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Unemployment Benefits: Nursery Schools
Nursery Schools, Unemployment Benefits & Payments
26 M.R.S.A. 1192-7

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August 21, 1978

The Honorable Barbara Trafton
House of Representatives
State House
Augusta, Maine

Subject: Unemployment Benefits to Nursery School Employees

Dear Representative Trafton:

You have requested whether nursery schools are educational institutions within the meaning of 26 M.R.S.A. § 1192(7). The particular functions nursery schools perform determine if they are educational institutions.

Title 26 M.R.S.A. § 1192(7) provides that employees of educational institutions are not eligible for unemployment benefits between school years and during vacation periods. If a claimant for benefits is not an employee of an educational institution, these ineligibility criteria do not apply.

The term "educational institution" for purposes of the § 1192(7) is derived from the Federal Unemployment Tax Act, 26 U.S.C. § 3306(c)(8). See 26 M.R.S.A. § 1043(11)(A-1)(3). While the Federal Act does not define the term, the United States Department of Labor has defined the term in its Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976--P.L. 94-566 (hereinafter Commentary). It provides that an educational institution exists if (1) students are offered an organized course of study designed to transfer knowledge, skills, information, attitudes, doctrine or abilities under the guidance of a teacher; (2) it is approved by some governmental licensing authority; and (3) study is of academic, trade, or technical nature. Commentary at 39.

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Applying these standards, the U. S. Labor Department, determined "Head Start" programs are not educational institutions. "The educational aspect is incidental to the primary purpose of bringing the participating children to a level of development where they can better cope with the environment of a kindergarten or primary school." Commentary, Supplement #4 at 5. It was concluded that, since Head Start programs are not educational institutions, its employees are not subject to the between terms disqualifications applicable to school employees.

If a nursery school's primary function is to enable children to interact with other children, and its academic concern is incidental, then, like a Head Start program, it is not an educational institution. But, if the primary function of the nursery school is to teach a structured academic program that serves the basis for further academic development, the nursery school is an educational institution.

The determination whether a nursery school is an educational institution, for the purposes of 26 M.R.S.A. § 1192(7), must be made on a case by case basis. A common sense approach should be taken. See Ray-Schools-Chicago v. Cummins, 146 N.E.2d 42 (Ill. Sup. Ct. 1957). The fact a nursery school teaches the alphabet or numbers does not make it an educational institution. But a nursery school that stresses reading, writing and mathematics may be an educational institution.

Sincerely yours,

Allan A. Toubman
Assistant Attorney General

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