

May 18, 2020

The Honorable Gavin Newsom
Governor
State of California
State Capitol
Sacramento, CA 95814

The Honorable Tony Thurmond
State Superintendent of Public Instruction
1430 N Street
Sacramento, CA 95814

President Linda Darling-Hammond
State Board of Education
1430 N Street, Room 5111
Sacramento, CA 95814

Re: Ensuring that California Schools Spend the Coronavirus Aid, Relief, and Economic Security Act Education Funds with a Focus on Equity, Transparency, and Accountability

Dear Governor Newsom, Superintendent Thurmond, and President Darling-Hammond:

We applaud Governor Newsom and state leadership for their commitment to funding schools fully throughout the pandemic and issuing guidance requiring local education agencies (“LEAs” or “schools”) to provide distance learning, nutrition, special education services, and other essential resources. Many schools have risen to the challenge during the school closures, delivering rigorous remote instruction, providing thousands of meals to families, offering remote academic and social-emotional counseling support, and providing other lifelines to their communities. However, many other schools have been less successful, lagging behind in providing the necessary supports and the education students need and deserve. Thousands of families across California are not receiving special education services, lack the technology to access remote learning, and struggle to cope with untreated anxiety and trauma, among other concerns. Critically, the pandemic has exacerbated persistent inequities in our education system, and our most vulnerable and high-need students, including students of color, low-income students, LGBTQ youth, foster youth, youth experiencing homelessness, English Learner students, children in the juvenile justice system, and students with disabilities (collectively “high-need students”) are among those suffering the most severe consequences.

The federal government has offered additional funding through the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, which will provide more than \$2 billion to K-12 schools in California. The State is afforded considerable authority to create processes to administer the funding and to identify priorities on which schools must spend the funds. Specifically, the CARES Act’s Governor’s Emergency Education Relief (“GEER”) Fund allows the Governor broad discretion over how to allocate the funds. The Act’s Elementary and Secondary School Emergency Relief (“ESSER”) Fund is more limited and sets forth twelve priorities toward which

the State and its schools must direct the funding, but, as discussed further below, the State (1) nonetheless must hold schools accountable for spending the money appropriately and (2) may create additional limits so long as they align with the twelve enumerated categories.

We write to urge the State and its schools to spend the CARES funding – as well as existing state education funding – on the resources needed to prevent COVID-19 from worsening the opportunity gap and leaving behind California’s highest-need students. Indeed, the impact of the pandemic will only be amplified by the perilous financial projections about the State education budget next year. While we understand that schools necessarily will face budget cuts next year, the CARES funding, particularly the GEER portion, presents an opportunity for the State to direct a discrete funding stream towards equity and to avoid concentrating the impact of the budget cuts on the students who have the highest needs.

Accordingly, we write to urge the State to:

1. Direct LEAs to spend the funding on priorities that promote equity, specifically focusing both the GEER and ESSER funding on the categories that expressly support high-need students, namely 1, 4, 8, 9, 10, and 11.
2. Allocate the GEER funding to LEAs that serve the highest proportion of high-need students by apportioning it in the same proportion that the State provides supplemental and concentration funds (the ESSER funding will already be apportioned with an equity focus, reflecting Title I allocations).
3. Create a reasonable process to ensure that schools solicit and incorporate input from their communities when choosing how to spend the funding, and that they spend it with sufficient transparency and accountability.

We hope that this letter will serve as the beginning of the conversation, and that we can collaborate to deepen the State’s focus on equity, even amidst these challenging times. Accordingly, we would like to continue meeting with representatives from the Governor’s office, the California Department of Education, and State Board of Education to serve as a resource both on the CARES funding and on the broader discussion about prioritizing equity in light of looming State budget cuts.

Overview of CARES Funding

The CARES Act provides school funding through the Education Stabilization Fund, which includes two primary streams of funding to K-12 schools: the GEER and the ESSER Funds.¹ California is poised to receive approximately \$355 million in GEER funds and \$1.65 billion in ESSER funds. Once California applies for the funding, the U.S. Department of Education will have 30 days to approve and disperse funds.² Upon receipt, the California Department of

¹ The CARES Act also provides \$14 billion to colleges and universities, of which California institutions will receive approximately \$1.73 billion. It also provides U.S. Secretary of Education DeVos with the discretion to allocate an additional approximately \$307 million to states with the highest coronavirus burden, which may include California. If California receives additional federal funding from other sources, we recommend the State allocate and spend it in the manner we discuss in this letter.

² CARES Act, Sections 18002(a) and 18003(a).

Education (“CDE”) will allocate the funding to its LEAs under the rules discussed further below. Recent estimates suggest that California schools will receive the CARES funding in June 2020.

A. Governor’s Emergency Education Relief (GEER) Fund

Governor Newsom will have considerable discretion to decide how schools spend the GEER funding. The Governor may spend the funds: (1) on schools that have been most significantly impacted by coronavirus to support their ability to continue providing educational services and to continue functioning; (2) on post-secondary institutions that have been most significantly impacted by coronavirus to support their ability to continue providing educational services and to continue functioning; and (3) on any other education-related entity that is essential for carrying out emergency educational services to students under the twelve categories listed in the next section; the Higher Education Act; or to provide childcare, early childhood education, social and emotional support, and protection for education-related jobs.³ The Governor has one year to spend the funds, or the funds will return to the federal government to be redistributed.⁴

B. Elementary and Secondary School Emergency Relief (ESSER) Fund

The federal government will provide the ESSER funds to state education agencies, including the CDE, in proportion to their Title I, Part A allocations under the Elementary and Secondary Education Act (“ESEA”).⁵ The CDE must distribute at least 90% of the ESSER funds it receives to LEAs, also in proportion to their Title I Part A allocations.⁶

Schools may use ESSER funds on twelve priorities,⁷ many of which expressly advance equity:⁸

- (1) Any activity authorized by the ESEA (including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act), the Individuals with Disabilities Education Act (“IDEA”), the Adult Education and Family Literacy Act, the Carl D. Perkins Career and Technical Education Act, or the McKinney-Vento Homeless Assistance Act.
- (4) Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.

³ Section 18002(c).

⁴ Section 18002(d).

⁵ Section 18003(b).

⁶ Section 18003(c).

⁷ Section 18003(d).

⁸ Other, more general, ESSER spending categories include: (2) Coordination of preparedness and response efforts of LEAs with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus; (3) Providing principals and others school leaders with the resources necessary to address the needs of their individual schools; (5) Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs; (6) Training and professional development for staff of the LEA on sanitation and minimizing the spread of infectious diseases; (7) Purchasing supplies to sanitize and clean the facilities of a LEA, including buildings operated by such agency; (12) Other activities that are necessary to maintain the operation of and continuity of services in LEAs and continuing to employ their existing staff.

- (8) Planning for and coordinating during long-term closures, including for how to: provide meals to eligible students, provide technology for online learning to all students, how to provide guidance for carrying out requirements under IDEA, and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.
- (9) Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.
- (10) Providing mental health services and supports.
- (11) Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

II. The State and Its Schools Should Spend CARES Funding to Promote Equity and Support California’s Highest-Need Students

Given that California’s high-need students are bearing the most severe consequences of the pandemic, and given the potential for the opportunity gap to swell, the State should ensure that schools spend both the GEER and ESSER funds specifically to reduce inequities for high-need students that have been caused or exacerbated by COVID-19. As discussed, the Governor has considerable discretion to place limits on how schools spend the GEER funding. The State may also restrict schools’ use of the ESSER funds, so long as those restrictions comport with the statute’s twelve enumerated spending priorities.⁹ Accordingly, we urge the state to take the following steps to support high-need students.

First, the State should exercise its discretion and mandate that schools spend all CARES funding – GEER and ESSER – on ESSER categories 1, 4, 8, 9, 10, and 11 (full text above), which are the categories that Congress expressly designed to advance equity and support high-need students.¹⁰ Those spending categories are sufficiently broad to encompass a wide range of services that will most effectively serve California’s school communities. The State should further provide guidance to LEAs on how they can use CARES and other funding on particular resources necessary to support high-need students. In Attachment A, we offer detailed recommendations about how CARES funding can be used to support students with disabilities, youth in the juvenile justice and foster care systems, youth experiencing homelessness, and English learners. We also provide proposals to (1) provide technology and remote learning in an equitable manner,

⁹ Because Section 18003 lacks any language prohibiting states from placing limits on how LEAs spend the ESSER funds, the State can further restrict LEAs’ use of the funds if they align with the permissive categories. *See Nixon v. Missouri Municipal League*, 541 U.S. 125, 127 (2004) (holding that a state has authority over local government entities absent an “‘unmistakably clear’ statement” by Congress limiting its discretion) (citing *Gregory v. Ashcroft*, 501 U.S. 452 (1991)). Congress could have made clear that LEAs can act independent of their state education agencies in spending the ESSER funds, as Congress did in other places in the CARES Act, including by allowing LEAs to apply for federal waivers independent of their states, but Congress did not. *See, e.g.*, Section 3511(b)(2).

¹⁰ Section 18003(d)(4).

(2) invest more in critical school-based mental health resources, (3) provide compensatory services, and (4) prevent schools from misusing the funds on law enforcement and other services that do not serve high-need students.

Second, to direct funding towards the LEAs that need it most, the State should allocate the GEER funding to LEAs that serve the highest proportion of high-need students. Specifically, the State should apportion the GEER funding to LEAs in proportion to the amount of supplemental and concentration funding they receive under the Local Control Funding Formula. The State should also ensure that LEAs subsequently concentrate both the GEER and ESSER funds on their school sites most impacted by the COVID-19 pandemic, which generally align with the school sites serving the most high-need students, as those sites traditionally have been under-resourced and generally face higher needs.

Third, as discussed further in section III, we urge the state to create reasonable but meaningful stakeholder engagement, transparency, and accountability mechanisms to ensure that schools spend the funds in the manner that most effectively serves their students and communities.

Finally, in light of the recent projections that state revenue will decrease in the coming years, we urge the State to use the CARES funding to supplement and not supplant state education funding. The pandemic has validated the critical role our schools play to support communities; now, more than ever, the State must fund them sufficiently. Sufficient funding will allow schools to address the imminent challenges of getting students back on track when in-person instruction resumes and providing services to address trauma families have experienced during the crisis. As such, the State should make every effort to maintain its education spending next year, at a minimum holding steady funding for high-need students, such as supplemental and concentration funds.¹¹

III. The State Must Ensure that Schools Spend the CARES Funding with Community Input, Transparency, and Accountability

Given the significant amount of money schools will receive through the CARES Act and the speed with which schools are expected to spend the funding, the State must implement protections to ensure that schools spend the funds with the requisite community input, transparency, and accountability. Indeed, both the GEER and ESSER funds are governed by the General Education Provisions Act (“GEPA”),¹² which makes clear that the State has an affirmative obligation to oversee the spending.¹³ Specifically, GEPA requires both the State and its LEAs to develop community engagement processes for the CARES funding that provide “reasonable opportunities for participation” by LEAs, interested institutions and organizations,

¹¹ As some of the undersigned groups have consistently stated, Proposition 98 sets forth a floor and not a ceiling for state education funding. In light of the declining tax revenues, we urge the Governor to increase the Proposition 98 funding above the 40% threshold and to find other sources of funding for schools as they recover from the crisis.

¹² 20 U.S.C. § 1221 (GEPA applies to “any program for which the [U.S. Secretary of Education or Department of Education] has administrative responsibility as provided by law or by delegation of authority pursuant to law.”); *see also* ESSER and GEER Fund Certifications and Agreements (requiring any LEA receiving funding to describe how it will comply with the GEPA requirements), <https://oese.ed.gov/files/2020/04/GEER-Certification-and-Agreement.pdf> and <https://oese.ed.gov/files/2020/04/ESSERF-Certification-and-Agreement-2.pdf>.

¹³ 20 U.S.C. § 1232d(b)(3).

and individuals when planning and spending the funds.¹⁴ Any such engagement processes must ensure “equitable participation,” which addresses the special needs of students and other stakeholders including any “barriers based on gender, race, color, national origin, disability, and age.”¹⁵ Ultimately, the State must “adopt and use proper methods of administering [the CARES funding] program, including [the] monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law . . . [and] the correction of deficiencies in program operations that are identified through monitoring or evaluation.”¹⁶

Further, both the GEER and ESSER Fund Certifications and Agreements, which the State must commit to when submitting its applications, include a number of transparency and accountability measures. For example, the GEER certification requires the State to “submit required quarterly reports to the Secretary [of Education]” that includes a description of (1) the entities receiving GEER funds, (2) the way the State and entities used those funds to support distance learning, (3) the number of schools receiving funds, and (4) the internal controls the State implemented to ensure the funds are spent in compliance with the applicable laws and rules.¹⁷ The ESSER certification requires similar quarter reports and considers the possibility of requiring additional reports including: “the methodology LEAs will use to provide services or assistance to students and staff in both public and non-public schools, the uses of funds by the LEAs or other entities and demonstration of their compliance with [the twelve identified priorities], [and] related issues in supporting remote learning for all students, including disadvantaged populations.”¹⁸

While we understand the importance of minimizing administrative burden on LEA and school staff during the crisis, community engagement, transparency, and accountability remain the cornerstones of successful school budgeting. Even in times of crisis, it is essential that the State implements strong, reasonable processes to ensure that schools spend the CARES funding responsibly and effectively. Such processes will reduce wasteful spending, help school leaders share best practices so they can replicate successful programs, reduce investments in ineffective programs, build trust with the school communities, and establish buy-in from stakeholders.

Specifically, we urge the State to:

1. Require LEAs receiving CARES funding to provide an opportunity for meaningful community engagement before deciding how they spend any funds.¹⁹ The process for community engagement should maximize community involvement and ensure that all

¹⁴ 20 U.S.C. §§ 1232d(b)(7) and 1232e(b)(5).

¹⁵ 20 U.S.C. § 1228a(b); *see also* ESSER and GEER Fund Certifications and Agreements requiring those receiving funding to provide “information on the steps the LEA proposes to take to permit students, teachers, and other program beneficiaries to overcome barriers [including barriers based on gender, race, color, national origin, disability, and age] that impede equal access to, or participation in, the program.”

¹⁶ 20 U.S.C. § 1232d(b)(3).

¹⁷ GEER Fund Certifications and Agreements at 4-5 (citing Section 15011(b)(2)).

¹⁸ ESSER Certifications and Agreement at 3 (citing Section 15011(b)(2)).

¹⁹ As required by 20 U.S.C. §§ 1232d, *et seq.* (“the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program and other interested institutions, organizations, and individuals in the planning for and operation of each program”).

community members have an equal opportunity to participate, while still respecting social distancing mandates.²⁰

2. Before LEAs spend their funding, require them to publish a spending plan – in multiple languages – that incorporates the community input they received; provides a description of how they will spend the CARES dollars, itemized by expenditure; and describes how they will use the funding on evidence-based practices to reduce education inequities for each of the high-need student groups it serves in light of the COVID-19 pandemic.
3. Require the CDE, California Collaborative for Educational Excellence, and/or other agencies to review LEAs’ spending documents and intervene if schools do not spend the funding in compliance with State and federal laws and mandates.²¹

* * *

As discussed, we applaud the actions the Governor and state leadership have already taken to support the state education system and our highest-need students during the COVID-19 pandemic. Given the pandemic and looming fiscal crisis, it is now more important – not less – to take aggressive steps to promote educational equity, including (1) prioritizing the CARES funding – along with existing state funds – on resources that will reduce inequities for California’s highest-need students, (2) directing the funding to LEAs serving the largest proportions of high-need students, and (3) developing strong but reasonable community engagement, transparency, and accountability measures for the federal funds. We hope to serve as a resource both with respect to the CARES funding and to discuss the larger education funding landscape as you work to address equity.

Please contact Victor Leung, Deputy Litigation Director at ACLU of California, at vleung@aclusocal.org or 213-977-5219 to discuss these issues further.

Sincerely,

ACLU of California
Alliance for Children’s Rights
Asian Americans Advancing Justice – CA
Black Parallel School Board
California Association for Bilingual Education
California Rural Legal Assistance, Inc.
California School-Based Health Alliance
Californians for Justice

²⁰ Community engagement best practices during social distancing include: online, telephone, and mail surveys; paper surveys for families who pick up meals or come to school for other services; e-mail and telephone hotlines; townhalls, meetings, and two-way community engagement opportunities in real time using text and voice/video communication applications such as Discord, Slack, and Zoom; live meetings broadcast via Instagram Live, Facebook Live, Periscope, and Twitter; telephone-based conference calls; other social media outreach, and other creative solutions while social distancing is in place.

²¹ As required by 20 U.S.C. § 1232d(b)(3) (“the State will adopt and use proper methods of administering each applicable program, including . . . monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law . . . and the correction of deficiencies in program operations that are identified through monitoring or evaluation[.]”).

Californians Together
CASA of Los Angeles
Center for Juvenile Law & Policy, Loyola Law School
Center for Leadership, Equity and Research (CLEAR)
Children's Defense Fund-CA
Disability Rights California
End Child Poverty/The GRACE Institute
Equal Justice Society
Fresno Barrio Unidos
Gente Organizada
InnerCity Struggle
Law Foundation of Silicon Valley
LAW Project of Los Angeles
Lawyers Committee for Civil Rights of the San Francisco Bay Area
Moreno Valley Unified School District
National Center for Youth Law
Parent Organization Network
Public Advocates
Public Counsel
RYSE
SEAL (Sobrato Early Academic Language)
The Coelho Center for Disability Law, Policy and Innovation, Loyola Law School
The Education Trust West
UnidosUS
United Friends of the Children
Youth Justice Coalition

cc:

See Attachment B

(Enclosures)

Attachment A:
Specific Recommendations to Support High-Need Students with CARES Funding

A. Supporting Students with Disabilities, Including Infants and Toddlers²²

Students with disabilities require special education and related services to receive meaningful benefit from and make progress in all areas of their schooling, including academics, extended learning opportunities, and social-emotional learning. For half a century, federal and California law have recognized the importance of providing these essential services to students with disabilities. In California, students with disabilities comprise about 800,000 of California’s K-12 school age children²³ and almost 50,000 of children birth to age three served through regional centers.²⁴ These children have various needs but, as a group, are victims of a widening achievement gap in California, as evidenced by indicators such as lower test scores and higher school discipline rates.²⁵ This vulnerable group of students will fall even farther behind during and after the COVID-19 pandemic without the key actions enumerated below. As such, we recommend that the State:

1. Require LEAs and regional centers to allocate funding for compensatory education services for any Individualized Education Program (“IEP”) / Individualized Family Service Plan (“IFSP”) services that are unavailable during the pandemic, difficult to provide through distance learning, and/or of lesser quality when not provided in person or shared within a group or classroom setting. The Governor, CDE, and the Department of Developmental Services (“DDS”)²⁶ should implement an equitable statewide compensatory education plan by setting a minimum amount of services owed to children (e.g., an equal amount to what children missed due to closures), while also allowing parents and LEAs/regional centers to negotiate a different plan.
2. Direct LEAs/regional centers to allocate funding and articulate a plan to extend special education and related services for students aging out of IDEA services (under both Parts B and C) during the physical school closures caused by the COVID-19 pandemic. The extension of special education and related services should be calculated based on number of days of physical school closures and regional center cessation of services.
3. Direct LEAs/regional centers to allocate funding and articulate a plan for prioritizing the assessment and identification of students (1) whose assessments were delayed during school closures and (2) who developed disabilities caused by COVID-19 (e.g., physical disabilities due to illness, emotional disabilities due to anxiety/stress), once in-person instruction resumes.

²² Infants and toddlers with disabilities will be especially impacted during regional center closures during the COVID-19 pandemic as any delay in identification, assessment, and service provision will be especially deleterious to their lifelong development and achievement, given the time sensitive nature of early intervention services.

²³ <https://lao.ca.gov/Publications/Report/4110>

²⁴ <https://healthdata.gov/dataset/dds-consumers-diagnosis-early-start-consumers-and-regional-center/resource/e23137c0-83c1>, data from December 2019.

²⁵ <https://www.caschooldashboard.org/reports/ca/2019>

²⁶ Early intervention services for children birth to age three under the IDEA Part C are administered by regional centers in California, under the direction of the Department of Developmental Services. We recommend that the Governor utilize GEER funds to meet this need.

4. Require LEAs to allocate additional funding toward Uniform Complaint Procedures complaint investigations and records request administration such that the backlog of records requests and complaints can be addressed in a timely fashion both while schools are physically closed and when schools reopen.²⁷

B. Supporting Youth in the Juvenile Justice and Foster Care Systems

California has long recognized that youth in the juvenile justice and foster care systems face monumental challenges in achieving educational stability, receiving needed supportive services and, ultimately, graduating from high school with meaningful opportunities to pursue college or a career.²⁸ As such, California and federal law have afforded these youth unique protections.

During and in the aftermath of the pandemic, the at least 27,000 youth in California’s juvenile justice system and approximately 33,500 school-age youth in foster care will face even more severe challenges. Therefore, we urge the State to invest CARES funding in both existing and new initiatives to ensure these students are not disconnected from school. The State and schools should direct federal funding:²⁹

1. To hire additional counseling and social work staff to work with LEAs’ existing foster youth education liaison(s), required under Cal. Educ. Code section 49069.5,³⁰ with specific additional funding for LEAs educating more than 200 youth in foster care or involved in the juvenile justice system, to ensure: (1) ongoing coaching and support to students and their families, including the meaningful inclusion of youth voice in decisions that are made on their behalf; (2) strengthened coordination between probation, child welfare, and school personnel; (3) timely provision of credit retrieval and summer expanded learning programming; and (4) immediate enrollment and transfer of records, including health records to alert school districts of particularly vulnerable students, if they move and do not remain in their school of origin.
2. For professional development for liaisons, counselors/registrars, and other LEA staff about supporting students with complex trauma, youth-centered re-engagement strategies, and school-based interventions and supports to promote healing, and prevent suspension and expulsion,³¹ including but not limited to restorative justice and Positive Behavior Interventions and Supports initiatives.

²⁷ We also recommend that the statute of limitations on all dispute resolution options be tolled during physical school closures. For more on this and other special education recommendations from an advocacy coalition, *see* <https://www.disabilityrightsca.org/system/files/file-attachments/COVID-19-Special-Education-State-Recommendations-Coalition-Ltr.pdf>.

²⁸ For example, in the 2018/2019 school year, youth in foster care graduated in four years at a rate of 56% compared to 85% of students statewide. This rate is more than 10% lower than any other at-risk student population.

²⁹ A portion of these funds should be allocated through the California Collaborative for Educational Excellence (“CCEE”) to provide flexibility to contract with community-based agencies and other nonprofits with expertise and a track record of success in serving these populations.

³⁰ California Education Code section 48853.5(a) defines “foster child” as any “child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code.”

³¹ Equity requires a focus on reducing discipline rates for foster youth given their disproportionate discipline rate. For example, DataQuest reports that in the 2018-2019 school year, foster youth were suspended at a rate of 15.1%,

3. For LEAs operating schools in juvenile detention facilities and youth prisons to:
 - a. Purchase technology devices for every detained youth and multiple wireless hotspots for every juvenile housing unit to support learning through technology and connection with family, service providers, and other social connections, and to cover costs of liability if devices are damaged, stolen or lost.
 - b. Immediately hire additional, full-time, on-site academic counselors to ensure detained youths' learning experiences are individualized and that youth have the proper support to engage with distance or blended learning.
 - c. Create new or restructure existing space to ensure there is a physical location for all detained youth to participate in in-person instruction while also abiding by social distancing guidelines.
 - d. Create new or restructure existing space for the provision of special education related services or other programming services that require confidentiality (such as counseling).
 - e. Provide compensatory educational opportunities, including tutors and instructional aides, for all students who did not or have not yet received meaningful distance learning due to physical closure of juvenile court schools.³²
 - f. Designate specific re-entry foster youth liaison(s) (discussed in 1., above) to assist youth being released from juvenile detention facilities during the COVID-19 pandemic with re-enrollment in appropriate schools in their communities, including but not limited to local comprehensive schools and schools of origin.
4. Expand capacity for child welfare agencies and other agencies to assign dedicated Education Case Managers to meet increased coordination needs over the next 18 months. Additional funding should be allocated proportionally to the number of youth in foster care and involved in the juvenile justice system in each county, directed to ensure LEA and agency staff do the following:
 - a. Adhere to school of origin protections if a student is relocated or moves homes.
 - b. Immediately enroll youth who move schools when it is in their best interest and provide partial credits to high school aged youth.
 - c. Include educational priorities and needs in Team Decision Making and Child and Family Team meetings.
 - d. Engage youth and family voice in student study team meetings, IEP meetings and discipline hearings.
5. Increase technology funding to ensure that youth in foster care and the juvenile justice system receive priority access to Chromebooks and Wi-Fi hotspots as gifts (not loans), and without liability to pay for the device if it is damaged, stolen or lost.

compared to the 3.5% of all students statewide, and expelled at 0.36% compared to the state rate for all students of 0.08%.

³² For example, computer-based distance learning with access to teachers through video-conferencing was not fully implemented in Los Angeles County Office of Education ("LACOE") juvenile court schools as of May 1, 2020. For the first six weeks of the Covid-19 school closures, youth have been receiving paper work packets with limited weekly teacher phone calls. See: <https://www.lacoe.edu/LACOE-Schools/Covid-19-Distance-Learning-Plan>. In addition, please note that these compensatory services are in addition to any compensatory educational services students with disabilities may be entitled to under the proposal in section 12 of this document.

C. Supporting Youth Experiencing Homelessness

Students experiencing homelessness are likely to be impacted severely by the pandemic and school closures. They disproportionately lack access to remote learning alternatives, to alternative meals, and to reliable adult supervision during school closures. Current state and federal funding does not meet the needs of these youth. An estimated 80% of youth experiencing homelessness in California cannot access housing services through traditional providers and funding streams, such as the Homeless Emergency Aid Program and Homeless Housing Assistance and Prevention vouchers, because of the differing definitions of homelessness in the McKinney-Vento Act and federal/state housing laws. Additionally, unaccompanied minors represent 18% of California's homeless children and youth, and these young people are particularly isolated from services.

As such, the State should require LEAs to allocate a percentage of the CARES funding they receive, proportionate to the number of youth experiencing homelessness who have been identified in each district, to:

1. Increase funding for and articulation of the roles of the McKinney-Vento District Liaison and County Office of Education (COE) District Liaison. Existing funding for these staff is inadequate, and the recent increase in economic vulnerability of families will only increase this gap as more children and families experience homelessness.³³
 - a. Allocate funding to LEAs and/or COEs with high populations of youth experiencing homelessness to support the McKinney-Vento district liaisons in smaller districts located in the region, who may lack capacity.
2. Set aside flexible, emergency funding, particularly for the 80% of youth experiencing homelessness described above who *cannot* access traditional housing supports. This funding will help meet the immediate needs most identified by homeless student liaisons, which include: access to food, hygiene supplies, technology devices and internet access; housing, rental, and eviction prevention assistance, including safe quarantine solutions; support to achieve housing stability; and transportation.
3. Provide additional funding to LEAs to link those 20% of homeless students who *can* access traditional housing supports with housing providers and community supports. This will ensure that schools take all necessary steps to provide youth experiencing homelessness with full access to remote learning, nutrition, and access to health and mental health services (this could be connected to McKinney-Vento district liaison funding or be a separate initiative, due to the very detailed expertise that is required to help to connect families with housing).

³³ For more information and detailed recommendations about the need for increased investments in McKinney-Vento District Liaisons, please see the California Homeless Youth Project and ACLU of California's 2019 Report *Serving Students Hidden in Plain Sight*, available at https://www.aclusocal.org/sites/default/files/homelessk12report_aclu_r4_digital.pdf.

D. Supporting English Learners³⁴

California’s K-12 public schools enroll approximately 1.3 million English Learner (“EL”) students – 20% of the student population.³⁵ Schools teach EL students both English Language development and academic content knowledge. EL students faced a learning gap prior to COVID-19 school closures on both fronts. Concerning English Language development, many EL students in California secondary schools are still not English-proficient despite six years or more in California schools. Schools have failed to support these Long Term English Learner (“LTELs”) students to develop English fluency, so students have incurred significant academic deficits. EL students face a learning gap relative to core curricular content, as well. In 2018, nearly 90% of English learner students across all grades in California did not meet English and math standards.³⁶ Districts are less likely to provide professional development to teachers on digital learning resources for instructing EL students as compared to professional development for instructing general education students, which exacerbates learning gaps for EL students.³⁷

Without targeted attention to EL students, the opportunity gaps they suffered prior to the pandemic will grow. As such, the State and schools should direct federal funds to:

1. Increase proactive, effective outreach to parents of ELs to inform them about distance learning, summer learning and other changes to their children’s education, and how to stay involved to support their children’s distance learning. Parents need instruction and support regarding the use of online, electronic, and digital platforms since many platforms are made available in English only.
2. Invest in online learning tools – devices, connectivity, and digital programs – that specifically address the learning needs of ELs to ensure that EL students, including students in bilingual programs such as dual language immersion, have access to both curricular content and English Language development instruction.
3. Provide free learning programs for summer school and after school in the 2020-21 school year that will help EL students recoup language and learning loss.
4. Hire additional instructors, tutors, and teaching aides to support EL students.
5. Provide translations and interpreters for all communications between school/district staff and families who do not speak English, and use communication platforms that help them reach EL students in the language spoken at home.
6. Provide professional development to school staff on how to adapt existing learning resources such that they are accessible to EL students, including students in bilingual programs such as dual language immersion, and parents.

³⁴ For further recommendations about how to support English learners most effectively, *see* the April 17, 2020 coalition letter led by UnidosUS, *available at* https://www.tesol.org/docs/default-source/advocacy/tesol-title-iii-sign-on-final.pdf?sfvrsn=8a64fbdc_0.

³⁵ <https://data1.cde.ca.gov/dataquest/longtermel/ELAS.aspx?cds=00&aggllevel=State&year=2018-19>.

³⁶ <http://www.afabc.org/wp-content/uploads/2019/06/2019-Policy-Priorities.pdf>.

³⁷ <https://www2.ed.gov/rschstat/eval/title-iii/180414.pdf>.

E. Supporting All High-Need Students

1. Providing Technology, Internet Access, and Alternatives

For the foreseeable future, schools as well as regional centers serving disabled infants and toddlers will be providing instruction through remote learning options for students, including providing instruction through the Internet, television stations, pre-loaded applications on laptops and tablets, and other means. While providing such instruction is necessary during school and regional center closures, it widens the opportunity gap because students who are already under-resourced, including low-income students, foster youth, detained youth, students experiencing homelessness, students in rural communities, and others lack access to the required technology and also frequently do not have a safe or quiet place to study. Only approximately one third of California households in rural areas have internet service, compared to 78% in urban areas.³⁸ Accordingly, schools and regional centers must ensure that all students have full access to these outlets by, for example, helping families access the Internet, providing hardware to students, allowing students to work remotely with teachers, making safe and private spaces available, and by providing physical instructional packets where Internet access is impossible.³⁹ Further, schools and regional centers must understand that remote learning models do not work for all students and should provide alternate and/or individualized instruction and curriculum to students who have trouble learning through the prevailing online platforms.

To support remote instruction, the State and schools should use the CARES funding on:

1. Technology to provide to students (including infants and toddlers with developmental delays and disabilities)⁴⁰ and families, including laptops, Chromebooks, and tablets, without liability to pay for the device if it is damaged, stolen or lost.
2. Fulfilling districts' obligations to provide Internet access to families through partnerships with utility companies, subsidies to families, loaning hotspot devices, and providing mobile hotspots in neighborhoods through buses equipped with Wi-Fi or other ways to transmit Internet.
3. Investments in remote classroom and meeting software to allow students and teachers to interact remotely.
4. Translation and interpretation services to ensure that schools provide all instructions and outreach in multiple languages.
5. Professional development for teachers and special education/early intervention service providers to help them transition from in-person instruction and curriculum models to online or remote instruction models.

³⁸ <https://edsources.org/2019/disconnected-internet-stops-once-school-ends-for-many-rural-california-students/620825>

³⁹ Instructional packets should be targeted to students' individual needs and students should receive feedback from teachers.

⁴⁰ While LEAs have been working for weeks to attempt to provide such technology to students, we know of few, if any, regional centers undertaking similar efforts to ensure children 0-3 and their families have access to such technology in order to access their IDEA Part C services. GERS funding must prioritize the need for DDS and regional centers to provide such technology.

2. School Counselors, Social Workers, Psychologists, Nurses and Other Mental Health Supports

Prior to the COVID-19 crisis, American children were already facing significant mental health issues; approximately one in six⁴¹ children aged 6 to 17 experienced a mental health disorder, such as depression or anxiety. Many children’s mental health needs were not met by systems in place due to excessively high caseloads for school-based mental health service providers. COVID-19 has produced a multitude of stressors – ranging from abrupt losses of structure and social connection to fear of illness to grief over the death of loved ones – that can lead to new or re-occurring mental health symptoms. These stressors are particularly acute for high-need youth.

During the rest of this school year, any summer school programming, and the next school year, it is imperative that schools have the funds necessary to maintain and enhance mental health services for children to help them recover. When schools re-open across the state, teachers will be supporting classrooms in which many students have experienced, or will be experiencing, some level of mental health impact or trauma. The State must ensure schools have plans in place to address this new reality.

Accordingly, we recommend that the State and schools direct federal funds to supporting the mental health and wellness of students by:

1. Implementing evidence-based programs and interventions to create trauma-informed school environments (including center-based programs for toddlers with disabilities), to increase wellness and resiliency, and to promote supportive connections with adults/peers.
2. Hiring additional health and mental health professionals, including school counselors, social workers, nurses, and psychologists.
3. Ensuring students (including infants and toddlers with disabilities) receive screenings and, when appropriate, referrals for individualized mental health services, including infant and toddler mental health services and supports.
4. Funding behavioral health agencies to provide increased mental health services on school campuses (or funding LEAs to contract with behavioral health agencies to provide increased mental health services on school campuses) during the 2020-21 academic year.
5. Providing increased funding to school districts to support their School Based Health Centers (“SBHCs”). Many SBHCs are situated in high-needs areas that are likely to experience the health and economic impacts of COVID-19 most acutely. While some SBHCs are staying open during school closures, many SBHCs are seeing their capacity cut back considerably during this public health crisis. SBHCs need additional funding to ensure they are able to open their doors and address the expanded health care needs that students will have as they return to school campuses. Funding would support an increase in overall utilization of SBHCs and increased services, including well-child exams and visits, vaccines, and comprehensive screenings and interventions addressing trauma, mental health, substance use, and/or reproductive and sexual health.

⁴¹ <https://www.aafp.org/news/health-of-the-public/20190318childmentalillness.html>

6. Providing professional development trainings and ongoing support to teachers, administrators, school staff, and early intervention providers on recognizing and responding to trauma.

3. Compensatory Education to Address Learning Loss, Including Supplemental Summer Programming

Given the inevitable loss of learning time caused by the closures, schools should provide supplemental educational opportunities to all students to help them recover lost learning time. Districts should use CARES funding to provide differentiated and/or priority educational opportunities to all high-need students. The CARES funding should be used for programs including, but not limited to, remedial coursework, intensive tutoring, developing diagnostic testing or other assessment processes, and hiring staff to provide educational services during the summer months and next school year, whether the school year begins early or not.

- F. The State and School Districts Should Not Spend CARES Funding on Law Enforcement or Purported Security Expenditures

Given the Governor's discretion to administer the GEER funding and the breadth of some of the ESSER spending categories, the State must develop protections to ensure that schools do not misspend the funding on ineffective expenditures that do not support students. For example, the State should make clear that schools should not use CARES funding on law enforcement and purported security expenditures such as physical or digital surveillance, security personnel, student search equipment, or other school hardening measures. Such spending not only is unrelated to addressing challenges schools face due to the COVID-19 pandemic, but it is also ineffective and harms high-need students, including students of color and students with disabilities. For example, prevailing research demonstrates that the presence of law enforcement and other school hardening measures only serves to alienate students, harm school climate, and reduce perceptions of safety, particularly for high-need students and students of color.⁴² Other research establishes that punitive school security practices such as exclusionary discipline, locked or monitored gates,⁴³ metal detector and other searches, and a law enforcement presence on campus increase disorder by making students more fearful and less trusting of school officials and police, particularly for students of color.⁴⁴

⁴² See, e.g., Matthew T. Theriot, *The Impact of School Resource Officer Interaction on Students Feelings About School and School Police*, 62(4) *Crime & Delinquency* 446, 459 (2016), https://www.researchgate.net/publication/297897099_The_Impact_of_School_Resource_Officer_Interaction_on_Students_Feelings_About_School_and_School_Police/link/5b15afbc4585151f91fb0375/download; Kenneth Alonzo Anderson, *Policing and Middle School: An Evaluation of a Statewide School Resource Officer Policy*, 4(2) *Middle Grades Rev.* art. 7 (2018), <https://scholarworks.uvm.edu/mgreview/vol4/iss2/7>.

⁴³ Although schools should not implement counterproductive hardening measures, they should invest more in health services such as nurses to perform health and temperature checks on students and staff.

⁴⁴ See, e.g., Jason Nance, *Student Surveillance, Racial Inequalities, and Implicit Racial Bias*, 66 *Emory L.J.* 765, 792 (2017).

Ultimately, we hope that no California schools will attempt to use federal funds reserved for COVID-19 purposes on such ineffective expenditures,⁴⁵ but we have seen many LEAs attempt to spend Local Control Funding Formula supplemental and concentration funds – which are meant to support low-income students, foster youth, and English Learners – in this inappropriate manner.⁴⁶ Indeed, it is particularly important that schools disinvest in school hardening and halt school pushout in the wake of the COVID-19 pandemic, given the urgent need to build inclusive and supportive school communities to allow students to heal and recover. Accordingly, we ask the State to issue a statement barring LEAs from using the CARES funding for such purposes out of an abundance of caution and to remove all doubt.

⁴⁵ For a more comprehensive discussion and a survey of the academic research demonstrating the ineffectiveness of school hardening measures, please refer to Public Advocates and ACLU of California’s 2020 *Our Right to Resources* report, which is available at: <https://www.aclusocal.org/en/publications/right-to-resources>.

⁴⁶ *See id.* (analyzing Local Control Accountability Plans in 136 Southern California school districts and finding approximately 40% of them illegally spent supplemental and concentration funds on law enforcement and purported security measures).

Attachment B:
Additional List of Recipients

Office of Governor Newsom

- Ben Chida, Chief Deputy Cabinet Secretary
- Jenny Johnson, Deputy Legislative Secretary

California Department of Education

- Debra Brown, Director, Government Affairs Division

California State Board of Education

- Karen Stapf Walters, Executive Director

Senate Committee on Education

- Senator Connie Leyva, Chair
- Lynn Lorber, Chief Consultant

Assembly Committee on Education

- Assemblymember Patrick O'Donnell, Chair
- Tanya Lieberman, Chief Consultant

Assembly Budget Committee

- Assemblymember Philip Y. Ting, Chair
- Assemblymember Jay Obernolte, Vice Chair
- Assemblymember Dr. Joaquin Arambula
- Assemblymember Richard Bloom
- Assemblymember William P. Brough
- Assemblymember David Chiu
- Assemblymember Jim Cooper
- Assemblymember Vince Fong
- Assemblymember Jim Frazier
- Assemblymember James Gallagher
- Assemblymember Cristina Garcia
- Assemblymember Reginald Byron Jones-Sawyer, Sr.
- Assemblymember Tom Lackey
- Assemblymember Monique Limón
- Assemblymember Devon J. Mathis

- Assemblymember Kevin McCarty
- Assemblymember Jose Medina
- Assemblymember Melissa A. Melendez
- Assemblymember Kevin Mullin
- Assemblymember Al Muratsuchi
- Assemblymember Adrin Nazarian
- Assemblymember Patrick O'Donnell
- Assemblymember Jim Patterson
- Assemblymember James C. Ramos
- Assemblymember Eloise Gómez Reyes
- Assemblymember Luz M. Rivas
- Assemblymember Blanca E. Rubio
- Assemblymember Mark Stone
- Assemblymember Shirley N. Weber
- Assemblymember Buffy Wicks
- Assemblymember Jim Wood
- Erin Gabel, Consultant

Senate Committee on Budget and Fiscal Review

- Senator Holly J. Mitchell, Chair
- Senator Jim Nielsen, Vice Chair
- Senator Jim Beall
- Senator Andreas Borgeas
- Senator Anna M. Caballero
- Senator Brian Dahle
- Senator Maria Elena Durazo
- Senator Melissa Hurtado
- Senator Connie M. Leyva
- Senator Mike McGuire
- Senator Bill Monning
- Senator John M. W. Moorlach
- Senator Mike Morrell
- Senator Richard Pan
- Senator Richard D. Roth
- Senator Nancy Skinner
- Senator Henry I. Stern
- Senator Bob Wieckowski
- Elisa Wynne, Deputy Director of Staff

**Attachment C:
Organization Logos**



EQUAL JUSTICE SOCIETY

