



STATE OF KANSAS

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June 11, 1979

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ATTORNEY GENERAL OPINION NO. 79- 112

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700 Kansas Avenue
Topeka, Kansas 66603

Re: Schools--Special Education--Sectarian Students

Synopsis: Unified school districts are required, by the provisions of K.S.A. 1978 Supp. 72-961 et seq., to furnish special education to children in private and parochial schools, as well as those schools operated under the jurisdiction of such school districts. In the event that any such unified school district fails to comply with said statutory provisions, including the state plan, and rules and regulations adopted by the State Board of Education thereunder, the Board is required by state and federal law to withhold from such district federal funds to which such district would otherwise be entitled.

* * *

Dear Mr. Francis:

By your letter of April 12, 1979, you requested an opinion of this office regarding the Kansas Special Education for Exceptional Children Act, K.S.A. 1978 Supp. 72-961 et seq. As stated in that letter, your request was prompted by the following situation:

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"During the week of April 2-6, 1979, the Bureau of Education for the Handicapped, U.S. Office of Education, HEW, held their Site Review of the Kansas State Department of Education's policies, procedures, and regulations as they relate to Part B, EHA, as Amended by P.L. 94-142. Among those school districts visited was Kansas City Public Schools, Unified School District #500. The federal review team stated verbally in their exit interview (and this statement will be a part of their formal written evaluation of the KSDE compliance procedures) that the Kansas City, Kansas, School District is in violation of the Federal statute and therefore no Federal money under Part B, EHA, (P.L. 94-142) should be released to the Kansas City Public Schools until this issue has been changed to meet the Federal requirements. From previous meetings with Archdiocese representatives from the Kansas City area, there are other school districts that may very well be in violation, also. But Kansas City, Kansas is the only school district to date where there is requested documentation available for diagnostic and educational services and these services were denied."

As a result of the foregoing, you indicate that the State Board of Education has requested you to secure our opinion on the following questions:

"(1) Must Unified School Districts furnish special education to children in private and parochial schools as well as those schools operated under the jurisdiction of the Unified School District?

"(2) If your answer is in the affirmative, then may the State Education agency withhold Federal funds from a Unified School District which fails to furnish special education to children in private and parochial schools?"

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With respect to your first question, you have noted that a prior opinion of this office (Attorney General Opinion No. 78-243) answered a similar inquiry from Merle R. Bolton, Commissioner of Education, in the affirmative. However, because of the recent federal review activity, you indicate that "an up-to-date Attorney General's opinion on this issue" is needed.

In order to avoid unduly burdening this opinion, suffice it to say that we have carefully scrutinized and reviewed Attorney General Opinion No. 78-243, and we are satisfied that this prior opinion contains a statement of the law in this area that is as timely today as it was when the opinion was issued on July 10, 1978. As a summary statement of that opinion's conclusions, the following quote from the opinion's Synopsis is pertinent:

"Kansas school districts must provide special education services to developmentally disabled and exceptional children attending sectarian schools at religiously neutral sites, and public employees who conduct such programs must maintain a religiously neutral stance. Such services must be provided notwithstanding the Establishment Clause of the United States Constitution."

Therefore, in answering your first question in the affirmative, we hereby expressly affirm and approve Attorney General Opinion No. 78-243.

With respect to your second question, inquiring as to the State Board's authority to withhold federal funds to a local school district that fails to furnish special education to children in private and parochial schools, the following provisions of K.S.A. 1978 Supp. 72-965 are pertinent:

"The state board shall be responsible for the distribution and allocation of state and federal funds for special education in accordance with appropriation acts and the statutes of this state. Such moneys shall be expended only in accordance with and for the purposes specified in federal or state law. Payments under this act may be made in installments and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments. Federal funds for special education shall be deposited in the state treasury."

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It is our opinion that the foregoing statutory provisions provide ample authority for the State Board of Education to withhold from a local school district moneys to which such district would otherwise be entitled, except for such district's non-compliance with the Special Education for Exceptional Children Act. Such authority extends to all moneys available to the State Board for distribution under that Act, regardless of whether it is derived from federal or state sources.

As we understand it, federal funds are made available to the State Board of Education under P.L. 94-142, Education of the Handicapped Act, upon the State Board's compliance with said law and the rules and regulations adopted by the Department of Health, Education, and Welfare thereunder. You have been advised by federal officials that the provisions of these federal laws require the State Board to withhold funds from a local school district which fails to comply with any provision of its application to the State Board for federal funding. In our judgment, the State Board is not only authorized to withhold federal funds under these conditions, pursuant to the provisions of K.S.A. 1978 Supp. 72-965 quoted above, but is legally obliged to withhold such funds under such circumstances, by virtue of the State Board's acceptance of federal funds distributed under Part B of the Education of the Handicapped Act. It is well-settled that a state agency's acceptance of federal funds that are made available pursuant to provisions of federal law or rules and regulations adopted thereunder carry with it the obligation to utilize said funds in compliance with said federal law or rules and regulations.

In summary, it is our opinion that unified school districts are required, by the provisions of K.S.A. 1978 Supp. 72-961 et seq., to furnish special education to children in private and parochial schools, as well as those schools operated under the jurisdiction of such school districts. In the event that any such unified school district fails to comply with said statutory provisions, including the state plan and rules and regulations adopted by the State Board of Education thereunder, the Board is required by state and federal law to withhold from such district federal funds to which such district would otherwise be entitled.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General