

1978 WL 35117 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 19, 1978

***1 SUBJECT: Education**

A student eighteen years or older who maintains a separate residence from his parents or legal guardian may attend the public schools in the district in which he resides provided that: (1) the student's residence qualifies as a place where he actually lives or has his home and (2) there is no specific intent to avoid the residency requirements established for students residing with parents or legal guardians.

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School Board Attorney

QUESTION:

Is a student eighteen years or older who maintains a separate residence from his parents or legal guardian eligible to attend public schools in the school district in which he resides?

STATUTES AND CASES:

[§ 59-63-20 of the Code of Laws of South Carolina](#), 1976; The Constitution of South Carolina, 1895, Article XVII Section 14; [Jernigan v. Capps](#), 187 Va. 73, 45 S.E. 2d 886; [Wray v. Wray](#), 149 Neb. 376, 31 N.W. 2d 228; 1969-70 Ops. Att'y. Gen. No. 2825, p. 39.

DISCUSSION:

[§ 59-63-20 of the Code of Laws of South Carolina](#), 1976, provides in part:

It shall not be lawful for any person who is less than six or more than twenty-one years of age to attend any of the free public schools in this State . . .

Be the enactment of this statute, the legislature set the minimum and maximum ages of attendance for students at free public schools and provided that local boards of trustees could waive these provisions.

As a general rule, students must attend school in the district within which their parent or legal guardian resides, absent a transfer to an adjoining district as provided by law. The Constitution of South Carolina, 1895, Article XVII, Section 14 provides:

Every citizen who is eighteen years of age or older, not laboring under disabilities prescribed in this Constitution or otherwise established by law, shall be deemed sui juris and endowed with full legal rights and responsibilities, provided, that the General Assembly may restrict the sale of alcoholic beverages to persons until age twenty-one.

Based upon the foregoing provision, a student eighteen years or older would no longer fulfill the 'child status' dealt with by the attendance statute.

CONCLUSION:

If a student eighteen years or older maintains a separate residence from his parents or legal guardian, he may attend the public schools in the district in which he resides provided that: (1) the student's residence qualifies as a place where a person actually lives or has his home, [Jernigan v. Capps](#), 187 Va. 73, 45 S.E. 2d 886 or a place where one is habitually present and to which having departed therefrom, he intends to return, [Wray v. Wray](#), 149 Neb. 376, 31 N.W. 2d 228 and (2) there is no specific intent to avoid the residency requirements established for students residing with parents or legal guardians. cf. 1969-70 Ops. Att'y. Gen., No. 2825, p. 39.

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