

**LETTER OPINION
2006-L-17**

May 12, 2006

Mr. Charles J. Peterson
Golden Valley County State's Attorney
PO Box 10
Beach, ND 58621-0010

Dear Mr. Peterson:

Thank you for asking whether N.D.C.C. § 15.1-29-14(5) requires the Superintendent of Public Instruction ("Superintendent") to not only withhold state aid payments from a school district that fails to pay tuition pursuant to N.D.C.C. § 15.1-29-14, but to also forward those withheld funds to the school district to which the tuition was supposed to be paid. Based on the following analysis, it is my opinion that the Superintendent is required to withhold funds pursuant to N.D.C.C. § 15.1-29-14(5) until that tuition is paid, but must then deliver those funds to the school district that was to have originally received them.

ANALYSIS

When a student is placed in a state licensed or operated institution, state law requires the school district in which the student is considered to be a resident ("resident school district") to pay tuition to the school district responsible for educating those students ("admitting school district").¹ Section 15.1-29-14(5), N.D.C.C., provides one remedy in the event the resident school district does not make that payment to the admitting school district:

If the student's district of residence does not pay the required tuition, the admitting district or facility shall notify the superintendent of public instruction. Upon verification that tuition payments are due and unpaid, the superintendent shall withhold an amount equal to the unpaid tuition from state aid otherwise payable to the student's school district of residence until the tuition due has been fully paid.

You question whether the Superintendent's responsibility to withhold state aid includes the responsibility to forward that amount to the admitting school district.

There is nothing in N.D.C.C. § 15.1-29-14(5) that indicates the Superintendent is to forward the withheld amount to the admitting school district. Section 15.1-27-01, N.D.C.C., requires the Superintendent to make certain state aid payments to North Dakota school

¹ N.D.C.C. § 15.1-29-14(2).

districts. If the resident school district fails to fulfill its statutory obligation, the Superintendent withholds state aid but only “until the tuition due has been fully paid” and only in amounts equal to the unpaid tuition.² There is nothing in state law that directs the Superintendent to do anything with the funds other than hold them until the resident school district pays the required tuition. Once the resident school district pays the required tuition, the Superintendent is then required to deliver the withheld funds to the resident school district.

Interpreting N.D.C.C. § 15.1-29-14(5) in a manner that would require the Superintendent to deliver the withheld funds to the admitting school district would render the phrase “until the tuition due has been fully paid” meaningless. We must presume that the Legislative Assembly intended the entire statute, including that phrase, to be effective.³ Accordingly, it is my opinion that the Superintendent is required to withhold funds pursuant to N.D.C.C. § 15.1-29-14(5) until the resident school district makes its statutorily required tuition payment to the admitting school district, and must then deliver those funds to the resident school district.

Sincerely,

Wayne Stenehjem
Attorney General

sam/pg

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.⁴

² N.D.C.C. § 15.1-29-14(5).

³ N.D.C.C. § 1-02-38(2).

⁴ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).