



Education Law Center

Standing Up for Public School Children

By Fax and Mail

June 2, 2009

Honorable Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary Duncan:

Education Law Center ("ELC") is an advocacy organization that seeks to advance equal educational opportunities for New Jersey public school children, particularly low-income students, students of color, and students with special needs. On their behalf, ELC writes to request that the USDOE reject New Jersey's amended application for initial funding under the State Fiscal Stabilization Fund Program, dated May 28, 2009, presently under review by your Department ("USDOE").

As explained below, New Jersey's amended application proposes to allocate initial stabilization funds without funding increases and "equity and adequacy" adjustments in the State's primary K-12 school funding formula and, therefore, is contrary to the express provisions of the American Recovery and Reinvestment Act ("ARRA"). Further, New Jersey proposes to utilize almost 80% of the State's entire allocation of stabilization funds in FY2010 and provides no assurance that stabilization funds will be available to restore formula funding and allow formula increases in 2011, as required under the ARRA.

For each of the Fiscal Years ("FY") 2009, 2010 and 2011, the ARRA directs states to distribute fiscal stabilization funds to the greater of the formula level in FY2008 or FY2009, and "to allow existing State formulae increases to support elementary and secondary education for fiscal years 2010 and 2011 to be implemented and allow funding for phasing in State equity and adequacy adjustments," if enacted under state law prior to October 1, 2008. P.L. 111-5, (H.R.1), February 17, 2009; 123 Stat. 115, as amended by P.L. 111-8 (H.R.1105), the Omnibus Appropriations Act 2009, Division A, Sec. 523; March 11, 2009; 123 Stat. 524, Title XIV, Sec. 14002(a)(i)(II).

New Jersey's amended application violates the ARRA for two reasons. First, the application clearly fails to "allow existing State formula increases" to be implemented and fails to fund "phasing-in State equity and adequacy adjustments" required by the State's K-12 funding formula. The application correctly designates the School Funding Reform Act of 2008 ("SFRA"), enacted January 7, 2008, as the State's primary funding formula under ARRA. As the application also notes, the state aid required under SFRA for FY2010, including required equity and adequacy increases under the SFRA, totals approximately \$6.1 billion. See, NJ Application, page D-8.

However, the application further indicates that the aid amount New Jersey will provide through SFRA for FY2010 is only \$5.6 billion. See, NJ Application, page D-8. Thus, it is clear that the State is proposing not to provide the state aid necessary to fund the increases required by the SFRA in FY2010, including phasing-in of equity and adequacy adjustments mandated by the formula.

Further, an analysis of the impact of the State's application on specific New Jersey school districts shows that the State will not fund approximately \$303 million in required state aid increases under SFRA, which includes \$293 million in state "equalization aid," the component of the SFRA formula that the State has designated as "primary" under ARRA. This formula aid shortfall impacts over 300 school districts across the state, including eighty-eight high poverty districts that will have formula shortfalls of over \$1 million. For complete list, see http://www.edlawcenter.org/ELCPublic/elcnews_090415_SchoolAidFormulaUnderfunded.htm

New Jersey's failure to provide the SFRA formula increases, as required by ARRA, also implicates the New Jersey Supreme Court's recent decision in Abbott v. Burke, ___ N.J. ___ (2009); the opinion is available at:

http://www.edlawcenter.org/ELCPublic/elcnews_090528_AbbottDecisionMay28.htm. In this ruling, issued May 28, 2009, the Court upheld the SFRA formula under the state constitution, but explicitly "premised on the expectation that the State will continue to provide school funding aid during this and the next two years at the levels required by SFRA's formula each year." Id. at 6. Indeed, the Court noted the availability of education stabilization funds, along with the increases in Title 1 and IDEA funds, provides New Jersey with "a substantial cushion" to fund the SFRA formula, including mandated increases and equity adjustments. Id. at 47. Thus, action by your Department to ensure compliance with the ARRA requirements will further the

State's obligation, as delineated in Abbott v. Burke, to ensure all New Jersey public school children receive a "thorough and efficient" education under the State constitution.

Second, New Jersey's application seeks approval to utilize almost 80% of the stabilization funds in FY2010, leaving only \$239.5 million to address formula funding in FY2011. Most importantly, the State's application provides no assurance, or any other information, on how New Jersey will meet the formula funding requirements of ARRA in FY2011. See NJ Application, D-14, Worksheet 3-B(failing to provide requisite ARRA calculations for FY2011). This lack of assurances for FY2011 is of particular concern since SFRA will generate further increases and equity and adequacy adjustments for New Jersey school districts in that year.

The distribution of federal stabilization funds in New Jersey will have a direct impact on the provision of state formula funding to disadvantaged students in New Jersey's poorest districts and schools, and on whether such funding will advance equity and adequacy in New Jersey over the next two fiscal years.

Accordingly, ELC respectfully requests that the USDOE deny New Jersey's application for stabilization funds in its present form. USDOE should direct New Jersey to promptly submit a revised or amended application that fully comports with the ARRA mandate to fund "State formula increases to support elementary and secondary education."

We appreciate the commitment of this Administration to improving educational opportunities for low-income students and students of color in the nation's public schools, especially schools serving impoverished and racially isolated neighborhoods and communities. ELC stands ready to work with your Department to further those critical objectives, and we look forward to your prompt reply.

Sincerely,



David G. Sciarra
Executive Director

cc: James Butler, Teacher Quality Group Leader, USDOE
Honorable Russynn Ali, Assist. Sec. for Civil Rights
Janellen Duffy, NJ Governor Education Policy Advisor
Members of the NJ Congressional Delegation