

## Testimony on H.315 - COVID-19 Relief

**Testimony To:** House Committee on Education

**Respectfully Submitted By:** Daniel M. French, Ed.D., Secretary of Education

**Date:** March 30, 2021

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### AOE Position on the Bill

I do not support this bill, and do not support the Senate's proposed amendments to the bill.

My chief concern with this bill and the proposed amendments is that they are seeking to appropriate three years of emergency federal relief funds in a matter of weeks before we have identified the needs and priorities of our K-12 education system. Those needs and priorities will be identified soon through the recovery planning process which is now underway at the local level.

State-level federal funds should be held in reserve as much as possible until we have a better understanding of those priorities. Acting now to appropriate these funds on a piecemeal basis without a full understanding of the needs of students and the system would be irresponsible.

### Authority Over ESSER Funding

To ensure states would have the necessary flexibility to respond to this unprecedented pandemic emergency, Congress appropriated funds for K-12 education through the ESSER program. ESSER funds are awarded to each state education authority or SEA. The SEA for Vermont is the Agency of Education. Each SEA must subgrant at least 90% of these funds to school districts and may reserve up to 10% in the form of a state-level set aside known as the SEA Reserve.

It is clear from the CARES Act which established the ESSER program that Congress intended the SEA Reserve to be managed and directed by each state's SEA. According to the CARES Act: "With funds not otherwise allocated under subsection (c), a State may reserve not more than 1/2 of 1 percent for administrative costs and the remainder for emergency needs **as determined by the state educational agency** to address issues responding to coronavirus, which may be addressed through the use of grants or contracts." - 18003(e) of the CARES Act.

Congress intended the SEA Reserve to be directed and managed by the SEA so states would have the necessary flexibility to respond to unprecedented emergency conditions. Congress also made SEAs responsible for ensuring these funds are spent in a manner consistent with the law, which means SEAs need to provide oversight and assurance, so the funds are used for, "emergency needs . . . to address issues responding to coronavirus."

H.315 interferes with the SEA responsibility and authority over ESSER funds, and ultimately would negatively impact the ability of the state to support local districts in responding to emergency needs related to the pandemic.

### **How Did This Happen?**

The AOE provided testimony in the policy committees of both houses on almost all the proposed strategies in H.315. At the time we provided that testimony, we consistently raised a concern that specific funding sources for these strategies were not identified. The consistent response in both policy committees was “the money committees will deal with that.”

Later in the process these strategies were tagged to ESSER as the funding source but the AOE was never asked to testify on the appropriateness or legality of this allocation, even though the AOE has the greatest technical expertise and fluency on the requirements of the ESSER program.

Additionally, the AOE was never asked to testify on several of the strategies now included in H.315, its proposed amendments, or in other legislation that has identified ESSER as a funding source. It is questionable if the strategies below are appropriate for ESSER funding.

- Section 25 of the Senate amendment seeks to award \$2.8M to UVM through a sole source contract to assist the AOE with helping districts spend their ESSER funds. Both UVM and the Secretary were surprised to learn about this strategy. Even if we identified these services as an emergency need, which is unlikely, UVM would not necessarily be an appropriate provider of these services.
- Another example includes a \$4M “transfer” to DCF for afterschool programs. ESSER funds are awarded to the SEA. The SEA cannot transfer its responsibility for these funds to another state agency.
- Another inappropriate transfer can be found in the Section E.337 of the “Big Bill” which seeks to appropriate \$6.7M of ESSER to the Department of Corrections for the Community High School of Vermont program. This is clearly a non-COVID-19 emergency expense and probably a violation of the law’s maintenance of effort provisions.

### **Using State ESSER Funds Strategically**

The General Assembly should expect the administration and the AOE to develop a plan to spend the ESSER funds in a manner that is both consistent with emergency priorities and federal law. We would welcome legislative involvement in the development of such a plan.

Again, it would be premature to identify the priorities for three-years of emergency federal funding now, but we could produce an initial outline of a plan next week.