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MEMORANDUM

TO: **National Alliance for Public Charter Schools**
FROM: **Penn Hill Group**
DATE: **November 12, 2020**
SUBJECT: **Education Jobs Bills**

The following is in response to your request for an analysis of the Hayes and Booker education jobs bills, with particular attention to the provisions governing teacher eligibility and how those provisions differ from what was provided under the American Recovery and Reinvestment Act of 2009.

Rep. Hayes' Save Education Jobs Act (October 23 draft)

This bill would authorize funding for an "Education Jobs Fund," with an authorization of appropriations beginning at $56.6 billion for fiscal year (FY) 2021 and declining annually to $15.2 billion for FY 2030. However, no funds could be provided for fiscal years 2026 through 2030 if the national unemployment rate (or the State unemployment rate, with respect to the eligibility of an individual State) falls below 5.5 percent.

Funding would flow to States based on their shares of Elementary and Secondary Education Act (ESEA) Title I-A funding. State educational agencies (SEAs) could retain up to 5 percent of their allocations for administration, the retention and creation of SEA jobs, and efforts to ensure that low-income and minority children are not disproportionately served by ineffective, out-of-field, or inexperienced teachers. SEAs would allocate the remaining funds to local educational agencies (LEAs) based on their Title I-A shares.

LEAs would use at least 90 percent of their allocations for *"compensation and benefits and other expenses, such as support services, necessary to retain existing employees, to recall or rehire former employees, and to hire new employees, in order to provide early childhood, elementary, or secondary educational related services."* The remaining funds could be used for, among other activities: (1) training; (2) the salary increases needed to cover the additional instruction provided to make up for learning time lost because of COVID; (3) payments to incentivize teachers obtaining advanced or additional certifications; (4) incentives for teaching in high-need schools and fields; and (5) partnership programs with teacher preparation programs. No funds could be used for the LEA's general administrative expenses or for merit pay, reduction of an LEA's debt (or contribution to a rainy-day fund), equitable services to private schools, or other support of private schools.

An SEA desiring an allocation would have to assure, among other things, that it will work with its LEAs to target funding to high-need schools and to the support of at-risk students and that the funding will supplement and not supplant other Federal, State, and local resources. States would also commit to maintaining State funding (at the average of the 2017-2018 and 2018-2019 school years) and that any funding reductions in the State and its LEAs do not disproportionately affect high-need LEAs and schools. The bill also includes extensive SEA and LEA reporting requirements.

Sen. Booker's bill (draft AEG20653)

Sen. Booker's draft bill (as yet unnamed) would amend the CARES Act and would be similar to the Hayes proposal but would include other elements in addition an Educator Jobs Fund.

With respect to the Educator Jobs Fund, the authorized funding levels are the same as under Hayes. The current draft language appears to be missing Federal-to-State formula allocation language. There is bracketed language in the section-by-section analysis, but not in the bill itself, indicating that the funds would be provided to States that have at least a 5.5 percent unemployment rate.

The State-to-local formula is basically the same as under Hayes (Title I-A shares) but the bill language specifically states that charter school LEAs will receive LEA allocations. There is also language (see section 1(e)(2) of the draft) that appears to provide each charter school that is not an LEA with its Title I-A share.

At the SEA level, instead of allowing 5 percent to be reserved for State-level activities (as under Hayes), the bill would permit SEAs to use up to 2 percent for administration and up to 10 percent for additional support (for employee compensation) to high-poverty LEAs that were disproportionately affected by the COVID-pandemic.

At the local level, LEAs would be required to use 95 percent (compared to 90 percent under Hayes) for employee compensation, under the same authorizing language (quoted and italicized above) as is in the Hayes bill. The other 5 percent would be used to identify and address disparities that result in low-income and minority students being taught disproportionately by teachers who are ineffective, out of field, or inexperienced. Unlike in the Hayes bill, there are no additional authorized uses of LEA formula funds.

The prohibited uses of funds, reporting requirements, and maintenance-of-effort and "maintenance-of-equity" (no disproportionate impact of funding reductions on high-poverty LEAs and schools) requirements are very similar to the Hayes language.

As noted above, this bill includes additional provisions not related to the Educator Jobs Fund. These provisions would revise the CARES Act maintenance-of-effort and reporting requirements, create supplement-not-supplant and maintenance-of-equity requirements under CARES, eliminate CARES Act "equitable services" for private school students and teachers, and create new programs to provide personal protective equipment to schools and support teacher preparation. A number of these are similar to provisions in the Senate Democrats' "Coronavirus Child Care and Education Relief Act" (CCCERA) proposal.

Eligibility of teachers who are not direct employees of an LEA

With respect to your concern about whether charter school teachers would qualify for payments under these bills, such as if teachers are not direct employees of an LEA, the legislative language specifying how the funds could be used, which is identical in the two bills, is the language quoted and italicized above. The bills do not define the term "employee" or prohibit a teacher (or other staffer) who is employed on a contractual basis, or as an employee of an LEA contractor, from benefitting. Charter schools that are LEAs would receive allocations based on their Title I-A shares and would use the funds to retain, hire, and rehire staff. Allocations to charter schools that are under the jurisdiction of LEAs would depend on decisions made by those LEAs, but the language giving a priority to schools that serve concentrations of students from low-income families and other at-risk students should benefit charter schools with student bodies of that nature.

Discussion of the ARRA language

The American Recovery and Reinvestment Act of 2009 (ARRA) included a $53.6 billion State Fiscal Stabilization Fund (SFSF) that provided formula funding to States and then to LEAs to help offset the fiscal consequences of the 2008 recession. At the LEA level, districts would use the funds for any activity authorized by ESEA, the Individuals with Disabilities Education Act, the Adult Education and Family Literacy Act, or the Perkins Career and Technical Education Act, or for modernization, renovation, or repair of public school facilities. ARRA did not include language prohibiting compensation for teachers employed by LEAs under contract.

The U.S. Department of Education did not regulate on the uses of SFSF funds, but did issue guidance on the program. That guidance did not prohibit payments to teachers who were not employed directly by LEAs. The most relevant language is in question II-D-6 (page 20), which states that the funds could be used for "paying the salaries of teachers, administrators, or support staff." The guidance also states that an SEA or Governor could not mandate how an LEA used or could not use its SFSF formula funds. (See question II-D-14 on page 23.) Thus if, in the implementation of SFSF, certain districts did not use the funds to pay the salaries of certain teachers, that would have been a local decision that was not dictated either by the statute or by State policy.