

LETTER OPINION
99-L-104

November 4, 1999

Mr. G. David Massey
Manager, Targeted Services Division
Department of Public Instruction
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Massey:

Thank you for your letter requesting an opinion regarding "North Dakota's definition of the North Dakota Youth Correctional Center as a local educational agency."

In your letter, you cite 20 U.S.C. § 8801 for the definition of "local educational agency." North Dakota's law does not define that term, so all I can provide is an opinion on how North Dakota's statutory provisions may relate to the federal definition.

Federal law, for the purposes of chapter 70, entitled, "Strengthening and Improvement of Elementary and Secondary Schools," of title 20 of the U.S. Code, defines "local educational agency" as follows:

(18) Local educational agency

(A) The term "local educational 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 for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(B) The term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(C) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs but only to the extent that such inclusion makes such school eligible for programs for which specific eligibility is not provided to such school in another provision of law and

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such school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that such school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

20 U.S.C.A. § 8801(18) (West Supp. 1999).

North Dakota's Constitution requires that the Legislative Assembly "make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control." N.D. Const. art. VIII, § 1.

Responsive to that constitutional provision, the Legislative Assembly has provided that North Dakota school boards may establish "a system of free public schools for all children of legal school age residing within the district." N.D.C.C. § 15.1-09-33(1). Those public schools established by North Dakota school boards "must be free, open, and accessible at all times to any child" falling within requisite age groups. N.D.C.C. § 15.1-06-01.

The North Dakota Youth Correctional Center "is the general reform and correctional facility of the state for the detention, instruction, and reformation of juveniles of both sexes who are committed to it according to law." N.D.C.C. § 12-46-01. Commitment to the Youth Correctional Center is limited to juveniles between certain ages and requires the involvement of a court. N.D.C.C. §§ 12-46-12, 12-46-13, and 12-46-15.

The federal statute noted above defining "local educational agency" relates to administration of "public" elementary or secondary schools by a public board of education or other public institution or agency having administration of a "public" elementary or secondary school. North Dakota's system of "public" schools is to be free, open, and accessible to all children from age 5 or 6 through age 21. The system of North Dakota public schools is established by school boards.

Contrary to the system of North Dakota public schools described above, the Youth Correctional Center is a state institution, under the control of a state agency, for the detention of juveniles of certain ages. Commitment to the Youth Correctional Center requires the involvement of a court; the institution is not available for general public education.

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It is therefore my opinion that the North Dakota Youth Correctional Center does not fall within the federal definition of "local educational agency" contained in 20 U.S.C.A. § 8801(18) (West Supp. 1999). I am sure you are aware that portions of chapter 70 of title 20 of the U.S. Code provide for certain grants to be distributed to agencies in addition to those falling within the definition of "local educational agency." See 20 U.S.C.A. § 6421, et seq. (West Supp. 1999) and 20 U.S.C.A. § 7114 (West Supp. 1999). The programs created by these sections of federal law relate to prevention and intervention programs for children and youth who are neglected, delinquent, or at risk of dropping out, and governors' programs for safe and drug-free schools and communities.

Sincerely,

Heidi Heitkamp
Attorney General

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