

Transportation, definition of preelementary

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Subject:
Transportation, definition of preelementary

Ms. Jo Ann Hutchinson
Executive Director
Florida Commission for the Transportation Disadvantaged
605 Suwannee Street, MS-49
Tallahassee, Florida 32399-0450

RE: COMMISSION FOR THE TRANSPORTATION DISADVANTAGED--TRANSPORTATION--MINORS--definition of "preelementary" for purposes of transportation disadvantaged statutes. s. 316.615, Fla. Stat.

Dear Ms. Hutchinson:

You have asked for my opinion on substantially the following question:

What programs may be included within the scope of the term "preelementary" as used in section 316.615, Florida Statutes?

In sum:

Programs within the scope of the term "preelementary" as used in section 316.615, Florida Statutes, are those that serve children who are not yet old enough for admission to public school under section 232.01, Florida Statutes.

The Commission for the Transportation Disadvantaged is created within the Department of Transportation[1] for the purpose of coordinating the cost-effective provision of transportation services to the transportation disadvantaged.[2] These are individuals who, because of physical or mental disability, income status, or age are unable to transport themselves or are unable to purchase transportation for themselves.[3]

The transportation disadvantaged include children who are handicapped or at high-risk of delayed or imperiled development.[4] These individuals and children are dependent upon others to obtain transportation in order to have access to health care, employment, education, shopping, social activities, or other life-sustaining activities. Your question relates to the use of school buses to transport either school children or at-risk children participating in before- and after-school programs.

Section 316.615, Florida Statutes, requires that

"(1)(a) All motor vehicles, with a seating capacity of 24 or more pupils, which are regularly used for the transportation of pupils to or from school, or to or from school activities, shall comply with the requirements for school buses of chapter 234."

For purposes of this statute, the term "school" includes "all public and private nursery, *preelementary*, elementary, and secondary level schools." [5] (e.s.) You have asked what programs may be included within the term "preelementary".

The term "preelementary" is not defined for purposes of the Florida Uniform Traffic Control Law, Chapter 316, Florida Statutes, nor does it appear in administrative rules of the Department of Education or the Department of Highway Safety and Motor Vehicles.

The term "preelementary" appears only three other times in the Florida Statutes, all relating to traffic issues. None of these instances includes a definition of the term. Section 316.003(45), Florida Statutes (1998 Supplement), provides a definition for "[s]chool bus" and includes the statement "[t]he term 'school' includes all *preelementary*, elementary, secondary, and postsecondary schools." (e.s.) Section 316.615, Florida Statutes, relates to school buses and describes the physical requirements of drivers. Subsection (1)(b), states that "[f]or the purposes of this section the term 'school' includes all public and private nursery, *preelementary*, elementary, and secondary level schools." (e.s.) Finally, Chapter 322, Florida Statutes, relating to drivers' licenses, contains a definition of "[s]chool bus" which includes the language: "[t]he term 'school' includes all *preelementary*, elementary, secondary, and post-secondary schools." [6] (e.s.)

It would appear from this review that the term "preelementary" must be understood as a broad descriptive term rather than a precise technical term for purposes of these statutes. [7] The term appears to be used to identify those programs for children who are younger than elementary school students.

I would note that section 232.01, Florida Statutes, which provides for compulsory school attendance, makes reference to certain children who may be eligible for school district programs from birth. Section 232.01(1)(e), Florida Statutes, states:

Beginning with the 1991-1992 school year and consistent with rules adopted by the commissioner, children with disabilities who have attained the age of 3 years shall be eligible for admission to public special education programs and for related services under rules adopted by the school board. Exceptional children who are deaf or hard of hearing, visually impaired, dual sensory impaired, severely physically handicapped, trainable mentally handicapped, or profoundly handicapped, or who have established conditions, or exhibit developmental delays, below age 3 may be eligible for special programs; or, if enrolled in other prekindergarten or day care programs, they may be eligible for supplemental instruction. Rules for the identification of established conditions for children birth through 2 years of age and developmental delays for children birth through 5 years of age must be adopted by the Commissioner of Education.

Rules adopted by the Commissioner of Education indicate that school districts are responsible for early intervention services for children ages birth through two years. [8] Other programs are available for children ages three through five who have special needs. [9]

Thus, it is my opinion that the term "preelementary" is used in a broad and inclusive manner in section 316.615(1)(b), Florida Statutes, to refer to programs for children not yet old enough for admission to public school under the terms of section 232.01, Florida Statutes.[10]

Sincerely,

Robert A. Butterworth
Attorney General

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[1] Section 427.012, Fla. Stat.

[2] See 427.013, Fla. Stat.

[3] See s. 427.011(1), Fla. Stat., for the definition of "[t]ransportation disadvantaged".

[4] See s. 411.202(8), Fla. Stat., defining a "[h]andicapped child" and s. 411.202(9), Fla. Stat., for a definition of a "[h]igh risk child" or "at-risk child".

[5] Section 316.615(1)(b), Fla. Stat.

[6] Section 322.01(36), Fla. Stat.

[7] See *State v. Tunncliffe*, 124 So. 279, 281 (Fla. 1929); *Gasson v. Gay*, 49 So. 2d 525, 526 (Fla. 1950); *State v. Egan*, 287 So. 2d 1, 4 (Fla. 1973), for the proposition that words in common use in a statute are to be construed in their plain and ordinary signification, unless they are used in their technical sense.

[8] See Rule 6A-6.03029, F.A.C., regarding the development of family support plans for children with disabilities ages birth through five years; Rule 6A-6.03030, F.A.C., relating to special programs for children birth through two years old who have established conditions; and Rule 6A-6.03031, F.A.C., providing special programs for children birth through two years old who are developmentally delayed.

[9] See Rule 6A-6.03014, F.A.C., describing special programs for students who are visually impaired; Rule 6A-6.03027, F.A.C., providing special programs for children three through five years old who are developmentally delayed; and Rule 6A-6.03029, F.A.C., regarding the development of family support plans for children with disabilities ages birth through five years.

[10] *And see* s. 234.01, Fla. Stat., which requires school boards to provide transportation for a variety of student groups including: prekindergarten handicapped students; public elementary school students when walking conditions are hazardous; and public school migrant, exceptional, nursery, and other public school students in membership below kindergarten.