



Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert H. Corbin

April 25, 1979

Mr. Lawrence Ollason  
Special Deputy County Attorney  
for School Affairs  
Pima County Attorney's Office  
182 North Court Avenue  
Tucson, Arizona 85701

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**ARIZONA ATTORNEY GENERAL**

Re: I79-124 (R79-103)

Dear Mr. Ollason:

This is to acknowledge receipt of your opinion letter of April 3, 1979 to Jerry P. McEuen, an administrator of the Continental Elementary School District, and to inform you of our concurrence in your opinion.

We agree that the purpose of the assessment and evaluation reports made pursuant to A.R.S. § 15-268 is to assess the competency of teachers and to make recommendations leading to the improvement of instruction. The failure to make such reports and transmit them to a probationary teacher, while a dereliction of this statutory duty, does not necessarily preclude the district from discharging a teacher for reasons other than inadequacy of classroom performance.

Sincerely,

BOB CORBIN  
Attorney General

BC/mm

*Corbett*

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APR 11 1979

ATTORNEY  
PIMA COUNTY ATTORNEY

April 3, 1979

R79-103

Mr. Jerry P. McEuen, Administrator  
CONTINENTAL SCHOOL DISTRICT  
Tucson-Nogales Star Route  
Box 469 C  
Amado, Arizona 85640

EDUCATION OPINION  
ISSUE NO LATER THAN  
6/5/79

Dear Mr. McEuen:

This is in response to your oral request of April 2, 1979, for an immediate opinion as to whether a school district's failure to provide a non-tenured teacher with two written "assessment and evaluation" reports during the school year bars the district from discharging that teacher for insubordination.

ANALYSIS AND OPINION

The Arizona Revised Statutes require that school districts undertake the assessment and evaluation of "certified teachers" and that these evaluations be "in writing [with] a copy thereof transmitted to the certified teacher." A.R.S. §§15-268 D and E. Upon receipt, the teacher may "initiate a written reaction or response to the assessment and evaluation." §15-268.E, supra. In the case of probationary teachers these reports are required by statute to be completed "at least twice each year," and for continuing teachers "every other year." A.R.S. §15-268.F. There is no express provision regarding how often reports must be completed for part-time, non-tenured teachers.

There are numerous indications in the express language of §150268, supra, that the Legislature intended that the required periodic reports represent assessments and evaluations of teaching performance. Subsection A, therein, refers to a school district's development and adoption of "objective assessment and evaluation guidelines for the improvement of instruction." Subsection D repeats this language and in sub-paragraph 1 provides for "[t]he establishment of criteria of teaching performance in each area of teaching and of techniques for the assessment and evaluation of that performance."

Sub-paragraph 2 then states the requirement for "[a]ssessment and evaluation of competence of certified teachers as it relates to the established criteria." [referring to the "criteria of ...teaching per-

formance" in sub-paragraph D.1] . Finally, sub-section H authorizes the release of the required reports:

"3. For introduction in evidence or discovery in any court action between the board and the certified teacher in which either:

- (a) The competency of the teacher is at issue.
- (b) The assessment and evaluation was an exhibit at a hearing, the result of which is challenged."

[Emphases added throughout.]

This last reference to "comptentency" clearly relates back to the teacher's "competence in teaching performance found in §15-268.D.2, supra, and there is no requirement that the evaluation reports be produced at a hearing or court action involving matters other than teaching performance, but only if they are made an exhibit they may be released "for introduction in evidence or discovery..."

That the assessment and evaluation of teaching performance or "comptentency" is distinguishable from the question of a teacher's "insubordination" is apparent from an examination of their respective meanings. "Insubordination" and "insubordinate" refer to "defiance of authority" and "unwilling[ness] to submit to authority" and are synonymous with rebelliousness, seditiousness, factiousness and apply to "disobediance of orders" and "infraction of rules." Webster's Third New International Dictionary (Unabridged), 1971 edition, page 1172. By contrast, "incompetence" and "incompetent" refer to one's lack of "the qualities, necessary (as maturity, capacity, initiative, intelligence) necessary to effective independent action." Id., page 1144. These two concepts have been distinguished by courts in other jurisdictions (See, eg., Cafferty v. Southern Tier Pub. Co., 173 N.Y.S. 774, 186 App. Div. 136 (1919), holding that a teacher guilty of insubordination may not be discharged for incompetency) in the context of actions involving school district sanctions against teachers. 21A Words and Phrases, "Insubordination" and 20A Words and Phrases, "Incompetency."

Based on the foregoing analysis, it is my opinion that the Arizona Legislature intended that the periodic assessments and evaluations of certified teachers required by A.R.S. §15-268 pertain only to the evaluation of teaching performance and that the purpose of such assessments and evaluations is to assist teachers in improving teaching performance. There is nothing in the Arizona Revised Statutes or relevant Arizona case law prohibiting a school district from discharging a non-tenured teacher for insubordination, notwithstanding the quality or lack of quality of his or her teaching performance or level of competence as an instructor. I, therefore, conclude that a school

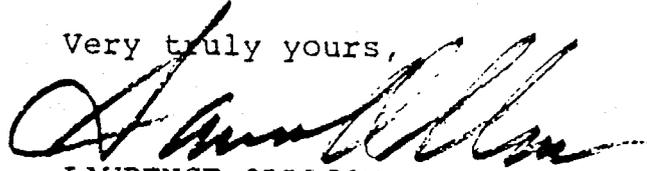
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district's failure to provide a non-tenured teacher with written assessment and evaluation reports during the school year, as required by A.R.S. §15-268, does not bar the district from discharging the teacher for insubordination.

A copy of the foregoing opinion is being submitted to the Attorney General in Phoenix for his review, revision and comments.

Very truly yours,



LAWRENCE OLLASON  
Special Deputy County Attorney  
for School Affairs

LO:bcs

CC: Robert K. Corbin, Attorney General ✓