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

MICHELLE LUJAN GRISHAM  
GOVERNOR

August 3, 2020

**MEMORANDUM**

**TO:** Bonnie Lightfoot, Superintendent, House Municipal Schools  
Johnna Bruhn, Superintendent, Mosquero Municipal Schools  
Kamau Turner, Superintendent, Roy Municipal Schools  
Reid Wessels, Head of School, The MASTERS Program

**FROM:** Gabriel C. Baca, Director – Student, School and Family Support Bureau 

**RE:** **Funds available under Coronavirus Aid, Relief and Economic Security (CARES) Act through the Elementary and Secondary School Education Relief Fund (ESSER) SEA Reserve, Index 24303**

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Dear Superintendents and State Charter Leader,

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.

**Allowable Uses of Funding:**

LEAs may use SEA Reserve ESSER Fund awards for:

- Closing the Digital Divide (Purchasing educational technology including assistive technology or adaptive equipment/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/or
- Training and professional development for LEA staff on sanitation and minimizing the spread of infectious diseases/Purchasing supplies to sanitize and clean facilities operated by the LEA/Purchasing PPE.

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.

### **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.

2020-21 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. Please upload a copy of the 24303 SEA Reserve ESSER Planning Allocation Table for SY20-21 with your IB BAR. The table is listed under FY 20-21 Initial Awards and may be downloaded from:

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

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. Outline the LEA’s proposed timeline for providing services and assistance to students and staff.
4. 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.
5. Describe how the LEA intends to assess and address student learning gaps resulting from the disruption in educational services.

Your Title I Director/Contact has access to the application in Sharepoint today. The application is due August 28, 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.

### **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, provided in the same manner as 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” and subsequent [interim final rule in 34 C.F.R. 76.665 \(effective July 1, 2020\)](#), 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](#). The interim final rule ostensibly gives LEAs two options: calculate the equitable services set-aside using low-income metrics, but then restrict the public use of the CARES Act funding in Title I schools only; or calculate the equitable services set-aside using proportional enrollments and use the public share in any school (Title I or non-Title I). As detailed in New Mexico Public Education Department’s advisory, PED believes the rule is inconsistent with the plain language of the CARES Act; and New Mexico has joined a multi-state action to enjoin the U.S. Department of Education from enforcing its rule.

While this action is pending, and in accordance with the New Mexico Public Education Department’s advisory, PED advises that school districts 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.

In the alternative, should the LEA decide to comply with the rule, the LEA would (a) calculate the private school set-aside using proportional enrollments and use the public share in both Title I and non-Title I schools; or (b) use the public share in only Title I schools, and calculate the private school set-aside as follows:

- 1) Applying the Title I 2019-2020 proportionate share (percentage) to the CARES Act award; or
- 2) Calculating a new set-aside using the following formula: [Total low-income students attending private schools located in the district] divided by [Total low-income students attending district Title I schools + Total low-income students attending private schools located in the district]

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

Please also see Secretary Stewart's May 28, 2020 memo regarding the CARES Act and Equitable Services in New Mexico at <https://webnew.ped.state.nm.us/wp-content/uploads/2020/05/5-28-20-Memorandum-re-Equitable-Services-FINAL.pdf>

cc: Secretary of Education, Ryan Stewart, Ed.L.D.  
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