



THE SECRETARY OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of

BELLEVUE PUBLIC SCHOOLS

Docket No. 97-55-I

**Student Financial
Assistance Proceeding**

Respondent.

DECISION OF THE SECRETARY

Bellevue Public Schools (Respondent) is a local education agency (LEA) in Bellevue, Nebraska. Respondent comes before me seeking review of the July 13, 1998 Initial Decision of Administrative Law Judge Allan C. Lewis (ALJ) dismissing its challenge to a determination by the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) regarding the Assistant Secretary's calculation of Federal Impact Aid funds due the LEA for fiscal year 1997 pursuant to the Impact Aid Act, Pub.L. No. 81-874, 64 Stat. 1100 (20 U.S.C. §§ 236-244).¹ Respondent contends that it is owed additional Federal Impact Aid funds.

The ALJ dismissed Respondent's challenge after concluding that the Impact Aid payment authorized by the Assistant Secretary was calculated properly, and that the Federal government owed no additional funds to the LEA for fiscal year 1997. For the reasons noted below, I affirm the ALJ's determination, and uphold the Assistant Secretary's calculation of Impact Aid. In addition, this decision clarifies why the regulation at issue controls the outcome of this case, and is not in conflict with the governing statute.

¹ The Impact Aid Act was repealed, see the Improving America's Schools Act of 1994, § 331(b), Pub.L. No. 103-382, 108 Stat. 3518, 3965, and a new Impact Aid statute enacted, Title VIII, § 8001, 108 Stat. at 3749, codified at 20 U.S.C. §§ 7701-7714 (1994). As a consequence of those legislative judgments, the Impact Aid program is now governed by Title VIII of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's School's Act of 1994.

I. BACKGROUND

Generally, the Impact Aid program provides assistance for maintenance and operational costs to local education agencies (LEAs) and school districts that are affected by Federal property ownership or other Federal activities. Broadly speaking, the purpose of the Impact Aid program is to provide compensation to LEAs and local school districts for the cost of educating students who attend LEA schools but are shielded from the LEA's tax base as a result of residing on tax-exempt Federal property.² In order to receive Federal Impact Aid, a LEA is required to submit an application to the Department.³ The amount of basic support or payment is determined, in pertinent part, by calculating a local contribution rate (LCR) or its equivalent. The LCR is computed by:

the sum of the total weighted student units . . . multiplied by . . . the *comparable* local contribution rate certified by the State, as determined under regulations prescribed to carry out the Act of September 30, 1950 (Public Law 874, 81st Congress) as such regulations were in effect on January 1, 1994; (emphasis added)

Section 8003(b)(1)(C)(iii). (20 U.S.C. § 7703(b)(1)(C)(iii)).

The *comparable* local contribution rate, as distinguished from the LCR, is calculated by the state's educational agency, which, generally, consists of a LCR for a group of comparable LEAs. Pursuant to the Department's regulations, the *comparable* local contribution rate represents the "aggregate local current expenditures of the comparable LEAs in [the] . . . group for the third fiscal year preceding the fiscal year for which the LCR is being computed" divided by the aggregate number of students to whom comparable LEAs provided a free public education during that year.⁴ Of particular importance to the challenge raised by Respondent, Nebraska's educational agency was directed by 34 C.F.R. § 222.41(a)(2) to "consider only those aggregate current expenditures made by the generally comparable LEAs from revenues derived from local sources [and that] No State or Federal funds may be included" as "revenues derived from local sources." In this regard, Respondent's argument before the ALJ rested on the assertion that its calculation of Federal Impact Aid should be determined by considering aggregate expenditures made by comparable LEAs in Nebraska from revenue sources provided to the LEAs from the State's taxing authority under Neb. Rev. Stat. § 79-3804.⁵

II. ISSUE

² H.R. REP. No. 81-2287, at 11 (1950).

³ Section 8005(a) (20 U.S.C. § 7705(a)).

⁴ 34 C.F.R. § 222.41 (1996).

⁵ To clarify, the task before me turns on the interpretation of the Federal Impact Aid statute and its accompanying regulations. Respondent's interpretation of Neb. Rev. Stat. § 79-3804 is not directly relevant to that task.

The facts are not in dispute. Rather, Respondent argues that the Assistant Secretary erred in calculating the amount of Impact Aid owed the LEA for fiscal year 1997 by improperly assessing the amount of "local" funds that the LEA had contributed to its educational expenditures for that fiscal year as a result of adopting a regulatory definition⁶ of the term "revenues derived from local sources" that is at odds with the controlling statute's own definition⁷ of the same term. As such, according to Respondent, the regulatory definition is, in effect, invalid. The precise question at issue in this case is whether 34 C.F.R. § 222.2(c) conflicts with Section 8013(11) of the Improving America's Schools Act of 1994. It is axiomatic that the test as to whether a particular regulation actually conflicts with the governing statute is whether the regulation creates a rule out of harmony with the statute.⁸

III. DISCUSSION

The ALJ did not indicate whether he found Respondent's argument unpersuasive, but, instead, indicated that he agreed that the statutory and regulatory definitions "differ[ed]." On this issue, the ALJ concluded that "any differences between the statutory and regulatory definitions are meaningless before this tribunal. The regulatory definition controls."⁹ The ALJ's conclusion was based on his recognition that he lacked the authority to invalidate any of the Department's regulations. To the extent that the ALJ's decision¹⁰ could be interpreted as offering a whisper of

⁶ The regulatory definition provides, in pertinent part, that revenues derived from local sources are the--

- (i) Tax funds derived from real estate; and
- (ii) Other taxes or receipts that are received from the county, and any other local tax or miscellaneous receipts.

.....
34 C.F.R. 222.2(c).

⁷ The statutory definition provides, in pertinent part, that revenues derived from local sources are the--

- (A) revenues produced within the boundaries of a local educational agency and available to such agency for such agency's use; or
- (B) funds collected by another governmental unit, but distributed back to a local educational agency in the same proportion as such funds were collected as a local revenue source.

Section 8013(11) (20 U.S.C.A. § 7713(11)), Improving America's Schools Act of 1994.

⁸ See, e.g., 2 AMJUR. ADMIN. L. § 227 (1994) (consistency of regulation with statute is required); 5 U.S.C. §§ 55—706 (1994).

⁹ In the Matter of Bellevue Public Schools, Dkt. No. 97-55-I, (Decision of the ALJ) at 3.

¹⁰ Ultimately, the ALJ ruled that the revenues derived by the State under Neb. Rev. Stat. § 79-3804 are state taxes, not local revenues and, therefore, cannot be considered in the calculation of the Respondent's local contribution rate.

support for Respondent's argument that because the language of section 222.2(c) differs from the governing statute, it is in conflict with the statute, this decision¹¹ emphatically rejects Respondent's argument.

The Department's duty to administer the Impact Aid program carries with it the authority to prescribe rules and regulations that carry into effect the will of Congress as expressed by the governing statute. Section 222.2(c) does this by setting forth a meaningful interpretation of local sources, wherein the Department centers the calculation of comparable local contribution rate on expenditures made by comparable LEAs from revenues derived from county or local taxes or tax funds derived from real estate. There is nothing within the text of section 8013(11) that precludes this interpretation or *requires* another result. Indeed, the language of section 8013(11) prescribes that the meaning of "revenues derived from local sources" be rooted in the concept of locality; namely, that revenue be collected as if it were derived directly from a local source or that it be produced directly from within the geographical boundaries of the LEA. Section 222.2(c) is consistent with these requirements. Notably, there is no dispute whether section 222.2(c) was promulgated under the Department's delegated authority by Congress to administer the Impact Aid program.¹² Section 222.2(c) embodies the Department's construction of the governing statutory provision, Section 8013(11), and reflects the Department's substantial experience ensuring that comparable local contribution rates for LEAs are calculated in a manner that effectuates Congress' decision to provide limited Federal assistance to school districts and local areas impacted by Federal activities.¹³

Therefore Section 222.2(c) controls the outcome of this case, and the ALJ's determination that the application of the regulation requires that Respondent's challenge be rejected is affirmed.¹⁴ Accordingly, the Impact Aid payment provided to the LEA by the

¹¹ The ALJ states that the "controversy centers on which definition governs." I disagree. The Department regulations must be interpreted in accordance with the governing statute.

¹² The statute does not define "local sources." Section 222.(c) fills in a legislative gap that has persisted in the Impact Aid program. In this respect, Section 8013(11) prescribes that comparable local contribution rates are determined by reference to revenues from local sources. The statute leaves the task of determining what a local source is to the Department. Therefore, Section 222.2(c) circumscribes what may constitute a local source.

¹³ In this regard, I am in full accord with the ALJ. The Assistant Secretary was in error by asserting that section 222.2(c) reflects the Department's construction of an entirely different statutory provision, despite the specific reference to section 8013(11) contained in 34 C.F.R. § 222.2(c).

¹⁴ The ALJ notes that the Assistant Secretary may have imposed a gloss on Section 222.2(c) with regard to the term "dedicated." Even so, I am confident that the ALJ applied the regulation to the facts of this case in a manner consistent with the regulation. As the ALJ noted, under the undisputed facts of this case, a "reasonable" application of the regulation would exclude the Nebraska's State income tax in calculations of comparable local contribution rates.

Assistant Secretary was calculated properly, and the Federal government owes no additional funds to the LEA for fiscal year 1997.

So ordered this 15th day of March 2000.


Richard W. Riley

Washington, D.C.

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