

OPINION
66-244

March 11, 1966 (OPINION)

Mr. Harold O. Bullis

State's Attorney

Richland County

RE: Schools - Attendance in Public Schools - Shared Time

This is in reply to your letter of March 1, 1966, relative to parochial school students attending the public schools on a shared time basis.

You state the following:

I understand your office has advised that a student cannot be enrolled in both a public and a parochial school at the same time. Is this correct?

If the student cannot be enrolled in both a parochial school and a public school, is it still possible for a student who is enrolled in a parochial school to be enrolled in certain classes in the public school?

If it is possible for a student who is enrolled in a parochial school to be enrolled in certain classes in a public school, is the public school entitled to receive state aid for these students?"

This office has previously advised that parochial school students may enroll for certain classes in the public school. It would not appear possible for a student to be "enrolled" in two schools with the thought of graduating from both schools. However if the term "enrolled" is considered to mean entered in either school for the purpose of taking classes therein, we believe this is permissible and we have previously indicated our approval of such arrangements. Our conclusion is based upon sections 147 and 148 of the North Dakota Constitution and section 15-47-01 of the North Dakota Century Code which provide that the public schools of the state shall be equally free, open and accessible at all times to the children the ages of six and twenty-one years.

We realize that in working out a "shared time" arrangement a good deal of cooperation is essential between the public and parochial school administrators since such program should be instituted with as little interruption of the public school program as is possible.

In regard to state aid, section 15-40-14 of the North Dakota Century Code, as amended, provides, with respect to high school students,

There shall be paid from the county equalization fund to all

school districts operating high schools, * * * * that amount of money resulting from multiplying the factor 1.32 times the educational cost per pupil as provided in section 15-40-12 from each high school pupil in average daily membership in such schools each year. * * * * For purposes of this chapter 'average daily membership' shall mean the total days all students in a given school are in attendance, including legal school holidays and days set aside for a North Dakota education association convention, plus the total days all students are absent, divided by one hundred eighty days. * * * *."

On December 24, 1949, this office addressed a letter to Mr. Ellis Snowfield, attorney-at-law, Langdon, North Dakota, in which it was stated that the schools would not be entitled to the state aid payments except for regularly enrolled students. It was further stated in that letter:

You will note that the statute, section 15-40-14, as amended by Chapter 149 of the Laws of 1949, provides that, 'the sum of ten dollars for each month of regular enrollment during the preceding year by a high school student who was a resident of North Dakota.' A person cannot be a regularly enrolled student in two schools at the same time. The pupils in question undoubtedly are regularly enrolled students of the parochial school and some of these pupils are taking one subject in the local public school. * * * *

It seems, therefore, that the only reasonable interpretation to be placed on this statute is that it contemplates the regular enrollment and attendance in the public high school in order to entitle such high school to ten dollars per month provided in said statute."

The provision of the 1949 enactment relative to "regularly enrolled" students has, as you will note, been deleted from section 15-40-14 and the language relative to average daily attendance inserted in lieu thereof. The 1949 expression is therefore no longer applicable to this question.

It is our opinion that a student who is enrolled in a parochial school and who is also enrolled in one or more subjects in a public school should be considered to be a student "in attendance" in such school within the meaning of section 15-40-14 of the North Dakota Century Code. However the student would not be considered a full-time student since he is also enrolled in another school. For this reason it is our further opinion that the amount of state aid should be in proportion to the number of courses for which the student is enrolled in the public school.

HELGI JOHANNESON

Attorney General