

Federal Funding Update for School District Clients

Over the past week, the U.S. Department of Education (USD OE) and the New York State Education Department (NYSED) announced financial relief, spending flexibilities and additional guidance pertaining to local education agencies and the usage of federal grant awards. This information memo provides details of such support and guidance to New York State school districts and charter schools.

I. U.S. Department of Education Emergency Relief Funds

On April 23, 2020, the USD OE announced the availability of \$13.2 billion in the Elementary and Secondary School Education Relief Fund (ESSER Fund) as appropriated by Congress under the CARES Act. Approximately \$1.04 billion of these funds are allocated to New York State. According to the U.S. Secretary of Education, education leaders will have the flexibility to use these funds for immediate needs, such as tools and resources for distance education, ensuring student health and safety, and developing and implementing plans for the next school year.

New York State must allocate at least 90% of these relief funds to local education agencies, including charter schools, in proportion to the amount of fiscal year 2019 funds the school received under Title I, Part A of the Elementary and Secondary School Education Act (ESEA). The CARES Act also requires that states maintain state funding at a level consistent with the average of the prior three academic years but allows exceptions to this requirement if the state faces a “precipitous decline in financial resources.” The CARES Act provides that ESSER funds may be used for any activity authorized by ESEA, coordination of coronavirus preparedness and response efforts, providing school leaders with resources to address needs of individual schools, activities to address needs of low-income students or students with disabilities, training of staff on sanitation and minimizing the spread of infectious diseases, purchasing supplies for sanitation and cleaning, planning for coordination of long-term school closures, purchasing educational technology, providing mental health supports, planning activities related to summer learning and supplemental after school programs or other activities necessary to maintain the operation and continuity of services.

States have until July 1, 2020 to apply for these funds. Gov. Cuomo effectively announced, as part of the 2021 New York State budget, that the ESSER Funds would be used to offset cuts made by the state. We will continue to update school districts pertaining to federal economic relief funds once additional guidance is issued.

II. New York State Education Department Guidance

On April 24, 2020, NYSED issued guidance on general fiscal flexibilities for existing federal funding sources to assist local educational agencies during the COVID-19 pandemic.

1. Allowability of costs not normally chargeable to awards.

Costs incurred related to the cancellation of events, travel, other activities necessary and reasonable for the performance of the federal funding award or the pausing and restarting of grant funded activities due to the COVID-19 pandemic, are now permissible to charge. The district must maintain records and cost documentation to substantiate these charges of cancellation or other fees.

However, districts must attempt to recover nonrefundable costs (e.g., travel and registration fees) associated with USDOE grants. Districts may attempt doing so by contacting the relevant entity that charged the fee directly (e.g., the airline, hotel or conference organizer) and request a refund, credit or other remedy available. Alternatively, if there is an agreement or contract in place, districts may seek to exercise the force majeure clause.

2. Budget changes due to the impact of school closures on federal grant funds.

NYSED indicated that if a budget change is necessary to any federal grant awards due to school closures, that budget amendments form FS-10A should be completed and submitted electronically directly to the program office contact.

3. Extended funding availability.

Due to school closures, districts are not anticipated to fully expend their allocated federal funds. As such, the period of availability for school year 2018-2019 funds has been extended through the end of school year 2020-2021. Districts will continue to have access to school year 2018-2019 funds through the carryover process by submitting an FS-10A budget amendment.

For school year 2018-2019, the federal funds for the below programs are extended through school year 2020-2021:

- Improving Basic Programs Operating by districts (Title I, Part A of the ESEA)
- State Assessment Formula Grants (Title I, Part B of the ESEA)
- Education of Migratory Children (Title I, Part C of the ESEA)
- Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent or At Risk (Title I, Part D of the ESEA)
- Supporting Effective Instruction (Title II, Part A of the ESEA)
- English Language Acquisition, Language Enhancement and Academic Achievement (Title III, Part A of the ESEA)
- Student Support and Academic Enrichment Grants (Title IV, Part A of the ESEA)
- 21st Century Community Learning Centers (Title IV, Part B of the ESEA)
- Rural and Low-Income School Program (Title V, Part B of the ESEA)
- McKinney-Vento Education for Homeless Children and Youth Program
- State grants authorized by Title I of the Carl D. Perkins Career and Technical Education Act of 2006
- State grants authorized by Title II of the Workforce Innovation and Opportunity Act

Further, flexibilities have been approved for the following programs:

- For school year 2019-2020 Title II, Part A funds, flexibility has been granted to the meaning of “professional development” as defined in section 8101(42) of ESEA. Therefore, districts are not required to provide only sustained professional development activities, but may also provide one-time, stand-alone training (if needed) to better meet the needs of teachers and students during this time.
- For school year 2019-2020 funds, districts with Title IV, Part A allocations of \$30,000 or more are no longer required to conduct a formal needs assessment in order to be eligible to receive the district’s allocation or make changes to planned use of funds.

- For school years 2018-2019 and 2019-2020, districts with Title IV, Part A allocations of \$30,000 or more are no longer required to meet the content area spending requirements of using at least 20% of funds received for Well-Rounded Educational Opportunities, at least 20% for Safe and Healthy Students, and a portion of funds for the Effective Use of Technology in section 4106(e)(2)(C), (D), and (E).
- For school years 2018-2019 and 2019-2020, all districts that received Title IV, Part A funds are no longer required to limit the expenditure of funds for technology infrastructure to no more than 15% of the portion of funds obligated for the Effective Use of Technology.

4. Carry-over limits.

In order to meet new identified needs without submitting a waiver to NYSED, districts may carry-over up to 100% of the 2019-2020 Title I, Part A funds to use during the 2020-2021 school year.

5. Various submission deadlines have been extended.

NYSED has extended the submission of financial, performance and other reports by three months. Districts may continue to use federal funds during this extended period.

The submission of any pending financial, performance and other reports required by the terms of the award amount for the closeout of expired projects is also extended. For this extension, the district must provide notice to NYSED of its intent to use this extension. The extension may not exceed one year.

Districts that have fiscal year-ends through June 30, 2020 that have not yet filed their single audits with the Federal Audit Clearinghouse as of March 19, 2020 may delay the completion and submission of the Single Audit reporting package by six months. Notice and approval to use this extension is not required. However, the district should maintain documentation of the reason for delaying the filing. NYSED states that districts taking advantage of this extension will still qualify as a "low-risk auditee."

If you have any questions regarding the information contained in this client alert, please contact [Elizabeth Lehmann](#), any of the [attorneys](#) in Bond's [School Law Practice](#), or the attorney at the firm with whom you are regularly in contact.



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