APPLICATION OF THE ARIZONA DEPARTMENT OF EDUCATION,
Applicant.

Docket No. 93-154-I
Impact Aid Proceeding

INITIAL DECISION

Appearances: Mark W. Smith, Esq. for the Office of the General Counsel, United States Department of Education
Elliot Talenfeld, Esq., Assistant Attorney General for the Respondent
Stephen K. Smith, Esq. for the Chinle Unified School District
John R. McDonald, Esq. for the Indian Oasis-Baboquivari Unified School District
C. Benson Hufford, Esq. for the Arizona Impact Aid Coalition

Before: Chief Administrative Law Judge Allan C. Lewis

This is a proceeding initiated by the Arizona Department of Education (Arizona) pursuant to 20 U.S.C. § 240(d)(2) and 34 C.F.R. § 222.69 (1993) to contest a determination by the Assistant Secretary for the Office of Elementary and Secondary Education of the United States Department of Education that Arizona Statute Section 15-991.02(A) (hereinafter the "reversion provision") violated 20 U.S.C. § 240(d)(1)(A), a provision that prohibits a State from taking into consideration Federal impact aid payments in determining the amount of State assistance to its local educational agencies (LEAs). The determination will require Arizona's LEAs to repay approximately $63 million of Federal impact aid received during the fiscal year 1993.

The proceeding was subsequently expanded to include a supplemental determination by the Assistant Secretary made on January 14, 1998. There, the Assistant Secretary concluded that the reversion provision did not violate 20 U.S.C. § 240(d)(1)(B), a provision that prohibits a State from making its aid available to LEAs in such a manner as to result in less State aid to any LEA which is eligible for Federal impact aid assistance than the LEA would receive if it were not so eligible.

Due to the nature of the proceeding and its impact upon local school districts, several LEAs were permitted to participate in the proceeding as intervenors.[1]

Based upon the submissions of the parties, the record, and for the reasons stated, infra, it is concluded that Arizona's reversion provision is compatible with the principles set forth in 20 U.S.C. §§ 240(d)(1)(A) and (B). Therefore, the initial determination by the Assistant Secretary is reversed and the supplemental determination by the Assistant Secretary is upheld.

I. OPINION

A. Background

LEAs are generally financed by revenues raised from local sources, contributions by the State and, in some instances, disbursements by the Federal government. Under the Federal impact aid program, a school system or district may be eligible for Federal

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[1] In the initial phase which addressed the prohibition in 20 U.S.C. § 240(d)(1(A), the intervenors were the Arizona State Impact Aid Coalition, which represented 16 Arizona public school districts, and the Chinle Unified School District No. 24. After the initial phase was resolved in an Order of Remand, the coalition withdrew. Subsequently, the Indian Oasis-Baboquivari Unified School District joined the proceeding for the second phase that addressed the prohibition under 20 U.S.C. § 240(d)(1)(B) and other arguments raised in the original determination, but not addressed therein.

assistance due to the presence of the Federal government in the school district. Such presence may be manifested through its ownership of real property or the attendance of sons and daughters of Federal employees in the local school system. 20 U.S.C. § 236(a).

In Arizona, the expenditures of a school district are limited and determined by law. Each LEA has a yearly budget of two parts: the maintenance and operation section and the capital outlay section. Ariz. Stat. § 15-905.F. The magnitude of the maintenance and operation portion is limited by the district's basic support level, a figure reflecting the product of a fixed dollar base level, a weighted student count, and a teacher experience index. Ariz. Stat. §§ 15-944.A-C. and 15-947.B. Capital expenditures, or amounts set aside therefor, are limited by the capital outlay revenue limit. Ariz. Stat. § 15-947.C.

Once the budget is determined, this amount is funded by the district and Arizona. The district's share is an amount equal to that raised by a specified, local tax on real property. Then, the State contributes whatever amount is necessary to fully fund the remainder of the budget. Ariz. Stat. § 15-971. Hence, the cost of basic education is borne by the LEA and the State. With minor exceptions, Federal impact aid plays no role in determining the cost of basic education in Arizona or the funding of the program.

For LEAs that desire to spend beyond their limitations, the Arizona finance laws permit a budget "override" of no more than 15% of the LEA's basic support level. An override may be funded by the imposition of additional local real estate taxes by the district, by Federal impact aid, or a combination of both. Ariz. Stat. § 15-481.

As of the fiscal year 1993, Arizona implemented two modifications to the school finance laws aimed at reducing the magnitude of Arizona's financial support for the school system. Arizona Statute Section 15-481.P. was revised and prohibited the past practice of using current Federal impact aid to fund an override. As amended, it requires these funds to be accumulated for one year before they could be used to fund an override. As a result, significant funds of some LEAs were now subject to the newly enacted reversion provision, the second modification. Under Ariz. Stat. § 15-991.02(A), the reversion provision appropriated a percentage of a LEA's ending cash balance in the maintenance and operation and capital outlay accounts and transferred these funds into the LEA's equalization assistance account for the next fiscal year. [2] By adding these monies to the equalization assistance account in the next fiscal year, Arizona effectively reduced the amount of its required contribution in the succeeding year because the State's share was determined by whatever amount was necessary to fully fund the budget after the district's contribution. These two modifications resulted in a savings for Arizona of approximately $25 million for the fiscal year 1993. Of the $25 million, slightly less than 50 percent or $11 million was contributed by LEAs that received Federal impact aid assistance even though these LEAs held only 5% of the budget authority in the State.

B. The Merits

There is a general prohibition denying Federal impact aid payments to LEAs if the State reduces its aid to a LEA due to its eligibility for Federal impact aid or took a LEA's Federal impact aid payment into consideration in determining the amount of the State's contribution to the LEA. 20 U.S.C. § 240(d)(1). An exception to the general

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[2] The reversion provision seized 27% of the balance in the account after the purported removal of the Federal impact aid therein. The percentage was reduced to 18% for fiscal year 1994 and to zero percent for the fiscal years thereafter. Ariz. Stat. § 15-991.02(A) E.

prohibition permits a State to consider Federal impact aid "if a State has in effect a program of State aid for free public education . . . which is designed to equalize expenditures for free public education among the local educational agencies of that State." 20 U.S.C. § 240(d)(2)(A).

Arizona, the Assistant Secretary (ED), and the intervenor LEAs (Chinle) agree that Arizona did not have an equalization program for fiscal year 1993 that qualified under the exception of Section 240(d)(2)(A).[3] Therefore, Arizona is subject to the general rule of Section 240(d)(1) which provides that--

> no payments may be made under this subchapter for any fiscal year to any local educational agency in any State (A) if that State has taken into consideration payments under this subchapter in determining . . .
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> (ii) the amount of such aid with respect to any such agency during that fiscal year or the preceding fiscal year, or
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> (B) if such State makes such aid available to local educational agencies in such a manner as to result in less State aid to any local educational agency which is eligible for payments under this subchapter than such agency would receive if such agency were not so eligible.

Chinle argues that the reversion provision violates subsections (A) and (B) of Section 240(d)(1), *i.e.* the taking into consideration prohibition of subsection (A) and the less State aid prohibition of subsection (B). ED maintains that the reversion provision violates the taking into consideration prohibition, but not the less State aid prohibition. Arizona argues, of course, that the reversion provision does not violate either subsection.[4]

1. Subsection (A) -- the taking into consideration provision

The parties agree that subsection (A) represents a codification of Shepheard v. Godwin, 280 F. Supp. 869 (E.D.Va. 1968).[5] There, a Virginia statute was struck down that reduced the State's supplemental assistance to its LEAs by 50% of the Federal impact aid received by them.[6] S. Rep. 1386, 90th Cong., 2d. Sess. at 129. Such a nexus between the Federal impact aid and a reduction in State aid is incorporated in subsection (A) as it provides that no payments may be made to a LEA in any State "which has taken into consideration [Federal impact] payments . . . in determining . . . the amount of that [State] aid."

Since the reversion provision seizes funds from the cash balance at the end of the fiscal year which may contain Federal impact aid, Arizona sought to avoid any nexus problem by excluding any Federal funds therein. In this regard, ED has a policy that—

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[3] In general, the arguments made by the intervenors will be attributed to Chinle to simplify matters.

[4] While this proceeding addresses Arizona's fiscal year 1993, the parties have agreed that its resolution will bind the parties for the fiscal year 1994. Stip. Para. 30.

[5] This issue was resolved in an Order of Remand, dated November 22, 1994, and its essence is included within this portion of the initial decision. A remand order was issued instead of an initial decision because the Assistant Secretary failed to consider a second issue in his original determination, namely, whether the Arizona statute violated subsection (B) of Section 240(d)(1).

[6] The three judge district court panel found that Federal impact aid is not aid to a State and that it is a supplement, not a substitute, for local resources. The court determined that the Virginia statute "[set] these precepts at naught" and, therefore, frustrated Federal law in violation of the Supremacy Clause. 280 F.Supp. at 874.

> [if] it is not possible to determine how much of an ending balance actually is Impact Aid, [it is the Department's policy] to consider ending cash balances to be Impact Aid in the same proportion that Impact Aid revenues are to total revenues.
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> Stip. Para. 23.

In an attempt to eliminate Federal impact aid from the ending cash balance before the reversion seizes any funds, Arizona adopted a proportional approach. Because a LEA maintains two general accounts, a maintenance and operation account and a capital outlay account, the provision combines both accounts as the first step in calculating the proportion. The numerator of the proportion is the Federal impact aid received by the school district in the prior fiscal year whether it was allocated to the capital outlay fund or the maintenance and operation fund. The denominator is the total revenue received by the school district for its capital outlay fund and for its maintenance and operation fund in the prior fiscal year.

The proportion is multiplied by the combined ending cash balances of the two accounts and yields an amount purportedly reflecting the Federal impact aid in the accounts. This amount is then excluded from the combined balances in the cash accounts before the appropriate reversion percentage is applied to determine the amount of the seized or reverted funds. Ariz. Stat. § 15-991.02.

In the initial determination of June 30, 1993, the Assistant Secretary found that the reversion provision suffered from "a serious design flaw" which "prevents it from insulating all Impact Aid revenue from consideration." Determination at 8. The flaw was that the reversion provision improperly combined the two funds in order to remove the Federal impact aid rather than treating each fund separately and, therefore, the funds reverted from one of the accounts may, in fact, contain Federal impact aid. As explained by the Assistant Secretary, the proportional approach--

> is effective in apportioning the Impact Aid revenues in a cash balance <u>only</u> where all Impact Aid revenues and all other revenues end up in a unified account. However, in Arizona[,] LEAs have complete latitude to deposit Impact Aid receipts and other revenues in either the maintenance and operations fund or the capital outlay fund as they see fit. If LEAs chose to deposit the bulk of Impact Aid funds in one account [footnote omitted] or the other such that the proportion of Impact Aid revenues in the account exceeds the proportion of Impact Aid revenues to total revenues, a violation of section 5(d)(1) [20 U.S.C. § 240(d)(1)] can occur when the Impact Aid revenues in that account in excess of the reversion provision's proportion are subjected to the reversion.
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> Determination at 8.

The Assistant Secretary determined that, in two specific instances in the State's fiscal year 1993, Arizona's reversion provision seized some of the LEA's Federal impact aid and used it to supplant State aid in the succeeding fiscal year in violation of 20 U.S.C. § 240(d)(1)(A). With respect to Indian Oasis United School District, Federal impact aid constituted 84% of the revenues deposited into its capital outlay account, yet Federal impact aid represented only 38% of its overall revenues. As a result of this significant deposit in the capital outlay account, a portion of the funds seized and removed by the reversion provision represented Federal impact aid. The situation was similar with

respect to San Carlos Unified School District where the Federal impact aid revenues represented 68% of its capital outlay account while the overall ratio of Federal impact aid revenues to total revenues in both accounts was 34%.

Arizona responds that it is reasonable under the circumstances to employ one ratio to eliminate the Federal impact aid contained in the two accounts. It notes that almost all of the LEA intervenors were permitted to transfer funds between the two accounts after the initial allocation of Federal impact aid funds. In addition, some LEAs have a negative balance in one fund and a positive balance in the other fund at the end of the year. Arizona law permits the "pooling" of the two accounts in order to satisfy an accrual in the deficit account. Thus, Arizona argues that there is no simple method to calculate separate reversions for each account and, therefore, it is appropriate to employ a single ratio.

It is apparent, based upon the affidavits submitted by Arizona (Ariz. Exs. 17-23), that a LEA has the discretion to allocate Federal impact aid payments between its maintenance and operations account and its capital outlay account at the time of their receipt and may also transfer these monies between the accounts during the fiscal year. It is equally apparent that, in fact, transfers are made during the year in the normal course of business. In some cases, funds from one account may be "pooled" in order to cover expenses incurred in the other account when the latter account had a negative balance.

Where, as here, a system of accounting permits the transfer of Federal impact aid funds between accounts and, therefore, permits the commingling of these accounts, each account loses its separate identity for purposes relevant here. Therefore, the two accounts may be treated as one. Arizona's reversion provision provides for such treatment and, consequently, it is apparent that no Federal impact aid funds were considered or reverted by the LEAs to the county treasurer during State's fiscal year 1993.[7] As such, Section 240(d)(1)(A) was not violated.[8]

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[7] This holding disposes of Chinle's argument that, due to the presence of many subfunds within the maintenance and operation fund and the capital outlay fund, a separate proportion for each subfund was necessary in order to screen out the Federal funds therein before any funds could be reverted.

As noted earlier, this issue was resolved in an Order of Remand issued on November 22, 1994. The intervenor, Indian Oasis-Baboquivari, seeks to relitigate this decision in its brief filed on December 7, 1998. The brief was supposed to address the Section 240(d)(1)(B) issue, the primary subject matter of the Assistant Secretary's supplemental determination. Indian Oasis-Baboquivari's action is tantamount to a motion for reconsideration. In ruling on such a request, it is a matter solely within the discretion of the tribunal. This request comes some four years after the issuance of the Order of Remand and after the litigation has moved on to other issues. It is a request by a party that was not even participating in the proceeding at the time of the issuance of the Order of Remand. In these circumstances, the motion for reconsideration is denied.

[8] Arizona advances two arguments in an effort to avoid even the application of Section 240(d)(1) in this case. First, it maintains that Federal impact aid loses its identity as Federal impact aid at the LEA level when it remains unexpended at the end of the State's fiscal year because it no longer satisfies the purpose for which it was given, namely, to remedy the shortfall in local revenues needed for current expenditures caused by Federal actions. Second, it urges that the commingling of Federal impact aid with State and local funds combined with the absence of any Federal supervision or control over the accounts causes the Federal funds to lose their character as Federal funds. These arguments lack merit. The Federal government maintains oversight over the Federal impact aid funds through its eligibility requirements, audits, and repayment provisions. 34 C.F.R. Part 222, Subparts B, C, and E. As such, the funds retain their character as Federal funds even though commingled or unexpended. United States v. Long, 996 F.2d

Chinle argues that Arizona adopted the first-in, first-out principle (FIFO) to identify and track the receipt of revenues by a LEA and, therefore, it is improper to utilize the proportional method to determine the extent of Federal impact aid funds within the ending cash balance. As support, Chinle cites a comment by Arizona's Director of School Finance to the effect that the State employs FIFO in determining when the ending cash balance is expended in the next fiscal year. Chinle, also maintains, that Section III-B-2 of Arizona's Unified System of Financial Records incorporates the FIFO principle in determining the date to accrue an item of revenue.

Chinle's argument is not persuasive. It misreads Section III-B-2. This provision has nothing to do with the timing of the receipt of revenue and its subsequent expenditure; rather, it adopts a rule governing the appropriate accounting period in which to recognize items of revenues and expenditures by a LEA—

> [d]istricts must record revenues and expenditures on a timely basis, and report them . . . using the modified accrual basis of accounting. Under this basis of accounting, revenues are recognized in the accounting period in which they become both measurable and available to finance expenditures of the fiscal period. Expenditures are recognized as liabilities when incurred (i.e., the date goods or services are received) during the fiscal period.

In the accounting area, the FIFO principle is used to determine cost of inventory and is not used to track the receipt of an item of revenue and its subsequent expenditure. Chinle's business manager articulated the well recognized differences at the prehearing—

> FIFO was an inventory method. It has nothing to do with cash. It was a method that you use to determine if you're in business, there's three or four different methods you can use to count your inventory to determine how much taxes you're going to pay.
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> Ex. PDH at 91-92.[9]

Hence, Chinle's FIFO argument has no merit.

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731 (5th Cir. 1993). In addition, Arizona's position is inconsistent with the general policy underlying Federal impact aid that a State may not use the LEA's Federal assistance to reduce its assistance to the LEA. Shepheard v. Godwin, 280 F.Supp. 869, 874 (E.D.Va. 1968) ("the act was not intended to lessen the [financial] efforts of the State"); Carlsbad Union Sch. Dist. of San Diego County v. Rafferty, 300 F. Supp. 434, 440 (S.D.Cal. 1969) (the State's assertion "that the [impact aid] funds represent a windfall [to LEAs] is based on the faulty premise that [LEAs] were never entitled to such.").

[9] As an illustration, Arizona's accounting rules permit the usage of either the FIFO or LIFO (last-in, first-out) method in accounting for supplies inventory. It favors the former method as "it provides a better measure of the cost of supplies used during the period." Section III-I-7, Unified System of Financial Records.

2. Subsection (B) -- the less state aid prohibition

The second test under Section 240(d)(1) provides that no payments may be made to any LEA—

> (B) if such State makes such aid available to local educational agencies in such a manner as to result in less State aid to any local educational agency which is eligible for payments under this subchapter than such agency would receive if such agency were not so eligible.

The parties dispute the nature of the prohibition under subsection (B). The Assistant Secretary focuses on the term "eligible for payments" and argues that the protection afforded by this subsection is limited to a reduction in State aid caused by the LEA's eligibility for Federal impact aid assistance--

> [t]he statute prohibits differential treatment in State aid on the basis of Impact Aid eligibility. Differential treatment must result, directly or indirectly, from Impact Aid eligibility for there to be a violation of this provision. If something other than Impact Aid eligibility is the cause of the differential treatment, there is no violation.

Supplemental Determination at 8.[10]

Chinle interprets subsection (B) in a much broader fashion, *i.e.* it applies to any LEA that receives Federal impact aid assistance and prohibits any reduction in State aid as a result of the receipt of such Federal assistance. As applied in the instant case, Chinlie argues that, "but for" the reversion provision, Chinle would have received more State aid in fiscal year 1993 than it, in fact, received and, therefore, Arizona's reversion provision violates subsection (B).

As noted above, Section 240(d)(1) prohibits the payment of Federal impact aid in two circumstances that are articulated in subsections (A) and (B). In the construction of subsections, the Court noted that statutes are to be considered, each in its entirety and not as if each of its provisions was independent and unaffected by the others. Alexander v. Cosden Pipe Line Co., 290 U.S. 484, 496 (1934). It is also improper to construe one subparagraph so that it is "obliterated by another subparagraph of the same regulation." Keinath v. Commissioner, 480 F.2d 57, 65 (8th Cir. 1973).

The plain language of subsection (B) prohibits a reduction in State aid because a LEA is "eligible for payments" of Federal impact aid. "[E]ligible for payments" requires only that a LEA possess the attributes necessary to qualify for Federal assistance. 20 U.S.C. § 240(a) (any LEA "desiring to receive the payments to which it is entitled for any fiscal year under sections 237, 238, or 239 of this title shall submit an application therefor." (Emphasis added.)). Such a construction is compatible with subsection (A) since each subsection addresses a reduction in State aid based upon a different factor -- the presence of Federal impact aid payments (subsection (A)) and the eligibility for

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[10] Under this view, the protection extends to LEAs which are eligible to participate in the program. This includes LEAs that receive Federal impact aid as well as LEAs that do not receive Federal impact aid even though they qualify for such aid. At the oral argument, ED suggested, based upon 34 C.F.R. § 222.61(b)(3) (1993), an even narrower interpretation when it argued that the protection of subsection (B) was limited only to LEAs which could apply for assistance but have not done so. This interpretation permits, however, an egregious situation – a State could now lawfully reduce its aid to LEAs participating in the Federal impact aid program where the reduction provision was keyed to the LEAs' "eligibility for payments." Accordingly, this argument is rejected

Federal impact aid (subsection (B)). Thus, the Assistant Secretary's interpretation is in accord with the statute.

Under Chinle's interpretation, subsection (B) applies in the context of a reduction in State aid caused by the Federal impact aid. This broad interpretation renders subsection (A) meaningless because both subsections would be triggered by the same event – the receipt of Federal impact aid assistance. As noted above, the rules of statutory interpretation prohibit a construction in which one subsection obliterates another subsection. Hence, Chinle's argument is rejected.

The case law proffers no meaningful assistance regarding the proper interpretation accorded subsection (B). In Middletown School Committee v. Board of Regents for Education of the State of Rhode Island, 439 F.Supp. 1122 (D.R.I. 1977), the court considered a Rhode Island statute in light of Sections 240(d)(1)(A) and (B). Under the funding formula, the State reimbursed each district, without ceiling, a percentage of the school expenditures borne by the district's taxpayers. Thus, two factors – the percentage and the amount of school expenditures locally funded – affected the size of the State's contribution. The percentage was based, inversely, upon the ability of a district to raise revenues. Thus, a district with a low assessed valuation of its real estate had a high percentage factor. The size of the locally funded school expenditures depended upon the degree of self-taxation imposed by each district.

The court found that the Federal impact aid assistance was not a substitute for State aid to the school districts and that the Rhode Island formula did not consider Federal payments in determining the amount of State aid. The level of State aid was determined by each district's percentage factor and its level of self-taxation. Thus, subsection (A) was not violated. Regarding Section 240(d)(1)(B), the court determined that State aid to the school districts was unaffected even if the Federal assistance was withdrawn and, therefore, dismissed this contention. 439 F.Supp. at 1127. It is apparent that the court never considered the interpretation of subsection (B) advocated by the Assistant Secretary and, given its holding, was not required to focus upon the distinctions between the two subsections. Thus, Middletown supports neither party in the instant case.

While the Assistant Secretary could not determined the source or sources for the differential treatmentamong the LEAs, he did rule out eligibility for Federal impact aid as a source--

> In the instant case, the record does not support the conclusion that differential treatment results from Impact Aid eligibility, either directly or indirectly. Not all Impact aid eligible districts received differential treatment due to the reversion, [fn omitted] and 126 districts not eligible for Impact Aid nonetheless received differential treatment due to the reversion. PDH 2, p. 3. While there may be a correlation between Impact Aid eligibility and ending balances, the record clearly does not support a finding that the two are equivalent. No reversions were taken from nearly 25 percent of the districts that were eligible for Impact Aid. Turning to the districts that had reversions, most of them (75 percent) were not eligible for Impact Aid. A statute, such as this one [Arizona's reversion], that results in differential treatment on some basis other than Impact Aid eligibility does not violate section 5(d)(1)(B) [20 U.S.C. § 240(d)(1)(B)].
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> Supplemental Determination at 8-9.

While it is apparent that Arizona sought to raise a significant amount of revenue from the LEAs that participated in the Federal impact aid program,[11] it is also evident that eligibility for Federal impact aid assistance was not a criterion incorporated in Arizona's reversion provision. As such, the reversion provision does not violate Section 240(d)(1)(B).[12]

C. Other arguments

Chinle argues that various State law budget limitations violate several provisions of P.L. 81-874 which prohibit the states from foreclosing or burdening these LEAs' ability to fully and freely utilize their Federal impact aid—

> [t]he budgetary provisions which, as applied, violated P.L. 81-874 include Arizona's provisions prohibiting school districts from fully expending their Impact Aid, A.R.S. § 15-905; the provisions prohibiting school districts from exceeding statutory budget limits set by the State (except for the 15% override provisions) without regard for the fact that these districts are receiving Impact Aid, A.R.S. § 15-947; the provisions requiring that voter approval be obtained by these districts in order for them to use the limited override provisions even when (and specifically when) they are using Impact Aid to fund these override budgets, A.R.S. § 15-481, ¶¶ G and K; and Arizona's provision, adopted as a part of its reversion program, prohibiting impacted school districts from using current Impact Aid revenues to fund their limited override budgets, and requiring these districts to fund their override budgets out of Impact Aid funds which have been carried forward from the prior year. A.R.S. § 15-481P.
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> Chinle Main Br. at 67-68.

As legal support, Chinle cites to 20 U.S.C. § 238(g) and Triplett v. Tiermann, 302 F.Supp. 1245 (D.Neb. 1969). Section 238(g) prohibits a State law that requires, in a heavily impacted school district, voter approval to spend Federal impact aid. Since Arizona has no heavily impacted school districts as that term is defined by 34 C.F.R. § 222.120(b) (1993), this provision has not been violated by Arizona.

Triplett v. Tiermann does not advance Chinle's position. The district court held that the Nebraska statute violated the Supremacy Clause because the State aid for any public school was partially offset by the amount, if any, of Federal impact aid received by that school. As previously determined, such an offset did not occur in this case. While

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[11] When the reversion provision was added, Arizona made a second modification that ensured cash surpluses for many Federal impact aid recipient LEAs. It changed the rule governing budget overrides, one of the primary means to spend revenues in excess of the normal State/local assistance. LEAs could no longer spend current Federal impact aid for budget overrides. Instead, these funds (or their equivalent) had to be accumulated for one year before they could be expended for this purpose. Hence, cash surpluses were assured for many LEAs that received significant Federal funds. As a result, forty-four percent of the proceeds of the reversion came from Federal impact aid districts that had only 5% of the budget authority in the State.

[12] In the event Chinle's "but for" argument is adopted, it is clear that, as applied to Chinle for fiscal year 1993, it would have received more State aid if it had not participated in the Federal impact aid program. For that year, Chinle had an ending cash balance of $2 million attributable to the difference between $22 million of revenues and $20 million of expenditures. This amount was subjected to the reversion provision and subsequently resulted in a decrease in the State aid in the next fiscal year. If Chinle's $7.5 million in Federal impact aid revenues in fiscal year 1993 are eliminated, its cash surplus disappears and the amount of State aid in the next fiscal year increases.

Arizona's financing laws are restrictive, the statutory scheme does not violate any Federal laws.

CONCLUSION

For the foregoing reasons, it is concluded that reversion provision, Ariz. Stat. § 15-991.02(A), does not violate 20 U.S.C. §§ 240(d)(1)(A) and 240(d)(1)(B). Accordingly, the Assistant Secretary's determination of June 30, 1993 is reversed and the Assistant Secretary's supplemental determination of January 14, 1998 is sustained.

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Allan C. Lewis
Chief Administrative Law Judge

Issued: June 15, 2000
Washington, D.C.