

**LETTER OPINION
2007-L-03**

February 1, 2007

The Honorable Merle Boucher
State Representative
House Chambers
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Representative Boucher:

Thank you for your letter asking whether a parent home schooling the parent's child must be the person providing the education to the student or whether the parent may supervise another person who provides the education to the child. For the reasons explained below, it is my opinion that the parent must provide the education and may not merely supervise the individual providing the education to the child.

ANALYSIS

Section 15.1-23-01, N.D.C.C., defines "home education" as "a program of education supervised by a child's parent, in the child's home." Throughout N.D.C.C. ch. 15.1-23, the chapter authorizing home schooling, there are several other references to the parent "supervising" the home education provided to the parent's child. For example, N.D.C.C. § 15.1-23-02 states that "a parent intending to supervise or supervising home education" must file a statement of intent which must include the name and address of the parent "who will supervise the home education" and the qualifications of the "parent who will supervise the home education." North Dakota law provides that a parent may supervise home education if the parent is licensed or approved to teach by the Education Standards and Practices Board, holds a baccalaureate degree, has met or exceeded the cutoff score of a national teacher examination, or has received a high school diploma or a general education development certificate and is monitored for the first two years.¹ And N.D.C.C. § 15.1-23-04 states that a "parent supervising home education" shall include instruction in areas required to be taught to public school children.

Using the terms "supervise home education" and variations of those terms throughout N.D.C.C. ch. 15.1-23 creates an ambiguity. It is not clear whether the terms mean that the parent must supervise the education by providing the home education directly to the student, or whether the parent may "supervise" someone else who is providing the

¹ N.D.C.C. §§ 15.1-23-03 and 15.1-23-06.

education, but who may not meet the qualifications specified in N.D.C.C. §§ 15.1-23-03 and 15.1-23-06.

The primary purpose of statutory construction is to ascertain the Legislature's intent.² When a statute is ambiguous, the statutory rules of construction permit the use of extraneous sources, including the legislative history, to determine legislative intent.³ The home education law in N.D.C.C. ch. 15.1-23 was originally enacted in 1989.⁴ This law created an exception to the compulsory attendance law for home-based instruction.⁵ The legislative history supports the conclusion that home-based instruction must be provided to a child by a parent who meets one of the qualifications described above. It does not permit a parent to supervise education provided to that parent's child by another individual.

The prime sponsor of the bill testified that under the bill "the parent may legally teach if the parent has passed a national teacher exam or if that parent has a high school education and is supervised by a certified teacher employed by a public school in which they reside."⁶ Representative Melby, another sponsor, testified that "responsible parents should [be] allowed to instruct their children at home."⁷ Yet another sponsor of the bill testified that the intent of the bill was to "provide parents and their children with a broad range of educational opportunities in a manner that will permit the accomplishment of the necessary objectives without infringing upon the right of parents to raise and teach their children. . . . A parent qualifying must successfully complete a refresher course in home-based instruction every third year."⁸ Reverend Clinton Birst, Executive Director, North Dakota Home School Association, said "[w]e ask you to accept that parents are effective educators. They have experience educating their children at home"⁹ The minutes of the House Appropriations Education and Environment Subcommittee state that this bill allows "home-based education – a parent teaching their own child."¹⁰ Jim Vukelic,

² Leet v. City of Minot, 721 N.W.2d 398, 404 (N.D. 2006).

³ N.D.C.C. § 1-02-39; Leet v. City of Minot, 721 N.W.2d at 404.

⁴ 1989 N.D. Sess. Laws ch. 198.

⁵ N.D.A.G. Letter to Sanstead (Dec. 22, 1989).

⁶ Hearing on H.B. 1421 Before the House Comm. on Education, 1989 N.D. Leg. (Feb. 8) (Testimony of Rep. Dan Ulmer).

⁷ Hearing on H.B. 1421 Before the House Comm. on Education, 1989 N.D. Leg. (Feb. 8) (Testimony of Rep. Art Melby).

⁸ Hearing on H.B. 1421 Before the House Comm. on Education, 1989 N.D. Leg. (Feb. 8) (Testimony of Rep. Dagne Olson).

⁹ Hearing on H.B. 1421 Before the House Comm. on Education, 1989 N.D. Leg. (Feb. 8) (Testimony of Rev. Clinton Birst).

¹⁰ Hearing on H.B. 1421 Before the House Subcommittee on Appropriations Education and Environment, 1989 N.D. Leg. (Feb. 20).

the solicitor general for this office at the time, explained that the bill was drafted by the Attorney General's office and was the result of a task force formed by this office to study the state's compulsory attendance laws.¹¹ He stated that this bill "would allow parents to teach their children at home."¹² When asked whether the bill requires the teacher to be the parent or whether it would be possible for the parent to farm out a student to someone else who was certified, he responded that "it would have to be a parent. The bill is specific as to that."¹³

In conclusion, it is my opinion that only a parent, qualified under N.D.C.C. §§ 15.1-23-03 and 15.1-23-06, may provide home-based instruction to that parent's child. With respect to home-based instruction, North Dakota law does not permit a parent to supervise the education of that parent's child by any other individual.

Sincerely,

Wayne Stenehjem
Attorney General

jak/pg

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.¹⁴

¹¹ Hearing on H.B. 1421 Before the House Comm. on Education, 1989 N.D. Leg. (Feb. 8) (Testimony of James Vukelic).

¹² Id.

¹³ N.D.A.G. Letter to Sanstead (Dec. 22, 1989) (citing Hearing on H.B. 1421 Before the House Comm. on Education, 1989 N.D. Leg. (Feb. 8) (Testimony of James Vukelic)).

¹⁴ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).