

# The State of South Carolina



## Office of the Attorney General

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April 9, 1991

The Honorable Michael L. Fair  
Member, House of Representatives  
323-B Blatt Building  
Columbia, South Carolina 29211

Dear Representative Fair:

You have advised that, while attendance rules for public school students say that a student must attend 170 days to receive credit for the year, the law seems to indicate that students with a chronic illness may be excused from attendance with a physician's statement stating the illness is of a chronic nature, etc., without regard to the 170 day requirement. You have asked for clarification of these points.

Section 59-65-90, S.C. Code Ann. (1990), required the State Board of Education to "establish regulations defining lawful and unlawful absences beyond those specifically named in this article...." The regulations were to require "that the district board of trustees or its designee shall promptly approve or disapprove any student absence in excess of ten days." Acting pursuant to this statute, the State Board of Education has promulgated several relevant regulations.

Attendance is governed generally by R.43-270, which provides as follows:

Secondary Schools: A student must attend each class a minimum number of days each instructional period before he can receive consideration for credit. Below is an attendance schedule required for the various instructional periods. \*

Instructional Semesterly	Credit	Minimum Days Attendance Required
(90 days)	1/2	85
Yearly (180 days)	1	170

This rule will not apply to cases of extended or chronic illnesses that are certified by a physician, and absences due to emergency conditions that are approved by the principal.

Any student who attends fewer than 170 days in the school year will not be eligible to receive credit unless the local school board grants approval for excessive absences in accordance with local board policy. Local school boards should develop policies governing student absences giving appropriate consideration to unique situations that may arise within their districts when students do not meet the minimum attendance requirements.

....

[\*NOTE: The number of days has been amended by implication to reflect the requirements of the EIA and R 43-274.]

The text of R.43-270 contained in Volume 24 of the Code of Laws does not reflect the "170 days" language as indicated above. The above regulation was provided by the State Department of Education and is the most current version.

Student attendance is further governed by R. 43-274, which sets forth lawful and unlawful absences. As to absences in excess of ten days, the regulation states:

The district board of trustees or its designee shall promptly approve or disapprove any student's absence in excess of ten days....

The district board of trustees, or its designee, shall approve or disapprove any absences exceeding ten, whether lawful, unlawful, or a combination thereof, for students in grades K-12.... 1/

As to high school credit, R. 43-274 provides:

In each class where high school credit may be awarded, a student must attend a minimum number of days each instructional period

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1/ Among the "lawful" absences from school as defined in R. 43-274 is an absence occasioned by illness: "Students who are ill and whose attendance in school would endanger their health or the health of others may be temporarily excused from attendance."

before receiving consideration for credit, unless the local school board grants approval for each excessive absence in accordance with local board policy. Below is an attendance schedule required for the various instructional periods.

<u>Instructional Period</u>	<u>Credit</u>	<u>Minimum Days Attendance Required</u>
Semesterly (90 days)	1/2	85
Yearly (180 days)	1	170

In interpreting any legislative enactment, including a substantive regulation, we must determine legislative intent and effectuate it if at all possible. Belk v. Nationwide Mut. Ins. Co., 271 S.C. 24, 244 S.E.2d 744 (1978). Words used therein will be given their plain and ordinary meanings unless something in the statute requires a different interpretation. Field v. Gregory, 230 S.C. 39, 94 S.E.2d 15 (1956). Where an enactment contains no ambiguity, the words must be applied literally. McCollum v. Snipes, 213 S.C. 254, 49 S.E.2d 12 (1948). All regulations on a subject should be considered together and harmonized, if at all possible. Cf., Columbia Gaslight Co. v. Mobley, 139 S.C. 107, 137 S.E. 211 (1927).

Regulations 43-270 and 43-274 provide for the minimum number of days of attendance required for a student to receive credit for various instructional periods. These regulations also clearly contemplate that excessive absences might occur and empower the local school boards to adopt policies concerning excessive absences. Provision is made for excusing absences due to extended or chronic illnesses which are certified by a physician.

In an opinion of this Office dated February 16, 1983, enclosed, this Office stated:

... [W]ithin the limits of statutory requirements, a school board may adopt a policy prescribing the conditions under which absences on account of illness will be excused.... To be valid, however, such a policy must not only be consistent with statutory requirements but it must also be reasonable....

... [R]egulation [43-274] does not prohibit a local school board from adopting a policy requiring that an absent student provide some form of proof of illness before his absence will be excused. Therefore, a school board may,

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consistent with this regulation, adopt a policy prescribing the conditions under which an absence due to illness will be excused provided the policy is a reasonable one.

... The legitimate interest of the school board that supports the adoption of a proof-of-illness statement ... is the interest in assuring that students are in school unless they have a bona fide illness, injury, or malady that prevents their attendance....

Thus, in considering whether a student's excessive absences due to chronic or extended illness would be excused, as is permitted by R. 43-270, it is appropriate to consider any policy which may have been adopted by the local school board. Further, as stated in R. 43-270 and in R. 43-274, the local school board must approve absences in excess of ten per year, per student. Of course, such determinations are made on a case-by-case basis. A student suffering from a chronic or extended illness, as certified by a physician, thus may be exempted from the 170-day attendance requirement and may receive credit for the instructional period in question, if approved by the local school board pursuant to R.43-270, R.43-274, and any local policy.

The foregoing represents the opinion of this Office as to clarifying your inquiry as to absences due to extended or chronic illness of a student. No policy of a local school board has been examined; should a particular question arise, the particular school board and its policy should be consulted. If such a policy has received a judicial or administrative interpretation, this Office would necessarily defer to such interpretation absent a clear and cogent reason to do otherwise. Tallevast v. Kaminski, 146 S.C. 225, 143 S.E. 796 (1928). No comment is made herein as to students considered to be handicapped and applicable federal law related thereto.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP/an  
Enclosure

REVIEWED AND APPROVED BY:

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