



## Keys on ESSER II Funds

### 1. Amounts:

Total	Minimum local educational agency (LEA) Distribution	9.5% for SEA Emergency Response	.5% for SEA Administration
\$170,099,465	\$153,089,519	\$16,159,449	\$850,497

### 2. Deadlines:

- a. SEA must award the funds within one year of receiving them, which will be January 2022.
- b. Within 6 months following award, State must report how they spent the funds.
- c. School districts must spend by September 2023.

### 3. State and Local Split:

- a. States **must** distribute **at least** 90% of funds to local education agencies (LEAs) based on their proportional share of ESEA Title I-A funds.
- b. States have the **option** to reserve **up to** 10% of the allocation.
  - i. ½ of 1% of funds distributed for administration.
  - ii. 9.5% for “emergency needs as determined by the state educational agency to address issues responding to coronavirus.”
    1. Extensive flexibility for the SEA for use of funds not distributed to schools. Can be awarded out to third parties or can be retained and spent to provide direct services.

### 4. The Formula for Local Distribution:

- a. The funds for local school districts must be distributed in the same manner as ESSER I, which is via the Title I-A formula.
  - i. Some districts do not receive Title I.
  - ii. Superintendent Arntzen distributed a portion of the SEA 10% in ESSER I to ensure that every school district received at least \$10,000. If the same thing happened this time, and with distributions at 4X ESSER I, that would roughly translate into a minimum of \$40,000 for ESSER II.

## 5. Lawful Uses:

- a. **The State:** “With funds not otherwise allocated under subsection (c), a State may reserve not more than one-half of 1 percent for administrative costs and the remainder for **emergency needs as determined by the state educational agency<sup>1</sup> to address issues responding to coronavirus**, including measuring and addressing learning loss, which may be addressed through the use of grants or contracts.”
- b. **School Districts:**
  - i. May use ESSER funds for any purposes listed in section 313(d), subsections 1-15 of the Act. Paraphrased:
    1. Any activity authorized by the ESEA, IDEA, Adult Ed, Carl Perkins, McKinney Vento.
    2. Coordinating, preparing for and responding to COVID.
    3. Resources necessary to address needs of individual schools.
    4. Unique needs of low income, children with disabilities, LEP, racial and ethnic minorities, homeless, foster care.
    5. Preparedness and response procedures and systems.
    6. Training on sanitation and minimizing spread of disease.
    7. Cleaning and sanitation supplies.
    8. Planning, coordinating and implementing activities during long-term closures, including meals for eligible students, technology and online learning for all, guidance for carrying out IDEA consistent with federal law.
    9. Ed technology, hardware, software, connectivity for students to aid interaction with teachers.
    10. Mental health services and support.
    11. Summer and after school learning.
    12. Addressing learning loss. Includes high quality, valid and reliable assessments to assist educators in meeting academic needs, including differentiated instruction. Evidence based approaches, information to parents and families, tracking student attendance and improving engagement in distance learning.
    13. School facility repairs and improvements to reduce risk of virus transmission and exposure to environmental health hazards.
    14. Inspection, testing, maintenance, repair, replacement, upgrade HVAC systems and window and door repair and replacement.
    15. “Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies

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<sup>1</sup> 34 CFR § 300.41 State educational agency. “State educational agency or SEA means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.”

and continuing to employ existing staff of the local educational agency.”

**6. Flexibility in Appropriation of Funds:**

- a. **Maintenance of Effort:** Section 317 of the Act provides: “*SEC. 317. (a) At the time of award of funds to carry out sections 312 or 313 of this title, a State shall provide assurances that such State will maintain support for elementary and secondary education . . . in fiscal year 2022 at least at the proportional levels of such State’s support for elementary and secondary education . . . relative to such State’s overall spending, averaged over fiscal years 2017, 2018, and 2019.*” This threshold requires a calculation showing the average percentage of all state spending represented by K-12 public education spending averaged over FY17-19. That calculation will represent a floor that must be met in FY22 in order to qualify for ESSER II funds.
- b. **Appropriation of Local Portion: With the extensive similarities in ESSER I and ESSER II,** it is reasonable to assume that the State, whether through the Legislature or the Board of Public Education or State Superintendent, cannot restrict or limit LEA uses of ESSER II formula funds under Section 313(1) through (15). In its FAQ on ESSER I, the U.S. DOE specifically answered this question, stating “the ESSER Fund provides a broad, permissive list of allowable LEA activities in Section 18003(d). SEAs do not have the authority to limit the uses of ESSER formula funds.”
- c. **The Issue of Supplanting:** Assuming that the guidance for ESSER II remains the same as for ESSER I, OPI’s statement from ESSER I guidance should remain relevant: “*The ESSER Fund does not contain a supplanting prohibition. At the LEA level, ESSER funds may take the place of State or local funds for allowable activities. However, the ESSER grant does not change the maintenance of effort requirements of other federal grants.*”

This guidance statement from OPI does not mean that the state can appropriate and direct schools to spend ESSER II funds in a particular manner, as such restriction would violate the U.S. DOE FAQ cited above. Based on Section 313(d)(1), allowable activities where ESSER funds could be used by school districts to make up for any shortfalls in state funds would include, for example, Title I (while complying with maintenance of effort, which requires ongoing state support at least 90% of the preceding year) and IDEA (while also complying with maintenance of effort of 100% of the preceding year).

- d. **Appropriation of State Portion:** The state funds are very flexible and can be used for emergency needs as determined by the SEA to address issues responding to coronavirus.

- i. The SEA is formally designated in the federal law as making the determination of what qualifies as an emergency need to address issues responding to coronavirus under language in the act.
- ii. The Legislature, through its appropriation authority, can determine how much to distribute locally vs. to the SEA. The federal act requires that at least 90% be distributed to school districts, but it does not limit such distributions to 90%.
  - 1. Any amount distributed to schools, however, must go through the Title I formula, so there is greater flexibility as to use of the state portion if it remains in the hands of and is distributed at the discretion of the SEA. This would allow, for example, distribution of a minimum of \$40,000 for each school district to cover those without Title I eligibility.
- iii. Cooperation between the Legislature and the SEA is key. Both have available checks and balances.

**7. Technical Issue – Effective Date:** Effective dates for appropriation of ESSER II funds should be upon passage and approval to ensure it is in the school districts as early as possible. The appropriation should be authorized for use in FY20-FY23 to take full advantage of the flexibility allowed by ESSER II.

A possible distribution of the SEA 10% proposed by MT-PEC

<b>Item</b>	<b>ESSER II State Funds</b>
Stop loss @ \$40,000 minimum	\$2,400,000.00
Comprehensive Support Schools	\$2,000,000.00
Sped Inflation	\$3,416,000.00
Shodair and YBGR	\$2,400,000.00
Database	\$5,900,000.00
Administration	\$850,497.00
<b>Total</b>	<b>\$16,966,000.00</b>