



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

June 30, 2021

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

Dear Commissioner Morath:

I am writing regarding the Texas Education Agency's (TEA) plan to use more than \$1 billion of its Elementary and Secondary School Emergency Relief Fund provided under the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (ESSER II) to supplant the State's commitment to education funding in 2020-2021. Based on its published "SY 20-21 Attendance and Enrollment FAQ"

[\[https://tea.texas.gov/sites/default/files/covid/SY-2020-21-Attendance-and-Enrollment.pdf\]](https://tea.texas.gov/sites/default/files/covid/SY-2020-21-Attendance-and-Enrollment.pdf), it appears that TEA intends to use ESSER II funds to take the place of State dollars that would otherwise be used as part of a "hold harmless" provision to local educational agencies (LEAs). Specifically, TEA's "SY 20-21 Attendance and Enrollment FAQ" states: "For 2020-2021, TEA will reduce total Refined [average daily attendance (ADA)] in an amount necessary to ensure each LEA receives total state and ESSER II funding equal to the amount that would have been available through the [Foundation School Program] while receiving the benefit of the hold harmless provided by the State." The document further refers to an "ESSER II reduction" in the calculation of State funds.

The purpose of the ESSER II funds is to provide additional resources to States so that school districts can better respond to the tremendous impact that the pandemic has had on students. This provision would reduce the amount of funding available to meet the urgent academic, social, emotional, and mental health needs of students—particularly those most impacted by the pandemic.

As you know, as a condition of receiving ESSER II funds, as well as other pandemic relief funds, Texas assured that it would maintain effort for both elementary and secondary education and higher education. (See sections 18008(a) of the CARES Act, 317(a) of the Coronavirus Aid, Relief, and Economic Security (CRRSA) Act, and 2004(a)(1) of the American Rescue Plan (ARP) Act of 2021.) Although TEA may request a waiver of the maintenance of effort (MOE) requirements (see sections 18008(b) of the CARES Act and 317(b) of the CRRSA Act), the Department's approach to MOE waiver requests will be rooted in the consideration of "the impact on students." As noted in question 8 of the Department's MOE [guidance](#) issued on April 20, 2021, one factor that the Secretary may consider when determining whether to grant a waiver is whether a State has "used or will...use ESSER, GEER, or Higher Education Emergency Relief (HEER) funding to replace State funding for education."

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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 used 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