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July 16, 1981

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ATTORNEY GENERAL OPINION NO. 81-165

Honorable Ruth Luzzati  
Representative, Eighty-Fourth District  
5203 Plaza Lane  
Wichita, Kansas 67208

Re: Schools--Special Education--Due Process Hearings;  
Review By State Board of Education

Synopsis: A local board of education may be compelled, through appropriate legal action, to comply with a decision made by the State Board of Education in accordance with subsection (b) of K.S.A. 72-974. The State Board possesses the authority, but is not required by law, to seek judicial enforcement of its decisions and orders. Cited herein: K.S.A. 72-972, 72-973, 72-974, 72-7512.

\* \* \*

Dear Representative Luzzati:

You seek our opinion whether the State Board of Education has the authority or duty to compel a local board of education to comply with a decision of the State Board made in accordance with the provisions of K.S.A. 72-974.

K.S.A. 72-974 is part of the Special Education for Exceptional Children Act, K.S.A. 72-961 et seq. Under the provisions of K.S.A. 72-972, a child, or his or her lawful custodian, must be afforded the right to a hearing, before the child can be: "(1) Excluded, reassigned or transferred from regular school classes on the ground that he or she is an exceptional child" or "(2) placed in, transferred to or from or denied placement in special education services." K.S.A. 72-972(a).

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Subsection (c) of K.S.A. 72-973 specifies that, for the purpose of conducting any hearing provided in accordance with K.S.A. 72-972, a hearing officer or officers must be appointed. The subsection concludes with the following provision:

"Whenever a hearing officer appointed under authority of this section conducts any hearing, such hearing officer shall decide the matter and shall prepare a written report thereon to the agency providing for the hearing. Any decision by the hearing officer in accordance with this subsection (c) shall be final, subject to appeal in the manner provided for in K.S.A. 72-974, and amendments thereto."

Subsection (b) of K.S.A. 72-974, in relevant part, provides:

"(1) Any party to a hearing . . . may appeal the decision to the state board . . . .

"(2) For the purpose of reviewing any hearing under this subsection, the state board may appoint one or more reviewing officers. Any such appointment shall apply to a review of a particular hearing or to reviewing a set or class of hearings as specified by the state board in making the appointment. Whenever a reviewing officer appointed under authority of this subsection conducts any review, he or she shall, after conducting the same, prepare a written report thereon to the state board. After receiving any such report, the state board shall determine the appeal with or without additional review. Any decision made by the state board in accordance with this subsection shall be valid to the same extent as if the matter were fully reviewed by the state board without a reviewing officer.

"(3) The decision made by the state board under this subsection may be appealed to the district court in the manner provided by K.S.A. 1980 Supp. 60-2101, and amendments or supplements thereto." (Emphasis added.)

Although not expressly stated in K.S.A. 72-974, it is apparent that if the decision of the State Board is not appealed, that decision is final and binding upon the parties to the appeal.

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Your inquiry concerns the authority or duty of the State Board to compel a local school district to comply with a decision of the State Board, made in accordance with K.S.A. 72-974. Your inquiry actually presents two questions: (1) Does the State Board have the authority to compel obedience to its decision; and (2) is the State Board under a duty to compel compliance with its decision?

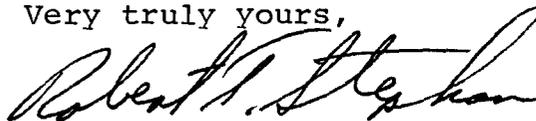
We find no statute which expressly states that the State Board of Education can compel obedience to any of its decisions or orders. However, we are of the opinion that an order or decision rendered by the State Board can be enforced through appropriate legal action. In 73 C.J.S. Public Administrative Bodies and Procedure, §256, it is said: "Except as it may be otherwise provided by statute, administrative bodies, generally, have no power to enforce their decisions or orders, but that power is lodged in the courts as a judicial function, and such decisions or orders can be enforced . . . by the courts." (Footnotes omitted; emphasis added.)

Under the provisions of K.S.A. 72-7512, the State Board of Education is granted the authority to "sue in its own name." Exercising this authority, we believe the State Board could seek judicial enforcement, probably through mandamus, of a decision rendered by the State Board in accordance with the provisions of K.S.A. 72-974.

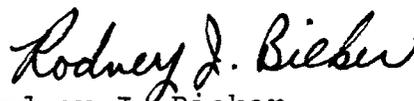
However, while we are of the opinion the State Board is authorized to seek judicial enforcement of an order of the Board, we do not believe the State Board is under a duty to seek such enforcement. Such action simply is not required by law.

Thus, in our opinion, a local board of education may be compelled, through appropriate legal action, to comply with a decision made by the State Board of Education in accordance with the provisions of K.S.A. 79-974. However, while the State Board possesses the authority to seek judicial enforcement of such a decision, it is not required by law to do so.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



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RTS:BJS:RJB:jm