

LETTER OPINION
94-L-211

August 17, 1994

Mr. Ronald C. Stastney
Assistant Superintendent
Department of Public Instruction
600 East Boulevard Avenue
Bismarck, ND 58505-0440

Dear Mr. Stastney:

Thank you for your letter asking whether either the Education Standards and Practices Board or the Administrator's Professional Practices Board has any authority to supervise administrator preparation programs at North Dakota universities or has authority over issuance of administrative or specialist credentials by the Department of Public Instruction.

1993 N.D. Sess. Laws ch. 171 amended numerous sections of North Dakota law for the purpose of removing teacher certification functions from the Superintendent of Public Instruction and devolving that function upon the Education Standards and Practices Board as created by that chapter. Further, an Administrator's Professional Practices Board was created for the purpose of hearing complaints against school administrators concerning their certification as teachers. Concerning "preparation programs," 1993 N.D. Sess. Laws ch. 171, § 12, amends North Dakota Century Code (N.D.C.C.) § 15-38-18, with respect to the newly created Education Standards and Practices Board to state:

It is the duty of the board to supervise the certification of teachers, to set standards for and approve teacher preparation programs, to develop and revise, consistent with state law, professional codes or standards relating to ethics, conduct, and professional performance and practices and to provide recommendations for in-service education of persons engaged in the profession of teaching in the public schools.

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This section only addresses the Education Standards and Practices Board and is the only section in 1993 N.D. Sess. Laws. ch. 171 dealing with "preparation programs." The duty given to the Education Standards and Practices Board with respect to "preparation programs" is limited to "teacher preparation programs" and gives the Board the authority "to set standards for and approve" such programs. It is therefore my opinion that 1993 N.D. Sess. Laws ch. 171 does not give the Education Standards and Practices Board any authority over administrator preparation programs, nor does it give the Administrator's Professional Practices Board authority over setting standards for any preparation program.

We have reviewed a Department of Public Instruction publication entitled "Guidelines for Educators Special Credentials" (July 1986) which indicates that almost all of the specialist or administrative credentials require first that the applicant be the holder of a North Dakota teaching certificate. Exceptions appear to be made for certain types of special education instructors, apparently pursuant to N.D.C.C. ? 15-59-05.

The apparent purpose of administrative or specialist supplementary certification, known in practice as a "credential," is to fulfill accreditation standards the Superintendent of Public Instruction is authorized to establish under N.D.C.C. ? 15-21-04.1. This general authority was enacted in 1979 (1979 N.D. Sess. Laws ch. 223), and its importance became notable in 1989 and 1991 with amendments to the state foundation aid program in N.D.C.C. ? 15-40.1-06(2)(c) and (d) concerning reduced foundation aid for non-accredited high schools and elementary schools. (1989 N.D. Sess. Laws ch. 230; 1991 N.D. Sess. Laws ch. 190.)

The issuance, by the Department of Public Instruction, of administrative or specialist credentials is not specifically provided for by any law or administrative rule. One statute provides that DPI's director of special education shall establish standards and

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provide for the approval of certification of special education teachers. See N.D.C.C. ? 15-59-05. Another statute states that teachers teaching kindergarten through grade eight must meet the requirements of the Superintendent to teach special education, foreign language, art, music, physical education, and computer education. See N.D.C.C. ? 15-47-46(4). Other statutes simply refer to certification or credentials issued by the Superintendent or DPI, where no statute specifically authorizes the Superintendent or DPI to issue such certificates or credentials. See N.D.C.C. ?? 15-29-08(21) (refers to principals being certified under rules of DPI); 15-20.4-03(3) (refers to guidance counselors being certified by DPI); 31-01-06.1 (refers to an elementary or secondary school counselor possessing a valid North Dakota guidance credential from DPI); 39-06-05(2) (refers to a driver training instructor certified by the Superintendent); and 43-37-03(4) (refers to a person holding a valid credential as a speech-language pathologist or teacher of the hearing impaired, issued by DPI). Another statute refers to the authority of the Superintendent and the North Dakota State Board of Psychologist Examiners to establish standards for the receipt of a master's degree in school psychology from an accredited graduate training program. See N.D.C.C. ? 43-32-30(5).

Although supplementary or extra teacher certification for administrators or specialists is not specifically authorized, the numerous places in the law where apparent special certification or credential is mentioned indicates legislative recognition that such "credentials" are issued.

1993 N.D. Sess. Laws ch. 171 relates to the issuance and suspension or revocation of teachers' certificates issued to persons employed as teachers or to persons employed as administrators. It is recognized that 1993 N.D. Sess. Laws ch. 171, ? 8 amends N.D.C.C. ? 15-36-15 to provide for the Administrator's Professional Practices Board to suspend or revoke any teacher's "or administrator's certificate." However, the proceedings to actually conduct a suspension or revocation in N.D.C.C. ? 15-36-16 (as amended by Section 9 of 1993 N.D. Sess. Laws ch. 171) indicate clearly that it is the person's "teacher's certificate" that is subject to annulment, revocation, or suspension. At no place in 1993 N.D. Sess. Laws

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ch. 171 is the issuance of, nor suspension, revocation, or annulment of any certificate other than a "teacher's certificate" authorized. It is therefore my opinion that 1993 N.D. Sess. Laws ch. 171 does not relate to any authority the Superintendent of Public Instruction may have over issuance of any administrative or specialist "credentials."

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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