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The State of South Carolina

Opinion No 88-61
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Office of the Attorney General

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August 17, 1988

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

Dear Dr. Williams:

You have requested the Opinion of this Office as to whether a part of the Comprehensive Health Act, § 59-32-30(C) of the Code of Laws of South Carolina, (1976), prohibits local school administrators from applying provisions of the Defined Minimum Program (DMP-R43-130, Vol. 24 of the Code) so as to reduce instructional time in health for individual students below that provided to those students in 1986-87. Section 59-32-30(C) provides as follows:

> "The time required for health instruction for students in kindergarten through eighth grade must not be reduced below the level required during the 1986-87 school year. Health instruction for students in grades nine through twelve may be given either as part of an existing course or as a special course."

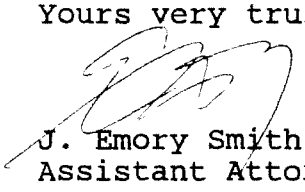
The portion in question of the DMP provides as follows:

> "The time required for any subject under the provisions of the Defined Minimum Program may be adjusted if necessary for students who are eligible and receive remedial, handicapped, or gifted supplemental instruction or for students who score below the statewide minimum standards as indicated by the results of the tests administered

tion as set forth above. I have been informed by your agency that DMP adjustments in health instruction would be made only if "necessary" for individual students who fall under those categories. No intent is indicated in the general requirements of § 59-32-30(C) to preclude such exceptions for individuals, a conclusion which is consistent with, for example, the provisions in § 59-5-65 for "modification of school day" as a means of providing supplemental instruction for remedial and compensatory students. Therefore, the above provisions of the DMP for adjusting instructional time for individual students falling within the DMP provisions appear to be operative consistently with § 59-32-30(C) even if such modifications included reducing the amount of health instruction time required by § 59-32-30(C) (Yahnis, supra); however, because of the strong legislative intent expressed in § 59-32-30(C) for continuing the 1986-87 levels of health instruction time, such modifications should be made only when necessary for individual students.

If you have any questions, please let me know.

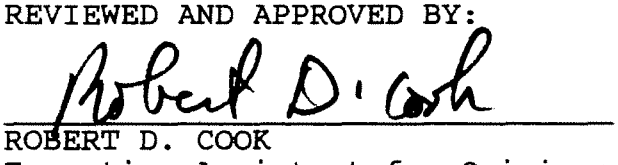
Yours very truly,



J. Emory Smith, Jr.
Assistant Attorney General

JESjr/jps

REVIEWED AND APPROVED BY:



ROBERT D. COOK
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