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February 14, 2017

Ann Whalen, Senior Advisor to the Secretary
Delegated the Duties of Assistant
Secretary for Elementary and Secondary Education
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Ms. Whalen:

I am writing on behalf of the Utah State Board of Education (USBE) to request a waiver, pursuant to section 8401(b) of Every Student Succeeds Act (ESSA), regarding section 1418(a) of the Elementary and Secondary Education Act of 1965 (ESEA). Please see the applicable legislative section under "Attachment A: Section 1418 of the Statute" and supporting rationale in "Attachment B: Supporting Rationale."

We would like the waiver to allow Utah's funding allocation -- set at a statutory maximum of 30%/70% transition-to-academic ratio -- to annually flex beyond the 30% transition limit, if needed. The transition percentage will be annually based upon state analytics and state strategic priorities to meet Title 1 Part D, Neglected and Delinquent (ND), students' needs as determined by multiple state and local sources of input. Please see "Attachment C: Letters of Support" to illustrate who those sources are.

USBE requests this waiver because, through statewide strategic planning with local education agencies (LEAs) and with senior staff from the Division of Juvenile Justice Services (DJJS), Youth In Custody (YIC), and ND (see Attachment C):

1. All of Utah's academic requirements under ND Statute are being funded by Utah's state-funded YIC program during September-to-June school year and by federal ND funds for both extended year (summer school from June to August inclusive) and extended day programming. Please see "Attachment D: Utah's ND/YIC Funding Schema."

Ms. Whalen

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2. Meanwhile, 150-200 students who are eligible for Utah's ND transition services are not served due to limitations set by the current ND 70/30 academic-transition ratio. Without negatively impacting statutory-required academic services and maintenance of effort, this waiver will advance student education transition services by permitting Utah to address, in addition to current education transition services, the education transition needs of the 150 to 200 unserved ND-eligible youth.

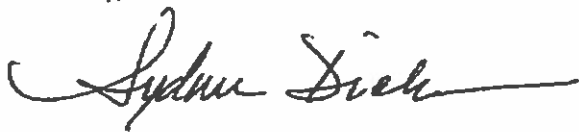
ASSURANCE: With this waiver for school year 2017-2018 and onward, the Utah State Board of Education (USBE) assures that, when the requested waiver is granted, the USBE will continue to meet, for eligible youth, all requirements of Title 1 Part D Statute, Subpart 1 which Utah is currently implementing. The state will continue to provide full, current academic services with a combination of state Youth In Custody and federal Title 1 Part D funding sources. Additionally, no supplanting will occur.

Prior to submitting this waiver request, Utah Title 1 Part D staff either met with and/or provided all qualifying LEAs, state YIC staff, and the DJJS State Director and senior staff with explanations of and full opportunities to comment on this request. Please see "Attachment C: Letters of Support."

For the reason that Utah is not reducing any academic or education transition services or limiting any funds to eligible students or providers, but is actually seeking to increase education transition services to unserved, eligible students, thus there is no need for public comment.

We appreciate your consideration of this waiver request. Please feel free to contact Murray Meszaros by cell phone (801-554-6408) or by e-mail (murray.meszaros@schools.utah.gov) if you have any questions regarding this request.

Sincerely,



Sydnee Dickson, Ed.D.

State Superintendent of Public Instruction

Attachments

cc: Patty Norman, Assistant Superintendent, Student Achievement
Rebecca Donaldson, Federal Programs Coordinator, Student Advocacy Services

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Attachment A
Section 1418 of the Statute

Subpart 1: Sec.1418. Transition Services

Each State agency shall reserve not less than 15 percent and not more than 30 percent of the amount such agency receives under this subpart for any fiscal year to support—

A project supported under this section may be conducted directly by the State agency, or through a contract or other arrangement with one or more local educational agencies, other public agencies, or private nonprofit organizations.

Nothing in this section shall be construed to prohibit a school that receives funds under subsection (a) from serving neglected and delinquent children and youth simultaneously with students with similar educational needs, in the same educational settings where appropriate.

a. TRANSITION SERVICES—

1. projects that facilitate the transition of children and youth from State-operated institutions to schools served by local educational agencies; or
2. the successful reentry of youth offenders, who are age 20 or younger and have received a secondary school diploma or its recognized equivalent, into postsecondary education, or vocational and technical training programs, through strategies designed to expose the youth to, and prepare the youth for, postsecondary education, or vocational and technical training programs, such as—
 - A. preplacement programs that allow adjudicated or incarcerated youth to audit or attend courses on college, university, or community college campuses, or through programs provided in institutional settings;
 - B. worksite schools, in which institutions of higher education and private or public employers partner to create programs to help students make a successful transition to postsecondary education and employment; and
 - C. essential support services to ensure the success of the youth, such as—
 - i. personal, vocational and technical, and academic, counseling;
 - ii. placement services designed to place the youth in a university, college, or junior college program;
 - iii. information concerning, and assistance in obtaining, available student financial aid;
 - iv. counseling services; and
 - v. job placement services.

Attachment B
Supporting Rationale

Fact #1

- a. Utah has state-appropriated Youth In Custody (YIC) funds of \$22,000,000 targeted to youth in state care/custody. Much of the \$22,000,000 is targeted specifically to youth offenders who are in the custody of the Division of Juvenile Justice Services (DJJS). The state YIC-funded educational services (classes, counseling, CTE, etc.) are provided through local education agencies (LEAs) during the regular school year of September to early June annually. Utah YIC funds provide comprehensive, highly-competitive educational programs that ND funds would normally provide in OTHER states.
- b. State YIC funds do NOT address transition services in any form at any time. Title 1 Part D funds are the ONLY source for providing education transition services to eligible youth.
- c. Additionally, Utah does not need ND Subpart 2 funds since the state YIC funds cover all the ND-eligible populations and activities – except, again, education transition services.

Fact #2

- a. Decreasing numbers of youth offenders are in state facilities while increasing numbers of students are being served in rural “residential treatment centers” (RTCs).
- b. Academic services for RTCs are covered by state resources, but targeted education transition services to those same students – also greatly in need – are not covered by any resources and could be appropriately served using Title 1 Part D education transition funding.
- c. **NOTE:** Estimations of the increased number of ND-eligible youth who could be served in Utah is around 30% more than those we currently serve. Indeed, in a current, single-area, one-year pilot study where we are servicing the education transition needs of nine (9) rural RTCs that were NOT served last year with transition services, the number of students being served in that area with education transition services quadrupled -- while academic services in the same area decreased by about 25% as compared to what that particular area served/offered last year.

Fact #3

Now that Utah’s incarcerated youth academic needs are largely taken care of by \$22,000,000 YIC funds and complemented by ND-funded services, analytics from DJJS and LEA directors as well as from incarcerated students show the greatest needs to be education transition services.

Fact #4

Title 1 Part D law was not written with the Utah scenario in mind. Hence, in its formulation, Title 1 Part D law does not neatly address Utah’s unique situations and resources. Flexibility, therefore, in the interpretation of Title 1 Part D to help Utah address its areas of growing demand (transition) while not ignoring the academic needs of youth offenders is requested.

Attachment C
Letters of Support



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

DEPARTMENT OF HUMAN SERVICES

ANN SILVERBERG WILLIAMSON
Executive Director

DIVISION OF JUVENILE JUSTICE SERVICES

SUSAN V. BURKE
Director

DEBBIE WHITLOCK
Deputy Director

December 22, 2016

To Whom It May Concern:

As the State Director of the Division of Juvenile Justice Services for the State of Utah and on behalf of our Division, I wish to give our Division's full endorsement and support for the requested waiver regarding section 1418(a) of the Elementary and Secondary Education Act of 1965 (ESEA).

The youth offenders who live in facilities administered by our Division are educationally served by both the state-funded "Youth in Custody" (YIC) program during the regular school year and by the Title I Part D (ND) program for eligible youth during Summer School and for extended day programs.

In our JOINT STRATEGIC PLANNING and in our joint monthly planning meetings with the Utah State Board of Education staff who manage both YIC and ND sources, we know that current and future academic needs of students are met and that sufficient funds to address those current and future academic needs are solidly in place.

However, the area with the largest unserved population and to which we must put increased funding is transition services for eligible youth – which would be on top of the excellent services that current Education Transition and Career Advocates (ETCAs) funded by ND funds currently give.

State YIC funds are not permitted to support transition; hence, the need to increase ND funds to support needed transition services.

Our joint DJJS and Education strategic planning team kindly requests federal decision makers to allow the Utah State Board of Education the flexibility it needs to set the 30% - 70% ratio for transition and academic services to be what it needs to be annually in order to meet the transition services needs for currently and emerging unserved youth offenders – which we conservatively estimate now to be 150-200 youth in the upcoming school year.

Thank you, in advance, for your favorable consideration to this waiver request.

Sincerely,

Susan Burke
Director



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Lorraine Austin, Board Secretary

To Whom It May Concern:

The state-funded Youth In Custody (YIC) program fully supports the academic-transition-percentage waiver request that the Utah State Board of Education is seeking for the Title 1 Part D (ND) program.

As a collaborative team – YIC, ND and the Utah Division of Juvenile Justice (DJJS) – we jointly and frequently plan and implement programs and services for the maximum benefit of youth offenders in custody. Our most pressing need is the capacity to provide significantly more education transition services for exiting youth offenders.

We know from research and from our own experiences that having high quality and sufficient support for youth in custody as they TRANSITION OUT of custody is CRITICAL to youth successfully transitioning, surviving ... and even thriving. The unfortunate systemic challenge in our state is that the only funding source that can adequately address transition is the federal ND source – and not the state YIC funds, for which supporting transition is prohibited.

Hence, to sufficiently aid our supporting student transition needs as mentioned above, our state needs a waiver to the ND academic-transition-percentage.

In support of this waiver, state YIC funds, as needed, will "back fill" and financially support any potential deficiencies if the federal ND funds to support academic instruction should be unable to address all ND-owned, academic responsibilities. In the most outlandish and improbable situation, if all the ND funds were put to transition, the state YIC funds would maintain funding and program support for academic instruction that ND funds customarily supports.

In closing, support for this waiver request will enable the state both (1) to fully continue funding and serving ND-eligible youth from federal and, as needed, fully from state resources as well as (2) to increase the state's capacity to fully fund and implement the much-needed transition services that currently are inadequately funded and incompletely implemented.

Thank you for your favorable consideration.

Handwritten signature of Steve Kaelin in black ink.

Steve Kaelin, Education Specialist
Youth In Custody (YIC) Program Services

Handwritten signature of Laurieann Thorpe in blue ink.

Laurieann Thorpe, Education Specialist
Youth In Custody (YIC) Program Services

