

**LETTER OPINION**  
**95-L-263**

November 22, 1995

Honorable Merle Boucher  
State Representative  
606 Highland Street  
Rolette, ND 58366

Honorable Gerry Wilkie  
State Representative  
P.O. Box 1140  
Rolla, ND 58367

Honorable Les LaFountain  
State Senator  
P.O. Box 662  
Dunseith, ND 58329

Gentlemen:

Thank you for your October 18, 1995, letter requesting my reconsideration of a 1994 opinion to former Senator Dan Jerome on criteria for identifying a federal school with which a North Dakota public school district is eligible to contract for the education of students of that North Dakota public school district. Letter from Attorney General Heidi Heitkamp to Senator Dan Jerome (October 25, 1994).

North Dakota state law and North Dakota Supreme Court opinions on North Dakota public school district authority control this issue. North Dakota public school district authority is limited to that expressed or necessarily implied to carry out the expressed authority, and the North Dakota Legislature must be presumed to have meant what it plainly expressed and that it made no mistake in expressing its purpose. Fargo Education Association v. Fargo Public School District No. 1, 291 N.W.2d 267 (N.D. 1980), and Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993).

Only North Dakota public school districts organized and controlled under North Dakota law may receive state taxpayer provided foundation aid under N.D.C.C. ch. 15-40.1. Through other sections of law, N.D.C.C. §§ 15-29-08(3) and 15-40.2-11, those North Dakota public school districts, under the limited circumstances provided therein, may contract with a federal school to educate students of the public school district. Those contracts may be only with federal schools and the federal government officials that operate them. Tribal governments and private school employees are not federal government officials. Merely because a private school does not discriminate on eligibility to attend classes does not make such a private

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institution a North Dakota public school district organized under North Dakota school law and managed and controlled by a school board elected under N.D.C.C. ch. 15-28. The Ojibwa School is identified by the North Dakota Department of Public Instruction in its educational directory as a nonpublic school. North Dakota Educational Directory, 1994/1995, p. C-2.

My October 25, 1994, opinion provides criteria for determining whether an institution is a federal school, and it notes that such a determination is a question of fact. Various types of Indian-related schools were noted in that opinion. Only federal Indian schools as described therein would be eligible for contracting with a North Dakota public school district under N.D.C.C. §15-40.2-11 and only for the period of time during which that institution qualified as such a federal school.

Federal policies on Indian education do not enter into the interpretation of North Dakota state law on North Dakota school district authority to contract and spend state foundation aid dollars. Federal Indian self-determination legislation does not change the fact that the North Dakota Legislature has limited the authority of North Dakota public school districts to contract only with federal schools and federal government officials that operate those federal schools. Indian grant schools, contract schools, tribal controlled or tribal sanctioned schools are not federal schools under North Dakota law.

Although I have reviewed the statutes you reference in your letter, my opinion as expressed in my October 25, 1994, letter to Senator Dan Jerome remains the same.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

rel/pg

cc: Dr. Wayne G. Sanstead, Superintendent of Public Instruction