

**IOWA DEPARTMENT  
OF EDUCATION  
(Cite as 26 D.o.E. App. Dec. 202)**

***In re Petition for Declaratory Order***

Iowa Association of School Boards, School Administrators of Iowa, and Iowa Association of School Business Officials,	:	
Petitioners,	:	DECLARATORY ORDER
for a Declaratory Order as to Iowa Code §§ 11.6(b)(1), 24.34, 25B.2, 25B.6, 256.9(18,19), 257.7, 257.10(9), and 291.10(2)	:	[Adm. Doc. #4747]

On or about January 11, 2012, the Petitioners filed their petition for declaratory order asking several questions regarding whether the Iowa Department of Education ["Department"] requires full funding of the Teacher Salary Supplement ["TSS"].

Pursuant to rule 281—Iowa Administrative Code (IAC) 3.2, notice of the petition was provided to the following education stakeholder groups in Iowa: Iowa State Education Association, Iowa School Finance Information Services, Iowa Association of AEAs, and Urban Education Network, as well as to the Iowa Department of Management. No petitions for intervention were received. An informal meeting was convened on [date] pursuant to rule 3.7. The Petitioners agreed to waive the 60 day time frame in Iowa Code section 17A.9 for the filing of the Department's order herein.

***Background***

Effective July 1, 2009, Teacher Quality and Phase II were combined statutorily to create TSS, which was rolled into the school aid formula and aid and levy worksheet. TSS monies are state foundation aid funds. In October of 2009, then-Governor Chet Culver ordered, pursuant to Executive Order 19, a 10% across-the-board budget reduction for the fiscal year ending June 30, 2010 ["FY 2010"].<sup>1</sup> Accordingly, state foundation aid payments to school districts were reduced by 10%.

Soon thereafter, the Iowa State Education Association ["ISEA"] filed a petition with the Department for a Declaratory Order, asking whether the TSS money was included in the 10% across-the-board ["ATB"] cut. ISEA argued that Iowa Code section 257.10(9)(d) must be interpreted to mean that TSS funds are to be distributed as calculated with no reduction. The Department disagreed, ordering that that TSS funds were subject to the 10% ATB budget reduction.<sup>2</sup> That order shall be referred to herein as "TSS Order I." In TSS Order I, the Department also stated that whether school districts were obligated to actually pay to their teachers the calculated TSS amount, which was 10% higher than the amount the school districts received in TSS monies, was dependent on their locally bargained agreements. If a local contract required TSS to be paid in full as calculated, the school district had the option of using cash on hand, taxing its property owners, or borrowing funds to make up the difference.

We disagreed in TSS Order I with ISEA's primary contention that school districts are mandated by statute to pay out to their teachers 100% of the sum calculated, that is, of the budget authority for which no cash

<sup>1</sup> See Executive Order 19, online at [http://www.governor.iowa.gov/files/Executive\\_Order\\_No19.pdf](http://www.governor.iowa.gov/files/Executive_Order_No19.pdf).

<sup>2</sup> See 25 D.o.E. App. Dec. 206 (2009).

was received by the districts. The calculation is by statutory formula, and the resulting calculation sets the upper limit of the school district's budget authority. The Department does not direct when a district must expend the budget authority the district has been granted. The Department believes it is a local district decision to expend its TSS as determined by its local bargaining, in good faith.

The terms "budget authority," "spending authority," and "authorized budget" are synonymous. Iowa Code section 257.7 defines the authorized budget as follows:

[T]he authorized budget ... is the sum of the combined district cost for that year, the actual miscellaneous income received for that year, and the actual unspent balance from the preceding year.

Budget authority does not necessarily equal the amount of cash that a school district has available to it. As is also stated in administrative rule 281—98.1, "There is no assumption that a school district or area education agency will receive the same amount of revenue as it has received in budget authority due to delinquent property taxes, cuts in state aid, or legislative decisions to fund other instructional programs off the top of state aid." It is simply a reality that a school district's budget authority may, and often does, exceed its available cash.

The Department *does* prohibit a district from using budget authority for any other purpose other than the purpose for which it was granted. Administrative rule 281—98.1 also states, "The school district or area education agency must expend the full amount of budget authority for the specific purposes for which it was earmarked." To that end, that full portion of the budget authority should be included in the restricted fund balance reported on the CAR every year until the authority has been expended for the purpose for which granted. It is in the public interest to have a transparent environment where the amounts the local district has or has not paid, as the legislature has determined, be publicly displayed. It would be misleading, and therefore is not in the public interest, to treat TSS in a way that is different from the treatment of all other categorical budget authority.

### ***The Questions Posed Herein***

The present Petitioners<sup>3</sup> now assert that **the Department, by rejecting a Certified Annual Report ["CAR"] which does not show local restricted funding of TSS, requires local funding of spending authority for TSS.** In other words, the Petitioners' questions are all based on the assumption that the Department, after acknowledging in TSS Order I that TSS was not exempt from the 10% ATB budget cut, and that school districts did not receive full TSS funding, nevertheless requires that districts back TSS authority with actual cash.

The Petitioners challenge the Department's authority to require full local funding of TSS spending authority. But inasmuch as the questions posed are based on an erroneous assumption, it makes no sense to repeat those questions and answer them. Rather, this Order will correct any erroneous assumption and provide three options for school districts that did not pay the full amount of TSS to teachers in the 2009-2010 fiscal year, have not done so since that date, and have not increased the ratio of fund balance to unspent balance to the extent that it has funded the budget authority for the TSS.

### ***The Agency's Analysis***

We first note, as we did in TSS Order I that this agency's authority to interpret statutes was most recently discussed by the Iowa Supreme Court in *Iowa Ass'n of School Boards v. Iowa Dept. of Educ.*, 739 N.W.2d 303 (Iowa 2007), wherein the Court stated as follows:

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<sup>3</sup> School Administrators of Iowa and the Iowa Association of School Boards were interveners in the action that led to TSS Order I.

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." ...

... 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. ...

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

It is worth noting again that the amount of cash available to a school district does not equal the budget authority of a district in any category in any year. The tension, of course, is that districts must report accurately the amount of budget authority they have for categorical funds such as TSS in such a way that makes it clear to the public that budget authority does not equal cash on hand to be spent.

Accordingly, as a courtesy to districts that acted in good faith on the erroneous assumption underlying the filing of the petition herein, the Department shall establish, for this one time and for TSS only, accounts similar to those formerly used by GAAP for long term debt (amount available, amount to be provided) with the following parameters:

- The accounts will exist for 5 years only, beginning with fiscal year 2009-2010 and ending with fiscal year 2013-2014. At the end of FY15, any remaining balance of unpaid TSS will return to restricted fund balance when reported on the CAR.
- For the 5-year-period, this will be, in effect, creating a false underreporting of restricted TSS to the extent of the 10% equivalent, adjusted by changes in fund balances since that date.
- This is a voluntary option available only to a district that did not pay the full amount of TSS to teachers in the 2009-2010 fiscal year, has not done so since that date, and has not increased the ratio of fund balance to unspent balance to the extent that it has funded the budget authority for the TSS.
- The amounts of fund balance and unspent balance are not known and verifiable until several months after the CAR-COA is filed. Therefore, the amounts will be separately reported by districts as directed by the Department, and will be verified by the Department and the CAR-COA balance sheet account codes will be adjusted accordingly.
- Because of the potential impact on federal reporting, funding, and policy or research, this optional reporting will be at the state level only on the CAR.

A second option is available to school districts that did not pay the full amount of TSS to teachers in the 2009-2010 fiscal year, have not done so since that date, and have not increased the ratio of fund balance to unspent balance to the extent that it has funded the budget authority for the TSS. That option is that at any time a district wants to permanently remove the obligation to account for the remaining unpaid TSS, the district may approach the School Budget Review Committee ["SBRC"] to request negative modified allowable growth. This Declaratory Order in no way obligates the SBRC to hear or approve such a request.

A third option is also available to school districts that did not pay the full amount of TSS to teachers in the 2009-2010 fiscal year, have not done so since that date, and have not increased the ratio of fund balance

to unspent balance to the extent that it has funded the budget authority for the TSS. That third option is to continue reporting the full amount of TSS not paid to teachers as a restricted fund balance on the CAR. This third option means not implementing the first or second options above. If any district does not implement the first or second option for fiscal year 2011-2012, it is assumed that the district has paid the full amount of TSS to teachers or has selected this third option.

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

Issued this 13<sup>th</sup> day of April, 2012.

/s/  
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Jason E. Glass, Director