ALAN WILSON
ATTORNEY GENERAL

January 24, 2023

Dr. Steve Adamson, Board Chair
The Charter Institute at Erskine
1201 Main Street, Suite 300
Columbia, SC 29201

Dear Dr. Adamson:

The Board of Trustee for the Charter Institute at Erskine has voted to seek our opinion regarding out of state students "who enroll in a public residential high school in this state" and who "receive public funding designated for South Carolina students." You note that these students "live at or near the school during the school year and return home to their resident states/countries after the close of the school year. . . ." You further state that these students "are not state property owners" and that "their parents and/or legal guardians do not live in South Carolina or own property in this state."

By way of background, you provide the following additional information:

> [t]he S.C. Code of Laws is silent on the specific issue of out of state students living here temporarily for schooling purposes, particularly for receipt of a secondary education. For example, S.C. Code Ann. § 59-63-30 provides the qualifications for public school enrollment in this state. Furthermore, S.C. Code Ann. § 59-63-31 provides additional qualifications for public school enrollment. Thus, if the qualifications of either of these statutes are not met, it would appear that state law provides no mechanism to enroll a student who cannot meet one of these requirements.
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> In addition, a review of the S.C. Attorney General Opinion Archive indicates that this specific issue has not been addressed, though similar issues have been vetted. For example, a March 7, 1983, Attorney General Opinion examined whether children who are not South Carolina residents may attend South Carolina schools free of charge under the property ownership provisions of S.C. Code Ann.§ 59-63-30(c). This office responded that out of state students "are excluded from the statute's property ownership provisions" because Article XI, § 3 of the S.C Constitution directs the legislature to provide "... for a system of free public schools open to all children in the State ...." (emphasis added). In that opinion, it was determined that a

> free education was not intended to be extended "to children other than those 'in the state.'"
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> On September 19, 1978, your office examined whether a student that is 18 years or older who maintains a separate residence from his parents or legal guardian is eligible to attend public schools in the school district which he resides. This office opined that the student may, so long as "(l) the student's residence qualifies as a place where a person actually lives or has his home, or a place where one is habitually present and to which having departed therefrom, he intends to return and (2) there is no specific intent to avoid the residency requirements established for students residing with parents or legal guardians."
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> Furthermore, other public residential high schools in this state, including the Governor's School for Science and Mathematics, require an enrollee to be a resident of South Carolina. It appears as though such an entitlement runs counter to the public policy of our state because S.C. law generally places a preference on children living with their families and on residency. Along those lines, student enrollment necessarily impacts the class rankings and eligibility for highly coveted scholarships such as Palmetto Fellows, LIFE, and SC Hope.
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> Based on the absence of a law specifically permitting an out of state student to attend a South Carolina taxpayer funded residential public school, we seek clarification to resolve this question.

## Law/Analysis

As you note, S.C. Code Ann. Section 59-63-30 provides the "qualifications for attendance" in the public schools of South Carolina. Such statute states as follows:

> [c]hildren within the ages prescribed by Section 59-63-20 shall be entitled to attend the public schools of any school district, without charge, only if qualified under the following provisions of this section:
>
> (a) Such child resides with its parent or legal guardian;
> (b) The parent or legal guardian, with whom the child resides, is a resident of such school district; or
> (c) The child owns real estate in the district having an assessed value of three hundred dollars or more; and
> (d) The child has maintained a satisfactory scholastic record in accordance with scholastic standards of achievement prescribed by the trustees pursuant to Section 59-19-90; and
> (e) The child has not been guilty of infraction of the rules promulgated by the trustees of such school district pursuant to Section 59-19-90.

Section 59-63-31 further sets forth "additional" qualifications for attendance of South Carolina public schools. We have described the intent of the General Assembly in enacting §

59-63-31 is "to allow students to attend school in the district of the residence of adults other than their parents with whom they reside for reasons other than to attend a particular school and through no control of their own." Op. S.C. Att'y Genl, 1991 WL 474792, Op. No. 91-62 (December 23, 1991). Your letter correctly notes that "if the qualifications of either of these statutes [§§ 59-63-30 and 59-63-31] are not met it would appear that state law provides no mechanism to enroll a student who cannot meet one of these requirements." In short, as will be demonstrated below, out of state or out of country students must demonstrate to school officials individually that each is a bona fide "resident" of the District.

In Storm M.H. ex rel McSwain v. Chas. Co. Bd. Of Trustees, 400 S.C. 478, 489-90, 735 S.E.2d 492, 498 (2012), our Supreme Court interpreted § 59-63-30 as follows:

> [b]y its plain terms, Section 59-63-30 entitles a child to attend the public schools of any school district if the child (1) resides with his or her parent or legal guardian, and that parent or legal guardian is a resident of the school district or the child owns real estate in the district having an assessed value of at least three hundred dollars; and (2) the child has maintained a satisfactory scholastic record and not been guilty of infraction of the rules of conduct.

In McSwain, the Court concluded that the Charleston County School District misread § 59-63-30 by excluding a student who owned property valued at more than three hundred dollars in the District. The Court viewed § 59-63-30's language as "unambiguous" and thus "a child who owns real estate in the district having an assessed value of three hundred dollars or more is entitled to attend that district's schools, just as a resident child." 400 S.C. at 492, 735 S.E.2d at 499.

Moreover, in Op. S.C. Att'y Gen., 1978 WL 35117 (September 19, 1978), we addressed the question of "residency" of a child who maintains a separate residence from his or her parent or guardian, concluding that:

> [i]f a student eighteen years or older maintains a separate residence from his parents or legal guardian, he may attend the public schools in the district in which he resides provided that: (1) the student's residence qualifies as a place where a person actually lives or has his home, Jernigan v. Capps, 187 Va. 73, 45 S.E.2d 886 or a place where one is habitually present and to which having departed therefrom, he intends to return. Wray v. Wray, 149 Neb. 376, 31 N.W.2d 228 and (2) there is no specific intent to avoid the residency requirements established for students residing with parents or legal guardians. Cf 1969-70 Op. Att'y Gen. No. 2825, p. 39.

The foregoing 1978 opinion cited with approval the decision of Wray v. Wray, supra. In Wray, the Supreme Court of Nebraska noted that "[w]hile it is true that lexicographers recognize some differences in the two terms it is clear from an examination of the statute and the decisions of this Court that the two terms are used interchangeably and have substantially the same meaning." 31 N.W.2d 228, 230.

Likewise, our Court of Appeals explained in Holden v. Cribb, 349 S.C. 132, 140, 561 S.E.2d 634, 639 (Ct. App. 2002) that

> [b]y what is apparently the majority rule, the word "reside" or "residence" as used in statutes . . . denotes the place of one's fixed abode, not for a temporary purpose alone, but with the intention of making such place a permanent home. . . . "[T]he term [residence] means the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning." . . .
>
> It is well established that a person's place of residence is largely one of intent to be determined under the facts and circumstances of each case. No specified length of time is required to fix the residence contemplated by our statute [homestead exemption]; the act and intent and not the duration of the residence are determinative.

(quoting Nagy v. Nagy-Horvath, 273 S.C. 583, 586-87, 257 S.E.2d 757, 759 (1979)) (quoting Gasque v. Gasque, 246 S.C. 423, 426, 143 S.E.2d 811, 812 (1965)) (emphasis added).

The same rule applies to students attending a school away from home. Residency cannot be merely for the "temporary purpose" of attending school. In this regard, we have opined that a student must clearly establish "a new domicile" in order to establish residency. Op. S.C. Att'y Gen., 1984 WL 159848, Op. No. 84-41 (April 11, 1984). There, we addressed the situation as to "the requirements for voter registration as those requirements relate to college students who wish to be registered in the community where they attend college." We referenced an opinion of November 22, 1971, noting that ". . . a board of registration is not bound by the statement of residency sworn to by a student or any other applicant for registration on his registration form," but may make further inquiries "to determine if the facts and circumstances are consistent or inconsistent with the stated intent. . . ."

The 1984 opinion concerning student residency cited the decision of Dyer v. Huff, 382 F.Supp. 1313 (D.S.C. 1973), aff'd., 506 F.2d 1397 (4th Cir. 1974), which rejected a claim of being discriminated on the basis of being a college student based upon the requirement that the student establish residency. Plaintiffs attacked South Carolina's residency requirements, contending that local registration officials could not look behind their written declarations of residency.

Judge Chapman rejected the students' claim, however. He noted that "[t]here is nothing wrong or even suspect in registration officials asking college boarding students whose permanent addresses are outside the county, certain questions to determine residency and their qualifications." 382 F.Supp. at 1316. Quoting the United States Supreme Court decision in Carrington v. Rash, 380 U.S. 89 (1965), Judge Chapman found that "[s]tudents at colleges and universities in Texas, patients at hospitals and other institutions within the State, and civilian employees of the United States Government may be as transient as military personnel. But all of

them are given at least an opportunity to show the election officials that they are bona fide residents." 382 F.Supp., supra, quoting Carrington v. Rash, 85 S.Ct. at 780.

Thus, our 1984 opinion concluded as follows:

> [i]n view of these authorities, this office must therefore conclude that, in order for students to be registered to vote in the community in which they attend college, they must show that they are domiciled in that community; in short, it must be demonstrated that 'they are living in the college community with the intention of abandoning their former domicile and with the intention of remaining permanently, or for an indefinite length of time in their new location.' Op. Att'y Gen., November 22, 1971. And in order to ascertain whether students meet this legal standard, the factors outlined in the 1971 opinion may be utilized. Dyer v. Huff, supra.

The 1971 opinion outlined a number of factors for determining residency. While the list was admittedly not exhaustive, the factors included, among others:

> . . . whether the applicant was registered to vote elsewhere; where the applicant maintains his [or her] personal property; the applicant's community ties; the residence listed on the applicant's drivers license; where the applicant pays taxes; where the applicant's automobile is registered; and if the applicant is employed, where his job is located The opinion noted that in the end 'the crucial issue boils down to the intent of the applicant,' or in other words, whether he intends to remain permanently or indefinitely in the college community.

We realize that some of these factors may not be relevant to your situation; however, the analysis remains the same. What is the overarching intent of the student? Simply living in the school's community without an intent permanently or indefinitely to reside in the school's community does not meet the requirement of § 59-63-30. School officials need not take the student at his or her word, but may inquire further in order to determine if the student intends to remain in the school district or is instead simply "there temporarily."

## Conclusion

Section 59-63-30 sets forth the requirements for a student to attend the public schools of a particular school district; He or she must reside in that school district (either with his or her parent or legal guardian or separate and apart therefrom) or the child must own real estate in the district having an assessed value of at least three hundred dollars. See McSwain, supra; Op. Att'y Gen., 1978 WL 35117 (September 19, 1978). Your letter notes that neither property ownership nor the residency of a parent or legal guardian is at issue here.

The single issue here is the requirement that a student satisfy the Board that he or she is a bona fide resident of the school district. While each situation must be evaluated on its own merits, a student from out of state or out of country is, generally speaking, not a resident of that

school district. If he or she is there temporarily merely to attend school, in the words of Judge Chapman in Dyer, the student is merely "transient."

We thus reaffirm our prior opinions that in order to establish residency by a student, that student must live in the District and have an intention to permanently live there, or an intent to return there, having departed therefrom. Merely being present in the District on a temporary basis in order to attend school is simply insufficient. In that instance, the student is merely "transient," not a bona fide "resident." As we stated in the 1984 opinion, such residency must be established on an individual basis through a determination that that student intends to "remain in the community [District] permanently or indefinitely."

We trust this provides the necessary legal guidance you require.

Sincerely,

Robert D. Cook
Solicitor General

cc: Victoriana Smith, Esquire