



STATE OF ALABAMA
DEPARTMENT OF EDUCATION



Joseph B. Morton
State Superintendent of Education

August 15, 2011

Alabama
State Board
of Education

Dr. Alexa Posny
The Assistant Secretary
Office of Special Education Rehabilitative Services
U. S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2500

Governor
Robert Bentley
President

Randy McKinney, J.D.
District I
Vice President

Dear Dr. Posny:

Betty Peters
District II

This letter is in response to your April 7, 2011, letter to Dr. Joseph Morton, State Superintendent of Education, (See Attachment) regarding the approval of Alabama's reduction in state financial support for special education and related services in the amount of \$9,204,462 for SFY 2010.

Stephanie Bell
District III

Recently this department regrettably discovered an error in its calculation of state financial support for SFYs 2008, 2009, and 2010. The reports provided by our Information Systems Section overstated amounts made to local school systems for the years mentioned above.

Yvette M.
Richardson, Ed.D.
District IV

We are now attaching corrected versions of the reports that were included in the supplemental information submitted in our original waiver request. You can see that the Special Education Maintenance of Effort (MOE) requirement is still met in all years except 2010. In 2010, Alabama failed to maintain state financial support by \$14,495,371 which is \$5,290,909 more than the \$9,204,462 approved in your earlier waiver.

Ella B. Bell
District V

Charles E. Elliott, M.D.
District VI

For the 2009 to 2010 SFYs, we initially reported a decrease in state financial support for special education and related services of 1.45%, when the decrease was actually 2.49%. This amount is still far less than the 9.99% decrease to total available revenues, and the 9.32% decrease to total available appropriations experienced in Alabama that year.

Gary Warren
District VII
President Pro Tem

Mary Scott Hunter, J.D.
District VIII

This department wanted to notify you of this correction and is hopeful the U.S. Department of Education's approval of the waiver for Alabama remains valid.

Joseph B. Morton, Ph.D.
Secretary and
Executive Officer

Dr. Alexa Posny
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August 15, 2011

If you have questions or need additional information regarding this letter,
please contact me at 334-242-9755.

Sincerely,

A handwritten signature in black ink, appearing to read "Warren Craig Pouncey". The signature is fluid and cursive, with a long horizontal stroke at the end.

Warren Craig Pouncey
Deputy State Superintendent
Administrative and Financial Services

WCP:EEK

Attachments

cc: Dr. Joseph B. Morton
Dr. Mabrey Whetstone



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

Honorable Joseph B. Morton
Superintendent of Education
Alabama Department of Education
Gordon Persons Building
P.O. Box 302101
Montgomery, Alabama 36130-2101

APR - 7 2011

Dear Dr. Morton:

This is in response to your letters to Ruth E. Ryder, who is now Deputy Director of the Office of Special Education Programs (OSEP) at the United States Department of Education (Department), that were received on September 30, 2010, and November 12, 2010, and additional information provided by Mabrey Whetstone, Ph.D., Director, Special Education Services, Alabama Department of Education, in a letter dated October 15, 2010. We appreciate the time and effort your staff took to provide the supplemental information.

Under 20 U.S.C. §1412(a)(18)(A) and 34 CFR §300.163(a), a State must not reduce the amount of State financial support for special education and related services for children with disabilities, or made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. While we are permitted to waive these requirements for a State, for one fiscal year at a time, if we determine that granting a waiver would be equitable due to exceptional or uncontrollable circumstances (such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State, 20 U.S.C. §1412(a)(18)(C)(i) and 34 CFR §300.163(c)(1)), we do so carefully and reluctantly, given the importance we place on maintaining State financial support for our most vulnerable students. However, regardless of whether a State receives a waiver under this authority, the State has a continuing obligation to ensure that a free appropriate public education (FAPE) is made available to all eligible children with disabilities, as required in 20 U.S.C. §1412(a)(1) and 34 CFR §300.101.

State Fiscal Year 2009

Your first letter, received on September 30, 2010, requested that the Department waive the requirement that the State maintain State financial support for special education and related services for children with disabilities for the State Fiscal Year (SFY) 2009 (October 1, 2008–September 30, 2009) for the Individuals with Disabilities Education Act (IDEA) under 20 U.S.C. §1412(a)(18)(C)(i) and 34 CFR §300.163(c)(1). However, the State withdrew that request in its October 15, 2010, letter. Thereafter, on November 12, 2010, the State submitted documentation that the State met its required level of State financial support for SFY 2009. Accordingly, the Department is not acting on the State's request for a waiver under 20 U.S.C. §1412(a)(18)(C)(i) and 34 CFR §300.163(c)(1) for SFY 2009.

State Fiscal Year 2010

In the materials included with its November 12, 2010, letter, the State requested a waiver in the amount of \$9,204,462 for State financial support for special education and related services for children with disabilities for SFY 2010 (October 1, 2009-September 30, 2010) for the IDEA under 20 U.S.C. §1412(a)(18)(C)(i) and 34 CFR §300.163(c)(1). This represented a 1.45 percent reduction in State financial support for special education and related services for SFY 2010 when compared to SFY 2009. From the information your agency provided, we are aware that the State experienced a significant decrease in revenues from SFY 2009 to SFY 2010. The State's revenues are collected through two funds--the Education Trust Fund (ETF), which provides funds for education, and the General Fund. From SFY 2009 to SFY 2010, the ETF experienced a drop in revenues of approximately \$462 million, which represented an 8.13 percent decrease. In addition, the General Fund experienced a drop in revenues of approximately \$174 million, which represented a 10.89 percent decrease over the same time period. The State reduced its appropriations across agencies, with an average 9.32 percent reduction in all appropriations from SFY 2009 to SFY 2010, including an 8.41 percent reduction in appropriations in education and an 8.46 percent reduction in elementary and secondary education for that same time period. While it is regrettable that these cuts were made to education funding, we recognize that the reduction in financial support for special education and related services was relatively small compared with cuts to other areas of education.

In reviewing your request, as part of our examination of "equitability," we considered all of the information provided by the State in all of its submissions--including that the percent reduction in State financial support for special education and related services was less than the average percent reduction in appropriations across agencies and less than the percent reduction in revenues. We also considered other relevant information, including the current information provided by the State with regard to the targets it has set and its data on the compliance and performance indicators under section 616 of the IDEA (20 U.S.C. §1416). In addition, when evaluating the equity of the requested waiver, we considered the fact that the IDEA American Recovery and Reinvestment Act (ARRA) funds were available to assist the State and local educational agencies (LEAs) in meeting their obligation to make a FAPE available to all children with disabilities in SFY 2010.

Based on all of the information discussed above, I have determined that it is equitable to grant a waiver under 20 U.S.C. §1412(a)(18)(C)(i) and 34 CFR §300.163(c)(1) due to exceptional or uncontrollable circumstances--the precipitous and unforeseen decline in the financial resources of the State--permitting Alabama to reduce its amount of State financial support provided for special education and related services for SFY 2010 by \$9,204,462.

We remind the State that if the Department determines through an audit, or other means, that the State failed to maintain State financial support at the level permitted by this waiver, the Department will be required to reduce the allocation of funds to the State under section 611 of the IDEA for any fiscal year following the fiscal year for which the State fails to maintain effort by the same amount by which the State fails to meet the requirement. 20 U.S.C §1412(a)(18)(B) and 34 CFR §300.163(b). In addition, the Department may take action to recover funds as provided for in section 452(a)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. §1234a(a)(1).

1. Alabama's revenues and appropriations for FY 2010 compared to FY 2009. ETF appropriations include prior year reversion amounts that have been reappropriated, as well as any proration.

REVENUES:

Total Revenues Available FY 2009 & FY 2010	FY 2009	FY 2010	Decrease	-%
General Fund:				
Beginning Balance	218,986,877	105,430,816	(113,556,061)	
Revenues	1,602,571,656	1,428,088,535	(174,483,121)	
TOTAL	<u>1,821,558,533</u>	<u>1,533,519,351</u>	<u>(288,039,182)</u>	<u>-15.81%</u>
Education Trust Fund:				
Beginning Balance	0	0		
Revenues	5,679,120,475	5,217,470,126	(461,650,349)	
TOTAL	<u>5,679,120,475</u>	<u>5,217,470,126</u>	<u>(461,650,349)</u>	<u>-8.13%</u>
Total Revenues Available Both Funds	<u>7,500,679,008</u>	<u>6,750,989,477</u>	<u>(749,689,531)</u>	<u>-9.99%</u>

APPROPRIATIONS:

General Fund (excluding conditional appropriations & Agency transfers to SGF)	1,787,330,974	1,568,478,403	(218,852,571)	-12.24%
Education Trust Fund (ETF)	5,707,308,868	5,227,445,033	(479,863,835)	-8.41%
Total Appropriations Available Both Funds	<u>7,494,639,842</u>	<u>6,795,923,436</u>	<u>(698,716,406)</u>	<u>-9.32%</u>
2. Alabama's level of financial support for special education and related services provided to children with disabilities.				
IDEA Maintenance of State financial support:	<u>634,976,935</u>	<u>625,772,473</u>	<u>(9,204,462)</u>	<u>-1.45%</u>

Note: IDEA level of support decreased by a much smaller percentage than the decrease to revenue or appropriations.

ALABAMA'S MAINTENANCE OF STATE FINANCIAL SUPPORT FOR SPECIAL EDUCATION

	<u>Fiscal Year 2008</u>	<u>Fiscal Year 2009</u>	<u>Fiscal Year 2010</u>
Amount made available to LEAs	543,838,015	552,209,181	547,230,913
Al. Dept. of Rehabilitation Services - Job Coaches	343,006	306,323	294,647
Dept. of Youth Services expenditures for students with disabilities	1,265,908	1,030,888	752,104
Allocation for Al. Inst. for Deaf & Blind - Children's Program	31,347,431	30,858,992	27,884,350
IDEA ADMIN Fund 259000	257,979	258,804	260,269
Preschool Allocation	3,766,473	2,269,605	1,931,927
Catastrophic Fund 600190	1,048,903	2,044,584	2,001,501
Transportation	<u>42,664,256</u>	<u>45,998,558</u>	<u>45,416,762</u>
TOTAL	<u>624,531,971</u>	<u>634,976,935</u>	<u>625,772,473</u>
Increase/Decrease		\$10,444,964	(\$9,204,462)
% Increase/Decrease		1.67%	-1.45%

Original

1. Alabama's revenues and appropriations for FY 2010 compared to FY 2009. ETF appropriations include prior year reversion amounts that have been reappropriated, as well as any proration.

REVENUES:

Total Revenues Available FY 2009 & FY 2010	FY 2009	FY 2010	Decrease	-%
General Fund:				
Beginning Balance	218,986,877	105,430,816	(113,556,061)	
Revenues	1,602,571,656	1,428,088,535	(174,483,121)	
TOTAL	<u>1,821,558,533</u>	<u>1,533,519,351</u>	<u>(288,039,182)</u>	<u>-15.81%</u>
Education Trust Fund:				
Beginning Balance	0	0		
Revenues	5,679,120,475	5,217,470,126	(461,650,349)	
TOTAL	<u>5,679,120,475</u>	<u>5,217,470,126</u>	<u>(461,650,349)</u>	<u>-8.13%</u>
Total Revenues Available Both Funds	<u>7,500,679,008</u>	<u>6,750,989,477</u>	<u>(749,689,531)</u>	<u>-9.99%</u>

APPROPRIATIONS:

General Fund (excluding conditional appropriations & Agency transfers to SGF)	1,787,330,974	1,568,478,403	(218,852,571)	-12.24%
Education Trust Fund (ETF)	5,707,308,868	5,227,445,033	(479,863,835)	-8.41%
Total Appropriations Available Both Funds	<u>7,494,639,842</u>	<u>6,795,923,436</u>	<u>(698,716,406)</u>	<u>-9.32%</u>

2. Alabama's level of financial support for special education and related services provided to children with disabilities.

IDEA Maintenance of State financial support:	<u>581,985,219</u>	<u>567,489,848</u>	<u>(14,495,371)</u>	<u>-2.49%</u>
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Note: IDEA level of support decreased by a much smaller percentage than the decrease to revenue or appropriations.

ALABAMA'S MAINTENANCE OF STATE FINANCIAL SUPPORT FOR SPECIAL EDUCATION

	<u>Fiscal Year 2008</u>	<u>Fiscal Year 2009</u>	<u>Fiscal Year 2010</u>
Amount made available to LEAs	494,341,250	499,217,465	488,948,288
Al. Dept. of Rehabilitation Services - Job Coaches	343,006	306,323	294,647
Dept. of Youth Services expenditures for students with disabilities	1,265,908	1,030,888	752,104
Allocation for Al. Inst. for Deaf & Blind - Children's Program	31,347,431	30,858,992	27,884,350
IDEA ADMIN Fund 259000	257,979	258,804	260,269
Preschool Allocation	3,766,473	2,269,605	1,931,927
Catastrophic Fund 600190	1,048,903	2,044,584	2,001,501
Transportation	<u>42,664,256</u>	<u>45,998,558</u>	<u>45,416,762</u>
TOTAL	<u>575,035,206</u>	<u>581,985,219</u>	<u>567,489,848</u>
Increase/Decrease			(\$14,495,371)
% Increase/Decrease			-2.49%

Corrected August 2011