Private School Provisions in the Hurricane Education Recovery Act

PRIVATE EDUCATION:
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Analysis of K-12 Hurricane Relief Provisions in
The Hurricane Education Recovery Act
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Introduction

On December 30, 2005, President Bush signed into law the Hurricane Education Recovery Act as part of H.R. 2863, the Department of Defense Appropriations Act of 2006. Subtitle A (Elementary and Secondary Education Hurricane Relief) of this landmark legislation provides assistance to students and schools, both public and private, affected by Hurricanes Katrina and Rita. The new law is designed to help restart schools damaged by the hurricanes and to help educate students forced to find new schools.

The bipartisan relief package that Congress approved and the president signed reflects refinements of three different proposals—one advanced by President Bush; one sponsored by Senators Michael Enzi (R-WY), Edward Kennedy (D-MA), Lamar Alexander (R-TN), Christopher Dodd (D-CT), Mary Landrieu (D-LA), Thad Cochran (R-MS), Trent Lott (R-MS), and Kay Bailey Hutchison (R-TX); and a third proposal sponsored by Reps. John Boehner (R-OH), Bobby Jindal (R-LA), and 25 other members of the House.

This document presents, in Q&A format, those provisions of the law that relate to private schools. Part 1 of this document covers section 102 (Immediate Aid to Restart School Operations) of the Hurricane Education Recovery Act, the section that provides assistance to help restart schools directly affected by the hurricanes. Congress has appropriated $750 million for the restart program. Part 2 of this document covers section 107 (Emergency Impact Aid for Displaced Students) of the act, which provides assistance for the education of students who were displaced by the hurricanes. Congress has appropriated $645 million for the emergency impact aid program.

Private school officials intending to participate in these programs should fully understand the provisions, timelines, and obligations associated with participation. This document, prepared by the Council for American Private Education (CAPE) is designed to provide an early introduction to the programs and to give private school officials a head start in working with colleagues in school districts and state education agencies. Although the law governing these programs envisions equitable services, the private school community must be proactive in pursuing that equity.

The Council for American Private Education (CAPE) is a coalition of national organizations and state affiliates serving private elementary and secondary schools. There are 29,000 private schools in America; in fact, one in four of the nation’s schools is a private school. More than six million students attend them. CAPE member organizations represent about 80 percent of private school enrollment nationwide.
Part 1
Assistance for Schools Directly Affected by the Hurricanes
(Section 102 of the Hurricane Education Recovery Act)

A. Immediate Aid to Restart School Operations

A-1. What private schools are eligible for this assistance?

To be eligible for this assistance, a private school must be: (1) located in Louisiana, Mississippi, Alabama, or Texas; (2) serving an area in which a major disaster has been declared related to Hurricane Katrina or Hurricane Rita; (3) accredited, licensed, or otherwise operating in accordance with state law; (4) a school that was in existence prior to August 22, 2005 (Sec. 102(b) and Sec. 102(g)).

A-2. What is the purpose of this assistance?

The purpose is to assist eligible schools with expenses related to restarting, reopening, and re-enrolling students (Sec. 102(a)(2)). Specifically, the assistance may be used for the following purposes: recovery of student and personnel data, and other electronic information; replacement of information systems; financial operations; reasonable transportation costs; rental of mobile educational units and leasing of neutral sites or spaces; initial replacement of instructional materials and equipment, including textbooks; redeveloping instructional plans, including curriculum development; initiating and maintaining education and support services; and such other activities related to the purposes of the program and approved by the U.S. Secretary of Education (Sec. 102(e)(1)). The assistance may not be used for the construction or major renovation of a school Sec. 102(e)(3)(A)).

A-3. Will public agencies provide funds to private schools under this program?

No. Assistance to private schools will be provided in the form of services, equipment, materials, and property, etc. (Sec. 102(h)(3)). (See question A-9.)

A-4. Through what agencies will assistance be provided to private schools?

Funds will flow from the U.S. Department of Education to the state education agency, which in turn will provide services and assistance to private schools and to local school districts (Sec. 102(c)(1)).

A-5. How will the amount of assistance be determined?

Congress has appropriated a total of $750 million for the Restart program. On December 30, Secretary Spellings announced that the Department of Education will immediately provide $100 million to Louisiana, $100 million to Mississippi, $50 million to Texas, and $3.75 million to Alabama under the Restart program. Final funding allocations for each state will be determined on the basis of the number of students who were enrolled during the 2004-05 school year in elementary and secondary schools that were closed on September 12, 2005, as a result of Hurricane Katrina or on October 7, 2005, as a result of Hurricane Rita (Sec. 102(h)). [NOTE: It is essential that private schools cooperate in data-gathering efforts connected with this program so that an accurate count of students can be determined.] Once it receives its allocation, the state education agency will then provide services and assistance to private schools based on (1) the number of children served by the private school during the previous (i.e., 2004-05) academic year, as well as (2) the severity of the impact of Hurricane Katrina or Hurricane Rita on the school and (3) the extent of the needs in each school (Sec. 102(c)(1)). [NOTE: It is essential that private schools cooperate with state education agencies in their efforts to determine these factors.]
A-6. Must states set aside a proportionate share of funds under this program for services and assistance to private schools?

Yes. The law requires state education agencies to reserve a share of funds under this program for assistance and services to private schools. The share must be at least equal to the share of private schools in the state (Sec. 102(h)(1)). Thus, if private schools account for 20 percent of the elementary and secondary schools in the state, the state must set aside at least 20 percent of funds for services and assistance to students in those schools. However, if funds set aside for private schools remain unobligated 120 days or more after the program is enacted into law, the state may use the set-aside funds for local school districts or private schools (Sec. 102(h)(2)).

A-7. Must states provide services and assistance to eligible private school students in an equitable and timely manner?

Yes. The law requires that services and assistance to private school students “shall be equitable in comparison to the educational services and other benefits provided for public school students…and shall be provided in a timely manner” (Sec. 102(c)(2)).

A-8. Must services or assistance provided under this program be secular, neutral, and nonideological?

Yes (Sec. 102(e)(3)(B)). (This restriction is comparable to that placed on all services and assistance provided by a government agency to private school students under the No Child Left Behind Act.)

A-9. Who controls the funds, assistance, and services provided under this program?

A public agency must control funds for services and assistance provided to private schools under the program, and must retain title to materials, equipment, and property purchased with such funds. Moreover, the public agency must administer such funds, materials, equipment, and property, and must either provide such services directly or contract for the provision of services with a public or private entity. (Sec. 102(h)(3))

A-10. How does assistance under this program interact with assistance provided by the Federal Emergency Management Agency (FEMA) and other government sources?

Funds provided under this program must supplement, not supplant, any funds made available through FEMA or through a state (Sec. 102(f)(1)). However, funds provided under this program may be used in coordination with other federal, state, or local funds (Sec. 102(e)(2)). Further, schools applying for funds for the same purposes from multiple government sources must follow certain additional provisions (Sec. 102(f)(2)).

A-11. How do private schools apply for services and assistance?

Each school desiring assistance must submit an application to the state education agency in accordance with procedures to be determined by the state education agency (Sec. 102(d)). [NOTE: It is essential that private schools submit timely applications in the manner prescribed by the state education agency.]
B. Equitability

B-1. Does the program provide equitable assistance for displaced students attending either public schools or private schools?

Yes.

B-2. Does the program allow displaced students to enroll in either a public school or private school regardless of their school of origin?

Yes.

C. Mechanics

C-1. What entity will administer the private school component of the program?

The local school district will administer the program (Sec. 107(a)(1)(B)). In the states of Louisiana and Mississippi, the state education department could administer the program if school districts are unable to do so (Sec. 107(a)(3)). Also, if any state education agency or eligible local school district is unable to carry out the private school components of the program, the Secretary of Education must make alternative arrangements with the state as the secretary deems appropriate (Sec. 107(l)(1)).

C-2. How will funds flow to private school parents and then to schools?

The parent or guardian of a displaced student in a private school must submit a timely application to the public school district in which the private school is located, requesting the district to make a payment to an account on behalf of the student (Sec. 107(c)(2)(A)(ii)(III)). [NOTE: This timely application by parents is an essential and early step in the process. Private school officials must determine from school districts ASAP the timeline and procedures for these applications.] Within 14 days of receipt of funds from the state, the public school district will make quarterly payments to the accounts for use by private schools (Sec. 107(d)(2)(B)). In the states of Louisiana and Mississippi, the state education department could administer the program if school districts are unable to do so (Sec. 107(a)(3)).

C-3. How often are counts of eligible private school students taken and how often are payments made by school districts to accounts for private school students?

Because of the high rate of mobility for displaced students, counts are taken and reported quarterly and payments are made quarterly (Sec. 107(c)(2) & (3)). Officials from the U.S. Department of Education have indicated that the opportunity will be provided for pro-rated payments in the case where a student might spend just part of the quarter in a particular school. Because the first quarter of the school year has already transpired, it is anticipated that the initial data collection will cover more than one quarter.
C-4. What if a student has left a private school to attend another school prior to the parent submitting an application to the school district requesting payment?

The parent must still submit an application to the school district. It is, therefore, important that private schools find a way of contacting parents even after students have transferred to another school. The U.S. Department of Education is expected to address this issue in a guidance document related to the program.

C-5. What is the timeline for the flow of funds?

The Secretary of Education is to publish a notice of the availability of funds by January 13, 2006 (14 days after the law’s enactment, which was December 30, 2005) (Sec. 107(a)(4)). No later than 14 days after the publication of that notice, school districts must submit an application for funds to the state education agency (Sec. 107(c)(2)). No later than 7 calendar days after the due date for receiving school district applications, the state education agency must submit an application for funds to the Secretary of Education (Sec. 107(c)(1)). The state education agency is to provide payments on a quarterly basis to local school districts by dates determined by the Secretary of Education (Sec. 107(d)(2)(A)(i)). Within 14 days of the receipt of funds from the state education agency, the school district must make payments to accounts established at the request of parents on behalf of students in private schools (Sec. 107(d)(2)(B)).

C-6. What if a school district does not make a payment to an account within 14 days of the receipt of funds from the state?

If a school district does not make the payment within 14 days, it must return the funds received for the quarter for that account to the state education agency, which then assumes the responsibility for making proper payment within 14 days of the return of funds from the district (Sec. 107(l)(2)).

C-7. What if a state or school district is unable to carry out the private school provisions of the program?

If a state education agency or a school district is unable to carry out the private school provisions, the Secretary of Education must make appropriate arrangements with the state to carry them out (Sec. 107(l)(1)).

C-8. What happens in states in which state law prohibits the state from using federal funds to provide services on behalf of students attending private schools and provides for another entity to deliver such services?

In that instance, the Secretary of Education must make arrangements with that entity (Sec. 107(k)).

C-9. What mechanisms does the program prescribe to ensure fiscal accountability for funds relating to students in private schools?

The program requires local school districts to secure from participating private schools attestations of attendance of eligible displaced students and attestations that accounts are used only for the purposes prescribed in the law (Sec. 107(c)(1)(D)). Further, before providing a quarterly payment to an account, the school district must verify with the parent or guardian of a displaced student that such student is or was enrolled in the private school for the quarter (Sec. 107(e)(2)). [NOTE: It is important that private schools keep track of forwarding addresses and other contact information for families that may have since moved on to other schools.]

C-10. May private schools access funds under this program for displaced students who are paying tuition?

No. A private school accessing funds on behalf of a displaced student must waive tuition, or reimburse tuition paid, in an amount equal to the amount accessed. (Sec. 107(d)(2)(C))
C-11. In applying to the state education agency for funds under this program, must a school district submit quarterly a count of displaced students attending eligible private schools?

Yes, and the count must include the number of displaced students who are children with disabilities (Sec. 107(c)(2)(A)ii). [NOTE: It is essential that private schools cooperate in ensuring that these counts are accurate.]

C-12. In applying to the U.S. Department of Education for funds under this program, must a state education agency submit the count of displaced students attending eligible private schools?

Yes (Sec. 107(c)(1)(F)). [NOTE: It is essential that private schools cooperate in ensuring that these counts are accurate.]

D. Eligibility

D-1. What students are eligible to participate?

An eligible student is a student who resided on August 22, 2005, in an area designated by FEMA as a disaster area related to Hurricane Katrina or Hurricane Rita (Sec. 107(b)(1)) and who enrolled in an eligible private school prior to December 30, 2005, the date of the enactment of the Hurricane Education Recovery Act (Sec. 107(c)(2)(A)ii)(I)). [NOTE: It is possible for private school students to change schools during the school year and still be eligible for assistance as long as they were enrolled in a private school prior to the enactment of the law.]

D-2. Does the program provide family income eligibility criteria?

The program allows states to establish criteria, including family income, for determining the eligibility and the amount of assistance provided on behalf of displaced students attending private schools (Sec. 107(c)(1)(E)).

D-3. Does the program provide assistance to students once they return to their original schools?

No (Sec. 107(b)(1)).

D-4. What is an eligible private school?

An eligible private school is an elementary or secondary school that was in existence on August 22, 2005; is accredited or licensed or otherwise operates in accordance with state law; and serves at least one displaced student whose parent or guardian has applied for funds (Sec. 107(b)(3)).

E. Amount, Duration, and Allowable Uses of Assistance

E-1. How much assistance will be available to parents of students enrolled in private schools?

For the entire school year, the maximum payment per displaced student is $6,000 per child without a disability and $7,500 per child with a disability (Sec. 107(d)(2)(B)(i)). The payment, however, is not to exceed the cost of tuition, fees, and transportation expenses at the private school (Sec. 107(d)(2)(B)(ii)). Further, if the amount appropriated for this program is insufficient to pay the full amount, that amount will be ratably reduced (Sec. 107(d)(2)(A)(iv)). Also, if a school district provides services under IDEA to displaced students in private schools, it may retain a portion of the funds available for such students (Sec. 107(e)(4)(B)).
E-2. For what period of time will the assistance be provided?

Aid is provided for the 2005-06 academic year only (Sec. 107(g)).

E-3. For what purposes may funds be used?

Schools enrolling displaced students may use funds drawn from accounts established on a student’s behalf for the following purposes: paying the compensation of personnel; identifying and acquiring curricular material, including the costs of providing additional classroom supplies; obtaining mobile educational units and leasing sites or spaces; basic instructional services for displaced students, including tutoring, mentoring, or academic counseling; reasonable transportation costs; health and counseling services; education and support services (Sec. 107(e)(1)). Funds may not be used for construction or major renovation of schools (Sec. 107(e)(3)). The law requires local school districts to secure from participating private schools attestations that accounts are used only for the allowed purposes (Sec. 107(c)(1)(D)(ii)). [NOTE: Schools may want to consider establishing a separate account for the receipt and expenditure of such funds in order to clearly track the use of the funds for authorized purposes.]

E-4. Are there special restrictions relating to payments made to accounts established on behalf of students with disabilities?

Yes. Any payment made on behalf of a displaced student who is a child with a disability must be used to pay for special education and related services consistent with the Individuals with Disabilities Education Act (Sec. 107(e)(4)(A)). Further, if the school district provides IDEA services to displaced students in private schools, the district may retain a portion of the assistance received on behalf of such student to pay for such services (Sec. 107(e)(4)(B)).

F. Nondiscrimination

F-1. What anti-discrimination provisions apply to participating schools?

The program requires participating schools not to discriminate against any student (displaced or otherwise) on the basis of race, color, national origin, religion, disability, or sex (Sec. 107(m)(1)(A)). For schools controlled by religious organizations, the prohibition of religious discrimination does not apply to the enrollment of students other than displaced students (Sec. 107(m)(1)(B)).

Notwithstanding the prohibition of sex discrimination, the program allows for single-sex schools, classes, or activities (Sec. 107(m)(2)(B)). Moreover, to the extent consistent with title IX of the Education Amendments of 1972, the sex discrimination language does not apply to schools where it would violate religious tenets or beliefs (Sec. 107(m)(2)(A)).

G. Opt-Out

G-1. What is the “opt-out” provision?

A parent or guardian of a displaced student on whose behalf a payment to an account is made may opt to have the child excluded from religious worship or religious classes offered in the private school in which the student is enrolled (Sec. 107(m)(4)).