

1979 S.C. Op. Atty. Gen. 126 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-92, 1979 WL 29097

Office of the Attorney General

State of South Carolina

Opinion No. 79-92

July 13, 1979

***1 Subject: Education, Students—Handicapped**

Neither the ‘Education For All Handicapped Children Act,’ [20 USCS § 1401 et seq.](#) (P.L. 94–142), nor South Carolina law require that a local school district provide a free appropriate public education for a handicapped child who has graduated from high school and/or completed the program of special education provided in his or her individualized education program.

To: Dr. Charlie G. Williams
State Superintendent of Education

Question:

Is a local school district required to continue to provide a free appropriate public education to a handicapped child under the age of twenty-one, who has graduated from high school and/or completed all special education programs included in his or her individualized education program?

Statutes and Other Authority:

[20 USCS § 1401 et seq.](#) (P.L. 94–142); 45 C.F.R. §§ 121a.4, 121a.122, 121a.125, 121a.220, 121a.222, 121a.227, 121a.300, 121a.304, 121a.320, 121a.321, 121a.323, 121a.341, 121a.342, 121a.346, 121a.349, 121a.750; §§ [59–33–10](#), [59–33–30](#), and [59–63–20](#), [Code of Laws of South Carolina \(1976\)](#), as amended; ‘Defined Minimum Program for South Carolina School Districts,’ State Department of Education, 1977, p. 40; ‘Procedures for Survey, Screening, Evaluation, Placement and Dismissal of Children Into/Out of Programs for the Handicapped,’ South Carolina State Department of Education, 1978, pp. 20, 24, 30, 36, 43, 58 and 61; [Websters Third New International Dictionary \(1976\)](#).

Discussion:

The answer to this question depends not only upon the requirements of South Carolina law. It is contingent upon whether such a responsibility is imposed on the State and the local school districts by ‘The Education For All Handicapped Children Act,’ [20 USCS § 1401, et seq.](#) (P.L. 94–142). This act provides assistance to the States for the education of handicapped children if the States comply with certain requirements for the childrens' education.¹ To qualify for assistance, a State must demonstrate that it has met, among other requirements, the following conditions set out in [20 USCS § 1412\(2\)\(B\)](#):

. . . a free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with the State law or practice, or the order of any court, respecting public education within such age groups in the State;

Local educational agencies, such as school districts, see 20 USCS § 1401(8), in turn, must comply with certain requirements for the provision of a ‘free appropriate public education’ for handicapped children. See 20 USCS § 1414.

*2 ‘Free appropriate public education’ (FAPE) is defined in 20 USCS § 1401(18) as follows:

... special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the State standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (d) are provided in conformity with the individualized education program required under § 614(a)(5) [20 USCS § 1414(a)(5)].

Section 1401(16) defines the term ‘special education’ as meaning ‘... specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instructions in hospitals, and institutions.’

As noted above, FAPE must be provided to eighteen to twenty-one year old handicapped children by September 1, 1980, unless to do so would be inconsistent with state law or policy. These provisions do not make expressly clear whether they apply to children who have completed their education before reaching the age of twenty-one. P.L. 94–142 is also ambiguous as to the degree of education that must be provided after September 1, 1980;² however, regardless of what requirements are imposed on states after September 1, 1980, other provisions of P.L. 94–142 indicate that, both before and after that date, the obligations of the State and the local school districts cease if a child has graduated from high school and/or successfully completed an authorized special education program.

An ‘Individualized Education Program’ (IEP) must be established for every handicapped child receiving special education. See 20 USCS §§ 1412(4) and 1414(a)(5) and 45 S.F.R. §§ 121a.346 and 121a.349. In addition, the definition for FAPE, *supra*, specifies that special education and related services be provided in conformity with the IEP. Section 1401(19) defines IEP as being a written statement for each handicapped child which, in part, includes ‘... a statement of the specific educational services to be provided to such child ... and the projected date for initiation and anticipated duration of such services ...’ [emphasis added].

That the IEP must include the ‘anticipated duration’ for special educational services demonstrates that such services will not extend to the age of twenty-one for all children. As noted above, § 1401(16) defines special education, in part, as ‘specially designed instruction to meet the unique needs of a handicapped child ...’ Thus, the ‘anticipated duration’ of specific educational services would be to that point when they are anticipated to meet the unique needs of the handicapped child.

As noted above, as a part of his FAPE, a handicapped child is entitled to special education and related services which include ‘... an appropriate preschool, elementary or secondary education ...’ 20 USCS § 1401(18). Thus, when a handicapped child has graduated from a secondary school and/or his needs have been met for special education provided in his IEP, P.L. 94–142 requires no further education even though the child may not have attained the age of twenty-one.³

*3 South Carolina law is consistent with the above interpretation of the application of the act to eighteen to twenty-one year old children. Section 59–63–20 of the Code of Laws of South Carolina (1976), as amended, provides, in part, as follows:

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 school;

(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; . . .

(5) The [above cited] restrictions in this section may be waived by the local board of school trustees in any proper case . . .

Also, [Section 59–33–10](#), *et seq.* of the Code provides for special education of handicapped children in the public schools between the ages designated in the above statute.

Although neither of these provisions state at what point a handicapped student's education ends before age twenty-one, the South Carolina State Board of Education has established certain general and specific qualifications which each pupil must meet before such pupil can be classified and counted in a public school for purposes of the Educational Finance Act, [§ 59–20–20 of the Code](#), as amended. *South Carolina State Register*, Vol. 3, Issue 2, February 9, 1979, pages 152–154. Paragraph (A)(6) of the general criteria provides, in part, that a student shall be dropped from membership when he leaves school because of graduation. *Webster's Third New International Dictionary (1976)* defines 'graduation,' in part, as follows: ' . . . the act of completing a phase of one's formal education, esp; the act of receiving a diploma from a school . . . ' Rule 43–259 of the Code, as amended, provides that a State High School diploma, or a certificate designed and issued by the School District, shall be awarded students who complete a program of prescribed special education. *See also* [§ 59–30–40 of the Code](#), as amended; 'Defined Minimum Program for South Carolina School Districts,' State Department of Education, 1977, p. 40. These requirements indicate that the education of handicapped students is directed toward their completing a program of education rather than automatically continuing it to a certain age.

Consistent with this view are other provisions of South Carolina law for handicapped children. Section 59–33–20 specifically gives the State Board of Education the authority to promulgate rules and regulations for the state's special education program. Pursuant to this authority, the Board has promulgated Rule 42–243 of the Code, as amended. Subparagraph (C)(4)(d) requires that the individualized education program include a statement of the specific educational services to be provided to each pupil. The regulation states that this requirement refers, in part, to a description of ' . . . all education services required to meet the unique needs of the pupil as reflected in the IEP . . . ' Under subparagraph (C)(4)(e) the IEP must contain the anticipated duration of the educational services. Thus, these provisions permit the same conclusion as that noted above for 94–142, which was that the education of a handicapped child is to continue until the child's 'unique needs' have been met. *See also* 'Procedures for Survey, Screening, Evaluation, Placement and Dismissal of Children Into/Out of Programs for the Handicapped,' South Carolina Department of Education, Spring, 1978, pp. 20, 24, 28, 30, 36, 43, 58 and 61.

***4** Based upon the foregoing analysis of the statutes and other authorities, the Opinion of this Office is that a local school district is not required to continue to provide a free appropriate public education for a handicapped child who has graduated from high school and/or completed the special education program provided in his or her IEP.

Conclusion:

Both South Carolina and federal law indicate that local school districts are not required to provide a free appropriate public education for handicapped children when those children have been graduated from the public schools and/or have successfully completed the program of special education provided in their individualized education program.

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State Attorney

Footnotes

- 1 Few cases have construed any of the provisions of P.L. 94-142. Recently, the case Armstrong, et al. v. Kline, et al., Civil No. 78-172 (D. Pa., filed June 21, 1979) considered a Pennsylvania State Department of Education policy which limited education to 180 days a year for all handicapped and non-handicapped children. The Court found that certain handicapped children needed a program of special education in excess of 180 days. According to Armstrong, the Pennsylvania policy prevented the provision of a program of special education designed to meet those childrens' unique needs and violated P.L. 94-142. But see Opinion of the Attorney General, to Dr. Charlie G. Williams, State Superintendent of Education, From Paul S. League, Assistant Attorney General, May 22, 1979.
- 2 Some indication is given that goals must be developed for providing FAPE for all children. 20 USCS §§ 1412(a), 1413(a)(2), 1414(a)(1)(C)(ii), 1418(d)(1). At least, a timetable must be established to accomplish a 'goal of full educational opportunity' for all handicapped children. 20 USCS §§ 1412(2)(A)(i) and 1414(a)(1)(C). This latter term is not defined although comments to 45 C.F.R. §§ 121a.300 and 121a.304, note some distinctions between it and FAPE.
- 3 The following regulations pertaining to P.L. 94-142 parallel many of the statutes cited above. 45 C.F.R. 121a.4, 121a.121, 121a.122, 121a.125, 121a.330, 121a.222, 121a.337, 121a.300, 121a.304, 121a.320, 121a.321, 121a.323, 121a.341, 121a.342 and 121a.750.

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