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ATTORNEY GENERAL OPINION NO. 81-199

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

Re: Schools--Special Education--Decisions of the State Board

Synopsis: If a local board of education refuses to provide special education services to a child who has been determined to be an exceptional child under the provisions of K.S.A. 72-972 to 72-974, inclusive, the State Board of Education may enforce a decision rendered by it under the provisions of K.S.A. 72-974 by suing the local school board and requesting the court to issue an order requiring the local board to comply with the decision of the State Board. In addition, if such a refusal is made by a local school board, the State Board of Education properly may refuse to make the payments to the local school board which are provided for under K.S.A. 72-978. (Attorney General Opinion No. 81-165 is affirmed herein.) Cited herein: K.S.A. 72-972, 72-974, 72-978, 72-7512.

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Dear Representative Luzzati:

Last month, in response to an inquiry made by you, we issued Attorney General Opinion No. 81-165. In that opinion, we concluded:

"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." A.G. Op. No. 81-165, Synopsis.

Having reviewed Attorney General Opinion No. 81-165, you now inquire as to the remedies available to the State Board of Education to enforce decisions rendered by it under the provisions of K.S.A. 72-974.

As we indicated in our prior opinion, under the provisions of K.S.A. 72-7512, the State Board of Education is granted the authority to "sue in its own name." We again express our belief that, by exercising this authority, the State Board could seek judicial enforcement of a decision rendered by it under the provisions of K.S.A. 72-974. Of course, by "judicial enforcement," we mean an order from a court of law directing the local board of education to comply with the decision of the State Board. Thus, one remedy available to the State Board is to bring suit against the local school board.

You also have been advised by an attorney in the Revisor of Statutes office that the State Board could withhold from the local school board payments for special education services. While this "remedy" is not succinctly provided for under the Special Education for Exceptional Children Act, K.S.A. 72-978 does provide in part: "In each school year . . . each school district which has provided special education services in compliance with the requirements of the state plan and the provisions of this act, shall be entitled to receive [certain payments]." (Emphasis added.)

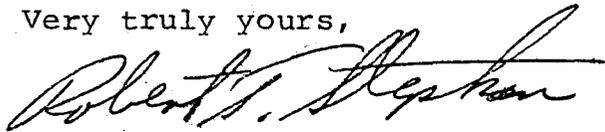
Under the provisions of the act, specifically, K.S.A. 72-966, "[t]he board of education of every school district shall provide special education services for all exceptional children in the school district . . . ." (Emphasis added.) If the State Board of Education, in accordance with the provisions of K.S.A. 72-974, has made the determination that a child is exceptional, and the decision of the State Board is not appealed to the district court, a local board of education, which refuses to provide special education services to that exceptional child, is not providing special education services for all exceptional children in the district. Thus, that local school board is not complying with the requirements of K.S.A. 72-966 and is not providing special education services in compliance with the provisions of the Special Education

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for Exceptional Children Act. Hence, said school district is not entitled to receive the payments provided for in K.S.A. 72-978. Therefore, the State Board may refuse to make the payments provided for in K.S.A. 72-978, if a local board of education refuses to provide special education services to a child who has been determined to be an exceptional child under the provisions of the Special Education for Exceptional Children Act.

Thus, in response to your inquiry, we are of the opinion that, if a local board of education refuses to provide special education services to a child who has been determined to be an exceptional child under the provisions of K.S.A. 72-972 to 72-974, inclusive, the State Board may enforce a decision rendered by it under the provisions of K.S.A. 72-974 by suing the local board and requesting the court to issue an order requiring the local school board to comply with the decision of the State Board. In addition, if a situation such as is described above occurs, the State Board properly may refuse to make the payments to the local school district which are provided for under K.S.A. 72-978.

Very truly yours,



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RTS:BJS:RJB:jm