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ROY COOPER
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October 16, 2013

Mr. Jonathan Blumberg
Mr. Colin Shive
Tharrington Smith
209 Fayetteville Street
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Raleigh, NC 27602-1151

Re: Advisory Opinion; Definition of "Teacher" - Excellent Public Schools Act of 2013

Dear Mr. Blumberg and Mr. Shive:

As counsel for the Wake County Schools, you have requested the opinion of this office regarding the definition of "teacher" as used in a particular portion of the Excellent Public Schools Act of 2013.

The Excellent Public Schools Act (hereinafter referred to as the "Act" or the "ESPA") was enacted during this past session of the General Assembly as part of the Appropriations Act, Senate Bill 402 (2013 N.C. Session Laws c.360). The Act essentially restructures the system of employment for professional educators in the public schools. The Act provides for a new system under which educators will be employed pursuant to contracts; the historical system that allowed for teachers to be awarded "career status," or "tenure," is being phased out. The Act provides that tenure for educators will be completely abolished by June 30, 2018. Sec. 9.6(i).

As part of the phasing out of tenure, and at the conclusion of the 2013-2014 school year, all local superintendents are required to offer a select group (25%) of teachers the opportunity to relinquish their tenure and instead be employed under a four-year contract. In exchange for their relinquishing tenure, these select teachers will receive a pay increase during each of the four years of the contract. Sec. 9.6(h). The issue that is presented by your letter is whether the select 25% of teachers to which these four-year contracts are offered include only "classroom" teachers. In our opinion, the term "teacher" as used in this portion of the Act, includes not only classroom teachers but all professional educators who fall within the definition of "teacher" found in G.S. 115C-325(a)(6).

Specifically, the Excellent Public Schools Act provides, in pertinent part, as follows:

Beginning September 1, 2013, to June 30, 2014, all superintendents shall review the performance and evaluations of all teachers who have been employed by the local board for at least three consecutive years. Based on these reviews, the superintendent shall 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. The superintendent shall not recommend to the local board any teacher for a four-year contract unless that teacher has shown effectiveness as demonstrated by proficiency on the teacher evaluation instrument. The local board of education shall review the superintendent's recommendation and may approve that recommendation or may select other teachers as part of the twenty-five percent (25%) to offer four-year contracts, but 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. . . . A teacher shall cease to be employed pursuant to G.S. 115C-325 and voluntarily relinquishes career status or any claim to career status by acceptance of a four-year contract as provided in this section.

2013 Session. Law 360, sec.9.6(g)(emphasis added). The inquiry posed by your letter is whether "teacher" as used in this section, which provides for four-year contracts to replace career status (also referred to as "tenure") for 25% of "teachers," applies to all professional educators who have been eligible for career status up to now, or just applies to those educators who are strictly categorized as "classroom teachers." In addressing your inquiry, it is important to view the historical context surrounding the use of the term "teacher" as that term appears in the statutes governing career status, or tenure.

For decades, G.S. 115C-325 has governed the system of employment for professional educators in this State, at least for those educators falling within the definition of "teacher" in G.S. 115C-325 (a)(6) (2011):

"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 broad definition, a number of professional educators, licensed by the State Board of Education, have traditionally been eligible for career status, or tenure, pursuant to

G.S. 115C-325. Included in this group are guidance counselors, school psychologists, media coordinators, and school social workers. See Advisory Opinion of the Attorney General to Mr. Jim Deni, Vice-Chair, Watauga County Board of Education, 1997 N.C.A.G. 53 (1997)

The new law repeals G.S. 115C-325 as that section previously existed, including the definition of “teacher” that was contained in that section. EPSA, section 9.6(i). Nevertheless, the new law goes on to provide that the repeal of the previous law does not become effective until June 30, 2018. EPSA, section 9.6(i). Thus, unless some other portion of the new EPSA applies, it appears that the definition of “teacher” as set forth in the current G.S. 115C-325(a)(6) remains in effect until “tenure” totally ceases for all educators on June 30, 2018. Accordingly, the term “teacher” as used in the EPSA’s provisions dealing with the offer of a four-year contract to the select 25% would appear to apply to all individuals heretofore eligible for career status and would include educators who support instruction as well as those strictly defined as “classroom teachers.”

This conclusion is supported by principles of statutory construction. The cardinal rule of statutory construction is that a statute must be construed to effectuate the intent of the legislature. State v. Hart, 287 N.C. 76, 213 S.E.2d 291 (1975). In order to ascertain the legislative intent, courts look to the language of the statute, its spirit and its purpose. State ex rel. North Carolina Milk Com. v. National Food Stores, Inc., 270 N.C. 323, 154 S.E. 2d 548 (1967). The intent of the legislature must be found from the language of the act and the circumstances surrounding its adoption. Id. Courts will construe words in accordance with their meaning at the time of enactment. Southern Bell Tel. & Tel. Co. v. Clayton, 266 N.C. 687, 147 S.E. 2d 195 (1966).

The definition of “teacher” found in G.S. 115C-325 (a)(6) has remained virtually the same since 1973. 1973 N.C. Sess. Laws c. 782 s.6. Notably, the new EPSA defines “teacher” using much the same language as used for the past forty years:

(6) “Teacher” means 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.

2013 Session Law c. 360, s. 9.6(b). This latter definition does not become effective until July 1, 2014. Id. sec.9.6(j). Even then, it only applies to “teachers” who are under contract on that date, either pursuant to the 25% provision, or pursuant to the EPSA provisions that

prohibit an educator from receiving tenure henceforth but rather requiring all educators to be under contract beginning in 2013. *Id.* Sec 9.6(f). Between 2013, when the conferring of tenure ceases, and 2014, when the 25% provision becomes effective; and between 2013, when the conferring of tenure ceases, and June 30, 2018, when all tenure ceases for all educators, there remain in the “pipeline” a number of educators who continue to enjoy the benefits of career status, or tenure. Nothing in the new law, and nothing in the language of the Session Law, indicates an intent by the legislature to change the definition of “teacher,” which definition has for forty years included educators in addition to those historically classified as “classroom” teachers. Accordingly, we believe the definition of the term “teacher” as used in the 25% provision, Section 9.6(g) as quoted above, is coterminous with the definition of “teacher” that has been in existence for the past 40 years. To read into the term “teacher” in this section a different definition, and thus attribute to the legislature an intent that is not plain from the language used, violates the rules of statutory construction.

We recognize that some provisions of the EPSA arguably raise questions about the legislative intent in using the term “teacher” in the section dealing with the 25% selection of teachers to receive four-year contracts. You have noted that Section 9.6(g) states that, in order to be recommended as part of the 25% group, a teacher must have “shown effectiveness as demonstrated by proficiency on the teacher evaluation instrument.” (emphasis added). Again, however, the legislature has used the generic term “teacher” to describe the evaluation instrument and has not further indicated that it intended to deviate from the forty-year-old definition that, by the terms of the Session Law, remains in effect until either 2014, or 2018, depending upon the particular status of a given educator (tenured or under contract). There is nothing in the use of the term “teacher” to modify “evaluation instrument” that suggests the legislative intent to limit “teacher” to classroom teachers, as opposed to all other educators historically eligible for tenure. While conceivably the legislature could have meant “teacher” to have a different definition for purposes of the 25% provision, that intention is simply not evidenced by any language used by the legislature. The legislature plainly continues to use the term “teacher” which has had the same definition for forty years. Moreover, the new definition of “teacher” found in the EPSA remains virtually the same as the old definition and would encompass all educators who historically were eligible for tenure, including counselors, school psychologists, and other professional educators.

Notable also is the absence of the legislature’s use of the term “classroom teacher” when describing which educators it intended to be subject to the 25% provision. Yet in G.S. 115C-301.1, the legislature has clearly used “classroom teachers” to describe which teachers are entitled to “duty-free instructional planning time.” Surely if the legislature had intended to limit the definition of “teacher” in Section 9.6(g), it would have used language that would give some indication of its intent to restrict the term “teacher” to mean something other than the historical definition that has been in place for forty years. A plain reading of the statute simply does not support the position that the definition of “teacher” should be restricted to those teachers categorized as “classroom teachers.”

In short, for forty years the term “teacher” has been statutorily defined to include an array of professional educators in addition to classroom teachers. Moreover, the prospective definition of “teacher”, effective beginning in 2014, is essentially identical to the 40-year-old definition and also includes educators other than classroom teachers. There is nothing in the language of the Act that indicates an intent by the General Assembly to deviate from that definition. Accordingly, “teacher” for purposes of the provision requiring the selection of 25% to receive four-year contracts includes all educators who have historically been considered “teachers” under G.S. 115C-325 (a)(6).

Your letter references the fiscal note prepared by the legislative staff was based only upon the impact of Section 9.6(g) of extending four-year contracts only to “classroom” teachers. However, the limitation you describe is not itself evident from a reading of the fiscal note to which you refer. The fiscal notes assesses the fiscal impact based upon numbers of “teachers” employed; it nowhere defines the term “teacher” as being limited only to those assigned to the classroom. However, even if the fiscal note were so limited, the opinions and interpretations given to legislation by members of legislative staff are not themselves indicative of, or controlling on, the interpretation of acts of the legislature. Consumer Prod. Safety Comm’n v. GTE Sylvania, 447 U.S. 102, 100 S.Ct. 2051, 64 L.Ed 2d 766 (1980).

Finally, you point to communications, second-hand at best, that allegedly were shared with third parties from the office of one of the bill sponsors. Again, the opinions of a single legislator, or even a group of legislators, are not considered evidence of legislative intent, particularly when the language of the statute is clear and unambiguous. See Mims v. Arrow Fin. Servs., LLC, 132 S.Ct. 740, 2012 U.S. Lexis 906 (U.S. Jan. 18, 2012).

In conclusion, it is the opinion of this office that the term “teacher” as used in Sec. 9.6(g) has the same meaning as it has had since 1973 and includes all professional educators who meet the definition contained in G.S. 115C-325(a)(6). We also believe this opinion is consistent with the overall legislative intent of the EPSA to gradually convert the rights formerly associated with “career status” or “tenure” to a new system of “teacher” contracts. The definition of “teacher” for purposes of tenure, and for purposes of the new system of contracts, remains the same throughout the legislation.

Please be advised that this letter is advisory only; it has not been reviewed and approved in accordance with procedure for the issuance of a formal Attorney General Opinion.

Sincerely,



Laura E. Crumpler
Special Deputy Attorney General

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