



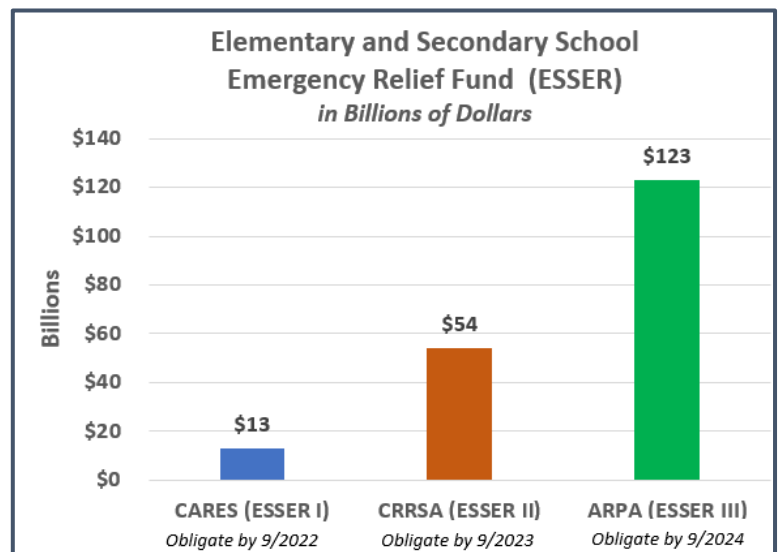
THE AMERICAN RESCUE PLAN: ADVOCATING FOR STUDENTS WITH DISABILITIES

April 26, 2021

The American Rescue Plan Act (ARP) is the third and, by far the largest, federal law providing money to schools to assist with the impact of COVID-19. Previously, the CARES and CRRSA Acts also provided funding for education as shown in the graphic below.

This unprecedented investment in education presents advocates for students with disabilities the chance to influence how these funds are spent to ensure that students with disabilities benefit.

This guide focuses on the education funding provided in the ARP’s **Elementary and Secondary Education School Relief Fund (ESSER)** and draws upon information provided in the U.S. Dept. of Education’s (ED) [COVID-19 HANDBOOK Volume 2](#) released in April 2021, which is well worth reviewing.



This guide *does not* include information regarding the supplemental funding provided under the ARP specifically for the Individuals with Disabilities Education Act (IDEA) as guidance is still pending from ED.

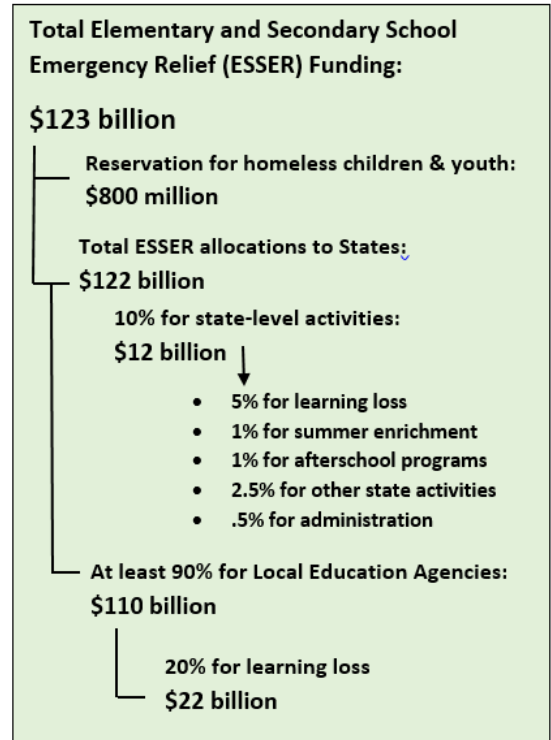
The ARP provides \$122.8 billion for the ESSER. Allocations for each state can be found in ED’s [State Allocation Table](#). How much each state and each district gets is based on a formula focused on students in poverty, so less affluent districts get more. Two-thirds of allocations (\$81.3 billion) were distributed to the States in late March 2021. The remaining one-third (\$40.7 billion) will be made available after submission of a [State application](#) by June 7, 2021 with a plan that describes, how ARP ESSER funds will be used to safely return students to in-person instruction, maximize in-person instruction time, operate schools, and meet the needs of students, and that addresses other requirements of the ARP ESSER Fund. ED has made clear that states should engage a wide range of stakeholders in the development of its ESSER application, including students, families, civil rights organizations **including disability rights organizations**, school administrators, superintendents, and educators and their unions.

All the state plans will be posted on the Department of Education website. Advocates should work to ensure that their State’s application focuses specifically the particular needs of students with disabilities.

The ARP also requires each local school district (known as an "LEA") to make public a plan for “safe return to in-person instruction and continuity of services.” LEAs must seek public comment on the plan. Advocates need to engage with school district leadership to ensure these plans include all necessary components to ensure students with disabilities can safely return to school or continue to be served remotely as needed.

Several specific requirements of both the state educational agencies (SEAs) and the local educational agencies (LEAs) are depicted in the graphic at right. Both SEAs and LEAs are required to spend a portion of their ESSER funds on *evidence-based activities to address learning loss*. ED’s [ARP ESSER Fact Sheet](#) also explains these specific requirements.

The ARP makes clear that ESSER funds can and should be used for activities that support students with disabilities. The Act calls out “students with disabilities” and activities authorized by the IDEA in its allowable use of funds. Additionally, all communications from ED to SEAs have emphasized the expectation that ARP ESSER funds *will be* focused on underserved student populations that have been disproportionately impacted by COVID-19, including students with disabilities.



ARP ESSER allowable use of funds that specifically mention students with disabilities include:

- Any activity authorized by the **Individuals with Disabilities Education Act**.
- Activities to address the unique needs of low-income children, **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.
- 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.

- 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.

USES of ARP ESSER funds as specified by ED that address students with disabilities include:

- Including **students with disabilities** in supplemental instruction such as in-school acceleration, tutoring programs, out-of-school time programs, and summer learning and enrichment;
- Providing career exploration; arranging for pre-employment transition services for **students with disabilities**, as applicable; and offering apprenticeships or internships;
- Making programs free, inclusive, and supportive of families. Programs should not charge fees for families to participate, should include free transportation and meals, and be available to **students with disabilities**, English learners, and other underserved students;
- Providing **students with disabilities** who are eligible under IDEA or Section 504 of the Rehabilitation Act of 1973 (Section 504) a range of mental health related services, such as counseling services, psychological services, and social work services in schools, if included in their IEP or 504 plan, as appropriate*;
- Providing extended school year services **as defined in IDEA** when determined necessary to ensure that the student maintains the skills necessary for the student to receive a free appropriate public education (FAPE) if educational services are not continued during periods when school is not in session, such as the summer;

As stated in [ED’s COVID-19 Handbook](#), “It is important to note that strategies like in-school acceleration, tutoring programs, out-of-school time programs, and summer learning and enrichment are supplemental instruction and cannot replace a program of special education and related services based on a student’s IEP and the decisions of the IEP Team. Inclusion of students with disabilities in district or schoolwide interventions to address lost instructional time does not relieve a district of its responsibility to make individualized decisions required under the IDEA about needed special education and related services for a student with a disability.” (Page 27)

*This is the language from page 14. Of course, students with disabilities are entitled to the full range of mental health related services whether or not such services are specified in their IEPs, the same as students without disabilities. The IEP should then specify, in a binding manner, the duration, setting, and goals for such services.

- Making individualized decisions about services needed for a **student with a disability**. Consistent with IDEA and Section 504 and respective applicable standards, **students with disabilities** might be entitled to additional instruction and services, often referred to as compensatory services to make up for any skills that might have been lost if it is individually determined that the student was unable to receive FAPE, as a result of the closure of school buildings during the COVID-19 pandemic.

[ED's COVID-19 Handbook](#) clarifies: *"Federal disability law requires that **students with disabilities** receive all of the education benefits provided by technology in an equally effective and equally integrated manner as their peers. Schools can build accessibility features for students with disabilities into their technology by ensuring that websites and documents are compatible with screen reader software and providing accurate captioning or embedded sign language interpreting for video content. This might also include leveraging technology for IEP Team meetings to ensure that parents understand the proceedings at the meeting if, for example, a parent requires a sign language interpreter or printed materials in accessible formats for someone with visual impairments. Further, when developing, reviewing, or revising an IEP for a student with a disability, the IEP Team must consider whether the child requires assistive technology devices or services in order to receive a free appropriate public education. States and school districts must ensure that assessments are compatible with assistive technology devices."*

Uses of ARP ESSER funds that address students with disabilities might also include:

- Training on and implementation of a multi-tier system of supports ([MTSS](#)) framework, such as [positive behavioral interventions and supports](#) (PBIS) with a particular focus on those students with disabilities experiencing disproportionate disciplinary actions such as suspension, expulsion, and/or referrals to law enforcement as well as the use of restraint and seclusion. (Suspension, expulsion, referrals to law enforcement, restraint and seclusion data can be found in the [Civil Rights Data Collection](#).)
- Providing a range of mental health-related services, such as counseling services, psychological services, and social work services in schools.
- Hiring and retaining [tutors](#) to provide evidence-based interventions to students with disabilities to accelerate learning and address lost instruction.
- Providing for authentic student voices through the use of [student-led IEPs](#).
- Providing intensive professional development for general education teachers on [meeting the needs of students with disabilities in general education settings](#) and professional development for both general education teachers and special education teachers on [co-teaching](#) in order to significantly increase the percentage of students with disabilities being educated in general education settings for most or all of the school day.
- Training and implementing [universal design for learning](#) in both remote and in-person instruction.
- Purchasing and training on [assistive technology devices and services](#) preferably recommended through an assistive technology evaluation.
- Ensuring that assessments are compatible with assistive technology devices and school websites and documents are fully accessible.
- Activities to address [chronic absenteeism of students with disabilities](#).

- Implementing programs designed to increase graduation rates for students with disabilities.
- Ensuring that summer and after-school programs are designed in such a way as to fully include and meet the unique needs of students with disabilities.
- Enhancing/expanding current activities included in states' State Systematic Improvement Plans (SSIPs).

Look to ED's [What Works Clearinghouse](#) for summaries of effective programs, products, practices, and policies across a range of topics.

The ARP also provides significant funds administered by other federal agencies that can be used to provide supports to K-12 students including students with disabilities. These include:

- \$7.2 billion to support emergency educational connections and devices;
- \$50 million for PPE (face masks, face shields), vaccines, sanitation of schools;
- \$7.5 billion for vaccine distribution);
- \$180 million for mental health services.

The ARP includes a [one-time supplemental appropriation for the Individuals with Disabilities Education Act of \\$3 billion](#). As noted, guidance on these funds is forthcoming from ED.

www.copaa.org