

**LETTER OPINION
2014-L-01**

January 14, 2014

Ms. Kirsten Baesler
State Superintendent
Department of Public Instruction
600 E Boulevard Ave Dept. 201
Bismarck, ND 58505

Dear Ms. Baesler:

This office received a request for an opinion regarding the ability of home educated students to use the open enrollment process and participate in academic classes and extracurricular activities.

For the reasons set forth below, it is my opinion that a home educated student may open enroll to a non-resident school district for the purpose of participating in academic courses. It is also my opinion that a home educated student may not open enroll to a non-resident school district for the sole purpose of participating in extracurricular activities.

ANALYSIS

You ask whether a home educated child may utilize the open enrollment process, as set out in N.D.C.C. ch. 15.1-31. The open enrollment statute provides, in part:

[A] parent who wishes to enroll a student in a North Dakota school district other than the student's district of residence shall file an application for approval with the board of the admitting district and shall file a copy of the application with the student's district of residence.¹

The open enrollment chapter sets out a distinct process independent from the home education chapter. Home educated students are not specifically prohibited from utilizing

¹ N.D.C.C. 15.1-31-01(1).

the open enrollment process. Rather, the process is open to any parent “who wishes to enroll a student in a North Dakota school district other than the student’s district of residence. . . .”²

Pursuant to N.D.C.C. § 15.1-23-02, a home educated child’s school district of residence is established by filing a “statement of intent to supervise home education” (Statement of Intent).³ The Statement of Intent requires parents who intend on home educating their child to provide certain information to the superintendent of the child’s school district of residence.⁴ Included in the information requested is:

- f. Any public school courses in which the child intends to participate and the school district offering the courses; and
- g. Any extracurricular activities in which the child intends participate and the school district or approved nonpublic school offering the activities.⁵

You explain that some school districts believe that a home educated student may only take academic classes or participate in extracurricular activities in the school district of residence listed on the Statement of Intent. Nothing in the language of N.D.C.C. § 15.1-23-02 suggests such a limitation.

In fact, N.D.C.C. § 15.1-23-02, the statute requiring the Statement of Intent, is silent as to how the information provided is to be used by the school district. In the case of a parent who intends to apply for open enrollment, the information provided in the Statement of Intent would establish a school district of residence and provide additional notification of the intent to apply for open enrollment. Therefore, because neither N.D.C.C. § 15.1-23-02 nor the Statement of Intent contemplated by that law, prohibits a

² N.D.C.C. § 15.1-31-01(1). But see, N.D.C.C. § 15.1-31-01(5) (a student whose school district of residence does not offer the grade level in which the student requires enrollment may not participate in open enrollment), N.D.C.C. § 15.1-31-01(6) (a child placed in a group or residential care facility or treatment center is not eligible for open enrollment), N.D.C.C. § 15.1-31-07 (students who reside in a district other than the one the student chooses to attend due to a dissolution or reorganization are not subject to the open enrollment chapter).

³ N.D.C.C. § 15.1-23-02.

⁴ Id.

⁵ N.D.C.C. § 15.1-23-02. The language in subsections 1(f) and 1(g) does not specifically reference the school district of residence, but instead references the “any public school courses” and “the school district.”

parent of a home educated child from utilizing the open enrollment procedure found in N.D.C.C. § 15.1-31-01, it is my opinion that the open enrollment process is available to students without regard to their home education status.

II.

Your second question is whether a home educated student may open enroll in a school outside the resident school district solely to engage in extracurricular activities. When considering approval of a student for open enrollment, a school board is required by statute to set standards for the acceptance and denial of applications for admittance under open enrollment as provided in N.D.C.C. § 15.1-31-06. The standards allowed by statute are the capacity of a program, class, grade level, or school building. The standards may not address previous academic achievement, participation in extracurricular activities, disabilities, English language proficiency, or previous disciplinary proceedings.⁶ Therefore, if a home educated student applied for open enrollment to a school only for the purposes of extracurricular activities, the school board would have no basis to consider the application. Therefore, it is my opinion that a home educated child may not apply for open enrollment solely to participate in extracurricular activities. Only if a home educated child has already open enrolled in a school for the purpose of taking an academic course may the child also participate in extracurricular activities in that school.⁷

There is a way for a home educated child to participate in extracurricular activities without taking an academic course. Specifically, N.D.C.C. § 15.1-23-16 in the home education chapter provides home educated students with two options for participating in extracurricular activities: either through the child's school district of residence, or through an approved nonpublic school if permitted by the administrator of the school.⁸

Regardless of whether the home educated child participates in extracurricular activities through the home education statute or because the child is taking an academic course through the open enrollment process, the authority to determine eligibility to participate in extracurricular activities lies with the North Dakota High School Activities Association (NDHSAA). The NDHSAA has a constitution and by-laws along with a handbook of interpretations used to determine, among other things, eligibility for participation in

⁶ N.D.C.C. § 15.1-31-06(1) (emphasis added).

⁷ If a home educated student applied for open enrollment in order to take an academic class and was accepted, that student would then be considered a student of that school. Once approved to open enroll in another school district for academic purposes, a student attends the school for all purposes including participation in extracurricular activities.

⁸ N.D.C.C. § 15.1-23-16.

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activities. The rules of the NDHSAA apply to a home educated child in the same manner as a child educated in the public or private school system.

Sincerely,

Wayne Stenehjem
Attorney General

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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 question presented is decided by the courts.⁹

⁹ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).