



UNITED STATES DEPARTMENT OF EDUCATION

November 2, 2009

THE DEPUTY SECRETARY

Honorable Paul Reville
Secretary of Education
The Commonwealth of Massachusetts
One Ashburton Place, Suite 1403
Boston, MA 02108

Dear Secretary Reville:

This letter is in response to your October 20 letter in which you expressed concerns regarding the description of Massachusetts's use of funds under the State Fiscal Stabilization Fund (SFSF) program in the September 30, 2009, alert memorandum issued by the Office of Inspector General (OIG) in the U.S. Department of Education (Department). In your letter you expressed three concerns: (1) that the OIG alert memo appeared to indicate that the State had not complied with the American Recovery and Reinvestment Act (ARRA) with respect to the statutory maintenance-of-effort (MOE) requirement; (2) that the alert memo would adversely affect your State's ability to compete for a grant under the Race to the Top program; and (3) the manner in which you became aware of the alert memo.

I want to be clear from the outset that there is no evidence that has been brought to the Department's attention – and the Department does not claim – that Massachusetts violated the MOE requirement under the ARRA. Massachusetts's application for initial funding under the SFSF indicates that State support for elementary and secondary education would be at least at the fiscal year (FY) 2006 level, the minimum level of support that the statute allows a State to maintain without a waiver from the Department, through FY 2011. In addition, while Massachusetts indicated that support for public institutions of higher education would be less in FY 2010 than in FY 2006, you assured the Department that the State would meet the criterion for a waiver of the MOE requirement. While I recognize that the OIG alert memo identified a percentage reduction in education spending during FY 2009, no evidence has been brought to our attention that Massachusetts violated the waiver criterion by reducing the proportion of total State revenues spent on education from one fiscal year to the next. Although we have taken steps to discourage States from reducing education funding, we fully recognize that SFSF funds are intended to help stabilize State and local budgets in order to minimize and avoid reductions in education and other essential services and that, under the current economic climate, States are forced to make difficult budgetary decisions and choices on the extent of State support for education and other vital public services.

Regarding the Race to the Top and other discretionary grant competitions, we have consistently advised States that the Department would take into consideration whether a State made disproportionate cuts to education. Our April 1, 2009, "Guidance on the State Fiscal

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Stabilization Fund Program” indicated that, when making awards under the Race to the Top program, the Department might consider whether a State had reduced the proportion of total State revenues spent on education. In fact, in the notice of proposed priorities, requirements, definitions, and selection criteria for the Race to the Top program, published in the *Federal Register* on July 29, we proposed that a State indicate in its application whether its level of support for education, as a percentage of total State revenues, differed in FY 2009 from FY 2008, and we proposed a related selection criterion based on this information regarding whether the State has made education funding a priority. However, I want to emphasize that, while the Department proposed that maintaining support for education be a consideration in the Race to the Top competition, we did not propose that a State’s eligibility to compete for Race to the Top funds would be affected. The Department will soon publish the final notice of priorities, requirements, definitions, and selection criteria for the Race to the Top program, after taking into account the comments we received from the public on the notice published on July 29. In any event, as stated above, no evidence has been brought to our attention that Massachusetts reduced the proportion of total State revenues spent on education from one fiscal year to the next.

I understand your concern with respect to the lack of communication between the State and OIG concerning the matters described in the report. As you know, the alert memo was prompted in part by OIG Hotline complaints and provided recommendations to the Department on actions it could take with regard to the impact of the SFSF requirements. The Department’s response stating that OIG’s recommendations were reasonable was in the context of the report’s focus on our internal processes. To be clear, OIG did not make any specific findings regarding the activities of Massachusetts or the other two States profiled. Further, I am aware that the States profiled in the alert memo are not the only States that made the difficult decision to reduce overall support for education.

While recognizing that OIG must maintain its independence, I want to assure you that the Department is considering how we can communicate more effectively with States regarding OIG reports in the future.

As a concluding note, I want to mention that all contact with your staff has been professional, constructive, and collaborative. I also want to commend the efforts by you and Governor Patrick to stimulate innovation, promote choice, and intervene in failing schools. We are encouraged by your State’s commitment to education.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,



Anthony W. Miller