

CARES Act: The Education Stabilization Fund

By Jeremy S. Motz / Apr 03, 2020

This E-Alert is the first in a series to address the Federal funding that will be available to Michigan public school districts under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") that was enacted and signed into law on March 27, 2020. The CARES Act creates a \$30,750,000,000 Education Stabilization Fund (the "ESF"). The focus of this article is to provide a general overview of the portions of the ESF that will be made available to public schools. The issues surrounding the amount, timing of availability, and allowable uses of the ESF monies are undoubtedly raising additional questions and issues which we will address in subsequent articles in this series.

The ESF is generally allocated into four buckets. The first 2% of the ESF (approximately \$615 Million) is allocated to use by the Secretary of Education for outlying areas, the Bureau of Indian Education and States with the highest coronavirus burdens. The remaining 98% of the ESF is divided into 3 buckets: (1) the Governors Emergency Grants (9.8% or approximately \$2.95 Billion); (2) the State Grants for Public Schools (43.9% or approximately \$13.23 Billion); and (3) the Higher Education Grants (46.3% or approximately \$13.95 Billion). This article provides a general overview of the Governor's Grants and the State Grants for Public Schools components of the ESF and the permitted uses of the funds allocated thereunder.

On April 2, 2020, Governor Whitmer signed Executive Order 2020-35, which suspended in-person instruction of pupils for the remainder of the 2019-2020 school year. Moreover, Executive Order 2020-35 requires each school district to develop a Continuity of Learning and COVID-19 Response Plan, which Plan must include elements in fourteen (14) specific required areas and be approved as a condition of continued receipt of State School Aid payments for the 2019-2020 school year. As school districts work through the development of their respective plans, school districts should note that funds received under the ESF may be used to supplement, but not supplant, many of the required areas of the plan and maintain the continuity of services of the school district.

Title VIII – Department of Education – Education Stabilization Fund

Section 18001 Summary

Of the \$30,750,000,000 Education Stabilization Fund:

- Allocates: (1) 0.5% to outlying areas on basis of needs; (2) 0.5% for Bureau of Indian Education Programs; and (3) 1% to State with highest Coronavirus burdens to support activities under CARES Act upon approved application.
- Allocates the remaining 98% of ESF to: (1) 9.8% to Governors Grants under Section 18002; (2) 43.9% to State Grants for Public Schools under Section 18003; and (3) 46.3% for Higher Education Grants under Section 18004.

Section 18002 Summary

- The Secretary of Education shall make Emergency Relief Grants to State governors upon approved application. Applications shall be invited within 30 days of the enactment of the CARES Act and approved or denied within 30 days of receipt of application.
- The grants shall be allocated to States
 - 60% based on the population of individuals aged 5-24.
 - 40% based on the State's number of children counted under Section 1124(c) of ESEA of 1965.
- Grant Funds may be used to:
 - Provide emergency support through grants to LEAs that have been most impacted by coronavirus to continue to provide educational services and support on-going functionality of the Local Education Agency (LEA).
 - Provide grants to institutions of higher education that have been most impacted by coronavirus to continue to provide educational services and support on-going functionality of the institution.
 - Provide support to LEAs, institutions of higher education and other education-related entities within State that governor deems essential to carry out emergency education services, child care, and early childhood education, social and emotional support and protection of education-related jobs.
 - All funds not allocated within 1 year must be returned to Secretary of State who shall reallocate to other States.

Section 18003 Summary

- The Secretary of Education shall make elementary and secondary school relief grants to each State Education Agency (SEA) upon approved application. Applications shall be invited within 30 days of the enactment of the CARES Act and approved or denied within 30 days of receipt of application.
- The amount to each State shall be allocated in the same proportion as each State received under Part A of Title I of ESEA of 1965.
- Each State shall allocate 90% of the funds received via subgrants to LEAs (including charter schools that are LEAs) in proportion to the amount received under Part A of Title I of ESEA of 1965.
- Grant Funds may be used to:
 - Any activity authorized by: (i) ESEA of 1965; (ii) Native Hawaiian Education Act; (iii) Alaska Native Educational Equity, Support and Assistance Act; (iv) Individuals with Disabilities Education Act (IDEA); (v) Adult Education and Family Literacy Act; (vi) Perkins Career and Technical

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- Education Act; (vii) Subtitle VII of McKinney-Vento Homeless Assistance Act.
 - Preparedness and response efforts of LEAs to coronavirus.
 - Provide principals and school leaders with resources to address the needs of individual schools.
 - Activities to address the needs of low-income, minorities, English learners, homeless students, and foster care youth.
 - Develop and implement procedures and systems to improve preparedness and response to coronavirus.
 - Training and professional development for LEA staff on sanitation to minimize the spread of infectious diseases.
 - Purchasing supplies to clean and sanitize LEA buildings.
 - Planning for and coordinating long-term closures of schools, including how to provide technology for on-line learning to all students, provide guidance for carrying out requirements under IDEA, and ensure educational services are provided in accordance with all Federal, State, and local requirements.
 - Purchasing educational technology for students served by LEA (hardware, software, and connectivity) that aides in regular and substantive educational interaction between students and instructors.
 - Provide mental health support services.
 - Planning and implementing summer learner and supplemental after-school programs, including on-line learning during summer.
 - Other activities that are necessary to maintain the operation of and continuity of services in LEAs and continuing to employ existing staff of the LEA.
 - The state may reserve not more than 0.5% for administrative costs.
 - The state shall return funds not used within 1 year to Secretary of State who shall reallocate to other States.

Section 18006 Summary

- An LEA, State, institution of higher education or other entity who received funds under the ESF shall, to the greatest extent practicably, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.

This is intended as a high-level overview of the Education Stabilization Fund of the CARES Act. There are ambiguities, and clarification on some of the details is still needed regarding the utilization of the ESF. One key issue is when will these funds be available to Michigan schools. Moreover, how these funds may be available to supplement school district plans is still developing and fluid. If you are unsure how these or other provisions of the CARES Act or ESF apply to you and your school district, please contact one of our Clark Hill Education Law attorneys.