

1983 WL 181899 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 30, 1983

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

Dear R. Williams:

You have requested that this office advise you as to whether schools are compelled to require basic instruction for students scoring below standard on the Basic Skills Assessment test given to them in the 11th grade. [Section 59-30-10, et seq. of the Code of Laws of South Carolina](#), 1976, as amended. Section 59-30-30(e) states that all public school boards ‘. . . shall . . . [p]rovide basic instruction to aid the student in bringing his performance up to the statewide minimum standards for a particular grade when a deficiency is indicated by the results of the tests administered under the basic skills assessment program or other assessment procedures’ [emphasis added].

The use of the word ‘shall’, which generally carries a mandatory construction, indicates that school boards are required to provide the basic instruction. [Sutherland Statutory Construction](#), Vol. 2A § 57.03 (4th ed.). This conclusion is supported by the statute's making other duties subject to the directive ‘shall’ which are clearly not optional. [See e.g.](#), Section 59-30-30(a). Thus, school boards must make basic instruction available to 11th grade students who have taken the examination. To comply with this requirement, a board may have to make basic instruction available at an alternative time for those students who are unable to take it during regular class periods because of their needing to take courses required for graduation; however, the law does not indicate that it would require that the class times be tailored to suit merely the preferences of each student.

Although the law directs that school boards provide basic instruction, it does not require that districts compel students to take it after the 11th grade. Compulsion is not indicated by either the definition of ‘provide’ or by the legislation generally. [See, Websters Third New International Dictionary](#) (1976). Therefore, if a district makes a reasonable effort to provide the basic instruction, it has complied with the law even if a student rejects the opportunity to enroll in that class.

If we may be of further assistance, please contact us.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

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