



OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

(R75-9)
75-275

BRUCE E. BABBITT
ATTORNEY GENERAL

August 19, 1975

The Honorable Leon Thompson
Arizona State Representative
1839 South Sixth Avenue
Phoenix, Arizona 85003

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Representative Thompson:

This letter is in response to your letter to this office dated January 20, 1975, in which you requested answers to six separate questions relating to school matters.

Your first question is whether a high school district can refuse to enroll a person solely because that person lives in a rehabilitative or corrective institution or foster home located in the district. The applicable statutory provisions are A.R.S. §§ 15-302, 15-304 and 15-449. Subsection E of A.R.S. § 15-302 permits a district school board to admit children to the district's schools who reside in rehabilitative or corrective institutions located in the district. Subsection B of A.R.S. § 15-304 specifies that the county school superintendent of any county in which a pupil is placed in, among other places, a state rehabilitative or corrective institution, as well as a foster home or child care agency licensed and supervised by the State Department of Economic Security, shall issue a certificate of educational convenience for the pupil to attend school in the school district or adjoining school district to that in which the pupil is placed. Upon the issuance of the certificate of educational convenience, A.R.S. § 15-449.A then becomes applicable. It requires a school board, among other things, to admit pupils from another district or area upon the presentation of a certificate of educational convenience issued by the county school superintendent pursuant to A.R.S. § 15-304.



The Honorable Leon Thompson
August 19, 1975
Page Two

It seems clear that Subsection B of A.R.S. § 15-304 mandates that the county school superintendent issue the certificate of educational convenience under the circumstances there set forth, and that Subsection A of A.R.S. § 15-449 mandates that the school board admit the pupil to whom the certificate has been issued. There does not appear to be any discretion in this regard. Consequently, a school district cannot refuse to enroll a person who resides in a rehabilitative or corrective institution or a foster home located within the district once that person presents the district with his or her certificate of educational convenience.

It bears mentioning that the foregoing opinion is limited to children who cannot properly be excluded or expelled from school because of, for instance, their dangerous conduct. But the standards for such exclusion or expulsion and the process by which the determination is made are governed by other statutory provisions, case law and constitutional precedent. We might add, however, that it is unreasonable for a school board to automatically assume that all children who reside in corrective or rehabilitative institutions or foster homes are, as a result of that fact alone, properly excludable or subject to expulsion.

Your second question is whether a high school district may treat foster home residents differently from all other students for enrollment purposes. Your fourth question is basically similar, since it asks whether a high school district can purposefully delay the enrollment of a foster home resident in one of the district's schools. We think it clear from our answer to your first question that foster home residents cannot, simply because they are such residents, be refused enrollment in a district's schools. Since they cannot be refused enrollment, they cannot, as a general matter, be subjected to different treatment in the

The Honorable Leon Thompson
August 19, 1975
Page Three

method of their enrollment or to tactics which result in the delay of their enrollment.

Your third question concerning whether it was legal for a high school district, as a condition to enrollment, to require the disclosure to it of information contained in the records of the Department of Economic Security and other agencies relating to children requiring protective services or to children placed in foster homes. The Arizona statutory provisions relating to protective services are found in A.R.S. §§ 8-546 et seq. The State Department of Economic Security is required by A.R.S. § 8-546.03.A to maintain a central registry of reports, investigations and evaluations pertaining to protective services. The registry is required to contain the information furnished by protective services workers throughout the state. Subsection C of A.R.S. § 8-546.03 states that the central registry information shall be confidential and can be made available to certain governmental and private agencies there specified only with the approval of the Director of the Department of Economic Security. The central registry data and information is therefore confidential, and the Director of the Department of Economic Security, as a general matter, is authorized to reject requests for that information unless the agency requesting the information can show good cause why the information should be distributed to it. If the Director disapproves the request for the information, the school district may not refuse to enroll the child with respect to which it is seeking information. Its recourse would lie with the courts, assuming it does not think the Director of the Department of Economic Security properly refused its request for the information.

Certain records and information are also required to be kept with respect to foster children. A.R.S. § 8-519.A requires a child welfare agency to keep such records regarding the children in its care as the Department of Economic Security prescribes and to furnish to the Department of Economic Security, upon request, any additional information that the Department requires. Subsection B of A.R.S. § 8-519 specifies that all records and information

The Honorable Leon Thompson
August 19, 1975
Page Four

in the possession of the Department of Economic Security or any child welfare agency regarding foster children and their parents or relatives shall be deemed confidential and shall be disclosed only pursuant to the rules of the Department of Economic Security or by order of court. Since the material is confidential, a school district may not refuse to enroll the student simply because the records and information concerning such student in the possession of the Department of Economic Security or a child welfare agency are not disclosed to the school district upon its request. As stated above, the proper recourse of the school district, assuming it believes that it has a right to the information, lies with the courts.

Your fifth question relates to whether the high school district or the student is required to "get all transcripts for students enrolled" in the district. We are not certain whether you are concerned with the privacy accorded students' records or whether you are concerned with some other problem. Consequently, we will await clarification of your question before responding to it.

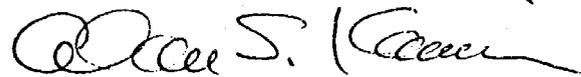
Your sixth question is whether a high school district may refuse to enroll a student who is over sixteen years of age but less than nineteen. This question is not really directed to whether a high school district can exclude all students over the age of sixteen from attendance at its schools. Rather, it is directed to whether a high school district can exclude a particular student over the age of sixteen from such attendance. Since the district admits many students over the age of sixteen to its schools, it must have good and sufficient reason for excluding a particular student from such attendance. In brief, without being advised concerning the particular facts involved, we can only opine that the exclusion must be based upon sufficient grounds, adequately documented, and must be carried out in a manner consistent with the statutes, case law and constitutional precedent. If the reasons and documentation for the exclusion are insufficient, or if the process by which the exclusion took place is improper,

The Honorable Leon Thompson
August 19, 1975
Page Five

then the student excluded will have been denied the benefits of the due process and equal protection clauses of the Arizona and United States Constitutions.

Sincerely,

BRUCE E. BABBITT
Attorney General

A handwritten signature in cursive script, appearing to read "Alan S. Kamin".

ALAN S. KAMIN
Assistant Attorney General

ASK:lc