

SCHOOLS: State Superintendent of Schools may authorize and approve state aid for special classes for physically and mentally handicapped children for less than the maximum amount allowed under the statutes.

August 2, 1943



Honorable Roy Scantlin
State Superintendent of Schools
Jefferson City, Missouri

Dear Mr. Scantlin:

This will acknowledge receipt of your letter of July 20, 1943, requesting an opinion, which is, omitting caption and signature, as follows:

"Inquiry has come to this Department about the laws governing the distribution of state school moneys based on special classes for handicapped children.

"Section 10351, R. S., 1939, authorizes the board of education to provide instruction for the physically handicapped children in the elementary grades when there are ten or more such handicapped children in the school that need such special instruction, or fifty or more for speech defectives as provided in Section 10355, R. S., 1939.

"Section 10353, R. S., 1939, provides for the apportionment of state aid for school districts in which special approved classes are provided for handicapped children. The amount to be apportioned by the state is limited to \$750.00 per annum for each teacher employed wholly in the instruction of pupils of the aforesaid classes pro-

vided that state aid shall in no case exceed two-thirds of the salary paid by the board of education. It appears that in some school districts of this state, classes may be organized on a more economical plan of instruction on a part-time basis. For example, one-half of the teacher's time may be given wholly to the instruction of special classes for handicapped children as provided in the law. The qualifications of the teacher, the number of pupils enrolled and other requirements of the law are fully met.

"I shall appreciate your advice and official opinion in answering the following question.

"1. Would it be in compliance with the provisions of the law for this Department to appropriate state aid to school districts on a part-time basis for only that time spent wholly in the instruction of handicapped pupils? For example, one-half of the teacher's time may be given wholly to the instruction of these classes for handicapped children as provided in the law. If it is proper to reimburse school districts for the time spent wholly in approved classes for the instruction of handicapped children for time less than the full day, the amount for a district giving one-half time would be only \$375.00 instead of \$750.00 for the full day class for the entire school term."

Directing our attention to the statutes of this State as they apply to all classes of schools we find at Section 10351 R. S. Mo., 1939, and subsequent sections provisions for special classes of students in school districts. We find it unnecessary to quote the entire section but merely

point out that the Legislature, in providing for the instruction of the physically and mentally handicapped children of the state, imposed on the board of directors of each school district the duty of ascertaining annually the number of children in a district belonging to the physically and mentally handicapped group. We find that school directors in school districts may provide instruction and special training for handicapped children. This instruction is to be limited to the elementary grades with certain provisions for the transportation of these individuals.

Section 10352 R. S. Mo., 1939, provides for joint schools for this special education provided appropriate state institutions are not available for this type of pupil. For the mutual benefit of school districts, their patrons and pupils arrangements may be made for joint school contract with adjacent school districts.

Section 10353 R. S. Mo., 1939, reads as follows:

"The state superintendent of public schools is hereby authorized to inspect and approve all special classes established under the provisions of Sections 10351 and 10352. Each school district maintaining special classes as provided for in the aforesaid sections, shall, when these classes have been approved by the state superintendent of public schools, receive state aid to the amount of seven hundred fifty dollars (\$750.00) per annum for each teacher employed wholly in the instruction of the pupils of the aforesaid classes: Provided, however, such aid shall not be granted for any teacher who has not been especially trained for work in such classes; and provided further, that the amount of special training shall be in accordance

with the rules and regulations established by the state superintendent of public schools, the amount of state aid granted on account of any teacher shall in no case exceed two-thirds of the salary paid such teacher by the local board. The state superintendent shall require such reports as he may desire from each of these special classes. The state superintendent shall cause the state treasurer to forward to the county clerk of each county, and to the secretary of the board of education of the city of St. Louis, the total amount shown to be due such county or such city under the provisions of this section."

Applying the provisions of this section to the problem raised in your letter, we find that the State Superintendent is authorized to approve special classes established under Sections 10351 and 10352 R. S. Mo., 1939. We further find that having exercised his discretion in the matter there is a mandatory provision that the district is to receive state aid to the amount of \$750.00 per teacher employed wholly in the instruction of pupils coming under the provisions of Sections 10351 and 10352, supra. Section 10351 further requires that the teacher shall be especially trained for work in the instruction of such pupils and that the state aid will not be available unless the teacher is so qualified. We find the further provision that the amount of such training is left to the discretion of the State Superintendent for the statute reads, "The amount of special training shall be in accordance with the rule and regulation established by the state superintendent."

Reading further, state aid granted on the salary of this teacher of these special classes shall in no case ex-

ceed two-thirds of the salary paid by the local board.

Digressing for the moment and looking to that portion of the section which reads, "Each school district maintaining special classes as provided for in the aforesaid sections, shall, when these classes have been approved by the superintendent of schools, receive state aid to the amount of seven hundred fifty dollars (\$750.00) per annum for each teacher employed wholly in the instruction of the pupils of the aforesaid classes: * * * "

We find the following definition of the word "wholly" in Webster's Dictionary, "In a whole or complete manner; entirely; completely; perfectly; to the exclusion of other things; totally; fully". For the purposes of our discussion we deem it unnecessary to go into great detail concerning the word "wholly". The program designed for this type of instruction being determined from examination by the State Superintendent as to the professional qualifications of the instructor and the practical needs of the district under consideration taken into consideration the intention of the Legislature we deem it unnecessary to more than point out the fact that the common usage of the word "wholly" is "in a whole or complete manner." As we shall point out later, if this program can be carried out in a whole or complete manner by having the instructor devote one-half the school day to this type of instruction we believe the intent of the Legislature to have been adequately complied with.

The question now arises, may the superintendent approve a program of instruction for handicapped children calling for less than the \$750.00 per annum for a teacher employed in the instruction of handicapped pupils. From our reading of the statutes and the interpretation of the word thereof it would seem the obvious intention of the Legislature to pay one-third of the salary of the qualified teacher approved by the State Superintendent if and when she devoted her entire time to this class of instruction. It would seem that the establishment of this special form of

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instruction within a school district rests entirely within the discretion of the State Superintendent. Having exercised that authority and discretion his duties become mandatory. As you will note, the statute declares that the district shall receive state aid to the amount of \$750.00. In other words, having determined that the district has qualified and having passed the point of approval, then all the other provisions of the statutes are mandatory and the State Superintendent could be required to fulfill all the obligations imposed.

The State Superintendent, having the authority to inspect, approve, and superintend the establishment of these classes, we see no reason why, in the exercise of his judgment, he may not, for example, reduce this program or restrict it to one-half the usual period of instruction, and in that event state aid would be available for one-half of the sum of \$750.00. This maximum amount may not be exceeded; and we see no good reason why, if the judgment of the superintendent so dictates, one-half of this amount may not be used in the operation of this special instruction program.

CONCLUSION

We therefore conclude from our reading of the statutes that the State Superintendent of Schools may authorize and approve special classes for physically and mentally handicapped children, which arrangement would call for less than the maximum amount of the state aid allowed such school districts who may qualify.

Respectfully submitted,

APPROVED:

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Attorney-General

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