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HENRY McMASTER
ATTORNEY GENERAL

March 17, 2006

The Honorable Ronald P. Townsend
Member, House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Representative Townsend:

In a letter to this office you requested an opinion regarding conflicting provisions in State Board of Education Regulations 43-53 and 43-53.2 as to which regulation should be utilized for determining advancement of a teaching certificate from bachelor's degree to bachelor's degree plus eighteen hours.

Regulation 43-53 (II)(B) in dealing with levels of credential classification states in part (B) that for a bachelor's degree plus eighteen hours classification:

...the educator must have 18 hours of graduate credit that he or she earns within seven years from the time the coursework is started. Individuals who do not complete the requirements during the seven years must request that the college/university revalidate the course credits before the work can be submitted for credential advancement. (emphasis added).

Regulation 43-53.2 (B)(2)(b), which deals with types and levels of credential classification, states that for a bachelor's degree plus eighteen hours classification, an individual must:

Have eighteen (18) hours of graduate credit in one specialty/content area (these may include add-on certification). Educators must follow the approved procedure for the identification of the graduate specialty/content area and completion of the coursework within seven (7) years after the request. Individuals who do not complete the requirements during the seven years must request a new evaluation of their teaching credentials and meet new requirements. (emphasis added).

According to your letter, the State Board of Education promulgated amendments to Regulation 43-53 that included the repeal of Regulation 43-53.2 in 2003. The regulations were submitted to the

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Speaker of the House and the Lieutenant Governor under one document, Document 2776. On March 24, 2003, the House Education and Public Works Committee requested that the State Board of Education withdraw, amend and resubmit Document 2776. The State Board of Education approved that request and withdrew, amended and resubmitted Document 2776 on April 2, 2003. However, the language to repeal Regulation 43-53.2 was not included in the resubmitted version and, therefore, that regulation was not repealed. Regulation 43.53 was subsequently amended effective November 28, 2003. Regulation 43-53.2 had been last amended in 2002. You have indicated that the repeal of Regulation 43.53.2 is currently before the General Assembly with a May 20, 2006 expiration.

As to your question regarding which regulation should be utilized for determining advancement of a teaching certificate from bachelor's degree to bachelor's degree plus eighteen hours, in my opinion, Regulation 43-53 should be considered the effective regulation to make such determination. An opinion of this office dated December 16, 1983 recognized the basic rule of statutory construction that regulations relating to the same subject matter should be harmonized if reasonably possible. However, because of the obvious disparity between Regulations 43-53 and 43-53.2 dealing with the requirement of completion of coursework, i.e. seven years after the coursework is started versus seven years after the request, it does not appear that the conflict can be harmonized.

In examining the two regulations, it appears that with the amendment to Regulation 43-53 having been approved in 2003 and Regulation 43-53.2 having been last effectively amended in 2002, Regulation 43-53 should be considered the regulation later in time. Regulation 43-53, therefore, would be considered the later or more recent expression of the legislature's will and, thus, controlling. Jolly v. Atlantic Greyhound Corporation, 207 S.C. 1, 35 S.E.2d 42 (1945); Feldman v. South Carolina Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943); Op. Atty. Gen. dated July 9, 1984.

Additionally, I am informed that the State Department of Education considers Regulation 43-53 to be controlling. Generally, deference is given to an agency's interpretation of its own regulations. Brown v. Bi-Lo, Inc., 354 S.C. 436, 581 S.E.2d 836 (2003). As stated in Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987), "(t)he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Courts generally do not "second guess" an agency's interpretation of its own regulations unless clearly erroneous. University of South Carolina v. Batson, 271 S.C. 242, 246 S.E.2d 882 (1978); Ops. Atty. Gen. dated September 8, 2005 and April 29, 2004. Consistent with such, if the State Department of Education has determined that Regulation 43-53 is controlling, this office will defer to its judgment.

While it appears that Regulation 43-53 controls, arguably, any inequity that may affect a particular individual as to that individual's attempt to advance his or her teaching certificate from

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bachelor's degree to bachelor's degree plus eighteen hours pursuant to the requirements of Regulation 43-53.2 could be resolved by action of the General Assembly in its review of the matter.

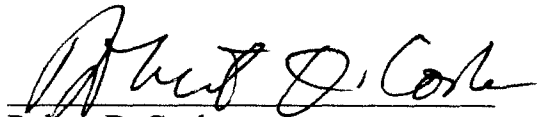
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General