

# OFFICE OF THE ATTORNEY GENERAL 85-00104



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State Senator  
P. O. Box 6791  
Dothan, Alabama 36302

Board of Education - Students -  
Kindergartens

Local Boards of Education may  
under certain circumstances allow  
underage student to remain in  
kindergarten.

Dear Senator Bailey:

The Attorney General has considered your request for an opinion concerning whether an underage child may be permitted by a local Board of Education to remain enrolled in a kindergarten program. For purposes of this opinion you ask us to assume that the child who did not obtain his fifth birthday prior to October 2 of the school year was admitted to kindergarten due to local Board of Education error. Further, facts you submit are that the child's parent submitted the child's birth certificate at the time of registration which was placed on file with the Houston County Board of Education.

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Your question for this office is, assuming the above stated facts are true and further assuming that the Board of Education is at fault, may the Board of Education permit the child to remain in the kindergarten program.

Based on the facts presented it is the opinion of this office that, space permitting, the Board of Education may allow the child to remain enrolled. This opinion is based upon Section 16-28-4(b), Code of Alabama 1975, as amended. In that Section it is provided that

"A child who is five years of age on or before October 1 shall be entitled to admission to the local public kindergartens at the opening of such schools for that year or as soon as practicable thereafter; a child who is under five years of age on October 1 shall not be entitled to admission to such schools during that school year..."

The statute includes a notable exception to the entitlement to admission, i.e., where an underage child has attended a public school kindergarten program in another state, the child may be permitted, upon approval by the local board, to transfer into a state kindergarten program on a space available basis. This exception along with the actual wording of the statute signifies a legislative intent that under certain specialized circumstances a local school board has the authority to allow an underage child to attend the kindergarten program on a space available basis.

Since the school's error in admitting the child was not discovered until after the school year was well under way, the child here stands in an almost identical position to the out-of-state underage child admitted. Therefore, it is our opinion that the Board of Education may approve the continuance of the child in the kindergarten program on a space available basis.

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This opinion should not be understood as a random approval of admitting underage children to kindergarten. It is based upon the limited facts here submitted and upon the assumption that to remove the child could cause the child to be harmed. Should the Board abuse its limited discretion to admit underage children appropriate action would be within the authority of the State Board of Education.

Sincerely yours,

CHARLES A. GRADDICK  
Attorney General

By:

A handwritten signature in cursive script, appearing to read "Rosa H. Davis".

ROSA H. DAVIS  
Assistant Attorney General

CAG:RHD:mth