

# MICROFILM DIVIDER

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10/2/03  
Date

2003 HOUSE EDUCATION

HB 1155

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Deanna Hall  
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10/2/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES  
BILL/RESOLUTION NO. HB 1155

House Education Committee

☐ Conference Committee

Hearing Date January 14, 2003

Tape Number	Side A	Side B	Meter #
1	x		3250-6211
1		x	00-3277
Committee Clerk Signature <i>Linda Fuchner</i>			

Minutes:

**Chairman Kelsch** open hearing on bill.

**SUPPORT**

**Rep. Larry Bellew, District 38, NW Minot, NW Ward County.**

Introduced bill for an institution that resides in my district. I have brought an expert to testify before you. I recommend a DO PASS on this bill.

**(3375-5512) Gary Crowds, Minot, Superintendent/Principal of Dakota Memorial High School located in Minot on the campus of Dakota Boys Ranch. See Attached Testimony**

Our student population that have referred to us through the court system. We serve students that are mild Mental Retardation and Emotional Disturbed of Bis/Mandan area. We also serve students in the Minot area who are severally emotional disturbed and sexual perpetrators, alcohol and drug issues and every kind of behavior issue you can think of. We also have a day school in Minot, students come to us during the day from the Minot system.

Gave examples of different situations that have occurred in the past.

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*Donna Hall*  
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*1/21/03*  
Date

Page 2  
House Education Committee  
Bill/Resolution Number HB1155  
Hearing Date January 14, 2003

Read parts of letter written to Dan Ruby and Larry Bollew, enclosed.

Referred to a letter written to Dr. Wayne Sanstead, State Superintendent, enclosed.

Basically we provide a service that I think is needed by the state of North Dakota. We have 16 beds that are constantly full. Two years ago we started a facility for the MRED kids because the state had been placing them out of state at the time, we wanted to keep them home and also wanted to keep the costs down. All we are looking for is that we get our tuition because we are providing an education for these students. And that we come to some determination as to a clearer picture where the student resides at the time of placement. Now there was a letter from the states attorney, dated Feb. 25 2002, that defined clearly what the intent of the legislation was when they talked about where a child resides. But from my discussion with a couple of superintendent they say that is just an opinion and that it's not the law. I'm asking that we look at these two parts of the code and clean them up It would sure help not to incur any costs that we can't recuperate. It is not fiscally responsible of me as a Superintendent to keep writing off \$30,000 a year in tuition aid. What we do not do at the ranch is kick anyone out because schools don't pay. That's not what we are about.

**Rep. Norland:** Is this determined after the student is there, or prior to receiving student?

**Crowdus:** It is usually determined by the referral agents who is usually the division of juvenile services. We do send out a letter to the schools letting them know that there is a placement. The letter is basically asking them to agree to these costs. We have two situations: yes they will or no they won't. The are emergency placements where children have been taken out of the home because of things that are happening and arrive before the paperwork. And then they refuse to pay.

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House Education Committee  
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Hearing Date January 14, 2003

(5731) Jerry Coleman, Department of Public Instruction.

we are in support of this bill. Additional information on this bill. After the placement is made the districts responsibility in these matters is limited to state average costs. The state actually picks up the excess cost reimbursements. We do allow them, because they are financially responsible for those students to claim them for Foundation Aid as if they are still a member of that school district. So in the current school year, the financial responsibility for a school district is never more than \$5,532 for elementary, \$5,771 high school and in addition to that it is offset by claiming Foundation Aid. Mr. Crowder was saying that their rate is \$95 per day, these school districts responsibility is much less than that, I think the state average is \$45 per day.

**Rep. Williams** Kids are coming in to live with their Grandmother or someone else, we would not take them, we would send them out because there was legal guardianship. If you follow the letter of the law, you do not have the Mandan situation explained earlier. Does this happen quit often, where students wander in and out of districts?

**Coleman:** yes it happens quit a bit.

**Chairman Kelsch** There are certain populations that it happens more frequently in. And that is why you See Attached Testimony the Mandan situation and around the reservations.

**Coleman:** and the guidance we have used is an old supreme court ruling that the student resides where it is living to be raised as criteria to establish residency.

flip tape

**Rep. Hawken:** Are there remaining dollars in a special fund that could be used for this?

**Coleman:** Out of the Foundation aid moneys, and there is also Special Education dollars available.

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House Education Committee  
Bill/Resolution Number HB1155  
Hearing Date January 14, 2003

**Rep. Jon Nelson:** Why can't you be the referee?

**Coleman:** Residency determination of fact, we place the responsibility with the placing agency because they are out there, they know the situation best.

**Chairman Kelsch** so the placing agency could be social service, the court.

**Coleman:** At the time placement is made, they are required by the section of the law to notify all parties concerned.

**Rep. Jon Nelson** Before the placement they don't have any problem accepting the aid, seems they can not accept the responsibility to pay. If we make this change will it help clear this up?

**Coleman:** The changes will say we will only make that determination one time. This would fix it firmly to the resident district.

**Chairman Kelsch** and if the tuition isn't being paid you will have the hammer to withhold funds on that child.

**Rep. Williams** In looking at the line 27 section 5, Who is making the determination?

**Coleman:** DEPARTMENT OF PUBLIC INSTRUCTION

**Rep. Williams** You are willing to referee?

**Coleman:** In that case, yes. We would honor the determination made by the placement agency and we will withhold any payments until this problem has been resolved.

**Chairman Kelsch** the difference in this would be that you would withhold all the payments not just that for the one student.

**Coleman:** there is currently no incentive to solve this issue.

**Rep. Haas** Tuition becomes due upon the placement of the student by the sending district.

*Dennis Ballantyne*  
Operator's Signature

10/2/03  
Date

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House Education Committee  
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**Rep. Meier :** (Q of Crowdus) Average amount of time a student is placed at the Dakota Boys Ranch?

**Crowdus:** It depends on the program they have been placed in. The certificate of need is usually 6-12 months.

**Rep. Jon Nelson** Isn't there a better method to force the issue in a legitimate dispute?

**Coleman:** No appeal process at this point, no suggestions.

**NEUTRAL**

**(745) Larry Klundt, Executive Director of the ND Council of Educational Leaders.**

This problem is much more significant than we have talked about today. It is severely complex.

**Example:** Let's say a family moved into Minniwauken, three days later something happens and Social Services removed the child from the home and place them in some facility outside of the district. And then the parent move out of the area. Should the taxpayers of Minniwauken be responsible for this child forever or until the parental rights are terminated.

We have more mobile and transient people these days. The complication comes relative to this law that gets to rather interesting.

In 1932, Britbarth in the Supreme Court. The ruling that whenever a child is in a school district for the purposes of education, then you can charge tuition. But if the child is in the school district for non-education purposes, can't charge tuition.

The penalty is to sever, there must be an incentive to pay.

**Chairman Kelsch** Why do bills like this have to come before us? It is fairly simple, the residency has been determined, why isn't the tuition being paid. Rep Bellew felt it necessary to put this big of a hammer because it must be an issue. School districts need to be taking the

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House Education Committee  
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responsibility for these kids. And if the residency has been determined then they need to take responsibility. However what is the answer, why aren't school districts taking the responsibility when the residency has been determined.

**Chairman Kelsch:** This is the section of the law, it is very clear. The typical scenario that we go the section of law that we like and that is the one we apply.

**Klundt:** If you let me finish I can clear that up, This section of the law is very clear to Rep. Meier can understand it very clearly. But I also understand the residency is where they reside, So which one are we going to use.

**Chairman Kelsch:** When the court determines where your residency is that is where it is.

**Rep. Haas** Has any of this every come to the attention of your organization prior to the introduction of this bill?

**Klundt,** Yes, we have talked about this a lot.

**Rep. Haas** What efforts did your organization do to make some proposals that would get it corrected?

**Klundt:** It is clearly a problem, but I don't know what the solution is, other than an interim study or a sub committee to compare all of these things and try to come up with an answer.

**Rep. Herbel** I look at this bill and I think there will always be someone who is unhappy or won't fit in to it, we can't clarify for everyone.

**Rep. Williams :** If we let the existing language here and line 30 and took the amendment would that basically satisfy this?

**Klundt:** I suspect that it would. Because what they are concerned about is getting the tuition. would that hammer be enough to force some litigation to rule on this, who knows.

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**Rep. Williams** I don't know what other ramifications it may have?

**Klundt:** Solution may be that where ever a placement is made for non-educational by a placing agency, that it simply becomes tuition paid by the state. Reducing the burden.

**OPPOSITION:**

**(2153) Mike Ahman, Director of Special Education of Bismarck Public Schools**

The issue of residency at the determination of placement and how that residency follows through

Let offer some examples: special education are the most costly

Currently at Anne Carlson in Jamestown which is a very costly education, 3 of these students, 2 parents did not reside in Bismarck at the time of the initial placement, but moved here shortly after. The short response for me would be to go with what this bill says, that I would no longer have financial responsibility for 2 of 3 students. The residency follows the parent. The thinking behind this has always been the state is not the primary payer or payee for the costs of these students. Where are the property taxes being paid, they follow the parent. and the student. the proposal will stay back in the original district.

The second issue, residential facility, Manchester House, we run the educational program there. Conditions prior to placement is that there is a signed tuition agreement. We don't have any problems collecting.

The third issue, Planning as students exiting these facilities in 6-12 months. Who gets involved in the exit, the agency, the school district to where the child is going. It is difficult to get the district involved of where the parent lives where the child will be returning.

And the second part of this bill that concerns me is what happens when the parents leave our state. Is the school still responsible or should the state be.

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Hearing Date January 14, 2003

Withholding state payments could be a problem, but find an incentive.

Part of the problem has to do with notification or informing them of the placement. What happens when they aren't notified, Who notifies who? Maybe the teeth need to go into punishment of the placement agency when they don't notify.

Closed hearing - (3277)

Break

(3300) **Chairman Kelsch:** Appointed a subcommittee on this bill they are Rep. Haas, Rep. Williams, Rep. Hawken. Directs the committee to look at 1) the residency issue 2) language that is overstock, the building in of a hammer; 3) compromise on this issue with Mr. Crowder and Dr. Klundt with some kind of resolution. If you can't we need to direct a group of units to come up with a bill draft for next session.

**Rep. Mueller** This is a good suggestion. It seems to be a two part issue. Tuition and Foundation Aid.

Closed.

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2003 HOUSE STANDING COMMITTEE MINUTES  
BILL/RESOLUTION NO. HB 1155  
House Education Committee

☐ Conference Committee

Hearing Date February 11, 2003

Tape Number	Side A	Side B	Meter #
2	x		4500-6055
Committee Clerk Signature <i>Linda Guenther</i>			

Minutes: Chairman Kelsch opened HB 1155

Rep. Hawken: reviewed the hog house amendments proposed, We don't want a study in a bill.

Chairman Kelsch On line 23 and then drop in the amendment. Draft resolution attached.

If we did this we have to have another hearing, and we need to take a long hard look at residnecy and the Senate also has a bill that they are counting on us to put this into study resolution in and they will defeat their bill. The study goes to Anita Thomas, with all of the information to move forward on the study. This does not go into state statue it will go into session law.

Rep. Williams "shall study" to LC. Do we have an assurance that they will study this.

Chairman Kelsch it is not a mandated study.

Rep. Hawken: We are not blowing this off and we understand that their is a problem, and we are going to address it.

Rep. Hawken moved the amendments, Rep. Haas second the motion., passed volve vote.

Rep. Mueller moved a DO PASS as amended, Rep. Meier second the motion.

Roll call Vote: 13-0-1, passed, Rep. Hawken will carry this to the floor.

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10/2/03  
Date

**FISCAL NOTE**  
Requested by Legislative Council  
02/13/2003

Amendment to: HB 1155

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The bill was amended to provide for a legislative council study of the criteria by which a student's school district of residence is established. Studies of this type come under the normal activities conducted during the Interim. There is no estimated fiscal impact.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

<b>Name:</b>	Jerry Coleman	<b>Agency:</b>	Public Instruction
<b>Phone Number:</b>	328-4051	<b>Date Prepared:</b>	02/13/2003

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**FISCAL NOTE**  
Requested by Legislative Council  
01/02/2003

Bill/Resolution No.: HB 1155

**1A. State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

State funding for students placed for purposes other than education are paid out of funds appropriated for special education and foundation aid. There is no estimated fiscal impact.

**3. State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

**A. Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

**B. Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

**C. Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Jerry Coleman	Agency:	Public Instruction
Phone Number:	328-4051	Date Prepared:	01/10/2003

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30220.0101  
Title.0200

Adopted by the Education Committee  
February 11, 2003

VR  
2/12/03

**HOUSE AMENDMENTS TO HOUSE BILL NO. 1155 EDU 2-12-03**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the criteria by which a student's school district of residence is established."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying, during the 2003-04 interim, the criteria by which a student's school district of residence is established and whether that criteria correctly assigns both benefits and responsibilities to the appropriate school districts. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

Date: 2/11/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1155

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 33092.0100 Hbg House

Action Taken \_\_\_\_\_

Motion Made By Hawken Seconded By Haas

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch					
Rep. Johnson					
Rep. Nelson					
Rep. Haas					
Rep. Hawken					
Rep. Herbel					
Rep. Meier					
Rep. Norland					
Rep. Sitte					
Rep. Hanson					
Rep. Hunsakor					
Rep. Mueller					
Rep. Solberg					
Rep. Williams					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent passed

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Dannan Baller  
Operator's Signature

10/2/03  
Date

Date: 2/11/03  
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1155

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 33092.0100

Action Taken Do Pass as amended.

Motion Made By Mueller Seconded By Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓				
Rep. Johnson	✓				
Rep. Nelson	✓				
Rep. Haas	✓				
Rep. Hawken	✓				
Rep. Herbel	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sitte	✓				
Rep. Hanson	✓				
Rep. Hunsakor	✓				
Rep. Mueller	✓				
Rep. Solberg	✓				
Rep. Williams	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Hawken

If the vote is on an amendment, briefly indicate intent:

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Date



**REPORT OF STANDING COMMITTEE (410)**  
February 12, 2003 4:05 p.m.

Module No: HR-27-2487  
Carrier: Hawken  
Insert LC: 30220.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

**HB 1155: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1155 was placed on the Sixth order on the calendar.**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the criteria by which a student's school district of residence is established.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying, during the 2003-04 interim, the criteria by which a student's school district of residence is established and whether that criteria correctly assigns both benefits and responsibilities to the appropriate school districts. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

2003 SENATE EDUCATION

HB 1155

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Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1155

Senate Education Committee

☐ Conference Committee

Hearing Date 3-05-03

Tape Number	Side A	Side B	Meter #
1	X		0 - 6.7
Committee Clerk Signature <i>Andrea Johnson</i>			

Minutes: VICE CHAIRMAN G. LEE called the committee to order. Roll Call was taken with five (5) members present. (Sen. Freborg absent)

VICE CHAIRMAN LEE opened the hearing on HB 1155 which provides for a legislative council study of the criteria by which a student's school district of residence is established.

**Testimony in support of HB 1155:**

REPRESENTATIVE LARRY BELLEW, Dist. 38, introduced the bill on behalf of Dakota Boys Ranch. The House turned the bill into a study resolution for legislative council. They are getting students assigned to them through the court system and there is a discrepancy in century code as to where the funds for these students are to come from. One section says the district where the parents live should pay and another section says the district where the student lives should pay.

MARY WAHL, ND Council of Educational Leaders, supports this bill. SB 2377 also discussed this issue and the committee voted a Do Not Pass anticipating this bill would study the complicated issue of determining the student's school district residency.

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Page 2  
Senate Education Committee  
Bill/Resolution Number HB 1155  
Hearing Date 3-05-03

MARK LEMER, Business Manager for the West Fargo School Dist., supports a formalized study of this issue so a formalized bill can be introduced next legislative session. His group and others have made a commitment to be involved with the legislative council in drawing up legislation for the next session.

There was no opposition on HB 1155.

The hearing was closed on HB 1155.

SENATOR FLAKOLL moved a DO PASS. Seconded by SENATOR TAYLOR.

Roll Call Vote: 4 YES. 0 NO. 2 Absent. Motion Carried. (the absent members will be allowed to vote, Sen. Cook and Sen. Freborg)

FINAL ROLL CALL VOTE: 6 YES. 0 NO. 0 Absent. Motion Carried.

Carrier: Senator G. Lee

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Dannan Hallmark  
Operator's Signature

10/2/03  
Date

Date: 3/5/03  
Roll Call Vote #: 1

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. *HB 1155***

**Senate      EDUCATION      Committee**

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken *Do Pass*

Motion Made By Sen. Flakoll Seconded By Sen. Taylor

[illegible]

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Lee

**If the vote is on an amendment, briefly indicate intent:**

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Dannan Hallmark  
Operator's Signature

18/2/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
March 5, 2003 1:59 p.m.

Module No: SR-39-4003  
Carrier: G. Lee  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HB 1155, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends  
**DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1155  
was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-39-4003

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Deanna Baller  
Operator's Signature

10/2/03  
Date

2003 TESTIMONY

HB 1155

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*Diana Hall*  
Operator's Signature

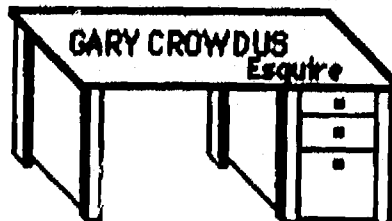
*10/2/03*  
Date

Date: September 23, 2002

To: Dan Ruby/Larry Bellew

Re: Legislative Law Change

FROM THE DESK OF:



Dear Representative Ruby and Representative Bellew:

As in our previous discussion I am asking you to look at and present to the state legislative committee potentially changing or cleaning up two laws concerning North Dakota Century School Code (15.1-29-14) which determines residency for students placed out of the home for noneducational reasons. This determination is for Payment of tuition for the accepting school district. The other area I would like addressed is also under (15.1-29-14) but under section or paragraph (5) where the law addressing sending school districts that do not pay tuition for students accepted by our school after being placed by the entities described in section 1 of Section 15.1-29-14.

To address the residency determination issue(15.1-29-14). The law states that the school district of residence is the district in which the student resides at the time of placement. Under paragraph 3a of the same section it goes on to read that if the parent moves from one district to another during the time the child is placed the district in which the parents moved becomes the sending district and responsible for tuition payments. This law works fine if the child resides with the parents at the time of the initial placement. However if the child lives in one district, for example Mandan with a brother or sister or Aunt or Grandparents for what ever reason and the parents live in Bismarck, is the sending district now Mandan or Bismarck? If the sending district is truly where the child resides at the time of placement then Mandan would be the sending district. If this continues to be true then why would section 3a be relevant to anything. As long as that child is in placement the Mandan district should be responsible for tuition until the child returns back to the Mandan district or to Bismarck with his parents. Now if they were to

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*Danna Baller*  
Operator's Signature

10/2/03  
Date



be placed again while living with the parents in Bismarck, Bismarck would then be considered the sending district. Our problem when it comes to collecting tuition from sending schools is that one school will read the law under section 1 of 15.1-29-14 and say we will not pay tuition because the child lived in Mandan at the time of placement. Mandan will read section 3a under 15.129-14 and say the parents reside in Bismarck so Bismarck should be the sending district and responsible for payment. In the long run neither pay and we are stuck for tuition. Who is responsible needs to be very clear. Children that we normally get into our system are from non traditional families where they are often living with someone other than a parent. How a school district is determined needs to be cleaned up and clear. At the present time it is not, and as the scenarios get more complicated with parents moving several time during a child's placement it gets even worse.

An opinion letter sent to Dr. Sanstead on February 25, 2002 by the Attorney General makes the situation even worse when they describe how determining the residence of a child was intended by the legislature. Someone may want to look at Anderson v. Breithbarth, 245 N.W. 483 (ND 1932) This again confuses the situation even further.

The second issue with this is the consequences to school districts who have been identified as the sending school districts for the purpose of paying tuition.

Under Section 15.1-29-06 paragraph two of this section states if " 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.

Under Section 15.1-29-14 paragraph 5 this section states, " If the student's district of residence does not pay the required tuition, that 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 PER STUDENT PAYMENTS and transportation aid otherwise payable to the student's school district of residence until the tuition has been fully paid.

The problem here is in the fact that under section 15.1-29-06 ALL STATE payments are withheld until the sending school pays the tuition due the accepting school. Under 15.1-29-14 only the tuition for the ONE STUDENT is withheld until payment is made. That consequence for the sending school districts has not been effective. Schools do not pay us on the average of \$25,000-\$35,000 a year and we have had to negotiate or write off these delinquent payments for years. At the beginning of this year it was just under \$30,000 for eight schools. We retained an attorney who threatened civil action and to date all but one has paid. However we as an accepting school district for these kids adjudicated by the courts or social services should not have to go to those extremes to get schools to abide by the law. I am urging you to help in alleviating these two issues.

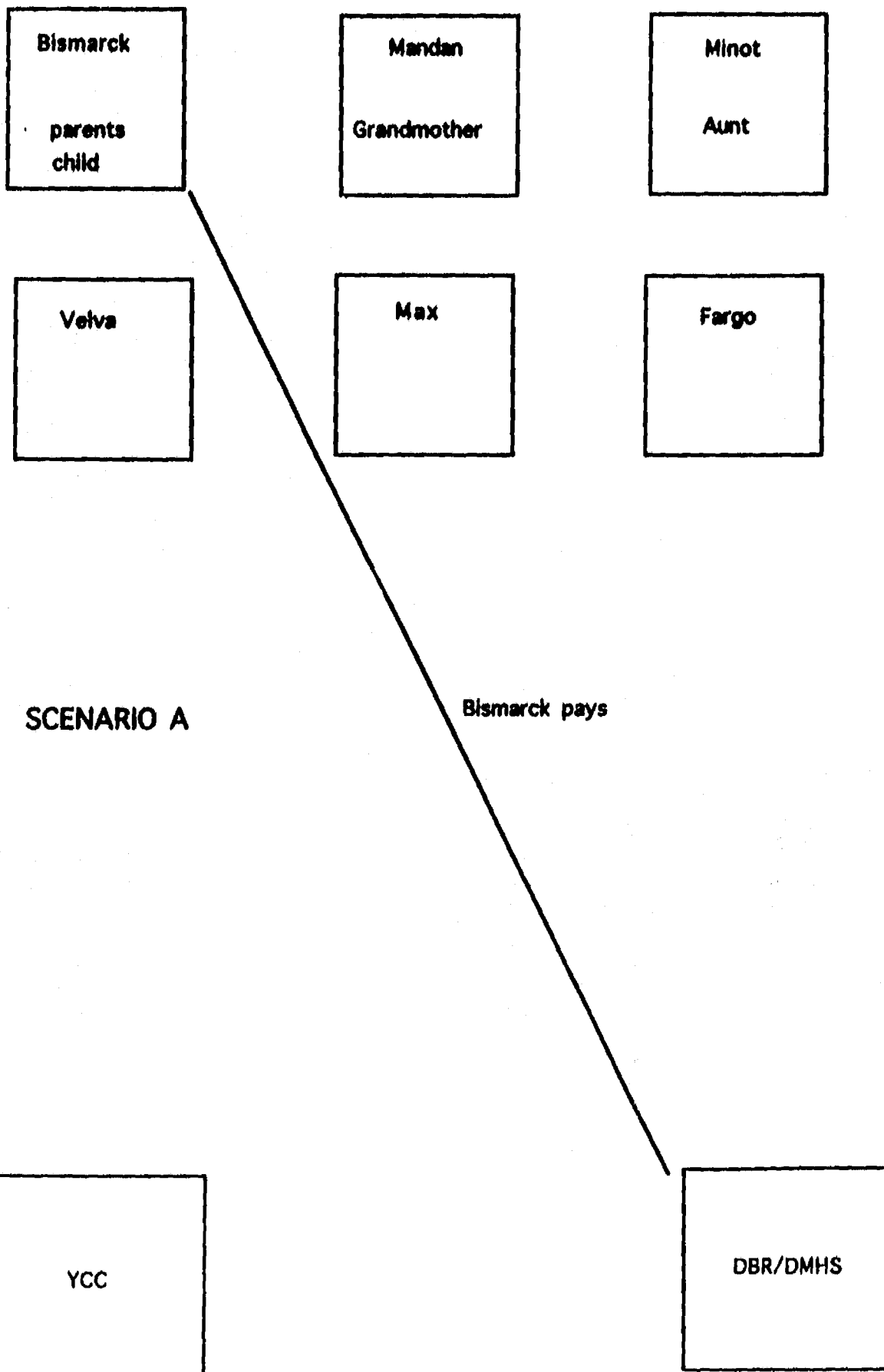
1. The confusion on the determination of residency for tuition payments for juveniles placed for non-educational reasons.

2. Enforcing tuition responsibility for sending schools by making the consequences for section 15.1-29-14 the same as the consequences for schools not paying tuition under section 15.1-29-06 of the North Dakota Century School Code.

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Deanna Ballentine  
Operator's Signature

10/2/03  
Date



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Dannan Ballantyne  
Operator's Signature

10/2/03  
Date

Bismarck  
parents

Mandan  
Grandmother  
child

Minot  
Aunt

Velva

Max

Fargo

SCENARIO B

Bismarck pays  
Mandan pays ?

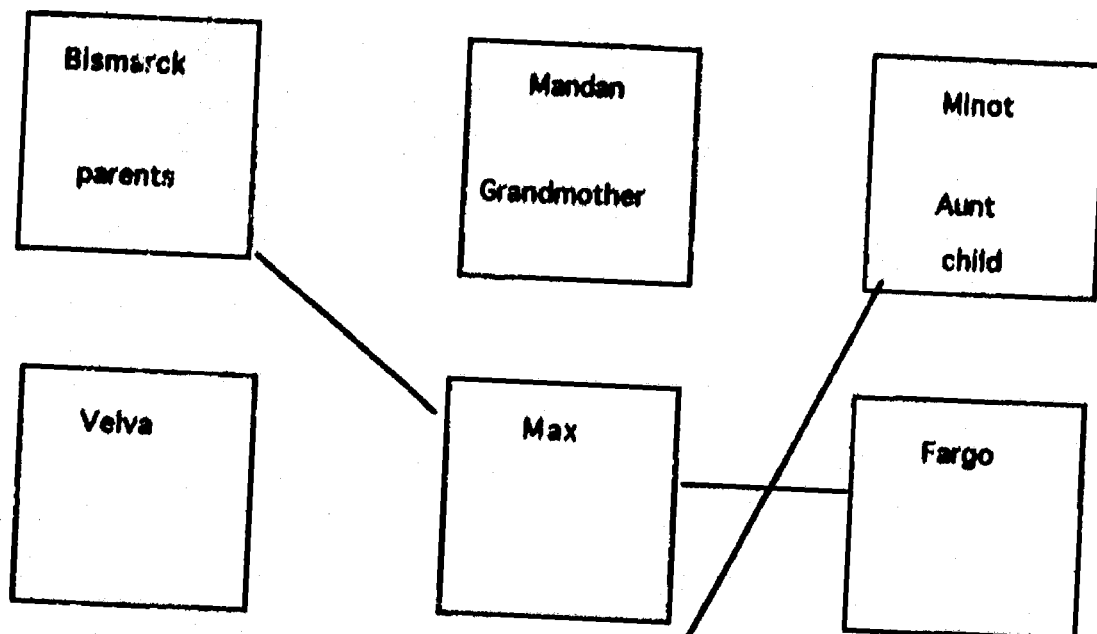
YCC

DBR/DMHS

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Deanna Ballantyne  
Operator's Signature

10/2/03  
Date

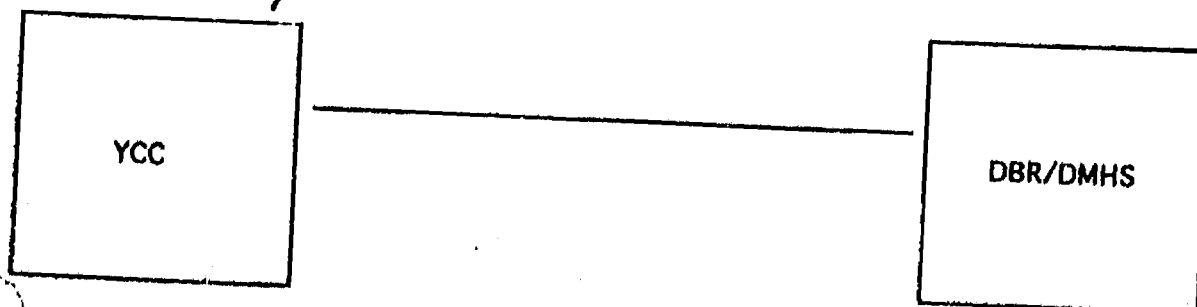


### SCENARIO C

While in Minot child gets sent to YCC, while at YCC parents move to Max, after he gets with us parents move to Fargo.

Who pays, Bismarck, Minot, Max or Fargo?

How much paperwork is generated?



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Operator's Signature

Date

10/2/03



Department of Public Instruction  
600 E Boulevard Ave., Dept. 201, Bismarck, ND 58505-0440  
(701) 328-2260 Fax - (701) 328-2461  
<http://www.dpi.state.nd.us>

Dr. Wayne G. Sanstead  
State Superintendent

To: Dr. Wayne G. Sanstead, State Superintendent  
From: Jerry Coleman, Assistant Director  
School Finance and Organization  
Date: September 3, 2002  
Re: Tuition/Residency Issues

I am writing in reply to your inquiry regarding child placements for purposes other than education as it relates to the letter you received from Gary Crowdus, Dakota Memorial School dated August 28, 2002.

Mr. Crowdus' letter identifies two issues they have investigated relating to tuition for students placed for purposes other than education - why schools are not paying and how to collect when districts refuse to pay. The following summarizes their findings:

- ☐ Schools refusing to pay do so because they dispute the determination of residency.
- ☐ Century Code relating to enforcing tuition responsibility does not provide meaningful consequences to districts for not paying.

I don't disagree with these findings. However, the law is pretty clear about what is required. Briefly the following are section 15.1-29-14 requirements:

- ① The resident district is the "district in which the child resides:" at the time of a placement identified under 15.1-29-14. This can change only if the parents *establish residency* in another school district or out-of-state, or if there has been a permanent termination of parental rights.
2. The resident district is obligated to pay all charges for tuition up to the state average per student elementary or high school cost. The remainder is paid by the state from funds appropriated for per student payments and transportation aid.
3. The placing agency must provide written notice of the initial placement and all subsequent placements by registered mail, to the superintendent of the student's school district of residence and the superintendent of the admitting district.
- ④ If the student's district of residence does not pay the required tuition, the admitting district shall notify the superintendent of public instruction and upon verification that the tuition is due and unpaid shall withhold an amount equal to the unpaid tuition from state aid otherwise due the district until the tuition due has been fully paid.

I have attached the Department's policy relating to these types of placements and some financial data summarizing the state funding involved.

School for the Deaf  
Devils Lake, ND  
(701) 662-9000

School for the Blind  
Grand Forks, ND  
(701) 795-2700

State Library  
Bismarck, ND  
(701) 328-2492

There are always a number of parties involved in these types of placements. These can be the placing agency (state court, tribal court, juvenile services, county social services, tribal social services), the child care home or facility, the resident school district, the educating school and the Department of Public Instruction. It goes without saying that better communication and understanding of the roles of each party would be beneficial.

The Department's position regarding these placements should be that:

1. Whenever possible a public school district should be ultimately responsible for the education of these students. This is the overriding reason the Department has never supported shifting full financial responsibility for these cases to state funds to relieve the burden on a school district.
2. The financial burden to school districts is never more than the state average cost of education (\$5,532 elementary, \$5,771 high school for the 2002-03 school year). In addition districts are allowed to claim foundation aid for these students further reducing their liability.
- ③ The determination of the district of residence is made by the placing agency and is documented and communicated through the school district of notification form. Any disputes must be resolved at that level and be reflected on that form. This form, completed in full on a timely basis, is the key to efficiently administering this system.
- ★ 4. The Department supports changing Century Code to require withholding all state aid to a school district refusing to pay until the tuition has been paid in full. This would assure a more timely resolution of these matters.

• Page 2

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*Doranne Hall*  
Operator's Signature

10/2/03  
Date

## District of Residence for Students Under NDCC 15.1-29-14

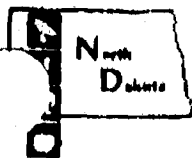
Under NDCC 15.1-29-14 the school district in which the child resides at the time of placement must be construed to be the district of residence of such child. The district of residence determined under subsection 1 can change only upon evidence of the occurrence of one the events stated in subsection 3 of 15.1-29-14.

- If, after the student placement is made as provided under subsection 1, the student's custodial parent establishes residency in another school district in this state, the school district in which the custodial parent has established residency becomes the student's school district of residence for purposes of paying tuition and tutoring charges under subsection 2.
- The state shall pay the tuition and tutoring charges under subsection 2 from funds appropriated by the legislative assembly for per student and transportation aid:
  - if, after a student placement is made as provided under subsection 1, the student's custodial parent establishes residency outside this state; or
  - if a court orders a termination of parental rights with respect to the student's parents.

Questions regarding residency determinations should be resolved with the placing agency and any corrections should be reflected on the school district notification of placement. The Department will respect the determination made by the placing agency if the evidence used to support it meets the criteria in law.

According to legal counsel, the general rule is residence is not lost until another is gained. Parental rights are terminated by court order under NDCC 14-17-24 or 27-20-44. Unknown or transient residence, incarceration, homelessness, or death of parents does not establish a change in residence of the child or make the state responsible under NDCC 15.1-29-14(3).





## Department of Public Instruction

600 E Boulevard Ave., Dept. 201, Bismarck, ND 58505-0440  
(701) 328-2260 Fax - (701) 328-2461  
<http://www.dpi.state.nd.us>

Dr. Wayne G. Sanstead  
State Superintendent

To: Superintendents, Business Managers, Special Education Directors, County Superintendents, Directors of Residential Facilities

From: Jerry Coleman, Assistant Director of School Finance

Date: February 1, 2002

Re: School district responsibility for student costs during the 2002-2003 school year

The following amounts will be used for the 2002-2003 school year to determine the school district responsibility (cost cap) for the education of resident students. For special education students, the school district incurs the full cost based upon an approved contract, and is then reimbursed for amounts in excess of the cost cap. For regular education students attending residential treatment facilities, the Department of Public Instruction will pay the excess cost, and the district of residence will only be responsible for the state average cost.

	2001-2002 Cost Cap*	2002-2003 Cost Cap	2002-2003 Daily Rate
Special education students placed by district (based on 2 1/2 times the state average cost)			
Elementary (grades 1-8)	\$12,954.15	\$13,830.48	\$76.84 / day
Secondary (grades 9-12)	\$13,547.18	\$14,426.38	\$80.15 / day
Regular and special education students placed for reasons other than education (based on the state average cost)			
Elementary (grades 1-8)	\$5,181.66	\$5,532.19	\$30.73 / day
Secondary (grades 9-12)	\$5,418.87	\$5,770.55	\$32.06 / day
Capital outlay used for tuition purposes	\$293.07	\$332.86	

If you have any questions, please contact Gloria at (701) 328-2283 or me at (701) 328-4051.

\*For comparison purposes only.

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*Donna Hall*  
Operator's Signature

10/2/03  
Date

the payment of tuition in order that the student can attend another school district. Within sixty days after receiving the petition, the board shall meet with the student's parent and render a decision regarding the payment of tuition. If the board does not render a contrary decision within the sixty-day period, the petition is deemed approved. If the petition is approved, the board shall pay the tuition charges. If the petition is denied, the student's parent may file an appeal with the county superintendent of schools.

Source: S.L. 2001, ch. 181, § 13.

**15.1-29-06. Payment of tuition for grades one through twelve — Appeal — Withholding of state payments.**

1. a. Within fifteen days after receipt of an appeal filed under section 15.1-29-05, the county superintendent of schools shall convene a three-member committee consisting of the county superintendent, the state's attorney, and one member appointed by the board of county commissioners for a term of three years. The committee shall consult with the boards of the affected districts and with the student's parent. The committee shall schedule a hearing, giving due notice to each affected board and to the student's parent. The committee shall conduct the hearing in a manner that allows all parties to present arguments and responses. The committee shall base its decision regarding the payment of tuition on the grade in which the student is enrolled.
- b. If the student is or during the following school year will be enrolled in any grade from nine through twelve and the committee finds that the attendance of the student is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the student's educational needs, 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 school district of residence, thereby obligating the district of residence to pay the tuition. The committee's directive regarding the payment of

tuition may be for any fixed number of school years, up to the completion of 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 kindergarten 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 may be appealed to the state board of public school education and the decision of the board is final.
2. 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. 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.

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

Source: S.L. 2001, ch. 181, § 13; 2001, ch. 193, § 5.

Effective Date.  
The 2001 amendment of this section by chapter 193, S.L. 2001 became effective July 1, 2001.

Note.  
Section 15.1-29-06 was created and amended by the 2001 Legislative Assembly. Pursuant to section 15.1-29-06, the section is printed above to have effect to the changes made in section 181, S.L. 2001, and section 4 of chapter 193, S.L. 2001.

**15.1-29-07. Payment of tuition — Content of tuition contract.**

1. If the board of a student's district of residence refuses to pay the tuition for the student's school in another district, the committee established under section 15.1-29-06 denies the appeal, the student's parent shall pay the tuition.
2. If the parent chooses to pay the tuition, the parent shall:
  - a. Submit at least fifty percent of the total amount due for the year of enrollment; and
  - b. Provide the board of the admitting district with a written contract agreeing to a payment plan maintaining balance on December thirty-first.

Source: S.L. 2001, ch. 181, § 13.

**15.1-29-08. Payment of tuition for kindergarten student. Repealed 2001, ch. 193, § 5.**

Note.  
Section 15.1-29-08 was created and repealed by the 2001 Legislative Assembly. Pursuant to section 15.1-29-08, the section is treated as repealed.

**15.1-29-09. Payment of tuition by federal government. An admitting district may accept payments under Public Law No. 81-874 [64 Stat. U.S.C. 236 et seq.] as tuition for a nonresident student if:**

1. The student's parent is employed by an installation owned by the federal government;

cept as otherwise provided, if school district fails to charge tuition for a nonresident, the districts shall per student payment transportation aid other for the nonresident.

board of a school district admit a nonresident student from another district in the same offering the same grade as that in which the student is enrolled without a charge of collection of tuition if the district and admitting district are entered into a written contract regarding the student's admission.

purposes of determining whether the same grade level, two or more school districts cooperating with each other for the joint provision of educational services under an approved by the superintendent of public instruction must be considered to be a district.

contract must specify whether transportation is provided and, if so, by whom. If a school district does not provide transportation to the student, it is provided by the admitting district and to state pay the transportation of the student.

contract is not necessary if a nonresident student is an approved alternative education program for which no charge is charged.

school district may accept a nonresident student description 15.1-31-07 from a school district in this state at a charge and collection of tuition and without a agreement.

school district may not accept a nonresident student from a nonresident student's parent, or a district of residence charges not otherwise resident students.

2001, ch. 181, § 13.

CTIONS UNDER PRIOR LA

f Section.

on was intended to apply to a receiving district already

struction which, in the judgmented the admission of nonresident of Educ., 54 N.D. 235, 209

charge is imposed upon nonresident pupils admitted to a high school, such charge must be alike to all, and the board may not arbitrarily admit certain pupils and exclude others. Todd v. Board of Educ., 54 N.D. 235, 209 N.W. 369 (1926).

A school district cannot be compelled to pay the tuition of pupils attending any high school other than a standardized high school; a high school in a special school district not supervised by the department of public instruction nor receiving state aid was not a "standardized high school" within statute relating to admission of nonresident pupils. State ex rel. Mannes v. Alquist, 59 N.D. 762, 231 N.W. 952, 72 A.L.R. 494 (1930).

Collateral References.

Schools and School Districts — 159.

66 Am. Jur. 2d, Schools, § 223.

79 C.J.S. Schools and School Districts, §§ 457, 459-461.

15.1-29-14. Student placement for noneducational purposes — Residence 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 resides:

- 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 or at a state-licensed child care home or facility;
- 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 or at a state-licensed child care home or facility;
- 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 or at a state-licensed child care home or facility; or
- At the time the student is voluntarily admitted to a state-operated institution or to a state-licensed child care home or facility.

The student's school district of residence is obligated to pay:

All charges for tuition upon claim of the admitting district; and

b. All charges for tutoring services upon claim of an admitting facility, provided that the tutoring services are delivered by an individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board.

- If, after a student placement is made as provided for under subsection 1, the student's custodial parent establishes residency in another school district in this state, the school district in which the custodial parent has established residency becomes the student's school district of residence for purposes of paying tuition and tutoring charges under subsection 2.
- The state shall pay the tuition and tutoring charges under subsection 2 from funds appropriated by the legislative assembly for per student and transportation aid:

(1) If, after a student placement is made as provided for under subsection 1, the student's custodial parent establishes residency outside this state; or

(2) If a court orders a termination of parental rights with respect to the student's parents.

4. If the student is voluntarily admitted to a state-licensed child care home or facility, or to a state-operated institution, the student's parent or, if one has been appointed, the student's legal guardian may appeal a determination under section 15.1-29-05 regarding the payment of tuition by filing a petition with the county superintendent of schools. Within fifteen days of receiving the petition, the three-member committee established under section 15.1-29-06 shall consult with the boards of the affected school districts and with the student's parent or legal guardian and render a decision regarding responsibility for the payment of tuition charges.

5. 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

tion that tuition payments are due and unpaid, the superintendent shall withhold an amount equal to the unpaid tuition from per student payments and transportation aid otherwise payable to the student's school district of residence until the tuition due has been fully paid.

6. An amount equal to the state average per student elementary or high school cost, depending on the student's grade of enrollment, is payable to the admitting district or facility as part of the cost of educating the student for the school year. The payment may not exceed the actual per student cost incurred by the admitting district or facility. The remainder of the actual cost of educating the student not covered by other payments or credits must be paid by the state, within the limits of legislative appropriations, from funds appropriated for special education in the case of a student with disabilities or from funds appropriated for per student payments and transportation aid in all other cases.

7. If a student with disabilities placed in accordance with this section reaches age eighteen and continues to receive special education and related services, the student's school district of residence is deemed to be the same as that of the student's custodial parent until the special education services are concluded. If the student's custodial parent establishes residency outside this state, or if a court orders a termination of parental rights with respect to the student's parents, the state shall pay the tuition and tutoring charges under subsection 2 from funds appropriated by the legislative assembly for per student and transportation aid.

8. a. The placing agency shall provide written notice regarding an initial placement and all subsequent placements of a student, by registered mail, to the superintendent of the student's school district of residence and to the superintendent of the admitting district:

- (1) Within five working days after a placement is made under court order;
- (2) Within five working days after an emergency placement is made; or

- (3) At least ten working days prior to any other placement.

- b. The written notice must contain any information requested by the superintendent of the district of residence for purposes of determining payment responsibility.

- c. The placing agency shall provide the student's school district of residence reasonable opportunity to participate in agency planning for the student.

9. Notwithstanding this section, educational services provided by the youth center are not subject to tuition by either the school district of the student or the superintendent of placement.

10. For purposes of this section, "custodial parent" means the parent who has been awarded sole legal custody of the student in a legal proceeding or, if there is no operative custody order, the parent with whom the student resides. If the student resides with both parents, then both are custodial parents.

Source: S.L. 2001, ch. 181, § 13.

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

Source: S.L. 2001, ch. 181, § 13.

#### CHAPTER 15.1-30

#### TRANSPORTATION OF STUDENTS

- |             |   |
|-------------|---|
| Section     |   |
| 15.1-30-01. | Transportation or meals and lodging — Options of school board.                      |
| 15.1-30-02. | Transportation payments — Board option.   |
| 15.1-30-03. | Transportation payments — Written request — Waiver.                                 |
| 15.1-30-04. | Provision of meals and lodging for high school students — Payment permitted — Levy. |
| 15.1-30-05. | Schoolbus transportation services — Optional fee.                                   |
| 15.1-30-06. | Transportation — Bids, contracts, bonds   |

**ELEMENTARY AND SECONDARY**  
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15.1-30-12  
tract, at least thirty days before the date of renewal, and shall make a good-faith effort to obtain at least two written quotations for the contract. The board shall maintain all quotations received on file for at least one year after their receipt.  
3. If any written quotations received, the board may negotiate a contract, provided:  
a. The board shall meet and the meeting shall be open to the public.  
b. The board shall receive at least seven days' notice of the meeting by mail, at least ten days prior to the meeting.

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A parent receiving payments under section 15.1-30-01.

3. If the board elects to provide transportation of students in transit, the board shall establish eligibility criteria based on maximum distance between a student's residence and the school. If otherwise provided by law, the board shall apply the same criteria equally to all students in the district.
4. Benefits under this section are available even if a student is transported to another school district or outside this state, provided the student's attendance meets other conditions established by the board.

Source: S.L. 2001, ch. 181, § 14.

**Effective Date.**  
This chapter became effective July 1, 2001.

#### DECISIONS UNDER PRIOR LAW

**Benefits.**  
Board could not award patrons benefits of former statutes, one of which was in section 15-34.2 and the other to section 15-34.2.