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ATTORNEY GENERAL

November 5, 2012

The Honorable Aaron L. Baldwin
Member, McClellanville Town Council
405 Pinckney Street
McClellanville, South Carolina 29458

Dear Councilman Baldwin,

We received your letter requesting an opinion on behalf of the McClellanville Town Council asking for our interpretation of the student transfer provision found in S.C. Code § 59-59-110 (Supp. 2005). By way of background, you state as follows:

McClellanville falls within a public school attendance zone defined by Constituent District 1 of Charleston County. The District 1 high school, Lincoln, includes grades 7th through 12th and has fewer than 200 students enrolled. The neighboring attendance zone falls within District 2 and is served by Wando, a much larger high school, with around 3,500 students.¹

As would be expected, the academic offerings of these institutions are vastly different from one another, with Lincoln allowing far fewer course options. This gross disparity creates an obvious disadvantage to District 1 students in terms of their postsecondary education and career plans. Existing legislation addresses this issue in S.C. Code Section 59-59-110 of the EEDA.

Passed in 2005, the EEDA was created to promote a “seamless” transition between high school and future education, training and employment opportunities. Toward that end, the law mandates that high school curricula be organized around “career clusters,” and that every eighth-grader in public school formally choose a career cluster based on his or her personal goals. (See S.C. Code Section 59-59-20).

Recognizing the potential for disparities between schools and in the interest of equity, the final two sentences of 59-59-110 read, “In order to maximize the number of clusters offered, a school district is to ensure that each high school within the district offers a variety of clusters. *A student may transfer to a high school offering that student’s career cluster if not offered by the high school in his attendance zone.*” (emphasis added).

¹ For purposes of clarification, we note that Lincoln Middle-High School and Wando High School are the only high schools located in Districts 1 and 2, respectively.

The Charleston County School District (CCSD) is, in practice, non-compliant with the above provision. Parents in District 1 have been told by the Associate Superintendent of High Schools that students may travel between high schools, taking individual courses, as needed, but that no transfers under the EEDA will be allowed.

Under the current CCSD policy, parents of school-aged children in McClellanville and other District 1 communities find themselves in the painful and, perhaps impossible, position of having to move in order to improve their children's potential to reach their career goals.

Our question is this: does South Carolina law (pursuant to S.C. Code 59-59-110) provide the right for a student, who cannot enroll in their chosen career cluster, to transfer to a high school of their choice outside of their assigned attendance zone? If so, does the law place conditions on such a transfer?

Law/Analysis

We have previously stated that, "[g]enerally speaking, it is contemplated that pupils will attend school within the school district in which they reside." Op. S.C. Att'y Gen. 2011 WL 2214063 (May 20, 2011); see also S.C. Code § 59-63-30 (1976) (setting for the general qualifications for attending school in a particular district). However, the statutory section you reference, § 59-59-110, provides an exception to this general rule:

During the 2007-08 school year, each public high school shall implement a career guidance program model or prototype as developed or approved by the State Department of Education. At least annually after that, certified school guidance counselors and career specialists, under their supervision, shall counsel students during the ninth and tenth grades to further define their career cluster goals and individual graduation plans, and before the end of the second semester of the tenth grade, tenth grade students shall have declared an area of academic focus within a cluster of study. Throughout high school, students must be provided guidance activities and career awareness programs that combine counseling on career options and experiential learning with academic planning to assist students in fulfilling their individual graduation plans. In order to maximize the number of clusters offered, a school district is to ensure that each high school within the district offers a variety of clusters. **A student may transfer to a high school offering that student's career cluster if not offered by the high school in his attendance zone.**

(Emphasis added).

In responding to your questions, several principles of statutory construction are applicable. "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). “[T]here is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.” Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997). Furthermore, “[i]n construing a statute, [courts] will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature.” Lancaster County Bar Ass’n v. S.C. Com’n on Indigent Defense, 380 S.C. 219, 222 670 S.E.2d 371, 373 (2008).

Here, § 59-59-110 clearly allows for a student to transfer to a high school outside of his attendance zone if the high school within his attendance zone does not offer his career cluster. The only limitation expressly found in the language of the provision concerning a student’s ability to transfer is that the high school he transfers to must be one “offering that student’s career cluster” Id. No mention is made as to whether the transfer must be approved by any authority. Nor is it stated whether the receiving school is to be located in the same district, an adjoining district, or a district in an adjoining county.

However, § 59-59-110 must construed in light of related local and general law provisions that were enacted prior to 2005. With the enactment of Act No. 340 of 1967 (the “1967 Act”), the General Assembly consolidated the eight school districts in the County into the Charleston County School District (the “CCSD”) and established the Board of Trustees as its governing body. Id., §§ 1,2. However, the eight school districts continued to exist in the form of special districts for administrative purposes, called “constituent districts,” that are governed by their own respective boards of trustees. Id., § 1. The County Board of Education was abolished and its duties devolved upon the CCSD’s Board. Id., § 3. Pursuant to § 5, the CCSD’s Board was given certain enumerated powers and duties “[i]n addition to [those] provided by law for county boards of education, and for school district trustees other than those devolved upon the constituent trustees”

On the other hand, the 1967 Act granted the trustees of the constituent districts certain powers “in their respective districts, subject to the appeal to the Board of Trustees of the [CCSD] in the manner provided in Sections 21-247 et seq. of the Code of Laws of South Carolina, 1962 (now §§ 59-19-510 et seq.)” Id., § 7. In particular, § 7(1) grants the trustees of the constituent districts the power “[t]o transfer any pupil from one school to another within the same constituent district so as to promote the best interest of education, and determine the school within such constituent district in which any pupil shall enroll.” Act 105, § 7(1). Furthermore, under the general law the board of trustees of a school district are given authority over intradistrict transfers. See S.C. Code § 59-19-90(9) (stating the board of trustees shall “[t]ransfer any pupil from one school to another so as to promote the best interests of education, and determine the school within its district in which any pupil shall enroll”). Reading § 59-19-90(9) in conjunction with the 1967 Act, we have previously stated that is the clear the power to make transfers within their respective districts “was vested in the constituent boards of trustees ... subject to appeal to the [CCSD].” Op. S.C. Att’y Gen., 1977 WL 24612 (Sept. 1, 1977). This is inapposite to the question at hand, however, as your question involves interdistrict transfers between Districts 1 and 2.

With regards to interdistrict transfers between adjoining districts, S.C. Code § 59-63-490 (1976) provides:

When it shall so happen that any person is so situated as to be better accommodated at the school of an adjoining school district, whether special or otherwise, the board of trustees of the school district in which such person resides may, with the consent of the board of trustees of the school district in which such school is located, transfer such person for education to the school district in which such school is located, and the trustees of the school district in which the school is located shall receive such person into the school as though he resided within the district.

With regards to the CCSD, this statutory section has been construed by case law as well as a prior opinion of this Office as granting the trustees of the transferring and receiving constituent districts the power to make initial decisions concerning the approval of interdistrict transfers. See U.S. v. Charleston County School Dist., 960 F.2d 1227, 1234 (4th Cir. 1992) (“Under the general laws of South Carolina ... a student in one district may transfer to another district if the student may be better accommodated in that district and provided that the trustees of both the transferring and receiving constituent districts approve of the transfer”); see also Op. S.C. Att’y Gen., 1977 WL 24612 (Sept. 1, 1977) (concluding a transfer between adjoining constituent districts in Charleston County can be made if constituent district in which student resides finds student is better accommodated at school of adjoining district and constituent district to which transfer is requested consents).

In the event the trustees of the transferring or receiving school district refuse to approve a transfer request, such a decision may be appealed to the county board of education pursuant to § 59-19-510.² Furthermore, § 59-63-510 provides, in part:

When a transfer of pupils from one district to another is sought and the trustees of the latter district unreasonably or capriciously withhold their consent, the county board of education of the county in which the districts are located shall have the right, after hearing, to make the transfer

However, as the entity upon which the County Board of Education’s powers were devolved pursuant to the 1967 Act, the CCSD exercises the authority to review decisions of the constituent districts pursuant to the above provisions. As stated by the Fourth Circuit in U.S. v. Charleston County School Dist.:

A refusal by a constituent district to permit an interdistrict transfer may be appealed to the CCSD and on appeal the CCSD decides only whether the refusal was unreasonable or arbitrary. **The CCSD has no authority under the laws of South Carolina initially to order an interdistrict transfer.**

² § 59-19-510 provides, in part:

Subject to the provisions of § 59-19-90, any parent or person standing in loco parentis to any child of school age, the representative of any school or person aggrieved by any decision of the board of trustees of any school district in any matter of local controversy in reference to the construction or administration of the school laws or the placement of any pupil in any school within the district, shall have the right to appeal the matter in controversy to the county board of education

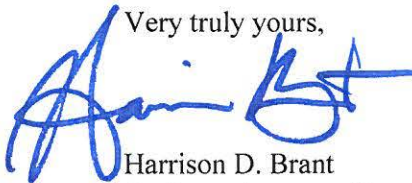
Id., 960 F.2d at 1234 (emphasis added) (citations omitted).

In light of the above authorities, it is the trustees of the transferring and receiving constituent districts, and not the CCSD, who have the authority to make the initial determination as to whether a student may transfer between districts. Thus, any high school student wishing to transfer from Lincoln Middle-High School in District 1 to Wando High School in District 2 pursuant to § 59-59-110 – i.e., on the basis his career cluster is offered at Wanda but not at Lincoln – must first obtain approval from the trustees of both constituent districts. It is only after such a transfer is refused that the CCSD's Board may become involved. Even then, the CCSD's Board is only empowered under § 59-63-510 to order a transfer if it finds the refusal to transfer was unreasonable and capricious. We are aware of no law, general or otherwise, granting the CCSD's Board the power to refuse all interdistrict transfers sought pursuant to § 59-59-110.

Conclusion

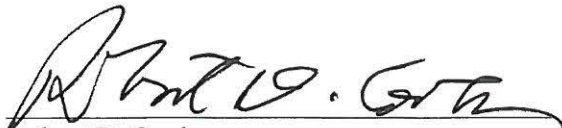
It is the opinion of this Office that a student may transfer from Lincoln Middle-High School in District 1 to Wando High School in District 2 under § 59-59-110 – i.e., on the basis his career cluster is offered at Wando but not at Lincoln – if the transfer between the districts is authorized by the trustees of both constituent districts as provided in § 59-63-490. The CCSD's Board has no authority to initially order an interdistrict transfer. Pursuant to § 59-63-510, the CCSD may only order an interdistrict transfer on appeal from a constituent district's refusal to approve a transfer if such refusal was unreasonable and capricious. We are aware of no law granting the CCSD's Board the power to refuse all interdistrict transfers sought pursuant to § 59-59-110. We note that this opinion was intended only to address the questions asked as they concern Districts 1 and 2 of the CCSD. As no two school districts in this State are completely identical, any question concerning a particular school district must be answered on a case-by-case basis.

Very truly yours,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General