

July 24, 2009

Alabama
State Board
of Education

Dr. Joseph C. Conaty
Delegated the Authority to Perform the Functions and Duties
of the Assistant Secretary for Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-0498

Governor Bob Riley
President

Dear Dr. Conaty:

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Joseph B. Morton
Secretary and
Executive Officer

I am writing on behalf of all local educational agencies (LEAs) in Alabama that receive funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) to request a waiver for fiscal year (FY) 2009 of the requirement in section 1116(b)(10) of the ESEA and in 34 C.F.R. § 200.48(a)(2) to determine an LEA's "20 percent obligation" for public school choice-related transportation and supplemental educational services (SES) based on the LEA's total FY 2009 Title I, Part A allocation (*i.e.*, including both its regular Title I, Part A allocation and its Title I, Part A allocation under the American Recovery and Reinvestment Act of 2009 (ARRA)). Specifically, I am seeking this waiver to allow LEAs within Alabama to exclude all of the Title I, Part A funds they receive under the ARRA in calculating their "20 percent obligation" for choice-related transportation and SES.

Alabama believes that the requested waiver will increase the quality of instruction for students and improve the academic achievement of students by providing each LEA within Alabama with flexibility to spend ARRA funds that the LEA would otherwise be obligated to spend on SES or choice-related transportation on other allowable Title I, Part A activities that the LEA believes best address the particular needs of its students.

Alabama has set annual measurable objectives (AMOs) in reading and mathematics, which are among the subjects that are covered by SES providers in Alabama for the 2009–2010 school year.

Reading

	2008-2009	2009-2010
Grade 3	81	85
Grade 4	77	82
Grade 5	81	85
Grade 6	81	85
Grade 7	74	79
Grade 8	59	67
Grade 11	86	89

Mathematics

	2008-2009	2009-2010
Grade 3	74	79
Grade 4	72	78
Grade 5	71	77
Grade 6	56	65
Grade 7	57	66
Grade 8	63	70
Grade 11	77	82

Alabama will determine adequate yearly progress (AYP) based on assessments administered in the 2009–2010 school year in accordance with the requirements of section 1111(b)(2) of the ESEA. Alabama believes that, ultimately, allowing LEAs to offer SES to eligible students in Title I schools in the first year of improvement and count the costs of providing SES to those students toward the

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LEA's 20 percent obligation may help more students within the State to reach the State's proficiency objectives.

Alabama will determine adequate yearly progress (AYP) based on assessments administered in the 2009–2010 school year in accordance with the requirements of section 1111(b)(2) of the ESEA. Alabama believes that, ultimately, the flexibility provided by the requested waiver with respect to how ARRA funds may be spent for allowable Title I, Part A activities may help more schools and LEAs within the State make AYP by enabling them to direct funds appropriately to help their students meet the AMOs set forth above.

Alabama hereby assures that, if it is granted the requested waiver, Alabama will implement the waiver only with respect to an LEA that provides assurances that:

- It will comply with its statutory and regulatory obligations for the provision of SES and public school choice with respect to its regular Title I, Part A allocation;
- It will use the funds freed up by the waiver to address needs identified based on data, such as Statewide or formative assessment results;
- It will comply with all of its other Title I, Part A statutory and regulatory obligations, including the obligations in sections 1114 and 1115 to have schoolwide and targeted assistance programs that “use effective methods and instructional strategies that are based on scientifically based research;” and
- It will submit an application for Title I funds, or, if necessary, an amendment to its existing LEA application, that describes the data on which it relied to identify needs that will be addressed using the funds freed up by the waiver and the evidence that supports the strategies it intends to use to address those needs.

Alabama further assures that it will not approve an LEA's application or amendment to an LEA's application unless or until it determines that, based on the LEA's description, the LEA has satisfied its obligation to identify needs based on data and address those needs using evidence-based strategies. Alabama will not approve an LEA to implement the waiver unless or until the LEA has an approved application (or amended application) that includes the required description of the data on which the LEA relied to identify needs and the evidence that supports the strategies to address those needs. If necessary to carry out these assurances, Alabama will require an LEA seeking to implement the waiver to amend its application in accordance with Alabama's usual process for changing an LEA's application.

Prior to submitting this waiver request, Alabama provided all LEAs in the State with notice and a reasonable opportunity to comment on this request. Alabama provided such notice by sending an email to each LEA on July 17, 2009. Copies of all comments that Alabama received from LEAs in response to this notice are attached hereto. Alabama has also provided notice and information regarding this waiver request to the public in the manner in which Alabama customarily provides such notice and

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information to the public e.g. posting information on the department's Web site and emailing the notice to over 1100 news agencies (see copy of notice attached).

Alabama hereby assures that, if it is granted the requested waiver, it will submit to you, by September 30, 2010, a report that sets forth the name and NCES District Identification Number for each LEA implementing the waiver.

Please feel free to contact me by phone at 334-242-9700 or email at jmorton@alsde.edu if you have any questions regarding this request. Thank you for your consideration.

Sincerely,

Joseph B. Morton
State Superintendent of Education

JBM/DKS/NJ

FY09-