

Opinion No. 71-81

July 7, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Ralph F. Petty, Jr. New Mexico State Representative Post Office
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QUESTIONS

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Can a public college, university or vocational training institution deny admission to a prospective student on the ground that the person is overweight?

CONCLUSION

No.

OPINION

{*118} ANALYSIS

While some school administrators have been slow to perceive the change, the old orthodoxy that a student or applying student had no rights began to change dramatically in the mid 1950's. No longer is it sufficient for school administrators to draw from a grab bag of conceptualisms, the most overworked being the phrase, "education is a privilege, not a right." Quite properly the constitution has come to the campus. Wright, **The Constitution on the Campus**, 22 Vand. L. Rev. 1027 (1969).

Public educational institutions are given wide latitude with respect to regulations governing student appearance and behavior, but the Equal Protection Clause of the Fourteenth Amendment prohibits classification upon an unreasonable basis. Nor are university administrators immune from due process requirements. **Soglin v. Kauffman**, 418 F.2d 163. A person does not shed the mantle of protection afforded by the constitution when he makes application for admission to a public, tax supported educational institution.

Public educational institutions are not at liberty to adopt unduly vague regulations nor may they act arbitrarily under reasonably specific ones. **Healy v. James**, 311 F. Supp. 1275. When a state educational institution chooses to use the awesome power of the state to deny a person access to an education, it must do so for a very good reason. **Calbillo v. San Jacinto Jr. College**, 305 F. Supp. 857. Excess poundage is not such a reason.

Physical characteristics as criteria for admission to state supported educational institutions, such as too fat, too skinny, too tall, too short, too light, too dark, too ugly, too pretty, etc. simply will not pass constitutional muster in and of themselves. There must be some sound reason to deny admission, a health or safety factor for example. And such justification must exist in fact; it cannot simply be a prop to shore up an unreasonable rule or ruling. See Seavy, **Dismissal of Students: Due Process**, 70 Harv. L. Rev. 1406 (1957).

Educational institution admission requirements must be consonant with principles of fair play. Anything less would render the Bill of Rights for naught. Such, of course, is not the law.

By: Oliver E. Payne

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