



CHIEF FINANCIAL OFFICER  
89 Washington Ave., Room 121, EB  
Albany, New York 12234

July 21, 2021

TO: BOCES District Superintendents  
School District Superintendents  
School District Business Officers  
Charter School Leaders

FROM: Phyllis D. Morris, Chief Financial Officer

**RE: Use of Federal Elementary and Secondary School Emergency Relief (ESSER) and Governor's Emergency Education Relief (GEER) Funds to Provide Recovery Services to Students Over the Age of 21**

This memorandum clarifies that a Local Educational Agency (LEA) may, in its discretion, use a portion of its federal Elementary and Secondary School Emergency Relief (ESSER) I, II, American Rescue Plan (ARP)-ESSER and/or Governor's Emergency Education Relief (GEER) I, II allocations to provide recovery services to support students over the age of 21 who have lost instructional time due to the COVID-19 pandemic.

"Recovery" Services vs. "Compensatory" Services

Services to support lost instructional time due to the COVID-19 pandemic—so-called "recovery" services—must be distinguished from "compensatory" services. Compensatory services are provided to students with disabilities to remedy a school district's failure to provide a student with a disability with appropriate services during the time the student was entitled to a free appropriate public education (FAPE) and was denied appropriate services. Compensatory services provided to remedy a past denial of FAPE may be paid for with Individuals with Disabilities Education Act (IDEA) Part B funds, including supplemental IDEA Part B LEA allocations under the federal American Rescue Plan (ARP) Act. In addition, such services are a permissible use of LEA federal ESSER and/or GEER allocations. For more information on compensatory services, please see: [Compensatory Services for Students with Disabilities as a Result of the COVID-19 Pandemic](#).

Recovery services may be provided to a student over the age of 21, at the LEA's discretion, without the need for the student to be classified as a student with a disability and without the need to remedy a past denial of FAPE. An LEA's allocation of ESSER and/or GEER funds may be used, at LEA discretion, to provide recovery services to students who missed instructional time during the 2019-20 and/or 2020-21 school years. This may include providing students who will age out of school with the opportunity to return for summer school and, if necessary, attend school in the 2021-22 school year to complete their education and earn a diploma, credential, or endorsement, as encouraged by the Department and the Board of Regents (please see: [Providing Over-Age Students the Opportunity to Return to School in the 2021-22 School Year Due to the COVID-19 Pandemic](#)). LEA expenditures of base 90% ARP-ESSER allocations to provide recovery services to support students over the age of 21 who have lost instructional time due to the COVID-19

pandemic will count toward the minimum 20% of such funds that must be expended to address learning loss.

Chapter 167 of the Laws of 2021

Recently enacted New York State legislation (Chapter 167 of the Laws of 2021) authorizes school districts to “provide educational services in the 2021-22 and 2022-23 school years” to students: (1) who turned twenty-one years old during the 2019-20 or 2020-21 school years; and (2) were enrolled in the school district and received special education services pursuant to an individualized education program during at least one of those years. Should a school district choose to provide such services, the district may, at its option, use a portion of its ESSER and/or GEER allocation to fund some or all of the cost.

cc: Commissioner Betty Rosa  
Jim Baldwin  
Sharon Cates-Williams  
Daniel Morton-Bentley  
Kim Wilkins  
Christopher Suriano  
Sean Giambattista  
Jason Harmon  
David Frank  
Suzanne Bolling  
Ed Lenart