



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

NOV 09 2006

The Honorable Gene Wilhoit
Commissioner
Kentucky Department of Education
500 Metro Street
Frankfort, Kentucky 40601

Dear Commissioner Wilhoit:

I am writing to follow up on my letter, dated June 22, 2006, inviting you to show cause why the U.S. Department of Education (Department) should not withhold 10 percent of the fiscal year 2006 funds the Kentucky Department of Education reserved for State administration under Title I, Part A of the *Elementary and Secondary Education Act of 1965* (ESEA), as amended by the *No Child Left Behind Act of 2001* (NCLB). In a letter of July 10, 2006, you responded to this invitation to show cause on behalf of the Kentucky Department of Education. On October 3, 2006, after several discussions and offering the State an opportunity to submit additional evidence, Kentucky, accepted the Department's determination of Kentucky's standards and assessment system as *Approval Pending* and requested additional feedback on the evidence submitted.

In the June 22, 2006 letter, I listed a number of components where the evidence provided did not demonstrate that Kentucky's assessments met the ESEA requirements. Specifically, the Department did not approve Kentucky's standards and assessment system due to outstanding concerns with the Kentucky Alternate Portfolio (KAP) link to grade-level content standards and separate alternate achievement standards for reading and mathematics; the technical quality of the Augmented Norm-Referenced assessments, including validity, reliability, and standard setting; and the alignment of the assessments to the Core Content for Assessment. Accordingly, Kentucky's standards and assessment system was assigned the status of *Approval Pending*. Based on the number of fundamental components that were missing or did not meet the ESEA requirements, I indicated the Department's intent to withhold a portion of Kentucky's Title I, Part A State administrative funds.

In the letter to show cause why the Department should not withhold Title I, Part A administrative funds, Kentucky did not provide sufficient evidence demonstrating that the assessments administered during the 2005-06 school year met the requirements of Section 1111(b)(1) and (3) of the ESEA. As you know, we have had several conversations with you and your staff to discuss issues related to Kentucky's standards and assessment system and the documentation the State submitted. This letter provides feedback on that evidence, its impact on Kentucky's request for reconsideration, and whether the evidence sufficiently shows cause that the Department should not withhold funds.

Kentucky submitted a plan to link the Kentucky Alternate Portfolio (KAP) to grade-level content standards and to develop separate alternate achievement standards in reading and mathematics. The documentation provided suggests Kentucky is taking appropriate steps to address this issue. While I applaud the work you have done on the Kentucky alternate assessment and the timeline you have established for the remaining work, they are not sufficient to show cause that the

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-6100

assessment system Kentucky administered during the 2005–06 school year met the requirements listed above.

With regards to the technical quality of the augmented norm-referenced test (ANRT), Kentucky has not demonstrated adequate support that the ANRT meets technical quality requirements including standard setting, reliability, and validity. While Kentucky has made substantial progress with standards setting, Kentucky needed to provide additional evidence regarding reliability and augment the State plans to develop validity evidence. In addition, the State needed to complete a technical report in order to demonstrate that the ANRT met the technical quality requirements as administered in 2005-06.

To address issues of the alignment of Kentucky's assessments to its grade-level content standards, Kentucky provided a plan to support alignment between the Kentucky Core Content Tests (KCCT) and the Core Content Standards 3.0. Rather than conduct an alignment study of the ANRT to the Core Content Standards, Kentucky plans to demonstrate the alignment of the ANRT by conducting an alignment study between the KCCT and ANRT. However, this is not sufficient evidence to demonstrate the alignment of the ANRT to the Kentucky Core Content Standards.

After careful consideration of Kentucky's submission, I have concluded that Kentucky has not shown cause why the Department should not withhold a portion of Kentucky's Title I, Part A State administrative funds for fiscal year 2006. Therefore, under section 1111(g)(2) of the ESEA, the Department is withholding ten percent of Kentucky's Title I State administrative funds for fiscal year 2006, totaling \$183,956, which will revert to the school districts' Title I, Part A allocations from which it was reserved. I am enclosing guidance on how Kentucky should redirect these funds to its Title I, Part A districts. If you have any questions about this guidance, please contact Sandy Brown of my staff at (202) 260-0976.

I regret having to withhold a portion of Kentucky's Title I, Part A State administrative funds for the State's failure in three fundamental areas to administer a fully compliant standards and assessment system during the 2005–06 school year. However, I have every reason to believe that Kentucky will implement a revised assessment system that meets the requirements under Section 1111(b)(1) and (3) of the ESEA in the 2006-07 school year. I appreciate your efforts to move forward with an aggressive plan to implement a revised system that embraces the letter and spirit of the law. My staff and I look forward to working with Kentucky over the coming year and we will continue to offer technical assistance to help you in this important work. We will be contacting you shortly to discuss your technical assistance needs and the resources the Department can provide Kentucky in the areas of technical quality, alignment, and alternate assessments based on alternate achievement standards. If you have any remaining questions or would like to discuss this further, please do not hesitate to contact David Harmon (david.harmon@ed.gov) or Abigail Potts (abigail.potts@ed.gov) of my staff.

Sincerely,



Henry L. Johnson

Enclosure

cc: Governor Ernie Fletcher

GUIDANCE

WITHHOLDING TITLE I, PART A FUNDS FOR STATE ADMINISTRATION BASED ON PEER REVIEW OF STATE ASSESSMENT SYSTEMS

Introduction

As a result of the peer review of each State's standards and assessment system, the Department of Education (ED) determined that the systems developed by some States do not meet three or more fundamental components of the statutory and regulatory requirements of Section 1111(b)(1) and (3) of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001. Accordingly, under section 1111(g)(2) of ESEA, ED is withholding a specified amount of fiscal year (FY) 2006 Title I, Part A funds that a State educational agency (SEA) reserves for State administrative activities. The effect of this withholding is that the funds withheld revert to the local educational agencies (LEAs) within the State from which they were initially reserved. The State's total allocation, however, is not affected by this withholding action.

Questions and Answers

Q1. How does a withholding affect the amount of Title I, Part A funds available to the SEA and LEAs in the State?

Section 1004 of the ESEA authorizes an SEA to reserve for State administration up to one percent (or \$400,000, if greater) from funds allocated to the State under Title I, Part A Grants to LEAs. The following chart illustrates how the withholding would affect how much an SEA may reserve for State administration.

1	State Title I, Part A allocation	\$183,955,830
2	Maximum amount State is authorized to reserve for State administration (Line 1 x 0.01)	1,839,558
3	Amount available to LEAs without any withholding (Line 1 - Line 2)	182,116,272
4	Reduction in the amount an SEA is authorized to reserve for State administration (assuming a withholding of 10 percent of State administrative funds) (Line 2 x 0.10)	183,956
5	Amount an SEA may reserve for State administration (Line 2 - Line 4)	1,655,602
6	Revised amount available to LEAs (Line 3 + Line 4)	182,300,228

In this example, absent any withholding, the SEA is authorized to reserve \$1,839,558 for State administration. Through a withholding under section 1111(g)(2), ED has limited the amount the SEA may reserve for State administration by \$183,956 (10 percent). As a result, the SEA may only reserve \$1,655,602 rather than \$1,839,558. The \$183,956 difference reverts to the LEA allocations from which it was initially reserved (*see* Q2 below).

Q2. How does an SEA ensure that the withheld funds revert to the Title I, Part A allocations of LEAs from which they were initially reserved?

Under §200.100(d) of the Title I regulations, an SEA may reserve funds for State administration in one of two ways: (1) proportionately reduce each LEA's total Title I, Part A allocation while ensuring that no LEA receives less than its hold-harmless guarantee based on its poverty percentage; or (2) proportionately reduce each LEA's total Title I, Part A allocation even if an LEA's total allocation falls below its hold-harmless guarantee.

An SEA that has reserved its maximum authorized amount for State administration must distribute the withheld funds to the allocations of the LEAs from which they were initially reserved. Thus, if an SEA proportionately reduced each LEA's Title I, Part A allocation, irrespective of its hold-harmless amount, the SEA must proportionately increase each LEA's allocation up to the amount of the withheld State administrative funds.

Q3. How would this process work for States in which the SEA and LEA are the same?

In this situation, the State would reduce the amount it is authorized to reserve for administration activities related to its SEA functions by the amount ED specifies (*see* Q1). The remaining funds would be available to the State as an LEA to allocate to its schools in accordance with section 1113 of the Title I statute and §§200.77 and 200.78 of the Title I regulations. Note that there is a special provision in section 1124(c)(2) that applies when an LEA contains two or more counties in their entirety. In this situation, the LEA must distribute to schools in each county within the LEA a share of the LEA's total Title I grant that is not less than the county's share of the population count used to calculate the LEA's grant.

Q4. May an SEA redistribute the funds withheld for State administration through its reallocation procedures or under section 1003(a) to LEAs with schools in need of improvement?

No. An SEA does not have discretion in how it distributes the withheld funds. Those funds must revert to the allocations of the LEAs from which they initially were reserved as described in Q2.

Q5. Would receiving funds withheld for State administration in school year (SY) 2006-07 affect an LEA's hold-harmless base for its SY 2007-08 allocations?

Yes. The SY 2006-07 LEA allocations that an SEA determines after it reserves a reduced amount for State administration would be the allocations the SEA uses as the hold-harmless to calculate each LEA's hold-harmless guarantee for SY 2007-08. The SEA would also use those same 2006-07 LEA allocations as the base for ensuring that no LEA receives less in SY 2007-08 than it received in SY 2006-07 when reserving funds for school improvement under section 1003(a).

Q6. Some States have already issued final SY 2006-07 allocations based on the allocations ED released in June, and LEAs have submitted applications and budgets based on those allocations. Because of the additional time and effort required to amend LEA applications and budgets for the small amount of money involved, may an SEA make the adjustments resulting from the withholding when it calculates final SY 2007-08 allocations next year?

We would not expect this situation to create significant burden because an LEA may carry over, subject to the 15 percent limitation in section 1127, the State administrative funds that revert to it due to the withholding action. However, if it is too burdensome to allocate the small additional amounts that would be available to its LEAs and to make new subgrants for the current year, an SEA may set these funds aside and make the adjustment next year when it calculates its SY 2007-08 allocations and makes subgrants for that year. However, an SEA would need to recalculate its allocations for SY 2006-07 based on the reduction in the amount it may reserve for State administration in order to determine the differences between the initial SY 2006-07 LEA allocations and what the revised SY 2006-07 LEA allocations should be. This step is also necessary to determine the proper hold-harmless base for SY 2007-08 Title I, Part A allocations. (See Q5). The SEA would then adjust its SY 2007-08 LEA allocations to reflect those differences. If an SEA uses this option, please note that the SY 2006-07 funds must be expended prior to September 30, 2008.

The following table illustrates how this process would work. Column A shows an initial SEA allocation and grant award of \$98,000 to the LEA. As a result of the change in the amount withheld for administration, the LEA's revised allocation is \$100,000 (Column B), a \$2,000 increase over the amount the SEA initially allocated and awarded to the LEA. The amount shown in Column B becomes the LEA's hold-harmless base for SY 2007-08 Part A allocation purposes. Because the SEA is adjusting for the difference between the initial allocation and grant award and the revised allocation in the following year, the LEA's SY 2007-08 Title I, Part A allocation is adjusted by the difference shown in Column C so that the final amount awarded to the LEA in SY 2007-08 is \$102,000 (Column D + Column E). Note that in this case, the amount *actually received* by the LEA in SY 2006-07 (shown in Column A) becomes the base the SEA uses for ensuring that no LEA receives less in SY 2007-08 than it received in SY 2006-07 when reserving funds for school improvement activities in SY 2007-08.

SY 2006-07			SY 2007-08		
(A)	(B)	(C)	(D)	(E)	(F)
Initial Title I, Part A Allocation (Actual Amount SEA Awarded to the LEA)	Revised Allocation Resulting from Change in the Amount Withheld for Administration	Difference	Initial Title I, Part A Allocation	Adjustment from 2006-07	Total Award
98,000	100,000	2,000	100,000	2,000	102,000

Q7. Does ED's withholding of Title I, Part A State administrative funds affect the process an SEA uses to reserve funds for school improvement?

No. A withholding of State administrative funds does not affect the process described on page 34 of ED's May 2003 within-State allocation guidance concerning how an SEA reserves funds for school improvement. Under section 1003(a) of the ESEA and §200.100(a) of the Title I regulations, an SEA first must reserve for school improvement four percent of its Title I, Part A funds the State receives, ensuring as it does that no LEA receives less than the amount the SEA allocated to the LEA in the prior year. The SEA may then reserve funds for the State Academic Achievement Awards program and State administration. Accordingly, as described in Q2, the SEA would distribute the withheld State administrative funds to the appropriate LEAs without regard to any adjustments it made to LEA allocations in implementing section 1003(a). For more detail, *see* the guidance on the web at <http://www.ed.gov/programs/titleiparta/seaguidanceforadjustingallocations.doc>.

Q8. If an SEA uses the flexibility in Q6 to distribute the withheld State administrative funds to its LEAs in 2007-08, what is the base on which an LEA calculates its set-asides for 2006-07?

Title I, Part A contains several provisions that require an LEA to set aside a percentage of its Title I, Part A allocation for a specific purpose (e.g., section 1118(a)(3) requires a reservation of "not less than 1 percent" for parent involvement activities). If an SEA waits to distribute the withheld 2006-07 State administrative funds to its LEAs until the 2007-08 school year, an LEA would calculate its Title I, Part A set-asides for the 2006-07 school year on the amount of Title I, Part A funds it *actually received* for 2006-07 (*see* Column A in the table shown in Q6). Then, in 2007-08, it would calculate its set-asides on its total 2007-08 Title I, Part A allocation, including any 2006-07 funds it receives based on the withholding of State administrative funds (*see* Column F in the table shown in Q6).

Q9. If an SEA uses the flexibility in Q6 to distribute the withheld State administrative funds to its LEAs in 2007-08, what Title I, Part A amount does the SEA use in calculating allocations for other Federal funds (e.g. Education Technology Grants (Title II, Part D, Subpart), Safe and Drug-Free Schools and Communities (Title IV, Part A), and Reading First (Title I, Part B, Subpart 1)) whose within-State formulas are based, in part, on Title I, Part A allocations received?

An SEA would use the total amount awarded to an LEA in 2007-08 (*see* Column F in the table shown in Q6) as the base for determining LEA allocations for those programs whose statutory formulas are based, in part, on the amount of Part A funding they receive for the current year. If the allocation for 2007-08 were based on the prior-year Part A amount received, an SEA would use the amount actually awarded to an LEA in 2006-07 (*see* Column A in the table shown in Q6).

9/29/06