

8067 Library



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

January 30, 2006

Kenneth L. Childs, Esquire
Childs and Hailigan
Post Office Box 11367
Columbia, South Carolina 29211-1367

Dear Mr. Childs:

In a letter to this office you indicated that the McCormick County School District is the only public school system located in McCormick County. You have requested an opinion regarding pupil enrollments and transfers referencing S.C. Code Ann. §§ 59-63-480 and 59-63-490. You particularly questioned whether the board of trustees of a resident school district has discretion to deny permission to students who wish to transfer to schools in adjacent counties and adjoining districts or whether permission must be granted. You also questioned whether the receiving school districts have discretion regarding such transfers.

Section 59-63-480 states that

If school children in one county reside closer to schools in an adjacent county, they may attend such schools upon the school authorities of the county of their residence arranging with the school officials of the adjacent county for such admission and upon payment of appropriate charges as herein authorized. The board of trustees in the school district in which the pupils reside shall make written application through its county board of education to the board of trustees of the district in which the school is located for the admission of such children, giving full information as to ages, residence and school attainment, and the board of trustees in the school district, agreeing to accept such pupils, shall give a written statement of agreement. Upon receipt of such application the board of trustees of the school and its county board of education shall determine the monthly per pupil cost of all overhead expenses of the school, which will include all expenses of the school not paid by the State. Upon proper arrangement being made for the payment monthly of such overhead per pupil cost for each such child the same shall be admitted to the schools of the adjacent county. (emphasis added).

Requester's Note

Mr. Childs
Page 2
January 30, 2006

Section 59-63-490 provides that

When it shall so happen that any person is so situated as to be better accommodated at the school of an adjoining school district, whether special or otherwise, the board of trustees of the school district in which such person resides may, with the consent of the board of trustees of the school district in which such school is located, transfer such person for education to the school district in which such school is located, and the trustees of the school district in which the school is located shall receive such person into the school as though he resided within the district. (emphasis added).

In its decision in Smith v. Wallace, 295 S.C. 448, 369 S.E.2d 657 (Ct.App. 1988), the State Court of Appeals dealt with the question as to whether pursuant to Section 59-63-480, a school district board of trustees had discretion in making application to the board of trustees of a school district in an adjacent county for the transfer of students to a school in the adjacent county where those students resided closer to the school in the adjacent county . In its decision, the Court of Appeals determined that such provision "clearly and unambiguously requires" a board of trustees to make application for the transfer. As stated by the Court, "...nowhere does the statute indicate that the Board of Trustees...(of the district from which the transfer is sought)...has the discretion not to make application for their admission." 369 S.E.2d 658. The Court further determined that such statute provides that the admission of the students to the school in the district in the adjacent county to which the transfer is sought is subject to the agreement of the board of trustees of that district to accept such pupils. Therefore, pursuant to Section 59-63-480, as to students seeking to attend a school in an adjacent county that is closer to the students' residences, a school district board of trustees of the resident school district has no discretion to deny permission to students who wish to transfer to a school in a district in an adjacent county. However, as further provided by such provision, the board of trustees in the school district of the adjacent county must agree to accept such pupils. See: Ops. Atty. Gen. dated August 8, 1988; September 1, 1977(no transfer can be made unless school board consents thereto); Ops. Atty. Gen. dated May 16, 1972 and April 27, 1966 (statute is not mandatory on the receiving county, but optional since the receiving county must first agree to such a transfer).

As to situations where there is no issue of closer proximity of a school in an adjacent county to a student's residence, but the student still seeks a transfer to a school in an adjoining school district, Section 59-63-490 allows for a transfer where the student is "so situated as to be better accommodated at the school of an adjoining school district." As specified by such provision, the board of trustees of the school district where the student resides "...may, with the consent of the board of trustees of the school district in which such school is located, transfer such person for education to the school district in which such school is located...." An opinion of this office dated September 1, 1977 determined that such provision

Mr. Childs
Page 3
January 30, 2006

...requires the board of trustees of the district in which the person resides to view each request for transfer on its own merits. Further, the board must find a set of circumstances...which place the person requesting the transfer in a singular situation relative to other persons residing in the district, such that the person is "better accommodated" in a school in an adjoining district.

Consistent with such, in my opinion, the transfer of a student in such situation is discretionary with the board of trustees of the school district where the student resides and with the board of trustees of the school district where the school to which the transfer is requested is located.

You also questioned whether Sections 59-63-480 and 59-63-490 are applicable only to school districts in South Carolina or whether they are applicable to school districts in the adjoining states of Georgia and North Carolina. The term "school district" is defined for purposes of the referenced statutes by S.C. Code Ann. § 59-1-160 as

...any area or territory comprising a legal entity, whose sole purpose is that of providing free school education, whose boundary lines are a matter of public record, and the area of which constitutes a complex tax unit.

No particular reference is made to the applicability of the term solely to schools in South Carolina. However, in Patrick v. Maybank, 198 S.C. 262, 17 S.E.2d 530 at 534 (1941), the State Supreme Court indicated that "(a) school district is a body politic and corporate under the laws of this State and constitutes one of our most important political subdivisions...."

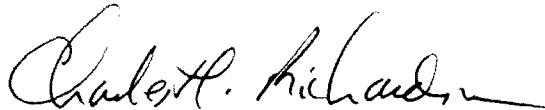
In its decision in Public Utility District No. 1 of Snohomish County, Washington v. Department of Revenue et al., 17 Or. Tax. 290 (Or. 2004), the Oregon Tax Court commented that if the term "school district" as used in an Oregon statute referred to a school district in another state the statute would have specifically indicated such. In its decision in The Commission of General Education v. Union Township School of Fulton County, 410 N.E.2d 1358 (Ind.1980), the Indiana Court of Appeals referenced a statute which specifically authorized the transfer of a student to a school district in another state.

Consistent with such, in my opinion, the term "school district" as used in Sections 59-63-480 and 59-63-490 should apply only to school districts within South Carolina. As recognized in Patrick v. Maybank, supra, a "school district" is considered a political subdivision of the State of South Carolina. Absent a statute specifically providing for the applicability of the term to a school district outside this State, in my opinion, it would not be applicable to such.

Mr. Childs
Page 4
January 30, 2006

If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General