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July 6, 1979

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ATTORNEY GENERAL OPINION NO. 79-135

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Re: Schools--School Attendance--Age and Immunization
Requirements

Synopsis: The admission of a child to a public school may properly be prevented by the board of education if the child cannot establish that he or she has, or will, attain the minimum age required for school attendance. However, the board should accept any document which reasonably tends to establish that the child satisfies these requirements.

Further, the admission of a child to a public school may be suspended if the child does not present the immunization records required by K.S.A. 1978 Supp. 72-5209 and K.A.R. 28-1-20.

* * *

Dear Mr. Whalen:

You request our opinion concerning whether school districts in the state of Kansas have the right to keep students from attending school if they fail to present proof of age or proper immunization records.

Concerning your inquiry as to the age of a child, K.S.A. 72-1107 provides in relevant part:

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"Subject to such regulations as the governing body of any school district may prescribe; (a) any child who will attain the age of six (6) years on or before the first day of September of any school year shall be eligible to attend the elementary grades in the school district of his residence except as herein otherwise provided; (b) in the first school year following the effective date of this act and in any succeeding school year, any child who shall have completed a kindergarten course maintained by a public school district shall be eligible to enter first grade, regardless of age" (Emphasis added.)

It is evident from this statute that, if a child will attain the age of six (6) years on or before the first day of September, the board of education must allow the child to attend school. Further, subsection (b) of this statute provides an exception to the general age requirement prescribed in subsection (a), and those children meeting the requirements of said subsection (b) also must be allowed to attend school. In our judgment, implicit in these provisions is the authority of a board of education to refuse enrollment to any child who does not satisfy these age requirements. However, there are no statutorily prescribed guidelines to assist a board in determining such eligibility.

The question of what proof of age should be accepted in determining a child's eligibility to attend school was addressed by former Attorney General William N. Ferguson. In Attorney General Opinion No. 61-139, issued April 26, 1961, it was stated:

"For the purpose of determining the age of a child in reference to [K.S.A.] 72-1107 it is our opinion that in addition to a certified copy of the child's birth certificate, the following documents should be accepted as satisfactory proof of age, to-wit: An affidavit signed by the child's parent or parents, a sworn certificate signed by the attending physician at birth, a certificate of a city clerk or other public official keeping a record of births, or an affidavit signed by any person present at

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the time of birth so as to have actual knowledge of the same. As a practical matter, when dealing with children of the age covered by said statute, it is not likely that items of proof other than those just mentioned will need to be sought."

We concur in Mr. Ferguson's opinion. While children who do not satisfy the age requirements of 72-1107 may be precluded from attending school, a board's regulations as to proof of age will be measured by the standard of reasonableness. In our opinion, those documents suggested by the foregoing excerpt satisfy this test. They are in consonance with the state's paramount objective, as parens patriae, of providing an education to its children, yet satisfy a board of education's statutory constraints to limit such education to those of proper age.

Your second inquiry is whether a board of education may prohibit a child from attending school if the child is unable to present proper immunization records. K.S.A. 1978 Supp. 72-5211a specifically authorizes the board of education of any unified school district to suspend any pupil who has not presented a certification of immunization as required by K.S.A. 1978 Supp. 72-5209. The only restraint on this power is that such suspension must be imposed pursuant to the due process requirements set forth in K.S.A. 72-8901 et seq., which require that notice and a hearing be afforded before an extended term suspension or an expulsion of a pupil is imposed.

K.S.A. 1978 Supp. 72-5209(a), in relevant part, provides:

"In each school year, every pupil enrolling or enrolled in any school for the first time in this state, and such other pupils as may be designated by the secretary, prior to admission to and attendance in said school, shall present to the appropriate school board certification from a physician or local health department that such pupil has received, or is in the process of receiving and will have completed within ninety (90) days after admission to school, such tests and inoculations as are deemed necessary by the secretary by such means as are approved by the secretary." (Emphasis added.)

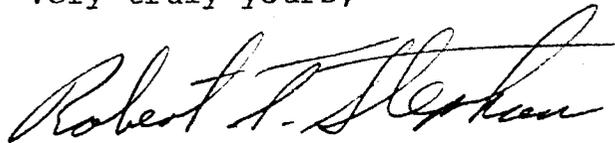
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Subsection (b) of this statute provides for certain alternatives to the certification required by subsection (a), and subsection (c) requires the board of education to give all known prospective students a copy of K.S.A. 1978 Supp. 72-5208 et seq. and any board policies regarding implementation thereof. Further, K.S.A. 1978 Supp. 72-5211 authorizes the Secretary of Health and Environment to adopt such regulations as are necessary to carry out the provisions of 72-5209, and pursuant to this authority, the secretary has adopted K.A.R. 28-1-20; said regulations prescribing those tests and inoculations which are required.

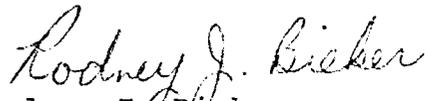
In our judgment, the legislative purpose for requiring students to present certification that they have received, or are in the process of receiving, tests and inoculations, is evident. It is to protect the health and welfare of such students, as well as others who may come in contact with these students in the schools. It is to curtail, to the greatest extent possible, the spread of disease through the medium of preventative medicine.

Thus, in accordance with these statutory provisions, it is our opinion that the admission of a child to a public school may properly be suspended by the board of education if the child does not present the immunization records required by K.S.A. 1978 Supp. 72-5209 and K.A.R. 28-1-20.

Very truly yours,



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Attorney General of Kansas



Rodney J. Bieker
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RTS:BJS:RJB:gk

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