

N.D.A.G. Letter to Sanstead (June 12, 1985)

June 12, 1985

Dr. Wayne Sanstead
Superintendent of Public Instruction
State Capitol
Bismarck, North Dakota 58505

Dear Dr. Sanstead:

Your predecessor, Dr. Joseph Crawford, asked this office whether the residence of a minor handicapped child is affected by the appointment of a guardian and whether the child's residence would then become that of the guardian even if the child does not reside with the guardian.

N.D.C.C. § 15-40.2-08 provides that in the case of a handicapped child, the district of residence may be that of either the parent or the legal guardian residing in North Dakota. The question, as presented to this office, involves a situation where the parental rights have not been formally terminated and a guardian has been appointed. The question then becomes which district is the district of residence if both the parent and legal guardian reside in different districts.

Although N.D.C.C. § 15-40.2-08 does not clearly indicate that there is an order of preference, it appears to me that the logical and common sense answer would be that if parental rights have not been formally terminated, the district in which the parent resides is the district of residence of the child. Only when parental rights have been formally terminated and a guardian has been appointed, should the district of residence of the child become that of the district in which the guardian resides. To decide to the contrary would discourage individuals from acting as guardian for minor school-aged children who are handicapped as it would increase the educational costs of the school district.

Sincerely,

Nicholas J. Spaeth

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