

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 19, 1996

The Honorable Barbara Stock Nielsen
State Superintendent of Education
State Department of Education
1429 Senate Street
Columbia, SC 29201

Re: Informal Opinion

Dear Dr. Nielsen:

You have today requested the advice of this Office as to whether a student may be permitted to take the exit examination this summer when he has taken it twice and failed portions of it on both occasions. The student has completed his junior year of high school and all of his high school credits. He wants to enroll in college this fall.

The exit examination is addressed by S.C. Code Ann. §59-30-10(f) (Supp. 1995) and by Reg. 43-259, Code Vol.24. The statute provides in part that "[s]tudents who do not pass the examination in the tenth grade must retake it in the eleventh grade and may take the test twice in the twelfth grade...." A summer testing program is offered for students who fail to pass the examination after four chances. The law further provides that students are obligated to enroll in a remedial program if they fail to pass the examination.

This Office has previously addressed the exit examination. Ops. Atty. Gen. No. 90-38 (May 1, 1990). Although that Opinion considered different issues it does offer guidance here. It recognized a considerable degree of weight to the construction of this law by the State Board of Education. Moreover, unlike other language in that statute which the Opinion noted as being mandatory, the above language does not appear to impose a mandatory limit on the number of times that the examination is offered which would bar the examination from being offered under the above circumstances. In addition, related Reg. 43-259, as noted in that Opinion, gives the Superintendent the authority to address "any special situations not covered by these regulations."

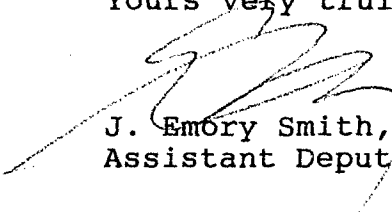
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For the above reasons, neither the statute nor the regulation appear to bar the appropriate agencies or officials from authorizing the administration of the examination under the above circumstances; however, this letter should not be interpreted as concluding that the examination is required to be given under these or other circumstances as this letter addresses only whether the law permits this offering of the test.

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

JESjr