

SENATE BILL NO. 2147

Introduced by

Education Committee

(At the request of the Superintendent of Public Instruction)

1 A BILL for an Act to amend and reenact sections 15-40.2-05 and 15-40.2-09 of the North
2 Dakota Century Code or in the alternative to amend and reenact section 15.1-29-01 and
3 subsection 1 of section 15.1-29-06 of the North Dakota Century Code, relating to school district
4 tuition payment appeals to the state board of public school education; and to repeal section
5 15.1-29-08 of the North Dakota Century Code, relating to appealing a school board's decision
6 to not pay tuition for a kindergarten student.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** If House Bill No. 1045 does not become effective, section
9 15-40.2-05 of the 1999 Supplement to the North Dakota Century Code is amended and
10 reenacted as follows:

11 **15-40.2-05. Application of parent or guardian for payment of tuition by district.**

12 The parent or guardian of any student who is a resident of a district may apply in writing to the
13 school board of the student's school district of residence for approval of the payment of tuition
14 charges to another school district for attendance of the student in another school district. The
15 school board shall, within sixty days of its receipt of the application, meet with the student's
16 parent or guardian and render a decision in regard to the payment of tuition charges. If the
17 school board has not rendered a decision within sixty days of receipt of the application, the
18 application is deemed approved. If the school board of the district of residence approves the
19 application, it shall pay the tuition charges. If the application is disapproved, the student's
20 parent or guardian may file an appeal with the county superintendent of schools. A
21 three-member committee consisting of a member appointed by the board of county
22 commissioners for a term of three years or appointed to fill the unexpired portion of a term at
23 the time a vacancy occurs, the state's attorney, and the county superintendent of schools shall
24 within fifteen days consult with the school boards of the districts concerned and with the

1 student's parent or guardian, hold a hearing after giving advance notice to the parties directly
2 involved, and render a decision in regard to the payment of tuition charges. The hearing must
3 be conducted in a manner that allows the arguments and responses of all parties to be
4 presented. In making its decision, the committee shall determine whether the student is a high
5 school student, which, for purposes of this section, must be defined to mean grades nine
6 through twelve, whether the student is an elementary school student, which, for purposes of this
7 section, must be defined to mean grades one through eight, or whether the student is a
8 kindergarten student, which, for purposes of this section, must be defined as a program
9 established pursuant to chapter 15-45, and then proceed in accordance with the following:

- 10 1. High school. If the student is a high school student and the committee finds that
11 the attendance of the student is necessitated by shorter distances, previous
12 attendance in another high school, inadequacy of curriculum considering the
13 educational needs of the student, or extreme family or student hardship, the
14 committee may approve the application. Upon approval, the committee shall
15 approve the payment of tuition by the student's district of residence, obligating the
16 district of residence to pay the same. The committee's approval for the payment of
17 tuition may be for any fixed number of school terms, up to the completion of the
18 student's high school education. The decision of the committee may be appealed
19 to the state board of public school education and the decision of the board is final.
- 20 2. Elementary or kindergarten. If the student is an elementary or kindergarten
21 student and the committee finds that the attendance of the student is necessitated
22 by shorter distances or extreme family or student hardship, the committee may
23 approve the application. Upon approval, the committee shall approve the payment
24 of tuition by the student's district of residence, and obligate the district of residence
25 to pay the same. The committee's approval for the payment of tuition is limited to
26 one school term, and subsequent applications for the payment of tuition may be
27 made annually. The decision of the committee may be appealed to the state board
28 of public school education and the decision of the board is final.
- 29 ~~3. Kindergarten. If the student is a kindergarten student, the school board of the~~
30 ~~student's district of residence may pay tuition to the receiving district. The~~
31 ~~committee may not hear an appeal from the parents or guardian as provided for in~~

1 ~~this section if the school board of the district of residence decides not to pay tuition~~
2 ~~to the admitting district. If the school board of the district of residence does not pay~~
3 ~~the tuition to the admitting district, the student's parent or guardian may pay the~~
4 ~~tuition to the admitting district under the provisions of section 15-40.2-02.~~

5 If twenty-five percent or more of the taxable valuation of the school district of residence
6 lies in another county, the joint committee must consist of a member appointed by the board of
7 county commissioners for a term of three years or appointed to fill the unexpired portion of a
8 term at the time a vacancy occurs, the state's attorney, and the county superintendent of
9 schools from the county in which the school district headquarters is located, and any counties in
10 which twenty-five percent or more of the taxable valuation is located. The concurrence of a
11 majority of the quorum of the joint committee is necessary to render a decision regarding the
12 payment of tuition. If the student's district of residence does not comply with the decision
13 requiring that tuition charges be paid, the admitting district shall notify the county
14 superintendent of schools of the county of the student's residence and the state superintendent
15 of public instruction. Upon verification by the county superintendent of schools that tuition
16 payments are due the admitting district and are unpaid, all payments from the state for
17 foundation aid to the student's district of residence must be withheld until the tuition due has
18 been fully paid.

19 A school district of residence may provide transportation to a student for whom tuition is
20 being paid under this section. If a school district of residence does not provide transportation to
21 the student, it may be provided by the admitting district and the admitting district is then entitled
22 to state payments for the transportation of the student.

23 **SECTION 2. AMENDMENT.** If House Bill No. 1045 does not become effective, section
24 15-40.2-09 of the 1999 Supplement to the North Dakota Century Code is amended and
25 reenacted as follows:

26 **15-40.2-09. Attendance in public schools or institutions of bordering states, when**
27 **permitted - Continuation of attendance under certain circumstances.**

28 1. Students may attend a school in a bordering state in accordance with section
29 15-40.2-10 under the following circumstances:

- 1 a. A student who lives within forty miles [64.37 kilometers] of another state or in
2 a county bordering on another state may, with the approval of the school
3 board, attend a public school or institution in a bordering state.
- 4 b. A student who has attended a school district in a bordering state since, and
5 including, the 1990-91 school year, must be permitted to continue attending
6 school in the district in the bordering state.
- 7 c. A student, whose sibling attended an out-of-state school during or before the
8 1990-91 school year, must be permitted to attend school in the district the
9 sibling attends in the bordering state.
- 10 2. If the school board of the district in which the student resides denies a request for
11 attendance and payment of tuition in another state, an appeal may be made to the
12 three-member committee in accordance with section 15-40.2-05. If the
13 three-member committee determines that the student falls within the terms of
14 subdivision b or c of subsection 1, then the student may attend in the bordering
15 state and the school district of residence shall pay the tuition. If the three-member
16 committee determines the student falls within the terms of subdivision a of
17 subsection 1, then the three-member committee shall make its decision using the
18 criteria specified in section 15-40.2-05. ~~For kindergarten students, the~~
19 ~~three member committee shall use the criteria specified for elementary students in~~
20 ~~section 15-40.2-05. Subsection 3 of section 15-40.2-05 does not apply to an~~
21 ~~appeal for out-of-state attendance and payment of tuition.~~ Regardless of the
22 provisions of this section, if the school district of residence does not provide for the
23 education of kindergarten students, it may not pay tuition for a kindergarten student
24 to attend school in a bordering state. The decision of the committee regarding
25 payment of tuition for high school, elementary, or kindergarten students may be
26 appealed by the school board, or the parent or guardian of the student, to the state
27 board of public school education, whose decision is final.
- 28 3. Foundation aid payments for students attending out-of-state schools must be made
29 to the district of residence. However, the district of the student's residence is
30 entitled to reduce the tuition payment to an out-of-state school by an amount
31 commensurate with the tuition costs the district would be entitled to receive as

- 1 compensation for a student from the out-of-state district enrolled in its school.
2 Transportation payments for students attending school in a bordering state must be
3 determined as provided in section 15-40.1-16.
- 4 4. This section does not require the district of residence to provide student
5 transportation, or payments in lieu thereof, for students attending out-of-state
6 schools.

7 **SECTION 3. AMENDMENT.** Section 15.1-29-01 of the North Dakota Century Code as
8 created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is
9 amended and reenacted as follows:

10 **15.1-29-01. Education of students in bordering states - Payment of tuition.**

- 11 1. Students may attend a school in a bordering state in accordance with section
12 15.1-29-02 under the following circumstances:
- 13 a. A student who lives within forty miles [64.37 kilometers] of another state or in
14 a county bordering on another state may, with the approval of the school
15 board, attend a public school or institution in a bordering state.
- 16 b. A student who has attended a school district in a bordering state since, and
17 including, the 1990-91 school year must be permitted to continue attending
18 school in the district in the bordering state.
- 19 c. A student whose sibling attended an out-of-state school during or before the
20 1990-91 school year must be permitted to attend school in the district the
21 sibling attended in the bordering state.
- 22 2. If the school board of the district in which the student resides denies a request for a
23 student's attendance in and payment of tuition to another state, the student's
24 parent may appeal the decision to the three-member committee referenced in
25 section 15.1-29-06.
- 26 a. If the three-member committee determines that the student meets the terms
27 of subdivision b or c of subsection 1, the student may attend school in the
28 bordering state and the board of the student's school district of residence shall
29 pay the tuition.

- 1 b. If the three-member committee determines the student falls within the terms of
2 subdivision a of subsection 1, then the three-member committee shall make
3 its decision using the criteria specified in section 15.1-29-06.
- 4 c. ~~If the student is a kindergarten student, the three-member committee shall~~
5 ~~apply the same criteria as that specified for elementary students in section~~
6 ~~15.1-29-06, except that subsection 2 of section 15.1-29-06 does not apply to~~
7 ~~an appeal for out-of-state attendance and payment of tuition.~~ Notwithstanding
8 the provisions of this section, if a student's school district of residence does
9 not provide for the education of kindergarten students, the district may not pay
10 tuition for a kindergarten student to attend school in a bordering state.
- 11 d. Any decision by the three-member committee regarding the payment of tuition
12 for high school, elementary, or kindergarten students may be appealed by the
13 school board or by the student's parent to the state board of public school
14 education. A decision by the state board is final.
- 15 3. a. The superintendent of public instruction shall forward all per student and
16 transportation aid payments for a student attending an out-of-state school to
17 the student's school district of residence.
- 18 b. The student's district of residence may reduce any tuition payment it must
19 make to an out-of-state school by an amount commensurate with the tuition
20 costs the district would be entitled to receive as compensation for a student
21 from the out-of-state district enrolled in its school.
- 22 c. Transportation payments for a student attending school in a bordering state
23 must be determined as provided in section 15.1-27-27.
- 24 4. Nothing in this section requires that a school district of residence provide student
25 transportation or payments in lieu of transportation for students attending
26 out-of-state schools.

27 **SECTION 4. AMENDMENT.** Subsection 1 of section 15.1-29-06 of the North Dakota
28 Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative
29 assembly, is amended and reenacted as follows:

- 30 1. a. Within fifteen days after receipt of an appeal filed under section 15.1-29-05,
31 the county superintendent of schools shall convene a three-member

- 1 committee consisting of the county superintendent, the state's attorney, and
2 one member appointed by the board of county commissioners for a term of
3 three years. The committee shall consult with the boards of the affected
4 districts and with the student's parent. The committee shall schedule a
5 hearing, giving due notice to each affected board and to the student's parent.
6 The committee shall conduct the hearing in a manner that allows all parties to
7 present arguments and responses. The committee shall base its decision
8 regarding the payment of tuition on the grade in which the student is enrolled.
- 9 b. If the student is or during the following school year will be enrolled in any
10 grade from nine through twelve and the committee finds that the attendance
11 of the student is necessitated by shorter distances, previous attendance in
12 another high school, inadequacy of curriculum considering the student's
13 educational needs, or extreme hardship for the student or the student's family,
14 the committee shall approve the application and the payment of tuition by the
15 student's school district of residence, thereby obligating the district of
16 residence to pay the tuition. The committee's directive regarding the payment
17 of tuition may be for any fixed number of school years, up to the completion of
18 the student's high school education, unless open enrollment is an available
19 option. The decision of the committee may be appealed to the state board of
20 public school education. A decision by the state board is final.
- 21 c. If the student is or during the following school year will be enrolled in any
22 grade from ~~one~~ kindergarten through eight and the committee finds that the
23 attendance of the student is necessitated by shorter distances or extreme
24 hardship for the student or the student's family, the committee shall approve
25 the application and the payment of tuition by the student's district of
26 residence, thereby obligating the district of residence to pay the tuition. The
27 committee's directive regarding the payment of tuition is limited to one school
28 year. The student's parent may make subsequent applications for the
29 payment of tuition. The decision of the committee may be appealed to the
30 state board of public school education and the decision of the board is final
31 ~~and is not subject to appeal.~~

1 **SECTION 5. REPEAL.** Section 15.1-29-08 of the North Dakota Century Code as
2 created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is
3 repealed.