

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 25 D.o.E. App. Dec. 206)

In re Petition for Declaratory Order

Iowa State Education Association, Petitioner,	:	DECLARATORY ORDER
for a Declaratory Order as to	:	
2009 Iowa Acts, SF 445, amending	:	[Adm. Doc. #4703]
Iowa Code §§ 257.10(9)(d), 257.37A(1)(d)	:	

On or about October 27, 2009, the Petitioner [herein called "ISEA"] filed its petition for declaratory order asking two questions, stated below, relating to the recent gubernatorial order of a 10% across-the-board budget reduction for the fiscal year ending June 30, 2010 ["FY 2010"].¹

Pursuant to rule 281—Iowa Administrative Code (IAC) 3.2, notice of the petition was provided to the Iowa Association of School Boards ["IASB"], School Administrators of Iowa ["SAI"], and four other stakeholder groups. A joint petition for intervention was received from IASB and SAI.

Abbreviated Summary of School Finance in Iowa

A school district's revenues come from many sources, including but not limited to state foundation aid, state categorical funds, federal categorical funds, local property taxes, and miscellaneous other sources. For purposes of this Declaratory Order, "school finance" is limited to the following brief discussion of State foundation aid and some state categorical funds.

The Legislative Services Agency ["LSA"] states that the goals and principles of school finance in Iowa include equity in expenditure, property tax relief, equalization of property taxation, uniform state aid allocation formula, predictability, simplicity (one funding formula), provision for local discretion/incentives, establishment of maximum spending control, adequacy of funding, promotion of high student achievement, and modification of the impact of community and family background on student achievement.²

Prior to July 1, 2009, the salary of a public school teacher³ in Iowa was paid by the teacher's employer in part from local property taxes, from federal funds, and from state funds that represented multiple purposes. Two of these state funds were Teacher Quality funds⁴ and Education Excellence Phase II monies.⁵ Teacher Quality and Phase II were, prior to July 1,

¹ See Executive Order 19, online at http://www.governor.iowa.gov/files/Executive_Order_No19.pdf.

² Pages 8-9, LSA's School Finance Formula Presentation dated January 2009 on the Legislature's Website at http://staffweb.legis.state.ia.us/lfb/docs/k-12_ed/SchlAidPresentation_2008_2009.pdf.

³ For purposes of this Declaratory Order, "public school teacher" or "teacher" means one who is employed as such by either a school district or an area education agency. Unless the context otherwise dictates, "school district" shall include an area education agency.

⁴ See Iowa Code section 284.13, subsection 1, paragraph h (2007).

⁵ See Iowa Code section 294A.9 (2007), retention of quality teachers.

2009, categorical state appropriations, the distribution of which was based on separate statutory formulae. As categorical appropriations, neither Teacher Quality nor Phase II monies added to a school district's spending authority.

An overly-simplified explanation of spending authority – which applies only to school districts and not to area education agencies – is that it refers to a limit on the amount of money that a school district may spend. School districts are allowed by statute to tax their property owners, use cash on hand, or borrow funds to make up any difference between authority (the limit on spending) and revenues received. In other words, when state school aid is reduced, school districts retain the spending authority originally authorized. If a school district desires to make up the shortfall by one of the methods mentioned, it may, but does not have to do so.

Effective July 1, 2009, Teacher Quality and Phase II were combined statutorily to create a Teacher Salary Supplement ["TSS"]. TSS was rolled into the school aid formula, and Teacher Quality and Phase II lost their categorical nature. TSS monies are state foundation aid funds. Pursuant to Executive Order 19, state foundation aid payments to school districts were reduced by 10%.

Prior to the across-the-board budget reduction, the total state foundation aid appropriation to school districts for FY 2010 was \$2,587,500,000. Of that total, \$309,001,736 was allocated to TSS, leaving \$2,278,489,264 in state foundation aid.⁶

The Questions Posed by ISEA

The questions posed to this agency by ISEA are as follows:

1. Beginning with the 2009-2010 school year does Iowa law require Iowa public school districts and Iowa Area Education Agencies to distribute to teachers of the district or AEA, in accordance with Chapter 284, the full amount of TSS money calculated by the Iowa Department of Management and certified to the school district on line 4.25 of the FY 2010 Aid and Levy Worksheet for school districts and Line 4.69 for AEAs?
2. Is the answer to question 1 altered in any way by virtue of the governor's announced across the board cut including a reduction of state aid checks to school districts?

The Arguments

ISEA believes that school districts must fully distribute TSS funds. It would answer the above questions "yes" to the first and "no" to the second. IASB and SAI disagree with ISEA, and would answer "no" to both questions.

The key to ISEA's position is its argument that the Legislature specifically directed that the amount of TSS calculated on the Aid and Levy Worksheet be fully paid to teachers. ISEA states, "There simply exists no authority for a school district to alter this calculation, and the payment of the sum calculated by the Iowa Department of Management must be made to teachers for FY 2010 in light of this clear legislative mandate."⁷ Section 4 of 2009 Iowa Acts, SF 445, which amended 257.10(9)(d), as well as the remainder of 257.10(9), are set forth below for context. [Parallel statutory provisions exist for area education agencies.]

Sec. 4. Section 257.10, subsection 9, paragraph d, Code 2009, is amended to read as follows:

⁶ 2009 Iowa Acts, HF 820, § 60.

⁷ Petitioner's Petition for Declaratory Order, page 6.

d. The For the budget year beginning July 1, 2009, the use of the funds calculated under this subsection shall comply with the requirements of chapters chapter 284 and 294A and shall be distributed to teachers pursuant to section 284.7 284.3A. For the budget year beginning July 1, 2010, and succeeding budget years, the use of the funds calculated under this subsection shall comply with the requirements of chapter 284 and shall be distributed to teachers pursuant to section 284.3A.

257.10

9. *Teacher salary supplement cost per pupil and district cost.*

a. For the budget year beginning July 1, 2009, the department of management shall add together the teacher compensation allocation made to each district for the fiscal year beginning July 1, 2008, pursuant to section 284.13, subsection 1, paragraph "h", and the phase II allocation made to each district for the fiscal year beginning July 1, 2008, pursuant to section 294A.9, and divide that sum by the district's budget enrollment in the fiscal year beginning July 1, 2009, to determine the teacher salary supplement district cost per pupil. For the budget year beginning July 1, 2010, and succeeding budget years, the teacher salary supplement district cost per pupil for each school district for a budget year is the teacher salary supplement program district cost per pupil for the base year plus the teacher salary supplement state allowable growth amount for the budget year.

b. For the budget year beginning July 1, 2010, and succeeding budget years, if the department of management determines that the unadjusted teacher salary supplement district cost of a school district for a budget year is less than one hundred percent of the unadjusted teacher salary supplement district cost for the base year for the school district, the school district shall receive a budget adjustment for that budget year equal to the difference.

c. (1) The unadjusted teacher salary supplement district cost is the teacher salary supplement district cost per pupil for each school district for a budget year multiplied by the budget enrollment for that school district.

(2) The total teacher salary supplement district cost is the sum of the unadjusted teacher salary supplement district cost plus the budget adjustment for that budget year.

The argument offered by ISEA is that the amendment to paragraph "d" is a legislative mandate that the TSS amounts for each district as calculated by the Iowa Department of Management must be used by school districts for teacher salaries, and that TSS is held harmless by the across-the-board budget reduction ordered in Executive Order 19.

In addition, ISEA points to the segregation of TSS funds from the overall appropriation of state foundation aid in § 60 of 2009 Iowa Acts, HF 820, below, as further proof of legislative intent to hold TSS funds harmless from the across-the-board budget reduction.

Sec. 60. STATE FOUNDATION AID FOR SCHOOLS -- FY 2009-2010. Notwithstanding the standing appropriation in section 257.16, subsection 1, for state foundation aid for the fiscal year beginning July 1, 2009, and ending June 30, 2010, the amount appropriated from the general fund of the state pursuant to that section for the following designated purpose shall not exceed the following amount:

For state foundation aid under section 257.16, subsection 1:..... \$2,587,500,000

1. Of the amount designated in this section for state foundation aid, \$309,001,736 is allocated for the teacher salary supplements, the professional development supplements, and the early intervention supplement in accordance with section 257.10, subsections 9 through 11, and section 257.37A.

2. If the remaining balance of the moneys designated in this section, after the allocation made in subsection 1, is less than the amount required to pay the remainder of state foundation aid pursuant to section 257.16, subsection 1, the difference shall be deducted from the payments to each school district and area education agency in the manner provided in section 257.16, subsection 4. The reduction for area education

agencies shall be added to the reduction made pursuant to section 257.35, subsection 5, as amended by this division of this Act.

Section 257.16(4), specifically referenced above, states, "Notwithstanding any provision to the contrary, if the governor orders budget reductions in accordance with section 8.31, reductions in the appropriations provided in accordance with this section shall be distributed on a per pupil basis calculated with the weighted enrollment determined in accordance with section 257.6, subsection 5." (Section 8.31 is the statutory authority used by Governor Culver when he issued Executive Order 19.)

ISEA argues that subsection 2 of § 60 of 2009 Iowa Acts, HF 820 provides a blueprint for how to deal with a reduction to state aid, and that the statutory procedure is to reduce the payments made to school districts "only '...after the allocation [is] made in subsection 1...'"⁸ ISEA unequivocally states, "The amounts for [TSS] are excepted from those amounts to be reduced to local school districts and AEAs if, in fact, there is a shortfall. To read the language 'after the allocation made in subsection 1' in any other way is to improperly render that language of the statute superfluous. *State of Iowa v. Public Employment Relations Board*, 744 N.S.2d 357,361 (Iowa 2008)."⁹

On the other hand, IASB and SAI point out that the first question posed by ISEA is based on a false premise or assumption. To ISEA's argument that the amount of the TSS calculation is the amount that must be spent by each school district on TSS, IASB and SAI counter that the TSS calculation is a cap on a school district's spending authority for TSS purposes, but that this calculation is neither an appropriation nor a spending mandate.¹⁰ Section 257.10(9), according to IASB and SAI, relates to spending authority; the statute is neither an appropriation statute nor a spending mandate. It sets a limit on spending inasmuch as it requires that TSS funds be used only as prescribed under Iowa Code chapter 284.¹¹ As to ISEA's argument that the phrase "calculated under this subsection" in 257.10(9)(d) is a mandate to spend the amount calculated, IASB and SAI counter that the phrase is merely a descriptor of the funds that are subject to the cap on spending.

The better question, according to IASB and SAI, is what is the impact of the 10% across-the-board budget reduction on TSS funds? Addressing this question as they frame it, IASB and SAI argue that the appropriation for TSS is subject to the reduction, that the reduced appropriation must be distributed to teachers in accordance with chapter 284 by the school districts, and that the school districts must look to the language of their local teacher contracts for guidance as to whether the shortfall of 10% must be made up. The effect of this argument is that some teachers will be paid 90% of their salary, some 100%, and arguably, some may fall somewhere in between those percentages. This is acknowledged by IASB and SAI, but those organizations point out that this effect is consistent with the state's local control philosophy.

IASB and SAI offer policy arguments in support of their position. They argue that the effect of holding TSS funds harmless from the 10% across-the-board budget reduction is to reduce general state aid by an additional \$30 million (roughly 10% of TSS), increasing the stress on local

⁸ Petitioner's Petition for Declaratory Order, page 7.

⁹ Petitioner's Reply Brief, page 2.

¹⁰ Intervenors' Brief, page 7.

¹¹ Chapter 284 ("Teacher Performance, Compensation, and Career Development") established minimum salaries for teachers, developed standards by which teachers are to be evaluated, created a mentoring and induction program for beginning teachers, mandated professional development for teachers, and sets the uses of monies appropriated elsewhere (not in chapter 284) by the Legislature for teacher salaries.

school district budgets and disproportionately harming student programs.¹² ISEA recognizes this reality, but reiterates that school districts have no choice but to hold TSS harmless and make up budgetary shortfalls by "cuts to other portions of its local budget, utilizing unspent balance, increasing tax revenues, or any combination of the three."¹³

The Agency's Analysis

We note first that the Iowa Supreme Court recently discussed this agency's authority to interpret statutes. In *Iowa Ass'n of School Boards v. Iowa Dept. of Educ.*, 739 N.W.2d 303 (Iowa 2007), the Court stated as follows regarding this agency's authority to interpret education law:

Iowa Code section 256.1 establishes the Department of Education "to act in a policymaking and advisory capacity and to exercise general supervision over the state system of education including ... [p]ublic elementary and secondary schools." The director of the department has numerous specified duties. See Iowa Code § 256.9. Section 256.9(16) provides that the director "shall ... [i]nterpret the school laws and rules relating to the school laws." *Id.* § 256.9(16). It is undeniable that this statute clearly vests the director with discretion to interpret "school laws." Although the association acknowledges the director's duty and authority to interpret school laws, it argues sections 298.4 and 296.7 are not school laws. According to the association, these provisions are taxing statutes. We disagree.

... While sections 298.4 and 296.7 certainly deal with taxation, we think their primary purpose is to delineate and control school spending. The principal focus of these statutes is not on the assessment and collection of the tax, but on the expenditure of the tax revenues. Moreover, both provisions are located in Title VII, "Education and Cultural Affairs" subtitle 6, "School Districts," rather than in Title X, "Financial Resources," which encompasses various taxing laws. Chapter 256, in which the director is charged with the interpretation of "school laws," is also in Title VII governing education. Thus, the context of sections 298.4 and 296.7 supports the district court's conclusion the department, acting through its director, has been vested with discretion to interpret these provisions.

In addition to the purpose and context of these laws, the practical considerations involved also support our conclusion. Because school financing is so complex, there are practical reasons the legislature would want all laws affecting school finances subject to the interpretive authority of the agency charged with oversight of those finances—the Department of Education. ... [I]n the present case, the department has broad authority over school budgeting and financing. See generally Iowa Code §§ 257.30 (establishing a school budget review committee in the department, chaired by the director), .31 (describing extensive duties of school budget review committee, including review of each district's proposed and certified budgets). ...

For the foregoing reasons, we are convinced the legislature intended to vest the department's director with the discretion to interpret sections 298.4 and 296.7. Accordingly, we give appropriate deference to the agency's interpretation of these statutes by reviewing its interpretation under the standard set forth in section 17A.19(10)(I). Under that standard, we will not reverse the agency's interpretation unless it is "irrational, illogical, or wholly unjustifiable." Iowa Code § 17A.19(10)(I).

739 N.W.2d 303,307-308.

¹² Intervenors' Petition for Intervention, page 3.

¹³ Petitioner's Reply Brief, page 3.

This agency has carefully considered the arguments of all parties. Our interpretation of the statutes in question is not that of ISEA; our answer is not that hoped for by ISEA. However, we do not reach our conclusions based on the lack of any language in statute unequivocally stating that TSS funds are exempt from an across-the-board (and at the time of enactment of HF 810 and SF 445 an unknown) budget reduction. It would be unreasonable for us to look for such specificity in legislation.

We agree with ISEA's statement that there is no authority for a school district to alter the amount of TSS calculated on the Aid and Levy Worksheet. The calculation is by statutory formula, and the resulting calculation sets the upper limit of the school district's spending authority. But we disagree with ISEA's contention that school districts are mandated by statute to make payment to their teachers of the sum calculated.

ISEA argues that section 257.10(9)(d) must be interpreted to mean that TSS funds are to be distributed as calculated with no reduction. The simplicity of ISEA's argument that the amounts calculated for TSS distribution to each school district are known, are clear, are readily discernable from the Aid and Levy Worksheet, and must be distributed as calculated by each school district to the district's teachers is beguiling, but is not compelling.

Certainly it is true that the full amount of money *appropriated and allocated* to school districts for TSS must be applied as directed by the Legislature, but we are unwilling to make the leap required by ISEA to say that any statute mandates that a school district distribute to teachers funds calculated but not allocated to the school district. We believe that ISEA overemphasizes the word "calculated" in 257.10(9)(d). The verb "calculated" is modified by the phrase "use of" those funds. We believe the plain meaning of the statute is to express the concern of our Legislature with making sure that the distributed funds are used appropriately; the statute is not mandating that funds calculated be distributed.

This agency's interpretation of 257.10(9)(d) is in context with other school finance laws and with section 8.31, requiring that such reductions be truly across-the-board. This agency must look to the overarching principles of school finance, and not focus narrowly on one element thereof. To honor the legislative intent of school finance law, we draw on the goals and principles summarized by LSA (see footnote 2), particularly those of property tax relief, provision for local discretion/incentives, establishment of maximum spending control, promotion of high student achievement, and modification of the impact of community and family background on student achievement. We also note that in his Executive Order 19, Governor Culver states that "an across-the-board reduction of General Fund expenditures avoids the unfair and unrealistic 'picking and choosing' of important programs."

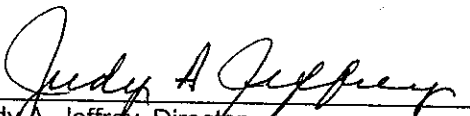
When we view the phrase "as calculated," we believe that it harmonizes with the total school finance scheme best to interpret the phrase as a cap on the spending and a directive to use TSS funds for the purposes allowed in chapter 284. To adopt ISEA's interpretation does too much harm -- \$30 million of harm -- to direct student programs for this agency to believe that holding TSS funds harmless is the intent of the Iowa Legislature. The 10% across-the-board budget reduction imposes a great burden on our school districts and their students. That burden would be unduly and disproportionately placed on the backs of Iowa's K-12 students if this agency were to answer the questions as ISEA has proposed.

As for § 60 of 2009 Iowa Acts, HF 820, this agency believes that the Legislature meant only to hold TSS payments harmless in the absence of an *across-the-board* budget reduction. The appropriation and subappropriation at section 60 are the maximums to be initially disbursed to the Department of Management. We do not believe that paragraph 2 intended to do anything more than to direct the Department of Management to disburse TSS funds first, if there is no across-the-board budget reduction [the reference to 257.16(4)].

Accordingly, for the foregoing reasons, it is ordered that TSS funds are subject to the 10% across-the-board budget reduction. However, whether school districts are obligated to pay to their teachers the calculated TSS amount, which is 10% higher than the amount the school districts received in TSS monies, is dependent on the locally bargained agreements of each school district. This agency has no authority to supersede local contract language regarding amount of funding paid and method of disbursement. We urge school districts that have not already done so to consult with their local school board attorneys as to the effect of local contract language. If a local contract obligates a school district to pay teacher salaries in excess of what the district received in its allocation from the State, the district may, as discussed earlier, use cash on hand, tax its property owners, or borrow funds to make up the difference.

This declaratory order has the same status and binding effect as a final order issued in a contested case proceeding.

Issued this 21st day of December, 2009.



Judy A. Jeffrey, Director