

**160-5-2-.02 WITHHOLDING OF FUNDS FROM LOCAL UNITS OF ADMINISTRATION.**

**(1) REQUIREMENTS.**

(a) If a local unit of administration fails to comply with provisions of law, rules, regulations, or terms of any contract with the state board, the state board may at its discretion withhold all or part of the state-contributed Quality Basic Education (QBE) program funds allotted to that local unit until full compliance is met by the local unit.

(b) In the absence of federal regulations specifying procedures for withholding federal funds, the state board shall adhere to these rules when authorized to withhold federal funds.

**(2) PREHEARING PROCEDURE.** Before the state superintendent of schools informs the State Board of Education that a local unit of administration is in noncompliance with any law, rules, regulations, standards, requirements or the terms of any contract for purposes of withholding state funds or federal funds, where applicable, the following procedures shall be followed.

(a) The state school superintendent or designee shall inform the local unit of administration of the specific areas of noncompliance.

(b) The local unit of administration shall have 30 calendar days from the date of notification to submit evidence of resolution to the department.

(c) If the noncompliance issue is not resolved by the end of the 30 days, the state school superintendent or designee shall so inform the local unit of administration that a recommendation to withhold will be forwarded to the State Board of Education with the specific areas of noncompliance of the particular local unit of administration noted.

(d) The state school superintendent shall inform the state board when any local unit of administration fails to comply with any provisions of law, rules, regulations, or terms of any contract with the state board if the noncompliance issue is not resolved, and shall recommend that the state board withhold state funds totally or in part until the local unit of administration complies.

(e) Should the state board exercise its discretion to withhold a portion or all of the state QBE funds from the local unit of administration, the board, through the state school superintendent's office, shall inform the local unit of administration of the board's intention to withhold funds at least 30 days prior to the intended date of withholding funds.

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(f) The local unit of administration shall be informed in writing of the areas of noncompliance and which funds are going to be withheld. The letter shall also state that the local unit of administration is entitled to a hearing on the matter according to the provisions of paragraph (3) of this rule, provided the local unit of administration requests a hearing within 30 calendar days of receipt of the notification.

(g) Should the board of the local unit of administration invoke the appeals procedure, no funds shall be withheld until all appeals have been exhausted.

**(3) HEARING PROCEDURE.**

(a) The State Board of Education assumes original jurisdiction in matters of this nature. The vice chairperson for appeals or a hearing officer employed by the state board shall be responsible for conducting hearings before the state board and shall acquaint the members of the state board with the matter to be considered.

(b) The local unit of administration shall submit within 30 calendar days a written request to the state school superintendent that a hearing be held before the State Board of Education. The request shall distinctly specify the question in dispute and the reasons for the dispute.

(c) Upon receipt of the request for a hearing, the state school superintendent shall determine whether the request is in proper form for hearing by the state board. The state school superintendent may procure the assistance of the Georgia Attorney General and the State of Georgia, Department of Law in making this determination. If the appeal is found to be in proper form for hearing, it shall be docketed and placed on the calendar for hearing before the state board at the earliest practical time, and the claimant shall be notified by mail of the time and place of hearing.

(d) At the hearing, all witnesses shall be sworn in by the vice chairperson or any member of the board or its attorney. The state board shall cause the testimony and other evidence to be transcribed by a court reporter or other appropriate means. All witnesses sworn and testifying shall be subject to reasonable cross-examination, but the strict rules of evidence prevailing in courts of law shall not be applicable to hearings before the state board.

(e) Following action by the state board, the vice chairperson for appeals or the hearing officer shall draft the ruling of the state board and furnish copies to the claimant.

(f) The State Board of Education shall render its decision within 25 calendar days from the date of the first board meeting following the date of the hearing or 10 days after the hearing when funds are being withheld pursuant to provisions of the Individuals with Disabilities Education Act (IDEA).

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**(4) NONCOMPLIANCE WITH RULES.**

(a) Failure to comply with any of the provisions of these rules relating to a hearing will be grounds for dismissal of the hearing.

(b) If the local unit of administration feels aggrieved by the final decision of the state board following such hearing, the local unit of administration shall have the right to obtain judicial review of such decision in accordance with the requirements of O.C.G.A. § 20-2-243.

**(5) SEPARABILITY.** The provisions of this rule are hereby declared to be separable, and the invalidation of any sentence, section or part hereof shall not affect or invalidate any other sentence, section or part thereof.

Authority O.C.G.A. § 20-2-240; 20-2-242; 20-2-243.

**Adopted: September 12, 2002**

**Effective: October 2, 2002**

