

**LETTER OPINION**  
**99-L-92**

October 15, 1999

Ms. Mary K. O'Donnell  
Rolette County State's Attorney  
PO Box 1079  
Rolla, ND 58367-1079

Dear Ms. O'Donnell:

Thank you for your letter asking whether a public school district must pay the costs of special education students that have open enrolled into another school district when the students in question live on an Indian reservation in North Dakota.

Open enrollment in North Dakota is governed by N.D.C.C. ch. 15-40.3 and the section related to the open enrollment of students with disabilities provides as follows:

If an application under section 15-40.3-01 is approved for a student with a disability, the school board of the district of residence shall pay to the admitting district the costs incurred by the admitting district in providing education and related services to the student with a disability up to a maximum each school year of two and one-half times the state average per student elementary or high school cost, depending on the student's enrollment level. The state is liable for any costs in excess of this amount.

N.D.C.C. § 15-40.3-04.

Words used in a statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but words explained in the Code are to be understood as explained. N.D.C.C. § 1-02-02. It must be presumed that the Legislature meant what it plainly expressed and that the law is what the Legislature says, not what is unsaid. It must be further presumed that the Legislature made no mistake in expressing its purpose and intent. Where the language of a statute is plain, courts cannot indulge in speculation concerning the probable or possible qualifications which might have been in the mind of the Legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it. Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993) (citing City of Dickinson v. Thress, 69 N.D. 748, 290 N.W. 653, 657 (1940)).

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The words in N.D.C.C. § 15-40.3-04 unambiguously provide that when a student's open enrollment application is approved according to N.D.C.C. § 15-40.3-01 and that student has a disability, the school board of the student's residence district "shall pay to the admitting district the costs incurred by the admitting district in providing education and related services to the student with a disability up to a maximum each school year of two and one-half times the state average per student elementary or high school cost, depending on the student's enrollment level." N.D.C.C. § 15-40.3-04. The Legislature did not qualify this obligation; it did not limit the obligation based on the area within a North Dakota public school district upon which the student resided; and it did not provide any other qualifications on the duty of the residence district in paying special education costs. It must be presumed, therefore, that the Legislature meant what it plainly expressed and that it made no mistake in expressing its purpose and intent. It is therefore my opinion that if a North Dakota public school district student resides on an Indian reservation in North Dakota and open enrolls from the student's residence district pursuant to N.D.C.C. § 15-40.3-01, the residence district is obligated to pay to the admitting school district the costs for the education of that student as provided in N.D.C.C. § 15-40.3-04.<sup>1</sup>

Sincerely,

Heidi Heitkamp  
Attorney General

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<sup>1</sup> Although the admitting district might conceivably be eligible for federal impact aid under 20 U.S.C. §§ 7703 and 7704, the Legislature has not limited the financial responsibility of the residence district under N.D.C.C. § 15-40.3-04 based on any federal impact aid received for an individual student.