



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
OFFICE OF ADMINISTRATIVE LAW JUDGES
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WASHINGTON, D.C. 20202
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In the Matter of

Wyoming Department of Education

Docket No. 22-38-O

IDEA Proceeding

Respondent.

Appearances:

Mackenzie Williams and Catherine Reeves, Wyoming Attorney General's Office,
for the Wyoming Department of Education

Nana Little and Eric Moll, Office of the General Counsel, U.S. Department of
Education, for Office of Special Education and Rehabilitative Services

Before: Daniel J. McGinn-Shapiro, Administrative Law Judge

DECISION

On July 5, 2022, I received a written Request for a Hearing filed on behalf of the Wyoming Department of Education (WDE or Wyoming). WDE challenges a proposed final determination issued by the Department's Office of Special Education and Rehabilitative Services (OSERS or Department). That determination denies eligibility to Wyoming in the total amount of \$9,072,121 for grants awarded under the Individuals with Disabilities Education Act (IDEA) Section 611, Part B, due to Wyoming's alleged failure to maintain State financial support (MFS or MFS obligation) for special education and related services in State fiscal years (SFYs) 2019 and 2020, as required

by 20 U.S.C. § 1412(a)(18)(A) and 34 C.F.R. § 300.163(a). OSERS’s proposed determination is not accepted in this case.

I. Facts and Procedural History

To fund education, Wyoming created a system called the School Foundation Program (SFP). Under the program, the State calculates the amount each school district requires which it calls a “Guarantee,” and provides that amount of money in a block grant from the SFP to be used for education, part of which is used to fund special education services.¹ Wyoming state law requires the local school districts to compile funds from 11 sources to be used for school funding (“SFP revenues”). These SFP revenues include a property tax assessed at the local level and another property tax assessed at the county level (the two property taxes).² If the SFP revenues are less than the “Guarantee,” the State provides additional resources from the SFP so that the district receives its “Guarantee.” If, however, a district raises more SFP revenues than its Guarantee, the funds beyond the amount Guarantee must be sent back to the SFP to be used for other districts.³ For example, if a district’s Guarantee was \$30,000,000 and it raised only \$20,000,000 in SFP revenues, it would receive \$10,000,000 from the SFP. But if the district raised \$40,000,000 in SFP revenues, it would send \$10,000,000 to the SFP be used for other school districts. Wyoming law explicitly states that the SFP revenues “shall be deemed state revenues.”⁴

In December 2009, OSERS sent a memorandum to Chief State School Officers and State Directors of Special Education (2009 Memorandum).⁵ The 2009 Memorandum stated that OSERS

¹ See Wy. St. § 21- 13- 309; See Dept. Ex. 3 - Letter from Anne-Marie Williams to Office of Special Education Programs (June 15, 2018) (hereafter June 2018 Letter) at 1; Wyoming Dep’t of Educ. Initial Brief (WDE Brief) WDE Brief at 3-4.

² See Wy. St. § 21- 13- 310; Applicant’s Supplemental Brief at 8-12.

³ See June 2018 Letter at 2-3.

⁴ Wy. St. § 21- 13- 310(a).

⁵ Dept. Exhibit 2 - Memorandum from Alexa Posny to Chief State School Officers and State Directors of Special Education (Dec. 2, 2009).

had been asked to clarify the MFS provision in the IDEA statute. Specifically, the 2009 Memorandum was in response to the question whether the MFS provision “specifically means the support for special education and related services provided by the State educational agency (SEA) or whether, in computing its maintenance of financial support for special education and related services, the SEA must include support provided by other State agencies, such as a State Department of Health or a State Vocational Rehabilitation Agency.”⁶ OSERS directed that the “reference to ‘State financial support’ in [the applicable regulation] is not limited to only the financial support provided to or through the SEA, but encompasses the financial support of all State agencies that provide or pay for special education and related services, as those terms are defined under the IDEA, to children with disabilities.”⁷ Further clarifying, OSERS directed that states must include in their MFS calculations “any financial support for special education and related services provided by any State agency.”⁸

In January 2014, the Department sent WDE a letter addressing a review of Wyoming’s compliance with its MFS obligations conducted between 2010 and 2012.⁹ Although OSERS identified areas of non-compliance, it did not determine that WDE was non-compliant with its “procedures for calculating the amount of State financial support made available for special education and related services.”¹⁰ The Department, however, noted that WDE’s staff might not have had access to all relevant information. OSERS, therefore, stated that it was “unable to conclusively determine that [WDE’s] method for calculating the amount State financial support made available for special education and related services is in compliance with the requirements

⁶ *Id.* at 1.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ WDE Ex. 3 - Letter from Melody Musgrove to Richard Crandall (Jan. 15, 2014).

¹⁰ *Id.* at 1-2.

of IDEA.”¹¹

In 2018, WDE and OSERS communicated about Wyoming’s school finance system.¹² On June 15, 2018, Wyoming sent a letter to OSERS explaining the State’s education funding system and how WDE calculated its maintenance of financial support obligations.¹³ In the letter, WDE explained the system noted above, where part of the revenues used by the State to calculate its MFS calculations was derived from both local and state revenue sources.¹⁴ WDE further explained in the letter why it believed that its funding system met its MFS obligations.

In 2019 and 2020, Wyoming and the Department exchanged information about the State’s education funding system.¹⁵ On September 11, 2020, OSERS sent WDE a letter regarding the “methodology” WDE uses to calculate MFS.¹⁶ The letter was intended to memorialize the Department’s understanding. The letter stated that a school district’s cost of special education that was not covered by IDEA funds was completely reimbursed from three sources: (1) “State funds from State-generated revenue;” (2) local funds that were not “recaptured;” and (3) local funds that were “recaptured.”¹⁷ The letter went on to explain that the Department understood that for local revenue above the base budget amount, the excess funds were “recaptured” by the state to use for other educational purposes.¹⁸ Additionally, OSERS further stated that it understood that the amount of special education funding, split between the State and local education agencies (LEAs) was based on the actual expenditures for the prior year. The letter also, after memorializing what WDE had reported about its State law, expressed the Department’s conclusion that WDE would

¹¹ *Id.* at 2.

¹² June 2018 Letter at 1.

¹³ *See Id.*

¹⁴ *Id.* at 2-3.

¹⁵ WDE Ex. 8 - Letter from Mackenzie Williams to Katherine Neas (June 16, 2022) at 1.

¹⁶ WDE Ex. 4, Dept. Ex. 4 - Letter from Laurie VanderPloeg to Margee Robertson (Sept. 11, 2020).

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 1.

be allowed to count “recaptured” local funds, but not local funds that were not “recaptured” for purposes of calculating MFS.¹⁹ In the letter, the Department directed WDE to provide a revised methodology for calculating MFS and revised data for State fiscal years 2015 through 2019.²⁰

On January 5, 2021, the Department sent WDE another letter.²¹ The letter indicated that it was responding to a November 17, 2020 letter from the Wyoming Attorney General’s office addressing the methodology used by WDE to calculate MFS. OSERS stated that, although the November 2020 letter from the State provided new information, it did not provide any information that changed the Department’s conclusions from the September 2020 letter. Finally, OSERS asked the State to provide the information requested in the September 2020 letter.

On both March 5, 2021 and May 19, 2021, WDE submitted revised MFS data that excluded from the MFS calculations “local” funds that were not “recaptured” by Wyoming.²² This new data showed shortfalls in meeting Wyoming’s MFS obligations for both fiscal years 2019 and 2020.²³ On September 30, 2021, WDE submitted requests to OSERS for waivers of the MFS requirements for both fiscal years, arguing that it would be equitable because of the “exceptional or uncontrollable circumstances” of the fluctuations in “local revenue” that resulted in the districts requiring less funding directly from the State.²⁴

In a letter dated June 1, 2022, the OSERS issued its proposed determination to Wyoming. OSERS addressed WDE’s waiver requests and determined that it would not be equitable to grant the waivers.²⁵ OSERS additionally concluded that the State failed to meet its MFS obligations.

¹⁹ *Id.* at 2.

²⁰ *Id.* at 2.

²¹ WDE Ex. 5 - Letter from Laurie VanderPloeg to Margee Robertson (Jan. 5, 2021).

²² WDE Ex. 1, Dept. Ex. 1 - Letter from Katherine Neas to Brian Schroeder (June 1, 2022) (Proposed Determinations) at 2; Dept. Ex. 5 – Letter from Dicky Shanor to Laurie VanderPloeg (March 5, 2021); Dept. Ex. 6 – Letter from Dicky Shanor to Schneer (May 19, 2021).

²³ Proposed Determinations at 2-3.

²⁴ WDE Ex. 6 - Letter from Dicky Shanor to Secretary Cardona (Sept. 30, 2021); Proposed Determinations at 3.

²⁵ Proposed Determinations at 3-4.

Specifically, OSERS proposed that Wyoming would not be eligible for \$9,072,121 in IDEA funding because of its failure to maintain State financial support of \$2,567,730 in fiscal year 2019 and \$6,504,391 in fiscal year 2020.²⁶

In a letter dated June 16, 2022, Wyoming timely filed a request for a hearing to challenge this proposed determination.²⁷ WDE filed an initial brief with attached exhibits. OSERS filed a response brief, also with exhibits. Finally, Wyoming filed a reply brief. In its reply brief, WDE raised a challenge to the Department's argument that deference was owed to its interpretation of the statute. The parties were given an opportunity to file supplemental briefs. Specifically, I asked the parties to address whether deference was owed to the interpretation of the statute that OSERS used in the proposed determinations and in the guidance articulated in the 2009 memorandum. Additionally, I asked the parties to clarify certain specific information about the different revenue sources used for calculating Wyoming's State financial support, including identifying the entity that collected the revenue, the legal authority for the collection of the revenue, and what entity distributed the revenue. On February 3, 2023, both parties filed their supplemental briefs. The record is now complete, and this matter is ready for a decision.

II. Jurisdiction

OSERS's action in this matter is a proposed final determination on eligibility. Therefore, before the United States Secretary of Education (the Secretary) makes a final determination on WDE's eligibility, Wyoming must be provided with an opportunity for a hearing.²⁸ And, because what is at issue is a potential for the Department to withhold funds in the administration of the

²⁶ Proposed Determinations at 4-5.

²⁷ WDE Ex. 8 - Letter from Mackenzie Williams to Katherine Neas (June 16, 2022).

²⁸ 20 U.S.C. § 1412(d)(2); 20 U.S.C. § 1416(e)(4)(A); 34 C.F.R. §§ 300.179(a)(1)(i) and (ii); *see also South Carolina Dep't of Educ. v. Duncan*, 714 F.3d 249, 251-252 (4th Cir. 2013).

IDEA program, this case must be presided over by an Administrative Law Judge.²⁹ My obligation, therefore, is to “prepare[] an initial written decision that addresses each of the points” in OSERS proposed determination.³⁰

III. Arguments

The parties agree that the sole issue raised in WDE’s challenge to OSERS’ proposed determination is the legal question of whether Wyoming properly included “local” SFP revenue that was retained locally to meet its obligation to maintain “State financial support.”³¹ WDE specifically states in its initial brief that it does not contest the Department’s waiver determination.³²

A. Wyoming Department of Education Arguments

WDE’s main argument is that OSERS incorrectly labels the funds at issue “local” when, under Wyoming’s education funding system, all education funding is part of the state funding system, is state funds, and has been labeled as such by the Wyoming legislature.³³ Additionally, Wyoming asserts that the main two sources of SFP revenue, the two property taxes, are controlled by the state. Specifically, WDE asserts that the State legislature has established the taxes, mandated that the revenues be directed to school districts, and “established how those revenues are divided among Wyoming’s 48 districts.”³⁴

Wyoming asserts that, to comply with its constitution and decisions from its State Supreme Court, in 1997, the state legislature changed the State’s system of funding kindergarten through

²⁹ See 20 U.S.C. § 1234(a)(2); cf. *South Carolina Dep’t of Educ.*, 714 F.3d 249.

³⁰ 34 C.F.R. § 300.182(a).

³¹ WDE Brief at 10; U.S. Dep’t of Educ., Office of Special Educ. and Rehabilitative Servs. Initial Brief (OSERS Brief) at 3-4.

³² WDE Brief at 7.

³³ WDE Brief at 1-2, 7.

³⁴ Wyoming Dep’t of Educ. Reply Brief (WDE Reply) at 6.

12th grade education (K-12 funding) “to what largely exists today.”³⁵ WDE contends that this system requires that the State maintain control over the amount of funding from any source used for K-12 funding, including imposing “a statewide property tax,” prohibiting school districts from setting property tax rates, and declaring property taxes and “other revenues to be state revenues.”³⁶ WDE explains that as a result of the changes “the Legislature identified revenue streams that were previously considered local revenue and established that ‘revenues specified under [Wyo. Stat. Ann. § 21-13-310(a)] shall be deemed state revenues’” and that by doing so, “the Legislature scooped up then-existing local revenues and made them state revenues.” Wyoming asserts that although school districts were able to use the moneys collected locally, they were only allowed to do so, “because of legislative permission” making the use of locally raised moneys “effectively a perpetual appropriation” from the State.³⁷

WDE argues that beginning in 2018, OSERS raised concerns with Wyoming’s K-12 funding and, “without any reasoning” ignored the State legislature’s “expressed intent” and considered the portion of the SFP revenues that was retained locally as not part of the State funding system.³⁸ WDE also asserts that OSERS’s belief that the State calculates the amount of necessary funding for education and divides that responsibility between the State and local education agencies (LEAs) demonstrates a “a fundamental misunderstanding of Wyoming’s system.”³⁹ Elaborating, Wyoming contends that the responsibility to fund education is not divided between the State and its LEAs, but rather is solely the State’s responsibility with the LEAs “completely under the State’s control when it comes to funding.”⁴⁰ WDE also asserts that OSERS

³⁵ WDE Brief at 3.

³⁶ WDE Brief at 3.

³⁷ WDE Brief at 10-11.

³⁸ WDE Brief at 12.

³⁹ WDE Brief at 12.

⁴⁰ WDE Brief at 12.

characterization of the SFP revenues as being paid from three sources: “(1) State funds from State generated revenue; (2) local funds (not ‘recaptured’); and (3) local funds (‘recaptured’)” is incorrect. Rather, Wyoming argues that the money used by an LEA on education comes from 2 sources, the SFP revenues and the money appropriated from the SFP for schools that do not raise sufficient SFP revenues to meet their Guarantee.⁴¹ Wyoming contends that all SFP revenues are state funds and not local in nature.⁴²

WDE additionally challenges OSERS’s assertion that only funds that enter the state’s treasury should be counted towards a state’s MFS obligations. Wyoming argues that this requirement does not appear in the IDEA statute or published Department rules and “elevates form over substance.”⁴³ WDE asserts that it would accomplish the same result if SFP revenues were sent to the State treasury and then redistributed to the LEAs when the process is unnecessary.⁴⁴

Finally, WDE argues that because Wyoming’s system guarantees that LEAs are reimbursed 100% for their actual funding of special education expenses from the SFP, a district would have no incentive to use federal funds instead. Using federal funds to supplant state funds would be a choice by the LEAs to forgo the state money to which they are entitled.⁴⁵

B. OSERS’s Arguments

OSERS argues that based on the plain text of the statute and OSERS’s 2009 guidance, Wyoming may not include in its calculation of state financial support “local funding.”⁴⁶ OSERS contends that allowing the inclusion of “local” funding in the calculation of State financial support is contrary to the purpose of the MFS requirement to “ensure that the State bears the fiscal

⁴¹ See WDE Brief at 13.

⁴² See WDE Brief at 13.

⁴³ WDE Brief at 13-14.

⁴⁴ See WDE Brief at 14; *see also* WDE Reply at 6.

⁴⁵ WDE Brief at 16.

⁴⁶ OSERS Brief at 2.

responsibility of providing State-level funding for special education and related services from year to year, and for the benefit of local educational agencies [].”⁴⁷

More specifically, OSERS first argues that its interpretation “governs” if it is reasonable, which OSERS contends it is.⁴⁸ OSERS asserts that excluding locally raised funds that remain local is consistent with the plain meaning of the term “state financial support.” It further contends that states have been on notice of this interpretation since 2009, when OSERS issued a memorandum to all Chief State School Officers and State Directors of Special Education stating that the term “State financial support” refers to “the financial support provided to or through the SEA” and “the financial support of all State agencies that provide or pay for special education and related services”⁴⁹ OSERS advances that this memorandum set out that under the plain meaning of the statute, “State Financial Support” means “state-level funds provided to or through State agencies.”⁵⁰

OSERS then argues that even if the language of the MFS provision was ambiguous and not clear from a plain reading of the statute’s language, its interpretation is consistent with the purpose of the MFS provision. OSERS asserts that the purpose of the MFS provision is “to ensure that States do not reduce their own State-level special education funding.”

OSERS additionally attacks WDE’s argument that local funds that remain local should be counted towards the State’s MFS obligation because the funds are part of the State’s mandated funding system and are “deemed . . . state revenue”. OSERS asserts that WDE cannot point to any language in the IDEA MFS provision that “expressly or implicitly permits or requires” local revenues to be used to “bolster the calculation of State financial support – even where a State

⁴⁷ OSERS Brief at 2, *See also* OSERS Brief at 12.

⁴⁸ OSERS Brief at 7.

⁴⁹ *Id.* at 8.

⁵⁰ *Id.* at 9.

Legislature has ‘deemed’ it so.”⁵¹ OSERS argues that if Congress intended for funds that were locally generated and retained to be counted in the MFS calculation or for it to defer to State law classifications or definitions of State funding, it could have “expressly done so.”⁵²

IV. Issues

1. Must OSERS’s proposed determination be upheld if it is reasonable?
2. Should “retained” funds be counted as state funds for purposes of calculating whether the State of Wyoming met its obligation to provide sufficient financial support for special education and related services?

V. Summary of Decision

OSERS’s interpretation of the MFS provision is not reviewed under the deferential “reasonableness” standard. Although some “local” funds are collected and retained within an area of the state or even within a specific school district, under the circumstances, those funds should be counted as state funds in this matter.

VI. Statement of the Law

The IDEA provides federal funding to states for special education services. The statute also requires states to comply with certain requirements, including the “maintenance of state financial support” (“MFS”) obligation.⁵³ This obligation prohibits a state from “reduc[ing] the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.”⁵⁴ If a state does reduce its “State financial support,” it may apply for a one-year waiver from the Department.⁵⁵ When a state reduces its

⁵¹ *Id.* at 11.

⁵² *Id.* at 11.

⁵³ See *Texas Educ. Agency v. U.S. Dep’t of Educ.*, 908 F.3d 127, 130 (5th Cir. 2018); *South Carolina Dep’t of Educ. v. U.S. Duncan*, 714 F.3d 249, 251 (4th Cir. 2013).

⁵⁴ 20 USC § 1412(a)(18)(A)

⁵⁵ See 20 USC § 1412(a)(18)(C).

“State financial support” and is not granted a waiver, the Department will reduce the state’s IDEA funds in a future fiscal year by the “same amount by which the State fails to meet the requirement.”⁵⁶ The purpose of the MFS obligation is to prevent a state from “supplanting its funding of special education with federal funds.”⁵⁷

The Department has promulgated 34 C.F.R. § 300.163 to implement the MFS obligation, using nearly identical language that is used in the statute.

VII. Analysis

A. Proper Standard of Review

The Department initially argues that OSERS’s interpretation of the MFS requirements should be upheld if it is a reasonable interpretation of the statute.⁵⁸ The two cases cited by the Department in support of this argument both indicate that this level of deference originates in the seminal case *Chevron U.S.A. v. National Resource Defense Counsel*, 467 U.S. 837 (1984). This level of deference, however, is only afforded to final agency actions and interpretations.⁵⁹ OSERS’s interpretation of the statute in this case is not a final agency action. The findings at issue in this matter are OSERS’s “Proposed Determinations.” And, as the Secretary has already stated, no deference is given to OSERS’s proposed determinations and actions.⁶⁰

In its brief, the Department also cites to its interpretation of the MFS provision of the IDEA in its 2009 memorandum that was sent to Chief State School Officers.⁶¹ That memorandum, however, addressed the question of whether funds from other state agencies should be counted

⁵⁶ 20 USC § 1412(a)(18)(B).

⁵⁷ *In re Massachusetts Dep’t of Elementary and Secondary Educ.*, Dkt. No. 21-08-O, U.S. Dep’t of Educ. (June 8, 2022) (Dec. of Sec.).

⁵⁸ OSERS Brief at 7-8.

⁵⁹ See *LabMD, Inc. v. F.T.C.*, 776 F.3d 1275, 1279 (11th Cir. 2015).

⁶⁰ See *In re New Jersey and New Jersey Dep’t of Educ.*, Dkt. No. 17-10-O, U.S. Dep’t of Educ. (Dec. of Sec., Dec. 23, 2020) at 6-7.

⁶¹ See Dept. Exhibit 2 - Memorandum from Alexa Posny to Chief State School Officers and State Directors of Special Education (Dec. 2, 2009).

towards a state's MFS calculations. It did not address the issue in this matter, whether locally collected and retained revenue collected pursuant to a state law may be counted as state financial support. Directing whether funds from other state agencies must be counted in MFS calculation neither requires nor prohibits states from including the funds at issue in this matter. In short, the 2009 memorandum did not direct states, including Wyoming, as to whether they could count the "local" non-recaptured SFP revenue towards MSF obligations.

B. Under these circumstances, the funding at issue is State financial support.

As noted, the only issue in dispute is whether what the Department characterizes as the "local" funds that were not recaptured by the State should be counted towards Wyoming's MFS obligations. Also noted above, Wyoming law explicitly states that all of the SFP revenues, including those funds characterized by the Department as local, "shall be deemed state revenues."⁶² This includes a 25-mill tax collected within each school district and a 6-mill tax assessed in each county.⁶³ These two property taxes are codified in the Local Financial Support and County Financial Support Articles, respectfully, of the School Finance Chapter of the Wyoming Statutes.⁶⁴

In *Comptroller of the Treasury of Maryland v. Wynne*,⁶⁵ the United States Supreme Court determined that income taxes labeled county taxes and raised within Maryland counties, under certain circumstances, should be considered state taxes. It follows that in certain circumstances, local or county raised and labeled revenue should also be considered state funds.

In *Wynne*, the Court addressed whether Maryland's income taxing scheme violated the dormant commerce clause derived from the Federal Constitution. In addition to federal income

⁶² Wy. St. § 21-13-310(a).

⁶³ See Wy. St. §§ 21-13-102, 21-13-201, 21-13-310.

⁶⁴ See Wy. St. §§ 21-13-102, 21-13-201.

⁶⁵ 575 U.S. § 542 (2015).

taxes, Maryland residents pay two sets of income taxes, what has been labeled “state” income taxes and “county” income taxes.⁶⁶ Maryland provided a credit for income taxes paid in other states for “state” income taxes but not for “county” income taxes.⁶⁷ The Court determined that by failing to provide a credit for “county” income taxes, the State of Maryland was violating the dormant commerce clause.⁶⁸

In coming to its conclusion, the Court noted that “[d]espite the names that Maryland has assigned to these taxes, both are State taxes, and both are collected by the State's Comptroller of the Treasury.”⁶⁹ In support, the Court cited to a decision from the Maryland Court of Appeals,⁷⁰ *Frey v. Comptroller of Currency*.⁷¹ In determining that the “county” tax was really a state tax, the Maryland high court noted that the State Comptroller collects both state and county taxes, accounts for the revenue, and distributes the revenue according to state law.⁷²

The funds at issue in this matter come from eleven sources.⁷³ The two primary sources are the two property taxes, collected at the county and at the local level.⁷⁴ Both of these property taxes are collected by the county treasurer, and not by the State Comptroller, or any other state entity.⁷⁵ And, there is no evidence that the revenue collected from these two property taxes are ever distributed by the Wyoming treasury or any other state agency or entity.

Both of the two property taxes, however, are collected at a rate established by a state statute.⁷⁶ The Maryland “county” tax that the United States Supreme Court and the Maryland high

⁶⁶ *Id.* at 545-46.

⁶⁷ *Id.* at 546.

⁶⁸ *Id.* at 545.

⁶⁹ *Id.* at 546.

⁷⁰ The Maryland Court of Appeals has been renamed the Maryland Supreme Court.

⁷¹ 422 Md. 111 (2011).

⁷² *Id.* at 125.

⁷³ See Wy. St. § 21- 13- 310; Applicant’s Supplemental Brief at 8-12.

⁷⁴ June 2018 Letter at 2-3.

⁷⁵ See Applicant’s Supplemental Brief at 9.

⁷⁶ Wy. St. § 21-13-102; Wy. St. § 21-13-201.

court both identified as a state tax in *Wynne* provided counties discretion to establish the tax rate for “county” taxes.⁷⁷ The Wyoming legislature has retained even more control over the two property taxes than Maryland retained over the income tax at issue in *Wynne*. Wyoming has established the specific rate that must be used for the local and county taxes. Additionally, for one of the property taxes, which is collected at the county level, the Wyoming Department of Education directs the treasurer of each county what percentage proportion to be allocated to each school district in the respective county.⁷⁸

Moreover, these property tax revenues, along with the funds raised from the other nine sources,⁷⁹ are compiled under a funding system created by state law, specifically Sections 21-13-309 through 21-13-311 of the Wyoming Statutes. This system empowers the State, not the localities, to determine the amount of funding a locality keeps and how much funding is returned to the state. And, perhaps most importantly, the “local funds” at issue in this case are explicitly identified in the statute as “state revenues.”⁸⁰

The Department contends that including the funds at issue in the calculations of Wyoming’s MFS obligations, is “clearly counter to a reasonable, plain language reading of the IDEA State MFS provision, [and therefore] Wyoming law simply is not relevant.”⁸¹ OSERS further asserts that “[a]llowing locally generated, locally retained, and locally directed funding to be counted as State financial support would contradict the plain text of the statute and provide an end run around the purpose of the MFS provision, which is to prevent decreases in State-level

⁷⁷ See MD Tax Gen. Code § 10-106

⁷⁸ Wy. St. § 21-13-201(b).

⁷⁹ Included among the nine other sources are a district’s share of Environmental Quality Act fines and penalties, federal forest reserve funds, Taylor Grazing Act Funds, and motor vehicle funds. These funds are disbursed by the State Treasury or other state agencies. See Wy. St. §§ 31-11-424, 9-4-502, 9-4-401, and 31-3-101. Even if Wyoming had not labeled these funds state revenues, these funds would be considered state financial support based upon Department’s December 2009 Memorandum 10-5, which dictates that revenue from all state agencies be counted.

⁸⁰ Wy. St. § 21-13-310(a).

⁸¹ OSERS Brief at 3.

funding for special education.”⁸² Contrary to OSERS’ assertions, and as discussed above, Wyoming retained some control over these funds, and so they are not entirely “locally directed.”

The federal IDEA scheme does not contain, in either the statute or the applicable regulation, language that defines what is “State financial support.” The statutory and regulatory language do not dictate whether locally raised and retained funds under these circumstances may be counted in the MFS calculations.⁸³

As noted, Wyoming law explicitly states that all SFP revenues, whether they are retained in the districts they are collected within or returned to the SFP to be redistributed, “shall be deemed state revenues.”⁸⁴ The United States Supreme Court has noted that deference is owed to state legislatures’ governance over how it raises and disburses state and local tax revenues for local interests.⁸⁵ This governance should include the State’s characterization of the funds raised in Wyoming pursuant to the State’s own statutes. In the absence of any clear and explicit language in the IDEA statute or regulations, deference is owed to the Wyoming legislature’s statute instruction that the funds at issue be treated as “state revenues.”⁸⁶

OSERS argues that if Congress intended to allow revenues generated and retained locally to be included in a state’s MFS calculations or intended for the Department to defer to State law classifications, it could have said so, but did not.⁸⁷ As noted, Congress did not provide a definition of “State financial support” that unequivocally prevents the funds at issue from being counted in

⁸² OSERS Supp. Brief at 12.

⁸³ Compare 42 C.F.R. § 433.53 (noting that “local” funds may not be used to satisfy a state’s share of funding for Medicaid services).

⁸⁴ Wy. St. § 21-13-310(a).

⁸⁵ See *San Antonio Local School District v. Rodriguez*, 411 U.S. 1, 40 (1973); See also *In re Baytown Tech. Sch., Inc.*, Dkt. No. 91-40-SP, U.S. Dep’t of Educ. (April 12, 1994) (Dec. of Sec.) at 2 (noting that a state “may apply its own laws in any lawful manner it chooses.”)

⁸⁶ See also Center for IDEA Fiscal Reporting, *Quick Reference Guide on IDEA Maintenance of State Financial Support*, available at <https://ciffr.wested.org/wp-content/uploads/2021/04/CIFR-MFS-QRG-final.pdf> (stating that State financial support does not include funds from local revenues or private sources, *unless the state determines those funds to be state funds*) (emphasis added).

⁸⁷ OSERS Brief at 11.

Wyoming’s MFS calculations. And, under those circumstances, the Department has failed to persuade that an unambiguous provision of state law should be discounted simply because Congress did not explicitly direct that deference be paid to state law.

C. Including retained “local” funds in the calculation of the State’s financial support does not undermine the purpose of the maintenance of financial support provision.

OSERS argues that its interpretation that funds “never held or controlled by a State-level agency” cannot be counted as state financial support is “consistent with the purpose of the State MFS provisions.”⁸⁸ OSERS asserts this purpose is “to ensure that States do not reduce their State-level special education funding.”⁸⁹ 20 USC § 1412(a)(18)(A) provides that a state cannot “reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.” Although some of the language in the IDEA statute and related regulations is clear and unambiguous,⁹⁰ as noted above, whether funds raised and retained locally can, in some circumstances, constitute “State financial support for special education and related services for children with disabilities” is not entirely transparent. Because the language is not entirely clear, the legislative history, and the regulation implementing the maintenance of financial support requirement, provide guidance on whether including those funds contradicts the expressed purpose of the provision.⁹¹

Discussing the IDEA as it was being enacted, Senator Thomas Harkin explained the purpose behind the MFS requirement, stating that “[t]he bill adds a State maintenance of effort

⁸⁸ OSERS Brief at 9.

⁸⁹ *Id.*

⁹⁰ See *In re New Mexico Public Educ. Dep’t*, Dkt. No. 13-41-O, U.S. Dep’t of Educ. (Oct. 8, 2015) (Dec. of Sec.) at 5-6 (concluding that the language of the provision is clear and unambiguous that the level of State financial support allocated must be maintained from year to year.).

⁹¹ See *Blum v. Stenson*, 465 U.S. 886, 896 (1984) (noted that where the “resolution of a question of federal law turns on a statute and the intention of Congress, we look first to the statutory language and then to the legislative history if the statutory language is unclear.”)

provision, to ensure that increases in Federal appropriations are not offset by State decreases.”⁹² The Department, in its regulation implementing this statute, added even more clarification about the purpose of the MFS requirement. The regulation directs that “[e]xcept as provided in § 300.203, funds paid to a State under Part B of the [IDEA] must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the SEA or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.”⁹³ The primary concern of the MFS requirement is that *federal* funds not be used to replace state funds. The primary concern of the IDEA statute and implementing regulations is to control the relationship between federal and state funds, not to address the relationship between state and local funding sources. As the United States Court of Appeals for the Fifth Circuit has written, “[i]n drafting the MFS clause, Congress sought to prevent a state from reducing its contributions to special education and shifting the financial burden of such services to the *federal government*.”⁹⁴

In its brief, OSERS argues that the purpose of the MFS requirement is “that States ease the funding burden of localities, not the other way around.”⁹⁵ In support, OSERS cites to the decision in *In re New Mexico Public Education Department*.⁹⁶ In that case, the decision addressed that if the state decreased its funding by the same amount as the IDEA funding provided by the Department, it would result in less overall money for the local education agencies. In other words, federal money should supplement, not supplant state money. That is not at issue here. Here the

⁹² Sen Harkin, 143 Cong. Rec. S4295-03, 4300.

⁹³ 34 CFR § 300.162(c)(1).

⁹⁴ *Texas Educ. Agency v. U.S. Dep’t of Educ.*, 908 F.3d 127, 135 (5th Cir. 2018) (emphasis added); see also *In re Texas Educ. Agency*, Dkt. No. 17-07-O, U.S. Dep’t of Educ. (May 23, 2016), at 6 (warning against “allow[ing] a state to reduce or defund state contributions to special education funding and shift[ing] to the *federal government* the burden of funding special education.”).

⁹⁵ OSERS Brief at 12.

⁹⁶ Dkt. No. 13-41-O, U.S. Dep’t of Educ. (May 8, 2014).

question is how funds that make up the state’s share are calculated, not whether there can be less total money for the LEAs. The text of the statute and the regulations direct that the relevant issue is whether a state has assured that the state has maintained the amount of monetary aid for special education services. As the United States Courts of Appeals for the Fifth Circuit stated, “the statutory text instructs a state not to reduce the ‘*amount of State financial support.*’ Hence, the relevant inquiry is . . . whether [the state] has maintained the same *amount of monetary aid.*”⁹⁷ The facts and evidence in this case do not demonstrate that Wyoming’s funding method has resulted or will result in a smaller amount of funding for the LEAs or a larger amount of funding from the federal government.

VIII. Conclusions

- 1. The federal statute gives Wyoming unmistakable clear notice that the IDEA grant funding requires Wyoming to maintain “State financial support.”**
- 2. The federal statute requires that Wyoming must maintain its “State financial support” or face federal grant reductions.**
- 3. The revenues at issue are controlled by state law.**
- 4. The evidence in this case does not demonstrate that the revenues at issue are collected, expended, or otherwise ever pass through the Wyoming treasury or other state agency or entity.**
- 5. The federal statute does not unambiguously dictate whether revenue that, under state law, is locally raised and locally retained may be counted as “State financial support.”**
- 6. The regulations implementing the statutory obligation to maintain “State financial support” does not unambiguously dictate whether revenue that, under state law, is locally raised and locally retained may be counted as “State financial support.”**
- 7. Wyoming law unambiguously defines the revenues at issue as state revenues.**
- 8. Under the circumstances in this case, Wyoming may count the revenue at issue as “State financial support.”**

⁹⁷ 908 F.3d 127, 133 (5th Cir. 2018).

IX. Order

The Department's proposed determination is **Denied**. OSERS shall not reduce the Wyoming's IDEA Part B Section 611 grant because of a failure to maintain state financial support for the 2019 and 2020 fiscal years.

X. Right to File Comments and Recommendations

This is the initial decision of the Hearing Official pursuant to 34 C.F.R. § 300.182. The regulation does not authorize motions for reconsideration. The following language summarizes a party's right to appeal this decision as set forth in 34 C.F.R. § 300.182.

Each party has the right to file comments and recommendations on this initial decision. Comments and recommendations are filed with the Hearing Official and must be filed within fifteen (15) days the date the party receives this decision. Each party may file responsive comments and recommendations with the Hearing Official within seven (7) days of the date the party receives the initial comments and recommendations filed by the opposing party. Upon the later of, receipt of initial comments and recommendations or upon the expiration of the date for receipt of responsive comments and recommendations, the Hearing Official forwards the record to the Secretary for review and issuance of a final decision.

The initial decision becomes the final decision of the Secretary unless, within 25 days after the end of the time for receipt for written comments and recommendations, the Secretary, in writing, informs the Hearing Official and the parties that the decision is being further reviewed for possible modification.

The Secretary's office is served with this initial decision and has been given access to the electronic file. Therefore, comments, recommendations, and responses may be filed through OES. Otherwise, comments, recommendations, and responses must be timely filed in OHA by U.S. Mail,

hand delivery, or other delivery service. Appeals filed by mail, hand delivery, or other delivery service shall be in writing and include the original submission and one unbound copy addressed to:

Hand Delivery or Overnight Mail

Office of Hearings and Appeals
U.S. Department of Education
550 12th Street, S.W., 10th Floor
Washington, DC 20024

U.S. Postal Service

Office of Hearings and Appeals
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington DC 20202

These instructions are not intended to alter or interpret the applicable regulations or provide legal advice. The parties shall follow the applicable regulatory requirements.

DATE OF DECISION: April 17, 2023

Daniel J. McGinn-Shapiro
Administrative Law Judge

SERVICE

This decision has been sent by U.S. Postal Service certified mail, return receipt requested, electronic mail, delivery receipt requested, and by OES automatic electronic service to:

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