

The State of South Carolina



Office of the Attorney General

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March 29, 1991

The Honorable Mel Maurer
Dutch Fork Magistrate
1223 St. Andrews Road
Columbia, South Carolina 29210

Dear Judge Maurer:

By your letter of March 20, 1991, you had enclosed some materials related to a high school student's absences due to illness and asked our opinion concerning the granting of high school credits in such a circumstance. We have reviewed the statutes and regulations cited in your enclosure and believe that the regulations are in agreement with the various statutes. We further note that § 59-5-65(3), S.C. Code Ann. (1990), a part of the Education Improvement Act, directs the State Board of Education to "[p]romulgate rules prescribing scholastic standards of achievement. The rules shall take into account the necessity for scholastic progress in order that the welfare of the greatest possible number of pupils shall be promoted." The emphasis is added to reflect that promotion of welfare and not students was intended by this legislative grant of authority to promulgate rules and regulations.

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 (90 days)	Credit	Minimum Days Attendance Required
Yearly (180 days)	1/2	85
	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 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.

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."

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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, 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.

It is within the exclusive province of the local school board to adopt and implement policies as to excessive absences. Similarly, the school board or its designee is granted the exclusive authority to excuse absences based on those policies. There is no indication from your letter or enclosures as to what the school board policy is or as to any decisions which may have been made as to these absences by the school board or its designee. An appeals process from denial of credit by the high school is alluded to in

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one enclosure, but there is no mention of what the appeals process is, whether it was followed, or the result thereof.

While this Office may comment on the law as it relates to a given situation, we may not draw factual conclusions. Op. Atty. Gen. dated December 12, 1983. Nor are we authorized, by an opinion, to review an administrative decision to determine its propriety or to substitute our judgment for that of the local school board, in this instance. Thus, we must respectfully decline to opine as to whether academic credit should be or should have been granted under the specified conditions. Instead, we must respectfully refer the interested party to the local school board; its policies, procedures, and appellate process; and to the appropriate court if the matter cannot be resolved administratively.

We regret that we cannot be of greater assistance in this matter than providing a commentary on the relevant legal principles, and we trust that the appropriate fact-finding body (school board or court) will be able to resolve the matter.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

ROBERT D. COOK
Executive Assistant for Opinions

cc: Mr. Weldon Smith