



Office of the Attorney General
State of Connecticut

May 16, 2011

Ms. Darlene Perez
State Teachers' Retirement Board
765 Asylum Avenue
Hartford, CT 06106

Dear Ms. Perez:

You have inquired of our office whether a superintendent who received a waiver of certification pursuant to Chapter 166 of our general statutes is eligible for pension credit under Chapter 167a, the Teachers' Retirement System ("System").

To answer this question, it is necessary to examine the definitions of "member" as contained in Conn. Gen. Stat. § 10-183b, and "teacher" as contained in Conn. Gen. Stat. §10-183b(26). We can then proceed to analyze those definitions in light of the certification requirements of Conn. Gen. Stat. §10-157(c).¹

For purposes of describing who may receive benefits from the System, Conn. Gen. Stat. § 10-183b(18) defines a "member" in relevant part as "***any Connecticut teacher*** employed for an average of at least one-half of each school day" (emphasis added). In turn, Conn. Gen. Stat. § 10-183b(26) requires that to be a Connecticut "teacher" for purposes of the System, one must be "any teacher, permanent substitute teacher, principal, assistant principal, supervisor, assistant superintendent or ***superintendent employed by the public schools in a professional capacity while possessing a certificate or permit issued by the State Board of Education***" (emphasis added). Therefore, for a superintendent to be a "member" who is eligible for pension credit under the System, he or she must *possess* a "certificate or permit issued by the State Board of Education." *Id.*

Prior to 2007, Conn. Gen. Stat. § 10-157(a) provided:

¹ Conn. Gen. Stat. §10-157(c) provides in relevant part that "[t]he commissioner may, upon request of an employing local or regional board of education, grant a waiver of certification" Conn. Gen. Stat. §10-145(a) further provides in relevant part that "[n]o . . . superintendent, except as provided for in section 10-157, shall be employed in any of the schools of any local regional board of education unless such person possesses an appropriate state certificate"

Except as provided in subsection (b) of this section,² no person shall assume the duties and responsibilities of the superintendent until the board [of education electing that person] receives written confirmation from the Commissioner of Education that the person to be employed is properly certified. The commissioner shall inform any such board, in writing, of the proper certification or lack thereof of any such person within fourteen days after the name of such person is submitted to him pursuant to section 10-226.

In 2007, the Legislature amended the statute to permit the State Board of Education (“SBE”) to waive the requirement that a superintendent be “properly certified.” Specifically, Public Act 07-241, § 4 amended Conn. Gen. Stat. § 10-157(a) to provide that “no person shall assume the duties and responsibilities of the superintendent until the board receives written confirmation from the Commissioner of Education that the person to be employed is properly certified or has had such certification waived by the commissioner pursuant to subsection (c) of this section.” (emphasis denotes new language).

Subsection (c) of Public Act 07-241, § 4, as amended and now codified at Conn. Gen. Stat. § 10-157(c), provided:

The commissioner may, upon request of an employing local or regional board of education, grant a waiver of certification to a person (1) who has successfully completed at least three years of experience as a certified administrator with a superintendent certificate issued by another state in a public school in another state during the ten-year period prior to the date of application, or (2) who the commissioner deems to be exceptionally qualified for the position of superintendent. In order for the commissioner to find a person exceptionally qualified, such person shall (A) be an acting superintendent pursuant to subsection (b) of this section, (B) have worked as a superintendent in

² Conn. Gen. Stat. § 10-157(b) provides authority for a board to appoint an “acting” superintendent, either one “who is or is not properly certified,” for not longer than 90 days.

another state for no fewer than fifteen years, and (C) be certified or have been certified as a superintendent by such other state.

Thus, under current Connecticut law, a person may be eligible for election as a superintendent in one of two ways: obtain proper certification from the SBE, or upon the request of the employing local or regional board obtain a waiver of certification from the SBE.

However, in amending Conn. Gen. Stat. § 10-157 to permit the SBE to waive the certification requirement, the Legislature did not amend the definition of those eligible to obtain a pension as a “member” of the State Teachers’ Retirement System. Thus, the recipient of the § 10-157(c) waiver is not a “teacher” for purposes of the System because he only possesses a letter from the Commissioner of Education and not “a certificate or permit issued by” the SBE.³ Conn. Gen. Stat. §10-183b(26) (emphasis added). In turn, an individual’s failure to meet the statutory requirement of “teacher” for purposes of the System compels a conclusion that he is not a “member” because he is not “any Connecticut teacher.” Conn. Gen. Stat. § 10-183b(18) (emphasis added). Furthermore, there is no statutory authority to waive the “certificate or permit” requirement for a “teacher,” or to provide that a “letter” from the Commissioner is the equivalent of either a “certificate or permit.” See §§ 10-183b, *et seq.*

Thus, we conclude based on current law, that, a superintendent who received a waiver of certification pursuant to Chapter 166 of our general statutes is not eligible for pension credit for such service as a superintendent under Chapter 167a based on that individual’s failure to qualify statutorily as a “teacher” and “member” for purposes of the System. Of course, the Legislature is free to amend the statutes governing the Teachers’ Retirement System if it is of the view that benefits should be extended to those who receive a waiver. To the extent that any employer or the Teachers Retirement Board itself has been treating this individual as eligible for a pension by collecting contributions, Connecticut statutes anticipate this scenario. Specifically, Conn. Gen. Stat. § 10-183ff(c) provides in relevant part that “[u]pon determination by the . . . Board that any

³ We have been informed that when the Commissioner waives the certificate requirement pursuant to Conn. Gen. Stat. §10-157(c), the SBE does not issue a “certificate or permit.” See Conn. Gen. Stat. §10-183b(26). Rather, the Commissioner merely provides a “letter” indicating that the requirement to hold a certificate is waived with respect to the individual. This process clearly permits the individual under Chapter 166 of the Connecticut General Statutes to “be employed in any of the schools of any local or regional board of education,” and to “be entitled to any salary” in the absence of state issued certification. See Conn. Gen. Stat. § 10-145(a).

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person has *erroneously* been included in membership in the teachers' retirement system, contributions and interest credited under the provisions of this chapter *shall be refunded* and records of related service voided." (emphasis added).

Very truly yours,

GEORGE JEPSEN
ATTORNEY GENERAL