

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2147
(Education Committee)
(At the request of the Superintendent of Public Instruction)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

15-40.2-05. Application of parent or guardian for payment of tuition by district. The parent or guardian of any student who is a resident of a district may apply in writing to the school board of the student's school district of residence for approval of the payment of tuition charges to another school district for attendance of the student in another school district. The school board shall, within sixty days of its receipt of the application, meet with the student's parent or guardian and render a decision in regard to the payment of tuition charges. If the school board has not rendered a decision within sixty days of receipt of the application, the application is deemed approved. If the school board of the district of residence approves the application, it shall pay the tuition charges. If the application is disapproved, the student's parent or guardian may file an appeal with the county superintendent of schools. A three-member committee consisting of a member appointed by the board of county commissioners for a term of three years or appointed to fill the unexpired portion of a term at the time a vacancy occurs, the state's attorney, and the county superintendent of schools shall within fifteen days consult with the school boards of the districts concerned and with the student's parent or guardian, hold a hearing after giving advance notice to the parties directly involved, and render a decision in regard to the payment of tuition charges. The hearing must be conducted in a manner that allows the arguments and responses of all parties to be presented. In making its decision, the committee shall determine whether the student is a high school student, which, for purposes of this section, must be defined to mean grades nine through twelve, whether the student is an elementary school student, which, for purposes of this section, must be defined to mean grades one through eight, or whether the student is a kindergarten student, which, for purposes of this section, must be defined as a program established pursuant to chapter 15-45, and then proceed in accordance with the following:

1. High school. If the student is a high school student and the committee finds that the attendance of the student is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the educational needs of the student, or extreme family or student hardship, the committee may approve the application. Upon approval, the committee shall approve the payment of tuition by the student's district of residence, obligating the district of residence to pay the same. The committee's approval for the payment of tuition may be for any fixed number of school terms, up to the completion of the student's high school education. The decision of the committee may be appealed to the state board of public school education and the decision of the board is final.
2. Elementary or kindergarten. If the student is an elementary or kindergarten student and the committee finds that the attendance of the student is necessitated by shorter distances or extreme family or student hardship, the committee may approve the application. Upon approval, the committee shall approve the payment of tuition by the student's district of

residence, and obligate the district of residence to pay the same. The committee's approval for the payment of tuition is limited to one school term, and subsequent applications for the payment of tuition may be made annually. The decision of the committee may be appealed to the state board of public school education and the decision of the board is final.

3. ~~Kindergarten. If the student is a kindergarten student, the school board of the student's district of residence may pay tuition to the receiving district. The committee may not hear an appeal from the parents or guardian as provided for in this section if the school board of the district of residence decides not to pay tuition to the admitting district. If the school board of the district of residence does not pay the tuition to the admitting district, the student's parent or guardian may pay the tuition to the admitting district under the provisions of section 15-40.2-02.~~

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

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

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

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

1. Students may attend a school in a bordering state in accordance with section 15-40.2-10 under the following circumstances:
 - a. A student who lives within forty miles [64.37 kilometers] of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state.
 - b. A student who has attended a school district in a bordering state since, and including, the 1990-91 school year, must be permitted to continue attending school in the district in the bordering state.
 - c. A student, whose sibling attended an out-of-state school during or before the 1990-91 school year, must be permitted to attend school in the district the sibling attends in the bordering state.
2. If the school board of the district in which the student resides denies a request for attendance and payment of tuition in another state, an appeal may be made to the three-member committee in accordance with section 15-40.2-05. If the three-member committee determines that the student falls within the terms of subdivision b or c of subsection 1, then the student may attend in the bordering state and the school district of

residence shall pay the tuition. If the three-member committee determines the student falls within the terms of subdivision a of subsection 1, then the three-member committee shall make its decision using the criteria specified in section 15-40.2-05. ~~For kindergarten students, the three member committee shall use the criteria specified for elementary students in section 15-40.2-05. Subsection 3 of section 15-40.2-05 does not apply to an appeal for out-of-state attendance and payment of tuition.~~ Regardless of the provisions of this section, if the school district of residence does not provide for the education of kindergarten students, it may not pay tuition for a kindergarten student to attend school in a bordering state. The decision of the committee regarding payment of tuition for high school, elementary, or kindergarten students may be appealed by the school board, or the parent or guardian of the student, to the state board of public school education, whose decision is final.

3. Foundation aid payments for students attending out-of-state schools must be made to the district of residence. However, the district of the student's residence is entitled to reduce the tuition payment to an out-of-state school by an amount commensurate with the tuition costs the district would be entitled to receive as compensation for a student from the out-of-state district enrolled in its school. Transportation payments for students attending school in a bordering state must be determined as provided in section 15-40.1-16.
4. This section does not require the district of residence to provide student transportation, or payments in lieu thereof, for students attending out-of-state schools.

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

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

1. Students may attend a school in a bordering state in accordance with section 15.1-29-02 under the following circumstances:
 - a. A student who lives within forty miles [64.37 kilometers] of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state.
 - b. A student who has attended a school district in a bordering state since, and including, the 1990-91 school year must be permitted to continue attending school in the district in the bordering state.
 - c. A student whose sibling attended an out-of-state school during or before the 1990-91 school year must be permitted to attend school in the district the sibling attended in the bordering state.
2. If the school board of the district in which the student resides denies a request for a student's attendance in and payment of tuition to another state, the student's parent may appeal the decision to the three-member committee referenced in section 15.1-29-06.
 - a. If the three-member committee determines that the student meets the terms of subdivision b or c of subsection 1, the student may attend school in the bordering state and the board of the student's school district of residence shall pay the tuition.
 - b. If the three-member committee determines the student falls within the terms of subdivision a of subsection 1, then the three-member committee shall make its decision using the criteria specified in section 15.1-29-06.
 - c. ~~If the student is a kindergarten student, the three member committee shall apply the same criteria as that specified for elementary students in section 15.1-29-06, except that subsection 2 of section 15.1-29-06 does not apply to an appeal for out-of-state attendance and payment of tuition.~~ Notwithstanding the provisions of this section, if a student's school district of residence does not provide for the education of

kindergarten students, the district may not pay tuition for a kindergarten student to attend school in a bordering state.

- d. Any decision by the three-member committee regarding the payment of tuition for high school, elementary, or kindergarten students may be appealed by the school board or by the student's parent to the state board of public school education. A decision by the state board is final.
3.
 - a. The superintendent of public instruction shall forward all per student and transportation aid payments for a student attending an out-of-state school to the student's school district of residence.
 - b. The student's district of residence may reduce any tuition payment it must make to an out-of-state school by an amount commensurate with the tuition costs the district would be entitled to receive as compensation for a student from the out-of-state district enrolled in its school.
 - c. Transportation payments for a student attending school in a bordering state must be determined as provided in section 15.1-27-27.
 4. Nothing in this section requires that a school district of residence provide student transportation or payments in lieu of transportation for students attending out-of-state schools.

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

1.
 - a. Within fifteen days after receipt of an appeal filed under section 15.1-29-05, the county superintendent of schools shall convene a three-member committee consisting of the county superintendent, the state's attorney, and one member appointed by the board of county commissioners for a term of three years. The committee shall consult with the boards of the affected districts and with the student's parent. The committee shall schedule a hearing, giving due notice to each affected board and to the student's parent. The committee shall conduct the hearing in a manner that allows all parties to present arguments and responses. The committee shall base its decision regarding the payment of tuition on the grade in which the student is enrolled.
 - b. If the student is or during the following school year will be enrolled in any grade from nine through twelve and the committee finds that the attendance of the student is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the student's educational needs, or extreme hardship for the student or the student's family, the committee shall approve the application and the payment of tuition by the student's school district of residence, thereby obligating the district of residence to pay the tuition. The committee's directive regarding the payment of tuition may be for any fixed number of school years, up to the completion of the student's high school education, unless open enrollment is an available option. The decision of the committee may be appealed to the state board of public school education. A decision by the state board is final.
 - c. If the student is or during the following school year will be enrolled in any grade from ~~one~~ kindergarten through eight and the committee finds that the attendance of the student is necessitated by shorter distances or extreme hardship for the student or the student's family, the committee shall approve the application and the payment of tuition by the student's district of residence, thereby obligating the district of residence to pay the tuition. The committee's directive regarding the payment of tuition is limited to one school year. The student's parent may make subsequent applications for the payment of tuition. The decision of the committee may be appealed to the state board of public school education and the decision of the board is final and is not subject to appeal.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2147.

Senate Vote: Yeas 49 Nays 0 Absent 0

House Vote: Yeas 93 Nays 0 Absent 5

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,
at _____ o'clock _____ M.

Secretary of State