



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

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**Statement of Commissioner of Education &
President of the University of the State of New York, Dr. Betty A. Rosa
NYS Senate Committees on Education, NYC Education & Budget and Revenue
To Review How School Districts are Spending Foundation Aid increases and ARP funds
September 30, 2021**

Good morning, Chair Mayer, Chair Liu and members of the Senate here today. I am Dr. Betty Rosa, Commissioner of Education. I am joined by Jason Harmon, our Assistant Commissioner for the Office of Accountability, Sean Giambattista, our Director of Education Finance, and Ed Lenart, our Assistant Director of Financial Administration. Thank you for inviting me to speak on the additional state and federal resources that have been made available to school districts.

The 2021-22 enacted budget provided a \$1.4 billion Foundation Aid increase with a three-year phase-in schedule, with full phase-in by the 2023-24 school year. The Board of Regents and the Department have long advocated for the Foundation Aid formula to be fully funded and we thank Senate Majority Leader Stewart-Cousins, Speaker Heastie, and Chairs Mayer, Liu, and Benedetto for their advocacy on behalf of New York's students.

This increase in foundation aid, coupled with the more than \$14 billion in federal education COVID response funding New York has received is instrumental in addressing the impacts of lost instructional time and meeting student social emotional needs. Since March 2020, New York State has been awarded federal funding through the Coronavirus Aid, Relief, and Economic Security (CARES) Act; Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act); and the American Rescue Plan (ARP) Act. These federal funds support the ability of local educational agencies (LEAs) to address the impact that COVID-19 has had, and continues to have, on elementary and secondary schools in New York State.

New York State has been allocated nearly \$9 billion in ARP Elementary and Secondary School Emergency Relief (ESSER) funds.¹ These funds are focused on strategies to support the safe return to in-person instruction and continuity of services. ESSER funds may also be used to address the impact of "learning loss" by implementing evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs. In addition, these funds are available to support interventions that respond to students' academic, social, and emotional needs and address the disproportionate impact of the coronavirus on our most vulnerable populations. These include economically disadvantaged students, children with disabilities, English learners, racial and ethnic minorities, migrant students, students experiencing homelessness, and children and youth in foster care.

¹ <http://www.nysed.gov/federal-education-covid-response-funding/american-rescue-plan-elementary-and-secondary-school>

A minimum of 90% (\$8.1 billion) of New York State's ARP allocation is required to be allocated to local educational agencies (LEAs). LEAs must reserve at least 20% of their funding allocation to address the impact of lost instructional time through the implementation of evidence-based interventions. Remaining funds may be used broadly to prevent, prepare for, and respond to the coronavirus pandemic.

NYSED is administering the application for the LEA 90% base ARP-ESSER allocations in two parts:

- Part 1: Each LEA was asked to submit signed assurances to NYSED by no later than May 24, 2021, after which LEAs were allowed to begin obligating funds.
- Part 2: LEAs were asked to submit a full application and budget by September 30, 2021 (with extensions upon request). NYSED then issues a Grant Award Notice (GAN) to the LEA after their application is fully reviewed and approved by SED.

ARP funds are available for LEA obligations for the March 13, 2020 to September 30, 2024 period.

Of the remaining 10% of funding (the \$900 million State Educational Agency reserve), ARP requires:

- A minimum of 5% (\$449.8 million) to be used to address the impact of lost instructional time by implementing evidence-based interventions;
- A minimum of 1% (\$90 million) to be used for evidence-based summer enrichment programs; and
- A minimum of 1% (\$90 million) to be used for evidence-based comprehensive afterschool programs.

The 2021-22 enacted NYS budget directed that these required set-asides be allocated as grants to specified school districts.

The U.S. Department of Education (USDE) requires all LEAs receiving federal ARP funds to develop two plans, which must be made publicly available on each LEA's website: a plan for the safe return to in-person instruction and continuity of services and a plan for the LEA's use of ARP-ESSER funds.

NYSED is considering each LEA's application for its ARP-ESSER allocation as meeting USDE's LEA-level ARP-ESSER use of funds plan requirement, provided the required elements of the plan are built into the LEA's application, combined with a budget, and then publicly posted after being developed with public input. NYSED has intentionally structured the LEA application to capture all of the required elements in an effort to reduce burden on our LEAs.

NYSED has issued guidance to LEAs on the development and submission of these plans and we will review the plans as they are received to ensure they comply with the intended use of funds to

support New York's children as we all recover from the pandemic. Our staff are also currently providing technical assistance to LEAs, including directly to Superintendents and School Business Officials, on the use of their ARP ESSER funds and is in the process of hiring additional staff for a dedicated technical assistance team.

For those districts with state-appointed monitors, NYSED has also placed conditions on each district's use of CRRSA and ARP funds to ensure that awarded funds are used in accordance with the intended purposes and provisions of the law. These conditions include, but are not limited to:

- Requiring monitor review and approval of the initial application – both program plans and budgeted use of funds – and any future amendments prior to submission to NYSED; and
- Limiting the amount of funds made via advance payments once applications are approved.

Thank you for the opportunity to testify. We would be happy to answer any questions that you may have.

Overview of Federal Education Stimulus Funding

Funding Source	NYS Allocation	Period of Availability	Use of Funds	Status
<i>Coronavirus Aid, Relief, and Economic Security (CARES) Act</i>				
CARES Act - Elementary and Secondary School Emergency Relief (ESSER) Fund	\$1.037 billion	3/13/20-9/30/22	All but \$5.1 million in CARES Act ESSER funds were programmed in the 2020-21 enacted NYS budget through the application of a “pandemic adjustment” to partially offset the state share of state aid to school districts. SED is using \$5.1 million for agency COVID response costs; CARES Act administrative costs; parent, teacher and family support through community-based partners; and school district instructional technology support.	LEA applications have been processed and grant award notifications/advances issued. Reimbursements are made as requests are received and approved. Contracts for community-based services and instructional technology support have been executed.
CARES Act - Governor’s Emergency Education Relief (GEER) Fund	\$164.2 million	3/13/20-9/30/22	The entirety of the GEER funds was programmed in the 2020-21 enacted NYS budget through the application of a “pandemic adjustment” to partially offset the state share of state aid to school districts.	School district applications have been processed and grant award notifications/advances issued. Reimbursements are made as requests are received and approved.
<i>Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act)</i>				
CRRSA Act - Elementary and Secondary School Emergency Relief (ESSER) Fund	\$4 billion	3/13/20-9/30/23	All but \$5.1 million in CRRSA Act ESSER funds were programmed in the 2021-22 enacted NYS budget as allocations to LEAs. The \$5.1 million is being used by SED for administration.	The LEA application was opened on May 10, 2021. Applications were due by June 30, 2021 (with extensions on request). LEA applications and grant award notifications/advances are in process. Comments on proposed USDE ESSER data collection were submitted on August 30, 2021.

Funding Source	NYS Allocation	Period of Availability	Use of Funds	Status
CRRSA Act - Governor's Emergency Education Relief (GEER) Fund	\$72.8 million	3/13/20-9/30/23	The entirety of the CRRSA Act GEER funds was programmed in the 2021-22 enacted NYS budget as allocations to school districts.	<p>The school district application was opened on May 10, 2021. Applications were due by June 30, 2021 (with extensions on request). School district applications and grant award notifications/advances are in process.</p> <p>Comments on proposed USDE GEER data collection form were submitted on September 10, 2021.</p>
CRRSA Act – Emergency Assistance to Non-Public Schools (EANS)	\$250.1 million	3/13/20-9/30/23	Funds are allocated to the Governor but must be administered by the SEA. ARP specifies allowable uses of funds. Certain services must be procured by the SEA while others may be reimbursed.	<p>SED issued allocations and executed a contract with Capital Region BOCES to review and approve applications and reimbursement requests.</p> <p>SED has procured and installed software to enable reimbursements to be issued.</p> <p>SED is working to put contracts in place.</p> <p>CRRSA requires all EANS funds to be obligated within 6 months of receipt, after which any unobligated funds revert to the GEER fund. On August 4, 2021, SED submitted a plan for the Executive's approval for unallocated funds after the funds revert to GEER on 9/1/21 (the 6 month deadline). USDE has confirmed that we may continue with</p>

Funding Source	NYS Allocation	Period of Availability	Use of Funds	Status
				the contracting and reimbursement process past the 9/1/21 deadline.
<i>American Rescue Plan (ARP) Act</i>				
ARP Act - Elementary and Secondary School Emergency Relief (ESSER) Fund (Base 90% LEA Allocations)	\$8.1 billion	3/13/20-9/30/24	<p>LEAs must reserve at least 20% of their 90% ARP-ESSER allocation to address the impact of lost instructional time through the implementation of evidence-based interventions.</p> <p>Each LEA receiving ARP-ESSER funds must develop a plan for the safe return to in-person instruction and continuity of services and develop a plan for the use of ARP-ESSER funds.</p>	<p>Part 1 of the LEA application (submission of signed assurances) was due on May 24, 2021.</p> <p>Part 2 of the LEA application (submission of full application and budget) was opened on July 21, 2021. Applications are due by September 30, 2021 (with extensions on request). LEA applications and grant award notifications/advances are in process.</p>
ARP Act - Elementary and Secondary School Emergency Relief (ESSER) Fund (State Educational Agency Required Minimum Reserves)	\$629.8 million	3/13/20-9/30/24	<p>SEAs are required to reserve:</p> <ul style="list-style-type: none"> • not less than 5 percent of the total amount of grant funds awarded to the State (\$449.8 million) to carry out activities to address the impact of lost instructional time by supporting the implementation of evidence-based interventions; • not less than 1 percent (\$90 million) to carry out the implementation of evidence-based summer enrichment programs; and • not less than 1 percent (\$90 million) to carry out the implementation of evidence-based comprehensive afterschool programs. 	<p>The 2021-22 enacted NYS budget directed that these required SEA set-asides be allocated as grants to specified school districts. Guidance and application forms are under development.</p> <p>USDE withheld the release of one-third of NYS' ARP funds (\$3 billion) until USDE approved NYS' plan for the use of ARP ESSER funds. NYS submitted the plan on the June 7, 2021 deadline, and resubmitted the plan with changes USDE requested on 6/30/21 and on 7/13/21. USDE provided formal approval on 8/5/21 and released the withheld funds.</p>

Funding Source	NYS Allocation	Period of Availability	Use of Funds	Status
				Baseline Maintenance of Equity data were provided to USDE on July 28, 2021.
ARP Act – Emergency Assistance to Non-Public Schools (EANS)	\$252.5 million	3/13/20-9/30/24	<p>Funds are allocated to the Governor but must be administered by the SEA. All services must be procured by the SEA – reimbursements are prohibited.</p> <p>Services or assistance may only be provided to non-public schools that enroll a significant percentage of low-income students and are most impacted by COVID-19. Under the CRRSA EANS program, services and assistance only needed to be prioritized using low-income and COVID-impact factors.</p>	The Governor submitted an application for funding to USDE on September 9, 2021.
ARP Act – SEA Reserve (NYC Charter Schools Supplemental Basic Tuition)	\$35 million	3/13/20-9/30/24	The 2021-22 enacted NYS budget directed that \$35 million in ARP SEA reserve funds be used to replace State funding for supplemental basic tuition for NYC charter schools.	The federal funds will be used in lieu of state funds when these payments are due to be made.
ARP Act – SEA Reserve (Pre-K Expansion)	\$210 million	3/13/20-9/30/24	<p>The 2021-22 enacted NYS budget directed that \$210 million in ARP SEA reserve funds be used for pre-k expansion as follows:</p> <ul style="list-style-type: none"> • \$195 million over 3 years distributed via a formula in statute for 235 school districts. • \$15 million expansion via a competitive bidding process. 	<p>The first year of the pre-k expansion grants (\$90 million) was allocated to districts in May 2021. Grant Award Notifications for the full \$195 million must be issued by the March 23, 2022 obligation deadline.</p> <p>The draft RFP for the \$15 million expansion was released on August 6, 2021. Applications are due by September 17, 2021.</p>

Funding Source	NYS Allocation	Period of Availability	Use of Funds	Status
ARP Act – SEA Reserve (SED Administration)	\$24.7 million	3/13/20-9/30/24	While SED could have retained up to \$45 million for administration, the 2021-22 enacted budget only allocated \$24.7 million. SED has developed a plan for staffing resources necessary to administer these funds.	DOB approved SED’s plan on 7/23/21. NYSED is working on the classification package, which will need to be reviewed and approved by Civil Service and the Division of the Budget.
ARP Act – Homeless Children and Youth	\$58.9 million	4/23/21-9/30/23	Funds are intended to expand state systems to identify and support the needs of homeless children and youth.	Grant award for initial 25% received on 4/26/21. SED submitted an application for the remainder of the funding on 7/19/21, and USDE released the remaining 75% of the funds on 7/27/21.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

June 30, 2021

The Honorable Betty A. Rosa
Commissioner
New York State Education Department
89 Washington Avenue
Albany, NY 12234

Dear Commissioner Rosa:

I am writing regarding legislation that the New York State Legislature recently enacted that would place a limit on the amount of American Rescue Plan Elementary and Secondary School Emergency Relief (ARP ESSER) funds a local educational agency (LEA) may spend in each year of the federal grant period. Specifically, I understand that subdivision §9-b of Chapter 56 of the Laws of 2021 would limit the “eligible costs incurred by [each LEA with an ARP ESSER allocation that exceeds a set amount] in the 2021-2022 through 2024-2025 school years, with the amount of such costs for each such school year” capped at a set percentage of the LEA’s total ARP ESSER allocation. This limitation would apply to 50 percent of the LEA’s ARP ESSER allocation.

I appreciate New York’s reported intent to avoid a “funding cliff” for its LEAs. However, under section 2001(a) of the American Rescue Plan Act of 2001 (ARP Act), ARP ESSER funds are available for obligation through September 30, 2023. Section 421(b) of the General Education Provisions Act (GEPA) extends the period of availability for an LEA to obligate ARP ESSER funds through September 30, 2024. Generally, in compliance with cash management requirements (e.g., the Cash Management Improvement Act (CMIA) and 2 C.F.R. Part 200), an LEA may draw down its ARP ESSER funds to meet its immediate needs throughout the period of availability. To the extent the State law precludes an LEA from drawing down needed funds, the State law would conflict with sections 2001(a) of the ARP Act and 421(b) of GEPA.

We are available to answer any questions that you and your staff may have, and we look forward to working with you to ensure that federal education funds are used to meet the critical needs of students, particularly groups of students disproportionately impacted by the pandemic, as required by statute.

Sincerely,

Ian Rosenblum
Deputy Assistant Secretary for Policy and Programs
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary
Office of Elementary and Secondary Education

cc: The Honorable Andrew Cuomo, Governor

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The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access

Glossary of Terms for Federal Education Stimulus Funding

1. Coronavirus Aid, Relief, and Economic Security Act or CARES Act

Two Components of the CARES ACT:

- CARES Act Elementary and Secondary School Emergency Relief (ESSER) Fund
- CARES Act Governor's Emergency Relief (GEER) Fund

2. Coronavirus Response and Relief Supplemental Appropriations Act or CRSSA Act

Three Components of the CRSSA ACT:

- CRSSA Act Elementary and Secondary School Emergency Relief (ESSER) Fund
- CRSSA Act Governor's Emergency Relief (GEER) Fund
- CRSSA Act Emergency Assistance to Non-Public Schools (EANS)

3. American Rescue Plan Act of ARP Act

Four Components of the CRSSA ACT:

- ARP Act Elementary and Secondary School Emergency Relief (ESSER) Fund (*90% LEA Allocations*)
- ARP Act Elementary and Secondary School Emergency Relief (ESSER) Fund (*State Educational Agency Required Minimum Reserves*)
- ARP Act Emergency Assistance to Non-Public Schools (EANS)
- ARP Act Homeless Children and Youth

Three Additional Components as Directed by the Enacted 2021-22 NYS Budget:

- ARP Act State Educational Agency Reserve for NYC Charter Schools Supplemental Basic Tuition
- ARP Act State Educational Agency Reserve for Pres-K Expansion
- ARP Act State Educational Agency Reserve for SED Administration

New York ARP ESSER State Plan Highlights

Total ARP ESSER allocation for New York: \$8,995,282,324

ARP ESSER funding released to New York on March 24, 2021: \$5,992,520,557

ARP ESSER funding released to New York on August 5, 2021: \$3,002,761,767

2020-2021 Preliminary Statewide Enrollment: 2,601,676

Top Priorities within New York's plan:

- Address lost instructional time and close academic performance gaps.
- Provide social emotional support within a *Culturally Responsive-Sustaining Framework*.
- Implement evidence-based interventions within multi-tiered support systems.

Highlights of New York's Plan:

- **Safely Reopening Schools and Sustaining Safe Operations:** As the COVID-19 pandemic continues to unfold, the New York State Education Department (NYSED) will continue to engage with stakeholders, the Governor's Office, and the New York State Department of Health on strategies and guidance for districts in support of NYSED's overall goal for the 2021-2022 school year of maximizing in-person teaching and learning, being responsive to student needs, and keeping students and staff healthy and safe.
- **Addressing the Academic Impact of Lost Instructional Time, Investing in Summer Learning, and Expanding Afterschool Programs:** The 2021-2022 enacted state budget fully allocated the ARP ESSER funds reserved to address the academic impact of lost instructional time, investing in summer learning through the ARP ESSER funding period, and expanding afterschool programs as subgrants to 398 high-need school districts. NYSED will require districts to utilize subgrant funds to implement evidence-based interventions. NYSED will provide technical assistance to support implementation and will monitor progress.
- **Investing in Early Learning:** NYSED will invest \$195 million of its emergency reserve funds to fund new full-day prekindergarten programs for 4-year-olds and expand existing programs. The pandemic dramatically impacted pre-school children as many daycare, pre-school, and enrichment programs closed for much of the past year. NYSED will expand opportunities for 4-year-olds to attend free, public pre-K programs where they will be able to catch up on lost early childhood learning, socialization, and other foundational skills required for long-term success. A crucial goal of these programs will be to accelerate learning to mitigate the impact of lost instructional time and help close pre-existing performance gaps.
- **Supporting Students' and Educators Social, Emotional, and Mental Health Needs:** NYSED collaborates with the Mental Health Association of New York State to provide districts with Mental Health First Aid Training. Mental Health First Aid is a public education program that introduces participants to risk factors and warning signs of mental illnesses, builds understanding of their impact, and overviews common supports. NYSED also adapted trainings to focus on integrating SEL and trauma-responsive practices into remote learning environments where needed, in order to support development of students' SEL competencies related to self-awareness, self-management, social awareness, relationship skills, and reasonable decision making.
- **Community Engagement and Consultation:** NYSED convenes monthly stakeholder meetings; held Regional Task Force meetings and also held convenings led by the Office of Bilingual Education and World Languages, the Office of Special Education, the Office of ESSA-Funded Programs; held Digital Equity Summits and solicited public input on the ESSER Plan via direct

outreach through an online “Thought Exchange” application. Almost 5,000 participants provided 6,844 unique responses and over 95,000 ratings of the responses shared by stakeholders. Of the respondents, 37% are parents/guardians of a current student, 37% are faculty, staff, or an educator, 6% are district level administrators, 3% are building-level administrators, and 14% identify as “other.” The information gathered were considered by NYSED in developing reopening guidance as well as future guidance to help support LEAs as they prepare to return to school

- **When New York LEA Use of Funds Plans will be Due:** September 30, 2021