

EXHIBIT A

PART IV

EXHIBIT 8

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 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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 14 **STATE OF MICHIGAN, STATE OF
 CALIFORNIA, et al.,**

15 Plaintiffs,

16 v.

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 18 **ELISABETH D. DEVOS, in her official
 capacity as the United States Secretary of
 19 Education, and UNITED STATES
 DEPARTMENT OF EDUCATION,**

20 Defendants.
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Civil Case No. 3:20-cv-04478-SK

**DECLARATION OF DR. MONICA E.
 GOLDSON**

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DECLARATION OF DR. MONICA E. GOLDSON

I, Dr. Monica E. Goldson, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

1. I am the Chief Executive Officer of Prince George’s County Public Schools (PGCPS) located in the state of Maryland. My educational background includes a bachelor’s degree in Mathematics from Florida A&M University, a master’s degree in Elementary and Secondary School Administration from Bowie State University, and a doctorate in Educational Administration and Policy from Howard University. I have been employed as Chief Executive Officer since July 1, 2019. Prior to becoming Chief Executive Officer, I most recently served as Interim Chief Executive Officer and Deputy Superintendent of Teaching and Learning. However, as a product of the county schools, I have spent my entire career in PGCPS, starting as a mathematics teacher and steadily climbing the ranks from the classroom to district leadership as Assistant Principal, Principal, Associate Superintendent for High Schools, and Chief Operating Officer to the preceding roles noted above.

2. PGCPS is one of the nation’s 25 largest school districts and the second largest school district in Maryland, with 208 schools and centers, nearly 136,000 students and 19,000 employees. The school system serves a diverse student population from urban, suburban and rural communities located in the Washington, D.C. suburbs. PGCPS is nationally recognized for innovative programs and initiatives that provide students with unique learning opportunities, including arts integration, environmental and financial literacy, and language immersion.

3. I submit this Declaration in support of the State of Maryland’s litigation against Elisabeth D. DeVos, in her official capacity as Secretary of Education and the United States Department of Education (the “Department”) regarding the recently issued Rule entitled *Providing Equitable Services to Students and Teachers in Non-public Schools*, 85 Fed. Reg. 39,479 (July 1, 2020) (the “Equitable Services Rule” or the “Rule”). I have compiled the information in the statements set forth below through PGCPS personnel who have assisted me in gathering this information from our institution and on the basis of documents that have been

1 provided to and/or reviewed by me. I have also familiarized myself with the Rule in order to
2 understand its immediate impact on PGCPS and public schools in Maryland.

3 **Background - Maryland Public Schools**

4 4. Article VIII, Section 1, of the Maryland Constitution mandates that the General
5 Assembly “shall by Law establish throughout the State a thorough and efficient System of Free
6 Public Schools; and shall provide by taxation, or otherwise, for their maintenance.” The authority
7 of the Maryland State Board of Education is broadly set forth in Maryland Code, Education
8 Article section 2-205. Courts have consistently found over a century of case precedents that
9 Section 2-205 confers comprehensive “visitatorial power” upon the State Board of Education.
10 *See, e.g., Bd. of Educ. of Heister*, 392 Md. 140 (2006) (citing *Wiley v. School Comm’rs*, 51 Md.
11 401 (1879)).

12 5. The State Board of Education oversees the Maryland State Department of
13 Education (MSDE), a principal department of State government established by statute for the
14 purpose of exercising “authority over: (1) Matters of elementary and secondary education that
15 affect this State; and (2) The general care and supervision of public elementary and secondary
16 education.” Md. Code Ann., Ed. Art. sec. 2-101 and 2-106. The State Superintendent of Schools
17 is appointed by the State Board of Education to oversee the administration of MSDE and has the
18 powers provided in Subtitle 3 of the Education Article. Part of MSDE’s oversight includes
19 coordinating the pursuit, acquisition, and management of external funds from public and private
20 sources to support state and local education programming.

21 6. Maryland aid to local governments for public education exceeds \$7 billion for the
22 fiscal year ending June 30, 2021.

23 7. The State Board of Education and Maryland State Department of Education
24 oversee the work of 24 local education agencies (LEAs) or school districts, which together served
25 over 900,000 students across more than 1,420 public schools for the 2020 school year.

26 8. All Maryland LEAs received varying levels of Title I-A funding, totaling more
27 than \$221.7 million for FY 2020. PGCPS received an estimated \$34.8 million for Title I-A
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1 funding in FY 2020. Across the state, 423 schools were identified as Title I schools for the 2019-
2 2020 school year.

3 **Effects of the COVID-19 Pandemic on Education in Prince George’s County**

4 9. The COVID-19 pandemic has drastically impacted K-12 education in Maryland.
5 Prince George’s County has been disproportionately impacted due to the high rates of infection
6 and COVID-19 related complications and deaths for thousands of county residents.

7 10. As a result of the pandemic and in accordance with a directive from Governor
8 Larry Hogan, MSDE implemented a budget and hiring freeze and stopped discretionary purchases
9 of items or services unrelated to addressing the COVID-19 pandemic. Further, MSDE is subject
10 to additional budget cuts, along with all state agencies, based on the substantial budget deficit
11 projected for FY 2021.

12 11. As a result of the COVID-19 pandemic and orders by the State Superintendent and
13 State Board of Education, PGCPs schools were shut down from March 16, 2020 to the end of the
14 academic year. During that time, PGCPs transitioned to a distance learning plan to complete the
15 academic year with online teaching, lessons broadcast on PGCPs-TV, and enrichment learning
16 packets. PGCPs has distributed over 65,000 devices—mostly chromebooks—and given
17 traditional laptops to staff and some iPads to our youngest students and some special needs
18 students. We estimate that we will be spending approximately \$100,000 per month on Internet
19 access to support families in need, as we continue to add additional families to Comcast’s Internet
20 Essentials program and continue to hand out hotspots from Verizon. We are in the process of
21 reviewing stakeholder feedback and formulating our recovery plan for the start of the 2020-2021
22 school year to determine whether instruction will resume in school buildings, remain virtual, or
23 become a combination of both approaches.

24 12. The Maryland State Board of Education, Maryland State Department of Education,
25 and State Superintendent have undertaken several efforts to assist LEAs and schools transition to
26 distance learning, and other pandemic related assistance. Those efforts include the provision of
27 child care services to essential personnel at more than 3,700 State-funded sites across Maryland;
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1 supporting student access to nutritious meals with more than 13 million meals served since the
2 start of school closures; professional development focused on supporting educators to provide
3 effective distance learning; and waivers from multiple provisions in state regulations governing
4 academic requirements that cannot reasonably be met during school closures and the pending
5 pandemic.

6 13. In May 2020, the Maryland Board of Revenue Estimates projected a \$900 million
7 to \$1.1 billion loss in general fund revenues for FY 2020. In addition, the Maryland Board of
8 Public Works recently approved Governor Larry Hogan's request to cut \$413.17 million from the
9 state's FY 2021 budget, which represents a 2% reduction from general fund appropriations. More
10 than \$200 million in additional proposed cuts are scheduled to be considered by the General
11 Assembly during the 2021 Legislative Session, cuts that will directly impact education and pay
12 raises for state employees, among other things.

13 **CARES Act Funds Received by PGCPs for K-12 Education**

14 A. Elementary and Secondary School Emergency Relief (ESSER) Funds

15 14. In order to receive the ESSER funds designated for PGCPs and as required by the
16 Department and the Maryland State Department of Education, PGCPs executed a Certification
17 and Agreement form and submitted it to the Maryland State Department of Education on June 12,
18 2020. A true and correct copy of the Certification and Agreement completed by PGCPs and
19 submitted to the Maryland State Department of Education is attached hereto as Exhibit A.

20 15. Within this Certification and Agreement, PGCPs agreed to the following
21 terms: (1) the local school system (LSS) will provide equitable services to students and teachers
22 in non-public schools located within the LEA in the same manner as provided under section 1117
23 of the Elementary and Secondary Education Act of 1965 (ESEA), as determined through timely
24 and meaningful consultation with representatives of non-public schools; (2) the LSS will ensure
25 that a public agency will maintain control of funds for the services and assistance provided to a
26 non-public school under the ESSER Fund; (3) the LSS will ensure that a public agency will have
27 title to materials, equipment, and property purchased with ESSER funds; and (4) the LSS will
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1 ensure that services to a non-public school with ESSER funds will be provided by a public
2 agency directly, or through contract with, another public or private entity.

3 16. At the time that PGCPs executed the Certification and Agreement form, the
4 Department had not yet published its Guidance Document or the Rule. Accordingly, neither
5 PGCPs nor the Maryland State Department of Education was aware that the Department would
6 subsequently issue rules to change the required proportional share calculation for equitable
7 services required under the CARES Act and the private school students eligible to receive
8 equitable services under the CARES Act.

9 17. Using the proportional share calculation set forth in Section 1117 of the
10 Elementary and Secondary Education Act (ESEA), PGCPs would reserve \$1,508,655 in ESSER
11 funds to provide equitable services to private school students.

12 18. However, using the proportional share calculation set forth in the Department's
13 Guidance Document and in Option #2 in the Rule, PGCPs would reserve \$2,415,474 in ESSER
14 funds to provide equitable services to private school students. Thus, under the Department's
15 preferred proportional share calculation, private school students in Prince George's County would
16 have access to an additional \$906,819, and public schools would lose this same amount of funds.

17 B. Governor's Emergency Education Relief (GEER) Funds

18 19. PGCPs anticipates receiving \$2,137,208 from the GEER Fund based on the
19 application submitted to the Maryland State Department of Education on July 10, 2020.

20 20. Using the proportional share calculation set forth in Section 1117 of the
21 Elementary and Secondary Education Act (ESEA), PGCPs would reserve \$107,363 in GEER
22 funds to provide equitable services to private school students.

23 21. However, using the proportional share calculation set forth in the Department's
24 Guidance Document and in Option #2 in the Rule, PGCPs would reserve \$171,897 in GEER funds
25 to provide equitable services to private school students. Thus, under the Department's preferred
26 proportional share calculation, private school students in Prince George's County would have access
27 to an additional \$64,533, and public schools would lose this same amount of funds.
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The Department's Rule Significantly Harms Prince George's County's K-12 Students

22. The Department's Guidance and Rule will result in less funding being distributed to public K-12 schools in Maryland.

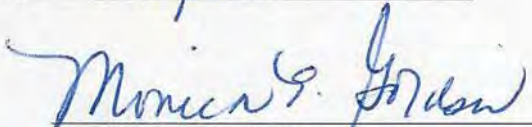
23. PGCPS must calculate the proportional share of CARES Act funds for private school students under Option #2 in the Rule. As a result, approximately \$1.0 million will be diverted from public schools to private school students.

24. For every \$246 diverted from the public schools, a public-school student loses out on a needed internet-connected device that could allow the student to access online learning while schools are closed due to the pandemic.

25. For every \$91,735 diverted from the public schools, a public-school teacher in Prince George's County, Maryland may lose their position and be unable to provide students with access to learning during the pandemic.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 15th day of July, 2020, at 7:44 p.m.



Dr. Monica E. Goldson
Chief Executive Officer

Exhibit A

PROGRAMMATIC, FISCAL, REPORTING, AND OTHER ASSURANCES


1. The Local School System (LSS) will use ESSER funds for activities allowable under section 18003(d) of Division B of the CARES Act. (See Appendix A.)
The following is not considered to be an allowable use of ESSER funds, under any part of 18003: 1) subsidizing or offsetting executive salaries and benefits of individuals who are not employees of the LSS or 2) expenditures related to state or local teacher or faculty unions or associations.
2. The LSS will provide equitable services to students and teachers in non-public schools located within the LEA in the same manner as provided under section 1117 of the ESEA, as determined through timely and meaningful consultation with representatives of non-public schools.
 - The LSS will ensure that a public agency will maintain control of funds for the services and assistance provided to a non-public school under the ESSER Fund.
 - The LSS will ensure that a public agency will have title to materials, equipment, and property purchased with ESSER funds.
 - The LSS will ensure that services to a non-public school with ESSER funds will be provided by a public agency directly, or through contract with, another public or private entity.
3. The LSS will, to the greatest extent practicable, continue to compensate its employees and contractors during the period of any disruptions or closures related to COVID-19 in compliance with Section 18006 of Division B of the CARES Act. CARES Act funds generally will not be used for bonuses, merit pay, or similar expenditures, unless related to disruptions or closures resulting from COVID-19.
4. The LSS will cooperate with any examination of records with respect to such funds by making records available for inspection, production, and examination, and authorized individuals available for interview and examination, upon the request of (i) the United States Department of Education (USDE) and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.
5. The LSS will comply with all applicable assurances in OMB Standard Forms 424B and D (Assurances for Non-Construction and Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood hazards; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders and regulations.
6. LSS will submit the full certification, as set forth in 34 C.F.R. Part 82, Appendix A, upon request.

7. The LSS will sign and return the Assurances page of the Notice of Grant Award (NOGA) which includes a set of assurances that meets the requirements of section 442 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232e).
8. To the extent applicable, an LEA will include in its local application a description of how the LEA will comply with the requirements of section 427 of GEPA (20 U.S.C. 1228a). The description must include information on the steps the LEA proposes to take to permit students, teachers, and other program beneficiaries to overcome barriers (including barriers based on gender, race, color, national origin, disability, and age) that impede equal access to, or participation in, the program.
9. The SEA will comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) requirements in Subpart D—Post Federal Award Requirements (2 CFR §§200.300-345) and Subpart E—Cost Principles (2 CFR §§200.400-475) to ensure that LEAs, including charter schools that are LEAs, are using ESSER funds for purposes that are reasonable, necessary, and allocable under the CARES Act.
10. The LSS and other entities will comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts 76, 77, 81, 82, 84, 97, 98, and 99; the OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and the Uniform Guidance in 2 CFR part 200, as adopted and amended as regulations of the USDE in 2 CFR part 3474.

LSS ESSER Fund Contact/Title: Chief Executive Officer _____

Contact Email: ceo@pgcps.org **Contact Phone:** (301) 952-6008

Local School System Superintendent (Printed Name): Dr. Monica Goldson



Signature:

6/12/2020

Date:

USES OF ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUNDS

Elementary and Secondary School Emergency Relief (ESSER) Fund Maryland Local School System Application

Part I – Planned Use of ESSER Funds

- 1. Please describe the Local School System’s (LSSs) process for determining the most important education needs as a result of the COVID-19 Pandemic. Please identify the most important education needs revealed through this process.**

Prince George’s County Public Schools (PGCPS) is guided in its decisions by its mission to provide a great education that empowers all students and contributes to thriving communities. Five strategic pillars undergird this mission and framed the prioritization of educational needs in the environment created by the COVID-19 pandemic. Each pillar (Academic Excellence, Safe and Supportive Environments, High-Performing Workforce, Family & Community Engagement, and Operational Effectiveness) is addressed in the context of six critical actions: communicate, prevent, protect, equip, educate, and support.

Discussions of PGCPS education needs under the threat of COVID-19 began in early March 2020. With an abundance of caution for the safety and health of the PGCPS community, CEO Dr. Monica Goldson, the Board of Education and the local government collaboratively engaged in discussions on ways to support the PGCPS community with the looming impact of COVID-19.

During the first week of March, all principals and building services personnel were instructed to use procedures aligned with virus prevention as part of their daily cleaning of facilities. Schools were equipped with additional supplies such as soap, paper towels and hand sanitizer dispensers. As a safety precaution, Dr. Goldson canceled all student local and international field trips and nonlocal travel for staff. Preventative measures included scheduled hand washings for students and a prescribed disinfection of schools and buildings. Within a few short weeks, the viral outbreak was worldwide and required prompt intervention at the federal and state levels to control.

Following strict guidance offered by state and local government and health officials, PGCPS’ Executive Leadership Team (ELT) engaged in daily command meetings to stay abreast of new information as well as to discuss and make decisions on immediate actions to address protective alternatives to standard educational operations as a result of the pandemic. The core ELT is comprised of district’s executive leadership who are responsible for every aspect of the organization. Meetings include the discovery of new information through updates from the State and local governments, updates from the internal Incident Command Center, as well as information from the Communications Office who continuously monitors stakeholder needs through social media, emails and phone inquiries. Through the deliberation of the ELT, the most important education needs can be grouped into the following four categories:

- Student and staff safety and building readiness
- Continuity of learning
- Access to technology – the need for devices and internet access
- Communications – the ability to reach all parents and relevant stakeholders

In keeping with its mission to provide quality instruction to advance student achievement, PGCPS prioritized equipping students/families, and instructional staff with the materials, tools, technologies, and training to sustain instruction and creative distance learning opportunities. In addition, surveys were administered to the PGCPS community to identify the unique needs of students and families surrounding technology device availability, internet/wifi access, CATV viewing opportunity, etc. Internal needs assessments combined with survey results were used to inform and confirm the prioritization of the most critical education needs which included 1:1 student/device technology gap; universal access to instructional materials and online learning opportunities; sustaining student achievement momentum in core content areas during 4Q and summer periods, fortifying social and emotional support for students, families, and staff; and ongoing maintenance and disinfection of facilities. In addition, discussions surrounding SY2020 close-out for seniors and student performance accountability impacts were salient factors in systemic needs assessment efforts.

Given these priorities, delivery of 3rd and 4th quarter academic standards in core content R/ELA and Mathematics was confirmed as an academic priority with well-rounded education opportunities capping the weekly distance learning schedule. Particular attention was given to ensuring multiple ways of accessing learning opportunities and related instructional materials and that ease of access to needed student and family supports is afforded to high-needs student/school populations (i.e., FARMS, SWD, ELs). Monitoring and supporting the engagement of students in the continuity of learning effort is of equal importance and is led by the Office of Information and Technology through the tracking and reporting of daily updates on both the access and usage of technology throughout the district. Finally, maintaining an equity focus consistent with its Local ESSA Consolidated Strategic Plan, a robust Continuity of Learning Plan (see response #2) guided and continues to guide PGCPS' priorities and decisions surrounding education needs in the ongoing COVID-19 environment and beyond.

2. Please provide a summary of the LSS’s Continuity of Learning (COL) plan. Please identify new initiatives or activities that have been instituted in order to implement the LSS COL plan; i.e. professional development, family outreach, learning management system content, new or additional streaming capability to deliver educational services via cable television or other platforms, and student and staff devices and hotspots to improve internet connectivity. Please identify the major issues encountered in implementing the LSS COL plan.

PGCPS’ Continuity of Learning plan unfolded in two phases, Phase One included preparation, distribution, training, and collaboration. This phase of the plan focused on the design and delivery of professional learning to educators in various online platforms, provided the opportunity for teachers to set up virtual classrooms, and distributed laptops to students and staff as needed. During phase two educators began to deliver virtual lessons, established communication with families and students, and provided virtual support for students in need of assistance.

While distance learning is not be structured like a typical school day, the district plans to maintain key aspects of the classroom experience: collaboration with peers, daily lessons, and experimentation with individualized and innovative techniques. PGCPS’ model of distance learning is inclusive of a blend of approaches to learning activities; independent, self-paced work; virtual office hours to check for understanding, and submission of assignments. This was designed to maintain an academic connection and flexibility for students, teachers, and families. The plan was strategically developed to support distance learning in the case of short- or long-term closures of school buildings.

The chart below outlines the new initiatives or activities that have been instituted in order to implement Continuity of Learning plan.

Continuity Plan Components	Description of Component
Professional Development	<p>The Continuity of Learning Plan includes an at-a-glance overview for high school, middle school, elementary school teachers/school staff, and central office staff. Additional guidance for the training process and course offerings are provided below:</p> <p><u>Registration:</u> The schedule and registration information was posted for each specific audience on the Remote Teaching Site (bit.ly/pgcpsremoteteaching)</p> <p><u>Course Selection:</u> During their grade span (elementary, middle, and high) professional development day, teachers/school staff attended one session to learn Google Classroom and one session to learn video conferencing Google Meet or Zoom and the Teaching at a Distance session. Additionally, teachers/school staff had the option to choose to attend a session to learn Screencastify.</p> <p><u>Platform Information:</u> All virtual professional development sessions were presented via WebEx, allowing up to 900 participants to register in each session.</p>

Continuity Plan Components	Description of Component
	<p><u>School Administrators</u>: School Administrators joined the training for their respective level with teachers and school staff. School administrators also attend a GoGuardian session to learn how to monitor instructional sites being used and students' inappropriate use online.</p> <p><u>Central Office Staff Training</u>: Separate sessions were designated for Central Office Staff to receive training.</p> <p><u>Instructional Focus Documents</u>: Teachers/School Staff have access to instructional focus documents that provide grade-level instructional focus topics and standard alignment that should be used weekly to guide instruction.</p>
Learning Management System	Instructional focus guides have been created for every course in order to provide teachers with direction on how to implement the curriculum within a distance-learning format. Teachers primarily use a combination of google classroom, google meet, and zoom to deliver instruction.
Television Streaming	<p>The district is providing daily access to Reading and Math PreK-5 lessons on PGCPS-TV (channels 96 Comcast and 38 Verizon). If families do not have cable, they are also able to watch shows on-demand using the online schedule with links to programming. This schedule is available at http://vod.pgcps.org/CablecastPublicSite/schedule.</p> <p>Additionally, there is a rotation of Music, Art, Dance, Physical Education, Montessori, and Immersion on Fridays.</p>
Device Distribution	<p>In an effort to identify student access to a computing device and broadband access at home, the district created a survey sent to all students/families to identify those in need of a computing device and home internet access. Parents were asked to evaluate:</p> <p>Which broadband Internet service provider is used in the home? Is there a device that connects to the Internet at home for your student(s) to use? What type of device(s) would your student(s) be able to use at home? Is the student having to share a device?</p> <p>The data received back identified students with and without a device. The survey also identified students with broadband access at home and their provider, as well as students currently without broadband access.</p> <p>Preparation of Chromebooks and Student Equipment Agreements</p> <p>To prepare for the deployment of so many devices, a social distancing distribution plan was put in place to ensure safety for staff and families. This plan also ensured a way to capture an appropriate inventory of all devices being handed out to parents. The paperwork identifies which device was given to which student. The information, once the paperwork is collected from the schools, will be entered into our Asset Management System for our electronic record.</p>
Internet Connectivity	<p>In-Home Connectivity</p> <p>PGCPS has partnered with Internet Essentials from Comcast to bring families affordable, high-speed Internet that makes it easier for low-income households to get</p>

Continuity Plan Components	Description of Component
	<p>connected so they can more easily work from home, access educational resources, and stay in contact with friends and family. New Internet Essentials customers may be eligible for two months of free Internet service.</p> <p>Wifi Access Points Drive-up wifi access points at several schools will be available starting Tuesday, April 14 for anyone with a PGCPs email account to log on from the school parking lot or within close proximity to the school.</p>
Family Outreach	<p>PGCPs designed a website (https://www.pgcp.org/coronavirus/distance-learning/) to inform families of the Distance Learning plan and resources available for students and families. This page includes information on the following:</p> <ul style="list-style-type: none"> Distance Learning Plan PreK-12 Phase 1: Preparation Phase 2: Distance Learning Plan PreK-Grade 5 Lessons TV Schedule Teacher/Student Weekly Schedule Distance Learning Packets Technology Special Education Calendar and Grading Resources
Major Issues Encountered in Implementing the Continuity of Learning Plan	
<ul style="list-style-type: none"> ● Supporting students who did not have access to digital devices before Chromebook distribution ● Supporting students who do not have access to the internet ● Students who have not logged on to interact with the classroom teacher during the distance learning period 	

To sustain the supports introduced by PGCPs' Continuity of Learning and those instructional opportunities provided during summer programming, PGCPs will extend its school day when it re-opens its doors to students and staff for SY21.

In so doing, PGCPs understands that there are many factors to consider. One in particular, is compensating for any learning loss associated with school closures. Our goal is to extend the school day versus adding additional days to the school year. All teachers and students, PreK-12, will have an extra 30 minutes per day for 30 days that will be used for academic interventions designed to deliver 4th quarter and 1st quarter content.

According to a January 2020 report from the Education Commission of the States, Md. Code Ann., Educ. § 7-103, requires Maryland schools to provide instruction for a minimum of 3 hours each day. The current school schedule in PGCPs far exceeds the minimum with six hours and 10

minutes for elementary and special schools K-12, and six hours and 40 minutes for K-8 academies, middle school, and high school. An additional 30 minutes would increase the daily instructional time to six hours and 40 minutes and seven hours and 10 minutes, respectively. The additional minutes for the first thirty days is reflected in the chart below.

PGCPS School Type	PGCPS Current School Day Time Allotment	PGCPS Proposed School Day Time Allotment (30 days)
Elementary Schools	6 hours 10 minutes	6 hours 40 minutes
Dedicated Specialty K-6	6 hours 10 minutes	6 hours 40 minutes
Special Schools K-12	6 hours 10 minutes	6 hours 40 minutes
Middle Schools	6 hours 40 minutes	7 hours 10 minutes
K-8 Academies and Dedicated Specialty K-8	6 hours 40 minutes	7 hours 10 minutes
High Schools	6 hours 40 minutes	7 hours 10 minutes
Academy of Health Science at Prince George's Community College & Annapolis Road Academy Alternative High School	6 hours 40 minutes	7 hours 10 minutes

Hanover Research and Washington Association of School Administrators (2020) asserted that when learning loss occurs due to a traumatic event such as the COVID- 19 school closure, establishing a sense of constancy and predictability with schedules and routines that communicate a clear set of expectations (p. 4) can support students when they return to the school setting. Additionally, Canady and Rettig (1995) found a well-crafted schedule to result in more effective use of time, space and resources, as well as improve instructional climate (p. 4) as PGCPS dedicates an additional 30 minutes to address predetermined skills and concepts.

According to Walker (2016), more school districts across the country have stretched the school day. In fact, the Rochester Teachers Association implemented an extended learning initiative that won positive reviews from district leaders, educators, and parents. However, the plan was designed and implemented *with* educators, not *to* educators. Thus, the following will be reviewed as stakeholders collaborate on the use of the additional 30 minutes per day:

- PGCPS will identify and support student groups most affected by distance learning
- Fluency standards that are most beneficial as students progress
- Specific skills and concepts that students really need to be successful in future years
- A schedule for teachers to work vertically across grade levels for the purpose of deciding upon critical areas that must be addressed as students move from one grade to the next
- Rearranging course content to focus on the progression of standards that may have been missed

3. Please describe how the LSS intends to assess and address student learning gaps resulting from the disruption in educational services.

PGCPS recognizes the potential gaps in student learning outcomes in 4Q20 performance stemming from the disruption of the instructional environment due to COVID-19. As a result, a comprehensive and robust systemic summer virtual learning plan is being implemented to assess and address any gaps in 4Q20 learning at each grade band (preK, elementary, middle, and high school). In accordance with the state Superintendent's recommendations, PGCPS is actively engaged in planning to determine the extent to which additional learning supports will be carried forward into the start of SY21.

During the PGCPS summer program, PGCPS will continue to offer virtual learning platforms for students in prek-12. This summer experience will commence on July 1st through July 31st, and will be monitored throughout to ensure ongoing learning for students. In addition to designated online learning and the provision of learning via PGCPS television stations, 38 and 96 respectively, instructional enrichment learning packets will be available for student use. Funding will be utilized to ensure the continued provision of educational services, via Edgenuity, television stations and to support staffing needed for program implementation.

Elementary students in K-5 will receive online instruction via *iRead* and *iReady*[®] for reading and *DreamBox*[®] for mathematics. Cool Spring ES, Rosa L. Parks ES and Cherokee Lane ES will host virtual Learning in Extended Academic Programs (LEAP) Virtual Summer Program for students. Judy Hoyer Early Learning Center will offer a two-week program for rising pre-kindergarten students. Scheduled content specific learning experiences will be scheduled daily where PGCPS teachers provide direct instruction for K-5 students via television channels. Content teachers will be tasked with planning and teaching lessons that are aligned to fourth quarter instructional standards.

All middle school students will engage in virtual learning experiences to include participation in Edgenuity. Edgenuity is an online instructional program that is available through the purchase of licenses. Students will utilize the intervention model, a student adaptive component, and courseware lessons, developed and aligned to fourth quarter content standards during their participation. Students participating in the courseware model are selected due to failure in reading and mathematics and for students where classrooms were covered by a long term substitute during the school year. Unique learning paths, online tutors and teacher support will serve as a compliment to this virtual experience. Content areas of focus will be mathematics and RELA.

PGCPS will offer a Credit Recovery Program approach for high school students in grades 9-12. Course offerings will provide students the opportunity to retake courses where they have been unsuccessful. In order that this provision is offered for students to accommodate their instructional needs, there will be a need to ensure the procurement of licenses needed.

4. Please provide the LSS's plan for meeting the equitable services requirement in Section 18005 of the CARES Act.

Annually, PGCPS ESSA Program Offices connect with our Non-Public partners to initiate an intent to participate and provide meaningful and follow-up consultation. During this collaborative dialogue, the Program Offices explain/review equitable services as outlined by the relevant Department of Education authority.

To maintain relative consistency and continuity with our non-public partners, PGCPS will utilize similar processes to ensure equitable services are provided to all students in private schools in connection with CARES Act Elementary and Secondary School Emergency Relief (ESSER) program funding. Following is the process to be utilized by PGCPS. In light of the timing of the ESSER application relative to school closings, PGCPS will exercise increased flexibility in these process steps, to the extent possible, to meet the needs of the non-public partners while adhering to the guidelines for meaningful consultation.

- PGCPS will contact all Private schools in Prince George's County that are identified on the MSDE website via email and US mail. This contact provides private school officials with the opportunity to convey their request to participate in equitable services provided via ESSER funding. Private school officials will be asked to submit their interest for participation in addition to student and staff counts as is standard in ESSA Title program requirements, in addition to providing required student data used to determine proportional allocations.
- Schools will be asked to respond and indicate their intention to participate for SY21 within one week of form dissemination.
- Upon receipt of interest letters, PGCPS will invite all interested private school officials to attend a Prince George's County Public Schools (PGCPS) ESSER Consultation Meeting (to be scheduled virtually).
- The purpose of the consultation meeting is to provide an opportunity for Nonpublic officials to consult with PGCPS' program personnel and to receive an explanation and clarification regarding eligible CARES Act ESSER-funded services and programs. The PGCPS personnel representing each funded component of the ESSER program will provide an overview of the regulatory and program requirements for each aspect of the program within the district.
- To document agreement, during the consultation meeting, nonpublic representatives will be provided an document (via online tools) to verify all nonpublic consultation program topics were discussed.
- PGCPS will propose a start date for services to commence with private school children consistent with program start timeframes for PGCPS students. In addition, should parental permission be required for participation in any program, PGCPS will establish a date for non-public schools to provide such documentation.
- To ensure that consultation is ongoing throughout the school year, a collaboratively developed schedule of consultation meeting dates throughout the program service period will be developed in the initial consultation meeting.
- Consultation meetings (virtual unless otherwise communicated) allows the inclusion of representatives from all participating private schools and PGCPS program staff to be a part

of the process. During each meeting, updates will be provided regarding the implementation of services, student progress, and attendance of parent and family engagement activities when applicable. During the school year, PGCPS Program Offices will also work with the participating private schools to assist in spending their funds and ensure accurate reporting and compliance timelines are met.

5. Please provide the LSS’s planned use of ESSER funds, including the timeline for implementing activities funded through this grant.

PGCPS will utilize funds received through ESSER grant award to address thirteen (13) discrete activities to include: *administrative cost, equitable services, operations, virtual summer school through edgenuity, curriculum writing, curriculum writing/instructional video, technology, communications, additional instruction time, trauma informed care supports, ESY enrollment expansion, academic materials and food services supplies*. Additionally, PGCPS’ approved indirect costs are factored into the budget.

The activities and associated budgets are presented in the chart below. Also, a timeline of the activities and associated start and end dates is found the preceding pages.

ACTIVITIES	BUDGET NARRATIVE DESCRIPTION	TOTALS
Administrative Cost	<p>Activity Summary: Hire a Part-Time Project Manager that will be dedicated to administering activities associated with the CARES/ESSA grant, and be responsible for the day-to-day management of the project.</p> <p>The Project Manager will monitor and track project timelines; ensure that all key deliverables are met; manage communication across all key project-related internal stakeholders; manage the project budget; give direction as and when required; make decisions or recommendations during the project’s life cycle; and coordinate, assemble and submit all project interim and final reports to MSDE in a timely manner.</p> <p>Budget Narrative: Part-time temporary grant administrative support: Salary - \$68,400 Fringes: FICA (.0765 x 68,400) = 5,232 Workers Compensation (.02 x 68,400) = 1,368</p>	\$75,000
Equitable Services Non-Public Schools	Estimated Equitable Services Set-Aside for Participating Non-Public Schools	\$1,508,655

ACTIVITIES	BUDGET NARRATIVE DESCRIPTION	TOTALS
Operations	<p>Activity Summary: Prince George’s County Public Schools will be providing the necessary labor and supplies/materials to reduce the risk of exposure to COVID-19 by thoroughly cleaning and disinfecting all of the district’s facilities. Additional disinfectant machines, personal protective equipment (PPE), sanitation supplies, and overtime are the key components that will be used to complete this ongoing task.</p> <p>Budget Narrative:</p> <p>A. Overtime - Total: \$1,958,687 To support the sanitation of schools and facilities throughout the district. ~\$64.49/hour x 27,699 hours = \$1,786,309 FICA (7.65%) = \$136,652 and Workers Compensation (2.00%) = \$35,726</p> <p>B. Supplies – Total: \$1,084,601</p> <p>Hand Sanitizer: Increase supply to proactively provide alcohol-based hand sanitizer when washing hands with soap and water is not readily available. 3,715 cases x \$41.76/case = \$155,138</p> <p>Hand Soap: Increase supplies to comply with hand washing of at least 20 seconds per CDC guidelines. 3,173 cases x \$43.25/case = \$137,232</p> <p>General Masks: Increase supply of general to protect against dust and air pollutants 9 cases (20,800 masks/case) x \$25,000/case = \$225,000</p> <p>N95 Masks: Increase supply of N95 masks that protect up to 95% of all bacteria, virus, and fungi 550 boxes (20/box) x \$62.40 = \$34,320</p> <p>Other Building Services Supplies - \$532,911</p> <p>C. Equipment – Total: \$40,000 Clorox 360 System Machines: Purchase additional disinfectant machines to clean and disinfect throughout the</p>	

ACTIVITIES	BUDGET NARRATIVE DESCRIPTION	TOTALS
	district in efforts to meet EPA N-List recommendations for use against SARS CoV-2. 10 machines x \$4,000 = \$40,000	
Sub Total		\$3,083,288
Virtual Summer School through Edgenuity	<p>Activity Summary: The Prince George's County Area Office reviewed the programs used by high schools and chose Edgenuity. The Edgenuity MyPath and Courseware programs provide intervention and enrichment resources to support skill attainment aligned to Maryland State Standards. The funds will be used to purchase site licenses for students.</p> <p>All middle school students will engage in virtual learning experiences to include participation in Edgenuity. Edgenuity is an online instructional program that is available through the purchase of licenses. Students will utilize the intervention model, a student adaptive component, and courseware lessons, developed and aligned to fourth quarter content standards during their participation. Students participating in the courseware model are selected due to failure in reading and mathematics and for students where classrooms were covered by a long-term substitute during the school year. Unique learning paths, online tutors and teacher support will serve as a compliment to this virtual experience. Content areas of focus will be mathematics and RELA.</p> <p>Budget Narrative: \$16 per unit license x 18,750 middle school students \$300,000 + \$17,600 in non-license costs = \$317,600.</p>	
Sub Total		\$317,600
Curriculum Writing/Instruction (Summer Curriculum Writing for 1st quarter for 2020-2021 content)	<p>Activity Summary: Prince George's County Public Schools will be adjusting the first quarter curriculum to ensure that critical standards from the previous quarter 4 are addressed during the first several weeks of the new year. These skills/standards will spiral through the 2020-2021 school year. Additionally, with adding these to the beginning of the documents, the current First Quarter curriculums need to be adjusted and ready for students by August 31, 2020.</p>	

ACTIVITIES	BUDGET NARRATIVE DESCRIPTION	TOTALS
	<p>Budget Narrative: Salary – Total: \$281,600 Workshop Pay: 64 Curriculum Writers will be paid the curriculum writing rate, per the labor contract, for the creation of the curriculum guides. As the system ensures learning of essential quarter 4 standards and/or skills and processes, curriculum documents for quarter 1 2020-2021 will need to be readjusted. Content curriculum writers will be adjusting quarter 1 instructional documents to reflect these changes to the beginning of the document and then adjusting the remaining weeks within the quarter. This will occur across the Division of Academics. Writing activities will occur between June 1 - August 15, 2020.</p> <p>Approximately 22 (days), x 64 (2 FTE per 32 contents) x \$200 a day = approximately \$281,600 Fringes – Total: \$21,542 FICA will be paid for all salaries: \$281,600 x .0765 = \$21,542</p>	
Sub Total		\$303,142
Curriculum Writing/Instructional Videos	<p>Activity Summary: Prince George’s County Public Schools is providing daily access to Reading and Math PreK-5 lessons on PGCPS-TV (channels 96 Comcast and 38 Verizon). If families do not have cable, they are also able to watch shows on-demand using the online schedule with links to programming. Additionally, there is a rotation of Music, Art, Dance, Physical Education, Montessori, and Immersion on Fridays.</p> <p>Budget Narrative: A. Salary – Total: \$58,800 Workshop Pay: Curriculum Writers will be paid the curriculum writing rate, per the labor contract, for each video created. Teachers are asked to create videos aligned to the instructional focus for each week established. Each week there are seven reading, seven math, three electives, one Montessori, and three Immersion videos each week. This totals 21 videos a week. The date span for this activity is April 14 - July 31, 2020.</p>	

ACTIVITIES	BUDGET NARRATIVE DESCRIPTION	TOTALS
	<p>Approximately 14 weeks, x 21 videos a week @ \$200 per video = \$58,800</p> <p>B. Fringes – Total: \$4,498</p> <p>FICA will be paid for all salaries: \$58,800 x .0765 = \$4,498.</p>	
Sub Total		\$63,298
Technology		
<p>Student Devices to create 1 to 1 (Purchase of student Chromebooks will be in preparation of start of the 2020-2021 School Year)</p>	<p>Activity Summary: Prince George’s County Public Schools has provided a student device (Chromebook) to students who have indicated that they did not have access at home. A total of 65,000 devices have been distributed and counting. The school district has been investing in Chromebooks with the expectation of the device lasting four years. To date, more than 25% of our devices need replacement. Pre-k and Kindergarten will be receiving iPads. Grades 1 - 12 will be receiving Chromebooks.</p> <p>Budget Narrative: Total - 20,000 Chromebooks x \$312.49ea \$6,249,800 + 206 iPads @ \$1,000ea \$206,000 = \$6,455,800</p>	
<p>Classroom Management System Software - Web Filtering, Classroom Management, and Instructional Software (Purchase will be made in July 2020, in preparation for start of the 2020-2021 School Year)</p>	<p>Activity Summary: In support of the delivery of instruction remotely, student access to devices and wifi broadband a cloud-based instructional classroom management system that focuses on instruction of students and is capable of monitoring and reporting interactions between teachers and their students when students are logged into Google Chrome or the Chrome OS using their PGCPs Google accounts. The classroom management system is needed to manage and monitor approximately 136,000 student devices and additional estimated cost for outdoor Wi-Fi antennas.</p> <p>Budget Narrative: Total - 136,000 students x \$7.35 per user \$999,600 + Wi-Fi antennas \$313,282 = \$1,312,882</p>	
<p>Wifi Cost (This purchase was made in May 2020)</p>	<p>Activity Summary: A total of 5,000 hotspots have been purchased. Monthly cost for hotspots is \$15.00 per device per month. In addition, the school system is paying for families that qualified for Comcast’s Internet Essentials and will be paying for the monthly cost.</p>	

ACTIVITIES	BUDGET NARRATIVE DESCRIPTION	TOTALS
	Budget Narrative: Total: 7,625 devices x \$200 per hotspot unit = \$1,525,000	
Sub Total		\$9,293,682
Communications	<p>Activity Summary: The Office of Communications develops and maintains Distance Learning and COVID-19 webpages to share the latest information on these topics with families, community members and staff. Communications staff also develops publications, posts updates on social media, sends mass emails and hosts tele town hall events to share updates and field questions on distance learning and COVID-19. Communications works closely with Academics staff to create instructional videos for distance learning and provide daily access to distance learning content through the school system’s cable television channels (Comcast Channel 96 and Verizon Channel 38).</p> <p>Budget Narrative: A. Tele Town Halls – Total: \$44,000 An external contractor will provide tele town hall dial-in services approximately every other month</p> <p>Tele Town Hall Hosting Services – \$11,000K per event x 4 = \$44,000 Staffing – Moderating and call-in screening will be provided at no additional cost by PGCPs volunteers</p> <p>B. External Graphics and Video Production Support – Total: \$149,079 External contractors will provide approximately 12 videos and 10 graphic design projects to help meet messaging needs to PGCPs families, community members or staff. Videography Fees – \$6K per video x 4 = \$24,000 Graphic Design Fees – \$2,500 per project x 4 = \$10,000; TV Lessons - \$53,200; Community Communications - \$61,879.</p> <p>C. Digital and Video Equipment Upgrades – Total: \$221,300 Upgrade On-Air system to improve remote operations, increase streaming capabilities, and have the ability to broadcast zoom meetings. Current system is at end of life, and can’t be updated.</p>	

ACTIVITIES	BUDGET NARRATIVE DESCRIPTION	TOTALS
	<p>Equipment and Installation \$75,000</p> <p>Upgrade Main Production Control Room to allow remote location technologies like Skype, Zoom and other online services to become a part of the studio production process.</p> <p>Equipment & Installation – \$146,300</p> <p>D. Website Software – Total: \$21,000 To support distance learning and move to online distribution of all content, this software is necessary to maintain website accessibility requirements for Section 508 compliance and monitor school and office websites for accuracy and updated content.</p> <p>Site-improve Software – \$21,000 Total: \$320,300</p>	
Sub Total		\$435,379
<p>Additional Instruction Time– 30 days of additional instruction for 30 minutes</p>	<p>Activity Summary: There are many factors to consider as PGCPs prepares to open its doors to staff and students. One in particular, is compensating for any learning loss associated with school closures. Our goal is to extend the school day versus adding additional days to the school year. All teachers and students, PreK-12, will have an extra 30 minutes per day for 30 days that will be used for academic interventions designed to deliver 4th quarter and 1st quarter content.</p> <p>The current school schedule in PGCPs far exceeds the minimum with six hours and 10 minutes for elementary and special schools K-12, and six hours and 40 minutes for K-8 academies, middle school, and high school. An additional 30 minutes would increase the daily instructional time to six hours and 40 minutes and seven hours and 10 minutes, respectively. The additional minutes for the first thirty days is reflected in the chart below.</p>	

ACTIVITIES	BUDGET NARRATIVE DESCRIPTION			TOTALS																								
	<table border="1"> <thead> <tr> <th data-bbox="467 323 734 417">PGCPS School Type</th> <th data-bbox="734 323 976 417">PGCPS Current School Day Time Allotment</th> <th data-bbox="976 323 1213 417">PGCPS Proposed School Day Time Allotment (30 days)</th> </tr> </thead> <tbody> <tr> <td data-bbox="467 422 734 470">Elementary Schools</td> <td data-bbox="734 422 976 470">6 hours 10 minutes</td> <td data-bbox="976 422 1213 470">6 hours 40 minutes</td> </tr> <tr> <td data-bbox="467 474 734 522">Dedicated Specialty K-6</td> <td data-bbox="734 474 976 522">6 hours 10 minutes</td> <td data-bbox="976 474 1213 522">6 hours 40 minutes</td> </tr> <tr> <td data-bbox="467 527 734 575">Special Schools K-12</td> <td data-bbox="734 527 976 575">6 hours 10 minutes</td> <td data-bbox="976 527 1213 575">6 hours 40 minutes</td> </tr> <tr> <td data-bbox="467 579 734 627">Middle Schools</td> <td data-bbox="734 579 976 627">6 hours 40 minutes</td> <td data-bbox="976 579 1213 627">7 hours 10 minutes</td> </tr> <tr> <td data-bbox="467 632 734 695">K-8 Academies and Dedicated Specialty K-8</td> <td data-bbox="734 632 976 695">6 hours 40 minutes</td> <td data-bbox="976 632 1213 695">7 hours 10 minutes</td> </tr> <tr> <td data-bbox="467 699 734 747">High Schools</td> <td data-bbox="734 699 976 747">6 hours 40 minutes</td> <td data-bbox="976 699 1213 747">7 hours 10 minutes</td> </tr> <tr> <td data-bbox="467 751 734 888">Academy of Health Science at Prince George's Community College & Annapolis Road Academy Alternative High School</td> <td data-bbox="734 751 976 888">6 hours 40 minutes</td> <td data-bbox="976 751 1213 888">7 hours 10 minutes</td> </tr> </tbody> </table>			PGCPS School Type	PGCPS Current School Day Time Allotment	PGCPS Proposed School Day Time Allotment (30 days)	Elementary Schools	6 hours 10 minutes	6 hours 40 minutes	Dedicated Specialty K-6	6 hours 10 minutes	6 hours 40 minutes	Special Schools K-12	6 hours 10 minutes	6 hours 40 minutes	Middle Schools	6 hours 40 minutes	7 hours 10 minutes	K-8 Academies and Dedicated Specialty K-8	6 hours 40 minutes	7 hours 10 minutes	High Schools	6 hours 40 minutes	7 hours 10 minutes	Academy of Health Science at Prince George's Community College & Annapolis Road Academy Alternative High School	6 hours 40 minutes	7 hours 10 minutes	
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	<p>Budget Narrative:</p> <p>A. Salary - \$10,073,528 The below amounts cover the salary of all full-time and part-time school-based employees (excluding 12-month school administrators) and bus drivers for an additional 900 minutes of work (30 minutes/day * 30 school days):</p> <p>Mid-Level Administration (202): \$419,324 Instructional Salaries and Wages (203): \$6,645,740 Special Education (206): \$1,923,429 Student Personnel Services (207): \$127,724 Student Health Services (208): \$134,274 Student Transportation Services (209): \$495,176 Operation of Plant Services (210): \$80,892 Food Service (213): \$216,039 Community Services (214): \$30,930</p> <p>B. Fringe Benefits - \$972,095 FICA (7.65%) and Workers Compensation (2.00%) employer payments for the above salaries. $\\$10,073,527 * (7.65\% + 2.00\%) = \\$972,095$</p>																											

ACTIVITIES	BUDGET NARRATIVE DESCRIPTION	TOTALS
	<p>C. Utility Costs - \$319,694 Additional utility costs associated with additional 900 minutes:</p> <p>Water & Sewer: \$56,461 Fuel Oil: \$33,201 Electricity: \$92,137 Natural Gas: \$137,142 Propane Gas: \$753</p>	
Sub Total		\$11,365,317
<p>Trauma-Informed Care Supports for Teachers, Students and their Families due to COVID-19</p>	<p>Activity Summary: PGCPS will provide training to teachers and administrators on the components of trauma and its impact as experienced by students during COVID-19. This training will also provide insight to educators on how student's learning and their behavior is affected by trauma. Lastly, the training will help schools develop safe environments for schools in supporting students whose trauma may manifest in ways previously met with school exclusion. Additionally, insight is intended to support staff's mental health, increase student engagement and reduce incidences of suspension as a result of student infraction.</p> <p>Budget Narrative:</p> <p>A. Trauma Organization/Trainer/Model - \$145,000 (\$100/teacher x 1,450 teachers) = \$145,000</p> <p>B. Workshop Pay to Staff - \$253,750 (\$250/day x 1,450 teachers = \$362,500)</p> <p>C. Fringe Benefits: FICA (7.65%) and Workers Compensation (2.00%) 362,500 x .0765 = \$27,732 362,500 x .02 = \$7,250</p> <p>Total Project: \$145,000 Trainer + \$362,500 Workshop Pay + \$34,982 Fringes = \$542,482 Sessions will be offered during the summer (one day). Sessions will also be offered during the school year where participants will attend two (3.5-hour sessions) afternoon sessions.</p>	
Sub Total		\$542,482

ACTIVITIES	BUDGET NARRATIVE DESCRIPTION	TOTALS
ESY Enrollment Expansion	<p>Activity Summary: ESY is a program that is legally mandated under the Individuals with Disability Education Act (IDEA) to maintain a free and appropriate public education (FAPE). The ESY program provides special education and related service to students with disabilities beyond the regular school year in accordance with his/her Individual Education Program (IEP). ESY will serve appropriately 3,800 students during the extended school year program. The number of students exceeded last year's student count by 1,675 students due to COVID-19 school closure. The increased number of students attending ESY is based on IEP team eligibility determination decisions due to loss of instructional time and regression.</p> <p>Budget Narrative: Salary – Total: \$1,355,092</p> <p>Teachers and Related Service Personnel: Classroom Teachers will provide online distance learning and complete IEPs and required documentation. Related Service Personnel to include speech, occupational and hearing therapists will provide supplementary aids and services outlined in a student's IEP for ESY. Teachers and related service personnel will work a 4-hour 4-day workweek over 4 weeks during the Extended School Year Program. 285 Teachers X \$61.29 Rate X 4 hours X 4 days per week X 4 weeks = \$1,117,930 51 Related Service Staff X \$72.66 Rate X 4 hours X 4 days per week X 4 weeks = \$237,162. Fringes – Total: \$130,766 FICA (7.65%) and Workers Compensation (2.00%) will be paid for all salaries: \$1,355,092 x .0765 = \$103,664 \$1,355,092 x .02 = 27,102</p>	
Sub Total		\$1,485,858
Academic Materials	Printing Cost for Student Instructional Materials: Academic Packets to Students - \$111,717 Other Academic Expenses: - \$26,625	
Sub Total		\$138,342
Food Service	Food Service Supplies to Serve Student Meals - \$505,046	

ACTIVITIES	BUDGET NARRATIVE DESCRIPTION	TOTALS
Supplies		
Sub Total		\$505,046
Total Direct Costs		\$29,117,089
Indirect Cost	FY20 Indirect Cost - 3.37% (Total Grant – Equipment – Transfers / 1+rate x rate) \$30,031,745 – 467,300 – 1,508,655 /1.0337 x .0337	\$ 914,656
TOTAL		\$30,031,745

PGCPS CARES/ESSER Timeline of Activities	FY20			FY21			FY22										
	Q2-SY20	Q3-SY20	Q1-SY21	Q2-SY21	Q3-SY21	Q4-SY21	Q1-SY22	Q2-SY22	Q3-SY22	Q4-SY22	Q1-SY23	Q2-SY23					
	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	
Project Manager (Administrative)				X	X	X	X	X	X	X	X	X	X	X	X	X	X
Equitable Services (non-public schools)				X	X	X	X	X	X	X	X	X	X	X	X	X	X
Operations																	
Thermometers		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
PPE		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Overtime		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Sanitation Supplies		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Additional Disinfectant Machines		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Virtual Summer School through Edgenuity	X	X															
Instruction (Summer curriculum)					X	X	X										
Instruction (ES Instructional videos for TV station)	X	X	X	X													
Technology																	
Technology (wi-fi)		X	X	X	X	X	X										
Technology (student devices)		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Technology Software			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Communications																	
Tele Town Hall platform	X	X			X	X	X	X									
External graphics and video production support	X	X			X	X	X	X	X								
Upgrades to digital and video equipment (i.e., Site/improve software			X		X	X	X										
Additional Instruction Time									X	X							
ESY Enrollment Expansion			X	X													
Trauma-Informed Care			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Academic Materials	X	X															
Food Service	X	X															

Part II – Budget Documents

Please submit a completed C125 workbook with the application.

The MSDE C-1-25 budget workbook that aligns with the activities identified in Question #5 of the application. The completed MSDE C-1-25 budget workbook accompanies the application.

EXHIBIT 9

1 XAVIER BECERRA
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 Senior Assistant Attorney General
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 Supervising Deputy Attorney General
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 8 *Attorneys for Plaintiff State of California*

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12

13
 14 **STATE OF MICHIGAN, STATE OF
 CALIFORNIA, et al.,**

15 Plaintiffs,

16 v.

17
 18 **ELISABETH D. DEVOS, in her official
 capacity as the United States Secretary of
 19 Education, and UNITED STATES
 DEPARTMENT OF EDUCATION,**

20 Defendants.
 21
 22

Civil Case No. 3:20-cv-04478-SK

DECLARATION OF GABRIEL C. BACA

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DECLARATION OF GABRIEL C. BACA

1
2 I, Gabriel C. Baca, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and
3 correct:

4 1. I am the Student, School and Family Support Bureau (Title I) Director at the New
5 Mexico Public Education Department (PED) located in New Mexico. My educational
6 background includes an Ed.D. in Educational Administration and an M.A. in Secondary
7 Education, both from the University of New Mexico. I have been employed as Title I Director
8 since June 2018. I have worked 28 years in education, 14 of these years have been at PED in
9 Title I, Special Education and other federal programs, and the balance have been at the district
10 and classroom level, administering federal programs and teaching.

11 2. Currently, my duties at PED include management and oversight of all
12 programmatic and fiscal aspects of the Title I-A and Title I-D programs, the Rural, Low-income
13 Schools program, CARES Act ESSER Fund, and the agency’s planning for and implementation
14 of the Multi-Layered System of Supports, PED’s adaptation of Response to Intervention.

15 3. I submit this Declaration to provide information for the State of New Mexico’s
16 litigation against Elisabeth D. DeVos, in her official capacity as Secretary of Education, and the
17 United States Department of Education (the “Department”) regarding the recently issued Rule
18 entitled *Providing Equitable Services to Students and Teachers in Non-public Schools*, 85 Fed.
19 Reg. 39479 (July 1, 2020), (the “Equitable Services Rule” or the “Rule”). I have compiled the
20 information in the statements set forth below through personal knowledge, through PED
21 personnel who have assisted me in gathering this information, and on the basis of documents that
22 have been provided to and/or reviewed by me. I have also familiarized myself with the Rule in
23 order to understand its immediate impact on PED and public schools in New Mexico.

24 4. Article 12 of the New Mexico Constitution addresses education; Section 6
25 establishes the Public Education Department, a cabinet-level agency, headed by the Secretary of
26 Public Education. The department has such powers and duties as are provided by law. The
27 secretary has administrative and regulatory powers and duties as provided by law, including all
28

1 functions related to the distribution of school funds and financial accounting for the public
2 schools.

3 The Public School Code – Chapter 22 of the New Mexico Statutes Annotated (1973) – is the
4 body of New Mexico law that primarily addresses public education. Sections 22-2-1 and 22-2-2
5 NMSA 1978 provide for the general powers of the secretary and department. The remainder of the
6 Code addresses particular public school programs, the public school funding formula, school
7 standards and graduation standards, school personnel, charter schools, vocational education, school
8 transportation, and diverse other matters related to the administration, regulation, and oversight of
9 public education in New Mexico.

10 Title 6 of the New Mexico Administrative Code, Primary and Secondary Education, contains
11 the many rules promulgated by the Public Education Department, either explicitly or implicitly
12 required by law, to properly administer public education in the state.

13 The *Martinez and Yazzie v. New Mexico*¹ consolidated lawsuit primarily addresses the
14 education in New Mexico of those students considered at-risk: Native American students, students
15 with disabilities, English learners, and economically disadvantaged students. The court found in that
16 case that New Mexico had failed its constitutional duty to provide these students with an education
17 sufficient to prepare them for college and career. Since the ruling, numerous legislation,
18 appropriations, regulations, and policies have been amended and adopted in an attempt to address the
19 deficiencies noted by the court and offer our most at-risk students the opportunities to which they are
20 constitutionally entitled.

21 5. The agency's primary responsibility is for K-12 education, though it also shares some
22 authority over prekindergarten instruction with the newly created Early Childhood Education and Care
23 Department. With the legislature, PED helps prepare education-related legislation and policy. PED,
24 based on legislative appropriations, sets the per-pupil funding value for the public schools, holds an
25 annual convention to assist schools in developing their budgets, and is generally responsible for

26 _____
27 ¹ *Yazzie v. State*, No. D-101-CV-2014-02224, 2017 WL 3780960 (N.M. Dist. filed June 5,
28 2017) (consolidated with, *Martinez v. State*, whereby plaintiffs contended a lack of sufficient
means to receive a proper education for Native American, Hispanic, and English Learner
students).

1 administering the public school funding formula. The department is responsible, at least as a pass-
2 through if not as the actual agent, for the administration of most federal grants and programs, though
3 some of those relationships are fostered directly between the federal government and local educational
4 agencies. PED sets curriculum standards and benchmarks for student proficiency and high school
5 graduation, and is responsible for determining which standardized assessments are administered and
6 for setting end-of-course evaluations. Apropos, the department tracks, compiles, and analyzes student
7 achievement data.

8 The Public Education Department is the agency that licenses teachers and other certified school
9 personnel, such as administrators and educational assistants. As such, it investigates licensure
10 complaints and potential violations, and administers penalties. The department's advisory panel on
11 the administration of the special education, required by the Individuals with Disabilities Education
12 Act, provides guidance for special education and related services for students with disabilities. The
13 department also provides technical assistance to school districts related to capital outlay funding and
14 procedures. It reviews and approves all potential lease-purchase arrangements between the public
15 schools and potential lessors, as well as requests from school districts and schools to dispose of certain
16 kinds of property within constitutional and statutory parameters.

17 Related to the Martinez and Yazzie consolidated lawsuit, PED maintains advisory panels for
18 and oversees the implementation of the Hispanic Education Act, the Indian Education Act, and the
19 Multicultural and Bilingual Education Act, requiring culturally and linguistically relevant instruction
20 and support for the state's diverse student body. The agency is the general primary authority for
21 providing students with the educational foundation to prepare them for college and career, and includes
22 oversight of career and technical education, next step plans for students approaching secondary
23 education and graduation, and working in partnership with the Higher Education Department and the
24 Workforce Solutions Department to help recent and rising graduates to prepare for life after the
25 completion of their secondary education.

26 Generally, the Public Education Department is the main authority for the administration,
27 oversight, and fiscal direction of the public schools in New Mexico.

28

1 6. In 2020, legislators appropriated \$3.468 billion in state funds for public education
2 from prekindergarten through secondary schools.

3 7. PED oversees 89 school districts and 50 state-authorized charter schools, for a
4 total of 139 LEAs. These LEAs serve 328,821 students in grades preK through 12.

5 8. In New Mexico, for the 2020-21 school year, 137 LEAs (87 districts and 50 state-
6 authorized charter schools) will receive Title I-A funds. These 87 districts contain 638 Title I
7 schools serving approximately 241,065 students. The total of 2019-20 Title I final awards to
8 LEAs in New Mexico was \$119,542,263.00.

9 9. There are approximately 190 private schools within the boundaries of 34 New
10 Mexico Title I Districts.²

11 **Effects of the COVID-19 Pandemic on Education in New Mexico**

12 10. The COVID-19 pandemic has drastically impacted K-12 education in New Mexico.
13 In mid-March 2020, schools abruptly shifted to an online instructional model. PED has engaged
14 in frequent communication with superintendents and charter school leaders. The Secretary and
15 Deputy Secretaries have provided extensive guidance and have held weekly and twice weekly
16 Zoom meetings with leaders. PED required all LEAs to submit Continuous Learning Plans
17 (<https://webnew.ped.state.nm.us/continuous-learning-plan-support/>) describing how they will
18 continue to provide education during the time schools are closed. PED has made Reentry and
19 school guidance resources available to schools and families
20 (<https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>).

21 **CARES Act ESSER Funds Received by New Mexico For K-12 Education³**

22 11. In order to receive the CARES Act ESSER funds designated for New Mexico and
23 as required by the Department, PED executed a Certification and Agreement form and submitted
24
25

26 ² New Mexico does not maintain a list of names or an accurate count of all of the private
27 schools within the state.

28 ³ To my knowledge, as of July 15, 2020, final decisions regarding GEER funds for New
Mexico have not been made.

1 it to the Department on April 30, 2020.⁴ A true and correct copy of the Certification and
2 Agreement completed by [SEA] and submitted to the Department is attached hereto as Exhibit A.

3 12. Within this Certification and Agreement, [SEA] agreed to the following terms:

4 I acknowledge and agree that the failure to comply with all Assurances and
5 Certifications in this Agreement, all relevant provisions and requirements of
6 the CARES Act, Pub. L. No. 116-136 (March 27, 2020), or any other
7 applicable law or regulation may result in liability under the False Claims Act,
8 31 U.S.C. § 3729, et seq.; OMB Guidelines to Agencies on Governmentwide
9 Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted
10 and amended as regulations of the Department in 2 CFR part 3485; and 18
11 USC § 1001, as appropriate.

12 ...

13 4. LEAs receiving ESSER funds will provide equitable services to students
14 and teachers in non-public schools as required under 18005 of Division B
15 of the CARES Act.

16 ...

17 5. LEA receiving ESSER funds will provide equitable services to students
18 and teachers in non-public schools located within the LEA in the same
19 manner as provided under section 1117 of the ESEA, as determined
20 through timely and meaningful consultation with representatives of non-
21 public schools.

22 [Ex. A at pp. 1-2.]

23 13. At the time that PED executed the Certification and Agreement form, the
24 Department had not yet published its Guidance Document or the Rule. Accordingly, PED was
25 unaware that the Department would subsequently issue rules to change the required proportional
26 share calculation for equitable services required under the CARES Act.

27 14. The Department distributed \$108,574,786 from the ESSER Fund to PED on May
28 4, 2020.

15. Of the ESSER funds received by PED, PED has retained \$10,857,479, or 10
percent of the award, as permitted by the CARES Act to administer the fund (one-half of one
percent) and make awards (nine and one-half percent) to educational entities including LEAs for

⁴ U.S. Dep't of Educ., Certification and Agreement for Funding under the Education Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund (ESSER Fund), CFDA Number 84.425D, April 24, 2020, available at <https://oese.ed.gov/files/2020/04/ESSERF-Certification-and-Agreement-2.pdf>.

1 the following COVID-19 related purposes: Closing the Digital Divide (mobile devices, internet
2 connectivity, professional development for online learning, and related purposes); Social and
3 Emotional Learning supports; Supporting students with disabilities and students in need of at-risk
4 services (during a building closure or during a transition back into the school building); PPE,
5 building sanitization and cleaning supplies; and Other (to be determined as needs emerge during
6 the return to school and during the school year).

7 16. In order to receive the ESSER 90 percent award, LEAs were required to submit an
8 application, with assurances, to PED. On May 14, 2020, PED released a six-page guidance
9 memo with the application as well as application instructions. Along with the application, LEAs
10 were required to submit a budget for the fund that was consistent with the application. After an
11 LEA's application and budget are approved, the LEA may submit a request for reimbursement
12 (RFR) against the ESSER 90 percent funds to PED. PED staff approve the RFR for payment
13 after they have reviewed the expenses and found them to be allowable per the CARES Act and
14 the approved LEA application.

15 17. To date, PED has distributed \$97,086,484.70 in ESSER funds to all 136 eligible
16 LEAs within New Mexico.

17 18. PED held back \$630,822.30 from the ESSER 90 percent award for "new charter
18 school LEAs or charter school LEAs that will significantly expand in school year 2020-2021" per
19 the ESSER Fund Frequently Asked Questions guidance document
20 ([https://oese.ed.gov/offices/education-stabilization-fund/elementary-secondary-school-
21 emergency-relief-fund/](https://oese.ed.gov/offices/education-stabilization-fund/elementary-secondary-school-emergency-relief-fund/)).

22 19. Using the proportional share calculation set forth in Section 1117 of the
23 Elementary and Secondary Education Act (ESEA), districts in New Mexico have designated
24 \$792,430.85 in ESSER funds to provide equitable services to private school students.⁵

25
26
27 ⁵ The amount of \$792,430.85 will change, as Albuquerque Public Schools (APS), which is
28 New Mexico's largest district (approx.. 27.13% of students in the state) recently decided to follow
the Department's Guidance Document.

1 20. However, using the proportional share calculation set forth in the Department’s
2 Guidance Document and in Option #2 in the Rule, Districts in New Mexico would have
3 designated a larger dollar amount to provide equitable services to private school students. If all
4 districts choose to calculate equitable services amounts using this methodology, more private
5 schools may opt to participate in receiving these services under the CARES Act, and this would
6 result in additional funds being designated for equitable services in these schools and less funds
7 benefiting public schools.

8 21. The Department’s Guidance Document and Rule place PED in legal jeopardy.
9 PED was required to certify in its ESSER Fund application that the SEA and the districts will
10 comply with the equitable service provision of the CARES Act (§ 18005) and “any other
11 applicable law or regulation.” (Ex. A at p. 1.) Because the Guidance Document and the Rule
12 require districts to calculate the proportional share for equitable services and determine eligibility
13 of private school students for equitable services contrary to the proportional share calculation and
14 eligibility requirements in the CARES Act, PED (and its districts) cannot satisfy both the Rule
15 and the CARES Act. Accordingly, the Department’s Rule forces PED to violate Section 18005 of
16 the CARES Act, placing PED in breach of the certification in the Certification and Agreement
17 and subjecting PED to “liability under the False Claims Act, . . . [and the] OMB Guidelines to
18 agencies on Governmentwide Debarment and Suspension (Nonprocurement).” (Ex. A at p. 1.)

19 22. As the districts in New Mexico are already using ESSER funds to assist with the
20 numerous pandemic-related challenges, this legal jeopardy will impact PED immediately.

21 23. The Department’s Guidance and Rule may result in less funding being distributed
22 to public K-12 schools in no fewer than 34 New Mexico districts.

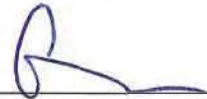
23 24. If districts in New Mexico calculate the proportional share of CARES Act funds
24 for private school students under Option #1 in the Rule, non-Title I schools in up to 18 districts
25 receiving CARES Act funds will receive no funds. In New Mexico, there are approximately 119
26 non-Title I schools in these 18 districts (that contain private schools in their boundaries) that
27 would not receive any CARES Act funding under this option. In addition, under this option, there
28 are approximately 142 Title I schools in 16 New Mexico districts that would have restrictions on

1 their spending of their CARES Act awards as they would need to comply with the supplement,
2 not supplant requirement in their use of these funds if eligible non-public schools elect to receive
3 supplemental services.

4 25. All LEAs that received the CARES Act 90 percent ESSER funds currently have
5 budget authority for these funds. Because PED moved quickly to make funds available, districts
6 have already calculated equitable services amounts. PED initially directed districts to follow
7 Title I methodology in calculating these amounts. PED subsequently issued a memo to districts,
8 advising them to follow Title I methodology, but allowing them to decide between the Title I
9 methodology and the methodology in the Department's Guidance Document. Per the
10 Department's Guidance Document, the affected districts will have to recalculate equitable
11 services amounts for participating private schools, and adjust and/or eliminate CARES Act
12 budgets for some of their public schools.

13
14 I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and
15 correct.

16
17 Executed on this 15 day of July, 2020, at 4:45 pm MDT

18
19 

20 Gabriel C. Baca
21 Director
22 Student, School and Family Support Bureau
23 New Mexico Public Education Department
24
25
26
27
28

EXHIBIT A

U.S. Department of Education

Certification and Agreement for Funding under the Education Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund (ESSER Fund)

CFDA Number: 84.425D



OMB Number: 1810-0743
Expiration Date: 10/31/2020

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The OMB control number for this information collection is 1810-0743. The time required to complete this information collection is estimated to average 5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain benefit under the Coronavirus Aid, Relief, and Economic Security Act. If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact Christopher Tate, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Ave., S.W., Room 3E229, Washington, D.C. 20202 directly.

PROGRAM BACKGROUND INFORMATION

Purpose

Under the Elementary and Secondary School Emergency Relief Fund (ESSER Fund), the Department awards grants to State educational agencies (SEAs) for the purpose of providing local educational agencies (LEAs), including charter schools that are LEAs, with emergency relief funds to address the impact that Novel Coronavirus Disease 2019 (COVID-19) has had, and continues to have, on elementary and secondary schools across the nation. LEAs must provide equitable services to students and teachers in non-public schools as required under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Eligibility

SEAs in any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Timeline

The SEA will have one year, from the date of its ESSER award, to award funds. Any funds not awarded by the SEA within one year of receiving its award will be returned to the Department to be reallocated to other States consistent with the CARES Act.

Uses of Funds

SEAs:

The SEA must use no less than 90 percent of its allocation to make subgrants to LEAs, including charter schools that are LEAs, based on each LEA's share of funds received under part A of title I of the ESEA in fiscal year 2019. With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to $\frac{1}{2}$ of 1 percent of the total allocation for administrative costs, and the remaining funds may be used for emergency needs as determined by the SEA to address issues responding to COVID-19. These emergency needs may be addressed through the use of grants or contracts.

LEAs:

LEAs may use funds for any purposes listed in section 18003(d) of the CARES Act. (See Appendix A.)

Program Contact

For additional information, please contact Christopher Tate by telephone at (202) 453-6047 or by email at ESSERF@ed.gov.

CERTIFICATION AND AGREEMENT INSTRUCTIONS

To receive an ESSER Fund allocation, SEAs must submit to the Department the following information:

- A completed cover sheet that includes the signature of the Chief State School Officer or authorized representative. (*Part A of the Certification and Agreement*)
- Programmatic, fiscal, and reporting assurances. (*Part B of the Certification and Agreement*)
- Information on the uses of ESSER funds. (*Part C of the Certification and Agreement*)
- Other assurances and certifications. (*Part D of the Certification and Agreement*)

For purposes of this document, the term “Certification and Agreement” is the application that an SEA is required to file under section 18003(a) of Division B of the CARES Act.

Certification and Agreement Submission Information

An SEA must submit a Certification and Agreement to the Department no later than July 1, 2020.

Please submit your Certification and Agreement to the Department as follows:

Email an electronic version of the ESSER Fund Certification and Agreement in .PDF (Portable Document Format) to ESSERF@ed.gov.

APPENDICES

- Appendix A – Authorizing Statute
- Appendix B – State Allocation Table

ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND (ESSER FUND)

STATE EDUCATIONAL AGENCY

PART A: CERTIFICATION AND AGREEMENT COVER SHEET

State: New Mexico CFDA Number: 84.425D
Legal Name: New Mexico Public Education Dept. DUNS Number: 808561690
Chief State School Officer: Mailing Address:
Ryan Stewart, Ed.L.D. 300 Don Gaspar, Santa Fe, NM 87501

State Contact for Elementary and Secondary School Emergency Relief Fund: Adán Delgado
Position and Office: Deputy Cabinet Secretary, Finance and Operations
Mailing Address: 300 Don Gaspar, Santa Fe, NM 87501
Telephone: 505-690-5412
Email address: adan.delgado@state.nm.us

To the best of my knowledge and belief, all the information and data in this agreement are true and correct. I acknowledge and agree that the failure to comply with all Assurances and Certifications in this Agreement, all relevant provisions and requirements of the CARES Act, Pub. L. No. 116-136 (March 27, 2020), or any other applicable law or regulation may result in liability under the False Claims Act, 31 U.S.C. § 3729, *et seq.*; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and 18 USC § 1001, as appropriate.

Chief State School Officer or Authorized Representative (Typed Name): Telephone:
Ryan Stewart, Ed.L.D, New Mexico Secretary of Education 505-795-1009

Signature of Chief State School Officer or Authorized Representative: Date:
Ryan Stewart Digitally signed by Ryan Stewart 04/30/2020
Date: 2020.04.30 08:44:40 -04'00'

PART B: PROGRAMMATIC, FISCAL, AND REPORTING ASSURANCES


The [Chief State School Officer or his/her authorized representative] assures the following:

1. The SEA will allocate no less than 90 percent of the grant funds under this program to local educational agencies (LEAs) (including charter schools that are LEAs) in the State. Under the ESSER Fund, the SEA will award grants by formula to State educational agencies (SEAs) for the purpose of providing LEAs, including charter schools that are LEAs, with emergency relief funds to address the impact that the Novel Coronavirus Disease 2019 (COVID-19) has had, and continues to have, on elementary and secondary schools across the Nation. This includes both continuing to provide educational services, such as remote learning, while schools and campuses are closed, and developing and implementing plans for the return to normal operations. The SEA will allocate these funds to LEAs on the basis of their respective shares of funds received under title I, part A of the Elementary and Secondary Education Act of 1965 in fiscal year 2019.
2. The SEA will use the remaining funds (hereafter SEA reserve) for emergency needs as determined by the SEA to address issues related to COVID-19, which may be addressed through the use of grants or contracts. From an SEA's reserve, the SEA may use not more than 1/2 of 1 percent of the SEA's total grant for administrative costs.
3. The SEA will ensure that LEAs use ESSER funds for activities allowable under section 18003(d) of Division B of the CARES Act. (See Appendix A.)
The Department generally does not consider the following to be an allowable use of ESSER funds, under any part of 18003: 1) subsidizing or offsetting executive salaries and benefits of individuals who are not employees of the SEA or LEAs or 2) expenditures related to state or local teacher or faculty unions or associations.
4. The SEA will ensure that LEAs receiving ESSER funds will provide equitable services to students and teachers in non-public schools as required under 18005 of Division B of the CARES Act.
5. The SEA will ensure that an LEA receiving ESSER funds will provide equitable services to students and teachers in non-public schools located within the LEA in the same manner as provided under section 1117 of the ESEA, as determined through timely and meaningful consultation with representatives of non-public schools.
 - The SEA will ensure that a public agency will maintain control of funds for the services and assistance provided to a non-public school under the ESSER Fund.
 - The SEA will ensure that a public agency will have title to materials, equipment, and property purchased with ESSER funds.
 - The SEA will ensure that services to a non-public school with ESSER funds will be provided by a public agency directly, or through contract with, another public or private entity.
6. The SEA will comply with the maintenance of effort provision in Section 18008(a) of Division B of the CARES Act absent waiver by the Secretary pursuant to Section 18008(b) thereof.
7. The SEA and each LEA and any other entity that receives ESSER funds will, to the greatest extent practicable, continue to compensate its employees and contractors during the period of

any disruptions or closures related to COVID-19 in compliance with Section 18006 of Division B of the CARES Act. In addition, each entity that accepts funds will continue to pay employees and contractors to the greatest extent practicable based on the unique financial circumstances of the entity. CARES Act funds generally will not be used for bonuses, merit pay, or similar expenditures, unless related to disruptions or closures resulting from COVID-19.

8. The SEA must assure that, when applicable, it will provide technical assistance to LEAs on the use of ESSER funds for remote learning, which includes both distance education as defined in section 103(7) of the HEA and distance learning as defined in ESEA section 8101(14), so that students can continue learning during school closures.
9. The SEA will comply with all reporting requirements, including those in Section 15011(b)(2) of Division B of the CARES Act, and submit required quarterly reports to the Secretary at such time and in such manner and containing such information as the Secretary may subsequently require. (See also 2 CFR 200.327-200.329). The Secretary may require additional reporting in the future, which may include: the methodology LEAs will use to provide services or assistance to students and staff in both public and non-public schools, the uses of funds by the LEAs or other entities and demonstration of their compliance with Section 18003(d), such as any use of funds addressing the digital divide, including securing access to home-based connectivity and remote-use devices, related issues in supporting remote learning for all students, including disadvantaged populations.
10. The SEA will submit to the Department, within 60 days of receiving ESSER funds, a report that will include:
 - A budget for the SEA's reserve that includes information about the up to 1/2 of 1 percent of the SEA's total grant for administrative costs and the uses of funds for emergency needs to address issues related to COVID-19; and
 - An Internal Control and Subrecipient Monitoring Plan to ensure that funds are used for allowable purposes in accordance with cash management principles.
11. The SEA will ensure that every recipient and subrecipient of ESSER funds will cooperate with any examination of records with respect to such funds by making records available for inspection, production, and examination, and authorized individuals available for interview and examination, upon the request of (i) the Department and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.
12. The SEA will return to the Secretary any funds received under the ESSER Fund that the SEA does not award within 1 year of receiving such funds.

Chief State School Officer or Authorized Representative (Printed Name): Ryan Stewart, Ed.L.D,
New Mexico Secretary of Education

Signature: Ryan Stewart	 Digitally signed by Ryan Stewart Date: 2020.04.30 08:45:05 -04'00'	Date: 4/30/20
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PART C: USES OF ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUNDS

Section 18003 of Division B of the CARES Act provides in relevant part that grants awarded under the Elementary and Secondary School Emergency Relief Fund be used to support the ability of local educational agencies (LEAs) to continue to provide educational services to their students. The Department requests the following:

1. Information that the SEA may request LEAs to include in their subgrant applications to the SEA. For example, an SEA might propose to include the following in developing its subgrant application:
 - How the LEA will determine its most important educational needs as a result of COVID-19.
 - The LEA's proposed timeline for providing services and assistance to students and staff in both public and non-public schools.
 - The extent to which the LEA intends to use ESSER funds to promote remote learning.
 - How the LEA intends to assess and address student learning gaps resulting from the disruption in educational services.

The above considerations are in addition to the application information requirements from sections 442 and 427 of the General Education Provisions Act (GEPA) (20 U.S.C. § 1232e and § 1228a).

Given the pressing needs our LEAs face in light of COVID-19, we intend to use a streamlined application process.

We will collect assurances that LEAs will comply with all applicable federal requirements, including allowable uses of funds, reporting, financial management, and recordkeeping requirements. We will also ask LEAs to provide budgets describing how they intend to spend ESSER funds.

2. The extent to which the SEA intends to use any portion of its SEA reserve (up to 10 percent of its ESSER Fund award) to support:
- technological capacity and access – including hardware and software, connectivity, and instructional expertise – to support remote learning. If so, please describe the strategies the SEA intends to use to serve disadvantaged populations listed in Sec. 18003(d)(4) of the CARES Act; and
 - remote learning by developing new informational and academic resources and expanding awareness of, and access to, best practices and innovations in remote learning and support for students, families, and educators.

The New Mexico Public Education Department proposes to allocate the 9.5% of ESSER funds available for distribution at the discretion of the SEA to education entities, including LEAs, for the following purposes:

- Closing the Digital Divide (mobile devices, internet connectivity, professional development for online learning, and related purchases): 60%
- Social and Emotional Learning Supports: 19%
- Supporting students with disabilities and students in need of at-risk services (during a building closure or during a transition back into the school building): 10%
- PPE, Building Sanitization and Cleaning Supplies: 2%
- Other, to be determined as needs emerge during the return to school and during the school year: 9%

Any funds not fully expended from a category will be shifted to other categories as needed.

NMPED will distribute funds via grants. Education entities' eligibility for these grants will be based in part on their percentage and/or number of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth.

PART D: OTHER ASSURANCES AND CERTIFICATIONS

The [Chief State School Officer or his/her authorized representative] assures or certifies the following:

1. The SEA will comply with all applicable assurances in OMB Standard Forms 424B and D (Assurances for Non-Construction and Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood hazards; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders and regulations.
2. With respect to the certification regarding lobbying in Department Form 80-0013, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; the SEAE will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 C.F.R. Part 82, Appendix B); and the SEA will require the full certification, as set forth in 34 C.F.R. Part 82, Appendix A, in the award documents for all subawards at all tiers.
3. Any LEA receiving funding under this program will have on file with the SEA a set of assurances that meets the requirements of section 442 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232e).
4. To the extent applicable, an LEA will include in its local application a description of how the LEA will comply with the requirements of section 427 of GEPA (20 U.S.C. 1228a). The description must include information on the steps the LEA proposes to take to permit students, teachers, and other program beneficiaries to overcome barriers (including barriers based on gender, race, color, national origin, disability, and age) that impede equal access to, or participation in, the program.
5. The SEA will comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) requirements in Subpart D—Post Federal Award Requirements (2 CFR §§200.300-345) and Subpart E—Cost Principles (2 CFR § §200.400-475) to ensure that LEAs, including charter schools that are LEAs, are using ESSER funds for purposes that are reasonable, necessary, and allocable under the CARES Act.
6. The SEA and other entities will comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts 76, 77, 81, 82, 84, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and the Uniform Guidance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Chief State School Officer or Authorized Representative (Printed Name): Ryan Stewart, Ed.L.D,
New Mexico Secretary of Education

Signature: Ryan Stewart <div style="text-align: right; font-size: small; margin-top: 5px;"> Digitally signed by Ryan Stewart Date: 2020.04.30 08:45:52 -04'00' </div>	Date: 04/30/2020
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Appendix A: Relevant Excerpts from Title VIII of Division B of the CARES Act, the Emergency Appropriations for Coronavirus Health Response and Agency Operations

DEPARTMENT OF EDUCATION EDUCATION STABILIZATION FUND

For 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: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

GENERAL PROVISIONS EDUCATION STABILIZATION FUND

SEC. 18001. (a) ALLOCATIONS.—From the amount made available under this heading in this Act to carry out the Education Stabilization Fund, the Secretary shall first allocate—

- (1) not more than 1/2 of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, in consultation with the Secretary of the Interior;
- (2) one-half of 1 percent for the Secretary of Interior, in consultation with the Secretary of Education, for programs operated or funded by the Bureau of Indian Education; and
- (3) 1 percent for grants to States with the highest coronavirus burden to support activities under this heading in this Act, for which the Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act and approve or deny applications not later than 30 days after receipt.

(b) RESERVATIONS.—After carrying out subsection (a), the Secretary shall reserve the remaining funds made available as follows:

- (1) 9.8 percent to carry out section 18002 of this title.
- (2) 43.9 percent to carry out section 18003 of this title.
- (3) 46.3 percent to carry out section 18004 of this title.

ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND

SEC. 18003. (a) GRANTS.—From funds reserved under section 18001(b)(2) of this title, the Secretary shall make elementary and secondary school emergency relief grants to each State educational agency with an approved application. The Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act and approve or deny applications not later than 30 days after receipt.

(b) ALLOCATIONS TO STATES.—The amount of each grant under subsection (a) shall be allocated by the Secretary to each State in the same proportion as each State received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

(c) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—Each State shall allocate not less than 90 percent of the grant funds awarded to the State under this section as subgrants to local educational agencies (including charter schools that are local educational agencies) in the State in proportion to the amount of funds such local educational agencies and charter schools that are local educational agencies received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

(d) USES OF FUNDS.—A local educational agency that receives funds under this title 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 and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.) and how to ensure 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 between students and their classroom instructors, including low-income students and students 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, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

(12) 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.

(e) STATE FUNDING.—With funds not otherwise allocated under subsection (c), a State may reserve not more than 1/2 of 1 percent for administrative costs and the remainder for emergency needs as determined by the state educational agency to address issues responding to coronavirus, which may be addressed through the use of grants or contracts.

(f) REALLOCATION.—A State shall return to the Secretary any funds received under this section that the State does not award within 1 year of receiving such funds and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (b).

ASSISTANCE TO NON-PUBLIC SCHOOLS

SEC. 18005. (a) IN GENERAL.—A local educational agency receiving funds under sections 18002 or 18003 of this title shall provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools.

(b) PUBLIC CONTROL OF FUNDS.—The control of funds for the services and assistance provided to a non-public school under subsection (a), and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property and shall provide such services (or may contract for the provision of such services with a public or private entity).

CONTINUED PAYMENT TO EMPLOYEES

SEC. 18006. A local educational agency, State, institution of higher education, or other entity that receives funds under “Education Stabilization Fund”, shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.

DEFINITIONS

SEC. 18007. Except as otherwise provided in sections 18001– 18006 of this title, as used in such sections—

- (1) the terms “elementary education” and “secondary education” have the meaning given such terms under State law;
- (2) the term “institution of higher education” has the meaning given such term in title I of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.);
- (3) the term “Secretary” means the Secretary of Education;
- (4) the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico;
- (5) the term “cost of attendance” has the meaning given such term in section 472 of the Higher Education Act of 1965.
- (6) the term “Non-public school” means a non-public elementary and secondary school that (A) is accredited, licensed, or otherwise operates in accordance with State law; and (B) was in existence prior to the date of the qualifying emergency for which grants are awarded under this section;
- (7) the term “public school” means a public elementary or secondary school; and
- (8) any other term used that is defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) shall have the meaning given the term in such section.

MAINTENANCE OF EFFORT

SEC. 18008. (a) A State’s application for funds to carry out sections 18002 or 18003 of this title shall include assurances that the State will maintain support for elementary and secondary education, and State support for higher education (which shall include State funding to institutions of higher education and state need based financial aid, and shall not include support for capital projects or for research and development or tuition and fees paid by students) in fiscal years 2020 and 2021 at least at the levels of such support that is the average of such State’s support for elementary and secondary education and for higher education provided in the 3 fiscal years preceding the date of enactment of this Act.

(b) The secretary may waive the requirement in subsection (a) for the purpose of relieving fiscal burdens on States that have experienced a precipitous decline in financial resources.

REPORTING ON USE OF FUNDS SEC. 15011.

(a) In this section—

- (1) the terms “agency”, “appropriate congressional committees”, “Committee”, “covered funds”, and “Coronavirus response” have the meanings given those terms in section 15010;
- (2) the term “covered recipient” (A) means any entity that receives large covered funds; and (B) includes any State, the District of Columbia, and any territory or possession of the United States; and
- (3) the term “large covered funds” means covered funds that amount to more than \$150,000.

...

(b)(2) Not later than 10 days after the end of each calendar quarter, each covered recipient shall submit to the agency and the Committee a report that contains—

- (A) the total amount of large covered funds received from the agency;
- (B) the amount of large covered funds received that were expended or obligated for each project or activity;
- (C) a detailed list of all projects or activities for which large covered funds were expended or obligated, including—
 - (i) the name of the project or activity;
 - (ii) a description of the project or activity; and
 - (iii) the estimated number of jobs created or retained by the project or activity, where applicable;and
- (D) detailed information on any level of subcontracts or subgrants awarded by the covered recipient or its subcontractors or subgrantees, to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note) allowing aggregate reporting on awards below \$50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

(3) Not later than 30 days after the end of each calendar quarter, the Committee, in consultation with the agency that made large covered funds available to any covered recipient shall make the information in reports submitted under paragraph (2) publicly available by posting the information on the website established under section 15010(g).

(4)(A) Each agency, in coordination with the Committee and the Director of the Office of Management and Budget shall provide user-friendly means for covered recipients to meet requirements of this subsection.

(B) Federal agencies may use existing mechanisms to ensure that information under this subsection is reported accurately.

(c)(1) The Director of the Office of Management and Budget, in consultation with the Secretary of the Treasury, the Administrator of the Small Business Administration, and the Chairperson of the Council of Economic Advisors, shall submit to the appropriate congressional committees and publicly release on the website established under section 15010(g) quarterly reports that detail the impact of programs funded through large covered funds on employment, estimated economic growth, and other key economic indicators, including information about impacted industries.

(2)(A) The first report submitted under paragraph (1) shall be submitted not later than 45 days after the end of the first full quarter following the date of enactment of this Act.

(B) The last report required to be submitted under paragraph (1) shall apply to the quarter in which the Committee terminates.

APPENDIX B: STATE ALLOCATION TABLE**Elementary and Secondary School Emergency Relief Fund**

STATE	STATE TOTAL	Minimum LEA Distribution ¹	Maximum SEA Reservation	Maximum for SEA Administration ²
TOTAL	13,229,265,000	11,906,338,500	1,322,926,500	66,146,325
ALABAMA	216,947,540	195,252,786	21,694,754	1,084,738
ALASKA	38,407,914	34,567,123	3,840,791	192,040
ARIZONA	277,422,944	249,680,650	27,742,294	1,387,115
ARKANSAS	128,758,638	115,882,774	12,875,864	643,793
CALIFORNIA	1,647,306,127	1,482,575,514	164,730,613	8,236,531
COLORADO	120,993,782	108,894,404	12,099,378	604,969
CONNECTICUT	111,068,059	99,961,253	11,106,806	555,340
DELAWARE	43,492,753	39,143,478	4,349,275	217,464
DISTRICT OF COLUMBIA	42,006,354	37,805,719	4,200,635	210,032
FLORIDA	770,247,851	693,223,066	77,024,785	3,851,239
GEORGIA	457,169,852	411,452,867	45,716,985	2,285,849
HAWAII	43,385,229	39,046,706	4,338,523	216,926
IDAHO	47,854,695	43,069,226	4,785,470	239,273
ILLINOIS	569,467,218	512,520,496	56,946,722	2,847,336
INDIANA	214,472,770	193,025,493	21,447,277	1,072,364
IOWA	71,625,561	64,463,005	7,162,556	358,128
KANSAS	84,529,061	76,076,155	8,452,906	422,645
KENTUCKY	193,186,874	173,868,187	19,318,687	965,934
LOUISIANA	286,980,175	258,282,158	28,698,018	1,434,901
MAINE	43,793,319	39,413,987	4,379,332	218,967
MARYLAND	207,834,058	187,050,652	20,783,406	1,039,170
MASSACHUSETTS	214,894,317	193,404,885	21,489,432	1,074,472
MICHIGAN	389,796,984	350,817,286	38,979,698	1,948,985
MINNESOTA	140,137,253	126,123,528	14,013,725	700,686
MISSISSIPPI	169,883,002	152,894,702	16,988,300	849,415
MISSOURI	208,443,300	187,598,970	20,844,330	1,042,217
MONTANA	41,295,230	37,165,707	4,129,523	206,476
NEBRASKA	65,085,085	58,576,577	6,508,509	325,425
NEVADA	117,185,045	105,466,541	11,718,505	585,925
NEW HAMPSHIRE	37,641,372	33,877,235	3,764,137	188,207
NEW JERSEY	310,371,213	279,334,092	31,037,121	1,551,856
NEW MEXICO	108,574,786	97,717,307	10,857,479	542,874
NEW YORK	1,037,045,603	933,341,043	103,704,560	5,185,228
NORTH CAROLINA	396,311,607	356,680,446	39,631,161	1,981,558
NORTH DAKOTA	33,297,699	29,967,929	3,329,770	166,489
OHIO	489,205,200	440,284,680	48,920,520	2,446,026
OKLAHOMA	160,950,476	144,855,428	16,095,048	804,752

¹ The totals in the Minimum LEA Distribution, Maximum SEA Reservation, and Maximum for SEA Administration columns have been rounded to the nearest whole dollar.

² With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to ½ of 1 percent of the total allocation for administrative costs.

STATE	STATE TOTAL	Minimum LEA Distribution ³	Maximum SEA Reservation	Maximum for SEA Administration ⁴
OREGON	121,099,019	108,989,117	12,109,902	605,495
PENNSYLVANIA	523,807,198	471,426,478	52,380,720	2,619,036
RHODE ISLAND	46,350,444	41,715,400	4,635,044	231,752
SOUTH CAROLINA	216,311,158	194,680,042	21,631,116	1,081,556
SOUTH DAKOTA	41,295,230	37,165,707	4,129,523	206,476
TENNESSEE	259,891,154	233,902,039	25,989,115	1,299,456
TEXAS	1,285,886,064	1,157,297,458	128,588,606	6,429,430
UTAH	67,821,787	61,039,608	6,782,179	339,109
VERMONT	31,148,360	28,033,524	3,114,836	155,742
VIRGINIA	238,599,192	214,739,273	23,859,919	1,192,996
WASHINGTON	216,892,447	195,203,202	21,689,245	1,084,462
WEST VIRGINIA	86,640,471	77,976,424	8,664,047	433,202
WISCONSIN	174,777,774	157,299,997	17,477,777	873,889
WYOMING	32,562,651	29,306,386	3,256,265	162,813
PUERTO RICO	349,113,105	314,201,795	34,911,311	1,745,566

³ The totals in the Minimum LEA Distribution, Maximum SEA Reservation, and Maximum for SEA Administration columns have been rounded to the nearest whole dollar.

⁴ With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to ½ of 1 percent of the total allocation for administrative costs.

EXHIBIT 10

1 XAVIER BECERRA
 Attorney General of California
 2 MICHAEL NEWMAN
 Senior Assistant Attorney General
 3 SARAH E. BELTON
 Supervising Deputy Attorney General
 4 REBEKAH A. FRETZ
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 8 *Attorneys for Plaintiff State of California*

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12

13
 14 **STATE OF MICHIGAN, STATE OF
 CALIFORNIA, et al.,**

15
 16 Plaintiffs,

17
 18 v.

19 **ELISABETH D. DEVOS, in her official
 capacity as the United States Secretary of
 Education, and UNITED STATES
 DEPARTMENT OF EDUCATION,**

20
 21 Defendants.
 22

Civil Case No. 3:20-cv-04478-SK

DECLARATION OF MATTHEW STEM

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 24
 25
 26
 27
 28

DECLARATION OF MATTHEW STEM

I, Matthew Stem, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

1. I am the Deputy Secretary for the Office of Elementary and Secondary Education for the Pennsylvania Department of Education (“PDE”). I have served in this role since 2015. Prior to joining PDE, I worked in school systems for more than 20 years, serving as a teacher, principal and assistant superintendent. I have a Bachelor’s Degree in Elementary Education from Millersville University and a Master’s Degree in Educational Administration from Temple University.

2. In my role as Deputy Secretary for the Office of Elementary and Secondary Education, I am responsible for the management and oversight of programs related to Pre-K to 12 education for students in Pennsylvania.

3. I submit this Declaration in support of the Commonwealth of Pennsylvania’s litigation against Elisabeth D. DeVos, in her official capacity as Secretary of Education and the United States Department of Education (the “Department”) regarding the recently issued Rule entitled *Providing Equitable Services to Students and Teachers in Non-public Schools*, 85 Fed. Reg. 39,479 (July 1, 2020) (the “Equitable Services Rule” or the “Rule”). I have compiled the information in the statements set forth below through personal knowledge, through PDE personnel who have assisted me in gathering this information from our institution, and on the basis of documents that have been provided to and/or reviewed by me. I have also familiarized myself with the Rule in order to understand its immediate impact on PDE and public schools in Pennsylvania.

Public Education in Pennsylvania

4. The Pennsylvania Constitution requires the General Assembly to “provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.” Pa. Const. Art. III § 14.

5. PDE is responsible for overseeing Pennsylvania’s public school districts, more than 170 public charter schools, public cyber charter schools, public Career and Technical

1 Centers/Vocational Technical schools, public Intermediate Units, the education of youth in State
2 Juvenile Correctional Institutions, Head Starts and publicly funded preschools, as well as
3 institutions of higher education.

4 6. Pennsylvania has 500 public school districts, ranging in size from approximately
5 200 students to more than 140,000 students. There are 2,865 schools in these 500 districts, which
6 educate more than 1.72 million students each year.

7 7. Funding for Pennsylvania schools is provided by a mix of federal, state, and local
8 sources. PDE oversees the distribution of state funding to local school districts. The
9 Commonwealth provides more than \$12 billion each year to Pennsylvania's public school
10 districts.

11 8. While PDE has broad oversight responsibility, primary authority for administering
12 public school districts in Pennsylvania is vested in local school boards, which consist of elected
13 or appointed directors who serve set terms. *See* 24 P.S. §3-301. These local school boards are
14 responsible for setting policies and regulations governing the schools in their districts.

15 **Effects of the COVID-19 Pandemic on Education in Pennsylvania**

16 9. The COVID-19 pandemic has had an unprecedented impact on schools across the
17 country, including those in Pennsylvania.

18 10. In March 2020, Governor Tom Wolf ordered schools across Pennsylvania closed
19 on an interim basis. On April 9, 2020, Secretary of Education Pedro A. Rivera ordered all schools
20 to remain closed for the remainder of the 2019-2020 school year.

21 11. Pennsylvania ended the 2019-2020 fiscal year with \$32.3 billion in General Fund
22 collections, \$3.2 billion, or 9.1 percent, below estimate.

23 12. Under the direction of Governor Tom Wolf, PDE has provided guidance for local
24 schools as they address whether and how to reopen this fall.

25 13. On June 3, 2020, PDE issued a 13-page document entitled "Preliminary Guidance
26 for Phased Reopening of Pre-K to 12 Schools."

27 14. That guidance required each school district or other school entity to create a Health
28 and Safety Plan to "serve as the local guidelines for all school reopening activities." These plans

1 “must be tailored to the unique needs of each school entity and should be created in consultation
2 with local health agencies, if possible.” Each school entity’s Health and Safety Plan must be
3 approved by its governing body.

4 15. Reopening will not be an easy process for our schools. For many, reopening will
5 require renovations or reconfiguration of physical spaces in order to ensure appropriate social
6 distancing. Beyond steps to protect the physical health of students and staff, school entities must
7 also be prepared to address the impact that the pandemic and accompanying closures have had on
8 students and families.

9 **CARES Act Funds Received by Pennsylvania For K-12 Education**

10 16. In order to receive the ESSER funds designated for Pennsylvania and as required
11 by the Department, PDE executed a Certification and Agreement form and submitted it to the
12 Department on May 4, 2020.¹ A true and correct copy of the Certification and Agreement
13 completed by PDE and submitted to the Department is attached hereto as Exhibit A.

14 17. Within this Certification and Agreement, PDE agreed to the following terms:

15 I acknowledge and agree that the failure to comply with all Assurances and
16 Certifications in this Agreement, all relevant provisions and requirements of
17 the CARES Act, Pub. L. No. 116-136 (March 27, 2020), or any other
18 applicable law or regulation may result in liability under the False Claims Act,
19 31 U.S.C. § 3729, et seq.; OMB Guidelines to Agencies on Governmentwide
20 Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted
21 and amended as regulations of the Department in 2 CFR part 3485; and 18
22 USC § 1001, as appropriate.

23 ...

24 4. The SEA will ensure that LEAs receiving ESSER funds will provide
25 equitable services to students and teachers in non-public schools as
26 required under 18005 of Division B of the CARES Act.

27 ...

28 5. The SEA will ensure that an LEA receiving ESSER funds will provide
equitable services to students and teachers in non-public schools located
within the LEA in the same manner as provided under section 1117 of the

¹ U.S. Dep’t of Educ., Certification and Agreement for Funding under the Education Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund (ESSER Fund), CFDA Number 84.425D, April 24, 2020, *available at* <https://oese.ed.gov/files/2020/04/ESSERF-Certification-and-Agreement-2.pdf>.

1 ESEA, as determined through timely and meaningful consultation with
2 representatives of non-public schools.

- 3 • The SEA will ensure that a public agency will maintain control of funds
4 for the services and assistance provided to a non-public school under the
5 ESSER Fund.
- 6 • The SEA will ensure that a public agency will have title to materials,
7 equipment, and property purchased with ESSER funds.
- 8 • The SEA will ensure that services to a non-public school with ESSER
9 funds will be provided by a public agency directly, or through contract
10 with, another public or private entity.

11 Ex. A at pp. 1-2.

12 18. At the time that PDE executed the Certification and Agreement form, the
13 Department had not yet published the Rule. It had, on April 30, 2020, issued a nonbinding
14 document entitled, “Providing Equitable Services to Students and Teachers under the Coronavirus
15 Aid, Relief, and Economic Security (CARES) Act Programs” (the “Guidance Document”).

16 19. On May 7, 2020, Pennsylvania Secretary of Education Pedro A. Rivera wrote to
17 Assistant Secretary for Elementary and Secondary Education Frank T. Brogan expressing concern
18 regarding the Guidance Document. This letter is attached hereto as Exhibit B.

19 20. That letter noted that the Guidance Document was “inconsistent with the CARES
20 statute; the fiscal year 2019 Title I-A administration that serves as the basis of CARES Act
21 allocations; and, crucially, our shared goal of ensuring that limited, one-time, emergency funding
22 reaches our most vulnerable students, wherever they attend school.”

23 21. The Department distributed \$523,807,198 from the ESSER Fund to PDE on May
24 5, 2020.

25 22. PDE opened its application for LEAs to apply for and receive ESSER funds on
26 May 13, 2020. The process involves a streamlined application and prompt action by PDE to move
27 complete applications through the federally required approval process.

28 23. To date, PDE has distributed \$111,280,869 to 284 eligible LEAs within
Pennsylvania, which represents 42% of LEAs eligible to receive ESSER Funds.

1 24. Using the proportional share calculation set forth in Section 1117 of the
2 Elementary and Secondary Education Act (ESEA), LEAs in Pennsylvania would reserve
3 \$19,202,578 in ESSER funds to provide equitable services to private school students. However,
4 using the proportional share calculation set forth in the Department’s Guidance Document and in
5 Option #2 in the Rule, LEAs in Pennsylvania would reserve more than double this amount to
6 provide equitable services to private school students.

7 **The Department’s Rule Significantly Harms PDE**

8 25. At a time when Pennsylvania faces a \$3.2 billion hole in its education budget as a
9 result of the pandemic, and local revenues are estimated to fall by another \$1 billion, PDE will be
10 required to find more than \$20,000,000 to support emergency needs of public schools that the
11 CARES Act funds were supposed to fill.

12 26. In addition, the SEA will be required to provide significant funding to Title I
13 schools that are not allowed to use the CARES Act funds to supplant their budgets, which have
14 been slashed due to the pandemic.

15 27. This increase in funding for public schools will be required immediately. As
16 Pennsylvania remains in the throes of the pandemic, public schools remain desperate for funding
17 as they continue to transition to remote learning and preparing for next school year. The costs of
18 reacting to this pandemic are drastic for public schools and without the funds the CARES Act was
19 intended to provide, PDE must immediately assist the LEAs adjust to the new realities presented
20 by the pandemic.

21 28. Beyond the additional funding that Pennsylvania will be required to expend in lieu
22 of the designated CARES Act funds, the Department’s Guidance Document and Rule have
23 imposed significant administrative burdens on PDE directly.

24 29. Finally, the Department’s Guidance Document and Rule place PDE in legal
25 jeopardy. PDE was required to certify in its ESSER Fund application that the SEAs and the
26 LEAs will comply with the equitable service provision of the CARES Act (§ 18005) and “any
27 other applicable law or regulation.” (Ex. A at p. 1.) Because the Guidance Document and the
28 Rule require LEAs to calculate the proportional share for equitable services and determine

1 eligibility of private school students for equitable services contrary to the proportional share
2 calculation and eligibility requirements in the CARES Act, PDE (and its LEAs) cannot satisfy
3 both the Rule and the CARES Act. Accordingly, the Department’s Rule forces PDE to violate
4 Section 18005 of the CARES Act, placing PDE in breach of the certification in the Certification
5 and Agreement and subjecting PDE “liability under the False Claims Act, . . . [and the] OMB
6 Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).”
7 (Ex. A at p. 1.)

8 30. As the LEAs in Pennsylvania need to use the ESSER funds as soon as possible to
9 assist with the numerous pandemic-related challenges, this legal jeopardy will impact PDE
10 immediately.

11 **The Department’s Rule Significantly Harms Pennsylvania’s K-12 Students**

12 31. The Department’s Guidance and Rule will result in less funding being distributed
13 to public K-12 schools in Pennsylvania.

14 32. If LEAs in Pennsylvania calculate the proportional share of CARES Act funds for
15 private school students under Option #1 in the Rule, non-Title I schools in LEAs receiving
16 CARES Act funds will receive no funds. In Pennsylvania, there are approximately 1140 non-
17 Title I schools in LEAs that are eligible to receive CARES Act funds that would not receive any
18 funding. Like all schools in Pennsylvania, these schools are equally impacted by the COVID-19
19 pandemic and would greatly benefit from the influx of CARES Act funds to assist them through
20 the pandemic. In addition, there are approximately 1,700 Title I schools in Pennsylvania that
21 would be prohibited from using CARES Act funds to respond to and prepare for the pandemic as
22 the schools cannot supplant State and local funding sources under the Rule. This would
23 significantly impact the Title I schools, as many are in desperate need of additional funding to
24 cope with the pandemic, and to assist students with online, remote learning tools that students
25 often cannot afford within these Title I schools.

26 33. If LEAs in Pennsylvania calculate the proportional share of CARES Act funds for
27 private school students under Option #2 in the Rule, approximately \$20,000,000 will be diverted from
28 less advantaged public school students to more advantaged private school students.

1 a. This increase in support flowing from the most disadvantaged to more advantaged
2 students impacts districts of every type—urban, suburban, and rural.

3 b. Estimated impacts include: Philadelphia: 53%; Pittsburgh: 124%; Altoona: 605%;
4 Scranton: 797%; Northeast Bradford: 932%; Upper Darby: 1104%; Manheim
5 Township: 1617%; Bristol Borough: 2324%; Blue Ridge: 3873%; York Suburban:
6 4084%; and Rose Tree Media: 4634%.

7 34. For every \$3 diverted from the public schools (Title I or non-Title I schools), a
8 public-school student loses out on systems to access online learning while schools are closed due
9 to the pandemic.

10 35. Regardless of how LEAs proportion the CARES Act funds in Pennsylvania, the
11 Rule requires that all private school students receive equitable services. In Pennsylvania, during
12 the 2019-2020 school year, approximately 26,202 private school students were eligible to receive
13 equitable services under Title I-A as they were at-risk students within a LEA receiving Title I-A
14 funds. As the Rule requires all private school students receiving equitable services, the
15 approximately 23,796 private school students who received equitable services under Title I-A last
16 year will receive fewer services as the CARES Act funds proportioned for equitable services will
17 be spread amongst all private school students.

18
19 I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and
20 correct.

21
22 Executed on this 16 day of July 2020

23
24 

25 Matthew S. Stem
26 Deputy Secretary

27
28

EXHIBIT A

U.S. Department of Education

Certification and Agreement for Funding under the Education Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund (ESSER Fund)

CFDA Number: 84.425D



OMB Number: 1810-0743
Expiration Date: 10/31/2020

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The OMB control number for this information collection is 1810-0743. The time required to complete this information collection is estimated to average 5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain benefit under the Coronavirus Aid, Relief, and Economic Security Act. If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact Christopher Tate, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Ave., S.W., Room 3E229, Washington, D.C. 20202 directly.

PROGRAM BACKGROUND INFORMATION

Purpose

Under the Elementary and Secondary School Emergency Relief Fund (ESSER Fund), the Department awards grants to State educational agencies (SEAs) for the purpose of providing local educational agencies (LEAs), including charter schools that are LEAs, with emergency relief funds to address the impact that Novel Coronavirus Disease 2019 (COVID-19) has had, and continues to have, on elementary and secondary schools across the nation. LEAs must provide equitable services to students and teachers in non-public schools as required under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Eligibility

SEAs in any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Timeline

The SEA will have one year, from the date of its ESSER award, to award funds. Any funds not awarded by the SEA within one year of receiving its award will be returned to the Department to be reallocated to other States consistent with the CARES Act.

Uses of Funds SEAs:

The SEA must use no less than 90 percent of its allocation to make subgrants to LEAs, including charter schools that are LEAs, based on each LEA's share of funds received under part A of title I of the ESEA in fiscal year 2019. With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to $\frac{1}{2}$ of 1 percent of the total allocation for administrative costs, and the remaining funds may be used for emergency needs as determined by the SEA to address issues responding to COVID-19. These emergency needs may be addressed through the use of grants or contracts.

LEAs:

LEAs may use funds for any purposes listed in section 18003(d) of the CARES Act. (See Appendix A.)

Program Contact

For additional information, please contact Christopher Tate by telephone at (202) 453-6047 or by email at ESSERF@ed.gov.

CERTIFICATION AND AGREEMENT INSTRUCTIONS

To receive an ESSER Fund allocation, SEAs must submit to the Department the following information:

- A completed cover sheet that includes the signature of the Chief State School Officer or authorized representative. (*Part A of the Certification and Agreement*)
- Programmatic, fiscal, and reporting assurances. (*Part B of the Certification and Agreement*)
- Information on the uses of ESSER funds. (*Part C of the Certification and Agreement*)
- Other assurances and certifications. (*Part D of the Certification and Agreement*)

For purposes of this document, the term “Certification and Agreement” is the application that an SEA is required to file under section 18003(a) of Division B of the CARES Act.

Certification and Agreement Submission Information

An SEA must submit a Certification and Agreement to the Department no later than July 1, 2020.

Please submit your Certification and Agreement to the Department as follows:

Email an electronic version of the ESSER Fund Certification and Agreement in .PDF (Portable Document Format) to ESSERF@ed.gov.

APPENDICES

- Appendix A – Authorizing Statute
- Appendix B – State Allocation Table

ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND (ESSER FUND)

STATE EDUCATIONAL AGENCY

PART A: CERTIFICATION AND AGREEMENT COVER SHEET


State: Pennsylvania	CFDA Number: 84.425D
Legal Name: Pennsylvania Department of Education	DUNS Number: 795145705
Chief State School Officer: Pedro A. Rivera	Mailing Address: Pennsylvania Department of Education 333 Market Street 10 th Floor Harrisburg, PA 17126-0333

States Contact for Elementary and Secondary School Emergency Relief Fund:

Susan McCrone
Chief, Division of Federal Programs
333 Market Street
5th Floor
Harrisburg, PA 17126-0333
717 579-7168
smccrone@pa.gov

Adam Schott
Special Advisor to the Secretary
333 Market Street
10th Floor
Harrisburg, PA 17126-0333
717 439-0623
adschott@pa.gov

To the best of my knowledge and belief, all the information and data in this agreement are true and correct. I acknowledge and agree that the failure to comply with all Assurances and Certifications in this Agreement, all relevant provisions and requirements of the CARES Act, Pub. L. No. 116-136 (March 27, 2020), or any other applicable law or regulation may result in liability under the False Claims Act, 31 U.S.C. § 3729, *et seq.*; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and 18 USC § 1001, as appropriate.

Chief State School Officer: Pedro A. Rivera	Telephone: 717 783-9780
Signature of Chief State School Officer: 	Date: May 4, 2020

PART B: PROGRAMMATIC, FISCAL, AND REPORTING ASSURANCES


The Pennsylvania Department of Education and Secretary Pedro A. Rivera assure the following:

1. The SEA will allocate no less than 90 percent of the grant funds under this program to local educational agencies (LEAs) (including charter schools that are LEAs) in the State. Under the ESSER Fund, the SEA will award grants by formula to State educational agencies (SEAs) for the purpose of providing LEAs, including charter schools that are LEAs, with emergency relief funds to address the impact that the Novel Coronavirus Disease 2019 (COVID-19) has had, and continues to have, on elementary and secondary schools across the Nation. This includes both continuing to provide educational services, such as remote learning, while schools and campuses are closed, and developing and implementing plans for the return to normal operations. The SEA will allocate these funds to LEAs on the basis of their respective shares of funds received under title I, part A of the Elementary and Secondary Education Act of 1965 in fiscal year 2019.
2. The SEA will use the remaining funds (hereafter SEA reserve) for emergency needs as determined by the SEA to address issues related to COVID-19, which may be addressed through the use of grants or contracts. From an SEA's reserve, the SEA may use not more than 1/2 of 1 percent of the SEA's total grant for administrative costs.
3. The SEA will ensure that LEAs use ESSER funds for activities allowable under section 18003(d) of Division B of the CARES Act. (See Appendix A.)
The Department generally does not consider the following to be an allowable use of ESSER funds, under any part of 18003: 1) subsidizing or offsetting executive salaries and benefits of individuals who are not employees of the SEA or LEAs or 2) expenditures related to state or local teacher or faculty unions or associations.
4. The SEA will ensure that LEAs receiving ESSER funds will provide equitable services to students and teachers in non-public schools as required under 18005 of Division B of the CARES Act.
5. The SEA will ensure that an LEA receiving ESSER funds will provide equitable services to students and teachers in non-public schools located within the LEA in the same manner as provided under section 1117 of the ESEA, as determined through timely and meaningful consultation with representatives of non-public schools.
 - The SEA will ensure that a public agency will maintain control of funds for the services and assistance provided to a non-public school under the ESSER Fund.
 - The SEA will ensure that a public agency will have title to materials, equipment, and property purchased with ESSER funds.
 - The SEA will ensure that services to a non-public school with ESSER funds will be provided by a public agency directly, or through contract with, another public or private entity.
6. The SEA will comply with the maintenance of effort provision in Section 18008(a) of Division B of the CARES Act absent waiver by the Secretary pursuant to Section 18008(b) thereof.
7. The SEA and each LEA and any other entity that receives ESSER funds will, to the greatest extent practicable, continue to compensate its employees and contractors during the period of

any disruptions or closures related to COVID-19 in compliance with Section 18006 of Division B of the CARES Act. In addition, each entity that accepts funds will continue to pay employees and contractors to the greatest extent practicable based on the unique financial circumstances of the entity. CARES Act funds generally will not be used for bonuses, merit pay, or similar expenditures, unless related to disruptions or closures resulting from COVID-19.

8. The SEA must assure that, when applicable, it will provide technical assistance to LEAs on the use of ESSER funds for remote learning, which includes both distance education as defined in section 103(7) of the HEA and distance learning as defined in ESEA section 8101(14), so that students can continue learning during school closures.
9. The SEA will comply with all reporting requirements, including those in Section 15011(b)(2) of Division B of the CARES Act, and submit required quarterly reports to the Secretary at such time and in such manner and containing such information as the Secretary may subsequently require. (See also 2 CFR 200.327-200.329). The Secretary may require additional reporting in the future, which may include: the methodology LEAs will use to provide services or assistance to students and staff in both public and non-public schools, the uses of funds by the LEAs or other entities and demonstration of their compliance with Section 18003(d), such as any use of funds addressing the digital divide, including securing access to home-based connectivity and remote-use devices, related issues in supporting remote learning for all students, including disadvantaged populations.
10. The SEA will submit to the Department, within 60 days of receiving ESSER funds, a report that will include:
 - A budget for the SEA's reserve that includes information about the up to 1/2 of 1 percent of the SEA's total grant for administrative costs and the uses of funds for emergency needs to address issues related to COVID-19; and
 - An Internal Control and Subrecipient Monitoring Plan to ensure that funds are used for allowable purposes in accordance with cash management principles.
11. The SEA will ensure that every recipient and subrecipient of ESSER funds will cooperate with any examination of records with respect to such funds by making records available for inspection, production, and examination, and authorized individuals available for interview and examination, upon the request of (i) the Department and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.
12. The SEA will return to the Secretary any funds received under the ESSER Fund that the SEA does not award within 1 year of receiving such funds.

Chief State School Officer or Authorized Representative: Pedro A. Rivera

Signature: 	Date: May 4, 2020
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PART C: USES OF ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUNDS

Section 18003 of Division B of the CARES Act provides in relevant part that grants awarded under the Elementary and Secondary School Emergency Relief Fund be used to support the ability of local educational agencies (LEAs) to continue to provide educational services to their students. The Department requests the following:

1. Information that the SEA may request LEAs to include in their subgrant applications to the SEA. For example, an SEA might propose to include the following in developing its subgrant application:
 - How the LEA will determine its most important educational needs as a result of COVID- 19.
 - The LEA’s proposed timeline for providing services and assistance to students and staff in both public and non-public schools.
 - The extent to which the LEA intends to use ESSER funds to promote remote learning.
 - How the LEA intends to assess and address student learning gaps resulting from the disruption in educational services.

The above considerations are in addition to the application information requirements from sections 442 and 427 of the General Education Provisions Act (GEPA) (20 U.S.C. § 1232e and § 1228a).

Pennsylvania will finalize a streamlined CARES subgrant application in consultation with key stakeholders, including its State Board of Education, statewide education organizations, the state’s Title I Committee of Practitioners, and representatives of a purposeful sample of local education agencies. The application will require LEAs to describe procedures for evaluating local COVID-19 impacts in relation to education programming and delivery. Areas of emphasis may include:

- Documenting learning loss associated with extended school closure;
- Outlining the development of local continuity of education plans over the course of emergency response efforts; and
- Detailing supports for vulnerable student populations and families.

LEAs will be asked to identify a core set of strategies that can guide local investment of CARES funding, associated with short-range (*i.e.*, remainder of the 2019-20 school year) and long-range (2020-21 and 2021-22 school years) time horizons.

These strategies may entail the establishment, scale-up, refinement, or evaluation of remote learning, as well as strategies for school-based teaching and learning responsive to conditions related to the pandemic. LEAs will be asked to outline how limited, one-time CARES funding may support these initiatives and how CARES funding might interact with other federal funding, including enhanced Title IV flexibility, to ensure strategic and sustainable use of one-time funds.

Subgrant applications will require LEAs to identify specific plans, measures, and longer-term evaluative strategies concerning student learning gaps—as well as opportunity to learn factors—stemming from COVID-19.

Finally, Pennsylvania will secure assurances that LEAs will comply with all applicable federal requirements, including equitable services provisions, allowable uses of funds, reporting, fiscal management, and recordkeeping requirements.

2. The extent to which the SEA intends to use any portion of its SEA reserve (up to 10 percent of its ESSER Fund award) to support:
 - Technological capacity and access – including hardware and software, connectivity, and instructional expertise – to support remote learning. If so, please describe the strategies the SEA intends to use to serve disadvantaged populations listed in Sec. 18003(d)(4) of the CARES Act; and
 - remote learning by developing new informational and academic resources and expanding awareness of, and access to, best practices and innovations in remote learning and support for students, families, and educators.

Pennsylvania plans to utilize its SEA reserve (10 percent, inclusive of 0.5 percent for SEA administration) to support initiatives, including remote learning, that can be designed, implemented, and resourced with greater economy of scale at the state level than would be possible or practical for LEAs to pursue individually.

It is important to note that Pennsylvania uses remote learning to describe a range of modalities that connect educators, students, and high-quality instruction outside the traditional school building. This may involve distance learning via large-scale or nationally sourced platforms, locally constructed virtual systems, partnerships between institutions of higher education and LEAs, public broadcast systems, enhanced educator and family engagement, and other means. A broadened definition of remote learning honors Pennsylvania’s strong tradition of local control, reflects the diversity of the state’s education landscape, and acknowledges the need for a mix of appropriate delivery methods in the context of long-term school closures.

More specifically, Pennsylvania’s reservation plans include:

- Expanding access to equitable statewide online blended, and offline learning platforms, with particular attention to access for students with disabilities, English learners, students in concentrated poverty, and other at-risk student populations;
- Strengthening support and accountability for full-time virtual schools while building local capacity to design, deliver, and evaluate the efficacy of online and blended learning;
- Supporting intensive teacher and school leader professional development on remote delivery and pedagogy;
- Providing direct resources and technical assistance to close learning and non-academic gaps stemming from extended school closures;


- Providing direct resources and technical assistance on mental health and trauma-informed practices, including those with demonstrated efficacy in distance learning settings;
- Identifying and implementing practices that foster remote collaboration among core content teachers and teachers of students with disabilities and English learners;
- Supporting partnerships between LEAs and IHEs to ensure an explicit focus on remote learning in preservice student teaching experiences; and
- Recognizing the role of parents in supporting remote learning through focused family engagement strategies.

PART D: OTHER ASSURANCES AND CERTIFICATIONS

The Pennsylvania Department of Education and Secretary Pedro A. Rivera assure or certify the following:

1. The SEA will comply with all applicable assurances in OMB Standard Forms 424B and D (Assurances for Non-Construction and Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood hazards; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders and regulations.
2. With respect to the certification regarding lobbying in Department Form 80-0013, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; the SEA will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” when required (34 C.F.R. Part 82, Appendix B); and the SEA will require the full certification, as set forth in 34 C.F.R. Part 82, Appendix A, in the award documents for all subawards at all tiers.
3. Any LEA receiving funding under this program will have on file with the SEA a set of assurances that meets the requirements of section 442 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232e).
4. To the extent applicable, an LEA will include in its local application a description of how the LEA will comply with the requirements of section 427 of GEPA (20 U.S.C. 1228a). The description must include information on the steps the LEA proposes to take to permit students, teachers, and other program beneficiaries to overcome barriers (including barriers based on gender, race, color, national origin, disability, and age) that impede equal access to, or participation in, the program.
5. The SEA will comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) requirements in Subpart D—Post Federal Award Requirements (2 CFR §§200.300-345) and Subpart E—Cost Principles (2 CFR §§200.400-475) to ensure that LEAs, including charter schools that are LEAs, are using ESSER funds for purposes that are reasonable, necessary, and allocable under the CARES Act.
6. The SEA and other entities will comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts 76, 77, 81, 82, 84, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and the Uniform Guidance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Chief State School Officer or Authorized Representative: Pedro A. Rivera

<p>Signature: </p>	<p>Date: May 4, 2020</p>
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Appendix A: Relevant Excerpts from Title VIII of Division B of the CARES Act, the Emergency Appropriations for Coronavirus Health Response and Agency Operations

DEPARTMENT OF EDUCATION EDUCATION STABILIZATION FUND

For 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: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

GENERAL PROVISIONS EDUCATION STABILIZATION FUND

SEC. 18001. (a) ALLOCATIONS.—From the amount made available under this heading in this Act to carry out the Education Stabilization Fund, the Secretary shall first allocate—

- (1) not more than 1/2 of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, in consultation with the Secretary of the Interior;
- (2) one-half of 1 percent for the Secretary of Interior, in consultation with the Secretary of Education, for programs operated or funded by the Bureau of Indian Education; and
- (3) 1 percent for grants to States with the highest coronavirus burden to support activities under this heading in this Act, for which the Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act and approve or deny applications not later than 30 days after receipt.

(b) RESERVATIONS.—After carrying out subsection (a), the Secretary shall reserve the remaining funds made available as follows:

- (1) 9.8 percent to carry out section 18002 of this title.
- (2) 43.9 percent to carry out section 18003 of this title.
- (3) 46.3 percent to carry out section 18004 of this title.

ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND

SEC. 18003. (a) GRANTS.—From funds reserved under section 18001(b)(2) of this title, the Secretary shall make elementary and secondary school emergency relief grants to each State educational agency with an approved application. The Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act and approve or deny applications not later than 30 days after receipt.

(b) ALLOCATIONS TO STATES.—The amount of each grant under subsection (a) shall be allocated by the Secretary to each State in the same proportion as each State received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

(c) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—Each State shall allocate not less than 90 percent of the grant funds awarded to the State under this section as subgrants to local educational agencies (including charter schools that are local educational agencies) in the State in proportion to the amount of funds such local educational agencies and charter schools that are local educational agencies received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

(d) USES OF FUNDS.—A local educational agency that receives funds under this title 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 and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.) and how to ensure 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 between students and their classroom instructors, including low-income students and students 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, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

(12) 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.

(e) STATE FUNDING.—With funds not otherwise allocated under subsection (c), a State may reserve not more than 1/2 of 1 percent for administrative costs and the remainder for emergency needs as determined by the state educational agency to address issues responding to coronavirus, which may be addressed through the use of grants or contracts.

(f) REALLOCATION.—A State shall return to the Secretary any funds received under this section that the State does not award within 1 year of receiving such funds and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (b).

ASSISTANCE TO NON-PUBLIC SCHOOLS

SEC. 18005. (a) IN GENERAL.—A local educational agency receiving funds under sections 18002 or 18003 of this title shall provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools.

(b) PUBLIC CONTROL OF FUNDS.—The control of funds for the services and assistance provided to a non-public school under subsection (a), and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property and shall provide such services (or may contract for the provision of such services with a public or private entity).

CONTINUED PAYMENT TO EMPLOYEES

SEC. 18006. A local educational agency, State, institution of higher education, or other entity that receives funds under “Education Stabilization Fund”, shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.

DEFINITIONS

SEC. 18007. Except as otherwise provided in sections 18001– 18006 of this title, as used in such sections—

- (1) the terms “elementary education” and “secondary education” have the meaning given such terms under State law;
- (2) the term “institution of higher education” has the meaning given such term in title I of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.);
- (3) the term “Secretary” means the Secretary of Education;
- (4) the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico;
- (5) the term “cost of attendance” has the meaning given such term in section 472 of the Higher Education Act of 1965.
- (6) the term “Non-public school” means a non-public elementary and secondary school that (A) is accredited, licensed, or otherwise operates in accordance with State law; and (B) was in existence prior to the date of the qualifying emergency for which grants are awarded under this section;
- (7) the term “public school” means a public elementary or secondary school; and
- (8) any other term used that is defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) shall have the meaning given the term in such section.

MAINTENANCE OF EFFORT

SEC. 18008. (a) A State’s application for funds to carry out sections 18002 or 18003 of this title shall include assurances that the State will maintain support for elementary and secondary education, and State support for higher education (which shall include State funding to institutions of higher education and state need based financial aid, and shall not include support for capital projects or for research and development or tuition and fees paid by students) in fiscal years 2020 and 2021 at least at the levels of such support that is the average of such State’s support for elementary and secondary education and for higher education provided in the 3 fiscal years preceding the date of enactment of this Act.

(b) The secretary may waive the requirement in subsection (a) for the purpose of relieving fiscal burdens on States that have experienced a precipitous decline in financial resources.

REPORTING ON USE OF FUNDS SEC. 15011.

(a) In this section—

- (1) the terms “agency”, “appropriate congressional committees”, “Committee”, “covered funds”, and “Coronavirus response” have the meanings given those terms in section 15010;
- (2) the term “covered recipient” (A) means any entity that receives large covered funds; and (B) includes any State, the District of Columbia, and any territory or possession of the United States; and
- (3) the term “large covered funds” means covered funds that amount to more than \$150,000.

...

(b)(2) Not later than 10 days after the end of each calendar quarter, each covered recipient shall submit to the agency and the Committee a report that contains—

- (A) the total amount of large covered funds received from the agency;
- (B) the amount of large covered funds received that were expended or obligated for each project or activity;
- (C) a detailed list of all projects or activities for which large covered funds were expended or obligated, including—
 - (i) the name of the project or activity;
 - (ii) a description of the project or activity; and
 - (iii) the estimated number of jobs created or retained by the project or activity, where applicable;and
- (D) detailed information on any level of subcontracts or subgrants awarded by the covered recipient or its subcontractors or subgrantees, to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note) allowing aggregate reporting on awards below \$50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

(3) Not later than 30 days after the end of each calendar quarter, the Committee, in consultation with the agency that made large covered funds available to any covered recipient shall make the information in reports submitted under paragraph (2) publicly available by posting the information on the website established under section 15010(g).

(4)(A) Each agency, in coordination with the Committee and the Director of the Office of Management and Budget shall provide user-friendly means for covered recipients to meet requirements of this subsection.

(B) Federal agencies may use existing mechanisms to ensure that information under this subsection is reported accurately.

(c)(1) The Director of the Office of Management and Budget, in consultation with the Secretary of the Treasury, the Administrator of the Small Business Administration, and the Chairperson of the Council of Economic Advisors, shall submit to the appropriate congressional committees and publicly release on the website established under section 15010(g) quarterly reports that detail the impact of programs funded through large covered funds on employment, estimated economic growth, and other key economic indicators, including information about impacted industries.

(2)(A) The first report submitted under paragraph (1) shall be submitted not later than 45 days after the end of the first full quarter following the date of enactment of this Act.

(B) The last report required to be submitted under paragraph (1) shall apply to the quarter in which the Committee terminates.

APPENDIX B: STATE ALLOCATION TABLE**Elementary and Secondary School Emergency Relief Fund**

STATE	STATE TOTAL	Minimum LEA Distribution¹	Maximum SEA Reservation	Maximum for SEA Administration²
TOTAL	13,229,265,000	11,906,338,500	1,322,926,500	66,146,325
ALABAMA	216,947,540	195,252,786	21,694,754	1,084,738
ALASKA	38,407,914	34,567,123	3,840,791	192,040
ARIZONA	277,422,944	249,680,650	27,742,294	1,387,115
ARKANSAS	128,758,638	115,882,774	12,875,864	643,793
CALIFORNIA	1,647,306,127	1,482,575,514	164,730,613	8,236,531
COLORADO	120,993,782	108,894,404	12,099,378	604,969
CONNECTICUT	111,068,059	99,961,253	11,106,806	555,340
DELAWARE	43,492,753	39,143,478	4,349,275	217,464
DISTRICT OF COLUMBIA	42,006,354	37,805,719	4,200,635	210,032
FLORIDA	770,247,851	693,223,066	77,024,785	3,851,239
GEORGIA	457,169,852	411,452,867	45,716,985	2,285,849
HAWAII	43,385,229	39,046,706	4,338,523	216,926
IDAHO	47,854,695	43,069,226	4,785,470	239,273
ILLINOIS	569,467,218	512,520,496	56,946,722	2,847,336
INDIANA	214,472,770	193,025,493	21,447,277	1,072,364
IOWA	71,625,561	64,463,005	7,162,556	358,128
KANSAS	84,529,061	76,076,155	8,452,906	422,645
KENTUCKY	193,186,874	173,868,187	19,318,687	965,934
LOUISIANA	286,980,175	258,282,158	28,698,018	1,434,901
MAINE	43,793,319	39,413,987	4,379,332	218,967
MARYLAND	207,834,058	187,050,652	20,783,406	1,039,170
MASSACHUSETTS	214,894,317	193,404,885	21,489,432	1,074,472
MICHIGAN	389,796,984	350,817,286	38,979,698	1,948,985
MINNESOTA	140,137,253	126,123,528	14,013,725	700,686
MISSISSIPPI	169,883,002	152,894,702	16,988,300	849,415
MISSOURI	208,443,300	187,598,970	20,844,330	1,042,217
MONTANA	41,295,230	37,165,707	4,129,523	206,476
NEBRASKA	65,085,085	58,576,577	6,508,509	325,425
NEVADA	117,185,045	105,466,541	11,718,505	585,925
NEW HAMPSHIRE	37,641,372	33,877,235	3,764,137	188,207
NEW JERSEY	310,371,213	279,334,092	31,037,121	1,551,856
NEW MEXICO	108,574,786	97,717,307	10,857,479	542,874
NEW YORK	1,037,045,603	933,341,043	103,704,560	5,185,228
NORTH CAROLINA	396,311,607	356,680,446	39,631,161	1,981,558
NORTH DAKOTA	33,297,699	29,967,929	3,329,770	166,489
OHIO	489,205,200	440,284,680	48,920,520	2,446,026
OKLAHOMA	160,950,476	144,855,428	16,095,048	804,752

¹ The totals in the Minimum LEA Distribution, Maximum SEA Reservation, and Maximum for SEA Administration columns have been rounded to the nearest whole dollar.

² With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to ½ of 1 percent of the total allocation for administrative costs.

STATE	STATE TOTAL	Minimum LEA Distribution ³	Maximum SEA Reservation	Maximum for SEA Administration ⁴
OREGON	121,099,019	108,989,117	12,109,902	605,495
PENNSYLVANIA	523,807,198	471,426,478	52,380,720	2,619,036
RHODE ISLAND	46,350,444	41,715,400	4,635,044	231,752
SOUTH CAROLINA	216,311,158	194,680,042	21,631,116	1,081,556
SOUTH DAKOTA	41,295,230	37,165,707	4,129,523	206,476
TENNESSEE	259,891,154	233,902,039	25,989,115	1,299,456
TEXAS	1,285,886,064	1,157,297,458	128,588,606	6,429,430
UTAH	67,821,787	61,039,608	6,782,179	339,109
VERMONT	31,148,360	28,033,524	3,114,836	155,742
VIRGINIA	238,599,192	214,739,273	23,859,919	1,192,996
WASHINGTON	216,892,447	195,203,202	21,689,245	1,084,462
WEST VIRGINIA	86,640,471	77,976,424	8,664,047	433,202
WISCONSIN	174,777,774	157,299,997	17,477,777	873,889
WYOMING	32,562,651	29,306,386	3,256,265	162,813
PUERTO RICO	349,113,105	314,201,795	34,911,311	1,745,566

³ The totals in the Minimum LEA Distribution, Maximum SEA Reservation, and Maximum for SEA Administration columns have been rounded to the nearest whole dollar.

⁴ With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to ½ of 1 percent of the total allocation for administrative costs.

EXHIBIT B



May 7, 2020

The Honorable Frank T. Brogan
Assistant Secretary for Elementary and Secondary Education
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Assistant Secretary Brogan:

Thank you for your leadership in ensuring timely, clear communication from the U.S. Department of Education (USDE) as states respond to the immediate effects of the COVID-19 pandemic, implement state-level waivers granted by your agency, and work to administer emergency funding under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

As Pennsylvania's CARES planning unfolds, I am seeking clarification concerning USDE's "Providing Equitable Services to Students and Teachers under the Coronavirus Aid, Relief, and Economic Security (CARES) Act Programs" document issued April 30, 2020. While I understand that this guidance does not have the force and effect of law, the document has created confusion as Pennsylvania works to ensure timely allocation of CARES Act funds.

Under the CARES Act statute and USDE's longstanding interpretation of equitable participation, local education agency (LEA) reservations for services to nonpublic schools are based on the number of low-income children in each participating non-public school in the LEA. USDE's guidance, suggesting that LEAs should instead base these calculations on the total number of nonpublic students, is inconsistent with the CARES statute; the fiscal year 2019 Title I-A administration that serves as the basis of CARES Act allocations; and, crucially, our shared goal of ensuring that limited, one-time, emergency funding reaches our most vulnerable students, wherever they attend school.

Initial analysis by the Pennsylvania Department of Education over the past 24 hours, using data derived from approximately 45 percent of the commonwealth's school districts, indicates that USDE's April 30 guidance would roughly double Equitable Services reservations, compared with the statutorily defined calculation. These sharply increased reservations would impact districts of every type—large urban, small urban, suburban, and rural; please see below for a sampling of these impacts.

School districts	Increase in support flowing from most disadvantaged to more advantaged students
Large Urban	
Philadelphia	53%
Pittsburgh	124%
Small Urban	
Altoona	605%
Erie City	104%
Greater Johnstown	110%
Scranton	797%
Williamsport Area	564%
York City	354%
Suburban	
Bristol Borough	2324%
Manheim Township	1617%
Rose Tree Media	4634%
Upper Darby	1104%
York Suburban	4084%
Rural	
Blue Ridge	3873%
Clarion Area	735%
Mifflin County	335%
Northeast Bradford	932%
Warren County	248%

These outcomes, observed in districts and communities of every type, are clearly inequitable. Accordingly, I urge USDE to clarify the April 30 guidance, outline data elements and procedures for calculating equitable services consistent with the CARES Act, and encourage LEAs to use the percentage of FY 2019 Title I funds set aside for equitable services and apply that percentage to ESSER allocations and any GEER funds. This approach will ensure that critical CARES support is provided in a consistent, transparent, and equitable manner.

Sincerely,



Pedro A. Rivera
Secretary of Education

cc: Council of Chief State School Officers

EXHIBIT 11

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 2 MICHAEL NEWMAN
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 8 *Attorneys for Plaintiff State of California*

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12

13
 14 **STATE OF MICHIGAN, STATE OF
 CALIFORNIA, et al.,**

15 Plaintiffs,

16 v.

17
 18 **ELISABETH D. DEVOS, in her official
 capacity as the United States Secretary of
 19 Education, and UNITED STATES
 DEPARTMENT OF EDUCATION,**

20 Defendants.
 21
 22

Civil Case No. 3:20-cv-04478-SK

**DECLARATION OF BENJAMIN R.
 JONES**

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DECLARATION OF BENJAMIN R. JONES

I, Benjamin R. Jones, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

1. I am the Chief Legal Counsel at the Wisconsin Department of Public Instruction (DPI). My educational background includes a Bachelor of Arts in Political Science and a Juris Doctor from the University of Wisconsin Law School. I have been employed as Chief Legal Counsel since January 20, 2019.

2. I oversee the DPI Office of Legal Services which provides legal advice to the Wisconsin State Superintendent of Public Instruction (“State Superintendent”) and the DPI on all matters of state and federal law, including administrative rule development, interpretation, and implementation.

3. I submit this Declaration in support of the State of Wisconsin’s litigation against Elisabeth D. DeVos, in her official capacity as Secretary of Education, and the United States Department of Education (the “Department”) regarding the recently issued Rule entitled *Providing Equitable Services to Students and Teachers in Non-public Schools*, 85 Fed. Reg. 39,479 (July 1, 2020) (the “Equitable Services Rule” or the “Rule”). I have compiled the information in the statements set forth below through DPI personnel who have assisted me in gathering this information from our institution. I have also familiarized myself with the Rule in order to understand its immediate impact on DPI and public schools in Wisconsin.

Background about Agency’s Work in Education and State’s Education Programs

4. The Wisconsin Constitution requires the state legislature to establish district schools which are to be “as nearly uniform as practicable” and “free and without charge for tuition to all children.” Wis. Const. art. X § 3. The supervision of public instruction is vested in the State Superintendent who is elected on a nonpartisan spring ballot for a term of four years. The State Superintendent is charged under Wisconsin statutes with the general supervision of public instruction and leads DPI in implementing policies and promulgating administrative rules.

5. The general duties of the State Superintendent include developing and disseminating information to the public on all matters relating to preschool, elementary and

1 secondary education. Wis. Stat. § 115.28. These duties include making rules to establish
2 standards of attainment and procedures for the examination and licensing of teachers, reviewing
3 teacher licensing applications, conducting complaint investigations, and making
4 recommendations for revocation of licenses if necessary. Responsibilities also include accepting
5 and administering federal funds, developing and implementing a statewide assessment and
6 accountability system, which includes publishing annual accountability report cards per state law
7 and accountability reports under the Elementary and Secondary Education Act of 1965 (“ESEA”).
8 DPI has staff throughout the agency responsible for meeting data reporting requirements under
9 state and federal law. In order to meet many of these reporting requirements, the department has
10 established and implements a WISE data system, which is a data collection system that allows
11 local educational agencies (LEAs) to submit data to DPI from the student information system
12 (SIS) vendor of their choice. DPI is responsible for administering the United States Department
13 of Agriculture (USDA) nutrition programs, Institute of Museum and Library Sciences grants,
14 Centers for Disease Control Youth Risk Behavior Surveys, the Carl D. Perkins Career and
15 Technical Education Act, the Individuals with Disabilities Education Act (“IDEA”), and ESEA.

16 6. In the 2019-2020 school year, DPI administered approximately \$6.1 billion in state
17 support for K-12 public schools; \$4.8 billion of that involved general school aids and the
18 remaining \$1.3 billion involved categorical aids and grants for special education, transportation,
19 class size reduction, and other targeted priorities. Additionally, DPI is responsible for monitoring
20 compliance with levy limits on \$4.4 billion in local school property taxes and administering
21 penalties as required by law.

22 7. DPI oversees 443 LEAs, comprised of 517 high schools, 22 junior high schools,
23 347 middle schools, 1,217 elementary schools, 87 combined elementary and secondary schools,
24 209 charter schools, and 26 non-district charter schools, with a combined total student enrollment
25 of 854,959. In the 2018-19 school year, 14% of students were students with disabilities, 6% of
26 students were English learners, 40.7% of students were considered economically disadvantaged;
27 69.3% of students were white, 9.1% of students were black or African American, and 12.3% were
28 Hispanic. In the 2019-20 school year, 435 LEAs in Wisconsin received federal funds under Title

1 I, Part A of the ESEA (“Title I-A”), which allocates funding to schools based on the number of
2 low-income students; 1171 schools received Title I-A funds; and 430,048 students attended
3 schools receiving Title I-A funds. In the 2019-20 school year, Wisconsin had 809 private schools
4 located within the boundaries of Title I-A LEAs.

5 **Effects of the COVID-19 Pandemic on Education in the State**

6 8. The COVID-19 pandemic has drastically impacted K-12 education in Wisconsin.

7 9. Wisconsin closed all schools beginning on March 23, 2020, through the end of the
8 school year (June 30, 2020). Schools were allowed to continue to provide meals to students as
9 well as virtual instruction. Local school districts were allowed to designate essential staff to
10 complete essential government functions. School board meetings were also allowed either
11 virtually or in-person while following health guidelines.

12 10. The 421 school districts were each responsible for developing and implementing
13 their own remote educational program. Each school district and independent charter school has
14 done the best they can to ensure the safety of their staff and students, based on the resources
15 available to them. This resulted in a wide variety of remote and virtual learning opportunities.
16 Without time to prepare, study, test, and revise remote learning models, school districts and
17 independent charter schools were faced with immense challenges: navigating a regulatory
18 framework that does not suitably address the circumstances of the current pandemic; providing
19 students from all socioeconomic backgrounds with equitable access to curriculum; enabling
20 teachers to deliver curriculum in an entirely different and unfamiliar space; keeping staff safe
21 while performing essential services; and adjusting policies and procedures to address the needs of
22 students, families, and local communities.

23 11. Moving into the next school year, schools will need to evaluate students and
24 address any learning loss. They will need to determine if additional education is required for
25 special education students if goals were not met in individualized education plans. They also
26 need to plan for a very different school year full of new health procedures and multiple health
27 scenarios. They need to address how they will provide learning if they have to operate in a virtual
28 environment for part or all of a year for some or all of their students. They need to have back up

1 plans in place if they are closed. They need to plan for educational models that fit the unique
2 situation of the school and evolving health scenarios. Having to plan for all of these unknown
3 variables and contingencies is extremely taxing on public and private schools.

4 12. The pandemic has had an even more severe impact on Title I-A LEAs. For
5 example, three of the four Wisconsin school districts with the highest rates of COVID-19 cases as
6 of June 2, 2020, were large school districts in Green Bay, Racine and Milwaukee, where 63%,
7 66% and 82% of the districts' students, respectively, are economically disadvantaged.

8 13. DPI has provided guidance and support to districts, requested and has been granted
9 waivers from the federal government under the ESEA and USDA school nutrition programs, and
10 has made policy decisions to help support school districts in the provision of educational services
11 during the health emergency. DPI is also authorized under Wis. Stat. § 118.38 to grant school
12 districts waivers from certain statutory and regulatory requirements upon request. DPI has
13 approved school district requests for waivers around the annual minimum number of school
14 hours, civics test graduation requirement, and educator effectiveness requirements. DPI has
15 provided policy guidance regarding special education under the IDEA, and policies under state
16 law related to graduation, attendance, course completion, and grades. DPI has also coordinated
17 with the Wisconsin Department of Health Services, in providing health-related guidance for
18 schools. DPI has developed return-to-school guidance to keep students and staff safe, providing
19 models for school operations, and illustrating best practices around teaching and learning to
20 address new models of learning and learning losses related to the extended closure. This is a
21 monumental amount of planning, representing a change to the entire way in which school districts
22 approach school operations—and it needs to occur in a short timeframe.

23 14. COVID-19 is expected to have a significant impact on school district budgets due
24 to unanticipated costs to: ensure access to virtual instruction for all students, sanitize school
25 facilities, train teachers and staff for new learning environments, increase transportation capacity
26 to maintain social distancing, address staff shortages from decisions to self-quarantine, and other
27 expenditures that are necessary to ensure an environment that is as safe as possible and to provide
28 learning that is outside the traditional format. These costs, combined with the economic impact

1 of COVID-19 on the state of Wisconsin and decreases in state and local government revenues,
2 will create difficult budget decisions for school districts across the state.

3 15. Almost all DPI staff have moved to a telework environment. This has caused a
4 significant shift in agency practices as all school district conferences and support typically done
5 in person have had to be transitioned to a virtual environment. At the same time, DPI has
6 reprioritized its time and focus across the agency. DPI created a common website and portal to
7 receive and respond to questions related to COVID-19. DPI has issued guidance on a nearly daily
8 basis to address a rapidly changing situation. Statutes and administrative rules that failed to
9 anticipate this pandemic and its effects continue to create significant challenges for school
10 operations. DPI has had to create new processes and solutions with stakeholders to effectively
11 meet the needs of schools. All agency staff and divisions have been affected by COVID-19 and
12 its implications.

13 **CARES Act Funds Received by Wisconsin for K-12 Education**

14 A. Elementary and Secondary School Emergency Relief (ESSER) Funds

15 16. In order to receive the ESSER funds designated for Wisconsin and as required by
16 the Department, DPI executed a Certification and Agreement form and submitted it to the
17 Department on May 15, 2020.¹ A true and correct copy of the Certification and Agreement
18 completed by DPI and submitted to the Department is attached hereto as Exhibit A.

19 17. Within this Certification and Agreement, Wisconsin agreed to the following terms:

20 I acknowledge and agree that the failure to comply with all Assurances and
21 Certifications in this Agreement, all relevant provisions and requirements of
22 the CARES Act, Pub. L. No. 116-136 (March 27, 2020), or any other
23 applicable law or regulation may result in liability under the False Claims Act,
24 31 U.S.C. § 3729, et seq.; OMB Guidelines to Agencies on Governmentwide
25 Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted
26 and amended as regulations of the Department in 2 CFR part 3485; and 18
27 USC § 1001, as appropriate.

28 ...

4. LEAs receiving ESSER funds will provide equitable services to students

¹ U.S. Dep't of Educ., Certification and Agreement for Funding under the Education
Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund (ESSER
Fund), CFDA Number 84.425D, April 24, 2020, *available at*
<https://oese.ed.gov/files/2020/04/ESSERF-Certification-and-Agreement-2.pdf>.

1 and teachers in non-public schools as required under 18005 of Division B
2 of the CARES Act.

3 ...

4 5. LEA receiving ESSER funds will provide equitable services to students
5 and teachers in non-public schools located within the LEA in the same
6 manner as provided under section 1117 of the ESEA, as determined
7 through timely and meaningful consultation with representatives of non-
8 public schools.

[Ex. A at pp. 1-2.]

9 18. At the time that DPI executed the Certification and Agreement form, the
10 Department had not yet issued the Rule.

11 19. The Department distributed \$174,777,774 from the ESSER Fund to DPI on May
12 18, 2020.

13 20. Of the ESSER funds received by DPI, DPI intends to retain \$16,233,474 as
14 permitted by the CARES Act to provide statewide services, including building capacity for, and
15 expanding access to, high quality online instructional resources; providing training for educators
16 in the provision of online and remote instruction; expanding and building capacity of school staff
17 to provide mental health services to better support students; and to cover administrative costs.

18 21. Wisconsin will use its federal grants portal, WISEgrants, for LEAs to apply for
19 and receive ESSER funds. This portal allows LEAs to budget-in allowable categories and serves
20 as the first level of DPI monitoring of these funds. The process is very similar to the process used
21 by LEAs to apply for and receive other federal funds, including ESEA Title I, Part A; Title II,
22 Part A; Title III, Part A; Title IV, Part A; and IDEA.

23 22. To date, DPI has not distributed any funds to eligible LEAs within Wisconsin.

24 23. LEAs are currently preparing grant applications.

25 24. Using the proportional share calculation set forth in in Title I-A, LEAs in
26 Wisconsin would reserve approximately \$18,739,938 in ESSER funds to provide equitable
27 services to private school students.

28 25. However, using the proportional share calculation set forth in the Department's
Guidance Document and in Option #2 in the Rule, LEAs in Wisconsin would reserve

1 approximately \$21,974,242 in ESSER funds to provide equitable services to private school
 2 students. Thus, under the Department's preferred proportional share calculation, private school
 3 students in Wisconsin would have access to an additional \$3,234,304, and public schools would
 4 lose this same amount of funds.

5 **B. Governor's Emergency Education Relief (GEER) Funds**

6 26. Wisconsin was awarded \$46,550,411 from the GEER Fund on June 1, 2020.

7 27. The Wisconsin Governor's Office has determined that LEAs will receive
 8 \$46,550,411 from the GEER fund. The Governor's Office has requested DPI to help distribute
 9 these funds through DPI's existing systems. Equitable participation applies to these funds
 10 similarly and DPI will make a similar adjustment to these funds to assure the funds are set aside
 11 for equitable participation. When the list of districts is determined, a share will be set aside based
 12 on the number of low-income students. DPI estimates that under the Department's preferred
 13 proportional share calculation, private school students in Wisconsin would have access to an
 14 additional estimated \$950,211.64, and public schools would lose this same amount of funds.

15 **The Department's Rule Significantly Harms DPI**

16 28. If every LEA in Wisconsin followed Option #1 (Title I-A-schools only Option) in
 17 proportioning the CARES Act funds for equitable services, the new supplement and not supplant
 18 requirement of Option #1 will create significant confusion among school districts. Prior to
 19 issuing the Rule, the Department had explicitly communicated that supplement and not supplant
 20 rules did not apply to CARES Act funds.² DPI will have to advise school districts that budgets
 21 developed without this requirement in mind will need to be revamped, and that the flexibility in
 22 how school districts may use these funds to address COVID-19 has been significantly curtailed.

23 29. As Wisconsin remains in the throes of the pandemic, public schools remain
 24 desperate for funding as they continue to transition to remote learning and preparing for next
 25 school year. Policies and procedures must be developed for remote learning; teachers must be

26 ² U.S. Dep't of Educ., ELEMENTARY AND SECONDARY SCHOOL EMERGENCY
 27 RELIEF FUND, Frequently Asked Questions about the Elementary and Secondary School
 28 Emergency Relief Fund (ESSER Fund), #20, available at
<https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf>.

1 trained to use remote learning techniques; school buildings must be thoroughly sanitized; and
2 school districts have to prepare to provide remote learning for students who will not return to
3 school. The procedures and considerations for districts are many and can be seen in the DPI's
4 guidance to school districts.³ The costs of reacting to this pandemic are drastic for public schools
5 and without the funds the CARES Act was intended to provide, DPI must immediately assist the
6 LEAs adjust to the new realities presented by the pandemic.

7 30. The Department's Guidance Document and Rule have imposed significant
8 administrative burdens on DPI: DPI staff have spent over 180 hours publishing a webpage, FAQ
9 document and guidance on allowable costs, programming WISEgrants, answering questions and
10 attempting to interpret the Department's interpretation of the CARES Act and how funds are
11 meant to be allocated and used. Of that 180 hours, approximately one-third of that time was spent
12 trying to understand the Department's guidance and the Rule, resolve conflicts between the Rule
13 and the CARES Act, and address confusion created by the Rule among stakeholders. DPI
14 estimates that its staff will dedicate approximately 3,500 hours to administering the ESSER Fund
15 from July 1, 2020, through September 30, 2020.

16 31. DPI has finite staff and resources, and the amount of time necessary to interpret
17 and address the Department's guidance and Rule for CARES Act fund allocation has diverted
18 resources that could be dedicated to the many other priorities created by COVID-19.

19 32. If the rule applies, DPI would have to develop two monitoring systems, one for
20 LEAs that chose Option #1 and a separate system for Option #2. Very little of the systems would
21 be applicable to the other, due to differences in allowable costs and services, so it would require a
22 very significant amount of additional work. If DPI is required to administer two options for
23 LEAs to allocate and use ESSER Funds as provided by the Rule, then DPI estimates a substantial
24 increase—potentially double—in the necessary hours for administering these funds.

25 33. A number of private schools are refusing to certify that LEAs are providing timely
26 and meaningful consultation as required by Section 1117 of Title I-A. Due to the confusion

27 ³ Wisconsin Dep't of Pub. Instruction, EDUCATION FORWARD, Reopening
28 Wisconsin's Schools, *available at*
https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/Education_Forward_web.pdf.

1 caused by the Department's guidance and Rule, several private schools are refusing to certify that
2 the LEA's program design is equitable with respect to private school students. A number of other
3 private schools are refusing to certify LEAs are providing timely and meaningful consultation as
4 required by Section 1117 of Title I-A.

5 34. Finally, the Department's Guidance Document and Rule place DPI in potential
6 legal jeopardy. DPI was required to certify in its ESSER Fund application that DPI and the LEAs
7 will comply with the equitable service provision of the CARES Act (§ 18005) and "any other
8 applicable law or regulation." (Ex. A at p. 1.) Because the Guidance Document and the Rule
9 require LEAs to calculate the proportional share for equitable services and determine eligibility of
10 private school students for equitable services contrary to the proportional share calculation and
11 eligibility requirements in the CARES Act, it is hard to see how DPI (and its LEAs) can
12 seemingly satisfy both the Rule and the CARES Act. Accordingly, the Department's Rule forces
13 DPI to effectively violate Section 18005 of the CARES Act, potentially placing DPI at risk of
14 breaching the certification in the Certification and Agreement and subjecting DPI to "liability
15 under the False Claims Act, . . . [and the] OMB Guidelines to Agencies on Governmentwide
16 Debarment and Suspension (Nonprocurement)." (Ex. A at p. 1.)

17 35. As the LEAs in Wisconsin need to use the ESSER funds as soon as possible to
18 assist with the numerous pandemic-related challenges, this legal jeopardy will impact DPI
19 immediately.

20 **The Department's Rule Significantly Harms Wisconsin's K-12 Students**

21 36. Due to the confusion created by the Department's interpretation of the equitable
22 service requirements, DPI has needed to take additional time to determine the distribution and use
23 of funds. This would not have been necessary with clear and lawful guidance from the
24 Department.

25 37. The Department's Guidance and Rule will result in less funding being distributed
26 to public K-12 schools in Wisconsin.

27 38. If LEAs in Wisconsin calculate the proportional share of CARES Act funds for
28 private school students under Option #1 in the Rule, non-Title I schools in LEAs receiving

1 CARES Act funds will receive no funds. In Wisconsin, there are approximately 1044 non-Title I
2 public schools in LEAs that are eligible to receive CARES Act funds that would not receive any
3 funding. Like all public schools in Wisconsin, these schools are equally impacted by the COVID-
4 19 pandemic and would greatly benefit from the influx of CARES Act funds to assist them
5 through the pandemic. In addition, there are approximately 1171 Title I-A public schools in
6 Wisconsin that would be limited in their ability to use CARES Act funds to respond to and
7 prepare for the pandemic, as, per the Department's Rule, the schools cannot supplant State and
8 local funding sources. This would significantly impact the Title I-A schools, as many are in
9 desperate need of additional funding to cope with the pandemic, and to assist students with
10 online, remote learning tools that students often cannot afford within these Title I-A schools.
11 Option #1 also would restrict district-wide activities which may be necessary to respond to this
12 global pandemic. For example, LEAs may not be able to use these funds to properly clean and
13 disinfect school buses, if those buses are used to transport students in both Title I-A and non-Title
14 I-A schools. An LEA would not be able to fund a district-wide, or even grade-level wide,
15 professional learning on remote instruction if not all schools received Title I-A funds. The
16 administrative barriers would be increased, and the practical uses of the funds would be
17 significantly restricted in manners far less than what is explicitly permitted in the statute.

18 39. If LEAs in Wisconsin calculate the proportional share of CARES Act funds for
19 private school students under Option #2 in the Rule, approximately \$4,184,515.64 of ESSER and
20 GEER funds will be diverted from public schools to private school students, which represents
21 roughly 2% of Wisconsin's total ESSER/GEER fund award. As an example, in Wisconsin's
22 second largest school district, the Madison Metropolitan School District, using the proportional
23 share formula in Title I-A would result in an estimated \$121,866 for equitable services. Using the
24 total enrollment formula would result in an estimate of \$621,938, a difference of \$500,072, or
25 9.5% of the total allocation. This would have a major impact.

26 40. Additionally, for every \$78,627 diverted from the public schools (Title I-A or non-
27 Title I-A schools), a public school teacher in Milwaukee, WI may lose their position and be
28 unable to provide students with access to learning during the pandemic.

1 41. Regardless of how LEAs proportion the CARES Act funds in Wisconsin, the Rule
2 requires that all private school students receive equitable services. In Wisconsin, during the
3 2018-2019 school year, approximately 11,714 private school students were eligible to receive
4 equitable services under Title I-A, as they were at-risk students within a LEA receiving Title I-A
5 funds. As the Rule requires all private school students to receive equitable services, the Rule will
6 shift funds away from private schools that have higher low-income populations and towards
7 schools with higher enrollment, but less low-income students. The approximately 11,714 private
8 school students who received equitable services under Title I-A last year will receive less services
9 as the CARES Act funds proportioned for equitable services will be spread amongst all private
10 school students.

11
12 I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and
13 correct.

14
15 Executed on this 15th day of July, 2020, at Monona, Wisconsin

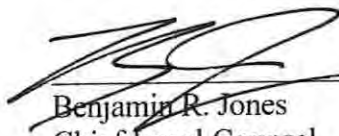
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18 Benjamin R. Jones
19 Chief Legal Counsel
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EXHIBIT A

U.S. Department of Education

Certification and Agreement for Funding under the Education Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund (ESSER Fund)

CFDA Number: 84.425D



OMB Number: 1810-0743
Expiration Date: 10/31/2020

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The OMB control number for this information collection is 1810-0743. The time required to complete this information collection is estimated to average 5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain benefit under the Coronavirus Aid, Relief, and Economic Security Act. If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact Christopher Tate, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Ave., S.W., Room 3E229, Washington, D.C. 20202 directly.

PROGRAM BACKGROUND INFORMATION

Purpose

Under the Elementary and Secondary School Emergency Relief Fund (ESSER Fund), the Department awards grants to State educational agencies (SEAs) for the purpose of providing local educational agencies (LEAs), including charter schools that are LEAs, with emergency relief funds to address the impact that Novel Coronavirus Disease 2019 (COVID-19) has had, and continues to have, on elementary and secondary schools across the nation. LEAs must provide equitable services to students and teachers in non-public schools as required under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Eligibility

SEAs in any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Timeline

The SEA will have one year, from the date of its ESSER award, to award funds. Any funds not awarded by the SEA within one year of receiving its award will be returned to the Department to be reallocated to other States consistent with the CARES Act.

Uses of Funds

SEAs:

The SEA must use no less than 90 percent of its allocation to make subgrants to LEAs, including charter schools that are LEAs, based on each LEA's share of funds received under part A of title I of the ESEA in fiscal year 2019. With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to $\frac{1}{2}$ of 1 percent of the total allocation for administrative costs, and the remaining funds may be used for emergency needs as determined by the SEA to address issues responding to COVID-19. These emergency needs may be addressed through the use of grants or contracts.

LEAs:

LEAs may use funds for any purposes listed in section 18003(d) of the CARES Act. (See Appendix A.)

Program Contact

For additional information, please contact Christopher Tate by telephone at (202) 453-6047 or by email at ESSERF@ed.gov.

CERTIFICATION AND AGREEMENT INSTRUCTIONS

To receive an ESSER Fund allocation, SEAs must submit to the Department the following information:

- A completed cover sheet that includes the signature of the Chief State School Officer or authorized representative. *(Part A of the Certification and Agreement)*
- Programmatic, fiscal, and reporting assurances. *(Part B of the Certification and Agreement)*
- Information on the uses of ESSER funds. *(Part C of the Certification and Agreement)*
- Other assurances and certifications. *(Part D of the Certification and Agreement)*

For purposes of this document, the term “Certification and Agreement” is the application that an SEA is required to file under section 18003(a) of Division B of the CARES Act.

Certification and Agreement Submission Information

An SEA must submit a Certification and Agreement to the Department no later than July 1, 2020.

Please submit your Certification and Agreement to the Department as follows:

Email an electronic version of the ESSER Fund Certification and Agreement in .PDF (Portable Document Format) to ESSERF@ed.gov.

APPENDICES

- Appendix A – Authorizing Statute
- Appendix B – State Allocation Table

ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND (ESSER FUND)

STATE EDUCATIONAL AGENCY

PART A: CERTIFICATION AND AGREEMENT COVER SHEET

State: Wisconsin

CFDA Number: 84.425D

Legal Name: Wisconsin Department of Public Instruction DUNS Number: 809611254

Chief State School Officer:

Mailing Address:

Carolyn Stanford Taylor

125 S. Webster Street, Madison, WI 53703

State Contact for Elementary and Secondary School Emergency Relief Fund: Jonas Zuckerman

Position and Office: Director, Title I

Mailing Address: 125 S. Webster Street, Madison, WI 53703

Telephone: 608-267-9136

Email address: jonas.zuckerman@dpi.wi.gov

To the best of my knowledge and belief, all the information and data in this agreement are true and correct. I acknowledge and agree that the failure to comply with all Assurances and Certifications in this Agreement, all relevant provisions and requirements of the CARES Act, Pub. L. No. 116-136 (March 27, 2020), or any other applicable law or regulation may result in liability under the False Claims Act, 31 U.S.C. § 3729, *et seq.*; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and 18 USC § 1001, as appropriate.

Chief State School Officer or Authorized Representative (Typed Name):

Telephone:

Jennifer Kammerud

(608) 266-7073

Signature of Chief State School Officer or Authorized Representative:

Date:

Jennifer A. Kammerud

Digitally signed by Jennifer A. Kammerud
Date: 2020.05.15 12:52:28 -05'00'

05/15/2020

PART B: PROGRAMMATIC, FISCAL, AND REPORTING ASSURANCES

The [Chief State School Officer or his/her authorized representative] assures the following:

1. The SEA will allocate no less than 90 percent of the grant funds under this program to local educational agencies (LEAs) (including charter schools that are LEAs) in the State. Under the ESSER Fund, the SEA will award grants by formula to State educational agencies (SEAs) for the purpose of providing LEAs, including charter schools that are LEAs, with emergency relief funds to address the impact that the Novel Coronavirus Disease 2019 (COVID-19) has had, and continues to have, on elementary and secondary schools across the Nation. This includes both continuing to provide educational services, such as remote learning, while schools and campuses are closed, and developing and implementing plans for the return to normal operations. The SEA will allocate these funds to LEAs on the basis of their respective shares of funds received under title I, part A of the Elementary and Secondary Education Act of 1965 in fiscal year 2019.
2. The SEA will use the remaining funds (hereafter SEA reserve) for emergency needs as determined by the SEA to address issues related to COVID-19, which may be addressed through the use of grants or contracts. From an SEA's reserve, the SEA may use not more than 1/2 of 1 percent of the SEA's total grant for administrative costs.
3. The SEA will ensure that LEAs use ESSER funds for activities allowable under section 18003(d) of Division B of the CARES Act. (See Appendix A.)
The Department generally does not consider the following to be an allowable use of ESSER funds, under any part of 18003: 1) subsidizing or offsetting executive salaries and benefits of individuals who are not employees of the SEA or LEAs or 2) expenditures related to state or local teacher or faculty unions or associations.
4. The SEA will ensure that LEAs receiving ESSER funds will provide equitable services to students and teachers in non-public schools as required under 18005 of Division B of the CARES Act.
5. The SEA will ensure that an LEA receiving ESSER funds will provide equitable services to students and teachers in non-public schools located within the LEA in the same manner as provided under section 1117 of the ESEA, as determined through timely and meaningful consultation with representatives of non-public schools.
 - The SEA will ensure that a public agency will maintain control of funds for the services and assistance provided to a non-public school under the ESSER Fund.
 - The SEA will ensure that a public agency will have title to materials, equipment, and property purchased with ESSER funds.
 - The SEA will ensure that services to a non-public school with ESSER funds will be provided by a public agency directly, or through contract with, another public or private entity.
6. The SEA will comply with the maintenance of effort provision in Section 18008(a) of Division B of the CARES Act absent waiver by the Secretary pursuant to Section 18008(b) thereof.
7. The SEA and each LEA and any other entity that receives ESSER funds will, to the greatest extent practicable, continue to compensate its employees and contractors during the period of

any disruptions or closures related to COVID-19 in compliance with Section 18006 of Division B of the CARES Act. In addition, each entity that accepts funds will continue to pay employees and contractors to the greatest extent practicable based on the unique financial circumstances of the entity. CARES Act funds generally will not be used for bonuses, merit pay, or similar expenditures, unless related to disruptions or closures resulting from COVID-19.

8. The SEA must assure that, when applicable, it will provide technical assistance to LEAs on the use of ESSER funds for remote learning, which includes both distance education as defined in section 103(7) of the HEA and distance learning as defined in ESEA section 8101(14), so that students can continue learning during school closures.
9. The SEA will comply with all reporting requirements, including those in Section 15011(b)(2) of Division B of the CARES Act, and submit required quarterly reports to the Secretary at such time and in such manner and containing such information as the Secretary may subsequently require. (See also 2 CFR 200.327-200.329). The Secretary may require additional reporting in the future, which may include: the methodology LEAs will use to provide services or assistance to students and staff in both public and non-public schools, the uses of funds by the LEAs or other entities and demonstration of their compliance with Section 18003(d), such as any use of funds addressing the digital divide, including securing access to home-based connectivity and remote-use devices, related issues in supporting remote learning for all students, including disadvantaged populations.
10. The SEA will submit to the Department, within 60 days of receiving ESSER funds, a report that will include:
 - A budget for the SEA’s reserve that includes information about the up to 1/2 of 1 percent of the SEA’s total grant for administrative costs and the uses of funds for emergency needs to address issues related to COVID-19; and
 - An Internal Control and Subrecipient Monitoring Plan to ensure that funds are used for allowable purposes in accordance with cash management principles.
11. The SEA will ensure that every recipient and subrecipient of ESSER funds will cooperate with any examination of records with respect to such funds by making records available for inspection, production, and examination, and authorized individuals available for interview and examination, upon the request of (i) the Department and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.
12. The SEA will return to the Secretary any funds received under the ESSER Fund that the SEA does not award within 1 year of receiving such funds.

Chief State School Officer or Authorized Representative (Printed Name):

Signature: Jennifer A. Kammerud	Date: 05/15/2020
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PART C: USES OF ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUNDS

Section 18003 of Division B of the CARES Act provides in relevant part that grants awarded under the Elementary and Secondary School Emergency Relief Fund be used to support the ability of local educational agencies (LEAs) to continue to provide educational services to their students. The Department requests the following:

1. Information that the SEA may request LEAs to include in their subgrant applications to the SEA. For example, an SEA might propose to include the following in developing its subgrant application:
 - How the LEA will determine its most important educational needs as a result of COVID-19.
 - The LEA's proposed timeline for providing services and assistance to students and staff in both public and non-public schools.
 - The extent to which the LEA intends to use ESSER funds to promote remote learning.
 - How the LEA intends to assess and address student learning gaps resulting from the disruption in educational services.

The above considerations are in addition to the application information requirements from sections 442 and 427 of the General Education Provisions Act (GEPA) (20 U.S.C. § 1232e and § 1228a).

See response on attached.

2. The extent to which the SEA intends to use any portion of its SEA reserve (up to 10 percent of its ESSER Fund award) to support:
- technological capacity and access – including hardware and software, connectivity, and instructional expertise – to support remote learning. If so, please describe the strategies the SEA intends to use to serve disadvantaged populations listed in Sec. 18003(d)(4) of the CARES Act; and
 - remote learning by developing new informational and academic resources and expanding awareness of, and access to, best practices and innovations in remote learning and support for students, families, and educators.

See response on attached.

PART D: OTHER ASSURANCES AND CERTIFICATIONS

The [Chief State School Officer or his/her authorized representative] assures or certifies the following:

1. The SEA will comply with all applicable assurances in OMB Standard Forms 424B and D (Assurances for Non-Construction and Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood hazards; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders and regulations.
2. With respect to the certification regarding lobbying in Department Form 80-0013, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; the SEAe will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 C.F.R. Part 82, Appendix B); and the SEA will require the full certification, as set forth in 34 C.F.R. Part 82, Appendix A, in the award documents for all subawards at all tiers.
3. Any LEA receiving funding under this program will have on file with the SEA a set of assurances that meets the requirements of section 442 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232e).
4. To the extent applicable, an LEA will include in its local application a description of how the LEA will comply with the requirements of section 427 of GEPA (20 U.S.C. 1228a). The description must include information on the steps the LEA proposes to take to permit students, teachers, and other program beneficiaries to overcome barriers (including barriers based on gender, race, color, national origin, disability, and age) that impede equal access to, or participation in, the program.
5. The SEA will comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) requirements in Subpart D—Post Federal Award Requirements (2 CFR §§200.300-345) and Subpart E—Cost Principles (2 CFR §§200.400-475) to ensure that LEAs, including charter schools that are LEAs, are using ESSER funds for purposes that are reasonable, necessary, and allocable under the CARES Act.
6. The SEA and other entities will comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts 76, 77, 81, 82, 84, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and the Uniform Guidance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Chief State School Officer or Authorized Representative (Printed Name):

Signature: Jennifer A. Kammerud	Date: 05/15/2020
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Appendix A: Relevant Excerpts from Title VIII of Division B of the CARES Act, the Emergency Appropriations for Coronavirus Health Response and Agency Operations

DEPARTMENT OF EDUCATION EDUCATION STABILIZATION FUND

For 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: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

GENERAL PROVISIONS EDUCATION STABILIZATION FUND

SEC. 18001. (a) ALLOCATIONS.—From the amount made available under this heading in this Act to carry out the Education Stabilization Fund, the Secretary shall first allocate—

- (1) not more than 1/2 of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, in consultation with the Secretary of the Interior;
- (2) one-half of 1 percent for the Secretary of Interior, in consultation with the Secretary of Education, for programs operated or funded by the Bureau of Indian Education; and
- (3) 1 percent for grants to States with the highest coronavirus burden to support activities under this heading in this Act, for which the Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act and approve or deny applications not later than 30 days after receipt.

(b) RESERVATIONS.—After carrying out subsection (a), the Secretary shall reserve the remaining funds made available as follows:

- (1) 9.8 percent to carry out section 18002 of this title.
- (2) 43.9 percent to carry out section 18003 of this title.
- (3) 46.3 percent to carry out section 18004 of this title.

ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND

SEC. 18003. (a) GRANTS.—From funds reserved under section 18001(b)(2) of this title, the Secretary shall make elementary and secondary school emergency relief grants to each State educational agency with an approved application. The Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act and approve or deny applications not later than 30 days after receipt.

(b) ALLOCATIONS TO STATES.—The amount of each grant under subsection (a) shall be allocated by the Secretary to each State in the same proportion as each State received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

(c) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—Each State shall allocate not less than 90 percent of the grant funds awarded to the State under this section as subgrants to local educational agencies (including charter schools that are local educational agencies) in the State in proportion to the amount of funds such local educational agencies and charter schools that are local educational agencies received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

(d) USES OF FUNDS.—A local educational agency that receives funds under this title 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 others 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 and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.) and how to ensure 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 between students and their classroom instructors, including low-income students and students 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, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.
 - (12) 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.
- (e) **STATE FUNDING.**—With funds not otherwise allocated under subsection (c), a State may reserve not more than 1/2 of 1 percent for administrative costs and the remainder for emergency needs as determined by the state educational agency to address issues responding to coronavirus, which may be addressed through the use of grants or contracts.
- (f) **REALLOCATION.**—A State shall return to the Secretary any funds received under this section that the State does not award within 1 year of receiving such funds and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (b).

ASSISTANCE TO NON-PUBLIC SCHOOLS

SEC. 18005. (a) IN GENERAL.—A local educational agency receiving funds under sections 18002 or 18003 of this title shall provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools.

(b) PUBLIC CONTROL OF FUNDS.—The control of funds for the services and assistance provided to a non-public school under subsection (a), and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property and shall provide such services (or may contract for the provision of such services with a public or private entity).

CONTINUED PAYMENT TO EMPLOYEES

SEC. 18006. A local educational agency, State, institution of higher education, or other entity that receives funds under “Education Stabilization Fund”, shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.

DEFINITIONS

SEC. 18007. Except as otherwise provided in sections 18001– 18006 of this title, as used in such sections—

- (1) the terms “elementary education” and “secondary education” have the meaning given such terms under State law;
- (2) the term “institution of higher education” has the meaning given such term in title I of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.);
- (3) the term “Secretary” means the Secretary of Education;
- (4) the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico;
- (5) the term “cost of attendance” has the meaning given such term in section 472 of the Higher Education Act of 1965.
- (6) the term “Non-public school” means a non-public elementary and secondary school that (A) is accredited, licensed, or otherwise operates in accordance with State law; and (B) was in existence prior to the date of the qualifying emergency for which grants are awarded under this section;
- (7) the term “public school” means a public elementary or secondary school; and
- (8) any other term used that is defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) shall have the meaning given the term in such section.

MAINTENANCE OF EFFORT

SEC. 18008. (a) A State’s application for funds to carry out sections 18002 or 18003 of this title shall include assurances that the State will maintain support for elementary and secondary education, and State support for higher education (which shall include State funding to institutions of higher education and state need based financial aid, and shall not include support for capital projects or for research and development or tuition and fees paid by students) in fiscal years 2020 and 2021 at least at the levels of such support that is the average of such State’s support for elementary and secondary education and for higher education provided in the 3 fiscal years preceding the date of enactment of this Act.

(b) The secretary may waive the requirement in subsection (a) for the purpose of relieving fiscal burdens on States that have experienced a precipitous decline in financial resources.

REPORTING ON USE OF FUNDS SEC. 15011.

(a) In this section—

- (1) the terms “agency”, “appropriate congressional committees”, “Committee”, “covered funds”, and “Coronavirus response” have the meanings given those terms in section 15010;
- (2) the term “covered recipient” (A) means any entity that receives large covered funds; and (B) includes any State, the District of Columbia, and any territory or possession of the United States; and
- (3) the term “large covered funds” means covered funds that amount to more than \$150,000.

...

(b)(2) Not later than 10 days after the end of each calendar quarter, each covered recipient shall submit to the agency and the Committee a report that contains—

- (A) the total amount of large covered funds received from the agency;
- (B) the amount of large covered funds received that were expended or obligated for each project or activity;
- (C) a detailed list of all projects or activities for which large covered funds were expended or obligated, including—
 - (i) the name of the project or activity;
 - (ii) a description of the project or activity; and
 - (iii) the estimated number of jobs created or retained by the project or activity, where applicable;

(D) detailed information on any level of subcontracts or subgrants awarded by the covered recipient or its subcontractors or subgrantees, to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note) allowing aggregate reporting on awards below \$50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

(3) Not later than 30 days after the end of each calendar quarter, the Committee, in consultation with the agency that made large covered funds available to any covered recipient shall make the information in reports submitted under paragraph (2) publicly available by posting the information on the website established under section 15010(g).

(4)(A) Each agency, in coordination with the Committee and the Director of the Office of Management and Budget shall provide user-friendly means for covered recipients to meet requirements of this subsection.

(B) Federal agencies may use existing mechanisms to ensure that information under this subsection is reported accurately.

(c)(1) The Director of the Office of Management and Budget, in consultation with the Secretary of the Treasury, the Administrator of the Small Business Administration, and the Chairperson of the Council of Economic Advisors, shall submit to the appropriate congressional committees and publicly release on the website established under section 15010(g) quarterly reports that detail the impact of programs funded through large covered funds on employment, estimated economic growth, and other key economic indicators, including information about impacted industries.

(2)(A) The first report submitted under paragraph (1) shall be submitted not later than 45 days after the end of the first full quarter following the date of enactment of this Act.

(B) The last report required to be submitted under paragraph (1) shall apply to the quarter in which the Committee terminates.

APPENDIX B: STATE ALLOCATION TABLE**Elementary and Secondary School Emergency Relief Fund**

STATE	STATE TOTAL	Minimum LEA Distribution¹	Maximum SEA Reservation	Maximum for SEA Administration²
TOTAL	13,229,265,000	11,906,338,500	1,322,926,500	66,146,325
ALABAMA	216,947,540	195,252,786	21,694,754	1,084,738
ALASKA	38,407,914	34,567,123	3,840,791	192,040
ARIZONA	277,422,944	249,680,650	27,742,294	1,387,115
ARKANSAS	128,758,638	115,882,774	12,875,864	643,793
CALIFORNIA	1,647,306,127	1,482,575,514	164,730,613	8,236,531
COLORADO	120,993,782	108,894,404	12,099,378	604,969
CONNECTICUT	111,068,059	99,961,253	11,106,806	555,340
DELAWARE	43,492,753	39,143,478	4,349,275	217,464
DISTRICT OF COLUMBIA	42,006,354	37,805,719	4,200,635	210,032
FLORIDA	770,247,851	693,223,066	77,024,785	3,851,239
GEORGIA	457,169,852	411,452,867	45,716,985	2,285,849
HAWAII	43,385,229	39,046,706	4,338,523	216,926
IDAHO	47,854,695	43,069,226	4,785,470	239,273
ILLINOIS	569,467,218	512,520,496	56,946,722	2,847,336
INDIANA	214,472,770	193,025,493	21,447,277	1,072,364
IOWA	71,625,561	64,463,005	7,162,556	358,128
KANSAS	84,529,061	76,076,155	8,452,906	422,645
KENTUCKY	193,186,874	173,868,187	19,318,687	965,934
LOUISIANA	286,980,175	258,282,158	28,698,018	1,434,901
MAINE	43,793,319	39,413,987	4,379,332	218,967
MARYLAND	207,834,058	187,050,652	20,783,406	1,039,170
MASSACHUSETTS	214,894,317	193,404,885	21,489,432	1,074,472
MICHIGAN	389,796,984	350,817,286	38,979,698	1,948,985
MINNESOTA	140,137,253	126,123,528	14,013,725	700,686
MISSISSIPPI	169,883,002	152,894,702	16,988,300	849,415
MISSOURI	208,443,300	187,598,970	20,844,330	1,042,217
MONTANA	41,295,230	37,165,707	4,129,523	206,476
NEBRASKA	65,085,085	58,576,577	6,508,509	325,425
NEVADA	117,185,045	105,466,541	11,718,505	585,925
NEW HAMPSHIRE	37,641,372	33,877,235	3,764,137	188,207
NEW JERSEY	310,371,213	279,334,092	31,037,121	1,551,856
NEW MEXICO	108,574,786	97,717,307	10,857,479	542,874
NEW YORK	1,037,045,603	933,341,043	103,704,560	5,185,228
NORTH CAROLINA	396,311,607	356,680,446	39,631,161	1,981,558
NORTH DAKOTA	33,297,699	29,967,929	3,329,770	166,489
OHIO	489,205,200	440,284,680	48,920,520	2,446,026
OKLAHOMA	160,950,476	144,855,428	16,095,048	804,752

¹ The totals in the Minimum LEA Distribution, Maximum SEA Reservation, and Maximum for SEA Administration columns have been rounded to the nearest whole dollar.

² With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to $\frac{1}{2}$ of 1 percent of the total allocation for administrative costs.

STATE	STATE TOTAL	Minimum LEA Distribution ³	Maximum SEA Reservation	Maximum for SEA Administration ⁴
OREGON	121,099,019	108,989,117	12,109,902	605,495
PENNSYLVANIA	523,807,198	471,426,478	52,380,720	2,619,036
RHODE ISLAND	46,350,444	41,715,400	4,635,044	231,752
SOUTH CAROLINA	216,311,158	194,680,042	21,631,116	1,081,556
SOUTH DAKOTA	41,295,230	37,165,707	4,129,523	206,476
TENNESSEE	259,891,154	233,902,039	25,989,115	1,299,456
TEXAS	1,285,886,064	1,157,297,458	128,588,606	6,429,430
UTAH	67,821,787	61,039,608	6,782,179	339,109
VERMONT	31,148,360	28,033,524	3,114,836	155,742
VIRGINIA	238,599,192	214,739,273	23,859,919	1,192,996
WASHINGTON	216,892,447	195,203,202	21,689,245	1,084,462
WEST VIRGINIA	86,640,471	77,976,424	8,664,047	433,202
WISCONSIN	174,777,774	157,299,997	17,477,777	873,889
WYOMING	32,562,651	29,306,386	3,256,265	162,813
PUERTO RICO	349,113,105	314,201,795	34,911,311	1,745,566

³ The totals in the Minimum LEA Distribution, Maximum SEA Reservation, and Maximum for SEA Administration columns have been rounded to the nearest whole dollar.

⁴ With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to ½ of 1 percent of the total allocation for administrative costs.



Carolyn Stanford Taylor, State Superintendent

PART C: USES OF ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUNDS

Section 18003 of Division B of the CARES Act provides in relevant part that grants awarded under the Elementary and Secondary School Emergency Relief Fund be used to support the ability of local educational agencies (LEAs) to continue to provide educational services to their students. The Department requests the following:

1. Information that the SEA may request LEAs to include in their subgrant applications to the SEA. For example, an SEA might propose to include the following in developing its subgrant application:

- **How the LEA will determine its most important educational needs as a result of COVID19.**
- **The LEA's proposed timeline for providing services and assistance to students and staff in both public and non-public schools.**
- **The extent to which the LEA intends to use ESSER funds to promote remote learning.**
- **How the LEA intends to assess and address student learning gaps resulting from the disruption in educational services.**

The above considerations are in addition to the application information requirements from sections 442 and 427 of the General Education Provisions Act (GEPA) (20 U.S.C. § 1232e and §1228a).

The Wisconsin Department of Public Instruction uses a department-developed federal grants management system, WISEgrants, which aligns with the 2 CFR 200 Federal Uniform Grant Guidance, the Education Department's General Administrative Regulations, and Wisconsin's Uniform Financial Accounting Requirements. WISEgrants is developed and managed by dedicated WDPI staff, so the ability to distribute and monitor ESSER funds will be streamlined and executed with expediency.

Currently, Wisconsin LEAs have a signed paper copy of GEPA assurances on record with WDPI. This GEPA assurance was last collected from existing LEAs in SFY 2009-2010. As part of the WISEgrants ESSER web-based application, WDPI will have electronic versions of the GEPA assurances digitally signed by district administrators or independent charter school administrators to ensure that subrecipients have easy access to this document in the future (from paper to web-based accessibility).

WDPI will provide technical assistance to LEAs regarding the many varied purposes allowed under the law. WDPI will also provide technical assistance and information on ESSERF set aside funds to address issues related to supporting remote learning for all students, including historically underserved populations. LEAs will be made fully aware of the reporting requirements that will be part of the ESSERF application process.

The following will be the ESSERF application steps for eligible Wisconsin subrecipients:

1. Digitally sign assurances that the LEA will comply with the provisions of all applicable statutes and regulations, including an assurance about maintaining staff to the extent practicable.
2. Digitally sign a current copy of the assurances that meet the requirements of section 442 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232e).
3. Upload an affirmation of consultation form from each private school located within the school district's boundaries confirming or denying their participation in CARES Act services.
4. Provide a description of the steps the LEA proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries who may experience any of these barriers: gender, race, national origin, color, disability, and age as required under GEPA Section 427.
5. Develop separate budgets, under a single grant, for regular education, special education and private school equitable services. The WISEgrants web-based budget software has the capability of:
 - o Typing each detailed budget item to an allowable activity under Section 18003(d); including:
 - I. Preparedness and Response to COVID-19
 - II. Outreach & Service Delivery to Special Populations
 - III. Addressing Long-term School Closure
 - IV. Educational Technology
 - V. Mental Health Services and Supports
 - VI. Addressing Afterschool and Summer Learning
 - o Typing detailed budget items to specific private schools served by the LEA.
 - o Collecting staff FTE to determine the LEA's need to use federal funds to continue employing existing staff.
 - o Tracking carryover amounts for each budget type (regular education, special education and private school services).
6. Reviewing ESSER applications will be a WDPI priority in order to ensure subrecipients have expedited access to funds. The staff completing the review will also provide LEAs with technical assistance on allowable costs.
7. LEAs will be able to claim funds based on DPI-approved applications. Funds will be claimed by budget type (general education, special education, private school services) and by allowable ESSER activity.

2. The extent to which the SEA intends to use any portion of its SEA reserve (up to 10 percent of its ESSER Fund award) to support:

- **technological capacity and access – including hardware and software, connectivity, and instructional expertise – to support remote learning. If so, please describe the strategies the SEA intends to use to serve disadvantaged populations listed in Sec. 18003(d)(4) of the CARES Act; and**
- **remote learning by developing new informational and academic resources and expanding awareness of, and access to, best practices and innovations in remote learning and support for students, families, and educators.**

WDPI plans to use its SEA reserve monies to assist schools statewide in response to the COVID-19 pandemic. This plan prioritizes the needs of all students, especially students most in need who are described in Section 18003(d)(4) of the CARES Act. WDPI was required under state statutes to get approval for its plan to use CARES Act funds from the state legislature's Joint Committee on Finance. The provisions below were part of the plan submitted related to this application questions. WDPI received approval of our plan on May 13, 2020.

Building capacity for, and expanding access to, high quality online instructional resources.

WDPI will collaborate with three strategic state partners to support online, blended, and remote instructional delivery systems. Examples of existing partnerships the department could build upon include:

- The Wisconsin Digital Learning Collaborative (WDLC). This is a partnership between WDPI, the Wisconsin Virtual School out of Cooperative Education Service Agency (CESA) 9, and the eSchools Network, and is Wisconsin's state-designated web academy. The WDLC partners currently support over 300 schools with online and blended courses. They are well-positioned to increase both leadership capacity for planning around online instruction, and access to online and blended learning courses for students in grades 6-12.
- The CESA Instructional Technology Network. The Network will help implement local training and leadership planning assistance.
- The Institute for Personalized Learning (IPL). A division of CESA 1, the Institute assists districts in creating and delivering learner-centered, instructional design principles, and technology-rich learning experiences. The Institute has a wealth of resources to assist schools in creating blended and digitally rich learning experiences.

The department plans to focus on providing additional capacity to facilitate access to online and blended courses and support for schools to build out their own high-quality online or blended instruction. An additional focus will be placed on areas of need as expressed by stakeholders. For example, addressing literacy and math needs for any loss of learning or credit recovery due to the COVID-19 pandemic.

Providing training for educators in the provision of online and remote instruction.

DPI will work with educator preparation programs to prepare educators for delivering instruction in online and remote settings. Educator preparation programs almost exclusively make use of face-to-face, pre-clinical and clinical placements for prospective teachers. K-12 education in Wisconsin has been primarily delivered in physical classrooms with teachers present. Thus, teachers are generally not prepared for teaching in an online or a blended environment as part of their formal training.

Providing extensive training to educators in online and remote teaching techniques this summer and next fall would help schools prepare to address statewide or localized school closures during the 2020-21 school year, as well as how to work with students who are not able to attend school for health reasons.

Additionally, educator preparation programs for School Counselors, School Social Workers, and School Psychologists typically do not include training on how to provide teleservices to students. LEAs need recommendations for best practices in implementing teleservices for K-12 students, as well as training in how to use available technology.

EXHIBIT 12

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9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12

13
 14 **STATE OF MICHIGAN, STATE OF
 CALIFORNIA, et al.,**

15 Plaintiffs,

16 v.

17
 18 **ELISABETH D. DEVOS, in her official
 capacity as the United States Secretary of
 19 Education, and UNITED STATES
 DEPARTMENT OF EDUCATION,**

20 Defendants.
 21
 22

Civil Case No. 3:20-cv-04478-SK

**DECLARATION OF DR. JANICE K.
 JACKSON**

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 27
 28

1 **DECLARATION OF DR. JANICE K. JACKSON**

2 I, Dr. Janice K. Jackson, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true
3 and correct:

4 1. I am the Chief Executive Officer of the Board of Education of the City of Chicago
5 (referred to herein as “CBOE”) located in Chicago, Illinois. My educational background includes a
6 Master of Education degree with a field of study in leadership and administration, as well as a
7 Doctor of Education degree with a field of study in urban education leadership, both from the
8 University of Illinois at Chicago. Prior to becoming CEO, I was the District’s Chief Education
9 Officer. I also held positions within CBOE as a network chief, principal, and teacher.

10 2. The CBOE is the local educational agency (“LEA”) for the City of Chicago.

11 3. I submit this Declaration in support of the CBOE’s litigation against Elisabeth D.
12 DeVos, in her official capacity as Secretary of Education, and the United States Department of
13 Education (the “Department”) regarding the recently issued Rule entitled *Providing Equitable*
14 *Services to Students and Teachers in Non-public Schools*, 85 Fed. Reg. 39,479 (July 1, 2020) (the
15 “Equitable Services Rule” or the “Rule”). I have compiled the information in the statements set forth
16 below through personal knowledge and through CBOE personnel who have assisted me in gathering
17 this information from our institution. I have also familiarized myself with the Rule in order to
18 understand its immediate impact on CBOE and public schools in Chicago.

19 **CBOE’S EDUCATION PROGRAMS**

20 4. The Illinois School Code created the CBOE, also known as City of Chicago School
21 Dist. #299 or the Chicago Public Schools (“CPS”), and charged it with responsibility for public
22 schools within the territorial limits of the City of Chicago. The Board currently consists of seven
23 members who, pursuant to the School Code, 105 ILCS 5/34-3, are appointed by the Mayor of the
24 City of Chicago. The Board’s CEO is also appointed by the Mayor.

25 5. CBOE is the third largest school district in the United States, with over 355,000
26 students at over 600 different schools. Most schools in the district, whether prekindergarten-8th
27 grade, elementary, middle, or secondary, have attendance boundaries restricting student enrollment
28 to within a given area. CBOE offers a broad array of alternative educational programs for its

1 students, including magnet schools, cluster programs, public military academies, career academies,
2 and charter schools.

3 6. Of the approximately 355,000 students served by the Board, about 76% qualify as
4 economically disadvantaged, almost 19% are English Learners, 3.5% are homeless, and about 15%
5 have IEPs. Over 46% of the district's student body is Latino, 36% is African American, 11% is
6 White, 4% is Asian, and 1.3% is mixed race.

7 7. To meet its objectives, the CBOE relies upon funds from local, state, and federal
8 sources. The CBOE's annual budget for the 2020 school year is \$6.9 billion. The CBOE derives
9 about \$3.8 billion of its funding through local sources, while the State of Illinois contributes almost
10 \$2.3 billion, and the federal government provides about \$767 million.

11 8. CPS estimates that it will receive about \$245 million in Title I funding for the 2020
12 school year. Pursuant to Title I, the CBOE designates schools eligible for Title I funding based on
13 poverty percentages. CBOE uses the same methodology for the entire district. Every school with a
14 poverty index of 40 or above receives Title I funding, with a few other schools qualifying for Title I
15 status based on waivers. Overall, about 89% of CPS schools qualify for Title I discretionary
16 funding.

17 9. CBOE estimates that it will receive approximately \$206 million under the CARES
18 Act.

19 10. In the 2019 school year, there were approximately 213 non-public schools in the
20 territorial limits of the City of Chicago. Out of those schools, about 129 had Title I programs. Non-
21 public schools are affiliated with one of five different organizations, referred to as their affiliate
22 representatives: Catholic Archdiocese of Chicago, Chicagoland Lutheran Education Foundation
23 Association, Independent Schools, Associated Talmud Torahs (ATT), and the Christian Schools.

24 **EFFECTS OF THE COVID-19 PANDEMIC ON EDUCATION IN CHICAGO**

25 11. The COVID-19 pandemic has drastically impacted K-12 education in Chicago.

26 12. In response to the pandemic, the CBOE curtailed in-person instruction on March 17,
27 2020. Given CBOE's student population, CBOE had to take additional steps and incur additional
28 expenses to ensure all students had access to the technology necessary to participate in remote

1 learning. CBOE also had to devote substantial resources to converting its free breakfast and lunch
2 program to a takeout/delivery model, as 77.9% of CBOE students qualify for free or reduced meals
3 at school.

4 13. Early on in the pandemic, CBOE recognized that (1) remote learning was the only
5 means to safely continue education during the pandemic, and (2) the “digital divide” prevented many
6 CPS students from partaking in remote learning. CBOE estimates indicated that in excess of
7 100,000 students did not have digital learning tools necessary to participate in remote learning. In
8 response, CBOE embarked on an unprecedented and ambitious program to distribute over 100,000
9 devices to needy students. The Board adopted a plan to ensure that all homeless students received
10 such a device as well as a 4G LTE internet hotspot.

11 14. Since the advent of the pandemic, CBOE also recognized the on-going importance of
12 nutrition to student learning. Hence, CBOE has offered “Grab and Go” meals at 270 locations
13 within the City of Chicago. For many low-income residents of the City, these meals are an essential
14 service. To date, the Board has served over 17.5 million meals.

15 15. CBOE also incurred considerable expenses in purchasing personal protective
16 equipment and conducting rigorous cleansing on all of its facilities, so as to decrease the spread of
17 COVID-19.

18 16. CBOE also incurred expenses for premium pay awarded to the essential workers who
19 provided services to the most at-risk populations during the pandemic.

20 17. All told, CBOE expended over \$76 million to date on expenses directly related to the
21 pandemic.

22 18. CBOE expects to incur additional substantial expenses associated with reopening its
23 schools in the Fall for the 2020 school year. In particular, CBOE staff have undertaken the process
24 of designing systems and protocols to be implemented at every school designed to diminish the
25 chances of COVID-19 transmissions. The Illinois State Board of Education recently published
26 guidelines to assist Illinois school districts in reopening, and those guidelines include temperature
27 checks, social distancing to the extent possible, masks, and staff training.

28

1 **CARES ACT FUNDS RECEIVED BY CHICAGO FOR K-12 EDUCATION**

2 A. Elementary and Secondary School Emergency Relief (ESSER) Funds

3 19. In order to receive the ESSER funds designated for Chicago and as required by the
4 Department (and the Illinois State Board of Education (“ISBE”), Chicago executed a Certification
5 and Agreement form and submitted it to ISBE on June 29, 2020.¹ A true and correct copy of the
6 Program Assurances completed by Chicago and submitted to the ISBE (SEA), as part of the ESSER
7 Grant application, is attached hereto as Exhibit A. In conjunction with the receipt of ESSER funds
8 from the Illinois State Board of Education, the CBOE certified as follows:

9 By checking this box, the applicant hereby certifies that he or she has
10 read, understood and will comply with the assurances listed below, as
applicable to the program for which funding is requested.

11 1. Entities that receive Elementary and Secondary Emergency Relief
12 Funds must provide nonpublic equitable services consistent with Title I,
Part A requirements.

13 2. Entities that receive Elementary and Secondary Emergency Relief
14 Funds must retain control of CARES Act funds and items purchased with
such funds for private school.

15 3. Entities that receive Elementary and Secondary Emergency Relief
16 Funds can provide equitable services directly or contract with a public or
private entity to do so.

17 4. Entities that receive Elementary and Secondary Emergency Relief
18 Funds that choose to use CARES funds for population(s) normally served
19 in one or more of the following federal programs will comply with
requirements of those programs: ESSA, IDEA, Perkins, McKinney
Vento, and/or Adult Education and Family Literacy.

20 5. The applicant will cooperate in carrying out any evaluation of the
21 program conducted by or for the State Educational Agency, the Secretary,
or other Federal officials.

22 6. The applicant will use such fiscal control and fund accounting
23 procedures to ensure proper disbursement of, and accounting for, federal
funds paid to the applicant under each such program.

24 20. At the time that Chicago executed the Certification and Agreement form, the
25 Department had not yet published the Rule. Moreover, it was the understanding within CBOE that

26 ¹ Upon information and belief, the State of Illinois, as the SEA, executed a Certification
27 with the U.S. Department of Education. U.S. Dep’t of Educ., Certification and Agreement for
28 Funding under the Education Stabilization Fund Program Elementary and Secondary School
Emergency Relief Fund (ESSER Fund), CFDA Number 84.425D, April 24, 2020, *available at*
<https://oese.ed.gov/files/2020/04/ESSERF-Certification-and-Agreement-2.pdf>.

1 amendments to the Heroes Act could impact the Department's proposed rule. The CBOE was not
2 aware that the Department would subsequently issue rules to change the required proportional share
3 calculation for equitable services required under the CARES Act and the private-school students
4 eligible to receive equitable services under the CARES Act.

5 21. Using the proportional share calculation set forth in Section 1117 of the Elementary
6 and Secondary Education Act (ESEA), the CBOE, as the LEA for Chicago, would reserve \$18.5
7 million in ESSER funds to provide equitable services to private school students.

8 22. However, using the proportional share calculation set forth in the Department's
9 Guidance Document and in Option #2 in the Rule, CBOE would reserve \$28.67 million in ESSER
10 funds to provide equitable services to private school students. Thus, under the Department's
11 preferred proportional share calculation, private school students in Chicago would have access to an
12 additional \$10.17 million, and public schools would lose this same amount of funds.

13 B. Governor's Emergency Education Relief (GEER) Funds

14 23. Chicago has not yet received any GEER Fund revenues for fiscal year 2020.

15 24. The Governor's Office is responsible for distributing the GEER funds, and has not
16 yet advised CBOE about the availability, amount, or proper allocation of those funds.

17 **THE DEPARTMENT'S RULE SIGNIFICANTLY HARMS CHICAGO**

18 25. In considering the harms introduced by the Rule, it bears emphasis that the Rule was
19 released mere weeks before the beginning of the school year, magnifying the harms described below
20 because of the haste demanded to adapt to the new, unexpected provisions required by the Rule.

21 26. For every dollar that is diverted from public schools as a result of the Department's
22 Guidance Document and Rule, the CBOE will be required to backfill these dollars in its budget. At a
23 time when Chicago faces a substantial deficit in its education budget as a result of the pandemic, the
24 CBOE will be required to find \$10 million to fill the budgets of public schools that the CARES Act
25 funds were intended to fill.

26 27. Even if Chicago, as the LEA, followed Option #1 (Title I-schools only Option) in
27 proportioning the CARES Act funds for equitable services, about sixty non-Title I schools in
28 Chicago that were expecting to receive CARES Act funds cannot be funded under the Rule. In

1 addition, Chicago will be required to provide significant funding to Title I schools that risk
2 supplanting violations under Title I if they use the CARES Act funds to supplant their budgets.

3 28. These shortfalls in funding for public schools in Chicago will be experienced
4 immediately. As Chicago remains in the throes of the pandemic, public schools remain desperate for
5 funding as they prepare for next school year. The CBOE is in the process of devising a plan for the
6 2020 school year that will ensure the safety of staff and students, while also facilitating learning.
7 That plan will include, amongst other things, personal protective equipment, social distancing, and
8 some continued remote learning.

9 29. Beyond the funding shortfalls that Chicago will sustain as a result of the loss of the
10 intended CARES Act funds, the Department's Guidance Document and Rule have imposed
11 significant administrative burdens on Chicago directly at a time those burdens can least be afforded.

12 30. The CBOE Budget Director is charged with responsibility for assisting school and
13 department leaders to maximize and align funds to their programmatic priorities supporting staff,
14 students, and school communities. The uncertainty in funding levels complicates this mission. In
15 addition, the staff at the Office of Budgets and Grant Management has dedicated time and resources
16 to evaluating the Rule and Guidance Document from the U.S. Department of Education, so as to
17 ensure proper planning and compliance.

18 31. Staff from the Office of Budgets and Grant Management meet with the affiliated
19 private schools on a regular basis. The Rule issued by the U.S. Department of Education has created
20 friction in the CBOE's relationship with the non-Title I private schools in that the representatives of
21 those affiliations contend that the CBOE did not engage in timely and meaningful consultation
22 before the LEA made any decision that affected the equitable participation of eligible private school
23 children in the CARES Emergency Relief Grant program. These certifications of non-compliance
24 reference the U.S. Department of Education's revised equitable share calculation formula.

25 32. The Department's Guidance Document and Rule place Chicago in legal jeopardy.
26 Chicago was required to certify in its ESSER Fund application that the CBOE will "ensure proper
27 disbursement of, and accounting for, federal funds" (Exh. A). Because the Guidance
28 Document and the Rule require LEAs to calculate the proportional share for equitable services and

1 determine eligibility of private-school students for equitable services contrary to the proportional
2 share calculation and eligibility requirements in the CARES Act, Chicago cannot satisfy both the
3 Rule and the CARES Act. Accordingly, the Department's Rule forces Chicago to violate Section
4 18005 of the CARES Act. As the CBOE and other Title I schools in Chicago need to use the
5 ESSER funds as soon as possible to assist with the numerous pandemic-related challenges, this legal
6 jeopardy will impact Chicago immediately.

7 **THE RULE SIGNIFICANTLY HARMS CHICAGO'S K-12 STUDENTS**

8 33. The Department's interpretation of the equitable service requirements has injected
9 delay in the CBOE's distribution of much needed coronavirus relief funds to schools.

10 34. The Department's Guidance and Rule will result in less funding being distributed to
11 public K-12 schools in Chicago.

12 35. If CBOE, as the LEA in Chicago, calculates the proportional share of CARES Act
13 funds for private school students under Option #1 of the Rule, 66 non-Title I public schools in
14 Chicago will receive no funds under the CARES Act. In addition, there are approximately 434 Title
15 I public schools in Chicago that would risk a supplanting violation under Title I if CBOE uses
16 CARES Act funds to respond to and prepare for the pandemic as it cannot supplant State and local
17 funding sources under the Rule.

18 36. If LEAs in Chicago calculate the proportional share of CARES Act funds for private
19 school students under Option #2 in the Rule, approximately \$10 million will be diverted from public
20 schools to 84 non-Title I eligible private schools. This diversion of resources represents about 5% of
21 Chicago's total CARES Act funding for education.

22 37. Regardless of how CBOE proportions the CARES Act funds in Chicago, the Rule
23 requires that all private school students receive equitable services. In Chicago, during the 2019-2020
24 school year, approximately 17,367 private school students were eligible to receive equitable services
25 under Title I-A as they were at-risk students within a LEA receiving Title I-A funds. As the Rule
26 requires all private school students receiving equitable services, the approximately 17,367 private
27 school students who received equitable services under Title I-A last year will receive less services as
28

1 the CARES Act funds proportioned for equitable services will be spread amongst all private school
2 students.

3
4 I declare under penalty of perjury under the laws of the United States and State of California that
5 the foregoing is true and correct.

6
7 Executed on this 15th day of July, 2020

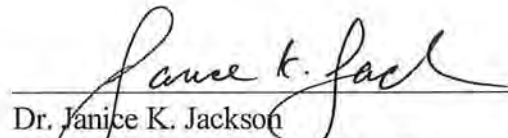
8
9 
10 Dr. Janice K. Jackson
11 CEO, Chicago Board of Education
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EXHIBIT A

7/14/2020

Grant Application

CBOE Exhibit A
Decl. of Dr. Janice K. Jackson

Close Printer Friendly Page

Applicant: CITY OF CHICAGO SD 299

County: Cook

Elementary and Secondary School Emergency Relief Grant

Application: 2019-2020 Elementary and Secondary School Emergency Relief Grant - ER
Cycle: Original Application

[Click to Return to Application Select](#)

Project Number: 20-4998-ER-15-016-2990-25-
Emergency Relief

Program Assurances	State Assurances	Debarment	Lobbying	GEPA 442	GATA Assurances	Assurances
------------------------------------	----------------------------------	---------------------------	--------------------------	--------------------------	---------------------------------	----------------------------

Specific Terms of the Grant

[Instructions](#)

- By checking this box, the applicant hereby certifies that he or she has read, understood and will comply with the assurances listed below, as applicable to the program for which funding is requested.
1. Entities that receive Elementary and Secondary Emergency Relief Funds must provide nonpublic equitable services consistent with Title I, Part A requirements.
 2. Entities that receive Elementary and Secondary Emergency Relief Funds must retain control of CARES Act funds and items purchased with such funds for private school.
 3. Entities that receive Elementary and Secondary Emergency Relief Funds can provide equitable services directly or contract with a public or private entity to do so.
 4. Entities that receive Elementary and Secondary Emergency Relief Funds that choose to use CARES funds for population(s) normally served in one or more of the following federal programs will comply with requirements of those programs: ESSA, IDEA, Perkins, McKinney Vento, and/or Adult Education and Family Literacy.
 5. The applicant will cooperate in carrying out any evaluation of the program conducted by or for the State Educational Agency, the Secretary, or other Federal officials.
 6. The applicant will use such fiscal control and fund accounting procedures to ensure proper disbursement of, and accounting for, federal funds paid to the applicant under each such program.
 7. The applicant will:
 - A. submit such reports to the Illinois State Board of Education and the Secretary as the State Educational Agency and Secretary may require, including quarterly expenditure and performance reports.
 - B. maintain such records, provide such information, and afford such access to the records as the Illinois State Board of Education or the Secretary may reasonably require to carry out the duties of the State Educational Agency or the Secretary.
 8. Any summer school or extended year activities will take place in a safe and easily accessible facility. The grantee will ensure that any program to be located in a facility other than an elementary or secondary school is at least as accessible to the students to be served as if the program were located in an elementary or secondary school.
 9. The LEA addresses both continuing to provide educational services, such as remote learning, while schools and campuses are closed, and developing and implementing plans for the return to normal operations.
 10. The LEA and any other entity that receives ESSER funds will, to the greatest extent practicable, continue to compensate its employees and contractors during the period of any disruptions or closures related to COVID-19 in compliance with Section 18006 of Division B of the CARES Act. In addition, each entity that accepts funds will continue to pay employees and contractors to the greatest extent practicable based on the unique financial circumstances of the entity. CARES Act funds generally will not be used for bonuses, merit pay, or similar expenditures, unless related to disruptions or closures resulting from COVID-19.
 11. The uses of funds by the LEAs or other entities demonstrates compliance with Section 18003(d), such as any use of funds addresses the digital divide, including securing access to home-based connectivity and remote-use devices, related issues in supporting remote learning for all students, including disadvantaged populations.
 12. Every recipient and subrecipient of ESSER funds will cooperate with any examination of records with respect to such funds by making records available for inspection, production, and examination, and authorized individuals available for interview and examination, upon the request of (i) the Department

7/14/2020

Grant Application

and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.

13. The SEA will ensure that LEAs use ESSER funds for activities allowable under section 18003(d) of Division B of the CARES Act. The Department generally does not consider the following to be an allowable use of ESSER funds, under any part of 18003: 1) subsidizing or offsetting executive salaries and benefits of individuals who are not employees of the SEA or LEAs or 2) expenditures related to state or local teacher or faculty unions or associations.

EXHIBIT 13

1 XAVIER BECERRA
 Attorney General of California
 2 MICHAEL NEWMAN
 Senior Assistant Attorney General
 3 SARAH E. BELTON
 Supervising Deputy Attorney General
 4 REBEKAH A. FRETZ
 JAMES F. ZAHRADKA II
 5 GARRETT LINDSEY (SBN 293456)
 Deputy Attorneys General
 6 300 South Spring Street, Suite 1702
 Los Angeles, CA 90013
 7 Telephone: (213) 269-6402
 E-mail: Garrett.Lindsey@doj.ca.gov
 8 *Attorneys for Plaintiff State of California*

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12

13
 14 **STATE OF MICHIGAN, STATE OF
 CALIFORNIA, et al.,**

15 Plaintiffs,

16 v.

17
 18 **ELISABETH D. DEVOS, in her official
 capacity as the United States Secretary of
 19 Education, and UNITED STATES
 DEPARTMENT OF EDUCATION,**

20 Defendants.
 21
 22

Civil Case No. 3:20-cv-04478-SK

DECLARATION OF ERIC S. GORDON

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DECLARATION OF ERIC S. GORDON

I, Eric S. Gordon, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

1. I am the Chief Executive Officer of the Cleveland Municipal School District (CMSD) located in Cleveland, Ohio. CMSD is the school district operated and maintained by the Cleveland Municipal School District Board of Education. My educational background includes a Bachelor’s of Science in Secondary Mathematics and a Master’s Degree in Education Administration and Supervision, both from Bowling Green State University. I have been employed as CEO since June 2011. In my role as CEO, I have led development of the Cleveland Plan, a collaborative process that has transformed public education in the City of Cleveland. I have also been active nationally in the implementation of the Common Core State Standards curriculum and in the implementation of Social and Emotional Learning Standards for children.

2. As CEO, I am responsible for overseeing all aspects of District operations, including curriculum, employment, facilities and budgeting.

3. I submit this Declaration in support of CMSD’s litigation against Elisabeth D. DeVos, in her official capacity as Secretary of Education, and the United States Department of Education (the “Department”) regarding the recently issued Rule entitled *Providing Equitable Services to Students and Teachers in Non-public Schools*, 85 Fed. Reg. 39,479 (July 1, 2020) (the “Equitable Services Rule” or the “Rule”). I have compiled the information in the statements set forth below through personal knowledge, through CMSD personnel who have assisted me in gathering this information from our institution, and on the basis of documents that have been provided to and/or reviewed by me. I have also familiarized myself with the Rule in order to understand its immediate impact on CMSD and public schools in Ohio.

Background about CMSD’s Work in Education and State’s Education Programs

4. CMSD is the second largest school district in Ohio. For many years, CMSD has faced a variety of challenges relating to its operations, finances, academics, and enrollment,

1 among other things. While other Ohio school districts may face similar challenges, the
2 persistence of the problems at CMSD is exceptional and unique. Accordingly, over the past 15
3 years, CMSD has engaged in a comprehensive effort to confront these and other systemic
4 challenges and improve the quality of educational opportunities available to all of our students.
5 In 2006 and 2007, the District adopted and began implementing a Portfolio School Strategy for
6 testing new models of education in a small number of schools to demonstrate that high quality
7 schools in Cleveland could attract and retain students. Among other things, these test schools
8 were provided increased autonomy in exchange for local accountability. In 2010, the District
9 adopted and began implementing its Academic Transformation Plan, a comprehensive approach
10 to central office redesign and school-by-school improvement. Increased autonomy and
11 accountability for individual schools was likewise a focus of the Academic Transformation Plan.

12 5. The barriers to transformative change remained substantial, and could not be
13 surmounted by the District acting on its own. Many were a function of statutory or decisional
14 law; others collective bargaining agreements; and others longstanding practices and customs. I
15 therefore began working with others on the development of a statutory plan to update, modernize,
16 streamline and create flexibility within the statutory law applicable to CMSD. Among other
17 things, our work focused on identifying outdated, inefficient and burdensome practices that
18 continued to stand as a barrier to change. We then brought in and worked with the various
19 stakeholders to create, and achieve consensus with respect to, more efficient and up-to date
20 alternatives specifically tailored to meet CMSD's unique needs. These efforts ultimately led to
21 the drafting and enactment of The Cleveland Plan for Transforming Schools (the "Cleveland
22 Plan").

23 6. In 2013, the District was faced with the prospect of being taken over by the State
24 because of low student achievement. Following the passage of the Cleveland Plan, CMSD
25 requested a waiver of the establishment of an academic distress commission, which would have
26 restructured the District and put all District operations under State control. The Ohio Department
27 of Education ("ODE") granted CMSD's request for a waiver based on the Cleveland Plan, stating
28 that because the Cleveland Plan was a coordinated effort to improve student achievement, the

1 appointment of an academic distress commission would be duplicative and could interfere with
2 the Cleveland Plan.

3 7. Ohio school districts are funded primarily through local property taxes and state
4 support. In Fiscal Year 2020, CMSD budgeted for \$425.7 million in local support, \$541.2 million in
5 state support, and \$113.2 million in federal support. CMSD did not realize these full revenues due to
6 the COVID-19 pandemic.

7 8. CMSD comprises 103 public schools and serves approximately 37,700 K-12
8 students. All of CMSD's students are considered economically disadvantaged.

9 9. All of CMSD's 103 schools receive Title I funding.

10 10. In addition, 35 private schools within Cleveland's city limits qualify for Title I
11 equitable services funds, and 31 participate. Fifty-one private schools outside the city's limits
12 qualify through CMSD, and 23 of those participate.

13 **Effects of the COVID-19 Pandemic on Education in Ohio**

14 11. The COVID-19 pandemic has drastically impacted K-12 education in Ohio.

15 12. The largest category of the CMSD's funding is Foundation Funding, which CMSD
16 receives from the State of Ohio. Faced with deep budgetary cuts because of the economic impact
17 of the COVID-19 pandemic, Ohio reduced CMSD's Foundation Funding in Fiscal Year 2020 by
18 more than \$5.6 million. CMSD will experience similar cuts in Fiscal Year 2021 and also
19 anticipates a drop in local property tax collections.

20 13. COVID-19 also had substantial non-economic impacts on school districts in Ohio.
21 The Governor ordered all schools to close effective March 17, and most districts transitioned to
22 online learning. Given CMSD's student population, CMSD had to take additional steps and incur
23 additional expenses to ensure all students had access to the technology necessary to participate in
24 remote learning. CMSD also had to devote substantial resources to converting its free breakfast
25 and lunch program to a takeout/delivery model, as 100 percent of CMSD students qualify for free
26 or reduced meals at school.

27 **CARES Act Funds Received by CMSD for K-12 Education**

28 **A. Elementary and Secondary School Emergency Relief (ESSER) Funds**

1 14. In order to receive the ESSER funds designated for Ohio and as required by the
2 Department, ODE executed a Certification and Agreement form and submitted it to the
3 Department on May 5, 2020.¹ A true and correct copy of the Certification and Agreement
4 completed by ODE and submitted to the Department is attached hereto as Exhibit A.

5 15. Within this Certification and Agreement, ODE agreed to the following terms:

6 I acknowledge and agree that the failure to comply with all Assurances and
7 Certifications in this Agreement, all relevant provisions and requirements of
8 the CARES Act, Pub. L. No. 116-136 (March 27, 2020), or any other
9 applicable law or regulation may result in liability under the False Claims Act,
10 31 U.S.C. § 3729, et seq.; OMB Guidelines to Agencies on Governmentwide
Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted
and amended as regulations of the Department in 2 CFR part 3485; and 18
USC § 1001, as appropriate.

11 ...

12 4. LEAs receiving ESSER funds will provide equitable services to students
13 and teachers in non-public schools as required under 18005 of Division B
of the CARES Act.

14 ...

15 5. LEA receiving ESSER funds will provide equitable services to students
16 and teachers in non-public schools located within the LEA in the same
17 manner as provided under section 1117 of the ESEA, as determined
through timely and meaningful consultation with representatives of non-
public schools.

18 [Ex. A at pp. 1-2.]

19 16. At the time that ODE executed the Certification and Agreement form, the
20 Department had not yet published its Guidance Document or the Rule. Accordingly, ODE and
21 CMSD were unaware that the Department would subsequently issue rules to change the required
22 proportional share calculation for equitable services required under the CARES Act and the
23 private school students eligible to receive equitable services under the CARES Act.

24 17. ODE distributed \$31.2 million from the ESSER Fund received from the
25 Department to CMSD on May 26, 2020.

26 _____
27 ¹ U.S. Dep't of Educ., Certification and Agreement for Funding under the Education
28 Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund (ESSER
Fund), CFDA Number 84.425D, April 24, 2020, *available at*
<https://oese.ed.gov/files/2020/04/ESSERF-Certification-and-Agreement-2.pdf>.

1 18. Using the proportional share calculation set forth in Section 1117 of the
2 Elementary and Secondary Education Act (ESEA), CMSD would reserve \$26.9 million in
3 ESSER funds to provide equitable services to private school students.

4 19. However, using the proportional share calculation set forth in the Department's
5 Guidance Document and in Option #2 in the Rule, CMSD would reserve \$26.1 million in ESSER
6 funds to provide equitable services to private school students. Thus, under the Department's
7 preferred proportional share calculation, private school students in Cleveland would have access
8 to an additional \$822,045, and public schools would lose this same amount of funds.

9 **B. Governor's Emergency Education Relief (GEER) Funds**

10 20. Ohio received \$104.9 million from the GEER Fund.

11 21. The Ohio Governor's Office is responsible for distributing the GEER funds,
12 working in collaboration with ODE.

13 22. CMSD has not yet received any GEER funding, nor is it clear if will receive GEER
14 funding.

15 **The Department's Rule Significantly Harms CMSD**

16 23. CMSD is unlikely to be able to backfill any of the dollars diverted from public
17 schools as a result of the Department's Guidance Document and Rule. At a time when Ohio faces
18 a \$300 million hole in its education budget as a result of the pandemic, CMSD will see further
19 cuts rather than relief that the CARES Act funds were supposed to bring.

20 24. As Ohio remains in the throes of the pandemic, public schools remain desperate
21 for funding as they continue to transition to remote learning and preparing for next school year.
22 Policies and procedures must be developed for remote learning; teachers must be trained to use
23 remote learning techniques; school buildings must be thoroughly sanitized; and students and
24 families must be educated on their learning options. The costs of reacting to this pandemic are
25 drastic for public schools and without the funds the CARES Act was intended to provide, CMSD
26 is put at a disadvantage in adjusting to the new realities presented by the pandemic.

27 25. The State of Ohio mandated that each district seek out the economically
28 disadvantaged numbers from private schools outside the city limits, along with all non-taxed/non-

1 chartered schools within the city limits and document those numbers in order to calculate
2 equitable services allocations. CMSD then had to calculate and create separate equitable services
3 scenarios. This slowed the process for the public CARES funds to be allocated because CMSD
4 had to determine the proper non-public set-aside first.

5 26. Finally, the Department’s Guidance Document and Rule place CMSD in legal
6 jeopardy. Ohio was required to certify in its ESSER Fund application that ODE, CMSD and
7 other schools in the state will comply with the equitable service provision of the CARES Act (§
8 18005) and “any other applicable law or regulation.” (Ex. A at p. 1.) Because the Guidance
9 Document and the Rule require CMSD to calculate the proportional share for equitable services
10 and determine eligibility of private school students for equitable services contrary to the
11 proportional share calculation and eligibility requirements in the CARES Act, CMSD cannot
12 satisfy both the Rule and the CARES Act. Accordingly, the Department’s Rule forces CMSD to
13 violate Section 18005 of the CARES Act, placing CMSD in breach of the certification in the
14 Certification and Agreement and subjecting ODE and CMSD to “liability under the False Claims
15 Act, . . . [and the] OMB Guidelines to Agencies on Governmentwide Debarment and Suspension
16 (Nonprocurement).” (Ex. A at p. 1.).

17 27. As CMSD needs to use the ESSER funds as soon as possible to assist with the
18 numerous pandemic-related challenges, this legal jeopardy will impact CMSD immediately.

19 **The Department’s Rule Significantly Harms CMSD’s K-12 Students**

20 28. There remains confusion at the state level regarding CARES funding, which
21 makes it difficult for CMSD to be confident in allocating its resources. CMSD was originally
22 told the funds would follow Title I-A guidance (i.e. the economically disadvantaged count). Then
23 CMSD was told the funds were Title I-A, but that CMSD must use the Title II-A calculation (i.e.
24 full ADM) for equitable service allocations, which provided a much larger set-aside to the non-
25 public schools. Then, CMSD was told to calculate the non-public allocation both ways and begin
26 spending using the economically disadvantaged count until a final decision is made by USDOE.
27 While CMSD may now spend the funds, it does so at the risk of penalty from USDOE.
28

1 29. The Department’s Guidance and Rule will result in less funding being distributed
2 to public K-12 schools in Cleveland.

3 30. If CMSD calculates the proportional share of CARES Act funds for private school
4 students under Option #1 in the Rule, CMSD’s schools would be prohibited from using CARES
5 Act funds to respond to and prepare for the pandemic as the schools cannot supplant State and
6 local funding sources under the Rule. This would significantly impact the Title I schools as many
7 are in desperate need of additional funding to cope with the pandemic, and to assist students with
8 online, remote learning tools that students often cannot afford within these Title I schools.

9 31. If CMSD calculates the proportional share of CARES Act funds for private school
10 students under Option #2 in the Rule, based on currently available information an additional
11 \$822,045 will be diverted from public schools to private school students, which represents a 3.1
12 percent increase out of CMSD’s total CARES Act funding for education.

13 32. For every \$580 diverted from the public schools (Title I or non-Title I schools), a
14 public-school student loses out on a needed internet-connected device that could allow the student
15 to access online learning while schools are closed due to the pandemic.

16 33. For every \$100,000 diverted from the public schools (Title I or non-Title I
17 schools), a public-school teacher in Cleveland may lose their position and be unable to provide
18 students with access to learning during the pandemic.

19 34. Regardless of how CMSD proportions the CARES Act funds, the Rule requires
20 that all private school students receive equitable services. In Cleveland, during the 2019-2020
21 school year, approximately 5,000 private school students were eligible to receive equitable
22 services under Title I-A as they were at-risk students within an LEA receiving Title I-A funds.
23 As the Rule requires all private school students receiving equitable services, the approximately
24 5,000 private school students received equitable services under Title I-A last year will receive less
25 services as the CARES Act funds proportioned for equitable services will be spread amongst all
26 private school students instead of only those students most at-risk.

27
28

1 I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and
2 correct.

3

4 Executed on this 15th day of July, 2020, at Cleveland, Ohio.

5



6

Eric S. Gordon
CEO, Cleveland Municipal School District

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EXHIBIT A

Ohio Department of Education ESSER Application to the U.S. Department of Education

May 5, 2020

Certification and Agreement for Funding under the Education Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund (ESSER Fund)

CFDA Number: 84.425D



OMB Number: 1810-0743
Expiration Date: 10/31/2020

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The OMB control number for this information collection is 1810-0743. The time required to complete this information collection is estimated to average 5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain benefit under the Coronavirus Aid, Relief, and Economic Security Act. If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact Christopher Tate, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Ave., S.W., Room 3E229, Washington, D.C. 20202 directly.

PROGRAM BACKGROUND INFORMATION

Purpose

Under the Elementary and Secondary School Emergency Relief Fund (ESSER Fund), the Department awards grants to State educational agencies (SEAs) for the purpose of providing local educational agencies (LEAs), including charter schools that are LEAs, with emergency relief funds to address the impact that Novel Coronavirus Disease 2019 (COVID-19) has had, and continues to have, on elementary and secondary schools across the nation. LEAs must provide equitable services to students and teachers in non-public schools as required under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Eligibility

SEAs in any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Timeline

The SEA will have one year, from the date of its ESSER award, to award funds. Any funds not awarded by the SEA within one year of receiving its award will be returned to the Department to be reallocated to other States consistent with the CARES Act.

Uses of Funds

SEAs:

The SEA must use no less than 90 percent of its allocation to make subgrants to LEAs, including charter schools that are LEAs, based on each LEA's share of funds received under part A of title I of the ESEA in fiscal year 2019. With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to $\frac{1}{2}$ of 1 percent of the total allocation for administrative costs, and the remaining funds may be used for emergency needs as determined by the SEA to address issues responding to COVID-19. These emergency needs may be addressed through the use of grants or contracts.

LEAs:

LEAs may use funds for any purposes listed in section 18003(d) of the CARES Act. (See Appendix A.)

Program Contact

For additional information, please contact Christopher Tate by telephone at (202) 453-6047 or by email at ESSERF@ed.gov.

CERTIFICATION AND AGREEMENT INSTRUCTIONS

To receive an ESSER Fund allocation, SEAs must submit to the Department the following information:

- A completed cover sheet that includes the signature of the Chief State School Officer or authorized representative. (*Part A of the Certification and Agreement*)
- Programmatic, fiscal, and reporting assurances. (*Part B of the Certification and Agreement*)
- Information on the uses of ESSER funds. (*Part C of the Certification and Agreement*)
- Other assurances and certifications. (*Part D of the Certification and Agreement*)

For purposes of this document, the term “Certification and Agreement” is the application that an SEA is required to file under section 18003(a) of Division B of the CARES Act.

Certification and Agreement Submission Information

An SEA must submit a Certification and Agreement to the Department no later than July 1, 2020.

Please submit your Certification and Agreement to the Department as follows:

Email an electronic version of the ESSER Fund Certification and Agreement in .PDF (Portable Document Format) to ESSERF@ed.gov.

APPENDICES

- Appendix A – Authorizing Statute
- Appendix B – State Allocation Table

PART B: PROGRAMMATIC, FISCAL, AND REPORTING ASSURANCES

The [Chief State School Officer or his/her authorized representative] assures the following:

1. The SEA will allocate no less than 90 percent of the grant funds under this program to local educational agencies (LEAs) (including charter schools that are LEAs) in the State. Under the ESSER Fund, the SEA will award grants by formula to State educational agencies (SEAs) for the purpose of providing LEAs, including charter schools that are LEAs, with emergency relief funds to address the impact that the Novel Coronavirus Disease 2019 (COVID-19) has had, and continues to have, on elementary and secondary schools across the Nation. This includes both continuing to provide educational services, such as remote learning, while schools and campuses are closed, and developing and implementing plans for the return to normal operations. The SEA will allocate these funds to LEAs on the basis of their respective shares of funds received under title I, part A of the Elementary and Secondary Education Act of 1965 in fiscal year 2019.
2. The SEA will use the remaining funds (hereafter SEA reserve) for emergency needs as determined by the SEA to address issues related to COVID-19, which may be addressed through the use of grants or contracts. From an SEA's reserve, the SEA may use not more than 1/2 of 1 percent of the SEA's total grant for administrative costs.
3. The SEA will ensure that LEAs use ESSER funds for activities allowable under section 18003(d) of Division B of the CARES Act. (See Appendix A.)
The Department generally does not consider the following to be an allowable use of ESSER funds, under any part of 18003: 1) subsidizing or offsetting executive salaries and benefits of individuals who are not employees of the SEA or LEAs or 2) expenditures related to state or local teacher or faculty unions or associations.
4. The SEA will ensure that LEAs receiving ESSER funds will provide equitable services to students and teachers in non-public schools as required under 18005 of Division B of the CARES Act.
5. The SEA will ensure that an LEA receiving ESSER funds will provide equitable services to students and teachers in non-public schools located within the LEA in the same manner as provided under section 1117 of the ESEA, as determined through timely and meaningful consultation with representatives of non-public schools.
 - The SEA will ensure that a public agency will maintain control of funds for the services and assistance provided to a non-public school under the ESSER Fund.
 - The SEA will ensure that a public agency will have title to materials, equipment, and property purchased with ESSER funds.
 - The SEA will ensure that services to a non-public school with ESSER funds will be provided by a public agency directly, or through contract with, another public or private entity.
6. The SEA will comply with the maintenance of effort provision in Section 18008(a) of Division B of the CARES Act absent waiver by the Secretary pursuant to Section 18008(b) thereof.
7. The SEA and each LEA and any other entity that receives ESSER funds will, to the greatest extent practicable, continue to compensate its employees and contractors during the period of

any disruptions or closures related to COVID-19 in compliance with Section 18006 of Division B of the CARES Act. In addition, each entity that accepts funds will continue to pay employees and contractors to the greatest extent practicable based on the unique financial circumstances of the entity. CARES Act funds generally will not be used for bonuses, merit pay, or similar expenditures, unless related to disruptions or closures resulting from COVID-19.

8. The SEA must assure that, when applicable, it will provide technical assistance to LEAs on the use of ESSER funds for remote learning, which includes both distance education as defined in section 103(7) of the HEA and distance learning as defined in ESEA section 8101(14), so that students can continue learning during school closures.
9. The SEA will comply with all reporting requirements, including those in Section 15011(b)(2) of Division B of the CARES Act, and submit required quarterly reports to the Secretary at such time and in such manner and containing such information as the Secretary may subsequently require. (See also 2 CFR 200.327-200.329). The Secretary may require additional reporting in the future, which may include: the methodology LEAs will use to provide services or assistance to students and staff in both public and non-public schools, the uses of funds by the LEAs or other entities and demonstration of their compliance with Section 18003(d), such as any use of funds addressing the digital divide, including securing access to home-based connectivity and remote-use devices, related issues in supporting remote learning for all students, including disadvantaged populations.
10. The SEA will submit to the Department, within 60 days of receiving ESSER funds, a report that will include:
 - A budget for the SEA's reserve that includes information about the up to 1/2 of 1 percent of the SEA's total grant for administrative costs and the uses of funds for emergency needs to address issues related to COVID-19; and
 - An Internal Control and Subrecipient Monitoring Plan to ensure that funds are used for allowable purposes in accordance with cash management principles.
11. The SEA will ensure that every recipient and subrecipient of ESSER funds will cooperate with any examination of records with respect to such funds by making records available for inspection, production, and examination, and authorized individuals available for interview and examination, upon the request of (i) the Department and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.
12. The SEA will return to the Secretary any funds received under the ESSER Fund that the SEA does not award within 1 year of receiving such funds.

Chief State School Officer or Authorized Representative (Printed Name):

Signature: 	Date: May 5, 2020
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PART C: USES OF ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUNDS

Section 18003 of Division B of the CARES Act provides in relevant part that grants awarded under the Elementary and Secondary School Emergency Relief Fund be used to support the ability of local educational agencies (LEAs) to continue to provide educational services to their students. The Department requests the following:

1. Information that the SEA may request LEAs to include in their subgrant applications to the SEA. For example, an SEA might propose to include the following in developing its subgrant application:
 - How the LEA will determine its most important educational needs as a result of COVID-19.
 - The LEA's proposed timeline for providing services and assistance to students and staff in both public and non-public schools.
 - The extent to which the LEA intends to use ESSER funds to promote remote learning.
 - How the LEA intends to assess and address student learning gaps resulting from the disruption in educational services.

The above considerations are in addition to the application information requirements from sections 442 and 427 of the General Education Provisions Act (GEPA) (20 U.S.C. § 1232e and § 1228a).

The Ohio Department of Education has developed a streamlined LEA application that will be shared with the LEAs and hard coded into our e-grant system, known as the CCIP. We will ask for basic information on the most important education needs as a result of COVID19, their timeline for providing services and supports to public and nonpublic schools and the extent to which the LEA plans to use ESSER funds to promote remote learning. The Department plans to provide districts who need the emergency funds during the 2019-2020 school year with access to the funds as soon as they submit an approved application. The application will require all applicable assurances including the requirement to provide timely and meaningful consultation with nonpublic schools and to provide equitable services to nonpublic students and teachers. The application will require a budget for intended uses of funds and assurance to they the subgrantee will meet all reporting and compliance requirements for managing and administering federal education grants.

2. The extent to which the SEA intends to use any portion of its SEA reserve (up to 10 percent of its ESSER Fund award) to support:
- technological capacity and access – including hardware and software, connectivity, and instructional expertise – to support remote learning. If so, please describe the strategies the SEA intends to use to serve disadvantaged populations listed in Sec. 18003(d)(4) of the CARES Act; and
 - remote learning by developing new informational and academic resources and expanding awareness of, and access to, best practices and innovations in remote learning and support for students, families, and educators.


The Ohio Department of Education is still working with all stakeholders, including nonpublic officials, to determine the best approach to use our state-level activities. The Department plans to use the full amount for state-level activities including the maximum amount reserved for state administration.

PART D: OTHER ASSURANCES AND CERTIFICATIONS

The [Chief State School Officer or his/her authorized representative] assures or certifies the following:

1. The SEA will comply with all applicable assurances in OMB Standard Forms 424B and D (Assurances for Non-Construction and Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood hazards; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders and regulations.
2. With respect to the certification regarding lobbying in Department Form 80-0013, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; the SEAE will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 C.F.R. Part 82, Appendix B); and the SEA will require the full certification, as set forth in 34 C.F.R. Part 82, Appendix A, in the award documents for all subawards at all tiers.
3. Any LEA receiving funding under this program will have on file with the SEA a set of assurances that meets the requirements of section 442 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232e).
4. To the extent applicable, an LEA will include in its local application a description of how the LEA will comply with the requirements of section 427 of GEPA (20 U.S.C. 1228a). The description must include information on the steps the LEA proposes to take to permit students, teachers, and other program beneficiaries to overcome barriers (including barriers based on gender, race, color, national origin, disability, and age) that impede equal access to, or participation in, the program.
5. The SEA will comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) requirements in Subpart D—Post Federal Award Requirements (2 CFR §§200.300-345) and Subpart E—Cost Principles (2 CFR §§200.400-475) to ensure that LEAs, including charter schools that are LEAs, are using ESSER funds for purposes that are reasonable, necessary, and allocable under the CARES Act.
6. The SEA and other entities will comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts 76, 77, 81, 82, 84, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and the Uniform Guidance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Chief State School Officer or Authorized Representative (Printed Name):

Signature: 	Date: 05/05/2020
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Appendix A: Relevant Excerpts from Title VIII of Division B of the CARES Act, the Emergency Appropriations for Coronavirus Health Response and Agency Operations

DEPARTMENT OF EDUCATION EDUCATION STABILIZATION FUND

For 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: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

GENERAL PROVISIONS EDUCATION STABILIZATION FUND

SEC. 18001. (a) ALLOCATIONS.—From the amount made available under this heading in this Act to carry out the Education Stabilization Fund, the Secretary shall first allocate—

- (1) not more than 1/2 of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, in consultation with the Secretary of the Interior;
- (2) one-half of 1 percent for the Secretary of Interior, in consultation with the Secretary of Education, for programs operated or funded by the Bureau of Indian Education; and
- (3) 1 percent for grants to States with the highest coronavirus burden to support activities under this heading in this Act, for which the Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act and approve or deny applications not later than 30 days after receipt.

(b) RESERVATIONS.—After carrying out subsection (a), the Secretary shall reserve the remaining funds made available as follows:

- (1) 9.8 percent to carry out section 18002 of this title.
- (2) 43.9 percent to carry out section 18003 of this title.
- (3) 46.3 percent to carry out section 18004 of this title.

ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND

SEC. 18003. (a) GRANTS.—From funds reserved under section 18001(b)(2) of this title, the Secretary shall make elementary and secondary school emergency relief grants to each State educational agency with an approved application. The Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act and approve or deny applications not later than 30 days after receipt.

(b) ALLOCATIONS TO STATES.—The amount of each grant under subsection (a) shall be allocated by the Secretary to each State in the same proportion as each State received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

(c) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—Each State shall allocate not less than 90 percent of the grant funds awarded to the State under this section as subgrants to local educational agencies (including charter schools that are local educational agencies) in the State in proportion to the amount of funds such local educational agencies and charter schools that are local educational agencies received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

(d) USES OF FUNDS.—A local educational agency that receives funds under this title 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 and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.) and how to ensure 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 between students and their classroom instructors, including low-income students and students 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, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

(12) 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.

(e) STATE FUNDING.—With funds not otherwise allocated under subsection (c), a State may reserve not more than 1/2 of 1 percent for administrative costs and the remainder for emergency needs as determined by the state educational agency to address issues responding to coronavirus, which may be addressed through the use of grants or contracts.

(f) REALLOCATION.—A State shall return to the Secretary any funds received under this section that the State does not award within 1 year of receiving such funds and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (b).

ASSISTANCE TO NON-PUBLIC SCHOOLS

SEC. 18005. (a) IN GENERAL.—A local educational agency receiving funds under sections 18002 or 18003 of this title shall provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools.

(b) PUBLIC CONTROL OF FUNDS.—The control of funds for the services and assistance provided to a non-public school under subsection (a), and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property and shall provide such services (or may contract for the provision of such services with a public or private entity).

CONTINUED PAYMENT TO EMPLOYEES

SEC. 18006. A local educational agency, State, institution of higher education, or other entity that receives funds under “Education Stabilization Fund”, shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.

DEFINITIONS

SEC. 18007. Except as otherwise provided in sections 18001– 18006 of this title, as used in such sections—

- (1) the terms “elementary education” and “secondary education” have the meaning given such terms under State law;
- (2) the term “institution of higher education” has the meaning given such term in title I of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.);
- (3) the term “Secretary” means the Secretary of Education;
- (4) the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico;
- (5) the term “cost of attendance” has the meaning given such term in section 472 of the Higher Education Act of 1965.
- (6) the term “Non-public school” means a non-public elementary and secondary school that (A) is accredited, licensed, or otherwise operates in accordance with State law; and (B) was in existence prior to the date of the qualifying emergency for which grants are awarded under this section;
- (7) the term “public school” means a public elementary or secondary school; and
- (8) any other term used that is defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) shall have the meaning given the term in such section.

MAINTENANCE OF EFFORT

SEC. 18008. (a) A State’s application for funds to carry out sections 18002 or 18003 of this title shall include assurances that the State will maintain support for elementary and secondary education, and State support for higher education (which shall include State funding to institutions of higher education and state need based financial aid, and shall not include support for capital projects or for research and development or tuition and fees paid by students) in fiscal years 2020 and 2021 at least at the levels of such support that is the average of such State’s support for elementary and secondary education and for higher education provided in the 3 fiscal years preceding the date of enactment of this Act.

(b) The secretary may waive the requirement in subsection (a) for the purpose of relieving fiscal burdens on States that have experienced a precipitous decline in financial resources.

REPORTING ON USE OF FUNDS SEC. 15011.

(a) In this section—

- (1) the terms “agency”, “appropriate congressional committees”, “Committee”, “covered funds”, and “Coronavirus response” have the meanings given those terms in section 15010;
- (2) the term “covered recipient” (A) means any entity that receives large covered funds; and (B) includes any State, the District of Columbia, and any territory or possession of the United States; and
- (3) the term “large covered funds” means covered funds that amount to more than \$150,000.

...

(b)(2) Not later than 10 days after the end of each calendar quarter, each covered recipient shall submit to the agency and the Committee a report that contains—

- (A) the total amount of large covered funds received from the agency;
- (B) the amount of large covered funds received that were expended or obligated for each project or activity;
- (C) a detailed list of all projects or activities for which large covered funds were expended or obligated, including—
 - (i) the name of the project or activity;
 - (ii) a description of the project or activity; and
 - (iii) the estimated number of jobs created or retained by the project or activity, where applicable;and
- (D) detailed information on any level of subcontracts or subgrants awarded by the covered recipient or its subcontractors or subgrantees, to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note) allowing aggregate reporting on awards below \$50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

(3) Not later than 30 days after the end of each calendar quarter, the Committee, in consultation with the agency that made large covered funds available to any covered recipient shall make the information in reports submitted under paragraph (2) publicly available by posting the information on the website established under section 15010(g).

(4)(A) Each agency, in coordination with the Committee and the Director of the Office of Management and Budget shall provide user-friendly means for covered recipients to meet requirements of this subsection.

(B) Federal agencies may use existing mechanisms to ensure that information under this subsection is reported accurately.

(c)(1) The Director of the Office of Management and Budget, in consultation with the Secretary of the Treasury, the Administrator of the Small Business Administration, and the Chairperson of the Council of Economic Advisors, shall submit to the appropriate congressional committees and publicly release on the website established under section 15010(g) quarterly reports that detail the impact of programs funded through large covered funds on employment, estimated economic growth, and other key economic indicators, including information about impacted industries.

(2)(A) The first report submitted under paragraph (1) shall be submitted not later than 45 days after the end of the first full quarter following the date of enactment of this Act.

(B) The last report required to be submitted under paragraph (1) shall apply to the quarter in which the Committee terminates.

APPENDIX B: STATE ALLOCATION TABLE**Elementary and Secondary School Emergency Relief Fund**

STATE	STATE TOTAL	Minimum LEA Distribution ¹	Maximum SEA Reservation	Maximum for SEA Administration ²
TOTAL	13,229,265,000	11,906,338,500	1,322,926,500	66,146,325
ALABAMA	216,947,540	195,252,786	21,694,754	1,084,738
ALASKA	38,407,914	34,567,123	3,840,791	192,040
ARIZONA	277,422,944	249,680,650	27,742,294	1,387,115
ARKANSAS	128,758,638	115,882,774	12,875,864	643,793
CALIFORNIA	1,647,306,127	1,482,575,514	164,730,613	8,236,531
COLORADO	120,993,782	108,894,404	12,099,378	604,969
CONNECTICUT	111,068,059	99,961,253	11,106,806	555,340
DELAWARE	43,492,753	39,143,478	4,349,275	217,464
DISTRICT OF COLUMBIA	42,006,354	37,805,719	4,200,635	210,032
FLORIDA	770,247,851	693,223,066	77,024,785	3,851,239
GEORGIA	457,169,852	411,452,867	45,716,985	2,285,849
HAWAII	43,385,229	39,046,706	4,338,523	216,926
IDAHO	47,854,695	43,069,226	4,785,470	239,273
ILLINOIS	569,467,218	512,520,496	56,946,722	2,847,336
INDIANA	214,472,770	193,025,493	21,447,277	1,072,364
IOWA	71,625,561	64,463,005	7,162,556	358,128
KANSAS	84,529,061	76,076,155	8,452,906	422,645
KENTUCKY	193,186,874	173,868,187	19,318,687	965,934
LOUISIANA	286,980,175	258,282,158	28,698,018	1,434,901
MAINE	43,793,319	39,413,987	4,379,332	218,967
MARYLAND	207,834,058	187,050,652	20,783,406	1,039,170
MASSACHUSETTS	214,894,317	193,404,885	21,489,432	1,074,472
MICHIGAN	389,796,984	350,817,286	38,979,698	1,948,985
MINNESOTA	140,137,253	126,123,528	14,013,725	700,686
MISSISSIPPI	169,883,002	152,894,702	16,988,300	849,415
MISSOURI	208,443,300	187,598,970	20,844,330	1,042,217
MONTANA	41,295,230	37,165,707	4,129,523	206,476
NEBRASKA	65,085,085	58,576,577	6,508,509	325,425
NEVADA	117,185,045	105,466,541	11,718,505	585,925
NEW HAMPSHIRE	37,641,372	33,877,235	3,764,137	188,207
NEW JERSEY	310,371,213	279,334,092	31,037,121	1,551,856
NEW MEXICO	108,574,786	97,717,307	10,857,479	542,874
NEW YORK	1,037,045,603	933,341,043	103,704,560	5,185,228
NORTH CAROLINA	396,311,607	356,680,446	39,631,161	1,981,558
NORTH DAKOTA	33,297,699	29,967,929	3,329,770	166,489
OHIO	489,205,200	440,284,680	48,920,520	2,446,026
OKLAHOMA	160,950,476	144,855,428	16,095,048	804,752

¹ The totals in the Minimum LEA Distribution, Maximum SEA Reservation, and Maximum for SEA Administration columns have been rounded to the nearest whole dollar.

² With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to ½ of 1 percent of the total allocation for administrative costs.

STATE	STATE TOTAL	Minimum LEA Distribution ³	Maximum SEA Reservation	Maximum for SEA Administration ⁴
OREGON	121,099,019	108,989,117	12,109,902	605,495
PENNSYLVANIA	523,807,198	471,426,478	52,380,720	2,619,036
RHODE ISLAND	46,350,444	41,715,400	4,635,044	231,752
SOUTH CAROLINA	216,311,158	194,680,042	21,631,116	1,081,556
SOUTH DAKOTA	41,295,230	37,165,707	4,129,523	206,476
TENNESSEE	259,891,154	233,902,039	25,989,115	1,299,456
TEXAS	1,285,886,064	1,157,297,458	128,588,606	6,429,430
UTAH	67,821,787	61,039,608	6,782,179	339,109
VERMONT	31,148,360	28,033,524	3,114,836	155,742
VIRGINIA	238,599,192	214,739,273	23,859,919	1,192,996
WASHINGTON	216,892,447	195,203,202	21,689,245	1,084,462
WEST VIRGINIA	86,640,471	77,976,424	8,664,047	433,202
WISCONSIN	174,777,774	157,299,997	17,477,777	873,889
WYOMING	32,562,651	29,306,386	3,256,265	162,813
PUERTO RICO	349,113,105	314,201,795	34,911,311	1,745,566

³ The totals in the Minimum LEA Distribution, Maximum SEA Reservation, and Maximum for SEA Administration columns have been rounded to the nearest whole dollar.

⁴ With the funds not subgranted to LEAs, the SEA may reserve up to an amount equal to ½ of 1 percent of the total allocation for administrative costs.

EXHIBIT 14

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 8 *Attorneys for Plaintiff State of California*

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12

13
 14 **STATE OF MICHIGAN, STATE OF
 CALIFORNIA, et al.,**

15 Plaintiffs,

16 v.

17
 18 **ELISABETH D. DEVOS, in her official
 capacity as the United States Secretary of
 19 Education, and UNITED STATES
 DEPARTMENT OF EDUCATION,**

20 Defendants.
 21
 22

Civil Case No. 3:20-cv-04478-SK

DECLARATION OF LINDSEY OATES

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1 **DECLARATION OF LINDSEY OATES**

2 I, Lindsey Oates, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and
3 correct:

4 1. I am the Chief Financial Officer (“CFO”) of the Board of Education for the City
5 School District of the City of New York (a/k/a the New York City Department of Education)
6 (“NYCDOE”), which oversees and manages the New York City school district, located in New
7 York, New York. My educational background includes a Bachelor’s of Arts degree in Political
8 Science and Sociology from Syracuse University and a Master’s Degree in Public Administration
9 from Cornell University. I have been employed as CFO of the NYCDOE since July 2018. Prior to
10 that, I served as Deputy CFO commencing in July 2014. In my role as CFO, I am responsible for
11 overseeing all aspects of financial operations in the school district, including school allocations and
12 funding for central-based programs and services. I oversee the Department of Education’s \$34
13 billion expense budget, as well as its payroll, accounting, financial IT services, contracts,
14 procurement, and revenue operations.

15 2. I submit this Declaration in support of the NYCDOE’s litigation against Elisabeth D.
16 DeVos, in her official capacity as Secretary of Education, and the United States Department of
17 Education (the “Department”) regarding the recently issued Rule entitled *Providing Equitable*
18 *Services to Students and Teachers in Non-Public Schools*, 85 Fed. Reg. 39,479 (July 1, 2020) (the
19 “Rule”). The information set forth below is based upon my personal knowledge, information
20 provided to me by other NYCDOE employees, and documents provided to and reviewed by me. I
21 have reviewed the Rule in order to understand its requirements and its impact on the New York City
22 public schools.

23 **The NYC School District and its Funding**

24 3. The NYCDOE is the largest school district in the nation, with approximately 1,600
25 public schools that serve approximately 1.1 million students, of whom approximately 820,093
26 (72.8%) are economically disadvantaged, 927,110 (82.3%) are minorities, 227,553 (20.2%) have a
27 disability, and 148,696 (13.2%) are English Language Learners. For many of these at-risk students,
28 the City’s public schools are essential sources not only of education, but of food, transportation,

1 medical care, and emotional support. These students are particularly vulnerable to the effects of the
2 COVID-19 pandemic and require extensive supports.

3 4. The NYCDOE is the local educational agency (“LEA”) of the New York City school
4 district, except that, for purposes of Title I, Part A (“Title I”) of the Elementary and Secondary
5 Education Act (“ESEA”), each borough of the City is considered an LEA and receives a distinct
6 allocation of Title I funding administered by the New York State Education Department.

7 5. Pursuant to Title I, the NYCDOE designates schools eligible for Title I funding based
8 on the poverty percentages of each borough. In the Bronx, Brooklyn, Manhattan or Queens, Title I-
9 status for a school is reached when no less than 60% of its students are from low-income families;
10 the percentage is 52.13% in Staten Island. Although the statutory threshold for Title I-school status
11 is set far lower, at a floor of 35% (20 U.S.C. 6313(b)(1)), the NYCDOE exercises the discretion
12 permitted by Title I to set a higher poverty threshold to ensure that the funding provided to Title I-
13 schools is sufficient to provide adequate programs and services to those schools with the greatest
14 needs. Even with those far higher thresholds, in the 2019-2020 school year, the NYC school district
15 was comprised of 1,314 Title I schools and 269 non-Title I schools.

16 6. The NYCDOE budget is comprised of federal, state and local funding sources.
17 Based on the City’s Fiscal Year (“FY”) 2021 Adopted Budget, 57% derives from City tax levy
18 funding, 36% from State funding, 6% from federal funding, and less than 1% from other funding
19 sources.

20 7. The NYCDOE funds its schools through various means. The Fair Student Funding
21 Formula (“FSF”) is the primary funding source for schools, and consists of unrestricted state and
22 local funding that affords school leaders with discretion to determine how to make expenditures for
23 their schools. FSF covers basic instructional needs and is allocated based on the number and
24 particular needs of students enrolled in each school. After allocating a fixed amount for each
25 student, the FSF funding formula ascribes weights to each student to allocate greater funding for
26 particular needs, such as grade level, academic intervention for at-risk students, and special programs
27 for English Language Learners and students with disabilities.

28

1 8. FSF provides funds for about two-thirds of a school’s budget. The remaining
2 approximate one-third is comprised of funding restricted to specific purposes, including federal
3 grants like Title I.

4 9. The NYCDOE also has a central budget that covers central administration costs and
5 support services that are provided on a citywide basis for all schools in the City, including, but not
6 limited to, school facilities services, meals, school safety, pupil transportation, and energy and leases.

7 10. A significant portion of NYCDOE’s budget derives from New York State’s
8 allocation of school aid, known as Foundation Aid. Due to deep economic losses caused by the
9 COVID-19 pandemic, New York State instituted a “pandemic adjustment” for FY 2021, reducing
10 the NYCDOE’s Foundation Aid by \$716,903,289, and offsetting this budget cut dollar-for-dollar by
11 backfilling it with federal CARES Act funding. The Department’s misinterpretation of the
12 Education Stabilization Fund section of the CARES Act only intensifies the impact of these cuts by
13 reducing the flexibility or amount of this funding (as explained in paragraphs 16-18 and 20 below).

14 11. The CARES Act requires LEAs receiving monies from the GEER and/or ESSER
15 funds to allocate a portion of those funds to provide “equitable services” to students and teachers at
16 nonpublic schools “in the same manner as provided under Section 1117 of the ESEA....” CARES
17 Act § 18005(a).

18 12. If NYCDOE were to distribute these funds as required by the statutory language of
19 the CARES Act, “in the same manner” as required by the equitable services provision in Section
20 1117 of the ESEA, the allocation would be based on the number of low-income nonpublic school
21 students who reside in a Title I school attendance area in relation to the total number of low-income
22 nonpublic and public school students who reside in a Title I attendance area. Under this
23 methodology, the proportional share to be provided to nonpublic schools for equitable services is
24 based on the number of *low-income* nonpublic school students who *reside in a Title I school*
25 *attendance area*. This would result in a total CARES Act allocation of \$626 million to public
26 schools and \$91 million to nonpublic schools.

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The Harm to the NYCDOE Caused by the Department’s Rule

13. In contrast to the methodology for computing the equitable share required by Title I, and described above, the Department’s Rule penalizes NYCDOE by providing options that decrease the amount of CARES Act funding to be allocated to NYCDOE or restrict the use of those funds.

14. Under Rule Option #1, funds are allocated according to either: (1) the proportional share calculated under Title I for the 2019-2020 school year; or (2) an updated calculation using the Title I formula of low-income students from nonpublic schools in relation to the number of low-income students in public and nonpublic schools based on current data.

15. However, if NYCDOE were to use either of these methods given by Option #1, the Rule imposes two additional requirements that would severely restrict the use of CARES Act funds. These restrictions are in effect a “poison pill” that makes Option #1 onerous and harmful.

16. The first “poison pill” would require the NYCDOE to use CARES Act funds only in Title I schools, thereby rendering 269 non-Title I schools (which still serve many low-income and at-risk students) in NYC ineligible for much-needed CARES Act funding at a time of declining State and local revenues. Since State and local revenues feed FSF, the requirement to only allocate CARES Act funding to Title I schools would necessitate the creation of a new methodology for this funding that excludes non-Title I schools only weeks prior to the beginning of the school year. We estimate the impact of this provision on non-Title I schools would be a loss of approximately \$100 million.

17. In addition, by limiting use of CARES Act funding to Title I schools only, the Rule prevents NYCDOE from using the funds to pay for essential central services provided to all schools in New York City, such as nursing and medical supplies, transportation, facilities maintenance and improvements, food services (including staff to serve meals), technology platforms to facilitate distance learning, and custodial services and cleaning supplies. These expenditures are made via central budgets on behalf of schools and are difficult, if not impossible, to disaggregate by Title I eligibility. This process allows NYCDOE to maximize its purchasing power and reduce the burden on school principals, who can thereby more extensively focus on instructional services for their school community.

1 18. The second “poison pill” is the Rule’s requirement that CARES Act funds may only
2 be used to supplement, not supplant, State and local funding in Title I schools. The Rule thereby
3 imports to the CARES Act the supplement not supplant provision found in Title I, even though there
4 is no such provision in the CARES Act statute. The Rule’s requirement would harm NYCDOE by
5 preventing it from using CARES Act funds in place of declining State and local funds, which is
6 particularly necessary in light of across-the-board budget cuts. This restriction contradicts the
7 purpose of the CARES Act, which is to provide funding to address issues caused by the pandemic,
8 such as maintaining continuity of services and continuing to employ existing staff, and to replace
9 city and local funds that have been eliminated due to fiscal constraints.

10 19. These poison pills would severely curtail NYCDOE’s use of CARES Act funds, and
11 make it impossible to use the funding for the pressing needs that exist in the school district.

12 20. The Rule’s Option #2 would also harm the NYCDOE. Rule Option #2 requires that,
13 in calculating the proportional share for equitable services for nonpublic schools, all nonpublic
14 school students must be counted, rather than only nonpublic school students who are low-income
15 and reside in a Title I attendance zone. Under this methodology, the proportional share for
16 nonpublic school students would increase by 58%, which amounts to approximately \$53 million,
17 with a concurrent decrease in that amount to New York City public schools and students. Instead of
18 an allocation of \$626 million to public schools and \$91 million to nonpublic schools, only \$573
19 million would be available to allocate to public schools, and \$144 million would be allocated to
20 nonpublic schools.

21 21. The Rule’s “options” deprive New York City public schools and students of the full
22 amount and flexible use of CARES Act funds, and, at the same time, bestow a windfall on nonpublic
23 schools, including wealthy private schools, giving them a far larger share of funding for “equitable
24 services”, while reducing the share provided to schools with large numbers of low-income students.

25 22. The Rule’s injuries are illustrated by the budget cuts to NYCDOE in the FY21 State
26 Enacted Budget, in which those cuts were backfilled with CARES Act funds which will not be
27 available under the Rule’s draconian and unsupportable limitations and restrictions.
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1 23. The Rule imposes significant burdens on NYCDOE and greatly harms the students in
2 New York City public schools. There is significantly less funding available to students in the public
3 schools, contrary to congressional intent. In addition, the confusion arising from the Department’s
4 Guidance and the Rule has resulted in a delay in the distribution of funds to students and teachers.
5 To date, New York City has not yet received any ESSER or GEER CARES Act funds.

6 24. The Rule’s Options not only decrease the amount of funding allocated to NYCDOE,
7 they impermissibly restrict the use of those funds. This comes at a time when NYCDOE urgently
8 needs more funding to address novel problems caused by the COVID-19 pandemic. Since the onset
9 of the pandemic, NYCDOE has spent significant sums to assist students and families impacted by
10 the pandemic, including more than \$300 Million on LTE enabled devices to give low-income
11 students access to remote learning, approximately \$150 million on Regional Education Centers that
12 provided emergency child-care to essential workers during school closures, and approximately \$40
13 million to provide meals to students. The urgent need for resources and federal support continues.
14 To re-open schools safely in the fall, additional funding will be needed for personal protective
15 equipment, improvement of ventilation systems in school buildings, disinfection and cleaning of
16 school facilities, and installation of digital platforms and technology for remote learning.

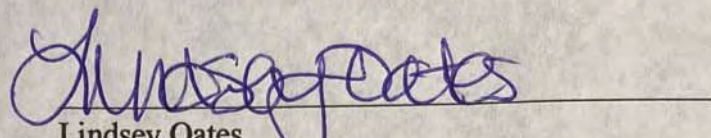
17 25. The Rule’s reduction and/or restriction of CARES Act funds for New York City
18 public schools would impede NYCDOE’s efforts to provide these supports and services and other
19 educational services, and is contrary to the purpose of the CARES Act, which is to fund immediate
20 pandemic-related services and supports to school districts. The Rule will have a long-term negative
21 impact on hundreds of thousands of public school students affected by COVID-19, including those
22 most vulnerable to the ravages of the pandemic.

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1 I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and
2 correct.

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Executed on this 15 day of July, 2020, at Gardiner, New York



Lindsey Oates
CFO, Board of Education for the
City School District of the
City of New York

EXHIBIT 15

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 8 *Attorneys for Plaintiff State of California*

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12

13
 14 **STATE OF MICHIGAN, STATE OF
 CALIFORNIA, et al.,**

15 Plaintiffs,

16 v.

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 18 **ELISABETH D. DEVOS, in her official
 capacity as the United States Secretary of
 19 Education, and UNITED STATES
 DEPARTMENT OF EDUCATION,**

20 Defendants.
 21
 22

Civil Case No. 3:20-cv-04478-SK

**DECLARATION OF MEGHAN
 WALLACE**

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1 I, **MEGHAN WALLACE**, pursuant to 28 U.S.C. § 1746, hereby declare that the
2 following is true and correct:

3 1. I am a resident of the State of California and over eighteen years of age, am
4 competent to testify to the matters contained herein, and testify based on my personal knowledge
5 and information.

6
7 2. I am the Chief Financial Officer (“CFO”) at SAN FRANCISCO UNIFIED
8 SCHOOL DISTRICT (“SFUSD” or the “District”) located in San Francisco, California. My
9 educational background includes a Bachelor of Arts in Policy Studies & Environmental Studies
10 from Dickinson College (2001), and a Master of Public Policy from the University of Maryland
11 (2007). I have been employed as the CFO of SFUSD since 2019. Prior to becoming SFUSD’s
12 CFO, I worked for the City & County of San Francisco between 2008 and 2019 serving in several
13 roles including: Senior Fiscal and Policy Analyst for the Mayor’s Office of Public Policy and
14 Finance, Budget Manager for the Port of San Francisco, Finance & Procurement Manager for the
15 Port of San Francisco, and Finance Director for the Port of San Francisco.

16
17 3. In my role as the CFO, I am the senior leader in the District responsible for the
18 overall financial operations of the District, with oversight of the District’s strategic deployment of
19 financial resources. I play a central role in SFUSD’s effort to plan, organize, and direct business
20 services, financial services and other activities related to the fiscal health and effective operation
21 of the District. First, I direct the day-to-day operations and work processes of SFUSD’s Business
22 Services Division, serving as a critical escalation point for decision and policy-making while
23 maintaining and moving towards a compelling vision for the Business Services Division. Second,
24 I design, articulate and execute policies and practices that ensure the responsible and strategic
25 deployment of financial resources, working inside and outside of the District to understand
26 SFUSD’s financial landscape within the City & County of San Francisco and the State of
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1 California. Third, I direct the preparation of SFUSD’s financial reports and ensure appropriate
2 controls and reporting of grant and contract management activities, manage processes for
3 financial/budgetary forecasting and provide the District’s lead negotiator with accurate and timely
4 financial information relative to the collective bargaining process. Fourth, I ensure that effective
5 internal controls are in place and in compliance with applicable federal, state and local regulatory
6 laws and rules for financial and tax reporting.

7
8 4. I submit this Declaration in support of SFUSD’s litigation against Elisabeth D.
9 DeVos, in her official capacity as Secretary of Education and the United States Department of
10 Education (the “Department”) regarding the recently issued Rule entitled *Providing Equitable*
11 *Services to Students and Teachers in Non-public Schools*, 85 Fed. Reg. 39,479 (July 1, 2020) (the
12 “Equitable Services Rule” or the “Rule”). I have compiled the information in the statements set
13 forth below through personal knowledge, through SFUSD personnel who have assisted me in
14 gathering this information from our institution, and on the basis of documents that have been
15 provided to and/or reviewed by me. I have also familiarized myself with the Rule in order to
16 understand its immediate impact on SFUSD.
17

18 **General Overview of District**

19 5. In 2019, SFUSD oversaw an estimated total of 133 schools, including 12 Early
20 Education, 64 Elementary (TK-5th Grades), 5 County, 13 Middle Schools (6th-8th grades), 14 High
21 Schools, 14 Charter Schools, and 3 Continuation Schools. SFUSD serves approximately 52,468
22 students, 41,692 are minorities, 28,556 are socioeconomically disadvantaged, 15,028 are English
23 Learners, 2,064 are homeless, 6,275 are students with disabilities, and 254 are foster youth.
24

25 6. During the 2019-20 school year, SFUSD received approximately \$12,159,358.00
26 in Title I funds which was distributed to approximately 53 eligible schools.
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1 SFUSD students in grades 3-12 who did not have access to a computer during the day at home to
2 support distance learning; 5) working with the City & County of San Francisco community-based
3 organizations and local philanthropists to expand internet access for students in grades 3-12 who
4 need WiFi to engage in SFUSD’s *Distance Learning Plan*—as part of that effort, SFUSD
5 distributed over 3,500 hotspots to families; 6) distributing over 10,000 learning kits, including
6 over 30,000 books to PK-2 families; and 7) in partnership with the Kinsa Health, San Francisco
7 Department of Public Health (“SFDPH”) and University of California San Francisco (“UCSF”)
8 gave away free thermometers to help SFUSD families track health symptoms.
9

10 12. SFUSD was facing severe funding challenges and struggling to balance budgets
11 prior to the COVID-19 outbreak. This funding challenge remains and has become more critical.
12 The pandemic has brought about millions of unanticipated costs for SFUSD. SFUSD estimates
13 that COVID-19 will result in nearly \$16 million less local revenue for the District in the current
14 year, including a smaller Public Education and Enrichment Fund (“PEEF”) appropriation and less
15 sales tax and interest income. Further, for the first time in many years, SFUSD no longer has an
16 unallocated fund balance. In addition, the largest category of SFUSD’s school aid is Local
17 Control Funding Formula (“LCFF”), which SFUSD receives from the State of California. Faced
18 with deep budgetary cuts because of the economic impact of the COVID-19 pandemic, California
19 reduced the SFUSD’s LCFF aid by approximately \$12,000,000.00. Depending on the duration
20 and severity of the COVID-19 induced recession, revenues will continue to be suppressed and
21 possibly decline. Unless SFUSD identifies new revenue streams to offset this loss of funds, K-12
22 schools in the district will face reduced investment in their students.
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1 **CARES Act Funds Allocated (or Distributed) to SFUSD for K-12 Education**

2 A. Elementary and Secondary School Emergency Relief (ESSER) Funds

3 13. On or about June 29, 2020, SFUSD applied for money from the local subgrant
4 ESSER Fund.

5 14. In September 2020, SFUSD anticipates an allocation of \$10,511,000.00 from the
6 ESSER Fund.

7 15. If SFUSD distributes the ESSER moneys in the same manner that Title I funds are
8 usually distributed for equitable services based on low-income nonpublic/private-school students,
9 as the plain language of the CARES Act requires, then only an estimated \$468,790.60 will be
10 distributed for equitable services to eligible nonpublic/private-school students. This allocation
11 will equal approximately \$719.00 per Title I-eligible student for both public and
12 nonpublic/private schools.

13 16. However, using the proportional share calculation set forth in the Department's
14 Guidance Document and in Option #2 (Total Enrollment Model) in the Rule, SFUSD would
15 reserve an estimated \$2,205,207.80 in ESSER funds to provide equitable services to
16 nonpublic/private school students. Thus, under the Department's preferred proportional share
17 calculation, an estimated \$1,736,417.20, will be diverted from about 13,973 public school
18 students to about 652 nonpublic/private school students (participating in CARES Act services).
19 This allocation will equal approximately \$594.42 per Title I-eligible student in public schools and
20 an estimated \$3,382.22 per Title I-eligible student in nonpublic/private schools. This
21 disproportionate share of funding per Title I eligible student, amounting to an estimated 5.7 times
22 more funding to each nonpublic/private student than public student, defies the intent of the Title I
23 program.
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1 B. GEER Funds

2 17. SFUSD anticipates receiving approximately \$3,300,000.00 through the Learning
3 Loss Mitigation Block Grant Fund/GEER Fund in September 2020. These funds are allocated to
4 school districts based upon their number of students with disabilities. Like all Learning Loss
5 Mitigation Grant funding, these funds must be used to offer instruction to students most heavily
6 impacted by school closures. Examples of eligible expenses include: summer programs;
7 extending the instructional school year; providing additional academic services for students such
8 as materials and devices; counseling or mental health services; professional development
9 opportunities; and access to school breakfast and lunch programs.
10

11 **The Department's Rule Significantly Harms SFUSD's K-12 Students**

12 18. For every dollar that is diverted from public schools in SFUSD as a result of the
13 Department's Guidance Document and Rule, SFUSD will have to cut down on expenses in other
14 areas in order to balance the budget, including potentially investments in low-income students.
15

16 19. The Department's Guidance and Rule will result in less funding to support public
17 K-12 schools in SFUSD.

18 20. If SFUSD calculates the proportional share of CARES Act funds for
19 nonpublic/private school students under Option #1 (Title I Model) in the Rule, non-Title I schools
20 in SFUSD receiving CARES Act funds will receive no funds. SFUSD oversee approximately 80
21 non-Title I schools that are eligible to receive CARES Act funds, but under Option #1 these
22 schools would not receive any funding. Like all schools in SFUSD, these schools are equally
23 impacted by the COVID-19 pandemic and would greatly benefit from the influx of CARES Act
24 funds to assist them through the pandemic. Most significantly, the approximately 53 Title I
25 schools in SFUSD would be prohibited from using CARES Act funds to respond to and prepare
26 for the pandemic as the schools cannot supplant State and local funding sources under the Rule.
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1 This prohibition would significantly impact the Title I schools as many are in desperate need of
2 additional funding to cope with the pandemic, and to assist students with online, remote learning
3 tools that students often cannot afford within these Title I schools.

4 21. If SFUSD calculates the proportional share of CARES Act funds for
5 nonpublic/private school students under Option #2 in the Rule, approximately \$1,736,417.20 will
6 be diverted from public schools to nonpublic/private school students, which represents 17.3% of
7 SFUSD's total CARES Act funding for education. With a total of about \$2,205,207.80 being
8 directed to nonpublic/private schools, the approximate 652 Title I-eligible nonpublic/private
9 school students will generate about \$3,382.22 per student. This number is approximately 5.7
10 times the \$594.42 generated per student for the 13,973 Title I-eligible students in public schools.

11
12 22. For every estimated \$540.00 diverted from the public schools (Title I or non-Title
13 I schools), a student in SFUSD loses out on a needed internet-connected device that could allow
14 the student to access online learning while schools are closed due to the pandemic. SFUSD
15 currently funds approximately 8,000 hotspots for student use but anticipates needing more, not
16 fewer points of connectivity.

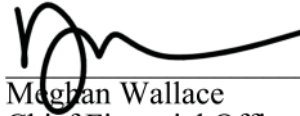
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18 23. For every estimated \$109,000.00 diverted from the public schools (Title I or non-
19 Title I schools), SFUSD will lose support for a public-school teacher required to provide students
20 with access to learning during the pandemic.

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22 24. Regardless of how SFUSD proportions the CARES Act funds, the Rule results in
23 1) SFUSD public schools losing critical funds to address the impact of the pandemic or 2)
24 significantly restricts SFUSD ability to distribute funds to its most vulnerable students.

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I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and of my own personal knowledge.

Executed on this 15th day of July, 2020 at San Francisco, California



Meghan Wallace
Chief Financial Officer
San Francisco Unified School District