THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

NEW MEXICO PUBLIC EDUCATION DEPARTMENT,

Respondent.

Docket No. 13-41-O
IDEA Determination

DECISION OF THE SECRETARY

This matter comes before me on appeal by the New Mexico Public Education Department (NMPED) of the Initial Decision by Administrative Judge (AJ) Richard F. O'Hair. On May 8, 2014, Judge O'Hair issued an Initial Decision resolving a conflict between NMPED and the Office of Special Education and Rehabilitative Services (OSERS) regarding their interpretations of section 613 of the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1413(j) (2012). This section of the statute creates an avenue for states to reduce expenditures on special education in certain circumstances.[1] The parties subsequently filed comments on the Initial Decision and, by letter dated June 25, 2014, I notified the parties that I would conduct a review.

I will affirm the AJ's decision unless I find that it is clearly erroneous.[2] Based on the following analysis, I affirm the AJ's ruling.

I. Factual and Procedural History

NMPED is a state educational agency (SEA).[3] Among its responsibilities is to fund special education and related programs run both by the state and by local educational agencies (LEAs) in the State of New Mexico. NMPED handles funds allocated by the State of New Mexico and, under the Individuals with Disabilities Education Act (IDEA), by the Department of Education (Department).[4] The Department provides funds via yearly grants (hereinafter, "IDEA grants" or "IDEA funds"). Congress reauthorized and amended the IDEA on several occasions. Relevant to this case are the amendments made in 1997 and 2004.

[1] 20 U.S.C. § 1413(j) (2012).
[2] 34 C.F.R. § 300.182(h).
[3] 20 U.S.C. § 1401(32) (2012).
[4] *Id.* §§ 1411–12 (2012).

In 1997, Congress added a "maintenance of State financial support" (MFS) requirement. To comply with this requirement, a state must maintain its level of financial support for special education and related services at no less than the level of support from the previous fiscal year.[5]

In 2004, Congress added a "State spending flexibility" (state flexibility) provision. In a year when a state's IDEA grant is higher than the previous year, and the SEA has reimbursed LEAs for 100% of the non-federal cost of special education, the state flexibility provision allows the SEA to reduce expenditures on special education from state sources by an amount equal to 50% of the excess funds in the federal grant. The SEA must then spend an equal amount of state funds on programs compliant with the Elementary and Secondary Education Act.

In state fiscal year (SFY) 2009, the Department granted $86,618,033 in IDEA funds to NMPED.[6] According to NMPED, it actually expended $313,871,032 during SFY 2009.[7] In SFY 2010, the Department significantly increased NMPED's funding to $181,763,853, which combined $90,589,360 of IDEA grant money with $91,147,493 of one-time funds authorized by the American Recovery and Reinvestment Act of 2009 (ARRA).[8] According to NMPED, it actually expended $278,630,002 during SFY 2010.[9]

On August 10, 2012, NMPED requested that the Department waive, for SFY 2010, the MFS requirement.[10] NMPED also sought a waiver for SFY 2011. On February 18, 2013, NMPED informed OSERS that it intended to use the state flexibility provision under 20 U.S.C. § 1413(j) to reduce its MFS amount for SFY 2010 and 2011, "so NMPED would have made [MFS] for SFY 2011."[11] OSERS granted the waiver request for SFY 2010, but denied the waiver request for SFY 2011 and informed NMPED that it could not reduce its MFS base using the provision at 20 U.S.C. § 1413(j).[12]

NMPED appealed to the Department's Office of Hearings and Appeals. At NMPED's request, OHA bifurcated the issues on appeal to first address OSERS's and NMPED's conflicting interpretations of the state flexibility provision in 20 U.S.C. § 1413(j), "because it was a distinct legal issue" and its resolution could render the remaining issues under appeal moot.[13]

Judge O'Hair conducted a hearing and issued the Initial Decision in favor of OSERS. In his decision, Judge O'Hair held that NMPED could not reduce its MFS base in SFY 2011, the

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[5] 20 U.S.C. § 1412(a)(18) (2012).
[6] Comments and Recommendations of NMPED on State Flexibility Under 20 U.S.C. § 1413(j) and Its Applicability to State Fiscal Year 2011 (NMPED Brief on Flexibility), p. 4.
[7] *Id.*
[8] *Id.*, p. 3. In its briefs and other communications with the Department, NMPED has consistently cited these figures as the component parts and total for the SFY 2010 IDEA grant. The parties also agreed to these figures in their joint stipulations before the AJ, and the AJ cited $181,763,853 as the total amount of the SFY 2010 grant. However, it appears that the component parts of the grant actually total $181,7*36*,853.
[9] *Id.*, p. 5.
[10] NMPED Brief on Flexibility, p. 2; 20 U.S.C. § 1412(a)(18) (2012).
[11] NMPED Brief on Flexibility, p. 2.
[12] *Id.*
[13] NMPED Responsive Comments and Recommendations at 1, 3.

year after it used the state flexibility provision in SFY 2010.[14] Judge O'Hair found that the MFS base is calculated as the amount of financial support that a state appropriated for special education in the previous fiscal year, and that the MFS requirement exists to prevent states from reducing their special education appropriations.[15] Judge O'Hair further found that the 2004 amendment did not modify this "clear, firm mandate" and the state flexibility provision does not provide an avenue for states to reduce their MFS bases in all subsequent years.[16] Rather, "[f]lexibility permits a reduction in actual expenditures, but not in budgeted amounts."[17]

NMPED subsequently filed the instant appeal of the initial decision.

II. Arguments of the Parties

NMPED first argues that, because the statute does not explicitly state whether or how state flexibility affects a state's MFS base, the statute is ambiguous.[18] NMPED asserts that this ambiguity justifies an analysis of the 2004 amendment's legislative history.[19] Specifically, NMPED points to a conference report it contends is plain evidence that Congress intended for the use of the state flexibility provision to result in a permanent reduction of a state's MFS base in subsequent years.[20] NMPED also argues that, because Departmental regulations allow LEAs to permanently reduce their maintenance of effort bases in certain circumstances, the IDEA statute should be read to create the same result for SEAs' MFS bases.[21]

Second, NMPED argues that Judge O'Hair erroneously concluded that the exercise of state flexibility results in a state's failure to meet the MFS requirement.[22] NMPED asserts that, because a state meets its MFS requirement in a year it uses the state flexibility provision, the MFS base should be lowered in subsequent years.[23]

Third, NMPED argues that the concept of prohibiting a state from permanently reducing its allocations to special education is "punitive" and "contrary to the overall purpose of IDEA."[24] NMPED asserts that Congress intends, through IDEA, to allow states to progressively reduce their spending on special education "to free up state funding for *general education.*"[25] Because of this overall goal of IDEA, NMPED contends that the Initial Decision produces an absurd result.[26]

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[14] Initial Decision, p. 1.
[15] *Id.*, p. 3.
[16] *Id.*, pp. 6–7.
[17] *Id.*, p. 8.
[18] NMPED Brief on Flexibility, p. 5.
[19] *Id.*
[20] *Id.*, p. 6.
[21] *Id.*, p. 7.
[22] *Id.*, pp. 7–8.
[23] *Id.*, pp. 8–11.
[24] *Id.*, p. 11.
[25] *Id.*, pp. 11–12.
[26] *Id.*, p. 13.

Finally, NMPED asserts that Judge O'Hair erred by finding the state flexibility provision to be an exception to the "supplement not supplant" (SNS) limitation in the IDEA.[27] NMPED's theory is that the regulation at 34 C.F.R. § 300.202 greatly limits the statutory language regarding SNS, thereby making it irrelevant to the issues decided in the Initial Decision.[28]

OSERS argues that there is a fundamental difference between allocations and expenditures and that the MFS base is calculated as the amount of money allocated by a state in the previous fiscal year.[29] OSERS asserts that a state may only comply with the MFS requirement by allocating at least as much money as was allocated in a previous year when MFS was met.[30] Therefore, even if a state reduces its expenditures in one year using the state flexibility provision, it must still allocate at least as much money as in the previous year.[31] In this fashion, the state can reduce its level of expenditure in a given year, but it can never permanently reduce its level of allocation.

OSERS contends that its theory alone complies with the original intent of the MFS provision, which is to prevent states from shortchanging special education in their budgets.[32] OSERS asserts that NMPED's theory would create an illogical and absurd result wherein a state could permanently reduce its level of allocation for special education in every year that it received excess federal funding.[33]

III. Analysis

The key finding of the Initial Decision is that the statute is clear and unambiguous. I will begin my analysis by determining whether the text of the statute is clear and unambiguous, as the text is the most reliable indicator of Congress's intent. That analysis will inform the degree to which the legislative history is needed to clarify Congress's intent. Next, I will determine whether the 2004 amendment creates an exception to the MFS requirement. Finally, I will briefly address NMPED's alternative arguments.

A. The Statute is Clear and Unambiguous

To interpret a statute, courts look first to the language, giving the words their ordinary meaning.[34] Courts do not insert additional language to reach a desired conclusion.[35] Courts assume that the ordinary meaning of the statutory language expresses Congress's intent.[36] I have previously held that "[t]he Department is categorically bound to follow what Congress lays down in plain language."[37] Courts need not scrutinize legislative history to determine congressional

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[27] *Id.*
[28] *Id.*
[29] Brief for U.S. Dep't of Educ. (ED Brief on Flexibility), pp. 10–11.
[30] *Id.*, p. 11.
[31] *See id.*, p. 12.
[32] *Id.*, p. 8.
[33] Transcript of Proceedings, p. 52 (Apr. 8, 2014).
[34] *Sebelius v. Cloer*, 133 S. Ct. 1886, 1893 (2013) (citing *B.P. Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006)).
[35] *Lawson v. FMR LLC*, 134 S. Ct. 1158, 1165 (2014).
[36] *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167, 175–76 (2009).
[37] *In the Matter of College America-Denver*, Dkt. No. 06-24-SP, U.S. Dep't of Educ. (Decision of the Secretary) at 4.

intent when the intent is clear from a statute's plain language.[38] Therefore, I turn first to the language of the statute to determine whether it is clear and unambiguous.

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.[39] Before Judge O'Hair, NMPED argued it could meet the MFS requirement in two ways. The first way, using "traditional means," is to make the same amount of funds available as it made available in the previous fiscal year. The second way, the "alternative way of measuring it," is to expend the same amount of funds as it expended in the previous fiscal year.

I disagree with NMPED. The IDEA separately refers to authorizing funds (variably referred to as *allocating, appropriating, allotting*, or *making available*) and then spending those funds (variably referred to as *spending, expending* or *reimbursing*). 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.[40] That guidance also delineated the differences between the requirements for SEAs and LEAs.[41]

If a state fails to maintain its allocations, the Department reduces *its* allocation equally.[42] The bases for granting waivers to this provision include "a natural disaster or a precipitous and unforeseen decline in the financial resources of the State."[43] These circumstances would justify a reduction of *allocations* by the state government, not a reduction in *expenditures* by an SEA of already-allocated funds. I find that none of the provisions in § 1412(a)(18) have a nexus with expenditures.

NMPED urges me to read a contrary intent into the statute based on a paragraph from a conference report. In a section of the report discussing adjustments to LEA fiscal effort, a paragraph asserts the Conferees' intent that for both LEAs and SEAs, "the reduced level of effort shall be considered the new base for purposes of determining the required level of fiscal effort for the succeeding year."[44] According to NMPED, the statute is ambiguous as to what happens to a state's MFS base in the year after exercising state flexibility, but the conference report is clear in resolving that ambiguity.[45]

Again, I disagree with NMPED. The 2004 amendment did not modify the MFS provision and did not create any exception to it. The addition of the state flexibility provision

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[38] *Mohamed v. Palestinian Authority*, 132 S. Ct. 1702, 1709 (2012); *U.S. v. Gonzalez*, 520 U.S. 1, 6 (1997).
[39] 20 U.S.C. § 1412(a)(18)(A) (2012).
[40] "For SEAs, the comparison is the amount of State financial support provided (made available) for special education and related services from year to year, regardless of the amount actually expended." Memorandum from Alexa Posny, Acting Dir. of the Office of Special Educ. Programs, U.S. Dep't of Educ., to Chief State Sch. Officers and State Dirs. of Special Educ., OSEP 10-5 (Dec. 2, 2009), p. 2.
[41] *Id.*, pp. 2–3.
[42] 20 U.S.C. § 1412(a)(18)(B) (2012).
[43] *Id.* § 1412(a)(18)(C) (2012).
[44] H.R. REP. NO. 108-779, at 197.
[45] NMPED Brief on Flexibility, p. 6.

did not create ambiguity in the scheme as I discussed above. As such, I find no basis to resort to language from a conference report to manufacture ambiguity. The statute sets forth the MFS in straightforward, clear terms. Where a statutory command is clear, there is no justification to resort to legislative history, which may "mudd[y] the waters" with requirements that are "'in no way anchored in the text of the statute.'"[46]

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.

B. The 2004 Amendment Does Not Create an Exception to the MFS Requirement

Next, I turn to the issue of whether the state flexibility provision provides an avenue for states to permanently reduce their MFS bases. When enacting the 2004 amendment, Congress did not modify 30 U.S.C. § 1412(a)(18) where the MFS requirement is codified. Notably, the 2004 amendment *did* expressly modify the SNS paragraph at 20 U.S.C. § 1412(a)(17)(C). In the absence of a similar modification in § 1412(a)(18), I cannot read into the statute any exception to the MFS requirement, much less one that would allow states to permanently reduce their allocations.

In fact, the entire subsection containing the state flexibility provision is modified by the words "for any fiscal year." Therefore, in addition to limiting the calculation of excess to a specific fiscal year, the SEA is also limited to reducing its expenditures for that fiscal year. This statutory scheme makes sense in this case, where the federal grant included an enormous, one-time increase. In SFY 2010, the regular IDEA grant increased by approximately $4 million, which would justify at most a $2 million reduction of expenditures. However, NMPED received a total federal funding increase of over $95 million due to the disbursement of one-time ARRA funds.[47] NMPED's interpretation of the statute would theoretically justify a permanent reduction of state spending by up to $47.5 million.

Allowing a permanent reduction of allocations to result from a one-time influx of additional funds would be illogical. NMPED's interpretation would produce a vicious cycle for special education funding wherein Congress and the Department have no incentive to provide states with one-time infusions of federal funds. Under NMPED's interpretation, if the Department were to provide a one-time funding increase of $100 million to a state, the state might permanently reduce its special education funding by 50% of the increase, or $50 million. By funding at this reduced level, over the subsequent four years, the state's total reduction of funding ($200 million) would be twice the value of the one-time federal grant ($100 million), a significant reduction in aggregate special education funding. This result runs counter to the purpose of IDEA, which is for the federal government to support state funding of special education. NMPED's interpretation of the statute produces an absurd result, because, in this example, the Department would have ensured more special education funding in the long term by *not* providing the one-time increase. The Supreme Court has held that "interpretations of a

[46] *U.S. v. Gonzalez*, 520 U.S. at 6 (quoting *Shannon v. United States*, 512 U.S. 573, 583 (1994)).

[47] ARRA was a stimulus bill intended to jump-start the economy with broad, one-time increases in federal spending. http://www.ed.gov/recovery. The Department awarded $97.4 billion in funds allocated under ARRA.

statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available."[48]

Furthermore, NMPED's interpretation of the provision ignores the statute's spending requirement. The provision only created flexibility in *how* money is spent, not *whether* money is spent. Normally, the SEA must supplement, not supplant, state spending with federal funds. However, the state flexibility provision is an exception that allows the SEA to supplant. The SEA supplants by first reducing its state spending on special education by 50% of the increase from the federal grant, then spending the same amount of state money on other specified education programs. There is no net reduction in expenditures, only a redirection of state money from special education to other education programs. If a state could reduce its allocations, it would not be able to comply with the state flexibility provision's express spending requirement. NMPED's interpretation again produces an absurd result.

I conclude that the state flexibility provision allows for a one-time alternative expenditure of state money as an exception to the SNS rule, and not permanently reduced allocations of state money as an exception to the MFS rule.

C. NMPED's Other Arguments

I will briefly address several other arguments raised by NMPED. NMPED argues: 1) Judge O'Hair erred by finding that exercising the state flexibility provision results in a state's failing to meet the MFS requirement; 2) a basic purpose of IDEA is to gradually relieve states from funding special education; and 3) the state flexibility provision cannot be an exception to the SNS requirement.

First, I disagree with NMPED's characterization of the Initial Decision as finding that the state flexibility provision results in a state's failing to meet the MFS requirement. Judge O'Hair made no such finding. Rather, he concluded that the MFS base is the amount allocated by a state, and the state flexibility provision separately allows a state to reduce its expenditures in a given year. A state may comply with the MFS requirement (by making a sufficient allocation to special education programs) in the same year it uses the state flexibility provision (redirecting state funds from special education to non-special education programs). Whether a state "fails to maintain financial support," and therefore whether the provision at 20 U.S.C. § 1412(a)(18)(D) applies, depends on whether the state made an allocation sufficient to meet the MFS requirement.[49] NMPED's arguments regarding this issue are unconvincing.

NMPED also argues that a basic purpose of the IDEA is to provide federal funding for special education to relieve states from funding these programs and to redirect that money to general education. I disagree. The goal of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education," to protect the rights of children with disabilities and their parents, and to assist local, state and federal government agencies to provide these educational programs.[50] State funded programs remain a key part of

[48] *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (citations omitted).
[49] *See* ED Brief on Flexibility, pp. 6–7.
[50] 20 U.S.C. § 1400 (2012).

the educational framework, because "States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities."[51] The federal government's role is to support states' efforts.[52] The goal of the IDEA is not to replace those programs solely with federally funded ones. The MFS requirement, added in the 1997 amendment, even more clearly reinforces this framework by providing for penalties when a state fails to maintain its level of financial support for the specified programs. Thus, states are strongly incentivized to continue their funding of special education. The MFS requirement is antithetical to NMPED's theory that IDEA funds are meant to gradually replace state funds altogether. NMPED's arguments to the contrary are unconvincing.

Finally, as I held above, I agree with Judge O'Hair's interpretation of the state flexibility provision as an exception to the general SNS prohibition. The SNS provision specifically identifies state flexibility at § 1413 as an exception to SNS.[53] I am neither persuaded by NMPED's theory to the contrary, nor do I find this line of argument relevant in light of my resolution of the key issues above.

ORDER

ACCORDINGLY, the Initial Decision by Administrative Judge Richard F. O'Hair is HEREBY AFFIRMED as the Final Decision of the Department.

So ordered this 8th day of October 2015.

Arne Duncan

Washington, D.C.

[51] *Id.* § 1400(c)(6) (2012).
[52] *See id.*
[53] *Id.* § 1412(a)(17)(C) (2012).

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