

The State of South Carolina



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May 1, 1990

The Honorable Charlie G. Williams
State Superintendent of Education
Room 1006
1429 Senate Street Rutledge Building
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested the opinion of this office as to the options available to students who complete the required units for graduation but do not pass the exit examination under the circumstances described below. The relevant statutory provision, section 59-30-10(f) (Paragraph F) which is set forth, in part, as follows:

"***Students who do not pass the [Exit] Examination in the tenth grade must re-take the test in the eleventh grade and may re-take the test twice in the twelfth grade, thereby providing students with four opportunities to pass the examination. If an individual exits the school system at the end of the twelfth grade without having passed the exit examination, he shall be awarded an appropriate State Certificate indicating the number of credits earned and grades completed."

In addition, State Board of Education (State Board) R43-259(H)(7)(Paragraph 7), Volume 24 of the Code as amended, also addresses this matter as follows:

Local School Boards shall insure "... (7) that students who have met all other requirements for graduation but who have not passed the exit examination are advised of their alternatives. The student may: (a) in lieu of a State High School Diploma, accept a Certificate indicating the number of credits earned and the grades completed; (b) continue active enrollment in the school until the exit examination is passed or until age 21 is reached; or (c) accept a Certificate and obtain additional opportunities to pass the exit examination by enrolling in an Adult Education Program."

Dr. Williams
Page Two
May 1, 1990

Your first question is whether R43-259 is consistent with Paragraph F. "The 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." Dunton v. South Carolina Board of Examiners in Optometry, 291 SC 221, 353 S.E.2d 732(1987). Therefore, because of the State Board's duties with respect to the exit examination, its interpretation of Paragraph F in Paragraph 7 should not be overturned absent compelling reasons. See §§ 59-5-60(1) and 59-30-10(1).

Here, no such compelling reasons appear to be present so as to overturn Paragraph 7. Option 7(a) is expressly authorized by Paragraph F. Option 7(c) is consistent with regulation 43-237(b)(4) concerning Adult Education. See also section 59-43-20 of the code. Option 7(b), which provides for continued active enrollment in the school until the exit examination is passed or until age 21 is reached, does not appear to be precluded by Paragraph F under Dunton standards of review. Although Paragraph F refers to providing four opportunities to students to pass the Examination, that statute does not expressly require an individual to exit school at the end of the twelfth grade when he or she has failed to pass the exit examination, and section 59-63-20 makes attendance at schools unlawful only for persons who are less than five or more than 21 years of age who are not otherwise excepted.

You have also asked whether schools have to give students who have failed the exam after four opportunities the option of taking the certificate while continuing in school. None of the options in the regulations include that circumstance. Paragraph F uses normally mandatory language in its last sentence concerning when a student "shall be awarded an appropriate State Certificate" (Sutherland Statutory Construction Volume 2a, Section 57.03. See also South Carolina Department of Highways and Public Transportation v. Dickinson 341 S.E. 2d 134 (1986)); however, the statute provides that the certificate should be given when "an individual exits the school system." Therefore, because the mandate to award a certificate appears to apply just to students exiting the school system, the State Board does not appear to be required to provide an option to the student of taking the certificate while continuing in school; however, under the above rule in Dunton and Paragraph F, the State Board does not appear to be precluded from choosing to adopt such an option by regulation if it so chooses.

Finally, you have asked what impact on continued enrollment is caused by students failing to take the exit examination less than the four times provided under Paragraph F. These students that you have described would have taken and passed all of the required units of graduation but would not have passed all portions of the exit examination. You give as an example a student who transferred from a private school into the public school in the eleventh grade

Dr. Williams
Page Three
May 1, 1990

so as to have had only three opportunities to take the exam. You also note the possibility of a regularly enrolled public school student having been absent during both the regular and make-up administration of one of the exams.


The question of the impact on continued enrollment of the above-described students' having taken the exit examination less than four times also appears to be a matter within administrative discretion. Dunton. Paragraph F does not expressly provide for these circumstances. Although it does refer to "providing students with four opportunities to pass the examination", it does so in the context of students having taken the examination once each in the tenth and eleventh grades and twice in the twelfth grade. Although Paragraph 7 does not expressly address these circumstances, that regulation does not expressly preclude the application of any of its alternatives to students under the above-described circumstances. In addition, I note that R43-259(I) provides that the "...Superintendent of Education may, through Administrative action, address any special situations not covered by these regulations" and provides that any action taken pursuant to this regulation will be presented to the State Board at its next regularly scheduled meeting.

In conclusion, no compelling circumstances appear to exist which would require a court to overrule the options provided for students who have not passed the exit examination in R43-259(H)(7). Neither that regulation nor section 59-30-10(f) appear to require that such a student be given the option of simultaneously taking a certificate and continuing in school, but neither this regulation nor the relevant statutes appear to prohibit such an option's being extended to a student by regulation. As to those students who have completed graduation requirements but who have not taken the exit examination four times, Paragraph F does not appear to preclude the application of the Paragraph 7 options to those students. See also R43-259(I).

This opinion addresses only the meaning of the statutory and regulatory provisions concerning the exit examination. Of course, no opinion is expressed herein as to policy matters concerning the exit examination because such considerations would be within the provinces of the State Board of Education and the General Assembly.

If you have any questions, please let me know.

Yours very truly,


J. Emory Smith
Assistant Attorney General

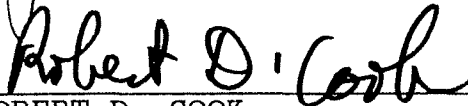
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Dr. Williams
Page Four
May 1, 1990

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