



ALAN WILSON
ATTORNEY GENERAL

January 31, 2012

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

Dear Dr. Booker:

We received your request for an opinion of this office. By way of background, you inform us that Cleveland Elementary School is a Title I school that has been deemed "At-Risk" according to South Carolina's accountability system, and that the school is required to "Restructure" as a result of "No Child Left Behind" sanctions and the school's failure to meet adequate yearly progress. You state that to improve student achievement at Cleveland Elementary School, Spartanburg School District 7 (the "District") is proposing the implementation of an extended school calendar for the students, staff, and teachers beginning in July, 2012. The school year would be extended for students from 180 days to 205 days (25 additional days), and for teachers the school year would be extended from 190 days to 215 days (25 additional days). The school year would commence on July 9, 2012, for teachers, and on July 13, 2012, for students. You indicate the District is aware that teachers would need to be compensated for the additional days worked, and that the cost of the additional time would not come from state funds but instead from federal Title I monies. You have questioned whether the District may establish the annual school calendar for teachers, staff, and students at Cleveland Elementary School beyond 190 days under state law.

S.C. Code Ann. §59-1-425(A) provides for the beginning and length of school terms in South Carolina. The provision states 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. However, beginning with the 2007-2008 school year the opening date for students must not be before the third Monday in August, except for schools operating on a year-round modified school calendar. Three days must be used for collegial professional development based upon the educational standards as required by Section 59-18-300. The professional development shall address, at a minimum, academic achievement standards including strengthening teachers' knowledge in their content area, teaching techniques, and assessment. 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 and does not have to be uniform among the schools in the district.

As set forth above, beginning with the 2007-2008 school year the opening date for schools must not be before the third Monday in August, with an exception for year-round schools. We note that §59-1-425(H) allows for the waiver by the State Board of Education (the "Board") of the school opening date requirement "on a showing of good cause or for an educational purpose" as defined in that provision.¹ The Board may grant the waiver for an educational purpose for that specific school or defined program to the extent the Board finds that: (1) the educational purpose is reasonable, (2) the accommodation is necessary to accomplish the educational purpose, and (3) the request is not an attempt to circumvent the opening date set forth in Subsection (A).

In your letter, you refer to an opinion of this office dated March 2, 2009, where we discussed the ability of a school district to establish an annual school calendar for teachers, staff, and students going beyond the 190 days statutory school term so that the school 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 reflected that they were significantly behind their peers and were at risk of not being promoted to the next grade level. The school district sought to adopt a school calendar that reflected four weeks of extended learning built into a nine-month period, which equaled twenty extra days of instruction for students and ten days more for teachers. The school district would require that students in grades one through ten, who were 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. Addressing the proposal by the school district, we considered the educational policies of this State and the regulations of the State Department of Education, which we determined are clearly intended to provide innovative methods to increase learning opportunities for students and improve student performance, and that further suggest legislative intent that schools be able to go beyond traditional methods of assisting students who perform poorly. Because we

¹Pursuant to §59-1-425(H):

(1) "Good cause" means that schools in a district have been closed eight days per year during any four of the last ten years because of severe weather conditions, energy shortages, power failures, or other emergency situations.

(2) "Educational purpose" means a district establishes a need to adopt a different calendar for a:

(a) specific school to accommodate a special program offered generally to the student body of that school,

(b) school that primarily serves a special population of students, or

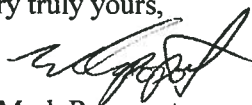
(c) defined program within a school.

found there is a clear intent under state law to authorize remedial programs at the time of need for students who perform below certain basic standards, we advised that the school district was not prohibited from implementing extra days of instruction during a school year which reflected four weeks of extended learning (equaling twenty extra days of instruction for students to be offered in August, October, March and June) built into the nine-month school calendar.

You indicate that the District plans to establish an annual calendar for Cleveland Elementary School commencing on July 9, 2012, for teachers, and on July 13, 2012, for students. The 2009 opinion, however, did not address an early start date. Instead, that opinion discussed establishing extra days of instruction built into the nine-month period which would exceed the statutory school term of 190 days. The District's proposal here is more akin to a school district's proposed calendar that we discussed in an earlier opinion dated January 19, 2007. In that school district, there were schools under a year-round schedule that started in mid-July, and other schools which opened on a traditional, mid-August schedule. The school district planned to unite the schools under a single calendar for the 2007-2008 school year to reflect a July 30 start date for students, with an early dismissal date of May 30. Because there was no school for students scheduled during the months of June and July of 2008, we concluded that the proposed calendar did not constitute a year-round school calendar. We therefore advised that the proposed calendar would be in conflict with requirement of §59-1-425(A) that the opening date for students not be before the third Monday in August.

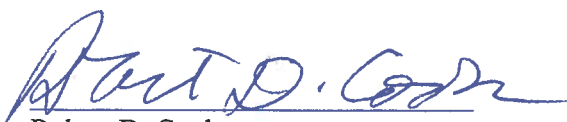
Although the District's purpose for the plan is to improve student performance at Cleveland Elementary School, the proposed 2012-2013 calendar is not a year-round school calendar. The District's proposal would thus appear to be in conflict with the third Monday in August opening date required by §59-1-425(A). However, we advise that this provision does not rule out the District's ability to obtain a waiver by the Board pursuant to Subsection (H) "on a showing of good cause or for an educational purpose." See Op. S.C. Atty. Gen., July 19, 2007. Of course, we are unable to determine whether the District's plan demonstrates "good cause" or "an educational purpose," because to do so would require us to evaluate and determine factual issues which are beyond the scope of an opinion of this office. See Op. S.C. Atty. Gen., April 6, 2006 ("[T]he investigation and determination of facts are matters beyond the scope of an opinion of this office"). This office will defer to the determination of the Board in this regard. See Op. S.C. Atty. Gen., September 8, 2005 ("[I]t has been our longstanding policy in the issuance of opinions to defer to the administrative agency charged with the enforcement of a particular area of law").

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General