

1978 WL 35208 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 6, 1978

*1 Mr. George L. Schroeder
Executive Director
Legislative Audit Council
500 Bankers Trust Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

This is in reply to your request for an opinion from this Office concerning the interpretation of [§ 59-20-50\(3\), Code of Laws of South Carolina](#), 1976, as amended. Specifically, you have inquired whether the policy adopted by the South Carolina Department of Education meets the statutory guidelines to ensure that funds appropriated under each weighted classification be spent in the specific area which serves the child which generated the funds.

[§ 59-20-50\(3\)](#), as amended by 60 STAT. Act No. 644, § 28(A)(3) (1978 General Appropriations Act, permanent section), provides:

Eighty-five percent of the funds appropriated through state and local effort for each weighted classification shall be spent in direct and indirect aid in the specific area of the program planned to serve those children who generated the funds. Districts expending less than the required eighty-five percent of the appropriated amount shall be subject to a penalty the following fiscal year in the amount equal to the difference between the amount spent and the required eighty-five percent figure. Provided, however, that during the 1978-79 school year, this requirement will not apply to the funds generated by children in the pupil classification 'speech handicapped pupils.'

This Section provides for a method of accounting to ensure that a minimum of eighty-five percent of the state and local effort for each weighted pupil classification be spent on the educational programs for the children who generated the funds.

The South Carolina Department of Education regulation, a copy of which is attached, has divided the weighted classifications into two general classifications for accounting purposes. The student whose education programs are relatively fixed and constant are in category one. Students, who for one reason or another, spend a portion of their time in the general educational programs and a portion of their time in special programs, either for remedial studies or for the physically and mentally handicapped, fall in category two.

Persons in category two must be placed in as many general educational programs as possible to meet the mandates of Public Law 94-142, the Education of the Handicapped Children's Act. The Department of Education has utilized a formula where monies in category two are divided between the general program and the special programs. Under category one, the required expenditure is equal to eighty-five percent times the average daily membership times the base student cost times the program weight. Under category two, the only difference in the formula is that the base student program weight is subtracted from the program weight before being added as a variable. This allows the districts to allocate monies where they are actually being spent for category two students. There is, per se, no segregated program for most category two children which would encompass the entire student's day.

*2 It is the opinion of this Office that the Department of Education may use the formula adopted, provided the formula ensures that eighty-five percent of the funds are spent in direct and indirect aid in the specific areas of the total program plan to serve those children generating the funds. This is not to infer that this is the only formula permissible under the present Act, since in the future data will be more readily available to validate the formula required.

Please do not hesitate to contact me if I can be of further assistance.

With kindest regards,

Sincerely,

Frank H. DuRant
Assistant Attorney General

1978 WL 35208 (S.C.A.G.)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.