

# The State of South Carolina

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## Office of the Attorney General

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December 28, 1988

The Honorable Charlie G. Williams  
State Superintendent of Education  
S.C. Department of Education  
Rutledge Building, Room 1006  
Columbia, SC 29201

Dear Dr. Williams:

You have requested the advice of this Office as to whether a penalty provision applies to school districts that do not comply with the teacher incentive program established by the Legislature under Section 59-21-800 et seq. of the Code of Laws of South Carolina, 1976, as amended. This program uses funds appropriated by the Legislature to provide for rewards to teachers who demonstrate superior performance and productivity. §59-21-800.

The only penalty provision provided in the legislation for the incentive program states that "[no] district may receive funds under this section unless it has an incentive program approved by the State Board of Education." Section 59-21-810(5). A plain reading of this provision indicates that only teacher incentive funds may be withheld from a district that does not have an approved incentive program. (South Carolina Department of Highways and Public Transportation vs. Dickinson, 341 S.E.2d 134 (S.C. 1986)). I am not aware of any other statutory provisions that would apply to impose penalties upon school districts for reasons associated only with the teacher incentive program. See e.g. §§12-35-1557 and 59-20-40. Proposed regulations of the State Board of Education do not provide for any penalty to be imposed upon districts in relation to the teacher incentive program. Proposed Rule R 43-201.3, S.C. State Register, Vol. 12, Issue 10; See §§59-21-800 and 59-21-801(5). For your information, I am enclosing a copy of a previous Opinion of former Attorney General Daniel R. McLeod which concluded that a statutory enactment would be necessary in order to authorize the Board of Education to withhold state appropriations from schools not meeting standards established by the State Board. (Ops. Atty. Gen., October 27, 1965).

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In conclusion, no statutory provisions or incentive program regulations appear to authorize a penalty for school districts concerning their participation in the teacher incentive program except §59-21-810(5) under which no district may receive funds for the teacher incentive program unless it has an approved incentive program. If you have any questions, please let me know.

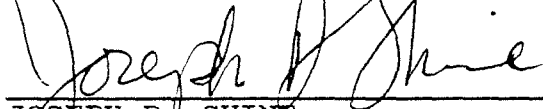
Yours very truly,



J. Emory Smith, Jr.  
Assistant Attorney General

JESjr/jps  
Enclosure

REVIEWED AND APPROVED BY:



JOSEPH D. SHINE  
Chief Deputy Attorney General



ROBERT D. COOK  
Executive Assistant for Opinions