



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

March 4, 2010

Cynthia Bryant  
Deputy Chief of Staff  
Office of the Governor  
P.O. Box 3044  
Sacramento, CA 95812-3044

Dear Ms. Bryant,

I am writing concerning the maintenance-of-effort (MOE) data that California provided to the U.S. Department of Education (Department) in its phase one and phase two applications under the State Fiscal Stabilization Fund (SFSF) program. As you know, as a condition of receiving SFSF funds, each State has assured that that it will maintain its levels of State support for elementary and secondary education and for public institutions of higher education, in each of fiscal years 2009, 2010, and 2011, at least at the respective levels of such support in fiscal year 2006. We are committed to ensuring that the MOE and other data in the SFSF applications are accurate and verifiable. As part of the process of holding States accountable for these data, the Department has made the SFSF applications publicly available on its website. This policy provides interested parties the opportunity to comment on any aspect of an SFSF application.

We have received from Parents and Students for Great Schools, The Education Coalition, and Sequoia Union High School District the enclosed letters expressing concerns about MOE data in California's SFSF applications. These letters include the following allegations:

1. California has not consistently treated deferrals under the Quality Education Investment Act (QEIA). A consistent treatment of deferrals would increase the State's fiscal year 2006 MOE baseline for elementary and secondary education by over \$1 billion and also reduce the levels of State support for fiscal years 2009, 2010, and 2011. With this correction, the State fails to meet the MOE requirement for elementary and secondary education for both fiscal years 2010 and 2011.
2. California inappropriately counts \$250 million of QEIA expenditures for fiscal year 2011, artificially pre-paid at the end of June 2010, as support of public education for fiscal year 2010. This money is specifically earmarked for QEIA obligations that districts are required to undertake in 2011.

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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.*

3. California does not meet the criterion for a waiver of the elementary and secondary education MOE requirement for fiscal year 2011 because the State improperly bases its waiver eligibility on proposed expenditures rather than revenues.

Please provide us with a written response to each of the referenced allegations. We will review your responses before making any final decision concerning California's phase two SFSF application.

In responding to the first two allegations, you should describe how the State accounts for both "deferrals" and "settle-ups" in its MOE calculations, including the fiscal years in which deferrals and settle-ups are counted in such calculations. Your response should indicate whether this treatment of deferrals and settle-ups is based on established State accounting practices. In addition, you should describe how your deferral and settle-up policies affect local accounting practices. Furthermore, you should explain whether the State has consistently treated deferrals across fiscal years, and whether it has consistently treated settle-ups across fiscal years. To the extent that deferrals are treated differently than settle-ups for MOE purposes, you should provide a rationale for such different treatment.

In responding to the third allegation, you should describe how the State's final expenditure data for a given year relates to its final revenue data for that year. As noted in our January 2010 MOE guidance, the Department will not make a determination on an MOE waiver request for a particular fiscal year until the data for that fiscal year and the preceding fiscal year (i.e., the relevant years under the MOE waiver criterion) are considered final. Thus, the Department will not make decisions on any fiscal year 2010 or 2011 MOE waiver requests at this time.

In addition, for the updated MOE data in California's phase two SFSF application, you should provide the following data or information:

1. For each of fiscal years 2006, 2009, 2010, and 2011, the aggregate levels of State support for elementary and secondary education on which the per student calculations are based, and the average daily attendance data for each year.
2. The amount of any deferrals or settle-up adjustments included in the aggregate levels of support for elementary and secondary education for each fiscal year, and the basis for including those amounts as support in the particular years in which they were assigned as opposed to support in other years.
3. The amount of any deferrals or settle-up adjustments included in the aggregate levels of support for public institutions of higher education for each fiscal year (on the basis of such adjustments to community colleges), and the basis for including those amounts as support in the particular years in which they were assigned as opposed to support in other years.

The letters also allege that the State is not making sufficient efforts to maintain funding for education in order to warrant an MOE waiver for fiscal year 2011. In particular, the letters note that the Governor's budget proposal seeks to eliminate a State sales tax on gasoline and substitute it with an excise tax on gasoline in order to remove revenues from the State's General Fund and effectively render the Proposition 98 minimum school guarantee inapplicable to those funds. The Department will thoroughly review California's documentation of final levels of support for education and total revenues for the applicable fiscal years to ensure the appropriateness of any waiver granted. As noted above, the Department will not make any determinations on an MOE waiver request for a particular fiscal year until after the conclusion of such year.

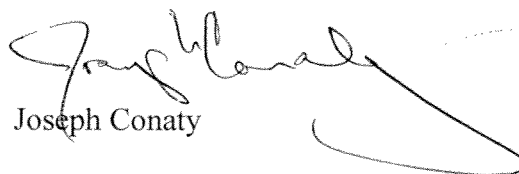
We would appreciate receiving the information requested in this letter as soon as possible, but no later than March 26, 2010. The information should be sent to:

Dr. Joseph C. Conaty  
Director, Academic Improvement and  
Teacher Quality Programs  
Office of Elementary and Secondary Education  
U.S. Department of Education  
400 Maryland Avenue, S.W., Room 3E314  
Washington, D.C. 20202

We will determine what additional steps we will take in resolving these issues after reviewing your response.

If you have any questions concerning this letter, do not hesitate to contact me at [joseph.conaty@ed.gov](mailto:joseph.conaty@ed.gov) or at (202) 260-8230.

Sincerely,

  
Joseph Conaty

Enclosures

cc: Alliance of Californians for Community Empowerment  
Californians for Justice  
PICO California  
Public Advocates Inc.  
The Education Coalition  
Sequoia Union High School District  
Jeannie Oropeza, California Department of Finance  
Kathryn Radtkey-Gaither, California Undersecretary of Education