

Opinion No. 2008-003

February 6, 2008

The Honorable Eddie C. Hawkins
State Representative
15 Sharon Road
Vilonia, AR 72173-9541

Dear Representative Hawkins:

I am writing in response to your request for an opinion on the following questions:

1. If a school district's published salary schedule meets the minimum requirements established by Ark. Code Ann. § 6-17-2403, could the district adopt a new schedule on [sic] the 2007-2008 school year prior to May 1 that would be effective in the 2008-2009 school year and would maintain individual contracted salaries at the same level for the 2008-2009 school year as are in effect for the 2007-2008 year? (The new schedule would not affect increases earned for professional training, etc.)
2. Additionally, if the district makes that change in its 2008-2009 salary schedule, would it violate Ark. Code Ann. § 6-17-1507, the Teacher Fair Dismissal Act?

RESPONSE

In my opinion, as a general proposition, the answer to your first question is "yes," but the law is unclear regarding the necessary procedure for accomplishing such a change. With regard to your second question, I assume this is asking whether such a change in the salary schedule can be made without following the procedures under the Teacher Fair Dismissal Act (hereinafter "TFDA"), A.C.A. §§ 6-17-1501 – 1510 (Repl. 1999 and Supp. 2007). This implicates what one of my predecessors characterized as the "mutually exclusive" operation and effect of the TFDA's May 1 automatic renewal date for contracts, and the July 1 effective date

for amendments to “personnel policies” pursuant to A.C.A. § 6-17-204 (Supp. 2007). Op. Att’y Gen. 92-097. Because this matter has not been clarified by the legislature or the courts, I cannot definitively opine on the issue.

With regard to the minimum requirements referenced in your first question, A.C.A. § 6-20-2305 states that school districts shall file a “salary schedule” as follows in order to obtain state funds pursuant to the Public School Funding Act of 2003, A.C.A. §§ 6-20-2301 – 2307 (Supp. 2007):

(4)(A) Each year the school district shall file with the state board a salary schedule for its certified employees that recognizes a minimum level of training and experience.

(B) The schedule shall reflect the actual pay practices of the school district, including fringe benefits.

(C) Salary increments for experience or education, or both, shall be identified on the schedule[.]

A.C.A. § 6-20-2305(f) (Supp. 2007).

A “minimum salary schedule” for teacher salaries is further outlined by A.C.A. § 6-17-2403, which states in part:

The board of directors in each school district in the state shall pay classroom teachers upon a minimum salary schedule that provides:

(1) Annual increments for education and experience;

(2) A base salary; and

(3) A minimum salary for a teacher with a master’s degree and at least fifteen (15) years’ experience.

A.C.A. § 6-17-2403(a) (Supp. 2007).¹

¹ Subsections 6-17-2403(b) and (c) set forth the following minimum schedules for the 2007-2008 and 2008-2009 school years:

Your question assumes that the district has adopted a salary schedule that meets these minimum requirements. The issue is whether the district could adopt a new

In school year 2007-2008, each school district in the state shall have in place a salary schedule with at least the following minimum levels of compensation for a basic contract:

<u>Years of Experience</u>	<u>BA Degree Salary</u>	<u>MA Degree Salary</u>
0	\$28,897	\$33,231
1	29,347	33,731
2	29,797	34,231
3	30,247	34,731
4	30,697	35,231
5	31,147	35,731
6	31,597	36,231
7	32,047	36,731
8	32,497	37,231
9	32,947	37,731
10	33,397	38,231
11	33,847	38,731
12	34,297	39,231
13	34,747	39,731
14	35,197	40,231
15	35,647	40,731

In school year 2008-2009 and each school year thereafter, each school district in the state shall have in place a salary schedule with at least the following minimum levels of compensation for a basic contract:

<u>Years of Experience</u>	<u>BA Degree Salary</u>	<u>MA Degree Salary</u>
0	\$29,244	\$33,630
1	29,694	34,130
2	30,144	34,630
3	30,594	35,130
4	31,044	35,630
5	31,494	36,130
6	31,944	36,630
7	32,394	37,130
8	32,844	37,630
9	33,294	38,130
10	33,744	38,630
11	34,194	39,130
12	34,644	39,630
13	35,094	40,130
14	35,544	40,630
15	35,994	41,130

schedule for 2008-2009 that would maintain, i.e., “freeze” salaries at the 2007-2008 level, or whether this is prohibited because teachers must receive salary increases based on the increments shown on the schedule.

I do not interpret A.C.A. § 6-17-2403 as establishing such a guaranteed increase in salary from one year to the next. Any new salary schedule clearly must include “annual increments” as required by subsection 6-17-2403(a)(1). But it seems that the requirements of A.C.A. § 6-17-2403 will be met as long as teachers in 2008-2009 are paid based upon a schedule that includes the increments. I note that one of my predecessors reached a similar conclusion regarding a previous similar statute governing minimum teacher salaries. Attorney General Opinion 92-097 observed:

[W]e find no law expressly prohibiting the ‘freezing’ of teacher salaries from one year to the next. While A.C.A. § 6-17-1001 (Cum. Supp. 1991) requires school districts to pay teachers upon a salary schedule which has annual increments for education and experience, it appears that payment based upon an amended schedule would still comply with this language, as least if not amended perpetually to avoid the schedule requirement.

Id. at n. 2.

My predecessor further observed that the annual increments for experience under the previous statute created only a “goal ... and not a requirement.” *Id.* (citing Op. Att’y Gen. 91-366). I note that A.C.A. § 6-17-2403 does not refer to the scheduled increments as a “goal.”² It is therefore distinguishable from the previous statute to that extent. But it does not necessarily follow that payment of the increments each year is now mandated. The essential observation in my opinion still stands: Payment based upon an amended salary schedule will still comply if the schedule has the required annual increments.

One further observation regarding a relatively recent change in the law in this area is necessary. The legislature in 2003 amended the previous minimum teacher

² Subsection 6-17-2403 is part of the Teacher Compensation Program of 2003, A.C.A. §§ 6-17-2401 – 2407 (Supp. 2007). The act establishing this program repealed A.C.A. § 6-17-1001. *See* Acts 2003 (2nd Ex. Sess.), No. 59, § 5.

salary statute – A.C.A. § 6-17-1001 – to require a teacher’s experience for purposes of salary to be “his or her total years in any school district in the state,” and not only “the years in the district in which he or she is currently employed.” *See* Acts 2003, No. 1768, § 1. Another statute – A.C.A. § 6-17-204(c)(1)(A) and (B) – had authorized school districts to limit past years of experience. This office concluded that the 2003 act impliedly repealed A.C.A. § 6-17-204(c)(1)(A) and (B). *See* Op. Att’y Gen. 2003-181. *See also* Op. Att’y Gen. 2003-202 (concluding that Act 1768 of 2003 applied to all existing teachers and not just to those newly hired by a district.) This requirement that a teacher’s experience be “his or her total years’ experience” is included in the current law at A.C.A. § 6-17-2403(d) (Supp. 2007).³

The “annual increments for ... experience” requirement under A.C.A. § 6-17-2403(a)(1) can thus be understood to ensure that teachers are appropriately paid according to the salary schedule. It does not appear to be tantamount to a mandate that teachers must invariably receive salary increases each year, as long as they are being paid at least the minimum compensation set forth in A.C.A. § 6-17-2403.

In response to your first question, therefore, the apparent absence of any clear proscription against freezing teacher salaries compels me to conclude that a district could, as a general proposition, adopt a new teacher salary schedule for the 2008-2009 school year that would maintain salaries at the 2007-2008 level.

³ Subsection 6-17-2403(d)(1) states:

For purposes of the salary schedules described in this section, the teacher’s experience is his or her total years’ experience as a teacher with a valid Arkansas teaching license and teaching at any:

(A) Public school accredited by the Department of Education or a nationally recognized accrediting association;

(B) Private school within the State of Arkansas accredited by a nationally recognized accrediting association;

(C) Institution of higher education within the State of Arkansas accredited by a nationally recognized higher education institution accrediting association; or

(D) Any facility operated by the Division of Youth Services or any facility contracting with the division to provide care for juveniles committed to the division.

Your second question raises the issue of the necessary procedure for making such a change. I assume that by referencing the Teacher Fair Dismissal Act (TFDA), A.C.A. §§ 6-17-1501 – 1510 (Repl. 1999 and Supp. 2007), you are asking whether the TFDA must be followed. There are two potential approaches to this question. Under one approach, following the TFDA is unnecessary because the teacher salary schedule is a part of the school district's "personnel policies," *see* A.C.A. § 6-17-201(a) (Supp. 2007), which may be set by the district's board of directors, subject to the qualification that a personnel policies committee must be afforded an opportunity to review a proposal for at least ten days before the board of directors' vote on the proposal. *See generally* Op. Att'y Gen. 2002-138 (regarding the process for changing existing policy). According to this view of the matter, the teacher salary schedule may be "downshifted," so to speak, by amending the personnel policies to this effect, so that teachers with an additional year of experience will be paid the same amount they received the previous year. The change in personnel policy will not be effective until the next fiscal year, unless approved by a majority of the certified personnel. *See* A.C.A. § 6-17-204(b) (Supp. 2007). At the time it becomes effective, however, following this interpretation, it will apply to the 2007-2008 contracts.

The alternative, competing view is that the TFDA must be followed because the teacher salary schedule is a "term" of each teacher's contract. The schedule is a part of the district's personnel policies, *see* A.C.A. § 6-17-201(a), which in turn are "considered to be incorporated as terms of the certified personnel contracts...." A.C.A. § 6-17-204(a) (Supp. 2007). The TFDA provides in relevant part:

(a) Every contract of employment made between a teacher and the board of directors of a school district shall be renewed in writing on the same terms and for the same salary, unless increased or decreased by law, for the next school year succeeding the date of termination fixed therein, which renewal may be made by an endorsement on the existing contract instrument unless:

(1) By May 1 of the contract year, the teacher is notified by the school superintendent that the superintendent is recommending that the teacher's contract not be renewed;

(2) During the period of the contract or within ten (10) calendar days after the end of the school year, the teacher shall send ... his or her resignation as a teacher; or

(3) The contract is superseded by another contract between the parties.

A.C.A. § 6-17-1506 (Rep. 1999).

The TFDA therefore provides for automatic renewal of each teacher's contract on May 1 if no notice of nonrenewal is given, or there is no superseding contract. *See generally Hilton v. Pine Bluff Public Schools*, 295 Ark. 397, 748 S.W.2d 648 (1988). The possible effect of this automatic renewal in connection with amending a salary schedule was aptly summarized by one of my predecessors as follows:

The automatic renewal entitles the teachers to a contract for the same salary and for the same terms as the previous year contract. One of the terms of the contract renewed, according to this interpretation, is the teacher salary schedule which was effective at the time of that contract. This interpretation therefore concludes that if contracts are automatically renewed, the school district is bound to honor the unamended salary schedule, and pay the increments established therein, entitling teachers to a salary increase for an additional year of experience. This interpretation would therefore require either mutual consent of the teachers to the amendment of the salary schedule, so that the amendment would be effective immediately and be incorporated as a term of the new contracts on the May 1 automatic renewal date, or the negotiating of new contracts with the teachers.

Op. Att'y Gen. 92-097 at 3.

As my predecessor noted, under this interpretation, "no personnel policies of a district could be amended during the school year and become effective July 1 if automatic renewal is utilized. If old terms are locked in on May 1, prior to the effective date of any amendments, the amendments cannot operate to change those terms." *Id.* at 6-7.

Like my predecessor, I am unable to reconcile the overlapping concepts that emerge under the TFDA and the personnel policy amendments procedure. The “mutually exclusive” provisions were summarized in Opinion 92-097:

The problem arises because there are ‘terms’ of the contract, including, presumably, the teacher salary schedule, which are locked in on automatic renewal. A.C.A. § 6-17-1506. On the other hand there are ‘personnel policies,’ which were, in the same legislative session, made ‘terms’ of the contract and which are subject to amendment. A.C.A. § 6-17-204. These concepts thus overlap The operation and effect of the two dates (May 1 and July 1) are mutually exclusive A reading of these statutes thus reveals conflicting evidences of legislative intent. The statutes cannot be reconciled or employed simultaneously without reaching an outcome that in either case seems contrary in some aspect to other evidences of legislative intent.

Id. at 7.

According to my review, the matter has not been clarified, either by the legislature or through the courts. These circumstances prevent me from definitively opining in response to your second question.

Assistant Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:EAW/cyh