

LETTER OPINION
98-L-9

January 21, 1998

Honorable Aaron Krauter
State Senator, District 35
HC 1, Box 27
Regent, ND 58650

Dear Senator Krauter:

Thank you for your letter asking whether the New England Public School District will have any duty to provide for the education of juveniles sent by the federal government to a detention center planned to be built in the city of New England.

The Southwest Multi-County Correction Center apparently operates pursuant to the authority provided in N.D.C.C. ch. 12-44.1. N.D.C.C. § 12-44.1-02, in particular, authorizes the governing bodies of counties and cities to establish and maintain a correctional facility in conjunction with other counties and cities. The Southwest Multi-County Correction Center's facility is located in the city of Dickinson. The Southwest Multi-County Correction Center, among other things, contracts with the United States Department of Justice's Federal Bureau of Prisons to house juveniles in the facility in Dickinson. The contract entered into with the federal government for the housing of these juveniles is called a "Statement of Work." The Southwest Multi-County Correction Center has tentative plans for building a branch facility in the city of New England. If the New England facility is built, juveniles received under contract with the federal government would be able to progress from the Dickinson facility to the New England facility, which I am informed would be a less secure, but still a secure facility. Education services would be available to the juveniles within the facility in New England, just as education services are provided within the facility in Dickinson. The cost of providing these educational services are billed to the federal government under its Statement of Work. See STATEMENT OF WORK, II, ch. 13, C. The juveniles sent to the Southwest Multi-County Correction Center pursuant to the contract with the federal government are juveniles who commit federal crimes, commit crimes on federal property, or commit crimes on Indian reservations.

The North Dakota Constitution provides, "the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota" N.D. Const. art. VIII, § 1. North Dakota state law provides:

The public schools of the state must be equally free, open, and accessible at all times to all children who have reached the age of six by midnight August thirty-first for school districts that do not provide kindergarten or the age of five for school districts that provide kindergarten, and have not reached the age of twenty-one by midnight August thirty-first. . . .

N.D.C.C. § 15-47-01.

North Dakota state law also provides:

The powers and duties of the school board of a public school district shall be as follows:

1. To establish for all children of legal school age residing within the district a system of free public schools which shall furnish school privileges equally and equitably.

. . . .

N.D.C.C. § 15-29-08 (emphasis added).

There is no state law that specifically addresses whether juveniles who are placed in a detention center in North Dakota under a contract with the federal government are "residents" of the local North Dakota school district for education purposes. State law, however, does provide that the residence of North Dakota students who are ordered by a state or tribal court to stay at a foster home or child care home is the school district of residence at the time of the court order. N.D.C.C. § 15-40.2-08(1). Also, when North Dakota juveniles must be sent to a detention facility, they are sent to the North Dakota Youth Correctional Center, located in the city of Mandan. See N.D.C.C. ch. 12-46. North Dakota school districts are not required to pay for the education of students sent to the Youth Correctional Center. See N.D.C.C. § 15-40.2-08(9). The education of the students in the Youth Correctional Center is paid by the state. Although state law authorizes a correctional facility to "utilize the resources of the community to provide inmates with available

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educational, vocational, counseling, and work release opportunities," N.D.C.C. § 12-44.1-17, this section does not require a local public school district to provide educational services to juveniles in a correctional facility.

The most helpful guidance in determining whether the local public school district has any duty to provide educational services to the juveniles in the detention center is reflected in a North Dakota Supreme Court case:

The term "residing in the [school] district" [for educational purposes] means what it says - a child who makes its home in that particular [school] 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."

Anderson v. Breithbarth, 245 N.W. 483, 487 (N.D. 1932).

The juveniles in a detention center have been "called elsewhere" for a "special or temporary purpose" from their home. The place where a person is situated for a special or temporary purpose is not one's home. It is expected that juveniles in the Southwest Multi-County Correction Center in Dickinson, for example, will be returned to their home or their sentencing districts upon release, and the transportation expenses will be paid by the Bureau of Prisons. See STATEMENT OF WORK, II, ch. 16, D.

No federal law specifically addresses the residency for educational purposes of juveniles sent to a detention facility in a particular state. The Statement of Work entered into between the Southwest Multi-County Correction Center and the Bureau of Prisons simply states that the cost of education will be itemized on a monthly bill sent to the Bureau of Prisons. See STATEMENT OF WORK, II, ch. 13, C.

For most purposes the residency of a federal prisoner is the prisoner's residency prior to incarceration. The general rule is that, for purposes of federal diversity jurisdiction, a prisoner's residency remains in the state where the prisoner resided at the time of conviction and imprisonment. Farm Credit Bank of St. Paul v. Ziebarth, 485 N.W.2d 788 (N.D. 1992); Jones v. Hadican, 552 F.2d 249 (8th Cir. 1977). The same is true to determine proper venue--a federal prisoner is not a resident of the state where incarcerated. Brimer v. Levi, 555 F.2d 656 (8th Cir. 1977). This is consistent with the manner residency is determined for educational purposes in

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North Dakota when a court orders placement of a juvenile. See
N.D.C.C. § 15-40.2-08(1).

In conclusion, it is my opinion that if this juvenile detention facility is built in the city of New England, the New England Public School District will have no duty to provide for the education of the juveniles housed in the detention center. It is possible that a juvenile may be released and make his or her home in New England, in which case, the New England Public School District could be responsible for the juvenile's education. However, since the Statement of Work provides for the cost for transporting the juveniles to their home or sentencing district, this is unlikely to occur. Further, when a student is released, the student may well be over the age of twenty-one or have completed high school in the correctional center, which would relieve the school district of any responsibility even if the young person remains in the community.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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