



March 24, 2021

[Lakesha.mckenzie@ed.gov](mailto:Lakesha.mckenzie@ed.gov);

[montana.oese@ed.gov](mailto:montana.oese@ed.gov);

Dear Ms. Mckenzie:

The Department of Education (“Department”) recently announced that it intends to provide additional guidance on the “Maintenance of Equity” requirements for “High Need” and “High Poverty” Local Education Agencies (LEAs) contained in Section 2004(b) of the American Rescue Plan Act (ARPA).<sup>1</sup> I write to request that the Department consider the State of Montana’s input when issuing guidance for states on these provisions. **Specifically, I ask that the Department adopt an interpretation of the “per-pupil basis” calculation that is compatible with the existing equity mechanisms in Montana’s complex school funding formula.** This will allow Montana to accurately reflect total funding to these LEAs while complying with the spirit and purpose of Section 2004(b).

As you know, ARPA provides additional funding for the Elementary and Secondary School Emergency Relief Fund (ESSER) that was created by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and then supplemented by the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA). In exchange for funds received under the CARES Act (“ESSER I”), states must maintain support for elementary and secondary education (ESE) in each of fiscal years 2020 and 2021 at least at the level of such support that is the average of the support for ESE in FYs 2017, 2018, 2019. Similarly, in exchange for funds received under CRRSAA (“ESSER II”), states must maintain support for ESE in FY 2022 based on the proportional share of the state’s support for elementary and secondary education relative to the state’s overall spending averaged over FYs 2017, 2018, and 2019. These are known as “Maintenance of Effort” (MOE) requirements.

In May 2020, the Department provided flexibility to the states to define “support for elementary and secondary education” for the purposes of the MOE requirements.<sup>2</sup> Montana chose “BASE Aid” as the measure of state funding for K-12 education for the MOE requirements in ESSER I.<sup>3</sup>

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<sup>1</sup> [https://oese.ed.gov/files/2021/03/FINAL\\_ARP-ESSER-FACT-SHEET.pdf](https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-FACT-SHEET.pdf)

<sup>2</sup> U.S. DEPARTMENT OF EDUCATION, FREQUENTLY ASKED QUESTIONS ON THE MAINTENANCE-OF-EFFORT REQUIREMENTS APPLICABLE TO THE CARES ACT PROGRAM (May 2020), <https://oese.ed.gov/files/2020/06/CARES-Act-Programs-Maintenance-of-Effort-FAQ.pdf>.

<sup>3</sup> For more information on the BASE formula, see <http://opi.mt.gov/Portals/182/Page%20Files/School%20Finance/Accounting/Guidance%20and%20Manuals/Tax%20Credits%20>



BASE Aid is the primary state funding mechanism for K-12 education in Montana. Enrollment is one component of the BASE Aid formula.

ARPA contains a similar MOE provision, but also adds a new “Maintenance of Equity” requirement. Sections 2004(b)(1) (High Need LEAs) and 2004(b)(2) (High Poverty LEAs), prohibit states from “reduc[ing] State funding (as calculated on a per-pupil basis)” to certain districts. This could present compatibility problems with our state funding formula.

If the Department interprets “as calculated on a per-pupil basis” as requiring a calculation based on state aid divided by current enrollment, Montana will likely be unable to meet this requirement for a significant number of school districts due to normal fluctuations in the school funding formula and existing equity mechanisms.

First, it is important to note that Montana’s school funding formula was developed decades ago under court order to achieve adequacy and equity as required by the Montana Constitution.<sup>4</sup> Pursuant to statute, the formula must be adjusted by an inflation measure each year.

One significant equity component of the formula is known as the guaranteed tax base (GTB) which provides additional state aid to school districts with taxable value per student that is lower than the statewide average. GTB supports equity by giving additional funding to poorer districts.

The GTB component, while important for satisfying state equity requirements, makes using the per-pupil basis calculation untenable for satisfying the federal ARPA equity provision. For example, if a High Need or High Poverty LEA sees an increase in taxable value in FY 2022, the district will need and, therefore, receive less money from the state GTB component due to increased local property tax revenue going to schools. This will create the illusion that state aid has decreased on a per-pupil basis when, in reality, the LEA’s funding has remained steady.

One other area of concern is changes in enrollment. The BASE Aid formula generally premises the aid in the current fiscal year on enrollment from the most recent fiscal year. So, for example, if a LEA experienced an enrollment decline in FY 2019 (the comparison year for Section 2004(b)(2)), per-pupil spending will appear high since the funding is based on the prior year’s enrollment. But this will create problems in subsequent years since funding is measured against current enrollment. It may be years before inflation increases the funding factors to compensate for this artificially high result in the base year. The problem is exacerbated by a provision in our funding formula allowing a LEA with declining enrollment to use a three-year average for funding, extending the artificially high per-pupil result over three years.

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[or%20Educational%20Donation/FY%202017/Understanding%20Montana%20School\\_Finance\\_FY\\_2018.pdf?ver=2018-06-04-101519-957.](#)

<sup>4</sup> See, e.g., *Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 109 P.3d 257 (Mt. 2005); *Helena Elementary Sch. Dist. No. 1 v. State*, 769 P.2d 684 (Mt. 1989).

Finally, some other components of BASE Aid are not awarded on a per-pupil basis. For example, the formula contains per-school and per-district entitlements. These essentially fixed costs can produce distorted per-pupil results when there are large enrollment changes.

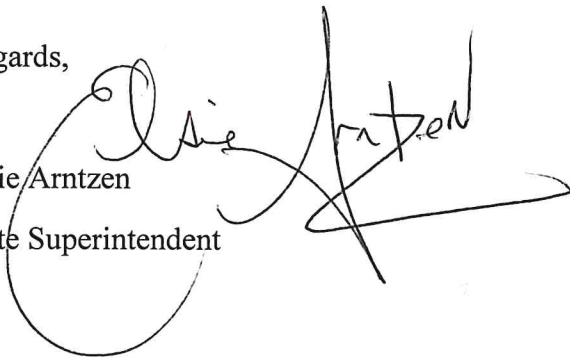
The Montana Office of Public Instruction has produced preliminary estimates of enrollment and funding for FY 2022 and found that 40 of the 140 “High Poverty” LEAs would fail the Section 2004(b)(2) requirement under the strict “per-pupil” calculation. This metric, as discussed, does not reflect the true measure of state education funding due to components such as the annual inflation factor and GTB boost for poorer districts.

As a result, we respectfully request that the Department interpret the “as calculated on a per-pupil basis” in a way that is compatible with Montana’s existing school-funding formula. To do otherwise would cause Montana to disrupt its judicially-mandated funding formula and also not reflect the true level of funding received by High Poverty and High Need LEAs. **We would greatly appreciate the opportunity to work with the Department to ensure Montana is in compliance with ARPA’s requirements.**

I am sure other states have similar funding idiosyncrasies. I look forward to discussing this issue in greater detail with your team.

Regards,

Elsie Arntzen  
State Superintendent

A handwritten signature in black ink, appearing to read "Elsie Arntzen", written over a large, loopy flourish that extends from the left side of the signature area.