***All ESSER II funded activities must be necessary to prevent, prepare for, or respond to COVID-19.***

**Use of ESSER II Funds**

Same uses as ESSER Fund (CARES Act): The “additional” LEA allowable uses of funds under the CRRSA Act (addressing learning loss, preparing schools for reopening, and testing, repairing, and upgrading projects to improve air quality in school buildings) already are permitted under the CARES Act. [ESSER II Fact Sheet](https://oese.ed.gov/files/2021/01/Final_ESSERII_Factsheet_1.5.21.pdf)

**General**

Q: What satisfies federal requirements for obligation of ESSER II funds (a contract with a vendor to do work over a period of time)?

A: Funds are obligated when the subrecipient commits those funds to specific purposes consistent with [34 C.F.R. § 76.707](https://www.govinfo.gov/content/pkg/CFR-2018-title34-vol1/xml/CFR-2018-title34-vol1-sec76-707.xml). If an SEA awards a contract from the SEA reserve, that is an obligation. In contrast, subgranting funds to an LEA or other subrecipient is not an obligation; rather, these funds are not obligated until the LEA or other subrecipient commits the funds to specific purposes. [ESSER FAQs](https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf)

Q: Can the General Assembly supplant state funds with these federal dollars?

A: Yes. The ESSER II Fund does not contain a supplanting prohibition. As a result, funds may take the place of State or local funds for allowable activities. Under the CRRSA Act, a State that receives ESSER II funds must maintain support for elementary and secondary education and higher education in FY 2022 based on the proportional share of the State’s support for elementary and secondary education and higher education relative to the State’s overall spending averaged over FYs 2017, 2018, and 2019. [ESSER II Fact Sheet](https://oese.ed.gov/files/2021/01/Final_ESSERII_Factsheet_1.5.21.pdf)

Q: Does ESSER II include an equitable services requirement?

A: No, the CRRSA Act includes a separate program of Emergency Assistance for Non-Public Schools (EANS) for which eligible non-public schools may apply to the SEA to receive services or assistance. Consequently, LEAs are not required to provide equitable services under ESSER II.

**Employee Salary/Benefits/Leave**

Q: How can a district use ESSER II funds to pay employee salaries?

A: Employees that are new or active staff and are set up in the payroll module with an ESSER project number will have the federal benefit match accounted for within Munis. Keep in mind Federal matching health insurance (0294), flex spending (0297), administrative fee (0296), and life insurance (0295) will calculate automatically based on the federal project codes 2000:6999 that are posted as part of the payroll, which are project codes in Job Pay.

Historical salaries paid July 1, 2020 and forward that were originally paid with other federal funds (not involving MOE) with a federal pay type can be transferred to federal ESSER federal funds and the matching benefits will transfer as well as part of the journal entry that were included as part of the payroll (ex. Federal matching Kentucky teacher retirement).

* The matching federal flex spending, health, life, and admin amounts do not automatically transfer as part of the “Payroll History Transfer” process because the federal health benefits (life, flex, admin, health) are calculated and posted separately each month as part of the ‘Federal Reimbursement” process.  You must key and post a manual general journal entry to recode the health, life, admin, and any flex spending amount from the original federal fund’s accounts to the federal funds ESSER accounts. To obtain the amounts needed to process the journal entry after processing a Payroll History Transfer for a person that was paid from one federal fund to another federal fund (i.e., ESSER), you will need to obtain the cost of their insurance that was charged to the original federal fund. Open the KY Employee Benefits program and then open the Federal Reimbursement option. Then select the Maintain option in the Ribbon and search for the employee number that you processed through Payroll History Transfer. Find the calendar months that were transferred and use the totals on that screen for your journal entry. If multiple months were transferred, you can Browse and export the data into excel and remove any month that were not transferred and total the months that were transferred to get your total per item (HRS, Admin Fee, Life, Health) to consolidate your journal.
	+ After removing the personal info, below is what the screen looks like:

If this person was being recoded from 310G to 613F the journal would be:

0502118-0296-310G       C                     1.00

0502118-0296-613F       D                     1.00

0502118-0295-310G       C                     8.00

0502118-0295-613F       D                     8.00

0502118-0294-310G       C                 666.36

0502118-0294-613F       D                 666.36

Historical salaries paid July 1, 2020 and forward that were not originally in a federal program are not to be moved by a simple journal entry from GF (Fund 1) to ESSER projects. The accounting side of this scenario works, but the payroll side of this will create problems since if you move historical GF salaries to a federal project it will still need to have the federal benefits moved. Munis is not capable of keeping up with the payroll side with just a simple journal entry.  It is, however, possible if you reverse the original payroll entries that contained the GF employee(s) and re-run them thru one of the ESSER projects.  This is not a recommended solution.

* To process:  Make this type of correction through an actual payroll. For the employee that has a payroll check that you are wanting to make the correction to, you would go to your next actual “live” payroll in the “Payroll Earnings and Deductions” screen to the “Pay” tab and add a negative entry in the employee’s payroll check by keying in the original local or state pay type and a negative pay amount (whatever amount that you are wanting to transfer up to the amount of the original gross pay) and then add a positive pay entry with the correct federal pay type and the pay amount (should be same as the negative amount).  This would create a $0 gross pay effect meaning their gross pay would continue to remain the same as normal.
* Make sure the appropriate TRS matching deduction (s) are included on the paycheck as well so the matching TRS is calculated, posted, and paid on the amount now being transferred to federal funds.  If the deduction is not the employee’s deduction master, then you would manually add it on the “Withholding” tab of the paycheck.
* When you process the Federal Reimbursement at the end of the month, the system would automatically calculate the new matching federal benefits and the posting process would post correctly to the ESSER project accounts.

Q: Can districts use ESSER II funds to pay employee emergency sick days?

A: Yes, districts may use ESSER II funds to pay staff emergency days.

The federal requirement that employers provide paid covid-19 related leave expired at the end of last year and was not renewed in the CAA, 2021. Per current KDE emergency regulation, school districts may provide employees as many emergency leave days as the local board of education deems necessary. With that in mind, may districts use ESSER II (or ESSER I) funds to pay for employee emergency days related to COVID-19? Per USED, the permissible uses of ESSER I and ESSER II are identical.

Districts may use ESSER II funds to pay employee sick leave under CRSSA Act, Section 313(d)(15). That section permits funds to be used for, “other activities necessary to maintain the operation of and continuity of services and continuing to employ the existing staff of the LEA.” Funds should not be used to subsidize or offset executive salaries and benefits of individuals who are not employees of the LEA, or expenditures related to state or local teacher/faculty unions or associations.

All ESSER II-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: Can districts use ESSER II funds to pay salary to summer school teachers and to incent retirees to return to district employment?

A: Among the allowable uses of ESSER II funds are "Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency". An LEA may use ESSER II funds for any allowable expenditure incurred on or after March 13, 2020, the date the President declared the national emergency due to COVID-19.

Salaries paid with ESSER funds must be necessary, reasonable, and allocable for the purposes of continuing educational services during school closures or for implementing a plan for return to normal operations, and incurred during the award period and cannot subsidize or offset executive salaries and benefits of individuals who are not employees of the LEA, or expenditures related to state or local teacher/faculty unions or associations.

**Retirement**

This section will be updated consistent with information provided by KTRS at the next Superintendent’s Webcast on February 23, 2021.

**Facilities**

ESSER funds may be used for “any activity authorized by the ESEA,” and construction is an allowable activity under the ESEA’s Impact Aid program, an LEA may use ESSER funds for construction, subject to approval by the Kentucky Department of Education. Specifically, in ESEA, Section 7013(3) the Impact Aid definition of “construction” includes (A) the preparation of drawings and specifications for school facilities; (B) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities; (C) inspecting and supervising the construction of school facilities; and (D) debt service for such activities.

As is the case with all activities charged to the ESSER II grant, construction costs must be reasonable and necessary to meet the overall purpose of the program, which is “to prevent, prepare for, and respond to” the COVID-19 pandemic. Therefore, any construction activities, including renovations or remodeling, that would be necessary for an LEA to prevent, prepare for, and respond to COVID-19 would be allowable. This might include renovations that would permit an LEA to clean effectively (e.g., replacing old carpet with tile that could be cleaned more easily) or create a learning environment that could better sustain social distancing (e.g., bringing an unused wing of a school into compliance with fire and safety codes in order to reopen it to create more space for students to maintain appropriate social distancing).

Approved construction projects must comply with applicable Uniform Grant Guidance requirements, as well as the Department’s EDGAR regulations regarding construction at 34 CFR § 76.600. As is the case with all construction contracts using laborers and mechanics financed by federal education funds, an LEA that uses ESSER funds for construction contracts over $2,000 must meet all Davis-Bacon prevailing wage requirements and include language in the construction contracts that all contractors or subcontractors must pay wages that are not less than those established for the locality of the project (prevailing wage rates).

Q: Can ESSER II funds be used to purchase buildings/real property?

A: Yes, districts may acquire property as set out above in order “to prevent, prepare for, and respond to” the COVID-19 pandemic.

Q: Can ESSER II funds be used to purchase water bottle filling stations?

A: Yes, if the purchase of water bottle filling stations for schools reduces the risk of virus transmission or exposure to environmental health hazards or supports student health needs. The Act specifically allows, “School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.”

Q: Can ESSER II funds be used to repair or replace wastewater treatment facilities?

A: As set out above, eligible construction activities to prevent, prepare for, and respond to COVID-19 pandemic are permissible. The act further specifically authorizes repair or improvement of facilities to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.

All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: If using ESSER II funds, do districts have to pay federal prevailing wage rates on permissible construction projects?

A: Yes, an LEA that uses ESSER funds for construction contracts over $2,000 must meet all Davis-Bacon prevailing wage requirements and include language in the construction contracts that all contractors or subcontractors must pay wages that are not less than those established for the locality of the project (prevailing wage rates).

All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: What types of facility projects are eligible for use with ESSER II funds?  Can a district, for example, renovate a building or start a new construction project with these federal dollars?

A: See above discussion of building projects. All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19. In addition to the previously stated, the Act permits:

(13) School facility repairs and improvements to enable operation of schools **to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.**

(14) Inspection, testing, maintenance, repair, replacement, and upgrade projects to **improve the indoor air quality** in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.

Q: Given the role of indoor air quality in preventing viral transmission, can the funding in ESSER II apply to building envelopes, including the roof, windows or walls?

A: See above discussion of building projects. In addition, the Act specifically permits window replacement related to improving indoor air quality in schools. All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: Does ESSER II permit Architectural/Engineering fees as ESSER I did?

A: Yes, ESSER II has the same permissible use of funds as ESSER I. [ESSER II Fact Sheet](https://oese.ed.gov/files/2021/01/Final_ESSERII_Factsheet_1.5.21.pdf). All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: Are bacteria-resistant materials like paints and laminates eligible expenses?

A: The Act permits, “school facility repairs and improvements to enable operation of schools to reduce risk of **virus transmission** and exposure to environmental health hazards, and to support student health needs.” The intent of the Act is to respond to the immediate threat caused by the ongoing viral pandemic. Unless the bacteria-resistant materials also inhibit virus transmission, they would not be eligible uses of funds.

All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: Can funds be used for pre-school/kindergarten floor rugs? District wants to replace all rugs or carpets where students sit after COVID passes.

A: Yes, if reasonable, necessary, and allocable to one of the allowable activities listed in [CRSSA Act, Section 313(d)(13-15)] for the purposes of continuing educational services during school closures or for implementing a plan for return to normal operations, and incurred during the award period between March 13, 2020 - January 6, 2022.

All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: Can funds be used for the construction of outdoor classrooms?

A: Yes, if reasonable, necessary, and allocable to one of the allowable activities listed in [CRSSA Act, Section 313(d)(13-15)] for the purposes of continuing educational services during school closures or for implementing a plan for return to normal operations, and incurred during the award period between March 13, 2020 - January 6, 2022.

All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: Can funds be used for water bills?

A: Generally, no. This is an on-going cost of the district and is not a result of COVID-19. Districts would be responsible for maintaining facilities as normal. However, if there is an increase in water costs due to increased cleaning related to COVID-19, then it may be justifiable.

Q: Can ESSER II funds be used for furniture to facilitate social distancing:

A: Yes, if reasonable, necessary, and allocable to one of the allowable activities listed in [CRSSA Act, Section 313(d)(13-15)] for the purposes of continuing educational services during school closures or for implementing a plan for return to normal operations, and incurred during the award period between March 13, 2020 - January 6, 2022.

All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: Do we have to use design professionals for ESSER II facility projects?

A: A: Yes, public work that involves the practice of engineering or architecture as defined in KRS 322 and KRS 323 requires the services of a professional engineer and/or architect as the circumstances warrant.

KRS 323.033 specifically requires the services of a licensed architect for Educational Use Groups (K-12 schools) for new construction or alterations requiring compliance with the Kentucky Building Code. However, if the project is consistent with the definition of repairs and maintenance found in these statues, these services are not required subject to the following:

KRS 322.360 Public work required to be done under professional engineer or licensed architect.

(1) Neither the state nor any of its political subdivisions shall engage in the construction of any public work involving engineering, unless the plans, specifications, and estimates have been prepared and the construction executed under the direct supervision of a professional engineer or a licensed architect.

(2) Subsection (1) of this section shall not apply to any public work, including a highway or capital project under KRS 56.491 that involves only maintenance or repair of the facility. **Maintenance or repair shall not include any work which alters, modifies, or changes the original characteristics of the design.**

702 KAR 4:160 requires a BG-1 for any project that requires professional design services.

Q: Is KDE’s approval required for inspection or testing activities?

A: No, KDE does not administer inspection or testing activities related to existing facilities.

Testing, inspection and special inspections related to a capital construction project are to be compliant with the Kentucky Building Code as are Guaranteed Energy Savings Contracts (GESC’s) in which the “qualified provider” is responsible for commissioning (testing) pursuant to KRS 45A.345.

Q: What types of facility projects are permissible under ESSER?

A: A non-exhaustive list of the types of permissible facility projects include:

**School Facility Repairs**…..to reduce risk of virus transmission and exposure to environmental hazards, and to support student health needs:

**School facility improvements** to reduce risk of virus transmission and exposure to environmental hazards, and to support student health needs:

Improvements (enhancements) by definition alter, modify, or change the original characteristics of the design require professional design services as noted above.

**Inspection, testing, maintenance or repair:**

As previously stated, KDE does not administer inspection or testing activities related to existing facilities.

Testing, inspection and special inspections related to a capital construction project are to be compliant with the Kentucky Building Code as are Guaranteed Energy Savings Contracts (GESC’s) in which the “qualified provider” is responsible for commissioning (testing) pursuant to KRS 45A.345.

**Upgrade project to improve the indoor air quality in school facilities:**

Mechanical and heating, ventilation, and air conditioning systems upgrades by definition alter, modify, or change the original characteristics of the design require professional design services as noted above.

Non-mechanical mechanical and heating, ventilation, and air conditioning systems will be evaluated on a case by case basis.

**Filtration:**

Individual, stand alone, room filtration devices do not require DFB approval.

Modifications to mechanical systems to increase the level of filtration may require professional evaluation and/or design services based on the nature of the system.

Please refer to additional information regarding filtration and HVAC systems provided in the document accessed by the following link:

<https://education.ky.gov/comm/Documents/Ventilation%20Final.pdf>

**Purification:**

Individual, stand alone, room purification devices do not require DFB approval.

Modifications to mechanical systems to add purification technologies such as ultraviolet light or bipolar ionization require professional design services.

Please refer to additional information provided in the document accessed by the link above.

**Fans**:

Individual, stand alone, fans do not require DFB approval.

Modifications to fans within systems require professional design services.

**Control systems**:

KDE assumes that control systems refer to temperature (and operational control). These will be evaluated on a case by case basis

Given research, humidity control is also an factor in limiting the life of the virus. Therefore, HVAC system humidification/dehumidification control systems are considered to be approvable, however, they do require design professional services.

**Window and door repair:**

Please refer to the definition of repairs and maintenance above.

**Window and door replacement:**

Replacement (alterations) to schools (Use Group E) that require compliance with the Kentucky Building Code require the services of an architect and possibly an engineer pursuant to KRS 323 as noted above.

**KDE recommends you communicate your district specific questions to your assigned** [KDE architect](https://education.ky.gov/districts/fac/Documents/KDE%20District%20Facilities%20Branch%20Project%20Managers%20List%209%203%2019.xls)

**Miscellaneous**

Q: Would transportation to/from ATCs, locally operated tech centers for activities hosted at these schools and sites be a permissible use of ESSER II funds?

A: Yes, if reasonable, necessary, and allocable to one of the allowable activities listed in [CRSSA Act, Section 313(d)(13-15)] for the purposes of continuing educational services during school closures or for implementing a plan for return to normal operations, and incurred during the award period between March 13, 2020 - January 6, 2022.

All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: Can ESSER II funds be used to purchase new textbooks? Virtual students & parents are better served in certain districts when they have an actual textbook to take home.

A: Yes, if reasonable, necessary, and allocable to one of the allowable activities listed in [CRSSA Act, Section 313(d)(13-15)] for the purposes of continuing educational services during school closures or for implementing a plan for return to normal operations, and incurred during the award period between March 13, 2020 - January 6, 2022.

All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: Can funds be used for cafeteria supplies?

A: Yes, if reasonable, necessary, and allocable to one of the allowable activities listed in [CRSSA Act, Section 313(d)(13-15)] for the purposes of continuing educational services during school closures or for implementing a plan for return to normal operations, and incurred during the award period between March 13, 2020 - January 6, 2022.

All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: Can funds be used for meal supplies for virtual students, including for items such as meal transport carts, plastic bags, boxes, etc?

A: Yes, if reasonable, necessary, and allocable to one of the allowable activities listed in [CRSSA Act, Section 313(d)(13-15)] for the purposes of continuing educational services during school closures or for implementing a plan for return to normal operations, and incurred during the award period between March 13, 2020 - January 6, 2022.

All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: Can funds be used for additional garbage pick-up due to additional Styrofoam tray usage?

A: Yes, if reasonable, necessary, and allocable to one of the allowable activities listed in [CRSSA Act, Section 313(d)(13-15)] for the purposes of continuing educational services during school closures or for implementing a plan for return to normal operations, and incurred during the award period between March 13, 2020 - January 6, 2022.

All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: Can funds be used for additional teacher classroom supplies, including paper, pencil, backpacks, pencil boxes, etc?

A: Yes, if reasonable, necessary, and allocable to one of the allowable activities listed in [CRSSA Act, Section 313(d)(13-15)] for the purposes of continuing educational services during school closures or for implementing a plan for return to normal operations, and incurred during the award period between March 13, 2020 - January 6, 2022.

All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: Can these fund be used to reimburse the purchase of school buses that were bought to lower the number of riders to allow for social distancing and safety of students?

A: Yes, if reasonable, necessary, and allocable to one of the allowable activities listed in [CRSSA Act, Section 313(d)(13-15)] for the purposes of continuing educational services during school closures or for implementing a plan for return to normal operations, and incurred during the award period between March 13, 2020 - January 6, 2022.

Reasonableness includes being able to demonstrate that purchasing a bus is a more cost-effective approach than other alternative solutions.

All ESSER-funded activities must be necessary to prevent, prepare for, or respond to COVID-19.

Q: May an LEA or SEA use ESSER funds for a preschool or other early childhood education program?

A: Yes, because an early childhood education program is an allowable use of funds under the ESEA, it is allowable under the ESSER Funds, if the need for the program is in response to COVID-19, and the costs of the program are reasonable and necessary.

**ESSER II: Statutory Use of Funds**

(d) USES OF FUNDS. — A local educational agency that receives funds under this section may use the funds for any of the following:

 (1) Any activity authorized by the ESEA of 1965, including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 21 1400 et seq.) (‘‘IDEA’’), the Adult Education and Family Literacy Act (20 U.S.C. 1400 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) (‘‘the Perkins 25 Act’’), or subtitle B of title VII of the McKinney Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.).

 (2) Coordination of preparedness and response efforts of local educational agencies 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.

 (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.

 (5) Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.

 (6) Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.

 (7) Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency.

 (8) Planning for, coordinating, and implementing activities during long-term closures, including providing meals to eligible students, providing technology for online learning to all students, providing guidance for carrying out requirements under the IDEA and ensuring 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 children 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 after school programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, children with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

 (12) Addressing learning loss among students, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the local educational agency, including by—

 (A) Administering and using high-quality assessments that are valid and reliable, to accurately assess students’ academic progress and assist educators in meeting students’ academic needs, including through differentiating instruction.

 (B) Implementing evidence-based activities to meet the comprehensive needs of students.

 (C) Providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment.

 (D) Tracking student attendance and improving student engagement in distance education.

 (13) School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.

 (14) Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.

 (15) Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.