



Wyoming Department of Education

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MEMORANDUM NO. 2008 – 109

TO: District Superintendents

FROM: Mary Kay Hill 

DATE: August 15, 2008

SUBJECT: Legal Opinion on Age for Kindergarten Enrollment

IMPORTANT INFORMATION

At the beginning of each school year, many parents question the legal enrollment age of children into kindergarten.

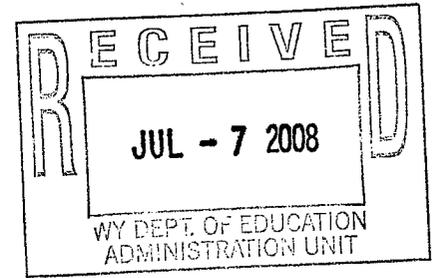
To assist you, attached please find the July 7, 2008 ruling and discussion by the Office of the Attorney General in answer to the age of kindergarten enrollment. **You will note that districts may not enroll children who have not reached their fifth (5th) birthday prior to September 15th of the school year.**

Please share this information with your staff.

Thank you.

MKH:kl

Encl.



Office of the Attorney General

Governor Dave Freudenthal	Human Services Division 123 State Capitol Cheyenne, Wyoming 82002 307-777-6397 Telephone 307-777-3435 Fax	Chief Deputy Attorney General Elizabeth C. Gagen
Attorney General Bruce A. Salzburg		Division Deputy Robin Sessions Cooley

July 7, 2008

Dr. James McBride, Ed.D.
State Superintendent of Public Instruction
Wyoming Department of Education
Hathaway Building, Second Floor
2300 Capitol Avenue
Cheyenne, Wyoming 82002-0050

RE: Request for informal legal opinion on age for kindergarten enrollment.

Dear Dr. McBride:

You recently requested the opinion of the Attorney General on the following question:

Do Wyoming school districts have the authority to enroll a child in kindergarten if the child has not had his fifth (5th) birthday prior to September 15th of the school year?

SHORT ANSWER

No. Pupils who have not reached their fifth (5th) birthday prior to September 15th of the school year (Preschoolers) may not enroll in kindergarten in the public schools of the state. However, Wyoming law provides districts with the option to create part-time preschool programs.

DISCUSSION

The Wyoming Supreme Court speaks to the issue of statutory interpretation regularly, and in doing so, has provided the following guidance:

In interpreting statutes, our primary consideration is to determine the legislature's intent. All statutes must be construed in *pari materia* and, in ascertaining the meaning of a given law, all statutes relating to the same subject or having the same general purpose must be considered and construed in harmony. . . . We endeavor to interpret statutes in accordance with the legislature's intent. We begin by making an inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection. We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe all parts of the statute in *pari materia*. When a statute is sufficiently clear and unambiguous, we give effect to the plain and ordinary meaning of the words and do not resort to the rules of statutory construction. *Wyoming Board of Outfitters and Professional Guides v. Clark*, 2001 WY 78, ¶ 12, 30 P.3d 36, ¶ 12 (Wyo. 2001); *Murphy v. State Canvassing Board*, 12 P.3d 677, 679 (Wyo. 2000). Moreover, we must not give a statute a meaning that will nullify its operation if it is susceptible of another interpretation. *Billis v. State*, 800 P.2d 401, 413 (Wyo. 1990) (citing *McGuire v. McGuire*, 608 P.2d 1278, 1283 (Wyo. 1980)).

BP Am. Prod. Co. v. Dep't of Revenue, 2005 WY 60, ¶ 15, 112 P.3d 596, 604 (Wyo. 2005).

Wyoming statute and case law sets out the age requirements for registration of pupils in district schools. The plain language of WYO. STAT. ANN. § 21-4-302(b) (2007) clearly prohibits the enrollment of a Preschooler in a district kindergarten program. That is, the statute provides that only a child who has reached his fifth (5th) birthday prior to September 15th of the school year (Kindergartner) “may register in kindergarten in the public schools of this state....” WYO. STAT. ANN. § 21-4-302 (b) (2007).

In *Natrona County Sch. Dist. No. 1 v. Ryan*, 764 P.2d 1019, 1033 (Wyo. 1988), the Wyoming Supreme Court held that “Wyoming is constitutionally obligated and statutorily directed to provide education to handicapped children only between five and twenty-one years of age.” *Id.* at 1033. The Court pointed out that “[r]eading the minutes of the constitutional convention debates in conjunction with the Wyoming Constitution and W.S. 21-4-301, 21-4-302, and 21-2-501, establish the definition of ‘child of school age’ to be five years of age to twenty-one years of age[.]” *Id.* In *Ryan*, the Court considered whether public schooling should be provided to a handicapped student after her 21st birthday. The Court held that the state was not

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obligated to provide public schooling to any student beyond the age of 21. *Id.* Providing an education to children who have not yet reached five (5) years of age would likewise not be required. *See id.*

Moreover, it would be improper to allow Preschoolers to enroll in kindergarten as it would render meaningless the age requirements of WYO. STAT. ANN. § 21-4-302(b) (2007). As noted above, courts are reluctant to give a statute a meaning that would nullify its operation if it is susceptible of another interpretation. *Billis v. State*, 800 P.2d 401, 413 (Wyo. 1990) (citing *McGuire v. McGuire*, 608 P.2d 1278, 1283 (Wyo. 1980)).

However, the law provides districts with the option to offer part-time preschool programs, which are separate from the district's kindergarten programs. "The board of trustees of a school district may permit the enrollment of pupils in a part-time preschool program with a curriculum based on developmentally appropriate practices funded by the district." WYO. STAT. ANN. § 21-4-302(c) (2007). As noted in the plain language of this statute, the state is not required to provide the districts with the necessary funds to support and sustain these preschool programs. The Wyoming Supreme Court, in *Campbell County Sch. Dist. v. State*, 2008 WY 2, ¶ 88, 181 P.3d 43, 70 (Wyo. 2008) held that "the constitution does not require the state to provide the necessary funds for each district to offer voluntary pre-schools." *Id.* ¶ 88. *See also*, WYO. STAT. ANN. § 21-4-302(c)(ii) (2007) ("A pupil who enrolls in such a preschool program shall not be included within the district's average daily membership (ADM) for purposes of receiving state funds or within any other school funding formula for purposes of receiving funds from the state, unless the pupil has attained the minimum age for registration in kindergarten as provided in subsection (b) of this section[.]").

Finally, the district preschool programs should be separate from the district kindergarten programs, and not simply a mixing of Preschoolers with Kindergartners, as such mixing of programs may have the same effect as allowing Preschoolers to enroll in kindergarten.

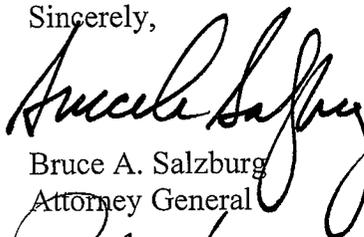
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CONCLUSION

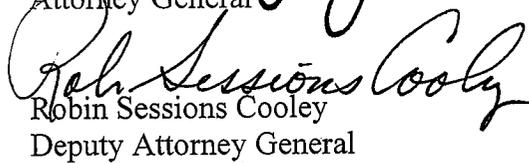
Given the clear intent of the legislature to provide an age requirement for the registration of Kindergartners, districts may not allow Preschoolers to register in kindergarten programs within the district.

If you have any further questions or concerns, please do not hesitate to contact our office.

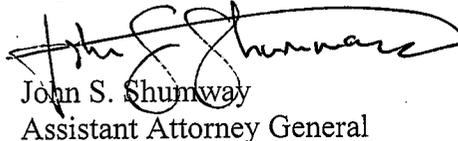
Sincerely,



Bruce A. Salzburg
Attorney General



Robin Sessions Cooley
Deputy Attorney General



John S. Shumway
Assistant Attorney General