

1979 WL 42710 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 21, 1979

***1 RE: Opinion Concerning South Carolina High School Equivalency Examination**

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

Dear Dr. Williams:

You have asked this office to render an Opinion concerning a proposed Rule for adoption by the State Board of Education, which would allow sixteen (16) year old students who are wards of the Department of Youth Services to qualify for the tests of General Educational Development. Specifically, you have asked whether such a Rule would relieve the aforementioned sixteen year old students, upon successful passage of the examination, from the requirements of South Carolina's Compulsory Attendance Law. [§ 59-65-10, Code of Laws of South Carolina, 1976.](#)

The Compulsory Attendance Law presently requires parents or guardians of children between the ages of seven and sixteen years, inclusive, to cause such children to regularly attend public or private school. Section 59-65-30 enumerates six exceptions to the Compulsory Attendance requirement of [§ 59-65-10](#). Successful passage of the South Carolina High School Equivalency Examination is not one of the exceptions included in [§ 59-65-30](#). Further, I have reviewed the remaining provisions of the [South Carolina Code of Laws](#) relating to education, and this review has failed to reveal any statute relieving a parent or guardian of the burdens of the Compulsory Attendance Law upon passage of tests of General Educational Development without graduation or its equivalent from high school as specified in [§ 59-65-30\(a\)](#).

While I can ascertain no specific limitation upon the State Board of Education's authority to promulgate the Rule in question, the mere promulgation of such Rule would not in and of itself override the express and clear dictates of Statutory Law. Obviously, when a student must attend high school after successful passage of the High School Equivalency Examination, one basic purpose for taking the examination would be frustrated.

Parenthetically, should the State Board of Education determine to promulgate the proposed Rule, a finding would have to be made that special need exists to allow sixteen year old students of the Department of Youth Services to take the examination. Such a finding is necessary in order to prevent the denial of equal protection of law to other sixteen year old high school students who may also desire to take the examination.

In conclusion, the opinion of this office is that the State Board of Education has authority to promulgate the proposed Rule in question; however, such Rule would not supersede the express requirements of South Carolina's Compulsory Attendance Law. Please do not hesitate to call upon me if you have any further questions concerning this matter.

With kindest regards,
Sincerely,

Paul S. League
Assistant Attorney General

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