THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

Docket No. 11-86-I
Federal Impact Aid Proceeding

IN THE MATTER OF

Central Kitsap School District (WA)

Respondent.

DECISION OF THE SECRETARY

This matter comes before me on appeal by the U.S. Department of Education ("the Department") of an Initial Decision by Administrative Law Judge ("ALJ") James G. Gilbert.[1] In the case before Judge Gilbert, the Central Kitsap School District ("Kitsap" or "the District") challenged a decision of the Acting Assistant Secretary of the Office of Elementary and Secondary Education ("OESE") that Kitsap was ineligible for heavy impact aid ("HIA") for fiscal year ("FY") 2010.[2]

The Department and Kitsap filed cross motions for summary judgment before the ALJ. Judge Gilbert concluded that OESE's decision to deny Kitsap HIA for FY 2010 was in error.[3] The ALJ found that the Department's approach to determining HIA status was not entitled to deference under the law.[4] He further determined that the Department violated the Administrative Procedure Act ("APA") by failing to regulate on the disputed term "average tax rate."[5]

OESE appealed the Initial Decision of the ALJ pursuant to 34 C.F.R. § 222.157(b)(1)(i).[6] The Department asks that I reverse the Initial Decision. In this review, I first provide a legal and

[1] *See* Initial Decision, James G. Gilbert, Nov. 15, 2013; *see also* U.S. Department of Education's Appeal of the Decision.
[2] *See* Kitsap's Motion for Summary Judgment, June 15, 2012.
[3] Initial Decision, p. 12.
[4] *Id.*, pp. 3–8.
[5] *Id.*, pp. 8–10.
[6] The Department appealed the Initial Decision on January 2, 2014. The District objected to the Department's request for reconsideration on January 6, 2014, arguing, among other things, that the appeal was not timely. While I determined that the Department's appeal was untimely, I issued an order on January 9, 2014, to review the Initial Decision exercising my authority under 34 C.F.R. § 222.157(b)(2)(ii).

factual background for the case. Next, I find that the ALJ engaged in the wrong analysis, focused on whether OESE was entitled to deference, and I provide the appropriate analysis of the best definition of the term "average tax rate." Finally, after reviewing the evidence, I conclude that the ALJ made erroneous factual findings. Based on these analyses, I reverse the ALJ's Initial Decision and reinstate OESE's decision.

Legal Background

Congress first passed the Impact Aid statute ("the Act" or "law") in 1950.[7] The purpose of the Act is to assist local school districts that have lost property tax revenue because of the presence of tax-exempt Federal property.[8] Specifically, the law provides supplemental aid to local school districts that have parcels of land owned by the Federal government or whose property has been removed from the local tax rolls by the Federal government, including Indian lands.[9]

Under 20 U.S.C. § 7703(b), basic support payments help local school districts educate federally connected children, such as children of members of the uniformed services, children who reside on Indian lands, children who reside on Federal property or in federally subsidized low-rent housing, and children whose parents work on Federal property.[10] In order to qualify for a basic support payment, a local school district must educate at least 400 such children in average daily attendance, or the number of federally connected children must make up at least three percent of the school district's total average daily attendance.[11]

In certain limited instances, the Department has designated certain districts as "heavily impacted." These districts typically have higher percentages of federally connected children and meet other specific statutory criteria, and thus, they qualify for increased payments under the Act.[12] Specifically, to qualify for HIA, an applicant must meet four criteria. First, an applicant must have received an additional assistance payment under 20 U.S.C. § 7703(f) for FY 2000.[13] Second, at least 35 percent of the students in the district must be federally connected.[14] Third, the local school district per pupil expenditures must be less than the average for the state or for all states.[15] In this dispute, the parties stipulated that Kitsap met these first three criteria.[16]

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[7] About Impact Aid, U.S. Dep't of Education, http://www2.ed.gov/about/offices/list/oese/impactaid/whatisia.html (last visited Feb. 27, 2015).
[8] *Id.*
[9] *Id.*
[10] The statute lists five specific categories of students the Department uses to calculate a district's eligibility for basic Impact Aid funds. 20 U.S.C. § 7703(a)(1) (2012).
[11] 20 U.S.C. § 7703(b)(1)(B) (2012).
[12] *Id.* § 7703(b)(2)(B).
[13] 20 U.S.C. § 7703(f) reads: "Notwithstanding any other provision of law, a local educational agency receiving funds under this section may also receive funds under section 386 of the National Defense Authorization Act for Fiscal Year 1993 or such section's successor authority."
[14] *Id.* § 7703(b)(2)(B)(i)(II)(bb).
[15] *Id.*
[16] *See* Joint Stipulation Regarding Legal Background, Exhibits and Findings of Fact ("Joint Stipulation"), June 18, 2012, Section D, p. 4.

The fourth criterion is the crux of this dispute. The statute requires that a district meet either an "all districts" or a "comparable districts" tax rate provision. Specifically, an applicant district's tax rate for general fund purposes must not be less than 95 percent of either: 1) the average tax rate for all districts in the state, or 2) the average tax rate of comparable districts in the state.[17] The Department has promulgated regulations to implement this requirement. The regulations establish procedures for identifying comparable districts,[18] but they do not define the term "average tax rate."[19] In a year when a district that previously qualified for HIA fails to qualify, the district nevertheless receives one more payment, commonly referred to as a "hold harmless" payment.[20]

The core dispute between the parties in this case is whether Kitsap qualified for HIA in 2010. The dispute turns on the parties' conflicting definitions of the term "average tax rate."

Factual Background

From FY 1998 through FY 2009, Kitsap annually qualified as a heavily impacted district under 20 U.S.C. § 7703(b)(2). As a result, Kitsap received roughly $6 million in HIA each year, in addition to general support payments.[21]

In FY 2010, the Department used data from the District's 2006 tax year (school year 2006-2007) as the basis for making a determination on Kitsap's application. Kitsap stated in its application that the District's general fund tax rate was $2.0129.[22] Given that the Washington state tax rate for FY 2010 was $2.3117, Kitsap failed to qualify for HIA based on the all districts test.[23]

Alternatively, the District sought to qualify under the comparable districts test.[24] Kitsap and the Washington State Office of the Superintendent of Public Instruction (OSPI) worked together on the application, first selecting comparable districts and placing Kitsap in a subgroup of 35 districts.[25, 26] OSPI then calculated the average tax rate for the subgroup of 35 "by taking the total amount of levy certified for the districts in the subgroup, dividing by the total assessed value within the subgroup and dividing by 1000."[27] Thus, the application created by Kitsap and OSPI contained a weighted average rather than a simple average. As OSPI later explained to the Department, this weighted average formula attempts to account for differences in property

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[17] 20 U.S.C. §§ 7703(b)(2)(B)(i)(II)(bb), 7703(b)(2)(C)(i)(III), 7703(b)(2)(G) (2012).
[18] 34 C.F.R. §§ 222.39–41.
[19] The Act, however, does provide that the Secretary shall use district data from the third preceding fiscal year for the purposes of determining assistance under the Act. *See* 20 U.S.C. § 7703(b)(2)(F) (2012).
[20] *Id.* § 7703(e).
[21] Joint Stipulation, Sec. A, p. 1.
[22] *Id.,* Sec. D, p. 5.
[23] Affidavit of Kristen Walls-Rivas ("Walls-Rivas Affidavit"), p. 4.
[24] Joint Stipulation, Sec. D, p. 5.
[25] Kitsap is in the first class school district category in Washington with an enrollment of more than 2,000 students.
[26] OSPI then sorted the list of comparable districts by size, grade span, and legal classification and divided the entire number of schools into three subgroups. OSPI concluded Kitsap fell within the subgroup of the 35 largest comparable first class districts in the state. Joint Stipulation, Sec. D, p. 5.
[27] *Id.*

values within districts.[28] OSPI noted that Washington state uses this formula when allocating its own funds to equalize tax rates between districts of significantly different sizes.[29]

On June 23, 2008, OSPI wrote to the Director of the Impact Aid ("IA") program, Catherine Schagh.[30] OSPI explained its methodology for generating the data it provided to OESE. In particular, OSPI noted that state law legally classified Washington school districts into two categories. OSPI contended that Kitsap's appropriate subgroup was the largest one-third of the first class school districts in the state. OSPI stated that Kitsap's tax rate of $2.01289 was approximately 99 percent of the $2.03340 average tax rate of the comparable first class districts.[31]

During the fall of 2008 and the spring of 2009, the IA Director met with Kitsap. According to the affidavit of Ms. Schagh, the parties spoke in general terms about the eligibility requirements for heavily impacted districts, but did not specifically discuss the issue of how to calculate an average tax rate.[32] In contrast, the IA coordinator for the District, David McVicker, stated that Ms. Schagh had assured him that "the Department was likely to accept our alternative calculations" and that the Department did not take "any issue with any of the District's work or OSPI's calculations."[33]

On or about April 2010, OESE sent a voucher to the District with its HIA payment for FY 2010. The voucher did not indicate that OESE took any issue with Kitsap's methodology or calculations or that the Department had denied Kitsap's FY 2010 application for HIA.[34] In August 2010, OESE verbally notified Kitsap that the April 2010 payment was not an approved HIA payment, but a "hold harmless" payment.[35] Beginning in August 2010 and extending into 2011, OESE and Kitsap engaged in further discussion about how Kitsap had calculated its average tax rate. Specifically, in reviewing Kitsap's data for FY 2010, OESE discovered that the District was using a weighted average to calculate its average tax rate.[36]

Prior to the discussions between the Department and Kitsap, the parties had never discussed the District's practice of submitting a weighted average tax rate. Kitsap had, without any further explanation, submitted weighted data in HIA applications for many years. In previous years, however, Kitsap's practice was not relevant because it qualified for HIA with its simple average tax rate as well.[37] When the Department calculated the average tax rate in FY 2010 using a simple average of comparable districts' tax rates, Kitsap did not qualify for HIA.

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[28] *See* Declaration of Calvin W. Brodie ("Brodie Affidavit"), pp. 3–5.
[29] *Id.*, p. 4.
[30] *Id.*, p. 5.
[31] *Id.*
[32] *See* Affidavit of Catherine Schagh ("Schagh Affidavit"), p. 10.
[33] *See* Declaration of David L. McVicker ("McVicker Affidavit"), p. 4.
[34] Joint Stipulation, Sec. D, p. 5.
[35] *See* Walls-Rivas Affidavit, pp. 1–2.
[36] *See id.*, pp. 3–4.
[37] According to the Department's program analyst on the Kitsap matter, even applying the Department's simple average tax rate formulation, the District qualified for HIA from 2005-2009. Walls-Rivas Affidavit, p. 4.

In the spring of 2011, departmental staff cooperated extensively with the District to determine whether the District could qualify for HIA.[38] Regardless of how they approached the issue, the District was unable to qualify for HIA for FY 2010.[39] On July 29, 2011, OESE formally notified Kitsap that it was ineligible for HIA for FY 2010, and that the FY 2010 HIA payment was a "hold harmless" payment as provided for by the law.[40] OESE noted that the Department disagreed with Kitsap's calculation of average tax rate. OESE added that applying a simple average formula – by adding the tax rate amounts and dividing by the number of districts – yielded an average tax rate for comparable districts of $2.5317.[41] As a result, Kitsap failed to reach the 95 percent threshold for comparable districts because its average tax rate of $2.01289 was only 79.5 percent of the amount of comparable districts.

Kitsap subsequently filed an appeal with the Department's Office of Hearings and Appeals.[42] As previously discussed, that appeal concluded with the ALJ issuing an Initial Decision granting Kitsap's motion for summary judgment. Now, OESE's appeal of that Initial Decision is before me.

Discussion

I determined to review the ALJ's Initial Decision.[43] Therefore, I first consider whether the ALJ erred. Based on the following analysis, I conclude that the ALJ erred in the Initial Decision, and I reverse it. Then I turn to the underlying matter that was before the ALJ. Exercising my de novo review authority, I find that the Department's interpretation of the statutory term is the best one and the Department correctly found that Kitsap did not qualify for an HIA payment in 2010.

I. The ALJ's Initial Decision

In the Initial Decision, the ALJ applied the two-part test outlined by the Supreme Court in *Chevron v. Natural Resources Defense Council*[44] to the Department's interpretation of the term "average tax rate." Although this analysis occupies a significant portion of the Initial Decision, I need not dig into this analysis, because *Chevron* does not apply to an agency's internal administrative proceeding such as this one.

Chevron describes the deference courts give to statutory interpretations made by administrative agencies within their areas of expertise.[45] On judicial review, courts give *Chevron* deference to final agency action created under the APA, 5 U.S.C. §§ 701–706 (2012). Where the agency's final decision includes a statutory interpretation, the Supreme Court held that a reviewing court "does not simply impose its own construction on the statute, as would be

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[38] Walls-Rivas Affidavit, pp. 2–3.
[39] *Id.*, p. 3.
[40] Joint Stipulation, Sec. D, p. 6.
[41] *Id.*
[42] 34 C.F.R. § 222.151.
[43] *Id.* § 222.157(b).
[44] 467 U.S. 837 (1984).
[45] "[W]e have held that *agencies* may authoritatively resolve ambiguities in statutes." *Perez v. Mortgage Bankers Ass'n*, 575 U.S. ___ (Mar. 9, 2015) (Scalia, J., concurring) (No. 13-1041), at 2 (quoting *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–843 (1984)).

necessary in the absence of an administrative interpretation."[46] *Chevron* comports with "the long history of judicial review of executive action, where '[s]tatutory ambiguities . . . were left to reasonable resolution by the Executive.'"[47]

Chevron has no bearing on an ALJ's analysis of a departmental officer's interpretation of a statute, nor does it have any bearing on my review of the ALJ's Initial Decision.[48] No entity within the Department is a court owing deference to another entity within the Department that is an "Executive,"[49] nor does any entity within the Department review "final agency action." Rather, this administrative review process will ultimately create the "final agency action" that may later be reviewed by a court. [50]

The appropriate analysis in this administrative proceeding is to determine the best interpretation of the statutory term "average tax rate." The ALJ applied the wrong body of law and did not provide such an interpretation. In the absence of such an analysis, I reject the ALJ's conclusions and undertake the analysis myself.

II. Definition of "Average Tax Rate"

I now turn to the parties' arguments on how best to define the statutory term "average tax rate." Kitsap avers the Act does not support the Department's contention that "weighted" averages are inappropriate under the law. Kitsap notes that the statute uses only the phrase "average tax rate," not the words "simple" or "weighted" average.[51] Kitsap adds that the statute does not define "average tax rate" or specify any particular methodology for calculating it.[52]

Kitsap further argues that the statute required the Department to define the term in the regulations, but the Department failed to do so.[53] Kitsap adds that the Department has not provided any formal written guidance about the appropriate way for a grantee to calculate an average tax rate in conformance with the Department's interpretation of that phrase.[54] In the absence of such guidance, Kitsap argues that the Department is obligated to accept Kitsap's approach as an "application of a legitimate averaging methodology to uncontested raw data."[55]

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[46] *Chevron*, 467 U.S. at 843.
[47] *Perez v. Mortgage Bankers Ass'n*, 575 U.S. ___ (Mar. 9, 2015) (Scalia, J., concurring) (No. 13-1041), at 4.
[48] *Nash v. Bowen*, 869 F.2d 675, 680 (2nd Cir. 1989), *cert. denied* 479 U.S. 985 (1989) ("An ALJ is a creature of statute and, as such, is subordinate to the Secretary in matters of policy and interpretation of law.").
[49] *See, e.g.*, Richard J. Pierce, Administrative Law Treatise, at 991 ("[T]he relation between the ALJ and agency is not the same as or even closely similar to the relation between agency and reviewing court[.]").
[50] The Fifth Circuit has held that Federal courts must focus their review on the final decision of the agency rather than a determination made by an ALJ. *See Bullion v. Federal Deposit Ins. Corp.*, 881 F.2d 1368, 1374 (5th Cir. 1989). In *Bullion*, the FDIC Board made a determination that was contrary to the ALJ's finding. On appeal, the Fifth Circuit concluded: "Our deference is to the agency and not the ALJ. . . . As long as the FDIC's interpretation was rational and consistent with congressional intent, we will uphold it whether we view the ALJ's approach as better or not." *See also Ass'n of Administrative Law Judges, Inc. v. Heckler*, 594 F. Supp. 1132, 1141 (D.D.C. 1984); Charles H. Koch, Jr. & Richard Murphy, Administrative Law and Practice, § 10.10.
[51] Kitsap's Response to the Comments of the Assistant Secretary for Elementary and Secondary Education Regarding the Decision ("Kitsap Response to Comments"), p. 12.
[52] *Id.*, p. 13.
[53] Kitsap's Response and Reply on Motion for Summary Judgment ("Kitsap Reply"), pp. 4–5.
[54] Kitsap Response to Comments, p. 13.
[55] *Id.*, p. 14, n. 13.

Finally, Kitsap argues that the Department reversed a long-standing practice of accepting Kitsap's/OSPI's calculations of average tax rate. Kitsap submits that the Department's acceptance of Kitsap's data for HIA applications between 1999 and 2009 was an implicit acceptance of the Washington state methodology that allows a district to set a target amount of revenue (levy) rather than to adjust the local tax rate each year.[56] Because the Department did not previously advise Kitsap that weighted averages were inappropriate for calculating its average tax rate, the District contends that the Department has now reversed course.[57] Kitsap suggests that the Department may have unknowingly accepted different formulas from states with varying property tax systems, and thus, the Department's argument that it did not have a practice of accepting different calculations of average tax rate is baseless.[58]

The Department responds with three arguments. First, the Department states that it had no obligation to create a regulatory definition of "average tax rate."[59] Instead, it used the most reasonable and logical definition, an arithmetic mean. OESE notes that this definition is consistent with the dictionary definition of average: the summing of all parts and then division by the number of parts to obtain a figure.[60] Here, OESE contends that the most straightforward approach to defining the term "average tax rate" is to add up the different rates from the school districts and divide by the number of districts.

Next, the Department argues that its definition of the term "average tax rate" is supported by the plain meaning of the statute.[61] OESE asserts that if Congress had intended for districts to use a weighted average, it could have specifically done so as it has done with other statutes.[62] The Department points to numerous statutes in which Congress specifically prescribed the use of weighted averages.[63]

Finally, the Department argues that it did not have a practice of accepting data with various interpretations of average, and it did not knowingly accept weighted submissions by states. For example, the IA Director's affidavit states that the IA office worked with every grantee on an individual basis, and applied the same approach to all applications.[64] Thus, the Department contends it applied its simple definition of "average tax rate" consistently with all grantees, including Kitsap. The Department adds that it did not have any reason to question the District's calculations prior to FY 2010 because Kitsap easily qualified as an HIA grantee using the all districts test rather than the comparable districts test.[65]

After considering the arguments of the parties, I agree with OESE that the Department's definition of the term "average tax rate" is the best definition.

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[56] *Id.*, pp. 4–5; *see* Brodie Affidavit, p. 6.
[57] Kitsap Response to Comments, pp. 11–12.
[58] *See id.*, pp. 13–14.
[59] Reply of the Assistant Secretary to Kitsap's Comments, pp. 4–5.
[60] *See* Comments of the Assistant Secretary for Elementary and Secondary Education Regarding the Initial Decision ("ED Comments"), p. 3.
[61] *See* 20 U.S.C. § 8003(b)(2) (2012).
[62] *See* ED Comments, p. 4.
[63] *Id.* (citing 19 U.S.C. § 1677f-1(c)(1), 7 U.S.C.A. § 1441, and 42 U.S.C. § 1395u(b)(14)(B)).
[64] *See* Schagh Affidavit, p. 9; Walls-Rivas Affidavit, p. 2.
[65] Walls-Rivas Affidavit, p. 4. Schagh Affidavit, pp. 9–10.

First, I will look to the plain language of the statute, giving the words their ordinary meanings.[66] The Department's simple mean definition is the most common and logical interpretation of the term "average tax rate." It is the most easily understood interpretation for departmental grantees because it is based on the common definition of the word "average." In fact, while the statute directed the Department to create a regulatory definition of "comparable local educational agencies," I do not find any departmental obligation to define "average tax rate." Rather, that term stands on its own, signifying only its common definition with no directive from Congress to create a more complicated scheme that would allow alternative mathematical approaches to create an average.

Second, I found the testimony of the IA Director to be persuasive. She swore under oath that during her time as Director from 1995 to 2010, no LEA or SEA either asked the Department about the definition of the term, or asked the Department to consider other methods of calculating an average tax rate.[67] She noted that the program's "longstanding practice was to interpret 'average tax rate of all the [LEAs] in the State' as meaning the total of the tax rates of all LEAs in that state, divided by the number of LEAs. We chose this method of calculating...because it is the common-sense meaning of 'average.'"[68] She also stated that OESE "always computed average tax rate in this manner."[69]

Third, I find that Kitsap's interpretation of the statute would not promote consistency in applications submitted by districts throughout the country. The Department's definition, on the other hand, creates one standard for calculating average tax rates for all potential HIA grantees. The use of one standard guarantees consistent and fair departmental review for all districts' applications.

Finally, I find that the Department's definition of "average tax rate" is more consistent with the rest of the law. The law already provides for equity in evaluating HIA applications by allowing districts to identify comparable districts through a number of factors.[70] Adopting the definition proffered by Kitsap would contradict this provision by inflating the tax rates of all districts through the weighted system and lead to a result contrary to the plain language of the statute.

In sum, I find that the definition asserted by OESE, which precludes a weighted average methodology, is straightforward, logical, and fair in light of other provisions of the Act. The Department's approach sets a clear and consistent standard for the field and reflects the Department's long-standing interpretation of the term "average tax rate."

Having ruled on the appropriate definition of "average tax rate," I next consider several factual findings that the ALJ made in his Initial Decision.

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[66] *Sebelius v. Cloer*, 133 S. Ct. 1886, 1893 (2013) (citing *B.P. Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006)).
[67] *See* Schagh Affidavit, p. 9.
[68] *See id.*, p. 7.
[69] *See id.*, pp. 7–9.
[70] *See* 34 C.F.R. § 222.39(c)(4)(i).

III. The ALJ's Findings of Fact

In the Initial Decision, the ALJ concluded that OESE had a practice of accepting alternative interpretations of the term "average tax rate" that would permit weighted averages or otherwise defer to a district's calculation.[71] The ALJ thus held that the Department's July 2010 letter notifying Kitsap that it would not receive HIA was not consistent with prior departmental interpretations of the law.[72] I believe the ALJ overlooked several important parts of the record. After reviewing the record, I come to the opposite conclusion.

First, the ALJ's Initial Decision ignored several statements from the long-standing Director of the IA program, Ms. Schagh. She stated that the IA office followed a detailed procedure for reviewing and evaluating applications every year. The office worked with districts to review their submissions, asked questions throughout the process, and did not "blindly" defer to a district's data.[73]

Second, Ms. Schagh stated that after obtaining a figure from a state's IA contact, "the [IA] Program's practice is to ascertain if in fact this figure represents the average tax rate for general fund purposes . . . . After making any adjustments needed after consultation with the State on the issue of 'general fund purposes' and comparing the average tax figure to that for the prior fiscal year or two to identify any significant changes and request clarification for them, the Program would typically accept the figure."[74] This statement contradicts the ALJ's conclusion that the Department "failed to check the math"[75] and his holding that the Department had a long-standing *policy* for adopting state formulas *without reviewing the data.*

Third, in an HIA application, the IA program "accepted the groupings of comparable districts submitted by the State as long as they complied with 34 CFR § 222.39."[76] If the submission did not comply with the requirements of § 222.39, then "we would work with the State and the LEA in order to get groupings of districts that met the requirements."[77] The record demonstrates that OESE followed the same procedures regarding comparable districts under § 222.39 when it discovered for the first time that Kitsap was not using a simple average for its data.[78]

Fourth, the Initial Decision failed to mention that, prior to 2010, Kitsap qualified for HIA under the law's *statewide* average tax rate provision. As a result, the Department did not have to undertake the more thorough analysis required when a grantee is qualifying under the comparable district formula.[79] Only when Kitsap approached the Department about using the comparable district formula (instead of the statewide average tax provision) did OESE learn that the District was using a weighted average.[80] In prior years, the Department had no reason to

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[71] Initial Decision, p. 7.
[72] *Id.*
[73] Schagh Affidavit, pp. 7–9.
[74] *Id.*, p. 7.
[75] Initial Decision, p. 7.
[76] Schagh Affidavit, p. 9.
[77] *Id.*
[78] *Id.*, p. 10; Walls-Rivas Affidavit, pp. 2–3.
[79] Walls-Rivas Affidavit, p. 4.
[80] *See id.*

engage in additional review because the District "met the 95 percent tax effort requirement on the basis of all districts in the State."[81] The Initial Decision also overlooks the District's role in the dispute. Kitsap knew its formula was different but never informed OESE that the District was using a weighted methodology for over ten years.[82]

Finally, the ALJ concluded that OESE failed to demonstrate valid and thorough reasoning in its interpretation of the term "average tax rate."[83] The Initial Decision does not address a crucial fact regarding this conclusion. According to the Director of the IA program, the Kitsap case was the first time that a grantee had asked about how to properly calculate the average tax rate for its district.[84] This statement supports the Department's position that its definition of the term was understood by other grantees and its reasoning was valid.

In sum, I find that the ALJ did not consider the entire record when making factual determinations about the Department's implementation and interpretation of the Act. As such, I conclude that the ALJ made erroneous factual findings.

Conclusion

The Department is committed to providing HIA funds to qualifying educational agencies attended by federally connected students. Departmental staff demonstrated that commitment through their work with Kitsap to evaluate and reevaluate its application to determine whether it could qualify for HIA funds. Furthermore, departmental staff promptly allocated Kitsap's statutorily authorized "hold harmless" payment. I sympathize with Kitsap's circumstances and the budget difficulties it faces.

However, I conclude the Department has the best definition of the term "average tax rate" based on a plain reading of the statutory language, among other reasons identified in this decision. In this case, departmental staff correctly applied that definition in the context of the current law, ultimately finding that Kitsap did not qualify for HIA funds in the year in question. OESE never adopted an interpretation of the term "average tax rate" that permitted weighted averages or unilaterally deferred to a district's calculation.

I further find that the Initial Decision of the ALJ improperly undertook a deference analysis regarding OESE's decision. Within that analysis, I find that the ALJ did not fully consider all of the evidence in the record before him and consequently made incorrect and unsupported factual determinations in the Initial Decision.

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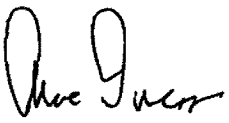
[81] Schagh Affidavit, p. 9.
[82] *See generally* McVicker and Brodie Affidavits.
[83] Initial Decision, pp. 7–8.
[84] Schagh Affidavit, p. 7.

ORDER

ACCORDINGLY, the Initial Decision by Administrative Law Judge James G. Gilbert is HEREBY REVERSED as the Final Decision of the Department, and the OESE decision is hereby REINSTATED.

So ordered this 18th day of June 2015.



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