



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING

MICHAEL P. FLANAGAN  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION

August 23, 2012

**MEMORANDUM**

TO: Local and Intermediate District Superintendents  
Public School Academy Directors and Authorizers

FROM: Sally Vaughn, Ph.D. *Sally*  
Deputy Superintendent/Chief Academic Officer

SUBJECT: Status of Using Title I Funds for Kindergarten

State legislation approving the 2012-13 budget required the Michigan Department of Education (MDE) to obtain approval from the U.S. Department of Education (USED) to allow districts that had used Title I funds for the second half of full day Kindergarten in the past two years to use Title I funds similarly for 2012-13 as required in MCL 388.1606(4)(r) (Attachment A).

The status of the MDE request to the USED is as follows:

1. MDE requested approval from the USED per state law (Attachment B).
2. USED responded, requesting justification for Michigan compliance with Section 9522 of ESEA (Attachment A).
3. MDE requested guidance from the state House, Senate, and Executive Office in responding to the USED request for justification for compliance (Attachment C).
4. MDE received a response from Chairman Rogers of the House Appropriations Subcommittee on School Aid & Education.
5. MDE has asked Chairman Rogers if his letter represents bicameral agreement as Michigan's response to the USED (Attachment D).
6. If Chairman Rogers' response has bicameral agreement, then MDE will forward that letter to the USED requesting a timely decision.

To support districts as they prepare to open school in a few short weeks, the MDE will take the following steps while we wait for a definitive response from the USED:

1. All approvable items in your district's Consolidated Application will be approved after any necessary clarification. This approval will make funds available for the majority of items in your Consolidated Application.
2. Requests for funding of Kindergarten will remain unapproved until a definitive decision is received from the USED.
3. The MDE will track requests for funding Kindergarten from eligible LEAs and enter final approval/denial upon receipt of the USED decision.

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We hope this two-step approval process will enable your district to move forward with planning for most Title I activities for the upcoming school year.

Contact Margaret Madigan at 517-373-4588 or [madiganm@michigan.gov](mailto:madiganm@michigan.gov) if you have questions.

c: Michigan Education Alliance

Attachments



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

July 17, 2012

The Honorable Michael P. Flanagan  
 Superintendent of Public Instruction  
 Michigan Department of Education  
 608 West Allegan Street  
 Lansing, Michigan 48909

RECEIVED  
 JUL 31 2012  
 SUPERINTENDENT'S OFFICE

Dear Superintendent Flanagan:

Thank you for your June 26, 2012 letter to Secretary Arne Duncan in regard to use of funds under Title I, Part A (Title I) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to provide full-day kindergarten consistent with a recent change in State funding for kindergarten in Michigan's fiscal year (FY) 2012–2013 State school aid budget (State aid budget). Your letter was referred to the U.S. Department of Education's (the Department) Office of Elementary and Secondary Education for review and I am pleased to respond.

The Department understands from your letter and a subsequent e-mail from your staff that, under State law, Michigan previously provided a local educational agency (LEA) the same amount per kindergarten student regardless of whether the child was enrolled in a half-day or full-day kindergarten program. As a result, in past years, an LEA was able to provide a half-day kindergarten program with State funds and still receive a full per-child allotment; then, the LEA was able to use Title I funds to supplement its kindergarten program to expand it to a full day program. Under Michigan's FY 2012–2013 State aid budget, however as a general rule, State aid funds for kindergarten students are now available to an LEA in proportion to the number of hours of instruction a child actually receives. As a result, an LEA that provides a half-day kindergarten program will receive half the State aid of an LEA that provides a full-day program.

At issue here is an exception to the general requirement governing State funding for kindergarten that is triggered when an LEA previously used Title I funds to fund full-time kindergarten. Specifically, the Department understands that, for an LEA that has used Title I funds to provide the second half of a full-day kindergarten program during the previous two years, the State aid budget provides the full allotment of State funds even if a child is enrolled in a kindergarten program supported with State or local funds for only a half day. You have asked whether an LEA falling within this exception may continue to use Title I funds to expand its kindergarten program to a full day in the 2012–2013 school year (SY).

[www.ed.gov](http://www.ed.gov)

400 MARYLAND AVE., SW, WASHINGTON, DC 20202

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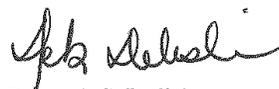
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As an initial matter, your question raises the supplement not supplant requirement in Title I, which is designed to ensure that Title I funds are used in addition to, and not to replace, funds or services from non-Federal sources that a Title I school would receive in the absence of the Title I funds. *See* 20 U.S.C. §§ 6314(a)(2)(B), 6321(b). As we understand Michigan's State aid budget, an LEA that used Title I funds to provide full-day kindergarten in the last two years would receive the full State aid amount if it provides at least a half-day program; it would not, however, have to provide full-day kindergarten during SY 2012–2013 to receive the full allotment. Based on this understanding, the Department does not think that there would be a supplanting issue because, in the absence of Title I funds for SY 2012–2013, the LEA would still receive the full State amount due to it having used Title I funds for full-day kindergarten during the previous two years, regardless of whether or not it provides a full-day program in SY 2012–2013.

Although the Department thinks that LEAs falling within the State aid budget exception may use Title I funds to expand kindergarten to a full day without violating Title I's supplement not supplant requirements, we nonetheless have concerns regarding this exception in Michigan's FY 2012–2013 State aid budget. Specifically, based on our understanding of the State aid budget, the Department questions if this provision of the State aid budget complies with section 9522 of the ESEA, which prohibits a State from taking into consideration payments under an ESEA program (except for Impact Aid) when determining the eligibility of an LEA for State aid or the amount of State aid an LEA receives. *See* 20 U.S.C. § 7902. Michigan's State aid budget bases eligibility for a full allotment of FY 2012–2013 State aid on an LEA's use of Title I funds to provide kindergarten in the prior two years in apparent violation of Section 9522. Moreover, it discriminates among LEAs, including among Title I LEAs, in the amount of State aid it distributes based on receipt and use of Title I funds; two LEAs who will both provide half-day kindergarten in SY 2012–2013 may receive different State aid amounts depending on how they used Title I funds in past years. Accordingly, we ask Michigan to provide a justification as to how, in tying State aid funding to the use of Title I funds in prior years, Michigan is in compliance with Section 9522 of the ESEA. Please provide this justification as soon as practicable but before Michigan allocates its FY 2012–2013 State aid.

If there are additional questions on this issue, please contact Todd Stephenson of my staff. He can be reached at (202) 205-1645 or by email to: [Todd.Stephenson@ed.gov](mailto:Todd.Stephenson@ed.gov).

Sincerely,



Deborah S. Delisle  
Assistant Secretary

cc: Dr. Sally Vaughn  
Dr. Michael Radke



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING

MICHAEL P. FLANAGAN  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION

June 26, 2012

The Honorable Arne Duncan  
Secretary of Education  
U.S. Department of Education  
400 Maryland Ave., SW  
Washington, DC 20202-6132

Dear Mr. Secretary:

Michigan Governor Rick Snyder has signed the FY 2012-13 state school aid budget into law. Included in the law is a provision that states, to the extent allowable under federal law, school districts that have used Title I funds in the two immediate preceding years to fund full-time kindergarten will receive state funding for kindergarten students in the same manner as was in law previously. Please see the attached for the exact language in law that defines that funding method (MCL 388.1606 (4)(r) as amended; HB5372 of 2012 (pp. 4-5), as signed today by the Governor).

This section of the law also includes a requirement that the Michigan Department of Education (MDE) seek clarification from the U.S. Department of Education (USED) as to whether this is an allowable use of federal Title I funds.

To comply with this new state law and to assist Michigan school districts in planning the details of their local budgets for the next school year, I am requesting that the U.S. Department of Education provide this clarification. A timely response would be appreciated since Michigan districts must complete their budgets by July 1, 2012, and must submit their applications for Title I funds by July 15, 2012.

Please contact Dr. Sally Vaughn at [vaughns1@michigan.gov](mailto:vaughns1@michigan.gov) if you need additional information. For your convenience, I am also including a link to the legislation (<http://legislature.mi.gov/doc.aspx?2012-HB-5372>). Thank you for your assistance.

Sincerely,



Michael P. Flanagan  
Superintendent of Public Instruction

Attachment

cc: Speaker of the Michigan House Jase Bolger  
Michigan Senate Majority Leader Randy Richardville  
Representative Chuck Moss, Chair of House Appropriations Committee  
Senator Roger Kahn, Chair of Senate Appropriations Committee  
Representative Bill Rogers, Chair of the House Appropriations Subcommittee on School Aid  
Senator Howard Walker, Chair of the Senate Appropriations Subcommittee on K-12,  
School Aid, and Education

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Attachment C

**From:** Flanagan, Mike (MDE)  
**Sent:** Tuesday, July 31, 2012 5:02 PM  
**To:** 'Jase Bolger (jasebolger@house.mi.gov)'; 'Randy Richardville (senrichardville@senate.michigan.gov)'; 'Chuck Moss'; 'Roger Kahn'; 'Bill Rogers (BillRogers@house.mi.gov)'; 'Howard Walker'  
**Cc:** 'Gretchen Whitmer (SenGWhitmer@senate.michigan.gov)'; 'Bruce Caswell'; 'John Pappageorge'; 'Hoon-Yung Hopgood'; 'Rick Hammel'; 'Earl Poleski (earlpoleski@house.mi.gov)'; 'Jon Bumstead (jonbumstead@house.mi.gov)'; 'Phil Potvin (philpotvin@house.mi.gov)'; 'Ellen Cogen Lipton'; 'Jim Ananich (JimAnanich@house.mi.gov)'; Posthumus, Dick (GOV); Muchmore, Dennis (GOV); Rustem, William (GOV); Tedder, Greg (GOV); McBride, Bill (GOV); Jameson, Robbie (DTMB); Bullion, Beth (DTMB)  
**Subject:** USED Response to Request for Title I Funding Clarification  
**Attachments:** USED Title I Kindergarten 7-31-12.pdf; USED612.pdf

Dear Legislative Leaders:

The Michigan Department of Education (MDE), as required in MCL 388.1606(4)(r), requested clarification from the U.S. Department of Education (USED) as to whether provisions for the use of Title I funds for kindergarten in this new state law are allowable uses of Title I funds. The MDE letter was sent to the USED Secretary of Education Arne Duncan on June 26, 2012 (see attached) the same day the bill was signed into law by the Governor.

Today we received the attached letter, dated July 17, 2012, from the USED. As you can see on page 2, the USED has determined that, given its understanding of our state aid, it did not think there would be a supplanting issue.

However, the USED goes on to question Michigan's compliance with 20 U.S.C. §§ 7709, which prohibits states from taking into consideration payments under an ESEA program when determining eligibility of a local district for state aid or the amount of state aid a district receives.

The Assistant Secretary has requested that Michigan "provide a justification as to how, in tying state aid funding to the use of Title I funds in prior years, Michigan is in compliance with section 9522 of the ESEA" and that we do so before FY 2012-2013 state allocations are made.

We are respectfully requesting input from the Legislature on how best to respond to the Assistant Secretary at this point. The 2012-2013 school year will start within the next month and districts would appreciate having a clear decision on this issue before school begins. Our department would need a timely response from the Legislature so we can provide the USED with the information necessary for them also to render their decision on a timely basis for the school districts of Michigan.

Sincerely,





RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING

MICHAEL P. FLANAGAN  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION

August 23, 2012

The Honorable Bill Rogers  
Chairman, House Appropriations  
Subcommittee on School Aid & Education  
State Representative  
P.O. Box 30014  
Lansing, MI 48909-7514

Dear Chairman Rogers:

Thank you for your August 14, 2012 response to the U.S. Department of Education (USED) Assistant Secretary request for "a justification as to how, in tying state aid funding to the use of Title I funds in prior years, Michigan is in compliance with section 9522 of the ESEA" and that we do so before FY 2012-2013 state allocations are made.

As you know, on July 31, 2012, I sent an email to our Michigan legislative leaders respectfully requesting their input on how best to respond to the Assistant Secretary. As of this time, the only input I have received is yours. I will send your letter to the USED as the State's response, but want to make sure that it represents the understanding of all who adopted the language. I would like to know if your letter represents consensus on this justification for Michigan's compliance with section 9522 among House and Senate legislative leaders. I respectfully ask that there is a bicameral agreement on this as a response from Michigan to the USED.

Our department needs a timely response from the Legislature so we can provide the USED with the information necessary for them also to render their decision on a timely basis for the school districts of Michigan. With

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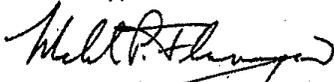
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Bill Rogers  
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only a few weeks before the beginning of the 2012-2013 school year, I urge you and your colleagues to respond as soon as possible so districts can plan accordingly.

Sincerely,



Michael P. Flanagan  
Superintendent of Public Instruction

cc: Senate Majority Leader Randy Richardville  
Senate Minority Leader Gretchen Whitmer  
Senator Roger Kahn  
Senator Howard Walker  
Senator Bruce Caswell  
Senator John Pappageorge  
Senator Hoon-Yung Hopgood  
House Speaker Jase Bolger  
House Minority Leader Rick Hammel  
Representative Chuck Moss  
Representative Earl Poleski  
Representative Jon Bumstead  
Representative Phil Potvin  
Representative Ellen Cogen Lipton  
Representative Jim Ananich