



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 24, 1976

ATTORNEY GENERAL OPINION NO. 76- 77

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

Re: Schools--Special Education--Financial Responsibility
of School District in Providing Special Education
Services

Synopsis: Unified school districts are not obligated by K.S.A. 1975 Supp. 72-966(a) to provide specialized instruction, as that term is defined by K.S.A. 1975 Supp. 72-922(i) to the exceptional child needing such instruction. Those districts which undertake to provide special education services at different or distant locations from the attendance facility which the child, if non-exceptional would be otherwise entitled to attend, must provide daily transportation to and from the location of the special education services. If in the judgment of the board of education of the child's residence, the distance to be traveled is determined to be impracticable, inconvenient or too expensive, the school district may, pursuant to K.S.A. 1975 Supp. 72-967(a)(6), pay all or part of the room and board of the child at the state institution or special education facility. In either event, it is obligatory upon the school district to provide either transportation or a proportionate share of the costs of room and board, both presumably within the limitations of K.S.A. 1975 Supp. 72-978.

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Dear Mr. Francis:

You have requested my opinion on the following question relative to special education services:

"What are the financial responsibilities of Unified School Districts having students with 'Special Education Services' or 'Specialized Instruction', provided by State Institutions, as those terms are defined in K.S.A. 1975 Supp. 72-962."

The term "exceptional children" is defined by K.S.A. 1975 Supp. 72-962(g) to mean 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 capabilities."

Subsection (h) goes on to define "special education services" to mean:

"programs for which specialized training, instruction, programming techniques, facilities and equipment may be needed for the education of exceptional children."

"Specialized education" is defined at subsection (i) to mean:

"programs of life and social adjustment provided in a state institution under the jurisdiction of the secretary."

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The obligation of the board of education in regards to the exceptional child is set forth at K.S.A. 1975 Supp. 72-966(a) which provides in pertinent part:

"The board of education of every school district shall provide special education services for all exceptional children in the school district and said special education services shall meet standards and criteria set by the state board. Said special education services shall be planned and operative no later than July 1, 1979."

The exclusion of "specialized instruction" from the language of subsection (g) and the statutory differentiation between "special education services" and "specialized instruction" leads to the conclusion that the provision of "special education services", as that term is defined, embodies the extent of the school districts' obligation towards the exceptional child. In other words, K.S.A. 1975 Supp. 72-966(a) limits the school districts' obligation to providing "special education services" to all exceptional children. The extent of this obligation to the exceptional child is brought into focus more clearly by K.S.A. 1975 Supp. 72-976 which states in part:

"Subject to the provision of K.S.A. 1975 Supp. 72-972 to 72-975, inclusive, no school district shall be required to keep an exceptional child in regular instruction when the child cannot materially benefit from the work of the regular classroom, nor to provide such exceptional child with special education services for exceptional children in a regular school setting when it is determined that the child can no longer materially benefit therefrom but needs specialized instruction."

The specificity of the language indicates that the Legislature clearly foresaw those situations in which the exceptional child could not profit materially from the district's "special education services" and, therefore, would necessitate transfer to "specialized instruction"--specialized instruction which K.S.A.

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1975 Supp. 72-966 does not require the school district to provide or furnish. Finally, further evidence of legislative intent is found at K.S.A. 1975 Supp. 72-978, which commences thus:

"In each school year, in accordance with appropriations for special education services provided under this act, each school district which has provided special education services in compliance with the requirements of the state plan and the provisions of this act, shall be entitled to receive . . ."

The remainder of the statute is concerned primarily with the various reimbursement rates and computations for the district's expenses in providing special education services. Specialized instruction is nowhere referenced as to reimbursement.

The question remains as to the extent of the school district's financial obligation when that district's "special education services" are provided by a state institution. The term "state" institution is defined by K.S.A. 1975 Supp. 72-962(f) to mean the following institutions:

"Topeka state hospital, Osawatomie state hospital, Larned state hospital, Parsons state hospital and training center, Norton state hospital, Southeast Kansas tuberculosis hospital, Winfield state hospital and training center, the youth center at Atchison, Kansas neurological institute, the youth center at Topeka, the youth center at Beloit, Kansas state school for the deaf and Kansas state school for the visually handicapped."

The authority of state institutions to provide special education services for unified school districts is recognized in K.S.A. 1975 Supp. 72-970(a) which provides:

"Special education services which are provided by state institutions for exceptional children shall meet standards and criteria

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set by the state board in accordance with the state plan and shall be subject to approval by the state board. State institutions may contract with local school districts for special education services."

Furthermore, the board of education of each school district is empowered by K.S.A. 1974 Supp. 72-967(a) to:

" . . . (2) Provide for approvable special education services in the home, hospital or other facility . . . (6) Provide transportation for exceptional children, whether such children are residents or nonresidents to such school district, to and from special education services attended. In lieu of paying for transportation, the board of the school district in which an exceptional child resides may pay all or part of the cost of room and board for such exceptional child at the place where the special education services attended are located."

Thus, it would appear that when a state institution provides special education services in lieu of the district fulfilling its obligation in some of this manner, the particulars of that arrangement are a matter of contract to be decided through negotiation of the parties. The limitations contained in K.S.A. 1975 Supp. 72-978 on the rates of reimbursement are what the district may reasonably anticipate receiving from the state. It in no manner limits the amount per exceptional child that the district may authorize be expended. Finally, the question remains whether K.S.A. 1975 Supp. 72-967(a)(6) sets mandatory, alternative requirements for those school districts which undertake to provide special education services at state institutions. In order to comply with the mandatory special education services law, K.S.A. 1975 Supp. 72-967 delegates to boards of education certain powers which are prefaced with the following:

"Each board, in order to comply with the requirements of K.S.A. 1973 Supp. 72-933 and section 6 [72-977] of this act shall have the authority to:"

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In pursuit of compliance, boards may make arrangements which by necessity often require travel outside the district's territorial boundaries.

In the case of the non-exceptional child, K.S.A. 72-8302 obligates the district to furnish transportation in the following instances:

"(a) The residence of the student is inside or outside the corporate limits of a city, the school building attended is outside the corporate limits of a city and the school building attended is more than two and one-half (2-1/2) miles by the usually traveled road from the residence of the student, or

(b) the residence of the student is outside the corporate limits of a city, the school building attended is inside the corporate limits of a city and the school attended is more than two and one-half (2-1/2) miles by the usually traveled road from the residence of the student, or

(c) the residence of the student is inside the corporate limits of one city, the school building attended is inside the corporate limits of a different city and the school building attended is more than two and one-half (2-1/2) miles by the usually traveled road from the residence of the student."

To my knowledge, there exists neither legal, constitutional or statutory, nor logical justification to differentiate between the exceptional and non-exceptional child for purposes of bus transportation. In fact, the language of K.S.A. 72-8302 is not confined to the non-exceptional child. Thus, a serious legal question would arise as to any rule or regulation which permitted discretion to the board in providing transportation to the exceptional child--a question based upon a potential denial of the Equal Protection Clause of the United States and Kansas Constitutions. The constitutional infirmity stems from the lack of any rational relationship between such a differentiation and a valid state objective. Thus, I conclude that the obligation

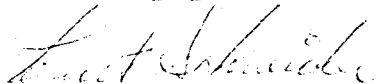
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of the school district to provide daily transportation to the exceptional child must be deemed mandatory except as otherwise discussed below. In the case where the district undertakes to provide the required services at in-district facilities, the provisions of K.S.A. 72-8203 govern those instances where transportation is to be provided. Where the board complies through arrangements which necessitate out-of-district travel, the board must provide that daily transportation to and from the location of the services.

Subsection (a)(6) is framed in the alternative. The clear import of the subsection's last sentence is that in those cases where daily transportation is impracticable or inconvenient, as determined by the judgment of the board of education, the school must pay all or part of the costs of room and board in addition to the basic costs of the services. The amount to be paid is subject to the discretion of the board, but would presumably, by virtue of K.S.A. 1975 Supp. 72-978(b), be at least to the extent of 80% of the costs of room and board up to an aggregate amount of \$600 per exceptional child--the amount for which the state will reimburse the school district.

Accordingly, it is my opinion that the State Plan of Special Education should be written to incorporate the conclusions stated in the above discussion. Specifically, the unified school districts are not obligated by K.S.A. 1975 Supp. 72-966(a) to provide specialized instruction, as that term is defined by K.S.A. 1975 Supp. 72-922(i) to the exceptional child needing such instruction. Those districts which undertake to provide special education services at different or distant locations from the attendance facility which the child, if non-exceptional, would be otherwise entitled to attend, must provide daily transportation to and from the location of the special education services. If in the judgment of the board of education of the child's residence, the distance to be traveled is determined to be impracticable, inconvenient, or too expensive, the school district may, pursuant to K.S.A. 1975 Supp. 72-967(a)(6), pay all or part of the room and board of the child at the state institution or special education facility. In either event, it is obligatory upon the school district to provide either transportation or a proportionate share of the costs of room and board, both presumably within the limitations of K.S.A. 1975 Supp. 72-978.

Sincerely yours,



CURT T. SCHNEIDER
Attorney General