



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

JUL 26 2010

The Honorable Denise Juneau
Superintendent
Montana Office of Public Instruction
P.O. Box 202501
Helena, Montana 59620-2501

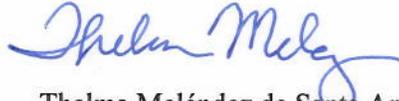
Dear Superintendent Juneau:

I am writing in response to Montana's request, submitted on May 1, 2010, to waive certain regulatory requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA). In addition to the waivers I granted on June 23, 2010, Montana requested a retroactive one-year waiver of the Title I, Part A regulatory requirement for a local educational agency (LEA) to provide parents of eligible students with notice of their public school choice options at least 14 days before the start of the 2009-2010 school year (34 C.F.R. § 200.37(b)(4)(iv)). This waiver would apply only to the notice provided to parents of eligible children attending schools that were newly identified for improvement for the 2009-2010 school year or that made adequate yearly progress (AYP) in the 2007-2008 school year, and so could have possibly exited improvement for the 2009-2010 school year by making AYP in the 2008-2009 school year, but did not.

I do not believe a retroactive waiver of 34 C.F.R. § 200.20(g) is appropriate. According to the Department's *Non-Regulatory Guidance on Title I, Part A Waivers* (July 2009), to have received a waiver of the 14-day notice requirement for the 2009-2010 school year, a state had to make certain assurances, including providing evidence that the state would modify its assessment schedule or test vendor contract in order that its LEAs could comply with the 14-day requirement in subsequent years and that its LEAs would implement the waiver in accordance with certain limitations articulated in that guidance, such as meeting the 14-day notice requirement with respect to any school that could not exit improvement. As Montana's request was made well after these activities would have occurred, Montana cannot now assure compliance. The waiver authority enables a State or LEA to request prospective relief from complying with a statutory or regulatory requirement that the State or LEA believes impedes it from increasing the quality of instruction for students or improving their academic achievement; it is not to excuse a State or LEA from non-compliance.. Accordingly, I am denying this waiver request.

I appreciate the work you are doing to improve your schools and provide a high-quality education for your students. If you have any questions, please contact Zollie Stevenson, Jr., Ph.D., Director of Student Achievement and School Accountability Programs (SASA) at (202) 260-0826.

Sincerely,



Thelma Meléndez de Santa Ana, Ph.D.

cc: B. J. Granbery