

June 19, 2007

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-2636

SYLLABUS:

2007-015

A teacher who did not hold a master's degree at the time of initial certification or licensure, but who has completed thirty hours of coursework "in the area of licensure or in an area related to the teaching field" during the time following the teacher's initial certification or licensure, and who has taught at least three of the last five years in the school district, is eligible for a continuing contract from that school district in accordance with R.C. 3319.11(B).



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OPINION NO. 2007-015

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-2636

Dear Prosecutor Baxter:

You have requested an opinion concerning R.C. 3319.11(B)(2), which establishes certain criteria with respect to a teacher's eligibility for a continuing contract of employment.¹ You specifically ask:

Whether a teacher who has earned a Master's Degree after the issuance of an initial provisional teaching license but who has completed less than thirty semester hours of applicable graduate credit since that initial issuance is eligible for a continuing teacher contract.

Let us begin with a brief discussion of the statutory requirements governing contracts of employment between boards of education and teachers. As creatures of statute, boards of education possess only those powers and duties expressly or impliedly granted them by statute. *Hall v. Lakeview Local School Dist. Bd. of Educ.*, 63 Ohio St. 3d 380, 588 N.E.2d 785 (1992). R.C. 3319.07 requires the board of education of each city, exempted village, local, and joint

¹ Because you have not indicated that the teachers you describe are subject to a collective bargaining agreement, this opinion will not address the potential effect of a collective bargaining agreement upon a teacher's eligibility for a continuing contract. *See, e.g., State ex rel. Brown v. Milton-Union Exempted Village Bd. of Educ.*, 40 Ohio St. 3d 21, 531 N.E.2d 1297 (1988) (in part, discussing the effect of a collective bargaining agreement entered into under R.C. Chapter 4117 upon a teacher's eligibility for a continuing contract under R.C. 3319.11). Instead, this opinion will address only the statutory requirements established by R.C. 3319.11.

vocational school district to employ the teachers for its district.² Under R.C. 3319.08, the board of education of each city, exempted village, local, or joint vocational school district and the governing board of each educational service center has a duty to enter into written contracts for the employment and reemployment of all teachers it employs.³

Teachers' contracts are either limited contracts or continuing contracts.⁴ R.C. 3319.08. A limited contract for teachers, not including superintendents or other administrators, is a contract for a period of no more than five years. R.C. 3319.08(A)(3). *See* R.C. 3319.01 (employment of superintendents); R.C. 3319.02 (employment of various administrators). In contrast, a continuing contract "remains in effect until the teacher resigns, elects to retire, or is retired pursuant to former section 3307.37 of the Revised Code, or until it is terminated or suspended." R.C. 3319.08(B).

As further described in R.C. 3319.08(B), a continuing contract:

² R.C. 3319.07(A) also authorizes educational service centers to employ certain teachers. *See generally* R.C. 3311.05(A) (defining the term "educational service center" as meaning "[t]he territory within the territorial limits of a county, or the territory included in a district formed under either section 3311.053 or 3311.059 of the Revised Code, exclusive of the territory embraced in any city school district or exempted village school district, and excluding the territory detached therefrom for school purposes and including the territory attached thereto for school purposes"). Because your question concerns teachers employed by a school district, this opinion will not address situations in which teachers are employed by educational service centers.

³ As used in R.C. 3319.08, the word "teacher" means:

all persons licensed to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents, or in any other educational position for which the state board of education requires licensure under sections 3319.22 to 3319.31 of the Revised Code including persons having a license issued pursuant to sections 3319.22 to 3319.31 of the Revised Code and employed in an educational position, as determined by the state board of education, under programs provided for by federal acts or regulations and financed in whole or in part from federal funds, but for which no licensure requirements for the position can be made under the provisions of such federal acts or regulations.

R.C. 3319.09(A).

⁴ Boards of education must also enter into a supplemental contract "for the performance of duties by a teacher that are in addition to the teacher's regular teaching duties." R.C. 3319.08. Supplemental contracts are limited contracts. *Id.*

shall be granted *only* to the following:

(1) Any teacher holding a professional, permanent, or life teacher's certificate;

(2) Any teacher *holding a professional educator license* who has *completed* the applicable one of the following:

(a) If the teacher did not hold a masters degree at the time of initially receiving a teacher's certificate under former law or an educator license, *thirty semester hours of coursework* in the area of licensure or in an area related to the teaching field *since the initial issuance of such certificate or license*, as specified in rules which the state board of education shall adopt;

(b) If the teacher held a masters degree at the time of initially receiving a teacher's certificate under former law or an educator license, six semester hours of graduate coursework in the area of licensure or in an area related to the teaching field since the initial issuance of such certificate or license, as specified in rules which the state board of education shall adopt. (Emphasis added.)⁵

R.C. 3319.08(B) thus restricts the categories of teachers to whom a board of education may award a continuing contract to the three categories listed in divisions (B)(1), (B)(2)(a), and B(2)(b) of that statute.

Similar provisions are found in R.C. 3319.11(B), which describes the criteria a teacher must meet in order to be eligible for employment under a continuing contract, in pertinent part, as follows:

(B) *Teachers eligible for continuing service status*⁶ in any city, exempted village, local, or joint vocational school district or educational service center shall be those *teachers qualified as described in division (B)(1) or (2) of section 3319.08* of the Revised Code, who *within the last five years have taught for at least three years in the district or center*, and those teachers who, having attained continuing contract status elsewhere, have served two years in the district or center, but the board, upon the recommendation of the superintendent, may at the

⁵ R.C. 3319.08 uses both the terms "certificate" and "license" to refer to the authority granted by the state to practice the profession of teaching within this state. Prior to the enactment of 1995-1996 Ohio Laws, Part VI, 10257 (Am. Sub. S.B. 230, eff., in part, Oct. 29, 1996), the State Board of Education issued "certificates" to teachers. Since the enactment of Am. Sub. S.B. 230, the Board of Education issues "licenses." See generally R.C. 3319.222(E) ("[o]n and after the effective date of this section, any reference in the Revised Code to educator licensing is hereby deemed to refer also to teacher certification under divisions (A), (B), and (C) of this section").

⁶ See generally R.C. 3319.09(C) (as used in R.C. 3319.08-.18, "continuing service status" for a teacher means "employment under a continuing contract").

time of employment or at any time within such two-year period, declare any of the latter teachers eligible. (Emphasis and footnote added.)

R.C. 3319.11(B) thus establishes two categories of teachers who are eligible for employment under a continuing contract: 1) teachers who possess the qualifications described in division (B)(1) or division (B)(2) of R.C. 3319.08 and who, within the past five years, have taught at least three years in the district, and 2) teachers who have attained continuing contract status elsewhere and who have served, with certain exceptions, for two years in the district.

In the situation you describe, the board of education has in its employ three teachers, all of whom possess five-year professional educator licenses. All have been employed by the board of education for at least three of the last five years, and have received their master's degrees after the issuance of their initial provisional licenses. You also state that all of these teachers earned credit hours toward their master's degrees both before and after their initial licensure, but none completed at least thirty hours of graduate credit during the time following their initial licensure. You question whether any of these teachers possesses the qualifications described in R.C. 3319.08(B)(2).

In order to meet the requirements set forth in R.C. 3319.08(B)(2)(a), a teacher who did not hold a master's degree at the time of initial certification or licensure, but who currently holds "a professional educator license," must have "*completed . . . thirty semester hours of coursework in the area of licensure or in an area related to the teaching field since the initial issuance of such certificate or license, as specified in rules which the state board of education shall adopt.*" (Emphasis added.) As defined in *Merriam-Webster's Collegiate Dictionary* 254 (11th ed. 2005), the transitive verb "complete" means, in part, "to bring to an end and esp. into a perfected state <~ a painting> . . . to mark the end of <a rousing chorus ~s the show>." The preposition "since" means, in part, "in the period *after* a specified time in the past." *Merriam-Webster's Collegiate Dictionary* at 1163 (emphasis added). Thus, R.C. 3319.08(B)(2)(a) requires that the teacher finish the applicable thirty semester hours after the initial issuance of the teacher's certificate or license, regardless when the first of those hours commenced. Nothing in R.C. 3319.08(B)(2)(a) indicates that a teacher must have both started and finished thirty hours of applicable coursework after the issuance of the initial certificate or license, only that the teacher must have finished those thirty hours after receiving the initial certificate or license. Had the General Assembly intended that a teacher both start and finish thirty hours of coursework in the period following the teacher's initial licensure, it could easily have included in R.C. 3319.08(B)(2)(a) language that indicated such intention. *See generally State ex rel. Cuyahoga County v. State Personnel Bd. of Review*, 82 Ohio St. 3d 496, 499, 696 N.E.2d 1054 (1998) ("[i]t is the duty of the court to give effect to the words used and not to insert words not used").

The conclusion that, for purposes of the continuing service status requirements set forth in R.C. 3319.11(B), the thirty hours of coursework mentioned in R.C. 3319.08(B)(2)(a) includes hours commenced either before or after the teacher's initial licensure is further supported by the principle that R.C. 3319.11 is a "remedial [statute] that must be *liberally* construed in favor of teachers." *Naylor v. Cardinal Local School Dist. Bd. of Educ.*, 69 Ohio St. 3d 162, 630 N.E.2d

725 (1994) (syllabus, paragraph one) (emphasis added). In accordance with this rule of construction, we find that, for purposes of the continuing service status requirements set forth in R.C. 3319.11(B), the thirty hours of coursework mentioned in R.C. 3319.08(B)(2)(a) includes hours of coursework a teacher earned before or after the teacher's initial licensure, so long as the final of the thirty hours are completed after the initial licensure.

Based upon the foregoing, it is my opinion, and you are hereby advised that a teacher who did not hold a master's degree at the time of initial certification or licensure, but who has completed thirty hours of coursework "in the area of licensure or in an area related to the teaching field" during the time following the teacher's initial certification or licensure, and who has taught at least three of the last five years in the school district, is eligible for a continuing contract from that school district in accordance with R.C. 3319.11(B).

Respectfully,

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

MARC DANN
Attorney General