



The Treasure State

MONTANA HOUSE OF REPRESENTATIVES

Representative David Bedey
House District 86

Representative Bill Mercer
House District 46

May 6, 2020

Elsie Arntzen
Superintendent of Public Instruction
Montana Office of Public Instruction
P.O. Box 202501
Helena, Montana 59620

Dear Superintendent Arntzen:

We have appreciated the opportunity to engage in discussions with you and your staff concerning allowable uses of CARES Act monies made available through the Elementary and Secondary School Emergency Relief (ESSER) Fund, which is a portion of the Act's Educational Stabilization Fund (ESF). Like you, we wish to ensure that expenditure of these funds meets the requirements of the Act. Impermissible uses of the funds will expose the State to liability under the False Claims Act, 31 U.S.C. 3729, et seq. We have a common interest in ensuring that any CARES Act dollars spent in this biennium do not result in a future liability for the State. Although the majority of the dollars from the ESSER Fund will be expended by local school districts, the liability for any impermissible uses of those monies would be incurred by the State.

There are at least two passages in the legislation that limit how CARES Act funds may be used by your office as the grantee or by subgrantees to whom you provide grants. Specifically, expenditures paid for or reimbursed by CARES Act monies allocated from the ESF must be used for activities "to prevent, prepare for, or respond to coronavirus." This requirement appears in at least two sections in the CARES Act with respect to dollars to be administered by your office. The first passage appears on page 284 of the bill in the description of the ESF. It states, in part, that "[f]or an additional amount for "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." Section 23004(a) of the CARES Act imposes an identical requirement, i.e., ". . . notwithstanding any other provision of law, funds made available in this Act, or transferred pursuant to authorization granted in this Act, may only be used to prevent, prepare for, and respond to coronavirus."

To ensure that ESSER Fund monies are used for permissible purposes—and before monies are made available to school districts or other subgrantees—we strongly recommend the following: (1) that all guidance provided to subgrantees makes clear that expenditures can only be made to prevent, prepare for, or respond to coronavirus; and (2) that subgrantees be required to provide OPI with a certification that expenditures of ESSER Fund monies will be used only to prevent, prepare for, or respond to coronavirus. This would not obviate the need for OPI to review a subgrantee's actual planned uses of CARES Act dollars, but it would clarify the burden that districts and other subgrantees need to meet to spend the monies.

Thank you for your attention to this matter. We would be pleased to continue the dialogue on this issue that we have had with you and your staff.

Respectfully,

Handwritten signatures of David F. Bedey and Bill Mercer in blue ink.