

**Federal Issues Update**  
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## **Summary**

The following is a summary of recent federal activities, including the Federal Relations Network Conference, the federal flexibility waiver, reauthorization of the Elementary and Secondary Education Act and recent activities regarding the Secure Rural Schools Act.

## **Background and Analysis**

### *Federal Relations Network Conference (FRN)*

This year's National School Boards Association FRN Conference was held on February 5-7, 2012 in Washington DC. This year's FRN agenda primarily focused on the reauthorization of ESEA and increasing funding for Title 1 and the Individuals with Disabilities Education Act (IDEA). The conference was attended by CSBA's Executive Committee and other local school board members from around the state. We were able to visit with Congressional staff and members, including Senators Feinstein and Boxer and Representative Miller's staff from the House Education and Workforce Committee. Meetings were also held with The White House Domestic Policy staff and with staff members from the US Department of Education.

FRN Background materials can be found at: <http://files.nsba.org/advocacy/frnbackgrounder.pdf>  
Conference materials can be found at: <http://www.nsba.org/Advocacy/FRN/2012-FRN-Conference-Presentations>

CSBA's Leave Behinds documents are also available at  
<http://www.csba.org/EducationIssues/EducationIssues/FederalEducationIssues2.aspx>

### *Elementary and Secondary Education Act (ESEA) Flexibility/Waiver*

Twenty-six more states have formally submitted requests for waivers from key provisions of the No Child Left Behind Act (NCLB). The states include Arizona, Arkansas, Connecticut, Delaware, Idaho, Illinois, Iowa, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New York, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, Wisconsin and the District of Columbia. This adds to the eleven states that have already had waiver applications approved to implement a number of education reforms in exchange for flexibility. Final determination for the latest round of applications will be made by late spring. The US Department of Education (USDOE) expects additional states to request flexibility by September 6 for the third round of reviews. Information on the requirements and state waiver applications can be found at:  
<http://www.ed.gov/esea/flexibility>.

As to whether or not California will submit a waiver application, the issue was heard by the State Board of Education (SBE) at their meeting on March 8, 2012. The California Department of Education (CDE) presented a proposal to submit an application to the USDOE seeking relief using the general waiver provisions of the federal education code (Section 9401).

The proposal, called a “state-defined waiver” was proposed after some board members and State Superintendent Tom Torlakson balked at pursuing the Administration’s waiver option offered last fall because of the cost implications. As proposed, the waiver did not ask for all of the benefits that are being offered under the Duncan waive, but it does seek the primary ones – flexibility to use \$353 million in Title I money that is now restricted to tutoring and transporting students to districts of choice and release from having to identify and prescribe turnaround programs for schools identified as failing under NCLB.

While there is support for submitting a general waiver proposal, during the SBE meeting concerns were raised that the proposal was not strong enough to even be considered for review by Secretary of Education Duncan. Many organizations testified before the SBE that the proposal needs to be strengthened and needs to better highlight what the state is already doing to address the education reforms that are being promoted by the USDOE and that more stakeholder input must be included in order to meet the requirements of Section 9401.

The SBE put the issue of submitting a general waiver over until their May meeting asking that the CDE work with interested stakeholder organizations to strengthen the proposal.

### *ESEA Reauthorization*

In late February, the House Committee on Education and the Workforce approved two pieces of legislation from Committee Chairman John Kline (R-MN) that would move to reauthorize ESEA. The bills, the Student Success Act (H.R. 3989) and the Encouraging Innovation and Effective Teaching Act (H.R. 3990), are the last pieces in Kline’s “piecemeal” reauthorization effort, and would dramatically scale back the federal role in education, turning more responsibility back over to the states. Over the course of the four-hour markup, Democrats and Republicans alike expressed concerns over the legislation.

Ranking Member George Miller (D-CA), asserted that the legislation “turn[s] its back on the civil rights promises of this nation: that every child deserves a fair shot at success, no matter what their background.” Civil rights groups and even the U.S. Chamber of Commerce have said that the legislation would lose much of the subgroup accountability that has improved education for students with disabilities, poor students, and English Language Learners. Democrats voted unanimously against the underlying legislation and all Republican amendments, and many used the markup as an opportunity to voice their unhappiness with the direction Kline is taking in these bills.

On a party-line vote, the committee accepted an amendment from Rep. Todd Rokita (R-IN) that would reduce the number of staff employees at the U.S. Department of Education. However,

another amendment that rural school advocates have been pushing was defeated. The provision, introduced by Rep. Glenn Thompson (R-PA) would have revamped the Title I funding formula, which distributes money for disadvantaged students.

Currently, the formula favors high-population areas (like Montgomery County, MD, one of the richest counties in the country) over smaller, rural schools. The proposed change would have been phased in over four years. Rep. Thompson argued that such a change would be just pure fairness. But Rep. Miller argued that the provision wouldn't be fair to the school districts that would lose out under the deal, since there wouldn't be any extra Title I money to offset their loss. The amendment failed on a vote of 22-16, despite Kline's support.

Democrats introduced two amendments, which would have replaced the accountability bill with their own version, authored by Miller. It would have required states to set their own achievement targets and expanded accountability for English-language learners and students in special education, among other provisions. Both amendments were defeated on a party-line vote.

Another amendment, offered by Congresswoman Judy Biggert (R-IL), would make the teacher evaluations currently mandated in H.R. 3990 optional. Biggert and a number of other committee members from both sides of the aisle expressed concern over the nature of teacher evaluations and the level of prescriptiveness that should come from Congress and the U.S. Department of Education. This included discussion whether the federal government should be setting one-size-fits-all requirements in the first place (an issue for many Republicans when it comes to current education law) and how teacher identity and privacy would be protected in publication of those evaluations. Biggert withdrew her amendment, but the debate highlighted additional problems with Republican unity.

As for the question of what happens next with reauthorization, that will depend on Rep. Kline being able to convince House leadership to put the bills to a vote on the House floor, despite the fact that the same leadership has promised to prioritize job creation and economic recovery in the months leading up to the November election. Further, Rep. Kline must also garner some Democratic support for these bills – after all, Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Tom Harkin (D-IA) has said that he will only move his own reauthorization bill in the Senate when he sees a bipartisan bill pass the House. In reality, the chances of both happening before Congress' focus turns to the election seem slim.

Currently, the American Association of School Administrators and the National School Board Association (NSBA) have both officially endorsed the bills. However, the tri-caucus, a group of powerful House lawmakers representing districts with lots of black, Hispanic, and Asian students, oppose the bills saying they are a big step back on accountability, particularly for subgroups of students, such as racial minorities and English-learners. There are approximately thirty-eight business and civil rights groups, including the U.S. Chamber of Commerce, the National Council of La Raza, and the Education Trust, that share similar concerns. Disability rights groups including the National Center for Learning Disabilities and the Council for Exceptional Children also oppose the bill. Teachers' unions don't have much love for the bill either.

There are a number of groups that fall into the middle – they aren't completely for or against the bill but they want to see reauthorization happen and like some aspects of the bills, but have concerns about others. The Council of Chief State School Officers and the National Association of Secondary School Principals are on this list.

### *Secure Rural Schools*

Over the past decade a federal program that's based on historic timber revenue has cushioned the loss of logging in forest communities. It has provided nearly \$3.8 billion for schools and roads in more than 700 counties in 42 states, including 32 in California. With nearly 21 million acres of national forest within its borders, California is among the biggest beneficiaries of the Secure Rural Schools and Community Self-Determination Act (full bill text is available at <http://www.govtrack.us/congress/bill.xpd?bill=h106-2389>). The state has received more than \$573.7 million for county schools and roads since the program's inception.

However, the act expired in September 2011, and the program's final dollars will run out by the end of this year. In California, the end of Secure Rural Schools leaves a \$33.4 million hole in county roads and schools budgets. When the money's gone, officials say, weathered roads will go unrepaired, and schools will have more crowded classrooms, fewer programs and fewer teachers.

Lawmakers in the U.S. Senate and House of Representatives have introduced legislation to extend the program another five years, albeit at lower payments. Reauthorization bills have bipartisan support from 32 senators, including Sens. Dianne Feinstein and Barbara Boxer in California, and eight Democratic representatives, including Rep. Michael Thompson, whose district includes rural counties along California's northern coast.

But it's uncertain whether Secure Rural Schools, which was approved in 2000 and reauthorized in 2008, can win enough support a third time. House Republicans are drafting legislation that would end program payments and instead fund counties by increasing timber production in national forests.

Since 1908, when the national forest system was created, the U.S. Forest Service has compensated counties with national forests in their boundaries for federal land they cannot tax. Counties received 25 percent of the agency's gross receipts, derived primarily from timber production. For years, timber receipts provided steady cash flows for infrastructure and schools, peaking at \$361 million in 1989. But payments plummeted as timber harvests declined. Secure Rural Schools was the congressional response to falling timber revenue. The act allowed counties to choose payments under the existing revenue-sharing model or through a new formula based on an average of historic timber receipts.

At its height, the program paid California more than \$69 million a year. Schools and county roads departments evenly split the majority or all of the funds. The remainder is dedicated to forest stewardship, restoration and maintenance; search and rescue and emergency services; and development of wildfire protection plans.

Without the renewal of Secure Rural Schools, all counties will revert to sharing 25 percent of timber receipts – a model that for most counties will mean substantially less revenue. Of California's 39 counties with national forests, 32 will receive less in timber revenue than they would through Secure Rural Schools.

Under S. 1692 by Sen. Jeff Bingaman (D-NM) reauthorizing the program will cost about \$1.4 billion over five years. At least one of the bill's co-sponsors, Sen. Lisa Murkowski (R-AL) pledged to drop her support of the legislation and work to defeat it if there were no budget offset. New Mexico Democrat Martin Heinrich introduced a companion measure (H.R. 3599) in the December. Meanwhile, the House Natural Resources Committee is working on legislation that would require forest counties to generate certain annual revenues through timber sales, recreation or other land use projects.

The loss of Secure Rural Schools would be felt differently from one campus to the next in California; the funding is typically unrestricted money for districts. Officials say that after years of state budget cutbacks, as well as shrinking Secure Rural Schools payments, there are few places left to cut.

On March 8, the Senate passed an amendment sponsored by Senator Max Baucus (D-MT) to reauthorize the "Secure Rural Schools & Communities Self Determination Act" for one year and to provide full funding for its payment-in-lieu-of-taxes program for one year. The measure passed as an amendment to the highway transportation bill (S. 1813) by a vote of 82 to 16. The Senate is scheduled to resume debate on S. 1813 this Monday, March 12. NSBA supports the amendment and will forward additional updates/action alerts as the legislation moves forward.

### *Special Education*

Each year, the USDOE visits states to see how well they are complying with the requirements of the federal Individuals with Disabilities Education Act (additional information available at <http://idea.ed.gov/>). These reviews have been primarily compliance driven and have not taken into account what or how much students with disabilities are actually learning. However, under a new proposal by USDOE, that will soon change. The department said it is revamping the way it rates states to better address the achievement gap between students with disabilities and their peers.

Department officials said they will suspend annual visits to 16 states for the 2012-13 school year for annual compliance reviews. They will still conduct reviews but they will be more of a paper review. Instead, USDOE will spend this next year working out a new review system that takes a results-driven approach to assessing how states are educating students with disabilities.

Already, the expansion of the department's focus has begun, officials said. States visited last year had to choose an education outcome on which to focus. Some special education advocacy groups have complimented the department's move while others are concerned that the waivers being provided under the ESEA flexibility proposal could make it easier for states to ignore lagging

student performance for some groups, such as racial and ethnic minorities, English-language learners, and students with disabilities.

### *Civil Rights Data Collection (CRDC)*

The US Department of Education recently released Part 2 of the 2009-10 CRDC. The survey covers about 7,000 school districts and over 72,000 schools. The data provided parents, educators and policymakers with critical information to assist in identifying inequalities and targeting solutions to close the achievement gap.

Part 1 of the CRDC was released in June 2011 and included information on access to rigorous sequences of college-and-career-ready math and science courses, the number of first- and second-year teachers in schools, the number of high school counselors in schools, availability of early learning programs, districts operating under desegregation orders or plans, and whether districts have written policies prohibiting harassment and bullying. Part 2 includes detailed discipline data on in-school suspensions, referrals to law enforcement, and school-related arrests. It also provides a comprehensive picture on college and career readiness, school finance, teacher absenteeism, student restraint and seclusion, and grade-level student retention.

Among the findings of Part 2:

- African-American students, particularly males, are far more likely to be suspended or expelled from school than their peers. These students represent 18 percent of the students in CRDC's sample but 25 percent of students suspended once, 46 percent of students suspended more than once and 39 percent of students expelled.
- Students learning English were 6 percent of the survey's high school enrollment but 12 percent of students retained.
- Only 29 percent of high-minority high schools within diverse districts offered Calculus, compared to 55 percent of schools with the lowest African-American and Hispanic enrollment.
- Teachers serving in high-minority schools were paid \$2,251 less per year than their colleagues serving low-minority schools in the same district.

The data collection reports can be found at <http://ocrdata.ed.gov/>

### *Nutrition*

Earlier this year, the US Department of Agriculture (USDA) released the new final regulations for school meal programs, just over a year after the draft regulations were first published. These regulations, which were the subject of much debate both among schools and states and in the halls of Congress –received more than 132,000 comments on the draft regulations – pertaining to the 2010 Healthy and Hunger Free Kids Act, and are among a series of new regulatory packages which instruct states on how to implement the new requirements of the law. More final regulations are expected to be released later this spring and will deal with additional sections of the Act.

The new regulations make a number of sweeping reforms to the nutritional requirements of school meals. These changes include the requirement that students be served twice the amount of fruits and vegetables as under current law; that all grain products be whole-grain rich; that all milk offered be low-fat or fat-free, and that meals generally meet caloric minimums and maximums as well as limitations on sodium content. There will be specific minimum requirements for subgroups of vegetables, including dark green and red/orange produce. Schools will be able to serve tofu as an alternative to meat at lunch. In order to pay for these reforms – or at least some of them – states will be provided with a reimbursement increase of six cents per meal. Most of the regulations are scheduled to take effect July 1, 2012, with some provisions being phased in over the next 3-5 years.

USDA had originally drafted the regulations to limit the number of servings of starchy vegetables and end the practice of counting tomato paste and puree – like that on a slice of pizza – as a serving of vegetables. After relentless lobbying from potato-producing states and food processing companies including ConAgra Foods and Schwan's Food Service, Congress amended Fiscal Year 2012 budget legislation to condition funding for the Department of Agriculture on removal of the limitation on starchy vegetables and restoration of the ability to count tomato paste as a vegetable serving – leading to a number of headlines saying congress had declared pizza to be a vegetable.

The new regulations are generally supported by nutrition advocacy organizations who have criticized current meal standards for contributing to obesity and other health problems among students. However, states and districts have expressed concern that the new requirements will increase costs and force them to raise the price of school meals for all students. USDA has estimated the cost to states at \$3.2 billion over the next five years, less than half the cost of the original proposed regulations, but states are skeptical about that number.

An implementation timeline of the new regulations is available on the USDA website at [http://www.fns.usda.gov/cnd/governance/legislation/implementation\\_timeline.pdf](http://www.fns.usda.gov/cnd/governance/legislation/implementation_timeline.pdf). A comparison of current requirements and the new regulations which will take effect in 2012 is available at <http://www.fns.usda.gov/cnd/governance/legislation/comparison.pdf>. Finally, a Question and Answer document from USDA's Food and Nutrition Service is available at <http://www.fns.usda.gov/cnd/governance/Policy-Memos/2012/SP10-2012os.pdf>.