

OFFICE OF THE ATTORNEY GENERAL



79-00201

File # 167

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STATE OF ALABAMA

April 25, 1979

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Dr. J. Carlton Smith
Superintendent of Education
Hartselle City Schools
P. O. Box 97
Hartselle, Alabama 35640

Schools - City Boards of Education -
Special Education, classroom facilities discussed.

Dear Doctor Smith:

We have your letter in which you request an opinion of this office concerning the construction of a separate facility for housing exceptional children on the campus of Morgan County High School within the jurisdiction of the Hartselle City Board of Education. As we understand your request, the proposed facility would house trainable mentally retarded children who are assigned to Morgan County High School. The facility will be separate and apart from the rest of the school campus on the other side of a parking lot on school property. You specifically ask our opinion on the legality of providing a separate facility for exceptional children.

It is our opinion that a separate facility for exceptional children may not be provided unless the needs of the children to be housed in such facility require that they be separated from non-exceptional children. We recognize that this is a difficult standard to apply. We therefore feel that a discussion of this standard is necessary.

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As you are aware, Section 16-39-8 Code of Alabama 1975 provides in pertinent part:

"In providing for the instruction of exceptional children, the school boards shall utilize regular school facilities and adapt them to the needs of exceptional children, except as otherwise provided herein. No exceptional child shall be segregated and taught apart from other non-exceptional children until a careful study of the child's case has been made and evidence obtained which indicates that such segregation would be for the exceptional child's benefit or is necessary because of difficulties in teaching the child in a regular school program. Appropriate placement shall be made on the basis of the placement committee recommendation wherever this is practicable."

This paragraph of Section 16-39-8 is the Alabama codification of the least restrictive environment requirement in the education of exceptional children which is necessary to meet federal constitutional standards. In its simplest terms this requirement simply means that exceptional children must be given the opportunity to benefit from association and education with non-exceptional children to the extent that their abilities allow them to do so. This requirement is mandated for the benefit of both exceptional and non-exceptional children. It is recognized that exceptional children should become prepared to become contributing members of society to the greatest extent of their abilities; and that non-exceptional children should be given the opportunity to learn that exceptional children can so contribute. These principals cannot be adequately learned and exceptional children cannot be adequately prepared to make their way in a normal world where the exceptional children are kept apart and segregated from non-exceptional school programs. In numerous recent federal court decisions separate facilities for exceptional children have been successfully challenged as a denial of equal protection of the laws in violation of the least restrictive environment requirement.

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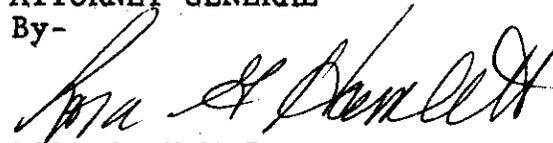
It is our opinion that in most instances separate facilities such as the one you propose would not withstand constitutional challenge. In exercising your judgment concerning whether the facility should be built as proposed you must first determine that the needs of the children to be served by the facility absolutely requires that these children be segregated and kept apart from the children participating in the regular school programs. If the needs of the exceptional children do not require such separation, then their classes must be more physically integrated into the regular classroom programs. It appears from the information which you have furnished that a separate facility would probably not meet constitutional standards in this instance.

I hope that the above discussion is helpful to you. If we can be of further assistance regarding this matter, please do not hesitate to call upon us.

Sincerely,

CHARLES A. GRADDICK
ATTORNEY GENERAL

By-



ROSA G. HAMLETT
ASSISTANT ATTORNEY GENERAL

RGH:dpr