

**LETTER OPINION**  
**2004-L-46**

July 1, 2004

Dr. Wayne G. Sanstead  
Department of Public Instruction  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Dr. Sanstead:

Thank you for your letter asking whether Trollwood Performing Arts School ("Trollwood") must be under the "effective management" of the Fargo Public School District ("District") in order to receive state foundation aid. In addition, you asked about the legality of fees charged by Trollwood.

For the reasons discussed below, it is my opinion that if a summer school program has been approved by the Department of Public Instruction ("DPI"), the school district has demonstrated the requisite management of the program necessary for the district to receive state financial aid. It is my further opinion that the District may not charge fees for courses offered at Trollwood for academic credit or if the course is considered a core subject.

**ANALYSIS**

The District has the power and duty to control and manage its public schools, including a summer school program such as Trollwood. See N.D.C.C. §§ 15.1-09-33, 15.1-09-50. Chapter 15.1-27, N.D.C.C., regulates how and when state foundation aid, also known as state aid, may be paid to schools. This chapter instructs the superintendent of public instruction regarding the timing and calculation of state aid payments and the reports that are required to be submitted by school districts in order to receive state aid payments. See N.D.C.C. ch. 15.1-27.

While there is nothing in N.D.C.C. ch. 15.1-27 directly mandating a specific level of management by a school district in order to receive state foundation aid, the two are clearly intertwined. For example, in order to receive foundation aid for a summer school program, a school must submit State Form Number 50091 to DPI. N.D.A.C. § 67-20-01-01. This form requires, in part, that a school submit information regarding

each teacher assigned to teach a summer school course; his or her relevant license, endorsements, and credentials; the name of each course taught; and the times it is offered. N.D.A.C. § 67-20-01-02. Each summer school course offered must be part of the high school curriculum adopted by the school board. N.D.A.C. § 67-20-01-03(1). In addition, each summer school course offered must be from a list of DPI approved courses. N.D.A.C. § 67-20-01-03(2). Proportionate foundation aid payments may only be paid if the course has gone through this approval process. N.D.A.C. § 64-20-01-08. See generally Report of Schools Offering a High School Summer Program, SFN 50091 available at <http://www.dpi.state.nd.us/forms/word/sfn50091.doc> (Rev. 10/2003). It follows that if a school district has completed this form and obtained approval for its summer school program from DPI, the district has demonstrated sufficient control over the approved programs. Specifically, it has demonstrated control over the types of courses offered, the time of day the course is offered, when the course will begin and conclude, who will teach each course, and the amount of credit offered for completing the course.<sup>1</sup>

Therefore, it is my opinion that if a summer school program has been approved by DPI, the school district has demonstrated the requisite management of the program necessary to receive state financial aid.

You next ask whether the fees<sup>2</sup> charged by Trollwood are legal. "It is a self-evident proposition that the public schools of the state are under legislative control, and that school directors have no powers, except those which are conferred by the statutes upon them." See, e.g., Pronovost v. Brunette, 162 N.W. 300, 301 (N.D. 1917). As such, the

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<sup>1</sup> The District works with FutureBuilders, referred to in your letter as the Trollwood Foundation, a non-profit group whose sole purpose is to support Trollwood. See About Us, Trollwood Performing Arts School, available at [www.trollwood.org/about/about\\_main.html](http://www.trollwood.org/about/about_main.html). FutureBuilders donates funds raised by it to the District in support of Trollwood. Gifts of this type may be made to a school district for its use and benefit. N.D.C.C. § 1-08-04. There is nothing in the information provided with your request or on the Trollwood website to indicate that FutureBuilders, nor any other entity other than the District, controls or manages Trollwood. In fact, the website is very clear that Trollwood is "a program of the Fargo Public Schools . . . accredited through the North Dakota Department of Public Instruction." See About Us, Trollwood Performing Arts School, available at [www.trollwood.org/about/about\\_main.html](http://www.trollwood.org/about/about_main.html).

<sup>2</sup> This office has addressed the issue of school fees on numerous occasions. See N.D.A.G. 81-109 (a mandatory activity fee charged to a student regardless of attendance is impermissible); N.D.A.G. 90-11 (a public school district may not charge a fee for credits taken beyond the 17 credits); N.D.A.G. 90-19 (a school district may charge a fee for participating in extracurricular or noncurricular activity); and N.D.A.G. Letter to Torkelson (Dec. 18, 1992) (attendance or participation in an extracurricular or noncurricular activity may be restricted or prevented if the required fee is not paid).

District can only charge students a fee to attend Trollwood if the Legislature has given it that power.

The North Dakota Legislature has stated “[e]ach public school must be free, open, and accessible at all times to any child. . . .” N.D.C.C. § 15.1-06-01(1)<sup>3</sup>. The occasions when a school board may charge a fee are limited in N.D.C.C. § 15.1-09-36. “[A] school board may . . . [r]equire that a student pay an admission fee or other charges for extracurricular or noncurricular activities if the student’s attendance is optional.” N.D.C.C. § 15.1-09-36(d) (emphasis added).

As its name implies, Trollwood offers courses relating to performing and production arts such as dance, theater arts, and vocal music. See generally [www.trollwood.org](http://www.trollwood.org). The issue is whether these types of courses fall within the definition of the terms “extracurricular” or “noncurricular,” for which a fee may be charged.<sup>4</sup> N.D.C.C. § 15.1-09-36(d).

“When the meaning of a word or phrase is defined in a section of our Code, that definition applies to any use of the word or phrase in other sections of the Code, except when a contrary intent plainly appears.” Adams County Record v. Greater North Dakota Ass’n, 529 N.W.2d 830, 834 (N.D. 1995) (citing N.D.C.C. § 1-01-09). The terms “extracurricular” and “noncurricular” are not defined anywhere in the North Dakota Century Code.

“Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears. . . .” N.D.C.C. § 1-02-02. The statute should be construed so that an ordinary person reading the statute would get the usual and accepted meaning. Wills v. Schroeder Aviation, Inc., 390 N.W.2d 544 (N.D. 1986).

The usual and accepted meaning of “extracurricular,” as found in Merriam-Webster Online Dictionary is “not falling within the scope of a regular curriculum; specifically: of or relating to officially or semiofficially approved and usually organized student activities (as athletics) connected with school and usually carrying no academic credit.”

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<sup>3</sup> See also N.D. Const. art. VIII, § 2 (“The legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.”).

<sup>4</sup> Section 15.1-09-36(k), N.D.C.C., states that a school board may “[r]equire that a student pay any other fees and charges permitted by statute.” There is no specific statutory authority to charge fees for summer school programs such as those offered by Trollwood.

(Emphasis added.) See Merriam-Webster Online Dictionary available at <http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=extracurricular>.

Like North Dakota, many other states use the term “extracurricular” without defining it in statute.<sup>5</sup> Some states, however, have defined the term as follows:

[A]ll direct and personal services for pupils for their enjoyment that are managed and operated under the guidance of an adult or staff member. . . .

. . . .

(b) Extracurricular activities have all of the following characteristics:

- (1) they are not offered for school credit nor required for graduation;
- (2) they are generally conducted outside school hours, or if partly during school hours, at times agreed by the participants, and approved by school authorities;
- (3) the content of the activities is determined primarily by the pupil participants under the guidance of a staff member or other adult.

Minn. Stat. Ann. § 123B.49, subd. 4 (emphasis added).

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<sup>5</sup> See, e.g., Ala. Code § 16-26A-6 (school shall offer extracurricular activities as may be found in any public secondary school in the state); Alaska Stat. § 14.07.030(10) (the Department of Education and Early Development may set student tuition and fees for educational and extracurricular programs); Miss. Code Ann. § 37-7-301(ii) (school boards may charge reasonable fees for participating in an extracurricular activity for academic or nonacademic credit); Neb. Rev. Stat. § 79-2, 127 (a school governing body may require and collect admission fees and transportation charges for spectators attending extracurricular activities); Ohio Rev. Code Ann. § 3313.642 (prohibition against charging a fee does not apply to any fee charged for extracurricular activities); Or. Rev. Stat. § 339.155 (a school board may require payments of admission fees or charges for extracurricular activities where pupil attendance is optional.); Tex. Educ. Code Ann. § 11.158(a)(2) (The board of trustees of an independent school district may require payment of admission fees or charges for attending extracurricular activities, if membership or attendance is voluntary); and Wis. Stat. § 120.13(19) (school board may establish and maintain programs and services, outside the regular curricular and extracurricular programs).

“[E]xtracurricular activity” means any optional, noncredit, educational or recreational activity which supplements the education program of the school, whether offered before, during or after regular school hours.

Ariz. Rev. Stat. Ann. § 15-342 (24) (emphasis added).

“[A]n extracurricular activity” is not part of the regular school curriculum, is not graded, does not offer credit, and does not take place during classroom time.

Cal. Educ. Code § 35160.5(a)(2) (emphasis added).

Based upon the above, “extracurricular” activities appear to be those activities that are related to the curriculum, yet are not offered for credit. It appears that some of the classes offered by Trollwood would fall within this category.

A dictionary definition of the term “noncurricular” could not be found. However, the Merriam Webster Online Dictionary defines the prefix “non” as “not : other than : reverse of : absence of” and the word “curricular” as “of or relating to a curriculum.” It further defines “curriculum” as “the courses offered by an educational institution.” Based upon these definitions, the term “noncurricular” appears to mean “not relating to the courses offered by an educational institution.” See Merriam Webster Online Dictionary available at <http://www.m-w.com/dictionary.htm>.<sup>6</sup>

Thus, it appears that a characterization of both extracurricular and noncurricular activities is that credit is not given for participation. In 1990, this office also stated, “[a] school generally may not charge a fee for a course for which credit is given. Nor may a school charge for education, regardless of whether credit is given, that is a core subject.” N.D.A.G. 90-19 (emphasis added).

Therefore, it is my opinion that no fee may be charged for those courses offered at Trollwood for which the student receives academic credit by the District, and no fee may be charged if the course is considered a core subject. This is true regardless of whether the fee is actually charged by the District, Trollwood, FutureBuilders or any

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<sup>6</sup> Several courts have considered the phrase “noncurriculum related student group” as that phrase is used in the Equal Access Act, 20 U.S.C.A. § 4071 et seq. See, e.g., Bd. of Educ. of the Westside Community Schools v. Mergens, 110 S.Ct. 2356, 2366 (1990) (listing chess club, a stamp collecting club, and a community service club as examples of “non-curriculum related student group”); Pope v. E. Brunswick Bd. of Educ., 12 F.3d 1244, 1247 (1993) (Key Club is noncurricular).

LETTER OPINION 2004-L-46

July 1, 2004

Page 6

other entity. Whether a particular course constitutes an extracurricular or noncurricular activity is a question of fact. N.D.A.G. 90-19.

Sincerely,

Wayne Stenehjem  
Attorney General

njl/vkk

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).