

OPINION NO. 67-126

Syllabus:

1. Pursuant to Section 3321.01, Revised Code, a board of education is required to designate by rule or regulation a standard or norm which the child failing the age requirement for first grade may meet in lieu of fulfilling said age requirement.

2. A board of education which has not already estab-

lished a testing program relative to the admission to the first grade of children failing to meet the age requirement of the general provisions of Section 3321.01, Revised Code, must designate the necessary standards and a testing program it will accept.

3. The cost of administering the testing program pursuant to Section 3321.01, Revised Code, must be paid from public funds.

**To: Martin Essex, Superintendent of Public Instruction, Dept. of Education,
Columbus, Ohio**
By: William B. Saxbe, Attorney General, December 21, 1967

I have before me your recent request for an opinion relative to the amended parts of Section 3321.01, Revised Code. Your questions specifically concern:

1. Whether a board is required to establish by rule or regulation a standard norm which the child failing the age requirement for first grade may meet in lieu of fulfilling the age requirement of six years.
2. Whether in making a determination relative to the admission to first grade of a child failing to meet the age requirement a board of education has the alternative of either establishing a testing program, or designating the necessary standards and a testing program it will accept.
3. Whether the cost of administering the program used by the school in testing children who will be six years of age on or before the first day of January of the school year for which admission is sought shall be paid from public funds or by the parents who request the testing for said children.

Before these matters are discussed, the first paragraph of Section 3321.01, Revised Code, will be set out in full to facilitate references made to it thereunder.

"A child between six and eighteen years of age is 'of compulsory school age' for the purpose of sections 3321.01 to 3321.13, inclusive, of the Revised Code. The compulsory school age of a child shall not commence until the beginning of the term of such schools, or other time in the school year fixed by the rules of the board of the district in which he resides. In 1967 and 1968, no child is eligible to be admitted to the first grade of a public school in a district in which all children are admitted to the first grade in August or September unless he is six years of age on or before the thirty-first day of October of the year

of admittance unless the board of education by resolution designates an earlier date within the year of admittance or on or before the first day of a term or semester other than the one beginning in August or September in school districts granting admittance at the beginning of such term or semester, except that in those school districts using, or obtaining, educationally accepted standardized testing programs for determining entrance, as approved by the board of education of such districts, such boards shall admit a child to the first grade who fails to meet the age requirement, provided the child meets necessary standards as determined by such standardized testing programs. If the board of education has not established a standardized testing program for such school districts, the board shall designate the necessary standards and a testing program it will accept for the purpose of admitting a child to the first grade who fails to meet the age requirement. Each child who will be six years of age on or before the first day of January of the school year for which admission is requested shall be so tested upon the request of his parent or guardian."

Your first two questions may be resolved by a careful reading of the exception provision of the above section which follows the general provision relative to eligibility of children admitted to the first grade. I direct your attention to the sentence beginning with "If" which states that a board of education which has not already established a testing program for the purpose of determining whether a child failing to meet the age requirement for first grade entrance such board "shall" designate the necessary standards and a testing program which it will accept. In accordance with the traditional rules of construction (Sutherland, Statutory Construction, Section 2802), the word "shall" indicates a mandatory obligation. Therefore, a board of education must designate the necessary standards in order to meet the requirements of Section 3321.01, supra.

In the event that a board of education has not established such standards and a testing program, I believe that such board may not establish its own testing program but may set the necessary standards for selecting a standardized program already in existence. The words "shall designate" precludes the creation of such a test by the board; rather the term requires the board to adopt a test already established.

The answer to your third inquiry as to who shall bear the cost of administering the testing program for the children referred to in the last sentence of Section 3321.01, supra, turns on the word "shall" in said sentence which concludes with "shall be so tested upon the request of his parent or guardian." The effect of using "shall" in Section 3321.01, supra, accords with Section 3314.64, Revised Code, which provides for free public education. The pertinent part of said section reads as follows:

"The schools of each city, exempted

village, or local school district shall be free to all school residents between six and twenty-one years of age, but the time in the school year at which beginners may enter upon the first year's work of the elementary school shall be subject to the rules and regulations of the board of education."

The principle of pari materia requires that when statutes pertain to the same subject matter, relate to the same person(s) or thing(s) or classes thereof, they should be construed so as to be consistent with one another. (Sutherland, Statutory Construction, Sections 5201 and 5202). Giving the statutes a consistent interpretation requires that the testing administration costs provided for in Section 3321.01, supra, be paid out of public funds so as to implement the grant of free public education given in Section 3314.64, Revised Code.

It is therefore my opinion and you are hereby advised that:

1. Pursuant to Section 3321.01, Revised Code, a board of education is required to designate by rule or regulation a standard or norm which the child failing the age requirement for first grade may meet in lieu of fulfilling said age requirement.
2. A board of education which has not already established a testing program relative to the admission to the first grade of children failing to meet the age requirement of the general provisions of Section 3321.01, Revised Code, must designate the necessary standards and a testing program it will accept.
3. The cost of administering the testing program pursuant to Section 3321.01, Revised Code, must be paid from public funds.