

ED Cautions States Not To Play ‘Shell Games’ with Stimulus Funds

Meeting with Advocates Also Previews New Guidance, Addresses Lingering Questions

Washington, April 10 — The U.S. Department of Education put states on notice that it would closely monitor how they spend billions of dollars in stimulus money, but officials acknowledged that they had limited ability to curb some activities that violate the spirit of the law.

“If there’s any state that intends to use any portion of the education section of the stabilization fund for anything but education, it won’t be allowed,” said Jonathan Schnur, senior advisor to Education Department (ED) Secretary Arne Duncan.

Schnur spoke during a two-hour meeting at the department on April 3, attended by about 150 people representing education advocacy organizations. The wide-ranging [meeting](#), which the department recorded and posted as a video on its Web site Monday, encompassed recent guidance, a preview of upcoming stimulus activity and a discussion of states that are trying to game the system.

The stabilization fund Schnur spoke of is \$48 billion aimed at shoring up shortfalls in state spending due to the recession. Most of that money, 81. percent, is aimed at education. An additional 18.2 percent can be used by governors for a variety of public services, including education.

While few states are openly advocating using the education portion of the fund for other purposes, several states — including Hawaii, Idaho, Kansas, Ohio and Rhode Island — have proposed a more novel approach, which some ED officials have likened to a “shell game.” Those states aim to decrease state education support in order to pay off deficits in other parts of their budgets, relying on the stabilization money to fill the gaps in school funding.

Such schemes could run afoul of a maintenance-of-effort provision in the stabilization law that requires states to at least maintain the level of state support for education in fiscal years 2009, 2010, 2011 that they did in 2006, although ED will allow waivers of this requirement.

“We’re going to vigorously enforce the maintenance-of-effort requirement,” said Schnur. “If there’s an interest in waiving that, then the principle that will be applied in giving waivers is whether the state is maintaining at least a proportional investment in education.”

The Carrot

ED can also influence states behaving badly by withholding future stimulus funds. Officials threatened to keep a second cut of stabilization money, worth about \$13 billion, if states don’t spend the first portion properly. “This is not a practice that is in the best

interest of children,” Joe Conaty, a veteran ED career official who is now serving as assistant secretary of elementary and secondary education, said of the state schemes. “It will be substantially discouraged, and you’ll see a number of places in the guidance where the implications are this will be taken into account for future decisions.”

Duncan was more blunt. He said that performance on the first portion of stabilization funds will be a determining factor in judging applications for his \$4.35 billion “Race to the Top” Fund, which will reward states for innovation.

“The first question on there, I promise you, will be, ‘What did you do with the stabilization funds to drive reform...,’” he said. “If there isn’t a good answer to that, they may as well tear up the form and not waste their time.”

The meeting also gave ED officials a chance to preview upcoming stimulus activity, which is expected to include:

- The release of supplemental stimulus funds for homeless students and Impact Aid today
- Examples of the effective use of stimulus funds, based on information provided by states and districts, on April 17
- Instructions on how to apply for maintenance-of-effort waivers, in the next three weeks
- Online posting of approved applications for the first round of stabilization funds, in the near future
- The submission of a draft application for the second round of stabilization funds, later in April

A part of that application will ask states whether they use student-achievement information in their local teacher- and principal evaluation systems, and for a breakdown of performance on those instruments. Schnur predicted that “one likely outcome of that will be...data showing that 95 percent of teachers and principals are all rated at the highest levels, which will help highlight that there’s not much disaggregation in the assessment of how people are doing.”

The application will include other data that ED has never collected before. For example, the application will ask whether states have a cap restricting the number of charter schools currently operating, and the number closed within the past three years for academic reasons. Duncan is committed to lifting state caps restricting the number of charters. The application will also ask states to provide the number and percentage of high school graduates, by school, who complete a year’s worth of college credit within two years of their high school graduation. The goal is to see not only how many students are graduating, Schnur said, but how many are leaving with college-ready skills.

‘Tension’ in Law

Tony Miller, another senior advisor to Duncan, said the reforms outlined in the guidance and the application had “direct engagement” from the domestic policy council at the White House, signaling the importance President Obama places on the agenda. He added that thorough reporting would also be paramount, with Vice President Joe Biden’s office overseeing the implementation and transparency requirements of the stimulus.

While acknowledging a “tension” in the law between speed on the one hand and thoughtful reform and transparency on the other, Miller said these aspects were not equally weighted.

“If the choice is get out the money quickly and not have it be spent wisely...or going slower, go slower,” he said.

Of course, not everyone has the same priorities. It will be a tough balancing act for districts given the pace of layoffs in many states due to the recession. Joel Packer, a lobbyist for the National Education Association, the nation’s largest teacher’s union, said his constituency initially would be more focused on staving off “tens of thousands of layoffs” and cuts in school programs than long-range school reform. “I have to honestly say they’re not focused right now on these policy assurances,” he said. “Right now is when state budgets are being set. That’s what they’re focused on. They’ll deal with these policy assurances as the next step.”

Transparency

On the transparency front, Duncan spoke of “mutual accountability,” urging states, districts and advocacy organizations to work together with the department to ensure the system works properly. Several groups gave the new leadership at the department high marks for practicing what it preaches, answering questions in timely phone calls, meetings and webinars, and holding regular briefings with the media.

While acknowledging “there are threats — I’m no fool about this,” Conaty, who has led many of the discussions with state and local leaders, called the reaction to the stimulus more positive “than you might presume from some of the questions we’ve seen in the press.”

But even Duncan said that “adult dysfunction” could be a “huge impediment” to realizing his reform agenda.

“I don’t want to be naïve or overly optimistic..., but we’re really pushing hard to have adults start to behave in different ways to seize the magnitude of this moment,” he said. “This is really a turning point in history. If we keep the same old fights — districts vs. states, governors vs. mayors, teachers vs. principals — we’re just not going to get where we need to go with children.”

Guidance Questions

In addition to expounding upon the big picture, the meeting also afforded opportunities for officials to delve into the weeds of the existing guidance and clear up some lingering questions.

Several speakers expressed interest in a provision of the Individuals with Disabilities Education Act (IDEA) that has been seldom used in the past, but is expected to gain traction due to the large amounts of money offered in the stimulus. IDEA law states that school districts can reduce their level of support for special education by an amount equal to fifty percent of their federal increase and use the unspent funds on any educational activity eligible under No Child Left Behind (NCLB) — a grant of authority that embraces an extraordinarily broad range of activities. For example, if a school district receives \$500,000 in IDEA funding, it could reduce its state and local spending by \$250,000 and use those funds for any NCLB-eligible activity. Bruce Hunter, associate executive director of the American Association of School Administrators, told federal officials they were “about to be flooded” with requests from school districts to use the flexibility.

But Jeff Simering, legislative director of the Council of the Great City Schools, highlighted what he called a new provision in the [IDEA stimulus guidance](#) (D-7) that would require states to show that districts are in compliance before they can get the flexibility. Previously, states were prohibited from offering the flexibility if they had found a district in non-compliance. The stimulus guidance seemed to be requiring a new, *affirmative* certification that could prove burdensome to districts and states.

Ruth Ryder, director of monitoring for ED’s office of special education programs, initially denied that the stimulus guidance had such a requirement. But after reviewing the language, she said, “We’ll take a look at that.”

Simering and Packer also raised questions about how discrepancies in the [stabilization guidance](#) between the way states calculate maintenance-of-effort and state levels of support could be misused. In determining how stabilization dollars will be distributed, states need to determine their levels of support for K-12 and higher education for various fiscal years. State support for school districts is based on the state’s primary elementary and secondary education formulae. But the level of support necessary for calculating maintenance-of-effort requirements could be larger, as it could also include other state support not provided through the primary formulae.

In terms of higher education, states can exclude tuition and fees paid by students from the amount it calculates for levels of support in determining stabilization funding. But once again, the support calculation for maintenance-of-effort is slightly different. In this case, the support level for maintenance would be smaller, excluding not only tuition and fees paid by students, but also support for capital projects and research and development.

In some states, those differences could benefit higher education at the expense of K-12 schools. “It creates opportunities for gamesmanship at the state level,” said Packer.

Miller, the ED advisor, said the department would have to deal with the issue on a case-by-case basis, adding, “It’s hard to characterize intent until you see the specifics.”

“That’s the fear,” Simering replied. “You have to wait for the crime to be committed.”

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