

Section 16-28-1

Definitions.

For purposes of this article, the following words, terms and phrases shall have the following respective meanings, unless clearly indicated otherwise:

(1) **PRIVATE SCHOOL.** Includes only such schools as hold a certificate issued by the State Superintendent of Education, showing that such school conforms to the following requirements:

- a. The instruction in such schools shall be by persons holding certificates issued by the State Superintendent of Education;
- b. Instruction shall be offered in the several branches of study required to be taught in the public schools of this state;
- c. The English language shall be used in giving instruction;
- d. A register of attendance shall be kept which clearly indicates every absence of each child from such school for a half day or more during each school day of the school year.

(2) CHURCH SCHOOL. Includes only such schools as offer instruction in grades K-12, or any combination thereof including the kindergarten, elementary, or secondary level and are operated as a ministry of a local church, group of churches, denomination, and/or association of churches on a nonprofit basis which do not receive any state or federal funding.

(School Code 1927, §302; Code 1940, T. 52, §299; Acts 1982, No. 82-218, p. 260, §1.)

Section 16-28-2

Purposes of article.

The purposes of this article are to secure the prompt and regular attendance of pupils and to secure their proper conduct, and to hold the parent, guardian or other person in charge or control of a child responsible and liable for such child's nonattendance and improper conduct as a pupil, and to effect these purposes the chapter shall be liberally construed and the courts and those charged with the enforcement of its provisions are vested with a wide discretion in its administration.

(School Code 1927, §321; Code 1940, T. 52, §317.)

Section 16-28-2.1

Adoption of standards for mandatory attendance policy; parents held accountable; enforcement.

The Legislature finds that mandatory attendance policies for schools differ from school system to school system throughout the State of Alabama. The State Board of Education shall adopt standards for a mandatory and enforceable attendance policy for all students in public schools in the State of Alabama. **Parents shall be held accountable in accordance with Sections 16-28-12 and 16-28-7, for the failure of the child who is of compulsory attendance age to attend either public, private or church-school. Enforcement of this section shall lie with the local board of education and the juvenile court system.**

(Acts 1991, No. 91-323, p. 602, §15.)

Section 16-28-3

Ages of children required to attend school; church school students exempt from operation of this section.

Every child between the ages of seven and 16 years shall be required to attend a public school, private school, church school, or be instructed by a competent private tutor for the entire length of the school term in every scholastic year except that every child attending a church school as defined in Section 16-28-1 is exempt from the requirements of this section, provided such child complies with enrollment and reporting procedure specified in Section 16-28-7. Admission to public school shall be on an individual basis on the application of the parents, legal custodian or guardian of the child to the local board of education at the beginning of each school year, under such rules and regulations as the board may prescribe.

(School Code 1927, §301; Code 1940, T. 52, §297; Acts 1956, 2nd Ex. Sess., No. 117, p. 446, §3; Acts 1982, No. 82-218, p. 260, §4.)

Section 16-28-5

Private tutor.

Instruction by a private tutor means and includes only instruction by a person who holds a certificate issued by the State Superintendent of Education and who offers instruction in the several branches of study required to be taught in the public schools of this state, for at least three hours a day for 140 days each calendar year, between the hours of 8:00 A.M. and 4:00 P.M., and who uses the English language in giving instruction. Such private tutor shall, prior to beginning the instruction of any child, file with the county superintendent of education, where his place of instruction is in territory under the control and supervision of the county board of education, or the city superintendent of schools, where his place of instruction is in territory under the control and supervision of a city board of education, a statement showing the child or children to be instructed, the subjects to be taught and the period of time such instruction is proposed to be given. Such tutor shall keep a register of work, showing daily the hours used for instruction and the presence or absence of any child being instructed and shall make such reports as the State Board of Education may require.

(School Code 1927, §303; Code 1940, T. 52, §300.)

Section 16-28-7

Report of enrollment.

At the end of the fifth day from the opening of the public school, the principal teacher of each public school, private school, and each private tutor, **but not church school**, shall report on forms prescribed by the State Superintendent of Education to the county superintendent of education, in the event the school is operated in territory under the control and supervision of the county board of education, or to the city superintendent of schools, in the event the school is operated in territory under the control and supervision of a city board of education, the names and addresses of all children between the ages of seven and 16 years who have enrolled in such schools; and thereafter, throughout the compulsory attendance period, the principal teacher of each school and private tutor shall report at least weekly the names and addresses of all children between the ages of seven and 16 years who enroll in said school or who, having enrolled, were absent without being excused, or whose absence was not satisfactorily explained by the parent, guardian, or other person having control of the child. **The enrollment and attendance of a child in a church school shall be filed with the local public school superintendent by the parent, guardian or other person in charge or control of the child on a form provided by the superintendent or his agent which shall be countersigned by the administrator of the church school and returned to the public school superintendent by the parent. Should said child cease attendance at a church school, the parent, guardian, or other person in charge or control of the child shall by prior consent at the time of enrollment direct the church school to notify the local public school superintendent or his agent that said child no longer is in attendance at a church school.**

(School Code 1927, §309; Code 1940, T. 52, §306; Acts 1982, No. 82-218, p. 260, §5.)

Section 16-28-8

Reports required must be furnished.

All school officers, including those in private schools, or private tutors, **but not those in church schools**, in this state offering instruction to pupils within the compulsory attendance ages, shall make and furnish all reports that may be required by the State Superintendent of Education and by the county superintendent of education or by the board of education of any city with reference to the workings of this article. **The principal teacher of each public school, private school, church school and each private tutor shall keep an attendance register showing the enrollment of the school and every absence of each enrolled child from school for a half day or more during each school day of the year.**

(School Code 1927, §310; Code 1940, T. 52, §307; Acts 1982, No. 82-218, p. 260, §6.)

Section 16-28-12

Person in loco parentis responsible for child's school attendance and behavior; noncompliance; local boards to promulgate written behavior policy, contents, annual distribution, receipt to be documented; school officials required to report noncompliance; failure to report suspected violation; district attorneys vigorously to enforce provisions.

(a) Each parent, guardian, or other person having control or custody of any child required to attend school or receive regular instruction by a private tutor who fails to have the child enrolled in school or who fails to send the child to school, or have him or her instructed by a private tutor during the time the child is required to attend a public school, private school, **church school**, denominational school, or parochial school, or be instructed by a private tutor, or fails to require the child to regularly attend the school or tutor, or fails to compel the child to properly conduct himself or herself as a pupil in any public school in accordance with the written policy on school behavior adopted by the local board of education pursuant to this section and documented by the appropriate school official which conduct may result in the suspension of the pupil, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars (\$100) and may also be sentenced to hard labor for the county for not more than 90 days. The absence of a child without the consent of the principal teacher of the public school he or she attends or should attend, or of the tutor who instructs or should instruct the child, shall be prima facie evidence of the violation of this section.

(b) Each local public board of education shall adopt a written policy for its standards on school behavior. Each local public school superintendent shall provide at the commencement of each academic year a copy of the written policy on school behavior to each parent, guardian, or other person having care or control of a child who is enrolled. Included in the written policy shall be a copy of this section. The signature of the student and the parent, guardian, or other person having control or custody of the child shall document receipt of the policy.

(c) Any parent, guardian, or other person having control or custody of any child enrolled in public school who fails to require the child to regularly attend the school or tutor, or fails to compel the child to properly conduct himself or herself as a pupil in accordance with the written policy on school behavior adopted by the local board of education and documented by the appropriate school official which conduct may result in the suspension of the pupil, shall be reported by the principal to the superintendent of education of the school system in which the suspected violation occurred. The superintendent of education or his or her designee shall report suspected violations to the district attorney within 10 days. Any principal or superintendent of education or his or her designee intentionally failing to report a suspected violation shall be guilty of a Class C misdemeanor. The district attorney shall vigorously enforce this section to ensure proper conduct and required attendance by any child enrolled in public school.

(School Code 1927, §305; Code 1940, T. 52, §302; Acts 1993, No. 93-672, p. 1213, §1; Acts 1994, 1st Ex. Sess., No. 94-782, p. 70, §1.)

Section 16-28-15

Absence must be explained.

Every parent, guardian, or other person having control or charge of any child required to attend public school, private school, or **church school**, shall as soon as practical explain the cause of any absence of the child under his control or charge which was without permission of the teacher, and a failure to furnish such explanation shall be admissible as evidence of such child being a truant with the consent and connivance of the person in control or charge of said child, unless such person can show to the reasonable satisfaction of the court that he had no knowledge of such absence and that he has been diligent in his efforts to secure the attendance of such child.

(School Code 1927, §308; Code 1940, T. 52, §305; Acts 1982, No. 82-218, p. 260, §7.)

Section 16-28-17

When child may be taken into custody.

It shall be the duty of the attendance officer, probation officer or other officer authorized to execute writs of arrest to take into custody without warrant any child required to attend school or be instructed by a private tutor who is found away from home and not in the custody of the person having charge or control of such child during school hours and who has been reported by any person authorized to begin proceedings or prosecutions under the provisions of this article as a truant. Such child shall forthwith be delivered to the person having charge or control of said child or to the principal teacher of the school or the private tutor from whom said child is a truant. If such child is an habitual truant, he shall be brought before the juvenile court for such disposition as the judge of said court finds proper from the facts.

(School Code 1927, §315; Code 1940, T. 52, §312.)

Section 16-28-22

Prosecutions.

No prosecution or proceeding under this article shall be begun except by one of the following parties:

- (1) The county superintendent of education or city superintendent of schools where the matter affects a school or private tutor in territory under his supervision; or
- (2) An attendance officer; or
- (3) **The principal teacher of the school which the child attends or should attend; or**
- (4) The private tutor by whom the child is instructed or should be instructed; or
- (5) The probation officer of the county; or
- (6) A duly authorized agent of the State Superintendent of Education or the Department of Human Resources.

(School Code 1927, §324; Code 1940, T. 52, §320.)

Section 16-28-23

Attendance register and rules and regulations as evidence.

The registry of attendance of pupils kept by any public school, private school, church school or private tutor in compliance with the provisions of law or any rule and regulation promulgated by the State Board of Education shall be admissible as evidence of the existence or nonexistence of the facts it is required to show.

A copy of any rule and regulation of the State Board of Education duly certified as true and correct by the State Superintendent of Education shall be admissible as evidence of the provisions of such rule and regulation, and the statement in the certificate of the State Superintendent of Education of the date of the promulgation shall be admissible as evidence that such rule or regulation was duly promulgated on the day and date named.

(School Code 1927, §325; Code 1940, T. 52, §321; Acts 1982, No. 82-218, p. 260, §8.)

Section 16-28-24

Church schools may waive exemptions specified in this article.

Notwithstanding entitlement to the exemptions provided church schools under Sections 16-28-1, 16-1-11, 16-28-3, 16-28-7, 16-28-8, 16-28-15, 16-28-23 and 16-40-1 any church school as defined in Section 16-28-1(2) shall certify to the local public school superintendent on forms supplied by the superintendent to the requesting church school that the exemptions specified herein are waived.

(Acts 1982, No. 82-218, p. 260, §10.)

Section 16-35-5.

Studies required to be taught in elementary school.

In every elementary school in the state there shall be taught reading, spelling and writing, arithmetic, oral and written English, geography, history of the United States and Alabama, elementary science, health education, physical education and such other studies as may be prescribed by the State Board of Education.

(School Code 1927, §§431; Code 1940, T. 52, §§408.)

Legal Opinion

Attorney General Bill Pryor Addresses Home Schooling in Alabama

In 1996 Representative Pete Turnham (Auburn) requested an attorney general's opinion on whether the state or local boards of education could regulate home schooling in Alabama. After analysis of the issue the Attorney General's office responded with the following letter addressed to Rep. Turnham, dated January 3, 1997.

Dear Representative Turnham:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Other than the state laws requiring parents to report attendance and for church schools to report if a student is no longer in attendance at such a church school, is there any provision of Alabama law that permits or requires any state local authority to regulate a church school?

FACTS AND ANALYSIS

Church schools as defined in Code of Alabama 1975, §16-28-1(2) are exempt from governmental regulations. The law requires mandatory or compulsory attendance of all children between the ages of 7 and 16 years at either a public, private, or church school. Code of Alabama 1975, §16-28-2.1 and §16-28-3. Parents who enroll their children in church schools are required by §16-28-7, Code, to report their children's attendance to the local superintendent of education. The church school notifies the superintendent if a child no longer attends the church school.

Church schools are exempt from regulations or state laws governing public and private schools. Code of Alabama 1975, §16-28-24. There is no statutory authority authorizing or requiring any state or local authority to regulate church schools, which may conduct classes in any manner they see fit. There is no requirement that church school teachers be certified or that a church school be accredited by the state or any private agency. No state or governmental agency has the authority to regulate a church school.

CONCLUSION

Other than the state laws requiring parents to report attendance and for church schools to report if a student is no longer in attendance at such a church school, there is no provision of Alabama law that permits or requires any state or local authority to regulate a church school.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact Jane LeCroy Brannan of my staff.

**Sincerely,
Bill Pryor, Attorney General**

**By:
James R. Solomon, Jr., Chief, Opinions Division**