

MEMO RE CARES ACT SECTION 18006 **AND SCHOOL VENDOR CONTRACTS**

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On Wednesday, March 27, 2020 Congress approved and President Trump signed the Coronavirus, Aid, Relief, and Economic Security (CARES) Act into law.

The purpose of this memo is to provide information to Arizona School Risk Retention Trust (“Trust”) members on how the CARES Act may impact vendor contracts.

The Trust appreciates the following firms peer reviewing this document: Udall Shumway, DeConcini McDonald Yetwin & Lacy, Gust Rosenfeld, and Hufford, Horstman, Mongini, Parnell & Tucker. Please contact the Trust or local counsel if your District requires legal advice.

Issue: Does the CARES Act require school districts to continue to pay contractors during school closures due to COVID19 even when they are not providing any services to the school district during that time?

The Coronavirus Aid, Relief and Economic Security (CARES) Act creates an “Education Stabilization Fund,” a portion of which shall be allocated for local educational agencies through grants to states. Local educational agencies that are elementary and secondary schools receiving funds under the Act *may* use the funds for any of twelve categories set forth in Section 18003(d).

Section 18006 provides as follows: “A local educational agency, state, institution of higher education, or other entity that receives funds under ‘Education Stabilization Fund,’ shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to Coronavirus.”

Section 18006 has been used by at least some contractors as support for their claim that districts should continue to pay the them during the time of the school closure even if the contractor is not providing services to the district. Transportation contractors may be raising this claim due in part to the lobbying efforts of the National School Transportation Association (NSTA). After passage of the CARES Act, the NSTA touted its success and claimed that the language of Section 18006 was a direct result of their lobbying efforts to ensure that school transportation providers continued to be paid during the closure. See <https://www.schoolbusfleet.com/news/737939/nsta-applauds-u-s-senate-s-passage-of-school-transportation-funding-in-cares-act>. However, NSTA first

asked “lawmakers to immediately require school districts to fund pupil transportation contracts through the conclusion of the COVID-19 health crisis.” *NSTA Keeps Urging Contractor Pay During Congressional Stalemate Over Covid-19 Aid*, available at: <https://www.schoolbusfleet.com/news/737884/nsta-keeps-urging-contractor-help-during-congressional-stalemate-over-covid-19-aid>. Such mandatory language, however, clearly did not make it into the Act.

The plain language of Section 18006 does not support the NSTA’s interpretation. The phrase “to the greatest extent practicable” suggests districts may choose how to use any funds received. Further, nothing in Section 18003(d) requires districts to use the funds to pay for services that are not being provided, including transportation contractors.

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