

Opinion No. 2012-114

November 20, 2012

The Honorable Les “Skip” Carnine  
State Representative  
Post Office Box 615  
Rogers, Arkansas 72757-0615

Dear Representative Carnine:

This is my opinion on your question about a minimum age requirement for public school enrollment.

Generally, a child may enter kindergarten if he turns five years old on or before August 1 of the year of enrollment.<sup>1</sup> But a child who will turn five at any time during the year may be enrolled if he has attended kindergarten elsewhere:

Any student who has been enrolled in a state-accredited or state-approved kindergarten program in another state for at least sixty (60) days, who will become five (5) years old during the year in which he or she is enrolled in kindergarten, and who meets the basic residency requirement for school attendance may be enrolled in kindergarten upon written request to the school district.<sup>[2]</sup>

You write about a child who turned five August 8, 2012, is moving to Arkansas from England, and “is currently enrolled in the British public school system and has been enrolled in their system for the past two years.” You write that he is now in what is called in England “first grade.” You ask whether he may be enrolled in an Arkansas public school in “the proper grade as determined by the school personnel.”

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<sup>1</sup> See A.C.A. § 6-18-207(a)(1)(C) (Supp. 2011).

<sup>2</sup> A.C.A. § 6-18-207(a)(2).

## RESPONSE

I cannot predict definitively how a court would answer your question. There are credible arguments on both sides, and a court could plausibly reach either conclusion. Legislative clarification is warranted. That said, it is in my opinion more likely than not that a court would hold that the child may not be enrolled in kindergarten or any higher grade.<sup>3</sup>

Your request correctly identifies the relevant law.<sup>4</sup> The child at issue is seven days too young to enter kindergarten under the general rule.<sup>5</sup> But because he turned five during the year in which his enrollment is sought, he may enter kindergarten if all the requirements of the statute quoted above are met.<sup>6</sup>

The statute contains several requirements. One is “the basic residency requirement for school attendance . . . .”<sup>7</sup> In my view, this refers to the general rule that a district’s schools are “open . . . to [any child] whose parents . . . reside within the school district. . . .”<sup>8</sup> I assume this requirement will be met.

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<sup>3</sup> Notwithstanding that the child is in his second or third year of school and is deemed by English authorities to be in “first grade,” the statutory subsection at issue, A.C.A. § 6-18-207(a)(2), would be interpreted, in my view, either to entitle him to enroll in kindergarten or not to entitle him to enter public school at all. A court would not, in my view, interpret the statute at issue to entitle him to enroll in some grade other than kindergarten. The statute expressly provides that a child “may be enrolled in *kindergarten*” if the statute’s requirements are met. A.C.A. § 6-18-207(a)(2) (emphasis added); *cf.* A.C.A. § 6-18-207(b)(3) (child who has been enrolled elsewhere in first grade and will turn six during the school year “may be enrolled in the first grade”). The child may, of course, enter a public prekindergarten program. *See* A.C.A. § 6-18-230(a)(2)(B) (Supp. 2011).

<sup>4</sup> *See* A.C.A. § 6-18-207(a)(2).

<sup>5</sup> *See* A.C.A. § 6-18-207(a)(1)(C).

<sup>6</sup> *See* A.C.A. § 6-18-207(a)(2).

<sup>7</sup> *Id.*

<sup>8</sup> A.C.A. § 6-18-202(b)(1) (Supp. 2011). I recently discussed this rule at length in an opinion addressed to you. *See* Op. Att’y Gen. 2012-061.

The child also must have “been enrolled in a . . . kindergarten program . . . for at least sixty 60 days. . . .”<sup>9</sup> You write that the child is in “first grade” but that this school year is not his first. I assume, then, that he is or was enrolled in a program that a court would deem to be “kindergarten” within the meaning of the statute, and that he has been or was in that program for at least 60 days.

The issue seems to be whether the English kindergarten is “a state-accredited or state-approved kindergarten program in another state. . . .”<sup>10</sup> I assume that the kindergarten was accredited or approved by the appropriate English governmental authorities. The answer to your question, then, depends on the meaning of the word “state” as used in the statute.

“State” is sometimes used synonymously with “nation,” a use that would, of course, include England.<sup>11</sup> The General Assembly has at least twice defined the word to include one or more foreign countries as well as U.S. jurisdictions, but neither of those definitions is broad enough to include a nation that, like England, is not in North America.<sup>12</sup>

In this country, however, the word “state” probably refers more often to one of the 50 United States of America or one of the districts, commonwealths, territories, or possessions of the United States. The Arkansas General Assembly has on many occasions defined “state” to have that narrower meaning.<sup>13</sup>

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<sup>9</sup> A.C.A. § 6-18-207(a)(2).

<sup>10</sup> *Id.*

<sup>11</sup> *See, e.g., Black’s Law Dictionary* 1537-1538 (9<sup>th</sup> ed. 2009).

<sup>12</sup> *See* A.C.A. § 12-76-102, art. X (Repl. 2003) (Interstate Civil Defense and Disaster Compact, defining “state” to include U.S. jurisdictions and “any neighboring foreign country or province or state thereof”); A.C.A. § 27-19-701(3) (Repl. 2008) (proof of future financial responsibility provisions of Motor Vehicle Safety Responsibility Act, defining “state” to include U.S. jurisdictions and “any province or territory of Canada”).

<sup>13</sup> *See, e.g.,* A.C.A. § 4-1-201(b)(38) (Supp. 2011) (Uniform Commercial Code), A.C.A. § 4-28-602(7) (Supp. 2011) (unincorporated nonprofit associations), A.C.A. § 9-26-201(14) (Repl. 2009) (transfers to minors).

I note in particular one recent enactment in a related context. A 2009 law gives school-related protections to children of military families.<sup>14</sup> They include that a child transferring to an Arkansas school must be allowed, regardless of age, to continue in the grade, including kindergarten, that he attended in the “sending school.”<sup>15</sup> Only a school located in a “state” is a sending school.<sup>16</sup> And “state” is defined to include only U.S. jurisdictions.<sup>17</sup> As a result, the child of a military family transferring from a school in England to a school in Arkansas would not be entitled to the protections of the 2009 law but would be subject instead to the minimum enrollment age rules discussed in this opinion.

Statutory construction is a search for legislative intent which, in the absence of ambiguity, is determined from the ordinary meaning of the language used.<sup>18</sup>

Here, a court might for several reasons conclude that the ordinary meaning of the word “state” is the narrower meaning, *i.e.*, one limited to U.S. jurisdictions.

First, the narrower meaning is ordinary in the sense that it is much more common in instances where the Arkansas General Assembly provides a definition.<sup>19</sup>

Second, the word “state” is probably much more often used in common parlance – in this country at least – to denote a U.S. jurisdiction rather than to denote a nation, and so has the narrow meaning as its ordinary meaning in that sense as well.

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<sup>14</sup> See Act 314 of 2009 (codified as A.C.A. §§ 6-27-101 to -113 (Supp. 2011)).

<sup>15</sup> See A.C.A. § 6-27-107(1).

<sup>16</sup> See A.C.A. § 6-27-102(8).

<sup>17</sup> See A.C.A. § 6-27-102(9) (“‘State’ means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Marianas Islands, and any other United States territory”).

<sup>18</sup> See, *e.g.*, *State v. Martin*, 2012 Ark. 191, 2012 WL 1548076.

<sup>19</sup> See *supra* text accompanying notes 11-13.

Finally, the statute’s use of the word “another,” in the phrase “another state,” strongly suggests that “state” is limited to those jurisdictions that are similar in character to the State of Arkansas. In other words, because Arkansas is a state in the narrower sense of the word – and not in the broader sense – the phrase “another state” probably was intended by the legislature to refer to a jurisdiction other than Arkansas but of the same nature as Arkansas.

If a court concluded that the ordinary meaning of the word “state” is limited to U.S. jurisdictions, the inquiry would come to an end. England clearly is not a state under a narrower definition.

While there are good reasons that a court might conclude that the ordinary meaning of “state” is the narrower meaning, it is more difficult to see how a court might conclude that the word’s ordinary meaning includes other nations. It seems unlikely, in my view, that a court would hold that the plain meaning of “state,” in this statutory context and appearing in the phrase “another state,” is the broader meaning, including other nations. A court might, however, interpret the word to have the broader meaning if it first concluded that the statute is ambiguous in this respect.

A statute is ambiguous “where it is open to two or more constructions, or where it is of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain as to its meaning.”<sup>20</sup>

A court could conclude that reasonable minds might differ on the meaning of the word “state” and therefore that the statute is ambiguous in this context. When a statute is ambiguous, the courts apply rules of statutory construction to determine legislative intent and the statute’s meaning.<sup>21</sup>

What rules of construction or other factors would support a broader definition of the word “state,” following a court’s finding of an ambiguity?

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<sup>20</sup> *Thomas v. Hall*, 2012 Ark. 66, \*5, 2012 WL 503879.

<sup>21</sup> *Id.*

First, “statutes relating to schools and school districts [are to be given] a liberal construction. . . .”<sup>22</sup> Here, the more liberal construction presumably would be the broader one, allowing the child’s enrollment. Such a broad judicial interpretation of the statutorily-undefined word “state,” while apparently somewhat unusual, is not unprecedented elsewhere when the statutory context calls for a liberal construction.<sup>23</sup>

Second, when a statute is ambiguous, a court will look to, among other things, the object to be accomplished and the purpose to be served by the statute.<sup>24</sup> Here, it seems clear that a principal policy underlying the law is to permit a child’s education to continue uninterrupted, provided the child is almost as old as his classmates. A broad interpretation of the word “state” would advance that policy.

But even if a court were to find the statute ambiguous, there are factors suggesting a narrow interpretation as well as ones favoring a broader definition.

The policy described above, favoring uninterrupted education, is tempered by the statute’s inclusion of the “state-accredited or state-approved” language, which suggests that the legislature also believed it important to protect Arkansas schools and students from disruptions caused by enrollment of young students from unaccredited programs that did not adequately prepare them to profitably continue without interruption. It is natural to assume that the General Assembly would be more familiar with, and trusting of, the educational standards of U.S. jurisdictions than those of each and every other nation of the world.

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<sup>22</sup> *Webb v. Adams*, 180 Ark. 713, 728, 23 S.W.2d 617 (1929); *see also, e.g., Spriggs v. Altheimer Sch. Dist. No. 22*, 385 F.2d 254, 259 (8<sup>th</sup> Cir. 1967) (“school . . . laws . . . should be interpreted liberally”); and *Cox Cash Stores, Inc. v. Allen*, 167 Ark. 364, 268 S.W. 361 (1925) (child labor laws, which foster education among other things, are enacted to promote common welfare and should be interpreted liberally).

<sup>23</sup> *See, e.g., Estate of Hudson*, 137 Cal.App.3d 984, 187 Cal.Rptr. 532 (1982) (Japan was “state” under California statute, amended to liberalize acceptance of out-of-state wills, making out-of-state wills valid in California if executed in accordance with laws of “state” where executed); and *Fessenden v. Radio Corp. of America*, 10 F.Supp. 394 (D. Del. 1935), *aff’d*, 103 F.2d 1012 (3d Cir. 1939) (Bermuda was “state” for purposes of Delaware statute, to be liberally interpreted, permitting suit by administrator of estate appointed “in any other State”) (citing *Foster v. Stevens*, 22 A. 78 (Vt. 1891) (Canada was “state” for purposes of Vermont statute, enacted for relief of property owners and to be interpreted liberally, exempting property from Vermont tax if taxed in “another state”)).

<sup>24</sup> *See, e.g., City of Maumelle v. Jeffrey Sand Co.*, 353 Ark. 686, 120 S.W.3d 55 (2003).

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And statutes having the same subject matter are construed to be consistent with one another.<sup>25</sup> A court might well cite the 2009 law relating to military families discussed above<sup>26</sup> and hold that the word “state” should be interpreted here to be consistent with that law’s narrow definition.<sup>27</sup>

Based on all the foregoing, it is in my opinion more likely than not that a court would hold that the child may not be enrolled in kindergarten or any higher grade. Again, however, I am unable to predict definitively how a court would answer your question. Legislative clarification is warranted.

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL  
Attorney General

DM:JMB/cyh

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<sup>25</sup> See, e.g., *Brock v. Townsell*, 2009 Ark. 224, 309 S.W.3d 179; *Baptist Health v. Murphy*, 2010 Ark. 358, \*28, 373 S.W.3d 269 (“The court strives to reconcile statutory provisions relating to the same subject to make them sensible, consistent, and harmonious.”)

<sup>26</sup> See *supra* text accompanying notes 14-17.

<sup>27</sup> A subsection of the statute at issue here permitted a child who would turn five by September 15 of the kindergarten year, and who was enrolled in a “state-approved prekindergarten program” during the 2008-2009 school year, to enroll in kindergarten notwithstanding the general September 1 cutoff date. See A.C.A. § 6-18-207(a)(3)(A). That statute defines “state-approved prekindergarten program” in a way that excludes any prekindergarten program in any jurisdiction other than the State of Arkansas. See A.C.A. § 6-18-207(a)(3)(B). The definition is not directly relevant to your question, which implicates statutory language that expressly refers to a kindergarten program in “another state.” A.C.A. § 6-18-207(a)(2) (emphasis added). But the former provision might be some evidence of legislative intent that the phrase “state-approved” be construed narrowly in general.