

Section 7, Article XI, of the Montana Constitution provides, "The public free schools of the state shall be open to all children and youth between the ages of six and twenty-one years."

From this constitutional provision it is apparent that any child who reaches his sixth birthday is entitled to attend school as a matter of right and should be considered in determining the number of enrolled pupils. The fact that the child is in kindergarten would not preclude him from being considered as a student in the public schools for the reason that Section 75-2001 defines a public school so that it includes an established kindergarten in the following language:

"A public school is a school established and maintained under the laws of this state at public expense and comprising the elementary grades, and, when established, the kindergarten and the high school including all the junior and senior grades of high school work."

The distribution of state aid to the public schools is made under the provisions of Chapter 199, Laws of 1949, as amended, and the basis of such distribution is fixed by the "average number belonging" or "A. N. B." which is defined as meaning "the average number of regularly enrolled full time pupils attending a public school."

Kindergarten pupils in an established kindergarten who have reached the age of six years meet all the qualifications of the above statutes and their attendance may be counted in the computation for the state aid.

It is therefore my opinion that kindergarten pupils, in an established kindergarten upon reaching the age of six years, may be included in the A. N. B. of the school districts and their daily attendance considered in determining the amount of state financial aid for the schools of their district.

Very truly yours,
ARNOLD H. OLSEN
Attorney General

Opinion No. 101

Schools and School Districts—Foundation Program—Kindergarten Pupils as Regularly Enrolled Pupils.

Held: Kindergarten pupils, in an established kindergarten upon reaching the age of six years, may be included in the A. N. B. of the school districts and their daily attendance considered in determining the amount of state financial aid for the schools of their district.

July 8, 1952.

Miss Mary M. Condon
State Superintendent of Public
Instruction
State Capitol
Helena, Mont.

Dear Miss Condon:

You have requested my opinion as to whether or not kindergarten pupils, upon reaching the age of six years, may be included in the A. N. B. of the schools involved in determining the foundation program.