

# The State of South Carolina



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February 10, 1987

The Honorable Derwood L. Aydlette, Jr.  
Member, South Carolina House of  
Representatives  
422-C Blatt Building  
Columbia, South Carolina 29211

Dear Representative Aydlette:

You have requested a definition of adequate education under the Education of All Handicapped Children Act (The Act - 20 USC 1401 et seq. (PL. 94-142)). The Act requires states receiving funds thereunder to provide a "free appropriate public education" to all handicapped children. 20 USC §1412. This term "free appropriate public education" is defined by the statute as follows:

"...special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate pre-school, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 1414(a)(5) of this title."  
§1401(18).

The "special education" referenced in this definition is described as follows:

"...specially designed instruction, at no cost to parents or guardians, to meet the unique means of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions." §1401(16)

The United States Supreme Court has reached the following conclusions concerning the meaning of "free appropriate public education":

"Implicit in the congressional purpose in providing access to a 'free appropriate public education' is the

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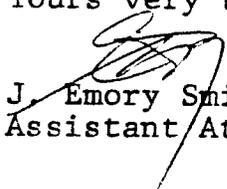
requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.... We therefore conclude that the 'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." Board of Education v. Rowley, 458 US 176, 73 L.E.2d 690, 102 S.Ct. 3034, 3048 (1982).

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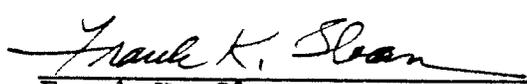
"Insofar as a state is required to provide a handicapped child with a "free appropriate public education" we hold that it satisfies this requirement by providing specialized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State educational standards, must approximate the grade levels used in the State's regular program and must comport with the child's [Individualized Education Program (IEP)]. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. 102 S.Ct. at 3049.

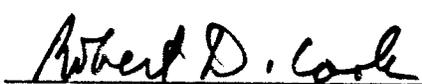
I hope that this information will be of assistance to you. If you have any questions, please let me know.

Yours very truly,

  
J. Emory Smith, Jr.  
Assistant Attorney General

JESjr/srcj  
REVIEWED AND APPROVED BY:

  
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