October 6, 1997

OPINION NO. 97-047

The Honorable Richard L. Ross
Morgan County Prosecuting Attorney
109 East Main Street
McConnelsville, Ohio 43756-1125

Dear Prosecutor Ross:

We have received your request for an opinion concerning statutory requirements governing lunch periods for teachers. You have asked whether a part-time teacher is entitled to a thirty-minute lunch period under R.C. 3319.072. Further, you have indicated by telephone that you would also like to know, if the part-time teacher is entitled to the lunch period, whether the teacher must be paid for the lunch period. You have informed us that teachers in question work on a half-time schedule and are paid a salary. You have stated that there is a collective bargaining agreement in effect, but that it does not address the issue of lunch periods for part-time teachers.

In order to answer your question, let us first look at the provisions of R.C. 3319.072. That section states:

> *Each teacher* employed by the board of education of a school district or a governing board of an educational service center *shall be granted at least thirty minutes for lunch each school day, during which time the teacher shall not be required to perform any school activity*; except that in a one-teacher school where enforcement of the foregoing provisions may work a hardship, the governing board of the service center in which the one-teacher school is located may require the teacher to remain on duty.
> The granting of the lunch period to a teacher shall not be cause for lengthening the school day.

R.C. 3319.072 (emphasis added). R.C. 3319.072 thus requires that, except in a one-teacher school, each teacher be granted "at least thirty minutes for lunch each school day," during which time the teacher is not required to perform any school activity. Further, R.C. 3319.072 provides that the granting of the lunch period to a teacher shall not be cause for lengthening the school day, thereby indicating that the lunch period is part of the regular school day. The school day is generally

considered to be the period during which students are in attendance. *See Norwood City School Dist. v. Norwood Teachers Ass'n*, No. C-930676 (Ct. App. Hamilton County Nov. 30, 1994).[1]

Let us consider next the manner in which teachers are employed and compensated, in order to determine how the lunch provision is to be applied to part-time teachers. Each school district is authorized to employ the teachers necessary to teach students in its district, R.C. 3319.07, and to enter into written contracts setting forth their salaries and compensation, R.C. 3319.08; R.C. 3319.12. The Revised Code sets forth a schedule of minimum salaries for teachers and provides that "[n]o teacher shall be paid a salary less than that provided in the schedule." R.C. 3317.13(B); *see also* R.C. 3317.13(C). School districts that receive state money are required to "annually adopt a teachers' salary schedule with provision for increments based upon training and years of service," but no teacher may be paid less than the amount required pursuant to R.C. 3317.13. R.C. 3317.14; *see, e.g., State ex rel. Fleming v. Rocky River Bd. of Educ.*, 79 Ohio St. 3d 200, 680 N.E.2d 981 (1997).

The salary that the teacher will be paid must be set forth in the teacher's written contract or the annual salary notice. R.C. 3319.08; R.C. 3319.12. If there is a collective bargaining agreement, that agreement can address the wages, hours, and terms and conditions of public employment and, with certain exceptions, will prevail over statutes to the contrary. R.C. 4117.10. *See generally, e.g., State ex rel. Burch v. Sheffield-Sheffield Lake City School Dist. Bd. of Educ.*, 75 Ohio St. 3d 216, 661 N.E.2d 1086 (1996)*; State ex rel. Johnson v. Cleveland Heights/University Heights School Dist. Bd. of Educ*., 73 Ohio St. 3d 189, 65 N.E.2d 750 (1995); *State ex rel. Chavis v. Sycamore City School Dist. Bd. of Educ.*, 71 Ohio St. 3d 26, 641 N.E.2d 188 (1994). Thus, in the event of a conflict between R.C. 3319.072 and a collective bargaining agreement, the collective bargaining agreement will prevail.

The salary schedule set forth in the Revised Code is directed toward full-time teachers. No provision of statute addresses the manner in which compensation of a part-time teacher is to be determined. Rather, if a school district elects to employ part-time teachers, it addresses their compensation in their contracts and in provisions of collective bargaining agreements. *See, e.g., Swanton Educ. Ass'n v. Swanton Bd. of Educ.*, No. 90FU000009 (Ct. App. Fulton County Aug. 16, 1991).

In most cases in which a part-time teacher is employed, the teacher's contract and the collective bargaining agreement address the individual's right to a lunch period and the question of compensation for that period. *See generally, e.g., State ex rel. Wallace v. West Geauga Local School Dist. Bd. of Educ.*, No. 91-G-1644 (Ct. App. Geauga County March 29, 1992), *appeal dismissed*, 65 Ohio St. 3d 1439, 600 N.E.2d 682 (1992); *Mahoning County TMR Educ. Ass'n v. Mahoning County*

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[1] The Revised Code does not specify the length of a teacher's day, but it does require that a student's day consist of at least five clock hours with pupils in attendance, except in emergency situations. R.C. 3313.48; *see also State ex rel. Rodgers v. Hubbard Local School Dist. Bd. of Educ.*, 10 Ohio St. 3d 136, 461 N.E.2d 1308 (1984).

Bd. of Mental Retardation, No. 81-CA-140 (Ct. App. Mahoning County Dec. 21, 1982) (master agreement defined work day of a full-time teacher to include a thirty minute duty-free lunch period and a daily thirty minute break period, and sick leave is calculated on the basis of that work day). You have indicated, however, that the collective bargaining agreement in effect in the instant case does not address that matter. *See, e.g.,* R.C. 4117.10(A) ("where an agreement makes no specification about a matter, the public employer and public employees are subject to all applicable state or local laws or ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees").

This opinion does not purport to construe any particular contract or to determine the intent of the parties to any contract. It would exceed the scope of this opinion to determine how the compensation of a part-time teacher should be calculated in a particular instance. Instead, this opinion assumes simply that the question of lunch for part-time teachers is not addressed by contract or collective bargaining agreement and considers whether R.C. 3319.072 requires that a part-time teacher receive a daily lunch period.

R.C. 3319.072 does not specify whether it applies to part-time teachers. It states only that "[e]ach teacher...shall be granted at least thirty minutes for lunch each school day, during which time the teacher shall not be required to perform any school activity." R.C. 3319.072. The statute indicates that each teacher is entitled to thirty minutes during each school day during which the teacher is free of school activities. *See, e.g.,* 1983 Op. Att'y Gen. No. 83-098. Hence, the statute appears to apply generally to all teachers, including part-time teachers.[2] *See*

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[2] No statutory definition of "teacher" is applicable to R.C. 3319.072. The following definition applies to related provisions R.C. 3319.08-.18:

> *"Teacher" means all persons licensed to teach and who are employed in the public schools of this state as instructors*, principals, supervisors, superintendents, or in any other educational position for which the state board of education requires licensure under sections 3319.22 to 3319.31 of the Revised Code including persons holding an internship certificate issued under section 3319.28 of the Revised Code and persons having a license issued pursuant to sections 3319.22 to 3319.31 of the Revised Code and employed in an educational position, as determined by the state board of education, under programs provided for by federal acts or regulations and financed in whole or in part from federal funds, but for which no licensure requirements for the position can be made under the provisions of such federal acts or regulations.

R.C. 3319.09(A) (emphasis added). A somewhat different definition applies to R.C. 3317.13-.14:

> "Teacher" means all teachers employed by the board of education of any school district, including any cooperative education or joint vocational school district and all teachers employed by any educational service center governing board.

State ex rel. Rodgers v. Hubbard Local School Dist. Bd. of Educ., 10 Ohio St. 3d 136, 138, 461 N.E.2d 1308, 1309 (1984) ("[t]he Ohio Revised Code makes no distinction between full-time and part-time teaching days").

The conclusion that the lunch requirement applies to all teachers, including part-time teachers, is appropriate particularly in light of the fact that the General Assembly has provided that the State Board of Education may not grant exemptions from R.C. 3319.072. *See, e.g.*, R.C. 3302.07; *see also* R.C. 3302.08. Further, it is consistent with the fact that the statute does not provide for prorating the lunch break, in contrast with such provisions as R.C. 3319.141, which provides for prorating sick leave granted to a part-time teacher. *See* R.C. 3319.141 ("[t]eachers and nonteaching school employees who render part-time, seasonal, intermittent, per diem, or hourly service shall be entitled to sick leave for the time actually worked at the same rate as that granted like full-time employees"). Pursuant to R.C. 3319.072, therefore, each full-time or part-time teacher must have at least thirty minutes for lunch each school day, during which time the teacher is not required to perform any school activity.

Even though the teacher is not required to perform any school activity during the lunch period, the statute requires that there be a thirty-minute lunch break each day. Therefore, the lunch period must be granted each day a teacher works, unless provisions applicable to a particular situation provide otherwise. In each situation, compensation will be determined in accordance with the collective bargaining agreement, if any, the teacher's contract, and the applicable salary schedule.[3]

For the reasons discussed above, it is my opinion, and you are advised, that pursuant to R.C. 3319.072, each full-time or part-time teacher must have at least thirty minutes for lunch each school day, during which time the teacher is not required to perform any school activity. The lunch period

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R.C. 3317.13(A)(2). *See generally State ex rel. Chavis v. Sycamore City School Dist. Bd. of Educ.*, 71 Ohio St. 3d 26, 641 N.E.2d 188 (1994).

[3] As discussed above, the Revised Code provisions governing the employment and compensation of teachers are directed, in general, to full-time teachers. As a result, reading R.C. 3319.072 as granting a thirty-minute lunch break to part-time teachers leads to results that may appear inequitable. For example, under this interpretation, a teacher who works one hour each day has the same amount of lunch time free from school activities as a teacher who works an entire day. A teacher who works a half-time schedule of one-half day each school day is entitled to a thirty minute lunch period for each of five days in a week, for a total of two and one-half hours. In contrast, a teacher who is on a half-time schedule of two and one-half days each week is entitled to three lunch periods, for a total of one and one-half hours. Discrepancies of this sort could be addressed by collective bargaining agreements. *See generally, e.g., Swanton Educ. Ass'n v. Swanton Bd. of Educ.*, No. 90FU000009 (Ct. App. Fulton County Aug. 16, 1991). If they are not, the statutory lunch provision operates to provide each teacher with a lunch period each day.

must be granted each day a teacher works, unless provisions applicable to a particular situation provide otherwise. In each situation, compensation will be determined in accordance with the collective bargaining agreement, if any, the teacher's contract, and the applicable salary schedule.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

October 6, 1997

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109 East Main Street
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SYLLABUS: 97-047

Pursuant to R.C. 3319.072, each full-time or part-time teacher must have at least thirty minutes for lunch each school day, during which time the teacher is not required to perform any school activity. The lunch period must be granted each day a teacher works, unless provisions applicable to a particular situation provide otherwise. In each situation, compensation will be determined in accordance with the collective bargaining agreement, if any, the teacher's contract, and the applicable salary schedule.