



## UNITED STATES DEPARTMENT OF EDUCATION

December 27, 2023

The Honorable Brian L. Maher  
Commissioner  
Nebraska Department of Education  
P.O. Box 94987  
Lincoln, NE 68509

Dear Commissioner Maher:

The U.S. Department of Education (Department) received your written plan for a reasonable level of tolerance when calculating whether the Nebraska Department of Education (NDE) has met State maintenance of equity requirements under the American Rescue Plan Act of 2021 (ARP Act) in fiscal years (FY) 2022 and 2023. This written plan applies only to a subset of Nebraska's local educational agencies (LEAs).

The ARP Act's State maintenance of equity requirements help ensure that State funding supports LEAs with high concentrations of poverty and the students who have been subject to longstanding opportunity gaps in our education system and experienced the greatest impact from the COVID-19 pandemic. These requirements are vital for ensuring that States maintain funding to address the impact of the pandemic on students' education, and for protecting students in high-need and highest-poverty LEAs from disproportionate cuts if reductions in State effort do occur.

The Department determined that it is consistent with the State maintenance of equity requirements to allow a State educational agency (SEA) to calculate whether it has maintained funding equity with respect to its very small high-need and highest-poverty LEAs within a reasonable "tolerance level." The Department's determination is based on the possibility of significant volatility in the calculated per-pupil funding amounts for very small LEAs caused by small changes in student enrollment, which may be unrelated to whether an SEA has achieved the intent of the requirements. (See *Frequently Asked Questions, American Rescue Plan Elementary and Secondary School Emergency Relief Program, Maintenance of Equity Requirements*, July 26, 2022, Question 21(a).)

NDE asserts that calculated per-pupil funding amounts for very small school districts are significantly affected by small changes in attendance rates and students' educational needs. This makes per-pupil funding amounts in these districts an imperfect indicator of whether the SEA has achieved the intent of maintaining equity in funding across LEAs.

Accordingly, NDE proposes three tolerance levels in FY 2022:

- Tier 1: For LEAs with 400 or fewer students, NDE proposes to tolerate a 25 percent reduction in per-pupil funding from year to year. This would impact 49 small LEAs identified by the State as meeting the definition of high-need or highest-poverty that served less than 3.5 percent of Nebraska's students in FY 2022.
- Tier 2: For LEAs with 401 to 1,000 students, NDE proposes to tolerate a 10 percent reduction in per-pupil funding from year to year. This would impact 14 small LEAs

identified by the State as meeting the definition of high-need or highest-poverty that served 2.93 percent of Nebraska's students in FY 2022.

- Tier 3: For LEAs with 1,001 to 1,800 students, NDE proposes to tolerate a two percent reduction in per-pupil funding from year to year. This would impact one small LEA that served .43 percent of Nebraska's students in FY 2022.

NDE also proposes four tolerance levels in FY 2023:

- Tier 1: For LEAs with 400 or fewer students, NDE proposes to tolerate a 30 percent reduction in per-pupil funding from year to year. This would impact 48 small LEAs identified by the State as meeting the definition of high-need or highest-poverty that served less than 3.41 percent of Nebraska's students in FY 2023.
- Tier 2: For LEAs with 401 to 1,000 students, NDE proposes to tolerate a 10 percent reduction in per-pupil funding from year to year. This would impact 15 small LEAs identified by the State as meeting the definition of high-need or highest-poverty that served 4.23 percent of Nebraska's students in FY 2023.
- Tier 3: For LEAs with 1,001 to 1,800 students, NDE proposes to tolerate a two percent reduction in per-pupil funding from year to year. This would impact one LEA that served .58 percent of Nebraska's students in FY 2023.
- Tier 4: For LEAs with 1,800 to 3,500 students, NDE proposes to tolerate a 0.50 percent reduction in per-pupil funding from year to year. This would impact one LEA that served 1.09 percent of Nebraska's students in FY 2023.

After reviewing NDE's tolerance proposal and accompanying data, the unique circumstances in the State, and our further State-specific analysis, we have determined that NDE's proposed tiers 1 and 2 include reasonable levels of tolerance when calculating whether Nebraska has maintained equity for small LEAs in FYs 2022 and 2023.

We do not find extending tolerance to LEAs in Tier 3 (FY 2022 and FY 2023) nor Tier 4 (FY 2023) to be reasonable. For example, it is unclear how changes in enrollments in LEAs of these sizes would contribute to the large reduction in per-pupil funding compared to LEAs with many fewer students. Accordingly, Nebraska will need to make additional payments to three LEAs across Tiers 3 and 4 that experienced disproportionate reductions in per-pupil funding in FYs 2022 and 2023 and are not captured by this small LEA tolerance proposal. Please advise the Department when these additional payments have been made.

We appreciate your diligence in developing this proposal. If you have any questions, please contact your program officer at: [Nebraska.OESE@ed.gov](mailto:Nebraska.OESE@ed.gov).

Sincerely,

*Laura Jimenez*

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Director, Office of State and Grantee Relations