

SCHOOLS:
SCHOOL DISTRICTS:
SCHOOL TRANSPORTATION:
DEPARTMENT OF MENTAL HEALTH:

(1) The cost of special educational services, including transportation, for a handicapped child who has been placed in a home by the Missouri Department

of Mental Health, regardless of where those services are provided, is paid by the Department (under the provisions of Section 162.970, RSMo Supp. 1973). The Department of Mental Health is then reimbursed by the school district in which the parent or guardian resides or which would otherwise be responsible for special educational services for the child in an amount not to exceed the average sum produced per child by the local tax effort of the parent's district. (2) The cost of special educational services and of transportation for a handicapped child not admitted to the programs or facilities of the Missouri Department of Mental Health who resides in a home that provides care or treatment--whether the child is an offender or troubled, abandoned, or neglected--is the responsibility of the school district in which the home is located. If the responsible district does not provide those services itself, it must contract with another district or with a public or a private agency for those services and it must provide transportation to the place where the services are provided.

OPINION NO. 48

June 25, 1975

Honorable Morris G. Westfall
Representative, District 133
Room 105, State Capitol Building
Jefferson City, Missouri 65101



Dear Representative Westfall:

This official opinion is issued in response to your request for a ruling on whether, under the new law on special educational services (Sections 162.670-162.995, RSMo Supp. 1973), it is the school district (1) in which a child resides or (2) in which a child's parent or legal guardian resides that must pay tuition and transportation costs for special educational services when a handicapped child has to go to another district for education.

According to the facts that you supplied to us, two homes in your area provide care to children who are considered handicapped. Handicapped children have been defined as:

". . . children under the age of twenty-one years who have not completed an approved high

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school program and who, because of mental, physical, emotional or learning problems, require special educational services in order to develop to their maximum capacity;" (Section 162.675(2), RSMo Supp. 1973)

The first home, privately owned, provides care but not education for children; some of the children have been placed there by the Missouri Department of Mental Health, which pays for their care. The second home, located in another school district, is a nonprofit boys ranch.

". . . Many of these boys have had encounters with the law and are considered to have mental blocks which prevent them from learning through the normal education process.
. . ."

We understand that some of these boys have been referred to the home by the Missouri Department of Social Services, Division of Family Services, which pays for their care; others, by the juvenile court; still others may have been sent by their parents. Further, many of the boys ". . . have no parents or guardian and are not originally from the area." In both homes, some of the students may be suffering from nervous disorders. The foregoing facts will be used as the basis for this opinion.

The new special educational services law (House Bill No. 474) is designed to provide all handicapped children special educational services sufficient to meet their needs and to maximize their capabilities. Section 162.670, RSMo Supp. 1973. Thus, the intent of the legislature is to afford the handicapped child the same rights to a free education as a normal child, recognizing that the handicapped child has special needs that require special services. See Opinion No. 179, Mallory, September 18, 1974.

From the facts that you have provided, it appears (and we shall so assume) that the children in the two homes are or may be "handicapped," as defined in Section 162.675(2), RSMo Supp. 1973, quoted above, rather than "severely handicapped." Section 162.675(3) defines "severely handicapped children" as:

". . . handicapped children under the age of twenty-one years who, because of the extent of the handicapping condition or conditions, as determined by competent professional evaluation, are unable to benefit from or meaningfully participate in

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programs in the public schools of a regular or special nature;"

Handicapped Children Placed In Homes
By The Department Of Mental Health

Our Opinion No. 290, Robb, December 6, 1974, holds that the Department of Mental Health must provide or procure special educational services for handicapped children who are patients of the Department of Mental Health on community placement. A child who is placed in a home by the Department of Mental Health has been "admitted to the programs or facilities provided" by the Department, for purposes of determining whether or not the Department must pay the school district in which the home is located for special educational services. Thus, these services are considered as if they were "provided or procured" by the Department of Mental Health. Section 162.970, RSMo Supp. 1973. Under the provisions of Section 162.970, the Department of Mental Health must charge the school district of residence of the child's parent or guardian an amount equal to the local tax effort per child of the parent's district. We also held in Opinion No. 290, 1974, that the Department of Mental Health may use state community placement funds or federal funds to furnish transportation for children who are admitted to the Department's programs.

Thus, the cost of special educational services for a handicapped child who has been placed in a home by the Missouri Department of Mental Health, including the cost of transportation, is paid by the Department, which is reimbursed by the school district in which the parent or guardian resides in accordance with Section 162.970, RSMo Supp. 1973.

Handicapped Children Placed In Homes By Others

Normally it is the school district in which the student lives that is responsible for providing public education. In Opinion No. 26, Manford, April 8, 1971, we held that mentally retarded children sent by nonresident parents for treatment to a home for the mentally retarded are residents of the school district in which the home is located. As long as they have been sent to the home for treatment or care--rather than for education--the cost of their education must be paid by the school district in which the home is located, regardless of whether or not their parents are supporting them. Section 167.151.2, RSMo 1969, which is analyzed in Opinion No. 26, 1971, provides as follows:

"Orphan children, children with only one parent living, and children whose parents

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do not contribute to their support--if the children are between the ages of six and twenty years and are unable to pay tuition--may attend the schools of any district in the state in which they have a permanent or temporary home without paying a tuition fee."

As we pointed out in Opinion No. 26, 1971, Missouri courts have recognized a distinction between "domicile" and "residence" for school purposes. Even though a child's domicile remains with his parents, his residence for school purposes is where he actually resides.

We later held in Opinion No. 27, McDaniel, March 9, 1973, that a child under the custody of the State Board of Training Schools [now the Missouri Department of Social Services, Division of Youth Services], who has been placed in a home--whether his own, a relative's, a foster or a group home--is entitled to attend school in the school district in which the home is located without payment of tuition. See also Section 167.151.2, RSMo 1969, quoted above.

If a school district is unable to provide special educational services to each handicapped child residing in such homes as required in Sections 162.670-162.995, RSMo Supp. 1973, the district must contract with another district or a public or a private agency for the special educational services, as specified in Section 162.705, RSMo Supp. 1973. The new law on special educational services further requires that transportation must be provided:

"The district responsible for furnishing special educational services shall provide necessary transportation for all handicapped children residing within the district, including transportation to and from contracted day classes, notwithstanding the provisions of sections 162.621 and 167.231, RSMo."
(Section 162.710, RSMo Supp. 1973)

Thus, the cost of special educational services and of transportation for a handicapped child placed in a home by a person or an agency other than the Missouri Department of Mental Health is paid by the school district in which the home is located.

CONCLUSION

It is the opinion of this office that:

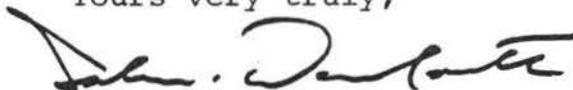
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(1) The cost of special educational services, including transportation, for a handicapped child who has been placed in a home by the Missouri Department of Mental Health, regardless of where those services are provided, is paid by the Department (under the provisions of Section 162.970, RSMo Supp. 1973). The Department of Mental Health is then reimbursed by the school district in which the parent or guardian resides or which would otherwise be responsible for special educational services for the child in an amount not to exceed the average sum produced per child by the local tax effort of the parent's district.

(2) The cost of special educational services and of transportation for a handicapped child not admitted to the programs or facilities of the Missouri Department of Mental Health who resides in a home that provides care or treatment--whether the child is an offender or troubled, abandoned, or neglected--is the responsibility of the school district in which the home is located. If the responsible district does not provide those services itself, it must contract with another district or with a public or a private agency for those services and it must provide transportation to the place where the services are provided.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hortense K. Snower.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 179
9-18-74, Mallory

Op. No. 290
12-6-74, Robb

Op. No. 26
4-8-71, Manford

Op. No. 27
3-9-73, McDaniel