



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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October 28, 1980

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CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 80-234

Dr. Michael Slusher
Superintendent of Schools
Unified School District No. 453
624 Olive Street
Leavenworth, Kansas 66048

Re: Schools--Special Education--Adoption of State Plan

Synopsis: The provisions of K.S.A. 77-415 et seq. are not applicable in regard to the adoption, by the State Board of Education, of amendments to the state plan for special education services. Said plan is not a "rule and regulation" within the meaning of that phrase as used in K.S.A. 77-415 et seq., and amendments thereto. Cited herein: K.S.A. 1979 Supp. 72-961, 72-963, 77-415 (as amended by L. 1980, ch. 303, §1) and 77-421 (as amended by L. 1980, ch. 304, §4).

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Dear Dr. Slusher:

You seek the opinion of this office concerning the applicability of the provisions of K.S.A. 1979 Supp. 77-421, as amended by L. 1980, ch. 304, §4, to the adoption, by the State Board of Education, of amendments to the state plan for special education services.

We are of the opinion that the above-cited provisions have no applicability to such action by the State Board of Education. Our opinion is based upon the fact the legislature, in K.S.A. 1979 Supp. 72-963, has distinguished "rules and regulations" adopted by the State Board of Education to administer the provisions of the Special Education for Exceptional Children Act,

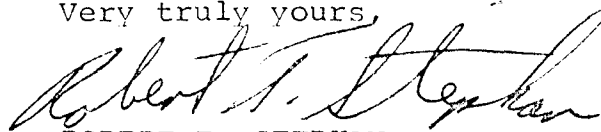
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K.S.A. 1979 Supp. 72-961 et seq., from the state plan for special education services. Specifically, K.S.A. 1979 Supp. 72-963 provides in relevant part:

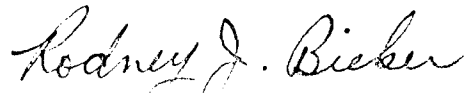
"The state board [of education] may adopt rules and regulations for the administration of this act and shall adopt, from time to time amend, and administer the state plan." (Emphasis added.)

From these statutory provisions, it is abundantly clear the legislature requires the State Board of Education to adopt, amend, and administer the state plan, while it has merely authorized, but not required, the adoption of rules and regulations for the administration of the act. Rules and regulations so adopted will have the force and effect of law. However, it also is clear to us the legislature did not perceive of the state plan as a "rule and regulation" or a series of "rules and regulations" as those terms are used in the provisions of K.S.A. 77-415, et seq., and amendments thereto. Thus, in our judgment, the provisions of 77-421, as amended, are not applicable to the adoption or amendment of the state plan for special education services.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm