

CHAPTER 18. FINANCIAL RECOVERY

§ 18.1. Statutory authority

The statutory authority for this chapter is section 621-A(a)(2) of the Public School Code of 1949 (24 P.S. § 6-621-A(a)(2) (relating to issuance of declaration; criteria)).

§ 18.2. Purpose

Consistent with the requirements of section 621-A(a)(2) of the School Code (24 P.S. § 6-621-A(a)(2) (relating to criteria)), the purpose of this chapter is to establish criteria that the Secretary may consider in determining whether to issue a declaration that a school district is in financial recovery status, and whether a school district in financial recovery status is in moderate or severe recovery status.

§ 18.3. Definitions

For the purposes of this chapter, the following terms shall have the following meaning, unless the context clearly indicates otherwise:

Average daily membership – The final average daily membership of a school district as most recently determined by the Department in accordance with procedures established by the Secretary under section 2501(3) of the School Code (24 P.S. § 25-2501(3) (relating to definitions)).

Claim – As defined by section 602-A of the School Code (24 P.S. § 6-602-A (relating to definitions)), a right to (1) payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (2) an equitable remedy for breach of performance if the breach gives rise to a right to payment, whether or not the right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

Deficit – As defined by section 602-A of the School Code (24 P.S. § 6-602-A), the excess of expenditures over revenues, calculated as a percentage of revenue, during an accounting period, and which calculation includes all governmental fund types and all proprietary fund types, but excludes all fiduciary fund types of the school district.

Expenditures – As defined by section 602-A of the School Code (24 P.S. § 6-602-A), reductions in fund equity, including current operating expenses that require the use of fund equity, debt service and capital outlays. The term shall not include interfund transfers.

Financial Recovery School District – As defined by section 602-A of the School Code (24 P.S. § 6-602-A), a school district declared by the Secretary to be in financial recovery status under section 621-A of the School Code (24 P.S. § 6-621-A (relating to issuance of declaration)).

Financial Watch School District – A school district declared by the Secretary to be in financial watch status under section 611-A of the School Code (24 P.S. § 6-611-A (relating to early warning system)).

Fixed costs – Expenditures for utility services, insurance-general, communications, energy, and debt service, as defined in the *Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems*.

Fund equity – As defined by section 602-A of the School Code (24 P.S. § 6-602-A), excess of assets of a fund over its liabilities. The term shall include a fund balance.

Revenues – As defined by section 602-A of the School Code (24 P.S. § 6-602-A (relating to definitions)), additions to fund equity other than from interfund transfers, proceeds of debt and proceeds of disposition of general fixed assets.

School Code – The Public School Code of 1949 (24 P.S. § 1-101—27-2702).

School district – As defined by section 602-A of the Public School Code (24 P.S. § 6-602-A), a school district of the first class A, second class, third class and fourth class and a Financial Recovery School District. The term does not include a school district of the first class.

Total annual expenditures – Reductions in fund equity (including current operating expenses that require the use of fund equity), debt service and capital outlays (including all governmental fund types and all proprietary fund types), but excluding all fiduciary fund types of the school district. The term shall not include interfund transfers.

Unassigned fund balance – Amounts available for any purpose within the general fund only, as defined in the *Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems*.

PROPOSED REGULATION – As approved by the State Board of Education on January 10, 2013, and revised by staff to meet form and legality requirements.

§ 18.4. Issuance of declaration under section 621-A(a)(1) of the School Code

(a) As provided by section 621-A(a)(1) of the School Code (24 P.S. § 6-621-A(a)(1) (relating to criteria)), the Secretary shall issue a declaration that a school district is in financial recovery status when either of the following applies:

(1) The school district has an average daily membership greater than 7,500 and receives an advance of its basic education subsidy at any time.

(2) The school district receives an advance of its basic education subsidy at any time and either of the following applies:

(i) The school district is subject to a declaration of financial distress under section 691 of the School Code (24 P.S. § 6-691 (relating to when district distressed)).

(ii) The school district is engaged in litigation against the Commonwealth in which the school district seeks financial assistance from the Commonwealth to allow the school district to continue in operation.

(b) As provided by section 621-A(a)(1)(ii)(B) of the School Code (24 P.S. § 6-621-A(a)(1)(ii)(B)), the Secretary may decline to issue a declaration that a school district is in financial recovery status where the Secretary determines that the school district, within the previous five years, has faced an emergency that caused the occurrence of a circumstance set forth in subsection (a).

(c) As provided by section 621-A(b) of the School Code (24 P.S. § 6-621-A(b) (relating to failure of Commonwealth to make payment)), no school district shall be declared in financial recovery status if the circumstances enumerated in subsection (a) have been caused by the failure of the Commonwealth to make any payment of money due to the school district at the

time the payment is due, including payment of any Federal funding that is distributed through the Commonwealth.

§ 18.5. Issuance of declaration under section 621-A(a)(2) of the School Code

(a) Consistent with section 621-A(a)(2)(i) of the School Code (24 P.S. § 6-621-A(a)(2)(i) (relating to criteria)), the Secretary may consider the following criteria when determining whether to issue a declaration that a school district is in financial recovery status:

(1) The school district receives at least 85 percent of its per pupil funding from the Commonwealth and collects less than 50 percent of local taxes levied to fund the school district.

(2) The school district's unreserved fund balance has declined for 3 consecutive years and is less than 5 percent of the school district's annual expenditures. As used in this paragraph, a school district's unreserved fund balance shall mean the school district's unassigned fund balance.

(3) The school district's fixed costs are at least 30 percent of the school district's total annual expenditures.

(4) The school district's total outstanding debt is greater than the school district's total annual expenditures.

(5) The salaries of any teachers or other employees of the school district are unpaid at least 15 days after payment is due.

(6) The school district is subject to withholding of its State appropriation under section 633 of the School Code (24 P.S. § 6-633 (relating to reports to the Secretary of Education; withholding state appropriations)).

(7) The school district is subject to withholding of its State appropriation under section 785 of the School Code (24 P.S. § 7-785 (relating to failure to pay rent or make payments; withholding appropriation)).

(8) The school district is subject to withholding of its State appropriation under section 8283(c) of the General Local Government Code (53 Pa.C.S. § 8283(c) (relating to failure to pay by school districts)).

(9) The school district has defaulted on the payment of a debt due to any school district, intermediate unit or charter school that remains unpaid on or after January 1 of the year following the school year it was due and there is no dispute regarding the validity or amount of the claim.

(10) The school district's assigned and unassigned total fund balance is less than zero in the school district's general fund.

(11) The school district's assigned and unassigned total fund balance in the school district's general fund as a percentage of total expenditures is less than 3 percent.

(12) The school district experiences a delinquent tax rate of more than 10 percent.

(13) The assessed valuation of taxable real estate in the school district, as certified by the State Tax Equalization Board, has not increased over the previous 5 years.

(14) Any amount due a joint board of school directors under a joint board agreement remains unpaid beyond the due date specific in the joint board's articles of agreement.

(15) The school district has contracted a loan not authorized by law.

(16) The school district has accumulated and operated with a deficit equal to at least 2 percent of the assessed valuation of the taxable real estate within the school district for 2 successive school years.

(17) The school district experiences a deficit of 3 percent or more for 3 consecutive school years, resulting in a reduction of unassigned fund balance each year.

(18) A new, merged or union school district has been formed and one or more of the former school districts which compose the merger or union school district was a distressed school district under section 691 of the School Code (24 P.S. § 6-691 (relating to when district distressed)) or a financial recovery school district under Article VI-A of the School Code (24 P.S. §§ 6-601-A—6-693-A (relating to school district financial recovery)) at the time of the formation of the new, merged or union school district.

(19) Whether the school district previously was or currently is designated as a Financial Watch School District under section 611-A of the School Code (24 P.S. § 6-611 (relating to early warning system) and the results of the actions taken or not taken as a consequence of that designation did not improve the financial conditions of the school district as documented by the Department.

(20) The school district is experiencing or has experienced a 10 percent loss in revenue in real estate taxes compared to the preceding school year due to the nonpayment of such taxes within 60 days of the due date by any business owning real estate within the boundaries of the school district by reason of bankruptcy proceedings under Chapter 7, 11 or 13 of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and the school district has applied for temporary special aid under section 2502.16 of the School Code (24 P.S. § 25-2502.16 (relating to temporary special

aid to school districts suffering loss of tax revenue due to bankruptcy of businesses in the school district)).

(21) The school district is experiencing or has experienced a 15 percent loss in total local revenue due to the reassessment of one or more properties within the boundaries of the school district, and the school district has applied for temporary special aid under section 2502.10 of the School Code (24 P.S. § 25-2502.10 (relating to temporary special aid to school districts due to real property reassessments)).

(22) The school district experiences a 15 percent reduction in earned income tax collections as compared to the preceding school year.

(23) The school district has failed to transfer required undisputed contributions for federal social security or any pension or benefit plan of an employee within 30 days of the time payment is due.

(24) The school district has failed to make undisputed payments that are due and owed to creditors in excess of 5 percent of total budgeted expenditures for a period of 90 days or more.

(25) The school district's expenditures in the functional classifications, as designated in the *Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems*, of support services and operation of noninstructional services have increased disproportionately as compared to the district's expenditures for instruction over the previous 3 years.

(26) The Department is notified by Local, State or Federal authorities of specific information identifying financial challenges or irregularities in a school district.

(27) The school district's board of school directors has been removed from office under section 318 of the School Code (24 P.S. § 3-318 (relating to removal for failure to organize or neglect of duty)) due to neglect of duty related to its fiscal responsibilities.

(b) As provided by section 621-A(b) of the School Code (24 P.S. § 6-621-A(b) (relating to failure of Commonwealth to make payment)), no school district shall be declared in financial recovery status if the circumstances enumerated in subsection (a) have been caused by the failure of the Commonwealth to make any payment of money due to the school district at the time the payment is due, including payment of any Federal funding that is distributed through the Commonwealth.

(c) The Secretary may decline to issue a declaration that a school district is in financial recovery status where the Secretary determines that the school district, within the previous five years, has faced an emergency that caused the occurrence of a circumstance set forth in subsection (a).

(d) When the Secretary issues a declaration that a school district is in financial recovery status, the Secretary shall specify the criteria set forth under this section that placed the school district in financial recovery status.

§ 18.6. Limitation

(a) As provided by section 621-A(a)(1)(ii)(A) of the School Code (24 P.S. § 6-621-A(a)(1)(ii)(A) (relating to criteria)), no more than 9 school districts may be under a declaration of financial recovery status or in receivership at any time.

(b) The Secretary may not use information that is more than 5 years old when considering criteria under § 18.5 (relating to issuance of declaration under section 621-A(a)(2) of the School Code).

§ 18.7. Moderate and severe recovery status

(a) *Moderate recovery status* – The Secretary shall issue a declaration that a Financial Recovery School District is in moderate recovery status if the Financial Recovery School District is not declared by the Secretary in severe recovery status.

(b) *Severe recovery status* – The Secretary shall issue a declaration that a Financial Recovery School District is in severe recovery status if the school district is unable to fulfill the 180 days of instruction for pupils requirement provided by section 1501 of the School Code (24 P.S. § 15-1501 (relating to minimum number of days; school month)) for the present school year or for the following school year due to the lack of existing revenue sources and additional revenue sources as are provided by and allowed under law, including the Taxpayer Relief Act (53 P.S. §§ 6926.101-6926.5006).

§ 18.8. Appeal

As provided by section 621-A(c) of the School Code (24 P.S. § 6-621-A(c) (relating to appeal), a school district may appeal the Secretary's declaration of financial recovery status under the Administrative Agency Law (2 Pa.C.S. (relating to administrative law and procedure)).