

**N.D.A.G. Letter to Sanstead (Sep. 16, 1985)**

September 16, 1985

Dr. Wayne G. Sanstead  
Superintendent Department of  
Public Instruction  
State Capitol  
Bismarck, North Dakota 58505

Dear Dr. Sanstead:

Thank you for your letter of August 30, 1985, concerning the authority of the Superintendent of Public Instruction to become involved in complaint resolution of matters concerning federal educational requirements in programs involving children.

According to the materials you have enclosed with your letter, federal law now requires recipients of federal funds to obtain prior written parental permission before requiring a minor to submit to psychiatric or psychological examination, testing, or treatment which are designed to reveal certain information concerning that child. This federal law also requires federal fund recipients to make available to parents and guardians all instructional materials used in connection with any research or experimental program involving their children. Where such consent does not occur, complaints may be made against the responsible federal fund recipient. The complaint may be filed at the state level where the state education agency has statutory and constitutional authority to become involved in such complaint resolution processes. Where such processes do not exist at the state level, the complaint may be filed at the federal level.

North Dakota law, as found in N.D.C.C. § 15-21-07.1, does provide authority with the Superintendent to enter into agreements with the federal government for and in behalf of individual school districts and to adopt necessary rules to place such agreements into effect. However, the statute specifically provides that such agreements may not impair the rights, powers, duties, or authority of those school districts or school boards in the management and control of their local schools. With the inclusion of this particular language, we fail to see how the Superintendent may agree to act as a complaint resolution entity where by statute he is unable to affect the management and control of local school districts and school boards which happen to be the subjects of these particular complaints.

Therefore, we are of the opinion that the Superintendent of Public Instruction does not have the statutory and constitutional authority and responsibility to become involved in the complaint resolution processes involved in this particular federal legislation.

Sincerely,

Nicholas J. Spaeth

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