

The State of South Carolina



Office of the Attorney General

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T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-8867

June 17, 1986

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 advice of this Office as to whether a recent South Carolina Supreme Court decision concerning absences due to suspensions affects attendance requirements for high school students to earn academic credit. In Re: Angela H., Opinion #22477, (February 24, 1986). This decision held that the days on which a student was under suspension should not have been counted as unexcused absences under the Compulsory School Attendance law for the purposes of adjudicating delinquency. The reasoning of the court was that the Compulsory School Attendance laws state that those laws shall not be construed as granting authority to require enrollment or attendance of a child who has been or may be expelled or suspended. Section 59-65-80 of the Code of Laws of South Carolina, 1976.

Your question arises under R.43-274, Vol. 24 of the Code, which contains attendance regulations of the State Board of Education (State Board) including requirements for the receipt of high school credit. These regulations provide that students must attend a minimum number of days each instructional period before receiving consideration for credit unless the local school board grants approval for each excess absence in accordance with local board policy. The excessive absences are not qualified as to whether they are lawful or unlawful. This fact, together with other provisions in the regulations, indicates that excessive absences of any kind would have to be approved by the local board. See R.43-274 (C) (2); Sutherland Statutory Construction, Vol. 2A §46.01, et seq. See also, Susan Mills, etc. v. Newberry County Board of Education, (Newberry County, 78-CP-36-89, May 23, 1978, Honorable James E. Moore). 1/ In other words, students with excessive absences would

1/ The regulation defines lawful and unlawful absences but does not list suspension and expulsion under either category; (R.43-274 (A) and (B)) however, the regulations permit local boards of trustees to add additional criteria to the definition of unlawful absences. (R.43-274 (B) (4)). Because excessive absences of either kind must be approved, whether suspensions may be counted as unlawful absences need not be decided now.

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have to have their excessive absences approved regardless of whether the absences were due to suspensions or some other cause. Therefore, the regulation leaves to the reasonable discretion of local boards the question of whether academic credit should be extended to a student who fails to meet attendance requirements because of suspensions, etc. See Department of Institutions v. Bushnell, 579 P.2d 1168 (Colo. 1978); Campbell v. Board of Education of New Rulford, 193 Conn. 93, 475 A.2d 289 (Conn. 1984). Whether the approval or disapproval of excess absences for particular students would be reasonable would be dependent upon the factual circumstances relevant to those requests for approval.

Angela H. does not appear to affect the local board's authority as to granting academic credit. In that case, the Supreme Court addressed only the question of whether days of classes missed due to suspension may be used to calculate unexcused absences for the purpose of proceedings under the Compulsory School Attendance laws. See §59-65-80. The question of whether academic credit may be extended to a student who has not attended class for the required number of days under R.43-274 appears to be an entirely different matter from the serious disciplinary related sanctions imposed for failure to comply with the compulsory school attendance laws. See e.g. §59-65-70. 2/ In considering the application of somewhat similar academic attendance requirements, Campbell recognized "...a distinction between sanctions which are disciplinary in nature and

2/ The State Board is expressly directed by the Compulsory School Attendance law to establish certain regulations concerning absences (§59-65-90), but the State Board's authority to adopt regulations concerning the academic consequences of absences rests with other provisions of law. Although not cited in the regulations, the authority appears to include the Defined Minimum Program under the Education Finance Act (§59-20-20 (4)) and provisions for determining the units required for a high school diploma under §59-39-100, as amended. See also §59-5-60 (3) of the Code. R.43-274 also appears to be consistent with those parts of the Education Improvement Act (EIA) designed to increase academic standards, strengthen student attendance and provide more effective use of classroom learning time. See Act 512, Part III, Section 9, Division II, Subdivision A, Subparts 1, 2, and 3, Acts and Joint Resolutions of South Carolina, 1984; see also Sutherland Statutory Construction, Vol. 2A, §47.03. Such authority to set requirements for academic credit such as graduation has been recognized in other jurisdictions. See State of Missouri v. Ledbetter, 559 S.W.2d 230 (Mo. 1977); Bushnell, 579 P.2d 1168.

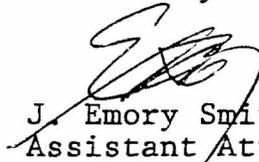
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sanctions which relate to academic requirements" 475 A.2d at 289. 3/ Although the attendance of suspended students is not required by the Compulsory School Attendance laws, Angela H. does not indicate that a "...school district must give [academic] credit for something which was not actually completed". (Emphasis added). Bushnell, 579 P.2d at 1170. Of course, the student's failure to meet academic attendance requirements may be excused if a local board chooses to do so in reasonably exercising its discretion pursuant to R.43-274.

In conclusion, although no assurance can be given as to how a court in this State would rule on the issue (see note 3), Angela H. does not appear to prevent school districts from reviewing excessive absences due to suspensions or expulsions for the purposes of determining academic credit. Under R.43-274, whether such excessive absences may be approved as to individual students is a matter for the local board to resolve by the reasonable exercise of discretion.

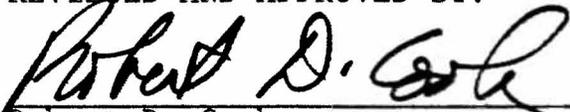
If you have any questions or if I may be of additional assistance, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

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REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions

3/ This distinction was not addressed in Gutierrez v. School District R-1, 585 P.2d 935 (Colo. 1978) which found that academic credit could not be denied to students whose absences were partially due to suspensions and excused absences.