

Equity-building
provisions

Community
schools

The ESSER Funds:

*Bargaining and Advocacy Guidance
for Safe and Equitable Schools*

Additional staff to provide smaller classes, small group learning, more individualized teaching, and reduced caseloads for Specialized Instructional Support Personnel (SISP) and special education teachers

Job security provisions to prohibit
contracting out

Manageable
workload

Increased or enhanced
compensation

Enhanced professional
learning and growth

Adequate planning and collaboration time

Enhanced leave
provisions

School health and safety
beyond COVID

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The ESSER Funds: Bargaining and Advocacy Guidance for Safe and Equitable Schools

Since the pandemic began last year, the federal government has enacted rescue legislation providing unprecedented levels of support for education. NEA believes that these funds should be used to advance equity, close opportunity gaps for vulnerable students, support the educator workforce, and protect the health and safety of educators, students, and their families.

But it will take ongoing effort by NEA locals and other public education advocates to ensure that this funding is used effectively for pandemic recovery and to increase equity in their schools, a critical step on the path to racial and social justice.

Federal emergency aid for public education over the last year has come through three separate laws:

- CARES (Coronavirus Aid, Relief, and Economic Security) Act, March 2020
- CRRSA (Coronavirus Response and Relief Supplemental Appropriations) Act, December 2020
- ARP (American Rescue Plan) Act, March 2021

The *Elementary and Secondary School Emergency Relief (ESSER) Fund* is the main source of funding for public elementary and secondary education under each law. As each succeeding law was enacted, the U.S. Department of Education (ED) modified the acronym ESSER to distinguish one fund from the other. Collectively, they are known as ESSER funds. In addition, each subsequent law extended the period of time that the funds can be used.

Here is a summary of each ESSER fund, the amount of funding provided, and the period of availability.

ESSER Funds	Funding Amount	Period of Availability*
ESSER or ESSER I (CARES Act)	\$13.2 billion	Through Sept. 30, 2022
ESSER II (CRRSA Act)	\$54.3 billion	Through Sept. 30, 2023
ARP ESSER or ESSER III (ARP Act)	\$122.8 billion	Through Sept. 30, 2024

**Includes the Tydings period. In general, any funds not obligated and expended during the period for which they were awarded become carryover funds and may be obligated and expended during the succeeding fiscal year.*

Nationally, \$190 billion in federal emergency aid is provided to states through the ESSER funds in support of public elementary and secondary education, or about \$3,700 per student. The American Rescue Plan (ARP) is the single largest investment ever in public education.

It is critical that our members' voices are heard in how and where this money is spent. No less than 90 percent of ARP ESSER funds will be delivered to local education agencies (LEAs) through Title I, which may be used by school districts for purposes defined by ED to address emergency needs and learning recovery related to COVID-19.

While some of the money was allocated to states starting in March, states must submit plans to receive the remaining funds. State Education Agencies (SEAs) and LEAs have already begun to develop plans and decide how these funds will be utilized. But they can't make these decisions in isolation. Under ARP interim federal regulations, the SEA is required to consult with educators and their unions. The interim final requirements state that:

[A]n 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 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.

Therefore, whether bargaining is permitted in your state or not, it is vital that state and local education associations raise educator voices and assert their professional authority to ensure that all stakeholders, including educators, parents, and community, provide input and be a part of the decision-making processes. It is also a good opportunity to grow member engagement and organizing.

This guidance focuses on local advocacy, particularly how local affiliates can bargain and advocate for resources that not only support student learning, but also students' social-emotional well-being. ARP ESSER funds can also be used to provide much needed supports for educators, including improving salary, benefits, and working conditions which are critical to recruiting and retaining high quality staff. These improvements are crucial to ensure sufficient staffing for schools.

Whether affiliates are entitled to engage in formal collective bargaining under state law, or rely on less formal advocacy practices in non-bargaining states, they should immediately invoke their right to engage in "meaningful consultation."

ARP issues are a natural fit for **Bargaining for the Common Good (BCG) and student-centered advocacy** strategies. In BCG contract campaigns, or other forms of student-centered advocacy, unions, parents, and other community groups align around a broad set of demands that benefit not just the bargaining unit, but also students and the wider community. BCG campaigns have focused on the equitable funding of schools and other public services.

See NEA's "**Bargaining for the Common Good: Sample Demands for Safe and Just In-Person Learning**" for examples of potential demands to consider in your advocacy regarding the use of ARP funds such as:

- Creating multi-language communication plans for parents, guardians, and students
- Increasing staffing of Specialized Instructional Support Personnel (SISP) and providing additional mental health supports for students and staff
- Providing internet service and devices to all students to close the technology gap

ARP ESSER funds and upcoming contract negotiations

Many local affiliates are negotiating contracts now. Despite the influx of ARP ESSER funds as well as reduced expenditures from the 2020-21 school year, many school districts are still claiming tight budgets, citing the ARP ESSER funds as "one-time" or "short-term" funds. Even if they are not claiming inability to pay, school districts have not invested sufficiently in educator pay and benefits and school infrastructure.

It is important that NEA affiliates emphasize a few key points when negotiating or advocating for additional education spending, even when addressing traditional union issues such as salaries, benefits, and working conditions:

- **The funding can be used to correct longstanding inequities, including staffing and other resources.** The level of funding under ARP and ESSER far exceeds that of the 2009 American Recovery and Reinvestment Act (ARRA) and any prior relief package, and ED specifically notes that these funds can be used for compensation, improving educator recruitment and retention, and working conditions. Since the Great Recession ended, many of our members have gone without adequate salary increases or have experienced benefit cutbacks. The pandemic has exacerbated the stressors on educators in their work and home lives, all the while being underpaid. As a result, many educators have left or are considering leaving the profession.
- **The funding can help strengthen supports in schools.** During the pandemic, many ESPs suffered layoffs. Now, with the federal emergency funds, or excess reserves, local affiliates can use this opportunity to strengthen their contract or policies to include strategies that not only support ongoing safe and equitable in-person instruction but will also strengthen student learning and educator and student supports for the long term.

- **The funding can launch new initiatives.** Some locals are bargaining or advocating for pilot programs to counter the one-time money argument. In addition, if appropriate, locals should note that when the local districts used ARRA funds years ago to hire additional staff, they often did not have to layoff educators when the funds were spent.

While the specific economic argument or advocacy stance varies depending on the local context, the key point is that this is the time to invest in education and the community.

We can and should bargain or advocate for:

■ Increased or enhanced compensation.

ARP ESSER funds can be used to recruit and retain staff. Locals should continue to bargain or advocate for base-building, across-the-board raises that provide significant salary increases. These increases should exceed inflation and recognize the commitment and time put in by all educators. In addition, ARP funds can be used to negotiate additional compensation for additional roles and responsibilities, extended days or school years, and summer school, and should be base-building wherever possible. Some additional approaches include:

- Retention bonuses
- Additional pay to educators working in hard-to-staff schools
- Professional growth or incentive pay for educators who take on additional roles and responsibilities, such as team leaders, mentoring, or coaching. These can also be implemented as part of a career ladder.
- Extra pay and training to Education Support Professionals (ESPs) if they take on work beyond their regular duties. Employees re-assigned or doing work in higher-paid classifications should earn the pay of the higher classification.

■ Additional staff to provide smaller classes, small group learning, more individualized teaching, and reduced caseloads for SISP and special education teachers.

School districts can use ARP funds to lessen the burden placed on employees and enhance student learning by prioritizing staffing. NEA locals should bargain provisions that will increase staffing levels and provide additional academic and social-emotional supports to students. When increasing staffing, districts should make every effort to diversify the workforce by increasing educators of color to reflect the make-up of the student body and community.

Smaller class sizes and caseloads are critical for student success, and recovery efforts will be delayed, if not derailed, if these issues go unaddressed. Locals should advocate for additional staff to:

- Ensure manageable class sizes and caseloads
- Address the need for student evaluations and services to redress pandemic-related trauma
- Adapt recommended ratios for school health professionals
- Ensure that every student has access to physical and mental health supports

■ Adequate planning and collaboration time, which in many cases, was reduced during the pandemic due to lack of coverage.

Teachers need both individual planning time (for activities such as designing lessons and developing materials) and team planning time to collaborate and reflect with colleagues. Before the pandemic, many educators did not have sufficient planning time. During the pandemic, it became even worse as teachers had to forgo their planning and collaboration and office hours because staff coverage was unavailable. Now, it is also clear that schools must have adequate staff and dedicated time to identify and provide social-emotional supports to students with pandemic-related trauma. ARP ESSER funds to provide for planning time to integrate social-emotional learning is crucial. In addition to bargaining or advocating for specific periods of planning or collaboration time for all educators, the following are elements to consider:

- Provide for additional paraeducators or other educators to provide support to assist in the classroom.

- Train ESPs to assist in the classroom to maintain their hours and provide career growth opportunities.
- Provide dedicated time for special education teachers and paraeducators to work with general education teachers to adapt remote learning lessons to meet the requirements documented in students' IEPs.
- Increase dedicated time to special education teachers and SISPs (such as occupational therapists, speech/language pathologists, social workers, counselors, audiologists, etc.) to address any pandemic-related backlog of initial evaluations and reevaluations under the confines of IDEA timelines.
- Provide for appropriate substitute coverage for teachers and other staff required during IEP meetings scheduled during instructional time.
- Develop professional learning opportunities for educators in early grades to plan for young students who have little experience with traditional schooling and may have had little to no structure in their life for the past year.
- Create professional learning opportunities for educators focused on mental health, social-emotional well-being, and how to work with school health professionals.

■ **School health and safety beyond COVID.**

ARP funds can be used to help our members implement the safest practices and COVID mitigation strategies during in-person instruction, ensuring our school communities are safe, just, and healthy places to learn, now and long after COVID-19 is no longer a concern. NEA locals can bargain provisions that provide adequate supplies of personal protective equipment; cleaning and disinfecting materials and training; and testing, inspecting, and upgrades to ventilation systems and other facility improvements.

Locals should consider bargaining or collaborating with the school district to create a joint labor-management health and safety committee, which can be one of the most useful means of effectively engaging with management about health and safety issues in an ongoing manner.

■ **Equity-building provisions.**

The pandemic exposed and worsened the systemic inequities that limit educational opportunities and resources for our most vulnerable students. ARP ESSER funds can be used to provide alternative and additional supports for these students, particularly where a lack of technology and internet access interferes with learning.

Contract language should provide all students with equitable access to connectivity and technological devices, including any necessary assistive devices and adaptive technology, to fully participate in the educational program and complete assigned work.

In addition, affiliates can negotiate language that supports respect for all cultural and ethnic backgrounds, such as:

- Bargain or collaborate to implement culturally responsive training and programs for educators and students, paid for by the employer
- Ensure that all students have access to healthy and nutritious meals
- Require that the district take clear steps to ensure that students and families are not subjected to bullying or harassment based on their race, ethnicity, or perceived national origin
- Guarantee that the district complies with existing school desegregation orders to guarantee all students have access to equal educational opportunities during COVID-19 distance learning or other scheduled modifications
- Implement restorative justice practices
- Create teacher hiring and retention programs that target BIPOC teachers

■ **Job security provisions to limit volunteers and prohibit contracting out.**

Outsourcing ESP positions has always been bad public policy. But during the pandemic, outsourcing has increased where school districts relied on temporary workers or volunteers to serve as classroom volunteers or monitors. Many school districts are currently considering tutoring services to enhance student supports. Students deserve

highly qualified and trained teachers and paraprofessionals who are knowledgeable about lesson content, pedagogy, and classroom management to ensure productive classroom time and student learning.

Local affiliates should take this opportunity to strengthen or add anti-outsourcing language in their contracts, including:

- Limit the use of volunteers, ensuring they will not displace or reduce the regular hours of bargaining unit members
- Retrain ESPs or other educators who may not be fully employed before using volunteers
- Prohibit the use of contracting out of work customarily and routinely performed by bargaining unit members, which will displace or reduce the work hours of unit members

■ **Enhanced professional learning and growth.**

Comprehensive professional learning should be job-embedded, collaborative, data-driven, and classroom-focused. Local affiliates should consider implementing comprehensive programs that enable educators to grow professionally and improve their practice. These can include:

- Comprehensive mentoring/induction programs, focusing on BIPOC teachers
- Career ladders
- “Grow Your Own” programs developed with higher education institutions that enable paraeducators to become certificated teachers
- Additional compensation for advanced credentials or certifications or tuition reimbursement for those who earn additional credentials

■ **Enhanced leave provisions.**

ARP ESSER funds can be used to bargain or advocate for additional leave provisions that protect our members and their families and allow them to save their leave for non-COVID related issues.

- Paid leave for COVID-related illness separate from existing paid sick leave policy
- Accommodations for medical conditions that are considered high-risk for COVID-19, including those of family members
- Paid leave for vaccinations and potential side effects for members and their families

Note: Under ARP, state and local public employers are entitled to a federal tax credit if they provide Families First Coronavirus Response Act (FFCRA) benefits from April 1 - September 30, 2021. The paid leave credits for wages paid up to the FFCRA caps for all FFCRA reasons, including leave taken to receive or recover from COVID-19 vaccinations, are tax credits against the employer’s share of Medicare tax. The tax credits are fully refundable, meaning the employer is entitled to payment of the full amount of the credits even if it exceeds the employer’s share of the Medicare tax. See <https://www.irs.gov/coronavirus/employer-tax-credits> for additional information.

■ **Community schools.**

Community schools are particularly well-suited to meet the needs of students throughout the pandemic by providing enhanced supports to students and their families, such as by connecting their families with food banks, social and emotional services, and specialized parent/guardian training on virtual learning.

For example, Templeton Elementary School, in Prince George’s County, Maryland, is one of the NEA cohort of schools across the country. In a virtual setting, ESPs prepared food that was either distributed or was available for family pick up. The community also created a thrift store in the school so families could come to pick up clothing, appliances, computers, and other items. Parent volunteers would come to the school and help with technology questions.

Contract language should reflect any specific site-based policies as well as any policies related to applying or transferring to or from the school.

■ **Manageable workload.**

In the last several months, NEA produced several guidance documents to help affiliates respond to the **workload crisis**. These resources offer options to counter the changing and mixed instructional models and other **changes in educator work assignments**, increased **workdays**, technology complications and challenges, equity issues for students and their families, and new and changing health and safety measures. These resources provide additional detailed bargaining and advocacy approaches to these issues.

For additional bargaining or advocacy questions or resources including contract language, contact NEA's Department of Collective Bargaining and Member Advocacy at collectivebargaining@nea.org.

For ARP-related questions in general, email arpinfo@nea.org.