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ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF (ESSER) FUND GUIDANCE

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MONTANA PUBLIC EDUCATION CENTER GUIDANCE: ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND

ESSER SUMMARY

Three rounds of the Elementary and Secondary School Emergency Relief (ESSER) Fund have been authorized by Congress in response to the COVID-19 pandemic. These emergency funds were appropriated to address the past, ongoing, and future impacts of COVID-19. The Montana Legislature passed appropriations authority for a portion of ESSER II and ESSER III funds not directly distributed to local school districts (basic allocation to school districts). You can see the Montana Office of Public Instruction (OPI) [ESSER I, II and III school district distribution here](#).

Understanding and executing projects and programming with ESSER funds may feel overwhelming and complex, however, the funds made available through ESSER I, II and III present an opportunity to adequately and fully respond to the impacts of COVID-19 while concurrently setting up Montana's students and public schools for a transformational opportunity.

Thus, the partners of the Montana Public Education Center (MT-PEC) recommend the following as you continue to plan, prepare and execute with these funds over the next two years:

- Read this guidance, [additional OPI guidance](#), and fully understand Elementary and Secondary School Emergency Relief (ESSER) I, II, and III funds.
- Take an inventory of district needs and opportunities (infrastructure, curriculum, programming, staffing, etc.).
- Establish the link between districts needs and allowable uses for ESSER funds. For those expenditures in which you have questions, we recommend you make your case to OPI for approval of those funds.
- Develop your district's local education agency (LEA) American Rescue Plan (ARP) ESSER plan and submit the plan to OPI.
- Conduct a periodic (at least every six months) review of the use of ESSER funds and impact for students and schools, adjust if/when necessary, as noted in US Department of Education (ED) ARP ESSER guidance.

Due Dates

- **May 24, 2021:** U.S. Department of Education Comment Due Date (not required)
- **June 21, 2021:** No later than June 21, 2021, but as soon as possible, the State must make information available on its website about the numbers of schools in the state providing each mode of instruction, student enrollment data for each mode of instruction by all students and disaggregated by subgroup, and if available student attendance data.
- **June 24, 2021:** Within 30 days of receiving ARP ESSER allocation. Districts must develop and make publicly available a **Safe Return to In-Person Instruction and Continuity of Services Plan**.
- **August 24, 2021:** Districts submit **ARP ESSER Plans** to the State within 90 days after receiving its ARP ESSER allocation.

ESSER I, II, III COMPARISON

A comparison of the three rounds of ESSER funds can be found in the following table:

Topic	ESSER I Fund (CARES Act)	ESSER II Fund (CRRSA Act)	ESSER III Fund American Rescue Plan Act of 2021
Authorizing Federal Legislation	Section 18003 of Division B of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Enacted March 27, 2020	Section 313 of the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, 2021, Enacted December 27, 2020	Section 2001, Elementary and Secondary School Emergency Relief Fund, Enacted March 11, 2021
Appropriations Authority from 2021 Montana Legislature	Not applicable	House Bill 630	House Bill 632
Period of Funds Availability	May be used for pre-award costs dating back to March 13, 2020, when the national emergency was declared. Available for obligation by State educational agencies (SEAs) and subrecipients through September 30, 2022.	Same as ESSER Fund (CARES Act): May be used for pre-award costs dating back to March 13, 2020, when the national emergency was declared. Available for obligation by SEAs and subrecipients through September 30, 2023.	May be used for pre-award costs dating back to March 13, 2020, when the national emergency was declared. Available for obligation by SEAs and subrecipients through September 30, 2024. <i>Funds are to be expedited and allocations are to be made within 60 days of passage of the act.</i>
Uses of Funds	The CARES Act includes allowable uses of funds related to <i>preventing, preparing for, and responding to COVID-19</i> . Note that the “additional” LEA allowable uses of funds under the CRRSA Act were already permitted under the CARES Act.	Same as ESSER Fund (CARES Act): Note that the “additional” LEA allowable uses of funds under the CRRSA Act (addressing learning loss, preparing schools for reopening, and testing, repairing, and upgrading projects to improve air quality in school buildings) already are permitted under the CARES Act.	Same as ESSER I and ESSER II, <i>except</i> that half of the SEA portion (5% of the overall grant) and 20% of the local distribution to schools must be spent to address learning loss by supporting the implementation of evidence-based interventions, such as summer learning, extended day, or extended school year programs. The SEA is also required to spend 1% each on “evidence based” summer enrichment and after-school programs. There are some minor differences in specific subsections authorizing local expenditures, but the language is broad enough that the expenditures across all three appropriations are similar if not identical. Some are just called out more specifically in ESSER II and then also in ESSER III.
Total National Funding	\$13,200,000,000	\$54,100,000,000	\$122,774,800,000

Montana Funding, State Portion Not Earmarked	\$4,150,301	\$17,009,946	\$9,550,575
Montana Funding, State Portion Earmarked for Learning Loss Programs	Not Required	Not Required	\$19,100,950
Montana Funding, State Portion Earmarked for Summer Enrichment	Not Required	Not Required	\$3,820,190
Montana Funding, State Portion Earmarked for After-school Programs	Not Required	Not Required	\$3,820,190
Montana Funding, State Portion for Administration	\$207,515	\$850,497	\$1,910,095
Montana Funding, Local Distribution, Unearmarked.	\$37,352,711	\$153,089,519	\$275,053,600
Montana Funding, Local Portion Earmarked for Learning Loss Programs	Not Addressed	Not Addressed	\$68,763,400
Total Montana Funding, State and Local	\$41,503,012	\$170,099,465	\$382,019,000
Equitable Services to Private Schools	Equitable services to private schools was required. "An LEA that receives ESSER funds under the CARES Act (Section 18005) must provide equitable services to non-public schools." The State, following a rule of USDOE that was later declared invalid, required a disproportionate distribution to private schools. Those funds were not recouped.	The CRRSA Act includes a separate program of Emergency Assistance for Non-Public Schools for which eligible non-public schools may apply to an SEA to receive services or assistance. Consequently, LEAs are not required to provide equitable services under ESSER II.	The ARP Act includes a separate program of Emergency Assistance for Non-Public Schools at approximately \$7 million in Montana, administered through the Governor. Consequently, LEAs are not required to provide equitable services under ESSER III.

Maintenance of Effort (MOE)	Required that the State fund public education in FY20 and FY21 at levels at least equivalent to the average levels of funding in FY17, 18 and 19.	Requires that the State must maintain support for elementary and secondary education and higher education in FY 2022 based on the proportional share of the State's support for elementary and secondary education and higher education relative to the State's overall spending averaged over FYs 2017, 2018, and 2019.	Requires that the State must maintain support for elementary and secondary education and higher education in both FY 2022 and FY2023 based on the proportional share of the State's support for elementary and secondary education and higher education relative to the State's overall spending averaged over FYs 2017, 2018, and 2019.
Maintenance of Equity, State	Not Addressed	Not Addressed	New requirements ensuring Maintenance of Equity. These provisions require that the State not decrease per-pupil funding for any high poverty school district in excess of the overall per-pupil reduction across all school districts. This new clause also provides that a State cannot reduce State funding of any school district with the 20% highest percentage of economically disadvantaged students in FY2022 or FY2023 below the funding levels from FY2019.
Maintenance of Equity, School District.	Not Addressed	Not Addressed	New requirements ensuring Maintenance of Equity. A school district cannot disproportionately reduce per-pupil funding (State and local funds) or per-pupil full-time equivalent staff for any high poverty school in FY2022 or FY2023.
Supplement, Not Supplant	USDOE FAQ 20 Provided: Are ESSER funds subject to a supplanting prohibition? No. The ESSER Fund does not contain a supplanting prohibition. As a result, ESSER funds may take the place of State or local funds for allowable activities.	Presumably the same standard as for ESSER I. No language prohibiting a supplant of State or local funding. However, shortfalls covered must be COVID- related ensuring compliance with allowable uses of funds related to preventing, preparing for, and responding to COVID-19.	Presumably the same standard as for ESSER I. No language prohibiting a supplant of State or local funding. However, shortfalls covered must be COVID-related ensuring compliance with allowable uses of funds related to preventing, preparing for, and responding to COVID-19.

USE OF FUNDS

<p>Authorized Expenditure – Note that the U.S. DOE has characterized the list of allowable school district expenditures as broad and permissive. The U.S. DOE has further specified that the State does not have the authority to limit the uses of ESSER formula funds.</p> <p>Even where overlap between ESSER I, II, and III does not exist, the U.S. DOE has acknowledged that the broad and permissive nature of the language is such that school districts could spend funds on certain purposes even without the specific authority being included in a particular act. For example, the U.S. DOE has specified that school districts could spend funds from ESSER I on areas included in ESSER II but not specifically included in ESSER I:</p> <p>“Note that the “additional” LEA allowable uses of funds under the CRRSA Act (addressing learning loss, preparing schools for reopening, and testing, repairing, and upgrading projects to improve air quality in school buildings) already are permitted under the CARES Act.”</p>	<p>ESSER I Legal Citation, Section 18003(d), “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act”, 2020.</p>	<p>ESSER II Legal Citation, Section 313(d) of the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, 2021</p>	<p>ESSER III Legal Citation, Section 2001 of the American Rescue Plan Act of 2021</p>
<p>Any activities authorized under the Elementary and Secondary Education Act, IDEA, Carl D. Perkins Career and Technical Education Act, Adult Education and Family Literacy Act, and McKinney-Vento.</p>	<p>Section 18003(d)(1)</p>	<p>Section 313(d)(1)</p>	<p>Section 2001(e)(2)(A) through Section 2001(e)(2)(D).</p>
<p>Coordination of preparedness and response efforts of LEAs with state, local, tribal, and territorial public health departments, and other relevant agencies, to prevent, prepare for, and respond to the coronavirus.</p>	<p>Section 18003(d)(2)</p>	<p>Section 313(d)(2)</p>	<p>Section 2001(e)(2)(E)</p>
<p>Providing resources for principals and others school leaders to address school-specific needs.</p>	<p>Section 18003(d)(3)</p>	<p>Section 313(d)(3)</p>	<p>Not included.</p>
<p>Activities that address unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youths, including how outreach and service delivery will meet the needs of each population.</p>	<p>Section 18003(d)(4)</p>	<p>Section 313(d)(4)</p>	<p>Section 2001(e)(2)(F)</p>

Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs.	Section 18003(d)(5)	Section 313(d)(5)	Section 2001(e)(2)(G)
Training and professional development for LEA staff on sanitation and minimizing the spread of infectious diseases.	Section 18003(d)(6)	Section 313(d)(6)	Section 2001(e)(2)(H)
Purchasing supplies to sanitize and clean facilities operated by an LEA.	Section 18003(d)(7)	Section 313(d)(7)	Section 2001(e)(2)(I)
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.	Section 18003(d)(8)	Section 313(d)(8)	Section 2001(e)(2)(J)
Purchasing educational technology, which could include hardware, software, and connectivity, for students served by the LEA that aids in regular, substantive educational interaction between students and educators, including low-income students, and students with disabilities. This could also include assistive technology or adaptive equipment.	Section 18003(d)(9)	Section 313(d)(9)	Section 2001(e)(2)(K)
Providing mental health services and supports.	Section 18003(d)(10)	Section 313(d)(10)	Section 2001(e)(2)(L)
Planning and implementing summer learning and supplemental after-school program activities, 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.	Section 18003(d)(11)	Section 313(d)(11)	Section 2001(e)(2)(M)
Addressing learning loss among all students in all subgroups, including by: <ul style="list-style-type: none"> Administering high-quality, reliable assessments that can assess student academic progress and assist educators in meeting student needs, including by using differentiated instruction. 	Not specifically included, but authorized	Section 313(d)(12)	Section 2001(e)(2)(N)

<ul style="list-style-type: none"> • Implementing evidence-based activities to meet the comprehensive needs of students. • Providing information and assistance to parents and families on ways to support students. • Tracking student performance and engagement in distance learning environments. 			
<p>School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards and support student health needs.</p>	<p>Not specifically included, but authorized</p>	<p>Section 313(d)(13)</p>	<p>Section 2001(e)(2)(O)</p>
<p>Inspecting, testing, maintaining, repairing, replacing, and upgrading projects to improve the indoor air quality in school facilities, including HVAC systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.</p>	<p>Not specifically included, but authorized</p>	<p>Section 313(d)(14)</p>	<p>Section 2001(e)(2)(P)</p>
<p>Development of strategies and implementation of public health protocols that align with Centers for Disease Control and Prevention guidance on reopening and operating school facilities to maintain the health and safety of students, educators, and other staff.</p>	<p>Not specifically included, but authorized</p>	<p>Not specifically included, but authorized</p>	<p>Section 2001(e)(2)(Q)</p>
<p>Other activities necessary to maintain the operation of and continuity of services in LEAs and continuing to employ existing staff.</p>	<p>Section 18003(d)(12)</p>	<p>Section 313(d)(15)</p>	<p>Section 2001(e)(2)(R)</p>

INTERIM AMERICAN RESCUE PLAN (ARP) ESSER (ESSER III) REQUIREMENTS

Due Dates

- **May 24, 2021:** U.S. Department of Education Comment Due Date (not required)
- **June 21, 2021:** No later than June 21, 2021, but as soon as possible, the State must make information available on its website about the numbers of schools in the state providing each mode of instruction, student enrollment data for each mode of instruction by all students and disaggregated by subgroup, and if available student attendance data.
- **June 24, 2021:** Within 30 days of receiving ARP ESSER allocation. Districts must develop and make publicly available a **Safe Return to In-Person Instruction** and **Continuity of Services Plan**.
- **August 24, 2021:** Districts submit **ARP ESSER Plans** to the State within 90 days after receiving its ARP ESSER allocation.

LEA PLAN CHECKLIST

- Reserve 20% of ESSER III funds to measure and address academic impact of COVID-19
 - Ensure interventions respond to students' academic, school, emotional, and mental health needs and address the impact of the COVID19 pandemic on groups of students disproportionately impacted by the pandemic
- Describe how the district will use ESSER III funds to respond to the following:
 - Implement prevention and mitigation strategies consistent with CDC guidance on reopening and operating schools for in-person learning
 - Address academic impact of lost instructional time through the implementation of evidence-based interventions such as summer learning or summer enrichment, extended day, comprehensive after-school programs, or extended year
- Engage in meaningful community consultation
- Plan for a safe return to in-person instruction and continuity of services by describing the following:
 - How will the district maintain the health and safety of students, educators and other school and LEA staff, and the extent to which it has adopted policies, and a description of any such policies ([1900 Series – COVID-19 Emergency Policies](#)), on each of CDC's safety recommendations
 - How will the district ensure continuity of services, including but not limited to:
 - Services to address students' academic needs and students' and staff social, emotional, mental health, and other needs, which may include student health and food services
- Post plan to school district website
- Review, and when appropriate, revise plan at least every six months.

ARP ESSER Proposed Requirements:

1. Ensuring that each SEA (OPI) meaningfully engages in stakeholder consultation and takes public input into account in the development of its ARP ESSER plan.
2. Ensuring that each LEA (school district) develops a plan for the use of its ARP ESSER funds and engages in meaningful consultation and seeks public input as it develops the LEA ARP ESSER plan.
3. Clarifying how an LEA must meet the statutory requirement to develop a plan for the safe return to in-person instruction and continuity of services.

Funds Breakdown:

- 90% directly to LEAs
- 5% SEA to address the academic impact of lost instructional time
- 1% for evidence-based summer enrichment programs
- 1% for evidence-based comprehensive after-school programs

Other Requirements:

- LEAs must reserve at least 20% of funds to measure and address the academic impact of lost instructional time on all students, through the implementation of evidence-based interventions, such as interventions implemented through summer learning or summer enrichment, extended day, comprehensive after-school programs, or extended school year programs.
 - LEA must also ensure that such interventions respond to students' academic, school, emotional, and mental health needs and address the impact of the COVID19 pandemic on groups of students disproportionately impacted by the pandemic.
- The SEA must develop and submit an ARP ESSER plan that describes, among other things, the current educational needs within the State, the SEA's intended uses of AEP ESSER funds, and the plans for supporting LEAs in their planning for and use of ARP ESSER funds.

1. **SEA Consultation with Stakeholders:** An SEA must engage in meaningful consultation with various stakeholder groups on its ARP ESSER plan and give the public an opportunity to provide input on the development of the plan and take such input into account.
 1. As soon as possible but no later than June 21, 2021.
 2. SEA must make student enrollment data and, to the extent available, student attendance data for all students and disaggregated by students from low-income families, students from each racial and ethnic group, gender, English learners, children with disabilities, children experiencing homelessness, children in foster care, migrant students for each mode of instruction.
 3. SEA must make information publicly available on its website the number of schools offering fully remote or online-only instruction, both remote/online instruction and in-person instruction (hybrid), and full-time in-person instruction is an important initial step toward transparency and understanding of the continued impact of the pandemic on learning and teaching.

2. **LEA ARP ESSER Plans:** 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 practical, consistent with 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 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 after-school programs or extended year.
 3. How the LEA will spend its remaining ARP ESSER funds consistent with section 2001(e)(2) of the ARP Act.
 4. How the LEA will ensure that the interventions it implements, including but not limited to 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.
 - i. LEA must engage in meaningful consultation with stakeholders and give the public an opportunity to provide input in the development of its plan.
 1. LEA ARP ESSER Plan Meaningful Consultation
 2. LEA ARP ESSER Plan Accessibility
 3. LEA Plan for Safe Return to In-Person Instruction and Continuity of Services
 - a. Plan must describe how it will maintain the health and safety of students, educators, and other school and LEA staff, and the extent to which it has adopted policies, and a description of any such policies, on each of CDC's safety recommendations.
 - b. Plan must describe how the LEA will ensure continuity of services, including but not limited to services to address students' academic needs and students' and staff social, emotional, mental health, and other needs, which may include student health and food services.
 - c. LEA must periodically, no less frequently than every six months, review and, as appropriate, revise its plan.
 - i. If LEA revises its plan, the revised plan must address each of the aspects of the safety currently recommended by the CDC and seek public input.
 - ii. An LEA that developed a plan prior to the enactment of the ARP Act that meets the requirements under section 2001(l)(1) and (2) but does not address each of the required aspects of safety established in this requirement must, as part of the required periodic review, revise its plan consistent with these requirements no later than six months after it last reviewed its plan.
 4. The plans must be in an understandable and uniform format; to the extent practicable, written in a language that parents can understand.

MTSBA MODEL POLICIES

The following chart references corresponding MTSBA model policies to “implement prevention and mitigation strategies consistent with CDC guidance on reopening and operating schools for in-person learning.”	
CATEGORY	POLICY REFERENCE
Maintain the health and safety of students, educators, and other staff and the extent to which it has adopted policies, and a description of any such policies, on each of the following safety recommendations established by the CDC:	1900; 1905
Universal and correct wearing of masks	1905
Modifying facilities to allow for physical distancing (<i>e.g.</i> , use of cohorts/podding)	1905; 1905P
Handwashing and respiratory etiquette	1905; 1905P
Cleaning and maintaining healthy facilities, including improving ventilation	1905; 1905P
Contact tracing in combination with isolation and quarantine, in collaboration with the State, local, territorial, or Tribal health departments	1905; 3417
Diagnostic and screening testing	1905
Efforts to provide vaccinations to school communities	3413
Appropriate accommodations for children with disabilities with respect to health and safety policies	1908; 2162; 2162P
Coordination with State and local health officials	1900; 1905; 1907; 3417
How it will ensure continuity of services, including but not limited to services to address students’ academic needs and students’ and staff social, emotional, mental health, and other needs, which may include student health and food services.	1906; 1906P; 2050

ADDITIONAL RESOURCES

- [Fact Sheet: U.S. Department of Education American Rescue Plan of 2021 ESSER](#)
- [Fact Sheet: U.S. Department of Education ESSER I & ESSER II](#)
- [Interim Final Requirements: U.S. Department of Education American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund](#)
- [U.S. Department of Education Safer Schools and Campuses Best Practices Clearinghouse](#)
- [U.S. Department of Education American Rescue Plan Elementary and Secondary School Emergency Relief Resources](#)
- Volume 1- [U.S. Department of Education COVID-19 Handbook: Strategies for Safely Reopening Elementary and Secondary Schools](#)
- Volume 2- [U.S. Department of Education COVID-19 Handbook: Roadmap to Reopening Safely and Meeting All Students' Needs](#)
- [MTSBA 1900 Series – COVID-19 Emergency Policies](#)
- [Montana Office of Public Instruction ESSER Resources](#)
- [OPI ESSER I, II & III District Allocations](#)

TEMPLATES

<u>20% RESERVE REQUIREMENT TO MEASURE AND ADDRESS ACADEMIC IMPACT OF COVID-19</u>			
	ACADEMIC	EMOTIONAL AND MENTAL HEALTH	SCHOOL
EVIDENCE BASED INTERVENTIONS			
SUMMER LEARNING/SUMMER ENRICHMENT			
EXTENDED DAY			
COMPREHENSIVE AFTER-SCHOOL PROGRAM			
EXTENDED SCHOOL YEAR			
OTHER:			

MEANINGFUL COMMUNITY CONSULTATION

MEETINGS	DATES	PRIORITIES/RESULTS
BOARD MEETINGS		
PARENT MEETINGS		
COMMUNITY/STAKEHOLDER MEETINGS		
OTHER:		

CONTINUITY OF SERVICES

ACADEMIC NEEDS	STUDENT SOCIAL/EMOTIONAL MENTAL HEALTH	STAFF SOCIAL/EMOTIONAL MENTAL HEALTH	OTHER NEEDS

SUMMARY SHEET

OPI DATA COLLECTION:	DATA COLLECTED	COMMENTS
Mode of Instruction for 2020-2021		
Attendance for ethnicity and learner category based on each mode of instruction for the 2020-2021 school year.		
DISTRICT ESSER PLAN:	DATA COLLECTED	COMMENTS
Engage in meaningful consultation with stakeholders		
Plan for the safe return to in-person instruction and continuity of services		
Plan is accessible on the district website and is understandable and is uniform in format, written in a language parents can understand		