

1984 WL 249999 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 29, 1984

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

Dear Dr. Williams:

You have requested the opinion of this office as to how many years a former teacher would have to attain the next teaching contract level upon re-entry to the teaching profession under [§ 59-26-40 of the Code of Laws of South Carolina \(1976\)](#), as amended by Act 512, Part II § 9, Subdivision C. The parts of this Section in question read as follows:

The teacher failing to receive the annual or continuing contract must not be employed as a classroom teacher in any public school in this State for a minimum of two years. Prior to reentry (sic) as a provisional or annual contract teacher, he must complete six units of credit for certificate renewal and six units of credit for remediation in areas of identified deficiencies. The teacher shall reenter at the contract level which he had attained before dismissal and continue toward the next contract level. The provisions of this paragraph granting an opportunity for reentry into the profession shall be available to a teacher once, and only once. (emphasis added).

As you know, [§ 59-26-40](#) sets up a three-tiered system of teachers' contracts. Under it a teacher receives an annual contract '[a]fter successful completion of the one-year provisional [contract] period.' He or she then receives a continuing contract '[a]fter the successful completion of a provisional year and one annual contract . . .' (emphasis added). Under the provisions of [§ 59-26-40](#) '[n]o person may be employed as a provisional teacher for more than two years . . . [and] . . . '[a] teacher may be employed for a maximum of two years under annual contracts'. Teachers who fail to receive the annual or continuing contracts must follow the procedure set forth above before re-entering the profession. Your question is whether, upon re-entry, a teacher has one or two years to reach the 'next contract level'.

You have posed a difficult question. No express answer is provided by [§ 59-26-40](#) or any other provision of law. Although some statutory guidance is given, arguments can be made to support both the one and two year re-entry periods. See Sutherland Statutory Construction, Vol. 2A § 46.05 (4th Ed.) That the strongly worded last sentence of the re-entry provision makes re-entry available 'once and only once' could mean that a teacher has only one year to ' . . . contin toward the next contract level.' The use of the word 'continue' might indicate that the teacher is not starting the level anew. This reading is supported by other provisions of [§ 59-26-40](#) which condition attainment of the next contract level upon successful completion of a provisional or annual contract. Accordingly, the argument could be made that re-entry is not designed to give a teacher anything more than one additional chance for a successful year on the way 'toward the next contract level;' however, a very strong counter argument can be made because the re-entry level is expressly limited only by the type of the contract rather than by the number of years. A court could be motivated to follow this latter argument and allow a teacher two years when those years are his or her last opportunity for re-entry.

**\*2** Legislative clarification seems particularly desirable here when this great uncertainty exists as to which interpretation a court would give the statute. Because of the time-frame for preparing for re-entry legislative action may be obtainable before a teacher's opportunity would be barred under either interpretation of the present statute.

If we may be of other assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.

Assistant Attorney General

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