



ALAN WILSON
ATTORNEY GENERAL

April 25, 2016

The Honorable Molly M. Spearman, Superintendent
South Carolina Department of Education
Rutledge Building, 1429 Senate Street
Columbia, SC 29201

Dear Superintendent Spearman:

Attorney General Alan Wilson has referred your letter dated February 17, 2016 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Question (as quoted from your letter):

The South Carolina Department of Education (SCDE) seeks an opinion on an issue as it relates to § 59-32-10, et seq., [the South Carolina] Comprehensive Health Education Program. The SCDE is tasked with enforcing the newly enacted Erin's Law found at § 59-32-[3]0(G). Subsection G provides that

"Beginning with the 2015-2016 school year, districts annually shall provide age-appropriate instruction in sexual abuse and assault awareness and prevention to all students in four-year-old kindergarten, where offered, through twelfth grade. This instruction must be based on the units developed by the board, through the department, pursuant to § 59-32-20(B)."

Section 59-32-50, enacted before Erin's Law, provides that after proper notice by the school, parents may opt their children out of portions of the Comprehensive Health Education Program. Those portions do not specifically include the later-enacted Erin's Law, rather it references "reproductive health," "family life," and "pregnancy prevention." Those defined terms do not use the words "sexual abuse and assault awareness prevention," but they do mention "criminal sexual conduct" and other topics that could be interpreted as being within the Erin's Law provision.

The question is whether parents may, after notice from the school, opt their children out of the Erin's Law instruction.

Discussion:

As you are aware, the Attorney General is statutorily required to consult and advise State officers on questions of law concerning their official business. S.C. Code § 1-7-110. Our advice to you regarding your legal question will begin and end with the recommendation you seek legislative clarification. In the event you are not able to receive the clarification needed, we offer the following analysis.

Let us begin by reviewing South Carolina Code § 59-32-50. It reads:

SECTION 59-32-50. Notice to parents; right to have child exempted from comprehensive health education program classes.

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Pursuant to policies and guidelines adopted by the local school board, public school principals shall develop a method of notifying parents of students in the relevant grades of the content of the instructional materials concerning reproductive health, family life, pregnancy prevention, and of their option to exempt their child from this instruction, and sexually transmitted diseases if instruction in the diseases is presented as a separate component. Notice must be provided sufficiently in advance of a student's enrollment in courses using these instructional materials to allow parents and legal guardians the opportunity to preview the materials and exempt their children.

A public school principal, upon receipt of a statement signed by a student's parent or legal guardian stating that participation by the student in the health education program conflicts with the family's beliefs, shall exempt that student from any portion or all of the units on reproductive health, family life, and pregnancy prevention where any conflicts occur. No student must be penalized as a result of an exemption. School districts shall use procedures to ensure that students exempted from the program by their parents or guardians are not embarrassed by the exemption.

S.C. Code § 59-32-50 (1976 Code, as amended) (emphasis added). The first step in statutory interpretation is to determine and achieve legislative intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). As we have stated in prior opinions of this Office, "the title or caption of an act may be properly considered to aid in the construction of a statute and to show the intent of the Legislature." Op. S.C. Att'y Gen., 2004 WL 2451474 (Oct. 15, 2004) (citing Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972)). The title to Section 59-32-50 is clear in giving parents notification of their right to exempt their child from "comprehensive health education program classes." Moreover, the caption of the statute's act includes "SO AS TO PROVIDE FOR THE ESTABLISHMENT OF A COMPREHENSIVE HEALTH EDUCATION PROGRAM IN ELEMENTARY AND SECONDARY SCHOOLS, ... AN EXEMPTION FOR STUDENT PARTICIPATION..." Act No. 437, 1988 S.C. Acts 2911. As you mention in your letter, the statute specifically authorizes the exemption from "reproductive health, family life, and pregnancy prevention ... and sexually transmitted diseases if instruction in the diseases is presented as a separate component." S.C. Code § 59-32-50. Those terms are statutorily defined in Section 59-32-10. Both Sections 59-32-20(B) and 59-32-30(G) direct "age-appropriate" instruction in "sexual abuse and assault awareness and prevention" to "four-year-old kindergarten" through "twelfth grade" and both sections are located under the title of and within the Comprehensive Health Education Program as located in Chapter 32 of Title 59 of the South Carolina Code of Laws. Furthermore, this Office has previously opined concerning the exemptions to the Comprehensive Health Education Act and concluded that they would apply to instruction before or after the Act. Op. S.C. Att'y Gen., 1989 WL 406202 (October 12, 1989). Therefore, the simple deduction is that the General Assembly intended if there are units or instruction as a part of the Comprehensive Health Education Program covering materials "concerning reproductive health, family life, [and] pregnancy prevention... and sexually transmitted diseases if instruction in the diseases is presented as a separate component" as statutorily defined, a parent may exempt their child.

Sections 59-32-20(B) and 59-32-30(G), which require instructional units in "sexual abuse and assault awareness and prevention," do not appear to offer a parental exemption to the extent the instructional

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units do not cover "reproductive health, family life, and pregnancy prevention... and sexually transmitted diseases if instruction in the diseases is presented as a separate component." However, please note the provisions of Chapter 32 do not apply to private schools. S.C. Code § 59-32-70; S.C. Code Regs. 43-238 (1992). Therefore, we cannot support a conclusion that the General Assembly believes and intended that Section 59-32-30(G) would apply to all children in South Carolina since the entire Comprehensive Health Education Program does not apply to students in private schools according to Section 59-32-70. Id.

Recommendation:

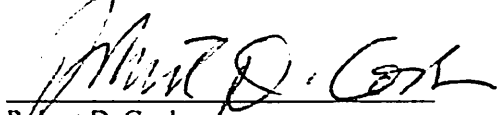
As stated above, our advice to you regarding your legal question will begin and end with the recommendation you seek clarification from the General Assembly. However, if you are not able to obtain legislative clarification, we advise we believe a court will determine the General Assembly intended¹ if there are units or instruction as a part of the Comprehensive Health Education Program² covering materials "concerning reproductive health, family life, pregnancy prevention ... and sexually transmitted diseases if instruction in the diseases is presented as a separate component," a parent may exempt their child. Regarding units or instruction concerning "sexual abuse and assault awareness and prevention," there does not appear to be a parental exemption for students in public schools to the extent the information does not concern "reproductive health, family life, pregnancy prevention ... and sexually transmitted diseases if instruction in the diseases is presented as a separate component" and their statutory definitions. Nevertheless, until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as a court of law interprets statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

¹ This legal opinion is based solely on the law provided to us in your question as the law is currently written and does address the politics behind the subject and the arguments thereof.

² Please note as stated above that the Comprehensive Health Education Program does not apply to children in private schools. S.C. Code § 59-32-70; S.C. Code Regs. 43-238 (1992).