

**Opinion No. 53**

**SCHOOLS & SCHOOL DISTRICTS; Superintendent of Public Instruction; Powers, Attendance of handicapped children; SCHOOLS & SCHOOL DISTRICTS; Children; Attendance of handicapped children; SCHOOLS & SCHOOL DISTRICTS; Attendance; handicapped children; Sections 75-5001, 75-5003, 75-5006, Revised Codes of Montana, 1947.**

- Held:**
- 1. A school district may maintain special classes for educable mentally handicapped children and physically handicapped children.**
  - 2. Triple ANB is not authorized for trainable mentally handicapped children.**

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December 12, 1962

Mr. Emmett T. Walsh  
Deer Lodge County Attorney  
Anaconda, Montana

Dear Mr. Walsh:

You have requested my opinion as to whether a school district is entitled to a triple ANB for trainable mentally handicapped children in classes conducted by public schools.

Handicapped children are classified in Section 75-5001, RCM, 1947. Under this statute there are two general groups, first the mentally handicapped and second, the physically handicapped. The mentally handicapped are divided into three groups as follows: educable mentally handicapped, trainable mentally handicapped, and custodial mentally handicapped.

The State Superintendent of Public Instruction with the approval of the State Board of Education has general supervision of the qualifications of teachers and the types of the education offered, and general supervision of the program for the handicapped as provided in Section 75-5006, RCM, 1947. The supervisor of the program is a member of the staff of the superintendent of public instruction, and may receive assistance from the State Board of Health and the Superintendent of State Training Schools.

Standards and classifications of children eligible to receive education is not lodged in the board of trustees of the school district, but under Section 75-5003, is made the responsibility of the State Superintendent of Public Instruction. This is stated as follows:

"The determination of the children requiring special education and the type of special education needed by these handicapped children shall not be the responsibility of local boards of trustees

but shall be the responsibility of the State Superintendent of Public Instruction in cooperation with appropriate medical, psychiatric, and psychological advice listed above."

Only mentally handicapped children who are educable, as distinguished from trainable and custodial may receive the benefits of special education in the public schools. This is specifically stated in Section 75-5001, RCM, 1947, in the following language: "The public schools are to assume responsibility for only the educable handicapped groups." As was pointed out above, the State Superintendent of Public Instruction fixes the standards, after receiving appropriate medical, psychiatric, and psychological advice for the mentally handicapped children who are classified as having sufficient mental capacity to receive special education. The other two groups, the trainable and custodial are not eligible for special education in the public schools.

In defining educable mentally handicapped children, our legislature in Section 75-5001 expressed the general rule applicable in the following language:

"Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that of an eleven-year-old, but not less than that of a seven-year-old."

The use of this general rule requires expert advice and qualified, trained experts as was observed above in the quotation from Section 75-5003, RCM, 1947. It is the office of the State Superintendent of Public Instruction which establishes the final standards of eligibility to the special classes.

The allowance of triple ANB (Section 75-5003, RCM, 1947) for each student authorized to attend the class is a recognition of the greater expense to the district. Physically handicapped children who are capable of profiting from general education are also eligible for special classes.

It is, therefore, my opinion:

1. A school district may maintain special classes for educable mentally handicapped children and physically handicapped children.
2. Triple ANB is not authorized for trainable mentally handicapped children.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General