

## MEMORANDUM

TO: Publicly Funded Schools

FROM: Kevin C. McDowell, General Counsel, Indiana Department of Education

RE: Nagy, et al. v. Evansville-Vanderburgh School Corporation, \_\_ N.E.2d \_\_ (Ind. 2006): **Effect on Full-Day Kindergarten**

DATE: May 1, 2006

### Background

On March 30, 2006, the Indiana Supreme Court decided Nagy, et al. v. Evansville-Vanderburgh School Corporation, interpreting pertinent language in Article 8, Section 1 of the Indiana Constitution. The provision in question reads as follows:

Knowledge and learning generally diffused throughout a community, being essential to the preservation of a free government, it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide by law for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.

The dispute began when the Evansville-Vanderburgh School Corporation instituted a \$20 “student services fee” and imposed it upon the parents of all of their students, without regard to financial need. The fee was designed to offset costs for programs required by either statute or, by extension of statutory delegation, by rules of the Indiana State Board of Education.

The Supreme Court determined the fee violated Article 8, Sec. 1, finding in relevant part:

Where the legislature—or through delegation of its authority the State Board—has identified programs, activities, projects, services or curricula that it either mandates or permits school corporations to undertake, the legislature has made a policy decision regarding exactly what qualifies as a part of a uniform system of public education commanded by Article 8, Section 1 and thus what qualifies for funding at public expense. And of course the legislature has the authority to place appropriate conditions or limitations on any such funding. However, *absent specific statutory authority*, fees or charges for what are otherwise public education cost items cannot be levied directly or indirectly against students or their parents. Only programs, activities, projects, services or curricula that are outside of or expanded upon those identified by the legislature—what we understand to be “extracurricular”—may be assessed, but only against those students who participate in or take advantage of them.

Slip Opinion at 15 (emphasis added).

## **Effect on Publicly Funded Schools**

The Indiana Department of Education has received a number of inquiries regarding the effect of the Nagy decision on full-day kindergarten. **Under Nagy, a publicly funded school cannot assess a tuition charge for attendance in a full-day kindergarten. This became effective as of March 30, 2006, the date the Supreme Court issued its decision.**

The General Assembly requires public schools to make available kindergarten. I.C. § 20-26-5-1(a)(1); I.C. § 20-33-2-7. Although the legislature has established minimum instructional hours for grades 1-12, see I.C. § 20-30-2-2, it has never established an instructional day for kindergarten. Kindergarten has traditionally been one-half day. This likely has been influenced by the counting of a kindergarten student as one-half a pupil for ADM purposes. See I.C. § 21-3-1.6-1.1(d).

Because the General Assembly has not dictated the instructional day for kindergarten but has required public schools to provide kindergarten for eligible students, **a public school cannot charge tuition for students attending either half-day or full-day kindergarten.** The General Assembly has not specifically authorized such a charge.

This does not affect the requirement to conduct at least 180 instructional days in each school year. The General Assembly did not restrict this to any specific grade. As a result, it applies to grades K-12. See I.C. § 20-30-2-3.

## **Kindergarten/Child-Care Programs**

Several publicly funded schools have inquired whether they could offer a one-half day kindergarten and a one-half day child-care program, with a charge for the latter. This is possible so long as the child-care program is, in fact, a child-care program and not a kindergarten program under a different designation. **A child-care program would be considered a kindergarten program where, *inter alia*, the program is under the direction of a licensed teacher, school attendance is taken, and grades are assigned.**

Further information is forthcoming regarding the use of federal Title I funds and eligibility for the state-funded Full-Day Kindergarten Grant. In addition, the Department of Education, in the near future, will provide further guidance on the effect of Nagy to other programs.