

1979 WL 43498 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 31, 1979

***1 RE: Requested Opinion Concerning the Education Finance Act of 1977**

Honorable Charlie G. Williams
State Superintendent of Education
Rutledge Building
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested the Opinion of this Office concerning two aspects of the Education Finance Act of 1977, Section 59-20-10, et seq., Code of Laws of South Carolina, 1976, as amended. First, you have asked whether the Education Finance Act requires that the Defined Minimum Program (DMP) be adjusted to reflect the elements presently identified in the Base Student Cost, or whether the elements presently identified in the Base Student Cost may be revised in order to reflect changes made in the DMP. Both the DMP and Base Student Cost are defined in Section 59-20-20 as follows: 'Defined Minimum Program' (DMP) means the program established annually by the State Board of Education that is necessary to provide public school students in the State with minimum educational programs designed to meet their needs. The State Board of Education shall transmit a per-weighted pupil estimate of the full implementation of the Defined Minimum Program to the State Budget and Control Board and the General Assembly for each proposed budgetary year. The State Board of Education shall transmit any suggested changes in the basic programs and their weighting as evidenced by changing requirements and practices.

'Base Student Cost' is the funding level necessary for providing the Defined Minimum Program for the base student which is calculated in 1976 dollars to be six hundred sixty-five.

The definitions are not dispositive of the question posed; therefore, reference is made to Section 59-20-40, which states as follows in subsection (b):

The Base Student Cost shall be established annually by the General Assembly. The Base Student Cost shall be established in such manner that five years after July 2, 1978, the funding level shall approximate the cost of the Defined Minimum Program as set forth by the State Board of Education.

Finally, reference is made to Section 59-20-60(5)(g), which places the following burden upon the State Department of Education, stating, 'adjust periodically the DMP accreditation standards to reflect the funding levels appropriated under the chapter, consistent with the basis utilized by the General Assembly in establishing the Base Student Cost.'

To ascertain the overall scheme envisioned by the Education Finance Act, reference must be made to the Act in its entirety, giving special attention to the aforementioned quotations. Generally, the State Board of Education is required to devise the Defined Minimum Program, which at the outset is not funded. The State Board of Education must transmit the DMP to the General Assembly, along with an estimate of the Base Student Cost necessary to implement the DMP.

The State Board of Education is also directed by the Act to transmit suggested changes in basic programs and weighting, deemed necessary by changing requirements and practices. The next step is for the General Assembly to establish the Base Student Cost. The Act envisions the performance of these requirements on an annual basis.

*2 While the answer to the question you have posed is not entirely free from doubt, the DMP, apparently, must be adjusted on some periodic basis to reflect the funding levels appropriated pursuant to the Act. The difficulty in the scheme provided in the Act is that the Legislature may or may not fully fund the DMP submitted by the Department of Education. In essence, then, the General Assembly adopts or amends the proposed DMP in establishing the Base Student Cost, which of course, includes elements other than those contained in the DMP. This is made readily apparent in § 59-20-60(5)(g) which requires the Department to periodically adjust the DMP accreditation standards to reflect the funding levels appropriated by the General Assembly. While this Code section requires the DMP be 'periodically' adjusted, the DMP would have to be adjusted annually in order to accurately reflect the funding levels appropriated by the General Assembly.

In any event, the Act is clear that the Base Student Cost is determined by the General Assembly upon the Department's estimate and the DMP established by the Department; however, the General Assembly is not estopped to establish the Base Student Cost on a basis outside of the DMP. Thus the necessity to periodically adjust the DMP accreditation standards to reflect funding levels appropriated.

Secondly, you have asked whether revisions to the DMP must be related to the pupil classifications specified in the Act, according to how such classifications generate additional funds, or can the Act be interpreted such that the cost for a new item in the DMP would be shared proportionally by all the programs. Keeping in mind the response to your first question hereinabove, the answer to your second question depends on the nature of the revision in question. Each pupil classification or program, as presently identified in the Act, has a weighting of 1.00 or greater. Therefore, the answer to the question depends upon whether the proposed revision is reflected in the Base Student Cost as determined by the General Assembly or is necessary for the special needs of one of the pupil classifications with a weighting greater than that provided for the base student.

I trust that this answers the questions posed; however, do not hesitate to call upon me if you have further questions.

With kind regards,
Sincerely,

Paul S. League
Assistant Attorney General

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