



GOVERNOR'S EXECUTIVE CABINET OFFICE OF THE SECRETARY

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March 14, 2024

Office of Elementary and Secondary Education
U.S. Department of Education
RE: Commonwealth of Kentucky Maintenance of Effort Waiver Request

Dear Office of Elementary and Secondary Education:

The Commonwealth of Kentucky respectfully requests a waiver of the maintenance of effort requirement for fiscal year 2023 for the percentage of overall state spending for elementary and secondary education. Kentucky has met the maintenance of effort requirements in the three prior fiscal years for elementary and secondary education, and for all years for higher education.

The Commonwealth's nominal amount of spending for elementary and secondary education has exceeded the fiscal year 2017 through fiscal year 2019 three-year average in all subsequent fiscal years: 2020 through 2023. There were no fiscal year 2023 reductions in state funding for elementary and secondary education. The need for the waiver is related to the share of spending for elementary and secondary education in fiscal year 2023 of overall state spending not meeting the three-year average.

Kentucky's per pupil spending in fiscal year 2023 is 8.6 percent higher than the three-year average: \$9,507 in fiscal year 2023 compared to the three-year average of \$8,750. This reflects a continued priority of elementary and secondary education in Kentucky.

There was an anomalous item in fiscal year 2022, a one-time appropriation of \$479 million to the Kentucky Teachers' Retirement System on behalf of Kentucky's school districts. Notwithstanding this one-time spending in fiscal year 2022, total recurring spending for elementary and secondary education has risen every year over the last three fiscal years, including fiscal year 2023, the year for which this waiver request applies.

Kentucky has not used any of the ESSER or GEER federal funding to replace or supplant state funding for elementary and secondary education. All of those resources have been net new resources to K-12 schools.

Even with the increase in spending per pupil in fiscal year 2023 for elementary and secondary education, the fiscal year 2023 percentage of overall state spending is lower than the three-year average; therefore, the reason for this waiver request.

Overall state spending in fiscal year 2023 increased substantially due primarily to spending of prior year surplus funds and higher tax revenues. Recurring spending for elementary and secondary education increased. Due to the spending of prior year surpluses and higher tax revenues the Kentucky legislature budgeted a substantial amount of one-time spending, including cash funding capital projects, disaster relief for two record-level natural disasters, and funding for large economic development projects within the electric battery manufacturing sector. That spending caused an outsized overall spending amount with much of the one-time spending targeted to areas other than elementary and secondary education.

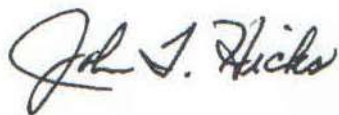
Elementary and secondary education has been Kentucky’s largest recipient of state funds for decades and remains so today.

The table below reflects that both nominal spending and spending per pupil in fiscal year 2023 were substantially higher than the three-year average.

Kentucky State Support for Elementary & Secondary Education	FY 2017-FY 2019 <u>Average</u>	FY 2020 <u>Actuals</u>	FY 2021 <u>Actuals</u>	FY 2022 <u>Actuals</u>	FY 2023 <u>Actuals</u>
Maintenance of Effort					
Percentage of Overall State Spending	46.24%	46.58%	47.32%	46.22%	39.16%
Waiver Request					
Elementary & Secondary Education Spending	\$5,219,706,861	\$5,412,932,695	\$5,429,040,523	\$6,022,412,164	\$5,618,771,656
Spending in Excess of 3-Year Average		\$193,225,834	\$209,333,662	\$802,705,303	\$399,064,795
Pupil Count	596,540				590,989
Spending Per Pupil	\$8,750				\$9,507

Attached is the Commonwealth’s completed Appendix C: MOE Waiver Request form.

Sincerely,



John T. Hicks
 Secretary of the Governor’s Executive Cabinet
 State Budget Director
 Authorized Representative

Attachment

Appendix C: MOE Waiver Request

This form must be used for the submission of a request for a waiver of the requirements noted below. For assistance, please contact your State mailbox, which is [State].oese@ed.gov .

State Kentucky

On behalf of my State, I request a waiver of the following State maintenance of effort (MOE) requirements for the following fiscal years:

Please check all that apply:

- FY 2020 MOE requirement for elementary and secondary education under section 18008 of the CARES Act.
- FY 2020 MOE requirement for higher education under section 18008 of the CARES Act.
- FY 2021 MOE requirement for elementary and secondary education under section 18008 of the CARES Act.
- FY 2021 MOE requirement for higher education under section 18008 of the CARES Act.
- FY 2022 MOE requirement for elementary and secondary education under section 317(a) of the CRRSA Act and section 2004(a) of the ARP Act.
- FY 2022 MOE requirement for higher education under section 317(a) of the CRRSA Act and section 2004(a) of the ARP Act.
- FY 2023 MOE requirement for elementary and secondary education under section 2004(a) of the ARP Act.
- FY 2023 MOE requirement for higher education under section 2004(a) of the ARP Act.

Data for State support and overall State spending

A State must resubmit the baseline data for FYs 2017, 2018, and 2019 (baseline years) as part of this MOE waiver request. If these baseline data differ from a State’s previously submitted data, please provide a description of the reason for the change. Additionally, a State must submit MOE data for the years in which it is requesting this waiver.

	State support for elementary and secondary education	State support for higher education	Overall State spending *
FY 2017	\$4,842,644,856	\$ 1,099,879,319	\$11,075,202,704
FY 2018	\$5,360,878,485	\$ 1,108,510,425	\$11,227,088,902
FY 2019	\$5,455,597,243	\$ 1,108,830,766	\$11,543,845,090
FY 2020	\$5,412,932,695	\$ 1,119,812,499	\$11,621,674,574
FY 2021	\$5,429,040,523	\$ 1,118,461,584	\$11,472,090,800
FY 2022	\$6,022,412,164	\$ 1,221,653,018	\$13,026,704,229
FY 2023	\$5,618,771,656	\$ 1,387,184,545	\$14,349,947,552

*For overall State spending, a State may request a waiver based on final allocations or appropriations. For more information, see FAQ 10.

Additional submission requirements

In an attachment, please provide:

1. A description of the extent to which the State experienced fiscal burdens in preventing, preparing for, and responding to the coronavirus and an explanation of how those fiscal burdens affected the State’s ability to maintain fiscal effort (e.g., the status of and any changes to the State’s rainy day fund, whether the State experienced a decline in revenues, or an increase in other emergency expenses resulting from the pandemic, such as expenses related to health care, unemployment insurance, or support for small businesses); and

2. Documentation and data supporting the description of the State’s fiscal burdens (e.g., revenue data, appropriation tables, unemployment statistics, etc.) including any State action that impacted State revenue (e.g., tax increases or decreases).
3. In addition, in its waiver request, a State should submit information on the relevant factors listed below to support its request. The Secretary may ask States for additional information after States submit the MOE waiver request form.

In determining whether to grant a State an MOE waiver, the Secretary may consider factors such as:

Has the State increased support for education?

The Department understands that it is possible that a State has maintained or increased overall funding for education and the proportion of the State budget for education has still declined because of increases in other areas of the budget (e.g., public health). In these cases, the Secretary may consider:

- Has total State funding for K-12 education and for higher education (calculated separately) increased from the prior fiscal year?
- Has total State funding for K-12 education and for higher education (calculated separately) increased over time (e.g., since baseline years)?
- Has per-pupil State funding for K-12 education and for higher education (calculated separately) increased from the prior fiscal year?
- Has per-pupil State funding for K-12 education and for higher education (calculated separately) increased over time (e.g., since baseline years)?
- Has the State appropriated an increase in State funding for K-12 education and for higher education for future fiscal years?

Are there exceptional circumstances that caused the State to be unable to maintain support for education?

If a State’s support for education declined, the Secretary may consider:

- Are there specific severe effects of the COVID-19 pandemic on the State’s economy that necessitated reductions in support for elementary and secondary education and for higher education?
- What steps did the State take to avoid and/or minimize such reductions?
- Did the State use Coronavirus State and Local Fiscal Recovery Funds awarded by the U.S. Department of the Treasury under section 9901 of the ARP Act to support elementary and secondary education and higher education?
- How did reductions in support for elementary and secondary education and for higher education compare to other budget categories?
- Did the State take steps that reduced or will it take steps to proactively reduce its financial resources in a way that impacted or will impact its ability to meet MOE requirements (e.g., tax changes (and in what context), additional contributions to rainy day funds)? If so, what was the impact of the reduction (e.g., to what extent were its resources reduced or will its resources be reduced)?

Has the State used or will it use ESSER, GEER, or Higher Education Emergency Relief (HEER) funding to replace State funding for education?

It is important for the Department to understand the State’s use of pandemic-related Federal funds when reviewing a request for a waiver. The Secretary may therefore consider:

- Will all unallocated ESSER or GEER funds relevant to the waiver be used to provide net new resources to K-12 schools and to higher education and not be used to replace existing State commitments to K-12 education and to higher education?
- Will all unallocated HEER funds be used to provide net new resources to higher education and not be used to replace existing State commitments to higher education?
- Has the State previously used any ESSER, GEER, or HEER funds to replace State funding for education?

To the best of my knowledge and belief, all of the information in this MOE data submission are true and correct and the

failure to submit accurate data may result in liability under the False Claims Act, 31 U.S.C. § 3729 et seq.; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and 18 USC § 1001, as appropriate, and other enforcement actions.

John T. Hicks 502-564-1218
Governor or Chief State School Officer or Authorized Representative (Typed or Printed Name) Telephone

John J. Hicks 3/14/2024
Signature of Governor or Chief State School Officer or Authorized Representative Date

Public Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0745. Public reporting burden for this collection of information is estimated to average 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain benefit under section 18008 of the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act, Division M, Section 317 of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA) Act, and Section 2004(a) of the American Rescue Plan Act of 2021 (ARP Act) If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact Britt Jung, Office of State and Grantee Relations, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-6450, email: SGR@ed.gov directly.

