

The State of South Carolina

2700
Library



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3636

May 21, 1987

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

Dear Dr. Williams:

You have requested the advice of this Office as to three questions concerning the promotion eligibility of students and the provision of remedial education to them. Each question is separately addressed below.

- 1) In making promotion decisions for students, is the utilization of a student's test scores from previous years as a supplement to a school district's criteria for promotion consistent with statutory and regulatory requirements?

This question relates to a "Statement of Interpretation" (Statement) of the State Department of Education which applies to promotion policies contained in statutory and regulatory provisions. The Statement provides, in part, as follows:

As prescribed in the State Board of Education regulation, promotion decisions are to be based on a combination of district criteria and the applicable State testing program (STP) results as stipulated in each school district's promotion policy. If the current-year STP results are not available by the time a promotion decision is to be made, this decision should be formulated using available district criteria. To supplement the district criteria school districts may also wish to review the most recent STP test results and performance trend data for each student. If the application of district criteria and a review of recent STP results do not lead to a clear decision on

The Honorable Charlie G. Williams
May 21, 1987
Page 2

promotion, the final decision should be postponed until current STP results become available... (Emphasis added).

Section 59-5-65 (7) of the Code of Laws of South Carolina, 1976 gives the State Board of Education (State Board) the "power and responsibility to...establish criteria for the promotion of students to the next higher grade." These criteria include the following provisions:

In grades 1, 2, 3, 6, and 8, a student's performance on the Basic Skills Test of reading shall constitute twenty-five percent of the assessment of his achievement in reading and his performance on the Basic Skills Test of mathematics shall constitute twenty-five percent of the assessment of his achievement in mathematics. The State Board of Education shall specify other measures of student performance in each of these subjects which shall constitute the remaining seventy-five percent of the student's assessment.

By regulation 43-269 State Board has provided similar requirements for the above mentioned grades. In addition, for grades 4, 5, and 7, twenty-five percent of the english and mathematics assessment is based upon the "[STP] test...mandated by the Education Finance Act of 1977 at a level determined by the State Board of Education." R.43-269; see §59-20-60(4) (c). For grades 9 through 12, students are eligible for promotion if they meet the pupil achievement criteria and promotion standards prescribed by the local Board of Trustees. R.43-269.

Neither §59-5-65 nor R.43-269 expressly address your question; however, "[t]he 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, (S.Ct., Opinion #22661, February 2, 1987). Here, the Statement interprets the statute and regulation to permit the use of "most recent STP test results and performance trend data for each student" to supplement school district criteria when the current year test results are not available by the time promotion decisions are to be made. Because promotion decisions are, in part, based upon the test results, a reasonable conclusion is that the legislative intent

was that the most recent test scores be utilized when available (Spartanburg Sanitary School District v. City of Spartanburg, 321 S.E.2d 258 (S.C. 1984); Sutherland Statutory Construction, Vol. 3, §60.01 (4th Ed.)), but the Statement addresses the circumstance of unavailability. Because the test results comprise no more than twenty-five percent of the promotion criteria, because earlier test scores would be considered in light of other factors, and because of the weight given to administrative interpretation of statutes, the Statement's interpretation, on its face, appears to be consistent with the statute and regulations as to the use of test data; however, the reasonableness of this interpretation of the use of this test data as applied to particular individuals will depend upon all the factual circumstances concerning them. Such fact questions as to the individual students cannot be addressed within the scope of opinions of this Office. Ops. Atty. Gen., (December 12, 1983).

- 2) Will the proposed Statement of Interpretation require a modification to the existing regulation or a statutory amendment?

Although amending the regulation and/or the statute would remove any question as to the accuracy of the Statement's interpretation of those provisions, because the Statement interprets existing provisions rather than sets forth new requirements, amending the regulation or statute is not required. See §1-23-10(4).

- 3) If remediation of a student is permitted by the provisions concerning promotion and Education Improvement Act (EIA) and Chapter I funds are not available or applicable, must a district still provide the required remediation activities?

Funding for the remedial programs is included under the Education Finance Act (EFA) in §59-20-40 as amended by the EIA (Act 512, Part II, §9 of 1984). Section 59-20-40(8) clearly indicates that the General Assembly is to pay the local share of funding for the remedial programs set forth in the EFA because those funding requirements were added by the EIA. See also, §12-35-1559. This conclusion is consistent with the direction to the State Board of Education to promulgate regulations to ensure maximum utilization of State and Chapter I funds to achieve the purpose of §59-20-40(7).

The Honorable Charlie G. Williams

May 21, 1987

Page 4

In addition the only funding penalty specifically imposed on districts for remedial education is the proportionate reduction in funding to districts that are failing to serve one hundred percent of their eligible remedial children funded under §59-20-40(7).

Reading these provisions together indicates that the remedial programs covered by §59-20-40(7) do not have to be provided to the extent that State or Chapter I funding is not forthcoming. Although §59-30-40(c) requires districts to provide basic instruction to aid students in bringing their performance up to statewide minimum standards when deficiencies are indicated by testing programs, such instruction does not have to be provided locally to the extent that it is encompassed in the more recent provisions of §59-20-40. Sutherland, Vol. 2A, §57.03. Because you have confined your questions to remedial programs associated with promotion decisions, this opinion does not address funding for remedial programs for those students who do not pass the exit examination. See §59-30-10(f) and Ops. Atty. Gen., (February 6, 1986).

Although school districts are not required to fund remedial programs to the extent that State funding is not forthcoming, maximum use of resources is emphasized. Under §59-5-65(9) "[e]fforts must be made to use existing personnel by including, but not limited to, (a) modification of school year, (b) modification of school day, and (c) increased utilization of summer schools." In addition, other resources may be available to school through policies and procedures to expand school volunteer programs and involve civic, professional and business organizations. §59-5-65(12) and (13). Finally, school districts are not precluded from choosing to use their own funds for remedial programs for which State funding has not been provided.

CONCLUSION


Because administrative interpretations of statutes are entitled to great weight, the Statement of Interpretation for the use of test results from prior years should be found, on its face, to be consistent with applicable statutory and regulatory provisions for promotion decisions. Of course, whether such an interpretation is

The Honorable Charlie G. Williams
May 21, 1987
Page 5

reasonable as applied to particular individuals will depend upon the facts concerning the use of these examinations together with the other criteria for promotion decisions. Because the Statement is only an interpretation of existing statutory and regulatory provisions, neither the statute nor the regulation are required to be amended, but to do so would remove any question of the statutory or regulatory authority to utilize prior year test scores. If State and Chapter I funding is not forthcoming for remedial programs under the relevant provisions of §59-20-40(7) local funding is not required for that statute's programs, but maximum usage should be made of funding that is provided as set forth in §59-5-65(9), (12) and (13).

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


Yours very truly,



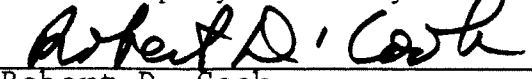
J. Emory Smith, Jr.
Assistant Attorney General

JESjr:srcj

REVIEWED AND APPROVED BY:



Frank K. Sloan
Chief Deputy Attorney General



Robert D. Cook
Executive Assistant for Opinions