

N.D.A.G. Letter to Sanstead (Aug. 24, 1992)

August 24, 1992

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

Dear Dr. Sanstead:

Thank you for your April 14, 1992, letter concerning the authority of the North Dakota School for the Blind to charge North Dakota school districts for the cost of summer school special education programs conducted for students at the North Dakota School for the Blind.

North Dakota school districts are to provide special education to handicapped children in accordance with North Dakota Century Code (N.D.C.C.) ch. 15-59. N.D.C.C. § 15-59-04. However, if a parent, guardian, or other person has control over any blind child of an age of 7 to 20 years, that child must be sent to the School for the Blind or other adequate institution for the entire school year unless the superintendent of the School for the Blind excuses that attendance. N.D.C.C. § 15-34.1-02. The school year is defined as beginning on the first day of July and closing on the thirtieth day of June of the following year. N.D.C.C. § 15-47-04.

The North Dakota School for the Blind is part of North Dakota's system of free public schools established by law and maintained by taxation. N.D.C.C. § 15-47-02. If a person is accepted into the North Dakota School for the Blind as being unable to make suitable progress in the public schools of the state, the person is entitled to receive an education in the School for the Blind "at the expense of the state." N.D.C.C. § 25-06-04.

If a child is handicapped to the point of rendering attendance or participation in the regular or special education program of a school district inexpedient or impracticable, the child is excused from compulsory attendance at that school, and that exclusion also qualifies the child as being handicapped under the provisions of North Dakota's special education law. N.D.C.C. § 15-34.1-03(4) and N.D.C.C. § 15-59-01(3).

The Superintendent of Public Instruction is required to enforce educational standards for all special education programs in institutions wholly or partly supported by the state which are not supervised by public school authorities. N.D.C.C. § 15-59-06.1. The North Dakota School for the Blind is one of these institutions. "[A] handicapped student whose individualized education program so requires is entitled to an educational program in excess of one hundred eighty days per year if regression caused by an interruption in educational programming, together with a student's limited recoument capacity, renders it

impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach in view of the handicapping condition." N.D.C.C. § 15-59-02.1.

Consequently, a child admitted to the North Dakota School for the Blind becomes the responsibility of the state and is not included in the membership of the school district of residence for purposes of computing state per-pupil foundation aid payments to public schools under N.D.C.C. § 15-40.1-09. The cost sharing provisions of N.D.C.C. ch. 15-59 therefore do not apply. A child in attendance at the North Dakota School for the Blind is enrolled in part of North Dakota's free public school system, is entitled to special education under standards enforced by the Superintendent of Public Instruction, and, if the child's individualized education program so requires, is entitled to that education for a time period in excess of one hundred eighty days per year under the conditions noted in N.D.C.C. § 15-59-02.1 at the expense of the state. It is, therefore, my opinion that the North Dakota School for the Blind may not charge the school district of residence of the child for the cost of summer school special education programs conducted for students at the North Dakota School for the Blind.

I hope this opinion is satisfactory for your needs.

Sincerely,

Nicholas J. Spaeth

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