



Education Law Center

Standing Up for Public School Children

By Fax and Mail

May 21, 2009

Honorable Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary Duncan:

Education Law Center ("ELC") works to advance equal educational opportunities for public school children, particularly low-income students, students of color, and students with special needs. On their behalf, ELC, and the undersigned organizations -- Campaign for Fiscal Equity and the Alliance for Quality Education from New York, and the Georgia School Funding Association -- write to bring to your immediate attention our concerns with the United State's Department of Education's ("USDOE") application process by states for initial funding under the State Fiscal Stabilization Fund Program.

The American Recovery and Reinvestment Act ("ARRA"), as well as its accompanying USDOE guidance, emphasize the importance of transparency and accountability in distributing fiscal stabilization funds through state K-12 school funding formulas. In addition, the ARRA directs states to distribute those funds to the greater of the formula level in FY2008 or FY2009, and "to allow existing State formulae increases to support elementary and secondary education for fiscal years 2010 and 2011 to be implemented and allow funding for phasing in State equity and adequacy adjustments," if enacted under state law prior to October 1, 2008. P.L. 111-5, (H.R.1), February 17, 2009; 123 Stat. 115, as amended by P.L. 111-8 (H.R.1105), the Omnibus Appropriations Act 2009, Division A, Sec. 523; March 11, 2009; 123 Stat. 524, Title XIV, Sec. 14002(a)(i)(II).

Our organizations are concerned that the current application process for states to request initial stabilization funds, as established by your Department, lacks transparency in

certain basic respects, and does not afford the public with notice and opportunity to review and provide comment on the states' proposed distribution of stabilization funds through the respective state K-12 funding formulas.

Under current procedures, the states, through the Governors, are required to submit an application to USDOE for initial funding under the State Fiscal Stabilization Fund Program. When the application is filed with your Department, no public notice is given, nor is there any requirement that the application be posted on the state's website. Further, USDOE does not notify the public that an application has been filed; does not post the pending application on the USDOE website; and does not provide the public with any opportunity to submit comment on state applications. Instead, the application is only posted on the USDOE website upon approval, which is the first point at which the public has ready access to states' submissions.

The application process for the State Fiscal Stabilization Fund Program does not provide the public any notice of a pending application, nor is public afforded an opportunity to comment on the application prior to approval. The absence of these minimum procedures is especially important in light of the ARRA requirements that states distribute stabilization funds through their K-12 school funding formulas, both to restore formula funding to the fiscal year 2008 or 2009 level, whichever is greater, and to implement formula increases and phase-in equity and adequacy formula adjustments in fiscal years 2010 and 2011. Thus, the proposed distribution of these funds directly implicates the provision of state formula funding to disadvantaged students in the nation's poorest districts and schools, and will have a significant impact on whether such funding advances equity and adequacy in state school finance systems over the next two fiscal years.

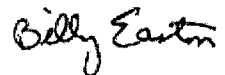
Accordingly, we request your immediate attention to this matter, particularly because a number of states have applications pending before USDOE, and some have already been approved. We would specifically request that USDOE: 1) inform states that application must be made public immediately upon filing with USDOE; 2) post all applications on the USDOE website immediately upon receipt; and 3) hold such applications open for at least ten (10) business days in order to receive public comment on pending applications.

and students of color in the nation's public schools, especially schools serving impoverished and racially isolated neighborhoods and communities. We further appreciate the Administration's commitment to transparency and accountability with regard to distribution and expenditure of ARRA funds. To further these twin objectives, our organizations stand ready to work with your Department on this matter, and look forward to your prompt reply.

Sincerely,



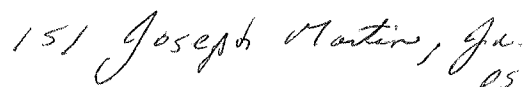
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cc: James Butler, Teacher Quality Group Leader, Office of
Elementary and Secondary Education, USDOE
Honorable Russynn Ali, Assist. Sec. for Civil Rights