



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the Matter of

STATE OF SOUTH CAROLINA,

IDEA Determination

ORDER REQUIRING RESPONSE

This matter comes before me by way of a request by the State of South Carolina, Department of Education, to be provided a hearing on its challenge of a determination by Alexa Posny, Assistant Secretary of the Office of Special Education and Rehabilitative Services (OSERS), "to permanently reduce South Carolina's allocation under the Individuals with Disabilities Education Act (IDEA) by \$36,202,909," and to partially deny the State's request for waiver of certain requirements pursuant to IDEA.¹

The State presents a number of arguments addressing the waiver issue as well as the issue concerning whether the Assistant Secretary correctly determined the State's allocation of IDEA funding for the 2009-10 fiscal year, but the threshold issue raised by the State is its argument that it has been deprived an opportunity for a hearing to challenge the Assistant Secretary's determinations concerning IDEA grant eligibility funding pursuant to 20 U.S.C. § 1412. The Department's procedures for a hearing on the matter are set out at 34 C.F.R. § 300.181.² To date, counsel for OSERS has not filed a response to the State's request. Given the foregoing, I find that a response by OSERS is appropriate. Accordingly, OSERS shall file an original and one copy of its brief on or before **December 16, 2011**, setting forth its position on the State's claim that it has not been provided with an appropriate hearing.

¹ The State submitted its request directly to me as well as simultaneously to the Department's Office of Hearings & Appeals, Office of Administrative Law Judges.

² IDEA also requires the Department to promulgate regulations "for determining whether to grant a waiver," which the Department has done by promulgating 34 C.F.R. § 300.164. *See*, 20 U.S.C. 1412(a)(19)(E). Although the State's argument is somewhat unclear, I do not understand the State's argument to be that a hearing on the waiver determination was timely sought and not provided.

All submissions relating to this order shall be in the form of an original and one copy to the Office of Hearings and Appeals, with simultaneous service of an additional copy upon the opposing party. Submissions may be made by means of electronic filing using the Office of Hearings and Appeals website.

So ordered this 15th day of November 2011.

A handwritten signature in black ink, appearing to read "Arne Duncan", written above a horizontal line.

Arne Duncan

Washington, D.C.

SERVICE LIST

Office of Hearings and Appeals
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Shelly Bezanson Kelly
General Counsel
State of South Carolina
Department of Education
1429 Senate Street, Suite 1015
Columbia, South Carolina 29201

Joan Bardee, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110

Honorable Alexa Posny
Assistant Secretary
Office of Special Education and Rehabilitative Services
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202