



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

October 21, 1975

ATTORNEY GENERAL OPINION NO. 75-407

Representative C. Fred Lorentz
Ninth District
530 North 10th
Fredonia, Kansas 66736

Re: Schools--School Residence

Synopsis: The statute [K.S.A. 72-1046] describes school residence disjunctively. First, one whose natural or legal guardian resides within the limits of the school district or city has a school residence in such city or school district. Alternatively, if a person of school age is living with a friend or relative who is a resident within the limits of the school district or city, and the family home of the student is not available to him by reason of separation of the parents or the death of either or both of them, or the friend or relative is contributing the major portion of the cost of support of such child, the student is deemed to have a school residence in such district or city in which he or she resides.

In those situations where a student fulfills the test for school residence, the district of his residence is required to admit him to the schools of that district.

A school district is not required to admit any student who fails to meet the test for residency contained in K.S.A. 72-1046.

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Dear Representative Lorentz:

You have requested an opinion from this office concerning whether a school district is required by K.S.A. 72-1046 to admit to its

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school an individual of school age who moves into that new school district to reside with a friend or relative and has a parent or parents who are fully capable of supporting them in their home school district.

The relevant statute, K.S.A. 72-1046, states as follows:

"Any person of school age whose natural or legal guardian resides within the limits of the school district or city, or whose family home with his father and mother is not available to him by reason of the separation of his parents, or the death of either or both of them, and who is living with a friend or relative or with a person who is a resident within the limits of the school district or city, or when such person is contributing the major portion of the cost of the support of such child, shall be deemed to have a school residence in such district or city."

You advise that you have been contacted by your local school board concerning a growing number of students under eighteen years of age who do not live at home and who, in some cases, move to another school district to live with a friend or relative while they still have a parent or parents residing in their original district who are fully capable of supporting them.

The statute [K.S.A. 72-1046] describes school residence disjunctively. First, one whose natural or legal guardian resides within the limits of the school district or city has a school residence in such city or school district. Alternatively, if a person of school age is living with a friend or relative who is a resident within the limits of the school district or city, and the family home of the student is not available to him by reason of separation of the parents or the death of either or both of them, or the friend or relative is contributing the major portion of the cost of support of such child, the student is deemed to have a school residence in such district or city in which he or she resides. The question still remains as to whether the receiving school district is required to admit the potential student despite the fact that he does not meet the standards under the foregoing test for school residence in the receiving district.

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The Kansas compulsory school attendance law, K.S.A. 72-1111, mandates that:

"Every parent, guardian or other person in the state of Kansas, having control over or charge of any child who has reached the age of seven (7) years and is under the age of sixteen (16) years, shall require such child to attend continuously a public school or a private, denominational or parochial school taught by a competent instructor, each school year, for such period as the public school of the school district in which the child resides is in session."

K.S.A. 72-1107 amplifies this requirement by stating:

"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 provide;"

A conjunctive reading of these statutes leaves the conclusion that in those instances where the pupils meets the standards promulgated in K.S.A. 72-1046 for school residence, the school district must admit the student. The use of the word "shall" in K.S.A. 72-1107 is significant support for this position in that it indicates the Legislature's desire that the admittance be mandatory rather than discretionary. This conclusion is even further supported by the fact that the Kansas compulsory education law requires, except in those instances where the student attends private or denominational schools, that every child between the ages of seven (7) and sixteen (16) attend public schools. Accordingly, it is our view that in those situations where a student fulfills the test for school residence, the district of his residence is required to admit him to the schools of that district.

Situations where a student wishes to attend school in a district different from that of his residence are governed by K.S.A. 72-6757 which provides:


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"Boards may contract with each other for the payment of tuition for students attending school in a unified district not of their residence. Such contracts may be made for students who reside at inconvenient or unreasonable distances from the schools maintained by their unified district or who should, for any other reason deemed sufficient by the board of their unified district, attend school in another unified district. A board may contract with a school district located in another state for the payment of tuition for students from this state attending schools in another state, or for students from another state attending schools in this state. The board of the sending school shall provide for the transportation of such students in a manner provided by law."

The entire tenor of the language in this statute is discretionary. In our opinion, the use of the word "may" throughout the context of this statute, indicates that the Legislature intended admittance of a non-resident student to be discretionary with the respective board's of education.

Accordingly, it is the opinion of this office that a school district is not required to admit any student who fails to meet the test for residence contained in K.S.A. 72-1046.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv