UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of	**Docket No. 17-07-0**
TEXAS EDUCATION AGENCY	IDEA Determination
Applicant	

Appearances: Eric T. Marin, Esq. for the Texas Education Agency

Nana Little, Esq. and Timothy Middleton, Esq. for the U.S. Department of Education.

Before: Judge Robert G. Layton

DECISION

The Secretary of the U.S. Department of Education has assigned this appeal for a hearing pursuant to 34 C.F.R. §300.180(a). The Texas Education Agency appeals the Department's proposed final determination that the State of Texas is ineligible for $33,302,428 in grant funding under the Individuals with Disabilities Education Act (IDEA). The grant at issue is authorized in Part B Section 611 of the IDEA. The procedures for the hearing are found in 34 CFR §§300.179 through 300.183. The Department determined Texas failed to maintain required state financial support for that amount in SFY 2012.

Issues

Under Part B of the IDEA, states must maintain financial support for special education and related services from one year to the next. If a state fails to maintain its financial support, the Department must reduce the grant funding by the amount of the state's funding shortfall.

Texas contends that the Department's reading of the IDEA statutes violates the clear-statement doctrine, and therefore cannot be a basis for withholding grant funding from Texas.

Texas further contends the requirement's language in the federal statute is ambiguous, and that it is consistent with the federal statute for Texas to apply its own state-developed system. Texas contends that under a Texas statute, the Texas "weighted student model system" of funding allows it to reduce the state level support, when the weighted student model system of funding says that reduced support level is appropriate.

The Department contends that the requirement is unambiguous, that Texas reduced its financial support by $33,301,428 for State fiscal year (SFY) 2012, and that IDEA grant funding to Texas must be reduced by that amount for the following year.

The issues to be addressed are:

1. **Does the federal statute give Texas unmistakable clear notice that the IDEA grant funding requires Texas to maintain state funding support?**

2. **Is the federal statute that requires that Texas must maintain its state financial support or face federal grant reductions ambiguous?**

3. **If the federal statute financial support requirement is ambiguous, does Texas meet the financial support requirement with its weighted student model created by Texas state law?**

Summary of Decision

The federal statute is clear and unambiguous. The Department's determination is **AFFIRMED.** Texas is not eligible for $33,302,428 of its IDEA Part B Section 611 grant because it failed to maintain that amount of state financial support in SFY 2012.

Findings of Fact

The parties disagree on the legal issues, but agree on the factual issues for this appeal.[1] The following findings of fact are from the Department's proposed final determination letter dated January 17, 2017.

The Department determined that Texas is not eligible for a portion of its grant under section 611 of Part B of the IDEA because Texas failed to meet the IDEA's maintenance of State financial support (MFS) requirement in SFY 2012. 20 U.S.C. §1412(a)(18)(A) - (B); 34 CFR §300.163(A).

In Federal fiscal year 2013, States applying for IDEA Part B grants had to report the total amount of State financial support made available for special education and related services for children with disabilities for the prior SFYs. Texas' report showed a shortfall for SFY 2012, which was ultimately narrowed to $33,302,428. The narrowing was accomplished through exclusion of the local share of funds from MFS, through inclusion of State funds made available for transportation of students with disabilities, and through use of actual enrollment instead of projected enrollment figures.

While working with the Department to narrow the shortfall, Texas also asserted it maintained the required financial support because "(1) the amount of State special education

[1] The parties have shown significant work on cooperative exchanges of information and discussion in this matter. Through their joint efforts, the initial amount in dispute in this appeal of $377,284,114 was reduced to $33,302,428.

funding generated per full time equivalent (FTE) in the State's funding formula did not change; and (2) the reduction in the aggregate amount of State support made available for special education and related services was due to enrollment decreases and the declining severity of special education needs (in Texas)."

The Department's shortfall amount is based on a per capita calculation. That calculation makes the shortfall smaller than it otherwise would have been, and credits Texas for the enrollment decreases it identified.

ANALYSIS

1. Does the federal statute give Texas unmistakable clear notice that the IDEA grant funding requires Texas to maintain state funding support?

Texas contends the MFS requirement runs afoul of the clear notice doctrine that requires that "if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." *Pennhurst State Sch. & Hosp. v. Halderman,* 451 U.S. 1, 17 (1981).

The requirements of mandatory levels of State education agency funding allocations, waivers, and prohibition against a state replacing funding with IDEA supplantation are in 20 U.S.C. § 1412(a). The provision identifies the requirements for a state to be eligible, and lists specific conditions. IDEA formal grants to States support special education and related services. The title of 20 U.S.C. § 1412 is "state eligibility," and it sets the specific conditions States must meet. 20 U.S.C. §1412(a)(18)(A) says the State cannot reduce the financial support made available for the previous fiscal year.

> §1412. **State eligibility**
> (a) In general
> A State is eligible for assistance under this subchapter for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures **to ensure that the State meets each of the following conditions:**
> …
> (a) (17) Supplementation of State, local, and other Federal funds
> …
> (C) Prohibition against supplantation and conditions for waiver by Secretary
> Except as provided in section 1413 of this title,[2] funds paid to a State under this subchapter will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this subchapter and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the

[2] The exception referred to in §1413 addresses local educational agency eligibility, which is not at issue in this appeal.

requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

(a)(18) Maintenance of State financial support
(A) In general
The State **does not reduce the amount of State financial support** for special education and related services for children with disabilities, **or otherwise made available** because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(B) Reduction of funds for failure to maintain support
The **Secretary shall reduce the allocation of funds** under section 1411 of this title for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) **by the same amount by which the State fails to meet the requirement.**

(C) Waivers for exceptional or uncontrollable circumstances
The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that—

(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this subchapter.
(emphasis added).

To interpret a statute, courts first look to the language, giving the words their ordinary meaning. *Sebelius v. Cloer,* 133 S. Ct. 1886, 1893 (2013). Courts do not insert additional language to reach a preferred conclusion. *Lawson v. FMR LLC,* 134 S. Ct. 1158, 1165 (2014). The Department is "categorically bound to follow what Congress lays down in plain language." *In the Matter of College America-Denver,* Dkt. No. 06-24-SP, U.S. Dep't of Educ. (Decision of the Secretary) at 4.

20 U.S.C. § 1412 (a)(18)(A) requires states to maintain financial support or "otherwise made available" to special education and related services. The Collins English dictionary defines the word "available" as: "obtainable or accessible; capable of being made use of." In the context of financial support, "made available" means that the funds must be appropriated and capable of being used. On its face, the language means states must maintain their previous level of appropriations funding special education services. The statute also provides relief in the form of waivers for exceptional or uncontrolled circumstances when natural or economic disasters strike a state, but no waiver has been sought for this appeal.

The issue of whether the statute is clear and unambiguous has been previously addressed by the Department. In *New Mexico Pub. Educ. Dep't,* Dkt. No 13-41-O, U.S. Dep't of Educ. (Decision of the Secretary), the Secretary examined this statutory provision in detail, and determined the language was clear and unambiguous.

In applying Subsection 18A and B, the Secretary held that "the statute unequivocally prohibits a state from reducing the 'amount of State financial support ... made available' below the amount of support made available in the previous fiscal year, i.e., the MFS requirement. … The MFS requirement simply prohibits a state from reducing its allocations, i.e. the finances 'made available' to special education, from one fiscal year to the next. The Department provided guidance to states on this definition of MFS as early as 2009." *Id.* at 5.

In *New Mexico,* the Secretary also held that "I find the statutory language clear and unambiguous. Congress's intent in requiring states to maintain 'financial support' is that states must maintain levels of allocations from year to year." *Id.* at 6. The language of the MFS requirement set forth a clearly understandable condition to Texas for acceptance of the federal funds. Texas failed to maintain its financial support as required by 20 U.S.C. § 1412 (a)(18)(A).

The Secretary's ruling on the MFS statutory requirement is binding precedent for this hearing. "Once an agency has ruled on a given matter (of law), it is not open to reargument by the administrative law judge." *Iran Air v. Kugelman,* 996 F.2d 1253, 181 (1992). The Secretary remains the final administrative arbiter on questions of law and policy. *Id.* at 183.

2. Is the federal statute that requires that Texas must maintain its state financial support or face federal grant reductions ambiguous?

With both parties assuming in their briefs that there is an ambiguity, Texas and the Department explore in detail what interpretation of the statute is reasonable, with Texas arguing its state funding provisions are a reasonable interpretation, and the Department arguing that *Chevron* deference is appropriate for its interpretation.

The analysis of language for the issue of clear notice statement also applies to the related issue of whether the statute is ambiguous. The statutory provision requiring MFS by Texas is clear and unambiguous.

3. If the federal statute financial support requirement is ambiguous, does Texas meet the financial support requirement with its weighted student model created by Texas state law?

The Department, in this appeal, states that the statute is unambiguous, but still in its brief addresses the question of what interpretation is reasonable if there is an ambiguity, touching on the agency deference accorded under *Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984), and also addressing *Skidmore* deference. *Skidmore v. Swift & Co.,* 323 U.S. 134, 140 (1944). Because of the clear and unambiguous language, analysis of the Department's agency deference argument is unnecessary.

However, Texas makes one final assertion—that there is ambiguity by silence. That silence alleged by Texas is based on the argument that the federal statute does not address the Texas state statutory scheme used by Texas for funding individual school districts special education program needs. The argument relating to Texas' state statutory scheme shall also be reviewed.

Texas has a "weighted student model" system for funding special education and related services for children with disabilities. In the Texas Education Code § 42.151(a), (b) and (f), Texas assigns a rating system dependent on instructional level factors such as whether a student is homebound or in a hospital class, as well as other similar factors. That rating system determines how Texas assigns state funding to individual school districts within the state of Texas.

In Texas, the state rating system has generated reduced instructional level factors, which has reduced funding under Texas's "weighted student model." Texas argues that all of its students have had reduced instructional needs under its state model, and that it has funded those reduced needs appropriately. According to Texas, the federal statute has an ambiguity, and its state law "weighted student model" is a reasonable interpretation that meets the requirement of not decreasing state funding for special education. Texas states:

> Texas has consistently read the MFS statutory provision to mean that maintaining financial support for special education and services is satisfied, so long as Texas does not change its weighted student model to decrease because of the excess cost of educating children with disabilities and fully funds each special education student each year based on his or her unique instructional setting. As noted in the analysis above, the MFS statutory provision lacks a clear statement to the contrary. *Texas Br. in Support of Appeal, 6.*

Texas argues that federal law must specifically address all state statutory schemes relating to special education funding.[3] The Texas weighted student model contradicts the plain language of the MFS provision that Texas "not reduce the amount of State financial support for special education" from one year to the next. 20 U.S.C. §1412(a)(18)(A).

Accepting Texas' interpretation thwarts the purpose of IDEA funding. It would allow a state to reduce or defund state contributions to special education funding, and shift to the federal government the burden of funding special education. Although Congressional intent is not a required tool for statutory construction in this appeal, Congress did state very clearly that the MFS provision was meant "to ensure that increases in Federal Appropriations are not offset by State decreases." 143 Cong. Rec. S4295, S4300 (daily ed. May 12, 1997), (statement of Senator Thomas Harkin).

Not only is Texas' alternative weighted student model inconsistent with the legislative intent, it also is contrary to the plain text of the federal statute, and is not an acceptable method for meeting the MFS requirement.

[3] Individual school districts are not parties to this hearing. The validity of this weighted student model as a way for Texas to distribute special education funds to individual school districts has not been challenged in this hearing.

CONCLUSIONS

1. **The federal statute gives Texas unmistakable clear notice that the IDEA grant funding requires Texas to maintain state funding support.**

2. **The federal statute that requires that Texas must maintain its state financial support or face federal grant reductions is not ambiguous.**

3. **Even if the federal statute financial support requirement is ambiguous, Texas does not meet the financial support requirement with its weighted student model created by Texas state law.**

ORDER

The federal statute is clear and unambiguous. The plain language of the statute and the Department's determination is **AFFIRMED.** Texas is not eligible for $33,302,428 of its IDEA Part B Section 611 grant because it failed to maintain that amount of state financial support in SFY 2012.

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Robert G. Layton
Judge

Dated: May 23, 2018

SERVICE

This order has been sent via US Postal certified mail and email, with confirmation delivery receipt, to:

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