



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

**STATE OF NEW JERSEY AND
NEW JERSEY DEPARTMENT OF EDUCATION**

Docket No. 17-10-O

IDEA Determination

Respondent.

ORDER NOTIFYING PARTIES OF FURTHER REVIEW

Under 34 C.F.R. Part 300 Subpart B, the Secretary provides grants to States authorized by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.* If the Secretary determines that a State is not eligible for an IDEA grant, the Secretary must provide notice and an opportunity for a hearing.¹ If the State requests a hearing, the Secretary appoints a person as the Hearing Official to conduct the hearing.² At the conclusion of the hearing proceedings, the Hearing Official issues an initial decision.³

After the parties receive the initial decision, they may file “comments and recommendations” with the Hearing Official, and each may file “responsive comments and recommendations” after reviewing the other party’s comments.⁴ Finally, the Hearing Official forwards the parties’ comments and the initial decision to the Secretary, allowing the Secretary

¹ 34 C.F.R. § 300.179(a) (“General. (1) The Secretary does not make a final determination that a State is not eligible to receive a grant under Part B of the Act until providing the State—

(i) With reasonable notice; and

(ii) With an opportunity for a hearing.

(2) In implementing paragraph (a)(1)(i) of this section, the Secretary sends a written notice to the [State educational agency, or ‘SEA’] by certified mail with return receipt requested.”).

² *Id.* § 300.180(a) (“If the SEA requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing.”).

³ *Id.* § 300.182(a) (“The Hearing Official or Hearing Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under § 300.179 including any amendments to or further clarifications of the issues, under § 300.181(c)(7).”).

⁴ *Id.* § 300.182(d) (“Each party may file comments and recommendations on the initial decision with the Hearing Official or Hearing Panel within 15 days of the date the party receives the Panel’s decision.”); *Id.* § 300.182(e) (“The Hearing Official or Hearing Panel sends a copy of a party’s initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Hearing Panel within seven days of the date the party receives the initial comments and recommendations.”).

an opportunity to review them and issue a final decision.⁵ In effect, this process allows a party to appeal the initial decision to the Secretary, and it allows each party to file legal briefs arguing either for or against the initial decision.

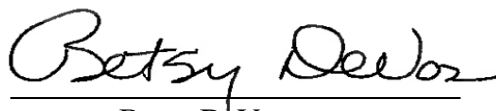
Once the period for filing comments has closed, the Secretary must either: (1) notify the parties and hearing official within 25 days if she intends to review the initial decision; or (2) refrain from acting and allow the initial decision to become final for the Department at the end of the 25th day.⁶

The State of New Jersey and New Jersey Department of Education (collectively, “New Jersey”) requested a hearing on a proposed final determination, dated January 17, 2017, from the Office of Special Education and Rehabilitative Services (OSERS) exercising the Secretary’s delegated authority to provide IDEA grants. OSERS proposed to make a final determination that New Jersey underfunded special education by \$13,272,335, rendering it ineligible for that same amount of IDEA grant money in State fiscal year 2011. I assigned this case to the Office of Hearings and Appeals for hearing procedures by order dated March 2, 2017.

On October 9, 2020, the Hearing Official, an administrative law judge, issued an initial decision in this case reversing OSERS’s proposed final determination and ruling that New Jersey qualified for a waiver of the entire amount in question, \$13,272,335. On November 2, 2020, the time period expired for the parties to file comments and recommendations. OSERS has filed comments arguing that I should reverse the Hearing Official’s initial decision on the grounds that it is clearly erroneous. New Jersey has filed comments arguing that the Hearing Official’s initial decision is correctly reasoned.

After a preliminary review of the case, I have elected to conduct further review of the initial decision for possible modification. Accordingly, I hereby notify the Hearing Official and parties of my review pursuant to 34 C.F.R. § 300.182(g).

So ordered this 27th day of November 2020.



Betsy DeVos

Washington, DC

⁵ *Id.* § 300.182(f) (“The Hearing Official or Hearing Panel forwards the parties’ initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.”).

⁶ *Id.* § 300.182(g) (“The initial decision of the Hearing Official or Hearing Panel becomes the final decision of the Secretary unless, within 25 days after the end of the time for receipt of written comments and recommendations, the Secretary informs the Hearing Official or Hearing Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.”).

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