

**ORANGE COUNTY
BOARD OF EDUCATION**

AGENDA ITEM ABSTRACT

Meeting Date: October 14, 2013

AGENDA ITEM No. 13-10-19

ACTION ITEM: (Y/N) N

SUBJECT: Legal Update

INFO. CONTACT: Dr. Gerri Martin, Sup't/Jonathan Blumberg, Attorney **PHONE:** 919-732-8126

ATTACHMENTS:

1. Request for Attorney General's Opinion – Tharrington Smith letter dated September 6, 2013.
2. General Assembly of North Carolina – Senate Bill 402.

PURPOSE: The purpose of this agenda item is for the Board of Education to receive a legal update from the Board Attorney.

BACKGROUND: Attorney Blumberg will provide a presentation on the recently passed legislation requiring school districts to offer four year contracts to 25% of teachers who have three or more consecutive years of service with the district. The legislation states that the contracts can be offered from September 1, 2013 until June 30 2014, and that all offers must be accepted by June 30, 2014. Selected teachers who accept the four year contracts will receive a \$500 salary increase each year of the contract and must relinquish tenure or any claim to tenure under the language of the law.

Attorney Blumberg recommends that the Superintendent develop a method of selecting the 25% of teachers who will be offered four-year contracts and present this method to the Board for consideration. After the plan has been finalized, the Board would approve it in open session. Once the Superintendent has utilized the selection method, she would recommend to the Board the selected list of 25% of teachers in closed session. The Board would then have an opportunity to revise the list before announcing the 25% of teachers.

There are some key questions about the legislation that remain unanswered. The biggest unanswered question is whether the contracts may only be offered to classroom teachers, or whether, for example, school counselors and school social workers fall under the definition of teacher for purposes of this legislation. Attorney Blumberg has requested an Attorney General's opinion on this issue.

At this time, the school district should begin assessing various selection methods to be prepared to adopt a method once the legal landscape becomes clearer. In developing a selection methodology, the school district should remember that the legislation requires the Superintendent to recommend teachers for four-year contracts based on her review of teachers' performance and evaluations. The legislation also states that the Superintendent may not recommend any teacher who has not demonstrated proficiency based on the teacher evaluation instrument.

There are a number of selection methodologies that have been proposed by members of the education community. Attorney Blumberg's firm has developed an optional approach that involves ranking

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teachers – at either the school level or district wide - based on teachers' evaluation ratings. This proposed method has the benefit of removing case-by-case decision-making responsibility from school administrators. This option is not the only legal method of selection. Other options include providing added discretion, either for principals or for central services, in selecting the 25%, or including a list of performance-based factors to be considered in addition to evaluation ratings (such as leadership roles at a school).

FINANCIAL IMPACT: The financial impact of this agenda item is unknown at this time.

RECOMMENDATION: The Superintendent recommends the Board of Education receive the legal update at this time for information only.



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COLIN A. SHIVE
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September 6, 2013

Via U.S. Mail and Electronic Mail

Laura Crumpler
Assistant Attorney General
9001 Mail Service Center
Raleigh, NC 27699-9001

RE: Request for Attorney General's Opinion—Excellent Public Schools Act of 2013

Dear Ms. Crumpler:

On behalf of the Wake County Public School System ("WCPSS"), please consider this a formal request for an Attorney General's Opinion regarding certain portions of SB 402/S.L. 2013-360, the Current Operations and Capital Improvements Appropriations Act of 2013 ("Budget Act"). More specifically, WCPSS requests an opinion with regard to certain portions of section IX of the Budget Act, "The Excellent Public Schools Act of 2013" or "EPSA," which we have attached for your convenience.

As you are aware, section 9.6(g) of the EPSA provides that from September 1, 2013 to June 30, 2014, LEA superintendents must "identify and recommend to the local board twenty-five percent (25%) of those teachers employed by the local board for at least three consecutive years to be awarded four-year contracts beginning with the 2014-2015 school year." Section 9.6(g) does not define "teacher," and it is unclear whether the four-year contracts may be offered only to classroom teachers or whether the four-year contracts may also be offered to other school system staff who have traditionally fallen under the definition of "teacher." Section 9.6(g) provides that the four-year contracts may only be offered to teachers who have "shown effectiveness as demonstrated by proficiency on the teacher evaluation instrument," and the teacher evaluation instrument is only used for classroom teachers.

Although not an exhaustive list of all relevant factors, the following points may be relevant to your analysis of this issue.

Under the previous version of N.C. Gen. Stat. § 115-325, portions of which remain in effect for all teachers until July 1, 2014, a "teacher" is defined as follows:

"Teacher" means a person who holds at least a current, not provisional or expired, Class A license or a regular, not provisional or expired, vocational license issued by the State Board of Education; whose major responsibility is to teach or directly supervises teaching or who is classified by the State Board of Education or is paid

either as a classroom teacher or instructional support personnel; and who is employed to fill a full-time, permanent position.

Under this definition, the term "teacher" clearly encompasses more than classroom teachers. The Department of Public Instruction Benefits Manual lists all of the following as "teachers" for purposes of 115C-325: Audiologists, Classroom Teachers, Guidance Counselors, School Psychologists, School Social Workers, Speech Language Pathologists, Career and Technical Education Teachers, and Media Coordinators.

Similarly, section 9.6(b) of the EPSA defines a teacher as:

a person meeting each of the following requirements:

a. Who holds at least one of the following licenses issued by the State Board of Education:

1. A current standard professional educator's license.
2. A current lateral entry teaching license.
3. A regular, not expired, vocational license.

b. Whose major responsibility is to teach or directly supervise teaching or who is classified by the State Board of Education or is paid either as a classroom teacher or instructional support personnel.

c. Who is employed to fill a full-time, permanent position.

Section 9.6(b), however, does not become effective until July 1, 2014. Furthermore, Section 9.6(g) contains conflicting language in that it states that "the local board shall not offer any teacher a four-year contract unless that teacher has shown effectiveness as demonstrated by proficiency on the teacher evaluation instrument." As noted above, the teacher evaluation instrument is only used to evaluate classroom teachers. Additionally, "proficiency" was not a rating option on the instrument used to evaluate non-classroom teachers prior to the 2013-2014 school year. School systems could therefore not easily determine whether a non-classroom teacher qualified as "proficient" for purposes of section 9.6(g).

In a separate section, the EPSA provides that beginning in 2018, "A superintendent shall only recommend a teacher for a contract of a term longer than one school year if the teacher has shown effectiveness as demonstrated by proficiency on the evaluation instrument." 115C-325.3(b). Notably, this section refers to the "evaluation instrument," as opposed to the "teacher evaluation instrument," which is the term used in section 9.6(g).

It is also worth noting that in drafting the fiscal note for the EPSA, the Fiscal Research Division ("Division") made its calculations based on the understanding that only classroom teachers would be offered the four-year contracts. (See attached.) The Department of Public Instruction was not able to provide the Division with the number of classroom teachers that had been employed in their present school districts for at least three years. Accordingly, as a proxy, the Division made its calculations based on the number of career status classroom teachers.

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The Division's interpretation is bolstered by communications between the North Carolina School Boards Association ("NCSBA") and the office of one of the EPSA's sponsors, Senator Phil Berger. Through these communications, the NCSBA learned that Senator Berger intended for the four-year contracts only to be available to classroom teachers.

We have included the above points as information only and are not advocating for a particular outcome. WCPSS is requesting an opinion so that it can ensure that it is applying the law based on an accurate and reliable interpretation. WCPSS does not wish to deprive any employee of the opportunity to receive a four-year contract if at all possible. On the other hand, Section 9.6(g) provides for a \$500 yearly raise for teachers who accept the four-year contracts. Accordingly, WCPSS must avoid offering four-year contracts in a way that is inconsistent with a proper interpretation of the law and, as a result, not receive funding from the general assembly for the full value of all of the four-year contracts that are offered. An opinion from your office is therefore requested to ensure both fairness to employees and the sound management of school system finances.

Please feel free to contact us if you have any further questions or concerns. We look forward to receiving your written opinion on this matter.

Sincerely,

THARRINGTON SMITH, LLP



Jonathan Blumberg

Colin Shive

Attorneys for the Wake County Public School System

Enclosure

Cc: Leanne Winner
Doug Thilman
Katie Cornetto

1 education, unless the school administrator voluntarily relinquished that right or is dismissed or
2 demoted pursuant to G.S. 115C-325.

3 (h) An individual who holds a provisional assistant principal's certificate and
4 who is employed as an assistant principal under G.S. 115C-284(c) shall be considered a school
5 administrator for purposes of this section. Notwithstanding subsection (b) of this section, a
6 local board may enter into one-year contracts with a school administrator who holds a
7 provisional assistant principal's certificate. ~~If the school administrator held career status
8 as a teacher in the local school administrative unit prior to being employed as an assistant
9 principal and the State Board for any reason does not extend the school administrator's
10 provisional assistant principal's certificate, the school administrator shall retain career status as
11 a teacher unless the school administrator voluntarily relinquished that right or is dismissed or
12 demoted under G.S. 115C-325. Nothing in this subsection or G.S. 115C-284(c) shall be
13 construed to require a local board to extend or renew the contract of a school administrator who
14 holds a provisional assistant principal's certificate.~~"

15 **SECTION 9.6.(e)** The State Board of Education shall develop by rule as provided
16 in Article 2A of Chapter 150B a model contract for use by local boards of education in
17 awarding teacher contracts. The State Board may adopt a temporary rule for a model contract
18 as provided in G.S. 150B-21.1 to provide a contract to local boards of education no later than
19 January 1, 2014, but shall replace the temporary rule with a permanent rule as soon as
20 practicable.

21 **SECTION 9.6.(f)** G.S. 115C-325(c)(1) is repealed effective May 1, 2013.
22 Individuals who have not received career status prior to the 2012-2013 school year shall not be
23 granted career status during the 2012-2013 school year. All teachers who have not been granted
24 career status prior to the 2012-2013 school year shall be offered only one-year contracts, except
25 for qualifying teachers offered a four-year contract as provided in subsection (g) of this section,
26 until the 2018-2019 school year.

27 **SECTION 9.6.(g)** From July 1, 2013, to June 30, 2014, all superintendents shall
28 review the performance and evaluations of all teachers who have been employed by the local
29 board for at least three consecutive years. Based on these reviews, the superintendent shall
30 identify and recommend to the local board twenty-five percent (25%) of those teachers
31 employed by the local board for at least three consecutive years to be awarded four-year
32 contracts beginning with the 2014-2015 school year. The superintendent shall not recommend
33 to the local board any teacher for a four-year contract unless that teacher has shown
34 effectiveness as demonstrated by proficiency on the teacher evaluation instrument. The local
35 board of education shall review the superintendent's recommendation and may approve that
36 recommendation or may select other teachers as part of the twenty-five percent (25%) to offer
37 four-year contracts, but the local board shall not offer any teacher a four-year contract unless
38 that teacher has shown effectiveness as demonstrated by proficiency on the teacher evaluation
39 instrument. Contract offers shall be made and accepted no later than June 30, 2014. A teacher
40 shall cease to be employed pursuant to G.S. 115C-325 and voluntarily relinquishes career status
41 or any claim of career status by acceptance of a four-year contract as provided in this section.

42 **SECTION 9.6.(h)** Teachers employed by a local board of education on a four-year
43 contract beginning with the 2014-2015 school year shall receive a five hundred dollar
44 (\$500.00) annual pay raise for each year of the four-year contract.

45 **SECTION 9.6.(i)** Subsection (a) of this section becomes effective June 30, 2018,
46 and no teacher employed by a local board of education on or after that date shall have career
47 status. G.S. 115C-325 applies only to teachers with career status after June 30, 2014.

48 **SECTION 9.6.(j)** Subsection (b) of this section becomes effective July 1, 2014.
49 G.S. 115C-325.1 through G.S. 115C-325.13, as enacted by this section, shall apply to all
50 teachers on one- or four-year contracts beginning July 1, 2014. G.S. 115C-325.1 through