



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

THE ASSISTANT SECRETARY

APR - 7 2011

Honorable Susan Castillo  
State Superintendent of Public Instruction  
Oregon Department of Education  
255 Capitol Street, NE  
c/o Public Services Building  
Salem, Oregon 97310-0203

Dear Superintendent Castillo:

This is in response to your March 8, 2011 letter (supplemented by additional information provided by your staff on March 24, 2011 and on April 5, 2011), in which the State of Oregon requests a waiver in the amount of \$15,674,579 for State financial support for special education and related services for fiscal year (FY) 2010 – 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. We appreciate the time and effort your staff took to provide the supplemental information.

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 made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. 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.

In your March 8, 2011 letter, the State of Oregon reported that it had “experienced a precipitous and unforeseen decline in revenue compared to the forecast during the latter half of the 2009 – 2011 biennium that resulted in two separate budget reductions during the 2010 – 2011 school year.” Based on the information the State provided to the Department, we understand that, during the course of the State’s two-year budget cycle, there was a downward re-estimate of projected State revenues, which necessitated cuts in appropriations for FY 2010 – 2011. In March 2010, the State projected that \$14,288,910,000 in revenue would be available for the FY 2009 – 2011 budget period. In June and September of 2010, the State made downward adjustments to that revenue projection. Since the legislature had appropriated \$14,235,485,962 for FYs 2009 – 2011, or \$721,075,962 more than that most recent revenue projection (of March 2011), in response to the change in projected revenue, the Governor ordered across-the-board cuts to appropriations for all executive agencies covering FY 2010 – 2011 (the State reported

that under State law, the Governor does not have the authority to order cuts in the legislative or judicial branches of the Oregon State government, and that, therefore, there were no reductions in appropriations for those branches of the Government).

These cuts reduced total appropriations for FYs 2009 – 2011 by \$931,852,177, or 6.5 percent, to \$13,303,633,785. Because of the timing of the downward revenue forecast, the State had to make all of these cuts in FY 2010 – 2011, reducing the original appropriation for that year from \$7,260,097,841 to \$6,328,245,664, a 12.8 percent reduction. Thereafter, the State's Emergency Board used some of its available funds to restore some funding to special education and related services, but not enough to maintain effort at the FY 2009 – 2010 level of \$349,984,489. The final FY 2010 – 2011 level of State financial support for special education and related services is \$334,309,910, or \$15,674,579 less than FY 2009 – 2010.

At this time, the State appears to have projected financial resources available to fully restore funding to special education and related services in order to meet its obligation to maintain State financial support – indeed, the documents submitted by the State demonstrate that the State estimates revenue that is \$210,776,215 in excess of its appropriations for the remainder of FY 2010 – 2011. The data provided by the State indicate that the State's projected revenue available for FY 2010 – 2011 is \$6,539,021,879 (based on the \$13,514,410,000 in projected revenue for FYs 2009 – 2011 minus the \$6,975,388,121 appropriated in FY 2009-2010). This amount (\$6,539,021,879) exceeds the \$6,328,245,664 in appropriations for the same period by \$210,776,215. In short, the difference between the State's total revised revenue projection for FYs 2009 – 2011 (\$13,514,410,000) and the State's total revised appropriations for that same period (\$13,303,633,785) is \$210,776,215.

Because the State's revised revenue projections indicate that it expects to have sufficient funds available to maintain its required level of State financial support for special education and related services for FY 2010 – 2011, the State has not experienced an "exceptional or uncontrollable" circumstance that prevents it from meeting its required level of State financial support. Accordingly, based on all of the information provided by the State, I have determined that it is not equitable due to exceptional or uncontrollable circumstances to grant a waiver under 20 U.S.C. §1412(a)(18)(C)(i) and 34 CFR §300.163(c)(1), permitting Oregon to reduce its amount of State financial support provided for special education and related services for FY 2010 – 2011.

When a State fails to maintain State financial support at the level required by law, the Department must 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 CFR §300.163(b). Accordingly, unless the State provides confirmation in writing to the Department that it has made available an additional \$15,674,579 in State financial support for special education and related services for FY 2010 – 2011, the Department will reduce the State's section 611 allocation for its Federal FY (FFY) 2011 grant by that same amount. 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, Oregon is required to make available \$349,984,489 in State financial support for special education and related services in FY 2011 – 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 Oregon will receive in FFY 2011 (distributed on July 1, 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. The reduction in Oregon's 2011 allocation is also likely to affect the State's allocations for future years because of the provisions in the formula that are based on the amount the State received for the previous year.

As you know, the State must ensure that lead educational agencies (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 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 State educational agency (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 Oregon'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 Oregon 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, appearing to read "Alexa Posny". The signature is written in a cursive, flowing style.

Alexa Posny, Ph.D.

cc: Oregon State Advisory Council for Special Education