



## **Federal and State Requirements for Federal COVID Relief Funds**

This document provides a compilation of provisions from federal and state laws and regulations covering planning requirements and required and allowable uses of federal assistance to school districts through the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA, enacted in December 2020) and the American Rescue Plan Act (ARPA, enacted in March 2020).

On April 21, the United States Department of Education issued interim final regulations governing funding provided through the ARPA Elementary and Secondary School Emergency Relief (ESSER Fund).

The New York State Education Department opened the [application portal for CRRSAA funding](#) on May 10 and provided [information about applying for ARPA funding](#) on Wednesday, May 12.

The U.S. Education Department has indicated that additional guidance on allowable uses of CRRSAA and ARPA funds will be forthcoming. The State Education Department will pass on that guidance upon receipt.

In the interim, the laws and regulations are a starting point for understanding what is required and what is allowed in the use of these federal resources.

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# **Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA)<sup>1</sup>**

## **Elementary and Secondary Schools Emergency Relief (ESSER 2) Fund**

### **Governor's Emergency Education Relief (GEER 2) Fund**

#### **Allowable Uses**

#### **Elementary and Secondary Schools Emergency Relief (ESSER 2) Fund**

Uses of Funds.--A local educational agency that receives funds under this section 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 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 other 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, coordinating, and implementing activities during long-term closures, including providing meals to eligible students, providing technology for online learning to all students, providing guidance for carrying out requirements under the IDEA and ensuring 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

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<sup>1</sup> <https://www.congress.gov/bill/116th-congress/house-bill/133/text>

between students and their classroom instructors, including low-income students and children 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 afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, children with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

(12) Addressing learning loss among students, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the local educational agency, including by--

(A) Administering and using high-quality assessments that are valid and reliable, to accurately assess students' academic progress and assist educators in meeting students' academic needs, including through differentiating instruction.

(B) Implementing evidence-based activities to meet the comprehensive needs of students.

(C) Providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment.

(D) Tracking student attendance and improving student engagement in distance education.

(13) School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.

(14) Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control 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 and continuing to employ existing staff of the local educational agency.

### **Governor's Emergency Education Relief (GEER 2) Fund**

(c) Uses of Funds.--Grant funds awarded under subsection (a)(1) may be used to--

(1) provide emergency support through grants to local educational agencies that the State educational agency deems have been most significantly impacted by coronavirus to support the ability of such local educational agencies to continue to provide educational services to their students and to support the on-going functionality of the local educational agency;

(2) provide emergency support through grants to institutions of higher education ...; and

(3) provide support to any other institution of higher education, local educational agency, or education related entity within the State that the Governor deems essential for carrying out emergency educational services to students for authorized activities described in section 313(d)(1) of this title [i.e., the ESSER 2 Fund above] or the HEA; the provision of child care and early childhood education, social and emotional support; and the protection of education-related jobs.

## **American Rescue Plan Act (ARPA)<sup>2</sup>**

### **Elementary and Secondary Schools Emergency Relief (ESSER 3) Fund**

#### **Allowable Uses**

USES OF FUNDS.—A local educational agency that receives funds under this section—

(1) shall reserve not less than 20 percent of such funds to address learning loss through the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs, and ensure that such interventions respond to students' academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student subgroups described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care; and

(2) shall use the remaining funds for any of the following:

(A) Any activity authorized by the Elementary and Secondary Education Act of 1965.

(B) Any activity authorized by the Individuals with Disabilities Education Act.

(C) Any activity authorized by the Adult Education and Family Literacy Act.

(D) Any activity authorized by the Carl D. Perkins Career and Technical Education Act of 2006.

(E) 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.

(F) 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.

(G) Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.

(H) Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.

(I) Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency.

(J) Planning for, coordinating, and implementing activities during long-term closures, including providing meals to eligible students, providing technology for online learning to all students, providing guidance for carrying out requirements under the Individuals with Disabilities Education Act and ensuring other educational services can continue to be provided consistent with all Federal, State, and local requirements.

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<sup>2</sup> <https://www.congress.gov/bill/117th-congress/house-bill/1319/text/enr>

(K) 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 children with disabilities, which may include assistive technology or adaptive equipment.

(L) Providing mental health services and supports, including through the implementation of evidence-based full-service community schools.

(M) Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, children with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

(N) Addressing learning loss among students, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the local educational agency, including by—

(i) administering and using high-quality assessments that are valid and reliable, to accurately assess students' academic progress and assist educators in meeting students' academic needs, including through differentiating instruction;

(ii) implementing evidence-based activities to meet the comprehensive needs of students;

(iii) providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment; and

(iv) tracking student attendance and improving student engagement in distance education.

(O) School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.

(P) Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.

(Q) Developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.

(R) 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.

## **Federal and State Statutory Requirements Regarding Funding to Address “Learning Loss”**

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### **20% Set-aside for Learning Loss from District Allocations**

American Rescue Plan Act (ARPA), Section 2001(e)(1)

**By federal law, all districts are required to use not less than 20% of their ARPA ESSER 3 allocation to**

(1) ...address learning loss through the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs, and ensure that such interventions respond to students’ academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student subgroups described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care;

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### **Learning Loss Grants**

American Rescue Plan Act (ARPA), Section 2001(f)(1, 2, and 3)

NYS Education Law, Section 3641(17)

**Districts are required to use 14.286% of their grant amount for...**

... implementation of evidence-based summer enrichment programs, and ensure such programs respond to students’ academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student populations described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care;

**Districts are required to use 14.286% of their grant amount for...**

...implementation of evidence-based comprehensive afterschool programs, and ensure such programs respond to students’ academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student populations described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care; and

**Districts may use the balance of their grant...**

...for activities to address learning loss by supporting the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive after-school programs, or extended school year programs. School districts shall ensure that such interventions respond to students’ academic, social, and emotional needs and address the disproportionate impact of the coronavirus on low-income students, children with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

## Enacted New York State Budget Chapter 56, Laws of 2021<sup>3</sup>

### State-Required Plans for Use of American Rescue Plan Act Funding

§ 9-a. On or before July 1, 2021, every local educational agency receiving funding from the elementary and secondary school emergency relief fund allocated by the American rescue plan act of 2021 shall be required to post on its website a plan by school year of how such funds will be expended and how the local educational agency will prioritize spending on non-recurring expenses in the areas of:

- safely returning students to in-person instruction;
- maximizing in-person instruction time;
- operating schools and meeting the needs of students;
- purchasing educational technology;
- addressing the impacts of the COVID-19 pandemic on students, including the impacts of interrupted instruction and learning loss and the impacts on low- income students, children with disabilities, English language learners, and students experiencing homelessness;
- implementing evidence-based strategies to meet students' social, emotional, mental health, and academic needs; offering evidence-based summer, afterschool, and other extended learning and enrichment programs;
- supporting early childhood education.

Provided further, that local educational agencies shall identify any programs utilizing such funding that are expected to continue beyond the availability of such federal funds and identify local funds that will be used to maintain such programs in order to minimize disruption to core academic and other school programs.

Before posting such plan, the local educational agency shall seek public comment from parents, teachers and other stakeholders on the plan and take such comments into account in the development of the plan.

**NOTE:** Interim final regulations issued by the United States Education Department (USDE) on April 21, 2021 will require state education agencies (SEAs) to submit state plans for the use of ARPA ESSER funds and will require local education agencies (LEAs—school districts and charter schools) to develop and submit plans for the use of funds to their SEA. The pertinent section of the regulations is presented in the next section.

The federal regulations also require LEAs to seek input on plans from stakeholders and to post those plans on their websites. The federal regulations do not, however, prescribe a deadline for those plans. The USDE has also indicated that it intends Pending additional federal guidance, the New York State Education Department is now working on guidance and applications for LEAs to use in developing and finalizing plans for the use of both CRRSAA and ARPA funds.

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<sup>3</sup> <https://legislation.nysenate.gov/pdf/bills/2021/s2506c>



**U.S. Department of Education**  
**American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund**  
**Interim Final Regulations<sup>4</sup>**

**Local Education Agency ARPA ESSER Plans**

- (a) Each LEA that receives ARP ESSER funds must submit to the SEA, in such manner and within a reasonable timeline as determined by the SEA, a plan that contains any information reasonably required by the SEA. The plan, and any revisions to the plan submitted consistent with procedures established by the SEA, must describe—
- (i) The extent to which and how the funds will be used to implement prevention and mitigation strategies that are, to the greatest extent practicable, consistent with the most recent CDC guidance on reopening schools, in order to continuously and safely open and operate schools for in-person learning;
  - (ii) How the LEA will use the funds it reserves under section 2001(e)(1) of the ARP Act to address the academic impact of lost instructional time 17 through the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs;
  - (iii) How the LEA will spend its remaining ARP ESSER funds consistent with section 2001(e) of the ARP Act; and
  - (iv) How the LEA will ensure that the interventions it implements, including but not limited to the interventions 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, including students from low-income families, students of color, English learners, children with disabilities, students experiencing homelessness, children in foster care, and migratory students.
- (b) In developing its ARP ESSER plan, an LEA must—
- (i) Engage in meaningful consultation—
    - (A) With stakeholders, including: Students; families; school and district administrators (including special education administrators); and teachers, principals, school leaders, other educators, school staff, and their unions; and
    - (B) To the extent present in or served by the LEA: Tribes; civil rights organizations (including disability rights organizations); and stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students; and
  - (ii) Provide the public the opportunity to provide input and take such input into account.

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<sup>4</sup> <https://www.federalregister.gov/documents/2021/04/22/2021-08359/american-rescue-plan-act-elementary-and-secondary-school-emergency-relief-fund>

(c) An LEA's ARP ESSER plan must be—

(i) In an understandable and uniform format;

(ii) To the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent;

(iii) Upon request by a parent who is an individual with a disability as defined by the ADA, provided in an alternative format accessible to that parent; and

(iv) Be made publicly available on the LEA's website.

# American Rescue Plan Act and U.S. Department of Education ARPA ESSER Interim Final Regulations

## Plan for Safe Return to In-Person Instruction

### American Rescue Plan Act

#### SAFE RETURN TO IN-PERSON INSTRUCTION.—

(1) IN GENERAL.—A local educational agency receiving funds under this section shall develop and make publicly available on the local educational agency’s website, not later than 30 days after receiving the allocation of funds described in paragraph (d)(1), a plan for the safe return to in-person instruction and continuity of services.

(2) COMMENT PERIOD.—Before making the plan described in paragraph (1) publicly available, the local educational agency shall seek public comment on the plan and take such comments into account in the development of the plan.

(3) PREVIOUS PLANS.—If a local educational agency has developed a plan for the safe return to in-person instruction before the date of enactment of this Act that meets the requirements described in paragraphs (1) and (2), such plan shall be deemed to satisfy the requirements under this subsection.

### U.S. Department of Education Interim Final Regulations

#### LEA Plan for Safe Return to In-Person Instruction and Continuity of Services.

(a) An LEA must describe in its plan under section 2001(i)(1) of the ARP Act for the safe return to in-person instruction and continuity of services—

(i) how it will 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:

(A) Universal and correct wearing of masks.

(B) Modifying facilities to allow for physical distancing (*e.g.*, use of cohorts/podding).

(C) Handwashing and respiratory etiquette.

(D) Cleaning and maintaining healthy facilities, including improving ventilation.

(E) Contact tracing in combination with isolation and quarantine, in collaboration with the State, local, territorial, or Tribal health departments.

(F) Diagnostic and screening testing.

(G) Efforts to provide vaccinations to school communities.

(H) Appropriate accommodations for children with disabilities with respect to health and safety policies.

(I) Coordination with State and local health officials.

(ii) 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.

(b)(i) During the period of the ARP ESSER award established in section Start Printed Page 212022001(a) of the ARP Act, an LEA must regularly, but no less frequently than every six months (taking into consideration the timing of significant changes to CDC guidance on reopening schools), review and, as appropriate, revise its plan for the safe return to in-person instruction and continuity of services.

(ii) In determining whether revisions are necessary, and in making any revisions, the LEA must seek public input and take such input into account.

(iii) If at the time the LEA revises its plan the CDC has updated its guidance on reopening schools, the revised plan must address the extent to which the LEA has adopted policies, and describe any such policies, for each of the updated safety recommendations.

(c) If an LEA developed a plan prior to enactment of the ARP Act that meets the statutory requirements of section 2001(i)(1) and (2) of the ARP Act but does not address all the requirements in paragraph (a), the LEA must, pursuant to paragraph (b), revise and post its plan no later than six months after receiving its ARP ESSER funds to meet the requirements in paragraph (a).

(d) An LEA's plan under section 2001(i)(1) of the ARP Act for the safe return to in-person instruction and continuity of services must be—

(i) In an understandable and uniform format;

(ii) To the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent; and

(iii) Upon request by a parent who is an individual with a disability as defined by the ADA, provided in an alternative format accessible to that parent.

## Enacted New York State Budget Chapter 56, Laws of 2021<sup>5</sup>

### State-Prescribed Timeline for Using ARPA ESSER Funds

§ 9-b. Notwithstanding any provision of law to the contrary, each local educational agency receiving an allocation of elementary and secondary school emergency relief funds pursuant to section 2001(d)(1) of the American rescue plan act of 2021 shall reserve one-half (0.5) of the amount so allocated for reimbursement of eligible costs incurred by such local educational agency in the 2021-22 through 2024-25 school years, with the amount of such costs for each such school year to equal one-eighth (0.125) of such allocation, provided that such time schedule shall not apply to eligible costs to be reimbursed from the other one-half (0.5) of such allocation; provided, however, that this requirement shall not apply to local educational agencies whose allocation pursuant to such section is less than five hundred dollars (\$500) per pupil, and provided further that, in the event that the director of the budget determines that by March 15, 2022, the federal government has not extended the deadline by which local educational agencies must obligate all of the funds allocated pursuant to such section at least through the end of the 2024-25 school year, the amount of such allocation to be reserved for reimbursement of eligible costs incurred in each of the 2022-23 and 2023-24 school years shall equal one thousand eight hundred seventy-five ten-thousandths (0.1875) of such allocation.

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**NOTES:**

- (1) This requirement appears to be inconsistent with federal law.
- (2) The requirement applies to district ARPA ESSER 3 allocations (allocations based on Title 1 shares), not to funds received as Learning Loss Grants.
- (3) The effect of the requirement is to require districts to use at least 12.5% of their allocation each year between 2021-22 and 2024-25 and not more than 62.5% in any one of those years.
- (4) The budget language provides for an alternate minimum annual percentage of use if the Governor's Budget Director determines by March 15, 2022 that the federal government will not extend the deadline for districts and charter schools to obligate funds through at least the end of the 2024-25 school year. The effect of that determination would be to require districts to use at least 12.5% of their allocation in 2021-22 and at least 18.75% in 2022-23 and again in 2023-24.

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<sup>5</sup> <https://legislation.nysenate.gov/pdf/bills/2021/s2506c>