



STATE OF SOUTH CAROLINA DEPARTMENT OF EDUCATION

Mick Zais
Superintendent

1429 Senate Street
Columbia, South Carolina 29201

April 3, 2013

The Honorable Hugh K. Leatherman, Sr.
Chairman, Senate Finance Committee
111 Gressette Building
Columbia, SC 29201

The Honorable W. Brian White
Chairman, House Ways and Means Committee
525 Blatt Building
Columbia, SC 29201

Dear Chairman Leatherman and Chairman White:

Thank you for your public service in the South Carolina General Assembly. The purpose of this letter is to provide an update to you about the State's appeal to the U.S. Department of Education (USED) regarding the Individuals with Disabilities Education Act (IDEA). At the conclusion of this letter is a request for a joint resolution to amend Proviso 1A.48 in the Fiscal Year 2012-2013 Appropriations Act.

As background, on June 17, 2011, the USED notified the South Carolina Department of Education (SCDE) that over \$111 million in special education funding would be withheld. This would have been a devastating cut to special education programs in South Carolina. Working as expeditiously as possible with Governor Nikki Haley and the General Assembly, the SCDE made \$75 million available to school districts for special education before the close of FY 2010-2011. This reduced the cut in federal special education funding to \$36,202,909 per year. However, that cut was to be in perpetuity. This cut was the result of the State not meeting the financial obligation for special needs funding in FY 2009-2010, prior to my tenure in office. I fought that cut by appealing this decision to the USED on August 1, 2011.

On August 9, 2011, the USED granted a one-year delay, stating that no reduction in federal funds would occur prior to October 1, 2012. On March 16, 2012, I requested another one-year delay in imposing this penalty because the USED still had not made a decision about the State's appeal. At the same time, the FY 2012-2013 budget was approved by the South Carolina House of Representatives. On April 3, 2012 I had a conference call with U.S. Deputy Secretary of Education Anthony Miller, the second-ranking official in the USED, to again make the State's case for another one-year delay.

On April 6, 2012, the USED denied the SCDE's request for another one-year delay. This denial meant the USED would reduce the State's IDEA allocation by \$36,202,909 per year in perpetuity beginning in FY 2012-13.

On May 22, 2012, U.S. Secretary of Education Arne Duncan denied South Carolina's request for a hearing and ordered the continuing reduction in South Carolina's IDEA allocation by \$36,202,909. This reduction became effective on October 1, 2012. The current budget sets aside \$36,202,909 in one-time state funds to fill the gap left by the USED's draconian cut. These funds have been distributed to school districts in the current fiscal year. While I have persistently pleaded with the USED to listen to reason, those pleas were rejected by USED. The children, not the adults in the system, would be the ones hurt by this decision.

On June 18, 2012, the SCDE filed a petition for review with the Fourth Circuit Court of Appeals (the Court) of Secretary Duncan's decision. On November 26, 2012, the SCDE filed its brief. The USED filed its brief on January 28, 2013 and the SCDE filed its response to USED's brief on February 11, 2013. The SCDE and USED presented oral arguments to the Court on Friday, March 22, 2013 in Lexington, Virginia. The SCDE has requested that the Court restore funding to South Carolina if the Court finds that the Secretary wrongly denied South Carolina a right to a hearing on the reduction.

U.S. Senator Lindsey Graham successfully included language to repeal the perpetual penalty in an appropriations bill in 2012. However, this legislation was never enacted by the previous Congress. I urged the South Carolina federal delegation to include Sen. Graham's language in an appropriate legislative vehicle in letters of November 28, 2012 and March 5, 2013. On March 21, 2013 the U.S. Senate and U.S. House of Representatives approved H.R. 933, a bill to fund federal government operations until September 30, 2013. Included in this bill was language to repeal the perpetual penalty.

There is another matter to discuss regarding IDEA in the current fiscal year. Proviso 1A.48 limits the amount of funds the SCDE can distribute to school districts to ensure the state meets IDEA MOE for the current fiscal year. Based upon new estimates, the limit imposed in Proviso 1A.48 is insufficient to meet IDEA MOE. Therefore, I respectfully request a joint resolution amending the proviso as follows:

1A.48. (SDE-EIA: IDEA Maintenance of Effort) Prior to the dispersal of funds appropriated in Section XII.A.1 Aid to Districts according to Proviso 1A.43 for Fiscal Year 2012-13, the department shall direct ~~up to \$30,494,337 of the~~ funds appropriated in Section XII.A.1 Aid To Districts to school districts and special schools for supplemental support of programs and services for students with disabilities, to meet the estimated maintenance of effort for IDEA. Funds provided for the maintenance of effort for IDEA may not be transferred to any other purpose and therefore are not subject to flexibility. The department shall distribute these funds using the current fiscal year one hundred thirty-five day Average Daily Membership. For continued compliance with the federal maintenance of efforts requirements of the IDEA, funding for children with disabilities must, to the extent practicable, be held harmless to budget cuts or reductions to the extent those funds are required to meet federal maintenance of effort requirements under the IDEA. In the event cuts to funds that are needed to maintain fiscal effort are necessary, when administering such cuts, the department must not reduce funding to support children with disabilities who qualify for services under the IDEA in a manner that is disproportionate to the level of overall reduction to state programs in general. By December 1, 2012, the department must submit an estimate of the IDEA MOE requirement to the General Assembly and the Governor. The department is directed to transfer \$350,000 to the South Carolina Autism Society for the Autism Parent-School Partnership Program.

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The amended proviso grants the SCDE flexibility to ensure the State will meet IDEA MOE. The joint resolution must be enacted before June 30, 2013. For future years, I recommend the budget proviso not contain a limit. The funds associated with this proviso will always be distributed to school districts; no funds are ever kept by the SCDE. The only change is the permissible uses of the funds.

Thank you for your support over the past three years regarding this issue. The children and parents of South Carolina thank you for your support.

Sincerely,



Mick Zais, Ph.D.

State Superintendent of Education

Cc: The Honorable Nikki R. Haley