STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

December 17, 1976

ATTORNEY GENERAL OPINION NO. 76-377

Dr. Merle R. Bolton
Commissioner of Education
Kansas State Department of Education
120 East 10th Street
Topeka, Kansas 66612

RE: Schools--Boards of Education; Organization, Power, Finances--Curriculum Requirements

Synopsis: A regulation of a unified school district which requires that a student be enrolled in a minimum of five hours per day is not prima facie discriminatory, and purely as a matter of law, the rule is not beyond the authority of the board in the exercise of its general administrative power to adopt reasonable rules and regulations for the governance of the school.

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Dear Commissioner Bolton:

You have inquired as to the legality of a unified school district regulation which mandates that students be enrolled in a minimum of five hours per day regardless of the number of credits the individual needs in order to fulfill the district's graduation requirements. This question is prompted by the case of a seventeen year old woman who needs only one-half (1/2) credit in government to graduate. Her school district refuses to allow her to attend unless she is in attendance for a full five hours of course work.

Kansas has long been in the forefront of those states where the right of married students to attend public high school has been recognized. In Nutt v. Board of Education, 128 Kan. 507, 278 P. 1065 (1929), the court, while recognizing the right of the Board to impose reasonable regulations on attendance, overturned the Board's rule which prohibited the attendance of all married women.

While the facts prompting this request show that the married student is permitted to attend school, the allegation has been made that the district's requirement that each student be enrolled in a minimum of five hours per day works a denial of due process to students needing less than the minimum five hours per day worth of credit to graduate. In regard to school authorities power to control curricular activities, the general rule first enacted in School Board District No. 18 v. Thompson, 24 Okla. 1, 103 P. 578 (1909) holds:

> "...The school authorities of the state have the power to classify and grade the scholars in their respective districts and cause them to be taught in such departments as they may deem expedient. They may also prescribe the courses of study and test-books for the use of the schools, and such reasonable rules and regulations as they may think needful...."

Kansas has statutorily adopted this same rule at K.S.A. 72-8206 wherein it is provided:

> "...The board shall have authority to prescribe courses of study for each year of the school program and provide rules and regulations for teaching in the unified district and general government thereof, and to approve and adopt suitable textbooks and study material for use therein subject to the plans, methods, rules and regulations formulated and recommended by the state board of education...."

In State Tax Commission v. Board of Education, 146 Kan. 722, 73 P.2d 49 (1937), the Court articulated this position in stating:

> "School boards and boards of education have authority to provide for instruction in subjects other than those required to be taught by the statutes or by courses of study prescribed by the state board of education, and in so doing may exercise a discretion with which the courts may not interfere unless a clear case of fraud or abuse is shown."

Thus, the issue involved reduces to whether the school board may adopt a regulation which requires all students to enroll in a minimum of five course hours per day irrespective of the number of course credits necessary for that pupil to graduate. Clearly, if the rule prohibits attendance solely on the basis of marital or sexual status, such regulation must fail. However, the factual background here shows all students, regardless of sex or marital status, must comply with this requirement.

In determining the "reasonableness" of this rule, the following excerpt is informative:

> "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. Thus, a state may not impose and enforce unconstitutional conditions upon attendance at public institutions of learning. State-operated schools may not be enclaves of totalitarianism, and school officials do not possess absolute authority over their students. Students in state-operated schools, as well as out of school, are "persons" under the Federal Constitution, and are possessed of fundamental rights which the state must respect, just as they themselves must respect their obligations to the state. However, the right to attend school and claim the benefits afforded by the public school system is the right to attend subject to all lawful rules and regulations prescribed for the government thereof. And the conduct of pupils directly relating to and affecting the management of a school and its efficiency is within the proper regulation of the school authorities.
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> The establishment of an educational program requires the formulation of rules and regulations necessary for the maintenance of an orderly program of classroom learning. In formulating regulations, including those pertaining to the discipline of schoolchildren, school officials have a wide latitude of discretion, but the school is always bound by the requirement that the rules and regulations must be reasonable. A reasonable school regulation is one which is essential in maintaining order and discipline on school property and which measurably contributes to the maintenance of order and decorum within the educational system...." 68 Am.Jur.2d, Schools, Section 242, Pg. 567-568.

The rule is claimed to be supported in part by considerations of discipline. The question presented is whether the regulation is reasonable. We cannot conclude that the rule is unreasonable solely as a matter of law. The resolution of the question of reasonableness is ordinarily one of mixed fact and law, which can only be determined by a court of competent jurisdiction which has the opportunity to receive relevant evidence of the problems which it is claimed to address, the purposes it is designed to serve, and, on the other hand, the effects of the regulations upon the students. The regulation in question here is not prima facie discriminatory, and purely as a matter of law, I am constrained to conclude that the rule is not beyond the authority of the board in the exercise of its general administrative power to adopt reasonable rules and regulations for the governance of the school.

Certainly, it appears that the regulation may work unnecessary hardship on particular students, such as that which prompts your letter. While these hardships are obvious, we cannot weigh, purely as a matter of law, the benefits, if any, which are claimed to accrue in the maintenance of discipline and order. It would be desirable for any Kansas board of education to avoid imposing such unnecessary hardships on their students by such a rule unless it brings real and substantial benefits for the majority of students which outweigh the hardship it works on the few. There is obviously room for skepticism whether this rule in fact operates in that fashion, but I cannot determine that question purely as a matter of law.

Very truly yours,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

CTS/HTW/cgm