

1998 WL 56477 (Miss.A.G.)

Office of the Attorney General

State of Mississippi  
Opinion No. 97-0817  
January 9, 1998

**Re: Compulsory School Attendance & Excused Absences**

\*1 Mr. Zeno Carter  
Superintendent  
Pearl River County School District  
7306 Highway 11  
Carriere, Mississippi 39426

Dear Mr. Carter:

Attorney General Mike Moore has received your letter of request and has assigned it to me for research and reply. In your letter you pose the following questions which we answer in the order presented:

I have a question concerning a valid excuse for temporary nonattendance as applied to compulsory school attendance versus a school attendance policy.

Question: Since [MS Code 37-13-91\(4\)\(a\) through \(i\)](#) is recognized as valid reasons for being absent from school, can a school district include days documented under (a) through (i) toward an absentee limit policy that would cause a student to lose a credit, fail a course, or in lower grades, be retained in the current grade?

Under Miss. Code Ann. Section 371391(4) what constitutes an unlawful or unexcused absence, is defined as follows:

(4) An “unlawful absence” is an absence during a school day by a compulsory-school-age child, which absence is not due to a valid excuse for temporary nonattendance. Days missed from school due to disciplinary suspension shall not be considered an “excused” absence under the provisions of this section....

What constitutes a lawful or excused absence is further defined by this section as follows:

(a) An absence is excused when the absence results from the compulsory-school-age child’s attendance of an authorized school activity with the prior approval of the superintendent of the school district or his designee. Such activities may include field trips, athletic contests, student conventions, musical festivals and any similar activity.

(b) An absence is excused when the absence results from illness or injury which prevents the compulsory-school-age child from being physically able to attend school.

(c) An absence is excused when isolation of a compulsory-school-age child is ordered by the county health officer, by the State Board of Health or appropriate school official.

(d) An absence is excused when it results from the death or serious illness of a member of the immediate family of a compulsory-school-age child. The immediate family member of a compulsory-school-age child shall include children, spouse, grandparents, parents, brothers and sisters, including stepbrothers and stepsisters.

(e) An absence is excused when it results from a medical or dental appointment of a compulsory-school-age child where an approval of the superintendent of the school of the school district or his designee is gained prior to the absence, except in the case of emergency.

(f) An absence is excused when it results from the attendance of a compulsory-school-age child at the proceedings of a court

or an administrative tribunal if such child is a party to the action or under subpoena as a witness.

\*2 (g) An absence may be excused if the religion to which the compulsory-school-age child or such child's parents adheres, requires or suggests the observance of a religious event. The approval of such absence is within the discretion of the superintendent of the school district or his designee, but approval should be granted unless the religion's observance is of such duration as to interfere with the education of the child.

(h) An absence may be excused when it is demonstrated to the satisfaction of the superintendent of the school district or his designee that the purpose of the absence is to take advantage of a valid educational opportunity such as travel including vacations or other family travel. Approval of such absence must be gained from the superintendent of the school district or his designee prior to the absence but such approval shall not be unreasonably withheld.

(i) An absence may be excused when it is demonstrated to the satisfaction of the superintendent of the school district or his designee that conditions are sufficient to warrant the compulsory-school-age child's nonattendance. However, no absences shall be excused by the school district superintendent or his designee when any student suspensions or expulsions circumvent the intent and spirit of the compulsory attendance law.

For purposes of this question, I am assuming that you are seeking prospective advice only and that the school district absences policy to which you refer provides for the automatic failure of a compulsory-school-age child upon the child's accumulating a set number of absences even if such absences are statutorily permitted. To impose an automatic failure upon a student whose absences are by statute lawful and thus by law must be excused is not contemplated by the Compulsory School Attendance Law or any other statute that we can find.

Question: Can a school district legally deny academic credit to a student with excessive absences even though the student is making passing grades?

Question: Can a school district legally change a student's grade from passing to failing because of excessive absences?

The second and third questions were touched upon in 93-CA-411- SCT.

Your second and third questions appear to be the same for purposes of this response. In [Board of Trustees of the Pascagoula Municipal Separate School District v T.H., a Minor](#), 681 So.2d 110 (Miss. 1996) the Mississippi Supreme Court held that an absences policy designed to deter truancy which operates to fail a student when the absences are the result of a disciplinary suspension is contrary to public policy as enunciated in the Compulsory School Attendance statutes. The absences policy at issue was that seven days unexcused absences resulted in an automatic 65/F for the semester, and the policy was applied against a student who was suspended out of school for ten days. In response to your second and third questions, under this ruling a school district could not impose an out-of-school suspension on a student and then also apply an absences policy that automatically fails the suspended student for the semester.

\*3 The Court in [T.H.](#) was not presented with nor did it decide the legality of such absences policies as applied to merely truant students -- that is, students with unlawful absences. However, such a policy, if it acts to fail a truant but passing student, would be disciplinary and punitive in nature, and imposition would be subject to procedural due process in accord with [Warren County Board of Education v Wilkinson](#), 500 So.2d 455 (Miss. 1986).

Sincerely,

Mike Moore  
Attorney General  
By: Anita C. Clinton  
Assistant Attorney General

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