

COURT, DISTRICT - Payment of public school tuition for youths placed outside their school districts of residence;

DEPARTMENT OF INSTITUTIONS - Payment of public school tuition for youths placed outside their school districts of residence;

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES - Payment of public school tuition for youths placed outside their school districts of residence;

PROBATION, YOUTH - Payment of public school tuition for youths placed outside their school districts of residence;

SUPERINTENDENT OF PUBLIC INSTRUCTION - Payment of public school tuition for youths placed outside their school districts of residence;

TUITION, PUBLIC SCHOOL - Payment of public school tuition for youths placed outside their school districts of residence;

YOUTH IN NEED OF CARE OR SUPERVISION - Payment of public school tuition for youths placed outside their school districts of residence;

MONTANA CODE ANNOTATED - Title 20; sections 1-1-215, 1-2-107, 40-4-101, 40-8-125, 41-4-101.

HELD: In most cases where a child attends school outside his or her school district of residence, financial responsibility will fall in one of three places: the parents or guardians, the school district of residence, or the sending agency. The particular circumstances of the placement will determine who is financially responsible for school tuition.

24 September 1984

Richard A. Simonton
Dawson County Attorney
Dawson County Courthouse
Glendive MT 59330

Dear Mr. Simonton:

You have asked my opinion on three questions:

1. If a local welfare department has legal custody by a temporary or permanent order for placement of a minor child and places that child with foster parents outside the school district of residence or outside the state, who is responsible for payment of tuition?
2. Who is responsible for payment of out-of-state tuition when a local student, either by choice or court order, attends high school out of state?

3. Who is responsible for payment of tuition on behalf of a student residing out of his school district who has been accepted by the local welfare department and attends school within the local district?

You have told me that your questions concern youths in need of care or supervision, not youths who require special education or are otherwise developmentally disabled. I am aware that there are cases where children fall into both categories, but I must limit this opinion to manageable size. For several reasons, this is a complex area of the law. Therefore, I will start with an overview generally applicable to all of your questions.

Montana law requires local school district trustees to admit to a district school all qualified children between the ages of 6 and 19 years who are residents of the district. § 20-5-101, MCA. State law also authorizes trustees to admit nonresident children under the tuition provisions of Title 20, MCA. Section 20-5-304, MCA, requires that school officials determine the residence of elementary school children according to section 1-1-215, MCA. I interpret this rule as applying to high school students as well. Unless a contrary intention plainly appears, statutes relating to the same subject matter should be interpreted consistently. § 1-2-107, MCA; State ex rel. McHale v. Ayers, 111 Mont. 1, 105 P.2d 686 (1940).

We must look to section 1-1-215, MCA, for guidance in determining the residence of a child. That statute holds in pertinent part:

Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

....

(4) The residence of his parents or, if one of them is deceased or they do not share the same residence, the residence of the parent having legal custody or, if neither parent has legal custody, the residence of the parent with whom he customarily resides is the residence of the unmarried minor child. In

case of a controversy, the district court may declare which parental residence is the residence of an unmarried minor child.

(5) The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

§ 1-1-215, MCA. The residence of an unmarried minor child is the residence of his (natural or adoptive) parents.

As I said above, section 20-5-101, MCA, gives qualified children an absolute right to be admitted to school in the school district of their residence. Admission to a school outside the child's district of residence is usually discretionary. This discretion is qualified by several factors listed in sections 20-5-301 to 303, and 20-5-312 to 313, MCA.

When children attend schools outside their districts of residence, various statutes establish who pays the costs of this education. If parents are willing to pay these tuition costs, sections 20-5-303 and 20-5-313(2), MCA, apply. These statutes give parents broad rights to send their children to school in other school districts at the parents' expense.

If the parents cannot or will not pay tuition, and still wish that a child attend school outside his or her district of residence, a tuition agreement is needed. Under a tuition agreement, the trustees of a child's school district of residence agree to pay the child's tuition. Tuition agreements must be approved pursuant to section 20-5-301(2), MCA, in the case of elementary school students, and pursuant to section 20-5-311(1), MCA, in the case of high school students. Other specific conditions for tuition agreements are enumerated in sections 20-5-301 to 302, and 20-5-311, MCA.

The Interstate Compact on the Placement of Children, certified at section 41-4-101, MCA, is also generally applicable. If a child is placed pursuant to this Compact, the "sending agency" has continuing financial responsibility for the child during the period of placement. § 41-4-101, MCA, art. V(1). The Compact defines "sending agency" as follows:

"[S]ending agency" means a party state, officer or employee thereof; a subdivision of a party state or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state.

§ 41-4-101, MCA, art. II(2). In cases of disagreement, the appropriate district court determines who is the "sending agency."

Finally, I note that the 1983 Session of the Montana Legislature had under consideration "An Act To Transfer, From The Office Of Public Instruction To The Department Of Social And Rehabilitation Services, The Fiscal Responsibility For The Educational Costs Of Youths Who Are Ordered To Out-Of-District Educational Programs Under The Youth Court Act Or Child Abuse, Neglect, And Dependency Laws." (HB 25, 48th Leg.) Since the Legislature did not pass this act, I presume it was their intent to authorize current practices in this area. Bottomly v. Ford, 117 Mont. 160, 168, 157 P.2d 108 (1945). Therefore, it has been my aim throughout this opinion to interpret the law in light of current practices. I now turn to your specific questions.

1. If a local welfare department has legal custody by a temporary or permanent order for placement of a minor child and places that child with foster parents outside the school district of residence or outside the state, who is responsible for payment of tuition?

As noted above, a child's residence is the residence of the natural parents in almost all cases. The only exceptions would be for a child who was married, emancipated, or subject to a final decree of adoption. §§ 1-1-215, 40-8-125, MCA. It is my opinion that legal custody in a local welfare department by either temporary or permanent order does not change the child's residence from that of his or her natural parents.

When, due to court order, an elementary school pupil attends school outside his or her district of residence but within the state, Montana law requires that the

tuition agreement be approved. § 20-5-301(3)(e), MCA. I interpret the Legislature's intent to be that high school students would also be treated this way. See § 20-5-311, MCA. So, if a child were placed within the state but outside his or her school district of residence, tuition would have to be paid by the district of residence. §§ 20-5-301(3)(e), 20-5-311, MCA.

If the placement of the child is outside the state, financial responsibility for school costs would rest with the sending agency under the Interstate Compact on the Placement of Children, § 41-4-101, MCA, art. V(1).

2. Who is responsible for payment of out-of-state tuition when a local student, either by choice or court order, attends high school out of state?

If the student is voluntarily attending school outside the state, responsibility for payment of tuition depends on the existence of a valid tuition agreement. If no valid tuition agreement exists, the child's parents or guardians are responsible for tuition costs. § 20-5-313(2), MCA. If a valid tuition agreement exists, the child's school district of residence is responsible for tuition costs. §§ 20-5-311, 20-5-314, MCA. Special note should be taken of section 20-5-314, MCA, and the Superintendent of Public Instruction should be consulted about the existence of a reciprocal tuition agreement with an adjoining state.

If the student attends high school out of state pursuant to court order, the sending agency is responsible for tuition costs under the Interstate Compact on the Placement of Children, § 40-4-101, MCA, art. V(1). In the event of disagreement, the district court determines who is the sending agency for purposes of the Interstate Compact.

3. Who is responsible for payment of tuition on behalf of a student residing out of his school district who has been accepted by the local welfare department and attends school within the local district?

Your question speaks of a child "who has been accepted by the local welfare department;" I take this to mean that the child has been placed by court order.

If the child's school district of residence is within Montana, the district of the child's residence is responsible for tuition costs under an approved tuition agreement. (See 1 above.) If the child's school district of residence is not in Montana, and the other state is a party to the Interstate Compact on the Placement of Children, the sending agency is responsible for tuition costs. If the child's district of residence is in a state not party to the Interstate Compact on the Placement of Children, responsibility for tuition costs would be a matter of the other state's local law.

THEREFORE, IT IS MY OPINION:

In most cases where a child attends school outside his or her school district of residence, financial responsibility will fall in one of three places: the parents or guardians, the school district of residence, or the sending agency. The particular circumstances of the placement will determine who is financially responsible for school tuition.

Very truly yours,

MIKE GREELY
Attorney General