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OFFICE OF THE
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STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

June 13, 1977

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ARIZONA ATTORNEY GENERAL

Mr. Howard D. Hinson, Jr.
Deputy County Attorney
Office of the Yavapai County Attorney
Prescott, Arizona 86301

Re: R77-181

77-124

Dear Mr. Hinson:

I have reviewed your May 11, 1977, opinion to Mr. Steve Hudson, Superintendent of the Mayer Unified Public School District No. 43. We informally concur in the result reached by that opinion. This informal concurrence has no precedential value.

Thank you for forwarding the opinion to the Attorney General as required by A.R.S. §15-122.B. If you have any questions, please call me.

Sincerely,

BRUCE E. BABBITT
Attorney General

David Rich

DAVID RICH
Assistant Attorney General

DR/ews



OFFICE OF

County Attorney

YAVAPAI COUNTY COURTHOUSE
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May 11, 1977

Mr. Steve Hudson, Superintendent
Mayer Unified Public Schools
School District Number 43
Mayer, Arizona 86333

Re: Your letter dated April 12, 1977

Dear Mr. Hudson:

As we discussed in our telephone conversation of May 3, the answers to questions 1 and 2 are basically controlled by the contract between the teacher and the Board. Both the standard contracts for probationary and continuing teachers have language indicating that the teaching assignment is to be dictated by the Board. In the normal course of dealing between the teacher and the Board, this teaching assignment should be made known to the teacher at the time of entry into the contract. If at contract time the teacher's exact assignment cannot be determined, the administration should nonetheless do its best to explain to the teacher the possible assignments he might receive and the factors which will affect that decision by the Board. While the language of the contracts clearly leaves the choice of teaching assignment to the Board, sound personnel management technique would dictate that that choice not be made in an arbitrary manner. The approval of the teacher is not required before the Board can make such a change in teaching assignments, however, the most effective personnel management would be to solicit the reaction of the teacher concerned prior to making such a change. The most desirable situation would be for the teacher to know what his teaching assignment will be at the time he signs his contract for the next year.

The language of the standard teacher contracts does not provide for changes in policy and operation such as a

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change in the starting and ending times of the school day. A change in the starting and ending hours of the school day would be a material change in the working conditions of the teacher. Because these hours are not provided for in the teaching contract, the Court would have to look to what was the contemplation of the parties at the time the contract was formed. A change in the hours of the school day announced after contracts had been signed could be deemed a breach of contract. Consequently, the best course of action would be for the Board to determine any changes in the school day and announce those changes before the contracts are signed for the succeeding year.

Question 3: The Board does indeed have the same legal responsibility to approve school sponsored extra-curricular programs and activities for the fundamental reason that almost all of these will involve an expenditure of Board funds or the use of school facilities. Even the unlikely extra-curricular activity which is somehow school related and yet does not involve any expenditure or use of school property or facilities would carry with it school district liability for any damage or injury to the students or teachers involved. Realistically these decisions give the Board the opportunity to withhold its approval from extra-curricular programs or activities, the content and purpose of which are somehow deemed unsatisfactory by the Board. I can think of few areas in which the Court would entertain a legal challenge to a decision made by the Board regarding extra-curricular programs or activities.

Question 4: The Board does have the final position of determining promotion procedure for all students; and specifically, the Board could decide to use district standardized achievement tests as an aid to evaluate the students' fitness for promotion. As you know, a Unified School Board can develop its own course of study subject to approval by the State Board of Education. A.R.S. §15-545(B). Approval of the State Board of Education is received by satisfying the minimum requirements set forth in the course of study adopted by the State pursuant to A.R.S. §15-1022. A Unified School District in addition is empowered to develop its own graduation requirements for the reasons indicated in enclosed Attorney General's Opinion 75-183. This too, however, is subject to approval by the State Board of Education as indicated by the addendum to Section 3.20 in the Arizona Handbook for Approved Secondary Schools, also enclosed. Basically this approval is also gained by satisfying the minimum requirements for

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graduation which are part of the course of study adopted by the State Board of Education. So while the State course of study sets forth minimum course requirements and an equivalent graduation requirement in terms of the units to be awarded for those courses, the question of what level of performance will earn the granting of credits and also how that level of performance is to be measured is solely the duty of the Board to determine.

The decision to use the results of standardized achievement tests and/or the extent to which they will be used in the determination of credits granted should be made only after the consideration of many factors. The evaluation of these factors calls for educational rather than legal expertise. Consequently, I will not attempt to analyze or venture conclusions about the feasibility of developing such a system. Legally, however, any formula the Board would develop which would be determinative in granting credits and/or awarding graduation could be subject to challenge by the families of those students who are denied either graduation or credits toward that graduation. If such a challenge were taken to the Courts, it would have to be decided by evaluating the Board's formula in light of the educational factors involved such as the type of test used, its level of predictive reliability, and the relative weight its results are given compared to classroom performance. To avoid legal challenge, any formula adopted must be defensible on an analysis of the educational criteria behind that formula. To assure a defensible formula, the Board should seek guidance in the development of such a formula from the State Board of Education, State Superintendent of Public Instruction, the Yavapai County Superintendent of Schools, and the other high school districts in the county.

As a practical matter, the development of such a formula may be met with distrust and resistance by both the students and the teachers who will fear that an isolated test result will somehow belie the level of achievement attained by performance in the classroom.

OFFICE OF THE YAVAPAI COUNTY ATTORNEY

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A copy of this opinion is being sent to the office of the Attorney General for review per A.R.S. §15-122(B). The Attorney General's Office may decide to revise this opinion, and if so, the revised opinion will prevail.

Sincerely,

HOWARD D. HINSON, JR.
Deputy County Attorney

HDH:gp
cc: Attorney General's Office
Enclosures