

LETTER OPINION
96-L-140

August 6, 1996

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

Dear Dr. Sanstead:

Thank you for your letter asking whether a North Dakota public school district is responsible for paying the educational costs prescribed by North Dakota Century Code (N.D.C.C.) § 15-40.2-08 for a student resident in that public school district but who has been expelled from the schools of that district. You cite prior opinions of this office and ask whether the application of N.D.C.C. § 15-40.2-08 affects the school district's financial obligation for expelled students.

The opinions you refer to are Letter from Attorney General Nicholas J. Spaeth to Dr. Wayne G. Sanstead (November 19, 1990) and Letter from Attorney General Nicholas J. Spaeth to Dennis E. Johnson (August 18, 1992). Those opinions determined that a North Dakota public school district did not have the responsibility to arrange for education services at an alternative location if the subject public school district had expelled the student from its schools, regardless of the financial status of the student's parents, unless a specific legislative mandate provided otherwise.

The circumstances dealt with in the two opinions noted above related to the expulsion of a student from the schools of a particular school district, and the responsibilities of that district to undertake, on its own volition, the provision of alternative education services. N.D.C.C. § 15-40.2-08 was not discussed nor asked about in those two prior opinions.

N.D.C.C. § 15-40.2-08 relates to the provision of educational services and the payment therefor when a child is placed in a school district other than the child's school district of residence by orders of state or tribal courts or juvenile supervisors, by county or state social service agencies, placement at a state-operated institution, or admission to a state licensed child care home or state-operated institution. These placements are, as indicated by the title to the section, made "for purposes other than education." N.D.C.C. § 15-40.2-08 establishes the "district of residence" for

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children placed at such facilities, and places on the district of residence certain financial responsibilities and the method for determining those responsibilities.

The above-noted opinion to Dennis E. Johnson stated, in part, that

It is my further opinion that when a student engages in proscribed conduct authorizing his removal from school pursuant to statute, and when due process has been extended in the process of the suspension or expulsion, the public school district has no affirmative duty to provide for an alternative education program absent a specific legislative mandate to do so.

(Emphasis supplied.)

N.D.C.C. § 15-40.2-08 provides a specific legislative mandate to which school districts are subject independently from their power and authority to expel a student pursuant to N.D.C.C. § 15-29-08(13). These two statutes must be read together to give meaning to both. N.D.C.C. § 1-02-07. Therefore, even though North Dakota statutes do not impose on a school district the duty to provide for alternative educational facilities after an expulsion of one of its students under its general authority to expel, the provisions of N.D.C.C. § 15-40.2-08 provide a legislative mandate for financial responsibility for the education of a school district's resident students where circumstances in addition to the mere expulsion have occurred pursuant to that section.

It is, therefore, my opinion that N.D.C.C. § 15-40.2-08 constitutes a specific legislative mandate to school districts when its provisions apply to a school district's resident students even if the subject school district has expelled the student in question from its schools.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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