



UNITED STATES DEPARTMENT OF EDUCATION

THE DEPUTY SECRETARY

August 8, 2011

Honorable Sam Brownback
Governor of Kansas
State Capitol
300 SW 10th Ave., Suite 241S
Topeka, Kansas 66612-1590

Dear Governor Brownback:

The purpose of this letter is to inform you that the U.S. Department of Education (Department) will reduce your State's Part B Section 611 (Grants to States) award under the Individuals with Disabilities Education Act (IDEA) in Federal Fiscal Year (FFY) 2012 due to your State's failure to maintain State financial support for special education and related services in State Fiscal Year (SFY) 2010.

This letter follows up on my October 25, 2010, letter related to the maintenance of State financial support for special education and related services for the IDEA under 20 U.S.C. §1412(a)(18) and 34 CFR §300.163. As I indicated in that letter, the IDEA provides in 20 U.S.C. §1412(a)(18)(B) that, when a State fails to maintain State financial support at the level required by law, the Department "shall reduce the allocation of funds under Section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement" to maintain effort "by the same amount by which the State fails to meet the requirement." Accordingly, the Department must reduce your State's Section 611 grant in the amount of \$2,186,454 because of the State's failure to maintain fiscal effort in SFY 2010 by that same amount.

Although the Department's October 25, 2010, letter indicated that the State's FFY 2011 Section 611 allocation would be reduced by \$2,186,454, we have decided to defer the reduction until FFY 2012. As you know, the State is required to make available a free appropriate public education (FAPE) to all children with disabilities residing in the State regardless of the amount of the State's Section 611 allocation. 20 U.S.C. §1412(a)(1). Given that this is the first time that the Department is reducing the allocation of Section 611 funds due to failure of a State to maintain fiscal support for special education and related services, as required under 20 U.S.C. §1412(a)(18)(B), we want to ensure that there is sufficient time and opportunity for a State and its local educational agencies (LEAs) to take whatever steps are necessary to plan for the reduction and ensure that a FAPE is available to all children with disabilities residing in the State. Accordingly, the reduction in Kansas's IDEA Part B Section 611 (Grants to States) award

will occur in FFY 2012.¹ Specifically, the Department will reduce the Section 611 funds distributed to the State on October 1, 2012, by \$2,186,454.

In addition, under 20 U.S.C. §1411(d)(3)(B)(i), (ii), and (iii) (if there is an increase in the amount of Section 611 funds) or 20 U.S.C. §1411(d)(4) (if there is a decrease in the amount of Section 611 funds), the State's allocation for a fiscal year is based in part on the amount the State received for the preceding fiscal year. The reduced allocation that Kansas will receive in FFY 2012 will stand as the amount the State received for the preceding fiscal year when the Department calculates the State's FFY 2013 grant.

In light of the Kansas Special Education Advisory Council's duties under 20 U.S.C. §1412(a)(21)(D), particularly its duty under 20 U.S.C. §1412(a)(21)(D)(i) to "advise the State educational agency of unmet needs within the State in the education of children with disabilities," we are providing it with a copy of this letter. In addition, the State must post this letter on the State educational agency's Web site and distribute a copy of this letter to each LEA no later than October 1, 2011, so that LEAs have notice of the Department's action.

We look forward to our continued collaboration to ensure that children with disabilities receive the special education and related services they need to reach their full potential.

Sincerely,

A handwritten signature in dark ink, appearing to read "Anthony W. Miller". The signature is fluid and cursive, with the first name "Anthony" being the most prominent part.

Anthony W. Miller

cc: Kansas Special Education Advisory Council

¹ Although the Department is exercising its discretion under the Act to delay the imposition of the reduction in Kansas' Section 611 award, States should not rely on similar delays in future years, as these decisions are made on a case-by-case basis. If a State has not maintained effort, the State should anticipate a reduction in its Section 611 allocation by that amount in the year immediately following the failure to maintain effort, and must take action to ensure that FAPE will be made available to all eligible children with disabilities.