UNITED STATES DEPARTMENT OF EDUCATION

THE DEPUTY SECRETARY

March 16, 2010

Honorable Mark Parkinson
Governor of Kansas
Capitol Building, Room 212S
Topeka, KS 66612-1590

Dear Governor Parkinson:

This is in response to your May 22, 2009, letter to Secretary Duncan in which you request a waiver for State financial support for special education for fiscal year (FY) 2010 and FY 2011 for the Individuals with Disabilities Education Act (IDEA) under 20 U.S.C. § 1412(a)(18) and 34 C.F.R. Section 300.163. Based on subsequent communication with your staff, we understand the State is requesting this waiver only for FY 2010 (school year 2009-2010). I apologize for the delay in responding to your letter.

Under 20 U.S.C. § 1412(a)(18) and 34 C.F.R. Section 300.163(a), a State must not reduce the amount of State financial support for special education and related services for children with disabilities, or made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. We are permitted to waive these requirements for a State, for one fiscal year at a time, if we determine that granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, regardless of whether a State receives a waiver under this authority, the State has a continuing obligation to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities as required in 20 U.S.C. § 1412(a)(1) and 34 C.F.R. Section 300.101.

As discussed in your May 22, 2009, letter, and Deputy Commissioner Dale Dennis' subsequent letter dated August 12, 2009, Kansas seeks to reduce State spending on special education and related services by $60,212,507 for FY 2010. The State noted that it included IDEA funds provided to the State under the American Recovery and Reinvestment Act of 2009 (ARRA) in its calculation of "Special Education State Aid" and indicated that, when taking the amount of IDEA ARRA funds into consideration, the State's percentage decrease in funds budgeted for special education and related services is 1 percent. However, IDEA ARRA funds are not State funds and cannot be used to calculate the actual or percentage decrease in State funding for special education. Accordingly, I did not consider the IDEA ARRA funds when determining the State's maintenance of effort requirements. However, when evaluating the equities of the proposed waiver, I considered the fact that the IDEA ARRA funds assisted the State and local educational agencies (LEAs) in meeting their obligation to make FAPE available to all children with disabilities in FY 2010.

A reduction of $60,212,507 represents a 14.07 percent decrease in State financial support for special education from FY 2009 to FY 2010, while the expenditures from the State General Fund will drop only 10.4 percent from FY 2009 to FY 2010. We acknowledge that the State faces a difficult financial situation and has experienced a significant decrease in revenues. However, the State's budget does not treat special education programs in an equitable manner when compared to some other State programs and when compared to the budget cuts for State agencies as a whole. Accordingly, after consideration of all of the information provided by the State in its submissions and other relevant information, including the current information provided by the State with regard to the targets it has set and its data on the compliance and performance indicators under section 616 of the IDEA (20 U.S.C. § 1416), I have determined that it would not be equitable to grant a waiver under 20 U.S.C. § 1412(a)(18)(C)(i) and 34 C.F.R. Section 300.163(c)(1) that would permit the State to reduce spending on special education and related services by $60,212,507 for FY 2010.

However, I have also determined that it is equitable to grant such a waiver due to exceptional or uncontrollable circumstances -- the precipitous and unforeseen decline in the financial resources of the State -- permitting Kansas to reduce its amount of State financial support provided for special education and related services for FY 2010 by $44,486,326, representing a 10.4 percent decrease from its State appropriation in FY 2009 of $427,753,137. This level brings the relative level of spending on special education and related services in line with the relative level of expenditures from the State General Fund. We remind the State that if it fails to maintain support at the level permitted by this waiver, the Department will be required to reduce the allocation of funds to the State under section 611 of the IDEA for any fiscal year following the fiscal year for which the State fails to maintain effort by the same amount by which the State fails to meet the requirement. 20 U.S.C. § 1412(a)(18)(B) and 34 C.F.R. Section 300.163(b). Further, as provided by 20 U.S.C. § 1412(a)(18)(D) and 34 C.F.R. Section 300.163(d), the amount of financial support required of the State in future years is the same amount that would have been required in the absence of this waiver.

Your letter also stated that you believed that all school districts will meet local maintenance of effort requirements this year. We are very glad to hear that since, as you know, the State must ensure that LEAs do not count ARRA Part B funds as "State" or "local" funds for the purpose of determining whether an LEA has met its supplement/not supplant and maintenance of effort requirements at 34 C.F.R. Sections 300.202(a)(3) and 300.203. Further, if it is discovered, through means such as monitoring or auditing, that an LEA has not met these requirements, the Department will seek to recover funds from the SEA, in an amount equal to the amount by which the LEA did not meet the requirements. The amount recovered must be paid from non-Federal funds. Based on your statement in your letter, we are hopeful that this will not be necessary.

We appreciate your continued commitment to serving children with disabilities and look forward to our continued collaboration on their behalf.

Sincerely,

Anthony W. Miller

Anthony W. Miller

cc: Deputy Commissioner Dale M. Dennis