



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

BOB CORBIN  
~~XXXXXXXXXXXX~~  
ATTORNEY GENERAL

January 23, 1979

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

Mr. John R. Mayfield  
Deputy Maricopa County Attorney  
400 Superior Court Building  
101 West Jefferson  
Phoenix, Arizona 85003

Re: I79-18 (R79-005)

Dear Mr. Mayfield:

We have reviewed your January 5, 1979 opinion addressed to the President of the Paradise Valley Unified School District Board of Education, and concur that the District's ranking system as presently constituted is illegal as being in violation of the Teachers Tenure Act, A.R.S. §§ 15-251 et seq., and the Teacher Assessment and Evaluation Article, A.R.S. § 15-268, insofar as the system relates to the ranking of certificated personnel.

Concerning the impact of the ranking system upon management and classified employees who are not governed by the above statutory sections, we conclude that the ranking system is not illegal per se, though it could create substantial difficulties for the school district if it were proved that the system results in an adverse impact on protected persons in a discrimination lawsuit brought against the district under Title VII of the Federal Civil Rights Act of 1964.

Sincerely,

BOB CORBIN  
Attorney General

BC:mm

OFFICE OF THE MARICOPA COUNTY ATTORNEY  
CHARLES F. HYDER COUNTY ATTORNEY

400 SUPERIOR COURT BUILDING, 101 W. JEFFERSON, PHOENIX, ARIZONA



*Rec'd  
1-10-79  
B*

*ad Note*

January 8, 1979

R79- 005

Mr. Robert K. Corbin  
Attorney General  
State of Arizona  
Suite 200, Old Capitol Building  
Phoenix, AZ 85007

*Rich  
1/15/79*

Attention: David Rich  
Assistant Attorney General

Dear Sir:

I am enclosing a copy of our School Opinion No. 79-1 dated January 5, 1979, and directed to Mr. Alvin S. Goodman, the President of the Board of Education of Paradise Valley Unified District No. 69. This opinion deals with the ranking system of certificated teachers employed by the district.

Because of potential litigation and the fact that letters of non-renewal will be sent to teachers on or before January 15th, we respectfully request an expedited review of our opinion.

Thank you for your prompt attention to this matter.

Very truly yours,

CHARLES F. HYDER  
MARICOPA COUNTY ATTORNEY

*[Handwritten Signature]*  
\_\_\_\_\_  
John R. Mayfield  
Deputy County Attorney

JRM:cap

Enclosure

cc: David Rich

OFFICE OF THE MARICOPA COUNTY ATTORNEY  
CHARLES F. HYDER COUNTY ATTORNEY

400 SUPERIOR COURT BUILDING, 101 W. JEFFERSON, PHOENIX, ARIZONA



January 5, 1979

Mr. Alvin S. Goodman  
President, Board of Education  
Paradise Valley Unified District No. 69  
3012 East Greenway Road  
Phoenix, Arizona 85032

School Opinion No. 79-1

R79- 005

Dear Mr. Goodman:

A review of the materials submitted with your letter of December 19, 1978, has resulted in a determination by this office that the ranking system does not comport with our interpretation of the relevant sections of Title 15 of the Arizona Revised Statutes insofar as certificated teachers are concerned. Managerial and classified employees will be considered separately in this letter.

A.R.S. §15-268 requires each school district to develop a system of assessment and evaluation of the performance of certificated teachers employed by the district. The district is to develop and adopt objective assessment and evaluation guidelines for the improvement of instruction. In the development and adoption of these guidelines and procedures, the governing board shall avail itself of the advice of its certificated teachers. This system is the exclusive statutory means whereby teachers can be evaluated and therefore precludes any other form of evaluation.

It is our understanding that Paradise Valley Unified School District has already prepared a system of assessment and evaluation which has been filed with the State Department of Education as required by A.R.S. §15-268(B).

A.R.S. §15-268(D) through (G) provides as follows:

"D. The governing board of each school district shall develop and adopt specific assessment and evaluation guidelines for the improvement of instruction which shall include the following elements:

1. The establishment of criteria of expected teaching performance in each area of teaching and of techniques

for assessment and evaluation of that performance.

R79- 005

2. Assessment and evaluation of competence of certificated teachers as it relates to the established criteria.

E. Any assessment and evaluation made pursuant to this article shall be in writing and a copy thereof transmitted to the certificated teacher. The certificated teacher may initiate a written reaction or response to the assessment and evaluation.

F. Assessment and evaluation of the performance of each certificated teacher shall be a continuous process, at least twice each year for probationary teachers, and at least every other year for personnel with continuing status.

G. Each assessment and evaluation shall include recommendations as to areas of improvement in the performance of the teacher. After transmittal of an assessment, a designee of the board shall confer with the teacher to make specific recommendations as to areas of improvement in the teacher's performance and to endeavor to assist the teacher in attaining that improvement."

In your updated letter to Mr. Dennis Van Roekel several statements are made which lead us to conclude that the ranking system is an assessment evaluation system and therefore is precluded by the terms of A.R.S. §15-268; they are as follows:

"1. It is not a matter of criteria, it's a matter of each supervisor being required to provide his/her judgment of the persons he/she supervises. Each supervisor will appear before the Superintendent in March to justify the continued payment of the public's money to those persons in the Paradise Valley School

District who have been with us less than four years, and who were not already nominated for reemployment in January. Each supervisor shall - whether directing management, certified or classified employees - list his employees according to his/her professional judgment in order of value to the District.

2. The purpose of the supervisor ranking is so that we can be assured he/she has considered the performance of each employee. The supervisor is not excluded from making employee performance part of his/her arguments for the inclusion of that particular employee on the list if employees being nominated by the Superintendent for reemployment.

...Each of the supervisors must make his/her own relevant judgment. ...but one might well expect the supervisor to give indication about the extent to which he/she believes the type of performance to which you refer should be a factor in arguing which teachers the Superintendent should nominate for reemployment.

4. ...The existing evaluation system is for the improvement of instruction. It already exists and continues undisturbed by this additional system. What we are discussing here is a system which has as its sole purpose the accumulation of a list of nominees for reemployment. (Emphasis supplied).

While we understand that the ranking system will apply to management, certificated and classified employees, insofar as it applies to certificated teachers, the above statements indicate that the ranking system is designed to result in a list of teachers who will be recommended for reemployment. This recommendation may, in part, be based on the existing assessment evaluation system, but will to a large degree depend on the judgment of the individual supervisor. To say that the ranking system is separate and distinguishable from the evaluation system results in the

conclusion that it is a prohibited form of evaluation since the legislature has prescribed the sole method of evaluation of certificated teachers.

There can be no question that the ranking system is a form of performance evaluation. Your letter of December 5, 1978, to Mr. Dennis Van Roekel so states:

You know the Superintendent will be relying on the judgment of each supervisor to determine who should be nominated and when. You know the supervisors have had a workshop in which they developed descriptions of the results of work well done.

Under the ranking system the supervisor is to, "list his employees according to his/her professional judgment in order of value to the District." This statement raises several questions concerning the purpose of the ranking system.

Is it to designate teachers for termination for reasons other than inadequate classroom performance? If so the existing evaluation system should perform this function. Thus the ranking system would add nothing of value to this determination. If the teacher is deemed unsuitable then the sole means for removal are defined in A.R.S. §15-252 and A.R.S. §15-253. Probationary teachers may be non-renewed even if they receive favorable evaluations if A.R.S. §15-252 is followed.

Is the purpose of the ranking system to designate teachers who are displaying inadequate classroom performance? The sole method for terminating such teachers are contained in A.R.S. §15-252 and A.R.S. §15-265. Continuing teachers are entitled to a hearing under A.R.S. §15-253, regardless of the reasons for termination unless a reduction in force under A.R.S. §15-257, which covers both probationary and continuing teachers, is involved.

Regardless of the purpose of the ranking system, it is precluded by the terms of A.R.S. §15-268 and it thus cannot exist side-by-side with the existing system of assessment and evaluation and cannot be used as a basis for determining which teachers will be retained. The ranking system compares teacher against teacher on a subjective "value to district" basis rather than against objective assessment and evaluation guidelines as required by A.R.S. §15-268. A.R.S. §15-268 gives all teachers a statutory right which cannot be infringed upon by a secondary form of evaluation.

## Management and Classified Employees

A further problem with the ranking system that affects management and classified employees is the apparent lack of established, definite and objective criteria for the supervisors in evaluating candidates for reemployment.

In the event of a discrimination lawsuit, the district will be required to demonstrate how personnel decisions have been made and to show the validity of any personnel technique that has been used in making the decisions.

Of particular concern is the potential impact that the rating system may have on minority groups and potential discrimination suits under Title VII of the Civil Rights Act.

The EEOC Guidelines, Federal Register, Vol. 35, No. 149, 12333-12336 (1970), contain the following language:

"In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisor's prejudice, as, when, as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups."

The establishment of performance standards and careful design of performance evaluation systems serve as a foundation for fair and equitable faculty dismissals and non-reappointment policies and procedures and provide a defense in employment discrimination cases.

Objectivity in evaluation could be achieved by the following requisites:

1. The language employed in the evaluative instrument used to describe each characteristic to be measured must be composed of words which are reasonably precise and uniform in meaning.

2. There must be a fairly specific standard of measurement to guide the evaluator in ascribing a particular value to a particular characteristic, and

3. There must be a reasonably well-defined system for assigning relative weight to the characteristics measured.

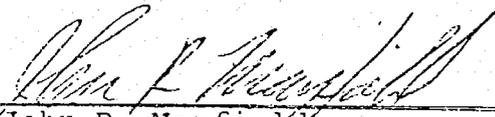
An honest effort to establish a fair and reasonable evaluation process based on objective standards and previously announced nondiscriminatory subjective factors applied without discrimination would most likely withstand a court challenge.

In conclusion, it is our opinion that the ranking system for certificated teachers falls within the preemption of A.R.S. §15-268, as it is involved in personnel decision-making. Secondly, the ranking system criteria, insofar as management and classified employees are concerned, must be unbiased and objective in intent and application and if subjective factors are involved, they should be previously announced and nondiscriminatory in nature.

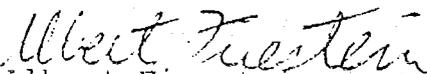
A copy of this opinion is being sent to the Attorney General for his concurrence, revision or review.

Very truly yours,

CHARLES F. HYDER  
MARICOPA COUNTY ATTORNEY

By   
\_\_\_\_\_  
John R. Mayfield  
Deputy County Attorney

APPROVED AND RELEASED:

  
Albert Firestein  
Chief Civil Bureau

JM: gc  
S-1-5



# Paradise Valley Unified School District No. 69

District Office  
3012 East Greenway Road  
Phoenix, AZ. 85032

*Where Individual Excellence Is Our Goal!*

*Administrative Services*

R79-005

December 18, 1978

Mr. Charles F. Hyder  
Maricopa County Attorney  
400 Superior Court Building  
101 West Jefferson  
Phoenix, AZ. 85004

RECEIVED

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MARICOPA  
COUNTY ATTORNEY

Dear Mr. Hyder:

Attached is a letter from the president of the Paradise Valley Education Association to the Board of Education dated November 9. As the Board president, I read this letter in the "Board Correspondence" agenda item at the November 16 meeting. At that time I gave indication to the president of the Paradise Valley Education Association that I would respond, as president of the Board of Education, at its meeting December 7. Attached also is a copy of my correspondence of December 5 in answer. This was read as part of Board correspondence at the December 7 meeting. After it was read, the president of the Paradise Valley Education Association rose to say that he was not satisfied with my answers and asked to have his four questions in his original letter answered in more detail. I told him at the time that I would write answers and that before sending them would have their legalness examined by the County Attorney.

I am, therefore, requesting that you examine the as yet undated letter as attached, and provide me with your judgment as to its legalness.

Very truly yours,

Alvin S. Goodman  
President  
Board of Education

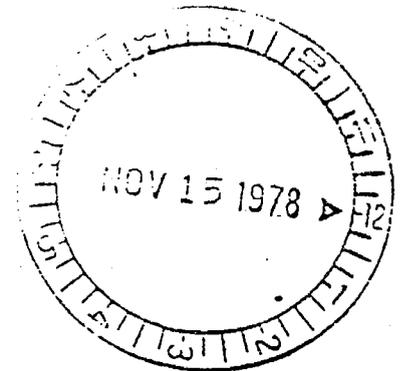
Attachments: 3  
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PARADISE VALLEY  
EDUCATION ASSOCIATION

P.O. Box 31218, Phoenix, AZ 85046

R79-005

November 9, 1978



Dr. Al Austin  
Mr. Tom Cunningham  
Mr. Al Goodman  
Ms. Carolyn Goodwin  
Mr. Bob Hay

Dear Paradise Valley Board of Education:

Dr. Hunt's proposed "ranking system" is still without objective guidelines. Arizona Revised Statutes requires a school district to adopt objective evaluation guidelines for its teacher assessment and evaluation procedures. Since the principals have not been provided a uniform and proper criteria with teacher input, the teachers are being "ranked" or "judged" on different criteria which may be subjective rather than objective.

Dr. Hunt insists the ranking is completely separate from the evaluation system. If ranking is the basis for reemployment, how can the evaluation of a teacher's performance in the classroom not be relevant? The only way classroom performance is not relevant is if the teacher's ranking is based on behavior not connected to the classroom. The Paradise Valley Education Association, on behalf of Paradise Valley teachers, contends that such a system is totally unacceptable to teachers and likewise will be unacceptable to the community when evidence is provided to show that a teacher's ranking and reemployment are not dependent in any way on classroom performance.

If classroom performance is used to determine a teacher's ranking, then the proposed ranking system violates Arizona Revised Statutes on several points. The statute requires:

- 1) objective evaluation guidelines adopted by the district's governing board.
- 2) that teachers shall have input in to the development and adoption of these guidelines.
- 3) that the evaluation procedure must be filed with the State Department of Education.

According to Article 4 (Teacher Assessment and Evaluation) of the Arizona Revised Statutes, each governing board shall adopt a system of assessment and evaluation. Since the ranking of teachers is a form of assessment, teachers and community members need answers to the following questions, which we request that you answer and submit to me, as President of the PVEA, by November 17.

1. When will the criteria for the ranking be established?

Paradise Valley Board of Education  
November 9, 1978  
Page two

R79- 005

- a. Will teachers have input into the criteria?
- b. Will the criteria be uniform districtwide?
- c. Will the criteria be objective?
2. Is classroom performance relevant to a teacher's ranking and subsequent reemployment?
3. If not, what is relevant?
4. What is the educational value of the ranking system?

Sincerely,

*Dennis Van Roekel*

Dennis Van Roekel, President  
Paradise Valley Education Association

DVR/mh

cc: Paradise Valley School District Teachers  
Dr. John J. Hunt  
Mr. Tom Horne  
Ms. Nancie Lane

R79- 005

December 5, 1978

Mr. Dennis Van Roekel  
President  
Paradise Valley Education Association  
Paradise Valley High School

Dear Mr. Van Roekel:

As you know, your November 9 letter to the Board concerning what you called "ranking" was read by me to the Board at its regular public meeting of November 16. At that time you heard me say I would be writing to you after the supervisors met "in the North Country," December 1.

Unfortunately, your telegram of November 30 objecting to my presence at the December 1 workshop precipitated my exclusion from the event. Thus, my response to you now is less than I could have made if you had not sent your telegram.

You do know the Board's policies numbered 4112 (Certified) and 4215 (Classified) contain the following:

"All personnel are employed by action of the Board upon the nomination of the Superintendent to the Board."

You know the Superintendent has indicated he intends in January to nominate for reemployment all employees who have worked for the Paradise Valley School District for more than three years. This will for the first time, extend to the classified employees the same treatment certified employees have been receiving for many years. I am sorry to know you object to this. I personally think it is long overdue.

You know the Superintendent has indicated he intends in January to nominate also for reemployment the top 1/6th of all the employees who have worked for the Paradise Valley School District for three years or less. I am sorry to know you object to this. I personally think it is long overdue.

Mr. Dennis Van Roekel

-2-

December 5, 1978

The two nominations in January will mean upwards of 1000 of the employees of the Paradise Valley School District will receive nominations for reemployment a full six months ahead of time. No other Superintendent has ever stood up so emphatically for the employees of this District, especially for the classified employees. I am sorry to know you object to this.

You know the Superintendent has indicated he intends in April to nominate for reemployment upwards of 475 of the approximately 500 employees not nominated in January as I described above. The taxpayers will then know their money is being paid to employees whom the Superintendent is willing to stand up and defend as worth the dollars paid. I am sorry you object to this. As a taxpayer, I personally think it is long overdue.

You know the Superintendent will be relying on the judgment of each supervisor to determine who should be nominated and when. You know the supervisors have had a workshop in which they developed descriptions of the results of work well done. Although Dr. Hunt has told me he has recently shared these with you, I am enclosing a copy to you with this letter. It is the results of the December 1 workshop.

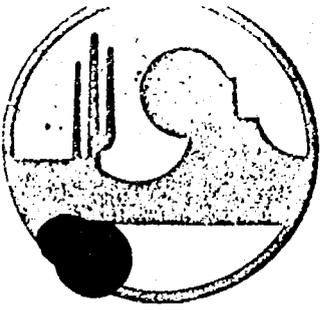
If you need any additional commentary from me, please let me know.

Sincerely,

Alvin S. Goodman  
President  
Board of Education  
Paradise Valley School District

cc: Board of Education  
Dr. John J. Hunt  
Mr. Tom Horne  
Mrs. Nancie Lane  
District Teachers

js



# Paradise Valley Unified School District No. 69

*Where Individual Excellence Is Our Goal!*

R79- 005

Mr. Dennis Van Roekel  
President  
Paradise Valley Education Association  
Paradise Valley High School  
3950 East Bell Road  
Phoenix, AZ. 85032

Dear Mr. Van Roekel:

At the December 7 Board meeting I indicated to you I would give further answers to questions asked in your November 9 letter, assuring first that the answers given, received legal review. This letter has been sent to the County Attorney for an answer to the question, "Are my answers in violation of the law?" The answer from the County Attorney is attached.

Listed below are your questions and my answers.

1. "When will the criteria for the ranking be established?"

It is not a matter of criteria, it's a matter of each supervisor being required to provide his/her judgment of the persons he/she supervises. Each supervisor will appear before the Superintendent in March to justify the continued payment of the public's money to those persons in the Paradise Valley School District who have been with us less than four years, and who were not already nominated for reemployment in January. Each supervisor shall - whether directing management, certificated, or classified employees - list his employees according to his/her professional judgment in order of value to the District.

The sub-parts to your question, a, b, and c seem in my judgment to be moot in light of the answer above.

2. "Is classroom performance relevant to the teacher's ranking and subsequent reemployment?"

The purpose of the supervisor ranking is so that we can be assured he/she has considered the performance of each employee. The supervisor is not excluded from making employee performance part of his/her arguments for the inclusion of that particular employee on the list of employees being nominated by the Superintendent for reemployment.

It strikes me your question is too narrow. Each of the supervisors must make his/her own relevant judgment. With reference to the supervisors of teachers, it seems reasonable to say the public is paying its money to the teachers primarily for student performance, but one might well expect the supervisor to give indication about the extent to which he/she believes the type of performance to which you refer should be a factor in arguing which teachers the Superintendent should nominate for reemployment.

3. "If not, what is relevant?"

It strikes me that your question #3 is answered within the response to your question #2.

4. "What is the educational value of the ranking system?"

In my judgment, the public will come to know, or learn if you wish to use that word, that the money they are paying to the public's employees is paid them because someone, namely the Superintendent, is willing to stand up and defend the nominees as being worthy of the dollars paid.

As I indicated to you in my December 5 letter, I am sorry to know you object to something so completely separate from the adopted and approved evaluation system. The existing evaluation system is for the improvement of instruction. It already exists and continues undisturbed by this additional system. What we are discussing here is a system which has as its sole purpose the accumulation of a list of nominees for reemployment.

If you feel that ranking is unfair to teachers, that means that you consider all teachers equal. If you consider all teachers equal, why aren't they all paid the same salary regardless of experience or education?

Mr. Dennis Van Roekel

-3-

R79- 005

Also, there are teachers presently on the screening committee for the Assistant Superintendent for Personnel and Training Services. After the interviews are over, will the candidates all be at the top, bottom, or will they be placed on a list based on qualification and oral response to committee questions?

We have seen in California what can happen when the public determines it has no confidence in public education.

I am hopeful this response provides you with the additional commentary which you indicated you needed.

Sincerely,



Alvin S. Goodman  
President  
Board of Education  
Paradise Valley Unified Schools

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