



Together, we can.

February 26, 2010

Alexa Posny, PhD, Assistant Secretary
Office of Special Education and Rehabilitative Services
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Dr. Posny:

Please accept this letter as a request from South Carolina for a waiver of state level maintenance of effort as permitted under 34 C.F.R. §300.163(c), *Waivers for exceptional or uncontrollable circumstances*. This request is for Fiscal Year 2009.

This request for relief is based on a severe and precipitous decline in state revenue, which is outside the control of the South Carolina Department of Education (SCDE) and the state legislature. This decline in state revenue is equitably distributed since it has been imposed through an across-the-board reduction in financial support to the state's local educational agencies (LEAs), thereby negatively impacting special education and related services within the state.

Based on your memorandum of December 2, 2009, we are collecting information on financial support for special education and related services for children with disabilities provided by other state agencies. We do not believe this will improve our total state financial effort since all public agencies have seen reductions due to economic circumstances.

If any additional documentation or specific information is necessary for the consideration or approval of our request, please contact Marlene Metts, the director of the SCDE's Office of Exceptional Children. You can reach Ms. Metts by telephone at 803-734-8806 or by electronic mail at mametts@ed.sc.gov

Thank you for your assistance in this matter.

Sincerely,

Jim Rex
State Superintendent of Education

JR/MM

Dear Marlene:

This email serves as a follow-up to our April 22, 2010 conversation, during which time you informed us that South Carolina had, earlier this year, submitted a written request for a waiver of State financial support for special education (maintenance of effort (MOE)) for “Fiscal Year 2009” under the Individuals with Disabilities Education Act (IDEA) pursuant to 20 U.S.C. §1412(a)(18) and 34 CFR §300.163. As we explained, although the State’s request was dated February 26, 2010, there was no record of receipt in the Office of Special Education Programs (OSEP). Following the call, you faxed a copy of the letter addressed to Alexa Posny, dated February 26, 2010, to OSEP. In addition to your February 26 letter, OSEP is requesting the following information:

1. In the State’s February 26, 2010 letter, the State indicated that the request is for “Fiscal Year 2009.” Please clarify exactly what period of time this represents – when this year began and when it ends. For example, does this represent the year beginning July 1, 2009 and ending June 30, 2010? Is this what you characterize as the State Fiscal Year (SFY) 2009 for State budgeting purposes? If not, please clarify.
2. South Carolina seeks to reduce State support for special education and related services by what dollar amount for the SFY in question? What was the dollar amount of funds made available for special education and related services in the SFY immediately preceding the year for which you are requesting the waiver?
3. What is the percentage reduction of the level of State support for special education and related services from the SFY preceding the SFY for which the State is requesting a waiver that will occur if the U.S. Department of Education grants the waiver requested by the State?
4. What are the State’s budget appropriations for the SFY for which the State is requesting a waiver and the prior SFY, including the percentage change between the years:
 - For education, broken down by special education, K-12, and higher education?
 - For all agencies, by category, such as Transportation, Justice, Human Services, etc.?Please organize by whatever manner the State uses in classifying its budget categories.
5. If the State is treating other agencies more favorably than special education in terms of budgeting cuts, please explain why.
6. What were the State's total budget revenues in the SFY for which the State is requesting a waiver and the preceding SFY? What is the percentage drop in State revenues between those two SFYs?
7. We assume that this is the only waiver of State support for special education and related services that the State will request for the SFY in question. If this is not correct, please clarify.



Together, we can.

June 17, 2010

Perry Williams, Ph.D.
Education Program Specialist
U.S. Department of Education
Office of Special Education Programs
550 12th Street, S.W. Room 4147
Washington, D.C. 20202

Dear Dr. Williams:

Attached you will find the further information requested regarding our request for a waiver of state level maintenance of effort. I hope we have adequately addressed your questions.

Thank you for your assistance in this matter.

Sincerely,

Jim Rex
State Superintendent of Education

Enclosures: Responses to Questions
General Appropriations Act
Section 59-1-480

Response to Questions

1. In the State's February 26, 2010 letter, the State indicated that the request is for "Fiscal Year 2009." Please clarify exactly what period of time this represents – when this year began and when it ends. For example, does this represent the year beginning July 1, 2009 and ending June 30, 2010? Is this what you characterize as the State Fiscal Year (SFY) 2009 for State budgeting purposes? If not, please clarify.

We are requesting a waiver for the year beginning July 1, 2009 and ending June 30, 2010.

2. South Carolina seeks to reduce State support for special education and related services by what dollar amount for the SFY in question? What was the dollar amount of funds made available for special education and related services in the SFY immediately preceding the year for which you are requesting the waiver?

July 1, 2008-June 30, 2009	287,030,451.66*
July 1, 2009-June 30, 2010	228,691,534.60*
Reduction	58,338,917.06

*** Actual adjusted appropriations which include reductions during this fiscal year. The figures represent our primary funding source, the Education Finance Act (EFA) as well as supplemental funds for students with disabilities provided under the Education Improvement Act (EIA).**

3. What is the percentage reduction of the level of State support for special education and related services from the SFY preceding the SFY for which the State is requesting a waiver that will occur if the U.S. Department of Education grants the waiver requested by the State?

This represents a 20 percent reduction.

4. What are the State's budget appropriations for the SFY for which the State is requesting a waiver and the prior SFY, including the percentage change between the years:
 - For education, broken down by special education, K-12, and higher education?
 - For all agencies, by category, such as Transportation, Justice, Human Services, etc.?Please organize by whatever manner the State uses in classifying its budget categories.

Please see Attachment 1, General Fund Original Appropriations, in the Excel spreadsheet.

In addition to the General Fund, South Carolina has two additional state sources for specifically for education: the Education Improvement Act (EIA) and Lottery Funds.

	EIA*	Lottery
July 1, 2008-June 30, 2009	545,191,538	49,814,527
July 1, 2009-June 30, 2010	531,507,880	49,814,527
Reduction	13,683,658	0
Percentage	3%	0

* Section 59-1-480 protects teacher salaries from across-the-board reductions due to shortfalls. Therefore the EIA was reduced less than other allocations. This would include general and special education teachers. (See attachment 2)

5. If the State is treating other agencies more favorably than special education in terms of budgeting cuts, please explain why.

The State is not treating other agencies more favorably as illustrated in Attachment 1, General Fund Original Appropriations.

Although the original appropriation shows the Department of Education had a reduction of 13.36 percent, the preliminary adjusted appropriation is \$1,928,430,292 which represents a 21 percent reduction.

Mid-year reductions in FY 09-10 mandated by the Budget and Control Board totaled 9.04% or \$438,680,034. These reductions due to general fund revenue shortfalls were across-the-board reductions. All agencies were treated the same except for limited exceptions directed by statute such as statewide debt service and scholarship appropriations.

Other agency adjusted appropriations will be available after June 30, 2010.

6. What were the State's total budget revenues in the SFY for which the State is requesting a waiver and the preceding SFY? What is the percentage drop in State revenues between those two SFYs?

	Total all sources of State Revenues*
July 1, 2008-June 30, 2009	9,220,323,939
July 1, 2009-June 30, 2010	8,088,166,259
Reduction	1,132,157,680
Percentage	12.2%

* Estimated revenues from the Appropriations Act.

7. We assume that this is the only waiver of State support for special education and related services that the State will request for the SFY in question. If this is not correct, please clarify.

This is the only waiver of State support for special education and related services that the State will request for the fiscal year beginning July 1, 2009 and ending June 30, 2010.