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May 19, 2021

TO: BOCES District Superintendents
School District Superintendents
School District Business Officers
Charter School Leaders

FROM: Phyllis D. Morris, Chief Financial Officer

RE: **Information for Local Educational Agencies (LEAs) on Federally Required Plans for American Rescue Plan (ARP) Elementary and Secondary School Emergency Relief (ESSER) Funds**

The U.S. Department of Education's (USDE's) ARP-ESSER Interim Final Requirements (IFR) require each LEA receiving ARP-ESSER funds to:

1. Develop a plan for the safe return to in-person instruction and continuity of services (as also required by the federal ARP statute); and,
2. Develop a plan for the use of ARP-ESSER funds.

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

NYSED will permit previously developed LEA re-opening plans to satisfy the ARP statutory requirement for the safe return to in-person instruction and continuity of services. LEAs must make any necessary updates to existing plans to conform with the USDE requirements within 30 days of receipt of ARP-ESSER funds and to review (and revise if appropriate) plans every six months thereafter (until September 30, 2023). More details on the statutory LEA plan requirements in the ARP Act and the LEA plan requirements in USDE's IFR may be found below.

ARP Act Requirements:

- Section 2001(i)(1) of the ARP Act requires each LEA receiving ARP ESSER funds to develop and make publicly available on its website, not later than 30 days after receiving ARP ESSER funds, a plan for the safe return to in-person instruction and continuity of services for all schools, including those that have already returned to in-person instruction.
- Section 2001(i)(2) of the ARP Act requires that the LEA seek public comment on the plan and take those comments into account in the development of the plan.
- Section 2001(i)(3) of the ARP Act states that an LEA that developed a plan for the safe return to in-person instruction and continuity of services prior to the date of enactment of the ARP Act will be deemed to have met the requirement to develop a plan under section 2001(i)(1) as long as the plan meets the statutory requirements (i.e., is publicly available on the LEA's website and was developed after the LEA received and considered public comment).

USDE's Interim Final Requirement:

- An LEA's plan must include how it will maintain the health and safety of students, educators, and other school and LEA staff and a description of any policies it has adopted regarding each of the CDC's safety recommendations, including universal and correct wearing of masks; modifying facilities to allow for physical distancing (e.g., use of cohorts/podding); handwashing and respiratory etiquette; cleaning and maintaining healthy facilities, including improving ventilation; contact tracing in combination with isolation and quarantine in collaboration with the State, local, territorial, or the health departments of Native American Nations; diagnostic and screening testing; efforts to provide vaccinations to school communities; appropriate accommodations for children with disabilities with respect to health and safety policies; and coordination with State and local health officials.
- The plan must describe how the LEA will ensure continuity of services, including but not limited to services to address students' academic needs and the social, emotional, mental health and other needs of students and staff, which may include student health and food services.
- During the period of the ARP ESSER award established in section 2001(a) of the ARP Act (i.e., until September 30, 2023), an LEA must periodically, but not less than every six months, review its plan and revise as appropriate. Consistent with section 2001(i)(2) of the ARP Act, an LEA must seek public input and take such input into account in determining whether to revise its plan. If the LEA determines revisions are necessary, it must seek public input on any proposed revisions (taking into consideration the timing of significant changes to CDC guidance on reopening schools).
- If the LEA revises its plan, the revised plan must address each of the aspects of safety currently recommended by the CDC, including any updated safety recommendations. An LEA that developed a plan prior to enactment of the ARP Act that meets the requirements under sections 2001(i)(1) and (2) of the ARP Act but does not address each of the required aspects of safety established in this requirement must, as part of the required periodic review, revise its plan consistent with these requirements no later than six months after it last reviewed its plan.
- LEA plans must be in an understandable and uniform format and, to the extent practicable, written in a language that parents can understand (or, if not practicable, orally translated). Upon request by a parent with a disability, LEA plans must be provided in an alternative format accessible to the parent.

LEA Plan for Use of ARP-ESSER Funds

NYSED will consider each LEA's application for its base 90% ARP-ESSER allocation as meeting the USDE LEA ARP-ESSER use of funds plan requirement, provided the required elements of the plan are built into the LEA's application, combined with a budget, and then publicly posted after being developed with public input. NYSED will structure the LEA application to capture the required elements in USDE's IFR. More details on the LEA plan requirements in USDE's IFR may be found below.

USDE's Interim Final Requirement:

USDE's IFR states that each LEA that receives ARP ESSER funds must develop, submit to the SEA on a reasonable timeline determined by the SEA, and make publicly available on the LEA's website a plan for the LEA's use of ARP ESSER funds. The plan, and any subsequent revisions, must, at a minimum, include a description of:

- The extent to which and how the funds will be used to implement prevention and mitigation strategies that are, to the greatest extent practicable, consistent with the most recent CDC guidance on reopening schools, in order to continuously and safely open and operate schools for in-person learning;
- How the LEA will use the funds it reserves under section 2001(e)(1) of the ARP Act to address the academic impact of lost instructional time through the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year;
- How the LEA will spend its remaining ARP ESSER funds consistent with section 2001(e)(2) of the ARP Act; and
- How the LEA will ensure that the interventions it implements, including but not limited to the interventions implemented under section 2001(e)(1) of the ARP Act to address the academic impact of lost instructional time, will respond to the academic, social, emotional, and mental health needs of all students, particularly those students disproportionately impacted by the COVID-19 pandemic, including students from low-income families, students of color, English learners, children with disabilities, students experiencing homelessness, children in foster care, and migratory students.

An LEA must engage in meaningful consultation with stakeholders and give the public an opportunity to provide input into the development of its plan. Specifically, an LEA must consult with students; families; school and district administrators (including special education administrators); and teachers, principals, school leaders, other educators, school staff, and their unions.

Additionally, an LEA must consult with the following organizations if located in, or served by, the LEA: Native American Nations; civil rights organizations (including disability rights organizations); and stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students.

Each LEA's ARP ESSER plan must be in an understandable and uniform format and, to the extent practicable, written in a language that parents can understand (or, if not practicable, orally translated). Upon request by a parent with a disability, LEA plans must be provided in an alternative format accessible to the parent.

Please direct questions to the Office of ESSA-Funded Programs at (518) 473-0295 or via e-mail at CARESAct@nysed.gov.

cc: Commissioner Betty Rosa
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