

SUSAN CASTILLO
State Superintendent of Public Instruction



OREGON DEPARTMENT OF EDUCATION
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March 8, 2011

Dr. Alexa Posny, Assistant Secretary
Office of Special Education and Rehabilitative Services
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-7100

Dear Dr. Posny:

The State of Oregon respectfully requests that OSEP grant a waiver of the requirement that Oregon maintain state financial support for special education and related services for the 2010-11 school year. This 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 Oregon’s financial resources. The State of Oregon respectfully requests a waiver in the amount of \$15,674,579 for 2010-11.

Based on the June 2010 guidance provided by OSEP (<http://www2.ed.gov/policy/speced/guid/idea/monitor/smfs-partb-waivers.html>), the remainder of this letter outlines Oregon’s circumstances in light of the factors OSEP considers when reviewing waiver requests.

- *Whether the state experienced exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the state.*

Oregon experienced a precipitous and unforeseen decline in revenue compared to the forecast during the latter half of the 2009-11 biennium that resulted in two separate budget reductions during the 2010-11 school year. (See the 2010 2nd and 3rd Quarter Economic and Revenue forecasts provided by the State of Oregon Office of Economic Analysis at: http://www.oregon.gov/DAS/OEA/economic.shtml#Description_and_Release_Dates). Because the 2009-11 biennium revenue forecast was adjusted downward for two consecutive quarters and the Oregon Constitution requires a balanced biennial budget, the Governor exercised his statutory authority in June 2010 and September 2010 and ordered across the board reductions to state General Fund appropriations. The Governor’s authority does not apply to the Legislative or Judicial Branches, so those budget areas did not receive any reductions. Since that time, the state legislature’s Emergency Board took action to restore some funding (including funding for general education and special education).

- *The state's revenues for the year for which it sought a waiver compared to the prior year and to what extent the decrease was based on exceptional or uncontrollable circumstances.*

As noted above, revenue forecasts for 2009-10 and 2010-11 were revised downward significantly between the March 2010 forecast and the June 2010 and September 2010 forecasts. Due to the timing of the June 2010 and September 2010 forecasts, the distributions of state funds to school districts in 2009-10 had already been made and could not be reduced, thereby requiring all reductions in projected revenue for 2009-10 and 2010-11 be taken in the 2010-11 distributions. The projected revenue shortfall for 2009-10 and 2010-11 between the March 2010 and March 2011 (Oregon's most recent) economic forecasts is \$780.8 M (5.91%). Because the entire \$780.8 M reduction in projected revenue was absorbed in 2010-11, state general fund available for 2010-11 was 11.44% lower than the March 2010 projection for 2010-11; and 5.41% below the March 2010 projection for 2009-10.

Revenue Forecast Timing Issue - Reductions for 2009-11 taken in 2010-11	2009-10	2010-11	2009-11 Biennium Totals	2010-11 with 2009-11 cuts	Difference from 2009-10 March 2010 Forecast
March 2010 Forecast	\$6,387.6 M	\$6,822.7 M	\$13,210.3 M	\$6,822.7 M	\$435.1 M
March 2011 Forecast	\$6,004.6 M	\$6,424.9 M	\$12,429.5 M	\$6,041.9 M	-\$345.7 M
Change from March 2010 Forecast	-\$383.0 M	-\$397.8 M	-\$780.8 M	-\$780.8 M	
% Change from March 2010 Forecast	-6.00%	-5.83%	-5.91%	-11.44%	-5.41%

- *The state's total appropriations in the year for which a waiver was sought and the prior year.*

Oregon's total appropriations for 2010-11 were \$6,328,245,664, compared to Oregon's total appropriations of \$6,975,388,121 in 2009-10. This was a decrease of \$647,142,457 (9.28%). Since Oregon budgets on a biennial basis (7/1/09-6/30-11), total appropriations for 2009-10 (7/1/09-6/30/10) and 2010-11 (7/1/10-6/30/11) were determined by attributing 49% of the original appropriations to 2009-10 and 51% to 2010-11 (unless the legislature stipulated an appropriation was available for a specific period of time). Based on the timing of the two reductions, they were applied to the 2010-11 year.

- *The state's level of financial support for special education and related services provided to children with disabilities in the year for which a waiver was sought and the prior year.*

Oregon's level of financial support for special education and related services provided to children with disabilities in 2010-11 was \$334,309,910, compared to \$349,984,489 in 2009-10. This was a decrease of \$15,674,579 (4.48%).

- *The state's appropriations for other agencies by category in the year for which a waiver was requested and the prior year, including education as a whole, and broken down by higher education, K-12, and special education.*

Oregon's appropriations for other agencies by category in 2010-11 compared to 2009-10 are shown in the following table.

Category/Agency	2009-10	2010-11	Change (\$)	Change (%)*
Education	\$3,604,623,304	\$3,268,776,911	-\$335,846,392	-9.32%
<i>Higher Education</i>	\$692,655,211	\$615,951,208	-\$76,704,003	-11.07%
<i>K-12 Education</i>	\$2,911,968,092	\$2,652,825,703	-\$259,142,389	-8.90%
<i>Special Education</i>	\$349,984,489	\$334,309,910	-\$15,674,579	-4.48%
Human Services	\$1,736,382,255	\$1,537,050,907	-\$199,331,348	-11.48%
Public Safety	\$925,360,678	\$819,213,559	-\$106,147,119	-11.47%
Judicial Branch***	\$246,943,439	\$257,022,764	\$10,079,324	4.08%
Economic Development **	\$71,964,027	\$73,029,937	\$1,065,910	1.48%
Natural Resources**	\$160,049,056	\$155,511,413	-\$4,537,643	-2.84%
Transportation**	\$46,768,100	\$47,912,003	\$1,143,902	2.45%
Consumer & Business Services	\$6,446,920	\$5,703,550	-\$743,369	-11.53%
Administration	\$102,700,641	\$92,673,670	-\$10,026,971	-9.76%
Legislative Branch***	\$36,837,514	\$38,341,086	\$1,503,572	4.08%
Miscellaneous	\$37,312,187	\$33,009,864	-\$4,302,324	-11.53%
Total	\$6,975,388,121	\$6,328,245,664	-\$647,142,457	-9.28%

* Lottery funds were not subject to cuts, so agencies with a large share of their budget coming from the lottery, and a small share coming from the General Fund, took relatively lower total cuts than agencies with a larger share from the GF.

** Large shares of these budgets come from lottery funds

*** Not subject to cuts

- *The state's compliance and performance record in implementing Part B of IDEA—the nature and length of any noncompliance, data in its state Performance Plan and Annual Performance Report, including data on performance and compliance indicators, the state's determination under Section 616 of IDEA, whether there are outstanding findings of noncompliance, whether corrective actions are underway, and whether the department has placed special conditions on the state's Part B grant award.*

Oregon has a very positive record related to compliance and performance in implementing Part B of IDEA. During the last four years, FFY 2005 – FFY 2008, Oregon has received a determination under Section 616 of IDEA of “Meets Requirements” three times, and anticipates another determination of “Meets Requirements” for FFY 2009. At the time of this request, there are no special conditions on Oregon’s Part B grant award, and all non-compliance identified in OSEP’s 2/1/11 verification letter is on a path to be corrected by 4/30/11.

Oregon remains committed to providing a free appropriate public education, as required by IDEA, to all Oregon children with disabilities, and continues to hold LEAs accountable for

meeting the requirements of IDEA, including LEA maintenance of effort during these challenging economic times. This message is communicated annually through the Systems Performance Review and Improvement (SPR&I) system to all of Oregon's 197 LEAs and 20 ESDs.

In conclusion, the State of Oregon respectfully requests a waiver of the requirement that Oregon maintain state financial support for special education and related services for the 2010-11 school year in the amount of \$15,674,579. This would be an equitable decision based on the factors described above, and the fact that a denial of this request would result in a reduction to Oregon's subsequent IDEA Part B, Section 611 grant and further reduce the amount of funding available to LEAs to provide needed educational services to students with disabilities.

If you have any questions about this matter, please contact Nancy Latini (nancy.latini@state.or.us or 503-947-5702) or Steve Smith (steve.w.smith@state.or.us or 503-947-5711).

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

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Castillo". The signature is fluid and cursive, with the first name "Susan" and last name "Castillo" clearly distinguishable.

Susan Castillo
Superintendent of Public Instruction

Enclosures: State of Oregon 2010-11 Part B MOE Comparisons
State of Oregon Revenue Forecasts
State of Oregon Appropriations
SACSE Letter of Support

Cc: Melody Musgrove, Director, OSEP
Ruth Ryder, Director, Monitoring and State Improvement Planning Division, OSEP
Nancy Latini, Assistant Superintendent, ODE