



January 26, 2010

The Honorable Arne Duncan
Secretary, United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Application for Waiver
IDEA's Maintenance of State Financial Support Requirement

Dear Secretary Duncan:

The State of Iowa respectfully requests that you grant a waiver of the requirement that Iowa maintain state financial support for special education and related services for the 2009-2010 school year. Your authority to grant the requested waiver is provided by statute and regulation. 20 U.S.C. § 1412(a)(18)(C); 34 C.F.R. § 300.163(c)(1). It would be equitable to grant this waiver because of the "exceptional or uncontrollable circumstances" due to the "precipitous and unforeseen decline" in Iowa's financial resources. The State of Iowa respectfully states the following.

- I. *There has been a "precipitous and unforeseen decline in the financial resources of the State."*

One condition for granting a waiver under Section 1412(a)(18)(C) is that a State is confronted by "exceptional or uncontrollable circumstances," such as a "precipitous and unforeseen decline" in a state's fiscal health. Within the last few months, Iowa's situation has deteriorated so dramatically from a balanced budget that Governor Chet Culver ordered an across-the-board budget cut, ordered unpaid furloughs for noncontract Executive Branch employees, and obtained concessions from the labor union representing the largest number of state employees to prevent further lay-offs. This fiscal deterioration is certainly what Congress had in mind when it empowered you to waive the requirement of section 300.163(a).

Iowa law requires the Governor to submit a balanced budget to the legislature. Iowa Code § 8.3(3) (2009). Iowa law also requires that a Revenue Estimating Conference ("REC") meet quarterly. *Id.* § 8.22A. If the REC determines that

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Helping Communities Meet the Learning Needs of All Their Children and Adults

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

revenue for a fiscal year is insufficient, the Governor is empowered to recast the budget to ensure it remains balanced. *Id.* § 8.31.

The budget for the fiscal year beginning July 1, 2009 ("FY10"), was balanced, as required. On October 7, 2009, the REC met and projected that Iowa's revenue for FY10 would be under its previous estimate by \$414.9 million, a shortfall of 8.4 percent. The October 7, 2009 REC report is attached to this Application as "Exhibit A." That day, Governor Culver directed Iowa's Department of Management to recast Iowa's FY10 budget.

On October 8, 2009, Governor Culver signed Executive Order 19, a copy of which is attached to this Application as "Exhibit B." Governor Culver ordered a ten percent across-the-board cut in state spending for FY10, pursuant to his authority under Iowa Code section 8.31. That cut amounted to \$564,507,832. Of that amount, \$238,495,330 was cut from foundation aid to Iowa's elementary and secondary schools. This represents over forty percent of the across-the-board spending reduction. The mandatory reduction of state support to special education was \$49.4 million. Iowa's state financial support in FY09 was \$525,593,244 and the anticipated level of state financial support for FY10 is \$487,490,347. The anticipated deficit in state financial support for FY10 is projected to be \$38,102,897.

As directed by the Governor, each Executive Branch agency was directed to prepare a plan to implement the across-the-board reduction. In the Department's plan, which is attached to this application as "Exhibit C," I clearly identified that this reduction would cause Iowa not to meet the IDEA's maintenance-of-state-financial-support requirement. Governor Culver's rationale for the across-the-board cut was to avoid "picking and choosing" between many worthy programs.

On October 28, the Governor approved the Department's plan. That day, the Governor ordered that each noncontract state employee take seven days of unpaid furlough leave during FY10. On October 30, Department staff had a telephone conference call with personnel at the United States Department of Education's Office of Special Education Programs about Iowa's circumstances. Further state layoffs were averted when the union representing the largest number of state employees approved, in November 2009, contract concessions, including five unpaid furlough days. On December 15, 2009, Department staff again consulted with OSEP personnel, who provided the Department with factors the Department may wish to include in this application. The Department has done so in this application.

Within the space of five months, the State of Iowa went from a balanced budget to deep budget cuts and unpaid leave for its employees. This calamitous drop in state revenues is certainly what Congress envisioned when it authorized you to grant waivers of the section 300.163(a) due to "exceptional or uncontrollable circumstances."

II. It would be equitable to grant this waiver due to "exceptional or uncontrollable circumstances."

Due to the deterioration of Iowa's fiscal situation, it would be equitable for you to grant this waiver. This is so for several reasons.

First, Iowa remains committed to offering a free appropriate public education, as required by the IDEA, to all Iowa children with disabilities. The Iowa Department of Education has taken steps to inform school districts that children with disabilities remain entitled to a FAPE even in challenging fiscal times (a copy of one such guidance document is attached to this Application as "Exhibit D"). The Department fully expects that all children with disabilities receive an education calculated to provide them with benefit, even after the across-the-board spending reduction.

Second, Iowa's local educational agencies ("LEAs") and area education agencies ("AEAs") are responsible for all costs associated with providing special education in the state. Since special education costs are covered by a combination of state aid and property taxes, any reduction in state aid occurring during a fiscal period is covered by an increase in property taxes by LEAs or use of cash reserves by an LEA or AEA. LEAs are allowed to request permission to receive allowable growth (the right to raise property taxes) for negative balances in special education during a school year. Iowa Code § 257.31(14). The Iowa Department of Education and the AEAs lack the taxing authority available to LEAs to make up for a reduction in special education funding. AEAs and the Iowa Department of Education would be disproportionately harmed and penalized and lack the ability to make up the lost funds from a reduction of Iowa's IDEA Part B allocation for failure to maintain state financial support.

Third, state special education funding is not being singled out for reductions. The reductions discussed in this waiver were applied to all state agencies, with the Governor making minor restorations that amounted to less than three percent of the total spending reduction and were less than one-half of the spending cuts for special education services. In contrast to instances where a state refuses to financially support special education so it may pursue other

priorities, Iowa is confronted by a reality where all government agencies are scaling back their initiatives and priorities in an equal manner.

Fourth, the required remedy 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 this were a situation in which a state was actively pursuing other priorities to the exclusion of supporting 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 these reductions. Any additional reduction in federal assistance would have no deterrent value and would make matters worse.

Fifth, Iowa's Special Education Advisory Panel supports this Application for a waiver. The panel recognized the dire situation confronting the state and the consequences of failing to grant a waiver. The panel, composed of educators, parents, persons with disabilities, and other members required by federal law, *see* 34 C.F.R. § 300.168, immediately understood the scope and magnitude of harm that would follow from the use of 34 C.F.R. section 300.163(b). A copy of a letter from the panel is attached to this Application as "Exhibit E."

Iowa's economic and fiscal affairs have unavoidably deteriorated. Nevertheless, Iowa remains committed to providing needed special education and related services to all children with disabilities. Imposing the statutory penalty for failure to maintain state financial support, when such failure is unavoidable, would take a bad situation and make it worse. Equitable principles suggest that the IDEA's requirement to maintain state financial support ought to be waived. Iowa respectfully requests that you recognize those principles of equity and fairness and grant this waiver.

III. Conclusion

For the reasons stated in this Application, the Iowa Department of Education respectfully requests that you exercise your authority under 34 C.F.R. section 300.163(c) and waive the requirement that Iowa maintain state financial support, due to "exceptional or uncontrollable circumstances." If you have any questions about this matter, please contact me or Lana Michelson, Iowa's state director of special education, at Lana.Michelson@iowa.gov or 515-281-4030.

Thank you in advance for your careful consideration of this application.

Respectfully submitted,



Judy A. Jeffrey
Director
Iowa Department of Education
(515) 281-3436
Judy.Jeffrey@iowa.gov

CC: Office of the Hon. Chester J. Culver, Governor of the State of Iowa
Members, Iowa's congressional delegation
Jeff Berger, Iowa Department of Education
Konni Cawiezell, Iowa Department of Education
Kevin Fangman, Iowa Department of Education
Lana Michelson, Iowa Department of Education
Dennis Dykstra, Iowa Department of Education
Steve Crew, Iowa Department of Education
Thomas Mayes, Iowa Department of Education

REVENUE ESTIMATING CONFERENCE
October 7, 2009

	FY 08 Actual	FY 09 Actual	FY 09 vs. FY 08 Actual	REC FY 10 Estimate 20-Mar-09	% Change FY 10 Est. vs. FY 09	REC FY 10 Estimate 7-Oct-09	% Change FY 10 Est. vs. FY 09 Actual	REC FY 11 Estimate 7-Oct-09	% Change FY 11 Est. vs. FY 10 Estimate
Tax Receipts									
Personal Income Tax	\$3,359.7	\$3,330.7	-0.9%	\$3,311.3	-0.6%	\$3,208.0	-3.7%	\$3,188.3	-0.6%
Sales/Use Tax	2,000.2	2,327.4	16.4%	2,397.8	3.0%	2,255.1	-3.1%	2,279.3	1.1%
Corporate Income Tax	483.8	416.5	-13.9%	394.2	-5.4%	316.2	-24.1%	281.4	-11.0%
Inheritance Tax	78.4	75.4	-3.8%	78.4	4.0%	67.9	-9.9%	71.3	5.0%
Insurance Premium Tax	111.7	90.0	-19.4%	108.6	20.7%	88.6	-11.6%	88.6	0.0%
Cigarette Tax	229.5	215.8	-6.0%	201.9	-6.4%	213.6	-1.0%	212.3	-0.6%
Tobacco Tax	21.2	23.0	8.5%	23.0	0.0%	23.7	3.0%	23.4	-1.3%
Beer Tax	14.5	14.7	1.4%	14.8	0.7%	14.9	1.4%	15.0	0.7%
Franchise Tax	37.6	33.7	-10.4%	31.2	-7.4%	34.0	0.9%	36.0	5.9%
Miscellaneous Tax	1.0	2.4	140.0%	1.0	-58.3%	1.0	-58.3%	1.0	0.0%
Total Tax Receipts	\$6,337.6	\$6,529.6	3.0%	\$6,562.2	0.5%	\$6,223.0	-4.7%	\$6,196.6	-0.4%
Other Receipts									
Institutional Payments	\$14.9	\$15.5	4.0%	\$13.7	-11.6%	\$14.7	-5.2%	\$14.7	0.0%
Liquor Profits	72.4	85.5	18.1%	74.6	-12.7%	83.2	-2.7%	88.1	5.9%
Interest	25.3	14.6	-42.3%	14.1	-3.4%	5.0	-65.8%	5.0	0.0%
Fees	82.1	77.7	-5.4%	48.7	-37.3%	50.6	-34.9%	49.1	-3.0%
Judicial Revenue	90.0	98.8	9.8%	114.0	15.4%	114.0	15.4%	114.0	0.0%
Miscellaneous Receipts	36.0	39.8	10.6%	38.6	-3.0%	36.9	-7.3%	35.1	-4.9%
Racing and Gaming	60.0	60.0	0.0%	66.0	10.0%	66.0	10.0%	66.0	0.0%
Total Other Receipts	\$380.7	\$391.9	2.9%	\$369.7	-5.7%	\$370.4	-5.5%	\$372.0	0.4%
Gross Tax & Other Receipts	\$6,718.3	\$6,921.5	3.0%	\$6,931.9	0.2%	\$6,593.4	-4.7%	\$6,568.6	-0.4%
Accruals (Net)	\$-24.0	\$17.2		\$8.6		\$-26.4		\$-3.0	
Refund (Accrual Basis)	\$-674.8	\$-803.9	19.1%	\$-821.0	2.1%	\$-891.3	10.9%	\$-830.0	-6.9%
School Infr. Refunds (Accrual)		\$-385.8		\$-401.9	4.2%	\$-379.0	-1.8%	\$-383.5	1.2%
Total Net Receipts	\$6,019.5	\$5,749.0	-4.5%	\$5,717.6	-0.5%	\$5,296.7	-7.9%	\$5,352.1	1.0%
Transfers (Accrual Basis)									
Lottery	\$55.3	\$56.6	2.4%	\$54.0	-4.6%	\$57.0	0.7%	\$59.0	3.5%
Other Transfers	9.6	128.4	1237.5%	81.3	-36.7%	84.3	-34.3%	5.2	-93.8%
Net Receipts Plus Transfers	\$6,084.4	\$5,934.0	-2.5%	\$5,852.9	-1.4%	\$5,438.0	-8.4%	\$5,416.3	-0.4%
Gambling Revenues Deposited To Other Funds	\$220.7	\$216.2	-2.0%	\$ 222.0	2.7%	\$214.6	-0.7%	\$214.6	0.0%

March REC estimate for FY 2010 has been adjusted for positive \$97.0 million in post-REC Legislative changes.

Exhibit "B"



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 19

WHEREAS, reckless conduct by Wall Street financial interests, combined with years of misguided economic and fiscal policies of the federal government, have joined to create a Great Recession, the worst economic downturn since the Great Depression; and

WHEREAS, as a result, across the nation, states are facing record high budget shortfalls in Fiscal Year 2010; and

WHEREAS, in addition to budgetary challenges caused by this economic down turn, the State of Iowa has, in recent years, experienced a series of unprecedented natural disasters requiring increased expenditures to relieve hardships endured by individuals and businesses harmed by those weather-related events; and

WHEREAS, the State of Iowa, using sound fiscal management practices, is in better shape than most other states, had the highest reserve funds in the state's history in Fiscal Year 2009, and thereby positioned itself to manage successfully notwithstanding the economic downturn and the adverse impacts of weather-related events; and

WHEREAS, in March, 2009, the State's Revenue Estimating Conference projected state revenues for Fiscal Year 2010, and the Iowa General Assembly passed, in April 2009, a balanced budget for Fiscal Year 2010, based on those projections; and

WHEREAS, on October 7, 2009, the State's Revenue Estimating Conference (REC), upon its review of more recent economic data, substantially revised and reduced its official projection of state General Fund revenues for Fiscal Year 2010 by approximately \$415 million; and

WHEREAS, based on these most recent projections, unless budgetary adjustments are made, I find that the estimated budget resources during Fiscal Year 2010 will be insufficient to pay all appropriations in full by the end of that period; and

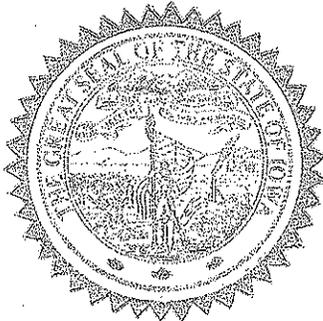
WHEREAS, I have therefore requested the Department of Management to recast the Fiscal Year 2010 General Fund budget with the REC's new revenue projections in order to abide with generally accepted accounting practices and to avoid an overdraft or deficit in the several funds of the State's General Fund for Fiscal Year 2010; and

WHEREAS, modifying budget allotments to state departments and agencies this early in the fiscal year will help state agencies adjust to lower revenues, despite already managing within the tight budget; and

WHEREAS, an across-the-board reduction of General Fund expenditures avoids the unfair and unrealistic "picking and choosing" of important programs; and

WHEREAS, a 10 percent reduction in appropriations, pursuant to Iowa Code 8.31, would reduce state expenditures in Fiscal Year 2010 by approximately \$565 million and help the State avoid an overdraft or deficit in the Fiscal Year 2010 General Fund; and

NOW, THEREFORE, I, Chester J. Culver, Governor of the State of Iowa, by the power vested in me by the Constitution and laws of the State of Iowa, do hereby order and direct a uniform modification of allotment requests, pursuant to Iowa Code 8.31, to achieve an annual ten percent budget reduction for Fiscal Year 2010. The Department of Management shall take all necessary steps under Iowa law to effectuate the annual ten percent reduction for Fiscal Year 2010, directed to all state departments and establishments, as provided in Iowa Code 8.2(5). Actions taken by the Department of Management and all state departments and establishments described above to implement this order shall commence on October 8, 2009.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 8th day of October, in the year of our Lord two thousand nine.

CHESTER J. CULVER
GOVERNOR

ATTEST:

MICHAEL A. MAURO
SECRETARY OF STATE

PRELIMINARY DEPARTMENT PLAN

Department of Education Spending Plan Reduction for the 10% ATB

No.	Appropriation Item/Service	Reduction Amount			FTEs Reduced			Criteria (please mark "X")			
		All Funds	Gen. Fund	Fed. Fund	Other Funds	Vac. Pos.	RIF	ST	FED	ARRA	MCH \$
811	Appropriation CDCC - Child Development	\$ 1,149,389	\$ 1,149,389					X			
905	State Foundation School Aid	\$ 238,495,330	\$ 239,495,330					X		X	X
916	Nonpublic Student Transportation	\$ 784,548	\$ 784,548								
0149	CC interpreters for the Deaf	\$ 20,000	\$ 20,000								
0150	Community College Salaries	\$ 91,668	\$ 91,668								

Exhibit "C"

PRELIMINARY DEPARTMENT PLAN

O151	DE Administration	\$ 807,398	\$ 807,398	\$ 807,398	14.00	5-10*	For an agency that is already 70% federally funded, this significant cut to state aid will have a dramatic impact on those personnel funded with state resources and will reduce the agency's ability to meet state expectations in various areas. The agency will be reviewing and making recommendations on functions that may have to be eliminated simply because there aren't enough staff to adequately support those mandated functions. We are eliminating out-of-state travel on state funds. We have reduced memberships by two thirds. We cut print, professional services, outside services, and out-of-state travel budgets by 50%. We will be considering a series of furlough days. Any staffing reductions will occur through a combination of moving state positions onto federal funding, attrition, retirements, and position elimination.	X				
O152	Vocational Education Administration	\$ 113,621	\$ 58,276	\$ 55,345	2.25		This funding must be maintained at the FY09 level. This cut will cause us not to meet MOE requirements. This specific appropriation has a one to one match requirement with the federal government. Reduction of this funding jeopardizes the entire funding stream (\$12,085,529). This entire fund is used for personnel to implement federal Perkins legislation, but is tied to the overall Vocational Education Secondary grant and appropriation.	X	X			X
O156	School Lunch Program	\$ 1,042,392	\$ 226,607	\$ 815,785			This is a fund with federal matching implications. This funding is used to provide hot lunch subsidies to schools and specifically covers students on reduced or free lunch programs. A cut like this with the resulting federal reduction will force lowa to decrease subsidies to school in this area, which will result in a higher cost of school lunches.	X	X			X
O157	Nonpublic School Textbooks	\$ 62,563	\$ 62,563				Claims for this funding already exceed available funds, so all reimbursements of this nature will be prorated down.					
O158	Vocational Education Secondary	\$ 269,692	\$ 269,692	**			This fund must be maintained at the FY09 level. This cut will cause us to not meet our MOE requirements. Reduction of this funding jeopardizes the entire funding stream (\$12,085,529). This entire fund is used for personnel to implement federal Perkins legislation, but is tied to the overall Vocational Education Secondary grant and appropriation.	X	X			X

PRELIMINARY DEPARTMENT PLAN

O159	Community College General Aid	\$ 15,867,850	\$ 15,867,850					Statewide effect undetermined and will vary by community college dependent on available levy authority and cash reserves, among other factors. Roughly 80% of local budgets are personnel, but options mid-year are limited due to contracts. This compression of system resources will impact staffing directly in FY11. CC tuition rates are already one of the highest in the nation and with the cap on ability to raise local property tax, this cut will require either reduction of programming and staff or increases to tuition rates or both.	X		X
O160	Empowerment - Family Support and Parent Education	\$ 1,521,455	\$ 1,521,455					The 10% reduction in this appropriation will cause local empowerment Grant awards made on these funds will be prorated down according to the reduction.	X		
O161	Before/After School Grants	\$ 54,595	\$ 54,595					The funds in this appropriation are used for beginning teacher mentoring and induction efforts, national board certification teacher reimbursements, statewide professional development including teacher development academies, state teacher of the year, career ladder/pay for performance pilots, and DE staffing to manage all of the programming under this chapter. All of these programs will be reduced.	X		
O169	Teacher Quality	\$ 892,428	\$ 892,428			1.20					
O170	Voluntary Preschool	\$ 1,194,569	\$ 1,194,569			1.00		Preschool grants will be prorated down proportionally. This will result in approximately 400 4 year olds not receiving the support of this programming.	X		
O183	Iowa Core Curriculum	\$ 197,954	\$ 197,954					The mandated implementation of the Iowa Core Curriculum must be completed by 2012 for grades 9-12 and 2014 for grades K-8. This appropriation is the primary support that provides trainers to schools on this implementation. This fund was already reduced in the appropriations process and is again reduced here and will delay the ability for schools to effectively implement this mandate. This is a primary example of how resources negatively impact the ability of the state and the Department of Education to increase expectations and performance.			
O189	IJAG	\$ 60,000	\$ 60,000					This reduction has the potential to eliminate the equivalent of one staff member to implement this programming, although the cut could be applied in several ways.			

PRELIMINARY DEPARTMENT PLAN

Impact: Describe impact of each reduction to Iowans and/or the impact on the operations of your department.

Please mark (X) the appropriate shaded box for each service if the criterion is met:

ST The service exists due to an Iowa Code or specific statutory requirement.

FED The service exists due to a federal requirement.

ARRA The service reduction will impact the expenditure of ARRA dollars.

MCH \$ Matching federal dollars are received as a result of state funding.

Exhibit "D"

Special Education Services in Difficult Budgetary Times

The Iowa Department of Education understands that school districts and area education agencies are looking for ways to save money and conserve scarce resources. The Department takes this opportunity to remind districts and AEAs about certain parameters imposed by federal and state special education laws.

Shortened Days. The Department is aware that some schools may be considering shortening school days for children with disabilities. State and federal law provides that a school day for a child with a disability is the same school day as for all children. Iowa Admin. Code r. 281—41.11(2). The school day of a child with a disability may be shortened only by the child's IEP team if an altered school day is necessary for a child to receive a free appropriate public education. *Id.* School days may not be shortened for other considerations, such as to reduce transportation costs.

Cost of Services. The Department also knows of districts in Iowa and elsewhere that have impermissibly used cost as a criterion in IEP meetings. The obligation to provide a FAPE to a child does not depend on the cost of providing that FAPE. If a service is required to provide a FAPE, it must be provided regardless of the cost. It is impermissible to provide an inappropriate but less costly service. *See, e.g.,* 71 Fed. Reg. 46589 (Aug. 14, 2006). Cost may only be considered when an IEP team is selecting between two services, either of which would provide a FAPE. In that instance, the team may select the less costly option because, under either option selected, the child would be receiving a FAPE. Finally, please remember that IEP team's decision about what to provide to a child must be individualized. Categorically excluding certain services is inappropriate. *Letter to Pagano*, 211 IDELR 454 (OSEP 1987). A service that may be an optional luxury to most children might be the only way a certain child could receive a FAPE. Any suggestion that a particular service is "never provided" or "too expensive" is evidence of violation of state and federal special education law.

Student Fees. Many districts are considering increases in student fees. While special education and supported and related services must be provided "at no cost," Iowa Admin. Code r. 281—41.39(1), this does not include student fees charged to all children. The definition of "at no cost" specifically excludes "incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program." *Id.* If a fee is charged to all children, it is chargeable to students with disabilities. Fees must be authorized by Iowa law and must be waived when the law requires.

If you have any questions or suggestions, please contact the Iowa Department of Education's Bureau of Student and Family Support Services at (515) 281-3176.

Exhibit "E"

November 23, 2009

The Honorable Chet Culver
Governor of Iowa
State Capitol
1007 East Grand Ave.
Des Moines, Iowa 50319

Dear Governor Culver:

I am writing on behalf of the Iowa Special Education Advisory Panel that is authorized through the federal Individuals with Disabilities Education Improvement Act (IDEA). The purpose and charge of the panel is to provide policy guidance with respect to special education and related services for children with disabilities. The Special Education Advisory Panel is comprised of parents, teachers, educational administrators, and state agency officials. Over half of our panel members are parents of children with disabilities or are individuals with disabilities themselves.

We appreciate all the efforts you and your administration have put forth to address the very difficult financial situation we, as a state, are in. We understand the Across the Board Reductions were made in an attempt to keep the state from suffering further harm. However, our concern is that such cuts will not only negatively impact students with disabilities this year, but also cause even more adverse ramifications for these students in the future.

Currently, the federal government provides the State of Iowa approximately \$120 million in an IDEA Part B grant designed to supplement state support for educating students with disabilities. In order for Iowa to continue to receive this grant, the state must maintain their level of financial support for this population of students. Failure of the state to do so will jeopardize the full funding of the IDEA Part B grant. As a result of the 10% Across the Board Reductions, it is estimated that Iowa will have an approximate \$40 million shortfall in meeting IDEA's maintenance of state financial support provisions for 2009-2010. This shortfall in state revenue will reduce the IDEA grant "dollar for dollar" resulting in a reduction of special education services in 2010-2011.

If there is any way to maintain the current level of state funding for special education services, we earnestly request that it be maintained. If this is not an option, we request that the state applies for a federal waiver preventing additional federal dollars from being cut in the future.

Thank you for seriously considering this request.

Sincerely,



Vicki Goshon
Chair, Iowa Special Education Advisory Panel

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