



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

October 3, 2024

The Honorable Josh M. Harkins
Mississippi State Senate
Post Office Box 1018
Jackson, Mississippi 39215-1018

Re: Recent Changes to Mississippi Code Annotated Section 37-15-29

Dear Senator Harkins:

The Office of the Attorney General has received your request for an official opinion.

Questions Presented

1. Do members of the National Guard Active Guard Reserve (AGR) qualify under Mississippi Code Annotated Section 37-15-29(5)(a)?
2. If so, can the qualifying parent(s) or legal guardian(s) select any school in any district?

Brief Response

1. For the purposes of Section 37-15-29(5)(a), members of the National Guard AGR are “active members of the United States Armed Forces.” Miss. Code Ann. § 37-15-29(5)(a).
2. Qualifying parent(s) or legal guardian(s) may select any school in any district “regardless of the residence of the child.” Miss. Code Ann. § 37-15-29(5)(a).

Applicable Law and Discussion

One of the exceptions to the requirement of a minor child attending school in the district of his or her residence is set forth in Section 37-15-29(5)(a), which states: “Those children whose parent(s) or legal guardian(s) are active members of the United States Armed Forces may, at the discretion of their parent(s) or legal guardian(s), enroll and attend the school district and school campus of their parent's or legal guardian's choosing, regardless of the residence of the child.” Nowhere in Title 37 is “active member[] of the United States Armed Forces” defined.

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Your question concerns the status of members of the National Guard AGR and whether they qualify as “active members of the United States Armed Forces.” *Id.* As an initial matter, the “Army National Guard shall mean the members of federally recognized units and organizations of the Mississippi National Guard which are a reserve component of the United States Army,” and the “Air National Guard shall mean the members of federally recognized units and organizations of the Mississippi National Guard which are a reserve component of the United States Air Force.” Miss. Code Ann. § 33-1-1(d), (e).

Army “AGR Soldiers serve full-time on Active Duty in units and organizations of the Army Reserve, or that directly support the Army Reserve.” U.S. Army Reserve, *Join Our Team: Active Guard Reserve (AGR)*, <https://www.usar.army.mil/AGR/> (last visited Oct. 3, 2024). Air Force Active Guard “Reservists serve full time on active-duty assignments and receive active-duty benefits for the duration of their contract.” Air Force Reserve, *Ways to Serve: Air Force Reserve*, <https://www.airforce.com/ways-to-serve/air-force-reserve> (last visited Oct. 3, 2024). According to their respective definitions, both Air Force and Army National Guard AGR are “active members of the United States Armed Services.” Miss. Code Ann. § 37-15-29(5)(a). Consequently, because Title 37 does not define “active member[] of the United States Armed Forces,” and based on the official descriptions of Army and Air Force Active Guard Reservists, it is the opinion of this office that members of the National Guard AGR qualify as “active members of the United States Armed Forces” under Section 37-15-29(5)(a).

In response to your second question, the qualifying parent(s) or legal guardian(s) under Section 5(a) may select “*the school district and school campus* of their choosing, regardless of the residence of the child.” (emphasis added). It is the opinion of this office that such language allows a parent or legal guardian, within the parameters of Section 37-15-29, to choose any school in any district.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Caleb A. Pracht*

Caleb A. Pracht
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