

OPINION
66-271

February 21, 1966 (OPINION)

Mr. O. Ray Warner

Area Program Director

Division of Plans and Supplementary Centers

Department of Health, Education and Welfare

RE: Schools - Laboratory Schools - Status

Pursuant to a recent telephone conversation, and in reply to your letter of February 11, 1966, the following is submitted in regard to the "Laboratory School" in Minot, North Dakota.

You inform us that:

The Minot State Laboratory School, located in Minot, North Dakota, has submitted to the U. S. Office of Education a proposed project to be funded under Title III of the Elementary and Secondary Education Act of 1965 - P.L. 89-10. Projects under this Title may be submitted only by 'local or intermediate educational agencies' as defined by the Act. Since the Minot State Laboratory School is under the control of the college and the State Board of Higher Education, we need to know whether they are eligible to apply for funds under this Act."

You further state:

Could you give us your opinion as to the status of this school. Is it a recognized public school and is it an eligible applicant for funds under Title III, Elementary and Secondary Education Act of 1965 - P.L. 89-10? (copy of regulations for this Title is enclosed.)"

We note in the pamphlet enclosed covering "Title 435 Chapter 1 Part 118 of the Code of Federal Regulations Reprinted from Federal Register (October 15, 1965) 30 F.R. 13138-13142", the following terms are defined as follows:

- (h) 'Elementary school' means a day or residential school which provides elementary education, as determined under State law.
- (k) 'Local education agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function, as defined in paragraph (o) of this section, for public

elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as is recognized in a State as an administrative agency for its public elementary or secondary schools. That term also includes any other public institution or agency of any State or political subdivision thereof having administrative control and direction of a public elementary or secondary school."

- (n) 'Secondary school' means a day or residential school which provides secondary education, as determined under State law, except that it does not include education beyond grade 12."

For practical purposes, the benefits received by a student at such "laboratory" or "model" schools are the same as would be received in one of the elementary or secondary schools maintained by one of the local school districts. There is, however, a difference in organization here. On the one hand, we have a system of local school districts in the state which, within their respective territories, maintain and administer all public elementary and secondary schools. In addition to these school district public schools, various of the state normal schools, teachers' colleges, etc. maintain such "laboratory" or "model" schools. Because of this origin, generally each normal school or teachers' college will maintain at the most only one "model" or "laboratory" school.

The governing body of the school district is, of course, the school board, consisting of locally elected individuals. A "model" or "laboratory" school will be governed and administered directly by the appointed officers of the normal school or teachers' college maintaining same. The normal schools or teachers' colleges are in turn governed by the State Board of Higher Education.

Insofar as the State Board of Higher Education administers teachers' colleges, normal schools, Universities, etc., throughout the state, and has statewide jurisdiction in these matters, it would be difficult to consider it a "local education agency" within the meaning of (k) above. Also, insofar as the staffs of the state colleges, teachers' colleges and normal schools also administer programs that in large part constitute programs more advanced than elementary schools and secondary schools as defined in (h) and (n) above, it would seem more practical to consider the staff of the "laboratory" or "model" school itself the "local education agency" for administrative purposes.

"Model" schools, such as the one in question, are recognized by our statutes, note Section 15-10-20 of the North Dakota Century Code, though they are, of course, not specifically regulated by statutory provision, it apparently being assumed that the staff of the teachers' college, state college or normal school concerned will make adequate provisions for this purpose.

A somewhat similar school has received the attention of the Supreme Court of our state in State v. Valley City Special School District,

42 N.D. 464, 173 N.W. 750, wherein our Supreme Court informs us at pages 467 and 468 of the North Dakota reports:

It is true Valley City Special School District has complied with the law with reference to maintaining its public schools both as to the grades and the high school. It has provided all the facilities for education to the same extent as the Model High School, which is located in the same district. It may be conceded that the educational facilities provided by the special school district of Valley City and the Model High School, which is a part of the Normal School, are equivalent. It is certain from the allegations of the complaint that a large number of the pupils in the Valley City Special School District attend the Model High School. The necessary effect of this is to assist the Valley City Special School District in providing educational facilities as required by law for the children therein, and the logical result is and must be to in part relieve the Valley City Special School District from the burden and expense necessary to maintain its schools. It has probably been relieved from the necessity or will be relieved from the necessity of constructing additional public school buildings and furnishing additional equipment and teachers by reason of the location of the Model High School within the district, which will necessarily always be engaged in giving instruction in the grades and in its high school department to a very large number of pupils who reside in the Valley City Special School District, and this must necessarily result in relieving such school district of a considerable expense."

To conclude, it is our opinion that the Minot State Laboratory School located in Minot, North Dakota, is for purposes such as the regulations you have submitted, a recognized public school and in view of the administrative practices therein set up, the eligible applicant for funds under Title III, Elementary and Secondary Education Act of 1965 - P.L. 89-10.

HELGI JOHANNESON

Attorney General