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FILE NO. S-705

**SCHOOLS AND SCHOOL DISTRICTS:
Enforcement of Pupil's Physical
Examination Requirement**

**Dr. Mark H. Lepper, Director
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Dear Dr. Lepper:

I have your letter in which you requested an opinion on the following three questions:

1. Does the school board of the school district in which the pupil is enrolled have the responsibility for enforcing the physical examination provisions of section 27-8 of the School Code? (Ill. Rev. Stat., 1972 Supp., ch. 122, par. 27-8.)
2. If the answer to question #1 is in the affirmative, does the school district have authority to exclude from school attendance a pupil who has not had a physical examination

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in accordance with that Section in light of the compulsory attendance provisions of section 26-1 of the School Code? (Ill. Rev. Stat. 1971, ch. 122, par. 26-1.)

3. If the answer to question #1 is in the negative, does any agency, state or local, have any authority to enforce the provisions of section 27-8 of the School Code? (Ill. Rev. Stat., 1972 Supp., ch. 122, par. 27-8.) "

Although section 27-8 of the School Code, supra, has been amended by Public Act 78-302, the pertinent language has not been changed and still provides as follows:

"Physical examinations as prescribed by the Department of Public Health, including vision screening tests, shall be required of all pupils in the public, private and parochial elementary and secondary schools, except as hereinafter provided, anytime within 6 months prior to their entrance into kindergarten or the first grade, and upon entrance into the 5th and 9th grades and, irrespective of grade, immediately prior to or upon entrance into any public, private or parochial school if that pupil has not previously been examined in accordance with this Section prior to or upon entrance into another public, private or parochial school in Illinois. Additional health examinations of pupils may be required when deemed necessary by the school authorities.

* * *

Even though the provision appears in the School Code, since the provision places duties on the Department of Health, standing alone, it may be ambiguous as to whether it is to be enforced by the school board or by the Department of Public

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Health. However, from an examination of the history of the Act and other provisions of the School Code, it is clear that it is the responsibility of the school board to enforce the requirement.

This provision in its original form was added to the School Code by "AN ACT to provide for the health, physical education and training of pupils, etc.", on July 22, 1943. (Laws 1943, p. 1262.) It was section 4. Section 1 of that Act which, as amended, is now section 27-5 of the School Code (Ill. Rev. Stat. 1971, ch. 122, par. 27-5), originally provided as follows:

"§1. Boards of Directors, Boards of Inspectors, Boards of Education of public schools and the Teachers College Board shall provide for the health, physical education and training of pupils of the schools and educational institutions under their control, and shall include physical education and training in the courses of study regularly taught therein."

It is therefore clear from this section that school boards have the responsibility to enforce the physical examination requirement. See also Moyer v. Board of Education, 391 Ill. 156, p. 161, which, after quoting the provisions of the 1943 Act, stated as follows:

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"The foregoing provisions reflect the legislative intent to * * * impose the duty of executing the statute upon boards of educations. * * * "

Secondly, you inquire as to whether the school board then has the authority to exclude from school attendance a pupil who has not had a physical examination. There is a line of cases in Illinois which has held that pupils could not be excluded from school for failure to be vaccinated. This rule was stated in Hegler v. Larner, 284 Ill. 547 at p. 549-550, as follows:

* * * * In this State the rule is firmly established that school directors and boards of education have no authority to exclude children from the public schools on the ground, simply, that they refuse to be vaccinated, unless in cases of emergency, in the exercise of the police power, it is necessary or reasonably appears to be necessary to prevent the contagion of small-pox. (Potts v. Breen, 167 Ill. 67; Lawbaugh v. Board of Education, 177 id. 572; People v. Board of Education, 234 id. 422.) In all the foregoing cases it appears that there was no epidemic or prevalence of small-pox and that the pupils were in a healthy condition and had not been exposed to small-pox, and this court held it to be unreasonable to require vaccination as a prerequisite to admission to the public schools in such cases and that there was no law of this State authorizing such action. * * * *
(emphasis added.)

These cases are no longer applicable in view of the fact that

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Illinois now has a law which requires both the vaccination and physical examination. The law under discussion relates not only to physical examinations but also to vaccinations. The provisions related to vaccination have not been quoted.

Exclusion does not contravene the Illinois compulsory education law which provides in section 26-1 of the School Code (Ill. Rev. Stat. 1971, ch. 122, par. 26-1):

"Whoever has custody or control of any child between the ages of 7 and 16 years shall cause such child to attend some public school in the district wherein the child resides the entire time it is in session during the regular school term, except as provided in Section 10 — 19.1.
* * * *

Compulsory education laws are directed to the parent or guardian of the child and do not grant to the child an absolute right to attend school. The Illinois Supreme Court in The People v. Levisen, 404 Ill. 574, page 577 stated as follows:

"* * * Compulsory education laws are enacted to enforce the natural obligation of parents to provide an education for their young, an obligation which corresponds to the parents' right of control over the child. * * * "

The Federal Court of Appeals in Betts v. Board of Education of City of Chicago, 466 F. 2d 629, (1972) at page 635, stated

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in regard to compulsory school attendance laws that:

"* * * Rather these laws are directed to parents or guardians and do not purport to guarantee students impunity from discipline removing them from their school regardless of the misconduct they engage in. * * *"

There is no provision which expressly gives the school board power to exclude a student for failure to have a physical examination. In fact, under section 10-22.6 of the School Code (Ill. Rev. Stat. 1972 Supp., ch. 122, par. 10-22.6), a school board only has express power to expel, and to authorize a superintendent to suspend pupils, for gross disobedience or gross misconduct. It could be argued that such explicit authority would negate any power to exclude. I assume that failure to obtain a physical examination would not be gross disobedience or misconduct.

However, I do not believe that section 10-22.6 is relevant to the question presented. This section is directed only to student conduct and to situations where disruption of or interference with school activities may result. Physical examinations relate not to conduct but are more akin to a requirement for, or condition of, admission. As provided by the statute, examinations are required "immediately to or upon

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entrance into" a specific grade. Such examinations are necessary to insure that a pupil is in proper physical health to learn and to participate.

The legislature has placed the duty on every school board of requiring a periodic physical examination of every child in its school, except those objecting on unconstitutional grounds. (Section 27-8 of the School Code, supra.) Such requirement would be meaningless if the school boards had no means of enforcing such examination. By section 10-20.5 of the Illinois School Code (Ill. Rev. Stat. 1971, ch. 122, par. 10-20.5), "the school board has the duty to adopt and enforce all necessary rules for the management and government of the public schools of their district". A school board has not only those powers expressly granted, but also those which result by necessary implication from those granted. Goedde v. Community Unit School Dist. No. 7, 21 Ill. App. 2d 79.

Exclusion until the physical examination requirement is met, is a reasonable means of enforcing such requirement. As already pointed out, those objecting on constitutional grounds are not required to have the examination, and furthermore, as

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also provided by section 27-8, supra, "The Department of Public Health may accomplish such examinations of those children who cannot otherwise be examined." I interpret this to mean that if a child cannot afford or otherwise be examined, that the Department of Public Health must provide the examination. Exclusion would have to be provided for in the rules and regulations of the school board, and all children and parents or guardians would have to be informed of the requirement.

The Superintendent of Public Instruction, who has the authority to advise school boards on legal matters (Board of Education v. Bakalis, 54 Ill. 2d 448), has taken the position for several years that school boards have the power to exclude pupils who fail to obtain a physical examination. The contemporaneous and practical construction of law by those concerned in its administration is entitled to great weight. Droste v. Kerner, 34 Ill. 2d 495.

I am thus of the opinion that for the foregoing reasons, exclusion of a child under appropriate rules and regulations for failure to have a physical examination is a proper method of enforcement of the requirement. I would emphasize that such

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rules and regulations should require that school boards notify the parents or guardian of the pupil of (1) the requirement within a reasonable time to obtain an examination; (2) the right of and the procedure for a pupil to object to such physical examination on constitutional grounds and to be excused from such examination, and (3) the obligation of the Department of Public Health through designated agencies, to accomplish such examination of those pupils who cannot otherwise be examined.

Since I have stated that school boards have the responsibility and authority to enforce the physical examination requirement, consideration of your third question is unnecessary.

Very truly yours,

A T T O R N E Y G E N E R A L