

Opinion No. 76-28

August 26, 1976

BY: OPINION OF TONEY ANAYA, Attorney General Jill Z. Cooper, Leila Andrews, Assistant Attorneys General

TO: Mr. Harry Wugalter, Chief, Public School Finance Division, State Capitol Building, Santa Fe, New Mexico 87503; Mr. Leonard Delayo, Superintendent of Instruction, Department of Education, Education Building, Santa Fe, New Mexico 87503

FACTS

The Department of Education and the Public School Finance Division of the Department of Finance and Administration proposes to implement a policy whereby students who have not attained their sixth birthday by October 1, 1976, but who have attained age six by January 1, 1977 and who have attended a full year, or the equivalent, kindergarten program, may be enrolled in the first grade at the beginning of the 1976-77 school year and, if so enrolled, may be counted in the "Basic Program ADM" as defined in Section 77-6-2 (C), NMSA, 1953 Comp.

QUESTION

May such a policy be legally implemented?

CONCLUSION

Yes.

ANALYSIS

{*102} The Department of Education and the Public School Finance Division of the Department of Finance and Administration have proposed a policy to clarify the guidelines established by law for enrollment in public school. Although both agencies concur in this policy, it must be considered in the context of the relevant statutes to determine whether it is consistent therewith.

Section 77-11-2, NMSA, 1953 Comp. provides for the establishment of an early childhood education program in each school district and the progressive phasing in of these programs "such that, not later than September 1, 1977, a program shall be available to every child who has attained his 5th birthday prior to September 1 of the school year."

Section 77-6-2 (K), NMSA, 1953 Comp. defines "a qualified student" as one who is at least six years old on January 1st of the school year if approved early childhood education programs are not provided for the student by the school district; or, if such

programs are provided by the school district, at least six years old on December 1, 1974 for the school year 1974-75, at least six years old on November 1, 1975 for the school year 1975-76, at least six years old on October 1, 1976 for school year 1976-77, and, at least six years old on September 1, 1977 for the school year 1977-78 and all succeeding school years. It would appear that the phasing in of the early childhood education program is coordinated with the phasing in of the entry level dates for the first grade.

Section 77-6-2 (C), **supra**, defines "basic program ADM" as "the average daily membership (ADM) of qualified students in the basic program." The amount of the state money distributed to a school district is determined in part by the ADM. Only students counted in the ADM receive funding from the state.

Questions have been raised with respect to the applicability of Section 77-6-2 (K), **supra**, to children who, for example, by reason of having moved from another district, have already attended a full year of kindergarten but will not be six by October 1. A literal interpretation of Section 77-6-2, **supra**, would require that such a child either wait out the year or repeat a full year of kindergarten or that a school district accepting such a child in the first grade not count the child in the basic program ADM. None of these results is reasonable and each would contradict the legislative intent of co-ordinating an early childhood education or kindergarten program with the first grade.

It is a rule of statutory construction that where adherence to the literal language of the statute leads to an injustice or absurdity or contradiction, the statute will be construed according to its obvious spirit or reason. **State v. Nance**, 77 N.M. 39, 419 P.2d 242 (1966), **cert. denied**, 386 U.S. 1039, {*103} 18 L. Ed. 2d 605, 87 S. Ct. 1495. Thus, we would construe this statute in accordance with its obvious spirit and recognize that the policy proposed by the State Department of Education and the Public School Finance Division properly reflects that spirit and reasonably provides for those children who will not be six years old before October 1, 1976 but who have attained age six by January 1, 1977 and who have attended a full year of kindergarten. Consistent with the intent of the statutory scheme, those students may be enrolled in the first grade and counted in the basic program ADM.