

LETTER OPINION
97-L-10

January 28, 1997

The Honorable Duane L. DeKrey
District 14
HC 2, Box 106
Pettibone, ND 58475

Dear Representative DeKrey:

Thank you for your letter asking about the tuition responsibilities of three North Dakota school districts, two of which have entered into an educational cooperative agreement approved by the Superintendent of Public Instruction.

N.D.C.C. § 15-40.2-01(2) states that if a school district does not provide educational services to an entire grade level, students in that grade level may attend school at a public school of their choice outside their district of residence, and their school district of residence shall pay tuition to the admitting district. N.D.C.C. § 15-40.2-04(1)(b) authorizes a school district to accept a nonresident student from another school district in this state which offers the same grade level as that in which the student is enrolled, without a charge and collection of tuition where a written agreement is made between those two districts. This procedure is sometimes referred to as a tuition waiver agreement.

N.D.C.C. § 15-40.3-01 provides that a student whose school district of residence does not offer the grade level in which the student requires enrollment may not participate in open enrollment. Also, the provisions in chapter 15-40.2 requiring payment of tuition do not apply to students involved in open enrollment. N.D.C.C. § 15-40.3-03.

Statutes concerning school district educational cooperative agreements approved by the Superintendent of Public Instruction are few in number and uninformative concerning the contents of such an agreement or its impact on the standing of the school districts involved in relation to each other and to other school districts. There are only two state statutes dealing with such agreements, one

of which authorizes school districts participating in such approved cooperative agreements to hold joint school board meetings (N.D.C.C. § 15-29-02(4)), and one that continues payments from the foundation aid program for high school students for four years without reduction based on enrollment differences. (N.D.C.C. § 15-40.1-07.4.)

The above combination of statutes deal with related subjects but are silent on tuition for students moving between cooperating districts or from one of the cooperating districts to a district not part of the cooperative plan.

Courts look to all statutes relating to the same subject matter in an effort to harmonize, if possible, apparently conflicting provisions in order to determine the legislative intent which gave rise to an enactment. In Interest of B.L., 301 N.W.2d 387, 390 (N.D. 1981). Interpreting sections 15-40.2-01, 15-40.2-04, 15-40.3-01, and 15-40.3-03 together in the effort to give meaning to all of them, leads to the following conclusions:

1. If a student's school district of residence offers the grade the student is in, then the student is eligible for open enrollment under N.D.C.C. ch. 15-40.3 and, unless otherwise specified, the tuition requirements in N.D.C.C. ch. 15-40.2 do not apply. N.D.C.C. § 15-40.3-03.
2. If a student's school district of residence does not offer the grade level the student is in, then the student is not eligible for open enrollment and the student may attend a school outside the student's district of residence and the district of residence must pay tuition. N.D.C.C. §§ 15-40.2-01(2) and 15-40.3-01
3. If a student's school district of residence does not offer the grade level the student is in, then the admitting district may not agree with the district of residence to waive tuition. N.D.C.C. § 15-40.2-04(1).
4. If a student once qualified for open enrollment because the student's school district of residence and the admitting district both provided the same grade level needed by the student, but, during the time of the student's tenure at the admitting district the student's district of residence ceased to provide the student's required grade level, then the district of residence must commence paying tuition to the admitting district.

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The scant authority provided by statute on the nature of the school district educational cooperative agreements approved by the Superintendent of Public Instruction makes it apparent that the agreements only control the educational and financial arrangements between the participating districts consistent with state law. The districts cooperating with each other do not lose their character as independent school district entities. To hold otherwise would give cooperating districts a status similar to reorganized districts without their undertaking the required statutory procedures. Consequently, a school district cooperating with another school district pursuant to such an agreement does not become one district with its cooperative partner. Nothing in N.D.C.C. §§ 15-29-02(4) and 15-40.1-07.4 indicates a legislative intent to authorize departure from statutes regulating open enrollment and tuition payments merely because school districts cooperate in an approved plan. If cooperating districts were intended to be treated as one district for any purpose, the Legislature would have so stated. As it is, joint board meetings and retention of high school aid payments at certain amounts do not imply an intent to avoid open enrollment qualifying requirements or tuition payment requirements.

Thus, if a district does not provide a grade level within its district, and a resident student in that grade level attends school outside the district, then the school district of residence must pay tuition to the admitting district. This is so whether the student attends school in a district that is part of the same cooperative plan or one that is not.

It is my opinion that school districts cooperating with other school districts pursuant to a plan approved by the Superintendent of Public Instruction must qualify pursuant to open enrollment under N.D.C.C. ch. 15-40.3 and tuition payments under N.D.C.C. ch. 15-40.2 as independent school districts based upon the grade levels actually being taught within each school district.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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