

Opinion No. 33

SCHOOLS AND SCHOOL DISTRICTS; High Schools, Funds, Special Education; SCHOOLS AND SCHOOL DISTRICTS; High School, Students, Retarded children—Section 75-5003, Revised Codes of Montana, 1947.

HELD: The board of trustees of a school district operating a high school may expend high school funds for the support of a special education program for the mentally retarded.

June 26, 1964

Miss Harriet Miller
State Superintendent of Public
Instruction
Capitol Building
Helena, Montana

Dear Miss Miller:

You have asked me if the board of trustees of a school district operating a high school may expend high school funds for the support of a special education program for the mentally retarded.

Special education programs for mentally retarded children are authorized by Section 75-5003, R.C.M., 1947. A portion of that statute provides that:

“Any such [mentally retarded] child who is enrolled in a state-approved high school special education program which is maintained by a high school located in a county other than the county in which such child resides, shall be included in the computation of the average number belonging to the high

school maintaining the special education program, according to the provisions herein.”

This language clearly indicates a legislative intent to authorize high schools to offer special education classes for mentally retarded children. The question arises because Section 75-5001, R.C.M., 1947, defines the educable mentally retarded as:

“Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected from an eleven-year-old, but not less than that of a seventeen-year-old”

I am informed that it is desirable that high schools provide special education classes for such children for two reasons. In most communities, only the high schools are equipped to offer the vocational education programs necessary to equip mentally retarded children with the skills to enable them to become productive members of society. Also, the full development of the mentally retarded child is thought to be best achieved by association with normal children of his own age. Undoubtedly, the legislature was aware of these factors when it drafted the statute. In any event, the above quoted portion of Section 75-5003 clearly authorizes high schools to offer special education classes for mentally retarded children.

It is therefore my opinion that the board of trustees of a school district operating a high school may expend high school funds for the support of a special education program for the mentally retarded.

Very truly yours,
FORREST H. ANDERSON
Attorney General