

J. Y. Interpretation No.333 ( January 14, 1994 ) \*

**ISSUE:** Is it in contravention of the Constitution to recognize the previous service years of a childcare worker, who has the qualification of kindergarten teacher, in computing or advancing his or her salary one level, after the fulfillment of a respective full year of service, up to the permissible maximum when such childcare worker has transferred from the position of a childcare worker (having previously served at all levels of a government-owned childcare center) to that of a public school kindergarten teacher?

**RELEVANT LAWS:**

Article 12 of the Preschool Education Act ( 幼稚教育法第十二條 ) .

**KEYWORDS:**

salary level ( 薪資水準 ) , childcare worker ( 教保人員 ) , kindergarten ( 幼稚園 ) .\*\*

**HOLDING:** Explanatory Letter (79) Jen-Tze No. 22064, issued by the Ministry of Education on May 15, 1990, prescribes that “A person who has previously served as a childcare worker at all

**解釋文：**教育部於中華民國七十九年五月十五日發布之（七九）人字第二二〇六四號函釋：「曾任各級政府設立之托兒所教保人員，服務當時如已具幼稚園教師資格，其服務年資於轉任

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levels of a government-owned childcare center and has been qualified as a kindergarten teacher, when transferring to a teaching position at a public school kindergarten, may advance one salary level after the fulfillment of every full year of service, and shall be limited in accordance with the maximum level for that position.” That aforesaid recognition of the previous service years is restrictedly applied to those with the qualification of kindergarten teacher and is not in contravention of the Constitution.

**REASONING:** Although the purpose of both childcare centers and kindergartens is to nurture the physical and mental development of preschool children, the difference between a childcare center and a kindergarten is that the former shall also introduce the concepts of health, life and moral conduct. The qualifications of a kindergarten teacher are regulated in Article 12 of the Preschool Education Act as promulgated on November 6, 1981. Therefore, only those persons with the statutorily stipulated qualifications can assume the position of a

公立幼稚園教師時，得每滿一年提敘一級支薪，並應受本職最高薪之限制。」其就提敘以具有幼稚園教師資格者之服務年資為限，與憲法並無牴觸。

**解釋理由書：**托兒所與幼稚園雖均關係兒童學前階段身心健全之發展，惟幼稚園尚應實施學前之健康、生活與倫理教育，與托兒所之任務有所不同，而幼稚園教師之資格，於中華民國七十年十一月六日公布之幼稚教育法第十二條設有明文規定，故擔任公立托兒所教保人員，以具有上述法律規定之資格者為限，其年資於轉任公立幼稚園教師時，始得據以提敘。教育部於民國七十九年五月十五日發布之（七九）人字第二二〇六四號函釋：「曾任各級政府設立之托兒所教保人員，服務當時如已具幼稚園教師資格，其服務年資於轉任

childcare worker in the public childcare center; and should s/he transfer to a public school kindergarten, his or her previous years of service can accordingly be recognized. Explanatory Letter (79) Jen-Tze No. 22064, issued by the Ministry of Education on May 15, 1990, states: “A person who has previously served as a childcare worker at all levels of a government-owned childcare center and has qualified as a kindergarten teacher, when transferring to a public school kindergarten to be a teacher, may advance one salary level after the fulfillment of every full year of service, and shall be limited in accordance with the maximum level for that position.” The abovementioned Letter conforms to the foregoing Interpretation and hence is not in contravention of the Constitution.

公立幼稚園教師時，得每滿一年提敘一級支薪，並應受本職最高薪之限制」，符合上述意旨，與憲法並無牴觸。