

To: Brad Clark, General Counsel
From: Tanga Luu, Teacher Pocola Public Schools
Date: November 9, 2021
Re: Underpayment Complaint referred to in Tit. 70 § 18-114.9

Mr. Clark,

I, Cal Ware Oklahoma Education Association Advocacy Specialist, am writing this complaint on behalf of [REDACTED] for Pocola Public Schools.

This summer I was informed by several teachers, including [REDACTED], that the Pocola School Board had voted upon and decided to add five additional school days to the school year 2021-2022 as compared to school year 2020-2021 without additional compensation added to teacher salaries. To confirm days had been added without a raise in salary to match, I called the Superintendent of Pocola Schools, Jason Brittain. He told me that 5 days had been added to the school year 2021-2022 without a reduction in minutes per school day and without a raise in compensation. The increase in days/hours totaled just over 40 hours over last school year.

After I spoke with the Superintendent, I asked the president of the Local OEA teacher affiliate in Pocola to request I be put on the agenda for the August 16, 2021 school board meeting. The agenda included a section to discuss and have a possible action on this issue, but I was not placed on the agenda. I attended the meeting and spoke during the part of the meeting designated for Public Participation. I presented a packet during public participation telling the board that I believed adding hours and duties to the school schedule for this year as compared to last year is a violation of state statute **Title 70, § 18-114.9** where it states:

A. If a teacher, as defined in Section 6-101.3 of this title, is employed by the same school district for the next school year as the preceding school year, the total compensation, consisting of salary and fringe benefits, of the teacher shall not be decreased the next school year unless the hours or the duties of the teacher are reduced proportionately. Compensation shall not include one-time incentive pay that is provided by the school district to a teacher nor retention incentive pay for returning the next year.

I explained the corollary of section 18-114.9, where a district cannot add hours and duties without increasing teacher salaries proportionally. I added the intent of 18-114.9 is that teachers be paid for the work they do, and if there is to be more work added to their schedule, the teachers shall be paid for it as well – if not, the board could add as many days/hours to the schedule as they wanted. The board voted later to table any action or decision to the next regularly scheduled meeting.

At the September 13th board meeting, I was placed on the agenda and was able to actively discuss the issue with the board. Again, I presented a packet to all board members and told them I feared they were in violation of 18-114.9 and I asked them to rescind their original decision to add five days without compensation. After I left the board table discussion, the board members continued to discuss the topic and voted again to table the discussion to the next board meeting.

I asked to be placed on the board agenda for the October 11th meeting, but the board didn't ask me to the table for a discussion. I left copies of my third packet with the board and they voted to keep the five days added without a proportionate increase in compensation.

At every chance I had to discuss this issue with the board and superintendent, I presented three workable solutions to this violation that are lawful and affordable (considering the very large amount of ESSER funds from the federal government). Additionally, one of the solutions I presented was at no cost at all to the district. All of my solutions were rejected by the board at the risk of violating the law.

██████████, as well as the other certified teachers at Pocola Public Schools have had their compensation reduced, without a corollary reduction in hours in violation of state statute by the board's decision to add 5 additional days to the teachers' contract, without a corresponding increase in compensation for the 5 additional workdays. We are requesting that this correspondence be treated as a complaint filed against the school district as per the statute in question and that the OSDE investigate the complaint and take the appropriate action required by the statute.

I would be happy to discuss my concerns and solutions with you or anyone looking into this issue. Please contact me at my cell number: ██████████ or my number at OEA Headquarters: 405-523-4326. I can also email or present my packet outlining my rationale if you desire.

Thank you for your consideration.

Sincerely,

Cal Ware, OEA Advocacy Specialist

Pocola Board Meeting

October 11, 2021

Presentation on
Reduction of Salary for School Year 2021 – 2022

Presented by:

Cal Ware

OEA Southeast Advocate

Oklahoma Statutes Citationized

Title 70. Schools

Chapter 1 - School Code of 1971

Section 18-114.9 - Reduction in Salary

Cite as: 70 O.S. § 18-114.9 (OSCN 2021)

A. If a teacher, as defined in Section 6-101.3 of this title, is employed by the same school district for the next school year as the preceding school year, the total compensation, consisting of salary and fringe benefits, of the teacher shall not be decreased the next school year unless the hours or the duties of the teacher are reduced proportionately. Compensation shall not include one-time incentive pay that is provided by the school district to a teacher nor retention incentive pay for returning the next year.

B. Subject to the provisions of this section, any school district that willfully reduces or has in years previous to enactment of this section willfully reduced the compensation of a teacher in violation of subsection A of this section shall forfeit as a penalty a portion of its State Aid equal to the total amount that the teacher was underpaid. If the teacher was underpaid for more than one (1) school year, the amount forfeited shall equal the cumulative amount that the teacher was underpaid. The amount to be forfeited shall be deducted from the State Aid payment following confirmation of the underpayment by the State Department of Education.

C. In addition to the amount of State Aid forfeited as a penalty pursuant to subsection B of this section, in order to ensure that the teacher receives the full amount of unpaid compensation, the State Department of Education shall withhold an amount which is equal to the total amount that the teacher was underpaid from the State Aid payment of the school district and pay the amount directly to the teacher. The Board shall not withhold an amount for payment to the teacher pursuant to the subsection if the teacher has recovered the underpayment pursuant to judicial action.

D. Complaints filed with the State Board of Education pursuant to this section may be based on alleged underpayments during fiscal years that began:

1. On or after July 1, 2002; or

2. Before July 1, 2002, if the teacher filed an action to recover the underpayment in a court of competent jurisdiction before July 1, 2002.

E. Complaints filed with the State Board of Education alleging underpayment during fiscal years that began on or after July 1, 2002, shall be filed within one (1) year of the end of the fiscal year in which the underpayment is alleged to have occurred.

F. Filing a complaint with the State Board of Education pursuant to this section shall not operate to prohibit a teacher from filing an action for underpayment in a court of competent jurisdiction or continuing to pursue an action for underpayment pending in a court of competent jurisdiction on August 29, 2003.

G. The State Board of Education shall promulgate rules necessary to implement the provisions of this section. The rules shall include, but not be limited to, procedures for a teacher to file a complaint for violation of this section and the Department to investigate the complaint.

Historical Data

Laws 2003, HB 1767, c. 434, § 18; Amended by Laws 2004, HB 2662, c. 119, § 3, emerg. eff. July 1, 2004; Amended by Laws 2004, SB 1106, c. 248, § 2, emerg. eff. July 1, 2004 ([superseded document available](#)); Amended by Laws 2015, HB 1521, c. 56, § 1, eff. November 1, 2015 ([superseded document available](#)); Amended by Laws 2017, HB 2157, c. 333, § 1, emerg. eff. July 1, 2017 ([superseded document available](#)).

- The language of the law above (Title 70, Section 18-114.9) specifically directs that a teacher working from one year to the next in the same district, cannot suffer the hardship of a reduction in salary UNLESS that teacher's duties and responsibilities have been reduced proportionally.
- The corollary of that directive is that a district cannot add duties and responsibilities without increasing the teacher's salary proportionally.
- In other words, the intent of the language of the law is such that teachers be paid for the work they do, and if there is to be more work added to their schedule, the teachers shall be paid for it as well.

The intent of the language protects some of the most important ideals of the United States: Family, equality, and capitalism. When we work, we do it to provide a means to live and gain a prosperous life for ourselves and our family. Teachers work just as hard as anyone and deserve to be paid for the time they spend away from their families. Their families, in turn, deserve an enriched life in the absence of their spouse or parent who teaches. Requiring extra time away from family, without the benefit of paying that teacher for their time, takes away precious time teachers may spend with loved ones - without providing the fair trade of being paid for the service they provide. If services are provided, the expectation is that those services are paid for, and in this case, it is a legal and binding obligation as well.

Proposed answers to the problem of the 5 days of extra duties and responsibilities.

Schedule Change

The district can keep the same number of days added (5 days) to the school calendar, yet keep the same number of contract hours (1,080 hours) as last year by reducing the number of contract hours to each school day this year. State law requires 1,080 hours each school year spent in school. Last school year Pocola met this requirement exactly. With the schedule left the same for this school year, the teachers are being required to work over 40 hours more this year than last year - while being paid the same amount of money. If each contracted day this school year were reduced by 15 to 20 minutes a day (depending on when the daily reduction was implemented) the district could reduce the 40 extra hours added by the 5 extra days and arrive at the same 1,080 hours of school as last year. This would keep the 5 extra days while not requiring the district to pay each teacher for their additional 40 hours of work.

Pay Raise

The district could choose to pay each teacher proportionally for their additional 5 days/40 hours of extra work by increasing each teacher's salary by 5 additional days of pay (pro-rata).

Stipend

The district could use ESSER 3 Federal Covid Relief money to provide a stipend to each teacher to pay teachers the amount they would have received as a pro-rata salary increase. Below are

excerpts from an article from a publication from the federal government - the “Federal Register” explaining the requirement to provide for the additional safety and instruction of students from districts who receive the ESSER 3 funds. A link is provided to view the article in its entirety. I have also copy and pasted sections of the article that pertain to what the ESSER 3 funds are to be used on.

Whole article from Federal Register.

<https://www.federalregister.gov/documents/2021/04/22/2021-08359/american-rescue-plan-act-elementary-and-secondary-school-emergency-relief-fund>

<https://www.federalregister.gov/d/2021-08359/p-58>

Intended purpose of funds to LEA's.

The minimum requirements for the ARP ESSER plans ensure that LEAs are using ARP ESSER funds for their intended purposes, including whether and how they will use the funds specifically for COVID-19 prevention and mitigation strategies, how the funds will be used to address the academic impact of lost instructional time through the implementation of evidence-based interventions, consistent with the requirement in section 2001(e)(1) of the ARP Act that each LEA reserve at least 20 percent of its ARP ESSER funds for that purpose, and how the LEA will ensure that those interventions respond to the academic, social, emotional, and mental health needs of all students and particularly those students disproportionately impacted by the COVID-19 pandemic. Given the unique circumstances in each State, we believe each SEA is best situated to determine what additional requirements to include in the LEA ARP ESSER plan. For example, an SEA might require that the LEA ARP ESSER plan include data that illustrates the LEA's most pressing needs or descriptions of promising practices that the LEA has implemented to accelerate learning. The SEA might also require that the LEA's ARP ESSER plan contain the information required in the LEA's plan for the safe return to in-person instruction and continuity of services, in which case the LEA may develop one plan that addresses both sets of requirements rather than two separate plans (i.e., one plan that addresses use of ARP ESSER funds and the safe return to in-person instruction and continuity of services). The SEA also establishes the deadline by which the LEA must submit its ARP ESSER plan, which must be reasonable and should be within no later than 90 days after receiving its ARP ESSER allocation.

<https://www.federalregister.gov/d/2021-08359/p-61>

LEA's to support student success.

As students and teachers continue to return to full-time in-person education, they will have important insights into how schools should approach prevention and mitigation of COVID-19, and into what may be needed to support student success. For this reason, in developing their ARP ESSER plans, LEAs will be required to meaningfully consult with students; families; school and district administrators (including special education administrators); and teachers, principals, school leaders, other educators, school staff, and their unions. Additionally, an LEA is also required to engage in meaningful consultation with each of the following, to the extent present in or served by the LEA: Tribes; civil rights organizations (including disability rights organizations); and stakeholders representing the

interests of children with disabilities, English learners, children experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students. An LEA's decisions about how to use its ARP ESSER funds will directly impact the students, families, and stakeholders in their school district, and thus the LEA's plans must be tailored to the specific needs faced by students and schools within the district. These diverse stakeholders will have significant insight into what prevention and mitigation strategies should be pursued to keep students and staff safe, as well as how the various COVID-19 prevention and mitigation strategies impact teaching, learning, and day-to-day school experiences.

Pocola Schools ESSER 3 Allotments

Pocola Public Schools received 3 installments from the federal government for covid relief money (ESSER 1, 2, and 3) totaling \$2,320,807. By itself, the ESSER 3 allocation to Pocola PS totals \$1,488,528. Eighty percent of the ESSER 3 allocation has been given, with the remaining 20% to be allocated to Pocola over the next 3 years through 2023. The 80% of the ESSER 3 allocation requires some of that money be spent on retaining teachers to help students cope with the recovery of lost instruction and to provide for the well being of those students.

The following is from the Oklahoma State Department of Education document titled, "American Rescue Plan, Elementary and Secondary Education Relief Fund FAQs."

"LEAs must also ensure that the chosen interventions respond to students' academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student subgroups described in section 1111(b)(2)(B)(xi) of ESEA (20 U.S.C. 6311(b)(2)(B)(xi)), (which include each major racial and ethnic group; economically disadvantaged students as compared to students who are not economically disadvantaged; children with disabilities as compared to children without disabilities; English proficiency status; gender; and migrant status), students experiencing homelessness, and children and youth in foster care.

What are the allowable uses, after the 20% set-aside has been reserved?

The allowable uses identified in the ARP Act include the following. Please note the addition of number 15 to the allowable uses.

1. Any activity authorized by the ESEA of 1965, the Individuals with Disabilities Education Act (IDEA), the Adult Education and Family Literacy Act, and the Perkins Career and Technical Education Act.
2. Coordination of preparedness and response efforts with State, local, tribal and territorial health departments to prevent and prepare a response to the coronavirus.
3. Any activity to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.
4. Developing and implementing procedures and systems to improve school preparedness and response efforts.

5. Training and offering professional development for staff on sanitation and minimizing the spread of disease.
6. Purchasing cleaning supplies for the cleaning of LEA facilities, including those operated by the LEA.
7. Planning for and coordinating services during long-term closures, including providing meals, technology for online learning, guidance for carrying out IDEA services, etc.
8. Purchasing educational technology (including hardware, software and connectivity) to conduct online learning for students served by the LEA. This use may include assistive technology or adaptive equipment for students with disabilities.
9. Providing mental health services and supports, including through the implementation of evidence-based full-service community schools.
10. Planning and implementing activities related to summer learning and supplemental after-school programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, children with disabilities, English learners, migrant students, students experiencing homelessness and children in foster care.
11. **Addressing learning loss among students**, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the LEA, including by
 - a. Administering and using high-quality assessments that are valid and reliable, to accurately assess students' academic progress and assist educators in meeting students' academic needs, including through differentiating instruction;
 - b. Implementing evidence-based activities to meet the comprehensive needs of students;
 - c. Providing information and assistance to parents and families on how they can effectively support students, including in a distance-learning environment; and
 - d. Tracking student attendance and improving student engagement in distance education.
12. School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.
13. Inspection, testing, maintenance, repair, replacement and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.
14. Developing strategies and implementing CDC-aligned public health protocols to prioritize reopening schools while maintaining the health and safety of students and staff.
15. **Other activities necessary to maintain the operation and continuity of services in LEAs and continuing to employ the LEA's existing staff.** See Section 313(d)."

A stipend has been used in many districts across the state to provide pay to teachers for having worked through the pandemic, to help insure the original staff's return, and help hire additional staff.

For 77 teachers at \$350 per day, for 5 days (5 days will equal \$1,750)

- $\$1,750 \times 77 \text{ teachers} = \$134,750$
- $\$134,750 \times 18\% \text{ Impact Costs} = \$159,005$
- Total Cost to the District = \$159,005
 - At \$300 per day the total cost is \$136,290.

ESSER ALLOCATIONS

- Total = \$2.3M (3 Allocations)
- Allocation 3 = \$1.4M = more than 23% of the 19-20 Total Revenues.
- Also, if you have the money to pay teachers for an extra week of work, why won't you?

"The teachers are contracted through May."

- Yes, but that's not what determines pay.
- Districts report to SDE by hours or days.
- 70 § 18-114.9 uses the words "hours" and "duties".
- Teachers have "contract days" which are a certain number of "hours" – so it's not how many days in the month the teachers work to determine pay – it's the "hours" and "duties" of the year - per 70 § 18-114.9.
- This school year has been increased 40 hours from last year, so the teachers' pay must be increased proportionally. (corollary of 70 § 18-114.9)
- Teacher contracts bind districts to pay teachers for the work they do, the hours and duties determine how much the pay is.
- Making the teachers work an extra week without compensating them pro rata for that week is a reduction in salary, and that's a violation of 70 § 18-114.9.
- There is nothing in the teacher contracts or law that prohibits a payment to them with money from the general fund or with a stipend.

To: Brad Clark, General Counsel

From: Cal Ware, OEA Advocate for Tanga Luu, Teacher Pocola Public Schools

Date: July 8, 2022

Re: Underpayment Complaint referred to in Tit. 70 § 18-114.9, and possible retaliation by district

Mr. Clark,

Good morning. On November 9, 2021, I submitted an underpayment complaint referred to in Tit. 70 § 18-114.9 on behalf of [REDACTED], employed with Pocola Public Schools.

As a reminder, the Pocola School Board voted to add 5 contract days to school year 21-22, compared to school year 20-21, without a proportionate increase in salary.

It is my, [REDACTED] and many teachers at Pocola Schools, belief that the school is in violation of Tit. 70 § 18-114.9 without a pro-rata increase in salary to compensate for the extra 5 days of work added to the work year.

You initially responded to me on November 15, 2021 to say that you would be working with Heather Young in School Personnel to provide a response.

Since the time I first submitted the complaint on November 9, 2021, there has been an unusual change of employment status for [REDACTED] which appears to be an act of retaliation perpetrated by the district upon [REDACTED]. Pocola Schools puts their school counselors on both a normal teacher contract and an additional extra duty contract to cover the pay and duties of counseling. At the end of the school year 21-22 [REDACTED] was informed that for next year her extra duty contract for counseling will be taken from her by the district and she was told she would be an RTI tutor for school year 22-23. As a result, [REDACTED] total compensation will be reduced by \$5,000 for school year 22-23 in comparison to school year 21-22. [REDACTED] replacement, the person who will take over her counseling duties, [REDACTED] does not have an Oklahoma certification in school counseling and doesn't appear to have an Oklahoma Teaching Certificate at all. [REDACTED] has been a very effective school counselor in Pocola for 6 years and no explanation was provided as to why she was being replaced with a person who is not certified to do the job [REDACTED] has been certified to do for years. Additionally and at the same time, a counseling position opened up at Pocola High School and [REDACTED] was overlooked and a teacher, [REDACTED], who isn't certified in counseling, was hired and is being emergency certified for counseling. This was done even though the district knew [REDACTED] was certified and already employed by the district. This action taken by the district appears to violate Tit. 70 § 6-187 as well as the State Department of Education regulations promulgated to abide by that statute.

This unusual decision by the district occurred after [REDACTED] submitted the complaint described in Tit. 70 § 18-114.9 and appears to be in malicious retaliation for that complaint, while putting a non-certified teacher in her place.

We are asking that you consider this additional development as part of the complaint against Pocola Public Schools. Should you require additional information, please do not hesitate to contact me at your convenience.

Thank you for your time and consideration,

Cal Ware
Oklahoma Education Association
Southeast Advocacy Specialist

To: Brad Clark, General Counsel

From: Cal Ware, OEA Advocate for Tanga Luu, Teacher Pocola Public Schools

Date: December 19, 2022

Re: Underpayment Complaint referred to in Tit. 70 § 18-114.9, and possible retaliation by district

Mr. Clark,

Good morning. On November 9, 2021, I submitted an underpayment complaint referred to in Tit. 70 § 18-114.9 on behalf of school counselor, ██████████ employed with Pocola Public Schools.

As a reminder, the Pocola School Board voted to add 5 contract days to school year 21-22, compared to school year 20-21, without a proportionate increase in salary.

It is my, ██████████ and many teachers at Pocola Schools, belief that the school is in violation of Tit. 70 § 18-114.9 without a pro-rata increase in salary to compensate for the extra 5 days of work added to the work year.

You initially responded to me on November 15, 2021 to say that you would be working with Heather Young in School Personnel to provide a response.

Since the time I first submitted the complaint on November 9, 2021, there has been an unusual change of employment status for ██████████ which appears to be an act of retaliation perpetrated by the district upon ██████████ Pocola Schools puts their school counselors on both a normal teacher contract and an additional extra duty contract to cover the pay and duties of counseling. At the end of the school year 21-22 ██████████ was informed that for next year her extra duty contract for counseling will be taken from her by the district and she was told she would be an RTI tutor for school year 22-23. As a result, ██████████ total compensation will be reduced by \$5,000 for school year 22-23 in comparison to school year 21-22. ██████████ replacement, the person who will take over her counseling duties, ██████████, does not have an Oklahoma certification in school counseling and doesn't appear to have an Oklahoma Teaching Certificate at all. ██████████ has been a very effective school counselor in Pocola for 6 years and no explanation was provided as to why she was being replaced with a person who is not certified to do the job ██████████ has been certified to do for years. Additionally and at the same time, a counseling position opened up at Pocola High School and ██████████ was overlooked and a teacher, Janie Vincent, who isn't certified in counseling, was hired and is being emergency certified for counseling. This was done even though the district knew ██████████ was certified and already employed by the district. This action taken by the district appears to violate Tit. 70 § 6-187 as well as the State Department of Education regulations promulgated to abide by that statute.

This unusual decision by the district occurred after [REDACTED] submitted the complaint described in Tit. 70 § 18-114.9 and appears to be in malicious retaliation for that complaint, while putting a non-certified teacher in her place.

We are asking that you consider this additional development as part of the complaint against Pocola Public Schools. Should you require additional information, please do not hesitate to contact me at your convenience. My cell number is [REDACTED]

Thank you for your time and consideration,

Cal Ware
Oklahoma Education Association
Southeast Advocacy Specialist