

VOLUME NO. 37

OPINION NO. 148

SCHOOL DISTRICTS - Special education, obligation to provide;  
EDUCATION - Special education, school districts, obligation  
to provide; REVISED CODES OF MONTANA, 1947 - Sections 75-  
7201, 75-6320, 75-7805, 75-7806, 75-7808, 75-7810.

CLARIFICATION OF OPINION NO. 98.

HELD: School districts are not entitled to deny special  
education services to children in need thereof who  
live within the district on the basis of the fact  
that the legal residence of child's parent or  
guardian is elsewhere.

16 June 1978

Georgia Ruth Rice  
Superintendent of Public Instruction  
State Capitol Building  
Helena, Montana 59601

Dear Ms. Rice:

Since I issued Opinion No. 98 in response to your request, I  
have received a number of comments from interested and  
affected persons, which indicate that further clarification  
of the opinion may be necessary to prevent the misapplica-  
tion of the law and potential adverse effects upon the  
children involved. It was not my intention to hold in that  
opinion that children in need of special education are not  
entitled to it unless they reside in the county or school  
district in which their parents or guardians reside. To the  
contrary, the law is clear that the right of special educa-  
tion exists, and nothing in Opinion No. 98 should be con-  
strued to the contrary.

Section 75-8705 provides that "[a]ll handicapped children in Montana are entitled to a free appropriate public education ...." That same section further provides that handicapped children in "public or private institutions or other care facilities" must be educated to the maximum extent appropriate with children who are not handicapped. Both sections 75-7805 and 78-7806 mandate the local school districts to provide or establish special education services when there are "sufficient numbers of handicapped children in the district...." (section 75-7806(1)(a)) (emphasis added.) The right to special education and the obligation of the district in which the child lives to provide it are clear.

The second issue which I raised and addressed in Opinion No. 98 arose from a concern that a local school district in which a state institution or a number of foster or group homes are located might be financially unable to meet the resulting demand for special education. An effort was then made to determine the Legislature's intent as to whether the local district, the district of the child's parents, the state or some other entity should pay.

It has since become obvious that there is a myriad of individual, unique circumstances that can and do arise involving children in need of special education. Since the statutes do not comprehensively treat this question, it is almost impossible to frame a general answer as to which entity or person is financially responsible for a child's special education. Each situation must be treated on a case-by-case basis, and should not create more than a short-term problem in any case since the state funds all or almost all of a district's special education costs.

The important point to be emphasized is that a child's entitlement to special education services in the district in which he resides cannot be ignored or postponed because of confusion or disagreement over the financial responsibility therefor. In any case, sections 75-7808, 75-7810, 75-7201 and 75-6320 should provide answers in most situations.

I hope that this will clarify the intention of Opinion No. 98 and help insure that all children in need of special education receive it.

Very truly yours,

MIKE GREELY  
Attorney General