

**OPINION  
63-211**

October 16, 1963 (OPINION)

SCHOOL DISTRICTS

RE: Federal Indian School - Agreements With Other Districts

This is in reply to your letter of October 10, 1963, concerning the above matter. You set forth the following facts:

The Federal Government is the owner of the High School building at Fort Yates, North Dakota, which is operated as a Federal Indian School. Fort Yates School District for Sioux County, North Dakota, has a cooperative agreement with the government whereby students from the Fort Yates District may attend this school and a certain proportion of the expenses of operation of the school are borne by the Fort Yates School District. This agreement has been in effect for many years and there is no problem insofar as the Fort Yates School District is concerned.

The parents of several students from the Selfridge School District desire to send their children to the Fort Yates School and have applied to the Selfridge School Board for permission to do so under the provisions of chapter (section) 15-40-17 of the 1963 Supplement to the N.D.C.C. of 1960 which, if granted, would allow the Selfridge District to pay the tuition of these students either to the Fort Yates District or to the Superintendent of the Indian Agency depending upon your interpretation of the law as to the questions hereinafter set forth. However, the Selfridge Board refused these applications and the parents appealed the Board's decision to the Sioux County Board as provided for in the above said statute.

The County Board has taken the position that it could not entertain this appeal on the grounds that in view of the fact the high school in question is a Federal Indian School, that attendance of this type of school is governed by the provisions of (section) chapter 15-29-08(3) of the 1963 Supplement which provides in part: 'The School Board may make arrangements for the education of pupils in a Federal Indian School and contract with the Superintendent of the Indian Agency for the payment of tuition for these pupils . . . .' It was the County Board's position in this case that this provision limited any contractual arrangement with the Superintendent of an Indian Agency for the education of pupils in a Federal Indian School to the School Board of the residence of the pupil. In this particular case, the Selfridge School Board would not be contracting with the Superintendent but would be contracting with the Fort Yates School District who would actually be acting as a middle man. The Fort Yates District would then contract with the Superintendent for students who are not residents of the Fort Yates District. With these facts in mind, my questions to you are:

1. Is the high school at Fort Yates which is Federally owned

but operated on a cooperative basis with the Fort Yates School District that type of a Federal Indian School contemplated by the provisions of (section) chapter 15-29-08(3) of the 1963 Supplement to the N.D.C.C. of 1960?

2. If it is, does the Sioux County Board have the power to hear the parents' appeal from the adverse ruling of the Selfridge School Board under the provisions of (section) chapter 15-40-17 (1963 Supplement)?
3. If the Board does not have jurisdiction, may the parents, themselves, contract directly with the Superintendent of the Agency for the payment of the tuition of these pupils?
4. What effect, if any, would the recent ruling in the case of Myhre v. School Board of North Central Public School District No. 10, County of Richland, 122 N.W.2d. 816, have upon the facts in this case?"

In reply to your first question, we believe the high school at Fort Yates is that type of Federal Indian School contemplated by the provisions of section 15-29-08(3) of the Supplement to the North Dakota Century Code, although the school is operated on a cooperative basis with the Fort Yates School District. Assuming the school would be considered as any other public school operated by a school district of this state, the school board would also have the authority, under the provisions of section 15-29-08(3) of the North Dakota Century Code, as amended, to enter into agreements with other school districts for the payment of tuition. Thus we believe the addition of the language quoted in your letter to section 15-29-08(3) by the 1963 Legislature authorized the school districts to pay tuition to Federal Indian Schools in the same manner as they pay tuition to other public schools of this state.

With regard to your second question, we believe the Sioux County Board does have the power to hear the parents' appeal from the adverse ruling of the Selfridge School Board under the provisions of section 15-40-17 of the North Dakota Century Code, as amended. We believe the language included in section 15-29-08(3) authorizing a school district to contract with the Superintendent of the Indian Agency is a grant of power to the school board. It is not, however, a limitation on the power of the county board to consider appeals from the decisions of the school district boards with regard to attendance. We must be frank in admitting, however, that this matter is not free from doubt.

Assuming for the purposes of your third and fourth questions that it was determined the county board did not have the power to hear the parents' appeal from the adverse ruling of the Selfridge School Board in this matter, we believe the parents themselves could then contract directly with the superintendent of the agency for payment of the tuition of these pupils. The recent ruling in the case of Myhre v. School Board of North Central Public School District No. 10, County of Richland, 122 N.W.2d. 816, would not govern this situation since it applies only to schools operated by school districts of this state.

Should the Sioux County Board grant the students in question permission to attend the Fort Yates School and require the Selfridge District to pay the tuition, we believe the tuition should be paid directly to the Superintendent of the Indian Agency since they are operating the school. We do not believe it should be paid to the Fort Yates District which, in turn, would act as "middle man."

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