

## WASB Legal and Legislative Video Update, July 21, 2021

### **Requirements for Districts Receiving ESSER III Funds—a) District Plan for Use of Funds and b) Meaningful Consultation**

The American Rescue Plan Act (ARPA) contains requirements on districts that school leaders should be aware of:

#### **1) Twenty (20) Percent of ESSER III Funds received must be used to address learning loss**

The ARPA requires is that a school district (LEA) that receives ESSER III funds ... *shall reserve not less than 20 percent of such funds to address learning loss* through the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs, and ensure that such interventions respond to students' academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student subgroups described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 ([20 U.S.C. 6311\(b\)\(2\)\(B\)\(xi\)](#)), students experiencing homelessness, and children and youth in foster care.

Districts are required to use any remaining funds for purposes authorized under the ARPA.

**Note:** The DPI has been holding stakeholder engagement sessions as it puts together its ESSER III State Plan. To help individual school districts and simplify the work of identifying which interventions are considered “evidence-based interventions” the WASB has asked the DPI to put together a bank of resources—identifying interventions that are deemed to be “evidence-based.”

#### **More Information on allowable uses of ESSER III Funds:**

[Section 2001\(e\) of the ARPA](#) prescribes certain mandatory and permissive uses of ESSER III funds by school districts (LEAs).

[Budget Paper #495](#) prepared by the non-partisan Legislative Fiscal Bureau provides a side-by-side comparison of the allowable uses of ESSER I, ESSR II and ESSR III funds.

#### **2) District Plan for Safe Return To In-Person Instruction**

A school district (LEA) receiving ESSER III funds must develop and make publicly available on its website, not later than 30 days after receiving the allocation of funds described in paragraph (d)(1), a plan for the safe return to in-person instruction and continuity of services.

Before making the plan publicly available, the local educational agency shall seek public comment on the plan and take such comments into account in the development of the plan.

If district had developed a plan for the safe return to in-person instruction before the date of enactment of this Act that meets the requirements described above, such a plan shall be deemed to satisfy the requirements under the ARPA.

Note: The U.S. Department of Education has released related resources to assist schools in safely reopening for in-person learning as part of the ED COVID-19 Handbook.

Volume 1 of the ED COVID-19 Handbook is available at <https://www2.ed.gov/documents/coronavirus/reopening.pdf>.

Volume 2 of the ED COVID-19 Handbook is intended to assist schools in addressing critical student needs and is available at <https://www2.ed.gov/documents/coronavirus/reopening-2.pdf>.

### 3) Maintenance of Equity for High-Poverty Schools

Section 2004(c) of the ARPA stipulates that a school district (LEA), as a condition of receiving ARP ESSER funds, may not, in Fiscal (School) Year 2022 or 2023:

- Reduce the combined State and local per-pupil funding for any high-poverty school served by the school district by an amount that exceeds the total reduction in district funding (from combined State and local funding), if any, for all schools served by the district in such fiscal year divided by the number of children enrolled in all schools served by the district in such fiscal year; or
- Reduce the number of full-time-equivalent (FTE) staff per-pupil in any high-poverty school by an amount that exceeds the total reduction in the number of FTEs per-pupil, if any, in all schools served by the district in such fiscal year divided by the number of children enrolled in all schools served by the district in such fiscal year.

A “high-poverty school” means a school in the highest quartile of schools served by a school district based on the percentage of economically disadvantaged students served. More information on maintenance of equity will be forthcoming.

The U.S. Department of Education recently published [new guidance](#) on Maintenance of Equity.

#### **Additional Requirements— District Plans for Use of ESSER III Funds & U.S. Dept. Of Education Interim Final Rule on those plans**

Recently, the U. S. Department of Education published a final interim rule establishing additional requirements on school districts receiving ESSER III funds under the ARPA.

(See: <https://www.federalregister.gov/public-inspection/2021-08359/american-rescue-plan-act-elementary-and-secondary-school-emergency-relief-fund>.)

Under the interim final rule, *each school district that receives ESSER III funds* under the ARPA *must develop a plan for its use of those ESSER III funds and submit it to the State education agency (SEA)* within a reasonable timeline determined by the SEA.

The plan must contain, at a minimum:

- the extent to which and how the funds will be used to: implement prevention and mitigation strategies that are, to the extent practicable, consistent with CDC guidance;
- how the school district will use the funds it reserves under section 2001(e)(1) of the ARPA to address the academic impact of lost instructional time;

- how the district will use its remaining ARP ESSER funds;
- and how the district will ensure the interventions it implements will respond to the social, emotional, mental health, and academic needs of all students and particularly those students disproportionately impacted by the COVID-19 pandemic.

In developing its plan, a school district must engage in **meaningful consultation** with stakeholders including students; families; school and district administrators (including special education administrators); and teachers, principals, school leaders, other educators, school staff, ***and their unions.***

A school district must also engage in meaningful consultation with each of the following to the extent they are present in or served by the LEA: Tribes; civil rights organizations (including disability rights organizations); and stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children and youth in foster care, migratory students, children who are incarcerated, and other underserved students.

A school district should translate relevant materials and obtain the services of interpreters, as needed, to engage its English learners and families with limited English proficiency. A school district must provide the public the opportunity to provide input on the development of the plan, take such input into account, and post the ESSER III plan on its website.

The actual, specific language of the interim final rule provides that:

“...each LEA that receives ARP ESSER funds must develop, submit to the SEA on a reasonable timeline determined by the SEA, and make publicly available on the LEA's website, a plan for the LEA's use of ARP ESSER funds. The plan, and any revisions to the plan submitted consistent with procedures established by the SEA, must include at a minimum a description of—

“(1) The extent to which and how the funds will be used to implement prevention and mitigation strategies that are, to the greatest extent practicable, consistent with the most recent CDC guidance on reopening schools, in order to continuously and safely open and operate schools for in-person learning;

“(2) How the LEA will use the funds it reserves under section 2001(e)(1) of the ARP Act to address the academic impact of lost instructional time through the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year;

“(3) How the LEA will spend its remaining ARP ESSER funds consistent with section 2001(e)(2) of the ARP Act; and

“(4) How the LEA will ensure that the interventions it implements, including but not limited to the interventions implemented under section 2001(e)(1) of the ARP Act to address the academic impact of lost instructional time, will respond to the academic, social, emotional, and mental health needs of all students, and particularly those students disproportionately impacted by the COVID-19 pandemic, including students from low-

income families, students of color, English learners, children with disabilities, students experiencing homelessness, children in foster care, and migratory students.

“Under this requirement, an LEA must engage in meaningful consultation with stakeholders and give the public an opportunity to provide input in the development of its plan. Specifically, an LEA must engage in meaningful consultation with students; families; school and district administrators (including special education administrators); and teachers, principals, school leaders, other educators, school staff, and their unions. Additionally, an LEA must engage in meaningful consultation with each of the following, to the extent present in or served by the LEA: Tribes; civil rights organizations (including disability rights organizations); and stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students.

“Finally, under the requirement, each LEA's ARP ESSER plan must be: In an understandable and uniform format; to the extent practicable, written in a language that parents can understand or, if not practicable, orally translated; and, upon request by a parent who is an individual with a disability, provided in an alternative format accessible to that parent.”

More information about these requirements can be found in this U.S. Dept. of Education document, “*Frequently Asked Questions, Elementary and Secondary School Emergency Relief Programs Governor’s Emergency Education Relief Programs*” (see: [https://oese.ed.gov/files/2021/05/ESSER.GEER\\_FAQs\\_5.26.21\\_745AM\\_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf](https://oese.ed.gov/files/2021/05/ESSER.GEER_FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf) )

### **State ESSER III Plans**

State education agencies (SEAs—such as the DPI) must also develop ESSER III plans and must make information publicly available about their ESSER III plans as soon as possible. (See: [ARP-ESSER-State-Plan-Template-04-20-2021\\_130PM.pdf\(ed.gov\)](https://www.ed.gov/files/2021/04/ESSER-State-Plan-Template-04-20-2021_130PM.pdf) .)

The DPI expects to complete and submit its ESSER III State Plan by mid-August. Watch the WASB Legislative Update Blog for more details as they become available.

The DPI also plans to provide guidance to school districts on developing local school district ESSER III plans. Based on conversations with the DPI, that is guidance likely to include:

- a Frequently Asked Questions (FAQ) sheet,
- a toolkit for districts on how to conduct listening/feedback sessions as well as
- sample questions to ask during those sessions to help generate useful feedback.

We plan to share links to whatever guidance documents the DPI provides on the WASB Legislative Update Blog as those documents become available.