

May 3, 2001
OPINION NO. 01-100

**92-A-2(1)
103**

**Retirement - Teachers
Schools and School Districts -
Pension & Benefits, Teachers' Retirement**

Mr. Nathan M. Roberts
Assistant District Attorney
P. O. Box 3306
Lafayette, LA 70502

In response to your question it is still the opinion of our office that an employee may exercise the option of receiving unused sick leave as designated in LSA-R.S. 17:47(B) and LSA-R.S. 17:425 at the rate of pay as any other employee who retires or otherwise leaves employment. Therefore, the rate of pay to be paid to an employee for unused sick leave would be the rate of pay in effect on the date of the employee's last day of service prior to enrollment in DROP.

Dear Mr. Roberts:

I am in receipt of your request for an Attorney General's opinion on behalf of the Lafayette Parish School Board concerning payment of unused sick leave pursuant to 17:425.1 for DROP participants. You indicate the following in your request:

Educational institutions such as K-12 school districts and higher education colleges and universities often appoint employees who are in DROP to temporary higher paying positions in an acting capacity until the position is filled on a permanent basis. While serving in an acting capacity the employee is generally paid a higher daily rate of pay equal to that of the position being filled on a temporary basis. The temporary position may last as long as six months to a full year.

Specifically, you seek an opinion addressing the following question:

Whether the school board may pay an employee for unused sick leave at the daily rate of pay equal to the interim position daily rate of pay or must the district pay the daily rate of pay in effect on the date of the employee's enrollment in DROP?

LSA-R.S. 17:425.1 states the following concerning payment of severance pay for DROP participants:

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Notwithstanding any other provision of law to the contrary, any employee of a parish or city school board, Special School District Number One, the State Board of Elementary and Secondary Education, or other boards of control of publicly supported elementary or secondary schools or public institutions of higher education who participates in the Deferred Retirement Option Program provided by R.S. 11:786 or 1152 shall be eligible for and may elect to receive on a one-time only basis severance pay upon entering the program on the same basis as any other employee who retires or otherwise leaves employment.

As provided in LSA-R.S. 17:47(B) and 17:425 pertaining to the payment of sick leave upon retirement or death:

Such pay shall be at the rate of pay received by the teacher or superintendent at the time of retirement or death or prior to retirement.

You cite Attorney General Opinion No. 93-612 which addressed the question of whether or not employees who were in the DROP Program when Act 302 of 1993 went into effect could receive severance pay prior to retirement as those entering the program at that time were accorded. Our office opined that LSA-R.S. 17:425.1 provided those employees already in the DROP program who have not retired may receive severance pay the same as the employees who are now entering DROP.

Our office also issued Opinion No. 93-612A which concluded that:

. . . an individual at the termination of participation in DROP has no relevance to receiving the severance pay, but the option is given upon entering the program. Any change would require legislative amendment.

In response to your question it is still the opinion of our office that an employee may exercise the option of receiving unused sick leave as designated in LSA-R.S. 17:47(B) and LSA-R.S. 17:425 at the rate of pay as any other employee who retires or otherwise leaves employment. Therefore, the rate of pay to be paid to an employee for unused sick leave would be the rate of pay in effect on the date of the employee's last day of service prior to enrollment in DROP.

I hope this opinion sufficiently addressed your concerns. If I can be of further assistance please let me know.

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Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY: _____
BETH CONRAD ROBINSON
ASSISTANT ATTORNEY GENERAL

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BETH CONRAD ROBINSON
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