S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

June 5, 2008

Opinion No. 08-116

Pay Plans for Principals and Teachers

QUESTIONS

1. Pursuant to Section 3 of Public Chapter 376 of 2007, Tenn. Code Ann. § 49-2-303 was amended in part to require specific performance standards in employment contracts between directors and principals. Section 3 also authorizes the inclusion of bonuses for principals beyond base salary if performance standards are met. In light of this language in Public Chapter 376, may directors in school districts that participate in collective bargaining include such bonuses in principal contracts without them being subject to the negotiations process between the board of education and teachers' association?

2. Pursuant to Section 6 of Public Chapter 376 of 2007, Tenn. Code Ann. § 49-3-306 was amended to mandate that LEAs develop a differentiated pay plan to be implemented prior to the beginning of the 2008-2009 school year. Section 6 requires that the pay plan be developed, adopted and implemented in compliance with Tenn. Code Ann. § 49-5-611. Must differentiated pay plans be subject to the negotiations process prior to implementation?

OPINIONS

1. Yes. Tenn. Code Ann. § 49-2-303 specifically provides that a director of schools employs principals. The statute also provides that a principal's employment terms are contained in an employment contract, which would obviously be negotiated between a director of schools and a principal.

2. Yes, if the professional employees of the local school district are represented by a professional employees' organization as provided in Tenn. Code Ann. § 49-5-611.

ANALYSIS

1. Section 49-2-303 of the Tennessee Code concerns the employment and duties of principals of public schools. According to the statute, principals are employed by the director of schools pursuant to employment contracts. *See* Tenn. Code Ann. § 49-2-303(a)(1). The employment contracts specify the duties of the principals and contain performance standards. *See* Tenn. Code Ann. § 49-2-303(a)(1). Pursuant to a 2007 amendment, the employment

contracts may also provide for "bonuses beyond base salary if performance standards are met or exceeded." Tenn. Code Ann. § 49-2-303(a)(1).

According to the Education Professional Negotiations Act, Tenn. Code Ann. § 49-5-601, *et seq.*, professional employees of public school systems have the right to organize for the purpose of professional negotiations or other mutual aid or protection. *See* Tenn. Code Ann. § 49-5-603. A professional employee is defined as, "any person employed by any local board of education in a position which requires a license issued by the department of education . . .". *See* Tenn. Code Ann. § 49-5-602(11). According to the Education Professional Negotiations Act, the party with whom the professional employees' organization negotiates is the board of education. *See* Tenn. Code Ann. § 49-5-601.

Are principals "professional employees" if they are "employed" by directors of schools pursuant to Tenn. Code Ann. § 49-2-303(a)(1) instead of a local board of education? This Office has previously opined that principals are professional employees pursuant to the Education Professional Negotiations Act, Tenn. Code Ann. § 49-5-601, *et seq.* In an Attorney General's Opinion from 1997, this Office determined that because local school boards retain many other powers relative to the employment of principals, principals are still "professional employees" pursuant to the Education Professional Negotiations Act, Tenn. Code Ann. § 49-5-601, *et seq.* *See* Op. Tenn. Att'y Gen. No. 97-106 (July 28, 1997). The Opinion specifically mentions "salary ranges" as an item which continues to be set by the board of education.

As principals are professional employees, should the provisions of the Education Professional Negotiations Act, Tenn. Code Ann. § 49-5-601, *et seq.,* apply to their employment if the professional employees in the school district in which they are employed have formed a professional employees' organization? Pursuant to Tenn. Code Ann. § 49-5-606, a professional employees' organization "shall be the exclusive representative of all the professional employees employed by that board of education for the purpose of negotiating." Tenn. Code Ann. § 49-5-606. Tenn. Code Ann. § 49-5-611 further provides that the board of education and the professional employees' organization shall negotiate in good faith "salaries or wages" and "fringe benefits." Thus, as principals are part of the professional employees' organization, their salaries and fringe benefits must be negotiated between the board of education and the professional employees' organization.

Are the potential "bonuses" discussed in Tenn. Code Ann. § 49-2-303 "salaries or wages" or "fringe benefits," which are required to be negotiated between the board of education and the professional employees' organization? The potential bonuses discussed in Tenn. Code Ann. § 49-2-303 are not "salaries or wages" or "fringe benefits." The Education Professional Negotiations Act also provides as follows:

> Those rights and responsibilities of boards of education, directors of schools and professional employees as contained in this title are not statutorily modified or repealed by this part.

Tenn. Code Ann. § 49-5-604.

The Tennessee Legislature chose to take the authority to hire principals away from boards of education when it enacted Tenn. Code Ann. § 49-2-303(a)(1) in 1992. In 2007, the Tennessee Legislature placed the provision regarding principal bonuses in Tenn. Code Ann. § 49-2-303(a)(1) instead of making it a mandatorily negotiated item within Tenn. Code Ann. § 49-5-611, evidencing its intention that any potential bonus be negotiated between a principal and a director of schools (and the board of education) as part of a principal's performance contract.

2. In 2007, Tenn. Code Ann. § 49-3-306 was amended to add subsection (h), which states, in pertinent part, as follows: "[A]n LEA[1] shall develop, adopt and implement a differentiated pay plan[2] under guidelines established by the state board of education and in compliance with § 49-5-611 to aid in staffing hard to staff subject areas and schools and in hiring and retaining highly qualified teachers." The amendment further requires that each LEA "implement a differentiated pay plan prior to the beginning of the 2008-2009 school year." *See* Tenn. Code Ann. § 49-3-306.

As previously noted, Tenn. Code Ann. § 49-5-611 provides that a board of education and a professional employees' organization shall negotiate in good faith "salaries or wages." Accordingly, if the professional employees in a school system have organized pursuant to the Education Professional Negotiations Act, Tenn. Code Ann. § 49-5-601, *et seq.*, the differentiated pay plan required by Tenn. Code Ann. § 49-3-306(h) would be subject to the negotiations process.

ROBERT E. COOPER, JR.
Attorney General and Reporter

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[1]"LEA" is an acronym for local education agency. A "local education agency" is defined as "any county school system, city school system, special school district, unified school system, metropolitan school system, or any other local public school system or school district created or authorized by the general assembly." Tenn. Code Ann. § 49-1-103(2); *see also* 20 U.S.C. § 1401(19) (defining an LEA as "a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools").

[2]Although the term "differentiated pay plan" is not defined by Tennessee statutes, the Tennessee State Board of Education issued an agenda entitled "Guidelines for Differentiated Pay Plans – Public Chapter 376" on November 2, 2007. In the agenda, differentiated pay plans are described as pay plans containing various types of incentives designed to recruit teachers in hard-to-staff subject areas. *See* http://tennessee.gov/sbe/ Nov07/ VB_ Diff_Pay_ Guidlelines.pdf.

JOSEPH F. WHALEN
Associate Solicitor General

MELISSA MOREAU
Assistant Attorney General

Requested by:

Timothy Webb, Ed.D.
Acting Commissioner of the Department of Education
6th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243-0375