

LETTER OPINION
97-L-28

March 20, 1997

Mr. Henry C. "Bud" Wessman
Executive Director
Dept. of Human Services
State Capitol, Judicial Wing
600 East Boulevard Avenue
Bismarck, ND 58505-0250

Dear Mr. Wessman:

Thank you for your letter asking whether federally funded Head Start Program teachers and home visitors contractually employed by a local school district are teachers for the purposes of the Teachers' Fund for Retirement (TFFR), N.D.C.C. ch. 15-39.1.

N.D.C.C. § 15-39.1-04(11)(a) defines teachers as

[a]ll persons certified to teach in this state who are contractually employed in teaching in any state institution or by any school board or other governing body of any school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers employed in any state institution or in the school system of any school district in this state.

TFFR serves as a singular state retirement plan for a certified teacher employed as a teacher and for a certified teacher who is employed by a school district as a superintendent, assistant superintendent, business manager, principal, assistant principal, or special teacher as teacher is defined in N.D.C.C. § 15-39.1-04(11)(a). Thus, a certified teacher who is employed as a superintendent, assistant superintendent, business manager, principal, assistant principal, or special teacher is a teacher for purposes of participating in TFFR. Id. This interpretation by TFFR maintains a certified teacher's participation in TFFR even though a certified teacher may be employed by a school district in a different capacity described in N.D.C.C. § 15-39.1-04(11)(a). But if a business manager who is not a certified teacher is employed by a school district, that person is not a teacher for the purposes of

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participating in TFFR. See Letter from Attorney General Nicholas J. Spaeth to Scott Engmann (June 30, 1986).

It is within this conceptual framework that the issue of Head Start Program teachers and home visitors is analyzed. As you note, the Head Start Program is divided into four major components: Education, Health, Parent Involvement, and Social Services. Within the Education component, you note that there are two categories of staff: teachers and home visitors. The specific issue is whether a certified teacher contractually employed by a school district as a Head Start Program teacher or home visitor is a teacher for the purposes of N.D.C.C. § 15-39.1-04(11)(a). Because this statute requires the certified teacher to be contractually employed "in teaching," the dispositive issue becomes whether a Head Start Program teacher or home visitor is working in a field that can be identified as teaching. It should be easily determined whether the Head Start Program teacher or home visitor is certified to teach and contractually employed by the school district and, accordingly, analysis of that criteria is not provided.

The answer to the above issue is a question of fact subject to TFFR's reasonable interpretation of the statutes it is charged to administer. See generally Letter from Attorney General Nicholas J. Spaeth to Scott Engmann (April 23, 1990); Turnbow v. Job Service North Dakota, 479 N.W.2d 872, 830 (N.D. 1992)(North Dakota Supreme Court "will normally defer to a reasonable interpretation placed on a statute by the agency responsible for enforcing it, especially when that interpretation does not contradict the statutory language."); Holtz v. Workers Compensation Bureau, 479 N.W.2d 469, 470 (N.D. 1992)(North Dakota Supreme Court will "defer to the interpretation given to a statute by the agency which is responsible for enforcing the statute, especially when such interpretation is consistent with the statutory language.")

Teaching is defined as "[t]he work or occupation of teachers." The American Heritage Dictionary 1247 (2d coll. ed. 1991). A teacher is "[o]ne who teaches." Id. To teach is

[t]o impart knowledge by means of lessons; to give instruction in; communicating knowledge; introducing into or impressing on the mind as truth or information, and may be done as well through written communications, personal direction, through the public press, or through any means by which information may be disseminated, or it may be done by the adoption of sentiment expressed or arguments

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made by others which are distributed to others for their adoption and guidance.

Blacks Law Dictionary 1311 (5th ed. 1979). See also The American Heritage Dictionary 1246 (2d coll. ed. 1991). As set forth, the concept of teaching is not limited to the traditional classroom teacher.

The education component objectives of the Head Start Program are divided into five parts as follows:

- (a) Provide children with a learning environment and the varied experiences which will help them develop socially, intellectually, physically, and emotionally in a manner appropriate to their age and stage of development toward the overall goal of social competence.
- (b) Integrate the educational aspects of the various Head Start components in the daily program of activities.
- (c) Involve parents in educational activities of the program to enhance their role as the principal influence on the child's education and development.
- (d) Assist parents to increase knowledge, understanding, skills, and experience in child growth and development.
- (e) Identify and reinforce experience which occur in the home that parents can utilize as educational activities for their children.

45 C.F.R. § 1304.2-1. Numerous other Head Start Program education services plan components are explained in 45 C.F.R. § 1304.2-2. Some of the contents for which the education services plan must provide are the development of a supportive social and emotional climate, the development of intellectual skills, and the promotion of physical growth. As you note, the amended Head Start Act requires the Head Start Program teacher to have "(A) a child development associate (CDA) credential that is appropriate to the age of the children being served in center-based programs; (B) a State-awarded certificate for preschool teachers that meets or exceeds the requirements for a child development associate credential; (C) an associate, baccalaureate, or advanced degree in early childhood education; or (D) a degree in a field related to early childhood education with experience in teaching preschool children and a State-awarded certificate to teach in a preschool program." 42 U.S.C. § 9843a(a)(1). Additionally as you note, a home visitor is not a child educator, but rather the home visitor is an adult educator who works with the child through the parents. The Head Start Home Visitor Handbook 4 (1994).

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I have reviewed the description of Head Start Program teachers and home visitors and the applicable federal provisions concerning these positions and cannot say, as a matter of law, that TFFR's interpretation of its definition of teacher to include these workers is in contradiction of the statutory language. This is not to say that TFFR's interpretation is the only reasonable interpretation available, but merely that it is reasonable and thus entitled to deference. However, as previously mentioned, this issue is a question of fact.

House Bill No. 1143, introduced this legislative session, amends N.D.C.C. § 15-39.1-04(11)(a) as follows:

11. "Teacher" means:

a. All persons certified to teach in this state by the education standards and practices board who are contractually employed in teaching, supervisory, administrative, or extracurricular services in any state institution or by any school board or other governing body of any school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers employed in any state institution or in the school system of any school district in this state.

If this amendment is enacted, it will clarify that a certified teacher employed in a public school in a supervisory, administrative or extracurricular service position is covered by TFFR.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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