

Iowa



UNITED STATES DEPARTMENT OF EDUCATION

THE DEPUTY SECRETARY

April 29, 2010

Honorable Judy A. Jeffrey
Director of Education
State Department of Education
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319-0146

Dear Ms. Jeffrey:

This is in response to your January 26, 2010, letter (supplemented by information provided in your February 18, 2010, and March 5, 2010, letters, and by an e-mail dated March 9, 2010, from Thomas Mayes of your staff) in which you request a waiver for State financial support for special education for fiscal year (FY) 2010 for the Individuals with Disabilities Education Act (IDEA) under 20 U.S.C. § 1412(a)(18) and 34 C.F.R. § 300.163. We appreciate the time you and your staff took to discuss this matter with U.S. Department of Education (Department) staff over the telephone, and in providing the supplemental information.

Under 20 U.S.C. § 1412(a)(18)(A) and 34 C.F.R. § 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. § 300.101.

As discussed in your letters, Iowa seeks to reduce State spending for special education and related services by \$38,102,897 for FY 2010, which represents a 7.25 percent decrease in State financial support for special education from FY 2009 to FY 2010. From the information your agency provided we are aware that the State faces a difficult financial situation and has experienced a significant decrease in revenues -- expenditures from the State's General Fund are expected to drop 8.4 percent from FY 2009 to FY 2010. The State cut its appropriations across agencies, with an average cut in appropriations from FY 2009 to FY 2010 of 14.75 percent.

In reviewing your request, I considered all of the information provided by the State in its submissions -- including that the percentage cuts to special education are less than the average cuts across agencies and less than the percentage reduction in revenues -- 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). In addition, when evaluating the equity of the proposed waiver, I considered the fact that the IDEA ARRA funds are available to assist the State and local educational agencies (LEAs) in meeting their obligation to make FAPE available to all children with disabilities in FY 2010. Accordingly, I have determined that it is equitable to grant a waiver under 20 U.S.C. § 1412(a)(18)(C)(i) and 34 C.F.R. § 300.163(c)(1) due to exceptional or uncontrollable circumstances -- the precipitous and unforeseen decline in the financial resources of the State -- permitting Iowa to reduce its amount of State financial support provided for special education and related services for FY 2010 by \$38,102,897.

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. § 300.163(b). Further, as provided by 20 U.S.C. § 1412(a)(18)(D) and 34 C.F.R. § 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.

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. §§ 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, even though the State has been granted the waiver described above. In addition, in light of the Iowa Special Education Advisory Panel’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 continued commitment to serving children with disabilities and look forward to our continued collaboration on their behalf.

Sincerely,



Anthony W. Miller