

1979 Iowa Op. Atty. Gen. 258 (Iowa A.G.), 1979 WL 21006

Office of the Attorney General

State of Iowa  
Opinion No. 79-7-3  
July 2, 1979

\*1 **SCHOOLS: Age of Admission to School: Const. of Iowa, Article IX, § 7; § 281.2(1) and (2); § 282.3(1), (2) and (3), Code of Iowa (1979, 1971 Acts, G. A., 181 (Ch. 163). School districts are without discretion to admit a student to kindergarten unless the child has attained the age of five on or before September fifteenth of the particular school year. (Hagen to Murray, State Senator, 7/2/79)**

Honorable John S. Murray  
State Senator  
612 Stanton Avenue  
Ames, Iowa 50010

Dear Senator Murray:

You have asked for an opinion of the Attorney General as to whether a **school** district has discretion to admit children to a **school** who have not reached the **age** of five years on or before **September 15** of the opening of a particular **school** year. For the reasons stated below, it is our opinion that the district board is without discretion to admit children who have not attained the requisite **age**. The specific questions you have propounded are as follows:

1) Does a **school** district have any discretion whether or not to enroll in kindergarten a child who has not reached the **age** of 5 years by **September 15**? If it does, must this discretion be based upon past educational experience, current test results, or some other objective criterion?

2) If a child is not 5 years of **age** by **September 15** but has been attending a certified kindergarten in another state prior to moving into the district, can the receiving **school** district legally enroll this child in its kindergarten program? Does the **school** district have any discretion in this case?

The Constitution of Iowa contains a relevant provision as follows:

The money subject to the support and maintenance of common **schools** shall be distributed to the districts in proportion to the number of youths, between the **ages** of five and twenty-one years, . . .

**Const. of Iowa, Article IX, Sec. 7.** The specific statutory language related to the first question submitted is found in the third unnumbered paragraph of § 282.3(2):

No child shall be admitted to **school** work for the year immediately preceding the first grade unless he is five years of **age** on or before the fifteenth of **September** of the current **school** year. [Emphasis supplied]

The language of that paragraph and of the first paragraph of that section have been the same for many years, except for changes in the requisite **age** of children who could be admitted to first grade and those who could be admitted to kindergarten. In 1961, the General Assembly amended Ch. 282 to provide in pertinent part:

On and after July 1, 1962, the conditions of admission to public **schools** for work in the **school** year immediately preceding the first grade and in the first grade shall be as follows:

‘No child under the **age** of six years on the fifteenth of **October** of the current **school** year shall be admitted to any public **school** unless the board of directors of the **school** (or the county board of education) shall have adopted and put into effect courses

of study for the **school** year immediately preceding the first grade, approved by the department of public instruction and shall have employed a teacher or teachers for this work with standards of training approved by the department of public instruction.

\*2 No child shall be admitted to **school** work for the year immediately preceding the first grade unless he is five years of age on or before the fifteenth of October of the current **school** year.

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On and after July 1, 1963, the conditions of admission to public **schools** for work in the **school** year immediately preceding the first grade and in the first grade shall be as follows:

'No child under the age of six years on the fifteenth of September of the current school year shall be admitted to any public school unless the board of directors of the school (or the county board of education) shall have adopted and put into effect courses of study for the school year immediately preceding the first grade, approved by the department of public instruction and shall have employed a teacher or teachers for this work with standards of training approved by the department of public instruction.

No child shall be admitted to school work for the year immediately preceding the first grade unless he is five years of age on or before the fifteenth of September of the current school year.

1971 Acts, G.A., 181 (Ch. 163). [Emphasis added]

Except for the editorial change of 1970, which eliminated the implementing sections of the 1961 enactment, the language of these paragraphs has been in effect since 1961.

The operative language of the statute, as emphasized in the text above, is 'No child shall be admitted . . . unless he is five years of age on or before the fifteenth of September . . .' The Iowa Supreme Court on numerous occasions has spoken to the impact of the word 'shall' when it is addressed to a public official. For example, in [Schmidt v. Abbott](#), 261 Iowa 886, 890, 156 N.W. 2d 649, 651 (1968) it was said 'When addressed to a public official the word 'shall' is ordinarily mandatory, excluding the idea of permissiveness or discretion.' In [Hansen v. Henderson](#), 244 Iowa 650, 665, 56 N.W. 2d 59, the court stated:

For the reasons stated the directions in section 399.14 are held to be demands and are mandatory. In each sentence in the section the verb contains the word 'shall.' In each of them it is not permissive or discretionary but means six years. And in the first sentence the word 'shall' definitely means that the council must elect a board of trustees and that the action is not a matter of choice or discretion. The word 'shall' appearing in statutes is generally construed to be mandatory.

In [City of Newton v. Board of Supervisors](#), 135 Iowa 27, 30, 112, N.W. 167, 168, 124 Am. St. Rep. 256, the court said:

'Sometimes courts are justified in interpreting the word 'shall' as 'may', but, when used in a statute directing that a public body do certain acts, it is manifest that the word is to be construed as mandatory and not permissive. \* \* \* The uniform rule seems to be that the word 'shall', when addressed to public officials, is mandatory and excludes the idea of discretion. \* \* \* There are many reasons for this rule which need not be elaborated upon, as the cases cited fully present the grounds upon which it is based.' (Citing authorities.) [Emphasis supplied]

\*3 Based on these interpretations of the use of the word 'shall', and especially when addressed to public officials, it is clear that district boards have a mandate not to admit children who are younger than the law provides. The principle is well settled that in considering a statute, the intent of the legislature as expressed in the statute should be followed, [State v. Rieke](#), 160 N.W. 2d 499 (Iowa 1968), and that the language is to be understood in accordance with the plain meaning of words used. [In re Miller's Estate](#), 159 N.W. 2d 441 (Iowa 1968).

We conclude on the basis of the legislative history in which the legislature changed only the relevant requisite month in which a child's birthday occurs and continually used the mandatory language 'no child shall be admitted'—that the district board is without discretion to admit children who are younger than that specified in the code section under any circumstances.

This conclusion is supported further by the fact that the legislature vested the district boards with discretion to exclude children who are under six. The board, pursuant to Sec. 282.3(1), Code of Iowa (1979) 'may exclude from **school** children under the **age** of six years when in its judgment such children are not sufficiently mature to be benefited from regular instruction . . .'

Further discretion with respect to attainment of a **greater age** is as follows:

Nothing herein provided shall prohibit a **school** board from requiring the attainment of a **greater age** than the **age** requirements herein set forth.

Sec. 282.3(3), Code of Iowa (1979). [Emphasis added] Thus, the discretion which the legislature did permit the district board to exercise in connection with the **age** of **school** children relates to children who would otherwise satisfy the **school age** requirement being older. Where, within the same statute, the legislature has allowed discretion and in the opposite direction, in our opinion, the mandatory meaning of 'no child shall be admitted' unless the child is of the required **age** is reinforced.

The special education chapters of the Code furnish further support. 'Children requiring special education' are defined as follows: 'Children requiring special education' means persons under twenty-one years of **age**, including children under five years of **age**, who are handicapped in obtaining an education because of physical, mental, emotional, communication or learning disabilities or who are chronically disruptive, as defined by the rules of the department of public instruction.

Sec. 281.2(1), Code of Iowa (1979). Those children are not to be admitted to school before they are five on or before **September 15**, however. Rather,

Special aids and services shall be provided to children requiring special education who are less than five years of **age** if the aids and services will reasonably permit the child to enter the educational process or school environment when the child attains school age.

\*4 Sec. 281.2:2 (Third Paragraph.), Code of Iowa (1979) [Emphasis supplied] Thus, the child requiring special education receives aids and services but does not enter school until reaching the **age** as provided in Sec. 282.2. Accord, 1962 O.A.G. 340.

We conclude that there is no discretion in district boards to admit children who have not attained the specified **age**. Inasmuch as the answer to your first question is negative, your other questions require no answer.

Very truly yours,

Howard O. Hagen  
Assistant Attorney General

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