REPLY TO: Thomas J. Ziko
Education Section
Telephone: (919) 716-6920
FAX: (919) 716-6764

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Mr. Earl Watson
Executive Director
Southwest Education Alliance
UNC Charlotte
9201 University City Boulevard
Charlotte, North Carolina 28223-0001

Re: Advisory Opinion; Local Board of Education Authority to Adopt Modified School Calendars; Affect of 215 Day School Calendar on Salary of Certified and Noncertified 10 Month Employees; N.C.G.S. § 115C-84.2(2004); 2003 N.C. Sess. Laws, c. 2004-180.

Dear Mr. Watson:

On behalf of the superintendents of the public schools served by the Southwest Education Alliance, you have asked for our opinion regarding the meaning and effect of certain provisions of the Act of August 9, 2004, ch. 180, 2003 N.C. Session Laws c. 2004-180 ("AN ACT TO REDUCE BY FIVE THE NUMBER OF NONINSTRUCTIONAL TEACHER WORKDAYS . . .") (hereinafter, "the Act"). Among other things, the Act amended N.C.G.S. § 115C-84.2 (2003) entitled "School Calendar." As we understand it, you have asked for our opinion regarding: (1) the meaning of "modified calendar" as it is used in section 1 of the Act (N.C.G.S. § 115C-84.2(d)(2004)); (2) whether the Act prohibits a local board of education from adopting a "modified calendar" for one of its schools; and (3) the effect of the Act on the term of employment and salary for 10 month certified and noncertified employees?

Our answers to your requests depend upon the application of accepted rules of statutory construction. The primary rule of statutory construction provides that legislative intent controls the meaning of a statute. *Hyler v. GTE Prods. Co.*, 333 N.C. 258, 262, 425 S.E.2d 698, 701 (1993). In ascertaining this intent, one must consider the act as a whole, weighing the language of the statute, its spirit, and that which the statute seeks to accomplish. *Id.* The statute's words should be given their natural and ordinary meaning, unless the context requires them to be construed differently. *Id.* Statutory interpretation properly begins with an examination of the plain words of the statute. *Id.* If the language of the statute is clear and is not ambiguous, one must conclude that the legislature intended the statute to be implemented according to the plain meaning of its terms. *Id.*

Applying those rules to the Act, we offer these opinions on the issues you have raised.

1. What does the phrase "modified calendar" mean in N.C.G.S. § 115C-84(d)(2004)?

Prior to the enactment of the Act, local boards of education were free to set the opening and closing dates for schools in their administrative areas. N.C.G.S. § 115C-84.2(d)(2003). Local boards could also set different opening and closing dates for different schools in their administrative areas. N.C.G.S. § 115C-84.2(d)(2003). Consistent with that authority, some local boards adopted school calendars which required students to begin school in early August or remain in school until late June. Local boards also had the express authority to adopt different school calendars for different schools within their administrative areas.

The plain intent of the Act was to restrict the discretion that local boards previously had to set the opening and closing dates of school for students. With limited exceptions, N.C.G.S. § 115C-84.2(d) as amended by the Act now requires that "the opening date **for students** shall not be before August 25, and the closing date **for students** shall not be after June 10."

One of the exceptions in the Act permits local boards of education to continue to require students to attend school outside the required August 25 opening and June 10 closing, if the school either was designated to operate on a "modified calendar" or was part of a plan to operate schools on "modified calendars" during the 2003-04 school year. Section 1 of the Act states:

> The required opening and closing dates under this subsection shall not apply to any school that a local board designated as having a **modified calendar** for the 2003-2004 school year or to any school that was part of a planned program in the 2003-2004 school year for a system of **modified calendar** schools, so long as the school operates under a modified calendar.

N.C.G.S. § 115C-84.2(d)(2004)(emphasis added). You have asked for our opinion on the meaning of the phrase "modified calendar" as it appears in this section of the Act.

The phrase "modified calendar" is not defined in N.C.G.S. § 115C-84.2(d) or any other General Statute or act pertaining to school calendars. It is clear that the term "calendar" in the context of N.C.G.S. § 115C-84.2(d) means the dates during which schools shall be open to students. With respect to this aspect of the school calendar, the Act specifically provides that "the opening date **for students** shall not be before August 25, and the closing date **for students** shall not be after June 10." N.C.G.S. § 115C-84.2(d)(2004) (emphasis added). Ordinarily, "modified" simply means "change[d]

in form or character; alter[ed].” *American Heritage Dictionary of the English Language*, p. 1161 (Houghton Mifflin 3rd ed. 1996) Therefore, giving “modified calendar” its natural and ordinary meaning, it is our opinion that “modified calendar” as used in N.C.G.S. § 115C-84.2(d)(2004) means a “a school calendar that is changed or altered from the standard or regular school calendar.”

The Act exempts from the statutorily required August 25 opening and June 10 closing dates those schools that operated on a “modified calendar” during the 2003-04 school year and those schools which, as of the 2003-04 school year, the local board of education had a plan to operate on a “modified calendar” in the future. We will first address the exemption for schools that operated on a “modified calendar” during the 2003-04 school year.

North Carolina has never had a state-wide, standard school calendar against which one could measure a “modified calendar.” Nevertheless, an attentive reading of the Act indicates that the General Assembly intended a “modified calendar” to meet at least three criteria. **First**, the Act specifically states that a school qualifies for the “modified calendar” exception only if the school operated on a “modified calendar” during the 2003-2004 school year. **Second**, in order to qualify as a school “designated as having a modified calendar,” the school had to operate on a calendar that was changed or altered from the local administrative unit’s standard or regular school calendar for the 2003-2004 school year. **Third**, the “modified calendar” must have required students to attend school before August 25, 2003, or after June 10, 2004.

Relying on those criteria, it is our opinion that the General Assembly intended the phrase “modified calendar” to include only those school calendars that, when first adopted, were different from the administrative unit’s standard or regular calendar and required students to attend school before August 25, 2003, or after June 10, 2004. In other words, schools which remained open to students after June 10, 2004, simply to make up days lost from the calendar originally adopted for the school due to severe weather or other emergency situations were not “designated as having a modified calendar” for purposes of N.C.G.S. § 115C-84.2(d)(2004) and do not qualify for this exception. Moreover, if the 2003-2004 calendar adopted for the school did not require students to attend before August 25, 2003, or after June 10, 2004, then, beginning with the 2005-2006 school year, the local board of education is prohibited from adopting a calendar for that school that requires students to attend outside those dates. This is true even though during the 2003-2004 school year students attended the school on days that were not included in the standard or regular calendar for schools in that local administrative unit. However, if during 2003-2004 school year the school operated under a calendar which was different from the standard school calendar for that local administrative unit and its calendar required students to attend outside the dates now permitted under the Act, then that school’s calendar will qualify as a “modified calendar” even if the local board of education did not specifically call it a “modified calendar” or

any other special name during the 2003-2004 school year.

Having established the components of a "modified calendar," our opinion regarding the exception in the Act for schools that were part of a planned program in the 2003-2004 school year for a system of modified calendar schools naturally follows. In our opinion, the Act preserves a local board of education's authority to adopt a "modified calendar" for a school even though the school was not on a "modified calendar" for the 2003-2004 school year, provided: **(1)** the local board had a plan for a **system** of modified calendar schools, *i.e.*, two or more schools with modified calendars; **(2)** the plan was in place during the 2003-2004 school year; and **(3)** the school in question was part of that plan during the 2003-2004 school year. The Act does not require that all the schools in the system be on "modified calendars" or that the plan include only one "modified calendar."

Finally, the Act provides that if a school comes within one of the exceptions for "modified calendars," a local board can continue to operate the school on that or any other "modified calendar" as long as the calendar for the school requires students to attend school before August 25 or remain in school after June 10. On this point, the Act expressly provides that the "modified calendar" exemption continues only "so long as the school operates under a modified calendar." 2003 N.C. Sess. Laws c. 2004-180, sec. 1(2003); N.C.G.S. § 115C-84.2(d)(2004). Consequently, if the local board should ever change a "modified calendar" for a school so that the school opens for students on or after August 25 **and** closes for students on or before June 10, the school will lose its "modified calendar" status and must thereafter conform to the August 25 opening and the June 10 closing dates required in the Act.

Local boards of education should be mindful that the exception for "modified calendar" schools is only one of several exceptions from the Act's calendar requirements. The Act also provides exceptions for "year-round schools," schools closed for emergency situations, and schools or programs with a special or defined "educational purposes" as defined in the Act. Finally, the Act does not prohibit local boards of education from offering "supplemental or additional education programs or activities" for students outside the regular school calendar required to be adopted under the Act. N.C.G.S. § 115C-84.2(e)(2004).

2. Does the Act prohibit a local board of education from adopting a "modified calendar" for one of its schools?

The authority to adopt a "modified calendar" is specifically described in response # 1 above. A local board of education can adopt different "modified calendars" for those schools that meet the criteria for a "modified calendar." However, if a school does not meet the criteria for a "modified calendar" or one of the other exceptions specified in the Act, then it must operate on a single calendar that is applicable to all the schools in the

local administrative unit and that requires students to attend school no earlier than August 25 and releases students from school no later than June 10.

Prior to the adoption of the Act, N.C.G.S. § 115C-84.2(d)(2003) expressly provided that "[d]ifferent opening and closing dates may be fixed for schools in the same administrative unit." The Act repealed that authority. N.C. Session Laws c. 2004-180, sec. 1(2003)(deleting last sentence of N.C.G.S. § 115C-84.2(d)(2003)) In light of the General Assembly's decision to remove the authority of local boards of education to fix different opening and closing dates for schools in their administrative unit, it is our opinion that, beginning with the 2005-2006 school year, local boards of education must adopt a single, uniform school calendar for students for all schools in the administrative area that do not qualify for one or more of the exceptions in the Act.

3. What effect does the Act have on the salaries and term of employment for 10 month certified employees and noncertified employees?

Prior to the ratification of the Act, N.C.G.S. § 115C-84.2(a)(2003) mandated a 220 day school calendar. The Act now provides that "[e]ach local board of education shall adopt a school calendar consisting of 215 days." The Act goes on to explicitly reduce the number of **work days for teachers** employed for 10 month terms from 200 to 195. N.C.G.S. § 115C-84.2(b)(1)(2004). Those 195 workdays, plus the minimum 10 annual vacation leave days and 10 paid holidays required under N.C.G.S. § 115C-84.2(a)(2) and (3)(2003), comprise the 215 compensable days for teachers in the school calendar. Despite the fact that the Act reduces the number of compensable days for teachers from 220 to 215, Section 3 of the Act explicitly states:

> For **certified** and **noncertified employees** employed on or after the effective date of this act, **the annual rate of pay** beginning with the 2005-2006 school year shall not be reduced as the result of this act. Furthermore, nothing in this act shall be construed to change the pay cycle for noncertified employees.

(Emphasis added).

To reenforce the General Assembly's intent that the five day reduction in compensable days for teachers shall not reduce teacher salaries, the Act provides for an adjustment in the **daily rate of pay for teachers.** Teachers are paid for a term of 10 months and are paid once every month in that term. N.C.G.S. § 115C-302.1(b). Prior to the ratification of the Act, every month in a teacher's 10 month work term was deemed to consist of 22 compensable instructional, workdays, holidays, or leave days. Over a 10 month term, the 22 compensable-day month translated into a 220 day annual teacher contract. (22 compensable days per month x 10 months of employment = 220 compensable days per school year). Accordingly, the daily rate of pay for a teacher

was deemed to be one twenty-second (1/22) of his or her monthly salary. N.C.G.S. § 115C-302.1(b)(2003).

Consistent with the five day reduction in teacher workdays, section 2 of the Act amends N.C.G.S. § 115C-302.1(b)(2003) to change the daily rate of pay for teachers from one twenty-second of their monthly rate of pay to "midway between one twenty-first and one twenty-second of the monthly rate of pay," *i.e.*, 1/21.5 of their monthly salary. N.C.G.S. § 115C-302.1(b)(2004). The effect of that change is to retain the same annual rate of pay for teachers while reducing the total number of compensable days for teachers by five days per year. (22 compensable days per month x 10 month term of employment = 220 compensable days; 21.5 compensable days per month x 10 months = 215 compensable days).

Taken together these changes clearly express the General Assembly's intent that the five day reduction in teacher workdays must not affect teacher salaries. Therefore, the Act requires local boards of education to pay 10 month teachers employed for 215 days in 2005-06 the same salary they earned for 220 days in 2004-05.

You have also asked whether the Act requires schools to reduce the term of employment for nonteacher, 10 month certified and noncertified employees from 220 to 215 days while maintaining their annual salaries at the 2004-2005 rate. The answer to that question depends upon whether the General Assembly intended the changes in the school calendar to apply to all 10 month employees, certified and uncertified, or whether the General Assembly intended to reduce the number of compensable days for teachers only.

Prior to the Act, the school calendar consisted of 220 days. That 220 day calendar was the sum of the days in the following categories: (1) 180 instructional days; (2) a minimum of 10 vacation days; (3) 10 or 11 legal holidays depending on the State calendar for that year; (4) eight days which could be scheduled at the discretion of the local board of education for any lawful purpose; and (5) the "remaining [11 or 12] days," which could be scheduled by the school principal for any lawful purpose. N.C.G.S. § 115C-84.2(a) (2003).

The General Assembly plainly intended that 220 day calendar to apply to teachers employed on 10 month contracts. N.C.G.S. § 115C-84.2 (b)(1) ("The total number of teacher workdays for teachers employed for a 10 month term shall not exceed 200 days."); N.C.G.S. § 115C-84.2 (b)(2)(the calendar need not guarantee teachers employed for more than 10 months 42 consecutive days off). However, there was nothing in N.C.G.S. § 115C-84.2 (2003) to indicate that the 220 day calendar applied only to 10 month teachers. For example, N.C.G.S. § 115C-84.2 (2003) contained several references to "personnel" in a context that make it clear that the General Assembly intended the calendar described in N.C.G.S. § 115-84.2 to govern

the employment of some school personnel in addition to teachers. *E.g.*, N.C.G.S. § 115C-84.2(a)(4) (calendar days can be scheduled "for different purposes for different **personnel**"); N.C.G.S. § 115C-84.2(a)(5) (no requirement that local board "schedule the same dates for **all personnel**"); N.C.G.S. § 115C-84.2(a) ("[l]ocal boards of education shall consult with parents and the employed public school **personnel** in the development of the school calendar"); N.C.G.S. § 115C-84.2(b)(4) ("Veterans Day shall be a holiday for **all public school personnel** . . ."). Giving the word "personnel" its ordinary meaning of "a body of persons employed by or active in an organization, business, or service" (*American Heritage Dictionary of the English Language*, p. 979 (Houghton Mifflin 3rd ed. 1996)) and being mindful of the statutory correlation between the school calendar and the 10 month term for teachers, it appears that the General Assembly meant for the 220 day calendar to apply to all 10 month certified and uncertified school personnel, not just 10 month teachers.

In light of the fact that the General Assembly intended the 220 day calendar described in N.C.G.S. § 115C-84.2(a) (2003) to apply to all school personnel employed for 10 months, the question is whether the General Assembly intended the five day reduction in the school calendar mandated in the Act to apply only to 10 month teachers. There is nothing in the Act to indicate that the General Assembly intended the present 215 day school calendar to apply only to 10 month teachers. The statute, for example, still contains several references to "personnel" other than teachers.

Furthermore, section 3 of the Act specifically addresses the effect of the five day reduction in the school calendar on school employees other than teachers. To reiterate, section 3 of the Act states in pertinent part: "For certified and noncertified employees employed on or after the effective date of this act, the annual rate of pay beginning with the 2005-2006 school year shall not be reduced as the result of this act." As noted above, the Act explicitly provides that 10 month teacher salaries shall not be affected by the five day reduction in the school calendar. Consequently, the references to certified and noncertified employees in section 3 of the Act have meaning only if the General Assembly intended the change in the school calendar to reduce from 220 to 215 the number of compensable days for all the other 10 month employees who are not teachers. If the General Assembly did not intend the 215 day calendar to apply to all 10 month employees, then any change in the annual rate of pay for these employees after the Act would have been the result of local boards exercising their discretion to change the term of their employment rather than "the result of this act." In short, unless the General Assembly intended the Act to result in a five day reduction in the number of compensable days for 10 month, nonteacher employees, the Act would have had no effect on them at all and a sentence protecting their annual salaries from the results of the Act would have been superfluous.

"[A] legislative body is presumed not to have used superfluous words, our courts must accord meaning, if possible, to every word in a statute. *North Carolina Bd. of Examiners for Speech & Language Pathologists & Audiologists v. North Carolina State Bd. of Educ.*, 122 N.C. App. 15, 21 (1996), *aff'd in part*, 345 N.C. 493, 480 S.E.2d 50 (1997) (citing 2A Norman Singer, Sutherland Statutory Construction § 47.37 (5th ed. 1992)); see also, *Domestic Elec. Service, Inc. v. City of Rocky Mount*, 285 N.C. 135, 203 S.E.2d 838 (1974) (the rules of statutory construction presume that "no part of a statute is mere surplusage, but each provision adds something which would not otherwise be included in its terms.") In order to give meaning to the first sentence of section 3 of the Act, it must be read as a plain statement of legislative intent that 10 month, certified and noncertified, nonteacher employees, *e.g.*, teacher assistants, as well as certified teachers employed on the 10 month school calendar should continue to receive the same annual salary they received in 2004-05 despite the fact that the Act reduced the number of compensable days in the school calendar from 220 days to 215 days. Consequently, it is our opinion that in adopting the Act the General Assembly intended all 10 month school employees, both certified and noncertified, to earn the same pay for 215 days of work, holidays and leave in 2005-06 that they earned for 220 days of work, holidays and leave in 2004-05.

ROY COOPER
Attorney General

Grayson G. Kelley
Chief Deputy Attorney General

Thomas J. Ziko
Special Deputy Attorney General

cc: Howard N. Lee
Jane Worsham
Patricia Willoughby
Janice Davis