



HENRY McMASTER
ATTORNEY GENERAL

March 2, 2009

The Honorable John Courson
Chairman, Senate Education Committee
The Senate of South Carolina
P. O .Box 142
Columbia, South Carolina 29209

Dear Senator Courson:

In a letter to this office you questioned the compensation for certain certified instructors at the Whitten Center. You stated that

[t]he certified instructors at the Whitten Center are employees of the South Carolina Department of Disabilities and Special Needs and are considered classified teachers in band five positions. It has been brought to my attention that certified instructors at the Whitten Center may be being paid significantly less than teachers in the surrounding area.

I am informed that DDSN does not pay these instructors based on the statewide salary schedule established for teachers generally.

Several State statutes and provisions are relevant to your inquiry. Pursuant to S.C. Code Ann. § 44-20-360(A),

[t]he physical boundaries of...(the)...Whitten Center are designated as independent school districts. These facilities may elect to participate in the usual activities of the districts, to receive state and federal aid, and to utilize other benefits enjoyed by independent school districts in general.

S.C. Code Ann. § 59-25-50, a provision of the State Educational Improvement Act of 1984, states that

[e]ach state agency having certified instructional personnel shall receive an allocation based on the following formula: Each state agency shall receive such funds as are

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required to adjust the pay of all certified instructional personnel to the appropriate salary provided by the salary schedules of the surrounding school districts utilized for the 1984-85 school year and subsequent years.

A provision of the State Appropriations Act of 2008, Act No. 310 of 2008, Section 1A.19, included in the section "Department of Education-EIA", may also be of relevance. It provides a formula for state agencies that do not contain a school district stating that

[e]ach state agency which does not include a school district but has instructional personnel shall receive an allocation from the line item "Alloc. EIA -Teacher/Other Pay" in Part 1A, Section 1, XI.F.2 for teachers salaries based on the following formula: Each state agency shall receive such funds as are necessary to adjust the pay of all instructional personnel to the appropriate salary provided by the salary schedules of the school district in which the agency is located.

S.C. Code Ann. § 59-20-50(4)(a), originally enacted as a provision of the State Education Finance Act of 1977, provides that

[e]ach school district shall pay each certified teacher or administrator an annual salary at least equal to the salary stated in the statewide minimum salary schedule for the person's experience and class...(b) The state minimum salary schedule must be based on the state minimum salary schedule index in effect as of July 1, 1984.

According to a letter dated December 11, 2008 from the General Counsel for the State Department of Education relevant to this question,

[t]he teacher salary schedule requirements are all tied to state education funding. The salary schedule is set forth in the EFA, the proviso language is tied to Education Improvement Act (EIA) funding, and S.C. Code Ann. § 59-25-50 ties back to the state agency receiving an allocation. On the other hand, the statute that establishes the Whitten Center as an independent school district...(Section 44-20-360)...specifically states that the facility "may elect to receive state and federal aid."...According to our Office of Finance, the Whitten Center does not receive EFA or EIA funding. Additionally, while DDSN receives funding from the federal Individuals with Disabilities Education Act (IDEA), funding does not flow directly from the...(State Department of Education)...to the Whitten Center. This decision, not to receive the funding, seems to be key in the applicability of the statutes that address the salary schedule.

Based upon these statements, with which we concur in that it appears that the applicability of salary schedules for teachers is dependent upon the receipt of EIA or EFA funding, there may be a basis to conclude that the instructional personnel at the Whitten Center are not to be considered

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within the mandates of the referenced salary schedules for teachers generally in that they are not considered teachers for EIA or EFA purposes. Again, it is our understanding that DDSN does not receive EIA or EFA funds for reasons unknown to us but nevertheless the nonreceipt of such funds may be determinative. As a result, there may be a basis to pay the instructors at the Whitten Center at a level different from other teachers generally.

However, this conclusion is not free from doubt. As a result, this office would recommend that a declaratory judgment action be brought to resolve this question with finality. I regret that we cannot be more conclusive at this time.

With kind regards, I am,

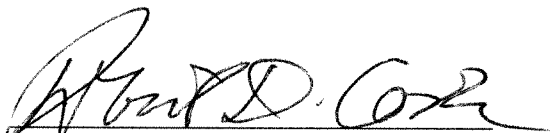
Very truly yours,

Henry McMaster
Attorney General



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REVIEWED AND APPROVED BY:



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Department of Disabilities and Special Needs