

OPINION NO. 69-070

Syllabus:

A local school board may not adopt a policy which would allow a teacher to receive full pay for absence resulting from personal injury caused by the assault by a student, such leave of absence not being charged to sick leave or personal leave.

To: David M. Griffith, Trumbull County Pros. Atty., Warren, Ohio
By: Paul W. Brown, Attorney General, June 24, 1969

I have before me your request for my opinion regarding substantially the following question:

May a local school district adopt a policy which would allow a teacher to receive full pay for absence resulting in personal injury caused by the assault by a student, such leave of absence not being charged to sick leave or personal leave?

Conditions under which employees of boards of education may use sick leave may be found in Section 143.29, Revised Code, which provides in pertinent part as follows:

* * * * *

"Employees may use sick leave, upon approval of the responsible administrative officer of the employing unit, for absence due to illness, injury, exposure to contagious disease which could be communicated to other employees, and to illness or death in the employee's immediate family." (Emphasis added.)

In no other section of the Revised Code is there reference to the use of sick leave as pertaining to employees of boards of education with the exception of Sections 3313.21 and 3319.08, both of which merely require the payment of sick leave compensation for not less than five (5) days annually.

It has been previously established by this office that the latter two statutes above cited provide minimum standards "for time lost due to illness or otherwise." It appears, however, that they do not authorize a local board to designate a new relief category. Opinion No. 1605, Opinions of the Attorney General for 1950. And Branch 4 of the syllabus of the same Opinion stated that sick leave rights of all employees of boards of education should be determined pursuant to Section 486-17a, General Code (Section 143.29, Revised Code), rather than Section 4834-5a, General Code (Section 3313.21, Revised Code).

The fact situation presented in your request clearly falls within the ambit of Section 143.29, supra. For the purpose of a leave of absence, either an individual is sick or injured, or he is not. If compensation for a period of absence due to injury by assault is to be paid, Section 143.29, supra, governs and said compensation must be deducted from accumulated sick leave. Perhaps an extension of the ninety day period would serve essentially

the same purpose as establishing an entirely new relief category. But it is clear, in any case, that accumulated sick leave must be used.

Therefore, it is my opinion and you are hereby advised that a local school board may not adopt a policy which would allow a teacher to receive full pay for absence resulting from personal injury caused by the assault of a student, such leave of absence not being charged to sick leave or personal leave.