

October 7, 2010

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

Re: Education Jobs Fund Implementation Efforts

Dear Secretary Duncan:

On behalf of the 95,000 school board members, state school boards associations and the millions of students they represent, the National School Boards Association greatly appreciates your work to help ensure the passage of and swift application process for the Education Jobs Fund. This funding is vital to continuing the progress in student achievement, and will help districts retain teachers and staff whose work is central to classroom instruction and student services.

Currently, 47 states and the District of Columbia have received their respective Education Jobs Fund allocations and are scheduled to submit Maintenance-of-Effort (MOE) certifications over the months of October and November. However, concerns about how the funding allocations are being distributed by a number of state governments are raising questions about how, and if, statutory maintenance-of-effort and distribution guidelines to LEAs are being adhered to, according to the intent of the law.

Specifically, reports have surfaced about Education Jobs Funding being used to supplant state education aid, rather than supplement funding that was already budgeted and approved for education in some states. In order to ensure that the funding is being used for its intended purpose of saving education jobs, NSBA is writing to request expanded guidance regarding the law's prohibition of the use of funds for debt reduction, to address reports about supplanting issues that are displacing the Jobs Funding.

Since states must provide certification of MOE within 60 days of receiving funds, is there a possibility of conducting interim reviews of how and when funds are being distributed to LEAs?

In South Dakota, for example, the state government announced its receipt of Education Jobs Funding and proceeded to allocate the funds to LEAs. However, the state forwarded regular state aid payments to LEAs, indicating that a specific amount of the regular payment was received from the Education Jobs Fund; but, the checks were the same amount as previously calculated (no increase in funding).

The only difference was the state funds were replaced with federal dollars; and, that portion of state funds (approximately \$26.3 million) will be held over to fund next year's education budget. At the same time, all state agencies are being directed to prepare budgets based on a 10 percent reduction in funds for the next fiscal year.



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Office of Advocacy

- *Earl C. Rickman, III
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Executive Director*
- *Michael A. Resnick
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In Montana, efforts to supplant \$30.7 million in Education Jobs Funding are the subject of several news reports; and, have raised concerns from the education community and taxpayers alike. Although federal statutes would normally take precedence, state officials have cited a state law regarding these efforts to supplant previously approved state education funds for Education Jobs Funding.

According to an article titled, "Jobs bill won't help local schools," published by *The Daily Inter Lake* in Montana, school districts that hoped they might be able to use Education Jobs Funding next year to retain teachers and staff, when budget predictions are significantly grim, may not get to do so.

"But the governor's office doesn't have a choice," said Dan Villa, Gov. Brian Schweitzer's education adviser.

"We have to follow state statute," he said, citing Montana Code Annotated 17-2-108, which says the state must use nongeneral fund money 'whenever possible before using general fund appropriations.'

Money from the jobs bill will be distributed via the state's school funding formula, Villa said. That formula is paid out of the state's general fund.

"They [the governor's office] decided that they will appropriate the federal money and reduce the general fund by a like amount," state Superintendent of Public Instruction Denise Juneau said in a statement. Her office will be responsible for distributing the funds, probably in December.

The general fund dollars that would have supported education this year will be reappropriated for schools next year, Villa said. "No one is losing anything here."

--"Jobs bill won't help local schools"
The Daily Inter Lake

The two scenarios described above are indicative of other efforts to supplant state education aid funding that has already been budgeted and approved.

There are concerns that if state tax revenues fall short later this year, even more state governments are likely slash state education aid, figuring schools have the federal funds as a cushion. *If so, how can state governments assuredly certify their compliance with the federal Maintenance-of-Effort guidelines?*

In addition to MOE guidelines, the law states that program funds may not be used, "directly or indirectly to establish, restore, or supplement a rainy day fund, or to supplant State funds in a manner that has this effect. Furthermore, a State may not use program funds, directly or indirectly, to reduce or retire debt obligations incurred by the State or to supplant State funds in a manner that has this effect."

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In effect, state efforts to supplant funding may produce a direct or indirect result in reducing the amount of a state budget shortfall. *Would such efforts to supplant not fall under Section C (C-11) in the Department's "Initial Guidance for States on the Education Jobs Fund Program?"*

And, according to C-2 of the Department's Initial Guidance for States, "a Governor must make awards to LEAs on a timely basis so that funds are available for use during the 2010-2011 school year. An LEA must be able to use all of its allocation, if it so chooses, during the 2010-2011 school year." *If the Education Jobs Funding is not distributed to LEAs because of supplanting efforts or intentions of withholding funding until the next school year, what alternative exists for LEAs?*

These questions are among several concerns we are fielding from school boards regarding implementation efforts for the Education Jobs Fund. School board members and their state associations throughout the nation rallied in support of Congress' passage of the Education Jobs Fund this year because of the urgent need to ensure that the progress made in academic improvement, innovative education, and efficient school services would not be hindered because of impending budget cuts to teachers and staff. However, many school board members and education advocates feel that their efforts were futile when faced with reports of funds being supplanted, which may result in the very budget cuts that districts were trying to avoid.

Another concern is that future audit findings and/or inspector general reports about implementation efforts may not be able to correct any supplanting or MOE issues until after the fact, when the program has expired and funding is unavailable.

As a practical matter, the efforts to supplant funding could prove counterproductive to overall education funding in future years by lowering the funding base in some states. Coupled with supplanting efforts, the across-the-board budget cuts affecting state education aid could likely inhibit student achievement and school performance, especially measures targeted toward school improvement and equity. It is because of these unintended consequences that many are wondering if the Education Jobs Fund is beneficial to their school districts and states for the long-term.

NSBA appreciates your leadership to help champion the Education Jobs Fund, and looks forward to working with you and your staff to ensure that the Jobs Fund helps supplement, rather than supplant, state education aid in order to retain the teachers and staff needed for the continued success of our students.

Sincerely,



Michael A. Resnick
Associate Executive Director