LETTER OPINION
2004-L-73

December 8, 2004

The Honorable Wayne G. Sanstead
Superintendent of Public Instruction
600 E Boulevard Ave
Bismarck, ND 58505

Dear Superintendent Sanstead:

Thank you for your letter asking whether a military installation school district is responsible for the education of children who, but for the renovation or rebuilding of their military housing, would be living within the military installation school district. For the reasons discussed below, it is my opinion that a military installation school district is responsible for the education of children who, but for the renovation or rebuilding of their military housing, would be living within the military installation school district. Whether a child would be living within the military installation school district, but for the renovation or rebuilding of the military housing, is a question of fact, to be determined on a case-by-case basis.

ANALYSIS

You explained that the military bases in North Dakota have been renovating or rebuilding their military base housing for service members. During this time, service members and their families, who would normally live on the military base, are forced to find alternative, temporary housing in the civilian communities surrounding the military base.

School districts for military installations may be established under N.D.C.C. ch. 15.1-08. Military installation school boards are required to "[c]ontract for the provision of education to the students residing in the district." (Emphasis added.) N.D.C.C. § 15.1-08-04(3). Similarly, N.D.C.C. § 15.1-09-33(1) states that school boards in this state may "[e]stablish a system of free public schools for all children of legal school age residing within the district." (Emphasis added.) It is clear from these statutes that the school district in which a child resides is the school district financially responsible for educating that child.

Determining residency is a question of fact. Habberstad v. Habberstad, 444 N.W.2d 703 (N.D. 1989). Finding facts for determining residency for school purposes is beyond

the scope of Attorney General's opinions. N.D.A.G. 2000-L-111. The following information may be used as a guide so that a proper determination of residency may be made for each child on a case-by-case basis.

The landmark case in determining student residency in North Dakota is Anderson v. Breithbarth, 245 N.W. 483 (N.D. 1932). See Lapp v. Reeder Public School Dist. No. 3, 491 N.W.2d 65, 68 (N.D. 1992) ("the applicable test for determining . . . residence for educational purposes is set forth in this court's decision in Anderson v. Breithbarth. . ."); In Interest of G. H., 218 N.W.2d 441, 447 (N.D. 1974); N.D.A.G. 2002-L-13; and N.D.A.G. 98-L-9.

In Anderson, a mother who lived out of state sent her child to live with the child's aunt and uncle in North Dakota. A question arose regarding whether this child "resided in the district" for education purposes. The court determined that a child resides in a school district when the child:

> . . . makes its home in that particular district, whether with its parents, or with other persons, when that place is the only home it has, a place to which she comes and where she remains when not 'called elsewhere for labor or special or temporary purpose.'

245 N.W. at 487 (emphasis added). The court was careful to point out that its interpretation of the phrase "residing in the district" would not permit any child to come into a school district merely for the purpose of obtaining school privileges. If that were the case, the child would be considered a nonresident of the school district for education purposes and tuition would have to be paid for the child. 245 N.W. at 487.

The test from Anderson contains two parts. First, is the child in the school district solely to obtain school privileges? If so, the child should be considered a nonresident of the school district and tuition must be paid. If not, a second question is asked. Is the providing school district where the child makes his or her home a place to which the child comes and where the child remains when not called elsewhere for labor or special or temporary purpose?

When applying this test to the question presented, it is reasonable to conclude that the displaced children are in the providing school district not solely to obtain school privileges but rather because they have been displaced from their home on the military base. As such, the second question must be considered. It is also reasonable to conclude that many of the displaced children are living in the providing school district for a "special or temporary purpose." A child who is living off-base due to the renovation or rebuilding of the service member's military base housing is certainly being called elsewhere for a "special purpose." In addition, it is a "temporary purpose" because once the renovation or rebuilding is completed the service member will return to the military

base housing. "The place where a person is situated for a special or temporary purpose is not one's home." N.D.A.G. 98-L-9. In a situation such as this, the military installation school district would remain the school district of residence and would be responsible for paying tuition to the school district in which the child is receiving educational services.

While the above scenario may apply to the children of many service members, it may not be true for the children of all service members. Whether a child would be living within the military installation school district, but for the renovation or rebuilding of the military housing, is a question of fact, to be determined on a case-by-case basis.

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). "The Supreme Court of North Dakota has held that an Attorney General's opinion has the force and effect of law until a contrary ruling by a court." North Dakota Fair Hous. Council, Inc. v. Peterson, 625 N.W.2d 551, 557-558 (N.D. 2001) (citations omitted); Roe v. Doe, 649 N.W.2d 566, 571 (N.D. 2002).