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## **Private Schools and the American Recovery and Reinvestment Act**

February 2009

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**PRIVATE EDUCATION:**

*Good for Students*

*Good for Families*

*Good for America*

# Private Schools and the American Recovery and Reinvestment Act

February 18, 2009

## Introduction

On February 17, 2009, President Barack Obama signed into law the *American Recovery and Reinvestment Act* (ARRA), a nearly \$800 billion package to help jump-start the sagging economy through a combination of tax cuts and government spending. ARRA involves unprecedented amounts of federal funds for education programs, some of which will affect religious and independent schools. Private school officials should understand the opportunities presented by ARRA and, if so inclined, should take appropriate steps to ensure equitable benefits for their students and teachers. This document is intended to help with that task.

## State Fiscal Stabilization Fund

ARRA establishes a \$53.6 billion State Fiscal Stabilization Fund (SFSF) designed primarily to help states offset their own cuts in aid to education and other services. The fund sets aside \$5 billion for use by the Secretary of Education for State Incentive Grants and an Innovation Fund, but most SFSF monies are awarded to states through a formula based on school-age population (ages 5-24) and total population.

States must use 81.8 percent of their SFSF allocation to support elementary, secondary, post-secondary, and (if applicable) early childhood programs, by first restoring funds that may have been cut to school districts and public institutions of higher education and by increasing formula funding for elementary and secondary education. If any funds remain after carrying out this initial priority, states are required to allocate them to public school districts based on their proportionate share of funds under Title I-A of the *Elementary and Secondary Education Act*.

States must use the remaining 18.2 percent of their SFSF allocation “for public safety and other government services.” Those services may include “assistance for elementary and secondary education and public institutions of higher education.” The 18.2 percent share may also be used for “the modernization, renovation, or repair of public school facilities and institutions [public or private] of higher education.”

## Equitable Services Under SFSF

Despite a strong advocacy effort by the private school community, ARRA does not include an explicit requirement that SFSF monies serve children and teachers in private schools in an equitable way. But neither does the act exclude such services under SFSF. Private school officials should encourage state and school district officials to treat all students and teachers equitably, regardless of the type of school they attend.

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*The Council for American Private Education (CAPE) is a coalition of national organizations and state affiliates serving private elementary and secondary schools. There are 29,000 private schools in America; in fact, one in four of the nation's schools is a private school. More than six million students attend them. CAPE member organizations represent about 80 percent of private school enrollment nationwide.*

Although states must distribute the 82 percent share of SFSF funds under a sequence of purposes and formulas specified in the bill, they have much more leeway when it comes to the 18 percent share. As noted above, public safety, other government services, and “assistance for elementary and secondary education” (note the absence of the word “public” here) are among the acceptable purposes for such funds. Services to students and teachers in private schools certainly fall within these categories of allowable uses.

Public school districts that receive SFSF monies, either under the 82 or 18 percent pot, may only use such funds for activities authorized under the *Elementary and Secondary Education Act* (ESEA), the *Individuals with Disabilities Education Act* (IDEA), the *Adult Education and Family Literacy Act*, the *Carl D. Perkins Career and Technical Education Act* (Perkins Act), or for “modernization, renovation, or repair of public school facilities.” ESEA and Perkins authorize services to students and teachers in private schools, and certain programs in ESEA require such services. IDEA requires proportionate expenditures of federal funds on services for children placed by their parents in private schools. Private nonprofit institutions are eligible providers under the *Adult Education and Family Literacy Act*. So at the very least, services to private school students and teachers are allowed under SFSF. Indeed, in certain circumstances they may even be required since, presumably, all current requirements within the acts in question (ESEA, IDEA, etc.), including requirements relating to equitable services for private school students, will apply when a school district uses SFSF funds for activities authorized under such acts. No doubt, the U.S. Department of Education will be addressing and clarifying this issue either through regulations or guidance or both.

ARRA includes language that expressly prohibits SFSF funds from being used “to provide financial assistance to students to attend private elementary or secondary schools.” But such language should be read carefully and literally as only prohibiting aid, such as tuition or vouchers, that would enable children *to* attend a private school. It should not be read as prohibiting services to students *who* attend private school. Indeed, the fact that Congress worded this prohibition so narrowly suggests that it anticipated the use of SFSF funds for services to private school students but wanted to exclude the use for such purposes as tuition scholarships or vouchers.

### **Incentive Grants and Innovation Fund Under SFSF**

As noted above, the SFSF includes \$5 billion for the Secretary of Education to use for State Incentive Grants and an Innovation Fund. The incentive grants are to be awarded to states that have made significant progress with respect to certain education-related goals, such as achieving equity in teacher distribution and improving the collection and use of data. Of the \$5 billion, up to \$650 million may be used by the secretary for an “Innovation Fund” to provide grants to eligible entities that have made “significant gains in closing the achievement gap.” The grants are intended to help the eligible entities, which can be school districts or a partnership between a nonprofit organization and a school district or a consortium of schools, to expand their work and to help others follow their example. Presumably, a partnership between a nonprofit organization and a consortium of schools opens the way for a group of private schools and an interested nonprofit organization to apply for a grant.

## School Modernization Under SFSF

The school modernization program contained in the version of the stimulus package originally passed by the House was rolled into the SFSF component of ARRA by adding “modernization, renovation, or repair of public school facilities” as an allowable use of any and all SFSF funds received by school districts. The explicit “public school” reference excludes the use of these funds for upgrading religious and independent elementary and secondary schools.

One of the purposes for which states are permitted to use only the 18.2 percent portion of the SFSF is for the modernization, renovation, or repair of public or private colleges and universities. However, such funds may not be used for facilities “used for sectarian instruction or religious worship” or “in which a substantial portion of the functions of the facilities are subsumed in a religious mission.”

## ESEA, IDEA

ARRA includes \$13 billion for Title I grants under the *Elementary and Secondary Education Act* (ESEA) to help disadvantaged students. Of that amount, \$10 billion is available for services to students in public and private schools, and \$3 billion is targeted for grants to help public schools that have been identified for school improvement.

The act also provides \$650 million under Title II-D of ESEA (EdTech) to help public and private schools enhance instruction through technology.

The *Individuals with Disabilities Education Act* (IDEA), which provides services to children with special needs in public and private schools, receives an additional \$12.2 billion under ARRA, including \$11.7 billion for Part B, which requires the equitable expenditure of federal funds for services to students placed by their parents in private schools, and \$500 million for Part C, which serves infants and toddlers with disabilities.

These special funds for ESEA and IDEA are supposed to be available during school years 2009-10 and 2010-11. Further, ARRA funds are over and above the regular annual appropriations for these programs. In the current fiscal year, those appropriations are as follows: \$11.7 billion for IDEA, Part B; \$13.9 billion for ESEA, Title I-A; and \$268 million for ESEA, Title II-D.

## Early Childhood

Early childhood programs also get a boost in ARRA, which provides \$1.1 billion for Early Head Start and \$1 billion for Head Start, two programs to promote the healthy development of children from low-income families before they attend school. A number of private nonprofit organizations sponsor these programs. Another \$2 billion will go to the Child Care and Development Block Grant program, which helps low-income parents

in the workforce cover daycare or after-school program costs at the child-care provider of their choice, public or private.

## School Lunch

ARRA includes \$100 million for a grant program for equipment assistance for school food authorities that administer the National School Lunch Program. Funds under the grant program are provided in a proportional manner to states, which in turn provide competitive grants to school food authorities “based upon the need for equipment assistance in participating schools with priority given to schools in which not less than 50 percent of the students are eligible for free or reduced price meals.” A number of private schools across the country serve as school food authorities, which means they actually administer the food program in one or more schools.

## Next Steps

Private school officials interested in having students and teachers participate in programs funded under ARRA should consider taking the following steps:

- Keep abreast of fact sheets, guidance, appropriations tables, and regulations relating to ARRA’s education programs by frequently visiting the U.S. Department of Education’s ARRA Web page at:  
<http://www.ed.gov/policy/gen/leg/recovery/index.html>
- At the state level, urge the governor and state education department officials to include private school students and teachers in an equitable way under ARRA’s State Fiscal Stabilization Fund (see rationale below).
- At the local level, urge the mayor, school superintendent, and other appropriate officials to include private school students and teachers under SFSF (see rationale below).
- Work with officials at the state education department and local school districts to ensure that increases in formula funds for programs that already benefit students or teachers in private schools (e.g., IDEA, Part B; ESEA, Title I-A; ESEA, Title II-D) will, from the start, include equitable set-asides, timely and meaningful consultation, and effective targeting of funds in order to meet the specific needs of students and teachers.

In making the case with state and local officials for the inclusion of services to private school students and teachers under SFSF, private school representatives should consider the following points:

- Federal programs that benefit public school students and teachers should provide equitable benefits to comparably situated private school students and teachers. Congress has long recognized this principle since the enactment of the *Elementary and Secondary Education Act* in 1965, which helps children in need regardless of the type of school they attend. Such equity is based not

only on a commitment to fairness and inclusion, but also on the practical recognition that America's children are educated in a variety of schools.

- The economic stimulus effect of a particular expenditure is not dependent on the public or private control of the participating institution. Key purposes of the stimulus package are to save jobs and improve education. These goals can be accomplished by directing benefits to students and teachers in public and private schools.
- There is a particular interest in preserving private elementary and secondary schools in that their closing (as has been the case, unfortunately, with many urban religious schools) presents an added financial burden on already hard-pressed and overcrowded public schools.
- Private school families will help bear the cost of the stimulus package; their children should reap some of the benefits.
- Private schools help educate the public. They perform a public service at enormous savings to taxpayers. Private K-12 schools nationally save taxpayers an estimated \$48 billion annually. Their public purpose should be recognized with public support.