



STATE OF KANSAS

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**Curt T. Schneider,**  
Attorney General

February 2, 1976

ATTORNEY GENERAL OPINION NO. 76- 36

Mr. Erle W. Francis  
Attorney  
State Board of Education  
Suite 719 - Capitol Federal Building  
700 Kansas Avenue  
Topeka, Kansas 66603

Re: Schools--Special Education--Funds

Synopsis: A unified school district which conducts special education programs for preschool children may receive state funds therefor which are categorical funds for special education distributed under K.S.A. 1975 Supp. 72-965.

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Dear Mr. Francis:

At the direction of the State Board of Education, you request my opinion whether a "Unified School District, conducting a preschool, for special education, [may] receive state funds which are categorical funds for special education distributed under K.S.A. 1974 Supp. 72-965."

The question derives from K.S.A. 72-67,115, enacted in 1965, which states thus:

"The board of any unified district may offer and teach courses and conduct programs for children under the age provided by law for enrollment in kindergarten, to be known as preschool programs. *None of the cost of any preschool program shall be borne by state*

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*aid, and no preschool program shall increase the state aid of any district." [Emphasis supplied.]*

In the question framed above, I understand the term "conducting a preschool, for special education" to refer to special education programs conducted for persons under the age provided by law for enrollment in kindergarten.

Under the Special Education for Exceptional Children Act, K.S.A. 1975 Supp. 72-961 *et seq.* "exceptional children" are defined to mean those persons who

"(1) Are school age, to be determined in accordance with rules and regulations which shall be adopted by the state board and said school age may differ from the ages of children required to attend school under the provisions of K.S.A. 72-1111; and (2) differ in physical, mental, social, emotional or educational characteristics to the extent that special education services or specialized instruction is necessary to enable them to progress toward the maximum of their abilities or capacities."

Pursuant to this authority, the State Board of Education has adopted a proposed regulation, no. 91-12-21, provides thus:

"Services for exceptional children shall be implemented at the age at which the local board of education provides educational services for non-exceptional children. Services shall be extended through age 21 or until the exceptional child has completed a local curriculum, whichever event shall first occur, in accordance with the state board of education standards."

Under K.S.A. 1975 Supp. 72-966(a), the board of education of each district "shall provide special education services for all exceptional children in the school district." Thus, if a school district has been providing courses and programs for preschool children, *i.e.*, persons under the age provided by law for enrollment in kindergarten, the district must also provide special education for exceptional children in the age groups of children being served by the preschool

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program. The question then arises whether the district which has chosen the option to provide preschool programs, and which is then mandated to provide special education programs to preschool persons, may receive categorical funds for special education distributed under K.S.A. 1975 Supp. 72-965.

In 1965, the provision now found at K.S.A. 72-8212 was amended, requiring every unified district to "maintain, offer and teach grades one (1) through twelve (12), with kindergarten being optional . . . ." See ch. 410, § 16, L. 1965. Section 41 of that same enactment contained the provision now found at K.S.A. 72-67,115. At that time, it was enacted to enable school districts to do that for which they had no existing authority, *i.e.*, to provide preschool programs. Such courses and programs were authorized, but were optional with the district, and for those optional preschool programs conducted under the authority of that section, no state aid could be paid. The "preschool program" to the cost of which state aid shall not be applied is, in my opinion, only that optional preschool program which a district is authorized to conduct by K.S.A. 72-67,115. The prohibition against the payment of state aid found in K.S.A. 72-67,115 should not be applied to programs other than those which are authorized by that same section, *i.e.*, to other than courses and programs which a district provides at its own option to persons not yet of the age provided by law for enrollment in kindergarten.

Accordingly, it is my opinion that a unified school district, conducting special education services for preschool children may receive state funds which are categorical funds for special education distributed under K.S.A. 1975 Supp. 72-965.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

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