

Date Issued: March 29, 1985 (AGO 85-11)

Requested by: Dr. Wayne G. Sanstead, Superintendent,
Department of Public Instruction

- QUESTION PRESENTED -

Whether a decision to expel a student made by the school board of a public school district, upon a recommendation from the district superintendent of schools, may be appealed to the county superintendent of schools pursuant to N.D.C.C. section 15-22-17.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a decision to expel a student made by the school board of a public school district, upon a recommendation from the district superintendent of schools, may not be appealed to the county superintendent of schools pursuant to N.D.C.C. section 15-22-17.

- ANALYSIS -

The superintendent of schools, in districts where a superintendent is employed, shall make reports to the school board embodying recommendations relative to the enforcement of discipline and school matters in general. N.D.C.C. section 15-38-01. The school board of a public school district shall have the power to suspend or expel a student for cause pursuant to N.D.C.C. section 15-29-08(13). The question presented is whether this decision by the school board can be appealed to the county superintendent of schools. N.D.C.C. section 15-22-17 provides as follows:

15-22-17. TO DECIDE SCHOOL CONTROVERSIES - APPEAL FROM DECISIONS OF COUNTY SUPERINTENDENT. The county superintendent of schools shall decide all matters in controversy arising in his county in the administration of the school laws or appealed to him from decisions of school officers or boards. An appeal may be taken from his decision to the superintendent of public instruction. In such case, a full written statement of the facts, together with the testimony and the decision of the county superintendent in the case, shall be certified to the superintendent of public instruction for his decision, and such decision shall be final, subject to appropriate remedies in the courts.

The authority of the county superintendent of schools to decide all matters in controversy in his county and hear appeals from school officers and boards is limited when the controversy or appeal arises in a school of a public school district. The county superintendent of schools shall have the general supervision of the schools in the county except those in districts which employ a district superintendent. N.D.C.C. section 15-22-09. Additionally, the schools of a public school district shall be under the supervision of the school board which may appoint a school superintendent to supervise the schools within the district. When no superintendent is appointed by the board, the schools of the district shall be under the immediate supervision of the county superintendent of schools.

N.D.C.C. section 15-29-07.

Therefore, it would follow that the authority to supervise schools and make decisions expelling a student within a public school district is given to the district superintendent and the school board within the district. Furthermore, an examination of the Century Code reveals no specific provision for a party to appeal a decision of a school board of a public school district.

Therefore, a decision to expel a student made by a school board of a public school district, upon a recommendation from the district superintendent of schools, may not be appealed to the county superintendent of schools. However, the expelled student is not without a remedy in this situation. The student may petition a district court for a writ of mandamus pursuant to N.D.C.C. chapter 32-34.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. section 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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