



TERRY E. BRANSTAD GOVERNOR

DEPARTMENT OF EDUCATION
WILLIAM L. LEPLEY, EDD., DIRECTOR

Declaratory Ruling #42
(Cite as 5 D.o.E. Decl. Rul. 22)

April 9, 1990

Mr. Gerald L. Hammond
SAYRE & GRIBBLE, P.C.
718 Equitable Building
Des Moines, Iowa 50309

Dear Mr. Hammond:

On February 18, 1990, Petitioner Iowa State Education Association [hereafter Petitioner or ISEA] filed for a Declaratory Ruling on behalf of those school districts whom ISEA represents, through its local education affiliates, in the collective bargaining process. Petitioner waived its right to a Ruling or denial within 30 days. See Iowa Admin. Code 281--3.4 (incorporating the Iowa Admin. Code Uniform Rules for Declaratory Rulings (1986)). The Petitioner seeks answers to two questions related to the proper method of distribution of Phase I funds.

The Department provided notice and a copy of the Petition to, inter alia, the Iowa Association of School Boards [hereafter the Association or IASB] who sought, by motion, to intervene in the Petition. We afforded IASB the opportunity to meet with Department staff and the Petitioner, as anticipated by the rules, on March 19, 1990; we accepted its brief and heard oral argument from IASB counsel. We hereby deny IASB's Motion to Intervene, which was sought for the purpose of appealing a ruling adverse to its position.

I
Facts

The hypothetical set of facts upon which the Petition for Declaratory Ruling was requested and on which the Ruling itself rests are as follows:

- a. That, in 1987-88, the Iowa Community School District (intended to represent any school district within the geographical confines of Iowa, and hereinafter referred to as District) received \$30,000 in Phase I funds with a staff representing 40.0 FTE (full time equivalency).

b. That the Phase I funds received in 1987-88, and in all subsequent school years hereinafter designated, were those funds available from the State of Iowa pursuant to Sections 294A.4 through 294A.6 (Code of Iowa (1989)).

c. That, in 1988-89, the District received \$30,000 in Phase I funds with a staff representing 40.0 FTE.

d. That due to a base increase in the salary schedule the "regular compensation," for those teachers in the District earning less than \$18,000 as "regular compensation," collectively increased by \$5,000 from 1987-88 to 1988-89. "Regular compensation" is defined in Section 294A.2(6).

e. For 1988-89, the District, therefore, needed only \$25,000 in Phase I funds, as opposed to \$30,000 in the prior year, to bring all teachers earning "regular compensation" of less than \$18,000 in 1988-89 to the minimum level of \$18,000 as required by Section 294A.5, Code of Iowa (1989).

g. That no teacher who received Phase I funds in 1987-88 received any Phase I funds in 1988-89 if his or her "regular compensation," established by virtue of the salary schedule, increased to \$18,000, or more, in 1988-89.

k. That for 1988-89, a Phase II plan was established within the District pursuant to the provisions of Sections 294A.8 through 294A.11, Code of Iowa (1989).

Petition for Declaratory Ruling, pages 1-2.¹

The questions presented are as follows:

1. Must the "excess Phase I funds" of \$5,000 under the above-stated facts for the 1988-89 school year be distributed to teachers through the Phase II plan in place for the same 1988-89 school year?

¹ Petitioner also included three additional paragraphs of hypothetical "facts" (paragraphs (f), (i), and (j)) which we have elected to exclude. Paragraph (f) is not a fact but a quasi-legal conclusion that begs the ultimate question posed. Paragraphs (i) and (j) state "facts" related to how Phase I funds were or are perceived by a fact-finder or arbitrator. These paragraphs add little or nothing to the foundation for the ruling and only serve to complicate the issue or represent an attempt to sway the Director of Education's views on the questions presented by postulating how another decision maker has viewed Phase I funds.

2. If "excess Phase I funds" exist, or existed, in any school year subsequent to the enactment of Chapter 294A by the Iowa legislature, must those excess Phase I funds now be distributed retroactively to the teachers in the District through the current Phase II plan?

Petition for Declaratory Ruling, page 3. Petitioner desires affirmative answers to both questions.

II.

Conclusions of Law

In 1987, the General Assembly passed H.F. 499, codified at Iowa Code chapter 294A "Educational Excellence Program -- Teachers." The chapter establishes three distinct programs of monetary enhancement for certificated (licensed) instructional employees in public schools and area education agencies: Phase I ("The recruitment of quality teachers"), Phase II ("The retention of quality teachers"), and Phase III ("The enhancement of the quality and effectiveness of teachers through the utilization of performance pay"). Iowa Code §294A.1 (1989). The questions posed herein require an understanding of Phase I directly and Phase II peripherally; Phase III is not at issue.

Phase I raises salaries to a level of \$18,000 for full-time public school teachers. Iowa Code §294A.5. The General Assembly established that in the first year (1987-88 school year) of Phase I, "each school district [LEA] and area education agency [AEA] shall certify . . . the names of all teachers employed . . . whose regular compensation is less than eighteen thousand dollars per year for that year [1987-88] and the amounts needed as minimum salary supplements." Id. For subsequent years, the amount of funds allocated to each district remains the same as in the first year of Phase I unless an LEA or AEA "reduces the number of its full-time equivalent [FTE] teachers below the number employed during the school year beginning July 1, 1987," in which case the State reduces the amount of money to that LEA or AEA accordingly. The reduction is based on the 1987-88 supplement amount and does not reflect salary increases since that year. Id. Appropriations have been made in school years 1987-88, 1988-89, and 1989-90 to fully fund Phase I.

In most, if not all LEAs and AEAs, the salary schedule increases annually, or possibly every two years. Therefore, the district that in 1987-88 had a minimum salary of \$15,000 would be expected to have a higher minimum salary in 1988-89 or 1989-90. Despite that fact, however, the General Assembly did not attempt to provide annually only those dollars necessary to bring teachers below \$18,000 to the minimum level. Instead, absent any FTE reduction in staff, a school district received the same amount of Phase I money in subsequent years (post 1987-88) as it received in 1987-88, although predictably the moneys "needed" for the \$18,000 minimum would be less in each succeeding year. This alleged discrepancy forms the basis of Petitioner's question of what must be done with "excess Phase I funds."

Petitioner's position that the difference (between what was required in 1987-88 to bring salaries to \$18,000 and what was needed in subsequent years to fulfill the same purpose) creates an annual "excess" apparently rests on its assumption that Phase I funds must be used solely to raise the salaries of those teachers whose regular compensation is below \$18,000 to \$18,000. I do not agree.

The moneys appropriated for Phase I, II, and III "shall be expended only to pay for increases in the regular compensation of teachers and other salary increases for teachers, to pay the costs of the employer's share of federal social security and Iowa public employees retirement system, or a pension and annuity retirement system established under chapter 294, payments on the salary increases, and to pay costs associated with providing specialized or general training." Iowa Code §294A.3 (1989)(emphasis added). The only prohibitive restriction is on "pay earned by a teacher for performance of additional noninstructional duties." Id.

"Regular compensation" is defined as "the annual salary specified in the teacher's contract pursuant to the salary schedule" and is exclusive of extra duty pay and the fringe benefits paid by the school district employer. Iowa Code §294A.2(6). The term "regular compensation" is not limited to the local salary schedule figure. It includes Phase I funds; the law thereafter states, "For the school year beginning July 1, 1987 and succeeding school years, the minimum annual salary paid to a full-time teacher as regular compensation shall be eighteen thousand dollars." Iowa Code §294A.5 (emphasis added). Petitioner has, I think, correctly pointed out that the Educational Excellence Act did not mandate that all districts adopt a salary schedule with an \$18,000 base. Instead, the allocation to each district has the effect of raising to \$18,000 the "regular compensation" of the teachers previously below that figure on the salary schedule.

The fact that the same amount of money is appropriated annually for Phase I (unless a district reduces its FTE from what it was in 1987-88) despite a predictably rising salary schedule, is certainly evidence that there was no legislative intent to limit Phase I to the exact dollar amount needed to fund \$18,000 minimum salaries. As further evidence that the General Assembly did not intend to define Phase I as Petitioner suggests is the absence of a reversion of funds by a district whose salary schedule increases annually. Compare 294A.5 and 294A.6 and .16 (Phase III moneys do revert to the State if not spent in the year allocated or the second year after.)

Finally, the most compelling argument against Petitioner's posited "excess Phase I" money theory is the practical application of how the money is needed to fund more than the difference between the district's salary schedule and \$18,000. Assuming the hypothetical Iowa Community School District had a \$15,000 base salary in school year 1987-88, with only ten teachers at three thousand dollars below the \$18,000 minimum, that district would receive \$30,000 in the first year of Phase I.

Let us assume that in the next year, following negotiations, the base salary is raised to \$16,000, with the same staff. The amount needed to bring those same ten teachers to \$18,000 is now \$20,000, but the balance (\$10,000) of the \$30,000 allocation is still required to fund the salary schedule. An illustration may be helpful.

	<u>Base Salary</u>	<u>+ To \$18K</u>	<u>10 Teachers</u>	<u>Phase I Funds</u>
Year 1	\$15,000	\$3,000	\$3,000 x 10 = \$30,000	\$30,000
	↓ 1,000			
Year 2	\$16,000	2,000	2,000 x 10 = 20,000 1,000 x 10 = <u>10,000</u> 30,000	"
	↓ 1,000			
Year 3	\$17,000	1,000	1,000 x 10 = 10,000 2,000 x 10 = <u>20,000</u> 30,000	"
	↓ 1,000			
Year 4	\$18,000	0	-- 3,000 x 10 = <u>30,000</u> \$30,000	"

As is apparent, the money required to raise the salaries of the ten teachers to \$18,000 and fund the regular salary schedule which has increased is still \$30,000 in year two. (In year two, the district requires \$2,000 per teacher to raise their salaries to \$18,000 from \$16,000 (\$20,000) plus \$1,000 per teacher [times ten teachers] to raise the salary schedule from \$15,000 (1987-88 year one) to the year two \$16,000 = total \$30,000.)

Thus the conclusion I reach is that there is no "excess" Phase I money because what is not needed to raise a teacher's salary to \$18,000 in subsequent years is still needed to fund the salary schedule (payments on the salary increases" and "other salary increases"). See §294A.3. This conclusion comports with the Department's statement issued in an early Educational Excellence Act interpretative document (Questions and Answers Regarding the Educational Excellence Program #2) and is not in conflict with a letter of advice issued from Assistant Attorney General Christie J. Scase (Scase to Collins, 8/7/89). (Although a separate account within the general fund is not necessary, districts must be able to show that all Phase I funds have been spent on teachers' salaries.)

III. Decision

The answers to Petitioner's questions posed on page 3 of this Ruling are (a): "No" and (b): "No," due to the fact that there are no "excess" Phase I funds, a premise on which both questions were based. I am not uncomfortable concluding that Phase I funds must be applied to teachers' salaries, and that those funds may be distributed through a district's Phase II plan, however.

Sincerely,



William L. Lepley, Ed.D.
Director

WLL:tsn

cc: Iowa Association of School Boards
Lone Tree Community School District