



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

July 31, 2023

The Honorable Tina Kotek
Governor of Oregon
900 Court Street, Suite 254
Salem, OR 97301-4047

The Honorable Charlene Williams
Director
Oregon Department of Education
255 Capitol Street, NE
Salem, OR 97310

Dear Governor Kotek and Director Williams:

I am writing in response to the March 29, 2023, request from the Oregon Department of Education to the U.S. Department of Education (Department) for a waiver of the maintenance of effort (MOE) requirements in section 317(a) of the Coronavirus Response and Relief Appropriations Act, 2021 (CRRSA Act) and section 2004(a)(1) of the American Rescue Plan Act of 2021 (ARP Act). As a condition of receiving CRRSA Act and ARP Act pandemic relief funds under the Education Stabilization Fund, Oregon assured it would maintain effort for both elementary and secondary education and higher education in each of fiscal years (FYs) 2022 and 2023.

More specifically, for FY 2022, section 317(a) of the CRRSA Act requires a State that receives Elementary and Secondary School Emergency Relief funds (ESSER II), Governor's Emergency Education Relief funds (GEER II), and funds for the Emergency Assistance to Non-Public Schools (EANS) program to: 1) maintain State support for 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) maintain State support for 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. This MOE requirement also applies to ARP ESSER funds, and 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 Oregon's request to waive the MOE requirements in section 317(a) of the CRRSA Act and section 2004(a)(1) of the

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

ARP Act with respect to State support for elementary and secondary education to relieve fiscal burdens incurred by the State for FY 2022.

As indicated in the Department's Frequently Asked Questions document, the Department's approach to MOE waiver requests is rooted in consideration of the impact on students. In reviewing Oregon's request for a waiver, the Department considered all information and data included, as well as the totality of the circumstances. Based on the information submitted, the Department determined that, consistent with the Department's interest in a State's commitment to education spending, Oregon made increased investments in elementary and secondary education in FY 2022. Specifically, Oregon increased State support for elementary and secondary education overall and on a per-pupil basis in FY 2022 compared to the baseline years.

Despite these facts, based on Oregon's submission, the State failed to meet MOE requirements by 5.05 percentage points (\$608 million) in FY 2022, compared with the baseline years. Oregon represents that the decrease in proportional education spending was driven by increased State spending on pandemic-related investments in health care, human services, mental and behavioral health, housing, and workforce. Oregon also noted that the State experienced additional fiscal burdens related to historic wildfires in the fall of 2020 and summer of 2021 as well as long-term drought impacts that required additional state assistance to impacted farmers and communities.

Considering the totality of the circumstances, including the State's support for elementary and secondary education, as well as the State's demonstration of fiscal burdens incurred in responding to the coronavirus pandemic, the Department approves Oregon's request for a waiver of the aforementioned MOE requirements for FY 2022.

This waiver for FY 2022 MOE requirements is distinct from any determination the Department may make concerning Oregon's compliance with maintenance of equity requirements for FY 2022 under the ARP Act (§ 2004(b)). Based on data provided by the State, Oregon has not yet complied with the maintenance of equity requirements in FY 2022 for two high-need LEAs. Oregon must make supplemental payments to these high-need LEAs that experienced disproportionate per-pupil funding in FY 2022. Please advise the Department when these additional payments have been made.

Finally, the Department will not be acting on the State's request for a waiver of the MOE requirements for FY 2023 at this time. We strongly encourage the State to take additional steps to further the State's commitment to elementary and secondary education in FY 2023.

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

Sincerely,

Laura Jimenez

Laura Jimenez
Director, Office of State and Grantee Relations