

56. STUDENT ISSUES: ATTENDANCE AND INSTRUCTIONAL ISSUES

Compulsory Attendance

Title 16, Chapter 28 of Code of Alabama (2001 Replacement) addresses compulsory attendance law for Alabama school boards. This chapter is crafted to place a burden on parents to assure that their school age children are enrolled in a school, whether it is public, private or church school. Additional legislative responsibilities are placed on city and county boards of education and their superintendents. This section address legislative enactments related to school attendance.

Attendance Requirements

Section § 16-28-3 Code of Alabama (2001 Replacement) requires every child between the ages of 7 and 16 to be in attendance at a public school, a private school, a church school, or be instructed by a competent private tutor. Section § 16-28-2.1 Code of Alabama (2001 Replacement) makes parents accountable for their child's attendance in one of the educational environments listed above, with enforcement duty lying with the local board of education and the juvenile court system. Section § 16-28-12 Code of Alabama (2001 Replacement) places criminal liability on parents for failing to assure that their child is not in school. It is important to note that at every juncture, church schools are exempt from oversight by the state board of education or local boards of education. (See, e.g., Section § 16-28-3 Code of Alabama (2001 Replacement)).

Sections §§ 16-8-34 and 16-9-17(b) Code of Alabama (2001 Replacement) require county superintendents and county boards of education to adopt a plan establishing attendance districts. Section § 16-9-30 Code of Alabama (2001 Replacement) requires county superintendents to enforce compulsory attendance laws, and provide attendance reports as required by law. City superintendents are required to recommend the employment of attendance officers to implement compulsory attendance laws, by Section § 16-12-18 Code of Alabama (2001 Replacement)

Exemptions

Section § 16-28-6(a) Code of Alabama (2001 Replacement) lists exemptions from compulsory attendance requirements:

- (1) Children whose physical or mental condition is such as to prevent or render inadvisable attendance at school or application to study. Before issuing such certificate of exemption, the superintendent shall require a certificate from the county health officer in counties which have a health

unit, and from a regularly licensed, practicing physician in counties which do not have a health unit, that such a child is physically or mentally incapacitated for school work;

(2) Children 16 years of age and upward or children who have completed the course of study of the public schools of the state through high school as now constituted;

(3) Where because of the distance children reside from school and the lack of public transportation such children would be compelled to walk over two miles to attend a public school;

(4) Where the children are legally and regularly employed under the provisions of the law relating to child labor and hold permits to work granted under the terms of said child labor law.

(b) Nothing in this section shall be construed so as to deny any right to any child granted under the provisions of Sections 16-39-1 through 16-39-12

Subsection (a)(1) in years past was used to justify denying access to school for students with physical or mental disabilities. It should be stressed that subsection (a)(1) provides an exemption for parents from punishment when their students do not attend school, when an exemption certificate is provided by the local superintendent. The provision does not give an exemption for school personnel so that they do not have to serve disabled students. Subsection (b), in specifying the application of Title 16, Chapter 39 Code of Alabama (2001 Replacement), makes it clear that students with disabilities are to be served.

A separate section in the compulsory attendance law provides permissive ages at which students may attend school. Section § 16-28-4 Code of Alabama (2001 Replacement) requires students to reach age 6 by September 1st for admission to first grade and age 5 by September 1st for admission to kindergarten. An Attorney General Opinion supplements this provision, by ruling that, at common law, a student is eligible for admission if their birthday is August 31st of the respective year. Report of Attorney General of Alabama, October-December 1963, Vol. 113. p. 20.

If a student is enrolled in school, the student is subject to compulsory attendance laws, even if the student is over age 16. Further, principals are not required to investigate why a student has been a habitual truant before reporting to the truancy officer. See, S.H. v. State, 2003 WL 21488876 (Ala.Civ.App. 2003).

Residency

Residency is a condition precedent to being permitted to attend school within a certain school district or attendance zone of a school district. In general, residency is a function of state law and local board policy, in deciding which persons are legal residents of a particular jurisdiction. Residency cannot be conditioned on alien status. Aliens who are not residents of a school district can be excluded from school because of their lack of residency (and not because of their alien status). See Module 34 for discussions concerning the authority of county and city boards of education to provide for education for students who are across attendance boundaries.

Fees

Much of the litigation involving the assessment of fees nationally arises because of provisions in state constitutions requiring “free” schools. The argument follows that, where a state constitution requires free schooling, then fees cannot be assessed. The Alabama State Constitution does not have such language in its education clause (Section 256), nor amendments to it. The issue of fees in schools is controlled, therefore, entirely by state law, state-level regulations, and local policy.

Section § 16-11-26 Code of Alabama (2001 Replacement) prohibits the collection of fees of any kind from children attending any of the first six grades of city schools during the school term. Section § 16-13-13 Code of Alabama (2001 Replacement) prohibits the assessment of fees for courses required for graduation. In elective courses (not required for graduation) local school boards may set reasonable fees for courses requiring laboratory and shop materials and equipment, with a waiver provision for students who cannot afford the fee. Funds collected for such courses must be spent only for such courses. Section § 16-13-13 is not to be construed in a way that prohibits fundraising activities, however it does prohibit requiring students to participate in the fundraising.

Curriculum

As part of the state’s Education Accountability Plan, Section § 16-6B-2 Code of Alabama (2001 Replacement) specifies a core curriculum for all students. Sections §§ 16-9-21 and 16-12-9 Code of Alabama (2001 Replacement) requires city and county superintendents, respectively, to prescribe a written course of study and submit it for approval to their respective boards of education. Sections §§ 16-8-28 and 16-12-20 Code of Alabama (2001 Replacement) require city and county boards of education to adopt a course of study and make copies of the course of study available to teachers and citizens. However, Section § 16-35-4 Code of Alabama (2001 Replacement) requires the State Board of Education, based upon the recommendation of the State Superintendent, to prescribe the minimum contents of courses of study for all grade

levels. The State Superintendent is advised on course of study contents by a Courses of Study Committee, which is created by Section § 16-35-1 Code of Alabama (2001 Replacement).

Section § 16-36-61 Code of Alabama (2001 Replacement) requires local boards of education to adopt textbooks that have been approved by the State Board of Education. Members of local boards who adopt textbooks rejected by the State Board are subject to a misdemeanor conviction, a \$500 fine, and imprisonment at hard labor for a term not exceeding six months. Section § 16-36-62 Code of Alabama (2001 Replacement) requires local boards of education to appoint local textbook committees for the purpose of selecting textbooks from the State Board-approved list of textbooks.

The Alabama Legislature has also added specific provisions related to curriculum and instruction. Section § 16-1-36 Code of Alabama (2001 Replacement) requires tutoring for students who score below average scores on the SAT. Section § 16-40-1 Code of Alabama (2001 Replacement) requires instruction in physical education (except in church schools), Section § 16-40-1.1 Code of Alabama (2001 Replacement) requires instruction in parenting skills and responsibility, and Section § 16-40-9 Code of Alabama (2001 Replacement) requires instruction in cardiopulmonary resuscitation (CPR). Section § 16-40A-2 Code of Alabama (2001 Replacement) describes minimum contents to be included in sex education curricula, and Section § 16-40A-3 Code of Alabama (2001 Replacement) does the same for drug education curricula. Another provision in Chapter 40A prohibits teaching that encourages illegal conduct:

Conduct that is illegal under state or federal law, including but not limited to, illegal use or distribution of controlled substances, under-age alcohol use or distribution, sexual intercourse imposed by means of force, or sexual actions which are otherwise illegal, shall not be encouraged or proposed to public school children in such a manner as to indicate that they have a legitimate right to decide or choose illegal conduct. Section § 16-40A-4 Code of Alabama (2001 Replacement).

Title 16, Chapter 41 of the Code of Alabama (2001 Replacement) codifies the Drug Abuse Education Act of 1971, which requires that schools teach about the dangers of drugs. Section § 16-41-5 Code of Alabama (2001 Replacement) prohibits the exclusion of nonpublic school teachers or administrators from participating in in-service teacher education institutes or curriculum development programs established by Chapter 24.

Section § 16-43-3 Code of Alabama (2001 Replacement) requires all students to daily have the opportunity to voluntarily recite the pledge of allegiance to the United States flag.

High School Diplomas for Veterans

In 2001, the Legislature authorized the State Superintendent to award a standard high school diploma to any honorably discharged veteran whose high school career was interrupted by military service at particular times in the past. (Alabama Act 2001-345; codified at Section §16-1-37 Code of Alabama (2001 Replacement).) The statute was amended in 2004 to specify that the veteran had to have been a resident of Alabama prior to entry into the United States Armed Forces, and to specify dates of service to qualify for the diploma. (Alabama Act 2004-549.)