

Federal Issues Update
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Summary

The following is a summary of recent federal activities, including the

- Federal Advocacy
- Civil Rights Data Collection (CRDC) Release
- USDA Rules on School Lunches
- Elementary and Secondary Education Act (ESEA) Reauthorization
- ESEA Flexibility/Waiver
- Secure Rural Schools and Community Development Act
- Special Education
- Medicaid/Medicare Funding
- Blueprint for the reauthorization of the Carl Perkin Career and Technical Education Program
- Workforce Investment Act (WIA)

Background and Analysis

Federal Advocacy

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 the Elementary and Secondary Education Act (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. Participants 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 Council staff and with staff members from the U.S. Department of Education (USDOE).

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 are available on our website at <http://www.csba.org/EducationIssues/EducationIssues/FederalEducationIssues2.aspx> and [Background](#) documents are attached.

Coalition for Adequate Funding for Special Education – For the second year, CSBA participated in the Coalition's visit to Washington DC to talk with congressional members and the Obama Administration about the need for increased funding for special education, the need to better align portions of ESEA with IDEA, and to ensure access to Medicaid funds for special education students. The meetings took place on May 7-9, 2012. Immediate Past President Martha Fluor, who is also a former special education teacher, participated in the visit on behalf of CSBA. Background information and issue papers will be available on CSBA's Federal Education Issues page (<http://www.csba.org/EducationIssues/EducationIssues/FederalEducationIssues2.aspx>) by the end of May.

Civil Rights Data Collection (CRDC) Release

The USDOE 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/>

USDA Rules on School Lunches

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; 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 at 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>.

A Question and Answer document from USDA's Food and Nutrition Service is also available at <http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2012/SP10-2012osr.pdf>.

Elementary and Secondary Education Act (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 USDOE. 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 Title 1 formula favors high-population areas (like Montgomery County, MD, one of the richest counties in the country) over smaller, rural schools. The proposed formula change would have been phased in over four years. Rep. Thompson argued that such a change would be just pure fairness. However, 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 have made the teacher evaluations 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 house 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.

At this time, the American Association of School Administrators and the National School Board Association (NSBA) have both officially endorsed the House bills. However, the tri-caucus, a group of powerful House lawmakers representing districts with substantial populations 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 (opposition letter available at http://www.edweek.org/media/tricaucus_ltr_opposing_ssa_and_eieta-blog.pdf). 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.

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 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 March meeting and is up again for consideration at the May meeting.

At the SBE's March meeting, 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 does not ask for all of the benefits that are being offered under the Duncan waiver, 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. Further, if approved the general waiver could take effect for the 2012-13 school year unlike the USDOE waiver which wouldn't take effect until the 2013-14 school year.

While there is support for submitting a general waiver proposal, during the March 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 CDE will bring back the general waiver for further discussion at the May SBE meeting. Information on the board's action will be posted after May 10.

Secure Rural Schools and Community Development Act

Over the past decade, this federal program that is 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 land 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 the budget for both county roads and schools.

Lawmakers in both houses of Congress have introduced legislation to extend the program another five years, albeit at lower payment levels. Reauthorization bills have bipartisan support from 32 senators, including Sens. Dianne Feinstein and Barbara Boxer in California, and eight Democratic representatives, including Rep. Mike Thompson, whose district includes rural counties along California's northern coast. However, it is 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, additional information on payment details available at <http://www.fs.usda.gov/main/pts/securepayments/projectedpayments>.

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, press release available at http://www.murkowski.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=e16782ab-7fda-420b-831a-a7f08d4f9a38&ContentType_id=b94acc28-404a-4fc6-b143-a9e15bf92da4&Group_id=c01df158-d935-4d7a-895d-f694ddf41624&MonthDisplay=10&YearDisplay=2011. 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, committee press release available at <http://naturalresources.house.gov/News/DocumentSingle.aspx?DocumentID=260128>.

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. NSBA supports the amendment and will forward additional updates/action alerts as the legislation moves forward.

On Wednesday, April 19, 2012, the House passed a 90-day extension of federal highway programs, which would extend surface transportation programs' spending authorization until October. The extension passed by a vote of 293-127, and replaces the previous extension (PL 112-102) which was set to end by July of this year.

It is expected that this move will hasten the conference process between both chambers and expedite the possibility of a long-term reauthorization bill this year. For this reason, sixty-nine Democrats voted with their Republican counterparts to pass the short-term extension. Last month, the Senate passed a two-year reauthorization measure (S. 1813). The bill would authorize about \$109 billion for federal transportation programs and was passed by a bipartisan vote of 74-22.

Senate Majority Leader Harry Reid (D-NV) is expected act quickly under an existing unanimous consent agreement, which originated in March when the Senate passed its reauthorization. Indications show that the Senate will likely take the House's short term extension, replace that language with language from S. 1813, and send the new amended bill back to the House accompanied by a request for a conference.

Included in the House's short-term extension is contentious language related to energy provisions. As passed, the bill includes language meant to compel the Administration to approve the construction of the Keystone XL Pipeline from Canada to Gulf Coast.

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.

Medicaid/Medicare Funding

Just recently, House Republicans have opted to pursue less controversial spending cuts, such as cutting federal health reform law funding, rather than pursue the broad changes to Medicaid and Medicare which were originally included in House Budget Committee Chair Paul Ryan's (R-WI) budget proposal.

The Ryan budget plan -- which the House passed in March and approved again in a procedural move earlier this month -- would have transformed Medicare from a fee-for-service program to one in which beneficiaries could either purchase coverage on the private market or maintain traditional Medicare coverage. The proposal would also reduce Medicaid spending and convert the program to a block-grant system in which states would receive a fixed amount, which would be capped at current levels for the next ten years. School-based Medicaid programs have been, and always will be, seen as more vulnerable under a block-grant scenario which will have tremendous impact on outreach, administrative and transportation services for special education students.

Although Republicans in the last month have indicated strong support for Ryan's plan, GOP leaders in follow-up legislation appear to be taking a different strategy. Attempts to pass the full Ryan budget or any binding legislation are unlikely to advance with President Obama in office and a Democrat-controlled Senate, according to the AP/Times. Republican leaders -- including House Speaker John Boehner (R-OH) -- appear to have acknowledged that and have decided to avoid casting numerous politically tough votes on issues such as Medicare. Instead, Republicans will push for other health-related cost-cutting proposals, such as reducing funding to the federal health reform law and limiting damages in medical malpractice cases until after the November election.

Blueprint for the reauthorization of the Carl Perkin Career and Technical Education Program

On April 18, 2012, the Obama Administration released a "blueprint" for the reauthorization of the Carl D. Perkins Career and Technical Education (CTE) program. In the draft document, the USDOE says it would revamp CTE programs to boost collaboration with private sector employers and supports, and move more responsibility to the state level. At an event in Iowa, Secretary of Education Duncan stated that "In the knowledge-based economy, lifelong learning is so critical. And that means that the traditional mission of career and technical education has to change. It can no longer be about earning a diploma and landing a job after high school. The goal of CTE should be that students earn an industry certification and postsecondary certificate or degree — and land a job that leads to a successful career."

The proposal would give states a larger role in choosing what types of programs to offer, allowing them to focus federal dollars on high-growth occupations and industries and aligning their curricula with the skills graduates need to land jobs. The Consortia consists of districts, post-secondary institutions, and partners including employers, labor organizations, and industry associations would share grants, which the proposal says would incentivize and encourage collaboration. There would also be a required private-sector match for federal grants which could be filled through dollar contributions or in-kind donation. In order to ensure accountability and program quality, new performance would be required.

Funding for the new academies would be competitive at the state level, allowing states to pick and choose which local programs to fund. While the USDOE and the Administration came under attack in recent years from Republicans and Democrats alike for increasing the number of competitive funding grants because they are seen as unfair to smaller and rural states and localities, a program like this – where states receive a formula grant and funding is doled out on a competitive basis to individual programs – could represent a viable compromise for many in Congress.

At present, the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act), which is a principle source of federal funding for secondary and postsecondary career and technical education programs, is in need of reform and updating. The 2006 Perkins Act took modest yet important steps to improve the quality of CTE programs. But it did not go far enough to address the needs of youths and adults preparing to participate in the knowledge-based, global marketplace of the 21st century.

The Administration's proposal for a reauthorized Perkins Act would transform CTE and usher in a new era of rigorous, relevant, and results-driven CTE shaped by four core principles—alignment, collaboration, accountability, and innovation—and accompanying reforms as presented on the next page.

Transforming the Perkins program would add to key investments the Obama Administration has already made to align classroom teaching and learning with real-world business needs. These investments include \$2 billion in Trade Adjustment Assistant grants to strengthen community college programs and workforce partnerships. In addition, transforming the Perkins program aligns with proposed investments that include \$8 billion for the Community College to Career Fund aimed at training 2 million workers for high-growth industries, and \$1 billion to help 500,000 (a 50-percent increase) high school students participate in career academies.

The goal of the changes, according to the Obama Administration, is to “reduce skills shortages, spur business growth, encourage new investment and hiring, spark innovation, and promote continued economic growth.” However, the proposal may be dead on arrival in a Congress where substantive policy legislation is taking a back seat to the debate over spending, and the reauthorization of even routine programs has been debated and delayed.

The Administration's Fiscal Year (FY) 2013 budget proposes an additional \$1 billion to help 500,000 (a 50 percent increase) high school students participate in Career Academies, which are programs offered in high school that combine college curricula with a career emphasis, such as healthcare or engineering. The Administration also has proposed \$8 billion in the FY 2013 budget for a Community College to Career fund to train 2 million workers for high-growth industries.

A copy of the blueprint is available at
<http://www2.ed.gov/about/offices/list/ovae/pi/cte/transforming-career-technical-education.pdf>.

A copy of the blueprint summary is available at <http://www2.ed.gov/about/offices/list/ovae/pi/cte/transforming-career-technical-education-summary.pdf>.

Workforce Investment Act

On April 17, 2012, the House Education and the Workforce Committee held a hearing to examine HR 4297 (Foxx, R-NC), the Workforce Investment and Improvement Act of 2012 which would overhaul the federal workforce training law. A number of draft reauthorization bills for the Workforce Investment Act (WIA), which was due for reauthorization in 2003, have been circulated in previous Congresses, though none has ever gotten enough traction to make it through both the House and Senate.

H.R. 4297 was introduced by House Republicans following the release of a Democratic WIA bill, HR 4227 (Tierney, D-MA) and substantial public discussion by House and Senate staff on moving forward with reauthorization. A Senate bill was scheduled to be released last year but the scheduled markup was delayed multiple times and eventually cancelled. This latest legislation contains language from three earlier Republican bills, with some minor changes and technical corrections.

In a hearing last month, ranking member George Miller (D-CA) said he had “serious concerns” about the GOP bill – specifically the proposal to consolidate twenty-seven programs into one funding stream, which he said would shift money away from the underserved populations that the programs were set up to protect. In response, Foxx highlighted the fact that President Obama called for a consolidation of workforce training programs in his State of the Union address. Foxx also noted that seven of the programs targeted for consolidation would also be consolidated under the Democrats bill (H.R. 4227). Another five of the programs that would be consolidated under the Republican proposal have either never been funded or have not been funded in years.

In addition to consolidating many of the major programs under the current WIA, the Republican bill would allow state Governors to merge additional programs if they have a “responsible” plan to do so. States would also be required to adopt a common set of performance measures to judge the success of all programs. Finally, the bill would boost participation by local businesses – it requires that two-thirds of local WIB members be employers.

If this bill moves forward, it would be the first serious attempt at reauthorization during this Congress. However, a spokesman for the Committee Chairman John Kline (R-MN) noted that no markup is scheduled at this time.



FRN 2012 – BACKGROUND

Reauthorization of ESEA

The Elementary and Secondary Education Act (ESEA), the major federal law supporting K-12 education, was last authorized in 2002 as the No Child Left Behind (NCLB) Act. Enacted in 1965, ESEA established federal policy and authorized federal funding to states and school districts to improve the academic performance of students enrolled in public schools. ESEA was scheduled to be reauthorized in 2008; however, since that has not occurred, provisions of the law continue to be in force through the congressional appropriations process.

The intent of Congress in enacting NCLB was to improve the academic achievement of all students, with an emphasis on English language learners, students in poverty and students with disabilities. However, the design of the accountability framework is seriously flawed. What has evolved is a measurement framework that bases its assessment of school quality on a student's performance only on a single assessment and then mandates a series of sanctions that have not proved to have significant impact on improving student or school performance compared to other options.

The Administration's Reauthorization Proposal

During testimony before the House Education and Labor Committee, Secretary Duncan said it is the Administration's intent "to move from a simple focus on rules, compliance, and labeling of insufficient achievement, toward a focus on flexibility for states and local education agencies (LEAs) that demonstrate how they will use program funds to achieve results, and on positive incentives and rewards for success."

On a number of occasions, Secretary Duncan has also indicated the Administration's intent to use the Race to the Top (RTTT) competition as the framework for ESEA reauthorization. In part, this means a larger role for incentive funding instead of grants based on eligible student populations. It also means a focus on the four RTTT "assurance areas:"

- Adopting internationally benchmarked standards and assessments that prepare students for success in college and the workplace
- Building data systems that measure student success and inform teachers and principals about how they can improve their practices
- Increasing teacher and principal effectiveness and achieving equity in their distribution
- Turning around our lowest achieving schools

In March of 2011, President Obama called on Congress to fix NCLB before the start of the 2011-12 school year in which he laid out three priorities for a new education law.

- A fair accountability system that shares responsibility for improvement and rewards excellence

- A Flexible system that empowers principals and teachers
- A system focused on schools and students who are at risk

Much of what the President called for in early 2011 and continues to call for today is contained in his “*Blue Print for Education Reform*” which can be found at:
<http://www2.ed.gov/policy/elsec/leg/blueprint/blueprint.pdf>

In September 2011, the Administration launched its Education Flexibility program which provides states the ability to apply for a waiver from 11 provisions of NCLB including adherence to the 100 percent proficiency requirement and allows districts to shift certain ESEA funds between categories. However, this would be in exchange for state and school district adherence to four distinct principles:

- College- and career-Ready Expectations for All Students
- State-Developed Differentiated Recognition, Accountability and Support
- Supporting Effective Instruction and Leadership
- Reducing Duplication and Unnecessary Burdens

The first group of eleven applications is currently under review for approval. As of yet, California’s State Board of Education has not decided whether it will apply for a flexibility waiver due to concerns over the timing and cost of implementation at both the state and local levels. Further, in order for California to be eligible issues such as instructional materials and professional development for common core standards and teacher evaluation processes would have to be addressed by the state’s legislature. A second round of applications is due in mid-February and a final round is scheduled for early summer. While the regulatory relief is welcomed, this flexibility program is in no way a substitute for the ESEA reauthorization.

Congressional proposals

The House Committee on Education and the Workforce and the Senate Committee on Health, Education, Labor and Pensions have each introduced legislation to reauthorize ESEA.

On January 6, 2012, the House Education and Workforce Committee Chairman John Kline (R-MN) released draft legislation to revise No Child Left Behind’s accountability and teacher effectiveness components. These two bills will complete Rep. Kline’s five-piece bill package to reauthorize ESEA which provides a targeted approach to revamping current law.

The other three bills in Kline reauthorization package are:

- HR 1891 (Hunter [R-CA]) - to eliminate duplicative and ineffective programs within ESEA
- HR 2218 (Hunter [R-CA]) - to promote more rigorous charter schools
- HR 2445 (Kline [R-MN]) - to block grant K-12 funds to states and districts

As of now, the only bill that has passed the full House and been sent to the Senate is HR 2218. HR 1891 and HR 2445 were passed out of committee but only on a party line vote. It appears

that with the introduction of Rep. Kline’s final two bills any chance of a bi-partisan reauthorization effort in the House is slipping away.

Last October, Senator Tom Harkin (D-IA) introduced draft legislation to reauthorize ESEA. The draft bill passed out of the Senate Health, Education, Labor and Pension Committee (<http://help.senate.gov/hearings/hearing/?id=b4d24a56-5056-9502-5d73-a45a120b096b>) on a bi-partisan vote. However, the bill is currently sitting on the Senate Floor and the chances of it being taken up before the 2012 election are dim. Senator Harkin has said that he will not try to move his own legislation unless a bipartisan counterpart is produced in the House.

Although the House Committee on Education and the Workforce and the Senate Committee on Health, Education, Labor and Pensions have begun the legislative process to reauthorize ESEA, substantial work still needs to be completed as all introduced measures have issues to like and dislike including potentially costly mandates for data and accountability.

Attached is a chart by Anne Hyslop with Education Sector’s *The Quick & the Ed* that compares the good and the bad of the House and Senate proposals.

Further, a group of moderate Democrats in the House, known as the “New Democrat Coalition,” recently released a framework detailing various policy items that they would like to see in an ESEA reauthorization proposal. The group’s education task force proposal, chaired by Representatives Susan Davis (D-CA) and Jared Polis (D-CO), includes priorities for universal access to a quality, well-rounded education for all students, ensuring that they graduate from high school well-prepared for college and jobs, having an outstanding educator in every classroom and supporting innovative and creative approaches to improve student learning. More information on the New Democrat Coalition report can be found at: <http://newdemocratcoalition-crowley.house.gov/issue/education>.

Reauthorization Issues

Standards and Assessments

CSBA has established a strong record of active support for challenging standards and rigorous assessments. CSBA has been especially opposed to the “soft bigotry of low expectations,” wherein historically low-performing student populations are held to lower standards than their higher achieving counterparts. Nothing could be more antithetical to CSBA’s vision that the “futures of all children are driven by their aspirations, not bounded by their circumstances.”

At the same time, the difficulty that many students have in achieving desired outcomes is not solved by simply imposing higher standards and tougher tests. Yet, this has been the focus of the Administration through RTTT and, by extension, ESEA reauthorization.

CSBA recognizes the central role and value of standards. They provide focus and direction and establish a common basis for assessment and—therefore—accountability. However, the setting of standards and the use of standards-based assessments do not—by themselves—automatically lead to improved curriculum and classroom instruction.

In fact, recent research suggests that the current focus on common core standards and the key to school improvement is misplaced, because there is no statistically significant association between a state's scores on the National Assessment of Educational Progress (NAEP) and the rigor of that state's content standards as ranked by the Fordham Foundation.¹ What matters more is curriculum, broadly defined as course content, sequencing of content and the materials and teaching methods used to deliver that content.

Further, a Brookings Institution study found that curriculum-based interventions had a much larger effect size² than alternative interventions, including charter schools, merit pay for teacher, expanded preschool, and raising state standards. In fact, the effect size for charter schools and raising state standards in mathematics was zero, indicating no impact on student performance. The effect size of merit pay in pay-for-performance program in India was 0.15. This means that the program raised the reading and math scores of students by 15 percent of one standard deviation—not much. By contrast, curriculum-based interventions had effect sizes of from 0.30 to 1.00.

CSBA believes that, while standards and assessments are important, research shows that focusing directly on the improvement of curriculum and instruction has better outcomes. Therefore, federal policy and funding should be redirected to these areas.

Data Systems

CSBA has a strong record of support for the development of a statewide student data system that would allow the longitudinal tracking of student performance, and supports the Administration's efforts in this area. However, CSBA cautions against the overreliance on data. Data should be used to inform decision making, not to trigger actions. Moreover, data should be used along with other sources of information (locally-designed assessments, classroom observation, etc.), and not by themselves to make decisions.

Teacher and Principal Effectiveness

Over the last few years, the Obama Administration has focused almost exclusively on using student performance data to evaluate teachers and principals and make decisions about compensation, promotion, placement and retention. The apparent assumption is that feedback on performance is—by itself—sufficient for improvement. A major sub-theme is using data to ensure the equitable distribution of effective teachers and principals in high-poverty or high-minority schools.

CSBA agrees that student performance data should be a component of teacher and principal evaluation. Data should be used as part of a broader evaluation system to make informed judgments about performance. Data—by itself—should not be used to trigger actions regarding compensation, retention, or placement.

¹ Grover J. "Russ" Whitehurst, "Don't Forget Curriculum." Brown Center Letters on Education #4. Washington, DC: Brookings Institution, March 4, 2010.

² Effect size is a way of representing numerically the strength of a relationship between an educational intervention and a student outcome. Effect sizes can be standardized to allow comparisons across interventions.

CSBA also believes federal policy should have a stronger emphasis on identifying, disseminating, and adopting professional development programs that have demonstrated effectiveness in improving student outcomes through improved teacher and principal performance.

Turning around Low Achieving Schools

As currently proposed, the Administration intends to continue the requirement, as provided through the RTTT, that there are only four models to turn around for persistently low performing schools:

- Closing the school and sending the students elsewhere
- Converting the school to a charter school or turning it over to an educational management organization (EMO)
- Replacing all or most of the staff
- “Transforming” it through changes in personnel and other areas

These models are based on strategies employed by No Child Left Behind (NCLB) that research shows are rarely effective.³ At the same time, the Administration’s plans exclude the use of alternative strategies that research has shown to be more effective than the four models.

The Administration and Congress both seem particularly intent on promoting charter schools. Not only is the conversion to charter status one of the four allowable turnaround models, states have been required to remove any restriction on the growth of charter schools as a condition of eligibility for RTTT funds.

Most national studies have concluded that there is no significant difference between charter schools and non-charter schools in terms of student performance on standardized tests.⁴ A more recent study of charter school performance in 16 states conducted at Stanford University, however, found that charter schools actually underperform traditional public schools more than twice as often as they outperform them.⁵ This is not the first study to find that charter schools underperform traditional public schools. A 2006 study by the U. S. Department of Education (which received scant attention from both the media and Washington, DC policy makers) concluded, “After adjusting for student characteristics, charter school mean scores in reading and mathematics were lower, on average, than those for public non-charter schools.”⁶

This is not to deny that there are some very good charter schools or that charter schools can play a role in improving public education in general. But there is no empirical evidence to support a

³ “Improving Low-Performing Schools: Lessons from Five Years of Studying School Restructuring under No Child Left Behind.” Washington, DC: Center on Education Policy, December 2009.

⁴ Grace Chen, “Charter Schools vs. Traditional Public Schools: Which One is Underperforming?” *Public School Review*, July 10, 2009.

⁵ “Multiple Choice: Charter School Performance in 16 States.” Center for Research on Education Outcomes (CREDO), Stanford University, July 2009.

⁶ Braun, H., Jenkins, F., and Grigg, W. (2006). *A Closer Look at Charter Schools Using Hierarchical Linear Modeling* (NCES 2006–460). U.S. Department of Education, National Center for Education Statistics, Institute of Educational Sciences. Washington, DC: U.S. Government Printing Office.

policy that prescribes charter schools as a solution for underperforming schools. In fact, the empirical evidence points in the opposite direction.

Meanwhile, there is research to support the conclusion that alternative interventions are more effective than chartering, private management, or replacing the school staff. Interestingly, some of the research comes from Secretary Duncan's own Chicago Public Schools. There, a program called Strategic Learning Initiatives, using an approach called Focused Instruction Process (FIP)⁷, has helped formerly low performing schools make significant improvements. An independent study of the program found that "all but two of the 10 FIP schools had ISAT Reading gains in the percent of students at or above proficient that exceeded the Chicago city average and that as a group, the gains in the FIP schools were nearly twice the city average."⁸ Not only has FIP been shown to be more effective, it is less expensive than the models promoted by the Administration.

California's own experience with successful School Assistance and Intervention Teams shows that intensive intervention with existing school staff can be an effective, relatively low cost way to turn around low performing schools.

CSBA believes the list of interventions allowed under federal law should be expanded to permit the use of alternative field-tested and/or research-based strategies that have a strong chance of success.

Over-Arching Concerns Regarding ESEA Reauthorization

As can be seen from the above discussion, there is a wide gap between Secretary Duncan's pronouncement that the Administration is moving away from a top-down, prescriptive approach and the actual details of its proposal. The Administration is already taking credit for RTTT competition, compelling states to expand charter school opportunities, adopt data-based teacher and principal evaluation systems and authorize the closure of under-performing schools. In other words, the Administration is falling into the same trap of setting expectations **and** prescribing how to achieve them.

In the meantime, while Congress has introduced legislation that does provide for more local-based decision making and moves away from many of the federal dictates in current law, neither the House nor the Senate has been able to make progress in forwarding their legislation to the President's desk.

CSBA strongly supports the intent "to move from a simple focus on rules, compliance, and labeling of insufficient achievement, toward a focus on flexibility for states and local education agencies (LEAs) that demonstrate how they will use program funds to achieve results, and on positive incentives and rewards for success." CSBA urges that the details of

⁷ Focused Instruction Process has four main components: shared leadership, targeted professional development, continuous improvement, and parent engagement. It uses an eight-step process to ensure that students master skills by providing focused lessons, formative assessments, reteaching after assessing where each student stands, and a reassessment to measure student progress. A trained facilitator monitors fidelity to the process in each school.

⁸ Steven Leinwand and Sarah Edwards, "Validating the Impact of Strategic Learning Initiatives' Focused Instruction Process (FIP) Model." Washington, DC: American Institutes for Research, July 29, 2009.

the current Administration education policies match this intent and that any proposal for reauthorization imbed this intent into the program.

TALKING POINTS:

In general, CSBA believes:

Federal education policy should (1) be consistent with the intent to permit state and local flexibility while holding LEA's accountable for results and (2) that it be guided by what research and experience show actually works.

Standards and assessments are important, research shows that focusing directly on the improvement of curriculum and instruction has better outcomes. Therefore, federal policy and funding should be redirected to ensure high-quality, valid and reliable assessments for all students, especially for English language learners and students with disabilities.

Multiple measures of academic achievement that more accurately determine students' knowledge and performance and reflect the education necessary to be successful in the 21st Century economy should be used instead of a single assessment.

In the development of a statewide student data system that would allow the longitudinal tracking of student performance and has a strong record of support for this type of system. However, we caution against the overreliance on data. Data should be used to inform decision making, not to trigger actions. Moreover, data should be used along with other sources of information (locally-designed assessments, classroom observation, etc.) and not by themselves to make decisions.

Student performance data should be a component of teacher and principal evaluation but it should only be used as part of a broader evaluation system to make informed judgments about performance. Data—by itself—should not be used to trigger actions regarding compensation, retention, or placement.

Federal policy should also have a stronger emphasis on identifying, disseminating, and adopting professional development programs that have demonstrated effectiveness in improving student outcomes through improved teacher and principal performance.

The list of interventions allowed under federal law should be expanded to permit the use of alternative field-tested and/or research-based strategies that have a strong chance of success.

Chart provided by Anne Hyslop in her article “ESEA Reauthorization Update: Good, Bad, and Bizarre” (January 11, 2012) in Education Sector’s *The Quick & the ED* which can be found [here](#)

Breaking Down the House and Senate ESEA Reauthorization Bills: The Good and The Bad

	Senate	House Republicans
Accountability	<p>Good: No more Adequate Yearly Progress, or AYP. Bad: What now? States can – but not required to – adopt annual targets for student performance and growth.</p>	
	<p>Good: District and schools must produce an annual accountability report card, including NAEP scores. Bad: We need more data, particularly some to link K-12 with postsecondary outcomes.</p>	
Standards and Assessments	<p>Good: Adoption of math, reading, and science standards for all students that align with college-level expectations. Bad: No real accountability, from the feds nor colleges, that shows these standards are up to snuff.</p>	<p>Good: Adoption of math and reading standards. Bad: No requirement that standards must be rigorous and aligned with college and career readiness. States can establish separate standards for students with severe cognitive disabilities. Science standards (and related assessments) are no longer required.</p>
	<p>Good: More flexibility with assessments – schools can use one test or multiple tests per year. Bad: Tests must measure individual student growth, but states aren’t required to use these data in accountability.</p>	
School Improvement	<p>Good:</p> <ul style="list-style-type: none"> States identify 5% as Persistently Low-Achieving Schools based on achievement or growth or graduation rates States identify 5% with largest performance gaps as Achievement Gap Schools Blue Ribbons Schools identify the top 5% No 20% set-aside for choice and tutoring options that are ineffective or underutilized <p>Bad:</p> <ul style="list-style-type: none"> Persistently Low-Achieving Schools choose from a menu of reforms, similar to SIG, but including a vague “Whole School Reform” approach and the option to create a state-defined “new innovative school” No identified strategies for supporting Achievement Gap Schools Districts aren’t required to reward schools meaningfully with autonomy or funding flexibility Effectiveness of SIG models and other improvement strategies depends on effective implementation 	<p>Good: States can use discretion in identifying schools for improvement and in designing strategies to improve them. Eliminates 20% set-aside for choice and tutoring options that are ineffective or underutilized.</p> <p>Bad: States can use discretion in identifying schools for improvement and in designing strategies to improve them. No minimum threshold for the percentage of schools that should receive supports and no incentives to include low-performing high schools that need interventions. SIG program is eliminated.</p>
Teacher Quality and Funding	<p>Good: Competitive grants for states to adopt teacher and principal evaluations that include multiple quality levels, student achievement, and observations. Bad: Teachers would be distributed based on effectiveness only if the state chose to adopt new evaluations. Otherwise, teachers would be distributed based on the existing highly-qualified definition and other inputs.</p>	<p>Good: Highly qualified teacher requirements eliminated. Districts must adopt teacher and principal evaluations that include multiple quality levels and student achievement. Evaluations will inform personnel decisions and data on teacher effectiveness available on school report cards. Bad: Will districts have the authority and ability to use evaluations to make personnel decisions? And what are consequences if districts don’t address inequities in the distribution of the best teachers?</p>
	<p>Good: Title II funding formula updated by removing hold harmless provision. Bad: Funding formula fights can be particularly nasty, as clear winners and losers emerge.</p>	<p>Good: Title II funding formula updated by removing hold harmless provision and limits amount spent on class-size reduction to 10% of district Title II funds. Bad: Title II funding formula altered to give poverty less weight (relative to population size). 10% cap is arbitrary and stymies efforts to gradually reduce Title II spending on class-size reduction.</p>
School Finance	<p>Good: Districts would have to show that state and local per pupil funding in Title I schools is no less than in non-Title I schools. Bad: No sizeable increase in Title I on the horizon = less targeted federal spending on schools with high concentrations of poor students.</p>	<p>Good: A larger-than-expected increase in Title I funding for schools with high concentrations of poor students. Bad: Increased funding comes at the expense of initiatives like SIG and RTTT. The comparability loophole remains in place and maintenance of effort requirements are eliminated, rather than reformed.</p>
Politics	<p>Good: It’s a bipartisan bill with similarities to Obama’s ESEA waivers. Bad: The likelihood that it will move anywhere significant, much less to the President desk, is slim.</p>	<p>Good: Umm... Bad: The bill is a partisan approach to the accountability and teacher provisions in ESEA, and Senate is unlikely to consider a partisan bill.</p>



FRN 2012 - BACKGROUND

Federal Funding

Budget Background:

With the continuation of the national fiscal crisis that is gripping our country, school districts are fighting to stay open and ensure that all students receive an appropriate education. Over the past two years, Congress has debated a number of bills to legislate increased funding for public programs aimed at providing an immediate benefit to the economy by creating jobs, investing in national infrastructure, extending services for citizens impacted by the current crisis, and providing additional funding for key domestic programs. These bills included the American Recovery and Reinvestment Act of 2009 (ARRA) (HR 1, Public Law 111-5) and the Education Jobs and Medical Assistance Act (HR 1586, Public Law 111-226). While these funding increases enabled schools to keep teachers and operate programs, they have been short-term in nature, only lasting approximately two years.

Last December, Congressional leaders negotiated an agreement for a final Fiscal Year (FY) 2012 appropriations bill (H.R. 2055) that included funding for education programs. Overall, the bill funds nearly three-fourths of all federal government operations. H.R. 2055 was passed along with two additional measures - a bill for disaster relief and recovery (H.R. 3672) and a bill imposing an across-the-board cut of 0.189 percent to most programs as an offset to pay for the disaster relief efforts.

H.R. 2055 provides slight funding increases for some education programs while eliminating or decreasing funding for others. After the across-the-board cut of 0.189 percent is applied, Title I grants are funded at \$14.5 billion, just about level funding from FY 2011. Special education grants receive a \$78 million increase for an overall allocation of \$11.57 billion. Funding for Impact Aid is \$1.29 billion, inclusive of an \$18.5 million increase; and, funding for Teacher Quality State Grants is \$2.46 billion, a \$4.7 million reduction from FY 2011. The allocation for Teacher Quality State Grants includes approximately \$37 million for competitive awards for teacher and principal training or professional development to national non-profit organizations.

The FY 2012 consolidated appropriations bill also funds Race to the Top at \$548.9 million, more than a 20 percent decrease from the current level of \$698.6 million. The legislation states that the Race to the Top program is to include "a robust early childhood education component." Investing in Innovation grants will receive \$149.4 million, a decrease of \$283,000. Career and Technical Education grants will be funded at \$1.12 billion; and, English Language Acquisition grants receive \$732 million. Rural Education grants will receive \$179 million.

Over the next few months, Congress will begin to negotiate the budget for FY 2013 which will include components of the Budget Control Act of 2011 that imposes across-the-board cuts to federal programs over a ten year period, from 2012 to 2021. The across-the-board cuts are expected

in lieu of a budget and deficit reduction agreement that the Joint Congressional Committee on Deficit Reduction was tasked with developing by November 23, 2011. While the Joint Congressional Committee held several hearings and meetings to examine federal revenues, the tax code and expenditures, the bipartisan panel was not able to finalize a proposal to Congress. The impact of an across-the-board cut to education programs is estimated at more than \$4 billion over 10 years. While the reduction would be legislated over 10 years, the reality is that other variables are not readily apparent in this process for our students and school districts, such as any possibility of new or increased federal revenues, increases in student enrollment that would escalate the demand for services and funding, additional mandates and requirements from the Elementary & Secondary Education Act reauthorization and related laws that could be imposed on school districts, as well as the outlook for local and state revenues and education aid.

Federal Programs:

There are two federal programs which provide the largest sources of federal funding to states that operate as mandates on school districts:

- Title I grants – the main source of federal funding for the Elementary and Secondary Education Act (ESEA)
- IDEA grants – special education funding under the Individuals with Disabilities Education Act (IDEA).

Historically, federal funding levels for Title I and IDEA have been consistently underfunded in comparison to the actual amounts needed by school districts and states to raise student achievement, implement successful intervention plans and address the costs of increasing student enrollment.

Title I Grants for Disadvantaged Students

Under ESEA, Title I grants are the major source of federal funding to schools districts and are used to fulfill requirements for student achievement (e.g. adequate yearly progress, testing and assessments, tutoring and remedial services, and school reform).

The overall purpose of a Title I grant is to ensure that children in low income school attendance areas have a fair, equal, and significant opportunity to obtain a high-quality education and achieve, at a minimum, proficiency on state academic achievement standards and state academic assessments. The major challenge, however, is that Title I grants and related programs have been underfunded by tens of billions of dollars since NCLB was enacted in 2002.

Over the last few years with the downturn in the economy, the demand for services under Title 1 has increased because more students are eligible for services. Federal funding for Title 1 grants is currently \$14.5 billion but the adequate funding level should be \$38 billion in order to address the education needs of an estimated 9.5 million schoolage children in poverty. Therefore, the unmet funding need is approximately \$23.5 billion for Title 1 grants.

According to the US Census Bureau, under the 2010 Poverty and Median Income Estimates, California has 2,012,723 children under 18 years of age who are in poverty. In 2009-10, the

California Department of Education reported 3,475,321 students receiving Title I services on the Consolidated State Performance Report (CSPR) which is the required annual reporting tool for California under ESEA, as amended by NCLB.

The economic recession is adding more students to the national poverty count, which in turn increases the number of students eligible for Title 1 services, which creates the need for additional resources. It has become a vicious cycle with no end in sight for a number of years and numerous students.

IDEA Grants for Special Education

Under IDEA, which provides the major source of federal funding to help school districts fund educational services to students with disabilities, the federal share of funding that Congress promised is 40 percent of the average per pupil cost for every student served under the IDEA. However, the federal share of funding actually provided was approximately 17.2 percent before the \$11.3 billion two-year increase in the ARRA.

Prior to the economic stimulus, the lack of federal IDEA funding has created a perpetual shortfall for school districts and communities. School districts frequently cut other education programs and increase property taxes so that they can fulfill this federal mandate. With the ARRA increase, the federal share of IDEA funding averaged approximately 26.3 percent for each of the two years—a clear improvement. However, this temporary measure does not help school districts in the long run if it is not continued and built upon to reach the 40 percent per pupil level for the promised federal share.

As districts across the country create their budgets for the 2012-13 school year, more are being forced to cut other student services to fund IDEA. According to the U.S. Department of Education, “Historically, local educational agencies have struggled with meeting the minimal education needs of a growing population of children with disabilities.” As pressure increases on special education budgets, more and more districts in California are being forced “to rob Peter to pay Paul” and cover the shortfall by reallocating funds from other education programs and services thereby shortchanging the education of all student in the district.

Our school districts are committed to fulfilling the federal IDEA mandate. However, fully funding the federal share of costs for special education must become a top domestic priority for the Congressional appropriations process. We need to ensure that school districts have the funding needed to develop Individual Education Programs (IEPs) for students, provide assistive technology, ensure healthcare services, and comply with adequate yearly progress reporting requirements which are all key functions that school districts fulfill under IDEA.

TALKING POINTS:

- **Urge Congress to continue to increase funding for Title I in order to meet the increased costs of accountability and instruction and to meet the increased demand for services due to the increasing number of students in poverty.**
- **Across-the-board cuts to education should not be legislated, especially for Title 1 and special education. The need to continue to raise student achievement should not and must not be consumed by record setting budget cuts. Key investments in Title I and IDEA will help sustain and continue the progress school district are making in closing the achievement gap by improving student performance, teacher and principal effectiveness, increasing graduation rates and college and career readiness.**
- **IDEA must be fully funded in order to meet the increasing costs of special education mandates and services.**
- **Funding for programs that are effective in raising student achievement and school performance should not be reduced, especially Title 1 and IDEA. The funding for these programs is critical to student achievement for the majority of school districts throughout the nation.**
- **Before Congress considers continuing and/or increasing funding for competitive grant programs, it must ensure that base level funding for federal programs is appropriated to all schools/districts. While some districts receive funding through the competitive grant process, most do not. Many of the districts with the greatest need for school improvement and innovation programs do not have the resources to successfully leverage a competitive grant. The federal investment in formula grants, such as Title 1 is a core component to helping the majority of school districts reduce obstacles to student success.**



FRN 2012 – BACKGROUND *IDEA*

The reauthorized Individuals with Disabilities Education Act (IDEA) became effective July 1, 2005. Over the last seven years, California has enacted legislation that brought a number of provisions of state law into conformity with federal law and regulations in order to ensure continued eligibility for federal special education funding. The federal conformity legislation amended provisions of state law that conflicted with new federal requirements, but did not repeal provisions of state law that were different than, but not in conflict with, federal law. Key changes were made in areas such as discipline, teacher qualifications, modifications to Individualized Education Plans (IEPs), conflict resolution, transition, parental consent, Child Find, and procedural safeguards.

In 2009-10, the latest year for which numbers are available, special education services were provided to 680,184 individuals in California, newborn through twenty-two years of age. Individuals are provided with specially designed instruction to meet their unique needs. This instruction is provided in a variety of settings that allow infants and their families, preschoolers, students, and young adults to be educated with their peers as much as possible. Special education services are available in a variety of settings, including day-care settings, preschool, regular classrooms, classrooms that emphasize specially designed instruction, the community, and the work environment.

IDEA and the Elementary and Secondary Education Act

In addition to the urgent need to appropriately fund federally mandated special education programs, there are several IDEA/ESEA issues that also need attention in the coming year as Congress and the Administration works to reauthorize ESEA.

California's education community has reviewed ESEA and its impact on students over the last ten years and we have come to agreement on a number of principles that have had an undesirable impact on special education programs and services. **To address these problems, CSBA recommends the following:**

- **When conflicts arise between IDEA and ESEA in any or all areas, IDEA must take precedence.**
- **The individualized education plan that is enacted for each special education student details his or her educational program. This IEP must take precedence for student testing, including parents' ability to opt-out students, the need for out-of-level assessments, and the variety of accommodations and modifications that a student may need.**

- **Since the US Department of Education determined that parents may unilaterally withdraw their students from special education services that are required for the provision of a free and appropriate public education, and since parents have the right in California to remove their children from testing, the federal government should not penalize districts under ESEA when their participation rate is less than 95 percent for this reason.**

Funding

In 2009, Congress approved the American Recovery and Reinvestment Act (ARRA) which provided increased funding to states for a variety of programs, including education, to counter the effects of national economic downturn. CSBA appreciated the infusion of these one-time funds. For special education the increased funding was spent primarily on staff development, equipment and retaining teachers and support staff.

While the one-time funding was of great assistance to schools and districts, Congress has yet to meet its financial commitment to pay for ongoing federal special education program mandates. This has placed a major burden on school districts that are required to pay for the excess costs when state and federal revenues decline or stay stagnant. This is especially critical as the cost of federally mandated special education services continues to rise and the population of students with high-cost disabilities continues to increase.

Federal IDEA funding is currently \$11.5 billion, which represents a fraction of what the law states: that federal funding should cover up to 40 percent of the excess cost of educating students with disabilities. Full funding for special education should be approximately \$26 billion in this fiscal year to pay for the federal share of costs for services to the more than 6.6 million students who receive IDEA services designed to meet their individual needs. California has just over 10 percent of the total special education students at 680,184. Currently the federal shortfall must be made up through local funding at a time when school districts are cutting budgets and programs.

Now more than ever, the promise to fund 40 percent of the average per-pupil costs for special education services needs to be met. In the FY 2012 appropriations bill, special education is scheduled to receive approximately \$11.57 billion which is an increase of \$78 million over FY 2011 funding. While this is an increase in funding for this year, which we appreciate, it is only funds about 17 percent of the national average per-pupil cost.

To address this problem, CSBA strongly supports increased federal funding, which, at a minimum, meets the needs for funding growth and COLA and eventually meets the 40 percent funding promise.

Autism

Autism Spectrum Disorder (ASD) is the fastest growing special education category in California and the nation. Between 1998 and 2002, the number of students receiving special education services to address issues associated with autism in California almost doubled, from 10,360 to 20,377. As of December 2011, that number has grown to approximately 72,000 students.

The educational and financial impact on school districts for students diagnosed with ASD is staggering. Research and best practices (National Research Council — “Educating Children with Autism,” 2001) show that a successful educational program for a student with autism requires a comprehensive assessment followed by intensive services by highly trained personnel. If this expertise is not available in a district, it must be contracted at a significant cost. Even when district staff is available, the cost of educating a child with autism is staggering in comparison to children with less severe disabilities.

Many school districts with rapidly increasing numbers of students with autism have established high quality internal programs to meet the needs of their students. Unfortunately, this is not the case statewide due to various barriers such as lack of knowledge of best practices in the area of treatment, staffing issues, and financial resources.

When crafting recommendations regarding support for children with ASD, policymakers need to recognize that the extent of the issues threatens to overwhelm local educational systems. This includes the lack of coherent, universally accepted effective educational practices; a lack of knowledge and training at all levels; and a shortage of personnel in key positions, coupled with inadequate local financial resources to meet immediate needs. This statement is a strong indicator of the intensive services needed to support children with ASD. Decisive, immediate action at the state level can significantly mitigate short-term needs and establish systems that will provide long-term sustainable support to students and their families, schools and communities.

CSBA recommends increased federal funding to address the specific and increasingly expensive service needs of students diagnosed with ASD.

TALKING POINTS FOR IDEA FUNDING:

- **When conflicts arise between IDEA and ESEA in any or all areas, IDEA must take precedence.**
- **The individualized education plan that is enacted for each special education student details his or her educational program. This IEP must take precedence for student testing, including parents' ability to opt-out students, the need for out-of-level assessments, and the variety of accommodations and modifications that a student may need.**
- **Since the US Department of Education determined that parents may unilaterally withdraw their students from special education services that are required for the provision of a free and appropriate public education, and since parents have the right in California to remove their children from testing, the federal government should not penalize districts under ESEA when their participation rate is less than 95 percent for this reason.**
- **CSBA strongly supports increased federal funding, which, at a minimum, meets the needs for funding growth and COLA and eventually meets the 40 percent funding promise.**
- **CSBA recommends increased federal funding to address the specific and increasingly expensive service needs of students diagnosed with ASD.**