



November 26, 2018

# *CERTIFIED STAFF LEGAL UPDATE*

**Marshall S. Ney**

## CURRENT FSPSD POLICY

- The District recognizes the Fort Smith Education Association (“FSEA,” f/k/a Fort Smith Classroom Teacher’s Association) for the purpose of negotiating personnel policies, salaries, and educational matters of mutual concern under a written policy agreement.
- The current policy agreement was **approved in 1987**.
- To the best of our knowledge, only one other District in Arkansas works with its certified staff in this manner.
- The rest of the state’s districts work through a teacher organized personnel policy committee.

# LETTER FROM ASTA\* – NOV. 6, 2018

- There is reason to believe **[FSEA's] membership has fallen below 50%** since this agreement was made. If this is the case, recognition of [FSEA] has become a serious policy compliance issue.
- Even if [FSEA's] membership was over 50%, alienating those who choose not to join the teachers union marginalizes the voices of valuable professionals who work hard to serve Fort Smith students on a daily basis.
- Arkansas has a Personnel Policy Committee law that provides for more equitable representation. AR Code § 6-17-203 states, "(a) Each school district shall have a committee on personnel policies which shall consist of no fewer than five (5) classroom teachers and no more than three (3) administrators, one (1) of which may be the superintendent.(b) (1) The classroom teacher members of each school district's committee on personnel policies shall be elected by a majority of the classroom teachers voting by secret ballot. (2) The election shall be solely and exclusively conducted by the classroom teachers, including the distribution of ballots to all classroom teachers."
- **Replacing the collective bargaining agreement with policies that more equitably represent Fort Smith certified professionals would allow the district to adopt policies in the same manner as 267 of the 269 Arkansas public school districts.**

\*Arkansas State Teachers Association

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\*Arkansas State Teachers Association

## ARKANSAS LAW – PPC EXCEPTION

### Ark. Code Ann. § 6-17-202(a)

The provisions of this subchapter shall not apply in any school district which chooses to officially recognize in its policies **an organization representing the majority of the teachers** of the school district for the purpose of negotiating personnel policies, salaries, and educational matters of mutual concern under a written policy agreement.

# ARKANSAS LAW – PPC EXCEPTION

## Requirements to Qualify for the Exception\*

1. A district **chooses** to officially recognize an organization;

*And*

2. The **organization represents the majority of the teachers.**

\* Must have both.

## FSPSD POLICY – PPC EXCEPTION

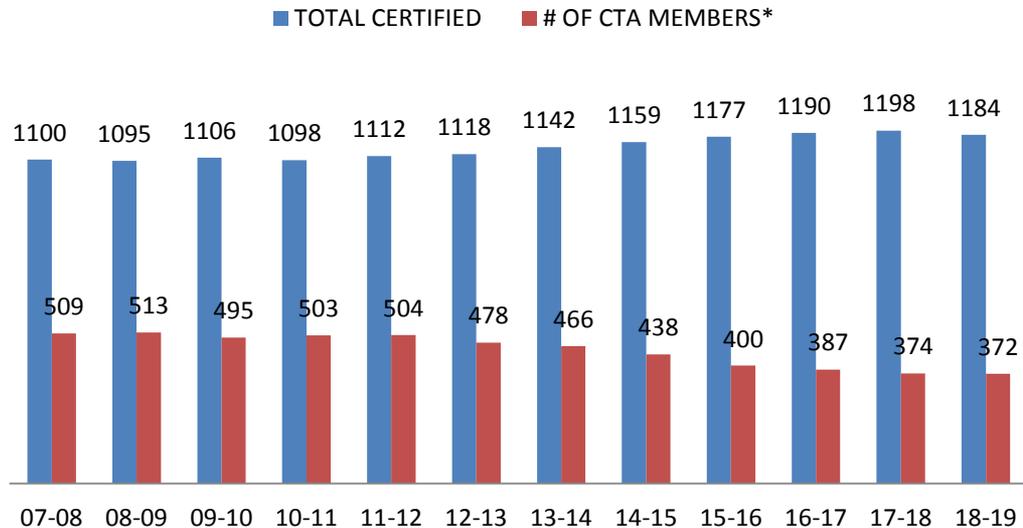
**GCQF - A PROFESSIONAL CONSULTATION AGREEMENT BETWEEN THE FORT SMITH BOARD OF EDUCATION AND THE FORT SMITH CLASSROOM TEACHERS ASSOCIATION**

\* \* \*

B. The Fort Smith District chooses to officially recognize in its policies the Fort Smith Classroom Teachers Association **which represents the majority of the teachers of the District** for the purpose of negotiating personnel policies, salaries, and educational matters of mutual agreement under a written policy agreement. . . .

# FSEA MEMBERSHIP

Year	07-08	8-9	9-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19
FSEA %	46%	47%	45%	46%	45%	43%	41%	38%	34%	33%	31%	31%
Unrepresented Teacher %	54%	53%	55%	54%	55%	57%	59%	62%	66%	67%	69%	69%



## FSEA MEMBERSHIP

*Letter to FSEA:*

*Dear Ms. Woodward:*

*The District has received the attached letter from ASTA and reviewed its payroll records to determine the percentage of certified teachers in the District who are dues paying members of FSEA. The District's records indicate that only 372 of its 1184 certified teachers are dues paying members of FSEA, and therefore, 69% of the certified teachers are unrepresented in District policy development. Can you please confirm whether FSEA's records are consistent with these numbers, and if not, provide your full list of dues paying members?*

# FSEA MEMBERSHIP

Response from FSEA:

Mr. Ney,

*Below you will find our unofficial numbers as of November 16, 2018. I know you asked for our October reconciled numbers, but we did not reconcile in October due to the changeover I mentioned in a previous email.*

*Please be advised that no administration is counted in the numbers of certified personnel. Because we were not given time to parse out the exact numbers, any numbers you figure will be unofficial from our end.*

*Our numbers have fluctuated over the past 20+ years and neither Dr. Gooden nor the FSPS Board showed any interest in rescinding our negotiation rights. That tells me that the law can be molded to the will of the district and that the previous administration was comfortable with the arrangements as they were. Being that this administration feels the need to rush a proposal and possible vote through in two weeks with no attempt to talk to us nor allow us to participate in any discussions disrespects the professional relationship this organization has maintained with the district for nearly 50 years, as we have negotiated for all the employees of this district - not just our members - in order to create the best possible classroom experience for the students of this community.*

*Should the district follow through on this unfortunate path, FSEA looks forward to participating and serving on the PPC committees for our district.*

**#379**

# FSEA MEMBERSHIP

## Key comments and takeaways:

- *379 is close to District's number (372)*
- *In the 5 days leading up to its response, FSEA stated:*
  - *We do “not know the exact percentage of teachers who [are] members of the organization.”*
  - *“Currently, FSEA does not have over 50% membership and has not for some time.”*
  - *“We understand that the law requires a majority.”*
  - *“If I give you numbers now they will not be accurate.”*

## CONSEQUENCES OF LOW MEMBERSHIP

- AGREEMENT VIOLATES ARKANSAS LAW AND DISTRICT POLICY
- AGREEMENT LIKELY HAS LAPSED BY OPERATION OF LAW AND POLICY

# CONSEQUENCES OF LOW MEMBERSHIP

\*FSEA CONTENDS THAT WE MEET THE REQUIREMENTS OF THE LAW.

1. The law does not specify membership in the organization, simply representation of the majority.
2. FSEA surveys ALL DISTRICT EMPLOYEES, INCLUDING NONMEMBERS, regarding policy issues they determine need to be addressed.
3. FSEA takes the survey data from ALL DISTRICT EMPLOYEES, INCLUDING NONMEMBERS, and creates proposals to be brought to the negotiations table.
4. Once policy is agreed upon by the full committee, FSEA takes the policy proposals to ALL DISTRICT EMPLOYEES, INCLUDING NONMEMBERS, for a vote.
5. ALL DISTRICT EMPLOYEES, INCLUDING NONMEMBERS, benefit from policies enacted by the district.
6. ALL DISTRICT EMPLOYEES, INCLUDING NONMEMBERS, get the final say in what is accepted as policy. This is NOT the case in a PPC.

## RECOMMENDATIONS

- Rescind Policy **GCQF** and the related Consulting Agreement due to lapse of the same;
- Form a Certified PPC;
- Seek a waiver from ADE to allow the District to proceed in the Spring Semester with formation of a PPC; and
- Seek a waiver from the ADE to allow the District to structure the PPC in a manner that solves the problem of under representation and ensures one or more representatives from each of the District's 27 campuses.

# QUESTIONS?

**THANK YOU!!**

# MARSHALL S. NEY

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