

To: Susan Plimpton Segal
Executive Director, Legal Services
Deer Valley Unified School District No. 97

June 21, 2001

Re: Definition of Teacher Under ARS § 15-977
I01-014 (R01-020)

Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-253(B), you submitted for review an opinion you prepared for Deer Valley Unified School District No. 97. This Office concurs with your conclusion regarding the definition of "teacher" for the purposes of A.R.S. § 15-977, and issues this Opinion to provide guidance to others concerning this subject. See Ariz. Att'y Gen. Op. I98-006, at 2 n.2 (review may be granted when facts have "broad statewide applicability").

Question Presented

The Classroom Site Fund ("CSF") in A.R.S. § 15-977 provides funds for various increases in "teacher" compensation. Are these compensation increases limited to traditional classroom teachers or are other school district or charter school employees who provide instruction to students also eligible?

Summary Answer

The teacher compensation increases through the CSF are not limited to traditional classroom teachers. Certificated teachers, certified teachers, and others employed to provide instruction to students on matters related to the school's educational mission are eligible for the increases in compensation.

Background

During the 5th Special Legislative Session of 2000, the Legislature passed S.B.1007, which created the CSF to provide funding to school districts and charter schools. A.R.S. § 15-977. The bill's provisions were contingent upon voter approval of Proposition 301, which was passed on November 8, 2000, and certified by the Governor on December 7, 2000. Proposition 301 increased the state transaction privilege tax rate by 0.6% to fund specific education programs, including the CSF.

A school district governing board or charter school must spend monies distributed to it from the CSF "for use at the school site" and "may not supplant existing school site funding with revenues from the Fund." A.R.S. § 15-977(A). Each school district or charter school must allocate funding from the CSF as follows:

1. 40% must be used for "teacher compensation increases based on performance";
2. 20% must be used for "teacher base salary increases"; and

3. 40% must be used for "maintenance and operations purposes," which may include teacher compensation increases.

A.R.S. §15-977(A), (C).

Analysis

The statute governing the CSF allocates monies for various teacher compensation increases, but it does not define the category of employees who qualify as "teachers." See A.R.S. § 15-977. Your opinion to Deer Valley correctly concluded that the phrase "teacher" is not limited to traditional classroom teachers.

For the purposes of this Opinion, the phrase "traditional classroom teachers" means a teacher responsible for academic instruction for an entire grade (e.g., a first-grade teacher) or a teacher generally responsible for teaching a particular academic subject (e.g., a high school history teacher). The legislation creating the CSF does not itself use the phrase "traditional classroom teacher." Determining if only such teachers are eligible for the compensation increases under the CSF thus turns on the meaning of the term "teacher" as used in A.R.S. § 15-977.

When terms are undefined, courts look to the plain meaning of the terms used in the statute. See, e.g., *Mail Boxes v. Indus. Comm'n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). Webster's Dictionary defines "teacher" simply as "one who teaches or instructs; one whose occupation is to instruct." Webster's Third New International Dictionary 2346 (1995). This definition is not limited to traditional classroom teachers.

Other language in A.R.S. § 15-977 indicates that the teacher compensation increases funded by the CSF are not limited to traditional classroom teachers. One subsection of that statute defining "class size reduction" refers specifically to "classroom teachers." See A.R.S. § 15-977(G). If the Legislature had wanted to limit increases in teacher compensation to traditional classroom teachers, it could have used the term "classroom teacher" in the sections outlining teacher compensation. It chose not to do so. "When the legislature has specifically included a term in some places within a statute and excluded it in other places, courts will not read into the statute the term that was excluded." *Luchanski v. Congrove*, 193 Ariz. 176, 179, 971 P.2d 636, 639 (App. 1998).

The legislative history further supports the conclusion that "teacher" in A.R.S. § 15-977 is not limited to traditional classroom teachers. A House Appropriations Committee amendment to the bill would have limited the category of teachers eligible for compensation increases to traditional full- or part-time classroom teachers. See House Appropriations Committee Amendment to S.B. 1007, 44th Leg., 5th Spec. Sess. (Ariz. 2000). The Legislature, however, did not include that provision in the final version of the bill, and it did not otherwise limit or define the term "teacher." Cf. Ariz. Att'y Gen. Op. I01-007 (where provision requiring State Board approval of teacher performance compensation plans was not included in

final version of bill, implication was that Legislature did not intend to require such approval).

Concluding that "teacher" is not limited to traditional classroom teachers does not, however, identify which employees are eligible for the compensation increases through the CSF. The statute establishing the CSF should be construed to serve its purpose. See e.g., *City of Phoenix v. Superior Court*, 144 Ariz. 172, 175-76, 696 P.2d 724, 727-28 (App. 1985). The CSF was one part of a measure that broadly aimed to improve education in Arizona. See generally 2000 Ariz. Sess. Laws, 5th Spec. Sess., ch. 1. The Legislature established a clear guideline for CSF funds: all monies from the CSF "are intended for use at the school site." A.R.S. § 15-977(A). In addition, the statute directs the district governing boards and charter schools to use the CSF to "maximize classroom opportunities." A.R.S. § 15-977(D). Thus, the additional funding is targeted to expenditures that increase student achievement, and the term "teacher" should be read in a way that furthers this goal. Cf. *Wheeler v. Yuma Sch. Dist. No. One*, 156 Ariz. 102, 107, 750 P.2d 860, 865 (1988) (statutory reference to "classroom performance" does not define "where the activity in question occurs" but may broadly include "professional activities that enhance or detract from the instructional process").

Although the Legislature has not defined "teacher," it has defined "certified teacher" and "certificated teacher." A "certified teacher" is someone certified as a teacher who "renders direct and personal services to school children in the form of instruction related to the school district's educational course of study and who is paid from the maintenance and operation section of the budget." A.R.S. § 15-901(B)(5). A "certificated teacher" is someone who holds a certificate issued by the Arizona State Board of Education allowing him or her "to work" in Arizona schools and who is employed under contract in a "position which requires certification," except that it does not include any psychologist or administrator who devotes less than 50% of his or her time to "classroom teaching." A.R.S. § 15-501(2).⁽¹⁾ Thus, under Arizona law, certain school employees, such as librarians or counselors, can be "certified teachers" or "certificated teachers" without being traditional classroom teachers.

The analysis does not end here, however, because the Legislature did not restrict the compensation increases under § 15-977 to only "certificated teachers" or "certified teachers." Instead it chose the more general term "teacher." The Legislature is presumed to know the state of the law when it amends a statute, *Wareing v. Falk*, 182 Ariz. 495, 500, 897 P.2d 1381, 1386 (App. 1995), and statutes should be interpreted in conjunction with other statutes which relate to the same subject or have the same general purpose. *State v. Thomason*, 162 Ariz. 363, 366, 783 P.2d 809, 812 (App. 1989). Based on these principles, the general term "teacher" automatically encompassed all employees included within the more specific terms "certificated teacher," A.R.S. § 15-501(2) and "certified teacher," A.R.S. § 15-901(B)(5).

Because the Legislature did not limit the compensation increases in A.R.S. § 15-977 to certificated or certified teachers, the term "teacher" is not limited to those

employees. The Legislature's choice of the more general term "teacher" in A.R.S. § 15-977 is consistent with the fact that CSF funds may be used to increase compensation for charter school teachers, who are not subject to the state's teacher certification requirements and thus may not be "certified teachers" or "certificated teachers." *Compare* A.R.S. § 15-502(B) ("a teacher shall not be employed if the teacher has not received a certificate for teaching") *with* A.R.S. § 15-183(E)(5) (charter schools are generally exempt "from all statutes and rules relating to schools, governing boards and school districts"). In addition, based on the plain meaning of the word "teacher," and the history and purpose of A.R.S. § 15-977, others employed at public schools to provide instruction to students relating to the school's educational mission are also "teachers" for the purposes of A.R.S. § 15-977. This instruction may cover a wide range of issues including, for example, traditional academic subjects, programs designed for children with special needs, computer research classes, and character education programs.

Given the possible variations in job descriptions, "there is no necessity to impose a rigid formula to determine whether [an employee] should be considered a teacher" when an employee spends "a substantial portion of . . . time with students or involved in student-related matters." *Hillhouse v. Rice Sch. Dist. No. 20*, 151 Ariz. 348, 350, 727 P.2d 843, 845 (App. 1986) (holding that counselor is a teacher for purposes of the Teacher Tenure Act); *see also* Ariz. Att'y Gen. Op. I84-065 ("[A] determination of whether a particular employee . . . [is a teacher] would depend upon that employee's specific duties and should be judged on a case-by-case basis."). Instead, school districts and charter schools should apply the general principles set forth in this Opinion to particular situations based on their specific facts.

Conclusion

Under A.R.S. § 15-977, funds are provided for increases in "teacher" compensation. Based on the statutory language, purpose, and history, this Office concludes that traditional classroom teachers are not the only persons eligible for compensation increases. School districts and charter schools may use such funds for compensation increases for certified or certificated teachers and others employed to provide instruction to students related to the school's educational mission.

Janet Napolitano
Attorney General

1. The statute authorizing the State Board of Education to certify teachers provides that the Board shall:

[s]upervise and control the certification of persons engaged in instructional work directly as any classroom, laboratory or other teacher or indirectly as a supervisory teacher, speech therapist,

principal or superintendent in a school district, including school district preschool programs, or any other educational institution below the community college, college or university level. . . .

A.R.S. § 15-203(A)(14). Under this authority, the Board has established rules regarding elementary teaching certificates, Arizona Administrative Code ("A.A.C.") R7-2-608, secondary teaching certificates, A.A.C. R7-2-609, special education teaching certificates, A.A.C. R7-2-610, vocational teaching certificates, A.A.C. R7-2-611, and specialized endorsements for certain subject areas such as bilingual education, English as a Second Language, gifted instruction, and library-media specialists, A.A.C. R7-2-613. There are also administrative certificates for supervisors, principals, and superintendents, A.A.C. R7-2-614, and certificates for counselors and school psychologists, A.A.C. R7-2-615.

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15-501. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrator" means any school district administrator except a school principal devoting not less than fifty per cent of his time to classroom teaching.
2. "Certificated teacher" means a person who holds a certificate from the state board of education to work in the schools of this state and who is employed under contract in a school district in a position that requires certification except a psychologist or an administrator devoting less than fifty per cent of his time to classroom teaching.
3. "Full-time" means employed for a full school day, or its equivalent, or for a full class load, or its equivalent, as determined by the governing board.
4. "Governing board" means the governing board of a school district or a county school superintendent in the case of accommodation schools located in such county.
5. "Inadequacy of classroom performance" means the definition of inadequacy classroom performance adopted by the governing board pursuant to section 15-538.
6. "Major portion of a school year" means full-time employment for fifty-one per cent of the school days during which school is in session, except that a certificated teacher is not deemed to have completed the major portion of the third school year of three consecutive years of employment until the end of the third school year.
7. "Performance classifications" means the four performance classifications adopted by the state board of education pursuant to section 15-203, subsection A, paragraph 38.
8. "Qualified evaluator" means a school principal or other person who is trained to evaluate teachers and who is designated by the governing board to evaluate the school district's certificated teachers.
9. "Superintendent" means the superintendent of schools of a school district.
10. "Suspension without pay" means suspension without pay for a period of time not to exceed ten school days.

15-901. Definitions

B. In this title, unless the context otherwise requires:

5. "Certified teacher" means a person who is certified as a teacher pursuant to the rules adopted by the state board of education, who renders direct and personal services to school children in the form of instruction related to the school district's educational course of study and who is paid from the maintenance and operation section of the budget.