



ALAN WILSON  
ATTORNEY GENERAL

July 25, 2013

Russell W. Booker, Ph.D.  
Superintendent, Spartanburg School District 7  
P.O. Box 970  
Spartanburg, South Carolina 29304

Dear Dr. Booker,

You seek an opinion of this Office as to whether Spartanburg School District 7 (the "District") may hire a licensed pediatrician to fill a nursing position at an elementary school using funds made available by the State Department of Education (the "DOE"). By way of background, you provide the following information:

Spartanburg School District 7 has the unique opportunity to hire a Licensed Pediatrician, Dr. Richard Pennebaker, to fill our nursing position at the Cleveland Academy of Leadership. Unfortunately, per the S.C. State Department of Education, our ability to capitalize on this opportunity is limited by:

***SECTION 59-10-210. Funding for licensed nurses for elementary schools.** Beginning with the 2007-08 school year, the General Assembly, annually in the General Appropriations Act, shall appropriate funds to the Department of Education to provide licensed nurses for elementary public schools. The State Department of Education shall make these funds available through a grant program and shall distribute the funds to the local school districts on a per school basis.*

My purpose in writing is to seek an opinion as it relates to our ability to hire and pay using Department of Education Funds, Dr. Pennebaker, as a School Nurse, to provide nursing services.

Over the past five years, the Cleveland Academy of Leadership has been transformed from a failing elementary school to a Leadership Academy using Stephen R. Covey's "Leader in Me" model and was recently chosen as the only public school supported by Purpose Built Communities as a flagship school for Spartanburg's federally funded Choice Neighborhoods' Northside Initiative.

Our ability to hire Dr. Pennebaker as the Academy's nurse complements the neighborhood transformation and our goal to provide community wellness services in our most challenged schools. Regensis Healthcare manages a Wellness Clinic at our Park Hills Early Learning Center partially funded by a

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U.S. Department of Education Full Service Community Schools Grant and the Mary Black Foundation.

Dr. Pennebaker, an American Board of Pediatrics Diplomat and member of our Student Health Advisory Committee, is singularly qualified to serve based on his experience and understanding of the Early Childhood Education challenges faced by children and their families.

Our ability to hire him in this position benefits not only the students that he would serve as a nurse, but also potentially yields additional funding to support long-term community health goals.

Representatives from the DOE have confirmed to us that they interpret § 59-10-210 as requiring a person to be licensed as a nurse to qualify for the grant funds.

#### Law/Analysis

Several rules of statutory construction are relevant in responding to your question. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). "[Courts] will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation." Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). "If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning." Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 472 (2007). "A well-established rule of statutory construction is 'expressio unius est exclusio alterius,' which means that the enumeration of particular things excludes the idea of something else not mentioned." Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 554, 320 S.E.2d 458, 463 (Ct. App. 1984). Furthermore, courts generally give deference to an administrative agency's interpretation of an applicable statute or its own regulation, and will only reject the agency's interpretation when it is contrary to the plain language of the statute. Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003).

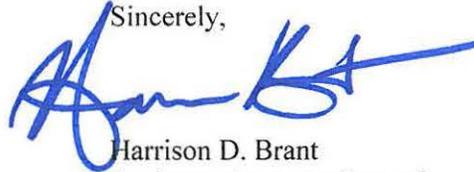
Here, the plain language of § 59-10-210 allows the DOE to make funds available to school districts through a grant program for the purpose of providing "*licensed nurses* for elementary public schools." § 59-10-210 (emphasis added). The Legislature's decision to use language limiting the use of such funds to providing "licensed nurses," as opposed to broader language indicating such funds could be used to hire any doctor, physician, or other person who may be otherwise qualified to provide medical services to children, indicates the Legislature intended to exclude such other medical providers from receiving funds under the statute. As the agency responsible for administering the grant program under § 59-10-210, the DOE has interpreted that statute as permitting such funds to be used only for the employment of a licensed nurse. Because the DOE's interpretation conforms with the plain language of § 59-10-210, we must defer to their interpretation on the matter.

This conclusion does not, however, prevent a school district from using funds other than that provided by § 59-10-210 to employ a person to provide medical services in an elementary school who is not a licensed nurse. S.C. Code § 59-19-270 states that "[e]very district board of trustees may employ physicians, dentists, podiatrists, ophthalmologists, other medical specialists, optometrists, nurses, dental

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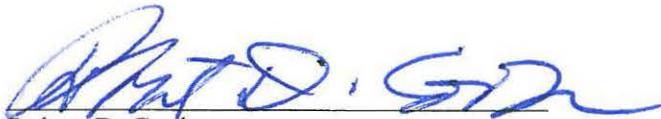
hygienists, and other technical and clerical personnel as may be needed." Accordingly, a school district may use funds otherwise available to it to employ a licensed pediatrician to provide medical services at an elementary school if it so desires.

Sincerely,



Harrison D. Brant  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General