

COVID-19 Funding and FY21 Funding

We have two sets of federal funding talking points: one specific to the next COVID package and what schools will need, and one specific to the annual appropriations for federal fiscal year 2021 (FY21).

COVID-19 Emergency Funding

As part of our ongoing advocacy related to the federal response to the COVID pandemic and federal support for schools, AASA/ASBO has very clear policy and funding priorities for the emergency appropriations package, which are outlined below.

Talking Points

- Congress must include \$200 billion in funding dedicated to K12 education, funding that will be critical in the ability of school districts to safely reopen this fall. The funding should retain the flexibility of the CARES Act funding, with broad uses spanning from health and safety for staff and students to staff retention and PPE. This funding could be split between \$175 billion for state education stabilization funds, and \$25 billion for categorical programs like Title I and IDEA.
- Urge Congress to include \$5 billion in funding to and through the E-Rate program to help school districts address the homework gap and to ensure all students have equitable access to affordable internet at home, a critical need in an era of remote and blended learning.
- Ensure the inclusion of State maintenance of effort language to prevent states from cutting state education funding and using federal emergency funding to backfill the gaps.

FY21 Appropriations

Federal fiscal year 2021 (FY21) will start October 1, 2020 and represents federal dollars that will be in the nation's schools for the 2021-22 school year. FY 2021 is the last year that there are caps on discretionary spending, stemming from the Budget Control Act of 2011. The overall budget for FY21 was set as part of a two year budget in 2020, which is a good thing, considering how intense 2020 already is and how the pressure and politics of overall funding levels in the midst of a pandemic and election year would have only complicated federal response. With the overall budget numbers set, the detail right now lies with process and politics. Overall, for LHHS, our slice of the federal pie, there is next to no additional money, and even that allocated increase has been spent/accounted for related to other (non-education) costs, setting up a very real scenario where level funding of our key programs is a win. Given the lack of consensus within the Senate—and between the House and Senate—and the fact that it is an election year, odds are very good that Congress will utilize a Continuing Resolution (CR), which is an extension of current FY2020 funding—until either just after the election or until the new Congress convenes in January.

Talking Points

- Thank your members of Congress for the final FY20 package, which included modest increases to the U.S. Department of Education, a critical investment that worked to restore the continued pressure of recession cuts.
- We oppose any effort to direct public dollars to private education. We oppose all vouchers and privatization schema. We ask Congress to continue to prioritize investment in critical formula programs designed to level the playing field, including IDEA, Title I and Title IV.
- Education is a continual investment. Investing in education builds a stronger nation. We need a well-trained and educated workforce ready to compete in a global economy and support our military.

Determining Equitable Services under CARES

Sec. DeVos doubled down on her flawed interpretation of the equitable services guidance in April and released a final interim rule that would codify the guidance with the strength of law. In her rule, DeVos continues to conflate the allocation of resources in CARES with the use of resources in an attempt to distract from the fact that her proposal shifts \$1.3 billion from public schools to private schools and is inherently inequitable. She frames the CARES Act equitable services resources as a subsidy for private schools to keep them from going out of business/closing, a far cry from the reality of CARES Act funding, which is about getting emergency funding to kids. DeVos uses the long-standing equitable services mechanism as a money grab to bolster private school coffers, when historically, the equitable services provisions have been focused on ensuring Title I eligible students in private schools are served.

The rule gives LEAs choices in how to distribute their K12 CARES Act funding to private schools:

- A district can decide to distribute the CARES money only to schools that received Title I for the 2019-20 school year—essentially, those schools with a minimum share of students from low-income backgrounds.
- If districts choose to distribute aid only to Title I schools, they can use two options to calculate how much money they set aside for equitable services: They can use the same amount for equitable services they set aside for the 2019-20 school year; or they can conduct a count of low-income students in local private schools to determine the proportional share.
- If a district distributes aid only to Title I schools, it can't use the CARES money to backfill cuts at the state and local level by moving other funding out of those schools into other schools. That could create a very big incentive for districts not to spend CARES money only on Title I schools, given the huge budget cuts many districts are facing.
- But if a district distributes CARES aid to schools that didn't receive Title I in 2019-20, then it must calculate the amount it must set aside for equitable services using a count of all local students enrolled in private schools in the district.

Giving the allusion of choice as a cover for a flawed policy proposal is unacceptable. This interim rule reaches into how schools USE their CARES funding—something Congress was crystal clear to make very flexible—so as to force public schools to allocate money from Title I students to private schools. The proposal is anything but choice: if you want to implement equitable services as it has historically been done—and as Congress intended—you can only use your CARES funding in Title I schools. This is a logistical and operational hurdle that unnecessarily complicates the work of safely reopening schools in the fall. And for states where the budget process has moved forward and your state cut their state education funding by the amount of CARES dollars your state received, this all but forces LEAs to set aside the higher proportion to private schools, or to be in non-compliance with supplement, not supplant, as DeVos grossly expanded her authority to apply this provision in the context of CARES.

Talking Points

- We oppose the DeVos guidance and interim rule and support equitable services and understand the importance of ensuring that all Title I-eligible students receive the support for which they qualify.
- Congress must act swiftly to ensure the CARES Act funding—and any subsequent federal emergency funding—be allocated equitably and not be hijacked to provide preferential funding shares for private schools.
- The DeVos proposal interim rule presents itself as an option of choice, but really just further complicates and delays allocation of critical response dollars as state and local education agencies—many of whom had finalized their budgets and started allocation—are left scrambling.
- The interim rule brings confusion to the field at the exact time that all educators—in private AND public schools—are looking for efficiency in how resources are allocated and available.

Education Technology/Homework Gap

The COVID-19 pandemic has blown wide-open one of the nation's worst kept secrets: the inequity with which students are not able to access the internet at home – known as the “homework gap.” Even before the COVID-19 pandemic, the homework gap was experienced by up to 12 million K-12 students who couldn't finish their schoolwork from home because they lacked internet access. COVID-19 has created a new reality; schools have physically closed their doors and moved classes online, leaving students without internet behind.

The inequity among students experiencing the homework gap is stark. According to Pew Research: 37% of rural Americans do not have broadband internet access at home; 35% of students from households with annual incomes below \$30,000 do not have access to high-speed internet at home; and 25% of African-American households and 23% of Hispanic households with school-age children do not have access to high-speed internet at home.

E-Rate is a longstanding, bipartisan universal service program that provides more than \$4 billion in discounts annually on broadband and Wi-Fi annually to K-12 public and private schools and public libraries. E-Rate does not support home Internet access service and distance learning technology currently, but a 2010 FCC pilot allowed home Internet access service. E-Rate's funding does not come from federal appropriations, but through the universal service fund, which is funded via fees assessed on consumer interstate and international phone calls. The FCC's E-rate program is uniquely positioned, as the only federal program that support schools and public libraries' with connectivity, to be used to quickly and efficiently address the homework gap.

The E-rate operates under strong guardrails that ensure the program integrity that funds are accurately and appropriately disbursed.

Talking Points

- Nearly 12 million students are unable to engage in remote learning because they lack internet access. Congress must address this homework gap in their next COVID package.
- Congress must invest \$5 billion in funding to and through the existing E-Rate program to best support equitable access to affordable internet.
- The FCC can quickly and easily make changes to help get appropriated emergency E-rate funds out specifically for the homework gap to connect students to the internet while their school buildings are closed.
- It is both efficient and expedient to move federal dollars through an already existing proven program; and it is much easier to use an existing program than “start from scratch” during an emergency. Schools and libraries know the E-rate. Introducing a new program during this COVID-19 emergency saddles them with more bureaucracy and delay – the opposite of what is needed.

IDEA Flexibility

The CARES Act created the opportunity for the U.S. Department of Education to recommend that Congress enact specific IDEA flexibilities for districts providing special education services during COVID-19.

Unfortunately, the DeVos Administration only chose to recommend one flexibility to Congress related to Part C to Part B transition, and furthermore stated they did not believe any other flexibility regarding timelines, financial requirements, or due process was necessary. This unfortunate response by the Department, coupled with the overwhelming and well-organized response by the disability community to oppose any and all flexibility—regardless of merit—since the pandemic began poses significant challenges to our advocacy on Capitol Hill.

Without some practical and necessary flexibility for districts to meet both the core and administratively burdensome tenets of IDEA—ranging from the least restrictive environment mandate to meeting initial evaluation timelines—districts will be exposed to considerable litigation from parents who will be able to successfully argue that the district is out of compliance with IDEA.

Talking Points

- It is critical that Congress provide practical, narrow flexibility in how districts meet some of the requirements under IDEA and to ensure that school personnel who are unable to meet every timeline, provide the same quality and quantity of services to students virtually and meet other administrative requirements in the law during the pandemic, are not automatically subject to potential litigation for failure to fully implement this complex and underfunded federal law.
- Districts need pandemic-specific liability protection that ensures that as long as school personnel document that they have made reasonable and measurable efforts to provide FAPE to students and have not engaged in discrimination, bad faith or gross misjudgment that they not be sued for their inability to meet IDEA.
- Congress should also provide districts with a local waiver to reduce IDEA spending. Unlike Title I, IDEA has a 100% maintenance of effort requirement and no opportunity for a local waiver due to a precipitous decline in financial resources. This is hitting districts in two ways:
 - During the 2019-2020 school year some districts redirected money that they had budgeted to spend on special education towards other sudden, emerging needs like technology purchases and food delivery therefore not spending everything they intended to spend for special education programming.
 - Many districts are anticipating that local revenue losses will be severe and coupled with state declines that they will be unable to spend the exact same amount of funding they did on special education and related services in the 2020-2021 school year as they did in the 2019-2020 school year.
 - As long as budget cuts for special education spending is proportional to other program cuts in the district, districts must be allowed to reduce their special education spending by up to 20%.

Child Nutrition

In the face of nationwide school closures due to the Coronavirus pandemic, superintendents, principals, educators, and other school staff have spent their time on the front lines providing critical services for their local communities. One of the most notable examples of this work has been our public school systems' continued operation of the federal School Lunch and Breakfast Programs.

To ensure that our families and students have a reliable source of food security throughout this pandemic and that their needs are being met as communities continue to strategize on how to re-open, districts have implemented innovative fiscal and policy solutions (e.g., meal delivery, off-school pop-up sites, and alternative meal feeding patterns) in an effort to meet the breadth of this unprecedented moment. While we appreciate and acknowledge that this would not have been feasible without Congress' quick action in passing the Families First Coronavirus Response and CARES Acts, we implore Congress to take the actions listed below to prevent our districts from tapping into fund balances and drawing upon lines of credit to sustain their foodservice operations.

Talking Points

- It is imperative that Congress ensure the extension all the waivers issued by the U.S. Dept. of Agriculture through at least March of 2021. Specifically, this includes Area Eligibility, Unanticipated School Closure, Non-Congregate Feeding, Parent and Guardian Pick-Up, Meal Service, Meal Patter Times, Child and Adult Care Food Program waivers.
- Given the rise in unemployment and poverty, districts must be given the flexibility to qualify for the Community Eligibility Provision based upon student free and reduced-price lunch data from the past three years. By including this provision in the next COVID-19 relief package, Congress will be able to ensure greater participation in the program by LEAs.
- Congress should grant authority to the Federal Emergency Management Agency (FEMA) so that LEAs can be reimbursed under the Public Assistance Category "B" Program for costs associated with serving meals to needy students and premium pay for school critical foodservice staff (e.g., bus drivers, lunch/breakfast employees, and school custodians).
- Congress must dedicate \$2.6 billion to mitigate a portion of the estimated financial loss that school nutrition programs have and will continue to experience during the pandemic. Allocating these funds will be a critical step in making school nutrition programs financially solvent and to maintain the integrity of essential food security programs as the recovery process begins.

Liability Protection

The multi-faceted nature of reopening the nation's schools this fall, post-COVID is well documented: beyond the obvious health and safety concerns, districts have to rethink and revamp virtually all aspects of district operations, from transportation and sanitation to classroom instruction and attendance and staffing patterns. All of this means that school will look—and feel—very different for staff, students and families.

Facing immense pressure, and rising to the challenge and doing their best to re-open schools in a manner consistent with Center for Disease Control (CDC) guidance and other state/local health agency recommendations, schools need temporary and targeted liability relief legislation related to the COVID-19 pandemic, allowing them to do the important work of reopening without fear of excessive liability. Such protections will be critical to businesses, non-profit organizations, and healthcare providers and facilities, as we work to recover from this pandemic.

As school systems prepare to help the country with this major step in emerging from the pandemic, they are also concerned that despite doing their best to follow applicable state and federal health guidelines, they will be forced to defend against an onslaught of frivolous lawsuits. The prospect of such litigation and significant related costs are a very real concern. Any such litigation of this manner would disrupt the school district's budget, a budget likely to have already been cut and squeezed in response to the pandemic and related state and local funding cuts. Absent a targeted safe harbor for those that work to follow applicable guidelines, the fear and uncertainty from boundless liability threatens to impede our country's social and economic recovery. In the wake of prior crises, Congress came together to pass timely and targeted liability protections for employers with strong bipartisan support because lawmakers understood the acute economic threat of lawsuits at moments of maximum economic vulnerability. School districts need similar liability protection.

Talking Points

- As Congress moves forward in its efforts to enact temporary liability protections for employers that work to follow applicable public health guidelines against COVID-19 exposure claims, that public school systems and educational institutions be included in such protections.
- In asking for these liability protections, we think they should be limited in scope and preserve recourse for those harmed by truly bad actors who engage in egregious misconduct.
- Now is the time for Congress to take strong action to stop a growing wave of lawsuits from getting in the way of what we all want and need: healthy citizens and a strong economy.