



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

May 26, 2021

Commissioner Mike Morath  
Texas Education Agency  
1701 N. Congress Avenue  
Austin, TX 78701

Dear Commissioner Morath,

It has come to our attention that Texas is considering a legislative proposal that would essentially require local educational agencies (LEAs) to supplant State and local funds with funds awarded under the Elementary and Secondary School Emergency Relief (ESSER) Fund, as authorized under the American Rescue Plan (ARP) Act of 2021. Such actions would be inconsistent with the purpose of the ARP ESSER program – which is to expand resources for K-12 and postsecondary schools and students, not to replace existing State education commitments – and may impact the State’s and LEAs’ ability to comply with Federal fiscal requirements.

We understand that Section 25 of HB 1525 would require Texas LEAs to reserve a significant portion of State and local education funds appropriated through the State’s Foundation School Program in fiscal years (FYs) 2022 and 2023 and to use those funds to support education costs starting in the 2024-2025 school year. This requirement may impact the ability of the State and its LEAs to comply with Federal fiscal requirements. As a condition of receiving ESSER and the Governor’s Emergency Education Relief (GEER) funds, Texas assured that it would maintain effort for both elementary and secondary education and higher education in FYs 2020, 2021, 2022, and 2023. Similarly, under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) and other Federal education programs, Texas assures that the State or its LEAs, as applicable, annually maintain fiscal effort. Finally, Texas also assured that it would maintain equity at the State and local level under section 2004(b) and (c) of the ARP Act.

When an LEA reserves otherwise available State and local funds to comply with the proposed State reservation requirement, those funds would not be taken into consideration in determining the level of support or expenditures during the year in which they are reserved. As a result, these reservations may preclude the State and its LEAs from complying with various Federal fiscal requirements. For example, if an LEA reserves a portion of its school year 2021-2022 State education funds for use in school year 2024-2025 as a result of the proposed State requirement, those reserved funds may not be considered State support for elementary and secondary education for school year 2021-2022. It would be impossible for a State to approve a budget for a specific fiscal year that maintains fiscal effort at the State level without knowing how much funding would be

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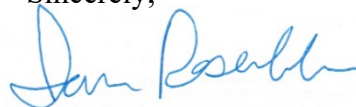
*The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

reserved by each LEA in the State for that fiscal year. Additionally, the required reservation of State and local funds for future school years may impact each LEA's ability to meet local maintenance of effort requirements under various Federal education programs.

Furthermore, to the extent that Texas requests a waiver of the ESSER and GEER maintenance of effort requirements for either elementary and secondary education or higher education, such legislative action would be a significant factor in the determination of whether to grant the waiver. As noted in the MOE guidance issued on April 20, 2021, one factor that the Secretary considers when determining whether to grant a waiver is whether a State uses ARP ESSER funding to replace State funding for education. By requiring LEAs to reserve a substantial portion of their State and local funding during the period of availability for ARP ESSER funding, the State is essentially using the Federal funds to replace State funds for education rather than to provide net new resources to support the urgent social, emotional, mental health, and academic needs of students – particularly those who have been most impacted by the pandemic.

The Department will continue to closely review and monitor whether Texas is meeting all of its Federal fiscal requirements. We are available to answer any questions that you and your staff may have, and we look forward to working together to ensure that these critical resources are effectively deployed to meet the needs of Texas students.

Sincerely,



Ian Rosenblum  
Deputy Assistant Secretary for Policy and  
Programs Delegated the Authority to Perform  
the Functions and Duties of the Assistant  
Secretary  
Office of Elementary and Secondary  
Education

cc: The Honorable Governor Greg Abbott