



HENRY McMASTER
ATTORNEY GENERAL

March 2, 2009

Mr. Fred S. Washington, Jr.
Chairman of the Board of Education
Beaufort County School District
Post Office Drawer 309
Beaufort, South Carolina 29901-0309

Valerie P. Truesdale, Ph.D.
Superintendent
Beaufort County School District
Post Office Drawer 309
Beaufort, South Carolina 29901-0309

Dear Mr. Washington and Dr. Truesdale:

In a letter to this office you requested an opinion regarding the ability of the Beaufort County School District ("the District") to establish an annual school calendar for teachers, staff, and students which goes beyond the statutory school term of 190 days. You indicated that the purpose of this extension would be so that the District could provide extra assistance and extended learning time to children in grades one through ten whose academic performance in the classroom and scores on state-mandated tests reflect that they are significantly behind their peers and are at risk of not being promoted to the next grade level. You stated that "[w]hat the Beaufort County Board of Education (Board) would like to do is adopt a 2009-10 school calendar that reflects four weeks of extended learning built into a nine-month period which equals twenty extra days of instruction for students and ten days beyond that for teachers only....The Board further wishes to mandate that students in grades one through ten, who are in danger of failing their current grade due to poor academic performance as reflected in the classroom or on state tests, attend the extended learning days offered in August, October, March and June." You indicated that the costs for the extra assistance and extended learning time would not come from state funds but instead from federal Title 1 monies.¹

¹Such may be necessary due to the limiting provisions of S.C. Code Ann. § 59-21-20 which provide that "[t]he General Assembly shall make sufficient appropriation to pay state aid to salaries (continued...)

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S.C. Code Ann. § 59-1-425(A) provides that

[e]ach local school district board of trustees of the State shall have the authority to establish an annual school calendar for teachers, staff and students. The statutory school term is one hundred ninety days annually and shall consist of a minimum of one hundred eighty days of instruction covering at least nine calendar months...Three days must be used for collegial professional development...No more than two days may be used for preparation of opening of schools and the remaining five days may be used for teacher planning, academic plans, and parent conferences. The number of instructional hours in an instructional day may vary according to local board policy....(emphasis added).

Various statutes relevant to educational policies in this State and regulations of the State Department of Education provide for innovative methods to increase learning opportunities. S.C. Code Ann. § 59-18-1920 authorizes grant programs to encourage school districts "...to pilot test or implement a modified school year or school day schedule." In order to obtain a grant, a district must submit an application which includes

...a plan for implementing a modified year or day that provides the following: more time for student learning, learning opportunities that typically are not available in the regular school day, targeted assistance for students whose academic performance is significantly below promotion standards, more efficient use of facilities and other resources, and evaluations of the impact of the modified schedule. Local district boards of trustees shall require students whose performance in a core subject area...is the equivalent of a "D" average or below to attend the intercessions or stay for the lengthened day and receive special assistance in the subject area.

Such suggests legislative intent for schools to be able to go beyond traditional methods of assisting students who perform poorly and allow for the implementation of innovative methods to improve student performance.

In your letter, you referenced that the focus of State Board of Education Regulation 43-268 addresses academic assistance programs for elementary, middle and secondary school students. Academic assistance program goals under Regulation 43-268 I. B.-D. include methods:

¹(...continued)

of all school teachers in the public schools on the basis and for the length of one hundred ninety days in the elementary and secondary schools in the State."

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[t]o establish the expectation that by providing extra assistance and learning time all students will graduate from high school with their peers...To allow districts and schools greater flexibility in providing targeted, coordinated programs of student assistance...To support students with academic difficulties in grades four through twelve so they are able to progress academically and move through school with their peers.

Regulation 43-268 II A., D., and E. reflect requirements that:

[d]istricts...develop and implement academic assistance programs which address alternatives to year-long and pull-out remediation methods of service...based on...strategies found to be effective in research...Assistance may be for short, intensive periods...Emphasis is on providing assistance at the time of need and on accelerating the progress of students performing below their peers.

Consistent with the above, there is clear intent to authorize remedial programs at the time of need for students who perform below certain basic standards. As referenced in a prior opinion of this office dated February 26, 1986, "...remedial legislation...should be broadly construed to effect its purpose." Moreover, I am unaware of any State statutes or regulations which explicitly prohibit a district from implementing extra days of instruction during a school year such as the proposal of your district establishing an annual school calendar which exceeds the statutory school term of 190 days. Indeed, as referenced previously, Section 59-1-425(A) provides that

[e]ach local school district board of trustees of the State shall have the authority to establish an annual school calendar...The statutory school term is one hundred ninety days annually and shall consist of a minimum of one hundred and eighty days of instruction....(emphasis added).

A prior opinion of the Michigan Attorney General dated October 4, 1978 dealt with the construction of a statute which provided in part that "[e]ach district shall provide a minimum of 180 days of student instruction." The opinion concluded that "[t]he pertinent statutes and administrative rules merely establish a minimum number of days of student instruction and in no way limit the authority of a board of education to provide for a greater number of days of student instruction." Therefore, in the opinion of this office, a school calendar that reflects four weeks of extended learning built into a nine-month period which equals twenty extra days of instruction for students could be implemented by the District consistent with present statutory law.

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With kind regards, I am,

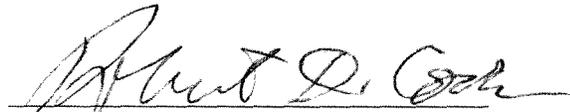
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
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