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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

December 3, 2001

The Honorable Robert W. Hayes, Jr.
Member, South Carolina Senate
P.O. Box 142
Columbia, SC 29202
(also to home address)

Dear Senator Hayes:

You have requested the Opinion of this Office as to whether a principal may require students to attend make-up sessions for doctor prescribed absences in excess of the ten unexcused absences allowed by law and whether the principal can charge a fee for the program. State Board of Education (State Board) Regulation 43-274, 24 S.C. Code Ann. Reg. 43-274 (Supp. 2000) (Copy enclosed) provides, in part, that "The district board of trustees, or its designee, shall approve or disapprove any student's absence in excess of ten days, whether lawful, unlawful, or a combination thereof, for students in grades K-12." State Department of Education Guidelines adopted pursuant to that Regulation and published therewith provide as follows as to the award of high school credit:

> (B) Approval of Absences in Excess of 10 Days and Approval of Credit
>
> The district board of trustees, or its designee, shall approve or disapprove any student's absence in excess of ten days, whether lawful, unlawful, or a combination thereof, for students in grades K-12. . . .
>
> (2). In order for a student to receive one Carnegie unit of credit that student must be in attendance 120 hours per unit, regardless of the number of days missed. Therefore, districts should allow students, whose excessive absences are approved in part 1 of this section, to make up work missed to satisfy the 120 hours requirement.
>
> Examples of make up work may include:

Leonard Lotti

a. After school and weekend make up time

b. Extra work that would translate to extra hours of credit

c. Summer school

Under the above authority, make-up work appears to be authorized at least as to high school credit. I also note that paragraph (B)(1) does not limit the authority of the district to approve or disapprove absences according to whether the Carnegie credit units have been satisfied; however, you may wish to discuss these matters with the Department of Education in that the State Board of Education adopted the regulation. An administrative agency's construction of its regulation would be entitled to great weight by a court. *Cf. Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 353 S.E. 2d 132 (1987).* You may also want to inquire about the matter with the office of the school district in question if you have not already done so.

As for the fee, it does not appear to be permissible unless authorized by statute. Section 59-19-80 (8) provides that school districts boards of trustees may "charge and collect matriculation and incidental fees from the pupils when allowed by any special act of the General Assembly." I am not aware of any statute that authorizes a fee for make-up classes. Although *Washington v. Salisbury, 279 S.C. 306, 308, 306 S.E.2d 600, 601 (1983)* held that " . . . summer school was not a part of the free public school system required by the State Constitution [and that no duty existed] to make it available to all children, free of charge," the same conclusion may not extend to make-up classes because they would be conducted during the regular school year and with the authorization of the guidelines. If statutory authorization for fees for make-up classes exists, whether the principal could impose such a fee would depend upon the language of the statute and whether the district board of trustees had authorized such a fee. Section 59-19-80(8) does not provide for principals to charge fees in the absence of the authorization of the board.

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Deputy Attorney General

Enclosure