



ALAN WILSON  
ATTORNEY GENERAL

November 22, 2021

Commissioner Jerome P. Singleton  
South Carolina High School League  
PO Box 211575  
Columbia, SC 29221-6575

Dear Commissioner Singleton:

You have requested an opinion of this Office regarding the applicability of section 59-63-100 of the South Carolina Code of Laws, which provides for the participation of home school, charter school, and Governor's school students in the interscholastic activities of public schools, to a foreign exchange student who is attending a charter school.

You explain that a foreign exchange student who is in South Carolina for one year is attending a charter school. The charter school is not a member of the South Carolina High School League and does not have a team. The foreign exchange student would therefore like to play on the public high school's team.

### LAW/ANALYSIS

The State Legislature has enacted the Equal Access to Interscholastic Activities Act, which is codified at S.C. Code Ann. § 59-63-100 (1976 Code, as amended), and provides:

(A) As used in this section:

- (1) "Charter school student" is a child enrolled in a charter school established pursuant to Chapter 40, Title 59.
- (2) "Governor's school student" is a child enrolled at a Governor's school established pursuant to this title.
- (3) "Home school student" is a child taught in accordance with Section 59-65-40, 59-65-45, or 59-65-47 and has been taught in accordance with one of these sections for a full academic year prior to participating in an interscholastic activity pursuant to this section.

(4) "Interscholastic activities" includes, but is not limited to, athletics, music, speech, and other extracurricular activities.

(B) Individual Governor's school students and home school students may not be denied by a school district the opportunity to participate in interscholastic activities if the:

(1) student meets all school district eligibility requirements with the exception of the:

(a) school district's school or class attendance requirements; and

(b) class and enrollment requirements of the associations administering the interscholastic activities;

(2) student's teacher, in the case of a Governor's school student, certifies by submitting an affidavit to the school district that the student fully complies with the law and any attendance, class, or enrollment requirements for a Governor's school. In addition, a charter school student's teacher, in the same manner required by this subsection for a Governor's school student, also must certify by affidavit to the student's school district that the student fully complies with the law and any attendance, class, or enrollment requirements for a charter school in order for the student to participate in interscholastic activities in the manner permitted by Chapter 40 of this title;

(3) student participating in interscholastic activities:

(a) resides within the attendance boundaries of the school for which the student participates; or

(b) in the case of a Governor's school student, resides or attends a Governor's school within the attendance boundaries of the school for which the student participates; and

(4) student notifies the superintendent of the school district in writing of his intent to participate in the interscholastic activity as a representative of the school before the beginning date of the season for the activity in which he wishes to participate . . . .

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It is well settled that the title or caption of an act may be considered to aid in the construction of a statute and to show the intent of the Legislature. Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972). University of S.C. v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966). The title of the act enacting section 59-63-100 provides:

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "EQUAL ACCESS TO INTERSCHOLASTIC ACTIVITIES ACT" BY ADDING SECTION 59-63-100 SO AS TO PERMIT HOME SCHOOL STUDENTS AND GOVERNOR'S SCHOOL STUDENTS TO PARTICIPATE IN INTERSCHOLASTIC ACTIVITIES OF THE SCHOOL DISTRICT IN WHICH THE STUDENTS RESIDE SUBJECT TO CERTAIN CONDITIONS, AND TO PROVIDE ADDITIONAL REQUIREMENTS FOR CHARTER SCHOOL STUDENTS TO PARTICIPATE IN INTERSCHOLASTIC ACTIVITIES.

2012 S.C. Acts 203.

This Office has previously discussed the title of Act 203:

[t]he Legislature's purpose in passing the Act is made clear in its opening provision and title, which is "to permit home school students and Governor's school students to participate in interscholastic activities of the school district in which the students reside subject to certain conditions, and to provide additional requirements for charter school students to participate in interscholastic activities." Act. No. 203, 2012 S.C. Acts 1809. Simply put, as the Act's title states, the Legislature intended to provide *equal access* for home school, charter school, and Governor's school students to participate in interscholastic activities. Id.

Op. S.C. Atty. Gen., 2014 WL 4659413 (Sept. 8, 2014).

We continued:

In other words, through the passage of the Act, the Legislature intended to put home school, charter school, and Governor's school students on a level playing field with public school students in regards to participation in extracurricular activities.

Id.

While Act 203 permits home school and Governor's school students to participate in the interscholastic activities of the school district in which they reside subject to certain conditions, it merely provides charter school students with an additional requirement to participate. Section 59-63-100(B)(2) requires a charter school student's teacher to certify that "the student fully complies with the law and any attendance, class, or enrollment requirements for a charter school" in order for the student "to participate in interscholastic activities in the manner permitted by Chapter 40 of this title." S.C. Code Ann. § 59-63-100(B)(2).

Chapter 40 provides for charter schools and contains section 59-40-50(C)(3), which specifically addresses a charter school student's eligibility to participate in extracurricular activities at a public school. Section 59-40-50(C)(3) provides:

(3)(a) A charter school is eligible for federally sponsored, state-sponsored or district-sponsored interscholastic leagues, competitions, awards, scholarships, grants, and recognition programs for students, educators, administrators, staff, and schools to the same extent as all other public schools.

(b) A charter school student is eligible to compete for, and if selected, participate in any extracurricular activities not offered by the student's charter school which are offered at the resident public school he would otherwise attend. A charter school student is eligible to compete for, and if selected, participate in an activity governed by the South Carolina High School League offered at the resident public school he would otherwise attend if the league-governed activity is not offered at the student's charter school.

(c) A charter school student is eligible for extracurricular activities at the student's resident public school consistent with eligibility standards as applied to full-time students of the resident public school.

(d) A school district or resident public school may not impose additional requirements on a charter school student to participate in extracurricular activities that are not imposed on full-time students of the resident public school.

(e) Charter school students shall pay the same fees as other students to participate in extracurricular activities.

(f) Charter school students shall be eligible for the same fee waivers for which other students are eligible.

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S.C. Code Ann. § 59-40-50(C)(3) (1976 Code, as amended) (emphasis added).

Section 59-40-50(C)(3) emphasizes that a charter school student who meets certain criteria is eligible to compete at his resident public school. According to the definitions in section 59-40-40, “‘Resident public school’ means the school, other than a charter school, within whose attendance boundaries the charter school student’s custodial parent or legal guardian resides.” S.C. Code Ann. § 59-40-40 (1976 Code, as amended).

After reading sections 59-63-100 and 59-40-50(C)(3) together, it is our opinion that they are not applicable to foreign exchange students who attend a charter school. The Legislature specifically used the word “resident” to describe the public school. Additionally, a foreign exchange student’s custodial parent or legal guardian would not reside within the attendance boundaries of a public school. Both of these factors lead us to conclude that legislative intent was for charter school students who are residents of South Carolina to have equal access with public school students to participate in interscholastic activities. We therefore believe that sections 59-63-100 and 59-40-50(C)(3) do not authorize foreign exchange students attending charter schools to participate in the interscholastic activities of public high schools.

### CONCLUSION

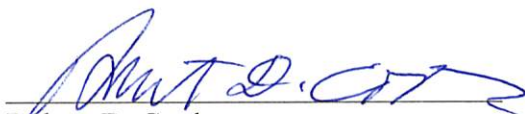
It is our opinion that sections 59-63-100 and 59-40-50(C)(3) do not authorize foreign exchange students attending charter schools to participate in the interscholastic activities of public high schools. Instead, we believe that legislative intent was for charter school students who are residents of South Carolina to have equal access with public school students to participate in interscholastic activities.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General