



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTON
ATTORNEY GENERAL**

October 10, 1989

Mr. William H. Miller
Executive Director
Texas School for the Blind
and Visually Impaired
1100 West 45th Street
Austin, Texas 78756-3494

LO-89-79

Dear Mr. Miller:

You ask whether the recuperative leave provision of section 13.904(f) of the Education Code applies to teachers and professional employees of the Texas School for the Blind and Visually Impaired.¹ For reasons to be discussed below, we conclude that teachers and professional employees of the school are not entitled to recuperative leave under section 13.904.

Section 13.904 provides the following in pertinent part:

(a) A state minimum sick leave program consisting of five days per year sick leave with no limit on accumulation and transferable among districts shall be provided for every teacher regularly employed in the public free schools of Texas. Local school districts may provide additional sick leave beyond this minimum.

1. The name of the the Texas School for the Blind was changed to the Texas School for the Blind and Visually Impaired by House Bill No. 2597 during the regular session of the 71st Legislature. Acts 1989, 71st Leg., ch. 247, § 19(a), at 1173, 1179 (effective June 14, 1989).

(b) Each district shall file, immediately after the regular term of the school year has been completed, a report with the Central Education Agency setting out the total number of days of sick leave utilized by teachers and other professional personnel, excepting excess units, approved and listed for foundation school program benefits. The Central Education Agency, each current scholastic year, shall calculate the cost of providing approved sick leave for each person listed at the rate of \$20 per day and shall reimburse the participating local district on the basis of the percentage relationship between the state and the district in financing the cost of the foundation school program multiplied by the total approved sick leave expenditure for the year. Said reimbursement shall be paid from the Foundation Program Fund and this cost shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for foundation program purposes.

(c) Each district's local board of education shall establish a sick leave plan [and grant approved leave only in four specified circumstances].

(d) The Central Education Agency shall prescribe rules, regulations, and forms necessary to the administration of this minimum sick leave program and the auditing of state allocations made therefor as part of the foundation school program.

(e) [Repealed].

(f) In addition to all other days of leave provided by this section or by the school district, a teacher or another professional employee of a school district who is physically assaulted during the performance of his regular duties is entitled to the number of days of leave necessary to recuperate from all physical injuries sustained as a result of the assault. Days of leave taken under this subsection shall be

reported and reimbursed as sick leave in accordance with Subsection (b) of this section, but may not be deducted from accrued sick leave. The period provided in this subsection shall not extend more than two years beyond the date of the assault.

In many respects, the Texas School for the Blind and Visually Impaired is similar to other public schools of the state. Although governed by a board appointed by the governor and confirmed by the senate, the board is instructed to organize and conduct itself in the same manner as board of trustees of an independent school district. Educ. Code § 11.061. The school was organized for the same purpose and serves the same general population as the public schools, and maintains a working relationship with local school districts. See, e.g., Educ. Code §§ 11.062 (as added by Acts 1989, 71st Leg., ch. 247, § 3 at 1173, 1174); 21.507. Salaries for personnel of the school are required to be set at levels no higher than those offered by the five independent school districts offering the highest salaries, but not lower than salaries offered by the Austin Independent School District. Educ. Code § 11.063. The salaries of teachers, instructional personnel, and certain other professionals at the school may not exceed salaries for like positions with the Austin Independent School District. Acts 1989, 71st Leg., ch. 1263, at 5555 (general appropriations act). Employees of the school are also eligible for membership in the Teacher Retirement System of Texas. See, e.g., Ins. Code art. 3.51-7 (payments of additional death benefits for retired officers or employees of Teacher Retirement System who served or were employed by School for the Blind and Visually Impaired immediately prior to retirement).

These similarities aside, we cannot say that teachers and professional employees of the Texas School for the Blind and Visually Impaired are entitled to the full scale of benefits offered teachers employed by public school districts. It is presumed that in enacting a statute the legislature used particular statutory language with care and deliberation, and that such language was selected with a definite meaning and purpose in mind. See 67 Tex. Jur. 3d Statutes § 132 (1989) and cases cited therein. Thus, unless a statute is ambiguous, the courts and this office must follow the clear language of a statute. RepublicBank Dallas, N.A. v. Interkal, Inc., 691 S.W.2d 605 (Tex. 1985). By its plain terms, section 13.904(f) extends recuperative

leave to "a teacher or another professional employee of a school district." It does not expressly include teachers and employees of schools such as the School for the Blind and Visually Impaired, and we are aware of no provision of law that classifies teachers and professionals employed by the school as teachers and professionals of a school district for purposes of determining entitlement to leave. The school is not operated or fully supported by a school district, even though school districts are required to share in the costs of providing services to students referred to the school. See Educ. Code §§ 11.063(b)(5), 21.507(a). The salaries of school employees are provided for by legislative appropriation. See Acts 1989, 71st Leg., ch. 1263, at 5551 (appropriation for the School for the Blind).

You also inform us that the School for the Blind and Visually Impaired does not receive reimbursement for sick leave from the Foundation Program Fund as provided in subsection (b) of section 13.904, but that its employees receive sick leave benefits as specified in Article V of the biennial general appropriations act for state employees. The sick leave provisions of the current appropriations act make no reference to teachers or employees of the school. Id. at 5764. However, instructional employees of the school with contracts for periods of less than twelve months are expressly excluded from vacation leave entitlements. Id. at 5763. It seems clear, then, that employees of the school are, at least for purposes of determining entitlement to leave, treated as state employees. Compare Attorney General Opinion Nos. JM-205 (1984) (employees of the Windham School System operated by the Texas Department of Corrections are state employees for purposes of Article V of the general appropriations act); H-829, H-775 (1976) (teachers employed by Texas Youth Council are state employees for purposes of determining entitlement to vacation and sick leave).

Accordingly, we conclude that the provisions of section 13.904(f) of the Education Code, which extend recuperative leave to teachers and professional employees of a school district who are assaulted during the performance of regular

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duties, are not applicable to teachers and other professional employees of the Texas School for the Blind and Visually Impaired.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steve Aragón". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steve Aragón
Assistant Attorney General
Opinion Committee

APPROVED: Rick Gilpin, Chairman
Opinion Committee

Sarah Woelk, Chief
Letter Opinion Section
Opinion Committee

RG/SW/SA/bc

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