School transportation

Number: INFORMAL

Date: January 24, 2018

Mr. Jason R. Gabriel
General Counsel, City of Jacksonville
City Hall, St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

Dear Mr. Gabriel:

We are in receipt of your letter on behalf of the Jacksonville City Council, asking whether the definition of “student” in section 1006.23(1), Florida Statutes, includes 6th-grade students in middle school or only students up to 5th grade in K-5 elementary schools. Attorney General Pam Bondi has asked me to respond to your question.

Section 1006.21, Florida Statutes (2017), directs the district school superintendent to ascertain which students are entitled to transportation to school or school activities, and directs the district school board to provide transportation when students are subjected to hazardous walking conditions en route to school according to section 1006.23. Section 1006.23, Florida Statutes (2017), sets forth the criteria and procedure to be used to evaluate whether a route is hazardous for students walking to school. It provides in paragraph (4)(c) that “[s]tate funds shall be allocated for the transportation of students subjected to a hazardous walking condition.” The allocation of funds for student transportation set forth in section 1011.68, Florida Statutes (2017), identifies students subjected to hazardous walking conditions as one of the categories of public school students entitled to transportation.

Each of these statutes contains a provision – paragraphs 1006.21(3)(b), 1006.23(1), and 1011.68(1)(e) – expressly specifying that the students who live within two miles of their public schools who are entitled to transportation to school because of hazardous walking conditions, must be “public elementary school students whose grade level does not exceed grade 6.”

You inform this office that 90 percent of the public elementary schools in Duval County contain grades 1 through 5, and all of the public middle schools begin at grade 6. You question whether students in 6th grade who are attending public middle schools must be provided transportation when they are subjected to hazardous walking conditions.

Although there is no definition of “elementary school” within the Florida Statutes, the definitions of “school” in sections 1003.01(2) and 1000.41(1), Florida Statutes (2017), clearly show that there is a distinction between elementary and middle schools within Florida public K-12 education. The term “school” is defined in section 1003.01(2) as “an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.” Section 1000.04(1) provides that public K-12 schools shall include, in part, “elementary, middle, and high school grades and special classes[.]”[1]

The statutes that require the provision of transportation when there are hazardous walking conditions – sections 1006.21, 1006.23, and 1011.68 – apply to students who are in 6th grade only when the 6th grade is within an elementary school, which therefore precludes the mandatory application of such statutes to students who are in 6th grade within a middle school.

Sincerely,

Ellen B. Gwynn
Senior Assistant Attorney General

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[1] There are at least 24 other Florida statutes that similarly distinguish between elementary and middle schools.