

1973 S.C. Op. Atty. Gen. 333 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3649, 1973 WL 21100

Office of the Attorney General

State of South Carolina

Opinion No. 3649

October 23, 1973

*1 Senator James M. Waddell, Jr.

State House

Columbia, South Carolina 29201

Dear Senator Waddell:

You have requested an opinion on the meaning of the following sentence quoted from Section 21–295.14 of the South Carolina Code of Laws, 1962, as amended (1972 Supplement):

When a school district cannot satisfy the requirements of this section by providing for the education of its resident handicapped children because of insufficient numbers, the district may contract with other districts within the State or school systems or institutions outside South Carolina which maintains approved special educational facilities.

Pursuant to this provision, a local school district which itself does not have an adequate number of handicapped school children resident therein to provide special education programs and services to such children may, after documenting the insufficient number and receiving the approval of the State Department of Education, contract with other local school districts within South Carolina. As an alternative, a local school district which cannot provide special education programs for its handicapped school children may contract with out-of-state school systems or institutions which maintain approved special education facilities.

There is no language in the above quoted provision which gives to a local school district the authority to contract with any body other than another school district if the special education program is to be provided within the State; if the special education program is to be provided outside South Carolina, a local school district may contract either with a school system or with an approved institution, public or private.

The purpose of the legislation as expressed in Section 21–295.10 is ‘to provide for the mandatory establishment of educational and training services and facilities for handicapped children in the public schools, . . . [Emphasis added.]

Section 21–295.14 provides in part:

The board of trustees of each school district shall, . . . establish and operate a program which will insure an appropriate education for each handicapped child resident within the district . . . [Emphasis added.]

The intent of the legislation clearly appears to be that the establishment and operation of special education programs and services for handicapped school children are the duty and responsibility of the local school districts and are not to be delegated to private agencies or institutions. The Act does recognize, however, that there may be instances in which a local school district may, with the prior approval of the Department of Education, contract with an out-of-state private or public institution; for example, such an institution may be able to provide specialized facilities for a uniquely handicapped child.

Nevertheless, the local school districts are directed to establish and operate approved programs for their handicapped school children and, in the absence of any express authority to contract with bodies other than school districts for the provision of such programs within South Carolina, the local school districts cannot answer this legislative directive by substituting private agencies or institutions for themselves and thereby delay the establishment of public educational programs for the handicapped.

*2 The opinion of this office is, therefore, that a local school district can contract with another school district if the special education program for its handicapped school children is to be provided within South Carolina; if the special education program is to be provided outside South Carolina, a local school district may contract either with a school system or with an approved institution, public or private.

Very truly yours,

Karen L. Henderson
Legal Assistant

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