



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

Honorable Jason Glass
Director
Iowa Department of Education
Grimes State Office Building
East 14th & Grand Streets
Des Moines, Iowa 50319-0146

JUL 14 2011

Dear Director Glass:

This responds to Deputy Director of the Iowa Department of Education Kevin Fangman's June 30, 2011 letter to the U.S. Department of Education (Department). Mr. Fangman's letter was in response to my June 21, 2011 letter, which denied a waiver of the requirement in the Individuals with Disabilities Education Act (IDEA) (in 20 U.S.C. §1412(a)(18)(A) and 34 CFR §300.163(a)) to maintain State financial support for special education and related services for State fiscal year (SFY) 2011 (July 1, 2010 – June 30, 2011), and denied a request for an amended waiver for SFY 2010 (July 1, 2009 – June 30, 2010).

In conversations with the State on June 29, 2011 with my staff, the State explained that, in July and August of each year, it reimburses local educational agencies (LEAs) 100% of the costs of the special education and related services for certain groups of children with disabilities that the LEA provided to those children in the prior school year. When the State calculates the amount of financial support made available by the State in a particular SFY, the State includes an estimate of these payments for the SFY in which the special education and related services are provided, rather than the SFY in which the State makes the payments. For example, the State estimated the amount that it would reimburse LEAs in July and August of 2010 (in SFY 2011), and included this estimate in its calculation of State financial support for SFY 2010, which ended on June 30, 2010. In a year when the State's other financial support for special education and related services is close to the prior SFY's amount of State financial support, the State would not meet its requirement to maintain fiscal effort if the payments actually made in July and August were lower than the State's estimate of those payments. Your staff indicated that this is what occurred in SFY 2010.

However, regardless of the State's usual accounting methods, the IDEA requires that, when calculating the amount of State financial support made available, the State include all State financial support made available for special education and related services during a particular fiscal year, regardless of the year in which the special education and related services are provided. In other words, the date that the State reimbursed LEAs for the cost of special education and related services is the date on which the State "made available" State financial support. Because the State had not used a proper method of calculating its fiscal effort, the Department directed the State to recalculate the amount of State financial support for special

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education and related services made available for SFYs 2009, 2010, and 2011, and specifically required the State to include payments made by the State in the calculation for the SFY in which the payments were made, and not the SFY in which special education and related services were provided.

In its June 30th submissions, the State provided revised data and information regarding the amount of State financial support made available for special education and related services in SFYs 2009, 2010 and 2011. The State reported that it made available for special education and related services \$525,391,078 in SFY 2009 and \$487,490,348 in SFY 2010. The Department carefully reviewed your State's submissions and accepts this data. With respect to SFY 2010, the Department's April 29, 2010 letter to the State granted the State a waiver of the requirement to maintain State financial support that permitted the State to reduce its amount of State financial support by \$38,102,897. The State's revised data indicates that the State made available an amount of State financial support for special education and related services that was permitted under the Department's April 29, 2010 letter.¹

In addition, the State also provided revised data for SFY 2011. The State reported that it made available the full amount of required State financial support for special education and related services for that year. Specifically, the State reported that, on June 30, 2011, in order to maintain fiscal effort, the State made available an additional \$3,880,757, for a total of \$525,391,078, in State financial support for special education and related services for FY 2011. The Office of Special Education Programs will be contacting selected LEAs in Iowa to obtain information on the effect that the State's resolution of its maintenance of effort shortfall for FFY 2011 had on the availability of special education and related services in those LEAs. This information will assist the Department in providing guidance to Iowa and other States on their responsibilities to maintain fiscal effort.

Accordingly, based on the data and information provided by the State, the issues related to the State's requests for waivers for SFYs 2010 and 2011 are resolved, and therefore, the Department will not reduce the State's section 611 allocation for its Federal FY (FFY) 2011 grant (funds that became available July 1, 2011 for distribution to States). We remind the State that it must include in its calculations all State financial support "made available" for special education and related services during a particular fiscal year, regardless of the year in which the special education and related services are provided.

In light of the Iowa State Advisory Council for Special Education's duties under 20 U.S.C. §1412(a)(21)(D), particularly its duty under 20 U.S.C. §1412(a)(21)(D)(i) to "advise the State educational agency of unmet needs within the State in the education of children with disabilities," we are providing it with a copy of this letter.

¹ The State made available \$37,900,730 less for special education and related services in FY 2010 than it did in FY 2009 – a reduction of 7.21 percent (compared to a reduction of 7.25 percent when calculated using the State's original incorrect data for SFY 2010). The Department's April 29, 2010 letter granted the State a waiver that permitted the State to reduce State financial support for special education and related services by a greater amount -- \$38,102,897. Given that the percent reduction in State support for special education and related services was less than the 8.4 percent reduction in overall appropriations, the State would have qualified for a full waiver under the rationale used in granting the State's original FY 2010 waiver request on April 29, 2010.

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

Sincerely,

A handwritten signature in black ink that reads "Alexa Posny". The signature is written in a cursive style with a large initial 'A' and a long, sweeping tail on the 'y'.

Alexa Posny, Ph.D.

cc: Iowa State Advisory Council for Special Education