

Opinion No. 77-04

February 3, 1977

OPINION OF: Toney Anaya, Attorney General

BY: Leila Andrews, Assistant Attorney General

TO: Representative Thomas J. Horan, Room 343-A, Capitol Building, Santa Fe, New Mexico 87503

SPECIAL EDUCATION-CHILDREN-LOS LUNAS HOSPITAL & TRAINING SCHOOL-PUBLIC SCHOOL FINANCE ACT-LEARNING DISABILITIES-STATE BOARD OF EDUCATION.-The State of New Mexico is responsible for providing special education programs consistent with programs offered in the public schools for children admitted to and residing at the Los Lunas Hospital and Training School pursuant to the criteria established for providing services to all other exceptional children and through the local school district within which the institution is located.

QUESTIONS

1. Is the State of New Mexico responsible for providing special education programs for children admitted to and residing at the Los Lunas Hospital and Training School?
2. If the answer to the above question is in the affirmative, under what authority and through what governmental entity is funding for such special education programs to be provided?

CONCLUSIONS

1. Yes.
2. See Analysis.

ANALYSIS

1. In 1972, the Legislature adopted legislation providing special education for exceptional children. Laws of 1972, Chapter 95; Sections 77-11-3 to 3.3, NMSA, 1953 Comp. (1975 P.S.). This legislation has been implemented by the Public School Finance Act which provides funding for special education programs. See Section 77-6-18.4, NMSA 1953 Comp. (1975 P.S.). These acts provide a comprehensive scheme and set forth the philosophy of the State with regard to this subject, define the necessary terms, set the method of computation for special education program units for financing, and designate areas of responsibility to specific governmental entities. Section 77-11-3 sets the tone of the legislation and provides as follows:

The state shall require school districts over a five (5) year period to provide special education sufficient to meet the needs of all exceptional children. . . . Regulations and standards shall be developed and established {~~84~~} by the state board of education for the conduct of special education in the schools and classes of the public school system in the state and in all institutions wholly or partly supported by the state. (Emphasis added.)

OPINION

Justification for the broad scope of the law is found in the New Mexico Constitution at Article XII, Section 1 which requires that a uniform system of free public schools sufficient for the education of and open to, all the children of school age in the state be established and maintained. The only apparent qualification placed upon a "child of school age" seeking entry into the free public school system is that such child be of "sufficient physical and mental ability." Article XII, Section 5, New Mexico Constitution. The Legislature has refined each of these constitutional provisions by declaring, first, that a free public school education shall be available to any person who is a resident of this state and has not received a high school diploma or its equivalent. Section 77-1-4(C), NMSA, 1953 Comp. Second, under our compulsory school attendance law each school age child is required to attend school until obtaining a diploma or attaining the age of eighteen (18), unless the child is judged "based on standards and procedures adopted by the state board of education, to be unable to benefit from instruction because of learning disabilities or mental, physical or emotional conditions." Section 77-10-2(5), NMSA, 1953 Comp. (1975 P.S.).

Section 77-11-3.2(A) obligates the state board of education to make, adopt and keep current a state plan for special education policies, programs and standards. The section also requires the department to set standards for diagnosis and screening. Section 77-11-3.2(B). Pursuant to these duties, the state board of education has promulgated "A Plan for Delivery of Special Education Services in New Mexico." ("Plan"). The Plan is intended to regulate the conduct of special education in the schools and classes of the public school system in the state and in all institutions wholly or partly supported by the state. There can be no doubt that the Los Lunas Hospital and Training Center is an "institution" within the purview of Section 77-11-3. Section 77-1-2(P), NMSA, 1953 Comp. (1975 P.S.) defines "state institution" for purposes of the Public School Code, and includes the "Los Lunas Mental Hospital" within its terms.

The question then narrows to whether children admitted to and residing at the Los Lunas Hospital and Training School meet the test of Article XII, Section 5, and Section 77-10-2(5) and are of sufficient physical and mental ability to benefit from a public school education. Section 34-3-2 establishes the Los Lunas Hospital and Training School "for the care, custody, employment, education and training of mental defectives," and allows the hospital to diagnose and evaluate mental deficiency, presumably to determine, among other things, whether a child classified as a "mental defective" is "trainable" or "untrainable." Notwithstanding such authority, the intent of the legislature in 1972 was to provide special education sufficient to meet the needs of exceptional

children judged according to standards for diagnosis and screening adopted by the state board of education to be able to benefit from such instruction, not just those considered "educable" or "trainable." See *State v. Blevins*, 40 N.M. 367, 60 P.2d 208 (1936); *State v. Montiel*, 56 N.M. 181, 241 P.2d 844 (1952); *State v. Valdez*, 59 N.M. 112, 279 P.2d 868 (1955). Thus, the specific comprehensive scheme developed under the special education for exceptional children act should control and nullify the general provision relating to "mental defectives." The State of New Mexico is therefore responsible for providing special education programs consistent with programs offered in the public schools for children admitted to and residing at the Los Lunas Hospital and Training School pursuant to the criteria established for providing services to all other exceptional children.

2. Section 77-10-3, NMSA, 1953 Comp., allows any student subject to the compulsory school attendance law to attend public school within the school district in which he is a resident. Therefore, assuming a child of school age is admitted to and enrolled at Los Lunas Hospital and Training School, that child is also eligible to attend school at the local district within which the institution is located. The only test is whether the "person is judged, based on standards and procedures adopted by the state board of education, to be unable to benefit from instruction because of learning disabilities or, mental, physical or emotional conditions," Section 77-10-2(5), not his parent's place of residence. See also Section 77-1-4(C).

The "public school equalization fund," now called the "public school fund," Section 77-6-15, provides the basis for distribution of funds to local school districts. And, although Section 34-3-5(B) requires that funds be appropriated from the state public school equalization fund, the section makes no mention of what governmental entity administers the funds. However, the entire public school finance act rests on formulas for distribution of funds to local school districts and is dependent on that unit of government as a measure for all calculations. Clearly, distributions to the Los Lunas Hospital and Training School are not included within the allowed supplemental distribution. See Section 77-6-29.

In view of these provisions, the local school district within which the Los Lunas Hospital and Training School is located is the appropriate entity to receive funding pursuant to the public school finance act for special education of exceptional children.

We do suggest that, although the legislation is adequate to allow funding for special education students at this time, remedial legislation would be appropriate and helpful to clarify certain ambiguous and conflicting provisions in the laws discussed herein. See *State v. Lujan*, 76 N.M. 111, 412 P.2d 405 (1966).

ATTORNEY GENERAL

Toney Anaya, Attorney General