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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 13, 1996

James A. Taylor, Ph.D.
Hearing Officer
Richland County School District One
1616 Richland Street
Columbia, South Carolina 29201

Re: Informal Opinion

Dear Dr. Taylor:

You have expressed concern regarding students who are expelled from school for having in their possession loaded firearms while at school. You reference a case where you permitted such an expelled student to apply for one of School District One's alternative to expulsion programs. However,

> [t]he student's parents ... rejected the alternative placement and opted to petition our Board of Commissioners for Home Schooling. Although the board initially denied the request for Home Schooling, they later rescinded that decision on the basis of legal advice which stipulated that Home Schooling can be viewed as an "alternative placement."
>
> I'm still somewhat confused because my understanding of the Gun-Free Schools Act of 1994 is that it "neither requires nor prohibits the provisions of alternative educational services to students who have been expelled."

Thus, your question is: "[a]re school districts obligated to provide Home Schooling for any student who has been expelled for having a firearm in his possession during school hours?"

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Request Letter

LAW \ ANALYSIS

S.C. Code Ann. Sec. 59-63-235 provides as follows:

> [t]he district board must expel for no less than one year a student who is determined to have brought a firearm to a school or any setting under the jurisdiction of a local board of trustees. The expulsion must follow the procedures established pursuant to Section 59-63-240. The one-year expulsion is subject to modification by the district superintendent of education on a case-by-case basis. Students expelled pursuant to this section are not precluded from receiving educational services in an alternative setting. Each local board of trustees is to establish a policy which requires the student to be referred to the local county office of the Department of Juvenile Justice or its representative.

Other statutory provisions are also relevant in the context of the broad authority of school districts regarding student discipline. Section 59-19-90 (3) authorizes school district trustees to "[p]romulgate rules prescribing ... standards of conduct and behavior that must be met by all pupils as a condition to the right of such pupils to attend the public schools of such district." Furthermore, Section 59-63-210 reads:

> [a]ny district board of trustees may authorize or order the expulsion, suspension, or transfer of any pupil for a commission of any crime, gross immorality, gross misbehavior, persistent disobedience, or for violation of written rules and regulations established by the district board, county board, or the State Board of Education, or when the presence of the pupil is detrimental to the best interest of the school. Every expelled pupil shall have the right to petition for readmission for the succeeding school year. Expulsion or suspension shall be construed to prohibit a pupil from entering the school, or school grounds, except for a prearranged conference with an administrator, attending any day or night school functions or riding a school bus. The provisions of this section shall not preclude enrollment and attendance in any adult or night school.

> and the action of the trustees may be reviewed by the County Board of Education, and the action of the board may, in proper cases, be reviewed by the Courts.

116 S.E.2d 846. Likewise, in Op.Atty.Gen., Op.No. 89-66 (June 20, 1989), we quoted with approval the following statement from Pervis v. LeMarque Ind. School Dist., 466 F.2d 1054 (5th Cir. 1972).

> [w]ithin the zone of reasonableness, an administrator must be given authority commensurate with his responsibility, or he cannot execute this assignment. At the level of the secondary school, the nature of the institution requires that such authority be tempered with considerable latitude and flexibility.

328 F.Supp. at 642. Accordingly, the General Assembly left it to the District as to whether or not a student expelled for bringing a gun to school is subsequently placed in an "alternative educational setting."

Moreover, nothing in the statute suggests a requirement that such an expelled student be placed in a home schooling program even if the District chooses to place him in an "alternative educational setting." There are numerous alternative educational programs in existence today and such programs are growing by leaps and bounds. The statute does not mention or require home schooling as opposed to any other alternative program. Again such is a matter of judgment for and discretion of the school board.

An opinion of this Office, dated November 2, 1984 is consistent with this conclusion. This Opinion was written prior to the enactment of Section 59-63-235, but the aforementioned Section 59-63-210 was in existence at that time. There, we pointed out that no state law required the education of expelled students, but that Section 59-63-210 authorized the attendance by an expelled student at adult or night school if the district board of trustees permitted such attendance. Again, the emphasis based upon a similarly worded statute was that allowance in an alternative program was in the discretion of the school district.

Accordingly, it is my opinion that the placement in an alternative educational setting of a student expelled for bringing a gun to school pursuant to Section 59-63-235

is a matter within the discretion of the local school board. Such provision does not require that the expelled student be home-schooled.[1]

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

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/ph

[1] The Home Schooling program is regulated by Sections 59-65-40 and 59-65-45. In Lawrence v. South Carolina State Board of Education 306 S.C. 368, 412 S.E.2d 394 (1991), the Court concluded that "the State clearly has the power to impose 'reasonable standards' on home schooling programs which the State has chosen to offer as an alternative to compulsory school attendance." Nothing in the law relating to home schooling would indicate that Section 59-63-235 does not control in the situation where a student brings a gun to school and is expelled. This is the General Assembly's most recent enactment on the subject and is deemed controlling. It is certainly reasonable for the General Assembly not to require that students expelled for gun possession be home schooled. While home schooling indeed is an "alternative educational setting" as contemplated by Section 59-63-235, this form of alternative education is not required to be provided to any student expelled for gun possession.