



TEXAS EDUCATION AGENCY

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January 20, 2009

The Honorable Greg Abbott
Attorney General of Texas
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RECEIVED

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OPINION COMMITTEE

FILE # M1-46318-10
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RQ-0855-GA

RE: Effect of Provisions of HB 3646, 81st Legislative Session, on Salaries Paid to School District Employees

Dear General Abbott:

I am writing to seek your guidance regarding several provisions of House Bill 3646 as enacted by the 2009 session of the Texas Legislature. That legislation amended provisions of the Texas Education Code relating to salaries required to be paid to certain employees by Texas school districts. My questions involve the salary required to be paid during the 2010-2011 school year.

Section 21.402, Texas Education Code, sets minimum salaries for each classroom teacher, full-time librarian, full-time counselor, and full-time school nurse. While subsection 21.402(b) generally sets minimum salaries based on years of service and the amount of funds available in the state Foundation School Program, for the 2009-2010 and 2010-2011 school years, salaries are instead determined under subsections (c-1) and (c-2). Those subsections additionally apply to full-time speech pathologists, who are not otherwise covered by the minimum salary schedule under subsection 21.402. This request will collectively refer to all school district employees covered by Sections 21.402 (c-1) and (c-2) as "educators".

Subsections 21.402 (c-1) and (c-2) as added by House Bill 3646 read as follows:

(c-1) Notwithstanding Subsection (a), for the 2009-2010 and 2010-2011 school years, each school district shall increase the monthly salary of each classroom teacher, full-time speech pathologist, full-time librarian, full-time counselor certified under Subchapter B, and full-time school nurse by the greater of:

(1) \$80; or

1 Acts, 81st Leg. Sess., Ch 1328 (2009).

2 Pursuant to subsection 21.402(c-3), subsections (c-1) and (c-2) expire September 1, 2011.

(2) the maximum uniform amount that, when combined with any resulting increases in the amount of contributions made by the district for social security coverage for the specified employees or by the district on behalf of the specified employees under Section 825.405, Government Code, may be provided using an amount equal to the product of \$60 multiplied by the number of students in weighted average daily attendance in the school during the 2009-2010 school year.

(c-2) An increase in salary under Subsection (c-1) does not include:

(1) any amount an employee would have received for the 2009-2010 or 2010-2011 school year, as applicable, under the district's salary schedule for the 2008-2009 school year, if that schedule had been in effect for the 2009-2010 or 2010-2011 school year, including any local supplement and any money representing a career ladder supplement the employee would have received in the 2009-2010 or 2010-2011 school year; or

(2) any part of the salary to which an employee is entitled under Subsection (a).

Subsection 21.402 (c-1) requires school districts to increase monthly educator salaries by the greater of \$80 or a uniform amount calculated by dividing the number of eligible employees by an amount of \$60 per student in weighted average attendance³ (the "subsection (c-1) increase"). Subsection (c-2) states that an increase required under (c-1) "does not include" amounts to which an educator would be entitled under the district's 2008-2009 salary schedule⁴. Subsections (c-1) and (c-2) by their terms apply to the 2009-2010 and 2010-2011 school years.

We have understood the provisions of subsection (c-2) to require a school district to pay an educator during the 2009-2010 school year the subsection (c-1) increase, plus whatever amount the educator would have been entitled to in that school year on the district's 2008-2009 school year local salary schedule. For some educators, that would provide both the subsection (c-1) increase, plus a "step" increase established by the district in its 2008-2009 local salary schedule to recognize an additional year of experience.

³ The number of students in weighted average attendance is calculated by applying "weights" to individual students to account for characteristics that increase the cost of educating them. The calculation of "WADA" is a part of the school finance system set out in Section 42.302 of the Education Code.

⁴ School districts generally adopt local salary schedules, which may pay educators amounts greater than the minimum requirements of Section 21.402 of the Education Code. Many local salary schedules include annual "steps" that recognize additional years of experience with a salary increase. There is no state requirement to adopt a local salary schedule beyond the minimum state requirement; a district without a local salary schedule would base an educator's salary on the state minimum salary as required by Subsection 21.402(c-2)(2). School districts that adopted 2008-2009 local salary schedules would have done so in the fall of 2008 before the passage of HB 3646.

During the legislative consideration of House Bill 3646, concern was expressed as to the effect of the educator pay provisions during the 2010-2011 school year. Section 99 of House Bill 3646 was added to read as follows:

SECTION 99. Section 21.402(c-1), Education Code, as added by this Act, is not intended to require an increase in the second year of the biennium beginning September 1, 2009.

The legislative record⁵ contains the following exchange regarding the effect of House Bill 3646 on educator salaries during the 2010-2011 school year:

HB 3646 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE GIDDINGS: You and I have been discussing some concerns that we have in Dallas—our school district personnel have been in touch with us. I think, perhaps, you and I have concluded that there is a misread of the bill some place, and I just wanted to clarify that. From my discussion with you, there is nothing in the bill that mandates the district to give a step increase the second year. They just have to maintain the increase that they've given in the first year. Is that right?

REPRESENTATIVE HOCHBERG: That's my understanding of the bill, yes, ma'am.

GIDDINGS: Okay, I just wanted to clarify that because you and I have had that discussion, and it continues to be a concern for the Dallas Independent School District. For legislative intent, I just want to make sure there's nothing in the bill that mandates a step increase the second year. Thank you for your work, Mr. Hochberg.

HOCHBERG: Thank you, Ms. Giddings, and if any of your folks in Dallas have some particular questions about particular words that we can handle in a technical correction tomorrow, we would be happy to do that.

By its terms, Section 99 precludes a second, additional application of the subsection 21.402 (c-1) increase during the 2010-2011 school year. However, the statute is unclear as to whether an educator is entitled to an additional "step" during the 2010-2011 school year, if such an additional pay increase was included in the district's 2008-2009 local salary schedule. The requirement to add the subsection (c-1) increase to the local salary schedule appears in subsection (c-2), which is not referenced in Section 99 of House Bill 3646. Subsection (c-2) applies to both the 2009-10 and 2010-2011 school years and does not appear to differentiate between the two years. Additionally, subsection 21.402(d) provides that a district may never pay an educator who remains employed by the district less than the educator was paid during the 2010-2011 school year, which appears to contemplate an educator reaching a maximum salary in that year.

⁵ Available at <http://www.journals.house.state.tx.us/hjml/81r/pdf/81RDAY85FINAL.PDF> (See pg. 6812-13 of the Journal or 772-73 of the PDF).

My first question is:

If a school district adopted a local salary schedule for the 2008-2009 school year that would provide a salary increase for an educator during the 2010-2011 school year if applied during that school year, is an educator entitled to that increase during the 2010-2011 school year?

For example, assume an educator with five years of experience was paid \$4000 per month during the 2008-2009 school year. Assume further that the district's 2008-2009 local salary schedule paid an additional \$100 per month for each of a sixth and seventh years of experience, and that the district's subsection (c-1) increase is \$80 per month. The educator is entitled to a salary of \$4180 per month during the 2009-2010 school year by operation of subsections 21.402 (c-1) and (c-2). My question is whether the educator would be entitled to the further increase to \$4280 per month by virtue of the provisions of subsection 21.402(c-2) during the 2010-2011 school year.

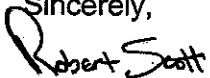
If your answer to the first question is "no", my second question is whether an educator would be entitled to a step increase in 2010-2011 if the district's local salary schedule provides a step increase in that year, but did not do so in the 2009-2010 school year.

In the example above, assume the same facts except that the district's 2008-2009 salary schedule does not have an additional step for a sixth year of experience (i.e., educators with five and six years of experience are paid the same amount while those with seven years of experience are paid an additional \$100). The educator would be paid \$4080 per month in 2009-2010. Would the educator be entitled to the additional \$100 in recognition of a seventh year of experience in 2010-2011?

My final question involves the amount a district is required to pay to an educator hired for the first time during the 2010-2011 school year. Assuming the facts in the example for the first question for a district hiring an educator with seven years of experience in the 2010-2011 school year, would the district be required to pay the educator \$4280 (2008-2009 salary schedule applied in 2010-2011), \$4180 (2008-2009 salary schedule applied in 2010-2011 but constrained to not provide an additional step in that year), or the state minimum salary plus \$80 (the 2008-2009 salary schedule has no effect after the 2009-2010 school year)?

Thank you for your consideration of this request. Should you need any additional information, please contact me or David Anderson, TEA General Counsel, at (512) 463-9720.

Sincerely,



Robert Scott
Commissioner of Education