

STATE OF SOUTH DAKOTA

OFFICE OF

THE ATTORNEY GENERAL

October 28, 2013

Cris Palmer
Counsel for Rapid City School District 51-4
P.O. Box 8045
Rapid City, SD 57709-8045

OFFICIAL OPINION NO. 13-02

RE: *School Day Defined for Calculating Length of Suspension from Extracurricular Activities*

Dear Mr. Palmer:

You have requested an official opinion from this Office:

QUESTION: Do days held during a special summer school term constitute a “school day” for purposes of calculating the sixty-day suspension from extracurricular activities under SDCL 13-32-9?

ANSWER: Yes. A “school day,” for purposes of SDCL 13-32-9, is a day during any school term, including a special summer school term, established by the local school board where instruction is being provided at the school the student is enrolled.

FACTS: You have provided the following factual statement:

A high school student was convicted of marijuana possession on May 1, 2013. He is ineligible to participate in any extracurricular activity for one calendar year from the date of conviction, pursuant to SDCL 13-32-9. However, he opts to participate in an assessment with a certified chemical dependency counselor, thus allowing the one-year suspension to be reduced to sixty school days. See SDCL 13-32-9. The student enrolls in summer school. Does his enrollment in summer school count towards the 60 “school days” suspension from extracurricular activities under SDCL 13-32-9?

IN RE QUESTION:

SDCL 13-32-9 governs student ineligibility from participation in extracurricular activities for drug related violations. SDCL 13-32-9 provides:

Any person adjudicated, convicted, the subject of an informal adjustment or court-approved diversion program, or the subject of a suspended imposition of sentence or suspended adjudication of delinquency for possession, use, or distribution of controlled drugs or substances or marijuana as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-15, is ineligible to participate in any extracurricular activity at any secondary school accredited by the Department of Education for one calendar year from the date of adjudication, conviction, diversion, or suspended imposition of sentence. **The one-year suspension may be reduced to sixty school days if the person participates in an assessment with a certified chemical dependency counselor or completes an accredited intensive prevention or treatment program.** If the assessment indicates the need for a higher level of care, the student is required to complete the prescribed program before becoming eligible to participate in extracurricular activities. Upon a subsequent adjudication, conviction, diversion, or suspended imposition of sentence for possession, use, or distribution of controlled drugs or substances or marijuana as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-15, by a court of competent jurisdiction, that person is ineligible to participate in any extracurricular activity at any secondary school accredited by the Department of Education. Upon such a determination in any juvenile court proceeding the Unified Judicial System shall give notice of that determination to the South Dakota High School Activities Association and the chief administrator of the school in which the person is participating in any extracurricular activity. The Unified Judicial System shall give notice to the chief administrators of secondary schools accredited by the Department of Education for any such determination in a court proceeding for any person eighteen to twenty-one years of age without regard to current status in school or involvement in extracurricular activities. The notice shall include name, date of birth, city of residence, and offense. The chief administrator shall give notice to the South Dakota High School Activities Association if any such person is participating in extracurricular activities.

Upon placement of the person in an informal adjustment or court-approved diversion program, the state's attorney who placed the person in that program shall give notice of that placement to the South Dakota High School Activities Association and chief administrator of the school in which the person is participating in any extracurricular activity.

As used in this section, the term, extracurricular activity, means any activity sanctioned by the South Dakota High School Activities Association. (emphasis added).

In 2006, the Legislature amended SDCL 13-32-9 to allow a student the opportunity to reduce the period of one-year ineligibility to a term of sixty school days if the student satisfied certain prescribed criteria. The intent of the amendment was to provide the student an added incentive to participate in chemical dependency prevention and treatment programs. In setting forth the reduced length of ineligibility, however, the Legislature did not define what constitutes a "school day." Further, there is no other statute, Department of Education rule, or South Dakota High School Athletics Association provision that defines what constitutes a school day in the context of extracurricular activity ineligibility.

Where a term is not defined, this Office follows the rules of statutory construction utilized by our courts. Under these standards, the intent of a statute is determined from what the Legislature said, rather than what a court thinks the Legislature should have said. This determination of intent is generally confined to the application of the plain, ordinary meaning of the statutory language. *Clark County v. Sioux Equipment Corporation*, 2008 S.D. 60, ¶ 28, 753 N.W.2d 406, 417. The provisions in SDCL 13-26-1 and 13-26-2 provide guidance in interpreting the plain, ordinary meaning of a "school day."

SDCL 13-26-1 provides:

The school fiscal year shall begin July first and end June thirtieth. Each local school board shall set the number of days in a school term, the length of a school day, and the number of school days in a school week. The local school board or governing body shall establish the number of hours in the school term for kindergarten programs, which may not be less than four hundred thirty-seven and one-half hours. The Board of Education shall promulgate rules pursuant to chapter 1-26 setting the minimum number of hours in the school term for grades one through three. The

number of hours in the school term for grades four through twelve may not be less than nine hundred sixty-two and one-half hours, exclusive of intermissions. An intermission is the time when pupils are at recess or lunch.

SDCL 13-26-2 provides:

The school board or governing body shall operate kindergarten through grade twelve in its schools. The school board shall operate grades one through twelve for at least a nine-month regular term in any one school year, and the number of hours in a school term for kindergarten shall be set pursuant to § 13-26-1. The regular school term may be conducted on a year-round basis and shall begin on a date established by the school board. The Board of Education shall promulgate rules pursuant to chapter 1-26 governing the operation and scheduling of year-round schools. Any school board or governing body may release graduating high school seniors from school before the end of the regular term. A school is not required to make up time for school closing because of weather, disease, or emergency once it has reached the minimum number of hours in the school term as required by state law. Graduating seniors are excused from make up time if the make up time occurs after the students have graduated or after graduation exercises have been held. If classes have been convened and then are dismissed, or if classes convene at a time later in the day than normal, because of inclement weather, that day constitutes a school day in session equal to the number of hours planned for that day as established in the local school district calendar for the year.

School boards are encouraged to provide time within the regular school term for curriculum and staff development which shall be in addition to the time required in this section. Each school board shall determine the appropriate amount of time for this activity and how best to use the time based on local needs for program development, increased parent participation, student contact, teachers' preparation, or other needs of the schools in the district. School is in session only when classes are held and as provided in §§ 13-26-4 and 13-26-4.1. A school board may operate a special term during the summer months.

Under SDCL 13-26-1 and 13-26-2, it is the local school board that establishes a school term or terms, the number of days in a school term, the length of a

school day and the number of school days in a school week. Under these statutes, a local school board is authorized to establish a regular school term at least nine months long. Additionally, a school board may establish and operate a special school term during the summer months. Under these provisions, a school day is a day a school board determines instruction is to be provided during an established school term. Depending upon the school term established by a school board, a school day could occur during a regular term or during a special summer term.

Absent any clarifying language in SDCL 13-32-9, the term “sixty school days” must be construed consistent with the plain ordinary meaning of a school day set forth above. For purposes of computing the length of the 60-day period of ineligibility under SDCL 13-32-9, it is my opinion that the phrase “school day” means any day that instruction is provided at the school the ineligible student is enrolled. This is the case, regardless of whether the school day occurs during a regular term or a special summer term established by the local school board. If the Legislature had intended that the ineligibility period only applies to a regular school term, it could have done so consistent with the language and intent the Legislature displayed when it enacted SDCL 13-26-1 and 13-26-2.

It is, therefore, my opinion that where a school district has established and operates a special summer school term and the affected student is enrolled in summer school, the number of days that instruction is provided during the special summer school term is counted as a school day when computing the length of the student’s 60-school day period of ineligibility under SDCL 13-32-9.

Very truly yours,

/s/

Marty J. Jackley
Attorney General

MJJ/JPH/rar