

TEXAS HOUSE OF REPRESENTATIVES



GIBSON D. (GIB) LEWIS
SPEAKER

ID # 16904
MBJ

July 23, 1992

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The Honorable Dan Morales
Texas Attorney General
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711

RECEIVED

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RE: Request for Opinion
Texas Education Code
Sections 13.905 and 13.352

Opinion Committee

Dear General Morales:

I have received a request from a public school district for an official Opinion regarding the interpretation of provisions in the Texas Education Code, specifically, Sections 13.905 and 13.352(d).

The specific questions asked are:

1. What is the meaning of the word "term" in 13.905(e); and
2. How is the provision in Section 13.905 requiring placement of an employee after leave of absence in a position interpreted in light of Attorney General Opinion DM-27 (1991) interpreting Texas Education Code Section 13.352(d)?

The actual fact situation here is that a teacher was diagnosed by her physician as having a serious illness which precipitated the teacher's request for leave of absence under Section 13.905. Two months later, in January of 1992, the teacher learned that the diagnosis was incorrect, that she had no debilitating disease, and that she could return to work. No position for which she is qualified was available at the school in which she taught prior to her taking a leave of absence. Further, after interviewing with other principals throughout the district, no placement offers were made to this particular teacher.

QUESTION 1.

Section 13.905 states in pertinent part:

- (a) Each certified, full-time employee of a school district shall be expected to be given a leave of absence for temporary disability at any time the employee's condition interferes with the performance of regular duties. The contract and/or employment of the employee cannot be terminated by the school district while on a leave of absence for temporary disability. Temporary disability in this Act includes the condition of pregnancy.
- (b) The employee shall notify the superintendent of the desire to return to active duty at least thirty (30) days prior to the expected date of return. The notice shall be accompanied by a physician's statement indicating the employee's physical fitness for the resumption of regular duties.
- (c) An employee returning to active duty after a leave of absence for temporary disability shall be entitled to an assignment at the school where the employee formerly taught, subject to the availability of an appropriate teaching position. In any event, the employee shall be placed on active duty no later than the beginning of the next term.

Section 13.305(e) required that the employee shall be placed on active duty no later than the beginning of the "next term" following their return from leave of absence. The district interprets "term" to mean school year. The teacher proffers that the word "term" means semester.

The definition of "term" is not set out in the statute. It is defined in the local school board policy (DEC (Local)). That policy states that: "Beginning of the next term" means beginning of the next school year. This interpretation is bolstered by other uses of the word "term" in the context of the school year, not school semester. For example, in 19 Texas Administrative Code, Section 105.72, School Year/Service Requirements, "term" means the school calendar year. Under 19 Texas Administrative Code Section 105.254, Accumulating Sick Leave, "school term" means school calendar year, not semester. It is the position of the school district that the requirement of the District to place the teacher would be at the beginning of the 1992-93 school year and not the beginning of the second semester of the 1991-92 school year.

QUESTION 2.

Section 13.352 (d) of the Texas Education Code provides that:

- (d) each principal shall:
- 1) approve all teacher and staff appointments for that principal's campus from a pool of applicants selected by the district or of applicants who meet the hiring requirements established by the district, based on criteria developed by the principal after informal consultation with the faculty.

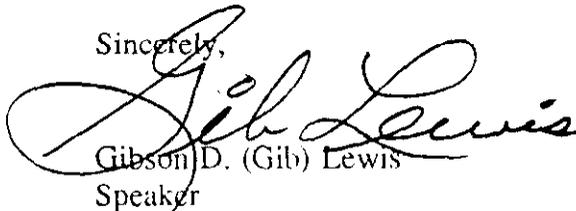
Attorney General Opinion DM-27 (1991) interprets Section 13.905 (d) to mean that it grants the authority to public school principals to approve all teacher and staff appointments on their campuses. It further is interpreted to mean that the principals are not required to accept teachers approved for transfers to their campuses by the school district administration.

The requirement in Section 13.905(e) that an employee be placed on active duty no later than the beginning of the next term conflicts with Section 13.352(d) in that the district administration cannot require a building principal to accept the placement of any teacher. In the case at hand, the teacher took a leave of absence; a position no longer exists at her prior building. The district administration cannot require any principal, even the teacher's previous principal, to accept a placement of a teacher to his or her campus.

The position of the district is that a teacher must be offered a contract (see 19 T.A.C. Section 145.46), but the teacher is not guaranteed a permanent teaching placement. The school district would place this teacher on a substitute list, at her current salary, until she is selected for a full time position. The teacher instead wants the guarantee of a permanent assignment. To do so, the district believes, would contravene DM-27.

Your opinion concerning this question will be helpful to a number of Texas public schools faced with this dilemma. If it can be adequately addressed with an informal opinion or letter advisor, either would be appropriate. I thank you in advance for your assistance.

Sincerely,



Gibson D. (Gib) Lewis
Speaker

GDL/jct