

High Level Summary of Education Components in the HEALS Act

Senate Republicans unveiled a new COVID-19 pandemic response plan with a total funding level of approximately \$1 trillion. It addresses public education in a variety of ways. The proposed legislation includes \$105 billion for education including approximately \$70 billion for K-12 education. However, two-thirds of the funding is only available to districts with approved re-opening plans that must be submitted to and approved by the Governor. Republican leaders are referring to the comprehensive legislative section focused on appropriations as the HEALS Act (Health, Economic Assistance, Liability Protection, and Schools).

The legislation in its current form has significant opposition but it will be used as a starting point for negotiations with the Democrats. It is expected it will change significantly as it moves through the legislative process. However, we wanted to highlight the proposal's major education components and their potential impact on local school districts. There are multiple major troublesome issues with the legislation including inadequate funding levels, no dedicated funds for the homework gap, shifts toward moving funds to private education, and requirements around school building reopening restricting many of the funds. The summary of the major legislative sections impacting public schools follows:

Education Stabilization Fund

The total legislative package contains \$105 billion for education (K-12 and higher education combined) overall. The funds are available through September 30, 2021 and allocated as follows:

- **\$1 billion for outlying areas and the Bureau of Indian Education (BIE)** (split evenly between the two)
- **\$2 billion for governors** for distribution for education purposes. The funds will be distributed with 60% going by population age 5-24 and 40% based on the Title I eligible population. Allowable uses in the proposal are similar to the ones contained in the CARES Act. The funds must be spent within 6 months and may be used to provide emergency support through grants to local education agencies (LEAs) that the state deems to have been most significantly impacted by coronavirus. Further, funds may be used to provide emergency support to institutions of higher education.
- **\$69.6 billion for K12** is allocated based on the proportion of the state's Title I funding, with 90% sub-allocated to LEAs by Title I proportion, one-third must be passed to LEAs "not less than" 15 days after the Secretary provides the funds to the state education agency (SEA), two-thirds are awarded only after the LEA submits a school reopening plan to the governor who then must approve the plan. LEA plans that provide "in-person instruction for at least 50 percent of its students where the students physically attend school no less than 50 percent of each school-week, as it was defined by the local educational agency prior to the coronavirus emergency, shall have its plan automatically approved." An LEA that provides in-person instruction to at least some students where the students physically attend school in-person, but does not satisfy the 50/50 requirements, shall have its allocation reduced on a pro rata basis as determined by the Governor."

If there is no in person schooling the district will not receive a share of the two-thirds set aside. Allowable uses for the funding are much narrower than the CARES Act. Set asides for low income students at private schools are better spelled out in this proposal, which appears to repudiate Secretary DeVos's interpretation of the CARES Act's equitable services provision, but it does not include language reversing the Department interpretation and final interim rule of that legislation implementation.

- **\$29.1 billion for higher education** with 85% allocated by the Secretary to institutions of higher education (IHEs) by apportioning it by 90% to Pell eligible FTEs and 10% non-Pell FTEs; 10% allocated by the Secretary to IHEs for "additional awards"; and 5% by the Secretary to IHEs with the greatest unmet needs. Allowable uses include defraying pandemic expenses and financial aid for students.
- **Maintenance of Effort.** Requires states to maintain their funding for education at least at the same proportional levels as in 2019 as a condition for receiving Education Stabilization Fund grants.
- **NAEP Funds and Administration Funds** The bill separately provides IES for \$65,000,000 for National Assessment of Educational Progress (NAEP) administration and \$8 million to USED for administration.

Private Education Provisions

The HEALS Act includes provisions for the school choice program that U.S. Secretary of Education Betsy DeVos has proposed for Education Freedom Scholarships. These provisions to redirect federal funding from public schools to private schools would authorize a one-time, emergency appropriation for scholarship-granting organizations in each state. Such organizations would provide families with "direct educational assistance, including private school tuition and home schooling expenses." While the bill authorizes the creation of these scholarships, it does not fund them.

NSBA strongly opposes this proposed diversion of federal funds to private schools and is urging Congress and the Administration to not use COVID-19 recovery efforts to a political agenda to advance school choice and privatization. As stated in previous advocacy and policy positions, NSBA opposes vouchers, tuition tax credits, and similar programs, and charter schools not subject to oversight of the local school boards, that would effectively create a separate unaccountable system of publicly funded education which would divert public funding to private schools, private home schools, including virtual schools, regardless of whether they are owned or operated by individuals, religious institutions, not for profit entities, or corporations. In addition, NSBA opposes the proposal for Education Freedom Scholarships because it would divert public funds outside of locally elected, locally accountable, representative oversight; and, it could effectuate re-segregation of schools.

Homework Gap

The legislation does not address the homework gap leaving this critical issue students across the nation are facing unresolved in this current proposal. Addressing the digital divide in education is an allowable use under the funds but this will create a competitive environment with many other important programs and will not adequately resolve the issue.

Liability

The legislation includes schools in its liability coverage. State tort liability laws are essentially eliminated under the legislation for issues arising from COVID-19 and replaced with a federal cause of action in which the plaintiff must prove their case through a clear and convincing evidence standard which is a higher standard than the normal one. Plaintiffs will need to prove that the defendant was not making reasonable efforts to comply with applicable government standards and /or guidance and was engaged in gross negligence or willful misconduct.

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