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Private Schools and the American Recovery and Reinvestment Act

April 2009

PRIVATE EDUCATION:

Good for Students

Good for Families

Good for America

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Updated April 2, 2009 (Latest Revisions Identified in Green)

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. It draws from the statute as its source as well as from guidance provided by the U.S. Department of Education (USDE), especially guidance released April 1, 2009, concerning the State Fiscal Stabilization Fund (SFSF Guidance), recovery funds for Title I-A of the *Elementary and Secondary Education Act* (Title I Guidance), and recovery funds for the *Individuals with Disabilities Education Act* (IDEA Guidance).

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*. The monies that constitute the 81.8 percent share of SFSF are called Education Stabilization Funds.

States must use the remaining 18.2 percent of their SFSF allocation “for public safety and other government services.” The scope of allowable services is very broad and only subject to a few specific statutory limitations (see Section IV of the SFSF Guidance). State’s may even use these funds to “construct, renovate, or repair a private school facility,” subject to certain conditions (see Q IV-6 of the SFSF Guidance). The monies that constitute the 18.2 percent share of SFSF are called Government Services Funds.

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.

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.

As noted above, states have tremendous leeway in how they spend the 18 percent earmarked for Government Services funds. Expenditures that benefit students and teachers in private schools certainly fall within the broad scope of allowable uses.

Public school districts that receive Education Stabilization funds (that is, the 82 percent share of a state's SFSF allocation) are free to 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* (AEFLA), 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 services to private school students and teachers are *allowed* under Education Stabilization funds. They are not, however, *required*. Question III-D-15 in the **SFSF Guidance** explains it this way:

"There is no requirement in the ARRA that an LEA provide equitable services for private school students with Education Stabilization funds, even if those funds are used for an activity authorized by a program that otherwise requires equitable services. However, an LEA may provide services for private school students and teachers to the extent that the activities are authorized by the ESEA, the IDEA, the AEFLA, or the Perkins Act."

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. This principle should apply to both Education Stabilization funds spent by school districts and Government Services funds spent by states.

ARRA (as subsequently amended by the *Omnibus Appropriations Act, 2009*) includes language in Section 14011 of Division A that expressly prohibits SFSF funds from being used "to provide financial assistance to students to attend private elementary or secondary schools unless such funds are used to provide special education and related services to children with disabilities, as authorized by the *Individuals with Disabilities Education Act* (20 U.S.C. 1400 et seq.)." 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.

Under IDEA, school districts are permitted, under certain conditions, to cover the costs of having a child with disabilities attend a private school in order to meet the special needs of that child. [The amendment to ARRA noted above opens the way for school districts to use SFSF funds to cover tuition costs for children placed by school districts in private schools.](#)

Incentive Grants and Innovation Fund Under SFSF

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.

ESEA, IDEA

In addition to the SFSF funds, 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.

In a [letter to CAPE](#) dated March 5, 2009, Secretary of Education Arne Duncan, wrote the following: “The enacted ARRA contains a number of provisions that will positively impact private school students and teachers. The law includes \$10 billion for formula grants to local educational agencies under Title I, Part A of the *Elementary and Secondary Education Act* (ESEA); \$11.7 billion in grants under Part B of the *Individuals with Disabilities Education Act* (IDEA); and \$650 million for the Enhancing Education through Technology program under Title II, Part D of the ESEA. These programs are governed by the equitable services provisions of the ESEA and IDEA and require the

equitable participation of eligible private school students and, in some programs, their teachers.”

Guidance issued April 1 by USDE on Title I-A recovery funds makes clear (Q. D-6) that “all Title I requirements apply to the use of Title I, Part A ARRA funds, including those requiring equitable services for eligible private school children and their teachers and families.” The guidance goes on to state (Q. D-7) that “an LEA [i.e., school district] must consult with private school officials during the design and development of the LEA’s Title I, Part A programs.” The guidance further clarifies that “consultation must include meetings of LEA and private school officials and must occur before the LEA makes any decision that affects the opportunities of eligible private school children to participate in Title I, Part A programs.” An additional question (Q. D-8) deals with equitable services in the event the district receives a waiver for one or more “set-aside” requirements. (See D-6, D-7, and D-8 of the [Title I Guidance](#))

The USDE’s [IDEA Guidance](#) for recovery funds describes how a district must calculate the proportionate share of funds under IDEA required for services to students placed by their parents in private schools (Q. F-1), the consultation requirements that apply to the use of such funds (Q. F-2), and the timetable for spending such funds (Q. F-3).

These special funds for ESEA and IDEA are being released by the USDE very quickly starting March 2009. The exact timeframe is available [here](#) under the heading “Categories of Funds and Schedule for Distribution.” Further, ARRA funds are over and above the regular annual appropriations for these programs. In the current fiscal year, those regular appropriations are as follows: \$11.7 billion for IDEA, Parts B & C; \$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. [These funds are in addition to whatever SFSF funds states and school districts decide to direct to early childhood programs \(see Q. III-D-9 of the SFSF Guidance.\)](#)

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

The USDE plans to move ARRA funds quickly starting March 2009. The exact timeframe is available [here](#) under the heading “Categories of Funds and Schedule for Distribution.” Private school officials interested in having students and teachers participate in programs funded under ARRA should consider taking the following steps soon:

- 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 **Government Services 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 the **Education Stabilization Fund** (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 SFSE, 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 parents 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.