

Opinion No. 65-218

October 29, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Gary O'Dowd, Assistant Attorney General

TO: Mr. Leonard J. De Layo, Superintendent of Public Instruction, State Department of Education, State Capitol, Santa Fe, New Mexico

QUESTION

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May educable children, residing at the New Mexico State Hospital at Las Vegas, be included in the Las Vegas School System's Average Daily Membership?

CONCLUSION

Yes, but see analysis.

OPINION

{*356} ANALYSIS

Certain mentally handicapped children of school age, residing at the New Mexico State Hospital at Las Vegas, are considered to be educable. The Las Vegas School System accordingly, has been sending teachers to the Hospital for the purpose of holding classes for these handicapped children. In turn, the Las Vegas School System has been counting these children in their Average Daily Membership for purposes of computing their share of the "equalization fund." We have been asked whether this is a permissible practice.

The legislature has provided for the instruction of educable and trainable mentally handicapped children in Section 73-12-8, N.M.S.A., 1953 Compilation (P.S.) which provides in part as follows:

"A. Upon petition of the superintendent of any administrative unit, instruction may be made available, or classes may be established within the school unit, for educable or trainable handicapped children; Provided the state superintendent of public instruction, through his findings concurs in the fact that a need exists. . . ."

"B. As used in this section: (1) 'Educable mentally handicapped children' means children between the ages of six (6) and twenty-one (21) years who, because of retarded intellectual development as determined by individual psychological evaluation are incapable of being educated profitably and efficiently through ordinary classroom

instruction, but may be expected to benefit from special educational facilities designed to make them economically useful and socially adjusted."

While Section 73-12-8 (supra) does provide for financing the instruction of these children, it does not answer the question presented here, and that is whether mentally handicapped children may be included in the Las Vegas School System's Average Daily Membership. Section 73-7-75 N.M.S.A., 1953 Compilation (P.S.) helps answer this question by providing in part as follows:

"Membership reports required. -- The superintendent of each administrative unit shall require each school under his jurisdiction to keep accurate records concerning the pupils under his jurisdiction, which will enable him to report to the state board of education the following required information:

* * * *

"B. The membership of all programs of education for educable handicapped children approved by the state board of {357} education within the administrative unit, for each month;. . ."(Emphasis Added).

The membership reports provided for in Section 73-7-75 (B), supra, are used in computing the allocations and distributions of the equalization fund. (See Section 73-7-60 N.M.S.A., 1953 Compilation, P.S.).

The Las Vegas State Hospital is within the Las Vegas "administrative unit" since an "administrative unit" is defined as "an area of land administered for school purposes by a single local board of education. (Section 73-7-57(D), N.M.S.A., 1953 Compilation, P.S.); and we have already been told that the Hospital is presently being administered for school purposes by the Las Vegas School System.

The above quoted sections make it clear that if all other provisions of the School and Education Act, (Chapter 73 of the New Mexico Statutes) have been met, and if such program of instruction has been approved by the State Board of Education, the Las Vegas School System may include educable and trainable mentally handicapped children in the State Hospital at Las Vegas within their Average Daily Membership.