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Honorable Charles L. Miles
Superintendent
Greene County Board of Education
P. O. Box 569
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Education - Board of
Education - Special
Education - Teacher Aides

Where a County Board of Education is grantee for a Headstart and DPS Program and the personnel are employed by the Board of Education, such employees are under same tenure law as teacher aides in the K-12 program.

County Board of Education may be prohibited from reducing or withdrawing supplemental funds to a Headstart and DPS Program if bound by a contractual relationship.

Dear Mr. Miles:

We have received your letter requesting an Attorney General's opinion on the following questions:

1. Since the Greene County Board of Education is the grantee for a Headstart and DPS Program for ages 3-5, are the personnel employed in these programs under the same tenure law as teacher aides in the K-12 program?

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2. Since the Greene County Board of Education supplements the Headstart and DPS program,

a. Can the Board reduce or delineate its funding to these programs?

b. Are the personnel in these programs entitled to a 15% or \$1,000.00 salary increase as mandated by the Legislature?

c. Can the Board relinquish its operation with the DPS and/or Headstart program?

3. Since the Board has instituted a system-wide reduction in force of all program teacher aides and paraprofessional teachers, do Special Education teacher aides have a preference over other teacher aides in a recall process based on seniority since they are required to have a special certification to work in the Special Education Program?

In response to the first question presented we refer you to an earlier published opinion which dealt with teachers in the Headstart program and whether they could earn tenure. The resolution of that inquiry is applicable in this case. There this office opined that:

"Although the Headstart Program is a federal program, the source of the funds for salaries for these teachers is not determinative on the issue of tenure. The determinative issue is the employer of these teachers. In order to earn tenure, they must be an employee of a city or county school system. You indicated in your inquiry that the funds for Headstart are awarded to the Colbert-Lauderdale Community Action Agency who distribute to the Tuscumbia City

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Board of Education as the delegate agency.... [T]hese funds are carried on the Board's books. In addition and vital to this issue is the fact that the Tuscumbia City Board approves personnel for this program. It appears that these teachers are under these circumstances employees of the Board and should be afforded the protection of the tenure law."

Opinion to Dr. Robert W. Clemmons, Superintendent,
Tuscumbia City Schools, under date of April 4, 1983.

Thus under the above language and reasoning it would appear that if the personnel in question are employed by the Greene County Board of Education then they would be under the same tenure law as aides in the K-12 program.

Subparts (a) and (c) to the second question are so closely related that the reasoning and resolution of the two go hand in hand. We are unable to find any Alabama authority which would prohibit the Greene County Board of Education from reducing or delineating its funding to these programs or from relinquishing its operation with the DPS program and/or the Headstart Program. However, as a caution, there may well be federal regulations which would prohibit withdrawal of funding or participation in the program. An adequate search for any federal prohibition is recommended.

It is our additional observation that there may be a contractual relationship that would prohibit the withdrawal or reduction of funding by the Board.

With regard to subsection (b) of question two (2) though the legislature did not pass either bill increasing the pay of teachers or state employees, it is the opinion of this office that if there is a contract in existence providing for the raises then they must be given.

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In answer to your third question regarding special education teacher aides, it appears that the decision regarding preference for special education teacher aides is a question of policy to be determined by the Greene County School Board. We find no Alabama law on the subject prohibiting a County Board of Education from making its own determination on the subject.

We hope the foregoing adequately answers your questions. If we may be of service in the future, please contact us.

Sincerely,

CHARLES A. GRADDICK
ATTORNEY GENERAL
BY-

M. Beth Slate

M. BETH SLATE
ASSISTANT ATTORNEY GENERAL

MBS/cdr