



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL,
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February 26, 1976

The Honorable M. L. Brockette
Commissioner of Education
Texas Education Agency
201 East Eleventh Street
Austin, Texas 78701

Opinion No. H-788

Re: Authority of State
Board of Education to
allocate additional
professional units to
school districts contain-
ing large numbers of
children of migrant
workers.

Dear Commissioner Brockette:

You have requested our opinion regarding the authority of the State Board of Education to allocate additional professional units to school districts containing large numbers of children of migrant workers.

You state that, at its June, 1975, regular meeting, the State Board of Education adopted the following resolution:

In districts having enrollments which include five percent (5%) or more children of migratory agricultural workers and fishermen the average daily attendance utilized for Foundation School Program purposes shall be the average daily attendance earned during any two six week reporting periods as determined by the district concerned. Such average daily attendance shall be on a current basis.

The resolution was based upon section 16.11(f) of the 1971 Texas Education Code, which provided, in pertinent part:

. . .where there is an annual fluctuation in attendance in the district, or where for any reason there is a marked increase or decrease in the attendance of any school district, adjustments in professional allotments shall be made by the state commissioner of education subject to applicable rules and regulations of the State Board of Education.

Section 16.11(f) was completely deleted from the revision of section 16 contained in House Bill 1126 (Acts 1975, 64th Leg., ch. 334, at 877), effective in pertinent part on September 1, 1975. Section 16.102(a) now provides:

Regular education program personnel units shall be allotted to each school district on the basis of the district's current average daily attendance during the 180-day school term for the 1975-1976 school year and on the basis of the district's current average daily attendance for the best 170 days of the 180-day school term for each school year thereafter.

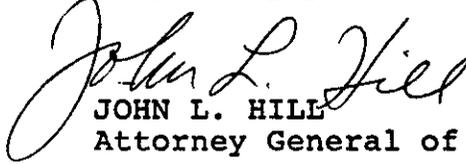
In our opinion, after the enactment of House Bill 1126, neither section 16 nor any other provision of the Education Code supports the resolution made the basis of your inquiry. Section 16.102(a) clearly states the formula for the allocation of personnel units, and no exception to that formula is provided. We have no authority to conclude that the deletion of former section 16.11(f) did not indicate the intention of the Legislature to repeal that statute. House Bill 1126 stated that one of its purposes was the "amending [of] Chapter 16. . . Texas Education Code." Acts 1975, 64th Leg., ch. 334, at 877. It is well established that the latest expression of legislative intent supersedes its predecessor.

State v. Easley, 404 S.W. 2d 296, 300 (Tex. Sup.1966); Commercial Standard Fire and Marine Co. v. Commissioner of Insurance, 429 S.W. 2d 930, 933 (Tex. Civ. App. -- Austin 1968, no writ). An amendment operates to repeal any provision of the original act or section that is omitted. State v. Andrews, 20 Tex. 230 (Tex. Sup. 1857). While the repeal of section 16.11(f) may have been inadvertent, we are without power to ignore the clear and unambiguous language of the statute. Thus, we conclude that the Legislature withdrew the authority of the State Board of Education to allocate additional professional units to school districts under circumstances such as you describe.

S U M M A R Y

By repealing section 16.11(f) of the Education Code, the Legislature has withdrawn the authority of the State Board of Education to allocate additional professional units to school districts containing large numbers of children of migrant workers.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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