

Opinion No. 68-55

May 28, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Harry Wugalter, Chief Public School Finance Division Department of Finance and Administration Santa Fe, New Mexico

QUESTION

FACTS

Section 77-11-3.1 B. N.M.S.A., 1953 Compilation provides as follows:

"Mentally or physically handicapped students attending a nonprofit training center pursuant to this section shall be counted as non-handicapped students in computing membership of the school district for distribution of the basic state support distribution of the Public School Equalization Fund."

QUESTION

Would the average daily membership of these nonprofit training centers be based on:

1. children of compulsory school age as set out in 77-10-2 as "any person attaining six years of age prior to January 1 of a school year and until attaining seventeen years of age"
2. children defined as educable and mentally handicapped under 77-11-3 as "children between the ages of six and twenty-one"
3. Any child in average daily membership regardless of age?"

CONCLUSION

See Analysis.

OPINION

{*92} ANALYSIS

In Attorney General Opinion No. 63-31, issued March 4, 1968, this office said that when handicapped students are attending a nonprofit training center pursuant to Section 77-11-3.1, supra, the Chief of Public School Finance must count those students as non-handicapped students and their membership must be weighted pursuant to subsections A and B of Section 77-6-18, supra. Since mentally handicapped students cannot be

classified as elementary, junior high or high school students, they are given the average weighting factor of the school district to which the distribution is made.

The above weighting factor is multiplied by the membership in the school district for the first 80 days of the school year to determine the weighted 80 day average daily membership. "Membership" as used in the Public School Finance Act means;

"the total enrollment of **qualified students** for each school day of the school year used, minus withdrawals of qualified students, divided by the number of school days of the school year used. . ." Section 77-6-2 D. N.M.S.A., 1953 Compilation.

A "qualified student" for the purpose of making allocations and distributions pursuant to Section 77-6-18 A, supra, means;

"a regularly enrolled public school student at least six (6) years of age prior to January 1 of a school year; not graduated from a high school; and regularly enrolled in one-half or more of the minimum course of instruction {93} requirements approved by the state board for public school school students;" Section 77-6-2 C, N.M.S.A., 1953 Compilation.

Since Section 77-11-3.1 B, supra, provides that the Chief of the Division of Public School Finance must count mentally or physically handicapped students attending nonprofit training centers as non-handicapped students for distribution of the basic state support distribution of the Public School Equalization Fund, it is our opinion that only those handicapped students attending nonprofit training centers who are "qualified students" as defined in Section 77-6-2, supra, may be counted in the membership of the school district. Thus to be counted in the membership of the school district the handicapped student attending a nonprofit training center must be at least six years of age prior to January 1 of the school year, have not graduated from high school and be enrolled in one-half or more of the minimum course of instruction of the nonprofit training school. We find no age limit for handicapped students to be counted as "qualified students" when determining membership of the school district for purposes of basic state support to the school district.

In answer to the alternatives presented in the question, we first of all do not believe that the compulsory school attendance law is to be used when determining "qualified students" for purposes of determining the basic state support to the school district. Secondly, we do not believe Section 77-11-3, N.M.S.A., 1953 Compilation is controlling. This section defines "educable mentally handicapped children" and "trainable mentally handicapped children" as children between the ages of six and twenty-one years of age who are in special educational facilities made available in the school district. Section 77-11-3.1, supra, does not require that mentally or handicapped students be "children" to attend a nonprofit training center. We believe that the third alternative has already been answered, the average daily membership of nonprofit training centers includes all qualified students who are six years of age or older prior to January 1 of the current school year. There is no age limit so long as the student meets the other requirements necessary to be classified as a "qualified student."

By: Gary O'Dowd

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