

CARES Act

Elementary and Secondary School Emergency Relief (ESSER) Fund

Guidance for

Non-Title I-A LEAs



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Arizona Superintendent of Public Instruction

MAY 2020



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- CARES Act: *Elementary and Secondary School Emergency Relief Fund*

U.S. Department of Education ESSER Fund Resources

- [Frequently Asked Questions about the Elementary and Secondary School Emergency Relief Fund \(ESSER Fund\)](#)
- [Fact Sheet for Repurposing Federal Equipment and Supplies to Combat COVID-19](#)
- [Fact Sheet for Transferring State-and Local-Level Funds \(Section 5103 of the ESEA\)](#)
- [Providing Equitable Services to Students and Teachers in Non-Public Schools Under the CARES Act Programs](#)

For questions on the **ESSER Fund**, please reach out to the Arizona Department of Education (ADE) by emailing:
[**ESSER@azed.gov**](mailto:ESSER@azed.gov)

For **general questions** on the CARES Act, please reach out by emailing:
[**Questions@azed.gov**](mailto:Questions@azed.gov)



Arizona Department of Education
Office of the State Superintendent

Dear School Leaders,

The 2019-2020 school year presented our education community with unprecedented challenges. Yet, despite these challenges, our schools and educators did an amazing job finding creative ways to support students and families. While there are still many unknowns about the future of this virus and its impact on our state, the Arizona Department of Education (ADE) remains committed to providing the field with as much guidance, support, and clarity as possible.

To continue to support schools, ADE's framework for the Elementary and Secondary School Emergency Relief (ESSER) Fund provides a comprehensive and equitable approach to support Arizona's students, families, teachers and schools that have been impacted by COVID-19.

We will continue to collaborate closely with the Governor's Office, state, regional and local partners, and initiatives to further support statewide relief and recovery efforts. Our primary areas of focus include support for re-opening schools, online and remote learning opportunities and infrastructure, mental health and social wellness supports and resources for addressing student learning gaps.

These focus areas will be addressed through three distinct phases of time (**Relief, Preparation and Prevention** and **Recovery**) needed for overall recovery and stabilization, and these areas of focus and phases align with guidance to LEAs on frameworks and activities for their consideration in how they can leverage these federal recovery funds to address the unique needs of their school communities.

Thank you again for all you are doing to support your students, staff and community through this challenging time! The Arizona Department of Education is grateful for your continued leadership and care for our communities. We look forward to continuing to support you all through this recovery process.

Best,

A handwritten signature in black ink that reads "Kathy Hoffman".

Kathy Hoffman, MS, CCC-SLP
Superintendent of Public Instruction
Arizona Department of Education



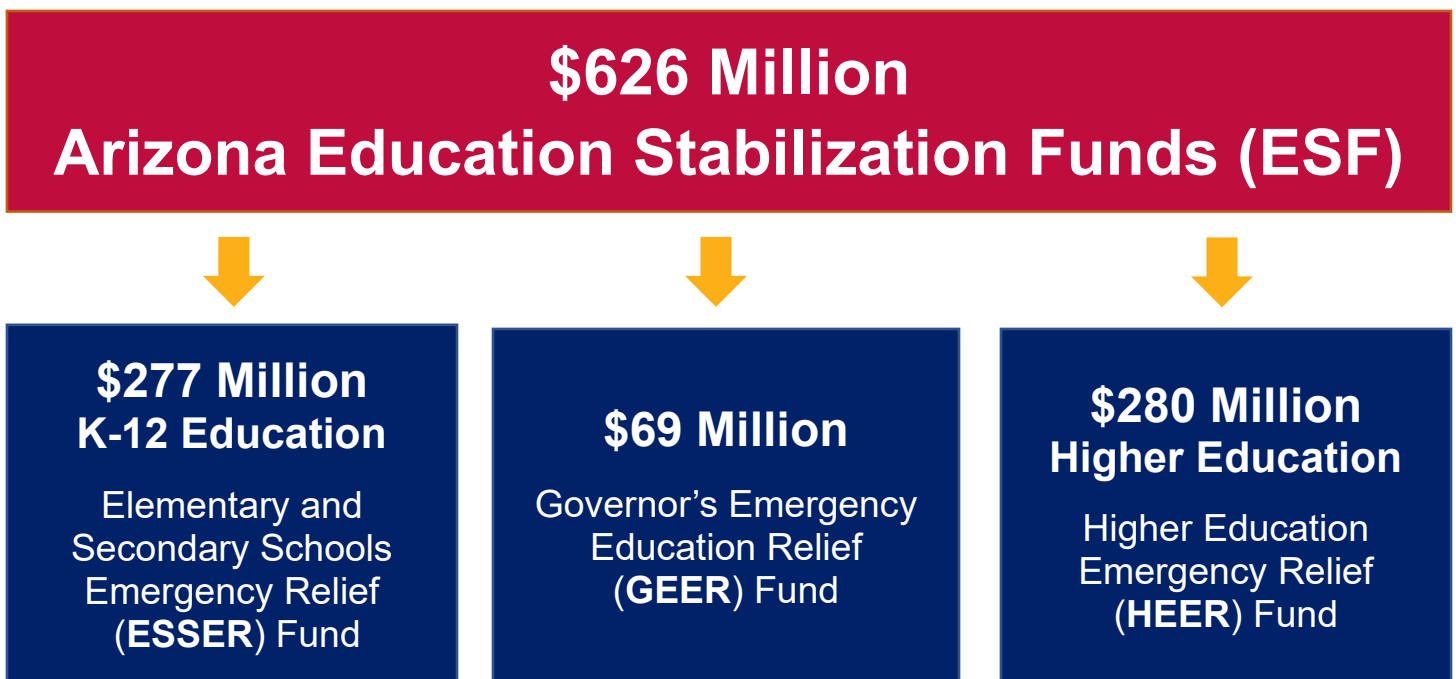
What is the CARES Act?

The **Coronavirus Aid, Relief and Economic Security (CARES) Act** is a \$2 trillion relief package that included \$180 billion to be distributed among two funds dedicated to State, Local, and Tribal governments

The **Education Stabilization Fund (ESF)** provides \$30.74 billion in dedicated funds to support education relief and recovery efforts, with:

- \$13.5 billion for K-12;
- \$14.2 billion for Higher Education; and,
- \$3 billion for Governors to further support a state’s most significantly impacted K-12 and Higher Education institutions.

Arizona is projected to receive **\$626 million** in **Education Stabilization Funds**:



The Arizona Department of Education (ADE) will administer the ESSER Fund, and advise the Governor regarding the distribution of a portion of GEER Funds to support K-12 LEAs that have been significantly impacted by COVID-19.



**\$277 Million
K-12 Education**

Elementary and
Secondary Schools
Emergency Relief
(ESSER) Fund

The **Elementary and Secondary School Emergency Relief (ESSER) Fund** is designated to support K-12 schools to respond to the COVID-19 pandemic and the declaration of statewide school closures. The Arizona Department of Education (ADE) will administer this fund.

Arizona’s award is based on the proportionate share of Title I-A funds received in FY20 (SY19-20):

- **90%** of Arizona’s award (**\$249 million**) must be **sub-granted to LEAs**. Funds are allocated based on each LEA’s **proportionate share of Title I-A funds received in FY20 (SY19-20)**.
- **9.5%** of the total award may be reserved for ADE **state-level activities** to support K-12 **relief, prevention and preparation, and recovery** efforts
- No more than **0.5%** of the total award may be reserved by ADE for **administrative costs**

The following is a breakdown of Arizona’s ESSER Fund award:

Total Award	\$ 277,422,944
Total SEA Admin (0.5%)	\$ 1,387,115
Total SEA Activities (9.5%)	\$ 26,355,179
Total LEA Assistance (90%)	\$ 249,680,650




Initial Project Term: March 13, 2020 – September 30, 2021

Funds will remain available for obligation through **September 30, 2022**



Phases to Recovery

ADE encourages a **three-phase approach** to plan to leverage ESSER Funds to respond to state and local needs in relation to COVID-19:

 <p>Relief</p>	 <p>Preparation & Prevention</p>	 <p>Recovery</p>
<p>March 13 – May 30, 2020</p> <p>Meeting immediate needs and managing school closures and planning for summer school</p>	<p>June 1 – August 30, 2020</p> <p>Addressing and stabilizing disruption and preparing for safe school openings, as well as a future health disruptions</p>	<p>September 1, 2020 - September 30, 2021</p> <p>Managing on-going recovery needs of students and schools, and reimagining safe learning environments</p>

A ***Roadmap for Reopening Schools***, developed through the efforts of a statewide stakeholders advisory group, will be released in **May 2020** with strategies and considerations to, in part, help inform LEA planning for the use of CARES funds across these phases

ADE SEA ESSER und Activities (\$26 million)

ADE’s SEA ESSER Funds will focus on **supporting students, families, educators, and leaders** to enhance **K-12 COVID-19 relief, prevention and preparation, and recovery efforts statewide**. Emphasis will be placed on areas most significantly impacted by COVID-19 – including Tribal Communities, rural and remote schools.

ADE will **collaborate with the Governor’s Office and other state, regional and local partners and initiatives** to further support efforts to identify areas that can be enhanced or expanded through targeted use of ESSER Funds. This will include **support for online and distance learning** improving broadband access for students and staff in significantly impacted LEAs.



ESSER LEA Assistance Funds for Non-Title I LEAs

Who is eligible to apply?

LEAs that **did not receive FY20 Title I-A funds** may apply for LEA assistance funds. For-profit charter LEAs are not eligible to apply, as they are not eligible to receive federal funds.

How are allocations determined?

ADE has reserved approximately half of the total amount of ESSER funds available to support SEA activities to provide grants to LEAs that did not receive Title I-A funds in FY20. Allocations have been determined based on the following methodology:

Non-Title I Cohort Allocation Methodology:

- Determine a per-pupil amount (PPA) based on 50% of the state FY20 Total Final Adjusted Poverty for the eligible Title I Cohort (Total for LEA Assistance / Total Adjusted Poverty)
- Determine adjusted poverty counts for Non-Title I Cohort using AzEDS SY19-20 October 1st data. Apply a ‘hold-harmless’ for poverty data to ensure a minimum applied poverty rate at the Title I-A cohort’s state average of **20%**
- Apply the 50% PPA to new adjusted poverty counts, and further support small LEAs by ensuring a **minimum allocation of \$50,000 (~68% of LEAs)**

Additional Title I Cohort Adjustment:

- Ensure all LEA allocations meet the 50% PPA as applied to their final adjusted poverty count
- Ensure a **minimum allocation of \$50,000 (~26% of LEAs)**

This process ensures that all LEAs, regardless of whether they received Title I-A funds in FY20, will receive an allocation based on a minimum per pupil amount based on poverty data, and that all LEAs will receive at least a minimum allocation of \$50,000.

How will eligible non-Title I-A LEAs apply for grant funds?

Eligible non-Title I-A LEAs will apply for ESSER Fund LEA assistance funds through completing an online application in the ADE Grants Management system.

What Assurances will apply to LEAs that choose to apply?

LEAs must make the following assurances in order to receive ESSER funds:

Assistance to Non-Public Schools

LEAs must provide equitable services in the same manner as required under Title I-A (ESEA Sec.1117). A **proportionate share** of funds to support equitable services must be calculated, and **timely and meaningful consultation** with non-public schools must be completed

Public Control of Funds

Just as required under Title I-A, LEAs must maintain control of all ESSER Funds for services and assistance provided to non-public schools associated with the provision of equitable services

Continued Payment to Employees

LEAs shall, to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.

NOTE: USED will provide additional guidance to address if ESSER Funds may be used by LEAs to help meet this assurance. An allowable LEA use of ESSER Funds are "*other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.*"

Are private schools eligible to apply for a grant?

No. Non-profit private schools are, however, eligible to receive equitable services through the ESSER Fund grant, as determined by timely and meaningful consultation. All students and teachers in private schools can benefit from equitable services, and the potential scope of services would be any activity allowable under the ESSER Fund. For-profit private schools are not eligible to participate in equitable services.

How long will LEAs have to use these funds?

LEAs will complete an application in the Grants Management system with an initial project/budget term of **March 13, 2020 – September 30, 2021**. However, funds obligated by LEAs will remain available for continued obligation through carryover through **September 30, 2022**

What can ESSER grant funds be used for?

ESSER Funds are **flexible**, and may be used by LEAs for **any of the following categories depending on local needs**:

- **Any activity allowed under the Every Student Succeeds Act (ESSA)** – eg: *Title I-A, Title I-C (Migrant Education), Title I-D (Neglected and Delinquent Students), Title II-A, Title III-A (English Language Learners), Title IV-A, Title IV-B 21st Century Community Learning Centers, Title V-B REAP (SRSA and RLIS), Title VI-A (Indian Education), Title VII (Impact Aid)*
- **Any activity allowed under the following Federal education acts:**
 - ***Individuals with Disabilities Education Act (IDEA)***
 - ***Carl D. Perkins Career and Technical Education Act (Perkins Act)***
 - ***McKinney Vento Homeless Assistance Act***
 - ***Adult Education and Family Literacy Act***
 - ***Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act***
- ESSER Funds may also be used by LEAs for any of the following **COVID-19 related relief, prevention and recovery efforts**:
 - **Coordination of preparedness and response** efforts of local educational agencies with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus

- Providing principals and other school leaders with the resources necessary to address the **needs of individual schools**
- Activities to **address the unique needs** of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how **outreach and service delivery** will meet the needs of each population
- Developing and implementing procedures and systems to **improve the preparedness and response efforts** of LEAs
- **Training and professional development** for staff of the LEA on sanitation and minimizing the spread of infectious diseases
- **Purchasing supplies to sanitize and clean** the facilities of an LEA, including buildings operated by such agency
- **Planning for and coordinating during long term closures**, including meals to eligible students, technology for online learning, guidance for carrying out requirements under the Individuals with Disabilities Education Act (IDEA), and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements
- **Purchasing educational technology** (including hardware, software, and connectivity) for students that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment
- **Providing mental health services and supports**
- **Planning and implementing activities related to summer learning and supplemental after school programs**, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care
- **Other activities that are necessary to maintain the operation of and continuity of services** in local educational agencies and continuing to employ existing staff of the local educational agency

What can ESSER grant funds not be used for?

The following are *unallowable* uses of ESSER Funds:

- CARES Act funds generally cannot be used for bonuses, merit pay, or similar expenditures, unless related to disruptions or closures resulting from COVID-19
- 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



Arizona Elementary and Secondary School Emergency Relief (ESSER) Fund Allocations – NON-TITLE I-A LEAs

Calculation Methodology:
1. Determine PPA based on 50% of FY20 state Total Final Adjusted Poverty for Title I Cohort (Total for LEA Assistance / Total Adjusted Poverty)
2. Determine adjusted poverty counts for Non-Title I Cohort using AzEDS SY19-20 October 1st data. Apply a 'hold-harmless' for poverty data to ensure a minimum applied poverty rate at the Title I cohort state average of 20%
3. Apply PPA to new adjusted poverty counts and ensure a minimum allocation of \$50,000

The following ESSER Fund allocations are based on the projected final eligible **Non-Title I-A LEA cohort**:

Entity ID	CTDS	LEA NAME	Total Initial ESSER Fund Allocation
79457	138761000	A Center for Creative Education	\$50,000.00
90199	108734000	Academy Del Sol, Inc.	\$123,755.24
449790	078286000	AIBT Non-Profit Charter High School, Inc.	\$50,000.00
4161	010307000	Alpine Elementary District	\$50,000.00
4178	020342000	Apache Elementary District	\$50,000.00
92980	118721000	ARCHES Academy	\$50,000.00
90857	078590000	Archway Classical Academy Scottsdale	\$104,520.27
134379	078412000	Arizona Agribusiness & Equine Center INC.	\$50,000.00
90758	078582000	Arizona Education Solutions	\$50,000.00
92566	078260000	Arizona Language Preparatory	\$50,000.00
4345	078722000	Arizona School For The Arts	\$87,082.82
631426	078285000	ASU Preparatory Academy	\$50,000.00
92327	078251000	ASU Preparatory Academy	\$50,000.00
91307	078205000	ASU Preparatory Academy	\$50,000.00
91305	078208000	ASU Preparatory Academy	\$50,000.00
92987	118716000	ASU Preparatory Academy - Casa Grande	\$50,000.00
522074	078284000	ASU Preparatory Academy Digital	\$60,874.44
79929	078614000	Avondale Learning dba Precision Academy	\$50,000.00
92734	078269000	BASIS Charter Schools, Inc.	\$50,000.00
783027	078288000	BASIS Charter Schools, Inc.	\$50,000.00
92865	078273000	BASIS Charter Schools, Inc.	\$50,000.00
92349	078231000	BASIS Charter Schools, Inc.	\$59,830.29
92997	078236000	BASIS Charter Schools, Inc.	\$64,320.17
90508	078575000	BASIS Charter Schools, Inc.	\$64,842.25
934316	078418000	BASIS Charter Schools, Inc.	\$65,051.08
92863	078272000	BASIS Charter Schools, Inc.	\$65,677.57

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92736	078268000	BASIS Charter Schools, Inc.	\$66,617.32
273398	078283000	BASIS Charter Schools, Inc.	\$68,914.46
91339	078212000	BASIS Charter Schools, Inc.	\$74,344.09
92318	108404000	BASIS Charter Schools, Inc.	\$77,267.73
92320	138786000	BASIS Charter Schools, Inc.	\$77,476.56
6361	108725000	BASIS Charter Schools, Inc.	\$83,845.93
91949	078225000	BASIS Charter Schools, Inc.	\$85,098.92
90862	038707000	BASIS Charter Schools, Inc.	\$87,813.73
91280	078403000	BASIS Charter Schools, Inc.	\$94,600.77
90841	078588000	BASIS Charter Schools, Inc.	\$97,002.33
91309	108737000	BASIS Charter Schools, Inc.	\$100,448.05
90842	078589000	BASIS Charter Schools, Inc.	\$116,632.51
81078	078736000	BASIS Charter Schools, Inc.	\$117,154.59
10972	078766000	Benchmark School, Inc.	\$50,000.00
89871	108501000	Blue Adobe Project	\$50,000.00
4231	060322000	Blue Elementary District	\$50,000.00
78888	078768000	Cambridge Academy East, Inc	\$50,000.00
89758	078534000	Candeo Schools, Inc.	\$62,858.35
78858	108777000	Carden of Tucson, Inc.	\$50,000.00
79886	078957000	Challenger Basic School, Inc.	\$50,000.00
90138	078549000	Choice Academies, Inc.	\$79,042.80
4177	020326000	Cochise Elementary District	\$50,000.00
91773	108909000	Collaborative Pathways, Inc.	\$50,000.00
90533	138501000	Compass Points International, Inc	\$50,000.00
89556	078530000	Concordia Charter School, Inc.	\$50,000.00
79077	078994000	Cornerstone Charter School, Inc	\$71,457.00
79443	078921000	Crown Charter School, Inc	\$50,000.00
4483	130341000	Crown King Elementary District	\$50,000.00
79496	078934000	Deer Valley Charter Schools, Inc.	\$50,000.00
88308	108732000	Desert Sky Community School, Inc.	\$50,000.00
81050	078744000	Edkey, Inc. - Sequoia School for the Deaf and Hard of Hearing	\$50,000.00
4202	038750000	Flagstaff Arts And Leadership Academy	\$50,000.00
4309	078628000	Foothills Academy	\$50,000.00
89829	078540000	Glendale Preparatory Academy	\$59,934.70
90906	078594000	Happy Valley East	\$132,557.92
79081	078998000	Happy Valley School, Inc.	\$61,083.28
89951	038755000	Haven Montessori Children's House, Inc.	\$50,000.00
92520	078259000	Heritage Academy Laveen, Inc.	\$58,264.05
92519	078258000	Heritage Academy Queen Creek, Inc.	\$67,661.47
4336	078712000	Heritage Academy, Inc.	\$118,616.41
4426	108701000	Hermosa Montessori Charter School	\$50,000.00

CARES Act – Education Stabilization Funds



4482	130335000	Hillside Elementary District	\$50,000.00
79264	078752000	Horizon Community Learning Center, Inc.	\$74,448.51
92620	078233000	Horizon Community Learning Center, Inc.	\$88,022.57
1000164	078616000	Integrated Education Foundation, Inc.	\$50,000.00
79063	078795000	James Madison Preparatory School	\$50,000.00
79065	138759000	Kestrel Schools, Inc.	\$50,000.00
10878	078779000	Keystone Montessori Charter School, Inc.	\$50,000.00
79420	108784000	Khalsa Family Services	\$50,000.00
4360	078759000	Khalsa Montessori Elementary Schools	\$50,000.00
92730	108738000	Leman Academy of Excellence, Inc.	\$430,295.43
4216	048750000	Liberty High School	\$50,000.00
90754	108908000	Lifelong Learning Research Institute, Inc.	\$50,000.00
79926	108708000	Lifelong Learning Research Institute, Inc.	\$50,000.00
79050	078997000	Little Lamb Community School	\$50,000.00
10965	138757000	Mary Ellen Halvorson Educational Foundation. dba: Tri-City Prep High School	\$50,000.00
5181	078906000	Metropolitan Arts Institute, Inc.	\$50,000.00
79207	078791000	Milestones Charter School	\$50,000.00
4253	070386000	Mobile Elementary District	\$50,000.00
4363	078763000	Montessori Education Centre Charter School	\$61,618.72
79548	078936000	Montessori House, Inc. d.b.a. Lehi Montessori	\$50,000.00
4203	038751000	Mountain School, Inc.	\$50,000.00
320470	078692000	New Learning Ventures, Inc.	\$50,000.00
4316	078903000	New School For The Arts	\$50,000.00
80985	078981000	New School for the Arts Middle School	\$50,000.00
4204	038701000	Northland Preparatory Academy	\$66,408.48
4373	080306000	Owens School District No.6	\$50,000.00
79069	128725000	Patagonia Montessori Elementary School	\$50,000.00
92983	078216000	Pathways In Education-Arizona, Inc.	\$50,000.00
87334	078504000	Pillar Charter School	\$50,000.00
79455	078925000	Pointe Schools	\$220,584.66
91317	078209000	Reid Traditional Schools' Painted Rock Academy Inc.	\$65,781.99
4306	078749000	Reid Traditional Schools' Valley Academy, Inc.	\$78,416.31
4414	100335000	San Fernando Elementary District	\$50,000.00
85454	108719000	Satori, Inc.	\$50,000.00
1000050	108514000	Science Technology Engineering and Math Arizona	\$50,000.00
91110	078243000	Scottsdale Country Day School	\$50,000.00
89756	078533000	Scottsdale Preparatory Academy	\$86,665.16
520359	078694000	Self Development Eastmark Academy	\$50,000.00
4250	070371000	Sentinel Elementary District	\$50,000.00
10966	078781000	Stepping Stones Academy	\$50,000.00
4361	078761000	Tempe Preparatory Academy	\$50,000.00

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91340	078213000	The Farm at Mission Montessori Academy	\$50,000.00
395879	078696000	The French American School of Arizona	\$50,000.00
90287	078561000	The Odyssey Preparatory Academy, Inc.	\$370,363.04
79073	108773000	Tucson Country Day School, Inc.	\$113,399.16
4310	078630000	Twenty First Century Charter School, Inc. Bennett Academy	\$62,654.33
4380	080322000	Valentine Elementary District	\$50,000.00
79957	078964000	Valley of the Sun Waldorf Education Association, dba Desert Marigold School	\$50,000.00
1000291	078104000	Valor Preparatory Academy, LLC	\$50,000.00
4358	078757000	Victory High School, Inc.	\$50,000.00
4339	078715000	Villa Montessori Charter School	\$51,685.85
4430	108705000	Vision Charter School, Inc.	\$50,000.00
79907	078960000	Vista Charter School	\$50,000.00
4377	080313000	Yucca Elementary District	\$50,000.00
4509	148758000	Yuma Private Industry Council, Inc.	\$50,000.00



Arizona Elementary and Secondary School Emergency Relief (ESSER) Fund Allocations Additional NON-TITLE I-A Entities

Calculation Methodology:
1. Determine PPA based on 50% of FY20 state Total Final Adjusted Poverty for Title I Cohort (Total for LEA Assistance / Total Adjusted Poverty)
2. Determine adjusted poverty counts for Non-Title I Cohort using AzEDS SY19-20 October 1st data. Apply a ‘hold-harmless’ for poverty data to ensure a minimum applied poverty rate at the Title I cohort state average of 20%
3. Apply PPA to new adjusted poverty counts and ensure a minimum allocation of \$50,000

NOTE: Data for delinquent students served under Title I-D used for County ESAs (county operated juvenile detention facilities), Arizona Department of Corrections and Arizona Department of Juvenile Correction used to determine ESSER Fund allocations

Entity ID	CTDS	LEA NAME	Total Initial ESSER Fund Allocation	Entity Type
10386	030199000	Coconino County Accommodation School District	\$50,000.00	Accommodation District
87600	040149000	Gila County Regional School District	\$50,000.00	Accommodation District
4386	090199000	Navajo County Accommodation District #99	\$50,000.00	Accommodation District
79379	130199000	Yavapai Accommodation School District	\$50,000.00	Accommodation District
6393	001202000	Arizona State School for the Deaf and Blind	\$84,159.18	ASDB
79188	029999001	Cochise County School Superintendent	\$50,000.00	County Operated Juvenile Detention (from Title I-D LEA)
79190	079999001	Maricopa County Education Service Agency	\$50,000.00	County Operated Juvenile Detention (from Title I-D LEA)
4234	070199000	Maricopa County Regional District	\$50,000.00	County Operated Juvenile Detention (from Title I-D LEA)
7652	089999001	Mohave County Education Service Center	\$50,000.00	County Operated Juvenile Detention (from Title I-D LEA)
4401	100100000	Pima Accommodation District	\$50,000.00	County Operated Juvenile Detention (from Title I-D LEA)
79192	111099000	Pinal County School Superintendent	\$50,000.00	County Operated Juvenile Detention (from Title I-D LEA)
79193	129999001	Santa Cruz County School Superintendent	\$50,000.00	County Operated Juvenile Detention (from Title I-D LEA)
79194	131899000	Yavapai County Education Service Agency	\$50,000.00	County Operated Juvenile Detention (from Title I-D LEA)
79196	149999003	Yuma County Education Service Agency	\$50,000.00	County Operated Juvenile Detention (from Title I-D LEA)
8336	211002000	Arizona Department of Corrections	\$128,744.75	Juvenile Detention (from Title I-D, State Agency)
8326	211001000	Arizona Department of Juvenile Corrections	\$50,000.00	Juvenile Detention (from Title I-D, State Agency)



Equitable Services

The CARES Act requires school districts (**these requirements do not apply to charter LEAs**) receiving ESSER (and GEER, as applicable) Funds to provide equitable services to non-profit private schools **in the same manner as provided under ESEA Section 1117 (Title I-A)**:

ASSISTANCE TO NON-PUBLIC SCHOOLS

SEC. 18005.

- (a) **IN GENERAL.** A local educational agency receiving funds under sections 18002 or 18003 of this title shall provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools.
- (b) **PUBLIC CONTROL OF FUNDS.** The control of funds for the services and assistance provided to a nonpublic school under subsection (a), and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property and shall provide such services (or may contract for the provision of such services with a public or private entity).

Who is required to provide equitable services?

Traditional school districts receiving either ESSER or GEER Fund LEA assistance grants are required to provide equitable services to non-profit private schools in the same manner as provided under ESEA Section 1117 (Title I-A) – **even if they are not receiving Title I-A**. Just as under ESSA programs, Charter LEAs, and other non-traditional district LEAs, are not required to provide equitable services.

How do you determine if a private school is eligible for equitable services?

A private school is eligible to choose to participate in ESSER Fund equitable services if they are currently eligible to participate in Title I-A equitable services from a school district.

Note, private schools that may have declined to participate in equitable services under Title I-A may choose to now participate under the ESSER Fund. Districts cannot only choose to reach out to private schools that have already chosen to participate in equitable services for other FY20 or FY21 ESSA programs, such as Title I or Title II. There may be private schools that will only choose to participate in ESSER Fund equitable services.

The *FY21 Affirmation of Timely/Meaningful Ongoing Consultation and Equitable Services* for the ESSER Fund is included in the Appendix. This form must be completed for all eligible private schools for a district, just as required under Title I-A, and must be uploaded to the Grants Management system as a required document as part of the LEA grant application process. Affirmation of Consultations for private school equitable services must be completed and submitted for LEA ESSER Fund grant applications to be approved.

Districts must make a minimum of three documented good-faith efforts to determine the participation status of a private school. If a private school has not responded after three documented good-faith efforts, then they may be reported by the district as a non-participating private school.

Do private schools need to have participated in FY20 Title I equitable services to be considered eligible for ESSER Fund equitable services?

No. All private schools eligible to participate in Title I equitable services in FY21 may choose to participate in ESSER Fund equitable services.

Who is eligible to receive equitable services?

All students and teachers in a participating non-profit private school are eligible to receive equitable services under the ESSER Fund.

What types of services are private schools eligible to receive?

Participating private schools may participate in any services aligned with any ESSER Fund allowable activity, as determined through **timely and meaningful consultation**.

How is the scope of equitable services that a private school can receive determined? Is consultation required?

School districts receiving ESSER and/or GEER Funds are required to engage in **timely and meaningful consultation** non-profit private schools, just as required under Title I-A. The expected outcome of this consultation is the determination of the scope and delivery of equitable services to be provided by the district.

The ADE **Ombudsman** for equitable services (PrivateSchoolsOmbud@azed.gov) is available as a resource, as needed, throughout the process of determining and delivering equitable services under the ESSER Fund, in the same manner as provided under Title I-A. Additional resources and support materials may be found on the ADE website for [Private School Equitable Services](#).

What are the requirements for equitable services?

LEAs must make the following assurances in order to receive ESSER Fund grants:

Assistance to Non-Public Schools

LEAs must provide equitable services in the same manner as required under Title I-A (ESEA Sec.1117). A **proportionate share** of funds to support equitable services must be calculated, and **timely and meaningful consultation** with non-public schools must be completed

Public Control of Funds

Just as required under Title I-A, LEAs must maintain control of all ESSER Funds for services and assistance provided to non-public schools associated with the provision of equitable services LEAs providing equitable services to non-public schools must:

- Maintain control of funds for the services and assistance provided to a non-public school under the ESSER Fund
- Maintain title to materials, equipment, and property purchased with ESSER funds
- Ensure that services to a non-public school with ESSER funds will be provided by a public agency directly, or through contract with, another public or private entity



How is proportionate share determined?

A district determines the proportional share of ESSER (and GEER, as applicable) Funds available for equitable services as follows:

- Determine the total number of eligible children from **low- income families residing in the LEA's Title I eligible school Attendance Zones**
- Determine the final cohort of participating private schools for ESSER Fund equitable services
- Determine the total number of eligible Private School children from **low- income families residing in the LEA's Title I eligible school Attendance Zones** attending ESSER Fund Participating Private Schools
- Determine the proportion of the total number of eligible Private School children from **low- income families residing in the LEA's Title I Attendance Zones** attending ESSER Fund Participating Private Schools as compared to the total number of all eligible children from **low- income families residing in the LEA's Title I eligible school Attendance Zones**
- Apply these proportions to the LEA's total ESSER Fund allocation to determine the amount of funds available for equitable services
- Reserve from this amount funds that are reasonable and necessary for the district to administer equitable services

How are participating private school budgets for equitable services determined?

A district determines the budget available for equitable services at each participating private school as follows:

- Determine the final cohort of participating private schools for ESSER Fund equitable services
- Determine the total number of eligible Private School children from **low- income families residing in the LEA's Title I Attendance Zones** attending ESSER Fund Participating Private Schools
- Determine final PPA for participating private schools:

$$\frac{\text{Total Amount Available for Equitable Services} - \text{Amount Reserved for Administration}}{\text{Total Eligible Private School Students from Participating Private Schools}}$$
- Apply the final PPA to the total eligible private school student count for each participating private school to determine final budgets for equitable services for each participating private school



Example of Determining the Proportionate Share of ESSER Funds Equitable Services

In this example, a district has received **\$1,000,000** in ESSER Funds

Step 1

The district has determined a final participating private school cohort of 3 private schools after completing timely and meaningful consultation with all eligible private schools. These schools have a total of 150 eligible Private School children from low- income families residing in the LEA's Title I Attendance Zones. The LEA has 1,350 children from low-income families attending Title I-A eligible schools. Using this information, they have determined the proportionate share of funds to reserve for equitable services:

Step 1			
EXAMPLE OF DETERMINING THE PROPORTIONATE SHARE OF ESSER FUNDS FOR EQUITABLE SERVICES			
	Total number of children from low- income families residing in the LEA's Title I-A <i>eligible</i> school Attendance Zones	Total number of eligible Private School children from low- income families residing in the LEA's Title I-A <i>eligible</i> school Attendance Zones	Total
Determine Eligible Student Count	1,350	150	1,500
	LEA Proportionate Share	Private Schools' Proportionate Share	Total
Proportion	90%	10%	100%
Proportional Share ESSER Fund	\$900,000	\$100,000	\$1,000,000



Step 2

The district has determined, after consultation with participating private school officials, an amount reserved that is reasonable and necessary for the district to administer ESSER Fund equitable services:

Step 2 EXAMPLE OF DETERMINING THE AMOUNT OF FUNDS RESERVED FOR DISTRICT ADMINISTRATION OF EQUITABLE SERVICES	
Total determined proportionate share for ESSER Fund equitable services	\$100,000
After consultation, the amount reserved that is reasonable and necessary for the district to administer ESSER Fund equitable services	\$10,000
Final amount available for ESSER Fund equitable services	\$90,000 (\$100,000 - \$10,000)



Step 3

The district determined their final participating private school cohort of 3 schools after completing timely and meaningful consultation with all eligible private schools. These schools have a total of 150 eligible Private School children from low- income families residing in the LEA's Title I Attendance Zones.

The district has determined the final per-pupil amount (PPA) of \$600 by dividing the total final amount available for ESSER Fund equitable services (\$90,000) by the final total eligible student count (150).

The district has applied their final PPA to the total eligible student count of each participating private school to determine the amount available to provide equitable services in each participating private school.

Step 3 EXAMPLE OF DETERMINING THE AMOUNT OF FUNDS AVAILABLE FOR ESSER FUND EQUITABLE SERVICES IN SPECIFIC PARTICIPATING PRIVATE SCHOOLS			
Private School	Total number of eligible Private School children from low- income families residing in the LEA's Title I <i>eligible</i> school Attendance Zones	Per-pupil amount (PPA) generated by each eligible private school student (\$90,000 / 150)	Amount available for ESSER Fund equitable services in each private school (number of students x PPA)
A	75	\$600	\$45,000
B	50	\$600	\$30,000
C	25	\$600	\$15,000
TOTAL	150	\$600	\$90,000

Please contact ESSER@azed.gov for additional questions regarding equitable services requirements



CARES Act Waivers

Under the CARES Act, the U.S. Secretary of Education has increased authority to provide education waivers related to assessments, accountability, and reporting requirements

Arizona has submitted and received approval for two waivers:

Assessment and Accountability Waiver

The following are now waived for ADE for SY19-20:

- Statewide assessment requirements
- Requirements that a state identify new schools for comprehensive and targeted support and improvement and additional targeted support and improvement (CSI and TSI) based on SY19-20 data, and freezes the current list of identified schools for SY20-21
- Report card provisions related to certain assessments and accountability

Fiscal Waiver

ADE will now be able to do the following:

- Approve LEAs to carryover more than 15% of FY20 Title I-A funds even if the LEA received approval to exceed this limitation in the past three years
- Extend the period of availability of FY19 funds to September 30, 2021 for the following ESSA grant programs:
Title I-A, I-B (State Assessment), I-C (Migrant), I-D (State Agency), II-A, III-A (EL), IV-A (Student Support and Academic Enrichment), IV-B (21st Century Community Learning Centers), V-B (RLIS), McKinney-Vento (Homeless)
- Permit LEAs to use their **FY20 Title IV-A funds** to best meet local needs through waiving content-area minimum expenditure requirements (for LEAs receiving more than \$30,000) and the 15% limit on technology-related purchases
- **Waive the ESSA definition of professional development for SY19-20**
ADE and LEAs may use FY20 ESSA funds to conduct time-sensitive, one-time, or stand-alone professional development

ADE CARES Act Fiscal Waiver Frequently Asked Questions

Does this waiver also apply to FY21?

No, the waiver only applies to FY20.

Will I have to apply for the 15% Carryover for FY20?

No, this fiscal waiver allows the SEA to approve the carryover of LEA funds for all Title I-A funds awarded in FY20 to FY21. There will be no requirement for LEAs to request this carryover waiver. It will happen automatically following the submission and approval of the FY20 Title I-A Completion Report. Please note, an LEA must have an approved FY21 Title I-A grant for FY20 funds to be carried over.

Will my LEA still be eligible if I have used the 15% carryover provision within the last three years?

Yes, this waiver will allow ALL LEAs to carryover funds from FY20 to FY21 due to the unique circumstances of COVID 19, regardless of whether a carryover waiver was requested within the last three years.

What does the period of availability waiver mean to the LEA?

The waiver extends the period of availability of FY19 ESSA funds to September 30, 2021. This waiver allows FY19 SEA funds and LEA carryover funds to be leveraged for a longer period of time, rather than having to return to them Federal Government on September 30, 2020, as would otherwise be required.

How does the waiver apply to Title IV-A?

The waiver now allows LEAs to use their FY20 Title IV-A funds to best meet local needs through waiving content-area minimum expenditure requirements (for LEAs receiving more than \$30,000) and the 15% limit on technology-related purchases. A revision to your FY20 application will need to be submitted and approved to take advantage of this new flexibility. As a reminder, the project period for FY20 Title IV-A ends on September 30, 2020.

Since ‘needs Assessment requirements’ is checked under Title IV-A, does that mean the Comprehensive Needs Assessment is no longer a requirement?

No, this only removes the requirement for FY20 Title IV-A for the remainder of the 2019-20 school year. LEAs already completed a Comprehensive Needs Assessment process for FY20. This waiver removes the requirement for LEAs to re-do the needs assessment for the specific purpose of leveraging expanded Title IV-A flexibility through submitting a revision to a FY20 Title IV-A grant application. As a reminder, the project period for FY20 Title IV-A ends on September 30, 2020. The Comprehensive Needs Assessment (CNA), root cause analysis (RCA), and Integrated Action Plan (IAP) remain required for FY21.

What does the change in the definition of ‘professional development’ for SY19-20 mean?

ESSA changed the definition of professional development for most ESSA programs to reflect activities that are, in part, “sustained, (not stand-alone, 1-day, or short-term workshop)”. The waiver allows both ADE and LEAs to now conduct time-sensitive, one-time, or stand-alone professional development designed to meet immediate needs and contexts given COVID-19, such as PD focused on supporting educators providing distance learning. The waiver applies to all ESSA covered programs that reference the ESSA definition of professional development.



Repurposing Federal Equipment and Supplies to Combat COVID-19

Generally, equipment and supplies purchased with Federal funds may only be used to carry out the purposes of the Federal program for which they were purchased and for intended Beneficiaries (2 C.F.R. § 200.403(a)).

ED has released guidance ([Fact Sheet for Repurposing Federal Equipment and Supplies to Combat COVID-19](#)) that allows grantees and subgrantees to **repurpose** federally purchased equipment and supplies that are **not currently in use to carry out a Department grant program** to meet the general education needs of students, including students with disabilities and English learners, and the instructional needs of teachers, related services providers, and other educational personnel **during the national emergency caused by COVID-19**.

When the national emergency ends, schools reopen, and students once again begin attending schools in person, the equipment and supplies that are not consumed **must be returned** for use in the Department grant programs for which they were purchased.

To take advantage of this flexibility, grantees and subgrantees must **clearly mark the equipment and supplies being repurposed** with pertinent identifying information. In addition, grantees and subgrantees must **maintain an inventory of the equipment and supplies being repurposed** to facilitate proper return, including the following:

- a **description and itemization** of the type of equipment or supplies being temporarily repurposed
- the **source (Federal program(s) funds** involved) from which the temporarily repurposed equipment or supplies were purchased and the amount of Federal funds used for the purchase
- **where the equipment or supplies are assigned** for use during the duration of the COVID-19 national emergency
- the **date on which the equipment or non-consumed supplies are returned** for Federal program purposes

Grantees must **maintain these records for a minimum of 3 years** and until the resolution of any audit, monitoring, or oversight that is being conducted relative to the repurposed equipment or supplies, as required by 2 C.F.R. §§ 200.302 (financial management) and 200.333 (retention requirements for records).

Equipment and non-consumable supplies that are **lost or damaged must be replaced with non-Federal funds** to ensure continued benefit to the Department grant program.

Please Note: This authority **does not permit** grantees and subgrantees to **use unobligated grant funds to purchase new equipment and supplies** for **purposes not aligned with the allowable activities** of the program under which funds are available.

Grantees should not assume additional funds will be available should the repurposing of equipment and supplies result in any type of shortage to a program.



ESSA Existing Transferability Flexibility

LEAs may choose to transfer funds received under **Title II-A** and **Title IV-A** to any of these ESSA programs (if they have an allocation under these programs):

<p>Title I-A Title I-C: Migrant Title I-D: Neglected and Delinquent Title II-A</p>	<p>Title III-A: English Learners Title IV-A: Student Support and Academic Enrichment Title V-B: Rural, Low-Income Schools (RLIS)</p>
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Districts must engage in **timely and meaningful consultation** for the **impact on the provision of equitable services** with private school officials.

Funds that are transferred **lose their source identity** and **become the destination funds**, and **all the requirements of the destination fund apply** – to include the provision of equitable services.

Once funds are transferred, **they cannot be transferred back**.

Please contact your Title I/II and Title IV-A Specialist(s) for additional guidance on the process to use this flexibility.

Please also refer to the US Department of Education’s [Fact Sheet for Transferring State-and Local-Level Funds \(Section 5103 of the ESEA\)](#) for additional information.



Appendices

- **FY21 Affirmation of Timely/Meaningful Ongoing Consultation and Equitable Services**
- **CARES ACT: *ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND***

FY21 Affirmation of Timely/Meaningful Ongoing Consultation and Equitable Services
CARES Act Elementary and Secondary School Emergency Relief Fund (ESSER) Fund (Section 18005)
Elementary and Secondary Education Act- P.L. 107 – 110 ~ SECTION 1117

Local Education Agency (LEA) _____
 LEA Federal Program Official _____
 LEA Federal Program Contact Phone: _____ Email: _____

Private School Name _____
 Private School Address _____
 In District *or* Out of District _____
 Private School Official _____
 Private School Contact Phone: _____ Email: _____

LEA Federal Program Official: Select what is applicable from the following statements. LEAs might check more than one.

- Check if LEA has students residing within the LEA and are providing services to students attending a private school **inside** LEA boundaries
- Check if LEA has students residing within the LEA but are providing services to students attending a private school **outside** of LEA boundaries
- Check if the private school has not responded to LEA’s repeated, good-faith attempts (3) for consultation

Private School Official: Complete the following showing private school participation:

LEA Providing ESSER Fund Equitable Services (Section 18005)	
Yes <input type="checkbox"/>	No <input type="checkbox"/>

Directions: Both school officials (private and public) must initial under either YES or NO for each statement below. Both School Officials will initial, sign, and date this document following the ongoing consultation AND the equitable services implementation. Comments may be made in the Comments section.

Upload to Related Documents under the Elementary and Secondary School Emergency Relief ESSER) Fund Grant.

Part 1: Timely and Meaningful Consultation Affirmation – Initial and/or Ongoing Consultation

Note: *Affirmation of Consultations for private school equitable services must be completed and submitted for LEA ESSER Fund Grant applications to be approved*

Official	Yes	No	Consultation Requirements (ESEA Section 1117, CARES Act Section 18005)
Private School			Timely and meaningful consultation occurred regarding the needs and services of eligible children and their teachers and families. Consultation Dates: _____
Public School			
Private School			The LEA gave due consideration to the views of the private school official.
Public School			
Private School			The program design/provision of services agreed upon by the LEA and private school is equitable. Date services are to begin: _____
Public School			

Signature of Public-School Official _____ Date: _____

Signature of Private School Official _____ Date: _____

Part 2: Equitable Provision of Services - (If equitable services were provided in FY21, the due date for Part 2 is upon submittal of FY21 Completion Report. Upload to CR Related Documents.)

Official	Yes	No	Consultation Requirements (ESEA Section 1117, CARES Act Section 18005)
Private School			Services began as agreed between the LEA and private school during consultation. Date services began: _____
Public School			
Private School			The LEA gave due consideration to the views of the private school official during ongoing consultation.
Public School			
Private School			Satisfactory services were provided during the school year.
Public School			

Signature of Public-School Official _____ Date: _____

Signature of Private School Official _____ Date: _____

Comments:

Education Stabilization Fund

\$30,750,000,000, to remain available through September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally

Elementary and Secondary School Emergency Relief Fund

\$13,229,265,000

Sec. 18003

https://www.appropriations.senate.gov/imo/media/doc/DIVB_EMSU.pdf

- (a) **GRANTS.** From funds reserved under section 18001(b)(2) of this title, the Secretary shall make elementary and secondary school emergency relief grants to each State educational agency with an approved application. The Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act and approve or deny applications not later than 30 days after receipt.
- (b) **ALLOCATIONS TO STATES.** The amount of each grant under subsection (a) shall be allocated by the Secretary to each State in the same proportion as each State received under part A of title I of the ESEA of 1965 in the most recent fiscal year.
- (c) **SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.** Each State shall allocate **not less than 90 percent** of the grant funds awarded to the State under this section as subgrants to local educational agencies (including charter schools that are local educational agencies) in the State in proportion to the amount of funds such local educational agencies and charter schools that are local educational agencies received under part A of title I of the ESEA of 1965 in the most recent fiscal year.
- (d) **USES OF FUNDS.** A local educational agency that receives funds under this title may use the funds for any of the following:
- (1) **Any activity authorized by the ESEA of 1965**, including the **Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act** (20 U.S.C. 6301 et seq.), the **Individuals with Disabilities Education Act** (20 U.S.C. 1400 et seq.) (“IDEA”), the **Adult Education and Family Literacy Act** (20 U.S.C. 1400 et seq.), the **Carl D. Perkins Career and Technical Education Act of 2006** (20 U.S.C. 2301 et seq.) (“the Perkins Act”), or subtitle B of title VII of the **McKinney Vento Homeless Assistance Act** (42 U.S.C. 11431 et 2 seq.).
 - (2) Coordination of preparedness and response efforts of local educational agencies with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.
 - (3) Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.
 - (4) Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing

homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.

- (5) Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.
 - (6) Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.
 - (7) Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency.
 - (8) Planning for and coordinating during long term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.) and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.
 - (9) Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.
 - (10) Providing mental health services and supports.
 - (11) Planning and implementing activities related to summer learning and supplemental after school programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.
 - (12) Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.
- (e) **STATE FUNDING.**—With funds not otherwise allocated under subsection (c), a State may reserve not more than **1/2 of 1 percent for administrative costs** and the **remainder for emergency needs as determined by the state educational agency** to address issues responding to coronavirus, which may be addressed through the use of grants or contracts.
- (f) **REALLOCATION.**—A State shall return to the Secretary any funds received under this section that the State does not award within 1 year of receiving such funds and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (b).

ASSISTANCE TO NON-PUBLIC SCHOOLS

SEC. 18005.

- (a) **IN GENERAL.** A local educational agency receiving funds under sections 18002 or **18003** of this title shall **provide equitable services** in the same manner as provided under **section 1117** of the ESEA of 1965 to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools.
- (b) **PUBLIC CONTROL OF FUNDS.** The control of funds for the services and assistance provided to a nonpublic school under subsection (a), and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property and shall provide such services (or may contract for the provision of such services with a public or private entity).

CONTINUED PAYMENT TO EMPLOYEES

SEC. 18006. A local educational agency, State, institution of higher education, or other entity that receives funds under “Education Stabilization Fund”, shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.

DEFINITIONS

SEC. 18007. Except as otherwise provided in sections 18001–18006 of this title, as used in such sections—

- (1) the terms “elementary education” and “secondary education” have the meaning given such terms under State law;
- (2) the term “institution of higher education” has the meaning given such term in title I of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.);
- (3) the term “Secretary” means the Secretary of Education;
- (4) the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico;
- (5) the term “cost of attendance” has the meaning given such term in section 472 of the Higher Education Act of 1965.
- (6) the term “Non-public school” means a nonpublic elementary and secondary school that (A) is accredited, licensed, or otherwise operates in accordance with State law; and (B) was in existence prior to the date of the qualifying emergency for which grants are awarded under this section;
- (7) the term “public school” means a public elementary or secondary school; and
- (8) any other term used that is defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) shall have the meaning given the term in such section.

MAINTENANCE OF EFFORT

SEC. 18008.

- (a) A State’s application for funds to carry out sections 18002 or 18003 of this title shall include assurances that the State will maintain support for elementary and secondary education, and State support for higher education (which shall include State funding to institutions of higher education and state need-based financial aid, and shall not include support for capital projects or for research and development or tuition and fees paid by students) in fiscal years 2020 and 2021 at least at the levels of such support that is the average of such State’s support for

elementary and secondary education and for higher education provided in the 3 fiscal years preceding the date of enactment of this Act.

- (b) The secretary may waive the requirement in subsection (a) for the purpose of relieving fiscal burdens on States that have experienced a precipitous decline in financial resources.