



February 5, 2010

Secretary Arne Duncan
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20510

Dear Secretary Duncan:

The Education Management Group is a coalition of local educational agencies and statewide associations representing public education in California. We write to express our serious concern about the proposed level of state funding for our schools in the wake of Governor Schwarzenegger's proposal to reduce funding for K-12 education in California by more than \$3.1 billion over the 2009-10 and 2010-11 state fiscal years. We ask that you provide particularly close review of the maintenance of effort assurance and waiver application that California submitted to your office on January 11, 2010 as part of its State Fiscal Stabilization Fund, Phase II application.

The Governor's 2010-11 Budget proposal has occasioned alarm among our local school districts and statewide education organizations. We believe that the most recent budget proposals do not meet the federal K-12 education maintenance of effort requirement for the 2010 federal fiscal year, and that the state is not on track to be eligible for a waiver in the 2011 federal fiscal year. Therefore, we respectfully request that your office support the protection for public education funding in the American Recovery and Reinvestment Act by making approval of California's Phase II application contingent on two amendments.

- (1) Elimination of "Forward Funding" Accounting: California should meet the maintenance of effort requirement for FFY 2010 without the use of "forward-funding" accounting manipulations that undermine the fundamental integrity of the maintenance of effort provision.
- (2) Use of Verifiable Revenue-Based Data for "Revenues": California should be eligible for a waiver for FFY 2011 only if the percentage of state support for elementary and secondary education is calculated in relation to the true amount of total available state revenues, rather than expenditures as proposed in the waiver request. While federal regulations allow for the use of appropriations, we believe that in the case of California's proposed budget for 2010-11 the use of expenditures instead of revenues is inconsistent with the intent of Congress and the spirit of the implementing federal guidance.

We welcome the opportunity to meet with you and the appropriate officials in the U.S. Department of Education to discuss these concerns and requests. At your convenience, please contact Mónica Henestroza at (916) 529-5171 or Michael Ricketts at (916) 446-3095.

(1) US Department of Education Should Not Accept Use of “Forward Funding”
 Accounting in Maintenance of Effort Data

Our first recommendation stems from the precedent that would be set in California and across the nation if the U.S. Department of Education does not establish a bright-line rule to prevent states from counting as current year support for schools those funds that are not intended to be spent for services to students until the following year.

Governor Schwarzenegger’s January 8 budget proposal and his January 11 maintenance of effort assurance both assume that the state can count as current year support for schools “forward funding” of \$250 million in payments for the 2010-11 Quality Education Investment Act, a program targeted to support low-achieving schools. “Forward funding” means that instead of paying the amount needed to fund the program in state FY 2010-11, the state will appropriate \$250 million of funding for next year’s program prior to the end of state FY 2009-10.

As the chart below shows, implementation of the Governor’s proposed \$896.2 million additional cut to K-12 education for state FY 2009-10 will cause K-12 education funding to fall below the maintenance of effort requirement by more than \$34 per student in the current year. However, if the U.S. Department of Education accepts the “forward funding” accounting manipulation, then California will appear to exceed the required level of state support for schools.

Comparison of Governor's January 8, 2010 K-12 Education Funding Proposal to Required Maintenance of Effort Funding Levels for State Fiscal Year 2009-10¹				
	SFY 2005-06 (MOE Level)	SFY 2009-10 Without "Forward Funding"	SFY 2009-10 With "Forward Funding"	
K-12 Funding Total (dollars in millions)	\$ 32,968	\$ 32,523	\$ 32,773	
Average Daily Attendance (ADA)	5,965,268	5,921,510	5,921,510	
Total Per ADA (in dollars)	\$ 5,526.66	\$ 5,492.35	\$ 5,534.57	
Amount Above/ Below MOE Level	--	\$ (34.31)	\$ 7.91	

The problem with this accounting manipulation could not be more evident: it incorrectly implies that the state is providing schools with \$250 million to be spent on students this year, when in fact California does not intend for its schools to use the money until the

¹ Our calculations are based on data in the Legislative Analyst’s Office Overview of Education Budget presented to the Senate Budget and Fiscal Review Committee on January 19, 2010.

following year, and the Quality Education Investment Act legal settlement would not be fully funded for state FY 2010-11 if schools used those funds for current year expenses.

Lastly, the acceptance of this accounting manipulation would create a dangerous precedent in California and nationwide. If “forward funding” is accepted as a legitimate accounting practice for purposes of demonstrating adherence to federal requirements, then California could forward fund any amount in the current or budget year in order to meet, on paper, the federal maintenance of effort test. Furthermore, the acceptance of this accounting manipulation may encourage other states to claim funding at a certain level for a given fiscal year – even if schools are not able to use significant amounts of those funds until the next year.

For these reasons, we urge the U.S. Department of Education to require that California meet the FFY 2010 maintenance of effort requirement without use of “forward-funding” accounting manipulations that undermine the fundamental integrity of the requirement.

(2) US Department of Education Should Require the Use of Verifiable, Revenue-Based Data for “Revenues” in Waiver Eligibility Determinations

On the second question of California’s eligibility for a waiver for FFY 2011, we recommend that the U.S. Department of Education find that California is eligible only if the percentage of state support for elementary and secondary education is calculated in relation to the verified, true amount of total available state revenues.

In addition to the \$896.2 million in proposed reductions to K-12 education for state FY 2009-10, Governor Schwarzenegger’s budget proposes to cut school funding by \$2.4 billion in state FY 2010-11. This additional reduction of about \$400 per student would take California below the federal maintenance of effort requirement for FFY 2011 by \$99 per student. For this reason, the Governor submitted a request to the U. S. Department of Education to waive the federal maintenance of effort requirement for State Fiscal Stabilization Fund Phase II eligibility.

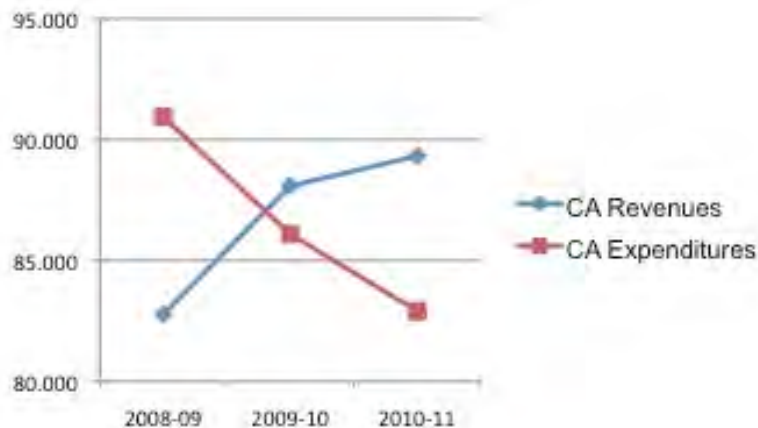
It should be noted that, even if California does not receive a waiver, the state can still cut K-12 education funding in state FY 2010-11 by \$1.8 billion. That said, U.S. Department of Education enforcement of the maintenance of effort requirement will reduce the magnitude of K-12 funding cuts in California and help protect the federal government’s financial investments in our education infrastructure from disastrous additional state cuts.

Per Section 14012 of ARRA, the Secretary of Education may not waive or modify the maintenance of effort requirement to relieve fiscal burdens on states unless a state can demonstrate that it will not provide elementary and secondary education a smaller percentage of “total available revenues” in the fiscal year under consideration than the percentage provided in the prior fiscal year. While federal statute specifies that “available revenues” must be used for this calculation, subsequent administrative guidance stated that a state may use “appropriations” as a proxy for revenues when filling

out its waiver request. Typically, a state's ratio of revenues and appropriations from year to year are fairly equivalent, and we appreciate that to date the U.S. Department of Education has not wavered in its message that a state can only receive a waiver if it can show that its education budget is not being disproportionately reduced.

In the case of California, we believe that the standard for consideration of a maintenance of effort waiver should require the use of total available state revenues and not the use of expenditures as proposed in the submitted waiver request. The percentage of state support for education relative to total state expenditures is a distorted standard. California did not realize many of its proposed non-education reductions for state FY 2009-10, resulting in a deficit that has depressed proposed spending in state FY 2010-11. This explains why state expenditures as proposed in the waiver request are so extraordinarily low when compared with the revenue forecast. California state revenues actually go up about \$1.24 billion between the 2009-10 and 2010-11 state fiscal years even as proposed state spending goes down about \$3.20 billion between the 2009-10 and 2010-11 state fiscal years. As shown in the chart below, California "appropriations" are not a proper proxy for California "revenues" because the former paints an inaccurate picture of state funds available to support schools.

Comparison of California Revenue and Expenditure Levels²
(Dollars in Billions)



In addition, the Governor's budget proposal for 2010-11 includes recasting a portion of state General Fund gasoline sales tax revenues as programmatically-restricted gasoline excise tax revenues. This recasting thereby reduces on paper the amount categorized as general-purpose revenues available to the state. Ironically, if this re-characterization of

² Data source: CA Department of Finance, [Schedule 6: Summary of State Population, Employees, and Expenditure](#), January 2010.

revenues is not carried out by the Governor and state Legislature, California's own constitutional guarantee of minimum funding for public schools (Proposition 98) would increase by \$836 million, restoring about \$140 per student in education funding and allowing California to meet its maintenance of effort requirement without a waiver.

In closing, we greatly appreciate the federal government's investment in schools. In this time of brutal state cuts to education, federal American Recovery and Reinvestment Act funds have served as a lifesaver for California students and schools. We also understand the federal government must be sensitive to the financial problems faced by states. However, the maintenance of effort assurance that California recently submitted to your office seems to seek federal cooperation to cut schools disproportionately and with impunity.

We strongly urge you to review California's State Fiscal Stabilization Fund Phase II application carefully, and then clearly inform the state of California that your Department will not approve maintenance of effort assurances until the state meets at least the minimum funding obligation made when California accepted almost \$6 billion in American Recovery and Reinvestment Act funds.

Sincerely,



Michael Ricketts
Co-Convener
Education Management Group



Mónica Henestroza
Co-Convener
Education Management Group

On behalf of:

Association of California School Administrations (ACSA)
California Association of School Business Officials (CASBO)
California County Superintendents Educational Services Association (CCSESA)
California School Boards Association (CSBA)
School Employers Association of California (SEAC)
Small School Districts Association (SSDA)
Acalanes Union High School District
Alameda County Office of Education
Alpaugh Unified School District
Alta Vista Elementary School District
Anaheim City School District
Anaheim Union High School District
Antelope Valley Union High School District
Arcadia Unified School District
Armona Union Elementary School District

Bolinas-Stinson School District
Brea Olinda Unified School District
Buena Park Unified School District
Burbank Unified School District
Calaveras Unified School District
Canyon Elementary School District
Castaic Union Elementary School District
Centralia School District
Dixie School District
El Dorado County Office of Education
Franklin-McKinley School District
Fountain Valley School District
Fullerton School District
Humboldt County Office of Education
Huntington Beach City School District
Inyo County Office of Education
Irvine Unified School District
Kentfield School District
Kern County Superintendent of Schools
Kings River-Hardwick School District
Knightsen Elementary School District
Laguna Joint School District
Lagunitas School District
Lake County Office of Education
Larkspur School District
Lemoore Union Elementary School District
Lemoore Union High School District
Lincoln School District
Los Alamitos Unified School District
Los Angeles County Superintendent of Schools
Los Banos Unified School District
Marin County Office of Education
Martinez Unified School District
Mendocino County Office of Education
Merced County Office of Education
Merced River School District
Mill Valley School District
Newhall Elementary School District
Nicasio School District
Novato Unified School District
Orange County Office of Education
Palos Verdes Peninsula Unified School District
Paramount Unified School District
Pasadena Unified School District
Pittsburg Unified School District

Placentia-Yorba Linda Unified School District
Pomona Unified School District
Reed Union School District
Ross School District
Ross Valley School District
Rowland Unified School District
Saddleback Valley Unified School District
San Bernardino County Office of Education
San Diego County Office of Education
San Diego Unified School District
San Francisco Unified School District
San Juan Unified School District
San Rafael City Schools
Sanger Unified School District
Santa Clara County Office of Education
Sausalito Marin City School District
Savanna School District
Shoreline Unified School District
Sonoma County Office of Education
St. Helena Unified School District
Tamalpais Union High School District
Tustin Unified School District
Union Joint School District
Upper Lake High School District
Washington Colony Elementary School District
West Contra Costa Unified School District
Westminster School District
Whittier City School District
Whittier Union High School District

Copy: Dr. Thelma Meléndez de Santa Ana, Assistant U.S. Secretary of Education
Anthony Miller, Deputy U.S. Secretary of Education
Roberto J. Rodríguez, Special Assistant to the President for Education
California Congressional Delegation
California State Legislature
Governor Arnold Schwarzenegger