

1975 WL 28832 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 20, 1975

*1 Dr. Charles Williams
Deputy Superintendent of Education
S.C. Dept. of Education
1429 Senate Street
Rutledge Building
Columbia, SC 29201

Dear Dr. Williams:

Your request for additional information concerning the placement of handicapped children in special education programs has been referred to me for reply.

With reference to your earlier letter, it is clear that prior to placement of a handicapped child in a special class due process requires that an adversary hearing be held.

... [M]any are suspended or expelled from regular schooling or specialized instruction or reassigned without any prior hearing and are given no periodic review thereafter. Due process of law requires a hearing prior to exclusion, termination of classification into a special program [citations omitted]. [Mills v. Board of Education of District Columbia, 348 F.Supp. 866 \(D.C.D.C.1972\)](#)

In addition, it is constitutionally required that a periodic review of the child's status and progress be provided along with the adequacy of any educational alternative.

For your reference, I have enclosed a copy of the judgment entered in the Mills case, supra, and a proposed preliminary consent agreement in the case of [Lebanks v. Spears, 60 F.R.D. 135 \(E.D.La 1973\)](#), which relate to the questions at hand. Both of the above contain considerable detail about the requirements and may serve as guidelines in forming your own regulations in this area. It should also be noted that the enclosed material was accepted by the courts in their respective jurisdictions and most likely a set of regulations similar to these would pass muster in South Carolina. However, it should further be noted that these regulations may contain information which does not go only to the issue of placing a handicapped child in a special class, but also to other areas in which the particular state was deficient.

I trust this additional information will be sufficient in resolving your problem. If this Office can be of any further assistance, please do not hesitate to contact us.

Sincerely yours,

H. Michael Bowers
Law Clerk

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