

1982 WL 189286 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 7, 1982

\*1 The Honorable Charlie G. Williams  
State Superintendent of Education  
State of South Carolina  
Department of Education  
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested the opinion of this office as to whether the State Board of Education has the authority to approve, by contract with a school district, an educational program for that school district which varies from the 'Defined Minimum Program' (DMP) and, if so, the effect of the Education Finance Act of 1977 (Finance Act) ([§ 59-20-10, et seq., Code of Laws of South Carolina, 1976](#), as amended) upon such a variance when the cost of providing a contractually approved educational program is less than the cost of providing the DMP.

§ 59-20-20(4) of the Finance Act defines the DMP as 'the program established annually by the State Board of Education that is necessary to provide public school students in the State with minimum educational needs.' While this provision does not specifically and directly mandate the State Board of Education to provide guidelines for a minimum educational program or to provide accreditation standards for approval of an educational program, such a directive is clearly implied.

The authority of the State Board of Education to 'adopt minimum standards for any phase of education as considered necessary to aid in providing adequate educational opportunities and facilities' is recognized in Act 309 of the 1963 Joint Acts and Resolutions. ([§ 59-5-60, Code of Laws of South Carolina, 1976](#), as amended.) This authority, together with that of § 59-20-20(4), makes the State Board of Education the appropriate party to provide the necessary standards for the DMP and to provide accreditation standards for the approval of an educational program which does not strictly conform to the DMP.

The Finance Act is replete with references to meeting the needs of the public school student. § 59-20-30(a) recognizes that the legislative purpose of the Finance Act is 'to guarantee to each student in the public schools of South Carolina the availability of at least minimum educational programs and services appropriate to his needs, and which are substantially equal to those available to other students with similar needs and reasonably comparable from a program standpoint to those students of all other classifications, notwithstanding geographic differences and varying local economic factors'. (Emphasis added). The Board, by developing DMP standards, provides a yardstick by which each district's education program can be measured. However, it is conceivable that there may be situations in which the particular needs of a district's students can be met without strict compliance with the DMP standards. If the basis for the allowed variance in DMP standards is founded on the differing needs of a district's public rather than a financial need to reduce cost, the spirit and purpose of the Finance Act are satisfied and the State Board of Education is acting within its authority in approving the program. <sup>1</sup>

\*2 The standards for the minimum program of education which is referred to as the DMP are directly related to funding under the Finance Act through the 'base student cost.' The 'base student cost' is defined in § 59-20-20(6) as the funding level necessary for providing a minimum foundation program which includes the level necessary for supporting the DMP . . . It is this 'base student cost' which, when multiplied by the district's 'weighted pupil units', yields the cost of the foundation program to the district. If the funding level necessary to provide a contractually approved education program is less than the cost of providing the DMP, then the cost of the program to the district will be less, and this savings should be passed on to the State.

It is the legislative purpose of the Finance Act to establish a procedure for the distribution of a specified portion of the state education fund so as to ensure that the funds are provided on the basis of need. If the needs of a district's pupils can be met at a cost less than the DMP, then funding should be provided based on the lower cost necessary to fulfill the need.

The opinion of this office is that the Board has the authority to approve, by contract with a school district, an education program for that school district which varies from the DMP as long as the variances correlate to the needs of the pupils of the district and do not sacrifice need for cost efficiency. Furthermore, it is the opinion of this office that if the variances result in a lower cost than the DMP, the savings to the school district should be reflected in the state funding under the Finance Act. If we may be of further assistance, please let us know.

Sincerely,

B. J. Willoughby  
Assistant Attorney General

#### Footnotes

- 1 In an Attorney General Opinion letter dated February 25, 1982 from Assistant Attorney General J. Emory Smith, Jr. to the State Superintendent of Education it is recognized that § 59-20-40(5) requires each district to maintain a certain average pupil-teacher ratio in grades one (1) through three (3) in order to qualify for funds under the Finance Act. If a variance in this requirement is allowed, it must be according to the special provision for waiver contained in § 59-20-40(5).

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