

N.D.A.G. Letter to Olson (March 27, 1990)

March 27, 1990

Representative Alice Olson
District 11
P.O. Box 8
202 Grace Street
Cavalier, ND 58220

Dear Representative Olson:

Thank you for your letter of January 3, 1990, requesting an opinion as to the legality of the Department of Public Instruction's (DPI's) distribution of the "Comprehensive Health Guidelines: K-12" (Guidelines) to the schools after the December 5, 1989, referral defeat of House Bill 1604, regarding comprehensive health education.

In the following discussion, I will explain 1) the process which resulted in the distribution of the Guidelines; 2) the effect of House Bill 1604 and the effect of its referral defeat; 3) the legality of the distribution of the Guidelines; and 4) the effect of the Guidelines on local school districts.

The process surrounding the development of the Guidelines began in 1986. In March of that year, the Department of Health and Consolidated Laboratories (DHCL) brought together a group called the School Health Task Force which later changed its name to the School Health Coalition. The School Health Coalition's purpose was to provide direction and recommendations to the DHCL and DPI relative to the promotion of a comprehensive health education program. Among its other concerns, the School Health Coalition identified the need to update and improve the health guidelines which DPI provided to the schools.

Prior to the distribution of the Guidelines, the most recent health guideline provided by DPI and made available to the schools was entitled "Comprehensive School Health Program: K-12", dated August, 1984. A revision of the 1984 health guidelines was deemed necessary because much of the information provided was outdated. Also, DPI and DHCL were repeatedly contacted by school officials seeking advice on how to address the AIDS issue.

DHCL received a grant in 1986 to address the AIDS issue. DHCL then contracted with the Fargo Public School System which, in turn, hired Edna Mortenson, a Fargo teacher with masters' degrees in both guidance and counseling and health education. Ms. Mortenson assisted in compiling a manual of comprehensive health guidelines to be provided to the schools. The School Health Coalition identified ten health-related areas which it wanted to address. Those areas were: 1) mental health, self-concept; 2) social competency skills/decision making; 3) disease prevention; 4) chemical health education; 5) family life

education; 6) personal and consumer health; 7) nutrition; 8) community and environment; 9) safety and first aid; and 10) physical health. Five of these health-related areas were studied first and the resulting guidelines were compiled in a manual called "North Dakota K-12 Comprehensive Sexuality and Drug Curriculum", made available in June of 1988 at the annual health conference. This manual was also made available to any school that requested it.

DPI then received a grant to deal with the AIDS issue. Since the grant moneys which the DHCL had used to contract with the Fargo Public School System had run out, DPI contracted with the Fargo Public School System in order to study and revise the guidelines covering four of the remaining health-related areas. (It was intended that the health-related area entitled "Physical Health" would be covered in the Physical Education Guide and, therefore, it was not covered in the Guidelines.)

The four remaining areas were then studied and, in June of 1989, the guidelines on each of the nine health-related areas were completed, compiled, and made available to school districts in the form of a draft. After this draft was made available and after receiving feedback from the general public, it was determined that the area on nutrition should be revised. The revision was completed in the beginning of November, 1989, and on November 16, 1989, DPI requested the printing of the final copy of the Guidelines. The printed copies were received by DPI on December 4, 1989. On December 5, 6, and 7, copies of the Guidelines were distributed to every school in North Dakota.

The foregoing history shows that the Guidelines were in the process of being drafted before House Bill 1604 was considered by the 1989 Legislature. The drafting of the Guidelines occurred independently of the requirements of House Bill 1604.

House Bill 1604 required that a particular procedure be followed to formulate and implement guidelines at the local level. The defeat of House Bill 1604 did away with the requirement that that particular procedure be followed. I have attached a copy of House Bill 1604 so that you may review it first-hand. House Bill 1604 required:

- 1) the Governor to appoint a health education advisory committee to recommend guidelines after soliciting input from the general public;
- 2) the Superintendent of Public Instruction to adopt rules addressing minimum instruction time, suggested curricula, and minimum qualification requirements for teachers;
- 3) local school districts, after soliciting input from the general public, to formulate and implement a comprehensive health education program developed pursuant to the guidelines adopted by the Superintendent;
- 4) local school districts to submit a proposed comprehensive health education program to the Superintendent for review;

- 5) the Superintendent to review the program submitted and allows him to make specific recommendations to improve the program;
- 6) the local school board to consider the Superintendent's recommendations: and
- 7) the Superintendent to authorize the distribution of funds to the local school district.

Soon after House Bill 1604 was passed by the 1989 legislature, the Governor began to solicit names to determine who to appoint to the health education advisory committee. As indicated above, his appointment of this committee was required by House Bill 1604. When it was determined that House Bill 1604 would be an issue in the December 5, 1989, referral election, the Governor postponed taking further action to appoint the health education advisory committee. In addition, because House Bill 1604 was defeated, the other requirements listed above were no longer effective. Thus, no other action required by House Bill 1604 was ever taken. If House Bill 1604 had not been defeated in the referral election, DPI had intended to make the Guidelines available to the newly-created advisory committee to use in any manner it chose.

The legality of DPI's distribution of the Guidelines did not depend upon the fate of House Bill 1604 at the December 5, 1989, referral election. The distribution of the Guidelines is authorized by N.D.C.C. §§ 15-21-09, 15-38-07, and 15-41-07. Section 15-21-09 provides: "[t]he superintendent of public instruction shall have charge and supervision of the . . . standardization of schools, uniformity of textbooks . . . and preparation of courses of study for the several classes of public schools." "The content of all courses and the grade in which they severally are taught in all types of high schools and in the high school department of all schools doing high school work shall conform to the state course of study for high schools as outlined by the superintendent of public instruction." N.D.C.C. § 15-41-07. In addition, N.D.C.C. § 15-38-07 states:

The following subjects shall be taught in all public and private schools to pupils who are sufficiently advanced to pursue the same: spelling, reading, writing, arithmetic, language, English grammar, geography, United States history, civil government, nature study, and elements of agriculture. Physiology and hygiene also shall be taught, and in teaching such subject, the teacher shall:

1. Give special and thorough instruction concerning the nature of alcoholic drinks and their effect upon the human system.
2. Give simple lessons in the nature, treatment, and prevention of tuberculosis and other contagious and infectious diseases.
3. Give, to all pupils below the high school and above the third year of school work, not less than four lessons in hygiene each week for ten weeks of each school year from textbooks adapted to the grade of the pupils.

4. Give, to all pupils in the three lowest primary school years, not less than three oral lessons on hygiene each week for ten weeks of each school year, using textbooks adapted to the grade of the pupils as guides or standards for such instruction.

Pursuant to these statutes, the superintendent of public instruction has routinely produced curriculum guides or guidelines which function as management tools and provide guidance to teachers in various subject areas. DPI has produced guides in recent years for mathematics, science, visual arts, creative writing, music, foreign language, language arts and, most recently, for health.

The Guidelines are intended to be advisory in nature. They are provided to local school districts for use at the district's option. The determination of what is taught regarding health at the local level remains with the local school district subject only to the requirements of N.D.C.C. § 15-38-07.

To summarize, the Superintendent routinely provides guides or guidelines to schools in order to meet the statutory requirements of N.D.C.C. §§ 15-21-09, 15-38-07, and 15-41-07. The December 5, 1989, referral defeat of House Bill 1604 did not prohibit the Superintendent from fulfilling his statutory responsibility to provide for the standardization of schools. The distribution of the Guidelines to the schools after the December 5, 1989, referral defeat of House Bill 1604 was, therefore, legal.

I hope this clarifies the issues which have been raised and helps you in explaining the situation to your constituents. Please contact me again if you have questions on this or any other issue.

Sincerely,

Nicholas J. Spaeth

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Enclosure