

Opinion No. 56-6435

April 30, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Floyd Santistevan, Director, State Education Retirement, P. O. Box 999, Santa Fe, New Mexico

You have asked our opinion as to whether a teacher may be transferred from disability to age retirement status upon reaching the age of sixty.

Your attention is called to the portion of § 73-12-16, N.M.S.A., 1953 Compilation, which reads:

"Provided that in every case not less than 15 years of additional service shall be required of which the last 5 years were service in New Mexico consecutively and immediately prior to the date of such retirement."

Although it is not completely clear, we feel that the above quoted provision would prevent such transfer. A different situation would prevail if the teacher involved were eligible for retirement under the thirty year provision of the statute. However, if that were the case, the teacher should have been placed upon age retirement originally rather than on disability.

By Walter R. Kegel

Assistant Attorney General