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September 16, 2003

T. Brooks Skinner, Jr.
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RE: Advisory Opinion: Age Requirements For Entry Into Public School; N.C.G.S. §§ 115C-288 and 364 (2001)

Dear Brooks:

You have written on behalf of the Division of Non-Public Education to request the opinion of this office regarding the statutory requirements for entering public schools. In particular you seek an interpretation of the statutes governing the age requirements for initial entry into kindergarten as well as the effect of such age requirements upon subsequent initial enrollment by a student. This office last addressed these issues in 1972. Since that time, the General Assembly has added kindergarten education to the public school system and has accordingly amended the statutes pertaining to initial enrollment. In light of those changes, we do not believe the opinions expressed in 1972 are consistent with current statutes.

N.C.G.S. § 115C-364 (2001) governs the right to initial entry to the public schools. That statute provides, in pertinent part, as follows:

- (a) A child who is presented for enrollment at any time during the first 120 days of a school year **is entitled** to initial entry into the public schools if:

in accordance with the laws or rules of that state before the child moved to and became a resident of North Carolina.
- (b) A local board **may allow** a child who is presented for enrollment at any time after the first 120 days of a school year to be eligible for initial entry into the public schools if:

- (1) The child reached the age of 5 on or before October 16 of that school year; or
 - (2) The child did not reach the age of 5 on or before October 16 of that school year, but has been attending school during that school year in another state **in accordance with the laws or rules of that state** before the child moved to and became a resident of North Carolina.
- (c) **The initial point of entry into the public school system shall be at the kindergarten level.** If the principal of a school finds as fact subsequent to initial entry that a child, by reason of maturity can be more appropriately served in the first grade rather than in kindergarten, the principal may act under G.S. 115C-288 to implement this educational decision without regard to chronological age. The principal of any public school may require the parent or guardian of any child presented for admission for the first time to that school to furnish a certified copy of the child's birth certificate, which shall be furnished by the register of deeds of the county having on file the record of the birth of the child, or other satisfactory evidence of date of birth.

(Emphasis added)

It is clear under this statute that in order to be entitled to "initial entry" into public school, a child must be five years old by October 16 "of that school year." Since "initial point of entry" is defined unequivocally to be "at the kindergarten level," it follows that in order to be admitted to public school, a child must have reached age 5 on or before October 16 of the kindergarten year. The statute contains two exceptions to this admission cut-off date: (a) a child who has transferred in from another state who entered public schools in that state pursuant to that state's age requirements; and (b) a child who does not meet the October birth date requirement but is determined by the principal to be gifted and mature in accordance with subsection (d) of N.C.G.S. § 115C-364. A child who comes within one of these two exceptions is entitled to enroll in public kindergarten despite the fact that he or she was not five years old by October 16 of that school year.

N.C.G.S. § 115C-364 addresses only the age requirement for the "initial point of entry" into public schools, *i.e.*, kindergarten, and does not address the enrollment of a child in North Carolina public schools in subsequent years. N.C.G.S. § 115C-288 (a)(2001), however, provides that the "principal shall have the authority to grade and classify pupils." It is our opinion that this statute gives the principal of the school the authority to decide the appropriate grade placement for any student, provided the student meets the age requirement for initial entry into public school. This opinion is consistent with N.C.G.S. § 115C-364(c) which specifically states that, "If the principal of a school finds as fact subsequent to initial entry that a child, by reason of maturity can be more appropriately served in the first grade rather than in kindergarten, the

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principal may act under N.C.G.S. § 115C-288 to implement this educational decision without regard to chronological age.”

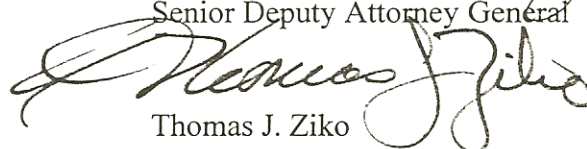
In sum, unless a child qualifies for one of the two exceptions set out in N.C.G.S. § 115C-364, a principal has no discretion with regard to the age at which a child may initially enroll in public school — by statute a child must have reached age 5 on or before October 16 of the kindergarten year. Once a child is old enough to enroll in public school, however, his or her grade placement in the initial year or any subsequent years is governed by N.C.G.S. §§ 115C-288(a) which gives the principal the discretion to place a child in any appropriate grade.

We hope this response adequately addresses your inquiry.

Sincerely,



Grayson Kelley
Senior Deputy Attorney General



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Special Deputy Attorney General



Laura E. Crumpler
Assistant Attorney General

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