

## **N.D.A.G. Letter to Gefroh (April 18, 1988)**

April 18, 1988

Mr. Peter M. Gefroh, Director  
Secondary Education  
Department of Public Instruction  
State Capitol  
Bismarck, ND 58505

Dear Mr. Gefroh:

Thank you for your letter of March 1, 1988, inquiring whether a North Dakota school district has legal authority to issue a high school diploma to a non-resident, foreign student who has never attended high school in the district but who graduates from high school in a foreign country.

The general rule for school districts is that their powers must either be express or implied by statute. Gillespie v. Common School Dist. No. 8. McLean County, 216 N.W. 564 (N.D. 1927). N.D.C.C. § 15-29-08(4) gives school districts general authority over courses subject to state law and subject to courses prescribed or approved by the Superintendent of Public Instruction. This section and N.D.C.C. § 15-29-07 giving school districts general supervision over schools is sufficient to imply general authority to issue diplomas to graduates of the school district's high schools.

It is not at all clear, however, that there is any implied authority to award a graduate of a foreign high school with a diploma from a North Dakota high school. Awarding a high school diploma suggests that a student has met the minimum academic requirements of the school. Rapp, 2 Education Law § 8.06[3]. Your information states that the local school board would satisfy itself that the transcript would be reviewed to ensure that the foreign student had met the standards for a high school diploma by the local school board.

Assuming that to be the case, however, I can find no authority, express or implied, for school districts to give a non-resident, non-attendeo a diploma. There are provisions in state law for non-residents to attend school districts and pay tuition. N.D.C.C. § 15-40.2-04. There are also provisions to allow non-attendeos to complete a high school education through correspondence. N.D.C.C. ch. 15-19. Furthermore one can obtain an equivalent of a high school diploma by taking the General Education Development (GED) test. None of the foregoing fits your fact situation, however.

The Superintendent of the Department of Public Instruction does have considerable authority over secondary education pursuant to N.D.C.C. § 15-41-02 which states that "the superintendent of public instruction shall have general supervision over secondary education in the state." It would seem possible for the Superintendent, pursuant to N.D.C.C. ch. 15-41 and ch. 15-21, to develop rules regarding the "sister school" concept

as outlined in your opinion request. Obviously, legislation specifically allowing such a practice by a school district is also a possibility. Whether such a practice would be educationally sound would be a factor to be considered and developed through the rulemaking or legislative Process.

Sincerely,

Nicholas J. Spaeth

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