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ATTORNEY GENERAL OPINION NO. 2026-4

The Honorable Megan Steele  
State Representative, 51st District  
State Capitol, Room 165-W  
300 SW 10th St.  
Topeka, Kansas 66612

Re: Schools—School District State Aid—ACT College Entrance Exams and  
WorkKeys Assessments; Payment of Fees and Costs

Synopsis: K.S.A. 72-5179 requires the Kansas State Board of Education to pay for certain exams, including the ACT, for “any person who is regularly enrolled in any public school or accredited nonpublic school located in Kansas.” Nonpublic schools may seek and obtain accreditation by the Board, and the Legislature has consistently used the term “accredited nonpublic school” to refer to those schools that have done so. Accordingly, under K.S.A. 72-5179 the Board is only required to pay for exams for students who attend a public school or a nonpublic school that has been accredited by the Board. Cited herein: K.S.A. 72-255; 72-5178; 72-5179.

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Dear Representative Steele:

As State Representative for the 51st District, you ask about the reach of K.S.A. 72-5179, which requires the Kansas State Board of Education to provide (*i.e.*, pay for) the ACT college entrance exam, along with associated assessments and the pre-ACT, to “any person who is regularly enrolled in any public school or accredited

nonpublic school located in Kansas.” Specifically, you are concerned about the meaning of “accredited nonpublic school” and whether the term includes schools that are not accredited by the Board but are accredited by another body. You raise this issue in the context of Flint Hills Christian School, which is not accredited by the Board but is accredited by, according to its website, the Association of Christian Schools International and Cognia.<sup>1</sup> As explained below, “accredited nonpublic school” means only those nonpublic schools that have been accredited by the Board.

Your question turns on statutory interpretation. Well-established statutory interpretation canons require that this office or a court neither “speculate” nor “read into the statute language not readily found there.”<sup>2</sup> And we must “reconcile the different [statutory] provisions so as to make them consistent, harmonious, and sensible.”<sup>3</sup> It also is well established that we presume the Legislature knows the existing law when it enacts new law.<sup>4</sup>

The Legislature has charged the Board with “[a]dopt[ing] and maintain[ing] standards, criteria, guidelines or rules and regulations for the . . . accreditation of schools including elementary and secondary, public *and nonpublic*.”<sup>5</sup> Nonpublic schools in Kansas may—and many do—seek Board accreditation.<sup>6</sup>

K.S.A. 72-5179 was amended in 2021 to include the term “accredited nonpublic school.”<sup>7</sup> Although K.S.A. 72-5179 does not define this term, other statutes do. For example, K.S.A. 72-6228(b) and 72-6241(a) define “[a]ccredited nonpublic school” as “all nonpublic elementary and secondary schools accredited by the state board of education.” And K.S.A. 72-6131(d), 72-6135(d), and 72-6142(d) define “[a]ccredited nonpublic school” as “a nonpublic school participating in the quality performance accreditation system,” *i.e.*, a nonpublic school that is part of the Board’s accreditation process. The Legislature has continually and consistently used “accredited nonpublic school” to refer to a nonpublic school that has been accredited by the Board, a process that is open to all nonpublic schools in Kansas.

The Legislature knows how to write statutes in a way that includes other schools. Significantly, when it amended K.S.A. 72-5179 in 2021, the Legislature also amended the Low Income Students Scholarship Program Act to define a “qualified school” to mean certain schools “accredited by the state board *or a national or regional accrediting agency that is recognized by the state board for the purpose of*

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<sup>1</sup> See <https://flinthillschristianschool.com/>.

<sup>2</sup> *In re Est. of Strader*, 301 Kan. 50, 55, 339 P.3d 769 (2014) (internal quotation marks omitted).

<sup>3</sup> *In re Marriage of Ross*, 245 Kan. 591, 584, 783 P.2d 331 (1989).

<sup>4</sup> See *Application of Am. Rest. Operations*, 264 Kan. 518, 524–25, 957 P.2d 473 (1998).

<sup>5</sup> K.S.A. 72-255(a)(3) (emphasis added).

<sup>6</sup> K.A.R. 91-31-32(e); *cf.* K.S.A. 72-3217 (providing requirements for “[a]ll accredited schools, public, private or parochial” and “all accredited high schools, public, private or parochial”).

<sup>7</sup> See 2021 Kan. Sess. L. ch. 114, § 23.

*satisfying the teaching performance assessment for professional licensure.*”<sup>8</sup> The Legislature could have used “qualified school” in K.S.A. 72-5179 or otherwise amended the statute to include nonpublic schools not accredited by the Board. Similarly, the Legislature could have used the term “[p]rivate elementary or secondary school,” which it has previously used to denote schools that are not accredited by the Board.<sup>9</sup>

But the Legislature did neither. Instead, the Legislature used a term—“accredited nonpublic school”—that it has consistently used to denote nonpublic schools that are accredited by the Board. By once again using the term, the Legislature limited the Board’s obligation under K.S.A. 72-5179 to students who attend public schools and Board-accredited nonpublic schools.<sup>10</sup>

In conclusion, K.S.A. 72-5179 applies only for students who attend public schools or nonpublic schools in Kansas that are accredited by the Board.

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<sup>8</sup> 2021 Kan. Sess. L. ch. 114, § 15(h)(2) (emphasis added) (now codified at K.S.A. 72-4352(h)). Certain accrediting agencies may be recognized by the Board in relation to professional teaching licenses. *See also* K.A.R. 91-1-203(b). But there is no statutory authority for these agencies to accredit schools in place of the Board. The Legislature knows how to cast a wide net that includes schools that are not accredited by the Board, *see* K.S.A. 72-4352(h), yet it did not do so in K.S.A. 72-5179.

<sup>9</sup> *See* K.S.A. 72-4345(a) (“‘Private elementary or secondary school’ means an organization which regularly offers education at the elementary or secondary level and attendance at which satisfies the compulsory school attendance laws of this state, but which is not accredited by the state board of education.”); *cf.* K.S.A. 72-4347 (“The purpose of this act is solely to make available to a school district, *an accredited nonpublic school, or a private elementary or secondary school* to which a pupil transfers, the name and location of the private elementary or secondary school from which the pupil transferred so that request may be made by the transferee school district, *accredited nonpublic school, or private elementary or secondary school* for the pupil’s records.” (emphases added)).

<sup>10</sup> Additionally, K.S.A. 72-5179 is part of the Kansas School Equity and Enhancement Act, K.S.A. 72-5131 *et seq.*, and another section in the Act—K.S.A. 72-5178—also references “accredited nonpublic schools.” K.S.A. 72-5178 and 72-5179 were enacted and amended together. 2021 Kan. Sess. L. ch. 114, §§ 23–24; 2019 Kan. Sess. L. ch. 19, §§ 3–4. K.S.A. 72-5178(a) requires the Kansas State Department of Education to annually “prepare and digitally update” on its website “the performance accountability reports and longitudinal achievement reports upon all students enrolled in any public school or accredited nonpublic school in the state, each school district, each school operated by a school district and each accredited nonpublic school.” In compiling longitudinal achievement reports, the Department must use data from, among other things, “the ACT college entrance exam and the pre-ACT assessment.” K.S.A. 72-5178(d)(2)(D). These reports are tied to the Board’s accreditation system and are only published for schools, public and nonpublic, that are accredited by the Board. *See* K.S.A. 72-5170(c)(2)(B). This connection, which highlights the importance of exam data for the Board, further demonstrates that K.S.A. 72-5179 covers only schools accredited by the Board.

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach  
Attorney General

/s/ Adam T. Steinhilber

Adam T. Steinhilber  
Assistant Solicitor General