



March 16, 2011

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. 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 the continuing consequences of the 2009 "precipitous and unforeseen decline" in Iowa's financial resources. In support of this waiver request, the State of Iowa respectfully states the following:

- I. *Iowa is still recovering from a "precipitous and unforeseen decline in the financial resources of the State."*

On April 29, 2010, the United States Department of Education granted Iowa a waiver based on a finding that Iowa's budget crisis, which required an across-the-board budget cut in October 2009, was an "exceptional or uncontrollable" circumstance. While Iowa's state fiscal health is improving, it has not yet improved to its condition prior to the October 2009 budget cuts. Iowa's budget crisis was so severe that complete recovery within one year cannot reasonably be expected.

Iowa's state financial support for special education in FY2009 was \$525,593,244 and its support in FY2010 was \$487,490,347, a difference of \$38,102,897. For FY2011, Iowa's state support for special education is \$521,510,321, an amount that is \$4,082,923 below FY2009 levels. While still below FY2009 levels, Iowa's FY2011 support for special education is 99.22% of FY2009 levels. Considered from another perspective, Iowa's FY2011 support for special education restored 89.28% of the cuts required in FY 2010.

Iowa law requires a balanced budget. *See* Iowa Code ch. 8 (2011). Within the constraints of Iowa law, Iowa has demonstrated its continued commitment to educating children with disabilities, by restoring state special education support to over ninety-nine percent of pre-crisis levels.

Iowa's FY2010 budget (after the across-the-board reduction) was \$5.08 billion, and its budget for FY2011 is \$5.28 billion. This is an increase of 3.94%. Iowa's state support for special education in FY2010, after the across-the-board cuts, was \$487 million and, in FY2011, it is \$521 million. This is an increase of 6.98%. Iowa's increased support for special education was much greater than the state's overall budget growth. Special education funding in Iowa has increased at a faster rate than the state budget as a whole.

*II. Iowa remains committed to provide a free appropriate public education to all Iowa children with disabilities.*

Notwithstanding its continuing difficulties, Iowa remains committed to offering a free appropriate public education (FAPE), as required by the IDEA, to all Iowa children with disabilities. The Iowa Department of Education has informed school districts that children with disabilities remain entitled to a FAPE even in challenging fiscal times. The Iowa Department of Education fully expects that all children with disabilities receive an education calculated to provide them with benefit, even after reduced state support for special education.

As proof of Iowa's commitment, please note the results of the United States Department of Education's October 2010 special education verification visit to Iowa. During that visit, the Office of Special Education Programs conducted focused monitoring of the provision of FAPE after its decision to grant Iowa's waiver request. OSEP could find no evidence that Iowa children with disabilities were denied a FAPE during the period for which Iowa sought a waiver (Iowa Part B 2010 Verification Letter Enclosure, at 10).

Iowa's AEAs and LEAs were able to provide FAPE with a reduction of \$38 million from FY 2009 levels, during the year in which the United States Department of Education granted Iowa's waiver. Iowa has the will and capability to provide a FAPE when the reduction from FY2009 levels is only \$4 million. This factor alone weighs heavily in favor of granting this waiver request.

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

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

First, a combination of state aid and local property taxes are utilized for special education costs in Iowa. When state special education funding is reduced, an LEA may raise property taxes or use cash reserves, and an AEA may use its cash reserves. LEAs may request permission to receive allowable growth (the right to raise additional property taxes) for negative balances in special education during a school year. Iowa Code § 257.31(14). In contrast to Iowa's LEAs, the Iowa Department of Education and the AEAs lack taxing authority to counteract a reduction in special education funding. If Iowa's Part B grant were reduced under section 300.163(b), Iowa's AEAs and the Iowa Department of Education would be disproportionately harmed financially and lack the ability to recoup the loss of funds.

Second, special education fared very well in Iowa's FY2011 budget, both in absolute and comparative terms. As noted above, Iowa's special education funding has recovered at a faster rate than the state budget as a whole. This is not a circumstance where special education funding is bearing a disproportionate weight of fiscal troubles. Rather, the opposite is true.

Third, the action required by the Part B regulations 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 Iowa was actively pursuing other priorities to the exclusion of 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 drastic reductions in FY2010, and Iowa has taken concrete steps to bring state special education support to over ninety-nine percent of FY2009 levels. Any additional reduction in federal assistance would have no deterrent value and would make matters worse.

Fourth, and most importantly, Iowa's children with disabilities are still receiving FAPE. OSEP's focused monitoring visit confirmed this, and the Iowa Department of Education remains committed to monitor and enforce this requirement.

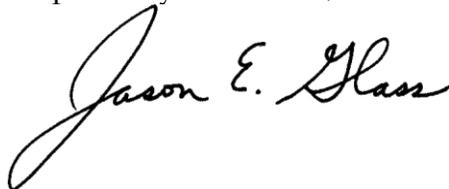
Iowa's economic and fiscal affairs are recovering, but not completely, from the unavoidable deterioration that required the October 2009 across-the-board budget cuts. Iowa remains committed to providing needed special education and related services to all children with disabilities. Imposing the statutory penalty for failure to maintain state financial support, when such failure is directly traceable to an unavoidable, nation-wide fiscal crisis, would take a bad situation and make it worse. Equitable principles support granting this waiver.

*IV. Conclusion*

For the reasons stated in this request, 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." The specific amount sought is \$4,082,923. If you have any questions about this matter, please contact me. You may also contact Martin J. Ikeda, Iowa's state director of special education, at Marty.Ikeda@iowa.gov or 515-281-5735. For questions about this request and the law, please contact Thomas Mayes, Iowa's special education law consultant, at Thomas.Mayes@iow.gov or 515-242-5614. For questions about this request and special education finance, please contact Steve Crew, Iowa's special education finance consultant, at Steve.Crew@iowa.gov or 515-326-1029.

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

Respectfully submitted,



Jason E. Glass  
Director  
Iowa Department of Education  
(515) 281-3436  
Jason.Glass@iowa.gov

CC: Office of the Hon. Terry E. Branstad, Governor  
Martin J. Ikeda, Iowa Department of Education  
Kevin Fangman, Iowa Department of Education  
Konni Cawiezell, Iowa Department of Education  
Jeff Berger, Iowa Department of Education  
Iowa Department of Education Special Education Administrative Team

Iowa Department of Education Special Education Finance Team  
Iowa Department of Education Special Education Legal Team