

Flexibility provisions in the 2008 and 2009 state budget

Policy considerations for governance teams

This advisory will provide governance teams with tools and strategies to implement the budget flexibility provided by the state, including:

- An overview of the state budget approved in February 2009
- Specific information about changes made to a variety of categorical programs
- How to approach the conversation on the use of flexibility for categorical funds
- Issues for consideration at a required public hearing
- Suggested follow-up actions on the utilization of the flexibility

Introduction

On February 20, Governor Schwarzenegger signed a package of bills revising the 2008-09 state budget and enacting the 2009-10 state budget. This action resolved a protracted political battle over the combination of cuts and revenue increases needed to close the state's \$41 billion deficit. Following the deal, CSBA's Executive Director Scott P. Plotkin expressed the frustration of school leaders: "Although we're glad the stalemate is finally over and the budget includes some new revenues, school governance leaders throughout the state are deeply disappointed in the choices made by Gov. [Arnold] Schwarzenegger and our Legislature to drastically reduce K-12 public education funding. It's time for lawmakers to stop sacrificing the future of our children and start really investing in their educational progress and success."

This advisory discusses the impacts of the recently enacted state budget on school districts and county offices of education. It should be noted that schools may also receive additional funding through the federal stimulus act (the American Recovery and Reinvestment Act). The extent to which the ARRA may impact district budget decisions, including layoffs and reforms to certain categorical programs, will be discussed in a later advisory.

Summary of Proposition 98 cuts over two years

Over the last two-year period, Proposition 98 funding has been cut by \$11.6 billion through actions of the Legislature and governor. These cuts have come in the form of no funding being provided for a cost-of-living adjustment, a direct reduction to school district and county office revenue limits of approximately \$1.3 billion and another \$1.3 billion cut to categorical programs. An additional deferral of \$3.2 billion has been imposed on school districts and county offices of education.

These actions have resulted in schools experiencing an actual year-to-year reduction in funding for two consecutive years. With the state facing the potential of an additional \$8 billion projected deficit in the 17-month budget just adopted in February, the potential for further devastating cuts for schools grow considerably. This hole in the state general fund assumes that all of the initiatives on the May 19 ballot will be approved by voters. Should any or all of them fail, the hit to the budget would increase by up to an additional \$5.8 billion (for a total of \$13.8 billion).

Categorical program flexibility

Although the budget contains steep cuts to over 50 categorical programs, Senate Bill X3 4 (the education budget trailer bill from the third extraordinary session which was called by the governor in December to address the state's fiscal crisis) did provide some amount of flexibility for districts. The bill authorizes districts and county offices to transfer funds received for approximately 40 programs to "any educational purpose." This flexibility will allow boards to use categorical funds based on the district's goals for student achievement and to direct these limited resources to priorities set by the district, rather than the priorities determined by the state.

Categorical tiers

Tier 1 Tier I programs were not cut in the budget and received no flexibility.

- After School Education and Safety Program (Prop. 49)
- Advancement via Individual Determination (AVID)
- Child development
- Child nutrition
- Economic impact aid
- Federal resources
- Home-to-school transportation
- K-3 class-size reduction
- Quality Education Investment Act
- School bus replacement
- Special education
- State lottery
- Tobacco Use Prevention Education (TUPE)

Tier 2 Tier II programs received the approximately 20% cut over two years, however no flexibility was provided.

- Adults in correctional facilities
- Agriculture-vocational education
- Apprenticeship programs
- Charter School Facilities Grant
- English Language Acquisition Program
- Foster youth
- K-12 high-speed network
- Multitrack year-round education
- Partnership academies

Tier 3 Tier III includes all other categorical programs and were cut by approximately 20% over two years. Flexibility was provided for these programs for 2008-09 through 2012-13.

- Administrator training program
- Adult education*
- Advanced Placement Grant Program
- Alternative credentialing
- American Indian Education Centers
- Arts and Music Block Grant
- CAHSEE Intervention Grants
- California School Age Families Ed. Program (CalSAFE)
- Certificated Staff Mentoring Program
- Charter Schools Categorical Block Grant
- Center for Civic Education
- Community Based English Tutoring
- Community day school*
- Counselors, grades 7-12
- County Offices of Education: Williams Monitoring*
- Deferred maintenance
- Educational technology
- Gifted and Talented Education Program (GATE)
- Immediate Intervention/Underperforming Schools Program (II/USP)
- Instructional Materials Block Grant
- International Baccalaureate
- High Priority Schools Grant Program
- Math and Reading Professional Development
- Morgan-Hart Class-Size Reduction (9th grade)
- National Board certification
- Oral health assessments
- Physical Education Teacher Grants
- Professional Development Block Grant
- Pupil Retention Block Grant
- ROC/Ps*
- School Assistance Intervention Team and Corrective Actions
- School and Library Improvement Block Grant
- School Safety Block Grant
- School Safety Competitive Grant
- Specialized Secondary Program Grants
- Student Leadership/CA Assoc. of Student Councils
- Supplemental Instruction Programs/Summer School
- Targeted Instructional Improvement Block Grant
- Teacher Credentialing Block Grant
- Teacher Dismissal Apportionments

*Only certain portions of these programs are subject to "flexibility" as discussed below.

A district that wishes to exercise this flexibility provision is required to first hold a public hearing on the matter and to take testimony from the public regarding the proposed use of the funding. Upon approval of flexibility by the board, SBX3 4 specifies that the district shall be “deemed in compliance with the program and funding requirements contained in statutory, regulatory and provisional language” for each of these Tier 3 categorical programs for the 2008-09 through the 2012-13 fiscal years.

As a result of this flexibility, districts also have discretion regarding the underlying statutory requirements for these programs during this period. For example, districts accepting flexibility that operate a grade 7-12 counseling program, a Tier 3 categorical, are no longer subject to the priorities in law regarding students to be served or the items that the counselor must discuss with each student. Such expansive flexibility applies to all Tier 3 categoricals regardless of whether funds are transferred from that program.

While the fiscal challenges facing districts are immense, it's important that boards consider this flexibility in the context of the district's overall goals for student learning. This issue is obviously part of the immediate and difficult discussion about the specifics of the district's 2008-09 and 2009-10 budgets and the cuts the district must make. However, the board should also have a larger discussion to ensure that the flexibility is used to develop policy based on district and community priorities. The ability to transfer funds and to administer certain programs free of statutory constraints gives the board an opportunity to set the direction for the district's educational program in the context of devastating cuts to education.

During this time of significant funding reductions, boards should determine the priorities of the district and what the board views as its core mission. Utilizing this flexibility, boards need to ensure that limited resources are focused on these priorities since spreading resources too thinly could result in funding being spent on programs and services that fall outside of the core mission. While these discussions will certainly result in difficult decisions that will upset certain stakeholders, there can be no sacred cows for programs that are not aligned with this core mission.

When discussing ways to utilize this flexibility it is imperative that boards understand that this option is limited both in terms of the relief it will provide, but also in the duration of the flexibility. The flexibility should be utilized as a tool to help focus resources, but it certainly can't make up for the cuts that have been imposed on districts over the last two years, or the additional cuts that may occur in the following two years. Further, boards must be prepared for these flexibility options to end on June 30, 2013.

K-3 class-size reduction

There will be no change to the statutory requirements of the K-3 class-size reduction program. However, there will be changes to the penalties provision for classes that exceed the current 20.4 to 1 ratio of students to teachers. The changes to the penalties are as follows:

- up to 20.5 students per teacher—no penalty
- up to 21—5 percent penalty (20 percent was the prior penalty)
- up to 21.5—10 percent penalty (40 percent was the prior penalty)
- up to 22—15 percent penalty (80 percent was the prior penalty for 21.9)
- from 22 to 25—20 percent penalty (100 percent for classes that exceed 22 was the prior penalty)
- over 25—30 percent penalty

It is important to note that districts will not receive additional funding for any students beyond 20. While there are no changes to the implementation priorities, there is not a requirement that class sizes in one grade be smaller than another. Additionally, there are no requirements for school or districtwide averaging.

Grades 9-12 (Morgan-Hart) class-size reduction is a Tier 3 categorical and subject to the full flexibility provisions, which means that there are no penalties for increasing class sizes above 20 students.

Note that there is no change for schools participating in the Quality Education Investment Act. Those schools must continue to meet the 20:1 requirement.

Instructional materials

Education Code 60422 requires that students be provided with standards-aligned textbooks or basic instructional materials within 24 months of the date the materials were adopted. For materials in grades K-8, the adoption deadline is within 24 months of adoption by the State Board of Education. For grades 9-12 the deadline is within 24 months of adoption by the local board. SBX3 4 suspends this requirement until July 1, 2010. However, this suspension only applies to mathematics materials and ultimately provides districts with very little relief.

Education Code 60119 requires that districts hold a public hearing within 30 days of the start of the school year for the purposes of addressing access to sufficient materials for all students. “Sufficient materials” means that every student has a standards-aligned textbook for each of the four core areas in class and to take home. As a result, districts must have adopted and purchased the new instructional materials by the beginning of the school year that the 24 month period falls in. For mathematics, instead of being required to purchase the materials by July 1, 2009, the materials must be purchased by July 1, 2010, which is the same timeline for purchasing reading/English language arts materials. The practical affect of this “flexibility” may be to provide districts with a one year extension on the purchase of mathematics materials, but in doing so means districts will have to purchase two sets of materials (mathematics and reading/English language arts) in July 2010.

CSBA is still seeking clarification as to whether or not further flexibility will provided for instructional materials purchases.

Routine and deferred maintenance

SBX3 4 reduces the amount that school districts are required to set aside in “routine restricted maintenance accounts” from 3% to 1% of their general fund budgets for the current year plus the next four years. For deferred maintenance, the local 0.5% statutory match is eliminated for the current year plus the next four years and districts need not complete the required board hearing to explain why the district match was not set aside.

Reserve for economic uncertainty

The budget makes no changes to the current reserve requirements under Assembly Bill 1200. Therefore districts need to set aside the following percentage of their general fund:

- 5 percent (or \$55,000) for districts with less than 300 ADA
- 4 percent (or \$55,000) for districts with 301 to 1,000 ADA
- 3 percent for districts with 1,001 to 30,000 ADA
- 2 percent for districts with 30,001 to 400,000 ADA
- 1 percent for districts with 400,001 or more ADA

Use of prior-year balances

The budget also allows school districts and county offices to access 2007-08 ending balances for most categoricals. This means that any funding received in 2007-08 and not expended by June 30, 2008 for all categorical programs (except those noted below) may be utilized for any educational purpose in 2008-09 or 2009-10. Programs excluded from this sweep are:

- Economic Impact Aid (EIA)
- All funds for instructional materials
- Targeted Instructional Improvement Program
- Special education
- California High School Exit Exam Intervention Grants
- Quality Education Investment Act
- Home-to-school transportation
- Adult education
- Deferred maintenance
- All funding for capital outlay, bond funds or federal funds

Any monies left over in the above programs must continue to be used pursuant to the requirements of the programs.

County office of education Williams and Valenzuela oversight monitoring

Although monitoring of Williams compliance by county offices of education is a Tier 3 categorical, SBX3 4 still requires county offices of education to conduct at least one site visit to required school sites. As of this writing it is unclear whether all, or just some, of the compliance items will continue to be checked by the county office during this single visit. SBX3 4 specifies that, for the purposes of the 2008-09 and 2009-10 years, sufficient instructional materials includes materials adopted by the SBE or, for grades 9-12 by the local board, prior to July 1, 2008.

However, California High School Exit Exam intervention grants, which is also part of the Williams monitoring process as a result of the settlement of the Valenzuela lawsuit, is now a Tier 3 categorical and thus districts that have accepted flexibility are “deemed in compliance” with all statutory requirements. For example, Education Code 35186 requires the Williams classroom notice contain information about the requirement that districts provide intervention services to students who have not passed

CAHSEE pursuant to Education Code 37254. Education Code 37254 is now subject to flexibility so it is unclear how this requirement will be monitored. It is likely that the California Department of Education will provide clarification on this issue throughout the spring.

State monitoring and compliance

The flexibility provisions that relax the statutory requirements will necessitate changes to the CDE's Categorical Program Monitoring Process, as well as the Annual Audit Guide from the State Controller's Office. Revisions may also be needed to the consolidated application as well as the program profiles for affected categorical programs. The CDE and SCO are in the process of analyzing how these provisions affect the monitoring and compliance processes. CSBA will continue to work to ensure that these activities don't continue to monitor requirements that are no longer required by law.

Public hearing on Tier 3 categorical flexibility

Districts accepting the Tier 3 flexibility provisions and exercising the transfer authority must hold a public hearing on the matter to "take testimony from the public, discuss, and approve or disapprove the proposed use of funding..." This public hearing may be held in conjunction with the public hearing on the adoption of the district's budget, or during an open session at either a special or regular meeting of the governing board. The meeting agenda should specify that a public hearing will be held on the flexibility and transfer of funds under the state budget and the agenda description must, in accordance with the Brown Act, provide a brief description of the action to be taken. The back-up and supporting material for the agenda should specify the funding sources affected, the amount to be transferred out, and the program to which the funds will be transferred.

The meeting minutes should reflect the action taken by the board. The law does not require that the board adopt a resolution regarding the flexibility. However, should a district wish to adopt a resolution, CSBA is providing a sample that may be used for this purpose.

The law does not require that the board hold this public hearing annually in order to continue accepting the flexibility for the next five years. However, CSBA recommends an annual hearing, in conjunction with the district's budget process, so that appropriate documentation can be maintained, and in order for the board and public to discuss how the flexibility can best be utilized.

This hearing is an opportune time for the board to have a discussion about the highest priority for the use of scarce resources to ensure that the intent of the board in making these transfers is to focus attention on the programs and support that will most benefit students. Neither SBX3 4 nor the Education Code specifies requirements for conducting a public hearing. CSBA recommends that the board conduct the hearing in accordance with the same procedures used for other public hearings, such as school district organization. In planning for the hearing, factors to consider include:

- Who needs to be involved in the discussion, who are the key stakeholders, when and where should the hearing be held and what are the best means to notify participants of the hearing?

CSBA recommends the list of participants be as broad as possible to ensure maximum participation in the hearing. Given the fiscal uncertainty in the state and nation, it is important that the district provides maximum "transparency" and "sunshine" on budget issues. Possible participants include parents, community members, unions, school site council, parent teacher associations, the media and local legislators and congressional representatives.

- The key messages must be that there are no good choices in this situation, and that the district has been forced to make these difficult cuts because of the economic crisis facing the state and the actions taken by the governor and Legislature.

It is no doubt an understatement to say that this will be a painful discussion and difficult decisions will need to be made. Parents and staff are sure to be unhappy that certain programs may be scaled back or eliminated. But it is important for the board to have open discussion about the hard choices that need to be made and how to best achieve the district's goals for student learning with the limited resources available.

- What are the board and community's priorities for student learning? How can flexibility best be used to support these priorities?
- What are the alternatives if the board does not take advantage of the flexibility? Absent the ability to transfer funds from one program to another, what action would have to be taken, including how many staff would be affected and what changes to the program would have to be made to address the nearly 20 percent reduction in funding?

- What type of public input and information does the board need to reach a decision? It is important not only that the public hear the priorities of the board but that the board has an opportunity to have balanced discussion with stakeholders about the how to spend limited and declining resources.

Other policy considerations

Districts and county offices need to make decisions regarding the 2008-09 and 2009-10 budgets quickly, therefore public hearings should be held soon and in the context of the adoption of those budgets. However, in addition to the public hearing required by law, the board might also want to hold other public forums to discuss the broader policy implications resulting from the flexibility provisions. In discussing these programs, the board and community might consider:

- What are the goals of the program and the desired educational outcomes?
- What have been the statutory constraints and how might the program be modified?
- What types of resources are necessary and available, including staffing and facilities?
- Are there collective bargaining implications?
- How will the board ensure that flexibility is achieving the desired educational outcomes, including internal monitoring?

Review

The board should also consider a regular review of this use of this flexibility to ensure that the implementation of the funding decisions continue to focus on the district's highest areas of priority. As part of its responsibility to monitor operations, the board should ensure that it has established a mechanism to accurately report how the flexibility was used, what results were anticipated, and what results were achieved. The board should also ensure continued transparency in reporting its financial condition to the community.

Next steps

CSBA is in the process of developing a revised sample policy authorizing the flexibility and transfer of funds. Depending on the level of flexibility exercised by the district and programs impacted, many of the district's policies and administrative regulations will be affected including, but not limited to, policies on supplemental instruction, student retention, professional development, peer assistance and review, counseling, and community day schools. In the upcoming months, CSBA will be reviewing and revising sample policies and regulations as necessary and which will be made available to subscribers of CSBA's policy services.

Resources

CSBA updates on the ongoing budget crisis can be found at: www.csba.org

Updates from the California Department of Education can be found at: www.cde.ca.gov