

N.D.A.G. Letter to Sanstead (June 29, 1992)

June 29, 1992

Dr. Wayne G. Sanstead
Superintendent of Public Instruction
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0440

Dear Dr. Sanstead:

Thank you for your December 18, 1991, letter in which you inquire whether, under North Dakota Century Code (N.D.C.C.) § 15-40.2-08(2), the school district of residence must pay the tuition of a student transferred to Jamestown State Hospital under a court order when the court did not notify the school district of residence of the placement.

During the 1990-1991 school year, the Grand Forks Public School District had a student placed by the Grand Forks County Juvenile Court in the adolescent center of the State Hospital in Jamestown. The student's parents were residents of the Grand Forks Public School District at the time of placement.

The Grand Forks Public School District has taken the position that it is not responsible for the student's tuition payments while he was at the State Hospital because it did not receive notice of the placement pursuant to N.D.C.C. § 15-40.2-08(2). It appears that in this case the district of residence was sent notice by the State Hospital upon receiving the student (four days after the court order was signed). In discussions with my staff, the State Hospital indicated that a contract and notification are always sent to the district of residence upon receipt of the student.

N.D.C.C. § 15-40.2-08 governs tuition payment for students placed in another school district for reasons other than education. It provides in pertinent part:

15-40.2-08. Residency determination and the payment of tuition in cases of foster care child placements for purposes other than education.

1. For purposes of applying this chapter, the school district in which a child resides must be construed to be the district of residence of such child:
 - a. At the time any court order or order of a juvenile supervisor shall have been issued requiring such child to stay for any prescribed period at a foster home, or home maintained by any nonprofit corporation, or any referrals made from a state-

operated institution;

- b. At the time of any placement for any prescribed period of time by a county or state social service agency with the consent of the parent or guardian at a foster home or home maintained by any nonprofit corporation; or
 - c. At the time of any voluntary admission to a state-licensed child care home or agency.
2. The district of residence shall be liable for tuition upon claim of the admitting district; provided, that both the district of residence and the admitting district be notified of the placement, admission, or court order at the time the same is ordered. Notification must be made by the placement agency.

The purpose of N.D.C.C. ch. 15-40.2 is to ensure that students receive an education and to ensure that receiving districts are not unduly burdened in a financial sense for serving students who have been placed in the district by the authorities. This is particularly relevant when a student is placed in a district for reasons other than education for services necessary to the student which the district of residence cannot provide. To determine that the district of residence is not responsible for tuition payments solely because its notice of the placement was received from someone other than the placement agency would place a tremendous financial hardship on the receiving district based upon what is best described as a mere technicality. The district of residence has the responsibility and funding for the student and the receiving district has no recourse other than against the district of residence. Therefore, it is my opinion that the district of residence is responsible for tuition payments if it receives notice from the receiving school district or the receiving facility.

My opinion is also supported by the fact that N.D.C.C. § 15-40.2-08 does not provide a penalty for the failure of the placement agency to notify the district of residence of the placement. Furthermore, a juvenile court making a child placement under judicial authority is not within the generally accepted description of a "placement agency," so the last sentence of N.D.C.C. § 15-40.2-08(2) does not limit the responsibility of the residence district for tuition if it does get actual notice of a child's placement.

You indicate that the notification provisions have created problems in several instances. I would suggest that you seek a legislative clarification to deal with these problems during the 1993 Legislative Session.

I trust this responds to your inquiry.

Sincerely,

Nicholas J. Spaeth

cjs/vkk