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COVID-19 FEDERAL FUNDS FOR K-12 EDUCATION

Elementary and Secondary School Emergency Relief (ESSER) Fund for Unified School Districts (USDs)

Coronavirus Aid, Relief, and Economic Security (CARES) Act

In the CARES Act (PL 116-136), enacted on March 27, 2020, Congress appropriated \$13.2 billion to the ESSER Fund to aid K-12 educational entities in preparing for the COVID-19 pandemic. Kansas was allocated \$84.5 million, which is the same proportion as received by Kansas under Part A of Title I of the Elementary and Secondary Education Act (ESEA) in federal fiscal year (FY) 2019. The funding was provided to KSDE to disburse to the 286 USDs in Kansas.

At least 90.0 percent of the \$84.5 million had to be allocated to local educational agencies, which are school districts in Kansas. State education agencies were allowed to reserve one-half of 1.0 percent for administrative costs. The remaining amount could be reserved for emergency grants. KSDE awarded \$76.1 million, or 90.0 percent, to the USDs. \$8.0 million, or 9.5 percent, was awarded to USDs for special education funding. The final \$422,645 was set aside by KSDE to cover administrative costs, which is the maximum amount allowable under the CARES Act.

Local educational agencies could use the funds for the following purposes:

- “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.);
- 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;
- Providing principals and others school leaders with the resources necessary to address the needs of their individual schools;

- 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;
- Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies;
- Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases;
- Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency;
- 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;
- Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency, including low-income students and students with disabilities, that aids in regular and substantive educational interaction between students and their classroom instructors; the technology may include assistive technology or adaptive equipment;
- Providing mental health services and supports;
- 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;
- 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.”¹

This funding is available to be obligated through September 30, 2022. As of April 8, 2021, \$53.0 million was drawn down and disbursed to USDs from the ESSER Fund and \$4.4 million was drawn down and disbursed for special education in state fiscal year (SFY) 2020 and SFY 2021. There is a maintenance of effort requirement, which is detailed below on page 9.

¹ HR 748, 116th Cong. 286-287.

The Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act

The CRRSA Act was enacted as part of the Consolidated Appropriations Act of 2021 (PL 116-260) and was signed into law on December 27, 2021. The CRRSA Act provided \$900.0 billion for stimulus relief in response to the COVID-19 pandemic, including \$82.0 billion through the Education Stabilization Fund. This funding included \$54.3 billion for the ESSER Fund. States received allocations based on the proportion of funding received under ESEA Title I, which is the same funding formula as in the CARES Act. The CRRSA Act has the same funding requirements as the CARES Act: at least 90.0 percent of the funding must be distributed to local educational agencies using the ESEA Title I formula; one-half of 1.0 percent may be reserved by state education agencies for administrative costs, and the remainder may be used for state-specific emergency needs.

The funding may be used for the same 12 purposes noted above in the CARES Act, with the following additional purposes:

- “Addressing learning loss among students, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the local educational agency, including by—
 - Administering and using high-quality assessments that are valid and reliable, to accurately assess students’ academic progress and assist educators in meeting students’ academic needs, including through differentiating instruction;
 - Implementing evidence-based activities to meet the comprehensive needs of students;
 - Providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment; and
 - Tracking student attendance and improving student engagement in distance education;
- School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs; and
- Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.”²

Kansas has received approximately \$369.8 million, of which approximately \$332.8 million must be awarded to USDs, under the ESEA Title I formula. This funding must be

² HR 133, 116th Cong. (2021) 1870-1871.

allocated by the state education agencies within one year of receipt and is available to be obligated until September 30, 2023. KSDE intends to award the funding to USDs by June 2021.

Of the 10.0 percent state education agency funding, the State Board of Education (State Board) has approved the following expenses:

- \$11.5 million to provide additional funding to approximately 21 USDs to ensure those USDs receive a minimum of \$300 per FTE student. The average award under the CRRSA Act is \$743 per FTE;
- \$24 million for special education to be awarded to school districts to spend over two fiscal years;
- \$200,000 for the Kansas State Schools for the Deaf and the Blind (KSSD/B); and
- \$1.8 million, or 0.5 percent, for administrative costs.

This funding has not yet been allocated. The Commissioner of Education also created a Task Force (Commissioner's Task Force) to review the funding that will be awarded to school districts for compliance.

As with the CARES Act funding, there is a maintenance of effort requirement that is discussed beginning on page 9 of this memorandum.

American Rescue Plan Act (ARPA)

ARPA (PL 117-7) was enacted on March 11, 2021, and provides \$1.9 trillion aimed at mitigating the impact of COVID-19. This includes \$122.7 billion allocated to K-12 education through the ESSER Fund. State allocations are based on the proportion of funding received under ESEA Title I, which is the same funding formula as in the CARES Act and the CRRSA Act. At least 90.0 percent of the ARPA funding must be distributed to local education agencies using the ESEA Title I formula and the remaining 10.0 percent is allocated to the state education agency.. While the funding structure is roughly the same under ARPA, the requirements and uses of the funding differ from the CARES Act and the CRRSA Act.

Of the money directed to local educational agencies, 20.0 percent must address learning loss by implementing evidence-based programs that meet the academic, social, and emotional needs of students, and target the disproportionate impact of COVID-19 on certain student populations, including at-risk students, students with disabilities, English-language learners, students experiencing homelessness, and students in foster care. The remainder of the funding directed to local education agencies may be used for the following allowable purposes:

- "Any activity authorized by the Elementary and Secondary Education Act of 1965;
- Any activity authorized by the Individuals with Disabilities Education Act;
- Any activity authorized by the Adult Education and Family Literacy Act;

- Any activity authorized by the Carl D. Perkins Career and Technical Education Act of 2006;
- 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;
- 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;
- Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies;
- Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases;
- Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency;
- Planning for, coordinating, and implementing activities during long-term closures, including providing meals to eligible students, providing technology for online learning to all students, providing guidance for carrying out requirements under the Individuals with Disabilities Education Act, and ensuring other educational services can continue to be provided consistent with all Federal, State, and local requirements;
- Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and children with disabilities, which may include assistive technology or adaptive equipment;
- Providing mental health services and supports, including through the implementation of evidence-based full-service community schools;
- Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, children with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care;
- Addressing learning loss among students, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the local educational agency, including by—

- Administering and using high-quality assessments that are valid and reliable, to accurately assess students' academic progress and assist educators in meeting students' academic needs, including through differentiating instruction;
 - Implementing evidence-based activities to meet the comprehensive needs of students;
 - Providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment; and
 - Tracking student attendance and improving student engagement in distance education;
- School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs;
- Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement;
- Developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff; and
- 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.”³

The 10.0 percent allocated to the state education agency must include funding for evidence-based programs directed at the academic, social, and emotional needs of students and the disproportionate impact of COVID-19 on certain student populations. These populations include at-risk students, students with disabilities, English-language learners, students experiencing homelessness, and students in foster care, at the following levels:

- At least 5.0 percent for activities to address learning loss;
- At least 1.0 percent to implement summer programs; and
- At least 1.0 percent to implement after-school programs.

The State can also reserve up to one-half of 1.0 percent for administrative costs with the remainder for emergency needs as determined by the state education agency.

³ HR 1319, 117th Cong. (2021) 17-19.

The preliminary allocation for Kansas is \$830.6 million, of which approximately \$747.5 million must be distributed to USDs under the ESEA Title I formula. Of the local educational agency funding, approximately \$149.5 million must be used for learning loss. Of the state education agency funding, approximately \$41.5 million must be used for learning loss, \$8.3 million for summer programs, \$8.3 million for after school programs, and up to \$4.2 million for administrative costs. The remaining state education agency funding of \$20.8 million can be used for determined emergency needs.

Funding must be awarded by the state education agencies within one year of receipt and is available to be obligated through September 30, 2023. There is a maintenance of effort requirement for FY 2022 and FY 2023, as well as a maintenance of equity requirement regarding the funding of high-poverty schools and school districts. These requirements are discussed in detail beginning on page 9 of this memorandum.

At the April 19, 2021, meeting, the State Board approved tentative plans for expending \$81.2 million of the \$83.1 million state education agency funding to include:

- \$29.0 million for statewide training and \$12.0 million for assessment assistance from the 5.0 percent set aside for learning loss;
- \$16.6 million for community-based programming, free admission for students to state museums and experiences, and grant funding for 21st learning centers from the 2.0 percent for summer enrichment and after-school programs;
- \$18.4 million for ensuring all USDs receive \$600 per FTE, \$900,000 for HirePaths, and \$300,000 for a teacher regional conference from the 2.5 percent discretionary fund; and
- \$1.2 million to hire Boston Consulting for database aid, \$300,000 for staff, \$300,000 for district financial planning and data collection, \$400,000 for dyslexia and early literacy support, \$400,000 for data literacy training, and \$400,000 for KSSD/B from the 0.5 percent for KSDE administration.

Other K-12 Funds and Federal Funds for Private Schools

Coronavirus Relief Fund (CRF)

The CARES Act provided \$150.0 billion in direct relief from the U.S. Department of the Treasury to states, tribal governments, and U.S. territories through the federal Coronavirus Relief Fund. Kansas was allocated \$1.25 billion in CRF moneys from the U.S. Department of the Treasury, with \$1.03 billion allocated to state government and \$215.9 million allocated for direct relief to local units of government in Johnson County and Sedgwick County. On July 15, 2020, \$400.0 million was issued to county governments.

Reports submitted by county governments indicated these funds were primarily utilized for public health measures, such as personal protective equipment; transfers to city governments; and aid to local educational institutions. Per the reports submitted to the Office of Recovery and other county information, USDs and other K-12 education institutions received

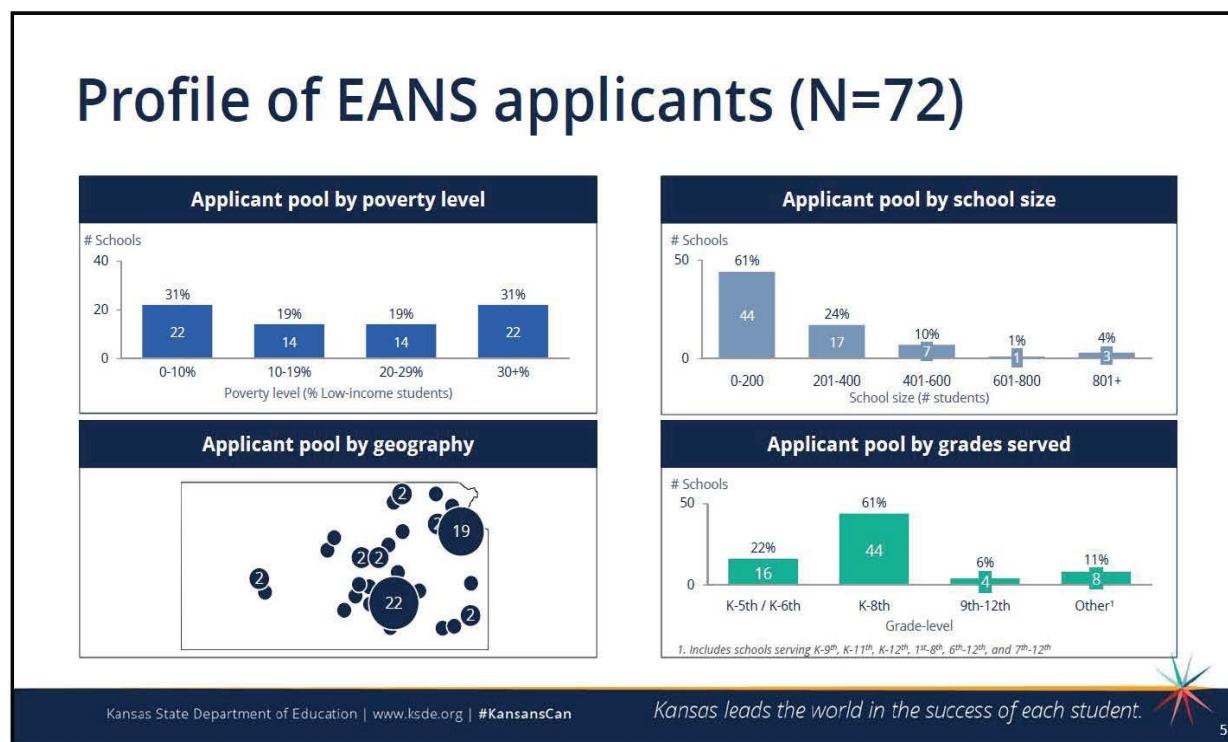
and expended approximately \$80.3 million from the state CRF. Of this, USDs expended \$74.0 million, private schools expended \$5.5 million, and other institutions expended \$823,763.

Emergency Assistance to Non-Public Schools (EANS)

CRRSA Act

Under the CRRSA Act, Kansas received \$26.7 million under the Governor's Emergency Education Relief Fund to be allocated as EANS funding. The Governor appointed KSDE as the lead agency to award these funds *via* an application process. The applications were first reviewed by KSDE for compliance with federal and state law and then assessed by need, impact, and relative poverty level. The application then went to the Commissioner's Task Force, which made recommendations based on maximum efficiency of funds.⁴ The window to apply for this funding closed on April 2, 2021, and the State Board awarded funds in a special meeting on April 19, 2021.

The Commissioner's Task Force received 72 applications for \$27.4 million, which is slightly more than the funding to be allocated. 65.0 percent of the requests were to fund personnel, both part-time and full-time, and 35.0 percent were for products and services. Below is a profile of the applicants provided by KSDE to the State Board.



This funding is subject to maintenance of effort requirements.

⁴ The Commissioner's Task Force will also review the ESSER Fund awards to USDs to ensure the USDs are properly expending the funds according to federal law and guidance.

ARPA

Under ARPA, KSDE received approximately \$25.1 million for EANS funding. Like the CRRSA Act funding, these funds are to be awarded within 60 days of the State's receipt via KSDE's application process. This funding has been received by the State and will be awarded before the end of the fiscal year.

Maintenance of Effort and Maintenance of Equity

Maintenance of Effort

Funds from the Education Stabilization Fund require a maintenance of effort from states. In the three federal COVID-19 relief packages discussed in this memorandum, the following funds are subject to a maintenance of effort requirement: ESSER Fund (CARES Act, CRRSA Act, and ARPA), GEER Fund (CARES Act and CRRSA Act), and EANS/GEER Fund (CRRSA Act). Each federal law has different requirements for different fiscal years.

Fiscal years for the maintenance of effort can be either federal fiscal years or state fiscal years at the discretion of the state. For elementary and secondary education (K-12), the maintenance of effort can be calculated using the state's primary school finance mechanism; the primary funding mechanism and other categorical state aid; or data provided for other purposes, such as data in the annual National Public Education Finance Survey conducted by the National Center for Education Statistics.

The higher education maintenance of effort can include the following: state support for higher education, funds provided using the principal funding mechanism, state need-based financial aid, non-appropriated support (lottery funds) set aside for higher education, state appropriations for financial assistance, and funds for dual enrollment or early college programs. States cannot include support for capital projects, research and development, tuition and fees paid by students, private donations, or federal funds.

States cannot consider state funds from restricted sources to calculate overall state spending (e.g. settlement funds, highway funds, or wildlife funds).

The CARES Act requires that state support for K-12 and higher education in FY 2020 and FY 2021 be maintained at the average level for FY 2017 through FY 2019. Under the CRRSA Act, state support for K-12 and higher education in FY 2022 must be maintained at the average level for FY 2017 through FY 2019 *proportional* to the overall state budget (emphasis added). ARPA extended this proportional level maintenance of effort requirement to FY 2023.

The federal Secretary of Education (Secretary) may waive the maintenance of effort requirement upon a state's application. The Secretary will consider the following:

- If the state has increased funding for K-12 and higher education from the prior year and over time;
- The state's overall fiscal burden and impact of COVID-19 on the state's economy, particularly if the state reduced education funding; and

- If the state used, or will the state use, federal COVID-19 relief legislation funding to replace state support for education.

At this time, states can apply for a waiver for FY 2020 and FY 2021.

Maintenance of Equity

In addition to the maintenance of effort requirement, ARPA added a maintenance of equity requirement for FY 2022 and FY 2023. Under the maintenance of equity, states must maintain funding for high-need and high-poverty local educational agencies at the same per-pupil level as the average state-wide per-pupil funding level. Essentially, state funding for K-12 education cannot be reduced in a way that would disproportionately affect high-need and high-poverty school districts. Additionally, states must maintain support for high-poverty local educational agencies at the FY 2019 level per-pupil. High-need would apply to the school districts that together serve not less than 50 percent of the state's total enrollment and have the highest percentage of economically disadvantaged students per data from the federal Department of Commerce. The high-poverty school districts are those that are ranked highest for economically disadvantaged students and serve 20.0 percent of the state's students enrolled in public schools.

School districts are also prohibited from making disproportional cuts for per-pupil funding and staff of high-poverty schools.

Further guidance is expected on the maintenance of equity requirements.