

1982 WL 189189 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 25, 1982

*1 The Honorable Charlie G. Williams
State Superintendent of Education
State of South Carolina
Department of Education
Columbia, S. C. 29201

Dear Dr. Williams:

You have requested the opinion of this office as to whether a February 3, 1982 State Board of Education (Board) adopted motion pertaining to the assessment of accreditation deficiencies permits the Board to deviate from the provisions of [§ 59-20-40\(5\) of the Code of Laws of South Carolina \(1976\)](#) which is contained in the Education Finance Act. If not, you also wish to know whether the motion would affect the school districts' qualifications for Finance Act funding. The motion reads as follows: [That] school and or/district accreditation deficiencies that occur during the 1981-82 school year as a result of the mandated 2.19 percent budget reduction not be considered in the determination of the school or district accreditation classification if the cause of the deficiencies can be documented as resulting from the budget reduction.

[Section 59-20-40\(5\)](#) requires each district to maintain certain average pupil-teacher ratios in grades one through three in order to qualify for funds. It also provides for waivers of these requirements by the Board when a district lacks classroom space or when a district submits to the Board and justifies '. . . an alternative education program to serve the basic skill needs of average daily membership in grades one through three.' The ratios are also included in the 'Defined Minimum Program' (DMP) which has been adopted by the Board and is used as an accreditation standard. See 1980 DMP, pp iii and 23; see also infra.

The above motion clearly would not permit a school district to avoid [§ 59-20-40\(5\)](#) as a qualification for funds. The statutory language is mandatory and the only exceptions to it are waivers which operate in circumstances which are not addressed by the motion. In addition, the legislature showed a strong intent to adhere to that section's provisions in the current Appropriations Act. Act 178 § 28, Acts and Joint Resolutions of South Carolina, 1981. It stipulated that the ratios in [§ 59-20-40\(5\)](#) be implemented '. . . to the extent possible on an individual class basis and that the pupil enrollment in [the specified grades] not exceed 28 pupils in each class.'

The Finance Act and the above quoted proviso also strongly indicate that the required pupil-teacher ratios must be used as accreditation standards, as well as funding qualifications. The Finance Act requires the Board to adopt a 'Defined Minimum Program' (DMP) which is designed to provide public school students with minimum educational programs. [§ 59-20-20\(4\)](#) and [§ 59-20-60\(2\)](#). The Board is directed to audit the degree to which schools meet DMP standards and ones which are '. . . classified as 'dropped' by [DMP] accreditation procedures shall not be eligible for funding in the following fiscal year . . .' until the Board approves an acceptable plan to correct the deficiencies. [§ 59-20-60\(2\)](#). Thus, the Finance Act appears to require that the DMP serve as an accreditation standard. That full funding for a district is made contingent upon complying with [§ 59-20-40\(5\)](#) indicates that the legislature intended for that requirement to be included in the DMP. As noted above, the pupil-teacher ratios are included in the current DMP and the DMP states that it is an accreditation standard. The above statutory provisions indicate that the ratios should not be removed therefrom by the Board except that they may be waived as provided in [§ 59-20-40\(5\)](#).

*2 The opinion of this office is that the Board's motion does not permit the Board to deviate from DMP accreditation requirements as to pupil-teacher ratios in grades one through three and it does not permit districts to avoid the funding penalties of § 59-20-40(5). If we may be of further assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

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