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March 26, 2009

Secretary Arne Duncan
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-3100

Dear Secretary Duncan:

On February 24, 2009 I wrote you to ask that the Department of Education issue guidance to states and school districts about how education funding under the American Recovery and Reinvestment Act (*ARRA*) can and should be used. While I appreciate the initial guidance the Department dispersed earlier this month, I believe future directives should emphasize how local education agencies (LEAs) can use categorical funds in a flexible manner to prevent layoffs.

As you know, the State Fiscal Stabilization Fund (SFSF) created in the *ARRA* helps stave off cuts in state education funding. However, many local LEAs face budget cuts at the local level and fear they will be forced to hand out pink slips while, at the same time, expanding and creating new programs and positions with the categorical funds, such as Title I and *IDEA*, they are set to receive.

Provisions of the *ARRA* and long-existing laws such as the *Elementary and Secondary Education Act* (*ESEA*) and *IDEA* create room for flexibility with restricted funds. The Department of Education would be well-served to be unambiguous and pointed in relaying this information to states and school districts.

Of note, based on the dialogue and concerns I have heard in my district, the Department should make clear and address the following ways *ARRA* education money can be used:

1) Under the *ARRA*, after states make their K-12 and higher education budgets whole, the remaining 81.8% of SFSF money that *must* be used for education, is sent directly to LEAs by Title I formula to be used for anything under the Elementary and Secondary Education Act (*ESEA*), *IDEA*, or the *Carl D. Perkins Career and Technical Education Act of 2006*

2) As the SFSF has no supplement not supplant (SNS) requirement, LEAs can use this money to pay for teacher salaries previously paid for with state or local funds.

3) Section 613(a)(2)(C) of the *IDEA* authorizes that in any fiscal year that an LEA's *IDEA* allocation exceeds the amount the LEA received in the previous year the LEA may reduce the level of state and local expenditures by up to 50% of the amount of the increase, as long as the LEA uses those freed-up local funds for activities supported under the *ESEA - including paying for general education teacher salaries*

4) Title VIII of *ESEA*, or "Impact Aid" allows LEAs to be compensated for "substantial and continuing financial burden," and would enable SFSF funds funneled to LEAs after the state makes its education budget whole to be used toward paying teacher salaries.

5) Page 39 of the Department's Non-regulatory Guide on Title I Fiscal Issues explains that Title I, Part A funds may be used to pay for costs that were previously paid for with state of local funds if, an "LEA can demonstrate that it would not have provided the services in question with non-Federal funds had the Federal Title I funds not been available.

Superintendents, chairs of boards of education, and parents throughout Connecticut's Fifth District are extremely grateful for the funding they will be receiving under the *ARRA* and are all-too-well aware of the dire state their budgets would be in without this funding. At the signing of the *ARRA* on February 17, 2009, President Obama stated that the new law would provide "aid to states and school districts to stop teachers from being laid off and education programs from being cut," and the Department has the voice to explain to states, towns, and LEAs how to do exactly that.

Thank you in advance for your assistance in this important effort.

Sincerely,

Christopher S. Murphy
Member of Congress