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American Rescue Plan Act Maintenance of Equity Restriction

The American Rescue Plan Act (ARP) of 2021, Public Law 117-2, enacted March 11, 2021, contained a new a federal mandate as a requirement for receiving ESSER III COVID-19 funds from the U.S. Department of Education (USED).[1] ARP provides approximately $382,019,236 in support of public education to Montana. But, pursuant to this new requirement, the State of Montana must satisfy a Maintenance of Equity ("MOEquity") calculation.

MOEquity, in its simplest form, is a federally designed calculation (found in section 2004(b) of ARP) in which a per-student calculation is determined by dividing the total state funding to each district (LEA) by the number of enrolled students in specified years. The difference in per-student support between years is the determination of MOEquity and only applies to designated "high need" and "high poverty" districts under the statute. In other words, Montana may not reduce state funding (calculated on a per-pupil basis) to these LEAs for several years.

Current study shows that of the 400 LEAs in the state, approximately 105 will not maintain equity under the federal MOEquity calculation. This is because the federal MOEquity calculation conflicts with Montana's complex school funding formula, which strives for the equitable distribution of state funding to public school districts as required by Article X of the Montana Constitution.

The following is a description of why the federal MOEquity requirement is incompatible with the current Montana state funding system and does not reflect the true measure of funding for high poverty and high need LEAs.

I. Enrollment-Based Calculations: Montana state funding is driven by prior year enrollment and 3-year averaging

The federal MOEquity formula is based on calculations of state funding per enrolled pupil.

In the Montana state funding formula, some components are "enrollment" driven:

Component Name	Proportion of Total State Aid Included
Per-ANB Entitlement	53.50%
Special Education Allowable Cost Payment (in part)	4.90%
Data for Achievement Component	0.41%
Indian Education for All Component	0.42%

Although these components are "enrollment" driven it is the enrollment of the *prior* year that drives the calculation for the determination of the entitlement in the ensuing year. The federal MOEquity calculation, however, requires the use of enrollment and the funding of the *same* year and produces the appearance of a lack of maintaining an equitable system—producing a noticeable disconnect between the two formulas.

Another "enrollment" complicating factor is the proxy that is used in place of "enrollment" when determining the state entitlements. Montana uses what is termed, Average Number Belonging (ANB) for these "enrollment" driven components. So, not only is the enrollment used from the prior year, it is an average of an October count

[1] ARP 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)

and a February count and it is also determined on either, the calculated ANB relating to the ensuing year or it may be based on a three-year average of enrollment/ANB. This complicating factor compounds the prior year enrollment situation with a consideration of three years' worth of enrollment. The state funding formulas consider the state entitlements to LEA's based on the most advantageous situation to the district and will potentially show elevated swings from that of the actual enrollment when compared to the state component entitlements in the same year as required in the federal calculation of MOEquity. Many of the districts that appear to be treated inequitably in FY 22 based on USED's guidance appear that way because the state was providing additional funding in FY 19 to support the district during years of declining enrollment, a soft landing in the interest of equity.

II. Non-enrollment-based provisions of Montana's funding formula create problems for MOEquity Purposes

"Enrollment" based entitlements comprise approximately 59.2% of the included state funding involved. The remaining components (40.8%) are based on non-enrollment-based measures shown below.

The remaining components include:

Component Name	Proportion of Total State Aid Included
Quality Educator (FTE)	5.12%
State - Guaranteed Tax Base Aid (Tax Equalization)	28.90%
At Risk Student (Title I)	0.69%
American Indian Achievement Gap (Indian Students)	0.56%
Basic Entitlement (Formula driven base amount)	5.50%

These non-enrollment entitlements create the appearance of not maintaining equity as well by not "shifting" proportionately when enrollment increases or declines and add to the appearance of not maintaining equity.

III. Montana's large number of very small districts complicates matters

One more consideration is the "small" nature of many of our Montana LEA's. Having a low enrollment in a LEA will lead to large swings inequity in comparison to LEA's with large populations that may be seen in other states when proportionality is considered for gains and losses in enrollment.

Finally, as a matter of last resort Montana can meet USED's MOEquity requirements through the provisions in HB630(2021) which state the following:

> *Maintenance of equity payment. If the superintendent of public instruction determines that in the absence of the payment under this section the state will not be in compliance with the maintenance of equity requirements of section 2004(b)(1) or (b)(2) of the American Rescue Plan Act of 2021, the superintendent shall provide a maintenance of equity payment from the BASE aid appropriation in House Bill No. 2 to school districts only as necessary and in the minimum amount required to ensure compliance. A school district receiving a maintenance of equity payment shall deposit the money in the district's miscellaneous programs fund and may use the money for general operations and instruction as determined by the board of trustees.*

This is not a favorable option for the State of Montana and should be considered a last resort as mandated by HB630 should we need it. However, engaging this provision is a diversion from the state funding formula in an attempt to comply with a federal requirement which employs a calculation which is not responsive to the current Montana state funding system.

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