



UNITED STATES DEPARTMENT OF EDUCATION

June 13, 2012

THE DEPUTY SECRETARY

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State Superintendent's
Office

Honorable Mick Zais, Ph.D.
State Superintendent of Education
South Carolina State Department of Education
1429 Senate Street
Columbia, South Carolina 29201

Dear Superintendent Zais:

This responds to your May 15, 2012, letter in which you requested clarification of a conversation we had on April 4, 2012, related to the partial denial of the State of South Carolina's request for a waiver under section 612(a)(18)(C)(i) of the Individuals with Disabilities Education Act (IDEA). During that conversation, I informed you that the Office of Special Education Programs (OSEP) would not delay the planned \$36,202,909 reduction in South Carolina's section 611 allocation under the IDEA.¹ As your May 15th letter states, during that conversation, we also discussed your request to the State legislature to appropriate an additional \$36,202,909 in State funds for special education and related services for State fiscal year (SFY) 2013 to make up for the reduced Federal allocation. The State was concerned that this increase in State financial support for special education and related services will reset its required level of fiscal effort for such purposes in subsequent years to a higher amount, and that this would be problematic if the State is successful in its request for a hearing on the partial denial of its waiver request for SFY 2010.

I want to clarify what I meant when I said during that conversation that the Department would work with the State on this issue. Under a scenario where the State provides an additional \$36,202,909 in State financial support for special education and related services for SFY 2013 (and its required level of fiscal effort in subsequent years rises to include those dollars), the State may request a waiver under section 612(a)(18)(C)(i) of the IDEA. The Department would carefully consider such a request. Such a request would be especially relevant if (1) the State's partial denial of its waiver request was granted after a hearing² and/or (2) future possible Federal legislative amendments would limit the effect of the reduction in the State's section 611 allocation to one year, and not reset its required level of fiscal effort for such purposes in subsequent years to the previous lower amount. While the Department would have to review all of the equities present at the time of any request, we would consider permitting the State to meet the

¹ OSEP will reduce the State's section 611 allocation by \$36,202,909 on October 1, 2012.


² At the time of the conference call (April 4, 2012), the Secretary had not yet issued an Order on South Carolina's request for a hearing. The Secretary issued an Order on May 22, 2012, denying the State's request for a hearing.

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requirement to maintain fiscal effort without providing an additional \$36,202,909 in State financial support for special education and related services in a future year.³

We acknowledge and fully support your efforts to ensure that there is adequate State financial support for students with disabilities to receive the special education and related services they need to receive a free appropriate public education. If there is additional information or technical assistance that we can provide, please let me know.

Sincerely,



Anthony W. Miller

³ The Department may only waive the maintenance of effort requirement for one year at a time.