

**OPINION
62-111**

October 15, 1962 (OPINION)

DEPARTMENT OF PUBLIC INSTRUCTION

RE: Physically Handicapped and Mentally Handicapped - Education of

This office acknowledges receipt of your letter of October 3, 1962, in which you state that you would appreciate our interpretation of section 15-59-07 passed by the 1961 Legislature as Chapter 171. This section as it appears in the 1961 Pocket Supplement to the North Dakota Century Code reads as follows:

EDUCATION OF PHYSICALLY HANDICAPPED - CONTRACT. If any school district in this state has any elementary or high school student who because of his physical handicap is unable to attend the public schools in the district, such school district shall contract with any accredited private nonsectarian nonprofit corporation within or without the state which has proper facilities for the education of such student, if there are not public schools in the state with the necessary facilities which will accept such student. Prior to the time any school district enters into a contract with any private nonsectarian nonprofit corporation for the education of any physically handicapped student the curriculum provided by such school and the contract shall be approved by the superintendent of public instruction. The contract shall provide that such school district agrees to pay to the private nonsectarian nonprofit corporation as part of the cost of educating such student an amount for the school year equal to the county average per pupil elementary or high school cost depending on whether enrollment would be in grade or high school department, in the county in which the contracting district is located. If the attendance of such student at such school is operated for less than a school year, then the contract shall provide for such lesser amount prorated on a monthly basis. For the purpose of this section, any student contracted for to attend a school as herein provided shall be considered as enrolled in the contracting district and the district shall be entitled to the per pupil payment out of the county equalization fund the same as other regularly enrolled students in the district."

In your letter you make the following observation with reference to this section:

According to this section of the law, it is possible for local school districts to sign a contract with the Crippled Children's School at Jamestown for the education of physically handicapped children. The Opportunity School in Fargo is for handicapped children, but is in the area of mental retardation. Could it conceivably come under this section when the title of the section specifically provides that this is for the physically handicapped?"

While, as indicated in your letter this section came into existence in order to enable certain districts to send children to the Jamestown Crippled Children's School, and while the word "physically" appears throughout the section, it is our opinion that the word "physically" should be given a broader meaning than may ordinarily be given when it is used in contrast with the word "mentally."

It is our opinion that the Legislature did not intend to discriminate against mentally handicapped children when it used the term "physically handicapped." It is our understanding that most cases of mental retardation can be attributed to physical causes, and in a broader sense, mental retardation is due to a physical handicap. This view is borne out by quotations from a letter which I received from A. F. Samuelson, M.D., Director, State Psychiatric Clinic, 320 Avenue B East, Bismarck, North Dakota, in which Dr. Samuelson makes the following statements:

It is the impression of psychiatrists and neurologists that most types of mental retardation are associated with brain damage of either a structural or a biochemical nature. In many instances the morbid pathology of the brain can be demonstrated by our present methods of investigation; in other instances, however the pathological changes are not so easily demonstrated but nevertheless are assumed to be present. In all instances, the evidence of brain damage and/or mental retardation becomes grossly apparent in the performance of a careful neurological and physical examination, x-ray examination of the skull, electroencephalographic changes and psychological testing.

The causes of brain damage with resultant retardation are numerous; any disease or disorder which can permanently damage the brain can be a cause of mental retardation. To give some examples, prenatal conditions which result in a malformed brain, infectious processes such as encephalitis, certain poisons, severe trauma, circulatory disturbances, metabolic disturbances, brain tumors are all potential cause of brain damage which could result in either a slight or marked degree of mental retardation."

It should also be borne in mind that a psychiatrist today must not only take training in psychiatry but must pursue the regular course required of physicians and surgeons in order to prepare himself for his work as a psychiatrist. This would lead us to believe that mental difficulties rest ultimately upon physical causes.

In view of the dire need for assistance for those who are mentally retarded, and the real benefits that may accrue by the use of this section, together with the reports outlined, it is our opinion that the provisions of section 15-59-07 may be used for mentally handicapped children, as well as for the physically handicapped, providing they are educable and meet the other requirements of this section.

LESLIE R. BURGUM

Attorney General