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Montana Association of School Business Officials | Montana Federation of Public Employees | Montana Quality Education Coalition | Montana Rural Education Association | Montana School Boards Association | School Administrators of Montana

February 4, 2021

Chair Bedey and Members of the Joint Appropriations Subcommittee on Education

The listed public education advocacy groups partnering in the Montana Public Education Center (MT-PEC) jointly recommend that the subcommittee appropriate funds from the Consolidated Appropriations Act, 2021 (ESSER II) as set forth below. We are each available to answer any questions you may have regarding our proposal.

**MT-PEC Position on ESSER II Funds  
Prepared for House Appropriations**

**Key Points:**

1. We recommend that the Legislature appropriate at least 90% of the total (which is a minimum required by the Consolidated Appropriations Act, 2021 (ESSER II) for local distributions. We recommend the appropriation authorize expenditures for pre-award costs dating back to March 13, 2020 and continuing through September 30, 2023.
  - a. We recommend that the Legislature let the language of Section 313(d) of ESSER II speak for itself, and clarify that school districts are responsible for and authorized to determine what meets the requirements of Section 313(d). The United States Department of Education has previously advised that the State Education Agency (SEA) is not to “restrict or limit LEA uses of ESSER formula funds”, advising that “The ESSER Fund provides a **broad, permissive list of allowable LEA activities.**”
  - b. A statement accompanying the appropriation of local distribution that the district is responsible for ensuring, documenting and reporting expenditures that comply with Section 313(d), subsections 1 through 15 is appropriate and sufficient.
  - c. Grant management guidance and support should be encouraged from OPI, with avoidance of oversight exercised in a manner that “restricts or limits” what Congress has authorized.
  - d. The urgency of appropriating these funds as quickly as possible cannot be overstated.
2. We recommend that the Legislature appropriate the maximum 10% of ESSER II to OPI.
  - a. We recommend ½ of 1% of the total ESSER II distribution for administration of ESSER II.

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- b. We recommend that the 9.5% remaining to OPI be appropriated for emergency needs as determined by the state educational agency to address issues responding to coronavirus.

**Summary of MT-PEC Proposal:**

<b>Purpose of Appropriation</b>	<b>Proposed Instructions</b>	<b>Appropriation Amount</b>
Equal distribution of ESSER II funds per school districts with small or no Title I-A.	School districts to spend these funds consistent with Section 313(d) of ESSER II.	\$2,400,000
ESSER II funds for supplemental support for schools with high student needs.	Expenditures shall be used by OPI to address opportunity gaps and other needs of schools qualifying for OPI's comprehensive support and improvement program.	\$931,836
ESSER II funds for distribution to schools equal to inflation on special education formula.	Distributions under 3,c, shall be distributed consistent with the special education formula elements addressed in House Bill 46 and shall be used by school districts consistent with applicable provisions of Section 313(d) of the ESSER II.	\$4,427,613
ESSER II funds for support for children placed in children's psychiatric hospitals and in-state residential treatment facilities (OTO/Biennial).	Expenditures under 3, d, shall be distributed consistent with the costs of implementing the provisions of House Bill 206 and shall be used by entities receiving such funds to help address the mental health needs of students with an emphasis on needs arising out of the circumstances of coronavirus.	\$2,400,000
ESSER II funds for modernization of all OPI databases connected to student learning, licensing and staffing	Distributions shall be used by OPI to repair, improve and/or replace existing data systems as part of responding to coronavirus and helping schools with data needed to address learning loss and improve recruitment and retention and streamline licensure. Systems eligible for expenditure under this line item include but are not limited to the TEAMS (Terms of Employment, Accreditation, and Master Schedule), GEMS (Growth and Enhancement of Montana Students), MAEFAIRS and AIM (Achievement in Montana). Efforts shall be aligned to ensure compliance with section 20-7-104, MCA.	\$6,000,000

ESSER II funds for administration of ESSER II program - (OTO/Biennial)	Administration of ESSER II.	\$850,497
ESSER II funds for local distribution (OTO/Biennial)	Represents 90% of total ESSER II. Must be spent consistent with Section 313(d) of ESSER II.	\$153,089,519
TOTAL ESSER II	Per USDOE Distribution Total	\$170,099,465

**Appendix: Detailed Facts on ESSER II:**

**STATE PORTION – A MAXIMUM OF 10%:**

Section 313(e) of ESSER II authorizes expenditure of ESSER II funds reserved by the SEA for the following:

(e) STATE FUNDING.—With funds not otherwise allocated under subsection (c), a State may reserve not more than one-half 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***, including measuring and addressing learning loss, which may be addressed through the use of grants or contracts.

**LOCAL DISTRIBUTION – A MINIMUM OF 90%:**

The USED generally does not consider the following to be an allowable use of funds:

1. Bonuses, merit pay, or similar expenditures, unless related to disruptions or closures related to COVID-19.
2. Subsidizing or offsetting executive salaries and benefits of individuals who are not employees of the school district.
3. Expenditures related to state or local teacher or faculty unions or associations.

LEAs receive Elementary and Secondary School Emergency Relief Funds based on their relative share of Title I-A funds, but these funds are not Title I-A funds. These funds may benefit any school in an LEA regardless of a school’s Title I-A status. Funds may be used on districtwide activities and/or to benefit any individual school.

Section 313(d) provides as follows: “A local education 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, 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 IDEA and ensuring 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 children 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 after-school 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.
- (12) 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—
  - (A) 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.
  - (B) Implementing evidence-based activities to meet the comprehensive needs of students.

- (C) Providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment.
  - (D) Tracking student attendance and improving student engagement in distance education.
- (13) 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.
- (14) Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the in- door 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.
- (15) 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.