

**OPINION
64-203(June 19)**

June 19, 1964 (OPINION)

SCHOOL DISTRICTS

RE: Classroom Training - Educable Children

Your letter dated June 1, 1964, provides as follows:

According to the statutes a child must attend school between the ages of seven and sixteen, and a youngster may begin school at the beginning of the school year if he is six years of age on or before October 31.

According to the statutes, too, kindergarten departments may be established and maintained by a public school district but Foundation Program payments do not include kindergarten children.

The question has been asked whether it would be lawful for public school districts to establish classes for the trainable mentally retarded children. I hesitate to define what constitutes trainable mentally retarded because there is a variation of opinion and there may be many definitions, all of which can be substantiated. This office is of the opinion that children with IQ's of 50, for example, are trainable but not educable.

The question is, however, may a school district provide classes for children who are not educable but may profit from attending special classes?"

The authority of a local school district to provide classroom training for the mentally retarded is to a certain degree dependent upon the definition of the word "educable." You will note that Section 147 of the North Dakota Constitution directs the Legislative Assembly to 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.

Section 15-29-08, subsection 1, of the North Dakota Century Code directs the school board of a public school district to establish a system of public schools which shall be free to all children of legal school age residing within the district. However, the school system established by a public school board by powers given under chapter 15-29 of the North Dakota Century Code would not be satisfactory for all the children of the state. Under the authority granted by chapter 15-59 of the North Dakota Century Code, any school district may provide special education to exceptional children in accordance with the provisions of that chapter. In this connection, section 15-59-01, subsection 1, of the North Dakota Century Code provides as follows:

DEFINITIONS. As used in this chapter:

1. 'Exceptional children' shall mean educable children under the age of twenty-one whose educational needs are not adequately provided for through the usual facilities and services of the public schools, school districts, or state institutions because of physical, mental, emotional or social conditions; and * * * *."

It is our opinion that the determination of whether a child is educable as that term is used in the above section was not meant by the Legislature to be limited by any specific intelligent quotient. Whether a child is educable or not would be a question of fact, dependent upon all the circumstances. Consequently, we believe a public school district may provide facilities for mentally retarded children if such child will profit from attending such special classes.

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