



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

JUN 21 2011

THE ASSISTANT SECRETARY

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

Dear Director Glass:

This is in response to your March 16, 2011 letter (supplemented by additional information provided on May 2, 2011 and on May 25, 2011), in which the State of Iowa requests a waiver in the amount of \$4,082,923 for State financial support for special education and related services for fiscal year (FY) 2011 (July 1, 2010, through June 30, 2011) for the Individuals with Disabilities Education Act (IDEA) under 20 U.S.C. §1412(a)(18) and 34 CFR §300.163. This letter also responds to the State's request in your May 25, 2011 letter for an amendment to the State's original FY 2010 waiver request, which the Department granted on April 29, 2010. We appreciate the time and effort you took to provide the supplemental information.

A State is eligible for a grant under Part B of the IDEA if the State submits a plan (application) that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets certain conditions. 20 U.S.C. §1412(a) and 34 CFR §300.100. One of these conditions is the requirement that a State make available State financial support for special education and related services in an amount that is no less than the amount made available the preceding fiscal year. Specifically, under 20 U.S.C. §1412(a)(18)(A) and 34 CFR §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 otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. Iowa has provided such assurances in its applications for Part B funds in all relevant years and the Department awarded Part B funds to the State based in part on those assurances.

While 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, 20 U.S.C. §1412(a)(18)(C)(i) and 34 CFR §300.163(c)(1)), we do so carefully and reluctantly, given the importance we place on maintaining State financial support for our most vulnerable students. Moreover, 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 eligible children with disabilities, as required in 20 U.S.C. §1412(a)(1) and 34 CFR §300.101.

FY 2011

In FY 2011, the financial support for special education and related services required of the State was the amount that would have been required in the absence of a failure to maintain effort in FY

2010 and not the reduced level of the State's financial support in FY 2010. 20 U.S.C. §1412(a)(18)(D) and 34 CFR §300.163(d). Based on information provided by your agency, Iowa seeks to reduce State financial support for special education and related services in FY 2011 by \$4,082,923 below its required level of effort.

Iowa's March 16, 2011 letter to the Department stated that the State was facing the "continuing consequences of the FY 2009 'precipitous and unforeseen decline' in Iowa's financial resources." While we recognize that total State revenues in FY 2011 decreased by \$78,400,000, or 1.32 percent, from FY 2009, the year that Iowa last met the maintenance of effort requirement, revenues in FY 2011 are \$221,800,000, or 3.94 percent, higher than in FY 2010.¹ In addition, the State's data establishes that the State has the financial resources available to fully restore funding in FY 2011 to special education and related services in order to meet its obligation to maintain State financial support. The documents submitted by the State demonstrate that the State estimates revenue that is \$576,516,324 in excess of its appropriations for the remainder of FY 2011, well beyond the amount necessary to maintain the State's required level of financial support for special education and related services for FY 2011.² Under these circumstances, the State must maintain financial support for special education and related services even if doing so requires the State to act outside of its normal legislative budget cycle.

In short, the State has offered no fiscal or practical reason why the State did not – and could not *now* – make available an additional \$4,082,923 for special education and related services to meet its requirement under the IDEA to maintain fiscal effort in FY 2011. Because the State's revenue projections indicate that the State has an increase in revenues from FY 2010 to FY 2011, and that it has a substantial surplus in FY 2011 that is available for special education and related services, the Department cannot conclude that the State has experienced an "exceptional or uncontrollable" circumstance. Accordingly, I have determined it is not equitable to grant a waiver under 20

¹ The revenue figures referenced here come from the Net General Fund Revenues line of Exhibit A, "Revenue Estimating Conference, Estimate of General Fund Receipts" provided in your May 2, 2011 letter. The FY 2009 and FY 2010 figures are final, and the FY 2011 number is the most recent estimate. Iowa's letter on May 2, 2011 provided a revenue figure for FY 2011 that was "limited to 99% of the REC (Revenue Estimating Conference) General Fund estimate as required in Iowa law," referencing an Iowa Code limitation that the State's budgeted expenditures not exceed 99 percent of the State's adjusted revenue estimate. However, we understand that the revenue numbers submitted in that same letter for FY 2010 and FY 2009, as well as the revenue figures submitted by the State as part of its FY 2010 request for a waiver, reflect 100 percent of General Fund revenue. In order to compare data from year to year, which the IDEA requires when determining maintenance of effort, the Department has adjusted the FY 2011 figure submitted on May 2, 2011 to the 100 percent level. We note that the analysis of the figures and the result would be the same regardless of whether the Department used revenue figures at the 99 percent or 100 percent levels for all years.

² Throughout the analysis, the Department used appropriations figures presented in Governor Culver's FY 2011 budget recommendations and Governor Branstad's FY 2012-FY 2013 budget recommendations: the FY 2009 Actuals, FY 2010 Actuals, and FY 2011 Current Year Budget Estimate of the Total General Fund Appropriation line found in the General Fund Appropriation by Function tables. Your letter of May 25, 2011 referenced these budget recommendations as sources for final appropriations figures for each State agency. We note that these figures are not the appropriations figures provided in the body of your May 25, 2011 letter. The Department is not using the figures provided in the body of your May 25, 2011 letter because, despite the fact that the figures in the body of the letter were described as final, audited amounts, there was no official documentation supporting those figures, and because the figures in the Governors' budget recommendations are more in line with the figures provided by the State in its application for a waiver in the College Access Challenge Grant program, submitted on May 25, 2011.

U.S.C. §1412(a)(18)(C)(i) and 34 CFR §300.163(c)(1) permitting Iowa to reduce State financial support for special education and related services for FY 2011.

FY 2010

Your May 25, 2011 letter also included a request for an amendment to the State's original FY 2010 waiver request. That letter confirmed that the State made \$486,043,986 available for special education and related services in FY 2010 -- \$1,446,361 less than the level of effort required by the waiver granted for that year, and that the State "would need to request an adjusted waiver amount in FY 2010 of \$39,549,258, as opposed to \$38,102,897." Although the Department found it equitable to grant a waiver on April 29, 2010 for FY 2010, your May 25th letter acknowledged that, "[a]fter approval of Iowa's waiver for SFY 2010, the Iowa General Assembly made some supplemental appropriations to reduce the financial impact on those programs that were cut by the largest percentages and disproportionately underfunded." The State's documents also demonstrate that, before the end of FY 2010, the State accumulated more than sufficient revenues to maintain fiscal effort at the level required by the Department's April 29, 2010 letter, and that the State was no longer experiencing an "exceptional or uncontrollable" circumstance that prevented it from meeting its required level of State financial support -- the amount allowed under the original waiver granted to the State, or \$486,043,986. Moreover, the State provided no reason why it was unable to use a portion of this surplus to make available the amount of State financial support for special education and related services required by the Department's April 29, 2010 letter. Accordingly, I have determined it is not equitable to grant an amended waiver under 20 U.S.C. §1412(a)(18)(C)(i) and 34 CFR §300.163(c)(1) permitting Iowa to reduce its amount of State financial support provided for special education and related services for FY 2010.

Other

We also wish to take this opportunity to specifically address some of the matters raised in your letters to the Department. In your March 16, 2011 letter, you stated that:

[A] combination of state aid and local property taxes are utilized for special education costs in Iowa. When state special education funding is reduced, an LEA may raise property taxes or use cash reserves, and an AEA may use its cash reserves. LEAs may request permission to receive allowable growth (the right to raise additional property taxes) for negative balances in special education during a school year. Iowa Code § 257.31(14). In contrast to Iowa's LEAs, the Iowa Department of Education and the AEAs lack taxing authority to counteract a reduction in special education funding. If Iowa's Part B grant were reduced under section 300.163(b), Iowa's AEAs and the Iowa Department of Education would be disproportionately harmed financially and lack the ability to recoup the loss of funds.

Your May 2, 2011 letter raised a similar issue, stating:

Iowa discerns two purposes underlying the IDEA's requirement to maintain state financial support:

1. To prevent States from financially disadvantaging special education during tough economic times, and
2. To prevent States from using federal dollars to replace state dollars previously used to fund special education.

Granting Iowa's requested waiver would not undermine either of these purposes.

Iowa's funding mechanism for special education requires the use of both state and local funds. As state revenues diminish, local property tax revenues replace the missing state funds. Iowa Code ch. 257. The inverse is also true. As state revenues increase, the reliance on local funds decreases. In Iowa, the statutory system used to fund special education meets both purposes underlying the IDEA's state financial support requirement.

The obligation to maintain State financial support for special education and related services rests with the State, and not with the State Educational Agency (SEA), local educational agencies (LEAs), or Area Education Agencies (AEAs). 20 U.S.C. §1412(a)(18)(A) and 34 CFR §300.163(a). Accordingly, the fact that the SEA does not have independent taxing authority is irrelevant – the State may not shift its responsibility to maintain fiscal effort for special education and related services to LEAs or AEAs. Moreover, while we agree that one purpose of the State maintenance of effort requirement is to prevent States from using Federal dollars to replace State dollars for special education and related services, the State maintenance of effort requirement also serves to provide LEAs and AEAs with some expectation of financial support for special education and related services from the State.

Further, your March 16, 2011 letter also argued that granting a waiver would be equitable by stating:

[T]he action required by the Part B regulations is harsh. The penalty Iowa faces is a reduction in its Part B grant equal to the amount it fell short of maintaining state financial support. 34 C.F.R. § 300.163(b). If Iowa was actively pursuing other priorities to the exclusion of special education, the remedy might have deterrent value. That is not the case here. Due to the deterioration, within a matter of months, of Iowa's fiscal standing, Iowa has no choice but to make drastic reductions in FY2010, and Iowa has taken concrete steps to bring state special education support to over ninety-nine percent of FY2009 levels. Any additional reduction in federal assistance would have no deterrent value and would make matters worse.

The Department may not consider the consequence of the State's failure to maintain effort when assessing the equities of a waiver request. Rather, the statute directs the Department to consider whether a "waiver would be equitable *due to exceptional or uncontrollable circumstances*" 20 U.S.C. §1412(a)(18)(C)(i) and 34 CFR §300.163(c)(1) (emphasis supplied). To consider the statutory consequence as part of the "equities" would render the requirement to maintain State financial support, and the statutory consequences of the failure to do so, meaningless, and the Department may not construe a statute as to render it meaningless. 20 U.S.C. §1412(a)(18)(B) and 34 CFR §300.163(b).

Summary

As noted above, when a State fails to maintain State financial support at the level required by law, the IDEA directs that the "Secretary shall reduce the allocation of funds under section 611 of the

IDEA for any fiscal year following the fiscal year for which the State fails to comply with the requirement” 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 CFR §300.163(b). Accordingly, unless the State provides confirmation in writing to the Department that it has made available an additional \$4,082,923 in State financial support for special education and related services for FY 2011, the Department will reduce the State’s section 611 allocation grant by that same amount, in addition to the \$1,446,361 by which the State failed to maintain effort in FY 2010, for a total of \$5,529,284. Please note that the level of State financial support that the State must maintain in the year the State’s section 611 allocation is reduced, or in future years, is not affected by the Department’s reduction in the State’s section 611 allocation; thus, Iowa is required to make available \$525,593,244 in State financial support for special education and related services in FY 2012.

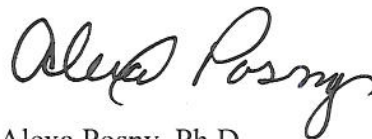
In addition, under 20 U.S.C. §1411(d)(3)(B)(i), (ii), and (iii), some of the State’s minimum and maximum allocations for a fiscal year are based on the amount the State received for the preceding fiscal year. The reduced allocation that Iowa will receive in FFY 2011 will be used as the amount the State received for the preceding fiscal year when the Department calculates the State’s FFY 2012 grant.

As you know, the State must ensure that LEAs do not count American Recovery and Reinvestment Act of 2009 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 in 34 CFR §§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.

The Department may undertake additional monitoring of Iowa’s implementation of Part B of the IDEA should we believe that to be necessary to assess whether a FAPE is still being made available to all children with disabilities. In addition, 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.

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, flowing style.

Alexa Posny, Ph.D.

cc: Iowa State Advisory Council for Special Education