August 6, 2021

Dear Chief State School Officers and School District Superintendents:

As we start the 2021-2022 school year, schools and communities must address opportunity gaps that were exacerbated by the pandemic, target resources and efforts to students who need them most, and build our education system back even better than before. To help meet these needs, earlier this week the U.S. Department of Education released the Return to School Roadmap. The goal of the Roadmap is to support educators and school leaders, parents, families, and communities and lead students on a path to return to in-person learning this fall where they can heal, learn, grow, and thrive.

Equity in access to educational resources—including equity in Federal, State, and local funding—is essential to achieving this vision for the success of our students. The American Rescue Plan Act of 2021's (ARP Act) historic investment of $130 billion in our Nation's schools and students is helping to safely reopen schools and support students' academic, social, emotional, and mental health needs as the new school year begins. Even with that new investment, Federal funds are only one part of the solution and cannot meet the full range of student needs on their own. That is why two other elements of the ARP Act are so important: 1) "maintenance of effort," which ensures that States continue to fulfill their overall commitment to K-12 education funding and higher education funding as a share of their total State budget, and 2) "maintenance of equity," which helps ensure that State and local funding supports the students who have been subject to longstanding opportunity gaps in our education system and have also experienced the greatest impact from the COVID-19 pandemic.

Maintenance of equity requirements were enacted for the first time in the ARP Act. These protections safeguard school districts and schools that serve a large share of students from low-income backgrounds against experiencing a disproportionate reduction in funding in fiscal years (FYs) 2022 and 2023 (i.e., school years 2021-2022 and 2022-2023). These requirements also ensure that school districts serving the largest shares of students from low-income backgrounds do not receive a decrease in State funding below their FY 2019 level.

The Department is committed to supporting State educational agencies (SEAs) and local educational agencies (LEAs) in implementing the ARP Act's maintenance of equity provisions with fidelity to the law. We also recognize that, with any new law that touches on fiscal issues, there will naturally be questions and challenges applying a single set of legal requirements to the specific circumstances of each State's education finance system, and even more so during a pandemic which has led to greater uncertainty in enrollment levels and other factors.

To support SEAs and LEAs as they implement these new provisions, the Department issued maintenance of equity guidance in June. Since issuing the guidance, the Department has continued to engage with a wide array of stakeholders to understand the opportunities and challenges related to maintenance of equity implementation during a school year unlike any other.

Today, the Department is pleased to announce the following additional supports to assist with the successful implementation of these critical maintenance of equity requirements and to continue to promote transparency at the SEA and LEA levels:

- **Updating "Frequently Asked Questions":** In response to questions from SEAs and LEAs, the Department is updating the June guidance document in order to provide greater clarity and additional advice and options regarding technical implementation consistent with the law during this challenging time. Specifically, the updated guidance will assist SEAs and LEAs in applying the statutory maintenance of equity provisions to their specific education finance systems in three areas: 1) which funding sources must an SEA or LEA include when determining whether it maintained fiscal equity, 2) how an SEA or LEA should determine enrollment for purposes of calculating per-pupil funding levels; and 3) which LEAs are excepted from the local maintenance of equity requirements during the 2021-2022 school year, as described in greater detail below.

- **Seeking Additional Input from the Field:** The Department is eager to learn from the experiences and perspectives of SEAs, LEAs, and other stakeholders. We therefore anticipate issuing a Request for Information to invite public comment on a range of maintenance of equity implementation questions. In addition to promoting public dialogue on the vital issue of resource equity, the Department plans to use the comments it receives to inform future guidance and potential rulemaking if necessary to ensure appropriate clarity and flexibility in implementing the law consistent with the goal of maintaining equity.

- **Addressing Specific Implementation Challenges for FY 2022:** The Department remains committed to ensuring that maintenance of equity is implemented with fidelity. We also recognize that some SEAs and LEAs may face barriers despite their best efforts to maintain fiscal equity.

  At the State level, as a matter of policy, the Department will work with SEAs to address technical limitations in their ability to fully implement aspects of the statute, while still fulfilling the central intention of the legislation to maintain equity. As an example of such a technical limitation, an SEA may be at risk of not maintaining fiscal equity due to the impact of funding changes in very small school districts or due to significant changes in enrollment resulting from the pandemic.

At the LEA level, the statute includes two important types of exceptions that limit the number of LEAs that are required to implement the maintenance of equity provisions. First, the statute exempts LEAs that meet certain size criteria, including LEAs that enroll fewer than 1,000 students, that have only one school, or that have only one school per grade span. The Department's preliminary analysis indicates that as many as 70 percent of LEAs will not be required to implement LEA-level maintenance of equity provisions as a result of these exceptions. It is important to note that these are generally very small LEAs that together enroll approximately 15 percent of the Nation's students.

Second, the statute allows exceptions for LEAs that demonstrate an "exceptional or uncontrollable circumstance." For FY 2022 maintenance of equity determinations, the Department recognizes that LEAs may face certain one-time implementation challenges due to the enactment of the ARP Act in March 2021—when LEA budgeting was already underway in many places—and the impact of the pandemic that has resulted in significant ongoing uncertainty about school-level enrollment for the 2021-2022 school year. Given such unique timing and implementation challenges, the Department has determined that these specific circumstances are an example of "exceptional or uncontrollable circumstances" that justify a limited exception to the LEA maintenance of equity requirements for the 2021-2022 school year. Therefore, an LEA experiencing these circumstances may demonstrate that it is excepted from the maintenance of equity requirements for FY 2022 by certifying to the Department that it did not and will not implement an aggregate reduction in combined State and local per-pupil funding in FY 2022 (i.e., is not facing overall budget reductions).

In addition, in the June guidance, the Department indicated that it will consider other "exceptional or uncontrollable circumstance" requests for exceptions to the LEA maintenance of equity requirements on a case-by-case basis and invites LEAs, or SEAs on their behalf, to contact the Department to seek a necessary exception for particular circumstances, including those that are unique to the specific context of the pandemic. For example, an "exceptional or uncontrollable circumstance" might include an "exceptional circumstance" such as increased one-time expenditures in the baseline year (school year 2020-2021) due to the pandemic or a very small school where the maintenance of equity calculations do not result in meaningful information about resource availability, or an "uncontrollable circumstance" such as a significant change in the expenses of a school that no longer serves a student whose educational and support needs require services that have a particularly high cost.

- **Promoting Transparency and Public Understanding:** The Department's June guidance was accompanied by an information collection for SEAs to submit baseline and initial maintenance of equity data for FY 2022. SEAs began submitting data to the extent available by July 30, 2021, and today the Department is posting all available data on its website and will continue to update this resource as additional submissions are received. (SEAs are invited to make any necessary revisions or updates to their submissions by emailing their OESE mailbox.) In addition, the Department anticipates publishing a notice of proposed requirements that each SEA make publicly available information on how each LEA in the State is maintaining fiscal and staffing equity. Requiring that maintenance of equity data be publicly available would allow parents, families, and local communities to access information on how each applicable LEA is maintaining equity for schools with high concentrations of students from low-income backgrounds. After publishing the notice in the coming weeks, the Department looks forward to receiving and responding to public comment.

We hope that this additional information will support SEAs and LEAs as you implement maintenance of equity protections for the first time during this challenging period. Thank you for all that you are doing to promote resource equity at this critical time for the Nation's students. The Department remains committed to working with and supporting all SEAs and LEAs.

Sincerely,

Miguel A. Cardona, Ed.D.