

MEMORANDUM

TO: Larry Ringer
Jennifer Finch
U.S. Department of Education
Office of Special Education Programs

From: Pat Homberg, Executive Director *PH*
Sandra McQuain, Assistant Director *SM*
Office of Special Programs

Date: May 27, 2010

RE: Request for waiver of maintenance of state level of support for 2009-2010

The following additional documentation is provided by the West Virginia Department of Education, Office of Special Programs, to support our request for waiver of state level of support for students with disabilities for 2009-2010. Our original request was for a reduction of \$143,864, however, more recent budget information, including additional mid-year cuts to WV Schools for the Deaf and the Blind require us to request a waiver in the amount of \$491,580. Responses are provided below to the questions posed by OSEP in its May 6 e-mail.

Question 1: In the State's March 26th letter, the State provides information on the amount of SFY appropriations for State support for exceptional children, which may include both students with disabilities and gifted children for SFYs 2008-2009 and 2009-2010. For SFYs 2009 and 2010, please provide the amount of appropriations only for special education and related services for children with disabilities, and not for gifted children.

State Maintenance of Support for Special Education					
	Account	2007-2008	2008-2009	2009-2010	% Change
Aid To Counties (LEAs)	0314-159	6,036,822	6,036,822	6,036,822	0%
Regional Education Service Agencies (RESAs)	0314-159	376,000	376,000	376,000	0%
Out of County Students	0314-159	558,935	558,935	558,935	0%
Out of State Students	0314-159	300,000	300,000	300,000	0%
Special Education/Institutions	0314-160	3,540,258	3,683,391	3,694,082	+0.2%
WV Schools for the Deaf and the Blind	0320-	12,639,944	12,903,424	12,651,153*	-2%
High Acuity	0313-634		500,000	250,000	-50%
Total		23,451,959	24,358,572	24,214,708	-2%
Change in Level from Previous Year			+906,613	-491,580	

*Reflects additional mid-year cut of \$347,716 not included in original waiver request

Appropriations are made for exceptional children, which includes gifted in grades 1-8 under West Virginia Code §18-20-1. It is not possible to provide a separate appropriation amount for gifted versus students with disabilities. However, as noted in our March 26 letter, the level of the appropriations going directly to county school districts (Aid to Counties) for provision of IEP services to children with exceptionalities has not decreased, but has been maintained. The same amount has been "made available", although districts then have the choice of using part of this funding for gifted students. Therefore, from the state perspective, the level of support within this appropriation has been maintained. LEA maintenance of effort is examined through a different process to ensure the overall level of state/local expenditures is maintained from year to year unless the district provides documentation of an allowable reason under IDEA for reduction. The reduction in state level of support was the result of reduction in appropriations to the Department of Education for the new high acuity fund and for WV Schools for the Deaf and the Blind only. WVSDS served 160 students in SFY10 based on their December 1, 2009 child count.

In an effort to provide additional information, we examined expenditures for gifted students within the Exceptional Children Aid to Counties accounts for FY 2008, 2009 and 2010, although it is our understanding that state level of support is based on funds *made available*, not expenditures. Expenditure data for 2010 are incomplete, however, because the year is not over until June 30. Expenditure data show that of the \$7,271,757 (account 0314-159) going to districts and RESAs, in 2008 \$186,561 was expended for gifted and in 2009, \$152,210. Incomplete data for FY10 show only \$49,168 expended for gifted. Thus the percentage of funds districts choose to use for gifted education has been small and districts are maintaining if not increasing the amount of funds they direct to students with disabilities from this allocation.

Question 2. The percentage reduction of level of State support for special education and related services for children with disabilities from 2009 to 2010 that will occur if the Department of Education grants the waiver requested by the state.

Response: Due to a reduction in state revenues and additional mid-year budget reductions, the amount and percentage of the requested reduction in maintenance of support have increased. Based on the original appropriations, the reduction was \$143,864. With additional budget cuts, the reduction is now \$491,580, as state revenues have continued to come in below 2008-2009 levels (attached). This is a 2% reduction from SFY 09.

Question 3. The percentage amount by which each State Agency's appropriations are being increased or reduced from SFY 09 to SFY 10. It is not necessary to include percentage amounts for each sub agency, however, please organize in the manner the State uses in classifying its budget categories. When including education, please break down by major education programs (higher education, K-12, special education).

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Response: This has been challenging, given the number of agency budgets that have changed since the original appropriation. Documentation is attached, collapsed into major categories. *State Ex rel. Board of Education, County of Kanawha v. Rockefeller* (W.Va. 281 S.E.2d. 131) established public education has a preferred status under the state Constitution, and expenditures cannot be reduced absent a compelling factual record demonstrating a significant deficit in general revenue. The requested mid-year cut for Department of Education was less than for other agencies, as previously documented, and was exclusive of formula-driven state funding for districts, which was not cut. Agencies overall were reduced by 5.8% from the FY09 levels, while the Department of Education budget (Education in attached table) was reduced 3.5%. Special education was reduced 2% overall (see above, pulled from sub categories not shown in the attached table).

Within the attached table, two line items within "Ed and Arts" represent higher education. One received a 5% reduction, and one received a 6.3% reduction from FY09 levels.

Question 4. The percentage drop in revenues from SFY 2009 to SFY 2010.

Response: Revenues for SFY10 through April compared to the same period for SFY09 show a 7% reduction overall. Most revenue categories are projected to continue to decline for the remainder of the year. (See the attached comparison of revenues.)

Question 5. The information on whether figures presented by the state are the final figures for SFY 2010.

Response: As indicated above, the final requested waiver amount increased to \$491,580 from our original request. We do not anticipate further reduction or increase for SFY10. Revenue figures through June 30 will be available in July.

If you have questions, please contact Sandra McQuain at smcquain@access.k12.wv.us or (304) 558-2696. We look forward to approval of our waiver request.

cc: Dr. Jorea Marple
Terry Harless

SM:jly

c:/MyDocuments/AdditionalDocumentationOSEP-StateMOE

State of West Virginia - General Fund

NAME	FIMS #	FY 2009 Appropriation	FY 2010 Appropriation	FY09 to FY10 (reduction)	Percentage Change
LEGISLATIVE					
JUDICIAL					
SUP CT	0180	115,817,478	115,963,668	146,190	0.1%
EXECUTIVE					
ADMINISTRATION					
EDUCATION					
CH NUT	0303	2,524,357	2,455,215	(69,142)	-2.7%
CEDAR LAKES	0306	1,056,060	1,057,335	1,275	0.1%
DEPT OF ED	0313	37,985,444	36,882,990	(1,102,454)	-2.9%
EXCEPT CHILD	0314	27,792,889	27,472,754	(320,135)	-1.2%
STATE AID	0317	1,721,793,398	1,659,495,319	(62,298,079)	-3.6%
ED PERF AUDIT	0573	731,290	709,081	(22,209)	-3.0%
VOCATIONAL	0390	26,222,375	26,193,199	(29,176)	-0.1%
DEAF & BLIND	0320	13,028,424	12,713,653	(314,771)	-2.4%
		1,831,134,237	1,766,979,546	(64,154,691)	-3.5%
ED AND ARTS					
OFC OF SEC	0294	6,610,559	6,168,372	(442,187)	-6.7%
HI ED EFF FUND	0556,0578	0	0	-	-
CULT & HIST	0293	5,164,736	5,091,384	(73,352)	-1.4%
LIBRARY COMM	0296	1,853,508	1,794,536	(58,972)	-3.2%
EBA	0300	5,870,507	5,526,782	(343,725)	-5.9%
CENTAL OFC	0333	0	0	-	-
UNIVERSITY	0327	0	0	-	-
HEALTH SCIEN	0323,0590	0	0	-	-
COLLEGE	0330	0	0	-	-
ADMIN	0589 Higher Ed	59,114,403	56,166,816	(2,947,587)	-5.0%
CONTROL	0586, 0596 Higher Ed	361,766,686	339,072,842	(22,693,844)	-6.3%
Comm & Tech	????	0	0	-	-
FUND PRIOR	0591	0	0	-	-
REHAB	0310	14,277,729	13,360,474	(917,255)	-6.4%
		454,658,128	427,181,206	(27,476,922)	-6.0%
HEALTH & HUM RES					
PUBLIC SAFETY					
TAX & REVENUE					
		861,943,046	791,248,164	(70,694,882)	-8.2%
		318,832,627	321,713,350	2,880,723	0.9%
TRANSPORTATION					
		30,688,899	30,467,104	(221,795)	-0.7%
COMMERCE					
		7,770,185	7,235,158	(535,027)	-6.9%
ENVIRONMENT					
		70,026,662	65,028,264	(4,998,398)	-7.1%
MISC BDS & COMM					
		8,369,266	7,962,249	(407,017)	-4.9%
		0	0	-	-
		3,896,870,388	3,670,216,994	(226,653,394)	-5.8%

Note - FY09 Education 0313 line item reflects the subtraction of state-aid formula items that were lowered in FY10 due to enrollment that would have otherwise overstated the discretionary cuts made in FY10.

STATE OF WEST VIRGINIA
COMPARISON OF REVENUES
APRIL 2009 VS APRIL 2010
(IN THOUSANDS)

GENERAL REVENUE FUND

SOURCE	Actual	Actual	Actual	Actual	Actual	To Date -	To Date -
	Collections	Collections	Collections	Collections	Collections	Increase	% Increase
	April 2009	April 2010	July 08-Apr. 09	July 09-Apr. 10	Over Prior Period	(Decrease)	(Decrease)
			10 Months	10 Months	Over Prior Period		
Business and Occupation Tax	\$ 13,531	\$ 12,152	\$ 126,263	\$ 110,820	\$	(15,443)	-12%
Consumer Sales Tax/Use Tax	93,037	96,980	944,671	922,065	(22,606)	(2,2%)	
Personal Income Tax	243,709	215,130	1,253,300	1,176,926	(76,374)	(6%)	
Liquor Profit Transfers	21	394	9,805	10,154	349	4%	
Racing Fees	22	26	451	293	(158)	(35%)	
Beer Tax and Licenses	686	787	6,610	6,487	(123)	(2%)	
Cigarette Tax/Smokeless Tobacco Tax	8,770	9,212	95,904	93,945	(1,959)	(2%)	
Estate Tax	12	56	29	82	53	183%	
Business Franchise Fees	25	24	749	684	(65)	(9%)	
Charter Tax	14	7	277	144	(133)	(48%)	
Property Transfer Tax	528	572	7,298	6,557	(741)	(10%)	
Property Tax	609	663	5,245	5,465	220	4%	
Insurance Tax	15,562	18,962	94,967	97,111	2,144	2%	
Departmental Collections	756	988	12,708	12,757	49	0%	
Corporation Income/Business Franchise Tax	48,400	32,529	220,311	177,379	(42,932)	(19%)	
Miscellaneous Receipts	141	4,133	4,569	5,427	858	19%	
Miscellaneous Transfers	0	0	130	239	109	84%	
Interest Income	1,004	(289)	23,434	10,073	(13,361)	(57%)	
Severance Tax	24,705	33,931	357,325	332,321	(25,004)	(7%)	
Telecommunications Tax	9	42	207	58	(149)	(72%)	
Special Revenue Transfer	0	0	0	0	0	0%	
HB 102 - Lottery Transfers	36,484	25,123	120,088	90,123	(29,965)	(25%)	
Video Lottery Transfers	23	211	617	696	79	13%	
Liquor License Renewal	0	0	0	0	0	0%	
Senior Citizen Tax Credit Reimbursement	2,148	2,760	6,199	6,814	615	10%	
Tax Amnesty	0	0	0	0	0	0%	
TOTAL	\$ 490,196	\$ 454,393	\$ 3,291,157	\$ 3,066,620	\$ (224,537)	(7%)	
Increase or Decrease Over Prior Period							
% Increase or Decrease Over Prior Period							