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LEGAL RULING 2001-1

QUALIFYING EDUCATIONAL INSTITUTION FOR TEACHER RETENTION CREDIT

INTRODUCTION

Advice has been requested regarding the eligibility of credentialed teachers employed in educational programs by various California state agencies for the teacher retention credit under Revenue and Taxation Code section 17052.2.

ISSUE

Are credentialed teachers employed in educational programs by certain California state agencies properly treated as "teaching at qualified educational institutions" for purposes of the teacher retention credit under Revenue and Taxation Code section 17052.2?

FACTS

Situation 1

A credentialed teacher is teaching in educational programs established by the correctional education authority for wards committed to youth authority at a facility of the Department of the Youth Authority.

Situation 2

A credentialed teacher is teaching hearing and/or visually impaired students at the California School for the Deaf or at the California School for the Blind.

Situation 3

A credentialed teacher is teaching in educational programs for individuals of mandated school age who are committed to a facility of the Department of Developmental Services or a facility of the Department of Mental Health.

Situation 4

A credentialed teacher is teaching in vocational education programs or academic

education programs of the Department of Corrections to inmates committed to facilities operated by that department.

LAW

Revenue and Taxation Code section 17052.2, added by AB 2879 (Stats. 2000, ch. 75), and amended by AB 1080 (Stats. 2000, ch. 603), provides a credit against the "net tax" imposed under the Personal Income Tax Law for credentialed teachers who teach at qualifying educational institutions. This credit is only available to credentialed teachers who have completed at least four years of service as a credentialed teacher.

Paragraph (1) of subdivision (c) of Revenue and Taxation Code section 17052.2 defines "credentialed teacher" as:

a person who holds a preliminary or professional clear credential as determined by the Commission on Teacher Credentialing pursuant to Article 1 (commencing with Section 44200) of Chapter 2 of Part 25 of Division 2 of Title 2 of the Education Code and *who teaches at a qualifying educational institution*. (Emphasis added.)

As a threshold matter, only credentialed teachers, as defined, are eligible for the teacher retention credit. An individual cannot be considered a "credentialed teacher" unless the individual possesses a current "preliminary" or "professional clear" credential, as determined by the Commission on Teacher Credentialing.

Paragraph (2) of subdivision (c) of section 17052.2 defines a "qualifying educational institution" as:

any elementary, secondary, or vocational-technical school located in this state providing education for kindergarten, grades 1 to 12, inclusive, or any part thereof. "Qualifying educational institution" includes an agency or instrumentality of the federal government providing education for grades kindergarten, grades 1 to 12, inclusive, or any part thereof, at any location within this state, including an Indian reservation or a military installation located within the geographical borders of this state, where a credentialed teacher is employed by the federal government or an agency or instrumentality thereof. "Qualifying educational institution" includes any elementary, secondary, or vocational technical school located in California, that files an affidavit pursuant to Section 33190 and 33191 of the Education Code, and provides education for kindergarten and grades 1 to 12, inclusive, or any part thereof.

The definition of "qualifying educational institution" requires an elementary, secondary, or vocational-technical school that provides a particular type of education – education for kindergarten, grades 1 through 12, inclusive, or any part thereof.

Title 2 of the Education Code (commencing with section 33000), entitled "Elementary and Secondary Education," sets forth requirements and criteria relating to and establishing the standards for elementary and secondary¹ education. Among other topics, it addresses teacher credentialing, course of study for kindergarten and grades 1 through 12, funding, and various education programs designed to meet the needs of special populations. Although the term "school" appears repeatedly throughout the Education Code, the term is actually never specifically defined.

It is well settled that the words of a statute are to be interpreted using their usual and ordinary meaning. (*Lennane v. Franchise Tax Board* (1994) 9 Cal.4th 263, 268 [885 P.2d 976, 978].) Black's Law Dictionary defines "school" as follows:

1. An institution of learning and education, esp. for children.²

Further, Black's Law Dictionary defines an "institution" as:

3. An established organization, esp. one of a public character, such as a facility for the treatment of mentally disabled persons. . . [.]³

The above definitions, taken together, indicate that a school is a structured organization operating for the purpose of learning and education. Some indications of a structured organization may be reflected by statutory authority, the filing of the affidavits pursuant to sections 33190 and 33191 of the Education Code, hierarchy of management to ensure educational purposes are met, accreditation by one of the various school accrediting associations, authorization to the institutions to grant high school diplomas or their equivalent, specific by-laws and other organizational documents, and operation in compliance with accepted curricula established by state or federal authorities.

Thus, in order for credentialed teachers to qualify for the teacher retention credit, they must teach in a "school" that meets each of the following criteria:

1. The school must be an established organization operated for the purpose of learning and education.

¹ In this context, the term "secondary" refers to the grades 9 through 12, or "high school." Postsecondary education, i.e., education past the 12th grade level, is addressed in Title 3 of the Education Code.

² Black's Law Dictionary, (7th ed. 1999) p. 1346, col. 2.

³ Black's Law Dictionary, (7th ed. 1999) p. 108, col. 1.

2. The school must be considered to be an elementary, secondary, or vocational-technical school.
3. The school must provide education from the curriculum for kindergarten, grades 1 through 12, or any part thereof.

ANALYSIS

Situation 1 -- Youth Authority

The Department of the Youth Authority (Youth Authority) has a specific mandate and authority pursuant to sections 1120 through 1125.5 of the Welfare and Institutions Code to provide appropriate educational programs for the wards committed to their facilities. This mandate requires the maintenance of a statewide educational program at each of its facilities.⁴

Under this statutory scheme, the Youth Authority is required to establish an office of the Superintendent of Education to oversee educational programs under the department's management. (Welf. & Inst. Code, § 1120.1.)

There is in the Youth Authority a correctional education authority for carrying out the education and training of wards committed to the youth authority. The course of study for wards attending any of grades 7 through 12 is required to include those courses specified in article 3 (commencing with section 51220) of chapter 2 of part 28 of the Education Code for the respective grade level. The course of study must also comply with the model curriculum standards adopted by the Superintendent of Public Instruction pursuant to section 51226 of the Education Code.

The correctional education authority established by the Youth Authority is authorized to issue high school diplomas to students who have completed the required course of study and meet basic standards of proficiency. (Welf. & Inst. Code, § 1120.2, subd. (d).) Further, for the purpose of receiving federal funds, this education system is deemed a local educational agency. (Welf. & Inst. Code, § 1120.1, subd. (e).)

The system is set up like many public school systems, with a Superintendent and chiefs (principals) of each division of instruction. The Legislature specifically refers to this system as a "school" by stating that the Youth Authority shall organize and create divisions it deems necessary in the conduct of "school." (Welf. & Inst. Code, § 1120.5.)

Therefore, based on the program as established pursuant to the Welfare and Institutions Code, the Youth Authority operates a school system. The schools within the system, operated pursuant to the statutory requirements, are elementary, secondary, or vocational-technical schools providing education for kindergarten, grades 1 through 12, or any part

⁴ This does not include their camp and initial reception and classification facilities.

thereof, at locations within California. Thus, the schools operated by the correctional education authority to provide education for grades 7 to 12 are considered a "qualifying educational institution" for purposes of the teacher retention credit.

As a result, a credentialed teacher teaching grades 7 through 12 in one of those schools that is otherwise eligible, i.e., a teacher with at least 4 years of service as a credentialed teacher, would qualify for the teacher retention credit.

Situation 2 -- Schools for the Deaf and Blind

There are three special schools established under the State Special Schools division of the Department of Education. These are the California Schools for the Deaf and the California School for the Blind.

Chapter 1 (commencing with section 59000) and chapter 2 (commencing with section 59100) of part 32 of the Education Code address the California Schools for the Deaf (one in northern California and one in southern California) and the California School for the Blind, respectively. Both schools are part of the public school system of the state. (See Ed. Code, §§ 59001 & 59101.) These schools are under the direct administration of the State Department of Education.

The Superintendent of Public Instruction is required to maintain a comprehensive elementary educational program for deaf individuals. Furthermore, the schools are to serve as regional secondary educational programs providing a comprehensive secondary education. (Ed. Code, §§ 59002 & 59102.) Both programs are authorized to provide for kindergarten instruction under Education Code sections 59040 and 59140.

These programs are elementary, secondary, or vocational-technical schools providing education for kindergarten and grades 1 through 12. As a result, these programs are "qualifying educational institutions" for purposes of the teacher retention credit. Based on the structure of these educational programs for the blind and the deaf, as mandated by the Legislature, these schools are "qualifying institutions" for purposes of section 17052.2 of the Revenue and Taxation Code.

However, many services besides "teaching" are provided at these institutions. Only teachers with preliminary or professional clear teaching credentials who are teaching in connection with education for kindergarten and/or grades 1 through 12 are eligible to claim the teacher retention credit.

Situation 3 -- Facilities of Department of Developmental Services (DDS) and Department of Mental Health (DMH)

These two departments, within the realm of providing educational services, operate under similar programs and guidelines and are therefore addressed together. The Department

of Mental Health (DMH) and the Department of Developmental Services (DDS), under sections 4011.5 and 4051.5, respectively, of the Welfare and Institutions Code, are required to ensure that appropriate special education and related services, pursuant to chapter 8 (commencing with section 56850) of part 30 of the Education Code, are provided to eligible individuals with exceptional needs residing in state hospitals. The program established under chapter 8 (commencing with section 56850) of part 30 of the Education Code provides educational programs to individuals of mandated school age⁵ with exceptional needs residing in state hospitals in counties where DDS and DMH hospitals are located.

The DDS and DMH must develop programs that will enable a child committed to their facilities, to the extent possible, to be involved in and to progress in a regular curriculum. They are also required to perform regular evaluations of the students to determine if they are meeting their educational goals, to evaluate whether students will take district or state wide achievement tests, and to provide explanations of why and to what extent students cannot participate with students without disabilities in a regular classroom. (20 U.S.C. § 1414 (b), (c) & (d).) Further, the educational system is required to inform students at least one year before they reach the age of 18 of the rights that will legally pass to them when they reach 18. (20 U.S.C. § 1414(d)(1)(A)(vii)(III).)

These departments are required to carry out these services under an interagency agreement with the Superintendent of Public Instruction. (Ed. Code, § 56854.) Pursuant to these agreements, these state facilities are required to adhere to educational program standards as prescribed by the Education Code and applicable regulations promulgated thereunder.

The Department of Education has certified that DDS and DMH maintain Special Education School Programs at specific hospitals that they operate and have certified that the programs are conducted in compliance with all federal and state laws governing special education. Based on this finding, these facilities are recognized as an educational system in this State.

In view of the above, these programs maintained by DDS and DMH are considered elementary, secondary, or vocational-technical schools providing education for kindergarten and grades 1 through 12. As a result, these programs are “qualifying educational institutions” for purposes of the teacher retention credit. A credentialed teacher teaching kindergarten, grades 1 through 12, or any part thereof, in one of those schools who is otherwise eligible, i.e., a teacher with at least 4 years of service as a credentialed teacher, would qualify for the teacher retention credit.

⁵ Under section 48200 of the Education Code, each person between the ages of 6 and 18 years not otherwise exempted under statute must attend full time day school or continuation school. Thus, mandated school age can be defined as the ages between 6 through 18.

Situation 4 -- California Department of Corrections (CDC)

Section 2053.1 of the Penal Code directs the Director of the Department of Corrections (CDC) to implement a literacy program for inmates in every state prison designed to ensure that each inmate is able to achieve a ninth-grade reading level. Section 2053.3 of the Penal Code directs the Director of CDC to implement a two-year correctional education program to increase inmate assignments through adoption of a pilot project cell study program. Section 2054 of the Penal Code authorizes the Director of CDC to establish and maintain classes for inmates. Further, the Director of CDC must appoint a Superintendent of Correctional Education (SCE) to oversee all prison education programs. (Penal Code, § 2053.4.)

Pursuant to this authority, CDC has established a program of academic and vocational instruction, industrial training, educational counseling, and apprenticeship. The guidelines for this program have been promulgated by the CDC in its Departmental Operating Manual.

A "school" structure hierarchy has been put into place under the direction of the SCE, including a Chief of Education and an Education and Inmate Programs Unit, which are both members of the Director of CDC's executive staff. Further, at each facility, the warden is directly responsible for the educational programs and has a Supervisor of Correctional Educational Programs on his/her executive staff that is responsible for the academic and vocational programs provided at the facility.

All of the instructors who teach or administer the inmate educational programs must have the appropriate teaching or service credential. The prisons are also authorized to contract with local school districts, boards of education and consultants, if needed.

CDC has established an education program which is designed to fulfill not only the mandated literacy program but also to provide a vocational educational program (which includes an apprenticeship training program), a program of basic adult education for those achieving below the sixth grade level, adult high school for those inmates performing at grade level nine or above, college courses for those with a high school diploma or its equivalent or who have achieved tenth grade level proficiency, a program to teach English as a second language, and a pre-release education program.

The Vocational Education training program, including apprenticeship training, is required, to the extent possible, to be accredited to allow inmates an opportunity to earn community college credit for vocational courses. As a result, the Vocational Education training program is not a program that provides education for kindergarten or grades 1 through 12.

The Academic Education program consists of four different programs offered to the inmates. Two of these structured DOC Academic Education programs address education for grades 1 through 12. Those two programs are the Adult Basic Education Program and

the Adult High School Program.

The Adult Basic Education Program specifies the educational levels it addresses. (Dept. of Corr., Departmental Operating Manual [hereinafter cited as DOM], § 53090.5.3.) This program issues certificates of completion to inmates upon completion of each of the following levels: ABE I (0 through 3.9 grade level); ABE II (4.0 through 6.9 grade level); and ABE III (7.0 through 8.9 grade level). As such, the program is a structured organization operating for the purpose of learning and education, i.e., a school.

The Adult High School Program is open to inmate students achieving at or above the ninth grade level. (DOM § 53090.5.4.) The course of study includes language, reading, mathematics, life skills, courses that meet the high school graduation requirements, and preparatory course requirements for the General Educational Development (GED) examination. This program is also authorized to administer the California High School Proficiency Examination (CHSPE), as well as to award high school diplomas upon a student's completion of the high school graduation requirements. Transcripts of high school work completed at this school that are forwarded outside the prison system are prepared on State Department of Education Transcript of Record forms. An elaborate records system is set forth and maintained regarding the inmates' progress in the classes. As such, the program is a structured organization operated for the purpose of learning and education, i.e., a school, which provides education from the curriculum for grades 9 through 12.

These two programs are organized as schools under a statutory mandate. They are authorized to issue high school diplomas and their equivalents. Further, all of these schools are located within California. As established above, the education is for the grades that require a curriculum program consistent with the requirements established under the Education Code for programs of instruction for grades 1 through 12.

In view of the above, the Academic Education programs that provide education for grades 1 through 12 (Adult Basic Education I, II, and III, and Adult High School) are considered elementary, secondary, or vocational-technical schools providing education for kindergarten, grades 1 through 12, or a part thereof. Consequently, these programs are considered a "qualifying educational institution" for purposes of the teacher retention credit under section 17052.2 of the Revenue and Taxation Code. As a result, a credentialed teacher teaching in one of those programs that is otherwise eligible, i.e., a teacher with at least 4 years of service as a credentialed teacher, would qualify for the teacher retention credit.

The other CDC education and training programs, i.e., English as a second language (DOM § 53090.5.3), college courses (DOM § 53050.5.5), and the Pre-release Program (DOM § 53050.5.6), are not part of the above-described programs. The curriculums for these programs provide no basis to conclude that such programs provide education for kindergarten, grades 1 through 12, or any part thereof. As a result, these programs do not

meet the requirements for a "qualifying educational institution" for purposes of the teacher retention credit under section 17052.2 of the Revenue and Taxation Code.

HOLDING

The above described schools operated by the Department of the Youth Authority, the California School for the Deaf, the California School for the Blind, the Department of Developmental Services, and the Department of Mental Health are "qualifying educational institutions" in that they are established organizations operated for the purpose of learning and education and are considered to be elementary, secondary, or vocational-technical schools that provide education from the curriculum for kindergarten, grades 1 through 12, or any part thereof.

Further, the Adult Basic Education I, II, and III schools, and Adult High Schools operated by the Department of Corrections are "qualifying educational institutions" as they are also established organizations operated for the purpose of learning and education and are considered to be elementary, secondary, or vocational-technical schools that provide education from the curriculum for kindergarten, grades 1 through 12, or any part thereof.

Teachers that hold a preliminary or clear teaching credential employed as teachers in these schools are "teaching at qualified educational institutions" for purposes of the teacher retention credit under Revenue and Taxation Code section 17052.2.

Therefore, if those teachers hold a preliminary or professional teaching credential and have taught at least 4 years with an appropriate credential, and satisfy any other requirements of section 17052.2 of the Revenue and Taxation Code, they are eligible to claim the teacher retention credit.

DRAFTING INFORMATION

The principal author of this ruling is Suzanne Small of the Franchise Tax Board, Legal Branch. For further information regarding this ruling, contact Ms. Small at the Franchise Tax Board, Legal Branch, P. O. Box 1720, Rancho Cordova, CA 95741-1720.