LEGISLATION
LETTERS
May 10, 2021

The Honorable Miguel Cardona  
U.S. Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20024

Dear Secretary Cardona:

The Education Department’s April guidance on State Maintenance of Effort Requirements and Waiver Requests for ESSER and GEER programs properly bases compliance reviews and waiver considerations on the “impact on students.” The Council of the Great City Schools, the nation’s coalition of large urban public-school systems, is in complete agreement and support of the Department’s statement in the guidance that the purpose of these pandemic recovery funds is to “expand resources for K-12 and postsecondary schools and students, not to replace existing State commitments.” However, some of the details in the guidance on how States could demonstrate compliance with the maintenance of effort provisions of CARES, CRRSA, and ARP acts, raise serious concerns that we wanted to call to your attention.

Our primary issue is that the guidance appears to allow States to exclude numerous K-12 state funding sources from maintenance of effort determinations and possibly permits only a limited subset of “primary funding mechanisms through which the State provides support of elementary and secondary education” to be counted as part of the MOE determinations. Of further concern, the guidance provides that “the State may choose to establish its level of support – Solely on the basis of the amount of funds provided through its primary state funding formula(e).” (Q&A #2 of the guidance)

In short, the guidance seems to allow States to exclude many essential K-12 funding sources that typically supplement their primary funding mechanisms or funding formula(e). While the guidance provides for State to consider funding mechanisms and formula(e) in their plural form, the guidance clearly does not require the full range of State K-12 funding to be included in the maintenance of effort compliance determinations. And while the State may choose to consider certain K-12 funding mechanisms or formula(e), the guidance allows a State to not choose “categorical or other support that is not provided through the primary funding formula(e).” (Q&A #2)

As the Council reads this guidance, the States appear to be given wide discretion over which State K-12 funding streams will be included in the maintenance of effort calculations, and which State K-12 funding streams will be excluded. The list of potential State K-12 funding mechanisms that could be excluded is sizeable and most concerning. Categorical and other forms of State funding for elementary and secondary education that could be omitted include State compensatory education funding, bilingual or ELL funding, special education aid, funding for specialized personnel (counselors, nurses, etc.), career and technical education funding, instructional materials and technology funding, school transportation funding, school security, food services funding, extended school day funding, school pension funding,
and more. If these common sources of elementary and secondary education funding were reduced or eliminated, a State would not be maintaining its K-12 fiscal effort as required by statute.

Finally, the Council notes that State maintenance of effort provisions in the three pandemic recovery laws do not limit compliance to only some selected subsets of State funding for elementary and secondary education. The Council requests that the Education Department review its April maintenance of effort guidance and its consideration of what State funding mechanisms are subject to exclusions in compliance determinations.

We appreciate your ongoing attention to this critical issue in your implementation of the recovery legislation. Thank you.

Sincerely,

Michael Casserly
Council of the Great City Schools
May 12, 2021

The Honorable Charles Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Nancy Pelosi  
Speaker  
United States House of Representatives  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

The Honorable Kevin McCarthy  
Minority Leader  
United States House of Representatives  
Washington, DC 20510

Dear Leader Schumer, Speaker Pelosi, Leader McConnell, and Leader McCarthy:

The American Rescue Plan (ARP) provides an extraordinary commitment to K-12 schools throughout the country. The support comes at a crucial time for schools as they face a gauntlet of daunting challenges: reopening schools safely and keeping them open, implementing robust academic recovery interventions, and addressing an avalanche of student mental health needs. Although ARP positions K-12 schools to confront these challenges head on and lays the foundation for recovery, longstanding public school infrastructure deficiencies and disparities remain a barrier for school districts. As Congress debates infrastructure proposals, the undersigned organizations strongly urge the inclusion of at least $100 billion in direct grants and $30 billion in bonds for K-12 public school facilities, which is consistent with the Reopen and Rebuild America's Schools Act, passed by the U.S. House of Representatives in July 2020.

To unleash ARP’s immense potential and enable optimal student learning, Congress must address an issue that preceded the pandemic: outdated and crumbling K-12 facilities due to decades of underinvestment. According to the 2016 State of Our Schools Report, state and local governments underfund K-12 facilities by $46 billion annually. Even if school districts were able to use 15 percent of ARP funding to meet CDC mitigation guidelines and reduce some of their deferred maintenance, school buildings would still be in need of major repairs and upgrades. A recent GAO study found that in about one quarter of all school districts, at least half of their schools needed upgrades or replacements to major building systems, such as heating ventilation, and air conditioning (HVAC) systems, plumbing, wiring, or windows. Further, the study found 41 percent of districts need to update or replace HVAC systems in at least half of their schools. A leaking roof or HVAC system can cause water damage, exposing students and staff to mold or asbestos. Strong federal funding is needed to address these health risks, as well as other hazards such as airborne polychlorinated biphenyls (PCBs) and lead in drinking water.

This longstanding neglect of school facilities is not equally shared. Low-income school districts and those districts with particularly aging facilities lack a robust local tax base that can be leveraged to upgrade building systems. The result is millions of students attending school in buildings that need major repairs and upgrades, creating unsafe conditions that depress student and educator performance. Providing robust federal investments in school infrastructure would shorten maintenance backlogs, help these districts upgrade and modernize their school buildings, and be a critical commitment to equity.
Investments in school infrastructure should be viewed as complementary to ARP funding and core to the recovery work already underway in schools. While ARP funds are being deployed to implement layered COVID-19 prevention strategies to support safe school reopenings, to boost academic recovery efforts, and to address student mental health challenges, these are only pieces of a larger student support puzzle. To fully maximize ARP, students also need safe and healthy learning environments. By supporting the funding levels for K-12 infrastructure included in the Reopen and Rebuild America’s Schools Act, Congress can help bring America’s school buildings into the 21st century and provide students the greatest opportunity to recover from this tumultuous period. We look forward to working with you on this matter of critical importance for K-12 schools, which provide educational opportunities for millions of students and serve an integral role in the civic life of communities across the country.

Sincerely,

AASA, The School Superintendents Association
American Federation of School Administrators
American Federation of Teachers
American School Counselor Association
Association of Educational Service Agencies
Association of School Business Officials International
Council of Administrators of Special Education
Council of Chief State School Officers
Council of the Great City Schools
National Association of Elementary School Principals
National Association of School Psychologists
National Association of Secondary School Principals
National Association of State Boards of Education
National Association of State Directors of Special Education
National Education Association
National PTA
National School Boards Association
April 26, 2021

Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-6450

The Council of the Great City Schools, the coalition of the nation’s largest central city school districts, submits the following comments on the Education Department’s April 12, 2021 Emergency Assistance for Non-Public Schools (EANS) Invitation to Comment.

The American Rescue Plan Act of 2021 (ARP) provides an extremely large amount of federal money ($2.75 billion) for services or assistance to non-public schools to address the emergency pandemic-related needs of their students and staff. The Act specifies that eligibility for services or assistance is provided solely to “non-public schools that enroll a significant percentage of low-income students and are most impacted by the qualifying emergency”.

The Council notes that EANS services and assistance in non-public schools must follow not only the ARP statute but also the constitutional child benefit principle of assisting students through federal education programs but not benefitting the sectarian institution. Hence, the provision prohibiting direct cash reimbursement to the institution was included in the ARP Act, and should be followed under the CRRSA EANS program as well.

The EANS provisions (sec. 2002) of the ARP Act establish a two-pronged eligibility requirement for assistance – both a significant percentage of low-income students and being most impacted by the qualifying emergency. The Council recommends underscoring the two-pronged criteria in the Department’s guidance and relying on already established criteria for schools in other federal elementary and secondary school programs in defining the “significant percentage of low-income students”, then looking to the federal Center for Disease Control and Prevention (CDC) for assistance in identifying criteria to further determine those “most impacted” by the pandemic.

Significant Percentage of Low-Income Students

While there are several poverty indices used by the federal government, the most recognized school-based measure of poverty is free and reduced priced lunch eligibility. The 185 percent of poverty maximum for free and reduced priced lunch eligibility is a generally accepted poverty level that the Council recommends for EANS and already is used for distribution of EANS funds among the States. Additionally, non-public school students that can be directly certified as meeting family income eligibility for Medicaid, TANF, or SNAP should also count as low-income on a non-duplicative basis. Such actual family income data, rather than equated or extrapolated data, should be used for the distribution of EANS assistance by the States. Status-based eligibility such as for homeless or foster care students, however, could be considered as well.
Recent reports indicate that approximately half of the nation’s public school students qualify under free and reduced-priced lunch criteria. The Council contends that “a significant percentage of low-income students”, therefore, should be above this national average percentage and similarly above the median. One common poverty percentage benchmark for schools used in the ESEA Title I program for disadvantaged students is the “75 percent poverty rate” that triggers mandatory school-level Title I funding by the applicable school district. In the alternative, the U.S. Department of Agriculture could provide a free and reduced priced lunch poverty percentage equivalent to the top quartile of the nation’s public schools that could be used as the threshold for EANS under the ARP. Moreover, a private school qualifying for 100% free meals under the Community Eligibility Provision (CEP) should also be deemed as having a significant percentage of low-income students.

Most Impacted by the Qualifying Emergency
Determining which schools are “most impacted” by the COVID-19 emergency is a difficult factor to quantify. Low-income families are disproportionately impacted by the pandemic in multiple ways. That impact is already taken into account at least in part with the low-income prong of the EANS criteria. And other demographic segments of the population, such as minority groups, similarly are disproportionately impacted by the pandemic. Certain communities or locales as well as specific zip codes are more impacted than others. The Council, therefore, recommends that the Education Department consult with the CDC to best determine the impact criteria for use in this second prong of the EANS eligibility test.

In any case, a qualifying non-public school must document and demonstrate to the State that it meets both the significant percent of poverty criteria as well as the most impacted criteria to be eligible for EANS services or assistance from the state or through a third-party contractor engaged by the state. States, however, should be expressly prohibited by the Department from weighting the “most impacted” criteria more heavily than the “poverty percentage” criteria. Since poverty itself is a major pandemic-related impact factor, a higher weighting of the “most impacted” criteria would exaggerate or overstate the EANS “impact” metric. Additionally, states should be prohibited from skewing the distribution of EANS assistance by adding other factors or criteria beyond poverty and COVID impact.

Finally, any funds that are not obligated under the EANS program within six months or otherwise are not able to be used by private schools should be reallocated to ESSER for distribution under section 2001(c) and (d) of the ARP.

Please contact me with any questions on these EANS comments.

Sincerely,

Jeff Simering
Director of Legislative Services
May 24, 2021

Comments on American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund

Docket ID ED—2021—OESE—0061

RIN 1810--AB64

U.S. Department of Education
400 Maryland Avenue, SW
Washington D.C. 20202

President Biden’s American Rescue Plan (ARP) provides the nation’s Great City Schools, students, and staff with the realistic opportunity and the resources to recover academically and operationally from the pandemic in ways that would not have otherwise been possible without its enactment. Our central cities have been the epicenter of viral transmissions in most states, and the challenges it has presented our urban public-school systems are profound. With the historic investment from the American Rescue Plan, the Great City Schools can implement a range of mitigation activities to safely support the recovery from a year of interrupted and unfinished learning and its attendant effects. The Council offers its comments and recommendations on the Education Department’s April 22, 2021 Interim Final Regulations for the Elementary and Secondary Schools Emergency Relief Fund (ESSER) of the American Rescue Plan based on the collective experience of the nation’s Great City Schools during the emergency, but with a sense of real gratitude for the resources that are coming our way.

The Council gratefully acknowledges that without President Biden’s insistence on a robust K-12 education component to the American Rescue Plan that the nation’s elementary and secondary schools would be without some $130 billion in federal assistance for jump-starting teaching and learning in the current school year, over the summer months, and in the upcoming school year and beyond. Now, the Council is actively engaged in the implementation of the Elementary and Secondary School Emergency Relief Fund (ESSER) program.

Prior to the development of the Department’s ESSER Interim Final Requirements, the Great City Schools undertook a collective effort to consider the range of academic, support, staff, facility, and community needs common across our urban settings and provide a framework for deploying the newly appropriated resources to systematically prioritize and address the varying needs of each school district. Input from the broad range of community stakeholders is a critical element in assessing those needs, as school officials weigh requests for funding from within the school system and from outside interests. These resource allocation decisions will reinforce the core student-centric mission of our urban school systems.

The nation’s Great City Schools were among the first to reach out to their communities during the height of the pandemic to seek input and gauge family opinions and preferences for instructional options. Yet, inconsistent and ever-changing guidance and directives from federal and state officials often frustrated our communities and complicated our ability to provide instructional and support services since March 2020. The principal challenge facing large urban school districts, however, was not our ability to develop plans as federal and state policy shifted and evolved. The greater challenge was our institutional capacity to deliver the range and intensity of new services necessary to accelerate learning and support for students, staff, and families in recovering from the lengthy disruptions to schooling and everyday economic and social activities.
The Council supports the Education Department’s decision to issue Interim Final Requirements due to the emergency nature of these recovery funds. It is understood that the Department’s interim requirements set the foundational conditions for implementing ESSER activities, and that public comments will be factored into any final requirements.

Yet, given the critical need for ESSER funds to address pandemic-related program interventions, safety upgrades, and other improvements, the added federal requirements and timelines in the April 22nd interim requirements have necessitated revisions in operational plans that were already under development at the state and local level for the month and a half following the March 11th enactment of the ARP. Urban school districts have been developing implementation plans based on the parameters of the ARP Act even before its final passage in early March due to the critical need for recovery funds in the current school year and with the impending start of critical summer instructional sessions.

The Council, therefore, restates our traditional concern when the Education Department adds its own requirements through regulations or guidance that exceed the provisions of the authorizing legislation. The Interim Final Requirements establish an extensive state and local public input process for the ESSER III plan, in addition to the specific public input process for the safe return and continuity of services plan enumerated in the statute. Fortunately, large urban school districts have maintained ongoing public engagement efforts throughout the pandemic period, enabling adjustments and accommodations for the Department’s requirements of more specific local consultation efforts.

On the other hand, the Department’s review and revision requirements for each school district’s “safe return and continuity plan” every six months over the 41-month period of ESSER III are unnecessary, excessive, and costly. These procedural, outreach, and documentation requirements must be repeated five times over three fiscal years under the Department’s Interim Final Requirements – once in FY 2021, two times in FY 2022, and another two times in FY2023. School districts are entirely capable of developing a safe return and continuity plan with appropriately planned contingencies and alternatives that operationally negate the need for a six-month formal review, public input, and revision processes containing in the April 22nd interim requirements. Moreover, based on the Department’s cost analysis, the estimated overall $198 million cost of the Interim Final Requirements could be reduced by half (a $102 million reduction) merely by repealing the Department’s six-month review and revision requirements for the safe return and continuity plan – requirements which are not contained in the statute.

In fact, the Department misinterprets the “safe return and continuity of services” provision of the ARP [section 2001(i)]. The provision was crafted to avoid imposing significant burdens on school districts by allowing compliance with its requirements based on prior school district activities that would obviate the need for any new district-level return plan. The Department’s five-step return plan development, review, and revision requirements are inconsistent with the statute in addition to imposing unnecessary costs. Further, the Council notes that the Department’s cost analysis for the local ESSER plan development process in the Interim Final Requirements appears understated. Developing ESSER plans for the expenditure of this unprecedented amount of emergency federal aid is not a cursory process of merely filing a set of forms and signing assurances. The Department’s estimate of 40 staff hours to “develop the ESSER plan and make it publicly available” (excluding the consideration of stakeholder and public input requirements) is equivalent to one staff person devoting one week to developing the school district’s ESSER plan and grant application, and it does not adequately reflect the wide-ranging planning process underway in large urban districts.

The Council’s primary recommendation is to reduce the Department’s projected costs for the Interim Final Requirements by half by eliminating the repetitive review and revision of the safe return and continuity plans every six months -- a responsible and cost-effective regulatory action.
The Council is concerned with the costs of these proposed interim requirements. The Council does not think it is justifiable to spend millions of dollars on Department-established administrative requirements when the need for funding of actual services and school-level improvements is at an historic level. School districts should be allowed to focus on the critical tasks of delivering services, upgrading facilities, updating safety protocols, managing project activities, and evaluating outcomes rather than implementing the multiple and at times duplicative requirements in the Interim Final Requirements.

Great City Schools Recommendations for ESSER Interim Final Regulations

**Primary Recommendation:**
Reduce the Department’s projected costs of ESSER plans by half by eliminating the repetitive review and revision of the safe return and continuity plan every six months -- a responsible and cost-effective regulatory action.

**Recommendation:** In ESSER Interim Final Requirement 3, strike requirements 3(b) and (c) and redesignate 3(d) as 3(b).

**Recommendations to Streamline and Simplify Interim Final Requirements:**

1. In ESSER Interim Final Requirement 1(a), strike everything beginning with “stakeholders” and insert “parents of elementary and secondary school students and other stakeholders; and”.

2. In ESSER Interim Final Requirement 1(b), strike “; and” and insert a period.

3. In ESSER Interim Final Requirement 2(b)(i), strike the hyphen and everything that follows, and insert “with parents of elementary and secondary school students and other stakeholders; and”.

Please let me know if there are questions about the Council comments and recommendations.

Sincerely,

Jeff Simering  
Director of Legislation  
Council of the Great City Schools
FCC EMERGENCY CONNECTIVITY FUND
Summary of FCC Public Notice on Emergency Connectivity E-Rate Fund in ARPA

Congress established a $7 billion Emergency Connectivity Fund as part of the 2021 American Rescue Plan Act (ARPA). Congress directed the Federal Communications Commission (FCC) to promulgate rules (no later than 60 days after enactment) providing for the distribution of funding from the Emergency Connectivity Fund to eligible schools and libraries for the purchase of eligible equipment and advanced telecommunications and information services for use by students, school staff, and library patrons at locations other than a school or library during this emergency period.

For the purposes of the Emergency Connectivity Fund, the COVID-19 emergency period is defined as beginning on January 27, 2020, and ending on the June 30 that first occurs after the date that is one year after the Secretary of Health and Human Services determines that a public health emergency no longer exists. The American Rescue Plan directs the FCC to reimburse 100% of “reasonable” costs associated with the purchase of eligible equipment and/or advanced telecommunications and information services. ARPA also directs USAC, the administrator of the Commission’s Universal Service support programs including the E-Rate program, to administer the Emergency Connectivity Fund.

The FCC Public Notice seeks comment and input in the following areas:

**Program Administration and Oversight.**
- What rules should Commission adopt to most efficiently and effectively distribute funding, mindful of the Commission’s obligation to protect against waste, fraud, and abuse in seeking to meet the connectivity needs of our nation’s students, school staff, and library patrons?
- What are the ways to ensure that the Commission and USAC efficiently and effectively oversee and administer the Emergency Connectivity Fund?
- What is the best way to measure the Commission’s and USAC’s performance in efficiently and effectively administering this Fund?
- Should the Commission adopt specific broadband adoption goals for students, school staff, and library patrons? If so, what should those goals be?
- Should the Commission adopt specific goals for ensuring students, school staff, and library patrons have end user devices for connecting to the internet? If so, what should those goals be?
- What data is available that could help establish a baseline against which the Commission can measure the impact of the Emergency Connectivity Fund?
- Do schools and libraries conduct assessments of their students’, school staffs’, and library patrons’ need for eligible equipment and services? If so, how have those assessments informed schools’ and libraries’ purchasing decisions during the pandemic?
- What information should the Commission direct USAC to collect to enable the Commission to evaluate progress towards meeting its goals?
- Should the Commission adopt specific performance goals and measures with respect to the administration of the Fund as it has done for the E-Rate program? If so, what should those performance goals be?

**Eligible Schools and Libraries.**
- Can schools, libraries, and consortia of schools and libraries eligible for support under the E-Rate program be eligible to receive funding from the Emergency Connectivity Fund?
- Are there other entities, not already eligible under the E-Rate program, that the Commission should make eligible for support through the Emergency Connectivity Fund?
Eligible Equipment and Services.

- Should the Commission provide funding only for equipment and services that are needed to provide the connectivity required to enable and support remote learning for students, school staff, and library patrons?

- What are the specific equipment and services necessary to support and facilitate the connectivity required for remote learning during the defined emergency period? Is more specificity needed than ARPA’s definition of eligible equipment as (1) Wi-Fi hotspots, (2) modems, (3) routers, (4) devices that combine a modem and router, and (5) connected devices (defined in ARPA as laptop computers, tablet computers, or similar end-user devices that are capable of connecting to advanced telecommunications and information services)?
  - Should the FCC clarify that modems include wireless modems, such as air cards?
  - Should the FCC provide any further guidance regarding what sorts of connected devices are eligible for reimbursement through the Emergency Connectivity Fund?
  - Should desktop computers be eligible for funding as “similar end-user devices” that are capable of connecting to “advanced telecommunications and information services”?

- Should the Commission propose that a connected device supported through the Emergency Connectivity Fund be able to support video conferencing platforms and other software necessary to ensure full participation in remote learning activities? This would exclude mobile phones (i.e., smartphones) as eligible connected devices because such devices do not sufficiently allow students, school staff, and library patrons to meaningfully participate in remote learning activities.

- Should the Commission impose minimum system requirements for connected devices supported by the Emergency Connectivity Fund and, if so, what those system requirements should be.

- Should the Commission require that connected devices be Wi-Fi enabled and have video and camera functions to enable remote learning?

- Are there rules that the Commission should adopt to ensure that “connected devices” eligible for support from the Emergency Connectivity Fund are accessible to and usable by people with different types of disabilities, including people who are deaf or hard of hearing; blind or with low vision; deaf and blind; and those with physical disabilities?

- What other issues should the Commission consider when adopting requirements for connected devices to ensure that all students, school staff, and library patrons will be able to fully engage in remote learning?

- Should the Commission limit services to those that can be supported by and delivered with eligible equipment as defined in the American Rescue Plan (i.e., Wi-Fi hotspots, modems, routers, devices that combine a modem and router, and connected devices)? This would result in excluding dark fiber and the construction of new networks, including the construction of self-provisioned networks.

- Should the Commission interpret “advanced telecommunications and information services” to include the equipment necessary to deliver these services to connected devices as eligible?
  - Should installation costs, taxes, and fees be included as an allowable cost?

- Should the Commission impose minimum service standards and data thresholds with respect to those services in order to consider them to be eligible advanced telecommunications and information services? If so, what should they be? In that regard, we seek comment on what standards are needed to enable and facilitate robust remote learning.

- Given that many schools and libraries have already purchased advanced telecommunications and information services to meet the needs of their students, school staff, and library patrons,
should the Commission impose minimum service standards on a going-forward basis only, if at all?

**Eligible Uses.**

- Should the Commission require that equipment and services purchased with funding from the Emergency Connectivity Fund be primarily for educational purposes?
- If the Commission adopts this approach, what guidance should the Commission provide schools and libraries about how eligible equipment and services can be used?
- What safeguards should the Commission impose to ensure that schools and libraries are reimbursed only for the purchase of equipment and services used primarily for educational purposes?
- Should, for example, schools and libraries be required to restrict access to eligible equipment and services to those students, school staff, and patrons with appropriate credentials?
- Would such an approach allow support for bulk programs that serve a large number of students and their families?

**Reasonable Support Amount.**

- Should the Commission reimburse for purchases of eligible equipment and services made by eligible schools and libraries since January 27, 2020?
- Do commenters interpret the American Rescue Plan as requiring the Commission to do so, subject to the Commission’s authority to determine reasonable costs for eligible equipment and services? If the Commission has the authority to set a different date, what date should it choose and why?
- We recognize that many schools and libraries have already entered into contracts to purchase eligible equipment and services to meet the remote learning needs of their students, school staff, and patrons. We therefore propose to allow eligible schools and libraries to seek reimbursement for the cost of eligible equipment and services purchased without having conducted a Commission-mandated competitive bidding process for purposes of the Emergency Connectivity Fund.
- We propose that the Commission require schools and libraries seeking funding from the Emergency Connectivity Fund to certify that they have complied with all applicable state, Tribal, or local procurement requirements with respect to the contracts they used to purchase eligible equipment and services. Can the Commission reasonably assume that schools and libraries that complied with applicable state, local and Tribal procurement requirements purchased eligible equipment and services at reasonable prices?
- Should the Commission adopt a streamlined competitive bidding process to be used by eligible schools and libraries that have not yet purchased or entered into contracts to purchase eligible equipment and/or services?
- Should the Commission reduce to 14 days the time that an applicant must wait to enter into a contract with a service provider after posting a request for bids? Are there other ways the Commission could streamline the competitive bidding process? For example, should the Commission adopt the modified competitive bidding rules adopted in the 2017 Hurricanes Order?
- Are there other exemptions the Commission should consider for the competitive bidding requirements? For example, are there state master contracts that schools and libraries should be allowed to use for purchases that are reimbursed through the Emergency Connectivity Fund without having to conduct a competitive bidding process? We seek comment on these issues and request examples of such contracts be provided.
• Should the Commission establish a range of costs that are reasonable for each category of equipment and service eligible for funding through the Emergency Connectivity Fund (i.e., Wi-Fi hotspots; modems; routers; devices that combine a modem and router; connected devices; and advanced telecommunications and information services)?

• How should the Commission determine the reasonableness of the costs associated with each category of eligible equipment and service?

• Should the Commission rely on costs for eligible equipment and services identified in response to this Public Notice, the Remote Learning Public Notice, or used in the Emergency Broadband Benefit Program and/or the existing E-Rate program to determine what is reasonable?

Application Process.

• We propose that the Commission direct USAC to open a 30-day Emergency Connectivity Fund filing window to allow eligible schools and libraries to apply for funding for eligible equipment and services purchases made or to be made between January 27, 2020 and June 30, 2021, which is the period between the start of the COVID-19 emergency period and the end of E-Rate funding year 2021.

• Is 30 days an appropriate filing window length?

• Although we expect demand will be high for the first funding window, if demand does not exceed available funds for the first application period, we also propose that the Commission direct USAC to open a filing window for the Emergency Connectivity Fund in the second quarter of every year (i.e., between April and June) for each of the following funding years, until the funds are exhausted or the emergency period ends, whichever is earlier.

• Should we require applicants to conduct an assessment of their need for eligible equipment and services and to align the funding requests that they file during the second and subsequent filing windows with their needs assessments? Should future filing windows be limited to prospective funding requests? We also seek comment on whether more than one filing window(s) a year should be open during the emergency period.

Prioritization of Funding.

• We propose that the Commission adopt rules applying the discount methodology used in the existing E-Rate program to prioritize funding requests, in the event that demand exceeds available funding.

Reimbursement Process.

• We also seek comment on the reimbursement process and on how the Commission can structure the process to provide funds to schools and libraries as quickly as possible to assist with the challenges presented by the pandemic. We seek to reduce the burdens on applicants during this challenging time, while also ensuring that funds are used for eligible equipment and services and primarily for an educational purpose, and otherwise minimize the risk of waste, fraud, and abuse.

• We propose requiring applicants (rather than service providers) to submit invoices detailing the items purchased to receive reimbursement. We seek comment on this proposal.

• What documentation should be included with the reimbursement request?

• Is having schools and libraries submit invoices and documentation an effective safeguard against the misuse of funds given that reimbursement is for 100% of the costs?

• Or, in the alternative, could a streamlined invoicing form or other invoice mechanism simplify review and be an effective safeguard against waste, fraud, and abuse of the Emergency Connectivity Fund?
In order to ensure efficient administration of the Emergency Connectivity Fund and allow the Commission to de-obligate committed funds for use by other schools and libraries, we also propose establishing a short window for schools and libraries to file invoices and reimbursement requests. What would be the shortest possible invoice filing deadline period that would not impose undue burden on applicants?

**Treatment of Eligible Equipment during and after the COVID-19 Emergency Period.**
- Should, for example, schools and libraries be permitted to use eligible equipment for any purpose that the school or library considers appropriate after the emergency period? Or, should the use of eligible equipment after the emergency period continue to be restricted to primarily educational purposes as defined by the Commission?
- Similarly, should the Commission prohibit the sale, resale, or transfer of the purchased equipment for anything of value consistent with the current E-Rate program rules during and after the emergency period? Or, recognizing the relatively short lifespan of most computers and communications equipment, should schools and libraries have flexibility about how to dispose of equipment after the emergency period?
- Are there any other restrictions the Commission should impose on the use of eligible equipment both during and after the emergency period ends?

**The Children’s Internet Protection Act (CIPA).**
- Should CIPA requirements extend to all school or library devices supported by funding through the Emergency Connectivity Fund that are used off-campus and outside the traditional E-Rate-supported networks?
- Should the Commission modify any of the existing CIPA-related rules or procedures to cover this situation? For example, should a CIPA certification be included on the application for funding, rather than on a separate form?
- Should a CIPA certification made in the traditional E-Rate program suffice for compliance to receive support from the Emergency Connectivity Fund?

**Other Federal and State Funding for Remote Learning.**
- We further propose that schools and libraries must certify that they have not received and will not seek funding for the funded equipment and/or services from other federal or targeted state programs when seeking funding or reimbursement through the Emergency Connectivity Fund.
- We seek comment on this proposal and whether there should be additional safeguards to prevent duplicate funding for the same equipment and services across the federal universal service programs and other federal or targeted state funding programs, as well as avoiding reimbursement for items that were provided as a gift.

**Protections Against Waste, Fraud, and Abuse.**
- We propose that the Commission require Emergency Connectivity Fund participants to retain records related to their participation in the Fund sufficient to demonstrate their compliance with the rules adopted by the Commission for at least 10 years from the last date of service or delivery of equipment.
- We also propose that the Commission require participants to present that information upon request to the Commission and its delegates, including USAC, and to the staff of the Commission’s Office of Inspector General.
- We propose that Emergency Connectivity Fund participants be required to maintain an asset inventory of devices purchased with these funds and record at a minimum: (1) device type (i.e., laptop, tablet, mobile hotspot, modem gateway/router); (2) device make/model and equipment...
serial number; (3) the individual to whom the device was provided; and (4) the dates the device was provided to and returned by the individual.

- We propose requiring Emergency Connectivity Fund participants to maintain a record of the services purchased with these funds, recording at a minimum: (1) type of service provided (i.e., DSL, cable, fiber, fixed wireless, satellite, mobile wireless); (2) broadband plan details, including: upload and download speeds and the monthly data cap; and (3) the individual(s) to whom the service was provided.

- For fixed broadband service, we also propose to require applicants to maintain a record of the service address for the broadband service and the actual installation date of service.

- We seek comment on requiring service providers providing monthly services reimbursed through this Fund to report and validate usage of the supported services provided after adoption of new rules.
In the Matter of

Establishing Emergency Connectivity Fund To Close The Homework Gap

WC Docket No. 21-93

COMMENTS OF THE COUNCIL OF THE GREAT CITY SCHOOLS

The Council of the Great City Schools is pleased to submit comments in response to the Commission’s Public Notice released on March 16, 2021 (WC Docket No. 21-93; DA 21-317) regarding the Emergency Connectivity Fund For Educational Connections And Devices To Address The Homework Gap During The Pandemic. The Council requests a flexible and targeted implementation of the Emergency Connectivity Fund to support school district provision of off-campus and at-home internet service for high poverty students, and the group urges quick action by the Commission to assist school districts with their ongoing efforts.

Introduction

In major cities and throughout the United States, public schools have revamped operations and instructional systems to help meet the unexpected COVID-19 challenges the nation has struggled with for over a year. In the first chaotic days of the crisis and with no promise of aid, urban districts organized to provide meals to millions of students and families, set up drop-off points, arranged home deliveries, and distributed meals at homeless shelters and to students on the street. On the instructional side, schools similarly made a rapid transformation from school-based to home-based learning and the energy, dedication, and urgency that have gone into these efforts have been extraordinary.

Since COVID-19 began forcing changes to K-12 instruction across the country, the nation has become more aware of the institutional inequities that exist in our public school systems, especially in large urban districts with some of the highest concentrations of students of color, English learners, and high poverty. The 77 school district members in the Council (representing approximately 0.5 percent of the 14,000 school districts in the US) enroll some 8 million urban students, including approximately 28 percent of the nation’s Hispanic students, 29 percent of the nation’s African American students, and 25 percent of the nation’s children living in poverty.

In the recent American Jobs Plan infrastructure proposal, the Biden Administration underscored the challenges for students enrolled in Council districts, “In urban areas as well, there is a stark digital divide: a much higher percentage of White families use home broadband internet than Black or Latino families.
The last year made painfully clear the cost of these disparities, particularly for students who struggled to connect while learning remotely, compounding learning loss and social isolation for those students.”

Many of the nation’s urban schools are opening this month for the first time in over a year, and those that have been open for in-person learning are still educating only a fraction of their students on campus. The E-Rate has been an invaluable resource to connect classrooms, but the urban students we enroll have long lacked the at-home access that is now essential to participate in a remote learning environment, including Internet connections, devices, and computers. The Commission’s fast action to deliver Emergency Connectivity Funds to support remote learning during the COVID-19 pandemic will be a great relief to school districts, as our work to ensure that urban students have reliable Internet access is ongoing, costly, and, to date, mostly covered at local expense.

As we did in our comments on the Public Notice regarding Addressing the Homework Gap Through the E-Rate Program (WC Docket 21-31), we also urge the Commission to resume consideration of the necessary and permanent use of E-Rate support for off-campus connectivity, as it has in the past. The nation’s schools must not continue to struggle to support the remote access that has long been needed for homework and other educational activities and is now recognized as an essential part of daily instruction and blended learning for many students. A flexible approach to the Emergency Connectivity Fund will not only support districts for their connectivity efforts, but it will serve as a pilot program for innovative approaches that support students wherever they learn.

**Poverty-Focused Budget Funding Process**

The key concepts we want to emphasize in our comments are flexibility and speed, and that begins with the funding allocation process the Commission uses. The Emergency Connectivity Fund (ECF) has a different purpose and should not mirror the E-Rate program’s requirements, but there are existing structures and formats from the E-Rate that can be adapted to align with the goal of the ECF. For example, beginning in Funding Year 2016, the Commission began allowing applicants to receive direct reimbursement from USAC. This decision simplified the invoicing procedures and allowed the program to speed disbursements to schools and libraries, a lesson that the ECF should benefit from.

The most essential element of the E-Rate program that the Council feels should be applied to ECF is the applicant budget process that is used for Category Two (C2) funding. With some modifications to target ECF funding on high need, the C2 budget process can be a familiar mechanism that applicants will readily understand and USAC can administer quickly. When the budget concept was introduced in a Public Notice in 2014, the rationale given by the Commission was that it would provide applicants with flexibility and predictability. As the Notice said at the time, providing “applicants certainty about the amount of funding that would be available to them” should also be a central component of the ECF’s implementation. The budget approach is certainly more desirable than the often drawn-out reimbursement process of the E-Rate’s old Priority Two funding, when local administrators remained in limbo awaiting word on when and how much of their submitted funding requests would be supported, if at all.

The Council supports the C2 budget approach but would modify the E-Rate system to calculate ECF school district funding based entirely on students in poverty. The emergency nature of the pandemic, and in particular the remote connectivity needs, differs significantly than E-Rate’s C2 goal of supporting broadband deployment to all of America’s schools and classrooms. While the E-Rate program includes a
poverty factor to determine the exact discount level provided to applicants, every student in a school district is factored into that program’s C2 calculations through the per-pupil budget allocation. Studies consistently show that school-age children in lower-income households are especially likely to lack broadband access at home. So under the Emergency Connectivity Fund, we feel the per-pupil budget calculations should exclude non-poor students and focus funding on a more discrete universe: the children in poverty who have required remote learning assistance.

Since school districts will not be required to contribute a local share to qualify, an ECF matrix analogous to the discount matrix should also be used to provide an additional layer of priority for school districts in rural locations and those with the highest percentages of poverty. But the initial per pupil budget amount and calculation should be based on the number of students in poverty in the school district, as identified by FRPL in the National School Lunch Program or the approved poverty measure the applicant used in their recent E-Rate applications.

As an example, if the Commission allocates $250 per-pupil for the ECF budget, a school district with 5,000 students in poverty (out of a total student enrollment of 10,000) would multiply 5,000 x $250. The resulting $1.25 million would be multiplied by the corresponding percentage in the ECF matrix. If the percentages in the existing C2 discount matrix are used, the school district’s poverty percentage of 50% means that the $1.25 million would be multiplied by 80%, and the $1 million product of that calculation is the total ECF budget for that school district.

In this poverty-focused approach, another school district with 5,000 poor students but a total enrollment of only 6,500 would receive more funding than the above school district because the poverty percentage for the district was higher. So the calculation of 5,000 poor students x $250 would remain the same, but the resulting $1.25 million would instead be multiplied by 85%, or whatever higher percentage was included in the ECF matrix for applicants with higher concentrations of poverty. The ECF matrix could continue to differentiate between rural and urban applicants as the E-Rate discount matrix does, and we recommend that the Commission continue to treat districts at the highest levels of poverty equally, regardless of locale. If an existing discount matrix is used as a model, we would recommend the Category One matrix due to the 90% factor applied to school districts with the highest poverty percentages.

We are certain some commenters may support an ECF budget approach but balk at the poverty-focused per-pupil calculation the Council proposes. In anticipation of this resistance, we will note that on three separate occasions, Congress approved significant COVID-19 relief funding for school districts calculated entirely on disadvantaged students. The amount of Elementary and Secondary School Emergency Relief (ESSER) funds that States and school districts were allocated under the CARES Act, the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, and the American Rescue Plan (ARP) Act is based on the ESEA Title I funding formula. The Title I formula primarily uses a count of poor children, as well as neglected and delinquent, foster children, and students from families receiving TANF. Every child attending a school district is not included in the calculation of Title I funds, except when total enrollment is used as a denominator to calculate a districtwide percentage of poverty in order to further “weight” the initial count of disadvantaged students.

The poverty-focused approach from Title I will distribute almost $200 billion in total ESSER funding over the three COVID relief bills, and it was approved by a White House and Senate that was under Republican control in 2020 and under Democratic control in 2021. The Emergency Connectivity Fund that Congress approved will provide relief for the same emergency as ESSER, albeit with only $7 billion in financial
The E-Rate’s Category Two budget is a simple, familiar, and efficient approach to allocate ECF quickly, but the limited funding necessitates even greater targeting than the traditional E-Rate budget approach, or funding will be stretched very thinly.

**Eligible Items and Services**

The flexibility the budget system provides to school districts is also how the Council recommends the Commission approach eligible items and services for the ECF. The program goal is to support off-campus connectivity on an emergency basis going back to the start of the pandemic in 2020, and while the American Rescue Plan outlined some of the allowable services and devices that can achieve that, we do not feel the statutory list should be considered exhaustive. When the proposed source of funding was E-Rate, the record in response to the Public Notice on Addressing the Homework Gap Through the E-Rate Program made clear that a flexible and all-inclusive approach to eligible services is required to connect students during the pandemic. We expect the requests for flexibility to remain ubiquitous in this ECF proceeding, especially since the ECF is not Universal Service funding and the Commission need not be constrained by whether a waiver of E-Rate rules is required.

Of course, urban school districts have relied heavily on traditional connectivity methods like hotpots and wired internet during the pandemic. Council members have likely purchased over a million mobile wireless or mifi hotspots since 2020 began and continue to cover their monthly fees. Our members have also paid for the initial sign-up and recurring monthly costs for wired internet subscriptions for tens of thousands of students to connect at home. Even though most of these services are going to students from households eligible under the Emergency Broadband Benefit (EBB) program, urban school districts were effectively excluded from EBB support since we typically cover the full expense for our students and families, and do not pass along any of the subscription costs to them. For a variety of reasons, many of our families are unlikely to sign up for free or discounted EBB services on their own, and ECF funding is needed to ensure we are reimbursed for these purchases retroactively and can continue to cover their costs going forward.

If they so choose, districts should also be permitted to use their budget allocations to build and deploy private LTE networks and fixed wireless services from the school campus into the community. The limitations of the E-Rate have historically affected school districts’ abilities to undertake these projects and curtailed more widespread participation in remote learning once the COVID-19 emergency forced almost every school in the nation to close. Future proceedings can determine whether those limitations remain necessary for the E-Rate program, but they should not apply to ECF budgets during the emergency period. In fact, the ECF provides a unique opportunity for some districts to attempt services they have not previously, but which may prove a more cost-effective manner of connecting students in the long-term.

We appreciate the Commission’s request for input regarding ECF support and believe districts should be given flexibility to use emergency funds to purchase any goods and services necessary to connect students and deliver instruction. The variety of efforts school districts are using to keep their communities connected encompass a broad range of services, and ECF flexibility is needed to support all of them. Our districts have sent school buses equipped with wi-fi signals to neighborhoods where connectivity is an issue. Learning management systems, antennas, base stations, in-home wi-fi routers and modems, SIM cards and installation and configuration costs should also be allowed under ECF, as well as the approval of voice services. Some districts have spent significant funds during the pandemic to expand on-premise VoIP solutions and extend voice services for employees working from home.
ECF support for remote connectivity and deploying district networks off-campus will also require greater protection, and we repeat the request from our recent petition that additional cybersecurity functions be supported. We also request that the Commission not include the broad application of CIPA requirements to devices and services with these funds. In some cases, off-campus access and filtering is possible through web-based or device-based approaches, but it would be impossible for applicants to police CIPA requirements and ensure compliance with connections directly from the home to a service provider. The retroactive application of such a requirement is unfair, and any prospective application should depend on the connectivity solution that is used.

**ECF Should Not Condition Funding on Unnecessary Requirements**

The Council’s request for ECF flexibility means we do not support the Commission limiting emergency funds for services or devices based on certain conditions or standards. This belief starts with rejecting the proposal to only allow prospective or forthcoming purchases with ECF. This proposal assumes that since certain costs were allowable with other federal relief funds (such as the CARES Act), money has been readily available for prior purchases. However, the Elementary and Secondary School Education Relief (ESSER) funds approved by Congress must address a wide collection of district needs, from PPE to meal distribution and ventilation systems and academic needs. And ESSER funding approved in the CRRSA Act and the American Rescue Plan has yet to reach school districts.

Many school districts have also seen a reduction in their annual operational funding as states reduce education aid to reflect the additional federal funds that were approved, resulting in no additional benefit at the local level. The third round of ESSER funds under the American Rescue Plan also includes a required 20% expenditure to address learning loss, but none of the relief bills required technology purchases. In addition to learning loss, recent presentations by U.S. Department of Education officials indicated upcoming ESSER guidance might prioritize activities related to school reopening, which could make local officials hesitant to use funding for remote or at-home learning. Distance learning is an allowable use of ESSER funds, but the Commission should not assume that school districts will be able to direct the money towards the crucial connectivity gap with so many competing priorities.

The Commission should also allow the emergency purchase of devices and services without the competitive bidding process that accompanies E-Rate, at the very least for retroactive reimbursement of expenses. Following the closing of schools in 2020, districts were forced to take immediate steps to meet the needs of their students. Urban schools certainly understand that our use of funds under ECF and the entire American Rescue Plan will be subject to intense scrutiny, program reviews, and audits. We feel that submitting invoices for products and services that are ordered or received during the emergency period is sufficient documentation that state, local, or district procurement policies were followed to the extent possible. A self-certification on the ECF application to that effect might give further assurance to the Commission while minimizing burden for school districts.

The Council also understands the rationale for the Commission’s proposal to impose minimum system requirements for connected devices and minimum service standards and data thresholds for advanced telecommunications and information services. We agree that participation in remote learning requires a device that can support an array of learning technologies, and minimum service and data thresholds are needed to enable and facilitate robust remote learning. But we disagree that emergency funding should be conditioned on whether such benchmarks were met when school districts had to get millions of students
connected at a moment’s notice last spring. Devices that met these specifications were often ordered but not delivered. And in every city and urban area in the nation, there are neighborhoods that are underserved and lacking access to advanced telecommunications, or those where providers have not maintained their infrastructure. School districts were unable to decline telecommunications services for students from those areas based on minimum connectivity requirements when doing so would have left students with no connectivity at all.

Urban school districts have been using a substantial amount of their own funds to serve students since federal connectivity assistance has not yet materialized. The costs began in the spring of 2020, when widespread remote learning first launched, and have continued to accumulate in the 2020-21 school year as most urban districts are operating in either a hybrid or fully virtual environment. In many cities, the costs for providing students with internet access are actually increasing each month, as school districts successfully connect more students and as providers’ initial promotional and “free sign-up” periods have concluded. An amendment to the Telecommunications Act’s definition of advanced services, or a future proceeding on E-Rate and permanently ending the homework gap, can determine whether specific benchmarks and thresholds should be required. But districts made good faith and often extraordinary efforts to support remote learning, and these efforts should not be dismissed or devalued by requiring adherence to standards that are not practicably attainable for every student and in every home in an emergency.

The Council also recommends that the Commission reject conditions on funding because it adds layers that will inevitably delay disbursements to school districts. Additional requirements will increase the burden of the application and the number of items that USAC will need to review before funds are committed. For applicants, this may mean additional Selective Reviews, Program Integrity Assurance (PIA), or other audit functions that attempt to measure whether those requirements were met. Along those lines, we similarly request that a needs assessment should not be required for ECF. Not only will a requirement such as this increase applicant burden and USAC review time, but the needs assessment (as a required component of the technology plan) was specifically removed from the E-Rate requirements more than five years ago.

CONCLUSION

The passage in our introduction about the lack of internet access for urban students was taken from the Biden Administration’s American Jobs Plan, a recent proposal to strengthen our nation’s infrastructure and deploy reliable high-speed broadband to everyone in the nation. The goals of the plan are worthy, but currently remain only a future possibility as concrete legislative language and successful congressional action are high hurdles to surmount. The American Rescue Plan, however, was signed into law less than a month ago, and we appreciate the Commission’s speedy action to turn the Emergency Connectivity Fund provisions into immediate and tangible support.

The COVID-19 crisis has provided an opportunity to address historical gaps in internet access and invest in solutions that transform schools and make a difference in the lives of urban students nationwide. While the challenges may be daunting and without precedent, urban school leaders and the dedicated professionals who work in our districts will persevere through the current school year and as long as the pandemic lasts. The goal of our large urban school districts is not simply a return to normal, but to reshape our educational systems into a new model that meets the needs of today’s and tomorrow’s students. The assistance of the Commission and funding from the Emergency Connectivity Fund is sorely needed to help our schools best serve the students, families, and communities in our cities.
Respectfully Submitted,

[Signature]

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**Member districts:** Albuquerque, Anchorage, Arlington (Texas), Atlanta, Aurora (Colorado), Austin, Baltimore, Birmingham, Boston, Bridgeport, Broward County (Ft. Lauderdale), Buffalo, Charleston, Charlotte-Mecklenburg, Chicago, Cincinnati, Clark County (Las Vegas), Cleveland, Columbus, Dallas, Dayton, Denver, Des Moines, Detroit, Duval County (Jacksonville), East Baton Rouge, El Paso, Fort Worth, Fresno, Guilford County (Greensboro, N.C.), Hawaii, Hillsborough County (Tampa), Houston, Indianapolis, Jackson, Jefferson County (Louisville), Kansas City, Long Beach, Los Angeles, Manchester (New Hampshire), Miami-Dade County, Milwaukee, Minneapolis, Nashville, New Orleans, New York City, Newark, Norfolk, Oakland, Oklahoma City, Omaha, Orange County (Orlando), Palm Beach County, Philadelphia, Pinellas County, Pittsburgh, Portland, Providence, Puerto Rico, Richmond, Rochester, Sacramento, San Antonio, San Diego, San Francisco, Santa Ana, Seattle, Shelby County (Memphis), St. Louis, St. Paul, Stockton, Toledo, Toronto, Tulsa, Washington, D.C., Washoe County (Reno), and Wichita.
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Establishing Emergency Connectivity Fund To Close The Homework Gap

WC Docket No. 21-93

REPLY COMMENTS OF THE COUNCIL OF THE GREAT CITY SCHOOLS

The Council of the Great City Schools is pleased to submit reply comments in response to the Commission’s Public Notice released on March 16, 2021 (WC Docket No. 21-93; DA 21-317) regarding the Emergency Connectivity Fund For Educational Connections And Devices To Address The Homework Gap During The Pandemic. The Council continues to request a flexible and targeted implementation of the Emergency Connectivity Fund, and it believes that the initial comments submitted certainly support this approach. We urge quick action by the Commission to assist school districts’ ongoing efforts and the provision of off-campus and at-home internet service for high poverty students.

Introduction

The Commission has been focused on broadband deployment and the Homework Gap for years, but only since COVID-19 forced changes to K-12 instruction across the country has the nation at-large become keenly aware of the internet access inequities that exist in our public-school systems. More than a year into the pandemic, the lack of connectivity remains a major issue in large urban districts with some of the highest concentrations of students of color, English learners, and high poverty. The 77 school district members in the Council alone (representing approximately 0.5 percent of the 14,000 school districts in the US) enroll some 8 million urban students, including approximately 28 percent of the nation’s Hispanic students, 29 percent of the nation’s African American students, and 25 percent of the nation’s children living in poverty.

Our students have long lacked access to the educational resources they now must have at home to participate in the new technology-based environment, including Internet connections, devices, and computers. A recent report from the Bipartisan Policy Center on “Understanding the Urban Digital Divide” underscored the extent of the need in cities across the nation. “Much of the focus on the digital divide has centered on the gulf between rural and urban areas. However, census data revealed that while approximately 5 million rural households do not have access to broadband, this problem is three times as large in urban areas—with around 15 million urban or metro households without broadband.” Urban school districts have undertaken heroic efforts to connect as many families as possible in the past year, and a targeted and flexible administration of the Emergency Connectivity Fund (ECF) can support those efforts and lay the groundwork for a permanent closing of the Homework Gap.
A Budget Approach Has Significant Support in the Record

The Council’s initial comments underscored the differences between the E-Rate program and the Emergency Connectivity Fund because the two programs need not duplicate each other. The very nature of ECF – support for devices and off-campus connections – distinguishes it from the original Schools and Libraries program since those services are not eligible for E-Rate support. But there are existing E-Rate structures that can help ensure an expedient and beneficial administration of ECF, specifically the use of a budget allocation system. The Council suggests modifying the E-Rate’s Category Two budget methodology to target funds based on poor students and disburse funds quickly using a process familiar to applicants and USAC.

A budget approach received significant support in the comments from a number of notable stakeholders. The State Education Technology Directors Association (SETDA) endorsed the approach, included the same rationales as our local urban school coalition, and made similar arguments about the need for targeting in their comments. “A capped budget system is equitable, efficient, and predictable, and SETDA’s members strongly support adopting a similar model for the ECF. This approach would provide incentives for cost effective purchasing, while also empowering local leaders to make decisions about the connectivity options and devices that best meet the needs of their students and educators. A capped model also lends itself to a less burdensome and less time-consuming application process. A capped system must, however, provide extra funding for geographically isolated rural and other unusually high-cost areas served by school districts…The commission should adopt a per-student budget cap model that favors rural school districts and districts serving large numbers of students eligible for free and reduced-price meals.”

Indeed, the Council’s comments suggested modifying the C2 budget approach to calculate ECF school district funding based entirely on students in poverty. The emergency nature of the pandemic, and in particular the remote connectivity need, differs significantly than the annual E-Rate goal of supporting broadband deployment to all of America’s schools and classrooms. In fact, the E-Rate Modernization Order in 2014 expressly stated the adoption of the budget approach for every school district in the nation was specifically intended, “to spread support more broadly than under the current system.” The E-Rate budget system does include a poverty factor to determine the exact discount level provided to applicants, but only after every student in a school district is factored into that program’s C2 calculations through the per-pupil budget allocation. But not every student lacked internet access or needed support to connect to their school, teachers, and classmates during the pandemic. The Commission can and should target this emergency funding on poverty to address the systemic issues behind the Homework Gap.

Studies consistently show that school-age children in lower-income households are especially likely to lack broadband access at home. Under the Emergency Connectivity Fund, we repeat our proposal to exclude non-poor students from the per-pupil budget calculations and focus funding on a more discrete universe: the children in poverty who have required remote learning assistance. We also suggested the inclusion of an ECF matrix analogous to the discount matrix be used to provide an additional layer of priority for disadvantaged school districts in rural locations and those with the highest percentages of poverty nationwide, essentially providing further support for the same beneficiaries proposed by SETDA. But the initial per pupil budget amount and calculation should be based on the number of students in poverty in the school district, as identified by FRPL in the National School Lunch Program or the approved poverty measure the applicant used in their recent E-Rate applications.
Local groups such as the Council do not always see eye-to-eye with state organizations, but an ECF budget approach was supported by another statewide group, the State E-Rate Coordinators Alliance (SECA). Although SECA proposed including non-poor students in their budget calculations, they still underscored the need for greater targeting on the neediest children. “To be clear, these amounts per student are not designed or intended to be used to pay for services for all students since some percentage of them – which may be most students in a district - already have adequate internet at home and do not need financial support from their schools for this purpose. The funds can and should be applied and targeted to provide internet to those unconnected or inadequately connected and to pay for the services that the schools already have incurred unexpectedly and plan to pay for the duration of the pandemic.” The Council’s proposal would ensure the targeting occurred at the outset by funding applicants based on their low-income students.

Several other stakeholder organizations promoted the benefits of a budget system. Funds for Learning, an early proponent of the budget approach in the E-Rate, championed transferring the benefits of the system here, stating that, “This approach will also improve the efficiency and efficacy of the ECF.” The Consortium for School Networking (CoSN) also suggested a modified budget methodology as the best way to distribute ECF and, although the specifics of their proposal differed in slight ways, echoed similar needs as the Council. “CoSN urges the Commission to adopt a per-student cap model, weighted to provide additional resources to high poverty and rural school districts, for distributing program funds. A well-designed cap-based model would be efficient, equitable, and offer a much lower-burden application process.”

Finally, we highlight the comments of the SHLB coalition, who outlined multiple reasons for a budget method in their comments. “By providing a fixed amount of funding per school district or library, the school districts and libraries can determine the best and most efficient means of providing service to their communities without fear that they will drain the fund with wasteful expenditures. Schools and libraries are long-standing and trusted community institutions that are already subject to enormous oversight by school boards and municipal officials, so there is no need for the Commission to look over their shoulders to determine whether they made the best possible choice. As long as the funds are used for broadband equipment, services and devices, the schools and libraries themselves are better equipped than federal government officials to determine what particular services and devices best meet the needs of their communities.”

We agree with our fellow commenters on the multiple benefits of the budget method. The program will be much simpler for both the applicants and administrator than an item-by-item reimbursement approach. The budget proposal also relieves the Commission of needing to resolve specifics questions and proposals in the Public Notice, such as cost-effective purchasing and retroactivity dates. With a poverty methodology such as the one we outlined, the Commission can also ensure the limited funding addresses the needs of those in poverty and truly focus on those affected by the Homework Gap.

**Flexibility is Needed in an Emergency**

Flexibility is a natural complement to the budget system discussed above and allows school districts to pair the greatest problems with workable solutions. As expected, there were widespread requests for flexibility from a diverse set of commenters in this proceeding. An “all in” approach to eligible services is required to connect the greatest number of students during the pandemic, and the record is filled with examples and requests from different applicant types along those lines.
The Los Angeles Unified School District supported a flexible approach that is not weighed down with requirements, stating, “We can most effectively serve our students and school communities through a system that is streamlined, adaptive and aligns to a rapidly evolving educational landscape. We believe that the best outcomes for our students are achieved by building on the successes of the E-rate program.” Pairing the budget approach and flexibility was also supported by district and governance leaders throughout the Golden State in joint comments filed by the Association of California School Administrators (ACSA) and the California School Boards Association (CSBA). “Given school districts’ need for a low-burden but equitable and effective process for obtaining ECF funds, the ACSA-CSBA Federal Partnership urges the Commission to use a budget caps model similar to E-rate Category 2….School district leaders best understand their students’ connectivity and device needs for remote learning. Congress recognized that districts require remote learning assistance covering both devices and connectivity and wisely provided flexibility in the ECF for program participants to decide the combination of devices and connectivity that would be most helpful for their students.”

The nonprofit Common Sense Media also urged local discretion and speedy action for the ECF. “We respectfully urge the Commission to allow schools and libraries the greatest flexibility possible to use these funds to ensure robust access for students and teachers to [support] distance learning throughout the duration of this public health emergency. Greater flexibility will allow for the quick and efficient distribution of these funds, as intended by Congress. This is an emergency fund, established in part to help mitigate harms caused by the covid-19 pandemic….This fund should seek to support both the rapid response efforts to address these needs by schools and libraries begun at the outset of the pandemic and the continuing efforts by schools and libraries to address the current needs of their communities.” Funds for Learning promoted flexibility by asking the Commission to focus on what the learner needs to get connected. “Rather than reverting to an eligible services policy with narrow definitions and strict requirements, ECF support should be available for any hardware, software, and/or service that a school or library deems necessary for remote learning…To define a distinct list of eligible equipment or services is to ignore the true nature of the challenges faced by students and library patrons.”

As the Council explained in our initial comments, flexibility should not only extend to the items and services purchased, but the purchasing process itself. The federal bidding and procurement requirements that govern the E-Rate should not be applied here, as explained by the Miami-Dade County Public Schools (M-DCPS). “M-DCPS expenses were all made subject to local and state procurement practices, including school board approval for amounts that require authorization. Use of existing school board procurement practices provides adequate safeguards, and any additional E-Rate requirements should be minimal burdens as it relates to purchases during the emergency period.”

SECA underscored Miami’s point regarding unnecessary layering of additional purchasing requirements, sharing that, “…state and local competitive bidding compliance have served and will continue to serve as an important safeguard to ensure that the charges for eligible services and equipment will be reasonable. These protections that are already in place should be sufficient without the necessity to superimpose a federal competitive bidding requirement onto the ECF program.” They went on to state that in this emergency period, the addition of a federal bidding requirement, “will be punitive.” The American Library Association offered a similar caution to the Commission about limiting burdens, saying that, “Administration and oversight of the Emergency Connectivity Fund should leverage lessons learned through applicant experience in the E-rate program to minimize applicant burden, and balance concerns for waste, fraud, and abuse.”
Finally, we would call attention to the Commission’s own response in their Frequently Asked Questions guidance regarding procurement requirements in the Telehealth Program during the pandemic. “Given the current pandemic and its impact on health care providers, the COVID-19 Telehealth Program does not have any competitive bidding requirements. However, we strongly encourage applicants to purchase cost-effective eligible services and devices to the extent practicable during this time.” The flexibility provided to other FCC programs during the current pandemic is no less needed for school districts and should also be applied to the Emergency Connectivity Fund.

**Spurring Further Progress**

As we mentioned in the introduction, we feel that the Emergency Connectivity Fund can lay the groundwork for a permanent closure of the Homework Gap, but it cannot do the work alone. The Biden Administration underscored the challenges for cities in announcing the American Jobs Plan. “In urban areas as well, there is a stark digital divide: a much higher percentage of White families use home broadband internet than Black or Latino families. The last year made painfully clear the cost of these disparities, particularly for students who struggled to connect while learning remotely, compounding learning loss and social isolation for those students.”

The ECF can create a foundation for solutions, a national infrastructure initiative like the American Jobs Plan can help with widespread broadband buildout, and the E-Rate program can help sustain operations over the long-term. As we did in our initial comments and our filing on Addressing the Homework Gap Through the E-Rate Program (WC Docket 21-31), we urge the Commission to resume consideration of the necessary and permanent use of E-Rate support for off-campus connectivity. The nation’s schools must not continue to struggle to support the remote access that has long been needed for homework and other educational activities and is now recognized as an essential part of daily instruction and blended learning for many students. A flexible approach to the Emergency Connectivity Fund can allow it to serve as a pilot program for innovative approaches to closing the Homework Gap.

**CONCLUSION**

The COVID-19 crisis has provided an opportunity to address historical gaps in internet access and invest in solutions that transform schools and make a difference in the lives of urban students nationwide. While the challenges may be daunting and without precedent, urban school leaders and the dedicated professionals who work in our districts will persevere through the current school year and as long as the pandemic lasts. The goal of our large urban school districts is not simply a return to normal, but to reshape our educational systems into a new model that meets the needs of today’s and tomorrow’s students.

Our nation’s inequities have been laid bare during the pandemic, and despite the tremendous efforts of urban school districts to bridge the divide, lack of connectivity remains a major issue in the big cities where high poverty compounds the inequities. The assistance of the Commission and targeted funding from the Emergency Connectivity Fund is sorely needed to help defray the ongoing costs and continue our efforts to better serve the neediest students, families, and communities in urban schools.
Respectfully Submitted,

Michael D. Casserly, Executive Director
Council of the Great City Schools

Address:
Council of the Great City Schools
Suite 1100N
1331 Pennsylvania Avenue, NW
Washington, DC 20004

**Member districts:** Albuquerque, Anchorage, Arlington (Texas), Atlanta, Aurora (Colorado), Austin, Baltimore, Birmingham, Boston, Bridgeport, Broward County (Ft. Lauderdale), Buffalo, Charleston, Charlotte-Mecklenburg, Chicago, Cincinnati, Clark County (Las Vegas), Cleveland, Columbus, Dallas, Dayton, Denver, Des Moines, Detroit, Duval County (Jacksonville), East Baton Rouge, El Paso, Fort Worth, Fresno, Guilford County (Greensboro, N.C.), Hawaii, Hillsborough County (Tampa), Houston, Indianapolis, Jackson, Jefferson County (Louisville), Kansas City, Long Beach, Los Angeles, Manchester (New Hampshire), Miami-Dade County, Milwaukee, Minneapolis, Nashville, New Orleans, New York City, Newark, Norfolk, Oakland, Oklahoma City, Omaha, Orange County (Orlando), Palm Beach County, Philadelphia, Pinellas County, Pittsburgh, Portland, Providence, Puerto Rico, Richmond, Rochester, Sacramento, San Antonio, San Diego, San Francisco, Santa Ana, Seattle, Shelby County (Memphis), St. Louis, St. Paul, Stockton, Toledo, Toronto, Tulsa, Washington, D.C., Washoe County (Reno), and Wichita.
May 5, 2021

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, D.C. 20554

Re: Emergency Connectivity Fund (WC Docket No. 21-93)

Dear Ms. Dortch:

On May 5, 2021, the Council of the Great City Schools (CGCS) emailed the attached letter to Acting Chairwoman Jessica Rosenworcel and Chief of Staff Travis Litman.

The letter outlines our concerns with the exclusion of the significant expenditures made by school districts for student connected devices and expanded broadband services during the initial months of the pandemic. Under the draft Order, expenditures for eligible items and services that were made when remote learning began would not be reimbursed because the purchases occurred prior to July 1, 2020.

Respectfully submitted,

Michael Casserly
Council of the Great City Schools

ATTACHMENT
May 5, 2021

The Honorable Jessica Rosenworcel
Acting Chairwoman
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Dear Acting Chairwoman Rosenworcel:

The Council of the Great City Schools, the coalition of the nation’s largest urban school districts, appreciates the opportunity to provide our perspective on the draft Report and Order for the Emergency Connectivity Fund (WC Docket No. 21-93). The Council also appreciates the immense work of Commissioners and staff in a short amount of time, and the transparency of the Chair’s decision that “extraordinary circumstances” allowed the release of a draft Report and Order on the implementation of the Emergency Connectivity Fund (ECF). The Council will appropriately report this follow-up letter.

That said, the Great City Schools are concerned with the exclusion of the significant expenditures made by school districts for student-connected devices and expanded broadband services during the initial months of the pandemic when there were widespread school closures in the last few months of school year 2019-2020. The Council notes that nothing in the provisions of the Emergency Connectivity Fund of the American Rescue Plan Act (ARP) authorizes an expenditure period during which otherwise eligible remote learning expenditures for devices and connectivity are excluded. In fact, the draft order acknowledges the “imperative to focus the Emergency Connectivity Fund Program on the equipment and services specified by Congress.” Moreover, section 7402(d)(5) of the ARP expressly delineates the emergency period as beginning with the HHS declaration of the public health emergency (January 27, 2020) for the Emergency Connectivity Fund. The Commission’s discretion to further restrict or vary the reimbursement period for schools and libraries appears to be precluded by section 7402 of the ARP. There is no ambiguity in the statute directing the Commission to promulgate regulations “for the purchase during a COVID-19 emergency period of eligible equipment or advanced telecommunications services (or both).”

As noted in the Council’s submitted comments and in the draft order, due to the extraordinary circumstances of COVID-19, districts made a rapid transformation from school-based to home-based learning when schools were shut down nationwide. The Council, therefore, is puzzled by the proposed July 1, 2020 start date in the draft order, despite the order specifically acknowledging the early action and best efforts of school districts in the pre-July “shift from in-person instruction to remote learning,” as well as the expenditure of “scarce resources for purchasing devices and Internet connections for students and staff to help bridge the gap.” The draft order further underscores the goal to help “meet the need for connected devices and broadband services to facilitate remote learning during the COVID-19 pandemic” and to provide “reimbursement for the reasonable costs that school districts have already incurred.” The recognition of these early efforts by school districts to transition to online instruction seems strangely disconnected from the prohibition on reimbursements for that same period in the draft order.
The July 1, 2020 start date in the draft order and in the proposed rules bears no clear relationship to the pandemic-related purpose of the Emergency Connectivity Fund. The July 1, 2020 date is rationalized with a passing reference to administrative convenience in the FCC application and review process and by a timetable linked only to the tangentially related E-Rate discount program. The Council maintains that the start date for reimbursement of eligible expenditures under the ECF should adhere to the emergency period specified in section 7402 of the ARP, or at least have some connection to the pandemic-related closure of schools and libraries and the accompanying shift to remote services in late March 2020 or following the March 13, 2020 National Emergency Declaration.

The Council of the Great City Schools respectfully requests that the Commission reconsider the draft order and proposed rules to align the Emergency Connectivity Fund with the COVID-19 emergency period in the statute, or to allow for pandemic-related eligible expenditures to be reimbursed at least back to the initiation of the widespread school and library closures -- perhaps the most critical phase of the pandemic impact on schools and students.

Recommendations:
The Council recommends revision of the draft report and order in paragraphs 79, 80, and 84, and proposed 47 CFR 54.1708(b) to reflect the statutory emergency period beginning on January 27, 2020 from section 7402 of the ARP as the start date for Emergency Connectivity Fund reimbursement of eligible expenditures, as well as making conforming changes in other applicable provisions and footnotes in the draft order and report, proposed rules, and eligible services list.

In the alternative, if the Commission continues to proclaim the discretion to restrict the start date of the ECF reimbursements, the Council then recommends revision of the draft order in paragraphs 79, 80, and 84, and proposed 47 CFR 54.1708(b) to establish a start date that approximates the beginning of the nationwide school closures, or even as late as April 1, 2020, in addition to making conforming changes in other applicable provisions and footnotes in the draft order and report, proposed rules, and eligible services list.

Thank you for considering this requested revision from the Council of the Great City Schools. Please let me know if there are questions or clarifications needed.

Sincerely,

Michael Casserly
Executive Director
Emergency Connectivity Fund (ECF)
Summary of Major Provisions

ELIGIBLE EQUIPMENT AND SERVICES.

Eligible equipment
- (1) Wi-Fi hotspots; (2) Modems; (3) Routers; (4) Devices that combine a modem and a router; and (5) Connected devices.

Eligible services
- Commercially-available fixed or mobile broadband Internet access services, including those available through bulk purchasing arrangements.
- ONLY when commercially-available fixed or wireless broadband Internet access services are not available will reasonable costs of construction of new networks, including self-provisioned networks, and/or the reasonable costs of customer premises equipment to receive datacasting services, be eligible.

Maximum
- Support amounts are limited up to $400 for connected devices and up to $250 for Wi-Fi hotspots.

COMPETITIVE BIDDING REQUIREMENTS.

Applicant must comply with all applicable state, local, or Tribal procurement requirements – no additional federal requirements for the ECF

APPLICATION WINDOWS.

Initial window
- Funding requests for upcoming purchases (made between July 1, 2021 and June 30, 2022) for eligible equipment and services provided to students and school staff who would otherwise lack connected devices and/or broadband Internet access services sufficient to engage in remote learning.
- Initial 45 day application window for requests

Subsequent windows
- If funds remain after the first window, there will be a subsequent application window for previous purchases (between March 1, 2020 to June 30, 2021) for students and school staff.
- FCC may also decide to open a second prospective window for upcoming purchases before opening an application window to fund previously purchased eligible equipment and services.
- If funds remain, additional filing windows may be open until the funds are exhausted or the emergency period ends.
PRIORITIZING APPLICATIONS (IN CASE OF EXCESS DEMAND).

After each application window closes, USAC will determine if the total applicant requests exceed the total support available. If there are more requests than funds available, USAC will fully fund as many applications as possible, beginning with the most economically disadvantaged, as determined by applicant location on the E-Rate category one discount matrix (adjusted to provide a five percent increase for rural locale – see below).

<table>
<thead>
<tr>
<th>% of students eligible for National School Lunch Program</th>
<th>Urban</th>
<th>Rural</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 1</td>
<td>20</td>
<td>30</td>
</tr>
<tr>
<td>1-19</td>
<td>40</td>
<td>55</td>
</tr>
<tr>
<td>20-34</td>
<td>50</td>
<td>65</td>
</tr>
<tr>
<td>35-49</td>
<td>60</td>
<td>75</td>
</tr>
<tr>
<td>50-74</td>
<td>80</td>
<td>85</td>
</tr>
<tr>
<td>75-100</td>
<td>90</td>
<td>95</td>
</tr>
</tbody>
</table>

Schools and libraries eligible for a 95 percent discount on the matrix shall receive first priority to have their applications fully funded, followed by applicants at 90 percent on the matrix, then 85 percent, etc. If the remaining funds are not sufficient to support all of the funding requests within a particular discount level, USAC will fund as many applicants as possible within the band beginning with the highest percentage of students eligible for the National School Lunch Program.

REQUESTS FOR FUNDING.

- Applicants will submit an FCC Form 471 (similar to the one used in the E-Rate) for their funding request, and will include the following certifications (among others):
  - Applicant is not seeking support or reimbursement that have been purchased and reimbursed in full with other federal pandemic-relief funding, targeted state funding, other external sources of targeted funding or targeted gifts, or eligible for E-Rate discounts or other universal service support;
  - Applicant will not provide ECF support to student or staff in a household participating in the federal Emergency Broadband Benefit program;
  - The school, library, or consortium will create and maintain an equipment and service inventory as required;
  - Audit and ten-year record retention requirements
  - Children’s Internet Protection Act (CIPA) requirements (applicable in most cases)
  - Support for new network construction or end-user equipment for datacasting services: applicant sought service from existing service providers in the relevant area and that such service providers were unable or unwilling to provide broadband Internet access services sufficient to meet the remote learning needs of their students, school staff, or library patrons.
REQUESTS FOR REIMBURSEMENT.

- ECF reimbursements can be provided directly to the school district or the service provider (using E-Rate FCC Form 472 or FCC Form 474).
- Within 60 days from the date of the funding commitment decision letter, an applicant or service provider seeking ECF reimbursement must submit invoices detailing the items purchased or ordered to USAC at the same time as the Form 472 or Form 474.
- Applicants that seek payment from the ECF prior to paying their service provider(s) must also provide verification of payment to the service provider(s) within 30 days of receipt of funds.

REGISTRATION PROCESS.

- Schools and libraries that plan to participate in the program can get ready to apply by making sure they have an FCC Registration Number and an active SAM.gov registration (see below). If a school or library has already registered with both the FCC and SAM.gov, applicants should check to ensure their SAM.gov registration has not expired or will not expire in the near future.

-----------------------------------------------------------------------------------------------------------------

- Please see the entire FCC Report and Order for details:  

- Sign up for USAC ECF outreach emails, including information on application window, future trainings, etc:  
BUDGET
Email Update – Biden Administration “Skinny” Budget Proposal for FY 2022

From: Manish Naik
Sent: Friday, April 9, 2021 11:50 AM
To: Legislation <legis@cgcslists.org>
Subject: Biden Administration releases details on FY22 budget proposal

Legislative Liaisons of the Great City Schools –

The Biden Administration just released their “skinny” budget proposal – a discretionary budget framework for federal FY 2022 with limited details. Non-defense appropriations would grow by 16% ($769 billion in total) while defense spending would grow by just 1.7% ($753 billion in total) -- a major departure in federal budgeting from recent years.

The Education Department discretionary appropriations request for FY 2022 (school year 2022-23) would increase by 41% to $102.8 billion (a $29.8 billion increase). The limited information released includes some program-level details, including:

- Title I would increase by $20 billion to $36.5 billion.
- IDEA Part B would increase by $2.6 billion to $15.5 billion -- effectively adding the ARP IDEA formula funding to the annual IDEA Part B baseline appropriations.
- IDEA Part C Infants and Toddlers program would increase by $250 million to $732 million.
- $1 billion in new funding is proposed for school mental health services to increase the number of counselors, nurses, mental health professional in schools.
- Full Service Community Schools receives a massive $413 million requested increase from the current $30 million (totaling $443 million).
- A new Diverse Schools program is proposed at $100 million.

The framework is available here: https://www.whitehouse.gov/omb/fy-2022-discretionary-request/. More detailed FY2022 budget information will be released later in the spring.

Also, please note that the U.S. Department of Education released a Volume 2 of their COVID-19 Handbook this morning, which compiles updated information from ED, CDC, Office of Civil Rights, USDA, and other agencies.

--Manish Naik
Council of the Great City Schools
Legislative Liaisons of the Great City Schools –

The Biden Administration just released their full budget proposal for federal FY 2022. As you may remember, the White House released a “skinny” version of the budget proposal in early April with limited details, outlining that non-defense appropriations would grow by 16% overall, but that the U.S. Department of Education’s discretionary appropriations request would increase by 41% in FY 2022 (school year 2022-23).

The skinny budget in April also highlighted a more than doubling of Title I to $36.5 billion (a $20 billion increase). Today’s release clarifies that the additional $20 billion proposed would be sent through a new “Title I Equity Grant” rather than the existing Title I formula. The proposed Title I Equity Grant is described as, “creating incentives for more equitable State and local education funding systems” and would require expanded reporting and goal setting, as well as competitive compensation for teachers, access to rigorous coursework, and universal pre-K. The specific formula that would be used to distribute the new Title I Equity Grants has not yet been determined, and would have to be approved by Congress (along with the funding itself).

Other discretionary requests in the education proposal include:
- increasing IDEA Part B by $2.6 billion;
- essentially flat funding Title II and Title IV;
- increasing Title III for English Learners by $120 million;
- providing $1 billion for a new School-Based Health Professionals grant; and
- increasing Full Service Community Schools by more than $400 million.

The Education Department’s budget proposal also includes mandatory spending investments that have been outlined in President Biden’s American Jobs Plan ($10 billion a year for school infrastructure) and American Families Plan (multiple proposals for teacher training, support, and credentialing).

We will continue to read through the proposals and provide additional updates soon. More details on the U.S. Department of Education’s budget proposal and related documents are available here:
https://www2.ed.gov/about/overview/budget/budget22/index.html

Have a good Memorial Day weekend.
<table>
<thead>
<tr>
<th>Federal Education Program</th>
<th>FY 2020 Final</th>
<th>FY 2021 Final</th>
<th>FY 2022 Biden Budget</th>
<th>Difference in FY 2022</th>
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<tr>
<td>PROPOSED: Title I Equity Grants</td>
<td>NA</td>
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<td>1,600,000</td>
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<td>NA</td>
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<td>18,953,225</td>
<td>18,953,225</td>
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</table>

Title I - Grants to LEAs                                     16,309,802 | 16,536,802 | 16,536,802 | 0
Migrant Education                                            374,751      | 375,626     | 375,626     | 0
Neglected and delinquent                                     47,614       | 48,239      | 48,239      | 0
Homeless children and youth                                  101,500      | 106,500     | 106,500     | 0
Impact Aid                                                   1,486,112    | 1,501,112   | 1,541,112   | 40,000
Comprehensive Literacy Dev. Grant                            192,000      | 192,000     | 192,000     | 0
Title IV - Support & Academic Grant                          1,210,000    | 1,220,000   | 1,220,000   | 0
State assessments                                             378,000      | 378,000     | 378,000     | 0
Rural education                                              185,840      | 187,840     | 192,840     | 5,000
Education for Native Hawaiians                               36,897       | 37,397      | 37,397      | 0
Alaska Native Education Equity                                35,953       | 36,453      | 36,453      | 0
Promise Neighborhoods                                        80,000       | 81,000      | 91,000      | 10,000
21st century learning centers                                1,249,673    | 1,259,673   | 1,309,673   | 50,000
Indian Education                                             180,739      | 181,239     | 186,239     | 5,000
Education Innovation and Research                            190,000      | 194,000     | 194,000     | 0
Title II - Effective Instruction                             2,131,830    | 2,143,080   | 2,148,580   | 5,500
Teacher quality partnership (HEA)                             50,092       | 52,092      | 132,092     | 80,000
Teacher and Leader Incentive Fund                            200,000      | 200,000     | 200,000     | 0
Charter schools grants                                       440,000      | 440,000     | 440,000     | 0
Magnet schools assistance                                     107,000      | 109,000     | 149,000     | 40,000
Title III - English Language Acquisition                     787,400      | 797,400     | 917,400     | 120,000
<table>
<thead>
<tr>
<th>Federal Education Program</th>
<th>FY 2020 Final</th>
<th>FY 2021 Final</th>
<th>FY 2022 Biden Budget</th>
<th>Difference in FY 2022</th>
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<td>2,600,037</td>
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<td><strong>U.S. Department of Education</strong></td>
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<td><strong>Discretionary Appropriations total</strong></td>
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<td>73,536,533</td>
<td>102,823,263</td>
<td>29,286,730</td>
</tr>
</tbody>
</table>

Funding Increases in **GREEN**

* Proposal requires MANDATORY annual funding
INFRASTRUCTURE
Email Update – Biden Administration’s American Families Plan

From: Jeff Simering <JSimering@cwcs.org>
Sent: Wednesday, April 28, 2021 9:23 AM
To: Legislation <legis@cwcslists.org>
Subject: $1 billion American Family Plan Proposed by Biden Administration

Great City Schools Legislative Liaisons:

Prior to his first address to Congress, President Biden announced a $1 trillion American Family Plan accompanied by $800 billion in tax reductions for low-income individuals and families. The new plan is the companion piece to the $2 trillion national infrastructure plan (American Jobs Plan) and proposes to build back better the social safety net infrastructure of the nation. The plan focuses primarily on education, child care, and financial support of families and is expected to result in a decrease in overall poverty levels.

The American Family Plan proposes:

- 2 years of free preschool education for 3 and 4-year old children with a $200 billion federal investment in a federal-state partnership, and 2 years of free community college education at $109 million for all who want it, including Dreamers.
- Pell grants for higher education would increase by $85 billion and other scholarships, college retention initiatives, and education supports would be available.
- Some $9 billion is proposed to address teacher shortages, training, and diversity in the teaching force.
- Federal scholarship amounts for future teachers would double.
- $2.8 billion would be invested in “Grow Your Own” teacher development programs.
- Teacher residency programs would be expanded.
- $400 million for teacher training in minority institutions would be provided.
- $900 million would be targeted to special education teacher training.
- $2 billion in teacher leadership and mentorship programs is proposed.
- $1.6 billion investment in additional certifications in high demand subject areas with priority of teachers in low-income schools.
- Further federal investments would include an additional $45 billion in support for meal programs for children and families, including a permanent extension of the Summer EBT program, expanding the Community Eligibility Provision(CEP) for elementary schools down to a 25% poverty threshold, and including Medicaid and SSI in school meal direct certification procedures.

$225 billion would be provided for expanded child care for subsidized payments above 7% of family income, and would require a $15 minimum wage for child care workers in assisted programs. Additionally, the child tax credit from the recovery legislation would be extended permanently for low-income families at the newly increased amount through 2025, as well as an extension of the child and dependent care tax credit. Additional revisions in federal unemployment insurance based on economic conditions, tax credits for Obamacare premiums,
and the permanent expansion of the earned income tax credit are proposed. A broader national family and medical leave programs of $225 billion over ten years would provide up to $4000 a month of paid leave for care of a new child, illness, or seriously ill family member, as well as bereavement leave. The American Family Plan would be underwritten by tax increases on the wealthy and corporations, as well as a major expansion of IRS enforcement targeted on high income individuals and businesses.

Earlier this week Chairman Neal of the House Ways and Means Committee proposed new legislation to similarly address support for families and combat poverty, including a new universal family and medical leave program, increasing the child care block grant, providing a refundable payroll tax credit to underwrite wage increases for child care workers, and permanent extension of the more expansive child tax credit, the child and dependent care tax credit, and the earned income tax credit from the recent recovery legislation.

The American Family Plan is expected to garner little bipartisan support due to its price tag, accompanying tax increases, and expansion of social programs. We will provide updates as further information becomes available.

Jeff
NUTRITION
The nation’s school food services programs were among the first responders to address the critical food shortages for students and the community at the outset of the COVID-19 pandemic, despite the health risks to staff and the unreimbursed program costs. Large segments of students have yet to return to school on a regular basis and may not return at the beginning of school year 2021-2022. Having operated under the more flexible seamless summer meal authority and associated waivers, school food programs have become more efficient and nimble in meeting student needs, while still maintaining fundamental nutrition requirements.

The upcoming child nutrition reauthorization should incorporate the lessons learned during the past year of crisis-based operations. Reestablishing a strong financial foundation and implementing appropriate nutritional metrics are important to an effective recovery for school-based meal programs without unwarranted federal micromanagement of school cafeteria menus and food choices.

**Program Costs**

Unreimbursed Costs
- USDA acknowledged over $1 billion in annual unreimbursed costs for school districts from HHFKA regulations
- Remote learning and the P-EBT program have contributed to lower school meal program participation rates and an inability to cover fixed program costs

Breakfast and Lunch Reimbursement Rates
- Increase federal reimbursement rates by a minimum of 6-cent per breakfast and lunch

Commodities:
- Provide USDA commodities for breakfast program (analogous to lunch program)
- Provide additional “cash in lieu” options to allow for timely and cost-effective purchases from local producers

A La Carte Entrees:
- Allow a la carte entrees served anytime during the week when otherwise part of the reimbursable meal to be offered in the lunch line without having to meet the competitive foods requirements -- negating the unnecessary and costly USDA regulatory restrictions

Paid Meals:
- Eliminate the unnecessary paid meal pricing requirements

**Program Efficiency**

Direct Certification and Community Eligibility:
- Add Medicaid or any “other means-tested, income-document programs” to the currently allowable Direct Certification programs if it can demonstrate household income eligibility
Uniform Program Application, Reporting, Reviews, and Seamless Meal Services for Public Schools:
- Establish a uniform application and uniform reporting requirements for all USDA food programs operated by SFAs to eliminate duplicate information submissions across multiple programs
- Require states to conduct concurrent program reviews for LEAs that operate multiple USDA meal programs (except for necessary summer on-site monitoring)
- Return to 5-year review cycle for programs, except for repeated noncompliance

Seamless Meal Services:
- Require USDA to issue multi-program guidance which eliminates, waives, coordinates, or simplifies requirements that vary across school-operated programs
- Authorize local flexibility in congregate meal service requirements and activities for summer, CACFP, and for remote students in hybrid programs and in district virtual schools
- Provide for snacks and suppers in the Summer Food Program including non-congregate options

Verification:
- Expand direct certification (see above) to improve program integrity
- Significantly limit any increases in verification percentages, and provide credit for reductions in non-response rates
- Include directly certified students in any new verification sampling protocols

Fresh Fruit and Veg Program:
- Allow funds also to be used for nutrition education

**Program Flexibility**

Multi-Grade Span:
- Allow for local flexibility in meal patterns for schools with multiple grade spans by allowing for weekly averages, calorie variations, and/or expanding the permissible age range in these schools

Meal Patterns/Fresh Fruit/Vegetables:
- Allow for substitutions, combinations, or double servings of either fruits or vegetables (but retain starchy vegetable weekly limit), if all nutrient standards are met
- Allow for local program flexibility including form and color requirements for food items, as well as capitalizing on product availability, if nutrient standards are met

**Retain or Modify Other Current Requirements**
- Freeze sodium requirement at current level
- Retain the current 50% grain-rich requirement
- Junk Food:
  - Ensure that non-SFA food sales that are required to comply with the federal competitive food requirements are the responsibility of the LEA (not the SFA, which does not have administrative authority over school stores, fund-raisers, or other non-SFA activities).
- Wellness Plan:
  - Create a separate wellness program funding authorization for LEAs (not SFAs) or eliminate add-on wellness requirements. School food authorities are not staffed by public health professionals and should not be responsible for these districtwide health-related policies.
Title IX Public Hearing Statement of the Council of the Great City Schools
June 10, 2021

I am Jeff Simering, legislative director at the Council of the Great City Schools, the coalition of the nation’s largest central city school districts.

Many of the Great City School districts along with the Council submitted extensive comments on the Title IX proposed rules.

However, we were not privy to the multiple meetings held at the White House and at the Education Department as the proposed regulations were being developed, and apparently only higher education interests were consulted. In fact, the Title IX regulatory process appears to be driven by high-profile controversies at the higher education level with insufficient attention to K-12 implementation practices that have worked relatively well over multiple decades.

And to be candid, I cannot name one big city school district Title IX coordinator or general counsel that agrees with or supports the 2020 final regulations.

The Council, therefore, requests that the 2020 rules be immediately withdrawn in the context of elementary and secondary schools, and that the prior Title IX legal framework for K-12 education to be reinstated in some form before the start of school year 21-22 – potentially through a K-12 interim final rule.

While the Council takes no position on the Title IX regulations in the postsecondary context, we are open to considering universally applicable revisions in Title IX definitions.

Let me underscore the unsuitableness of the formalized Title IX requirements for minor children in K-12 public schools, in contrast to adult college students.
• School children have neither the judgment nor experience to make decisions like an adult. Even the nation’s court system has adopted different procedures for juvenile infractions.

• A school-age child’s physical, emotional, and mental development is not complete. Instructional and support services in public schools are designed in recognition of each child’s developmental stages.

• Adversarial procedures run contrary to the traditional environment in our American public school system. And, these procedures are not well understood by school children, parents, and even many administrators.

These procedures are not just inappropriate for school-age children, but are cumbersome, costly, and ineffective for school districts and staff.

• Under the higher regulatory standard for sexual harassment and the required federal procedures, school districts now must operate multiple systems of disciplinary practices: 1. For differing types of discrimination, 2. For other forms of unwanted sexual behavior, 3. to meet state requirements, and 4. for other code of conduct violations.

• The 2020 rules also have doubled the staffing requirements for school districts that now must have separate investigators and decision-makers, in addition to the Title IX Coordinator and any appellate process.

• These extensive judicial-like grievance procedures add to the complexities of the process, delay timely incident resolution, required more school staff to be trained, and mandate formalized procedures even within any informal resolution process.
Written Comment: Title IX Public Hearing (Council of the Great City Schools)

T9PublicHearing@ed.gov

June 11, 2021

Attention:
Ms. Suzanne Goldberg, Acting Assistant Secretary
Office of Civil Rights
U.S. Department of Education

The Council of the Great City Schools, the coalition of the nation’s largest central city school districts, resubmits the Title IX regulatory comments (below) on the 2018 NPRM that remain basically applicable given the minimal revisions in the 2020 final regulations for elementary and secondary schools. These comments are submitted in addition to the Council’s June 10th oral presentation at the Education Department’s Title IX hearing.

The fundamental unsuitableness of the 2020 Title IX regulatory requirements for elementary and secondary schools leads the Council to request: 1) the immediate recission of the current regulations for K-12 schools prior to the start of school year 2021-2022, and 2) the reinstatement of the pre-2020 Title IX legal framework through an emergency K-12 interim final rule or through a compliance protocol that accepts either the provisions of the pre-2020 legal framework or the 2020 final rules at the discretion of the local education agency.

Please contact Jeff Simering at jsimering@cgcs.org if there are questions.
The Council of the Great City Schools, the coalition of the nation’s largest central city school districts, submits the following comments on the proposed Title IX regulations published in the November 29, 2018 Federal Register. The Council recognizes and values the important contribution that Title IX has made in developing and ensuring equitable treatment of students in education programs at all levels.

The Department’s “Directed Questions” (83 FR 61482-3), however, acknowledge that there are serious concerns about the applicability of the proposed regulatory changes in elementary and secondary school settings—concerns that the Council shares. Discussions with Great City Schools Title IX coordinators and general counsels underscore that the proposed regulations create an unduly formalized and litigation-like set of requirements unsuitable for elementary and secondary schools and the children they serve. While the handling of adult sexual harassment issues on college campuses has generated controversy, the handling of improper sexual conduct among school-age children in our public schools has been generally effective and largely noncontroversial. The Council, therefore, does not think that the proposed regulations affecting higher education should be applied to elementary and secondary education. Consequently, the organization opposes adopting the proposed Title IX rules for elementary and secondary schools. We request that the regulations be withdrawn, or that the proposed regulations be redrafted to allow current elementary and secondary school policies, procedures, and operations to be maintained.

The current Title IX regulations from 1975 pre-date the U.S. Department of Education and have been supplemented by federal guidance relating to sexual harassment issued in 1997, 2001, 2006, 2011, 2014, 2016, and 2017. The 1975 Title IX regulations, for example, are not overly prescriptive, and they have allowed school districts and others over the years to develop their own implementation policies, procedures, and practices consistent with state law and statewide policies.

If adopted, the newly proposed Title IX regulations, which will operate with the force of federal law, will undermine the current flexibility of public schools to handle incidents in a manner appropriate for school-age children and the specific circumstances involved.
The flexibility to establish policies and procedures at the state or local level will be significantly constrained under the proposed Title IX framework, requiring major revisions in the administration of Title IX by the nation’s school districts. Particularly at the elementary and secondary education level where current Title IX processes are generally working well, more than four decades of law, policy, and procedure would be subject to rescission or revision. Great City School officials have also expressed concern that the new “severity” threshold in the proposed federal regulations could ultimately lead to less attention to student incidents that do not rise to the new higher bar on sexual harassment but would nonetheless interfere with a child’s access to compulsory public education. Moreover, the proposed rules appear to reduce the federal obligation to address incidents of unwelcome conduct of a sexual nature that would typically be addressed under existing local school policies and procedures.

The proposed Title IX regulations were developed against the backdrop of numerous well-publicized higher education incidents involving campus-based sexual assault and how colleges and universities handled them. Numerous meetings were held between department officials and representatives of victims, those accused, and university administrators as the new regulations were being drafted. Much of the Title IX proposed rules, however, would also be applicable to the nation’s public schools, but we do not know that any of the Great City Schools were consulted or invited to any of the meetings on Title IX, despite operating the nation’s largest and arguably most complex school systems. In contrast to the consultations with higher education officials, it appears that elementary and secondary school officials were not formally consulted by the Department to determine current Title IX practices in public schools, how they were working, or to figure out what changing them might do. The proposed regulations, therefore, reflect a lack of understanding of how fundamentally unsuitable the new rules are to regular elementary and secondary school operations – a fact only tangentially conceded by the “Directed Questions” referenced above.

For instance, the proposed rules conflate federal requirements for processing and adjudicating sexual misconduct incidents involving adult college students who voluntarily attend higher education institutions with children/minors who attend public schools under compulsory attendance laws. The proposed rules attempt – albeit unsuccessfully -- to encompass and harmonize Title IX implementation at the higher education, preschool, elementary and secondary education levels, with Clery Act requirements in higher education, with state sexual misconduct laws, with state labor laws, with other public-school disciplinary proceedings along with collective bargaining agreements for public sector employees.

This results in a one-size-fits-all “fix” for all aspects of the Title IX sexual harassment framework, including procedures in elementary and secondary education that are not broken. Elementary and secondary schools should be allowed to continue to operate within the existing Title IX regulatory framework, supplemental Department guidance, and applicable state law in order to properly serve the interests of K-12 students and the local community.

On the subsequent pages is a non-exhaustive list of significant operational problems at the elementary and secondary school level that we would expect if the newly proposed Title IX regulations were implemented (referencing the CFR numeration from the November 29, 2018 Federal Register).
Major Problems with the Proposed Regulations

Unsuitability of Formalized, Litigation-like Procedures to the Developmental Stages of School-Age Children. The nation’s public schools serve pre-kindergarten to 12th grade school children, almost all deemed to be minors under state law. A school-age child’s physical, emotional, and mental development during his or her elementary and secondary school tenure is not complete. Instructional and support services in public schools are designed in recognition of the developmental stages of each child, and the courts have routinely recognized the developmental differences between K-12 students and students in higher education. School children have neither the judgment nor experience to interact or make decisions like an adult.

The process of handling complaints of sexual harassment or misconduct in a higher education setting is much more formalized and quasi-judicial, recognizing that most parties in this setting are legal adults. Even a cursory review of existing university procedures shows that official complaints are subject to complex procedural protocols, like those contained in the proposed rules that are not used or are not appropriate with minors. The formalized procedures contained in the rules for higher education are simply not suitable in the elementary and secondary education setting. Equating the two settings suggests that the Department did not adequately understand the two settings and the kinds of procedures that grow up over time to handle the differing needs of the students in each.

Many of the proposed regulatory requirements are simply not universally used by school districts when they address Title IX issues among preschool, elementary, and secondary school children. These requirements include the proposed formal complaints; the multitude of written notices; the prescribed content of notices; the right to inspect and review evidence, including the identification of witnesses; the presence of additional individuals at meetings or proceedings; responses to draft investigative reports and revisions; the distribution of investigative files; cross examination or directed questions submitted for the parties and witnesses; the cycle of follow-up questions; the content of written determination of responsibility; and a written notice and written mutual consent if informal resolution is used. School children, parents, and many K-12 administrators will not understand or be familiar with these judicial-like procedures. By analogy, the Council notes that even the nation’s court system has adopted different procedures for investigations, proceedings, and determinations of punishment for juvenile infractions than for individuals of legal age.

In addition, the confidentiality used in most schools to accommodate school-age parties and witnesses to sexual harassment will be breached by many of the proposed procedural requirements in the draft regulations. Student witnesses to sexual harassment – already hesitant to come forward with information – will likely be more reticent once they understand that their identity and statements as well as the school’s investigative files will be disclosed to each party. Peer pressure, bullying, and even retaliation at school, in the community, or online are expected to increase in schools as a result of these disclosures. School-age children, unfortunately, are more susceptible to these types of intimidating behaviors than are adult college students. More confidential and less formal procedures are more age-appropriate for grade-school children and provide important “teachable opportunities” to mold proper behavior at the elementary and secondary level – behaviors that college students should have already learned. In short, these proposed litigation-like procedures will do more harm than good in an elementary and secondary
school setting, and decades of more child-oriented approaches to handling school misconduct will be negatively affected.

Incongruent Judicial-like Procedures to the Purpose and Functioning of American Public Schools. State compulsory attendance laws, with limited exceptions, require school-age children to attend public school during ten months of the year. Contemporary public schools are expected by their communities to provide a safe and nurturing learning environment as well as a variety of related social, nutritional, and health services. Resolution of student behavior issues, large and small, for some 50 million students is part of a daily school routine that is designed so kids will want to come to school every day, and not just because they are required to do so. The adversarial-based procedures of the proposed rules run contrary to the inclusive and communal environment of the modern-day public school.

Moreover, the proposed Title IX regulations require a more formalized set of procedures for addressing one specific area of student behavior, sexual harassment, differently from other student behaviors, including issues of discrimination. Even the informal resolution regulation, as proposed, includes formalized elements that are not required in existing site-based school resolution procedures. The increased “severity” threshold, for example, in the newly proposed definition of sexual harassment will likely result in school districts utilizing one set of procedures for federal Title IX sexual harassment incidents and retaining another set of procedures for “code of conduct” sexual harassment violations to ensure that a safe and unimpeded learning environment can be maintained. And waiting for indicators of impeded access, such as chronic absenteeism or dropping out, would unreasonably delay proper school-level responses to unwelcome sexual-related conduct. Further, the proposed rule separating the functions of Title IX coordinators, investigators, and decision makers would be markedly unworkable, inefficient, and costly for many school districts, particularly for large urban school districts with hundreds of school sites where one responsible school-level official is selected to perform these three functions.

Associated Problems in the Proposed Regulations

Privacy and Confidentiality -- Sec. 106.6(e)
Despite the proposed rule referencing FERPA, school officials remain uncertain and extremely concerned that the proposed grievance procedures for notice and disclosure of the identity of involved individuals and witnesses will lead to bullying, intimidation, or retaliation among students – which current school-level confidentiality procedures seek to minimize. And, even though the 2001 revised Title IX guidance has been retained, its equivocating language (“The Department currently interprets FERPA…” and “an additional statutory provision may apply”) adds to the uncertainty about the intersection of these two federal laws.

Officials Having Authority -- Sec. 106.30
While the adoption of “actual knowledge” rather than “imputed knowledge” is supportable, the proposed definition of actual knowledge creates multiple uncertainties in the elementary and secondary school setting. An “official … who has the authority to institute corrective measures on behalf of the recipient” in the context of public schools lacks clarity. The proposed rule uses a rationale of “standing in loco parentis” to deem public school teachers as having enough authority under the proposed rules, and it draws a distinction with college-level instructors and professors who have less ongoing contact and control in teaching adult college students.
nature of public school management, however, requires supervision of school-age children virtually every minute of the school day, and at times before and after school as well, thereby raising operational questions under the proposed rules regarding whether “officials” having the requisite authority would be extended to anyone in temporary supervision of school children from the lunch room monitors to bus drivers to other school support staff, employees that colleges and universities typically do not have. Various school-level employees have limited authority to institute a narrow set of corrective measures and do not have broad-based authority to implement a full range of disciplinary measures, leaving school districts with an ambiguous interpretation of the proposed rule.

Formal Complaint by a Child -- Sec. 106.30
The definition of a formal complaint further underscores the inappropriateness of the proposed regulation to elementary and secondary school settings involving young school children. While adult college students might be expected to have the capacity to file a formal “signed” complaint invoking an institution’s grievance procedures, the same capacity cannot be expected for preschool, elementary and most secondary school children.

Off Site and Cyber Harassment – Sec. 106.30
The definition of a formal complaint addresses only “conduct within the education program or activity” that is accompanied by a specific request to initiate grievance procedures. Although there is some applicable federal guidance and some history of local practices addressing school-related, off-site events, the proposed regulations offer little clarity about cyber-related harassment among students, including use of social media and other technology that are an acknowledged problem at the secondary school level.

New Definition of Sexual Harassment -- Sec. 106.30
The proposed definition of sexual harassment derived from related case law in private legal actions for monetary damages establishes a high bar of “severe” conduct effectively denying access to education programs. As mentioned above, under the proposed regulations, school districts would be required to establish one set of procedures for sexual harassment under the new “severity” threshold and utilize another set of procedures for other improper conduct of a sexual nature under the school district’s student code of conduct -- an unwarranted and cumbersome result of these regulations. Additionally, several school district legal counsels have questioned whether the proposed threshold could be more workable if defined as “so severe, pervasive, OR objectively offensive”.

Supportive (Interim) Measures – Sec. 106.30
The practice of implementing interim or supportive measures, whether or not a formal complaint has been filed, is a critical step in addressing incidents of potential misconduct. In elementary and secondary schools, it is often not feasible to implement supportive measures that may not burden one party somewhat more than the other. It is unclear from the regulatory language whether “without unreasonably burdening the other party” would prohibit reassigning one party to a different class without also reassigning the other party as well. This proposed rule could readily interfere with a school’s best judgment, experience, and training in handling incidents involving school children during investigations and adjudication, as well as during informal resolutions or even in restorative justice initiatives. Further, under the proposed regulations, “[t]he Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.” However, coordinating “individual” supportive measures in the context of
large or even moderate-sized school districts with dozens or even hundreds of schools under this rule would be unworkable. Operationally, a variety of designated non-teaching staff including counselors, school psychologists, social workers, assistant principals, or others may be responsible for coordination at the school site, since it is not feasible for one districtwide Title IX coordinator to oversee individual support at large numbers of sites. Moreover, how this provision interacts with the particularly problematic provision [sec. 106.44(b)(4)] mandating separation of the coordinator, investigator, and decision maker roles further complicates this coordination function in sizeable public-school systems.

Unfunded Training Requirements and Questionable Cost Analysis -- 106.45(b)(1)(iii)
Training for each of three mandated Title IX functions (coordina tor, investigator, and decision maker) is required in the proposed rules. The Council acknowledges that some training is currently required in some states and in some school districts but not in others. The proposed federal Title IX training requirements unfortunately are not accompanied by any federal funding. Moreover, the cost analysis included in the preamble material of the NPRM does not account for large school districts that typically have one responsible official in each school—rather than a coordinator, an investigator, and a decision maker, as proposed—to handle Title IX and other misconduct allegations. While the Department predicts that the volume of formal complaints will decrease under the proposed regulations, school districts will still have the obligation under Title IX to respond to informal reports or complaints at each school with trained personnel. At an estimated 16 hours of training for each of the three responsible individuals in each school, the cost burden for large districts, like the Great City Schools, will be substantial and likely has been underestimated by the Department.

Ten Notice Requirements -- Sec. 106.8(a), 106.8(b), 106.8(c), 106.45(b)(1)(v), 106.45(b)(2)(i), 106.45(b)(2)(ii), 106.45(b)(3)(v), 106.45(b)(4)(iii), 106.45(b)(5), and 106.45(b)(6)
The proposed regulations add multiple new formal notice requirements, as well as detailed content requirements for those notices that are not contained in most existing school district policies and procedures. The new notice requirements further formalize school district Title IX procedures and reduce the flexibility of school districts to properly address a wide range of student behaviors in an age-appropriate manner.

Additional Incompatible Grievance Procedures (below) -- Sec. 106.45
As cited immediately above, there are multiple formal notice requirements included in the grievance procedures of the NPRM that are not contained in existing school policies and procedures. The proposed regulations also specify the content of these multiple notices, including matters not currently included in many existing local practices. Additionally, state law commonly prescribes grievance procedures for its public schools. Great City School officials, therefore, worry about how they will handle the inconsistencies between these overly prescriptive federal grievance procedures and their current state and local grievance systems. If these regulations are adopted, school districts would be forced to operate dual systems of grievance procedures—one for Title IX formal complaints of sexual harassment and another for other student code of conduct or employee conduct violations as well as for various forms of discrimination. Formal complaints regarding conduct that might constitute racial or ethnic discrimination would be handled under a set of procedures that are different from those proposed for formal sexual harassment complaints. Similarly, unwelcome student statements referring to appearance, body parts, or dress that would violate a school district’s student code of conduct— but not the proposed Title IX rules— would be handled under different procedures as well.
Both parties can discuss the allegations and gather evidence during investigations – 106.45(b)(3)(iii). Confidentiality for all individuals involved in incidents in elementary and secondary schools is generally an important element of the school-level investigative process. Investigations and the availability of both information and student witnesses will be severely compromised by this and other proposed rules.

Opportunity for others, including advisors and attorneys as well as parents, to attend meetings or proceedings – 106.45(b)(3)(iv). Providing for the presence of advisors and attorneys at the elementary and secondary school level during meetings or proceedings in a formal complaint – even though the level of participation may be limited by school officials – will add to the adversarial and litigation-like atmosphere established by these proposed regulations.

Quasi-cross examination allowed through written questions and follow-up questions to each party and any witness – 106.45(b)(3)(vi). With or without a live hearing, the Title IX decision maker of a public school must provide for parties to ask relevant questions and follow-up questions, at minimum in written form. It remains unclear how many back-and-forth follow-up questions would be allowable in this quasi-cross examination process. This quasi-cross examination/questioning of student witnesses at the elementary and secondary school level will result in even greater hesitation among classmates to offer information on the children involved. Peer pressure, which looks different among susceptible children and adolescents than it does with college-age students, already works against tattling or ratting on fellow students. Most existing school-level practices handle the disclosure of the identity of witnesses and their statements during investigations very carefully. The breach of this confidentiality under the proposed grievance rules would make investigation and resolution of sexual harassment incidents substantially more difficult to handle. Moreover, the disclosure of information and identities under these rules are likely to result in increased peer pressure, bullying, intimidation and retaliation against complainants and witnesses.

Option for Live Hearing at the Elementary and Secondary School Level – 106.45(b)(3)(vi). The proposed rule provides for a live hearing at the elementary and secondary school level at the option of the school district. A very small percentage of the Great City Schools use live hearings for Title IX sexual harassment complaints. If these regulations are adopted, additional requests for adversarial hearings are expected to increase in elementary and secondary schools nationally.

Review and inspect evidence gathered by the school district -- Sec. 106.45(b)(2)(i)(B) and 106.45(b)(3)(viii). The proposed regulations require school districts to review and inspect evidence by both parties at multiple stages of the proceedings, whether the evidence is intended to be used in determining responsibility, including prior to conclusion of the investigation, prior to the completion of the investigative report, or at a hearing itself. The school’s ability to gather relevant evidence in an investigation will be constrained since students will know that their identity and statements will be provided to both parties.

Sending all evidence to each party and their advisors in electronic format --106.45(b)(3)(viii). The proposed regulation would require all evidence gathered, whether or not used in a determination of responsibility and regardless of form, to be replicated in electronic format
and forwarded to the parties. The burden of reproducing the content of investigative files in digital form will be costly and burdensome for school staff.

Requiring separate Title IX coordinators, investigators, and decision makers will add major costs and staffing burdens to elementary and secondary schools – 106.45(b)(4)(i). School districts, particularly large school districts, assign Title IX responsibilities to a single staff person in each school, since a district-level administrator cannot oversee and supervise dozens or hundreds of school sites, thousands of students, and thousands of employees. The proposed regulations, however, expressly prohibit this common practice of one designated Title IX individual handling the coordination, investigation, and decision making at the school level. This proposed rule, perhaps more than any of the other proposed rules, will unnecessarily disrupt the current administration of Title IX at the elementary and secondary school level—a system that is currently functioning effectively—and will add costs to public school systems that are already strained with limited resources.

Standard of Evidence Requirements – 106.45(b)(4)(i). Although the proposed regulations provide the option of applying either the “preponderance of evidence” standard or the “clear and convincing evidence” standard, the proposed rule imposes additional federal requirements if a preponderance of evidence standard is used. These additional evidentiary requirements reveal a preference for the clear and convincing standard by the Education Department. Adoption of a preponderance of evidence standard imposes an additional requirement that the same standard be used for other student code of conduct violations not involving sexual harassment but carrying the same maximum sanction. Moreover, the same standard of evidence must also apply for complaints against students as it does for complaints against employees. Since the most common standard of evidence used by public schools in student sexual harassment and in other incidents is the preponderance of evidence standard, the Great City Schools find these add-on requirements implicating other components of student conduct codes as well as employee-related collective bargaining agreements to be unusually overreaching and unworkable.

Formalizing the Informal Resolution Process – 106.45(b)(6)
The proposed regulations properly provide for an informal resolution option at any time prior to a determination of responsibility. The proposed rule, however, formalizes the informal resolution by requiring a written notice to the parties detailing the allegations, any limitations on resuming a formal complaint, consequences that may result from the resolution, and also requires the written consent of each party. Although the “Informal Resolution” regulation is contained within the grievance provisions of the proposed Title IX rules, it is not clearly communicated that alternative informal resolution procedures can be used by school districts in circumstances where a formal complaint is not filed. Moreover, this proposed rule also would result in a dual set of procedures for informal resolutions in elementary and secondary schools.

While the Council agrees with several of the provisions in the proposed regulations (including the Department’s not imposing monetary damages or second-guessing responsibility determinations by schools in administrative enforcement actions [sec. 106.3(a) and 106.44(b)(5)]; the application of actual knowledge rather than constructive notice [sec. 106.30]; and the posting of contact information by the name or title of the Title IX coordinator[s]
[106.8(a)], the Council cannot support the proposed regulations and its lengthy litigation-like procedures as they apply to elementary and secondary schools. The proposed rules are clearly unsuitable for child-serving institutions like the nation’s public schools.

The Council of the Great City Schools, therefore, requests the withdraw of the proposed Title IX regulations and the initiation of an extensive outreach effort during the remainder of 2019 to stakeholders of every type of recipient of federal funds, including extensive consultation with public elementary and secondary school officials.

[In the alternative, the Council recommends the following revisions to the proposed regulations:

1. Add a new sec. 106.46 — “Sec. 106.46 Alternate Procedures for Local Educational Agencies and Other Child-Serving Recipients. Notwithstanding sec. 106.45, local educational agencies and other child-serving recipients may adopt grievance procedures consistent with Title IX of the Education Amendment of 1972 that comply with relevant state law, are age-appropriate for pre-school and school-age children and follow applicable collective bargaining agreements with employee organizations.

2. In sec. 106.44, strike “sec. 106.45” in each instance it appears and insert “sec. 106.45 or section 106.46”.

3. In sec. 106.30 under the definition of sexual harassment, strike “so severe, pervasive, and objectively offensive” and insert “so severe, pervasive, or objectively offensive”.

Please contact me if there are questions on these comments at mcasserly@cgcs.org or Jeff Simering at jsimering@cgcs.org. Thank you for your consideration.

Sincerely,

Michael Casserly
Executive Director