

May 22, 2009

The Honorable Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Avenue S.W.
Washington, D.C. 20202

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Dear Secretary Duncan:

Kansas, like many other states, faces a daunting financial challenge. State costs for public assistance programs and education have increased substantially while state revenues have declined due to the recession. In order to balance the state budget for FY 2009 and FY 2010, the Legislature approved a mix of revenue adjustments and spending cuts totaling approximately \$900 million. As a result of budget reductions in state funding for elementary and secondary education, including special education state aid, the State of Kansas is requesting a waiver for maintenance of effort for FY 2010 and FY 2011 for IDEA, under 34CFR Section 300.163. This section of federal law allows states to request a waiver due to a "precipitous and unforeseen decline in financial resources." The amount of the waiver request for each of the two years is \$60,212,507.

To substantiate our request, we will document the state's increasing investment in special education in the years leading up to the recession and the adverse impact the recession has had on the Kansas economy and state revenues. We will also show that public education fared better in relation to other state programs when the Legislature implemented its reductions to balance the state budget. Overall, public education accounts for 65% of the total expenditures from the State General Fund. Elementary and secondary education accounts for 52% of the total expenditures while higher education accounts for the remaining 13%.

In order to address adequacy issues and ensure that the educational needs for all special education students are met, the Kansas Legislature enacted legislation in 2005 requiring that state aid for special education be funded at 92 percent of excess cost. As demonstrated below, this has substantially increased the state's commitment to fund special education in recent years.

Fiscal Year	State Appropriation	Cumulative Percentage Increase
2004-05	\$250,744,332	-----
2005-06	\$292,471,391	16.6%
2006-07	\$334,003,604	33.2%
2007-08	\$403,273,815	60.8%
2008-09	\$427,753,137	70.6%
2009-10	\$367,540,630	46.6%
2010-11	\$367,540,630	46.6%

Despite the reduction approved for 2009-10, special education state aid has increased over 46 percent in the past five years. Based upon actual receipts and projected revenue, the state will encounter a 15.3 percent decline in available revenue in the State General Fund between FY 2008 and FY 2010. Directly attributable to this decline in revenue is a reduction in funding for special education state aid. The state appropriation for special education for FY 2010 is \$367,540,630. Even though this represents a reduction of 14.07 percent, it is noteworthy that this reduction is smaller than the overall decline in state revenue of 15.27 percent. In spite of the state's declining economic downturn, this administration and the Legislature did our best to minimize reductions for elementary and secondary education in comparison to other areas of the state budget.

Below please find a summary of the actual or projected revenues available to spend from the State General Fund for FY 2008 through FY 2010.

Fiscal Year	General Fund Revenue	Cumulative Percentage Decline
2007-08	\$6,628,400,000	-----
2008-09	\$6,243,200,000	(5.81%)
2009-10	\$5,616,100,000	(15.27%)

Where it becomes particularly evident that we considered public education to be our highest priority is when looking at the total budget approved for elementary and secondary education. Overall, the general operating fund of school districts was reduced by only 3.5 percent in 2009-10 which will allow school districts to offset some of the costs associated with special education. We point this out because a portion of the general operating funds of the school districts will be used to fund special education and this is extremely important for all special education programs in Kansas.

We made a concerted effort to minimize the reduction in special education state aid by utilizing the ARRA special education funds which together with state aid will result in only a one percent reduction for FY 2010 and FY 2011.

To substantiate our waiver request and demonstrate the effect of the recession on our state budget, we have outlined the data which details the economic downturn in our economy. This information was considered and later released by the state's revenue estimating group when forecasting revised State General Fund revenue estimates in April 2009 for FY 2009 and FY 2010. These estimates are developed using a consensus process that involves the Division of the Budget, the Kansas Legislative Research Department, the Kansas Department of Revenue and three consulting economists. The Governor's budget which was released in January 2009 for FY 2009 and FY 2010 was based on the November 2008 consensus estimates. The Legislature adopted its final budget in May 2009 for FY 2009 and FY 2010 based on the most current estimates available which were revised in April 2009.

Economic Forecast for Kansas – Summary

The contraction in the state, national and global economies that was apparent in early November took a significant turn for the worse over the winter months. The state revenue forecast in April was based on the expectation that Kansas would be able to experience a milder contraction than the nation as a whole, premised on the then-perceived relative health of key sectors of the state's economy, including aviation manufacturing and energy. However, the broader national crises engulfing the housing, credit, and stock markets have not spared those sectors. Moreover, the estimate for virtually every major state and national economic indicator now looks significantly worse than it did in the fall. Estimates of Kansas Growth State Product used in November of 3.5 percent for 2009 and 5.0 percent for 2010 have now been reduced to a negative 1.5 percent and 2.9 percent, respectively. While there seems to be a general consensus among analysts that the aggressive use of new fiscal and monetary policy initiatives by the federal government may help prevent a much more serious economic collapse, the length and severity of the current downturn remains to be determined. Many forecasts continue to indicate that this could be the longest and deepest recession in the last 70 years.

Federal Legislation

Two pieces of federal legislation will greatly impact Kansas revenues. The first important new development is the federal enactment of the American Recovery and Reinvestment Act (ARRA) of 2009. A separate piece of legislation that increased cigarette taxes to help provide additional funding for the State Children's Health Insurance Program (SCHIP) also affects state revenues. Kansas state general fund (SGF) receipts are expected to be reduced by a total of \$88 million by the end of FY 2010 as a result of these new federal laws.

Because Kansas generally begins computation of its income tax liability using federal tax law as a starting point, a number of provisions of the ARRA will flow through and also affect state income tax receipts. The Department of Revenue has estimated that Kansas SGF receipts will have been reduced by the end of FY 2010 by an additional \$77.5 million as a result of our conformity to the ARRA – \$12 million in FY 2009 and \$65.5 million in FY

2010. Of the amount, \$45 million is attributable to new bonus depreciation and Section 179 expensing provisions (\$6.0 million in FY 2009 and \$39.0 million in FY 2010); \$20.0 million is attributable to tax law changes related to discharged indebtedness (\$6.0 million in FY 2009 and \$14.0 million in FY 2010); \$7.0 million is attributable to the exclusion of certain unemployment insurance benefits from adjusted gross income (all in FY 2010); \$4.0 million is attributable to an expansion in the earned income tax credit (all in FY 2010); and \$1.5 million is attributable to a special deduction for sales taxes paid on certain vehicle purchases (all in FY 2010).

While 2008 federal stimulus legislation containing tax cuts for individuals prompted the consensus group a year ago to assume modest increases in sales and use taxes (\$8 million), this year's estimates do not contain any explicit adjustment for two major reasons. The 2009 tax cuts are being provided for most individuals through a reduction in federal withholding taxes and will be realized throughout the course of the tax year. On the other hand, the full amount of the 2008 tax cuts for most individuals were made available more quickly as "recovery rebate credits" that were provided in a single lump sum to qualifying taxpayers in the spring of 2008. Overall consumer confidence also remains at a much lower level than a year ago, so predicting behavior relative to selected tax reductions is much more problematic.

The SCHIP legislation increased the federal cigarette tax by 61 cents per pack, effective April 1. The Department of Revenue has estimated that this increase and its impact on consumer behavior will be expected to reduce Kansas cigarette tax receipts by about \$3.0 million in FY 2009; and \$7.5 million in FY 2010.

Kansas Personal Income

Kansas Personal Income (KPI) in 2008 grew by 4.9 percent over the 2007 level. KPI is currently expected to decline by 0.5 percent in 2009, which would represent what is believed to be the first annual reduction since before World War II. The current estimate for 2010 is that only very modest KPI growth (2.1 percent) will have returned. The new 2009 and 2010 estimates are significantly different than the KPI forecasts used in November (positive 3.2 and 4.3 percent, respectively). Current estimates are that overall US Personal Income (USPI) growth will fare only moderately better than KPI, with nominal USPI estimates of positive 0.3 percent in 2009 and 2.4 percent in 2010.

Employment

Data obtained from the Kansas Department of Labor indicate that the employment picture for Kansas has continued to deteriorate over the winter. The most recent monthly data shows that total Kansas non-farm employment from February 2008 to February 2009 had contracted by 1.6 percent. Most major sectors experienced significant employment decreases, especially manufacturing, professional and business services, and construction. Current estimates by the Department are that the overall Kansas unemployment rate, which was 4.4 percent in CY 2008, is expected to jump to 6.0 percent in CY 2009 before moving to 6.3 percent in CY 2010. These newly revised estimates suggest a much longer timeline of relatively serious unemployment issues for the state than did the estimates of 4.7 percent for both calendar

years used in November. Major layoffs in our state include the Sprint Nextel Corporation, headquartered in Olathe, which cut 8,000 jobs, including 2,000 locally, and the aviation-manufacturing industry located in Wichita. Combined, Boeing, Cessna, Bombardier and Hawker-Beechcraft recently terminated the jobs of 10,000 employees.

Agriculture

Recent volatility in input prices, especially energy costs, is contributing to an uncertain outlook for 2009. From one year ago, the composite price received by Kansas farmers for all agriculture products declined nearly 20 percent. The latest prospective plantings report indicates farmers expect to plant 19.1 million acres of the four major grain crops in 2009, down 2.8 percent from 2008. Average livestock prices in mid-March were significantly below prices from a year earlier.

Oil and Gas

While the price of oil has undergone historic levels of volatility in FY 2009, the final estimated average price per taxable barrel of Kansas crude is now \$63 (down substantially from the \$80 estimate used in November) and reflects the collapse in world prices over the winter months. The estimated average price of \$45 per barrel for FY 2010 (down from \$70 in November) takes into account current oil futures price expectations and continued weak demand relative to the economic slowdown. As always, significant political tensions in the Middle East and elsewhere provide a great deal of uncertainty about forecasting the price of this commodity. Gross oil production in Kansas, which had been declining steadily for more than a decade until FY 2000, has recently reversed that trend and been increasing slightly since FY 2005. The current forecast of 40 million barrels for FY 2009 represents a level not seen since FY 1997. Approximately half of all Kansas oil produced is not subject to severance taxation because of various exemptions in that law. The price of natural gas is expected to average \$5.60 per mcf (1000 cubic feet) for FY 2009 before decreasing to \$3.50 per mcf for FY 2010, based on an industry source's analysis of futures markets. Current wellhead prices are the lowest they have been in at least seven years. The new price estimates, particularly for FY 2010, are significantly below the \$6.25 and \$5.75 estimates used in the fall. Factors considered in revising the price forecasts included the relationship between crude oil and gas prices, the current relatively high storage levels for gas, weakening of the economy, and the impact of enhanced production from shale formations elsewhere in the United States. Kansas natural gas production in FY 2008 of 379 million cubic feet represented a significant decrease from the modern era peak of 730 million cubic feet in FY 1996 (largely as a result of depleting reserves in the Hugoton Field). Production has nevertheless stabilized somewhat in recent years and is expected to be 380 million cubic feet for FY 2009 before decreasing to 360 million cubic feet for FY 2010. Slightly less than 9 percent of gas produced is expected to be exempt from severance taxation.

Inflation Rate

The Consumer Price Index for all Urban consumers (CPI-U) increased by 3.8 percent in 2008, somewhat less than the final November forecast of 4.3 percent. The current forecasts

for 2009 and 2010 of a negative 0.9 percent and 1.5 percent, respectively, reflect the overall weakness of the economy as a result of the recession.

Interest Rates

The Pooled Money Investment Board is authorized to invest state funds in US Treasury and Agency securities, highly rated commercial paper, repurchase agreements and certificates of deposit in Kansas banks. In FY 2008, the state earned 4.26 percent on its SGF portfolio (compared with a 5.27 percent rate in FY 2007). The average rate of return forecasted for FY 2009 is now 2.84 percent (up slightly from the 2.55 percent estimate used in November). For FY 2010, the forecasted rate is 0.98 percent (down substantially from the 2.70 percent rate assumed in November).

For FY 2010, the Kansas Legislature approved an 8.67 percent reduction from the State General Fund for all elementary and secondary education programs. This reduction was made, however, with the knowledge that ARRA State Fiscal Stabilization Funds of \$138.7 million would be available to offset a portion of this reduction, thereby lowering the overall reduction to 4.37 percent.

The following table provides a summary of the FY 2010 reductions approved by the Kansas Legislature for other state agencies which again highlights the continued commitment we share in preserving our state's investment in public education.

State Agency	Percentage of General Fund Reductions
Kansas Public Employees Retirement System (KPERs)	93.78%
Department of Administration	26.35%
Department of Labor	11.16%
Department of Aging	11.83%
Health Policy Authority	11.47%
Social and Rehabilitation Services	10.84%
Kansas Arts Commission	10.65%
Hutchinson Correctional Facility	70.01%
Winfield Correctional Facility	80.27%
Norton Correctional Facility	79.23%
Kansas Water Office	28.32%
Department of Wildlife and Parks	30.52%

The table shown on the next page compares the increase in State General Fund expenditures for public elementary and secondary education from FY 2005 to FY 2010 to the increase in expenditures for all other remaining areas of the budget.

	FY 2005	FY 2010	Percentage Increase
Total General Fund Expenditures	\$4,690,000,000	\$5,615,700,000	19.74%
Elementary and Secondary Education	\$2,324,165,343	\$2,943,673,666	26.66%
Remaining Areas of the Budget	\$2,365,834,657	\$2,672,026,334	12.94%

Again, state funding for special education during this same time period increased 46.6 percent.

This is the first time that Kansas has ever requested a waiver for maintenance of effort in special education. No budget reductions are being applied to the Special Education Services Team in the State Department of Education to ensure that adequate staffing and resources continue to be available for monitoring school districts for compliance with IDEA and to provide required technical assistance, training and support to local school district personnel. Based on IDEA's Special Education State Performance Plan and Annual Performance Reports, the most recent Level of Determination (LOD) for the State of Kansas was "Meets Requirements". Kansas anticipates meeting all IDEA requirements again for the 2008-09 and 2009-10 school years. With regard to due process and formal complaint process, all actions are completed with specified required timelines. We also believe that all school districts will meet local maintenance of effort requirements this year and next.

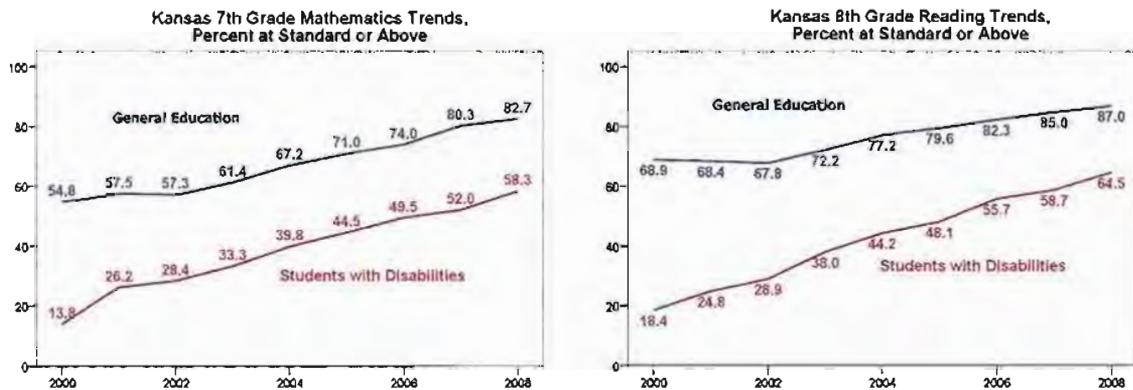
The net effect of this request is that special education will have a one percent reduction (including ARRA special education funds) thereby allowing Kansas to meet all state and federal requirements for students with disabilities in regard to providing them a free and appropriate public education.

Kansas continues to make an extraordinarily good faith effort to meet all IDEA requirements. As shown below, the number of special education teachers and paraeducators has increased significantly while the number of students with disabilities has remained fairly constant.

Fiscal Year	Special Education Teachers	Special Education Paraeducators	Students With Disabilities
2005	7,066	9,655	65,291
2006	7,181	10,294	65,595
2007	7,380	10,726	65,831
2008	7,535	11,266	65,716
2009	7,757	11,808	65,730
Cumulative Increase	+9.8%	+22.3%	+ 0.67%

Again, it is important to note during this same time period state funding for special education increased over \$177 million, or by 70.6 percent. As a result of these additional resources and the unwavering commitment of Kansas educators to ensure the academic success of all students, we have witnessed unprecedented gains in the academic performance of our

students with disabilities and a narrowing of the gap between students with disabilities and general education students.



In summary, we sincerely appreciate your support of special education and the support of the President and Congress in making the recovery money available.

Sincerely,

Mark Parkinson
Governor of Kansas

Alexa Posny
Commissioner of Education

cc : U.S. Senator Sam Brownback
U.S. Senator Pat Roberts