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December 1, 2017

Dear Public School Leaders:

We have been contacted by some members concerned with OPI’s 2017 Legislative Special Session Guidance, distributed to members yesterday afternoon. We just learned of the existence of this document ourselves this morning and have not had a chance to review it in full detail. Preliminarily, however, we do have concerns and have brought those concerns to the attention of OPI.

OPI’s guidance, throughout the document, asserts that Senate Bill 2, Section 10 **requires** school district transfers to the transportation fund. This is incorrect. The operative language in SB2, Section 10 does not require transfers. It provides that a district is to transfer an amount estimated by the district to be necessary to eliminate an increase in school district taxes resulting from this act. If the district does not estimate an increase in taxes, then it doesn’t have to transfer. If a district has sufficient funds in its transportation fund, for example, or decides to reduce spending as an alternative to increasing taxes, then no transfer is required.

OPI’s guidance, on the bottom of page 4, asserts that transfers under Senate Bill 2 must comply with section 20-9-208, which is a general provision on transfers from fund to fund. This is incorrect. The only restriction on transfers for the limited purpose set forth in SB 2, Section 10 is that the amount transferred cannot exceed *“an amount estimated by the district to be necessary to eliminate an increase in school district property taxes resulting from [this act].”* The irrelevance of Section 20-9-208 to transfers under SB 2 is clear. Section 20-9-208 does not, for example, allow transfers from a non-budgeted fund to a budgeted fund. Senate Bill 2, on the other hand specifically authorizes a district to transfer *“state or local revenue from any budgeted or **non-budgeted** fund”* to the transportation fund (which is a budgeted fund). If the Legislature intended that section 20-9-208 restrictions apply to transfers under Senate Bill 2, it would not have specifically authorized transfers of revenue from non-budgeted funds to the transportation fund (which is a budgeted fund). The Legislature has codified a rule that provides that specific provisions like Senate Bill 2, Section 10, take precedence over general provisions like 20-9-208 (see section 1-2-102, MCA):

OPI’s guidance, on page 5, implies that transfers of federal funds are allowed:

*“Be cautious of transferring any federal dollars and ensure the district is not violating any grant restrictions or matching requirements or the requirements in 20-9-208, MCA.”*

Senate Bill 2 does not allow transfers of federal funds at all. The operative language allows transfers of *“state or local revenue from any budgeted or non-budgeted fund.”* School districts should not rely on Senate Bill 2 for authority to entertain any transfer of federal funds.

We are scheduled to meet with OPI on this guidance document next week and we hope to resolve these differences in interpretation at that time.

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