

OFFICIAL OPINION NO. 71-54, Obligations of a district to provide transportation for secondary students under certain situations.

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

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Edward M. Blando
Deputy States Attorney, Hughes County
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 71-54

Obligations of a district to provide transportation for secondary students under certain situations.

Dear Mr. Blando:

You have requested an official opinion based on the following factual situations:

"X" Independent School District operates an accredited high school. The physical makeup of the district is such that the northerly end of the district is much more densely populated and the roads therein better and more numerous than the southerly portion of the district. Wherein the high school students are sparsely located, some being as far as 30 to 40 miles from the high school proper, and the roads are few and not as well connected or maintained. In the northerly portion bus pickups are made of high school students at, or nearly at, the individual driveways of their residence. However, the school board of the district has determined that it is financially not feasible to provide corresponding service on the southerly portion of the district. Further, they have determined that the time required to drive a route in that area would be prohibitive to the welfare of the students in that some of them would have up to a 2 1/2 hour bus ride one way to and from school. They have proposed instead that there be a central pickup for the high school students in the southerly end of the district to which a bus would be sent to and from the high school nonstop, a distance of approximately 23 miles. This proposed procedure would require that the students or their parents provide transportation for the students up to 6 miles from their home to the proposed central pickup point.

You have asked the following specific questions:

1. Can the school board require parents and students to use the central pickup method to obtain bus service?
2. Considering the type of bus service provided in the northerly end of the district, would the central pickup method be considered as "bus service" to the students in the southerly end of the district?
3. If the answer to either of the above (1) and (2) is negative is the school district obligated to pay tuition for any of the students in the southerly end of the district who desire to attend a high school outside of the district?

SDCL 13-30-1 reads in part as follows:

The following types of students who do not have access to bus service furnished by the school district to and from school shall be entitled to a transportation or board and room allowance, provided in this chapter, to be paid by the district wherein the student has school residence regardless of the type or method of conveyance used for transportation:

- (1) The elementary student who attends an elementary school to which he had been assigned and which is located more than two and one-half miles from his residence in either the same or any other school district;
- (2) The secondary student who attends a high school which is located in the same district wherein the said student is a resident and which is more than two and one-half miles from the student's residence, provided such transportation is authorized by his school district board...

SDCL 13-28-20 reads as follows:

If a student lives more than ten miles from the nearest high school being operated in his own district and bus service or dormitories are not provided said student, the school board shall assign and pay the tuition for the student to any public high school or any state institution offering high school subjects in this state or any other state which the student's parent or guardian requests; provided that this provision shall not apply in counties operating a county high school created prior to March 13, 1963.

The Attorney General has consistently held that the granting or withholding of transportation for secondary students lies within the sound discretion of the governing body of the home school district. These opinions have been based upon the above statutes and similar wording in prior statutes. (see 1967-68 AGR 48) It is my opinion, however, that if the governing body of a school district elects to provide transportation for secondary students, transportation must then be made available to all secondary students who reside within the district. The transportation may be in the form of mileage paid to the parents, or bus service or a combination thereof.

Based on the factual situation you have submitted and in answer to your question no. 1, it is my opinion that in order for a central pickup method to qualify as providing bus service under the above statute that the central pickup point must be within a reasonable distance of the secondary student's residence. It is also my opinion that 2 1/2 miles or less would constitute a reasonable distance.

In answer to your question no. 2 and based upon my answer to your question no. 1, it is my opinion that a central pickup point located more than 2 1/2 miles from the secondary student's residence would not constitute furnishing bus service to a secondary student.

In answer to your question no. 3 it is my opinion that under the provisions of SDCL 13-28-20 the school district would be obligated to pay tuition for its students who are residents of the district who live more than 10 miles from the nearest high school being operated within its district and bus service or dormitories are not provided said student.

Respectfully submitted,

Gordon Mydland
Attorney General