



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

April 18, 2024

The Honorable Jim Justice
Governor of West Virginia
State Capitol
1900 Kanawha Boulevard East
Charleston, WV 25305

The Honorable Michele L. Blatt
State Superintendent of Schools
West Virginia Department of Education
1900 Kanawha Boulevard East
Charleston, WV 25305

Dear Governor Justice and Superintendent Blatt:

I am writing in response to the West Virginia Department of Education's (WVDOE) February 20, 2024, request to the U.S. Department of Education (Department) for a waiver of the fiscal year (FY) 2023 maintenance of effort (MOE) requirements under the American Rescue Plan Act of 2021 (ARP Act).

As a condition of receiving Elementary and Secondary Emergency Relief (ESSER) funds under the ARP Act, West Virginia assured it would maintain effort, as defined in the ARP Act, for both elementary and secondary education and higher education in FYs 2022 and 2023. More specifically, for each FY, section 2004(a)(1) of the ARP Act requires a State that receives ARP ESSER funds to maintain State support for: 1) elementary and secondary education at least at the proportional level of the State's support for elementary and secondary education relative to the State's overall spending, averaged over FYs 2017, 2018, and 2019; and 2) higher education at least at the proportional level of the State's support for higher education relative to the State's overall spending, averaged over FYs 2017, 2018, and 2019. Section 2004(a)(2) of the ARP Act allows the Department to grant a waiver of the MOE requirements "for the purpose of relieving fiscal burdens incurred by States in preventing, preparing for, and responding to the coronavirus."

Under the authority of section 2004(a)(2) of the ARP Act, I am approving West Virginia's request to waive the MOE requirements section 2004(a)(1) of the ARP Act with respect to State support for elementary and secondary education and higher education to relieve fiscal burdens incurred by the State for FY 2023. This determination is based on the totality of the circumstances, including review of West Virginia's waiver request and the fiscal burden the State incurred in responding to the COVID-19 pandemic; the Department's application of the

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<http://www.ed.gov/>

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statutory requirements; the Department’s approach to MOE waiver requests as noted in the Frequently Asked Questions document¹; and consideration of the impact on students.

Based on the information submitted, West Virginia failed to meet the FY 2023 MOE requirement for elementary and secondary education by 6.95 percentage points (a \$397.6 million shortfall) and for higher education by 0.87 percentage points (a \$22.9 million shortfall). West Virginia noted that the decrease in proportional education spending was due to an increase in overall State spending on health care.

In determining whether to grant a State an MOE waiver, the Secretary may consider factors such as increased State support for education. West Virginia submitted data showing it increased overall support for elementary and secondary education from an average of \$2,082,961,475 in the baseline years to \$2,133,443,840 in FY 2023. Data submitted by the State also shows an increase in overall support for higher education from an average of \$447,224,048 in the baseline years to \$496,436,268 in FY 2023. West Virginia also increased FY 2023 per-pupil spending compared to the baseline for both elementary and secondary education (9.6 percent or \$743 per student) and higher education (31.1 percent or \$1,979 per student).

West Virginia also demonstrated a commitment to State support for elementary and secondary education in future fiscal years² including \$273.7 million in supplemental spending in FY 2024 and an additional \$148.6 million in FY 2025. West Virginia also increased State support for higher education in FY 2024³ by \$146 million including for dual enrollment programs, postsecondary students in foster care, and postsecondary medical education. These supplemental appropriations are larger than the FY 2023 MOE gaps for both elementary and secondary and higher education.

Thank you for your ongoing commitment to education. If you have any questions, please contact the West Virginia State mailbox at: WestVirginia.OESE@ed.gov.

Sincerely,

Laura Jimenez

Laura Jimenez
Director, Office of State and Grantee Relations

¹ https://oese.ed.gov/files/2022/09/8.15.22-Update_MOE-Chart-with-waiver-FAQs-Rounding-and-Appendices-Updated1.pdf

² https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=200&year=2024&sessiontype=RS

³ https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=650&year=2024&sessiontype=RS
https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=877&year=2024&sessiontype=RS
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