



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

The Honorable Theodore R. Mitchell
President
California State Board of Education
1430 N. Street, Suite 5111
Sacramento, California 95814

JAN 15 2009

The Honorable Jack O'Connell
Superintendent of Public Instruction
California Department of Education
P.O. Box 944272
Sacramento, California 94244-2720

Dear President Mitchell and Superintendent O'Connell:

I am writing to follow up on my letter dated November 21, 2008, inviting you to show cause why the U.S. Department of Education (Department) should not withhold \$1 million of California's fiscal year 2008 Title I, Part A administrative funds pursuant to section 1111(g)(2) of the *Elementary and Secondary Education Act of 1965* (ESEA), as amended by the *No Child Left Behind Act of 2001* (NCLB). On December 18, 2008, you attempted to show cause why the Department should not withhold a portion of California's Title I, Part A administrative funds.

As noted in my letter of November 21, 2008, under Title I of the ESEA, California was required, by the 2005–06 school year, to annually administer mathematics assessments to all 3rd- through 8th-graders that are, among other requirements, aligned with grade-level academic content and student academic achievement standards. Yet, California permits some 8th-graders to take the General Mathematics assessment, which is aligned with 6th- and 7th-grade mathematics content standards, rather than requiring all 8th-graders to take an assessment that is aligned with Algebra I content standards, which apply to 8th-graders. In 2006–07, half of all 8th-graders in California (219,000 students) took the General Mathematics assessment.

Having carefully reviewed your letter from December 18, 2008, and considered the arguments set forth therein, the Department has determined that California has failed to demonstrate why the Department should not withhold a portion of California's Title I, Part A administrative funds. Because California did not show cause why the funds should not be withheld, and due to the significance of California's non-compliance with Title I statutory and regulatory requirements, including the fact that the state has not been in compliance since the 2005–06 school year and the fact that the state has not made meaningful progress to develop an action plan and timeline to come into compliance, I am withholding, under section 1111(g)(2) of the ESEA, \$1 million from California's fiscal year 2008 Title I, Part A allocation for administrative activities. California must allocate these funds to local educational agencies (LEAs) within California. I am enclosing guidance on how California should redirect these funds. If you have any questions about this guidance, please contact Sandy Brown of my staff at (202) 260-0976. Please note that, because this action is being carried out pursuant to section 1111(g)(2) of the ESEA, section 455(b) of the General Education Provisions Act is inapplicable and does not entitle California to a hearing regarding this withholding.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

I regret having to withhold a portion of California's Title I, Part A state administrative funds for non-compliance during the 2007-08 school year. I hope that you will continue the hard work required to meet the remaining requirements under Section 1111(b)(1) and (3) of the ESEA and provide a plan to the Department regarding the steps California will take to have a fully compliant standards and assessment system. We will continue to offer technical assistance to help you in this important work. If you have any remaining questions or would like to discuss this further, please do not hesitate to contact Grace Ross (Grace.Ross@ed.gov) or Patrick Rooney (Patrick.Rooney@ed.gov) of my staff.

Sincerely,



Kerri L. Briggs, Ph.D.

Enclosure

cc: Governor Arnold Schwarzenegger
Gavin Payne, Chief Deputy Superintendent of Public Instruction, Office of the State
Superintendent of Public Instruction
Deb Merle, Executive Director, California State Board of Education



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

GUIDANCE

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

Introduction

Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), requires each State receiving Title I funds to satisfy certain requirements relating to its standards and assessment systems. In particular, each State was required to adopt academic content and student academic achievement standards in at least mathematics, reading/language arts, and science. In addition, each state was required, by the 2005–2006 school year, to administer mathematics and reading/language arts assessments yearly in grades 3-8 and once in grades 10-12. Among other requirements, the assessments that are administered must be aligned with the State's content and achievement standards.

California has failed to comply with these requirements because California permits 8th-graders to take the General Mathematics assessment, which is aligned to 6th- and 7th-grade mathematics content standards, rather than requiring all 8th-graders to take an assessment that is aligned with Algebra I content standards, which apply to 8th-graders. Accordingly, the U.S. Department of Education (ED) is withholding, under section 1111(g)(2) of ESEA, \$1 million of fiscal year (FY) 2008 Title I, Part A funds that the state educational agency (SEA) is authorized to reserve 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 exception provision in section 1004(b) of the ESEA applies because the fiscal year 2008 appropriation in total for Title I, Parts, A, C, and D exceeded \$14 billion. As a result, the amount each SEA reserves for state administration may not exceed one percent of the amount it would otherwise receive if \$14 billion were allocated among the states for Title I, Parts A, C, and D. ED has calculated the base amount each state should use in reserving funds for state administration under the state administration cap.

The following chart illustrates how the withholding would affect how much the California State Board of Education as the SEA may reserve for state administration.

1	State fiscal year 2008 (school year (SY) 2008-09) Title I, Part A allocation *	\$ 1,660,173,208
2	Maximum amount state is authorized to reserve from its Title I, Part A allocation for state administration. (The amount is based on one percent of Line 1.)	16,601,732
3	Amount available to LEAs without any withholding (Line 1 – Line 2)	1,643,571,476
4	Reduction in the amount an SEA is authorized to reserve for state administration	1,000,000
5	Amount an SEA may reserve for state administration (Line 2 – Line 4)	15,601,732
6	Revised amount available to LEAs (Line 3 + Line 4)	1,644,571,476

* This amount (calculated by ED) is the Title I, Part A base amount that California uses to calculate how much it is authorized to reserve for State administration under the section 1004(b) State administration cap.

In this example, absent any withholding, the California State Board of Education as the SEA is authorized to reserve up to one percent, or \$16,601,732, of the allocation ED calculated for California under the section 1004(b) State administration cap provision for administration activities of the ESEA. Through a withholding under section 1111(g)(2) of the ESEA, ED has reduced the amount the California State Board of Education may reserve for state administration by \$1,000,000. As a result, the SEA may only reserve \$15,601,732 rather than \$16,601,732 for Title I State administration activities. The difference (\$1,000,000) 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 ESEA and §§ 200.77 and 200.78 of the Title I regulations. Note that there is a special provision in section 1124(c)(2) of the ESEA 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) of the ESEA 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) 2008-09 affect an LEA's hold-harmless base for its SY 2009-10 allocations?

Yes. The SY 2008-09 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 2009-10. The SEA would also use those same 2008-09 LEA allocations as the base for ensuring that no LEA receives less in SY 2009-10 than it received in SY 2008-09 when reserving funds for school improvement under section 1003(a) of the ESEA.

Q6. Some states have already issued final SY 2008-09 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 2009-10 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 2009-10 allocations and makes subgrants for that year. However, an SEA would need to recalculate its allocations for SY 2008-09 based on the reduction in the amount it may reserve for state administration in order to determine the differences between the initial SY 2008-09 LEA allocations and what the revised SY 2008-09 LEA allocations should be. This step is also necessary to determine the proper hold-harmless base for SY 2009-10 Title I, Part A allocations. (See Q5). The SEA would then adjust its SY 2009-10 LEA allocations to reflect those differences. If an SEA uses this option, please note that the SY 2008-09 funds must be expended prior to September 30, 2010.

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 2009-10 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 2009-10 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 2009-10 is \$102,000 (Column D + Column E). Note that in this case, the amount *actually received* by the LEA in SY 2008-09 (shown in Column A) becomes the base the SEA uses for ensuring that no LEA receives less in SY 2009-10 than it received in SY 2008-09 when reserving funds for school improvement activities in SY 2009-10.

SY 2008-09			SY 2009-10		
(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 2008-09	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) of the ESEA. 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 2009-10, what is the base on which an LEA calculates its set-asides for 2008-09?

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) of the ESEA requires a reservation of “not less than 1 percent” for parent involvement activities). If an SEA waits to distribute the withheld 2008-09 state administrative funds to its LEAs until the 2009-10 school year, an LEA would calculate its Title I, Part A set-asides for the 2008-09 school year on the amount of Title I, Part A funds it *actually received* for 2008-09 (*see* Column A in the table shown in Q6). Then, in 2009-10, it would calculate its set-asides on its total 2009-10 Title I, Part A allocation, including any 2008-09 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 2009-10, 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 amounts received?

An SEA would use the total amount awarded to an LEA in 2009-10 (*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 2009-10 were based on the prior-year Part A amount received, an SEA would use the amount actually awarded to an LEA in 2008-09 (*see* Column A in the table shown in Q6).