

RESOLUTION

WHEREAS, SDCL § 13-13-10.1 (8-10) limits the amount of cash balances for school districts:

13-13-10.1 (8) "Monthly cash balance," the total amount of money for each month in the school district's general fund, calculated by adding all deposits made during the month to the beginning cash balance and deducting all disbursements or payments made during the month;

(9) "General fund base percentage," is determined as follows:

(a) Forty percent for a school district with a fall enrollment as defined in subdivision (2A) of two hundred or less;

(b) Thirty percent for a school district with fall enrollment as defined in subdivision (2A) of more than two hundred but less than six hundred; and

(c) Twenty-five percent for a school district with fall enrollment as defined in subdivision (2A) greater than or equal to six hundred.

When determining the general fund base percentage, the secretary of the Department of Education shall use the lesser of the school district's fall enrollment as defined in subdivision (2A) for the current school year or the school district's fall enrollment from the previous two years;

(10) "Allowable general fund cash balance," the general fund base percentage multiplied by the district's general fund expenditures in the previous school

WHEREAS, SDCL § 13-13-73.5 requires a reduction of the state aid based upon the lowest general fund monthly balance from a school district:

13-13-73.5. Reduction of state aid by subtracting allowable general fund cash balance from lowest general fund monthly cash balance.

Beginning on July 1, 2018, a school district's state aid for general education as calculated pursuant to § 13-13-73 shall be reduced by subtracting the allowable general fund cash balance from the lowest general fund monthly cash balance. If the result is less than zero, the reduction equals zero.

A school district created or reorganized after July 1, 2016, is exempt from the reduction provided by this section for a period of three years immediately following its creation.

WHEREAS, an a federal emergency was declared by the President of the United States on March 13, 2020, after United States Secretary of Health and Human Services (HHS) declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19. This was followed by an Emergency Declaration by the Governor of South Dakota on March 13, 2020 due to the epidemic contagion known as COVID-19, and both emergencies are continued until such time that they expire due to the on-going spread of COVID-19,

Whereas, the Financial Accountability Board was established by the South Dakota Legislature by virtue of SDCL § 13-45-38. Certain inherent rights are given to this board to waive the provisions of SDCL § 13-13-73.5 if a school district can demonstrate that its lowest monthly general cash fund cash balance percentage is the result of special circumstances and to promulgate rules to establish factors for a waiver, to provide procedures for appeals of requests by school districts should a waiver not be granted, and specifically addresses that the waiver shall not affect retirement funds. Waivers are to be reviewed by the Joint Committee on Appropriations or the Interim Committee on Appropriations:

1-45-38. School Finance Accountability Board.

There is hereby created the School Finance Accountability Board within the Department of Education. The board shall consist of five members appointed by the Governor. The members shall serve a term of four years.

The board may recommend that the provisions of § 13-13-73.5 be waived for a school district if the district can demonstrate that its lowest monthly general cash fund cash balance percentage is the result of special circumstances.

The board may recommend that a penalty against a school district imposed under § 13-13-73.6 be waived, in whole or in part, if the district can demonstrate that its failure to comply with § 13-13-73.6 is due to special circumstances.

The School Finance Accountability Board shall promulgate rules pursuant to chapter 1-26 to establish the appeals process provided for in § 13-13-73.6, and to establish the factors that may be considered in considering a waiver requested by a school district, which shall include the impact of retirements.

The Joint Committee on Appropriations or the Interim Committee on Appropriations shall review any waivers of § 13-13-73.5 or 13-13-73.6 recommended by the School Finance Accountability Board. For a waiver recommended by the board under this section, the committee may provide any suggested change to the waiver. Not more than thirty days following receipt of a suggested change from the committee, the board may amend the recommended waiver in accordance with the suggested change and shall resubmit the recommended waiver. The Joint Committee on Appropriations or the Interim Committee on Appropriations shall approve, amend, or deny any waiver recommended by the board. The Department of Education shall annually report to the Governor and the Legislature the information collected pursuant to §§ 13-8-47 and 13-13-73.6.

FURTHER, WHEREAS Administrative Rules have not been established to address the factors to be considered for a waiver of 13-13-73.5, the Board is still authorized by law to waive these provisions.

AND WHEREAS, federal aid has been granted to South Dakota in order to provide relief to education. The granting of these funds have been through the Governor's Office and through the Department of Education. One such fund, the Coronavirus Relief Fund (CRF), is providing school districts funds due to the emergencies by and through Sub-Recipient Agreements. The amount of funding is outlined in these agreements as:

The State will provide Sub-Recipient \$500 per enrolled elementary and secondary student. The State's initial payment will be calculated as \$500 multiplied by 90% of Fall 2019 enrollment (rounded to the nearest whole number). The final payment will be calculated as \$500 multiplied by Fall 2020 enrollment, less all amounts previously advanced to Sub-recipient under this Agreement. In the event Sub-Recipient's Fall 2020 enrollment is less than 90% of Fall 2019 enrollment, making the final payment amount negative (an "Overpayment"), Sub-Recipient shall return the amount of the Overpayment to the State within 30 business days of the State's written notice of such Overpayment.

It is the belief from financial officers of many of the sub-recipient districts that the granting of these CRF funds will place a duty by virtue of the plain language of 13-13-73.5 on the Department of Education to reduce state aid due to the lowest general fund monthly cash balances being too high in school districts awarded these CRF amounts.

NOW THEREFORE, under the authority given to the board by ARSD § 24:44:01:02 to call a special meeting and the board members in attendance having met a quorum, it is hereby **RESOLVED** that the provision of SDCL 1-45-38 regarding special circumstances has been established due to the federal and state emergency orders caused by COVID-19. Be it further **RESOLVED** that a waiver will hereby be granted under 13-13-73.5 for any school districts who are awarded CRF funds. This waiver may be utilized for the remainder of the emergency periods.

RESOLUTION APPROVED BY VOTE OF _____ YAY _____ NAY