

STATE BOARD OF EDUCATION
STATE DEPARTMENT OF EDUCATION
ADMINISTRATIVE CODE

CHAPTER 290-1-2
REVIEW BY THE STATE SUPERINTENDENT OF EDUCATION OF ACTIONS BY
COUNTY AND CITY BOARDS OF EDUCATION

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290-1-2-.01	<u>Short Title Review Of Actions Of County And City Boards. .</u>

The State Superintendent of Education shall have the authority to review actions and orders of county and city boards of education and of county superintendents of education and city superintendents of schools in matters relating to finance and other matters seriously affecting the education and educational interests.

Author:

Statutory Authority: Code of Ala. 1975, §16-4-8.

History: New Rule: Filed November 10, 1988 effective December 15, 1988; January 14, 1993. **Amended:** Effective February 19, 1993.

290-1-2-.01.01 Warrant(s) To Be Reviewed And/Or Approved.

The State Superintendent of Education shall review and/or approve each application by/for each county or city board of education for the sale of Tax Anticipation Warrants and/or Notes in Anticipation of Warrants and/or Warrants for Public Construction.

(1) Tax Anticipation Warrants.

(a) Tax Anticipation Warrants in Cities and Counties proposed to be issued pursuant to Code of Ala. 1975, §§16-13-70 through 16-13-77.

(b) Warrants for Special County and District Taxes proposed to be issued pursuant to Code of Ala. 1975, §§16-13-90 through 16-13-109.

(c) Warrants for Special License, Privilege or Excise Taxes to be issued pursuant to Code of Ala. 1975, §§16-13-120 through 16-13-122.

(2) Notes in Anticipation of Warrants.

(a) Notes in Anticipation of Warrants proposed to be issued pursuant to Code of Ala. 1975, §§16-13-210 through 16-13-217.

(3) Warrants for Public Construction.

(a) Proposal for agreement pertaining to Warrants for Public Construction pursuant to Code of Ala. 1975, Title 11, Chapter 28 for capital outlay or debt refunding for capital outlay.

(b) Exceptions to Alabama Administrative Code r. 290-1-2-.01.01(3)(a) (above).

1. Proposed agreement pertaining to warrant issues and refunding issues with a county, city, or other agency shall not be approved when subject issue or agreement includes monies for operations, except:

(i) in the case when there is a net savings to the local board of education due to refunding a warrant issue; and

(ii) the time for repayment of the refunded warrant is not extended.

Author: Mr. William J. Rutherford

Statutory Authority: Code of Ala. 1975, §§16-4-8; 16-13-70 through 16-13-77; 16-13-90 through 16-13-109; 16-13-120 through 16-13-122.

History: New Rule: Filed January 14, 1993 effective February 19, 1993.

290-1-2-.01.02 Authorization To Intercept State Funds For Debt Payments.

A local board of education may enter into a binding agreement to authorize the State Comptroller to intercept and direct certain

state allocated funds to satisfy a debt payment that is due and unpaid in accordance with the provisions of Ala. Act No. 2003-384.

(1) Debt Eligible for Intercept. A debt obligation requiring the approval of the State Superintendent by state laws or Rule 290-1-2-.01.01 may be eligible for payment by intercept of state funds allocated to the local board of education.

(a) The State Superintendent shall not approve a debt obligation of a local board of education which would jeopardize the Foundation Program of education established by state law and by rules and regulations of the State Board of Education.

(b) A debt obligation shall not be eligible for intercept of state allocated funds unless the debt instrument provides for reserved funds for debt payments by one of the following methods:

1. A debt service reserve fund is funded to provide for the maximum amount of principal and interest coming due in any fiscal year for the term of the debt obligation.

2. A restricted fund, consisting of cash or other instruments legally available under state law for the investment of board funds, is funded to provide for the maximum amount of principal and interest coming due in any fiscal year for the term of the debt obligation.

(c) The State Superintendent may reduce the amount of the reserve fund requirement only if a lesser amount is required by the rules of the Internal Revenue Service.

(2) Procedures for Authorization to Intercept State Funds.

(a) Consent for Intercept. Before the issuance of a debt obligation requiring the approval of the State Superintendent, a local board of education may approve a binding agreement authorizing the State Comptroller to intercept and direct certain state allocated funds to satisfy a debt payment that is due and unpaid. In the binding agreement the local board of education shall agree to replace the funds withheld to satisfy the debt payment by providing funds legally available for replacement. The binding agreement shall be submitted to the State Department of Education in a form required by the State Superintendent.

(b) Withdrawal of Consent for Intercept. A local board of education may not withdraw the consent to intercept state

allocated funds for a debt obligation unless one of the following conditions are met:

1. The debt obligation has not been issued.
2. The debt obligation has matured.
3. The local board of education has issued refunding bonds to legally defease the debt obligation.
4. The local board of education, the paying agent, and holders of the debt obligation agree that consent to intercept state allocated funds is no longer required.
5. The debt obligation has been satisfied by other means.

(3) Approval by State Superintendent.

(a) The State Superintendent shall approve the issuance of a debt obligation before the State Comptroller can intercept and direct certain state allocated funds to satisfy a debt payment that is due and unpaid.

(b) The State Superintendent shall approve the intercept of state allocated funds directed to the satisfaction of a debt payment that is due and unpaid after determining that the procedures to intercept state allocated funds have been met.

(4) Procedures to Intercept State Allocated Funds.

(a) The State Superintendent shall not approve the intercept of state allocated funds for the satisfaction of a debt payment that is due and unpaid unless the following conditions have been met:

1. The paying agent for a debt obligation approved by the State Superintendent, notifies the State Department of Education by telephone, e-mail, or facsimile that the local board of education has not made the debt payment within two business days after the due date for debt payments specified in the debt instrument.
2. The initial notification of the unpaid debt by the paying agent to the State Department of Education is followed by written notification through U.S. Postal Service, return receipt requested, or by other legal means of official notification.

3. The State Department of Education has notified the local board of education that a payment on a debt obligation is due and unpaid.

4. The State Department of Education has attempted to locate legally available funds for the local board of education to provide payment for the unpaid debt.

5. The State Department of Education has determined that the intercept of state funds allocated to the local board of education is the only source of funds available to make the scheduled debt payment in a timely manner.

(b) The State Superintendent shall then provide documentation and instructions to the State Comptroller, no later than two business days prior to the debt obligation payment date, to pay state allocated funds directly to the paying agent in order to satisfy the debt obligation payment, and to withhold monthly allocations of state funds from the local board of education to equal the amount of debt obligation payment made by the State Comptroller.

Author: Dr. Ed Richardson

Statutory Authority: Code of Ala. 1975, §§16-3-13; 16-13-4.

History: **New Rule:** Filed May 13, 2004; effective June 17, 2004.

290-1-2-.02

Matters Subject To Review.

(1) The State Superintendent of Education may review actions and orders of county and city boards of education and of county superintendents of education and city superintendents of schools on the following matters:

(a) Matters related to health, safety, and welfare affecting persons attending the various schools of this state and their employees.

(b) Matters of health, safety, and welfare affecting the condition or operation of any facility utilized as a public school.

(c) A failure to comply with state or federal law.

(d) A failure to comply with the rules and regulations of the State Board of Education, State Department of Education, or any other state or federal administrative agency.

(e) Other matters seriously affecting education and educational interests.

Author:

Statutory Authority: Code of Ala. 1975, §16-4-8.

History: New Rule: Filed November 10, 1988; effective December 15, 1988.

290-1-2-.03**Matters Not Subject To Review .**

(1) The State Superintendent of Education shall not have the authority to review actions and orders of county and city boards of education or county superintendents of education and city superintendents of schools in personnel matters; provided, however, that the State Superintendent may review such actions and orders in personnel matters upon a finding by the State Superintendent, made after investigation, that exigent circumstances affecting the education and education interest of the affected board require the State Superintendent's intervention in such matters. Any such finding by the State Superintendent, and an explanation of the basis for the finding, shall be submitted to the State Board of Education forthwith upon its issuance.

(2) If substantial evidence exists that an employee of a county or city board of education or a county superintendent of education or a city superintendent of schools has committed a violation of the criminal laws of this state, the State Superintendent of Education shall conduct such investigation as the State Superintendent deems necessary and make a written report of such evidence of the investigation to:

(a) the county or city board of education;

(b) a county superintendent of education; or

(c) a city superintendent of schools;

(d) the State Board of Education; and

(e) such other appropriate law enforcement agencies as the State Superintendent deems necessary.

Author: Richard N. Meadows, General Counsel

Statutory Authority: Code of Ala. 1975, §16-4-8.

History: Filed November 10, 1988 effective December 15, 1988; September 10, 1992 adopted 290-1-2-.03(1).68ER repealing 290-1-2-.03(1) and reserving same effective September 10, 1992; January 14, 1993 adopted 290-1-2-.03(1) effective February 22, 1993.

290-1-2-.04**Institution Of Action Of Review.**

Institution of action to review actions and orders of county and city boards of education and of county superintendents of education and city superintendents of schools:

(1) The State Superintendent of Education shall review actions and orders of county and city boards of education and of county superintendents of education and city superintendents of education upon:

(a) An exercise of discretion by the State Superintendent of Education.

(b) Upon receipt of a resolution passed by a majority of a county or city board of education.

(c) Upon request of a county superintendent of education or city superintendent of schools.

(d) Upon a resolution of a majority of the State Board of Education.

Author:

Statutory Authority:

History:

290-1-2-.05

Procedures For Review.

(1) Upon a determination that a review of an action or an order of a county or city board of education or of a county superintendent of education or city superintendent of schools is required under these rules, the State Superintendent of Education shall:

(a) Notify the county or city board of education and the county superintendent of education or the city superintendent of schools of the proposed review.

(b) The State Superintendent shall state reasons for the review, in writing, to the county or city board of education and county superintendent of education or city superintendent of schools and the scope of the proposed review.

(c) The State Superintendent or designee shall conduct such investigation as deemed necessary to obtain all relevant facts regarding the reasons given for the review and shall report the results of the review to the affected party.

(d) The county or city board of education and county superintendent of education or city superintendent of schools shall respond to the State Superintendent of Education within ten (10) work days after receipt of the report of review.

(e) Upon a review of the written response of the county or city board of education or county superintendent of education or city superintendent of schools, the State Superintendent shall, in his sole discretion, allow further written or oral

response within five (5) work days of receipt of subject response.

(f) The State Superintendent shall make a final order respecting the review not later than ten (10) work days after receipt of the response of the county board of education, city board of education, or county superintendent of education, or city superintendent of schools.

(g) The final order, referred to in 290-1-2-.06(f) above, shall be issued by the State Superintendent no later than ninety (90) calendar days after the affected party has been notified of a proposed review.

Author:

Statutory Authority:

History:

290-1-2-.06

Emergency Review Procedures .

(1) In those circumstances where an imminent health or safety risk is the subject of a review, the State Superintendent may conduct an emergency review. In such case the Superintendent shall:

(a) Notify the county or city board of education and county superintendent of education or city superintendent of schools of the imminent health or safety danger within three (3) working days of the imminent health or safety danger being brought to the attention of the State Superintendent.

(b) Except that if the imminent health or safety danger is of such a nature to require emergency action on the part of the State Superintendent, the State Superintendent may, without notice or after conducting such investigation as deemed necessary, suspend any action or order of a county or city board of education or county superintendent of education or city superintendent of schools for a period not to exceed ten (10) work days.

(c) If the State Superintendent suspends an action or order of a county or city board of education or of a county superintendent of education or a city superintendent of schools prior to the State Superintendent giving notice of the review, the county or city board of education, or county superintendent of education or city superintendent of schools shall respond to the notice in writing not later than five (5) days after receiving actual notice of the State Superintendent's review.

Author:

Statutory Authority:

History:

290-1-2-.07 Disposition.

Distribution of reviews of actions or orders of county board of education, city board of education, county superintendent of education, or city superintendent of schools.

(1) If after conducting such investigation as the State Superintendent deems necessary, the State Superintendent finds an improper action or order on the part of a county board of education, a city board of education, a county superintendent of education, or a city superintendent of schools, the State Superintendent shall report the results of the investigation and final order to the State Board of Education and to the affected county or city board of education, county superintendent of education or city superintendent of schools and shall take such action as deemed necessary to cause a just and proper disposition of the matter.

Author:

Statutory Authority:

History:

290-1-2-.08 Conduct Of Review Of Actions Or Orders.

Conduct of review of actions or orders of county board of education, city board of education, county superintendent of education, city superintendent of schools.

(1) The State Superintendent of Education or a person designated by the State Superintendent shall conduct such review as is required and the State Superintendent of Education shall issue a final order, signed by the State Superintendent, respecting the review of the action or order that is the subject of the review reflecting the just and proper disposition of the matter.

Author:

Statutory Authority: Code of Ala. 1975, §16-4-8.

History: New Rule: Filed November 10, 1988 effective December 15, 1989.