



STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
300 DON GASPAR
SANTA FE, NEW MEXICO 87501-2786
Telephone (505) 827-5800
www.ped.state.nm.us

RYAN STEWART, ED.L.D.
SECRETARY OF EDUCATION

MICHELLE LUJAN GRISHAM
GOVERNOR

May 14, 2020

MEMORANDUM

TO: Superintendents and State Charter School Leaders

FROM: Gabriel C. Baca, Director – Student, School and Family Support Bureau (signature on file)

RE: **Funds available under Coronavirus Aid, Relief and Economic Security (CARES) Act through the Elementary and Secondary School Education Relief Fund (ESSER), Index 24301**

Dear Superintendents and State Charter Leaders,

Thank you for providing continued learning opportunities for students and steadfast leadership and support for your hard-working employees and contractors during this time.

The purpose of this memo is to inform you of the opportunity to apply for funds through the Elementary and Secondary School Education Relief Fund (ESSER Fund), a component of the recently enacted Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub.L. 116–136.

Background:

The ESSER Fund is a highly flexible federal program designed to provide local education agencies (LEAs) with funding to meet a diverse array of educational and COVID response related needs. By law, awards from the ESSER Fund are based on LEAs' proportional share of final 2019-20 Title I, Part A allocations received.

Allowable Uses of Funding:

LEAs may use ESSER Fund awards for:

1. Purchasing educational technology including assistive technology or adaptive equipment;
2. Professional development for educators or families to support remote/distance learning activities;
3. Providing mental health services and supports;
4. Activities that address the unique needs of low-income children;
5. Activities that address the unique needs of students with disabilities;
6. Activities that address the unique needs of English learners;
7. Activities that address the unique needs of Native American students;
8. Activities that address the unique needs of Non-Native American racial and ethnic minorities;

9. Support for homeless or foster youth;
10. Purchasing supplies to sanitize and clean facilities operated by the LEA;
11. Other activities necessary to maintain the operation of and continuity of services in the LEA and continuing to employ existing staff, including purchasing personal protective equipment for students and staff;
12. Planning and implementing summer learning and supplemental afterschool program activities;
13. Providing resources for principals and others school leaders to address school-specific needs;
14. Career and Technical Education;
15. Adult Education;
16. Family Literacy;
17. Coordination of preparedness and response efforts of the LEA with state, local, tribal, and territorial public health departments, and other relevant agencies, to prevent, prepare for, and respond to coronavirus;
18. Procedures and systems to improve the preparedness and response efforts of the LEA;
19. Training and professional development for LEA staff on sanitation and minimizing the spread of infectious diseases;
20. Planning and coordination during long-term closures, including how to provide meals to eligible students, how to provide online learning technology to all students, how to provide guidance on meeting IDEA requirements, and how to ensure other educational services can continue to be provided consistent with federal, state, and local requirements; and
21. Other activities authorized under ESEA.

The following are not allowable uses of ESSER funds:

- Lobbying;
- Subsidizing or offsetting executive salaries and benefits of individuals who are not employees of the SEA or LEAs;
- Expenditures related to state or local teacher or faculty unions or associations; and
- Bonuses, merit pay, or similar expenditures, unless related to disruptions or closures resulting from COVID-19.

Statewide Priorities:

With the close of this school year upon us and planning underway for the uncertainties and complexities that we will face in the year to come, the PED is working to align federal and state funding efforts to meet the needs of students, staff, families, and stakeholders during each of the phases outlined below. While the use of the ESSER Fund award is flexible, it is critical that all LEAs keep student and staff safety and teaching and learning at the forefront of decision-making. The PED strongly encourages each LEA to plan for how these resources can be used to ensure that critical program and infrastructure elements are in place to allow for a safe return to school and to mitigate interruptions to the learning process caused by COVID-19. These priorities include:

- **Closing the digital divide** through the purchase and distribution of digital devices, through the support of home internet connectivity for all students, and through the professional development and instructional coaching needed by educators to facilitate remote learning;
- **Supporting the social and emotional needs** of students, families, and staff;
- **Supporting the needs of students with disabilities and at-risk students**, both during the building closure and when students transition back into school buildings; and
- **Providing personal protective equipment** for all staff and students, as well as ensuring that schools are fully cleaned, sanitized, and stocked with cleaning supplies.

COMING TOGETHER

MARCH – MAY 2020

Meeting the immediate needs of our children and our communities:

- » ensuring food security
- » graduating our seniors
- » managing and supporting continuous learning
- » planning for summer programming

LOOKING FORWARD

JUNE – AUGUST 2020

Collaborating to provide support to communities through:

- » summer programming
- » ensuring we continue to prioritize the needs of our most at-risk populations
- » leveraging existing resources to bridge and support learning
- » preparing to transition back to our schools
- » closing the digital divide
- » providing essential social and emotional supports

RISING

SEPTEMBER 2020 AND BEYOND

New Mexico will “rise” by:

- » reimagining safe learning environments
- » re-envisioning our practices
- » strengthening digital teaching and learning
- » enhancing our ability to collaborate and communicate
- » continuing to support our most at-risk students
- » refining our teaching: plan-teach-assess, analyze, adapt, reflect

We hope that the ESSER Fund award will enable you to “look forward” and “rise” in ways that work for your local community. As the disruption in our education system is disproportionately impacting our most vulnerable students, including low-income children, children with disabilities, English learners, Native American students, other racial and ethnic minorities, students experiencing homelessness, and foster care youth, we encourage you to especially consider these students as you use the ESSER Fund award for students’ education.

Application for Funds:

The PED has endeavored to make the application for funding a simple and straightforward process for LEAs. The application you will submit to gain access to ESSER funding will be completed using SharePoint. Detailed instructions on completing the application are available when you log in to the SharePoint application.

We recommend that you call an emergency board meeting, per your policy, and request approval for the:

- ESSER Fund Application;
- Initial Budget BAR for 2019-20; and
- Initial budget amount for 2020-21.

2019-20 Budget Authority: When you submit your application, you will also submit an “Initial Budget” Budget Adjustment Request (IB BAR) via the Operating Budget Management System (OBMS) to establish budget authority for this fund for 2019-20. Please upload a copy of the 24301 ESSER Planning Allocation Table for SY19-20 with your IB BAR. The table is listed under FY 19-20 Initial Awards and may be downloaded from:

<https://webnew.ped.state.nm.us/bureaus/administrative-services/awards-and-carryover/>

Once your application and budget are approved, you may charge allowable pre-award costs to this grant (through journal entry) from as early as March 13, 2020. **This will only be allowable during FY2019-20.** Therefore, if you have eligible expenditures affecting FY19-20, you must seek board approval and submit a BAR for FY19-20.

2020-21 Budget Authority: You may also include 100% of your ESSER Fund award amount in your 2020-21 OBMS budget. This step is necessary in order to establish budget authority for the 2020-21 school year. You will not have to submit a separate application for 2020-21. If you do not include the 24301 ESSER Fund Planning Allocation Table amount for FY20-21 in your 2020-21 initial budget in OBMS, your access to these funds will be delayed during the 2020-21 school year. Pre-award costs cannot be reimbursed in FY20-21.

The total ESSER Fund award cannot exceed 100% of your planning award. ***Track expenditures carefully in 2019-20 so that you will not overspend - as you will have 100% budget authority during each fiscal year for the same award.*** Final award balances will be calculated after the first reporting period in FY20-21 with carryover award letters to be issued in the fall.

As part of your application, you will be asked to respond to the following:

1. Provide a description of the steps the LEA will take to ensure compliance with Section 427 of the General Education Provision Act (GEPA), 20 U.S.C. 1228a. The description must include information on the steps the LEA proposes to take to permit students, teachers, and other program beneficiaries to overcome barriers (including barriers based on gender, race, color, national origin, disability, and age) that impede access to, or participation in, the program(s) for which you are submitting this funding request.
2. Describe how the LEA will determine its most important educational needs as a result of COVID19.
3. Explain how the LEA intends to use the ESSER Fund award to promote remote learning. Due to the nature of the pandemic and COVID-19 itself, it is likely that we may need to continue, or return to, distance learning in the future. Please explain how your intended use of ESSR funds will support ongoing remote learning.
4. Outline the LEA's proposed timeline for providing services and assistance to students and staff in both public and non-public schools.
5. Describe how the LEA intends to assess and address student learning gaps resulting from the disruption in educational services.
6. Describe how you will utilize the ESSER Fund award to target additional supports and services for your At-Risk student populations (English Learners, Students with Disabilities, Native American Students, Low Income Students, Students with high mobility, and Homeless/Foster Children).

Your Title I Director/Contact has access to the application in Sharepoint today. The application is due June 1, 2020. Extensions will be granted if needed, and you will not lose the funds allocated to your LEA. I encourage you to submit your application and IB BAR as soon as possible.

This program will be administered by the Student, School and Family Support Bureau. Staff will work with you on your application submission and approval. Please see the attached list for the name of your contact in my bureau.

Program Requirements:

Quarterly reporting on the use of funds will be required of all LEAs. Some details are provided in the assurances included in the application. The United States Department of Education has committed to releasing additional details in the near future.

Please note the following requirement around continuation of employment when receiving ESSER funds:

An entity receiving ESSER funds must, to the greatest extent practicable, continue to compensate its employees and contractors during the period of any disruptions or closures related to COVID19

in compliance with Section 18006 of Division B of the CARES Act. In addition, each entity that accepts funds will continue to pay employees and contractors to the greatest extent practicable based on the unique financial circumstances of the entity.

There is no requirement for site allocations for these funds – LEAs may use their discretion when determining how to allocate funds among school sites. The PED strongly encourages all LEAs to ensure at a minimum that all schools, including locally authorized charter schools, are equipped to provide remote learning through digital technology and that all schools have sufficient PPE for all students and staff and cleaning supplies to open school safely. All expenditures must be reasonable, necessary, and allocable under the CARES Act.

There is no requirement that these funds be used to supplement and not supplant existing funding.

Funds allocated to school districts are subject to equitable services under Sec. 1117 of the [Elementary and Secondary Education Act of 1965](#) (ESEA) (and require consultation). Consultation for equitable services must occur as soon as practicable, and must be completed and documented before Requests for Reimbursement (RFRs) will be approved by NMPED for the 2020-21 school year.

New Mexico Public Education Department’s Advisory to School Districts for the Determination of Equitable Services Calculations under the CARES Act:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub.L. 116–136, requires school districts that receive awards under the Elementary and Secondary School Emergency Relief (ESSER) Fund to provide equitable services to students and teachers in non-public schools using Title I criteria in the [Elementary and Secondary Education Act of 1965](#). See Section 18005(a) of the [CARES Act](#). In compliance with the [CARES Act](#), school districts are advised to determine equitable services dollar amounts based on the number of children from low-income families in each participating non-public school in the attendance area boundaries of Title I schools within the school district.

This advisory aligns with the plain language of the [CARES Act](#) and is consistent with long-standing equitable services calculations under Title I criteria, as well as U.S. Department of Education’s (ED) interpretations of the [Elementary and Secondary Education Act of 1965](#) over decades and as recently as October 2019. See <https://ccsso.org/sites/default/files/2020-05/DeVosESLetter050520.pdf>.

[ED’S April 30, 2020 non-binding guidance](#), titled “Providing Equitable Services to Students and Teachers under the Coronavirus Aid, Relief, and Economic Security (CARES) Act Programs”, advocates for calculations based on the number of total student enrollment at participating non-public schools instead of the number of students from low-income families at such schools, which is inconsistent with [Title I](#). Since [ED’S April 30, 2020 non-binding guidance](#) document presents an alternative interpretation of the [CARES Act](#) that does not align with the State’s reading of the [CARES Act](#), it is not being followed.

The New Mexico Public Education Department’s advisory is permissible under [ED’S April 30, 2020 non-binding guidance](#) document, which notes:

“Other than statutory and regulatory requirements included in the document, such as those pursuant to the authorizing statute and other applicable laws and regulations, **the contents of the guidance do not have the force and effect of law and are not meant to bind the public in any way.** This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. **In addition, it does not create or confer any rights for or on any person.**” (Emphasis added.)

In accordance with the New Mexico Public Education Department’s advisory, school districts shall take the following steps to calculate equitable services dollar amounts for participating non-public schools under the [CARES Act](#):

- 1) School districts shall contact *all* non-public schools within their geographic boundaries to ask whether they wish to receive equitable services under the [CARES Act](#).
- 2) To help determine which students live within Title I attendance areas and who are from low-income families, non-public schools that wish to receive equitable services under the [CARES Act](#) will collect the following data:
 - a. Student addresses;
 - b. Student grade levels; and
 - c. Student poverty information.
- 3) Only those students who live within Title I attendance areas and who are from low-income families will generate an equitable share. Title I attendance areas are determined by the public schools the school district served during the 2019-2020 school year.
- 4) Since children who enroll in non-public schools live in many different school districts, school districts may transfer the equitable share funds to one another to form a "Lead District" that will deliver the equitable services on behalf of the non-public school(s), as in the Title I equitable share process.

If you have any questions about this advisory, please contact me at gabriel.baca2@state.nm.us or (505) 670-8402.

cc: Secretary of Education, Ryan Stewart, Ed.L.D.
Deputy Secretary Dr. Hand, Policy, Resource & Accountability
Deputy Secretary Dr. Perea Warniment, Teaching, Learning & Assessment
Deputy Secretary Delgado, Finance & Operations
Deputy Secretary Bobroff, Identity, Equity & Transformation
Deputy Secretary Sandoval, Academic Engagement and Student Success
Allison Briceño, Managing Director
Alan Brauer, Director of Charter Schools
Marian Rael, Director of Administrative Services
Susan Lucero, Bureau Chief, Administrative Services Division, Fiscal Grants Management Bureau
Title I Directors and Contacts
Business Managers