
Coates' Canons Blog: Changes to County / School Dispute Resolution Process

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Article: <https://canons.sog.unc.edu/changes-to-county-school-dispute-resolution-process/>

This entry was posted on June 26, 2018 and is filed under Finance & Tax, General Local Government (Miscellaneous), Public School Finance

As detailed **here** and **here**, if a local school board believes that it has not received sufficient funding from the county for the fiscal year, for either capital or operating expenses, the local school board may initiate a dispute resolution process. For many years, the process has had three stages—joint meeting of the two governing boards; mediation; and litigation. The General Assembly has replaced the litigation stage with a mandated funding formula for operating expense funding disputes. See **S.L. 2018-83**. Litigation will continue as the third stage for capital funding disputes. This post summarizes the new dispute resolution process.

Trigger for Dispute Resolution Process

If the local school board “determines that the amount of money appropriated to the local current expense fund [for operating expenses], or the capital outlay fund [for capital expenses], or both, . . . is not sufficient to support a system of free public schools,” it may initiate a dispute resolution process with the board of county commissioners to challenge the appropriation (dispute resolution process). G.S. 115C-431(a).

Stages of Dispute Resolution Process

As stated above, there are three stages in the dispute resolution process—joint meeting of the two governing boards; mediation; and default funding formula (for operating expense disputes) or litigation (for capital outlay disputes).

Joint Meeting of Boards. To trigger the process, a local school board must so notify the county board within seven days of the adoption of the county budget ordinance. The boards then are required to meet and make a good-faith effort to try to resolve their differences. A mediator presides over the meeting and acts as a neutral facilitator.

Mediation. If the meeting is not successful, the boards proceed to official mediation. Unless the two boards agree otherwise, the participants in the mediation are the chairs, attorneys, and finance officers of each board; the school superintendent; and the county manager. The compensation and expenses of the mediator are shared equally by the local school administrative unit and the county. The mediation is conducted in private, and statements and conduct are not discoverable in any subsequent litigation. The mediation must end by August 1, unless both boards agree otherwise. If the mediation continues beyond August 1, the county must appropriate to the local current expense fund a sum equal to its appropriation for the previous fiscal year.

Default Funding Formula or Litigation. If mediation ultimately fails, what happens next depends on whether operational funding levels, capital funding levels, or both are in dispute. If the dispute at least partially involves operational funding amounts, to be appropriated to the school unit’s local current expense fund, then a failed mediation triggers a default funding formula. The funding formula is the final determination of the local current expense appropriation amount for that fiscal year. Neither the local board of education nor board of county commissioners may file any legal action challenging the determination.

The funding formula differs depending on whether or not the funding formula had been triggered in the prior fiscal year.

Local Current Expense Funding Formula if Statutory Funding Formula Not Triggered for the Prior Two Years

If the statutory funding formula was not triggered in the prior two fiscal years, the county’s appropriation to a local school unit’s local current expense fund derives from the following formula:



1. Start with the amount of county appropriations allocated to the local current expense fund in the prior fiscal year that was actually expended by the local school unit or transferred to a charter school, innovative school, regional school, or laboratory school. In other words, begin the calculation with the amount of county appropriations that were actually spent for the year immediately preceding the budget year. *Note that because county appropriations are commingled with other local revenue sources in the local current expense fund, it will be incumbent on the local school board to separately track the expenditure of county appropriations.*
2. Divide the amount from step (1.) by the sum of the average daily membership of the local school administrative unit from the prior year + the share of the average daily membership of any innovative, charter, regional, or laboratory school whose students reside in the local school administrative unit from the prior year. This number represents the per student allocation of monies actually spent.
3. Multiply the amount from step (2.0), rounded to the nearest penny, by the sum of 1 + the twelve-month percent change in the second quarter Employment Cost Index for elementary and secondary school workers as reported by the Federal Bureau of Labor Statistics. Unfortunately, the new law does not precisely designate the data required to make this calculation. *It is unclear if the reference is to the Employment Cost Index for total compensation for elementary and secondary school workers or the Employment Cost Index for wages and salaries for elementary and secondary school workers. Here is a graph that illustrates the difference. (Note that second quarter data is released on July 31.) The new law also does not indicate whether seasonally adjusted or non-seasonally adjusted data should be used. It will be up to the local school board and board of county commissioners to determine which set of data to use in the calculation. It is also not clear whether or not the percent change should also be rounded to the nearest penny before performing the calculation.*
4. Multiply the adjusted per student allocation in step (3.), rounded to the nearest penny, by the sum of the allotted average daily membership of the local school administrative unit from the budget year in dispute + the share of the average daily membership of any innovative, charter, regional, or laboratory school whose students reside in the local school administrative unit from the budget year in dispute. *Note that it is not clear what number should be used to determine the total number of students for the budget year in dispute. At the point in time that the statutory formula is likely to be triggered a local school unit likely will only have its estimated average daily membership for the year. The county and school unit will have to determine what happens if actual ADM for the budget year differs from estimated average daily membership.*

The resulting figure from step (4.), rounded to the nearest penny, is the statutorily mandated local current expense appropriation for the budget year.

Local Current Expense Funding Formula if Statutory Funding Formula Triggered in Prior Two Fiscal Years or More

If the statutory funding formula is triggered a second year in a row, the formula is altered to increase the inflationary factor. The formula then becomes:

1. Start with the amount of county appropriations allocated to the local current expense fund in the prior fiscal year that was actually expended by the local school unit or transferred to a charter school, innovative school, regional school, or laboratory school. In other words, begin the calculation with the amount of county appropriations that were actually spent for the year immediately preceding the budget year. *Note that because county appropriations are commingled with other local revenue sources in the local current expense fund, it will be incumbent on the local school board to separately track the expenditure of county appropriations.*
2. Divide the amount from step (1.) by the sum of the average daily membership of the local school administrative unit from the prior year + the share of the average daily membership of any innovative, charter, regional, or laboratory school whose students reside in the local school administrative unit from the prior year. This number represents the per student allocation of monies actually spent.
3. Increase by 3 percent the twelve-month percent change in the second quarter Employment Cost Index for elementary and secondary school workers as reported by the Federal Bureau of Labor Statistics. *This provision, again, leaves a great deal of ambiguity. As stated above, it is unclear if the reference is to the Employment Cost Index for total compensation for elementary and secondary school workers or the Employment Cost Index for wages and salaries for elementary and secondary school workers. Here is a graph that illustrates the difference. (Note that second quarter data is released on July 31.) The new law also does not indicate whether seasonally adjusted or non-seasonally adjusted data should be used. It will be up to the local school board and board of county commissioners to determine which set of data to use in the calculation. Finally, it is not clear how to interpret the mandate to increase the percentage change by 3 percent. It could mean that you add 3 percent to the percent change. It could also mean that you multiply the percent change by 3 percent. The former interpretation seems the most consistent with legislative intent. (To illustrate how that calculation would work, if the 12-month*

percent change is 2.38 percent, you add 3 percent to that for a total of 5.38 percent or 0.0538.)

4. Multiply the amount from step (2.), rounded to the nearest penny, by the amount in step (3.), rounded to the nearest penny. *Note that statutory language appears to indicate that the percent change calculated in step (3.) be rounded to the nearest penny before it is multiplied by the amount from step (2.) (To illustrate how the calculation would work, if the amount from step 2 is 211.3823 and the amount from step (3.) is .0538, you round both numbers and then multiply 211.38 by .05.)*
5. Multiply the modified per student allocation in step (4.) by the sum of the average daily membership of the local school administrative unit from the budget year + the share of the average daily membership of any innovative, charter, regional, or laboratory school whose students reside in the local school administrative unit from the budget year. *Note that at the point in time that the statutory formula is likely to be triggered a local school unit likely will only have its estimated average daily membership for the year. The county and school unit will have to determine what happens if actual ADM for the budget year differs from estimated average daily membership.*

The resulting figure from step (5.), rounded to the nearest penny, is the statutorily mandated local current expense appropriation for the budget year.

Litigation for Capital Funding Dispute

If the dispute, or part of the dispute, involves capital funding amounts, the local board of education may file an action in superior court related to the capital funding only. The action must be filed within five days of the failed mediation. Either side may demand a jury trial. The judge or jury must determine the “amount of money legally necessary from the board of county commissioners to provide the local school administrative units with buildings suitably equipped, as required by G.S. 115C-521.” G.S. 115C-521 specifies that a local school board provide adequate school buildings “equipped with suitable school furniture and apparatus.”

In *Union County Board of Education v. Union County Board of Commissioners*, 771 N.C. App. 590 (2015), the court of appeals held that the amount “legally necessary” is the amount needed to enable the local school board to fulfill its constitutional duty to provide every child with the opportunity for a sound basic education. The court also clarified that the judge or jury is limited to considering the needs of the school unit, and resources available to the school unit and the county, in the fiscal year in which the dispute arose.

In making this determination, a judge or jury must consider

the educational goals and policies of the State and the local board of education, the budgetary request of the local board of education, the financial resources of the county and the local board of education, and the fiscal policies of the board of county commissioners and the local board of education.

G.S. 115C-431.

If the school board succeeds in the litigation, the court will order the board of county commissioners to appropriate a specific amount to the local school administrative unit and, if necessary, to levy property taxes to cover the amount of the appropriation. Any payment by the county may not be considered or used to deny or reduce appropriations to a local school administrative unit in subsequent fiscal years.

Either board may appeal the superior court’s judgment in writing within ten days after the entry of the judgment. Final judgments at the conclusion of the appellate process are legally binding on both boards.

Although the statute directs the trial court to take up the matter as soon as possible, it is silent as to the timing of appellate review. In practice, the appellate review process often takes over a year or more to complete. Thus, even if a judge or jury determines that a local school board needs additional funds from the county to meet its constitutional and statutory educational responsibilities for a particular school year, the school unit may not receive those additional capital funds that school year.

Links



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- www.ncleg.net/Sessions/2017/Bills/House/PDF/H1031v5.pdf
 - fred.stlouisfed.org/graph/?g=khda