

**To: Thomas W. Pickrell
General Counsel, Mesa Public Schools**

February 21, 2001

Re: Classroom Site Fund

I01-007 (R00-085)

Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-253(B), you submitted for review an opinion you prepared for the Governing Board of Mesa Public Schools regarding the Classroom Site Fund ("CSF") established by A.R.S. § 15-977. This Office concurs with your conclusion and writes this Opinion to provide guidance to other school districts regarding the new statutory provisions.⁽¹⁾

Questions Presented

1. Must monies allocated from the CSF for "teacher compensation increases based on performance" be limited to increases based solely on individual teacher performance, or may such increases be based at least in part on collective performance goals established for teachers of a school or the district?
2. Must school district governing boards allocate CSF monies strictly according to the priorities established by the principals of schools in the district, or may such funds be allocated according to a plan that is contrary to the priorities of an individual principal if the governing board finds that its allocation includes the collective priorities of its school principals and would maximize classroom opportunities?

Summary Answers

1. School districts may use their teacher performance monies from CSF to increase teacher pay based on individual teacher performance as well as other factors such as school or district performance.
2. Although school district governing boards must ascertain the priorities of school principals and allocate CSF maintenance and operation funds according to those priorities "wherever possible," governing boards need not allocate such funds *solely* in accordance with those priorities if they determine that an alternative allocation would "maximize classroom opportunities."

Background

During a special session in June of 2000, the Legislature approved S.B.1007, which, among other things, created the CSF to provide funding to school districts and charter schools for designated purposes. 2000 Ariz. Sess. Laws, 5th Sp. Sess.,

ch. 1, § 16 (codified as A.R.S. § 15-977). This measure took effect after the voters approved Proposition 301 at the 2000 general election and will be implemented after May 31, 2001. 2000 Ariz. Sess. Laws, 5th Sp. Sess., ch. 1, §§ 66 (delayed implementation), 67 (conditional enactment).⁽²⁾

The Department of Education administers the CSF and allocates CSF funds to school districts and charter schools based on student count and other factors specified by statute. A.R.S.

§ 15-977(B). A school district governing board or charter school must spend monies from the CSF "for use at the school site" and "may not supplant existing school site funding with revenues from the fund." A.R.S. § 15-977(A). Each school district or charter school must allocate funding from the CSF according to statutory parameters:

- 40% of the funds must be used "for teacher compensation increases based on performance and employment related expenses;"
- 40% of the funds must be used for "maintenance and operations purposes," which are defined as class size reduction, teacher compensation increases, AIMS intervention programs, teacher development, dropout prevention programs, and teacher liability insurance premiums; and
- 20% of the funds must be used for "teacher base salary increases and employment related expenses."

A.R.S. §15-977(A), (C).

To determine the "maintenance and operations purposes" for which CSF funds will be allocated, school district governing boards and charter schools must "request from the school's principal each school's priority" for such an allocation. A.R.S. §15-977(A). The statute further requires that "[t]he district governing board or charter school shall allocate the [CSF] monies to include, wherever possible, the priorities identified by the principals of the schools while assuring that the funds maximize classroom opportunities and conform to the [allocation levels established by Proposition 301]." A.R.S. § 15-977(D).

Analysis

A. Teacher Performance Pay Increase Plans May Consider Factors Other than Individual Teacher Performance.

The fundamental rule of statutory construction is to give effect to the intent of the legislature. See, e.g., *Arizona Sec. Ctr., Inc. v. State*, 142 Ariz. 242, 244, 689 P.2d 185, 187 (App. 1984). Generally, the language of the statute is the best indicator of its meaning. *Id.* Also relevant are the context, subject matter, effects and consequences, reason and spirit of the law. Statutory provisions should be construed in the context of related provisions and in light of their place in the statutory scheme. *City of Phoenix v. Superior Court*, 144 Ariz. 172, 175-76, 696 P.2d 724, 727-28 (App. 1985).

In allocating 40% of the monies from the CSF for teacher compensation increases, A.R.S. § 15-977(A) indicates only that such increases shall be "based on performance."⁽³⁾ The statute does not define the term "performance," nor does it contain any additional guidance concerning the performance measures on which such increases are to be based. Therefore, an examination of the legislative history of the statute, along with related statutory provisions, is essential in determining the legislative intent regarding teacher performance increases.

The Legislature has previously authorized three types of teacher pay plans based on performance. School district governing boards are given the discretion to use any of these pay plans:

- *The Career Ladder Program*, a "performance based compensation system" which bases teacher pay on instructional performance, pupil academic progress, increased levels of instructional responsibility, and other objective measures. See A.R.S. §15-918.02(A). That program expressly authorizes school districts to "include additional incentive components in which awards are based upon group, team, school or district performance." A.R.S. § 15-918.02(B).
- *The Optional Performance Incentive Program*, a "performance based compensation system" that is an alternative to the Career Ladder Program and that is based on "principles of effective organizations, teamwork, parental and pupil involvement and support of teachers." A.R.S. § 15-919(E).
- *Performance Pay Component Programs*, which allow school districts that do not use the Career Ladder Program or the Optional Performance Incentive Program to carry forward to the next fiscal year any unspent monies that were budgeted for the component of teachers' salaries related to a "teacher's classroom performance." A.R.S. § 15-920.

Thus, the Legislature has previously provided school districts with alternative systems if they desire to adopt a teacher salary structure that is based on "performance."

In reading the newly-adopted A.R.S. § 15-977(A) in conjunction with these authorized teacher performance-based compensation plans, it appears that the Legislature has recognized that performance increases for teachers may consider various factors in addition to the performance of individual teachers.

The legislative history supports the conclusion that school boards have discretion to determine how to use the CSF funds earmarked for teacher performance increases. As amended by the Senate Education Committee, A.R.S. § 15-977(A) would have required school districts to submit teacher performance compensation plans that used CSF funds to the State Board of Education for its review and approval.⁽⁴⁾ See S.B.1007, 44th Leg., 5th Spec. Sess. (Senate Education Committee Amendment). That provision, however, was not included in the final version of the bill, and school district governing boards were given the sole authority to determine the factors upon which CSF teacher performance increases could be based. See A.R.S. § 15-977 (as enacted in 2000 Ariz. Sess. Laws, 5th Sp. Sess., ch. 1, § 16).

Based on these indications of legislative intent, A.R.S. § 15-977(A) allows (but does not require) school districts to use their teacher performance CSF monies to increase teacher pay based not only on individual teacher performance, but also other factors such as school or district performance.

B. School District Governing Boards and Charter Schools Need Not Allocate CSF Monies Solely in Accordance with the Expressed Priorities of School Principals.

When statutory language is clear and unequivocal, the plain language determines the Legislature's intent and the correct construction of the statute. See *Mercy Healthcare Ariz., Inc. v. Arizona Health Care Cost Containment Sys.*, 181 Ariz. 95, 97, 887 P.2d 625, 627 (App. 1994). The language of A.R.S. §15-977(D) is clear: The allocation of CSF monies shall "include, wherever possible, the priorities identified by the principals of the schools." In addition to considering those priorities in allocating CSF maintenance and operation monies, school district governing boards and charter schools are also required to use such funds to "maximize classroom opportunities." A.R.S. § 15-977(D). Nothing in the statute indicates that CSF maintenance and operation funds must be allocated *solely* in accordance with the priorities identified by principals. To the contrary, governing boards are required to maximize classroom opportunities, while considering the identified priorities "*wherever possible*." Thus, the plain statutory language indicates that the priorities of school principals alone do not dictate the allocation of CSF monies.⁽⁵⁾

Conclusion

Teacher compensation increases under A.R.S. § 15-977 need not be based on individual teacher performance, but may also consider other factors such as school and district performance. In addition, although school district governing boards and charter schools must ascertain the priorities of principals and head teachers regarding the use of CSF maintenance and operation funds, the final allocation of such funds need not mirror those priorities. Instead, school district governing boards and charter schools must take those priorities into account "wherever possible," but must also allocate such funds in a manner that maximizes classroom opportunities and is consistent with the statutory limitations.

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1. Under A.R.S. § 15-253(B), the Attorney General must "concur, revise or decline to review" opinions of county attorneys relating to school matters submitted for review. Although this provision expressly applies to the opinions of county attorneys, it also applies to the opinions of school districts' private counsel. *See* Ariz. Att'y Gen. Op. I99-006.
2. The Legislature referred some portions of S.B. 1007 to the voters for approval, including the measure's .6% increase in the State transaction privilege tax, which is for specific education programs, including the CSF. *See* 2000 Ariz. Sess. Laws, 5th Sp. Sess., ch. 1, § 64. Those provisions appeared on the general election ballot as Proposition 301. Ariz. Secretary of State, Ballot Propositions & Judicial Performance Review for the General Election of Nov. 7, 2000 at 169 (2000). All of the provisions in S.B. 1007 were contingent upon the voters' approval of Proposition 301. 2000 Ariz. Sess. Laws, 5th Sp. Sess., ch. 1, § 67.
3. Twenty percent of the CSF is allocated for "teacher base salary increases," which are unrelated to teacher performance measures. A.R.S. § 15-977(A).
4. As amended, A.R.S. § 15-977 would have included the following requirement: "[A] school district shall apply to the state board of education for performance pay increases. The state board of education shall establish an application and review procedure of the performance pay system by July 1, 2001." S.B. 1007, 44th Leg., 5th Spec. Sess. (Senate Education Committee Amendment).
5. Although an examination of the legislative history of this provision is unnecessary because the statutory language is not ambiguous, that history supports this conclusion. The first version of the bill gave school principals or head teachers sole control over the CSF maintenance and operation monies, but later amendments replaced that statutory language with the current version. *Compare* S.B.1007, 44th Leg., 5th Spec. Sess. as introduced (school principal or head teacher "administer[s]" CSF monies pursuant to A.R.S. § 15-977(A)) *with* A.R.S. § 15-977(D) as adopted.

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