

**Internal Auditor's Memorandum on
Classroom Site Fund (CSF) Performance Pay
January 11, 2018**

Purpose: Tucson Unified School District administrators want to clearly define which employees are eligible to receive Prop 301 payouts. Since the term "teacher" is not clearly defined. This memorandum and the associated recommendations are intended to assist administrators in determining which employees are eligible for Prop 301 payouts.

Background: Based on conversation with an audit manager from the Arizona Auditor General's Office and review of prior legal opinions auditor determined the following:

Reeves v. Barlow

According to Reeves v. Barlow, 227 Ariz. 38, 251 P.3d 417, (Ariz.App.Div. 1, 2011) "An employee who does not possess a teaching certificate **may not** participate in the compensation system".

Although the word "teacher" is not specifically defined by statute, Arizona Revised Statutes A.R.S. 15-502(B) makes it clear that a school district may not employ as a teacher anyone who has not received a teaching certificate. Accordingly, even though the Legislature did not limit "teacher" in A.R.S. 15-977(C)(9) with qualifying terms such as "certified", "certificated", or "classroom" as it did in other provisions. A.R.S. 15-502(B) and A.R.S. 15-977(C)(9), when read together, establish that the class of persons eligible to participate in the compensation system as "teachers" is limited to persons who have the requisite teaching certificate.

In this court case, five employees held positions in the district as a physical therapist, psychologist, speech therapist/pathologist, speech language pathologist, and a registered nurse. Only one of the employees possessed a teaching certificate. The court ruled none of the employees were eligible to receive CSF pay.

"A school district that permitted a non-teacher to participate in the compensation system would exceed its authority under A.R.S. 15-977"

Arizona Attorney General Opinion I13-005

According to Arizona Attorney General Opinion I13-005, (Issued after Reeves v. Barlow) "Although an employee may possess a qualifying certificate, that employee must be engaged in instructional activities relating to the school's educational mission to participate in the CSF plan"

Example "A Junior Reserve Officer Training Corps Certificate is listed as an 'Other Teaching Certificate' pursuant to Arizona State Board of Education Rules. Ariz. Admin. Code (A.A.C)

R7-2-614...[and] **WOULD** meet qualifications for participation in a CSF plan”. (If the Junior Reserve Officer is currently teaching the class)

Example “A Guidance Counselor Certificate, issued pursuant to A.A.C R7-2-617(B), is listed as an ‘Other Professional Certificate’ and **would NOT** qualify to participate in the CSF plan”

Reminder “An employee **MUST** be employed to provide instruction to students to participate in the CSF plan. The holding of an appropriate teaching certificate is a necessary condition, but it is not alone sufficient for participation in the district’s CSF plan.”

Recommendations

- **Recommendation 1.** Determine when the district can legally discontinue the “Grandfathered List”. If an employee is not eligible based on current guidance, the employee should not receive CSF performance pay. TUSD should not exceed its authority under A.R.S 15-977.
- **Recommendation 2.** Based on guidance above, remove individuals from the Prop 301 list that are not eligible.
- **Recommendation 3.** Based on guidance add individuals to the Prop 301 list that are eligible to receive Prop 301 payouts.
- **Recommendation 4.** Review A.A.C R7-2-614 to ensure all employees with “other teaching certificates” are receiving performance pay if the employee is a position that requires the certificate.
- **Recommendation 5.** Communicate these changes to all employees who are impacted.
- **Recommendation 6.** Post the listing of eligible positions on the district website to provide transparency to district employees. Then notify employees where to find the listing of eligible position.

References:

Reeves v. Barlow, 227 Ariz. 38, 251 P.3d 417, (Ariz.App.Div. 1, 2011)

Arizona Attorney General Opinion I13-005

Ariz. Admin. Code (A.A.C) R7-2-614

Ariz. Admin. Code (A.A.C) R7-2-617(B)

A.R.S. 15-502

A.R.S. 15-977