

June 23, 2021 Board Meeting Written Comments
Received between Monday, June 21st and Thursday, June 24th
Submitted via Written Comments Form

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An Open Letter To The Next CPS CEO*

On Monday, May 3, Chicago Public Schools CEO Dr. Janice Jackson announced that she will be leaving CPS at the end of her contract. We at Raise Your Hand understand the need for more family time and wish Dr. Jackson the best of luck with the next chapter.

As Mayor Lightfoot selects CPS' 8th CEO in 12 years, we are again disappointed that this process will not be led by a fully elected representative school board. Past mayors like Daley and Emanuel, time and time again, appointed rubber stamp CEOs who carried the mayor's special interests. While we are hopeful that Mayor Lightfoot will engage stakeholders directly in this search, this pattern will continue until mayoral control is dismantled. As a citywide, grassroots parent advocacy organization that organizes parents around systemic issues in education, we intend this open letter as guidance for the next CEO* of CPS. We look forward to working with them and their leadership team on ensuring parents have a seat at the table.

To the Next CEO* of CPS,

As we are sure your predecessor will tell you, this may be the hardest job in your career. CPS suffers from decades of disinvestment, mismanagement and unilateral decision making without real stakeholder inclusion. The top down approach that focuses on image and perception has resulted in frequent state and federal intervention in CPS. You have the opportunity and immense responsibility of continuing to change CPS culture. You have the opportunity to build trust through transparency and integrity. We hope for a productive relationship with you and your leadership team; here are our recommendations for your tenure.

- Fund Black Communities. Full Stop.

Stop the practice that in order for predominantly Black communities to receive new investment, something needs to be taken away. In order for Englewood to receive a new school, others needed to be closed. In order to build a new high school, there was an attempted closure of National Teachers Academy, a successful predominantly Black elementary school. Now, in order for North Lawndale to receive new investment, CPS is claiming 3 other schools need to be closed. Chicago has seen systematic school closures and chronic disinvestment that has destabilized Black and Brown communities and further exacerbated the push out of Black families and Black teachers in Chicago. We must be aggressive in funding education in these school communities without being extractive.

- Create Real Opportunities for Authentic and Meaningful Engagement

In Chicago, parents and students are treated like a check box. They have participated

in meetings and spoken in hearings only to see the district move forward with the plan they already had in place. We ask that you create meaningful opportunities for parents and other stakeholders to not just inform CPS policies but help to create them. We have a wealth of leaders on Local School Councils that are ready to serve. Keep your ear to the ground for parents who are most directly impacted by CPS decisions and let them guide your policy. From facilities investment to how the district should spend the ARPA funding, communities must have a voice. As the leader who will guide us through to being a post-pandemic district, we must not focus on returning to normal. Normal has never been enough for many CPS families. Now is the time to be transformational - and that starts with parents and students who have been historically harmed by CPS practices.

- Dismantle Institutional Adulthood

Too often students are last in line for feedback. They are given advisory roles with no real power. We must trust our students to make real decisions for this district. If we say we center youth experiences, we must actually deliver on their demands. That is why RYH supports the youth led #CopsOutCPS campaign and their calls to reimagine safety in their schools. That is why we believe that special education students, with their IEP team, are able to determine their high school placements.

In order to achieve a robust, well-funded and healthy CPS community, we urge you not to make the same mistakes as your predecessors. Please listen to the needs of CPS students, families and educators. Stand with those that most need your support to thrive in Chicago Public Schools.

We look forward to working together with the district.

Best,

Raise Your Hand Board & Staff
www.ilraiseyourhand.org

*We would love to have a Superintendent instead of a CEO.

Published May 5, 2021: <https://www.ilraiseyourhand.org/ryh-statements/letter-next-cps-ceo>

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VOYCE Position Statement and Recommendations Regarding Student Code of Conduct
June 24, 2021

In its most recent edit of the Student Code of Conduct, CPS has undoubtedly made some improvements. Unfortunately, we do not believe those changes will adequately address the systemic racism exemplified by CPS' continued reliance on law enforcement to address student misbehavior. As a result, we believe that students,

families, and communities will continue to be harmed by the antiquated and ineffective approach to school discipline that is codified within the new revisions of the SCC.

This may strike many of you as an overly harsh response to what is ultimately a positive reform, but it is borne out of disappointment from our communities which have been engaging in efforts to transform the Student Code of Conduct over the last 15 years. Many current VOYCE members had not even been born when members of our organizations and communities began pointing out the need for CPS to address this issue. Indeed, the first report documenting the devastation caused by school policing in Chicago was released in 2005. It showed that thousands of CPS students were arrested every year, almost all of whom were students of color. It also showed that for most, if not all, of the incidents that resulted in the arrest of children and youth, there were less harmful and more effective interventions available. Since that time, Chicago youth, parents, and other community members have consistently highlighted the severe harm caused by Chicago's school-to-prison pipeline. Year after year, we have pointed out that police involvement in schools was detracting from students' health, safety, and learning, and even inflicting trauma and toxic stress on students. Year after year, we have pointed out the need to design a disciplinary system based around student health and well-being, the developmental needs of young people, and racial equity. The continued response has been to instead tinker around the edges of the same policy that resembles a criminal code far more than it does a policy worthy of Chicago's young people.

That is why we do not share in CPS's enthusiasm for these changes. Notably, it is not as if CPS personnel are unaware of what is needed. At the last minute, after meeting with us, the following language was inserted into the policy: "To prevent traumatic impacts of police arrest for children and their families, school administrators should prioritize a trauma-responsive behavioral health approach that focuses on de-escalation and restorative, mental health intervention based on student needs before considering police involvement." We wholeheartedly agree with that approach. Unfortunately, that is not how the rest of the policy is structured. Instead, it continues to be framed around a criminalization approach to addressing youth behavior. For example:

The limitations on police notification are not nearly as restrictive as CPS seems to believe. "Emergency situations" are defined as those in which there are "immediate threats of danger or imminent harm." However, that could include two pre-K students who push each other on the playground. Indeed, because it does not even specify physical harm, this language would allow for a situation in which a school official determines that a student might get their feelings hurt as an "emergency situation" that requires police notification.

Additionally, school officials are directed to "contact CPD to report violations of the law." Not only is this directive likely to produce confusion because of the seemingly contradictory guidance to contact the Student Safety Center within the same section of the document, but it will also lead to continued over-reporting of students to police.

That is because our criminal laws are extremely broad and vague, encompassing a huge range of behavior that happens every day in every school. For example, there may not be a school in the U.S. that doesn't have dozens of behaviors every day that qualify as "disorderly conduct" or "disturbing the peace" under criminal law. Therefore, using criminal law to guide educational decisions is severely misguided.

CPS has emphasized the creation of a role for the Student Safety Center within the policy as a strategy for mitigating that risk. However, nowhere does the policy actually

state what will be guiding the Student Safety Center's intervention. In other words, the district is asking the community to trust that they will take a mental and behavioral health approach rather than criminalization, and that they will be able to convince school administrators to do the same. We have far too much experience with one or both of those things not being true. Also with high turnover in the district there is always the possibility that a well-intentioned official will leave their position and be replaced by someone with different values. In other words, if there are values that district officials hold with regard to these issues, they should be willing to write them within a policy so that all relevant decision makers can be held accountable for upholding them.

Recommendations

We respectfully submit that CPS should stop trying to tweak and wordsmith the existing Student Code of Conduct. Instead, we propose the following:

Creating an entirely new Student Code of Conduct that is centered around student health and well-being, the developmental needs of young people, and racial equity. Such a policy would be far more aligned with the Whole School Safety Initiative and the Healing Centered Initiative. It would minimize all forms of criminalization to the greatest possible extent while instead emphasizing restorative justice approaches; increased use of school psychologists, social workers, and other mental and behavioral health professionals; other social/emotional supports; conflict resolution, effective crisis response, de-escalation strategies; and trauma-informed approaches to meeting students' developmental needs.

Similar to the Whole School Safety process that we went through with the Office of Safety and Security, what we would suggest is a drafting process that focuses on building ownership of stakeholders, including health professionals and especially the young people who are directly affected by this issue.

We also need a full audit of all police notifications and referrals to law enforcement that have happened over the past 3 years to inform a more comprehensive approach to behavioral health in the district.

By implementing these recommendations, CPS can finally put an end to the cycle of needless harm that its continued reliance on criminalization has consistently inflicted on its students. It could launch a new era that is characterized by prioritizing racial equity and student health and well-being above all else. We know this is absolutely possible and within reach, as there are individual schools within CPS that have gone beyond what the Student Code of Conduct outlines to center health, well-being, and restorative practices with incredible results. An example of this is Curie Metropolitan High School, whose approach we have spotlighted through the Whole School Safety Initiative with an overwhelmingly positive response from CPS staff such as teachers and administrators, LSC members, students and parents. The current revised policy does not allow for the deep engagement of local school stakeholders that is needed to carry out the vision of the Whole School Safety and Healing Centered Initiatives.

Please contact Maria Degillo, VOYCE Coordinator, with any questions at maria@voyceproject.org or (773) 240-9612.

ATTACHMENTS



VOYCE Position Statement and Recommendations Regarding Student Code of Conduct June 24, 2021

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That is why we do not share in CPS's enthusiasm for these changes. Notably, it is not as if CPS personnel are unaware of what is needed. At the last minute, after meeting with us, the following language was inserted into the policy: "To prevent traumatic impacts of police arrest for children and their families, school administrators should prioritize a trauma-responsive behavioral health approach that focuses on de-escalation and restorative, mental health intervention based on student needs before considering police involvement." We wholeheartedly agree with that approach. Unfortunately, that is not how the rest of the policy is structured. Instead, it continues to be framed around a criminalization approach to addressing youth behavior. For example:

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- Additionally, school officials are directed to "contact CPD to report violations of the law." Not only is this directive likely to produce confusion because of the seemingly contradictory guidance to contact the Student Safety Center within the same section of the document, but it will also lead to continued over-reporting of students to police. That is because our criminal laws are extremely

broad and vague, encompassing a huge range of behavior that happens every day in every school. For example, there may not be a school in the U.S. that doesn't have dozens of behaviors every day that qualify as "disorderly conduct" or "disturbing the peace" under criminal law. Therefore, using criminal law to guide educational decisions is severely misguided.

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- Similar to the Whole School Safety process that we went through with the Office of Safety and Security, what we would suggest is a drafting process that focuses on building ownership of stakeholders, including health professionals and especially the young people who are directly affected by this issue.
- We also need a full audit of all police notifications and referrals to law enforcement that have happened over the past 3 years to inform a more comprehensive approach to behavioral health in the district.

By implementing these recommendations, CPS can finally put an end to the cycle of needless harm that its continued reliance on criminalization has consistently inflicted on its students. It could launch a new era that is characterized by prioritizing racial equity and student health and well-being above all else. We know this is absolutely possible and within reach, as there are individual schools within CPS that have gone beyond what the Student Code of Conduct outlines to center health, well-being, and restorative practices with incredible results. An example of this is Curie Metropolitan High School, whose approach we have spotlighted through the Whole School Safety Initiative with an overwhelmingly positive response from CPS staff such as teachers and administrators, LSC members, students and parents. The current revised policy does not allow for the deep engagement of local school stakeholders that is needed to carry out the vision of the Whole School Safety and Healing Centered Initiatives.

Please contact Maria Degillo, VOYCE Coordinator, with any questions at maria@voyceproject.org or (773) 240-9612.



Janice K. Jackson, EdD
Chief Executive Officer

Chief Executive Office

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Dear Dr. Ayala:

We are writing to raise concerns related to the Novel Monitoring projects presented to the Illinois State Board of Education on May 19, 2021, as part of the Extended Corrective Action. We disagree that the Novel Monitoring projects were developed in collaboration with CPS, or that CPS was provided with notice before their introduction. Additionally, the Novel Monitoring projects go beyond the scope of the Public Inquiry and lack measurable goals. For these reasons, we object to their addition as part of the Extended Corrective Action and request that they be removed from it.

While we understand the need for continuing the monitoring function related to Student Specific Corrective Action, as that strand is still underway, as well as the continued monitoring of the progress and accomplishments made in the other strands, adding these additional Novel Monitoring projects threatens to dilute ODLSS's focus on completing SSCA and to extend monitoring indefinitely.

I. Novel Monitoring Projects are Beyond the Scope of the Public Inquiry

The new goals are not directly related to the findings of the Public Inquiry and Corrective Action. The Extended Corrective Action document states in its description of the Novel Monitoring projects that these goals are "tangential" to the Original Corrective Action. It argues, however, that they are nonetheless relevant because they "address assurances that CPS policies, procedures, or practices ... [are] consistent with the IDEA Part B." The District objects to this reasoning. The fact that the Public Inquiry was related to Part B of the IDEA does not mean that every other District action governed by Part B is also eligible for monitoring under the Public Inquiry.

The Original Corrective Action document lists very specific allegations investigated by the Public Inquiry. It identified the following violations¹ of the IDEA Part B in:

- "the way in which CPS used its electronic Individual Education Plan system, known as the SSM System;"
- "the documentation and data collection requirements;"
- "the budgeting and appeals process;" and
- "the way in which CPS managed transportation."

¹ See pages 2–4 of ISBE's Corrective Action Report, dated May 16, 2018.

Taken together with these identified violations, it is unclear to us how the Novel Monitoring projects, which are focused around teacher vacancies (an acknowledged statewide struggle) and child find, are related to these four identified violations.²

II. Novel Monitoring Projects Lack Measurable Goals

An additional concern is that the Novel Monitoring projects do not have measurable goals that would allow for an objective completion, or even for the District to create a clear plan or schedule of completion. Especially given the acknowledged “statewide challenge in the hiring and retention of qualified special education teachers,” we are concerned with how CPS will be able to demonstrate completion of the Corrective Action. Additionally, if new areas of investigation and correction unrelated to the Public Inquiry can be added annually, we are unclear on how monitoring will ever be concluded.

A. Teacher Vacancies

The Extended Corrective Action document does not include in its description of the Special Education Teacher Vacancies project what completion of this project would look like. It only states that, “the Monitoring Team will focus on CPS’ vacancies to confirm that CPS is addressing appropriate special education services to students despite vacancies” and requires that CPS work with the Monitoring Team to identify “*any* problems of practice.” This expectation does not indicate what actions CPS must take to confirm this, nor does it allow for any clear planning or conclusion.

In efforts to ensure that students who need services from a special education teacher are receiving those services, the District has already been working consistently for the past several years to recruit teachers--especially special education teachers--and to help address the teacher shortage in Chicago. It has undertaken several strategies, such as aggressively recruiting hundreds of special education teachers through an early offer program, providing stipends for special education student teachers, directly subsidizing the cost of special education endorsements for general education teachers who commit to transfer into a vacant special education position, recruiting special education teachers from international exchange programs, and training hundreds of teacher residents through their internal teacher residency programs.

In addition to these recruitment efforts, the District has also already made significant budgetary revisions that make it easier for schools to provide students with compensatory education, when other measures have not met the students’ needs. These revisions provide that compensatory education given to a student as a result of a teacher vacancy will be funded centrally by the District. Additionally, as part of its continuing efforts to provide professional development to staff members, the District has worked closely with both the Monitoring Team and external

² While we acknowledge that teacher vacancies may stem from budgeting concerns, the identified violation is not the existence of teacher vacancies, nor even the concern of whether students are receiving services despite vacancies, but rather that the District’s budgeting and appeals process (now long since revised) was overly restrictive during the identified school years. If the logic that any negative result of the budget appeals process is up for monitoring, then it is unclear what the monitoring does *not* cover.

stakeholders³ to develop compensatory education training to ensure that students receive special education services despite teacher vacancies.⁴

What additional steps is CPS required to take to confirm that it is addressing concerns surrounding teacher vacancies? Regardless of whether this project is included in the Novel Monitoring, the District will always be taking steps to ensure that students are receiving appropriate special education services. This issue does not require additional monitoring. Rather, it is an inherently continuing endeavor undertaken by the District as part of its mission to ensure the success of all of its students.

B. Child Find

Because the Extended Corrective Action document terminates on page 9, we cannot point to specific language in the Child Find Novel Monitoring Project. But if it reflects the project as it is described in the 2020 Monitoring Report, then it also lacks objectively measurable goals. Additionally, the District is already working separately with ISBE Monitors to address concerns related to Child Find, and the inclusion of a Child Find Novel Monitoring project in the Extended Corrective Action is redundant.

The Child Find Novel Monitoring Project, as described in the 2020 Annual ISBE Monitoring Report, is also overbroad and lacks measurable goals. Similar to the concerns of the Teacher Vacancy Novel Monitoring Project, the Child Find project does not give clear steps that enumerate how the District could satisfactorily address concerns and exit monitoring. For example, it states that the Monitoring Team will “focus on several schools.” Nowhere does it indicate exactly how many schools will be the point of focus, so additional schools could be easily brought in, with no limit. Neither does it indicate what factors will bring a school under review, except that they have been identified as less than ten percent of their student population being found eligible for IEPs or 504 Plans. And while the Monitoring Team does propose the use of a rubric, the rubric is actually a list of “questions designed to [elicit] responses that target specific areas in which child find issues may occur”⁵ so that schools can have a discussion on the topic. But to what end? There is no system of scoring that would allow for guidance from ISBE to help schools see weak points in their processes. The 2020 ISBE Monitoring Report states that at this point in the process, the Monitors will “work closely with ODLSS leadership, the ODLSS District Representative, and likely the CPS Network Chief” to “determine training opportunities” discovered during these discussions, but this still does not indicate an end point. How many trainings should be developed? Should they be school-based, or district-wide? And once the trainings are implemented, will the Monitoring Team review additional schools? Does the monitoring project

³ External stakeholders were provided with drafts of the professional development at two separate stages, and they provided extensive feedback on both occasions.

⁴ On this subject, the Extended Corrective Action report further states that, “CPS will collaborate with the Monitoring team to ... coordinate school-specific coaching and professional development that may be necessary to ensure appropriate delivery of services, progress monitoring, and/or compensatory services when applicable.” Again, this goal is extremely broad and does not define its conclusion, and is already being addressed through the development of the compensatory education training.

⁵ See page 23 of the 2020 Annual ISBE Monitoring Report.

come to an end once the trainings are held? The process and the end goal are not clear from the language in the 2020 ISBE Monitoring Report.

The administrative burden of this process is particularly challenging considering that the District is already partnering with ISBE to address Child Find under a separate monitoring project, making the Child Find Novel Monitoring Project redundant. The District acknowledges that Child Find is an area of growth. In September 2020, the District was informed that it had scored "0" for Indicator 11: Child Find as part of ISBE's annual LEA Determination. Since then, the District has established an accountability team, and been working with two other Monitors (Lori Clampitt and Elizabeth Hayes) to develop a concrete plan to help the District meet the state target of 100.0%. ODLSS leadership and members of the District's Data Analysis team meet with these two ISBE Monitors assigned to CPS on a monthly basis, and are in regular email communication. This collaboration has resulted in the creation of a corrective action plan, and the District has also submitted two progress reports to date (of the required mid-year and end-of-year progress reports). ODLSS leadership has met individually with Network Chiefs and District Representatives to review data and support an ongoing cadence as a team. Additionally, District Representatives met with all case managers district-wide in February 2021 to address Indicator 11. A data dashboard has been developed to support access for school administrators and Network Chiefs to support monitoring and planning, and training is already being developed to ensure that all stakeholders are aware of Child Find concerns and timelines. Professional development will also be again provided to all case managers in August at the beginning of the upcoming school year. Much has been accomplished as part of this separate LEA Determination monitoring project, and the District looks forward to continuing this partnership. If ISBE would like to incorporate additional review processes and identify training opportunities for staff, then those additions would fit most sensibly within the LEA Determination monitoring project.

III. ODLSS was not Consulted Prior to Introducing Novel Monitoring

ODLSS has been meeting with ISBE on a weekly basis for approximately two years which has led to a collaborative and transparent relationship in advancement of our goals. However, the district is concerned that these new projects were developed without discussing and collaborating with ODLSS. ISBE's intention to address teacher vacancies and child find within SSCA was first introduced as part of the ISBE Monitoring 2020 Annual Report, and is now being proposed as a concrete part of the Corrective Action. On neither of those occasions was ODLSS consulted beforehand.

A. ISBE Monitoring 2020 Annual Report

At the end of 2019, the ISBE Monitoring 2019 Annual Report was published and included information about the progress on the Corrective Action as well as goals for the 2019-2020 school year. The goals did not involve investigation into new issues; the goals outlined a plan to continue the next steps of implementing the original Corrective Action.

However, the ISBE Monitoring 2020 Annual Report took a different approach. The 2020 Report indicated that while the overall objective for the Monitoring Team was to ensure the fulfillment of

the corrective action, it also stated that, "with thoughtful input from various stakeholder groups, the Monitors will concentrate their efforts on three additional goals for this school year." Two of these goals included "Monitoring Schools with Low Child Find Percentages" and "Monitoring Schools with a High Number of Sustained Vacancies of Special Education Teachers."⁶ It was only upon the publication of these additional goals that CPS was notified of them. CPS was not given an opportunity to provide feedback on their addition.

Despite this, and despite the concerns that ODLSS expressed after learning of these new projects that they would divert resources and attention away from SSCA, other Corrective Action items, and internal priorities, CPS has cooperated with the Monitoring Team's efforts to contact schools of concern related to these goals and to meet with them. This cooperation was in attempts to maintain a strong partnership with ISBE and in recognition of the monitoring function spelled out in the original Corrective Action report.

B. Extended Corrective Action

The District's concerns were heightened, however, upon receiving the Extended Corrective Action document, which cements these Novel Monitoring projects into the Corrective Action requirements.⁷ CPS only learned that the Extended Corrective Action was going to the Illinois State Board on May 17, and no mention of the Novel Monitoring projects being added to the Extended Corrective Action was ever made. CPS was not given notice or an opportunity to provide feedback on adding these issues to the Extended Corrective Action.

Given the weekly meetings between the Monitoring Team and ODLSS, as well as additional communication between the Monitoring Team and CPS Law Department, we are disappointed that adding these Novel Monitoring projects to the monitoring function was not discussed prior to memorializing the change in the proposed Extended Corrective Action.

IV. Conclusion

We respectfully request that the Novel Monitoring projects be removed from the Extended Corrective Action. CPS is dedicated to correcting the problems identified in the Public Inquiry and implementing the required Corrective Action steps. We are also dedicated to resolving concerns surrounding teacher vacancies and child find, and we welcome ISBE's input and collaboration on these projects. But these projects are unrelated to the Public Inquiry, and do not need to be part of the Corrective Action. For all of the reasoning given above, we disagree that the Novel Monitoring projects were developed in collaboration with CPS, or that CPS was provided with notice before their introduction. Furthermore, the Novel Monitoring projects go beyond the scope of the Public Inquiry, and lack measurable goals. As such, we object to their addition as part of

⁶ A third goal promotes an equity focus in the monitoring function. This goal is a continuation of existing work and CPS supports efforts to ensure that students in historically underrepresented populations are included and supported.

⁷ The Extended Corrective Action document ends on page 9, after Special Education Teacher Vacancies. It appears that additional pages have been cut off as the introduction references projects, plural. We expect that Child Find is the other project, but would appreciate receiving a copy of the full document.

the Extended Corrective Action, and to the addition of any new goals or monitoring projects that are unrelated to the Public Inquiry findings and insist that any proposal to do so be discussed with ODLSS prior to publication.

We sincerely appreciate your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Janice K. Jackson". The signature is written in a cursive style with a large, looping initial "J".

Janice K. Jackson, Ed.D.
Chief Executive Officer
Chicago Public Schools



Illinois State Board of Education

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www.isbe.net

Darren Reisberg
Chair of the Board

Dr. Carmen I. Ayala
State Superintendent of Education

MEMORANDUM

**TO: THE ILLINOIS STATE BOARD OF EDUCATION
DR. CARMEN I. AYALA, STATE SUPERINTENDENT OF EDUCATION**

**FROM: TRISHA OLSON, LEGAL OFFICER
LAURA BOEDEKER, ASSISTANT LEGAL OFFICER**

**RE: EXTENDED CORRECTIVE ACTION AND RECOMMENDATIONS CONCERNING THE
CHICAGO PUBLIC SCHOOLS PUBLIC INQUIRY**

DATE: MAY 19, 2021

I. THE 2017-18 PUBLIC INQUIRY AND 2018 CORRECTIVE ACTION REPORT

At the Illinois State Board of Education (ISBE) meeting in November 2017, a number of special education advocates¹ (the advocates) filed a complaint with ISBE regarding alleged systemic violations of the *Individuals with Disabilities Education Act of 2001* and its implementing regulations against the Chicago Public Schools (CPS)² special education system pursuant to 23 IAC 226.570. The advocates articulated a systemic complaint regarding CPS' noncompliance with certain special education procedures and processes. The U.S. Department of Education defines a systemic complaint of noncompliance as a complaint that alleges that a public agency has a policy, procedure, or practice applicable to a group of children that is inconsistent with IDEA Part B and its implementing regulations.³¹

Following the November 2017 Board meeting, the ISBE legal department directed a Public Inquiry to develop factual findings regarding the complaint filed by the advocates. Those factual findings were reported to the Board at the April 2018 ISBE meeting. The Public Inquiry Team issued factual findings declaring that CPS released or engaged in policies, procedures, or practices applicable to a group of children, and those actions were inconsistent with IDEA Part B and its implementing regulations. ISBE also made recommendations stemming from the Public Inquiry fact finding process at the May 16, 2018, ISBE meeting.

When developing the resulting Corrective Action Report, ISBE met with and discussed the findings and a range of possible corrective action recommendations with CPS, the advocates,

¹ The advocates presently go by the name Special Education Advocacy Coalition of Chicago (SPEACC).

² "CPS" as noted throughout this Memorandum includes the CPS Office of Diverse Learner Supports and Services (ODLSS).

³ See, OSEP Memo 13-08, July 23, 2013, Memorandum to Chief State School Officers Regarding Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act, page 20.



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representatives from the Chicago Teachers' Union (CTU), the Assistant Secretary for the U.S. Department of Education's Office of Special Educations and Rehabilitative Services (OSERS), our State contact for the U.S. Department of Education's Office of Special Education Programs (OSEP), and our counterparts at other State Educational Agencies that developed corrective action plans for large urban school districts. Based on the totality of information, ISBE developed a series of recommendations and corrective actions in a Corrective Action Report (Corrective Action), dated May 16, 2018.

While the Corrective Action identifies specific items of reform and oversight, it also provided ISBE with the flexibility to provide additional training, programmatic support, guidance, or other technical assistance to ensure that CPS makes necessary reforms and to ensure that students, parents/guardians, and families have the resources they need to access and receive appropriate services and supports.

II. CORRECTIVE ACTION TIMELINE

The Corrective Action and the related appointment of the ISBE Monitoring Team to oversee its recommendations anticipated that "the placement of the monitor at CPS will be evaluated after three school years, at which time ISBE will determine the necessity of the monitor going forward." Currently, ISBE's CPS Monitoring Team includes an Assistant General Counsel, who is housed within the Legal Department and a Principal Consultant in the Special Education Department.

The first year of monitoring activities were reported in [the 2019 Monitor Annual Report](#) and the second year of monitoring activities were reported in [the 2020 Monitor Annual Report](#). It is important to note that the work needed to enact necessary reforms has been frustrated due to certain major developments. First, in the fall/winter of 2019, the parties agreed that CPS would provide a Universal Enrichment Remedy (UER) to students who were agreed to have been impacted by the actions described in the Inquiry findings. Although a major development towards ensuring students receive appropriate services and support, the negotiation and development of the UER was not contemplated by the original Corrective Action. Further, [a CPS strike](#) in 2019 and the emergence of COVID-19 in 2020 both had a tremendous impact on the timeline of Corrective Action and on overall Monitoring achievements. Based upon the whole of factors emerging over the past three years, there remains additional corrective action work, including monitoring projects developed in collaboration with the advocates, CPS and stakeholders. A fourth year of monitoring is needed to ensure that the provisions of corrective action and recommendations adopted by the State Board of Education are fully met.

This memorandum expands the monitoring role to cover one additional full school year (2021-22), updates the original Corrective Action Report, and revises the recommendations to accurately reflect remaining corrective action work, as well as current monitoring projects developed in collaboration with the advocates, CPS, and other stakeholders.

The Monitoring Team will continue to consult with ISBE's State of Illinois Contact of the U.S.



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Department of Education's Office of Special Education Programs (OSEP) regarding the Monitoring Team's activities and vision on a monthly basis.

III. REVISED CORRECTIVE ACTION AND RECOMMENDATIONS

A. ISBE Appointed Monitoring Team

ISBE Requirements: The Monitoring Team will continue to implement the provisions of corrective action and recommendations adopted by ISBE. The Monitoring Team will continue to serve as a liaison for special education between ISBE, CPS, the advocates and other stakeholders, as well as coordinate ISBE staff to support the compliance and technical assistance activities within CPS. The Monitoring Team and the ISBE Special Education Department will continue to have the authority to provide technical assistance or additional corrective action if CPS does not fully implement this plan and take other affirmative actions to abide by the policies, procedures and practices that are consistent with IDEA Part B and Illinois Regulations regarding special education.

Essential Corrective Actions:

1. CPS will fully cooperate with the Monitoring Team, providing ISBE with timely notice of special education meetings where discussions occur regarding potential changes in policy or procedures. CPS will provide requested data within a timeframe identified by the Monitoring team and will provide any other information related to the implementation of this corrective action or Federal and State law governing special education.
2. The ISBE Monitoring Team will continue to have access to the SSM and ASPEN systems in order to independently monitor individualized education programs (IEPs), IEP meetings, and SSCA meetings and related documentation.
3. CPS will comply with all laws and regulations concerning any changes to policies and procedures, or adoption of new policies and procedures, regarding special education, including any changes to its ODLSS Procedural Manual; CPS will also seek approval from the Monitoring Team prior to making any such changes or adoptions.
4. CPS will continue to submit all training materials related to special education to the Monitoring Team for review and edits prior to finalizing the training materials. CPS will provide the Monitoring Team with dates for all trainings related to special education and invite the Monitoring Team to attend and/or participate in the trainings.
5. CPS will continue to invite the Monitoring Team to all meetings of the group currently called the ODLSS Family Advisory Board (FAB) and formerly known as the Parent Advisory



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Committee/Council; CPS will also invite the Monitoring Team to all ODLSS FAB debrief meetings.

6. The Monitoring Team will continue to facilitate and host all meetings with the advocate representatives and other stakeholders.
7. CPS staff and parents/guardians may raise concerns or file complaints regarding CPS special education with the Monitoring Team. Concerns and complaints may be reported via the Monitoring Team's dedicated email address: isbemonitor@isbe.net email. The Monitoring Team will endeavor to ensure that staff and parents/guardians who report concerns do not suffer retaliation for filing a concern or complaint.
8. The Monitoring Team will continue to publish reports on the ISBE website on an annual basis. The reports shall review the status of the Corrective Action, summarize activities undertaken in the previous school year, and set forth activities planned for the upcoming school year. The reports will be published as long as the ISBE Monitoring Team is in place.

B. IEP Meetings

ISBE Requirements: ISBE expects that the members of an IEP team required to make a decision regarding a student's educational programming will be present at every IEP meeting, unless parents agree otherwise and sign an excusal for a participant's attendance. IEP team members include at least one special education teacher, one general education teacher who is familiar with the student, a local school district representative, related service providers relevant to the student's IEP, and a person with the authority to bind the school district to certain services (the Local Education Agency's district representative). If the ODLSS District Representative or school Principal is the LEA representative, they must be in attendance at the IEP meeting or designate another appropriate team member to serve in that role.

Essential Corrective Actions:

1. CPS will provide reports to the Monitoring Team on a monthly basis, and upon request of the Monitoring Team, identifying any IEP meetings that were continued and a reason for the continuance. ODLSS and/or the ODLSS District Representatives will run these reports in SSM every month to determine if schools are properly reconvening commenced and continued meetings in the requisite time periods identified by CPS in 2018 (e.g. to collect data for paraprofessional assistance or extended school year (ESY) eligibility or to have a District Representative present when recommending a therapeutic day school placement and school assignment).
2. A member of Monitoring Team or other ISBE Staff is permitted to attend IEP meetings throughout the Corrective Action. ISBE will determine which meetings ISBE Staff will



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attend, or, when available, a member of the Monitoring Team will attend a meeting when a parent/guardian, advocate, or CPS staff member requests their attendance. If applicable, ISBE will provide feedback to the IEP team and/or the District Representative following the meeting.

3. CPS will use ISBE IEP Meeting Facilitators throughout the school year at specific schools or meetings identified by the Monitoring Team.

C. Electronic IEP System Use

ISBE Requirements: CPS will continue to allow IEP teams full access to the SSM electronic IEP system during an IEP meeting in order to enter decisions and information discussed by the IEP team.

Essential Corrective Actions:

1. CPS will use the IEP Notes section to capture and describe conversations and other important details of the IEP meeting that are not, or cannot be, included in other IEP sections. The IEP Notes section are always a part of the IEP document and must be provided to the parents with the IEP and all IEP related documentation following the IEP meeting.
2. CPS will allow IEP teams to determine the provision of paraprofessional support, ESY, and transportation at the IEP meeting when supported by appropriate qualitative and quantitative data.
3. The Monitoring Team will review IEPs periodically to ensure teams have appropriate access to the electronic IEP system (SSM) and all sections of the IEP document.

D. Data Collection

ISBE Requirements: ISBE continues to expect CPS' IEP teams to use qualitative and quantitative data to support their decisions. This includes observations of the student, input from all team members, input of the parents, and input from the parents' private providers when applicable.

E. Procedural Manual and Guidance

ISBE Requirements:

1. CPS shall continue to comply with law and seek stakeholder input during any revision process of the ODLSS Procedural Manual.



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2. CPS must provide the Monitoring Team all proposed revisions to the ODLSS Procedural Manual prior to its publication on the CPS website for the required 45-day public comment period per the *Illinois School Code*. The Monitoring Team must review and approve all proposed revisions.
3. When the 45-day comment period ends and after edits are finalized per the public comments, the ODLSS Procedural Manual shall be broadly disseminated to CPS staff and parents.

F. Budgeting

ISBE Requirements: ISBE continues to expect that CPS' methods and allocation formulas for determining and funding special education staff is legally compliant, clear and transparent for schools.

Essential Corrective Actions:

1. CPS will provide ISBE with the allocation/staffing formula used for each school year.
2. CPS will establish clear position request and appeals processes that will include the following:
 - a. Specific documentation required from schools.
 - b. Timelines of an expected response to schools regarding new position requests and appeals.
3. CPS will continue to provide the Monitoring Team access to all documented staffing requests and appeals (*i.e.* Google Sheets) and related materials. CPS will continue to include the relevant Monitoring Team member on all email communication to Principals regarding budgeting decisions and discussions regarding staffing requests and appeals. The relevant Monitoring Team member maintains the authority to override position request and appeals decisions if evidence demonstrates that the decisions would result in the unwarranted denial of services to students.

G. Stakeholder Involvement

ISBE Requirements: ISBE expects that CPS will continue to engage with stakeholder groups at regularly scheduled meetings throughout the school year. CPS will continue to provide communication and documents to these groups to obtain feedback and suggestions for various topics, including certain training materials and communications to CPS parents.



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Essential Corrective Actions:

1. ISBE expects that CPS will continue to host monthly ODLSS FAB meetings, unless otherwise agreed upon by ODLSS and the FAB. The Monitoring Team or other ISBE representative will continue to attend these meetings and the debrief meetings that follow. CPS will continue to provide parents with written agendas, meeting notes, and any relevant documentation before, during, and after the meetings.
2. ISBE expects CPS to continue to meet with the Monitoring Team on a weekly basis for regular “check-in” meetings.
3. ISBE expects CPS to continue to meet with representatives from the advocate groups and the Chicago Teachers’ Union to provide updates and revisions to CPS’s electronic IEP system (SSM). The Monitoring Team will be in attendance at these meetings.
4. CPS and the ODLSS Parent Involvement Specialists will continue to invite the Monitoring Team to all Parent University training sessions and request participation when desired or needed.

H. Additional Training Plan

ISBE Requirements: ISBE expects CPS to continue implementation of a robust and transformative plan for training staff regarding federal and State special education laws. CPS will continue to consult with the Monitoring Team to identify areas of need in training and how to best implement optional and mandatory training sessions for CPS staff, including ODLSS staff and school-based personnel. The Monitoring Team will be invited to all training planning sessions.

I. Student Specific Corrective Action (SSCA)

ISBE Requirements: ISBE expects that SSCA will be utilized to identify and provide a remedy for students with disabilities who were negatively impacted by a policy, procedure, or practice applicable to a group of children that was inconsistent with IDEA Part B and its implementing regulations. CPS will provide SSCA to relevant students by providing a Universal Enrichment Remedy (UER) or by convening a SSCA meeting to identify, generally, whether the student was denied/delayed services in line with the findings of the Public Inquiry and whether the student made expected progress during the relevant time.

Essential Corrective Actions:



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1. CPS will share training materials concerning UER and SSCA with the Monitoring Team. CPS will continue to provide ongoing training to ODLSS teams concerning UER and SSCA. The Monitoring Team may attend trainings.
2. CPS will continue to provide ongoing SSCA training sessions for parents/guardians and students. The Monitoring Team may attend trainings.
3. CPS will continue to notify parents/guardians via U.S. Postal Mail, email and/or telephone concerning ongoing SSCA and UER.
4. Where applicable, CPS will continue to provide a menu of appropriate options for in-person, remote and virtual remedies to parents/guardians for an impacted student. CPS will offer a variety of service providers to parents/guardians. CPS will permit parents/guardians to submit the name of additional providers that may be approved to provide services through the CPS Vendor Application process. CPS will also permit parents/guardians to receive reimbursement by submitting documentation of expenses incurred and payments made in connection to services provided to students during the 2016-17 and/or 2017-18 school years. On a monthly basis, if applicable, CPS will send to the Monitoring Team any denial of parents/guardians' provider or reimbursement and the detailed rationale for the denial.
5. CPS will continue to provide a parent/guardian the opportunity to request a SSCA meeting in the event the parent/guardian is not in agreement with the UER offered or if the student was not identified to receive an automatic SSCA meeting.
6. For all SSCA meetings, the CPS team will review qualitative and quantitative data to determine whether a delay/denial occurred and whether a student made expected progress. CPS will consider relevant data provided from the parents/guardians, contained in its data systems – including but not limited to ASPEN and SSM, included in the student's school record, or gathered from the student's school.
7. The Monitoring Team may attend UER Calls and SSCA Meetings to provide support, guidance and oversight of the meeting processes and best practices.
8. The Monitoring Team may review UER Call and SSCA Meeting documentation to gather data, provide feedback, and develop further training when necessary. Upon review, the Monitoring Team may refer cases back to CPS for reconsideration or correction.
9. CPS will provide weekly information to the Monitoring Team concerning:



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- a. **UER** - The number of: calls/notices of conferences (calls scheduled, pending meeting), calls in process (*e.g.* action is required such as a parent signature), calls completed (*i.e.* remedy is settled or opt-out received), remedies agreed on, parent opt-outs, no response, and SSCA meetings requested.
 - b. **SSCA** – The number of: notices of conferences sent, meetings in process, meetings held, remedies offered, meetings resulting in a determination that a student was not eligible for a remedy, remedies declined or meeting opt-out received, and compensatory education referrals.
10. CPS will continue to ensure parents/guardians who disagree with a CPS SSCA decision are informed of the opportunity to, where applicable, submit an ISBE State Complaint, request State-sponsored mediation, request an impartial due process hearing, or request an appeal directly to the Monitoring Team.

IV. 2020-21 NOVEL MONITORING

As described in the 2020 ISBE Monitoring Annual Report, the monitoring activities stemming from the Public Inquiry revealed novel monitoring projects that are tangential to the original corrective action but nonetheless address assurances that CPS policies, procedures, or practices applicable to a group of children is consistent with the IDEA Part B. Through collaboration with the advocates, CPS and stakeholders, the Monitoring Team identified the following monitoring projects for inclusion in the Extended Corrective Action and Recommendations:

Special Education Teacher Vacancies

Through its monitoring responsibilities, the Monitoring Team learned of sustained or recurring special education teacher position vacancies, including positions that have been allocated to schools but remain unfilled for six months or more. The Monitoring Team acknowledges that a component of the ISBE Strategic Plan focuses on unfilled positions, including those in the area of special education. Stated another way, the Monitoring Team acknowledges a larger Statewide challenge in the hiring and retention of qualified special educators. However, the Monitoring Team will focus on CPS' vacancies to confirm that CPS is addressing appropriate special education services to students despite vacancies. CPS will collaborate with the Monitoring team to identify any problems of practice and coordinate school-specific coaching and professional development that may be necessary to ensure appropriate delivery of services, progress monitoring, and/or compensatory services when applicable.

List of Subjects in 34 CFR Part 677

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

Miguel Cardona,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary adds part 677 to title 34 of the Code of Federal Regulations to read as follows:

**PART 677—HIGHER EDUCATION
EMERGENCY RELIEF FUND
PROGRAMS**

**Subpart A—Provisions Related to
Historically Black Colleges and Universities**

Sec.

677.1 Calculations.

677.2 [Reserved]

Subpart B—Reserved

Authority: 20 U.S.C. 1221e–3; section 314(a)(2), Pub. L. 116–260, Division M, 134 Stat. 1182.

**Subpart A—Provisions Related to
Historically Black Colleges and
Universities**

§ 677.1 Calculations.

For the purpose of calculating allocations under section 314(a)(2)(A)(iii) of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (division M of Pub. L. 116–260, December 27, 2020), an institution that has a total endowment of less than \$1,000,000, including an institution that does not have an endowment, will be treated by the Secretary as having a total endowment of \$1,000,000.

§ 677.2 [Reserved]

Subpart B—Reserved

[FR Doc. 2021–08379 Filed 4–21–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2021–OESE–0061]

RIN 1810–AB64

**American Rescue Plan Act Elementary
and Secondary School Emergency
Relief Fund**

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Interim final requirements.

SUMMARY: The Department of Education (“Department”) establishes interim final

requirements for the American Rescue Plan Elementary and Secondary School Emergency Relief (“ARP ESSER”) Fund, under section 2001 of the American Rescue Plan (“ARP”) Act of 2021. These requirements are intended to promote accountability, transparency, and the effective use of funds by: Ensuring that each State educational agency (“SEA”) meaningfully engages in stakeholder consultation and takes public input into account in the development of its ARP ESSER plan; ensuring that each local educational agency (“LEA”) develops a plan for the use of its ARP ESSER funds and engages in meaningful consultation and seeks public input as it develops the LEA ARP ESSER plan; and clarifying how an LEA must meet the statutory requirement to develop a plan for the safe return to in-person instruction and continuity of services.

DATES: *Effective date:* These interim final requirements are effective April 22, 2021.

Comment due date: We must receive your comments on or before May 24, 2021.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or by postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “FAQ.”

- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the interim final requirements, address them to: Britt

Jung, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W113, Washington, DC 20202.

Privacy Note: The Department’s policy is to make comments received from members of the public available for public viewing on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Britt Jung, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W113, Washington, DC 20202. Telephone: (202) 453–5563. Email: ESSERF@ed.gov.

If you use a telecommunications device for the deaf (“TDD”) or a text telephone (“TTY”), call the Federal Relay Service (“FRS”), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: *Invitation to Comment:* Although the Department has decided to issue these interim final requirements without first publishing proposed requirements for public comment, we are interested in whether you think we should make any changes in these requirements. We invite your comments. We will consider these comments in determining whether to revise the requirements.

To ensure that your comments may be most effectively considered, we urge you to clearly identify the specific section or sections of the interim final requirements that each comment addresses and to arrange your comments in the same order as the interim final requirements.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these interim final requirements. Please let us know of any further ways by which we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department’s programs and activities.

During and after the comment period, you may inspect all public comments about these interim final requirements by accessing www.regulations.gov. Due to the current COVID–19 public health emergency, the Department buildings are not open to the public. However, upon reopening, you may also inspect the comments in person at 400 Maryland Avenue SW, Washington, DC 20202, between 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. To schedule a time to inspect comments, please contact the person

listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these interim final requirements. To schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The ARP ESSER Fund provides a total of nearly \$122 billion to SEAs and LEAs to help safely reopen and sustain the safe operation of schools and address the impacts of the coronavirus disease 2019 (“COVID–19”) pandemic on the Nation’s students by addressing students’ academic, social, emotional, and mental health needs.

Program Authority: The American Rescue Plan Act of 2021, Public Law 117–2, March 11, 2021.

Background: In early 2020, COVID–19 swept through the world, resulting in major upheaval to all aspects of life. In the United States, this resulted in unprecedented school closures in the spring of 2020. For tens of millions of students, learning was abruptly interrupted. For many students who were already facing limited educational opportunities and disengagement—including students from low-income families, students of color, English learners, children with disabilities, students experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students—losing access to reliable in-person instruction and the many supports schools can provide has led to significant challenges.

Since spring of 2020, the opportunities for students to learn have varied significantly across the country. Some schools have remained fully virtual and still have not physically reopened, while others have been providing in-person instruction for months. Many schools are providing a hybrid approach, with virtual instruction for a portion of the school week, and in-person instruction for the remainder of the week. As the initial 2021 National Assessment of Educational Progress (“NAEP”) School Survey revealed, there are significant disparities in both access to and enrollment in in-person instruction across the country, with white students much more likely than students of color

to be learning in person as of February.¹ Many of the most disadvantaged students have frequently encountered barriers to accessing virtual learning.² Students across virtual and in-person settings are facing significant academic, social, emotional, and mental health challenges as a result of the interrupted education and the trauma caused by the COVID–19 pandemic.

In recognition of the immense challenges facing students, educators, staff, schools, LEAs, and SEAs right now, Congress has made emergency funds available to SEAs and LEAs to prevent, prepare for, and respond to COVID–19, first through the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, Public Law 116–136, div. B, tit. VIII, section 18003, enacted on March 27, 2020; next through the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, 2021, Public Law 116–260, section 313, enacted on December 27, 2020; and, most recently and significantly, through the ARP Act, Public Law 117–2, section 2001, enacted on March 11, 2021.

The ARP Act provides a total of nearly \$122 billion via the ARP ESSER Fund to SEAs and LEAs to help schools return safely to in-person instruction, maximize in-person instructional time, sustain the safe operation of schools, and address the academic, social, emotional, and mental health impacts of the COVID–19 pandemic on the Nation’s students. ARP ESSER provides funds to each SEA in the same proportion as each State received under part A of title I of the Elementary and Secondary Education Act of 1965 (“ESEA”) in fiscal year 2020.³ An SEA must allocate at least 90 percent of its ARP ESSER grant funds to its LEAs (including charter schools that are LEAs) in the State in the same proportion that the LEAs received under part A of title I of the ESEA in fiscal year 2020.⁴ Each SEA is required to reserve at least 5 percent of its total ARP ESSER funds to carry out activities to address the academic impact of lost

instructional time;⁵ at least 1 percent for the implementation of evidence-based summer enrichment programs; and at least 1 percent for the implementation of evidence-based comprehensive afterschool programs.⁶ Each of these reservations requires that the SEA use evidence-based interventions that respond to the academic, social, emotional, and mental health needs of students, particularly groups of students disproportionately impacted by the pandemic.⁷ The SEA may reserve no more than half of 1 percent of its total ARP ESSER allocation for administrative costs.⁸ The SEA may use any remaining funds for emergency needs as determined by the SEA to address issues responding to COVID–19.⁹

An LEA may use its ARP ESSER funds for a wide variety of activities related to educating students during the COVID–19 pandemic and addressing the impacts of the COVID–19 pandemic on students and educators. For example, an LEA may use the ARP ESSER funds to maintain the health and safety of students and school staff as they return to in-person instruction (e.g., adopting policies consistent with guidance on reopening schools from the Centers for Disease Control and Prevention (“CDC”), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html>, including universal and correct wearing of masks; modifying facilities to allow for physical distancing (e.g., use of cohorts/podding); handwashing and respiratory etiquette; cleaning and maintaining healthy facilities, including improving ventilation; contact tracing in combination with isolation and quarantine, in collaboration with the State, local, territorial, or Tribal health departments; diagnostic and screening testing; efforts to provide vaccinations to school communities; appropriate accommodations for children with disabilities with respect to health and safety policies; and coordination with State and local health officials). The Department released related resources to assist schools in safely reopening for in-person learning as part of the ED COVID–19 Handbook. Volume 1 of the ED COVID–19 Handbook is available at <https://www2.ed.gov/documents/coronavirus/reopening.pdf>. Most

¹ NAEP 2021 School Survey, released by the Department of Education Institute of Education Sciences (March 24, 2021), available at <https://nces.ed.gov/nationsreportcard/about/covid19.aspx>.

² Korman, H., O’Keefe, B., Repka, M., (2020, Oct. 21). *Missing in the Margins: Estimating the Scale of the COVID–19 Attendance Crisis*. Bellweather Education Partners. Retrieved from: <https://bellwethereducation.org/publication/missing-margins-estimating-scale-covid-19-attendance-crisis#Why%20aren't%20students%20attending%20school?>

³ Section 2001(c) of the ARP Act.

⁴ Section 2001(d)(1) of the ARP Act.

⁵ “Academic impact of lost instructional time” has the same meaning as “learning loss,” which is the term that is used in the ARP Act.

⁶ Section 2001(f)(1)–(3) of the ARP Act.

⁷ Id.

⁸ Section 2001(f)(4) of the ARP Act.

⁹ Id.

recently, the Department released Volume 2 of the ED COVID–19 Handbook to assist schools in addressing critical student needs. Volume 2 of the ED COVID–19 Handbook is available at <https://www2.ed.gov/documents/coronavirus/opening-2.pdf>.

An LEA may also use the ARP ESSER funds to address the academic, social, emotional, and mental health needs of its students by, for example, hiring additional personnel such as school counselors, psychologists, and nurses and implementing strategies to accelerate learning and to make investments in teaching and learning that will result in lasting improvements in the LEA. An LEA may also use the funds for activities that are necessary to maintain the operation of services in LEAs, for example, to stabilize the workforce and avoid layoffs. In December 2020, the Bureau of Labor Statistics reported an 8.6 percent decline in the local government education workforce over the previous 12 months, to its smallest size for the same month since 1999.¹⁰

In addition to the wide range of allowable uses of ARP ESSER funds, an LEA that receives ARP ESSER funds must reserve at least 20 percent of the funds to measure and address the academic impact of lost instructional time on all students, through the implementation of evidence-based interventions, such as interventions implemented through summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs. The LEA must also ensure that such interventions respond to students' academic, social, emotional, and mental health needs and address the impact of the COVID–19 pandemic on groups of students disproportionately impacted by the pandemic.¹¹

On March 24, 2021, the Department made available two thirds of each SEA's ARP ESSER allocation to support ongoing efforts to reopen schools safely for in-person learning, keep schools safely open once students are back, and address the academic, social, emotional, and mental health needs of all students. To receive the remaining third of an SEA's ARP ESSER allocation and to comply with the terms and conditions of the ARP ESSER funds the SEA has already received, the Department is

requiring that the SEA develop and submit an ARP ESSER plan that describes, among other things, the current education needs within the State, the SEA's intended uses of ARP ESSER funds, and the plans for supporting LEAs in their planning for and use of ARP ESSER funds.

As described in more detail below, the Secretary is establishing interim final requirements for ARP ESSER related to SEA consultation, LEA ARP ESSER plans, and the statutory requirement that LEAs receiving ARP ESSER funds develop plans for the safe return to in-person instruction and continuity of services.

SEA Consultation with Stakeholders; Public Input Statute: Under 20 U.S.C. 1231g, unless otherwise limited by law, the Secretary is authorized to require the submission of applications for assistance under any applicable program. "Applicable program" is defined in 20 U.S.C. 1221(c)(1) as any program for which the Department has administrative responsibility, which includes ARP ESSER. Title VIII of Division B of the CARES Act directs the Department to carry out the Education Stabilization Fund, of which the ARP ESSER funds are a part. Section 2001 of the ARP Act provides for the Department to make grants to each SEA from the ARP ESSER funds. Under 20 U.S.C. 1221e–3, the Secretary has the authority to promulgate rules governing the programs administered by the Department.

Interim Final Requirement: Under this requirement, an SEA must engage in meaningful consultation with various stakeholder groups on its ARP ESSER plan and give the public an opportunity to provide input on the development of the plan and take such input into account. Specifically, an SEA is required to consult with students; families; Tribes (if applicable); civil rights organizations (including disability rights organizations); school and district administrators (including special education administrators); superintendents; charter school leaders (if applicable); teachers, principals, school leaders, other educators, school staff, and their unions; and stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students in the development of its ARP ESSER plan. Under the requirement, an SEA must also provide the public with the opportunity to provide input in the development of the plan and take such input into account.

To facilitate consultation on an SEA's ARP ESSER plan and ongoing communication with the public, under the requirement, an SEA must also make information publicly available on its website as soon as possible but no later than June 21, 2021, and regularly provide updated available information on its website, on the numbers of schools in the State providing each mode of instruction (*i.e.*, fully remote or online-only instruction, both remote/online instruction and in-person instruction (hybrid model), and full-time in-person instruction). The SEA must also make publicly available student enrollment data and, to the extent available, student attendance data for all students and disaggregated by students from low-income families, students from each racial and ethnic group, gender, English learners, children with disabilities, children experiencing homelessness, children in foster care, and migratory students for each mode of instruction.

Reasons: As explained in the background text above, the ARP ESSER program provides significant resources to SEAs and LEAs to respond to the educational disruptions caused by the COVID–19 pandemic. Given the unprecedented funding available and the widespread impacts of the COVID–19 pandemic, ARP ESSER funding presents a unique opportunity not only to help students and educators overcome the trauma and the loss of instructional time that they may have experienced, but also to make investments in student achievement and success. With strategic investment, ARP ESSER funding can build the capacity of States, LEAs, and schools to sustain meaningful and effective teaching and learning and address the needs of underserved students. Taking full advantage of this opportunity is consistent with the President's determination to "build back better" in response to the COVID–19 pandemic.

We believe diverse stakeholders will have significant insight into the effects of the COVID–19 pandemic on teaching and learning that will be critical to informing an SEA's plan for ARP ESSER, including how it will use its ARP ESSER funds, support LEAs in the use of their ARP ESSER funds, and evaluate the effectiveness of ARP ESSER. For that reason, under the requirement, an SEA must engage with students; families; Tribes (if applicable); civil rights organizations (including disability rights organizations); school and district administrators (including special education administrators); superintendents; charter school leaders (if applicable); teachers, principals,

¹⁰ Bureau of Labor Statistics. (2021). Employment, Hours, and Earnings from the Current Employment Statistics survey (National) for all employees, local government education, seasonally adjusted. Data extracted on April 1, 2021. <https://beta.bls.gov/dataViewer/view/timeseries/CES9093161101>.

¹¹ Section 2001(e)(1) of the ARP Act.

school leaders, other educators, school staff, and their unions; and stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students in the development of the SEA's ARP ESSER plan. The SEA must also provide the general public with the opportunity to provide input (e.g., by requesting input on its website) and must take the public input it receives into account. By seeking input from these diverse stakeholders and the general public, an SEA will be better positioned to fully understand and adequately respond to the education needs in the State and the impact of the COVID-19 pandemic on all students, and particularly the groups of students most significantly impacted by the COVID-19 pandemic. The SEA will also be better positioned to make critical investments not just to recover, but also to implement and improve effective approaches for teaching and learning that accelerate student learning outcomes and address the needs of underserved students most impacted by the COVID-19 pandemic.

The requirement that the SEA make information publicly available on its website about the number of schools offering fully remote or online-only instruction, both remote/online instruction and in-person instruction (hybrid), and full-time in-person instruction is an important initial step toward transparency and understanding of the continued impact of the pandemic on learning and teaching. Disaggregated enrollment and, if available, attendance data will allow the public to provide more informed input on the SEA's ARP ESSER plan and initial approaches for targeting of federal resources to address the impact of interrupted instruction and the needs of students and teachers.

LEA ARP ESSER Plans

Statute: Title VIII of Division B of the CARES Act directs the Department to carry out the Education Stabilization Fund, of which the ARP ESSER funds are a part. Section 2001 of the ARP Act provides for the Department to make grants to each SEA from the ARP ESSER funds. An SEA must allocate at least 90 percent of its ARP ESSER grant funds to its LEAs (including charter schools that are LEAs) in the State in the same proportion that the LEAs received under part A of title I of the ESEA in Fiscal Year 2020, as required by section 2001(d)(1) of the ARP Act; and section 2001(e) of the ARP Act prescribes certain mandatory and permissive uses

of LEAs' funds. Under 20 U.S.C. 1221e-3, the Secretary has the authority to promulgate rules governing the programs administered by the Department.

Interim Final Requirement: Under this requirement, each LEA that receives ARP ESSER funds must develop, submit to the SEA on a reasonable timeline determined by the SEA, and make publicly available on the LEA's website, a plan for the LEA's use of ARP ESSER funds. The plan, and any revisions to the plan submitted consistent with procedures established by the SEA, must include at a minimum a description of—

(1) The extent to which and how the funds will be used to implement prevention and mitigation strategies that are, to the greatest extent practicable, consistent with the most recent CDC guidance on reopening schools, in order to continuously and safely open and operate schools for in-person learning;

(2) How the LEA will use the funds it reserves under section 2001(e)(1) of the ARP Act to address the academic impact of lost instructional time through the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year;

(3) How the LEA will spend its remaining ARP ESSER funds consistent with section 2001(e)(2) of the ARP Act; and

(4) How the LEA will ensure that the interventions it implements, including but not limited to the interventions implemented under section 2001(e)(1) of the ARP Act to address the academic impact of lost instructional time, will respond to the academic, social, emotional, and mental health needs of all students, and particularly those students disproportionately impacted by the COVID-19 pandemic, including students from low-income families, students of color, English learners, children with disabilities, students experiencing homelessness, children in foster care, and migratory students.

Under this requirement, an LEA must engage in meaningful consultation with stakeholders and give the public an opportunity to provide input in the development of its plan. Specifically, an LEA must engage in meaningful consultation with students; families; school and district administrators (including special education administrators); and teachers, principals, school leaders, other educators, school staff, and their unions. Additionally, an LEA must engage in meaningful consultation with each of the following, to the extent present in or

served by the LEA: Tribes; civil rights organizations (including disability rights organizations); and stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students.

Finally, under the requirement, each LEA's ARP ESSER plan must be: In an understandable and uniform format; to the extent practicable, written in a language that parents can understand or, if not practicable, orally translated; and, upon request by a parent who is an individual with a disability, provided in an alternative format accessible to that parent.

Reasons:

LEA ARP ESSER Plan—

Under the ARP ESSER program, LEAs are receiving significant resources to respond to student and educator needs as schools continue to safely reopen. LEA plans are necessary to ensure transparency and accountability for use of the funds. As discussed in more detail below, the public and in particular students, their families, and educators, have a vested interest in understanding an LEA's priorities and plans for the funds and whether and how the LEA will use the funds to address their students' academic, social, emotional, and mental health needs. Requiring the development and posting of the LEA's plan will result in important transparency.

Additionally, ARP ESSER provides significant federal resources to respond to the COVID-19 pandemic that, for some LEAs, comprise millions of dollars of emergency funding. Requiring each LEA to develop a plan for the use of those funds will provide a mechanism for SEAs and the Department to ensure that the ARP ESSER funds are being used consistent with statutory requirements and to meet the needs of schools, students, and educators, in particular those students most impacted by the COVID-19 pandemic.

The minimum requirements for the ARP ESSER plans ensure that LEAs are using ARP ESSER funds for their intended purposes, including whether and how they will use the funds specifically for COVID-19 prevention and mitigation strategies, how the funds will be used to address the academic impact of lost instructional time through the implementation of evidence-based interventions, consistent with the requirement in section 2001(e)(1) of the ARP Act that each LEA reserve at least 20 percent of its ARP ESSER funds for that purpose, and how the LEA will ensure that those interventions respond

to the academic, social, emotional, and mental health needs of all students and particularly those students disproportionately impacted by the COVID-19 pandemic. Given the unique circumstances in each State, we believe each SEA is best situated to determine what additional requirements to include in the LEA ARP ESSER plan. For example, an SEA might require that the LEA ARP ESSER plan include data that illustrates the LEA's most pressing needs or descriptions of promising practices that the LEA has implemented to accelerate learning. The SEA might also require that the LEA's ARP ESSER plan contain the information required in the LEA's plan for the safe return to in-person instruction and continuity of services, in which case the LEA may develop one plan that addresses both sets of requirements rather than two separate plans (*i.e.*, one plan that addresses use of ARP ESSER funds and the safe return to in-person instruction and continuity of services). The SEA also establishes the deadline by which the LEA must submit its ARP ESSER plan, which must be reasonable and should be within no later than 90 days after receiving its ARP ESSER allocation.

LEA ARP ESSER Plan Meaningful Consultation

COVID-19 has had a dramatic impact on the Nation's education system. In addition to disrupting teaching and learning, it has exacerbated existing inequities in our schools and school districts. Every aspect of student life has been impacted by the COVID-19 pandemic: Students' classes and courses of study have been interrupted and/or delayed and students' social, emotional, and mental health have been negatively impacted by the isolation and anxiety of living through a pandemic and quarantine along with the additional associated stresses placed on their families.¹²

¹² See Korman, H., O'Keefe, B., & Repka, M., (2020, Oct. 21). Missing in the Margins: Estimating the Scale of the Covid-19 Attendance Crisis. Bellwether Education Partners. Retrieved from: <https://bellwethereducation.org/publication/missing-margins-estimating-scale-covid-19-attendance-crisis#Why%20aren%27t%20students%20attending%20school?>; Sparks, S., (2020, Nov. 12) Children's Mental Health Emergencies Skyrocketed After COVID-19 Hit. What Schools Can Do, *Education Week*. Retrieved from: <https://www.edweek.org/leadership/childrens-mental-health-emergencies-skyrocketed-after-covid-19-hit-what-schools-can-do/2020/11>; Dorn, E., Hanckock, B., Sarakatsannis, J., & Viruleg, E. (2020). COVID-19 and Learning Loss—Disparities Grow and Students Need Help. <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-learning-loss-disparities-grow-and-students-need-help#>; Kuhfeld, M., Tarasawa, B., Johnson, A., Ruzek, E., & Lewis, K. (2020, Nov.).

As students and teachers continue to return to full-time in-person education, they will have important insights into how schools should approach prevention and mitigation of COVID-19, and into what may be needed to support student success. For this reason, in developing their ARP ESSER plans, LEAs will be required to meaningfully consult with students; families; school and district administrators (including special education administrators); and teachers, principals, school leaders, other educators, school staff, and their unions. Additionally, an LEA is also required to engage in meaningful consultation with each of the following, to the extent present in or served by the LEA: Tribes; civil rights organizations (including disability rights organizations); and stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students. An LEA's decisions about how to use its ARP ESSER funds will directly impact the students, families, and stakeholders in their school district, and thus the LEA's plans must be tailored to the specific needs faced by students and schools within the district. These diverse stakeholders will have significant insight into what prevention and mitigation strategies should be pursued to keep students and staff safe, as well as how the various COVID-19 prevention and mitigation strategies impact teaching, learning, and day-to-day school experiences.

With regard to addressing the academic, social, emotional, and mental health needs of all students, particularly those most impacted by the pandemic, we believe that it is critical that LEAs solicit and consider the input of students and their families to identify their most pressing needs. Close coordination with Tribes is critical to effective support for Native American students, so LEAs need to consult Tribes, as applicable. In addition, the Department understands educators and students' families will have important insights into and observations of students' academic, social, emotional, and mental health needs garnered from their experiences during the COVID-19 pandemic. Stakeholders will similarly have critical insights into how best to address the academic impact of lost

Learning During COVID-19: Initial Findings on Students' Reading and Math Achievement and Growth. NWEA. Retrieved from: <https://www.nwea.org/research/publication/learning-during-covid-19-initial-findings-on-students-reading-and-math-achievement-and-growth/>.

instructional time that LEAs are required to address with at least 20 percent of their ARP ESSER funds. For all of these reasons, through this consultation, LEAs will be better positioned to fully plan to use ARP ESSER funds to adequately respond to the needs of all students, particularly those most impacted by the COVID-19 pandemic.

LEA ARP ESSER Plan Accessibility

The requirement also mandates that LEA ARP ESSER plans be accessible, including to parents with limited English proficiency and individuals with a disability. This requirement is intended to help ensure that all parents, including parents with limited English proficiency or individuals with disabilities, are able to access and understand the information in an LEA's ARP ESSER plan, consistent with the Department's interpretation of Title VI of the Civil Rights Act of 1964 and existing obligations to parents with disabilities under the Americans with Disabilities Act (ADA).

LEA Plan for Safe Return to In-Person Instruction and Continuity of Services

Statute: Section 2001(i)(1) of the ARP Act requires each LEA that receives ARP ESSER funds to develop and make publicly available on the LEA's website, not later than 30 days after receiving ARP ESSER funds, a plan for the safe return to in-person instruction and continuity of services for all schools, including those that have already returned to in-person instruction. Section 2001(i)(2) of the ARP Act further requires that the LEA seek public comment on the plan and take those comments into account in the development of the plan. Finally, section 2001(i)(3) of the ARP Act states that an LEA that developed a plan for the safe return to in-person instruction and continuity of services prior to the date of enactment of the ARP Act will be deemed to have met the requirement to develop a plan under section 2001(i)(1) as long as the plan meets the statutory requirements (*i.e.*, is publicly available on the LEA's website and was developed after the LEA sought and took into account public comment).

Interim Final Requirement: As described in more detail below, this requirement clarifies what an LEA's plan for the safe return to in-person instruction and continuity of services must address and requires periodic review and, when needed, revision of the plan to ensure it remains relevant and meets statutory and regulatory requirements.

First, the requirement clarifies that an LEA's plan must include how it will maintain the health and safety of students, educators, and other school and LEA staff, and the extent to which it has adopted policies, and a description of any such policies, on each of the CDC's safety recommendations including: Universal and correct wearing of masks; modifying facilities to allow for physical distancing (e.g., use of cohorts/podding); handwashing and respiratory etiquette; cleaning and maintaining healthy facilities, including improving ventilation; contact tracing in combination with isolation and quarantine, in collaboration with the State, local, territorial, or Tribal health departments; diagnostic and screening testing; efforts to provide vaccinations to school communities; appropriate accommodations for children with disabilities with respect to health and safety policies; and coordination with State and local health officials.

Second, the requirement further clarifies that the plan must describe how the LEA will ensure continuity of services, including but not limited to services to address students' academic needs and students' and staff social, emotional, mental health and other needs, which may include student health and food services.

Third, the requirement provides that, during the period of the ARP ESSER award established in section 2001(a) of the ARP Act (i.e., until September 30, 2023),¹³ an LEA must periodically, but no less frequently than every six months, review and, as appropriate, revise its plan. Consistent with section 2001(i)(2) of the ARP Act, which requires an LEA to seek public comment on the development of its plan, an LEA must seek public input and take such input into account in determining whether to revise its plan and, if it determines revisions are necessary, on the revisions it makes to its plan, i.e., the LEA must seek public input on whether to revise its plan and on any revisions to its plan no less frequently than every six months (taking into consideration the timing of significant changes to CDC guidance on reopening schools). The requirement clarifies that, if the LEA revises its plan, the revised plan must address each of the aspects of safety currently recommended by the CDC or, if the CDC has updated its

safety recommendations at the time the LEA is revising its plan, each of the updated safety recommendations. The requirement also clarifies that an LEA that developed a plan prior to enactment of the ARP Act that meets the requirements under section 2001(i)(1) and (2) of the ARP Act but does not address each of the required aspects of safety established in this requirement must, as part of the required periodic review, revise its plan consistent with these requirements no later than six months after it last reviewed its plan.

Fourth, under the requirement, the plans must be: In an understandable and uniform format; to the extent practicable, written in a language that parents can understand or, if not practicable, orally translated; and upon request by a parent who is an individual with a disability, provided in an alternative format accessible to that parent.

Reasons: The statutory requirements for each LEA to develop a plan for the safe return to in-person instruction and continuity of services, to seek and incorporate public comment on the plan, and to make the plan publicly available are important for planning and transparency as LEAs work to return to, or continue, the safe operation of in-person instruction. However, the statute does not explicitly define what it means for a plan to provide for a safe return to and continuity of in-person instruction.

Because safe return to and continuity of in-person instruction is fundamental to addressing the lost instructional time and disengagement that many students have experienced during the COVID-19 pandemic, it is essential that these plans contain precise information about how LEAs will focus on prevention and mitigation of COVID-19 specific to their communities, in order to keep students, staff, and families healthy and to avoid future shutdowns. To ensure that each plan contains a sufficient level of specificity, the requirement sets forth several aspects of safety that each LEA plan must address.¹⁴ These elements are consistent with current, relevant guidance from the CDC related to the

safe reopening of schools.¹⁵ The requirement does not mandate that an LEA adopt the CDC guidance, but only requires that the LEA describe in its plan the extent to which it has adopted the key prevention and mitigation strategies identified in the guidance. The requirement also ensures that each plan will specifically address how it will continue to provide services that meet student and staff needs. Section 2001(i) of the ARP Act requires that the plan address "continuity of services," but does not specifically identify those services. The requirement clarifies that, in addition to meeting academic needs, the plan must also address how the LEA will continue to provide services to meet students' academic needs and students' and staff social, emotional, mental health, and other needs through, for example, continuing to provide students meals and access to medical services. According to the National School Lunch Program, before COVID-19, schools provided free or reduced-priced lunches to approximately 22 million students each day.¹⁶ This is just one example of the many essential services that schools provide. For this reason, the requirement ensures that each LEA separately addresses continuity of services as a discrete prong of the plan.

The statute does not explicitly specify when or how often an LEA's plan must be reviewed and revised. To help an LEA adapt to the constantly evolving status of the COVID-19 pandemic, the requirement mandates that, during the period of the grant, an LEA review its plan at least every six months (taking into consideration the timing of significant changes to CDC guidance on reopening schools), and seek public input in determining whether, and what, revisions are necessary. The requirements also make clear that a revised plan must continue to address safety recommendations from the CDC, which must include updated CDC guidance, to ensure that the plans continue to provide useful information that addresses the most up-to-date research on COVID-19 prevention and mitigation. This requirement will also ensure that an LEA that developed a safe return to in-person instruction and continuity of services plan prior to enactment of the ARP Act and the requirement will, at least within six months of receipt of its grant, revise, as

¹³ ARP ESSER funds are subject to the Tydings amendment in section 421(b) of the General Education Provisions Act, 20 U.S.C. 1225(b), and are therefore available to SEAs and LEAs for obligation through September 30, 2024. Review and revisions, if necessary, are not required during the Tydings period.

¹⁴ As described above, each plan must address: Universal and correct wearing of masks; modifying facilities to allow for physical distancing (e.g., use of cohorts/podding); handwashing and respiratory etiquette; cleaning and maintaining healthy facilities, including improving ventilation; contact tracing in combination with isolation and quarantine, in collaboration with the State, local, territorial, or Tribal health departments; diagnostic and screening testing; efforts to provide vaccinations to school communities; appropriate accommodations for children with disabilities with respect to health and safety policies; and coordination with State and local health officials.

¹⁵ <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html>.

¹⁶ ED COVID-19 Handbook Vol. 2, *Roadmap to Reopening Safely and Meeting All Students' Needs*, page 8, available at: <https://www2.ed.gov/documents/coronavirus/reopening-2.pdf>.

necessary, and post its plan so that it addresses all of the safety recommendations included in the requirement.

The rationale for requiring that LEA plans for the safe return to in-person instruction and continuity of services be accessible, including to parents with limited English proficiency and individuals with disabilities, is described above with respect to the same requirement as it applies to LEA ARP ESSER plans.

Interim Final Requirements: The Secretary establishes the following interim final requirements for the ARP ESSER Fund.

(1) *SEA Consultation with Stakeholders; Public Input.* An SEA receiving ARP ESSER funds must, in the development of its ARP ESSER plan—

(a) Engage in meaningful consultation with stakeholders, including, but not limited to, students; families; Tribes (if applicable); civil rights organizations (including disability rights organizations); school and district administrators (including special education administrators); superintendents; charter school leaders (if applicable); teachers, principals, school leaders, other educators, school staff, and their unions; and stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students;

(b) Provide the public the opportunity to provide input and take such input into account; and

(c) To facilitate consultation on its ARP ESSER plan and ongoing communication with the public, make information publicly available on its website as soon as possible but no later than June 21, 2021, and regularly provide updated available information on its website, on—

(i) The numbers of schools in the State providing each mode of instruction (*i.e.*, fully remote or online-only instruction, both remote/online instruction and in-person instruction (hybrid model), and full-time in-person instruction); and

(ii) Student enrollment data and, to the extent available, student attendance data for all students and disaggregated by students from low-income families, students from each racial and ethnic group, gender, English learners, children with disabilities, children experiencing homelessness, children in foster care, and migratory students for each mode of instruction listed in paragraph (i).

(2) *LEA ARP ESSER Plan.*

(a) Each LEA that receives ARP ESSER funds must submit to the SEA, in such manner and within a reasonable timeline as determined by the SEA, a plan that contains any information reasonably required by the SEA. The plan, and any revisions to the plan submitted consistent with procedures established by the SEA, must describe—

(i) The extent to which and how the funds will be used to implement prevention and mitigation strategies that are, to the greatest extent practicable, consistent with the most recent CDC guidance on reopening schools, in order to continuously and safely open and operate schools for in-person learning;

(ii) How the LEA will use the funds it reserves under section 2001(e)(1) of the ARP Act to address the academic impact of lost instructional time¹⁷ through the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs;

(iii) How the LEA will spend its remaining ARP ESSER funds consistent with section 2001(e) of the ARP Act; and

(iv) How the LEA will ensure that the interventions it implements, including but not limited to the interventions under section 2001(e)(1) of the ARP Act to address the academic impact of lost instructional time, will respond to the academic, social, emotional, and mental health needs of all students, and particularly those students disproportionately impacted by the COVID-19 pandemic, including students from low-income families, students of color, English learners, children with disabilities, students experiencing homelessness, children in foster care, and migratory students.

(b) In developing its ARP ESSER plan, an LEA must—

(i) Engage in meaningful consultation—

(A) With stakeholders, including: Students; families; school and district administrators (including special education administrators); and teachers, principals, school leaders, other educators, school staff, and their unions; and

(B) To the extent present in or served by the LEA: Tribes; civil rights organizations (including disability rights organizations); and stakeholders representing the interests of children with disabilities, English learners,

children experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students; and

(ii) Provide the public the opportunity to provide input and take such input into account.

(c) An LEA's ARP ESSER plan must be—

(i) In an understandable and uniform format;

(ii) To the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent;

(iii) Upon request by a parent who is an individual with a disability as defined by the ADA, provided in an alternative format accessible to that parent; and

(iv) Be made publicly available on the LEA's website.

(3) *LEA Plan for Safe Return to In-Person Instruction and Continuity of Services.*

(a) An LEA must describe in its plan under section 2001(i)(1) of the ARP Act for the safe return to in-person instruction and continuity of services—

(i) how it will maintain the health and safety of students, educators, and other staff and the extent to which it has adopted policies, and a description of any such policies, on each of the following safety recommendations established by the CDC:

(A) Universal and correct wearing of masks.

(B) Modifying facilities to allow for physical distancing (*e.g.*, use of cohorts/podding).

(C) Handwashing and respiratory etiquette.

(D) Cleaning and maintaining healthy facilities, including improving ventilation.

(E) Contact tracing in combination with isolation and quarantine, in collaboration with the State, local, territorial, or Tribal health departments.

(F) Diagnostic and screening testing.

(G) Efforts to provide vaccinations to school communities.

(H) Appropriate accommodations for children with disabilities with respect to health and safety policies.

(I) Coordination with State and local health officials.

(ii) how it will ensure continuity of services, including but not limited to services to address students' academic needs and students' and staff social, emotional, mental health, and other needs, which may include student health and food services.

(b)(i) During the period of the ARP ESSER award established in section

¹⁷ "Academic impact of lost instructional time" has the same meaning as "learning loss," which is the term that is used in section 2001 of the ARP Act.

2001(a) of the ARP Act, an LEA must regularly, but no less frequently than every six months (taking into consideration the timing of significant changes to CDC guidance on reopening schools), review and, as appropriate, revise its plan for the safe return to in-person instruction and continuity of services.

(ii) In determining whether revisions are necessary, and in making any revisions, the LEA must seek public input and take such input into account.

(iii) If at the time the LEA revises its plan the CDC has updated its guidance on reopening schools, the revised plan must address the extent to which the LEA has adopted policies, and describe any such policies, for each of the updated safety recommendations.

(c) If an LEA developed a plan prior to enactment of the ARP Act that meets the statutory requirements of section 2001(i)(1) and (2) of the ARP Act but does not address all the requirements in paragraph (a), the LEA must, pursuant to paragraph (b), revise and post its plan no later than six months after receiving its ARP ESSER funds to meet the requirements in paragraph (a).

(d) An LEA's plan under section 2001(i)(1) of the ARP Act for the safe return to in-person instruction and continuity of services must be—

(i) In an understandable and uniform format;

(ii) To the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent; and

(iii) Upon request by a parent who is an individual with a disability as defined by the ADA, provided in an alternative format accessible to that parent.

Waiver of Notice and Comment Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (“APA”) (5 U.S.C. 551–559), the Department generally offers interested parties notice of and the opportunity to comment on proposed requirements. However, the APA provides that an agency is not required to conduct notice and comment rulemaking “when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B). Here, there is good cause to waive notice and comment rulemaking. The requirements in this notice are critical to ensuring that SEAs and LEAs urgently and effectively develop plans to use the ARP ESSER resources that reflect a full understanding of student

needs and support a strong response to those needs. In addition, to ensure an effective and sustained return to in-person instruction, it is imperative that LEA return to in-person instruction plans address specific areas of safety and are adjusted as needed in response to evolving COVID–19 pandemic circumstances. However, going through the full rulemaking process would delay an SEA's ability to submit a plan for its remaining ARP ESSER funds, which are emergency funds intended to meet the immediate needs of students, educators, staff, schools, LEAs, and SEAs. Notice and comment rulemaking would be contrary to the public interest because the time involved would preclude emergency funds being available to meet exigent need for summer learning and effective, timely planning for the upcoming school year, both of which are critical to mitigate and prevent the continued impact of lost instructional time as well as to meet academic, social, and emotional needs. Nonetheless, the Department is issuing interim final requirements instead of final requirements to allow the members of the public to provide their input about the content of the requirements.

The COVID–19 pandemic continues to present extraordinary circumstances, including widespread school closures, significant loss of instructional time, and trauma for students, educators, and other staff. Various provisions of section 2001 of the ARP Act describe the emergency caused by the COVID–19 pandemic and encourage quick dispersal of ARP ESSER funds. Establishing these interim final requirements now, without the delay of notice and comment rulemaking, enables SEAs and LEAs to effectively use ARP ESSER funds to address the immediate safety, academic, social, and emotional needs of students and help schools safely return to or continue in-person instruction.

The APA also requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). Again, because the ARP ESSER funds are needed to address the immediate needs of students, educators, schools, LEAs, and SEAs due to the COVID–19 pandemic, the Secretary also has good cause to waive the 30-day delay in the effective date of these requirements under 5 U.S.C. 553(d)(3).

Executive Orders 12866 and 13563 Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget

(“OMB”) must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as “economically significant” regulations);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Pursuant to section 804(2) of the Congressional Review Act (5 U.S.C. 804(2)), the Office of Information and Regulatory Affairs designated this rule as a “major rule.”

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.”¹⁸ The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”¹⁹

The Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and we are issuing these interim final requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows and the reasons stated elsewhere in this document, the Department believes that the interim final requirements are consistent with the principles set forth in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, or Tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis, we discuss the need for regulatory action, the potential costs and benefits, and the net budget impacts.

Elsewhere, under *Paperwork Reduction Act of 1995*, we identify and explain burdens specifically associated with information collection requirements.

Need for Regulatory Action and Analysis of Benefits

These interim final requirements are intended to provide two critical benefits: State and local plans under the ARP ESSER program that are informed by and meaningfully address the academic, social, emotional, and mental health needs of our Nation’s students,

particularly those students disproportionately impacted by the COVID–19 pandemic; and local plans required under the ARP Act that effectively guide a safe return to in-person instruction and ensure continuity of services during and after the COVID–19 pandemic. As discussed elsewhere in this document, the ARP ESSER program provides significant resources to SEAs and LEAs to respond to the unprecedented educational disruptions caused by the COVID–19 pandemic. The Department believes this regulatory action is needed to ensure that the plans SEAs and LEAs develop to use these resources reflect a full understanding of student needs and support a strong, urgent response to these pressing needs. In addition, to ensure an effective and sustained return to in-person instruction, it is imperative that LEA plans address specific areas of safety and adjust as needed in response to evolving COVID–19 pandemic circumstances.

Analysis of Costs

This regulatory action establishes interim final requirements for an SEA to meaningfully consult with various stakeholder groups on its ARP ESSER plan, give the public an opportunity to provide input on the development of the plan, and facilitate consultation and public input by publishing and regularly updating information on school modes of instruction and student enrollment and, to the extent available, attendance. It also requires an LEA receiving ARP ESSER funds to develop and make publicly available a plan for the use of those funds; meaningfully consult with stakeholders and consider public input in developing its plan; and make its plan accessible, including to parents with limited English proficiency and individuals with disabilities. Finally, with respect to the LEA plan for the safe return to in-person instruction and continuity of services required under section 2001(i) of the ARP Act, this action specifies what the plan must address; requires periodic review and, when needed, revision of the plan, with consideration of public input in each case, to ensure it meets statutory and regulatory requirements and remains relevant to the needs of schools; and requires that the plan be accessible, including to parents with limited English proficiency and individuals with disabilities. We estimate the costs of complying with these interim final requirements in the paragraphs that follow. Throughout, we use mean wages for Education and Childcare

Administrators²⁰ to monetize costs associated with SEA and LEA staff time, and we assume that the total dollar value of labor, including overhead and benefits, is equal to 200 percent of the wage rate.

SEAs and LEAs may use ARP ESSER funds to defray costs associated with these interim final requirements, including funds that an SEA reserves for administration under section 2001(f)(4) of the ARP Act.

SEA Consultation With Stakeholders; Public Input

The Department expects that SEAs generally will rely on previously established procedures for consulting with stakeholders and considering public input and that any burden in adapting those procedures to comply with these interim final requirements for ARP ESSER plans would be negligible. We estimate that, in implementing its procedures, an SEA will need, on average, 80 staff-hours to engage in meaningful consultation with identified stakeholder groups and 40 staff-hours to consider public input, for a total estimated average of 120 staff-hours. At \$97.28 per SEA staff-hour, the average estimated cost to comply with the requirements is approximately \$12,000. For 52 SEAs (including the District of Columbia and the Commonwealth of Puerto Rico), the total estimated cost is \$607,000.

Under the interim final requirements, an SEA must facilitate consultation with stakeholders and ongoing communication with the public by posting on its website information on the number of schools in the State providing different modes of instruction and on student enrollment and (if available) attendance, and it must update such information regularly. We expect that SEAs generally possess much of this information and estimate that the average SEA will need 100 hours to comply with the facilitation requirement, including initial posting and six updates. At \$97.28 per SEA staff-hour, the average estimated cost to comply with the requirements is approximately \$9,700. For 52 SEAs, the total estimated cost is \$505,900.

LEA ARP ESSER Plans

Under the interim final requirements, an LEA must develop an ARP ESSER plan that describes, at a minimum, how the LEA will use ARP ESSER funds to implement prevention and mitigation strategies in school opening and operations, address the academic impact

²⁰ See https://www.bls.gov/oes/2020/may/oes_nat.html.

¹⁸ Executive Order 13563, section 1(c).

¹⁹ U.S. Office of Management and Budget (2011, Feb. 2). Memorandum for the Heads of Executive Departments and Agencies and of Independent Regulatory Agencies on Executive Order 13563, “Improving Regulation and Regulatory Review”. Office of Information and Regulatory Affairs. Washington, DC.

of lost instructional time, carry out other allowable activities, and identify and meet student needs resulting from the COVID-19 pandemic. The Department expects that the majority of LEAs have already devoted significant time and resources toward identifying activities that are responsive to these requirements and that, for these LEAs, the burden associated with ARP ESSER plan development would consist primarily in determining how best to use ARP ESSER funds for these purposes. We estimate that an LEA will need, on average, 40 staff-hours (exclusive of time to consult with stakeholders and consider public input, which is estimated in the following paragraph) to develop an ARP ESSER plan that meets the requirements and to make its plan publicly available. At \$97.28 per LEA staff-hour, the average estimated cost to comply with the ARP ESSER plan development requirement is approximately \$3,900. For an estimated 15,000 LEAs receiving ARP ESSER funds, the total estimated cost is \$58,368,000.

We anticipate that, as with SEAs, LEAs receiving ARP ESSER funds largely will use existing processes for stakeholder consultation and public input and that any adaptations of those processes for purposes of the final requirement would impose minimal burden. The Department estimates that, in carrying out its process, an LEA will need, on average, 30 staff-hours to engage in meaningful consultation with identified stakeholder groups and consider public input. At \$97.28 per LEA staff-hour, the average estimated cost to comply with the requirement is approximately \$2,900. For an estimated 15,000 LEAs receiving ARP ESSER funds, the total estimated cost for stakeholder consultation and public input is \$43,776,000.

Finally, we estimate that an LEA will need an average of 10 hours to comply with the requirement that its ARP ESSER plan be accessible, including to parents with limited English proficiency and individuals with disabilities. At \$97.28 per LEA staff-hour, the average estimated cost to comply with the requirement is approximately \$1,000. For an estimated 15,000 LEAs receiving ARP ESSER funds, the total estimated cost is \$14,592,000.

LEA Plan for Safe Return to In-Person Instruction and Continuity of Services

The Department believes that the majority of LEAs developed plans for the safe return to in-person instruction and continuity of services prior to enactment of the ARP Act. We estimate that one-third of LEAs receiving ARP ESSER funds, or an estimated 5,000 LEAs, will need to develop or revise such plans to meet statutory and regulatory requirements, using an average of 40 staff-hours. At \$97.28 per LEA staff-hour, the average estimated cost for complying with the requirements is approximately \$3,900, and the total estimated cost is \$19,456,000.

Under these interim final requirements, an LEA must review its plan at least every six months, revise its plan as needed, and consider public input in plan review and revision. Assuming LEAs implement their plans through Fiscal Year 2023, an LEA will need to review its plan a minimum of five times—more specifically, at least once in Fiscal Year 2021 and twice in each of Fiscal Years 2022 and 2023—to meet the plan review requirement. We estimate that each review, including consideration of public input using customary methods, will require an average of 10 staff-hours, for a total average of 50 staff-hours. Further, we

estimate that the average LEA will revise its plan once and require an average of 20 staff-hours for plan revision, including consideration of public input. The total average estimated staff-hours for complying with plan review and revision requirements is 70 staff-hours, and at \$97.28 per LEA staff-hour, the average estimated cost is approximately \$6,800. For an estimated 15,000 LEAs receiving ARP ESSER funds, the total estimated cost for complying with the plan review and revision requirements is \$102,144,000.

Finally, we estimate that an LEA will need an average of 15 hours to comply with the requirement that its plan (including revisions) for the safe return to in-person instruction and continuity of services be accessible, including to parents with limited English proficiency and individuals with disabilities. At \$97.28 per LEA staff-hour, the average estimated cost to comply with the requirement is approximately \$1,500. For an estimated 15,000 LEAs receiving ARP ESSER funds, the total estimated cost is \$21,888,000.

Net Budget Impacts

We estimate that the discretionary elements of these interim final requirements will not have an impact on the Federal budget. This regulatory action establishes requirements for SEAs and LEAs receiving ARP ESSER funds but does not affect the amount of funding available for this program. We anticipate that the nearly \$122 billion in ARP ESSER funds will be disbursed in Fiscal Year 2021, and therefore estimate \$122 billion in transfers in Fiscal Year 2021 relative to a pre-statutory baseline.

Accounting Statement

ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED IMPACTS

[In millions]

Category	Benefits
SEA and LEA ARP ESSER plans that are informed by and successfully address student needs	Not Quantified
LEA plans that ensure a safe return to in-person instruction and continuity of services	Not Quantified
	Costs
SEA consultation with stakeholders; public input	\$1.1
LEA plan for use of ARP ESSER funds	\$117
LEA plan for safe return to in-person instruction and continuity of services	\$143
	Transfers
Activities to help safely reopen and sustain the safe operation of schools and address the impact of the coronavirus pandemic on the Nation's students	\$121,975

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice-and-comment rulemaking under the Administrative Procedure Act (5 U.S.C. 553).

Clarity of the Regulations

Executive Order 12866 and the Presidential Memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the interim final requirements clearly stated?

- Do the interim final requirements contain technical terms or other wording that interferes with their clarity?

- Does the format of the interim final requirements (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

- Would the interim final requirements be easier to understand if we divided them into more (but shorter) sections?

- Could the description of the interim final requirements in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the requirements easier to understand? If so, how?

- What else could we do to make the interim final requirements easier to understand?

To send any comments that concern how the Department could make these interim final requirements easier to understand, see the instructions in the **ADDRESSES** section.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*). This helps ensure that the public understands the Department's collection instructions, respondents provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information

unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of the law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently-valid OMB control number.

As discussed in the *Analysis of Costs and Benefits* section of the *Regulatory Impact Statement*, this regulatory action establishes interim final requirements for an SEA to meaningfully consult with various stakeholder groups on its ARP ESSER plan and to give the public an opportunity to provide input on the development of the plan. It also requires an LEA receiving ARP ESSER funds to develop and make publicly available a plan for the use of those funds; meaningfully consult with stakeholders and consider public input in developing its plan; and make its plan accessible, including to parents with limited English proficiency and parents with a disability. Finally, with respect to the LEA plan for the safe return to in-person instruction and continuity of services required under section 2001(i) of the ARP Act, this action specifies what the plan must address; requires periodic review and, when needed, revision of the plan, with consideration of public input in each case, to ensure it meets statutory and regulatory requirements and remains relevant to the needs of schools; and requires that the plan be accessible, including to parents with limited English proficiency and parents with disabilities. We estimate the costs and burden hours associated with complying with these interim final requirements in the paragraphs that follow. The estimates below for the costs and burden hours are the same as the costs and staff-hours discussed in the *Regulatory Impact Statement* unless otherwise noted. Differences between the estimates in the *Regulatory Impact Statement* and this section are due to differences in calculating the net impact and annual impact of these requirements.

In the notice of final requirements, we will display the control number assigned by OMB to any information collection activities proposed in these interim final requirements and adopted in the notice of final requirements.

For SEA consultation with stakeholders and seeking public input, we estimate that an SEA will need, on average, 80 staff-hours to engage in meaningful consultation with identified stakeholder groups and 40 staff-hours to consider public input, for a total

estimated average of 120 staff-hours. At \$97.28 per SEA staff-hour, the average estimated cost to comply with the requirements is approximately \$12,000. For 52 SEAs (including for the District of Columbia and the Commonwealth of Puerto Rico), the total estimated cost is \$607,000, and the total estimated burden is 6,240 hours.

Under the interim final requirements, an SEA must facilitate consultation with stakeholders and ongoing communication with the public by posting on its website information on the number of schools in the State providing different modes of instruction and on student enrollment and (if available) attendance, and it must update such information regularly. We expect that SEAs generally possess much of this information and estimate that an SEA will need, on average, 33 hours to comply with the facilitation requirement, including information updates. At \$97.28 per SEA staff-hour, the average estimated cost to comply with the requirements is approximately \$3,200. For 52 SEAs, the total estimated cost is \$166,800 and the total burden is 1,716 hours. This estimate differs from the estimate in the *Regulatory Impact Statement* due to calculating the annual impact, rather than the net impact.

We estimate that an LEA will need, on average, 40 staff-hours to develop an ARP ESSER plan that meets the requirements and to make its plan publicly available. At \$97.28 per LEA staff-hour, the average estimated cost to comply with the ARP ESSER plan development requirement is approximately \$3,900. For an estimated 15,000 LEAs receiving ARP ESSER funds, the total estimated cost is \$58,368,000, and the total burden is 600,000 hours.

For LEA consultation with stakeholders and seeking public input, we estimate that an LEA will need, on average, 30 staff-hours to engage in meaningful consultation with identified stakeholder groups and to consider public input, for a total of 30 staff-hours. At \$97.28 per LEA staff-hour, the average estimated cost to comply with the requirement is \$3,900. For an estimated 15,000 LEAs receiving ARP ESSER funds, the total estimated cost is \$43,776,000, and the total estimated burden is 450,000 hours. We estimate that an LEA will need an average of 10 hours to comply with the requirement that its ARP ESSER plan be accessible, including to parents with limited English proficiency and individuals with disabilities. At \$97.28 per LEA staff-hour, the average estimated cost to comply with the requirement is approximately \$1,000. For an estimated

15,000 LEAs receiving ARP ESSER funds, the total estimated cost is \$14,592,000, and the total estimated burden is 150,000 hours.

We estimate that 5,000 LEAs will need to develop or revise safe return to in-person instruction and continuity of services plans to meet statutory and regulatory requirements, using an average of 40 staff-hours. At \$97.28 per LEA staff-hour, the average estimated cost for complying with the requirements is \$3,900. The total estimated cost is \$19,456,000, and the total estimated burden is 200,000 hours.

Under these interim final requirements, an LEA must review its plan at least every 6 months, revise its plan as needed, and consider public input in the review and revision. Under these interim final requirements, an LEA will need to review its plan twice per year. We estimate that each review will require an average of 15 staff-hours for a total burden of 30 hours per year. We estimate that the average LEA will revise its plan once over the course of the next three years and require an average of 20 staff-hours for plan revision, an average of 7 burden hours per year. The total average estimated staff-hours for complying with plan review and revision requirements is 27 staff-hours annually, and at \$97.28 per LEA staff-hour, the average estimated cost is \$2,600. For an estimated 15,000 LEAs receiving ARP ESSER funds, the total estimated cost for complying with the plan review and revision requirements is \$39,398,000, and we

estimate a total burden of 405,000 hours. This estimate differs from the estimate in the *Regulatory Impact Statement* due to calculating the annual impact, rather than the net impact.

Finally, we estimate that an LEA will need an average of 15 hours to comply with the requirement that its plan for the safe return to in-person instruction and continuity of services be accessible, including to parents with limited English proficiency and individuals with disabilities. At \$97.28 per LEA staff-hour, the average estimated cost to comply with the requirement is approximately \$1,500. For an estimated 15,000 LEAs receiving ARP ESSER funds, the total estimated cost is \$21,888,000, and we estimate a total burden of 225,000 hours.

Collectively, we estimate that these new information collection activities will result in a total estimated cost of \$198,791,800 and a total estimated burden of 2,037,956 hours to the public annually. The Department is requesting an emergency paperwork clearance from OMB on the data collections associated with these interim final requirements.

We must receive your comments on the collection activities contained in these interim final requirements on or before [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Comments related to the information collection activities must be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov by selecting the

Docket ID number ED–2021–OESE–0061 or via postal mail, commercial delivery, or hand delivery by referencing the docket ID number and the title of the information collection request at the top of your comment. Comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

Note: The Office of Information and Regulatory Affairs in OMB and the Department review all comments related to the information collection activities posted at www.regulations.gov.

We consider your comments on these proposed collection activities in—

- Deciding whether the proposed collection activities are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection activities, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

COLLECTION OF INFORMATION

Information collection activity	Estimated number responses	Hours per response	Total estimated burden hours	Estimated cost at an hourly rate of \$97.28
SEA Consultation with Public	52	120	6,240	\$607,000
SEA Facilitation and Updates	52	33	1,716	166,800
LEA ARP ESSER Plan Creation	15,000	40	600,000	58,368,000
LEA Consultation with Public	15,000	30	450,000	43,776,000
LEA ARP ESSER Plan Accessibility	15,000	10	150,000	14,592,000
LEA Plan for Safe Return <i>Creation</i>	5,000	40	200,000	19,456,000
LEA Safe Return Plan Review	15,000	27	405,000	39,938,000
LEA Plan for Safe Return Accessibility	15,000	15	225,000	21,888,000
Annualized Total	80,104	315	2,037,956	198,791,800

In addition to the information collection activities that are a result of these interim final requirements, the Department is issuing an ARP ESSER State Plan application template that creates burden for the public. The content of the template is based on the ARP ESSER statute, in particular the required SEA and LEA set asides (see ARP sections 2001(e)(1) (LEA set aside) and (f)(1)–(3) (SEA set asides)), as well

as the regulatory requirements in these interim final requirements. The estimated burden hours for completing the ARP ESSER State Plan application template are accounted for in a separate emergency information collection request to OMB.

Intergovernmental Review

The ARP ESSER program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the

requestor with an accessible format that may include Rich Text Format (“RTF”) or text format (“txt”), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document:

The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or portable document format (“PDF”). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Miguel Cardona,

Secretary of Education.

[FR Doc. 2021–08359 Filed 4–21–21; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0467; FRL–10022–84–Region 5]

Air Plan Approval; Illinois; Public Participation in the Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Illinois State Implementation Plan (SIP) that were submitted on August 27, 2020 by the Illinois Environmental Protection Agency (IEPA). These revisions affect the public notice rule provisions for the New Source Review (NSR) and title V Operating Permit programs (title V) of the Clean Air Act (CAA). The revisions remove the mandatory requirement to provide public notice of draft CAA permits in a newspaper and allow electronic notice (e-notice) as an alternate noticing option. EPA proposed to approve this action on February 26, 2021 and received no adverse comments.

DATES: This final rule is effective on May 24, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2020–0467. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Daniel Wolski, Physical Scientist, at 312–886–0557 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Daniel Wolski, Physical Scientist, Air Permitting Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0557, wolski.daniel@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

I. Background Information

On February 26, 2021, EPA proposed to approve revisions to Illinois’ public notice for CAA permitting rules contained in Chapter 35 Illinois Administrative Code (IAC) part 252. *See* 86 FR 11680. An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA’s reasons for proposing approval were provided in the notice of proposed rulemaking (NPRM) and will not be restated here. The public comment period for this proposed rule ended on March 29, 2021. EPA received one supportive comment on the proposal.

II. Final Action

EPA is approving IEPA’s August 27, 2020, SIP program revisions addressing public notice requirements for CAA permitting. EPA has concluded that the State’s submittal meets the plan revisions requirements of CAA section 110 and the implementing regulations at 40 CFR 51.161, 40 CFR 70.4, and 40 CFR 70.7.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Illinois Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.¹

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
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¹ 62 FR 27968 (May 22, 1997).

THE CULTURE

Complaint against top CPS official alleges verbal abuse of employees and toxic work environment

By Kelly Garcia

MAY 13 2021 MAY 14 2021



Dr. Stephanie Jones, head of CPS special education department, allegedly created a toxic work environment, according to a newly surfaced complaint.

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The complaint also alleges that Executive Director Dr. Hireshemo Clark and District Representative Manager Sarah Briggs were unfit for their roles within the CPS special education department.

Today (May 13), Clark told The TRiBE that he resigned on Nov. 26, 2020, because of unfair treatment by Jones and Deputy Chief Rebecca Parker of the special education department.

“I worked professionally in my job as executive director and those allegations against me are not true,” said Clark, regarding the complaint. “But Jones did treat her staff disrespectfully and was unprofessional in her role.”





This news comes in light of **recent announcements** from three senior CPS officials who plan to step down at the end of the school year, including CEO Janice Jackson, Chief Education Officer LaTanya McDade and Chief Operating Officer Arnie Rivera.

According to the newly-surfaced Jones **complaint** obtained by The TRiBE on May 12 through a public records request, the concerns represented collective staff members from the special education department who chose to remain anonymous for fear of retaliation.

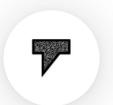
The complaint includes multiple allegations of verbal abuse in the workplace, including instances in which Jones allegedly yelled at and berated employees during staff meetings, striking “fear and anxiety” in an attempt to “garner respect.” Complainants also mention Rebecca Parker, deputy chief of the special education department, as a witness to these alleged incidents.

The allegations are similar to the **allegations made against former CPS Inspector General Nick Schuler** who was under investigation in December of 2019 by an outside law firm hired by the school board for creating a “toxic work environment” in the office of the Inspector General. It took only a month for Schuler to resign following that investigation.

However, the complaint filed against Jones was filed over a year ago and it’s unclear if an investigation has been launched into the matter.

Jones did not immediately respond to our request for comment.

“It’s disgusting,” Mary Fahey Hughes told The TRiBE on May 12. She is a special education parent liaison with Raise Your Hand (RYH). “There’s no trust and there’s no sense that anyone there gives a shit about what is going on. They are just going through the motions in the most cynical way.”



The Jones complaint also names two other staff members from CPS, including Executive Director Dr. Hiresemo Clark and District Representative Manager Sarah Briggs. Complainants allege that both individuals were hired into their positions without notification to the special education department or an opportunity for other qualified candidates to apply.

As district representative manager, Briggs oversees 38 district representatives in the school district tasked with making sure that students with disabilities who require specialized services by federal law are receiving them. Another major component of her job, according to the Jones complaint, is overseeing Student Specific Corrective Action (SSCA), a measure set in place by the Illinois State Board of Education in 2018 to ensure that remedies are offered to the 10,500 students who were harmed by the school district's overhaul of special education services in 2016.

SSCA "can have huge financial implications" for the school district, according to the complainants who feel that anyone in the position to oversee that process should have the proper credentials, but Briggs "does not."

According to the complainants, Briggs' position should be held by someone with an Illinois Professional Educator's License with an administrative endorsement. Briggs' license currently does not include that endorsement, according to the Illinois State Board of Education educator licensure information system.

Jones, Briggs and Clark were all hired after the school district's overhaul of the special education program which led to a **state investigation** confirming that the district limited services to students who needed them. As a way to hold the school district accountable, the state required CPS to undergo a three-year plan to fix the problems associated with the overhaul and provide remedies to the more than 10,000 students affected by it.

"It disempowers parents and it makes them [unable] to advocate for their children," said Terri Smith-Roback, a CPS special education advocate, about the impact of an alleged toxic work environment on students. "People are demoralized and leaving."

Though the Jones complaint was addressed to multiple senior officials, including the former Inspector General Nick Schuler, a CPS spokesperson said the school district is unaware of any ongoing investigations related to the matter.

"Dr. Jones has the highest integrity and is performing her duties with a steadfast commitment to serving CPS families and students with special needs," said the district in a statement to the TRiiBE on May 13. "Dr. Jones brings years of experience to her role and as a mother of a student with special needs, she brings a unique perspective – one of personal understanding and commitment to the needs of all of our diverse learners and their families."

Current CPS Inspector General Will Fletcher also told The TRiiBE on May 6 that they "cannot deny or confirm the existence of an investigation" related to the Jones complaint.



As the CPS district begins its search for a new CEO, Hughes hopes for a better administration that will take concerns related to special education more seriously.

"I hope they make sure there's personnel in place who are willing to put students first," she said. "[I hope] that they can focus on what's really happening and not so much the marketing."

This is a breaking news story. Please check back for updates.

Kelly Garcia is a freelance writer for The TRiiBE.

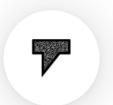
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