



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

March 12, 1987

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 87- 46

The Honorable Nancy Parrish
State Senator, Nineteenth District
State Capitol, Room 403-N
Topeka, Kansas 66612

Re: Schools -- Provisions Related to Common-School
Districts -- School Attendance

Synopsis: In Kansas, every child has a constitutional and statutory right to attend the public schools, subject to reasonable regulations adopted by the board of education. Nutt v. Board of Education, 128 Kan. 507 (1929); Kan. Const., Art. 6, § 5, as amended in 1986. A regulation is "reasonable" if it furthers the educational mission. In our opinion, a regulation which denies a minor child admission to a public school solely because the child has obtained a G.E.D. is not reasonable. However, depending on the facts and circumstances of the particular case, a regulation which delays enrollment for a certain amount of time or until certain requirements are met may be appropriate. Cited herein: K.S.A. 72-1046; 72-1046a; 72-1107; 72-1111; 72-4530; 72-5209; 72-8201; K.A.R. 1986 Supp. 91-10-1; Kan. Const., Art. 6, §§ 1,5.

* * *

Dear Senator Parrish:

As State Senator for the Nineteenth District, you request our opinion on two issues concerning school attendance:

1. Does a school district have authority to deny admittance to a school age child who has received a G.E.D. but wishes to return to high school and receive a diploma?
2. Does a school district have authority to delay or deny enrollment to children who transfer to the district without sufficient records for placement or who have for one reason or another missed a significant part of a semester and wish to enroll in school at mid-semester?

The Kansas compulsory school attendance law, K.S.A. 72-1111(a), provides that children who are at least seven years old and under the age of sixteen must attend a public or private school. Any child who will attain the age of six years on or before September 1 of any school year is eligible to attend the elementary grades. K.S.A. 72-1107. Any eligible child may attend school in the district in which the child lives if:

"(1) the child lives with a resident of the district and the resident is the parent, or a person acting as parent, of the child; or (2) the child lives in the district as a result of placement therein by a district court or by the secretary of social and rehabilitation services."
K.S.A. 72-1046(a)

In certain situations a child may attend school in a district in which he is not a resident. K.S.A. 72-1046(b); 72-1046a.

Pursuant to K.S.A. 72-4530, the State Board of Education has adopted regulations concerning the general educational development (G.E.D.) credentials. To be eligible for G.E.D. testing an applicant must be eighteen years old "and the class of which he or she was a member shall have graduated." K.A.R. 1986 Supp. 91-10-1(a). Exceptions to these requirements are provided for in K.A.R. 1986 Supp. 91-10-1(b):

"(b) Any person who does not meet the requirements of subsection (a) may, upon submitting the recommendations of two persons other than members of the immediate family, apply to take the G.E.D. test if the person:

- "(1) is 16 years of age or older;
- "(2) if the person would benefit from receipt of a Kansas state high school equivalency diploma; or
- "(3) if the person is:
 - "(A) a ward of the state or of the court;
 - "(B) self-supporting;
 - "(C) joining any branch of the armed services; or
 - "(D) confronted with a set of circumstances or conditions not usually associated with youth of this age."

The Kansas statutes do not specify if or when a school district may deny enrollment to a school-age child. The authority of local school districts is derived from Article Six of the Kansas Constitution, as amended by the voters in November 1986:

"§1. Schools, educational institutions and related activities. The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.

. . .

"§5. Local public schools. Local public schools shall be maintained, developed and operated by locally elected boards The state board of education shall exercise such supervision over the maintenance, development and operation of local public schools as may be prescribed by law."

The Kansas legislature has established a system of local public schools which are placed under the supervision of locally elected boards of education. K.S.A. 72-8201 et seq. Opportunity of education, where the state has undertaken to provide it, must be made available to all on equal terms. Brown v. Board of Education of Topeka, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1953). The Kansas Supreme Court has stated that every child has a constitutional and statutory right to attend the public schools. Nutt v. Board of Education, 128 Kan. 507, 508 (1929); Creyhon v. Board of Education, 99 Kan. 824, 826 (1917). However, the court also recognizes the authority of local school boards to set standards concerning school attendance and that the right to attend public schools is subject to such regulations, if they are reasonable. Blaine v. Board of Education, 210 Kan. 560, 570-71 (1972); Nutt v. Board of Education, 128 Kan. at 508; Creyhon v. Board of Education, 99 Kan. at 824, Syl. § 2. The authority of a board of education to deny admittance to a student has been summarized as follows:

"School attendance is a privilege which the state confers upon its youth; the only right a child has to school attendance is the right which the state confers upon all other children similarly situated. Since attendance at the state schools is essentially a privilege and not a right, the state may authorize its agents to exclude all children who do not meet the requirements established by the state. Consequently, a school board usually has the implied power to reject applicants for admission who do not conform to the reasonable and necessary requirements established by the board." N. Edwards, The Courts and the Public Schools, p. 540 (1971).

See also 68 Am. Jur. 2d Schools § 224.

The question becomes, what constitutes a "reasonable regulation" by which a public school may deny enrollment to a student? This question has been addressed in several Kansas cases. In Creyhon v. Board of Education, supra, graduates of parochial grade schools were required to pass an examination for admission to public high schools while graduates of public grade schools were admitted without this

requirement. The court recognized the authority of the school board to require an examination to determine whether a student had sufficient preparatory training to warrant acceptance. 99 Kan. at 829. In this case, however, the court found that the parochial students had studied the same textbooks and been given the same tests as the public school graduates. Since the background of the parochial and public students was the same, the court held that the examination requirement for the parochial students was not justified. 99 Kan. at 830.

In Nutt v. Board of Education, supra, the court stated:

"The public schools are for the benefit of children within school age, and efficiency ought to be the sole object of those charged with the power and privilege of managing and conducting the same, and while great care should be taken to preserve order and proper discipline, it is proper also to see that no one within school age should be denied the privilege of attending school unless it is clear that the public interest demands the expulsion of such pupil or a denial of his right to attend." Id. at 509.

In this case the court ruled that the fact that a minor had conceived a child out of wedlock was an insufficient reason to exclude the minor student from school.

More recently, the issue as to whether a school regulation is reasonable was discussed in Blaine v. Board of Education, supra:

"A school regulation must not be oppressive or unreasonable. A regulation to be reasonable must be a proper one to further the educational processes in the school and the means adopted to accomplish a purpose must be appropriate to accomplish the educational mission." 210 Kan. at 567

"In measuring the appropriateness and reasonableness of school regulations against the personal rights of the individual student, courts should give full credence to the role and purposes of

the schools as well as the nature of the problems inherent in the public education of our youth." 210 Kan. at 570.

"The responsibility for maintaining proper standards for learning and discipline, and for creating a wholesome academic environment in our public schools is vested in the local boards of education, consistent with fundamental constitutional safeguards" 210 Kan. at 571.

The court held that a board of education regulation "limiting extreme hair styles of male students" had a rational purpose and was not unduly oppressive or unreasonable.

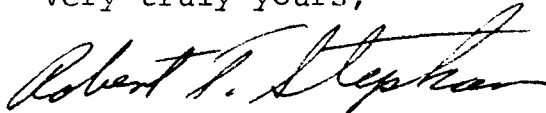
As noted earlier, Kansas recognizes the constitutional and statutory right of every child to attend the public schools, subject to reasonable regulations. A school regulation which denies a minor child admission to a public school solely because the child has obtained a G.E.D., however, does not appear to be reasonable. While a G.E.D. is recognition that an individual has achieved a certain level of education, it cannot be said that a G.E.D. is the same as a high school diploma. For example, the fact that an individual has a G.E.D. is a red flag on a resume that he or she did not finish high school. This is not to say that a high school graduate is better educated than a person who has passed a G.E.D. examination. Nevertheless, the fact remains that persons who did not graduate from high school are placed at a disadvantage in seeking employment. Such a regulation is not reasonable as it does not appear to "further the educational processes in the school." Therefore, a minor child should not be denied the right to attend public school solely because the child has attained a G.E.D.

The second question is whether a public school may delay or deny enrollment to children who transfer without sufficient records or who have missed a significant part of a semester and wish to enroll at mid-semester. Depending on the circumstances of the particular case, it may be reasonable for a public school to delay enrollment for a certain amount of time or until certain requirements are met. For example, K.S.A. 72-5209 provides that every pupil enrolling in any school for the first time must, before admission to and attendance in school, present a certificate that the pupil has received, or will receive within 90 days, the required tests and inoculations. If a child transfers from another school

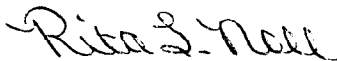
district or state without school records at the time of enrollment, it would seem that the child's privilege to attend school outweighs the concerns of administrative paperwork caused by the delay in sending records. However, in some situations it may be prudent or reasonable to delay enrollment until the beginning of a semester. This may be the case, for instance, where the student wishes to enroll late in the semester, has not been attending school regularly, and has not presented sufficient records for placement. We must emphasize that the circumstances of the situation dictate "reasonableness."

In summary, a school-age child has a constitutional and statutory right to attend the public schools, subject to reasonable regulations. To be reasonable a regulation must be designed to "accomplish the educational mission." Such a determination depends on the facts of the particular case.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General

RTS:JLM:RLN:bas