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July 14, 2021

Adam Proffitt  
Director of the Budget  
Landon State Office Building  
900 SW Jackson, Suite 504  
Topeka, KS 66612

J.G. Scott  
Director of Legislative Research  
State Capitol Building  
300 SW 10<sup>th</sup> Avenue, Room 68-W  
Topeka, KS 66612

Director Proffitt and Director Scott,

Pursuant to Section 1(m) through Section 1(o) of 2021 HB 2134, I am writing to certify that the Kansas State Department of Education will not be using Elementary and Secondary School Emergency Relief (ESSER) Fund moneys to make expenditures of \$5,000,000 for School Safety and Security Grants, \$3,924,160 for the Mental Health Intervention Team (MHIT) Pilot Program, and \$100,000 for Communities in Schools.

It is the opinion of KSDE and the State Board of Education that expenditures for School Safety and Security Grants, as directed in Section 1(m) of 2021 HB 2134, are not allowable under federal law. Federal law allows for ESSER funds to be used for school facilities and repairs to reduce the risk of virus transmission and exposure to environmental health hazards. HB 2134, however, directs the use of ESSER funds to provide grants for the "acquisition and installation of security cameras and any other systems, equipment and services necessary for security monitoring of facilities operated by a school district and for security doors, windows and any entrances to such facilities." The language in HB 2134 does not comply with federal law and, therefore, is not an allowable expenditure.

Regarding Section 1(n) and Section 1(o), which direct KSDE to use ESSER funds for the MHIT Pilot Program and Communities in Schools, it is the opinion of KSDE and the State Board of Education that federal law delegates the authority on how to spend State-level ESSER funds solely to state educational agencies (in the case of Kansas, KSDE and the State

*Kansas leads the world in the success of each student.*

Board of Education). All three COVID-19 relief bills included the following language:

“a State...may reserve not more than one-half of 1 percent of the total amount of grant funds awarded to the State under this section 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.”

Pursuant to the authority granted to state educational agencies by federal COVID-19 relief legislation, KSDE, at the direction of the State Board of Education, has already allocated all available State-level ESSER funds. For ESSER I, the State-level funds were allocated to school districts to provide additional special education funding, particularly to address special education costs associated with the pandemic. ESSER II State-level funds were allocated for three purposes: special education, ensuring every school district receives at least \$300 per student in ESSER II relief funds, and providing funding to the Kansas State School for the Blind and the Kansas State School for the Deaf. Finally, the State Board of Education, during its April 2021 meeting, directed KSDE to use available ESSER III State-level funds for the following purposes: ensuring every school district receives at least \$600 per student in ESSER III relief funds, supporting regional teacher conferences, and entering into contracts to support Kansas students, including during the transition from secondary to postsecondary education. These allocations account for 2.5 percent of the total ESSER III award. The remainder of the available ESSER III State-level funds are, pursuant to federal law, directed towards specific tasks, including addressing learning loss, summer enrichment, and after school programs.

Mental health services are an allowable expenditure under federal law governing ESSER funds, as long as the expenditures are to address mental health services provided as a result of the COVID-19 pandemic. However, KSDE and the State Board of Education have already allocated all of the available State-level ESSER funds, pursuant to their authority to direct State-level funds. If school districts wish to provide additional mental health services to students as a result of the pandemic, KSDE encourages school districts to join the framework established by the MHIT Pilot Program and use their ESSER funds to provide the services. Similarly, Communities in Schools may provide summer enrichment and after school programming, but KSDE and the State Board have already allocated the State-level funds for those purposes to specific contracts and programs. Additionally, representatives of Communities in Schools, in testimony to the House Committee on K-12 Education Budget requesting

State funding of \$100,000, indicated the funding would “[build] stability and sustainability for the programs we are currently operating” in Kansas. Since the funding would be used to support existing programs and not provide services related to the COVID-19 pandemic, it is the opinion of KSDE and the State Board that such an expenditure would not be allowable under federal law.

For the reasons described above, KSDE and the State Board of Education respectfully certifies to the Director of the Budget and the Director of Legislative Research that the agency will not make the expenditures outlined in Section 1(m) through Section 1(o) of 2021 HB 2134. This certification will be reflected in KSDE’s revised FY 2022 budget submission.

The State Board of Education has expressed its desire to partner with the Legislature to improve educational outcomes for Kansas children, but it wants to be included in the legislative decision-making process and not a partner after the fact.

Please do not hesitate to contact my office with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Craig Neuenswander". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

S. Craig Neuenswander  
Deputy Commissioner  
Division of Fiscal and Administrative Services  
Kansas State Department of Education