

Introduced by

**NORTH DAKOTA CENTURY CODE CHAPTER 15.1-29 -
PAYMENT OF TUITION**

Chapter 15.1-29 of the North Dakota Century Code is created and enacted as follows:

15.1-29-01. Education of students in bordering states - Payment of tuition.

1. Students may attend a school in a bordering state in accordance with section 15.1-29-02 under the following circumstances:

a. A student who lives within forty miles [64.37 kilometers] of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state.

b. A student who has attended a school district in a bordering state since, and including, the 1990-91 school year must be permitted to continue attending school in the district in the bordering state.

c. A student whose sibling attended an out-of-state school during or before the 1990-91 school year must be permitted to attend school in the district the sibling attended in the bordering state.

2. If the school board of the district in which the student resides denies a request for a student's attendance in and payment of tuition to another state, the student's parent may appeal the decision to the three-member committee referenced in section 15.1-29-06.

a. If the three-member committee determines that the student meets the terms of subdivision b or c of subsection 1, the student may attend school in the bordering state and the board of the student's school district of residence shall pay the tuition.

b. If the three-member committee determines the student falls within the terms of subdivision a of subsection 1, then the three-member committee shall make its decision using the criteria specified in section 15.1-29-06.

- 1 c. If the student is a kindergarten student, the three-member committee shall
2 apply the same criteria as that specified for elementary students in section
3 15.1-29-06, except that subsection 2 of section 15.1-29-06 does not apply to
4 an appeal for out-of-state attendance and payment of tuition. Notwithstanding
5 the provisions of this section, if a student's school district of residence does
6 not provide for the education of kindergarten students, the district may not pay
7 tuition for a kindergarten student to attend school in a bordering state.
- 8 d. Any decision by the three-member committee regarding the payment of tuition
9 for high school, elementary, or kindergarten students may be appealed by the
10 school board or by the student's parent to the state board of public school
11 education. A decision by the state board is final.
- 12 3. a. The superintendent of public instruction shall forward all per student and
13 transportation aid payments for a student attending an out-of-state school to
14 the student's school district of residence.
- 15 b. The student's district of residence may reduce any tuition payment it must
16 make to an out-of-state school by an amount commensurate with the tuition
17 costs the district would be entitled to receive as compensation for a student
18 from the out-of-state district enrolled in its school.
- 19 c. Transportation payments for a student attending school in a bordering state
20 must be determined as provided in section 15.1-27-30.
- 21 4. Nothing in this section requires that a school district of residence provide student
22 transportation or payments in lieu of transportation for students attending
23 out-of-state schools.

NOTE: Present Section 15-40.2-09.

15.1-29-02. Education of students in bordering states - Reciprocal contract.

- 24 1. The superintendent of public instruction shall pursue a reciprocal contract with the
25 education agency of each bordering state. The contract must address the cost of
26 educating students in the public schools of the bordering state.
- 27 2. A school district may comply with the terms of the superintendent's reciprocal
28 contract or, upon providing notice to the superintendent of public instruction, may
29 contract with a school district in a bordering state for the education of students. A
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contract between school districts supersedes the terms of the superintendent's reciprocal contract. A contract between school districts must provide for the payment of tuition at an agreed-upon amount. The amount of tuition payable per student may not exceed the amount set by the superintendent's reciprocal contract nor may it be less than the per student payment plus tuition apportionment in the North Dakota school district.

3. For purposes of per student payments and tuition apportionment payments, a student who attends school in a bordering state under a contract provided for by this section is deemed to be in attendance in the student's school district of residence. The student's school district of residence is liable to the school district of the bordering state for payments as provided in the contract.
4. If the education agency of a bordering state is not authorized to or refuses to enter into a reciprocal contract with the superintendent of public instruction, a school district in this state may enter into its own contract with a school district in a bordering state for the education of students. A school district in this state may not agree to accept students from a bordering state unless the tuition payable equals or exceeds the per student payment plus the tuition apportionment payment that the district would have received from this state for a student in the same grade if its student had been attending school in the bordering state.

NOTE: Present Section 15-40.2-10.

15.1-29-03. Education of students in other districts - Payment of tuition.

1. After taking into account the best interests of all affected parties, the board of a school district may elect to send its students to another school district. In this instance, the board may pay tuition for the students. The board may arrange, and when petitioned to do so by a majority of the district's qualified electors shall arrange, with other boards or with other institutions to send students to the other districts or institutions and to pay for their tuition and transportation.
2. If a district does not provide educational services to an entire grade level, the students in that grade level may attend a public school of their choice outside their district of residence without going through the procedures outlined in section 15.1-29-05. The school district of residence shall pay tuition to the admitting

1 district. For purposes of determining whether educational services are provided to
2 an entire grade level, districts cooperating with each other in the joint provision of
3 educational services under a plan approved by the superintendent of public
4 instruction are considered to be a single district.

NOTE: Present Section 15-40.2-01. Present Section 15-40.2-01(1) provides that a school board may send its students to another school district or to an accredited institution if "because of shorter distances and other conveniences, it is in the best interests of the school district to do so." The 1997-98 interim Education Services Committee indicated that, as a policy matter, it would be appropriate to take into account the interests of other parties as well, particularly the students. The 1999-2000 interim Education Services Committee suggested that a school board should "take into account the best interests of all affected parties."

The first sentence of this section authorizes a school board to send its students to another school district or to an "accredited institution." The 1999-2000 interim Education Services Committee asked for a clarification of intent regarding the reference to an "accredited institution."

When first enacted in 1971, the section provided that a school board could send its students to "another school district" if because of shorter distances or other conveniences, it was in the best interests of the school district to do so. In 1973 the section was changed to provide that a school board could send its students to "another school district or to an accredited institution of another state" if because of shorter distances or other conveniences, it was in the best interests of the school district to do so. In 1977 the words "of another state" were removed. That same legislation also amended the sections dealing with reciprocal agreements and the attendance of students in bordering states.

Because provisions exist for the attendance of students in bordering states and because there is no indication that the Legislative Assembly intended to pay for the attendance of students at nonpublic schools, it is the recommendation of Department of Public Instruction staff and personnel from the Attorney General's office that the statute be amended to remove the reference to an accredited institution. The rewrite removes the reference to "an accredited institution," pending approval of the committee.

5 **15.1-29-04. Payment of tuition by sending districts - Interest on late payments.** If
6 a school board approves the payment of tuition for a student attending school in another district
7 or if a district is required to make tuition payments under the provisions of this chapter, the
8 sending district shall pay at least fifty percent of the annual tuition charge to the admitting
9 district on or before December thirty-first and any remaining amount on or before May
10 thirty-first. If payment is not received by the admitting district within thirty days after the date on
11 which payment is due, simple interest at the rate of six percent per annum accrues to any
12 amount due.

NOTE: Present Section 15-40.2-13. The committee determined that the reference to "the end of each semester" is not sufficiently clear and therefore provided for payment due dates of December 31 and May 31.

1 **15.1-29-05. Payment of tuition - Petition by parent.** A student's parent may petition
2 the board of the student's school district of residence for the payment of tuition in order that the
3 student can attend another school district. Within sixty days after receiving the petition, the
4 board shall meet with the student's parent and render a decision regarding the payment of
5 tuition. If the board does not render a contrary decision within the sixty-day period, the petition
6 is deemed approved. If the petition is approved, the board shall pay the tuition charges. If the
7 petition is denied, the student's parent may file an appeal with the county superintendent of
8 schools.

NOTE: Present Section 15-40.2-05. Present Section 15-40.2-05 consists of several concepts. These have been separated into several sections in the rewrite. The committee might wish to determine if it is still appropriate for a denied petition to be appealed to the county superintendent. (See appeal process in Section 15.1-29-06.)

9 **15.1-29-06. Payment of tuition - Appeal - Withholding of state payments.**

- 10 1. a. Within fifteen days after receipt of an appeal filed under section 15.1-29-05,
11 the county superintendent of schools shall convene a three-member
12 committee consisting of the county superintendent, the state's attorney, and
13 one member appointed by the board of county commissioners for a term of
14 three years. The committee shall consult with the boards of the affected
15 districts and with the student's parent. The committee shall schedule a
16 hearing, giving due notice to each affected board and to the student's parent.
17 The committee shall conduct the hearing in a manner that allows all parties to
18 present arguments and responses. The committee shall base its decision
19 regarding the payment of tuition on the grade in which the student is enrolled.
20 b. If the student is or during the following school year will be enrolled in any
21 grade from nine through twelve and the committee finds that the attendance
22 of the student is necessitated by shorter distances, previous attendance in
23 another high school, inadequacy of curriculum considering the student's
24 educational needs, or extreme hardship for the student or the student's family,
25 the committee shall approve the application and the payment of tuition by the
26 student's school district of residence, thereby obligating the district of
27 residence to pay the tuition. The committee's directive regarding the payment
28 of tuition may be for any fixed number of school years, up to the completion of
29 the student's high school education, unless open enrollment is an available

option. The decision of the committee may be appealed to the state board of public school education. A decision by the state board is final.

- c. If the student is or during the following school year will be enrolled in any grade from one through eight and the committee finds that the attendance of the student is necessitated by shorter distances or extreme hardship for the student or the student's family, the committee shall approve the application and the payment of tuition by the student's district of residence, thereby obligating the district of residence to pay the tuition. The committee's directive regarding the payment of tuition is limited to one school year. The student's parent may make subsequent applications for the payment of tuition. The decision of the committee is final and is not subject to appeal.

2. If the student is or during the following school year will be enrolled in kindergarten, the board of the student's school district of residence may pay tuition to the receiving district. The board's decision with respect to a kindergarten student is not appealable. If the board of the student's district of residence does not pay the tuition to the admitting district, the student's parent may pay the tuition to the admitting district under the provisions of section 15.1-29-10.
3. If a student's school district of residence consists of land situated in more than one county, the three-member committee established under subsection 1 must consist of the county superintendent of schools and the state's attorney from the county in which the greatest portion of the school district's land is situated, and an individual appointed for a term of three years by the board of county commissioners representing the county in which the greatest portion of the school district's land is situated.
4. If the student's school district of residence does not comply with the decision requiring that tuition charges be paid, the board of the admitting district shall notify the superintendent of public instruction. Upon verifying that tuition payments are due the admitting district and are unpaid, the superintendent of public instruction shall withhold all state payments to the student's school district of residence until any tuition due has been fully paid.

- 1 5. A school district of residence may provide transportation to a student for whom
2 tuition is paid under this section. If a school district of residence does not provide
3 transportation to the student, it may be provided by the admitting district and the
4 admitting district is then entitled to state payments for the transportation of the
5 student.

NOTE: Present Section 15-40.2-05.

6 **15.1-29-07. Payment of tuition by parent - Content of tuition contract.**

- 7 1. If the board of a student's school district of residence refuses to pay the tuition for
8 the student to attend school in another district and if the committee established
9 under section 15.1-29-06 denies the petition on appeal, the student's parent may
10 pay the tuition.
- 11 2. If the parent chooses to pay the tuition, the parent shall:
- 12 a. Submit at least fifty percent of the total amount due on the day of enrollment;
13 and
- 14 b. Provide the board of the admitting district with a written contract agreeing to
15 pay any remaining balance on or before December thirty-first.

NOTE: Present Section 15-40.2-06. The committee examined the reference to the
"first day of the second semester" and determined that a date specific would be
preferable. The committee selected December 31 to remain consistent with Section
15.1-29-04.

16 **15.1-29-08. Payment of tuition by federal government.** An admitting district may
17 accept payments under title 1 of Public Law No. 81-874 [64 Stat. 1100; 20 U.S.C. 236 et seq.]
18 as tuition for a nonresident student if:

- 19 1. The student's parent is employed on an installation owned by the federal
20 government;
- 21 2. The student's parent resides on an installation owned by the federal government;
22 and
- 23 3. The boards of the student's school district of residence and the admitting district
24 agree to accept the payments in lieu of other tuition for the nonresident student.

NOTE: Present Section 15-40.2-07.

25 **15.1-29-09. Tuition contracts - Agreement with federal officials.** A school board
26 may contract with federal officials for the education of students in a federal school.

NOTE: Present Section 15-40.2-11. Present Section 15-40.2-11 provides that the contracts "may be in the form of tuition charges mutually agreed upon, the sharing of education operational costs and facilities, or any other type of contract which will be agreeable to the school district." Because the proposed section is all inclusive, the wording regarding the form of the contracts was omitted.

1 **15.1-29-10. Admission of students - Conditions.** The board of a school district shall
2 admit students from other districts to its schools if:

- 3 1. The admission does not create overcrowding; and
4 2. a. The board of the sending district has entered into a contract with the board of
5 the admitting district regarding the students' attendance;
6 b. Tuition will be paid by the parents of the students from the sending district; or
7 c. The grade level required by the students is not offered by the sending district.

NOTE: Present Section 15-40.2-02.

8 **15.1-29-11. Tuition payments - Determination.**

- 9 1. Except as provided in section 15.1-29-12, a school district sending a student to
10 another district for purposes of education shall pay the full cost of education
11 incurred by the admitting district.
12 2. a. The admitting district shall determine the cost of education per student for its
13 kindergarten, elementary, and high school students on the basis of its
14 average daily membership and those expenditures permitted in determining
15 the cost of education per student in section 15.1-27-04.
16 b. To the cost of education per student, the admitting district shall add the state
17 average capital outlay per student. The state average capital outlay per
18 student is determined by dividing the total of all school districts' annual
19 expenditures for sinking and interest funds, tax receipts to the building funds,
20 and general fund expenditures for capital outlay by the average daily
21 membership of the state.
22 c. The admitting district shall subtract the following from the amount arrived at
23 under subdivision b:
24 (1) The weighted per student payment received by the admitting district,
25 less the average amount per North Dakota resident student enrolled in
26 the school district realized from the deductions applied under section
27 15.1-27-06; and

- 1 (2) Any credit for taxes paid to the admitting district by the student's parent.
- 2 d. The amount remaining is the full cost of education incurred by the admitting
- 3 district and the tuition amount payable for the individual student.
- 4 3. If the student's school district of residence and the student's parent are both paying
- 5 tuition, the credit allowed under subdivision c of subsection 2 for taxes paid to the
- 6 admitting district by the student's parent must be proportionately credited to the
- 7 student's district of residence and the student's parent.
- 8 4. Nothing in this chapter affects the right of a school board to charge and collect
- 9 tuition from students who are not residents of this state, in accordance with section
- 10 15.1-29-02.

NOTE: Present Section 15-40.2-03.

11 **15.1-29-12. Tuition payments - Nonresident students.**

- 12 1. a. Except as provided in this subsection, the board of a school district that
- 13 admits a nonresident student shall charge and collect tuition for the student.
- 14 Either the student's district of residence shall pay the tuition to the admitting
- 15 district in accordance with section 15.1-29-11 or the student's parent shall pay
- 16 the tuition to the admitting district in accordance with section 15.1-29-07.
- 17 b. A board may charge tuition for nonresident students enrolled in an approved
- 18 alternative education program.
- 19 c. Except as otherwise provided, if a school district fails to charge and collect
- 20 tuition for a nonresident student, the districts shall forfeit any per student
- 21 payment and transportation aid otherwise payable for the nonresident student.
- 22 2. a. The board of a school district may admit a nonresident student from another
- 23 district in this state offering the same grade level as that in which the student
- 24 is enrolled without a charge and collection of tuition if the sending and
- 25 admitting districts have entered into a written contract regarding the student's
- 26 admission.
- 27 b. For purposes of determining whether the same grade level is offered, two or
- 28 more school districts cooperating with each other for the joint provision of
- 29 educational services under a plan approved by the superintendent of public
- 30 instruction must be considered to be a single district.

- c. The contract must specify whether transportation is to be provided and, if so, by which district. If a school district of residence does not provide transportation to the student, it may be provided by the admitting district and the admitting district is then entitled to state payments for the transportation of the student.
 - d. A contract is not necessary if the nonresident student is enrolled in an approved alternative education program for which no tuition is charged.
 - e. A school district may admit a nonresident student described in section 15.1-31-07 from another school district in this state without a charge and collection of tuition and without a written agreement.
3. A school district may not charge or collect from a nonresident student, the student's parent, or the student's district of residence any fees or charges not otherwise assessed to all resident students.

NOTE: Present Section 15-40.2-04. Section 15.1-31-07 relates to a student who, as the result of a school district dissolution, lives in a district other than the one the student chooses to attend.

15.1-29-13. Student placement for noneducational purposes - Residency determination - Payment of tuition.

1. For purposes of applying this chapter, a student's school district of residence is the district in which the student's custodial parent resides:
 - a. At the time that a state court, tribal court, juvenile supervisor, or the division of juvenile services issues an order requiring the student to stay for a prescribed period at a state-licensed foster home, a state-licensed child care home, or a residential treatment facility;
 - b. At the time a county or state social service agency places the student, with the consent of the student's parent or legal guardian, at a state-licensed foster home, a state-licensed child care home, or a residential treatment facility;
 - c. At the time the student is initially placed in a state-operated institution, even if the student is later placed at a state-licensed foster home, a state-licensed child care home, or a residential treatment facility; or
 - d. At the time the student is voluntarily admitted to a state-operated institution, a state-licensed child care home, or a residential treatment facility.

- 1 2. The student's school district of residence is obligated to pay:
 - 2 a. All charges for tuition upon claim of the admitting district; and
 - 3 b. All charges for tutoring services upon claim of an admitting facility, provided
 - 4 that the tutoring services are delivered by an individual who is licensed or
 - 5 approved to teach by the education standards and practices board.
- 6 3. a. If after a student placement is made, as provided for under subsection 1, the
- 7 student's custodial parent relocates to another school district in this state, the
- 8 district to which the custodial parent relocates is the student's school district of
- 9 residence for purposes of paying the tuition and tutoring charges under
- 10 subsection 2.
- 11 b. If after a student placement is made, as provided for under subsection 1, the
- 12 location of the student's custodial parent cannot be determined, the student's
- 13 school district of residence is the district in which the student's noncustodial
- 14 parent resides for purposes of paying the tuition and tutoring charges under
- 15 subsection 2.
- 16 c. If the location of the student's custodial parent and the location of the
- 17 student's noncustodial parent cannot be determined, and in all other
- 18 circumstances, including a court-ordered termination of parental rights, the
- 19 state shall pay the tuition and tutoring charges under subsection 2 from funds
- 20 appropriated by the legislative assembly for per student and transportation
- 21 aid.
- 22 4. If the student is voluntarily admitted to a state-licensed child care home, a
- 23 residential treatment facility, or a state-operated institution, the student's parent or,
- 24 if one has been appointed, the student's legal guardian may appeal a
- 25 determination under section 15.1-29-05 regarding the payment of tuition by filing a
- 26 petition with the county superintendent of schools. Within fifteen days of receiving
- 27 the petition, the three-member committee established under section 15.1-29-06
- 28 shall consult with the boards of the affected school districts and with the student's
- 29 parent or legal guardian and render a decision regarding responsibility for the
- 30 payment of tuition charges.

- 1 5. If the student's district of residence does not pay the required tuition, the admitting
2 district or residential treatment facility shall notify the superintendent of public
3 instruction. Upon verification that tuition payments are due and unpaid, the
4 superintendent shall withhold an amount equal to the unpaid tuition from per
5 student payments and transportation aid otherwise payable to the student's school
6 district of residence until the tuition due has been fully paid.
- 7 6. An amount equal to the state average per student elementary or high school cost,
8 depending on the student's grade of enrollment, is payable to the admitting district
9 or facility as part of the cost of educating the student for the school year. The
10 payment may not exceed the actual per student cost incurred by the admitting
11 district or residential treatment facility. The remainder of the actual cost of
12 educating the student not covered by other payments or credits must be paid by
13 the state, within the limits of legislative appropriations, from funds appropriated for
14 special education in the case of a student with disabilities or from funds
15 appropriated for per student payments and transportation aid in all other cases.
- 16 7. If a student with disabilities placed in accordance with this section reaches age
17 eighteen and continues to receive special education and related services, the
18 student's school district of residence is deemed to be the same as that of the
19 student's custodial parent until the special education services are concluded. If the
20 location of the student's custodial parent cannot be determined, the student's
21 school district of residence is deemed to be that of the noncustodial parent until the
22 special education services are concluded. If the location of the student's custodial
23 parent and the location of the student's noncustodial parent cannot be determined,
24 and in all other circumstances, the state shall pay the tuition and tutoring charges
25 under subsection 2 from funds appropriated by the legislative assembly for per
26 student and transportation aid.
- 27 8. a. The placing agency shall provide written notice regarding an initial placement
28 and all subsequent placements of a student, by registered mail, to the
29 superintendent of the student's school district of residence and to the
30 superintendent of the admitting district:
31 (1) Within five working days after a placement is made under court order;

- 1 (2) Within five working days after an emergency placement is made; or
- 2 (3) At least ten working days prior to any other placement.
- 3 b. The written notice must include any information requested by the
- 4 superintendent of public instruction for purposes of determining payment
- 5 responsibility.
- 6 c. The placing agency shall afford the student's school district of residence
- 7 reasonable opportunity to participate in permanency planning for the student.
- 8 9. Notwithstanding this section, educational services provided to a student by the
- 9 youth correctional center are not subject to the payment of tuition by either the
- 10 student's school district of residence or the superintendent of public instruction.
- 11 10. For purposes of this section, "custodial parent" means the parent who has been
- 12 awarded sole legal and physical custody of the student in a legal proceeding or, if
- 13 there is currently no operative custody order, the parent with whom the student
- 14 resides. If the student resides with both parents, then both are custodial parents.

NOTE: Present Section 15-40.2-08.

15 **15.1-29-14. Levy for tuition payments.** If the board of a school district approves
16 tuition payments for students in grades seven through twelve or if the board is required to make
17 tuition payments under this chapter, the board may levy an amount sufficient to meet such
18 payments, pursuant to subdivision c of subsection 1 of section 57-15-14.2.

NOTE: Present Section 15-40.2-12.