

RESOLUTION

WHEREAS, SDCL § 13-13-10.1 (17-19) defines the general fund cash balance limit a school district may carry:

13-13-10.1. Definitions.

- (17) "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;
- (18) "General fund base percentage," is determined as follows:
 - (a) Forty percent for a school district with a fall enrollment as defined in subdivision (2) of two hundred or less;
 - (b) Thirty percent for a school district with fall enrollment as defined in subdivision (2) 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 (2) 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 (2) for the current school year or the school district's fall enrollment from the previous two years; and

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

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

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, a federal emergency was declared by the President of the United States on March 13, 2020, after the 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 School Finance Accountability Board ("Board") was established by the South Dakota Legislature by virtue of SDCL § 1-45-38. 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. Waivers are to be approved by the Joint Committee on Appropriations or the Interim Committee on Appropriations. Statutory provisions are as follows:

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.

WHEREAS, administrative rules have not been established to address the factors to be considered for a waiver of SDCL § 13-13-73.5 and the Board is authorized by law to waive these provisions.

WHEREAS, federal aid has been granted to the State of South Dakota for the purpose of providing relief funds to educational agencies to address the impact that COVID-19 has had, and continues to have, on schools. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law. The CARES Act provided Education Stabilization Funds for the Governor's Emergency Education Relief (GEER) Fund and Elementary and Secondary School Emergency Relief (ESSER) Fund. On December 27, 2020, the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA Act) was signed into law which added funds to GEER and ESSER. The American Rescue Plan (ARP) was signed into law on March 11, 2021, which added more funds to Elementary and Secondary School Emergency Relief fund. Granting of these funds has resulted in over \$554 million for school districts and education providers in South Dakota. Schools and education providers can expend funds through September 30, 2022, for the CARES Act and through September 30, 2023, for the CRRSA Act and September 30, 2024, for the ARP Act. Funds are intended to help States and school districts safely reopen schools, measure, and effectively address significant learning loss, and take other actions to mitigate the impact of COVID-19 on the students and families who

depend on our K-12 schools. By accepting these funds, the State of South Dakota must comply with Maintenance of Effort (MOE) requirements, including not cutting state aid to education disproportionately in the state budget.

Granting of these federal funds to public school districts will place a continuing duty by virtue of the plain language of SDCL § 13-13-73.5 on the Department of Education to reduce state aid due to the lowest general fund monthly cash balances being higher than allowed in the coming fiscal years.

AND WHEREAS, the Board resolved by a unanimous vote on September 22, 2020, to grant school districts a waiver from SDCL § 13-13-73.5 due to the influx of other federal funds received from the Coronavirus Relief Fund (CRF). The Joint Committee on Appropriations approved the resolution on November 18, 2020. Also, the board resolved by unanimous vote on February 17, 2021, to grant school districts an additional waiver due to the influx of ESSER funds. The Joint Committee on Appropriations approved the resolution on March 29, 2021. These prior waivers continue and are in effect during the state of emergency as declared by executive order from the Governor of the State of South Dakota.

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 and by the influx of federal funds for ESSER and GEER.

BE IT FURTHER RESOLVED that a new waiver will hereby be granted so as not to reduce a school district's state aid as set forth in SDCL § 13-13-73.5 due to the granting of COVID-19 related federal funds, which will be in addition to the prior waiver issued by the Board on September 22, 2020, and February 17, 2021. The prior waivers will remain in effect through the remainder of the emergency periods. The new waiver is due to the increase in monies under the federal ESSER fund and will be in effect for the period of July 1, 2023 through June 30, 2024. School districts who do not meet the general fund cash balance in fiscal year 2023 for state aid accountabilities in fiscal year 2024 are required to attend an informational hearing with the School Finance Accountability Board in Fall 2023 at the board's call.

RESOLUTION APPROVED BY VOTE OF 5 YAY 0 NAY

Approved by the School Finance Accountability Board on Sep 27, 2022.

Terry W Nebelsick
Terry Nebelsick, Chairman of School Finance Accountability Board

9-27-22
Date