



Association of Texas
Professional Educators
305 E. Huntland Dr., Suite 300
Austin, TX 78752-3792

Phone: (512) 467-0071
Fax: (512) 467-2203
Email: info@atpe.org
Online: atpe.org

April 21, 2021

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202

Dear Secretary Cardona:

The **Association of Texas Professional Educators (ATPE)** represents approximately 100,000 employees of Texas public schools. As the state's leading education association, we write to you today regarding the Department's recently released "Guidance on Maintenance of Effort Requirements under the Elementary and Secondary School Emergency Relief (ESSER) Fund and Governor Emergency Education (GEER) Relief Fund."

ATPE appreciates the guidance the Department has provided to states as they work to ensure they comply with the MOE requirements under the CARES Act, the CRRSA Act, and the ARP Act. As you may be aware, Texas school districts have not received any of the \$5.5 billion in ESSER II funds that became available January 6. Nor have they received the \$12.4 billion from the American Rescue Plan, two-thirds of which became available March 24. Our Governor is holding ESSER II funds, has yet to draw down ESSER III funds, and has instead applied to the Department for a waiver from the CRRSA's MOE requirements. Our state's waiver request stems from expressed uncertainty about how the elementary/secondary and higher education MOE requirements are to be applied and what criteria the Department will consider when determining whether to grant a waiver.

Your guidance issued this week provides some clarity by stating that determinations regarding whether a state has met MOE requirements for K-12 or higher education funding are to be calculated separately. As Appendix C shows, a state must indicate which type of waiver it seeks (elementary/secondary or higher education and under which relief act), which we believe indicates the Department believes MOE requirements must be met *or waived* separately.

What is still unclear is whether the MOE requirements for higher and elementary/secondary education, which must be calculated and met separately, must *both* be met to satisfy the requirements for ESSER funding, or if only the elementary and secondary education MOE applies to a state's eligibility for receiving and keeping ESSER funding, which can only be spent on elementary and secondary education. By comparison, GEER, which can be used for elementary/secondary or higher education expenditures, requires both the elementary and secondary education MOE and the higher education MOE to be met in order for a state to satisfy the requirements for GEER funding. We seek clarity on how MOE requirements are to be interpreted for ESSER funds.

ATPE believes that without more clarity from the Department, Texas will continue to withhold critical COVID-19 relief funding from school districts while waiting for the Department's response to the state's CRRSA waiver request to provide an answer to this question. For this reason, we respectfully ask for a response to the following question as an update to your guidance aimed at giving states, including Texas, critically needed guidance on the MOE question:

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Must a state meet BOTH the elementary and secondary education MOE and the higher education MOE requirements under separate calculations as described in the guidance to receive ESSER, or is the requirement to meet both MOEs only applicable to GEER funds, which may be spent on either elementary/secondary or higher education?

Thank you in advance for your prompt response to this important question. We hope your answer will help expedite the release of the funds Congress intended to go to school districts as they deal with costs associated with the pandemic, including technology for virtual learning, PPE, mental health services, emergency sick and family leave for teachers, and other costs.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shannon Holmes', with a stylized flourish at the end.

Shannon Holmes, Ed.D.
Executive Director