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February 26, 1986

The Honorable Charlie G. Williams  
Superintendent  
South Carolina Department of Education  
Rutledge Building  
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested the opinion of this office as to when remedial programs must be provided for students failing the exit examination required of high school students by §59-30-10 (f) of the Code of Laws of South Carolina, 1976 and the responsibility of the district to compel participation by students in this program. This law provides no express deadline for the implementation of remedial programs nor does it address what steps a district should take if a student refuses to enroll in one. The relevant portions of this law are set forth as follows:

"Beginning with the school year 1985-86, the eleventh grade examination may be no longer administered and the Board shall cause to be administered an exit examination to all tenth grade students. Local school districts shall establish remedial programs to assist those students who do not pass the examination. Passage of this exit examination is a condition for the receipt of a state high school diploma for those students who otherwise meet the requirements for the diploma during the school year 1989-90 and thereafter....Failure to pass the examination obligates the student to enroll in a remedial program."

The Honorable Charlie G. Williams  
February 26, 1986  
Page 2

Students who do not pass the examination in the tenth grade must retake the test in the eleventh grade and may retake the examination twice in the twelfth grade, thereby providing students with four opportunities to pass the exit 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." (Emphasis added)

Because §59-30-10 (f) does not expressly address your questions, interpretation of this statute should be guided by the rules that "...the dominant factor is the intent, not the language of the legislature" (Spartanburg Sanitary Sewer District v. City of Spartanburg, 321 S.E.2d 258 (SC 1984)) and that "remedial" legislation such as §59-30-10 should be broadly construed to effect its purpose (Sutherland Statutory Construction, Vol. 3, §60.01 (4th Ed.)). Here, the legislative intent appears to be that all students be given remedial instruction who fail the examination in 1985-86 or subsequent years. That remedial programs should be implemented for those students now in the tenth grade who fail the 1985-86 examination is indicated by the fact that the 1985-86 examination requirements are followed immediately by the direction to establish the remedial programs. Sutherland, Vol. 2A, §46.05. This conclusion is further supported by the provision that failure of the examination, without qualification as to year or grade of failure, "...obligates the student to enroll in a remedial program." Id. Although 1985-86 tenth graders will not have to pass the examination to graduate, a legislative purpose in requiring them to take remedial instruction if they fail may have been to ensure that these students benefit educationally from the examination. As to the students required to take and pass the examination in subsequent years, the remedial programs clearly have the additional purpose of helping the students to pass the examination that is required for their receipt of a diploma.

The law does not specify when remedial programs must be given for those students who fail. To fulfill the above noted purpose of the remedial programs, those programs would have to be offered sometime before the examination is administered to eleventh graders who have previously failed it. Sutherland, §60.01 and Spartanburg, supra. Although discretionary language is used with respect to a

The Honorable Charlie G. Williams  
February 26, 1986  
Page 3

student's retaking the examination twice in the twelfth grade, providing remedial instruction again to those students, at least, between the eleventh grade and the first twelfth grade examinations would be consistent with the above noted intent. See Sutherland, Vol. 2A, §57.03. 1/

You have also asked to be advised as to the responsibility of school districts for students who refuse to enroll in a remedial program. As noted above, this circumstance is not expressly addressed by the law. Therefore, this subject may be addressed by State Board of Education regulations or by local school districts in accordance with local policy concerning students' failures to enroll in or attend other required programs. See §§59-5-60 (3) and (6) and 59-19-60 (3). See also §§59-30-80 and 59-30-90.

In conclusion, remedial instruction appears to be required for all students who fail to pass the exit examination given in 1985-86 and/or subsequent years. For these students, programs must be provided prior to the next time the examination is offered. The State Board of Education and local school districts appear to have reasonable discretion to ensure compliance with enrollment requirements for these programs.

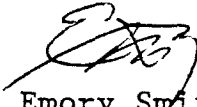
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1/ This discretionary language may have been intended merely to emphasize the opportunity for students to take the twelfth grade examination twice. Therefore, requiring enrollment in a remedial class for students failing the eleventh grade examination appears to be consistent with the above noted legislative intent. Spartanburg and Sutherland, §46.05. Interpreting this law so as to require further remedial instruction for students failing the first examination given in the twelfth grade may also be consistent with the law's emphasis on the remedial programs and the consequences of a student's failing to pass the fourth examination (Id.); however, because of the lack of express guidance on the number of times remedial programs must be given, legislative clarification may be desirable.

The Honorable Charlie G. Williams  
February 26, 1986  
Page 4

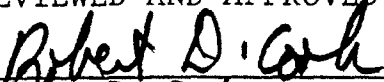
If you have any questions or if I may be of further assistance,  
please let me now.

Yours very truly,

  
J. Emory Smith, Jr.  
Assistant Attorney General

JESjr/srcj

REVIEWED AND APPROVED BY:

  
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Executive Assistant for Opinions