

**LETTER OPINION
2004-L-31**

April 27, 2004

Honorable Wayne G. Sanstead
Executive Secretary for the State
Board of Public School Education
Superintendent of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440

Dear Dr. Sanstead:

Thank you for your January 29, 2004, letter asking two questions related to the payment of tuition for students who attend school in a school district other than the one in which they reside immediately following a school district dissolution or reorganization.

For the reasons discussed below, it is my opinion that the school district of attendance may not require the school district of residence to pay tuition for the students. It is also my opinion that the school district of attendance must continue to allow the students to attend school in its district even though no tuition is being paid.

ANALYSIS

State law provides:

15.1-29-11. Admission of students - Conditions. The board of a school district shall admit students from other districts to its schools if:

1. The admission does not create overcrowding; and
2.
 - a. The board of the sending district has entered into a contract with the board of the admitting district regarding the students' attendance;
 - b. Tuition will be paid by the parents of the students from the sending district; or

- c. The grade level required by the students is not offered by the sending district.

15.1-29-12. Tuition payments - Determination.

- 1. Except as provided in section 15.1-29-13, a school district sending a student to another district for purposes of education shall pay the full cost of education incurred by the admitting district.

....

15.1-29-13. Tuition payments - Nonresident students.

- 1.
 - a. Except as provided in this subsection, the board of a school district that admits a nonresident student shall charge and collect tuition for the student. Either the student's district of residence shall pay the tuition to the admitting district in accordance with section 15.1-29-12 or the student's parent shall pay the tuition to the admitting district in accordance with section 15.1-29-07.
 - b. A board may charge tuition for nonresident students enrolled in an approved alternative education program.
 - c. Except as otherwise provided, if a school district fails to charge and collect tuition for a nonresident student, the districts shall forfeit any state aid otherwise payable for the nonresident student.
- 2.
 - a. The board of a school district may admit a nonresident student from another district in this state offering the same grade level as that in which the student is enrolled without a charge and collection of tuition if the sending and admitting districts have entered into a written contract regarding the student's admission.

....

- e. A school district may admit a nonresident student described in section 15.1-31-07 from another school district in this state without a charge and collection of tuition and without a written agreement.

....

(Emphasis added.)

In another section pertaining to open enrollment between school districts, the code states:

15.1-31-07. Students not subject to this chapter. If a student, as a result of a school district dissolution or reorganization, resides in a district other than the one the student chooses to attend at the time of the dissolution or reorganization, the student is not subject to this chapter and may attend school in the chosen school district. Notwithstanding section 15.1-28-03, the superintendent of public instruction shall forward payments from the state tuition fund made on behalf of the student to the student's chosen school district. The student may not be considered a student in average daily membership in the student's school district of residence for purposes of section 15.1-31-02.

(Emphasis added.)

Section 15.1-31-07, N.D.C.C., indicates that a student may attend in his or her chosen school district regardless of who pays tuition or whether tuition is paid. The law does not directly address the payment of tuition for students attending school in their chosen school district after a school district reorganization or dissolution. When a statute is ambiguous, the legislative history may be considered in determining the intention of the legislation. N.D.C.C. § 1-02-39(3).

The language currently found in N.D.C.C. § 15.1-31-07 and N.D.C.C. § 15.1-29-13(2)(e) was initially passed by the 1995 Legislature in Senate Bill No. 2209.¹ See 1995 N.D. Sess. Laws ch. 177, §§ 16 and 17. Senate Bill No. 2209 was introduced at the request

¹ Senate Bill No. 2209 amended N.D.C.C. § 15-40.3-07, the predecessor to N.D.C.C. § 15.1-31-07, and N.D.C.C. § 15-40.2-04, the predecessor to N.D.C.C. § 15.1-29-13. In 2001, the Legislature reorganized parts of title 15, resulting in changed section numbers. See 2001 N.D. Sess. Laws ch. 181, §§ 13 and 15.

of the Superintendent of Public Instruction. Mr. Thomas Decker, Director of School District Finance and Organization in the Department of Public Instruction, provided written testimony to both the Senate and House Education Committees. Mr. Decker's written testimony, submitted on January 17, 1995, to the Senate Education Committee said:

[Subsection 2e of Section 15.1-29-13] makes an exception to the requirement that a school district may not accept a nonresident student without collection of tuition and a written agreement. That exception is outlined in Section [15.1-31-07] When a district is dissolved² and attached to other districts every student has a choice of which district to attend. If through the dissolution process a student ends up as a resident of a district other than their district of attendance the student may attend the district of their choice and the district of residence would not need to pay tuition nor would there need to be a written agreement. . . .

Hearing on S.B. 2209 Before the Senate Comm. on Education, 1995 N.D. Leg. (Jan. 17) (written testimony of Thomas Decker, Director, School District Finance and Organization, Department of Public Instruction) (emphasis added).

Mr. Decker also submitted written testimony to the House Education Committee on March 8, 1995. The written testimony said:

When a school district is dissolved, sometimes land is attached to school district A, but the student residing on that land wants to attend school in school district B. This bill authorizes that student to attend school in school district B without going through open enrollment, without school district B's collection of tuition, and without a written agreement between the school districts. . . .

Hearing on S.B. 2209 Before the House Comm. on Education, 1995 N.D. Leg. (Mar. 8) (written testimony of Thomas Decker, Director, School District Finance and Organization, Department of Public Instruction) (emphasis added).

Based on this legislative history, it is my opinion that N.D.C.C. § 15.1-31-07 enables students involved in a reorganization or dissolution to attend school in their chosen school district and the school district of attendance may not require the school district of

² Section 15.1-31-07, N.D.C.C., was amended by the Legislature in 2001, making it apply to school district reorganizations, as well as dissolutions. See 2001 N.D. Sess. Laws ch. 195, § 6.

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residence to pay tuition for the students. It is my further opinion that the school district of attendance must continue to allow the students to attend school in its district even though no tuition is being paid.

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).