

1979 S.C. Op. Atty. Gen. 68 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-53, 1979 WL 29059

Office of the Attorney General

State of South Carolina

Opinion No. 79-53

March 15, 1979

***1 SUBJECT: Education: School Districts; County Boards of Education**

(1) A school district which permits the enrollment of a pupil by waiving the requirements of § 59-63-20(3)(4) shall not be entitled to receive any state aid for any students who fail to meet such requirements.

(2) A school district board of trustees may, under applicable state law, imposed tuition fees upon the parents of such children as a condition of the waiver of the age requirements.

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QUESTIONS:

(1) Is a school district denied state-aid funds for a child who attends school in such district and who has not attained the minimum age requirement imposed by subsections (3) and (4) of § 59-63-20?

(2) May a local school district charge the parents of a child for the cost of educating such child during the period in which the district received no state-aid as a result of a waiver granted under § 59-63-20(5)?

STATUTE AND CASES:

§ 59-63-20, § 59-19-10, § 59-19-510, § 59-63-480, [Code of Laws of South Carolina](#), 1976, as amended; [Holler v. Rock Hill School Dist.](#), 60 S.C. 41, 38 S.E. 220 (1901).

DISCUSSION:

(1) § 59-63-20, [Code of Laws of South Carolina](#), 1976, as amended, provides:

It shall not be lawful for any person who is less than five or more than twenty-one years of age to attend any of the free public schools of this State, including kindergarten, except that:

(1) Persons over twenty-one years of age may attend night schools;

(2) When a pupil is in the graduating class and becomes twenty-one years of age before graduation, he shall be permitted to complete the term if otherwise qualified to do so;

(3) Students may enter kindergarten in the public schools of this State if they will attain the age of five on or before November first of the applicable school year;

(4) Students may not enter the first grade in the public schools of this State unless they will attain the age of six on or before November first of the applicable school year or have substantially initiated a first grade program in another state that has a different attendance age requirement than South Carolina;

(5) The restrictions in this section may be waived by the local board of school trustees in any proper case; provided, however, that if the provisions of items (3) and (4) of this section are not complied with, the school district shall not be entitled to receive any state aid for any students who fail to meet such requirements.

This Act, effective August 8, 1978, establishes the permissive ages of attendance for pupils in the public schools of South Carolina as between 5 and 21 years of age. However, students under the age of six on November 1 of a school year may attend school only upon certain conditions prescribed in subsections (3) and (4). The Act further provides that the conditions or limitations in said subsections may be waived by the local board of school trustees, but by waiving such provisions, the school district will not be entitled to receive state aid for such students.

*2 The decision of the board of trustees to grant or deny a waiver of such restrictions may be appealed to the county board of education pursuant to § 59–19–510, et seq. because the decision is a ‘matter of local controversy in reference to the construction or administration of the school laws or the placement of any pupil in any school within the district.’

(2) Section 59–19–90(10) empowers the school board trustees to prescribe conditions and charges for attendance in the public schools of such districts for all children specially situated and not meeting the eligibility requirements of [§ 59–63–30, Code of Laws of South Carolina](#), 1976, and who petitioned the trustees in writing seeking permission to attend the public schools in such district. [§ 59–63–30](#) provides for certain categories of students who may not be charged fees to attend certain school districts and is applicable only to students between the ages of six and twenty-one years of age. However, this waiver provision, supra, applies only to children under the age of six years on November 1.

A school district may condition a waiver of the requirements above upon the parents paying the actual cost of educating the child without violating the constitutional provision for free public schools. [Holler v. Rock Hill School Dist.](#), 60 S.C. 41, 38 S.E. 220. Therefore, the local school district board of trustees may impose the payment of a charge for attendance for such children as a condition of waiving the age requirements imposed by [§ 59–63–20](#), as amended.

CONCLUSION:

State law provides that state aid will not be received by school districts when certain age requirements are waived by the local school district board of trustees. However, the board of trustees may impose a charge for attendance upon the parents of such children as a condition of granting the waiver of the age requirement imposed by [§ 59–63–20](#).

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