

Office of the Attorney General
State of North Dakota

Opinion No. 87-18

Date Issued: September 11, 1987

Requested by: Representative Larry A. Klundt

--QUESTIONS PRESENTED--

I.

Whether "the child's physician," as that language is used in N.D.C.C. § 15-34.1-03(4), must be licensed to practice medicine in North Dakota.

II.

Whether "the child's physician," must be a person who has examined, diagnosed, or treated the child.

III.

Whether "the child's classroom teacher," as that language is used in N.D.C.C. § 15-34.1-03(4), must be state certified.

IV.

Whether "the child's classroom teacher," means the classroom teacher in the public school who would instruct the child if the child enrolled in the public school.

--ATTORNEY GENERAL'S OPINIONS--

I.

It is my opinion that "the child's physician," as that language is used in N.D.C.C. § 15-34.1-03(4), must be licensed to practice medicine in North Dakota or some other state.

II.

It is my further opinion that "the child's physician," must be a person who has examined, diagnosed, or treated the child.

III.

It is my further opinion that "the child's classroom teacher," as that language is used in N.D.C.C. § 15-34.1-03(4), must be state certified.

IV.

It is my further opinion that "the child's classroom teacher," does not mean the classroom teacher in the public school who would instruct the child if the child enrolled in the public school.

ANALYSES

I.

North Dakota's compulsory school attendance law states as follows:

15-34.1-03. COMPULSORY ATTENDANCE--EXCEPTIONS. The parent, guardian, or other person having control of a child required to attend school by the provisions of this chapter shall be excused by the school board from causing the child to attend school whenever it shall be shown to the satisfaction of the board, subject to appeal as provided by law, that one of the following reasons exists:

....

4. That the child is in such physical or mental condition as to render attendance or participation in the regular or special education program inexpedient or impracticable. Such condition shall be shown by a declaration of a multidisciplinary team which includes the director of special education of the special education unit of which the school district of residence is a member, the school superintendent of the child's district of residence, the child's classroom teacher, the child's physician, and the child's parent or guardian.

Prior to 1983, North Dakota's compulsory attendance law provided:

15-34.1-03. COMPULSORY ATTENDANCE--EXCEPTIONS.--The parent, guardian, or other person having control of a child required to attend school by the provisions of this chapter shall be excused by the school board from causing the child to attend school whenever it shall be shown to the satisfaction of the board, subject to appeal as provided by law, that one of the following reasons exists:

....

4. That the child is in such physical or mental condition as to render attendance or participation in the regular or special

education program inexpedient or impracticable. Such condition shall be shown by a declaration of a licensed physician if required by the board.

(Emphasis supplied.)

That statute was repealed and replaced with the current language adding the child's parent and classroom teacher, the local school superintendent and director of special education as members of a multidisciplinary team. The legislative history makes clear a desire to provide the child's physician with assistance in declaring to the school board the child's ability or inability to be educated in the regular or special education programs. Nothing in the legislative history implies that "the child's physician" need not be licensed.

N.D.C.C. § 43-17-01(1) states: " 'Physician' shall include physician and surgeon (M.D.) and osteopathic physician and surgeon (D.O.)." Black's Law Dictionary defines "physician" as "a practitioner of medicine; a person duly authorized or licensed to treat diseases; one lawfully engaged in the practice of medicine." Black's Law Dictionary 1033 (5th ed. 1979).

Webster's New World Dictionary (2d College ed. 1982) defines "physician" as "a person licensed to practice medicine, a doctor of medicine." Webster's New World Dictionary 1074 (2d College ed. 1982).

It is a rule of statutory construction that words should be given their plain, ordinary, and commonly understood meaning. See N.D.C.C. § 1-02-02; Berg v. Torgerson, 100 N.W.2d 153, 155 (N.D.1959).

Consequently the "child's physician," in order to participate in the multidisciplinary team, must be licensed to practice medicine. It has been held that unless wording of a statute or its context requires otherwise, the term "physician" refers to a person licensed to practice in any state, not just the state which adopted the statute. See, State, Department of Health and Rehabilitative Services v. McTigue, 387 So.2d 454, 456 (Fla.App.1980). Since national standards have been implemented for the licensing of physicians it follows that the "physician" denoted in N.D.C.C. § 15-34.1-03(4) may be licensed in North Dakota or in any other state.

II.

The language "the child's physician" does not tell us what conduct on the part of the physician creates the physician--patient relationship.

N.D.C.C. § 1-02-39 provides assistance in determining the intention of legislation. That section provides:

1-02-39. AIDS IN CONSTRUCTION OF AMBIGUOUS STATUTES. If a statute is ambiguous, the court, in determining the intention of the legislation, may consider among other matters:

1. The object sought to be attained.
2. The circumstances under which the statute was enacted.
3. The legislative history.
4. The common law or former statutory provisions, including laws upon the same or similar subjects.
5. The consequences of a particular construction.
6. The administrative construction of the statute.
7. The preamble.

A review of the 1983 legislative history shows that the exception to the North Dakota compulsory attendance law set forth in N.D.C.C. § 15-34.1-03(4) was enacted to address the educational problems of the mentally retarded and terminally ill children. See Hearings on S. 2200 Before the Senate and House Education Committees, January 12, and March 1, 1983, 48th Leg. (1983) (testimony of Gary Grondberg, Patricia Laubach, and Barbara Braun). The 1983 Legislature added a parent, classroom teacher, school superintendent, and special education director to form a team with the physician to consider the child's needs. Only after the physician had assistance from the family and the educational consultants could a "declaration" be made to the final arbiters, the school boards. ("The parent ... shall be excused by the school board from causing the child to attend school whenever it shall be shown to the satisfaction of the board ... that one of the following reasons exists: ..." N.D.C.C. § 15-34.1-03 (emphasis supplied)).

It would serve no purpose for a physician to participate in the multidisciplinary decision unless he or she had examined, diagnosed or treated the child. Therefore I conclude that "the child's physician" must be a person who has examined, diagnosed, or treated the child.

III.

Generally courts in other jurisdictions have interpreted "teacher" to mean one who is certified or licensed by the state. See *Lester v. Board of Ed. of School District No. 119 of Jo Daviess*

County, 87 Ill.App.Ct. 269, 230 N.E.2d 893, 898 (1967); Wagenblast v. Crook County School District, 75 Ore.App. 568, 707 P.2d 69, 72 (1985).

Although the words "teacher" or "classroom teacher" are not defined in N.D.C.C. ch. 15-34, "teacher" is defined elsewhere in the code as one who is certificated by the North Dakota Department of Public Instruction. N.D.C.C. §§ 15-38.1-02(6) and 15-39.1-04(11). By administrative rule the North Dakota Superintendent of Public Instruction has established standards for certification, N.D.Admin.Code § 67-02-02-02, and unless these standards are met the school employing such teacher(s) cannot receive state approval, N.D.C.C. § 15-34.1-03(1).

It is clear that the legislature intended all teachers in North Dakota to be state certified as the superintendent of public instruction was given authority to set qualifications for teachers in both public and private schools. Therefore, I conclude that a "classroom teacher" who serves on the multidisciplinary team must be state certified.

IV.

Just as there must be an actual physician--patient relationship in order to qualify a doctor to sit on the multidisciplinary team set out in N.D.C.C. § 15-34.1-03(4), so there also must be a teacher-pupil relationship before an educator can qualify as a "child's classroom teacher." This teacher would be the one in whose classroom the pupil spends most of each school day. If the multidisciplinary team is formed during a summer recess, the classroom teacher from the previous school term should sit on the team. In the event that the child had no certified teacher previous to or concurrently with formation of the multidisciplinary team, no person would serve in that capacity. The local school superintendent has no authority to appoint as a team member the teacher in whose class the child would be enrolled if the child attended public school. School officers have only those powers that are either expressly or necessarily implied by statute. *Gillespie v. Common School District No. 8* 216 N.W. 564, 565 (N.D.1927).

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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