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CUBE Advocacy Briefing: Is There a New Federal Role in Education?

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American Recovery and Reinvestment Act (ARRA) Grassroots Update

NSBA is in the process of determining how best to move forward with Congress and the U.S. Department of Education to ensure that school districts can access and implement economic stimulus funding appropriated through the *American Recovery and Reinvestment Act (ARRA)*.

To help maximize your efforts to utilize economic stimulus funding for education priorities, we need your help to identify successes and/or challenges your district may be facing. NSBA has surveyed CUBE members and the deadline has been extended to July 1. You can find the survey at: www.nsba.org/cube.

Please also note our new additions to NSBA's Economic Stimulus Resource Center at www.nsba.org/economicstimulus that includes information for school districts (such as ideas for using ARRA funding and updated reports from the Department of Education on money distributed to states) under our Implementation Resources section.

You can also visit our website at www.nsba.org/advocacy to write to your member of Congress during the July 4th recess regarding ARRA implementation issues.

FY 2010 Education Funding

Earlier this month, U.S. Department of Education Secretary Arne Duncan testified before the House and Senate Appropriations subcommittees responsible for education funding. Secretary Duncan discussed the Administration's FY 2010 budget request to Congress for education and responded to a number of questions from members regarding proposals to reduce funding for some programs and redirect a portion of Title I funding towards the creation of new programs.

NSBA submitted questions on key NSBA priorities to the House Appropriations Committee for the hearing. Reductions in funding for the Education Technology and Safe & Drug-Free Schools programs and a proposed cut to Title I basic grants all were brought up at the hearing. Secretary Duncan emphasized goals to address the school dropout rate and discussed priorities for early childhood education, additional support for school reform and teacher quality, and restructuring the traditional school day and year for extended learning opportunities. Highlights from the Administration's FY 2010 budget request to Congress can be found on page 6.

Elementary and Secondary Education Act (ESEA) / No Child Left Behind (NCLB) Reauthorization

The Advocacy staff has continued intensive lobbying of members of Congress and their staffs regarding the urgent need to reauthorize the *Elementary and Secondary Education Act (ESEA) / No Child Left Behind (NCLB) Act*.

With the election of President Barack Obama in November 2008, education was identified among his top three priorities; and the appointment of Arne Duncan—CEO of the Chicago Public Schools—as the new U.S. Secretary of Education conveyed a strong message that reauthorization of ESEA would be addressed. Additionally, with the convening of the 111th Congress, education as a top priority appeared to be re-affirmed.

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Although Senator Edward Kennedy (D-MA), Chairman of the Senate Health, Education, Labor and Pensions Committee; and Representative George Miller (D-CA-7), Chairmen of House Committee on Education and Labor, have continued to voice strong support for ESEA reauthorization, it appears unlikely that there is sufficient time to complete the reauthorization before the First Session of the 111th Congress adjourns.

During the 109th and 110th Congresses, NSBA was able to secure bipartisan support for a comprehensive approach to address the much needed changes in the current law with the introduction of the *No Child Left Behind Improvements Act of 2006 (H.R. 5709 in 2006) and the No Child Left Behind Improvements Act of 2007 (H.R. 648 in 2007)*. These bills, incorporated over forty recommendations developed by local school board members across the nation and garnered strong bipartisan support.

This year, NSBA has again developed draft legislation that addresses the concerns of local school board members. In addition to addressing the important issues related to assessments, accountability, and sanctions, this new bill incorporates school board member concerns over standards and assessments, high school graduation rates, and multiple assessments for determining Adequate Yearly Progress (AYP). NSBA continues to seek strong bipartisan sponsorship.

Additionally, NSBA has developed draft legislation that would temporarily suspend the restructuring sanctions against schools and local school districts until ESEA is fully authorized. With the continued delays in reauthorizing ESEA, the performance bar of the nation's public schools continues to rise – resulting in more schools being subject to the restructuring sanctions that impose costly implementation problems.

We are fully aware that these bills will not be the *final* bills adopted by Congress. However, strong congressional support for these bills as co-sponsors would increase the likelihood that the provisions in our bills would be incorporated in the final bills adopted by Congress.

Americans with Disabilities Act (ADA) Amendments

The *ADA Restoration Act of 2007* was introduced by Representative Steny Hoyer (D-MD-5) in July 2007. The purpose of the bill is to respond to several court decisions regarding the definition of disabilities under the law. On June 25, 2008, the House passed its version with a vote of 402-17. On September 11, 2008, the Senate passed its version. Subsequently, President Bush signed the bill into law which became effective on January 1, 2009.

NSBA will continue to monitor implementation of this new law; particularly as it relates to the following concerns expressed by local school boards:

- The broader definitions and expansion of coverage could create operational problems for local school districts. NSBA is particularly concerned over the use of such terms as “mitigating measures” and “material restrictions,” and their unintended consequences in changing hiring standards by which local school districts must operate.
- The new definitions of disability in the legislation could trigger an increased number of students who have minor or corrected conditions to claim Section 504 eligibility.
- There could be increased workload and costs regarding the administrative processes related to evaluations and in determining appropriate accommodations.
- The new law could have devastating and costly consequences for local school districts as it relates to increased litigation in attempting to build case law.

Reauthorization of Individuals with Disabilities Education Act (IDEA)

Although IDEA reauthorization is not expected before 2011, both the White House and Capitol Hill have hosted meetings to discuss several IDEA-related issues, including the use of restraints and seclusion in schools as an appropriate approach with children with behavioral disorders. Much of the more recent activities have focused attention on a report released by the National Disability Rights Network, “School is Not Supposed to Hurt:

Investigative Report on Abusive Restraint and Seclusion in Schools.” This report seeks raise the level of attention by local, state, and federal officials.

A central theme being expressed by many in the disability community is that federal legislation is needed, including full prohibition. A central theme being expressed by NSBA—and concurred in by many from the education community—is that federal prohibition against the use of restraints and seclusion would not provide sufficient flexibility to address the wide range of unique circumstances. Additional concerns being raised by both the education and disabilities communities include the need for increased resources from both the state and federal levels.

The U.S. Education Department acknowledges that while federal guidelines and standards currently exist regarding adults, such guidelines are not extended to students with disabilities. Department officials also acknowledge that training in de-escalation and on how to build more collaborative efforts is also needed.

The White House Domestic Policy Council appears committed to addressing the harmful impact of restraints and seclusion; and the House Committee on Education and Labor staff has indicated that Chairman George Miller (D-CA-7) is committed to introducing legislation before this First Session of the 111th Congress adjourns. NSBA will continue to lobby the interests of our local school boards.

Education Technology State Grants (Ed Tech) Program

The Ed Tech program helps high-need school districts integrate technology into the curriculum by preparing technology-proficient educators, equipping classrooms and supporting a curriculum that recognizes the role technology plays in all disciplines. School districts implementing Ed Tech grants have experienced higher student achievement and teacher retention.

NSBA joined the Mission Critical Campaign to restore funding for this program in the FY 2010 budget from \$100 million (proposed) to at least \$269 million (current FY 2009 funding level). The Ed Tech program also receives \$650 million in one-time funding under the stimulus bill, making ongoing appropriations crucial to avoiding a funding cliff in FY 2011.

E-Rate

NSBA continues to advocate for this program that allows rural and low-income school districts and libraries to purchase Internet access and other telecommunications services at discounted rates. Since it began in 1996, the E-Rate has played a leading role in connecting schools and libraries to the Internet. In 2004 however, the Federal Communications Commission (FCC) ruled that the program was subject to the *Anti-Deficiency Act (ADA)*, effectively suspending the issuance of funding commitment decision letters that school districts rely on to plan for their technology services. Application of the ADA to E-rate dramatically impacts the processing of funding requests and the ability to keep a steady, reliable flow of funds to schools and libraries.

Each year since then, NSBA has helped secure temporary exemptions from the ADA and sought permanent relief. Further, NSBA Executive Director Anne Bryant is a member of the Universal Service Administrative Company, which oversees administration of the program.

President Obama’s nominee for chair of the FCC could bring a new and unique perspective to regulation of the E-Rate program. Julius Genachowski worked at the FCC when the E-Rate was first created, and spoke about the historic and meaningful contributions of the program during his June confirmation hearing before the Senate Committee on Commerce, Science and Transportation. Mr. Genachowski’s nomination has been approved by the Committee and is awaiting confirmation by the full Senate.

Nutrition Standards

On March 31, 2009 the Senate Committee on Agriculture, Nutrition & Forestry held a hearing on “Beyond Federal School Meal Programs: Reforming Nutrition for Kids in Schools.” On May 14, 2009, the House Subcommittee on Healthy Families and Communities of the Committee on Education and Labor held a hearing on “Improving Child Nutrition Programs to Reduce Childhood Obesity.” At both hearings NSBA presented formal testimony.

Under debate is whether the federal government should establish new nutrition standards and extend those standards beyond federally subsidized meals to all foods available to students at all school-sponsored activities – even outside the school campus. In our testimony, NSBA re-affirmed its strong efforts by the state associations to promote nutrition in the schools through web-based services, educational programming and publications, as well as the extensive efforts to engage communities through partnerships and coalitions.

Additionally, NSBA voiced its opposition for the federal government to regulate or codify into statute the types of foods and beverages that can be sold at all school-sponsored activities. Both the Senate and House have now introduced legislation that would establish new standards and extend such standards to all foods served at all school-sponsored activities. NSBA is lobbying for amendments that would provide greater flexibility to local school districts and exclude infrequent school-sponsored activities from such standards.

Interstate Compact on Educational Opportunity

The Interstate Compact on Educational Opportunity for Military Children became effective in August 2008 when the first 10 states adopted the agreements. Since then, the number of states that have joined the Compact has grown to 22: Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, Texas Virginia and Washington (as of June 2009).

The purpose of the Interstate Compact is to address perceived inequities facing schoolchildren of military parents when they are required to relocate across state lines. Specifically, it allows the laws of the “sending” state to apply to transferring students from military families in the schools of the “receiving” state for such policies as graduation requirements, Advance Placements (AP), and age of student enrollment. For example, if the “sending” state has a lower graduation requirement than the “receiving” state (e.g. course requirements), then, depending on the terms of the Interstate Compact, the requirements of the “sending” state would apply to a transferring high school student. The provisions would most likely have a more significant impact on public schools near military bases that have students transferring from other states.

The Interstate Compact when adopted by the state legislatures applies to the children of:

- Active duty members of the uniformed services, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C §1209 and 1211;
- Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement;
- Members of the uniformed services who die on active duty for a period of one year after death.

Additionally, some states have extended applicability to children of civilian employees of the Department of Defense as well.

The governing body for the Compact, the Interstate Compact Commission, held its organizational meeting in the fall of 2008. However, to date, no proposed rules regarding its governance have been released. Further, the Commission has not released its recommendations on the financial assessments that will be levied – initially proposed at \$1 per covered student to meet the operational expenses of the Commission.

Medicaid Claiming

NSBA filed comments on June 1, 2009 with the U.S. Department of Health and Human Services in support of a proposal to rescind a final rule (CMS-2287) that would have eliminated Medicaid reimbursement for

administrative and transportation services provided by schools—at a potential loss of over \$650 million per year to school districts. NSBA and state associations have fought for almost 10 years to protect the interests of school districts and to ensure that they can continue to receive these Medicaid reimbursements.

This announcement from the Centers for Medicare and Medicaid Services (CMS) is a significant step forward, thanks to the combined advocacy efforts of state associations, school board members across the country, and NSBA. Originally, NSBA sought to initiate litigation in partnership with several state associations to stop CMS's actions. Once CMS issued the final regulations (CMS-2287) to restrict school-based Medicaid reimbursement in December 2007, NSBA successfully gained short-term legislative relief from Congress from year to year, thereby preventing the CMS restrictions from becoming effective.

NSBA will forward updates regarding this new CMS proposal to continue school-based Medicaid reimbursement as information becomes available.

Voluntary Pre-K

NSBA's Pre-K Legislative Committee, established in October 2007, continues to be active with a meeting held at the annual conference in San Diego in April 2009 and at the FRN meeting in D.C. in February 2009. NSBA and Center for Public Education staff discussed legislative updates, research and state pre-k programs among others in these meetings. Currently, about 360 advocates are on the Pre-K Legislative Committee. Also in April 2009, NSBA and the Center for Public Education hosted a webinar for the pre-k advocates on the newly published *Pre-k Toolkit for School Board Members*. NSBA will continue to engage our pre-k advocates through communications on Congressional updates, research, messaging and additional webinars. Pre-k issues are expected to come before Congress this year. NSBA is following several bills pending in Congress to assure that any final legislation assures that pre-K education is voluntary, adequately funded, aligned with K-12 education and implemented in consultation with local school boards that want to be involved.

Private School Vouchers

President Obama has proposed funding in the FY 2010 budget to continue serving students who are currently in the D.C. voucher program. The proposal would not extend the program to add new students. NSBA is lobbying Congress to discontinue the expired pilot program. Earlier this year, we have successfully defeated an amendment to the FY 2009 appropriations bill that would have resulted in the extension of D.C. vouchers beyond the 2009-2010 school year. The program can now be extended only with a reauthorization by Congress and approval by the D.C. City Council.

NSBA has been meeting with House and Senate staff to lobby to discontinue the voucher program. NSBA submitted an individual letter and a coalition letter opposing any continued funding of the program to the House Appropriations Subcommittee on Financial Services, which has the jurisdiction over the D.C. voucher program and held a markup on June 23. Another NSBA letter and coalition letter were submitted in May for the hearing held by the Senate Committee on Homeland Security and Governmental Affairs.

NSBA continues its advocacy efforts to defeat any private school vouchers or tuition tax subsidy legislation. We remain especially focused on ensuring that Congress does not reauthorize or continue funding the expired D.C. voucher program, the only federally funded voucher program. NSBA worked closely with Senate leadership to secure the limits and phase-out language in the Senate bill. We also have taken a lead role in the National Coalition for Public Education (NCPE), a group of 50 education, religious and civil rights groups, in working to pressure Congress to stop funding vouchers.

For additional information on any of these issues, please visit our website at www.nsba.org/advocacy.

Fiscal Year 2010 Key Program Funding Recommendations

Program	FY 2009	FY 2010 Budget Request to Congress	ARRA Funding (if applicable) ¹	Difference (between FY 2009 level and FY 2010 request)
Title I Grants for Disadvantaged Students	\$14.5 billion	\$13 billion ²	\$10 billion	-\$1.5 billion
Title I School Improvement Grants	\$545.6 million	\$1.5 billion	\$3 billion	\$954.4 million
Special Education State Grants (Part B)	\$11.5 billion	\$11.5 billion	\$11.7 billion (IDEA-Part B funding includes \$11.3 billion for grants to students ages 6-21 and \$400 million for preschool children)	\$0
Teacher Quality	\$2.95 billion	\$2.95 billion	\$300 million (includes \$100 million for Teacher Quality grants and \$200 million for a Teacher Incentive Fund)	\$0
Education Technology	\$269 million	\$100 million	\$650 million	-\$169 million
21 st Century Community Learning Centers	\$1.13 billion	\$1.13 billion	-----	\$0
Safe & Drug-Free Schools and Communities	\$515 million	\$283.6 million ³	-----	-\$231.4 million
Impact Aid	\$1.3 billion	\$1.3 billion	\$100 million (school construction)	\$0
Career & Technical Education (Perkins Act)	\$1.2 billion	\$1.2 billion	-----	\$0
English Language Acquisition Grants	\$730 million	\$730 million	-----	\$0

¹ Funding provided by the *American Recovery & Reinvestment Act* (ARRA) is being awarded during Fiscal Years 2009 and 2010. Please refer to specific program guidance from the U.S. Department of Education to determine when ARRA funding for certain programs must be obligated for use. Additional ARRA information is available at www.nsba.org/economicstimulus.

² The Administration's FY2010 budget request to Congress includes proposals to redirect \$1.5 billion of Title I funding to Title I School Improvement Grants and new programs including Early Childhood Grants (\$500 million), a High School Graduation Initiative (\$50 million), an Early Learning Challenge Fund (\$300 million), and Teacher Incentive Fund (\$420 million).

³ The FY 2010 budget request for Safe & Drug-Free Schools and Communities proposes to alter the program by eliminating funding for state formula grants (\$294.8 million), while increasing national programs funding. Under this proposal, grants would be available solely through a federal discretionary grant program.