

OFFICIAL OPINION NO. 76-106, Necessary transportation for an exceptional child

November 2, 1976

Mr. Thomas C. Todd, State Superintendent  
Division of Elementary and Secondary Education  
New State Office Building  
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 76-106

**Necessary transportation for an exceptional child**

Dear Mr. Todd:

You have requested an official opinion from this office in regard to the following factual situation:

FACTS:

Mr. and Mrs. "X" are legally blind and are the parents of "Y" who attends the School for the Visually Handicapped at Aberdeen. Due to their handicap, Mr. and Mrs. "X" are unable to transport "Y" to and from Aberdeen by automobile. On a certain weekend, "Y" is flown from Aberdeen to Sioux Falls by chartered airplane and then returns to Aberdeen by bus with his parents accompanying him. The parents then return to Sioux Falls by bus. "Y" can make the trip by chartered airplane by himself; however, "Y" cannot, at the present time, travel on a bus by himself.

The question you ask is:

QUESTION:

Under SDCL 13-37-8.9 and 13-61-7, what are the necessary transportation expenses that Mr. and Mrs. "X" are eligible to receive?

SDCL 13-37-8.9 provides:

Where appropriate transportation is not provided by the school district, any exceptional child, when legally assigned, shall be eligible for necessary transportation at the rate per mile set forth in § 13-30-3, provided, however, that the maximum shall be twice the dollar limitation set forth in § 13-30-3. The district wherein an exceptional child has school residence shall pay the transportation expenses from the district's special education fund.

SDCL 13-30-3 provides:

The amount of the transportation allowance shall be eight cents per mile for distances actually traveled in excess of two and one-half miles each way, provided that no travel allowance shall exceed the limit of seven hundred dollars per family and provided that no mileage shall be paid for extra trips to the schoolhouse which the school board does not deem necessary nor for more miles than would have to be traveled if the shortest fixed publicly used roads were traveled. Such distance shall be measured from the place on such publicly used road nearest the dwelling house of the child to the schoolhouse site.

SDCL 13-37-13 provides:

Neither the superintendent of elementary and secondary education, nor any school district shall expend any public funds under the provisions of this chapter for the education of exceptional children enrolled in any state-owned institution, except for transportation as provided in § 13-37-8.9. The provisions of this chapter may apply to approved programs and services provided by state universities and colleges, and for assignment to institutions outside of South Dakota for services not available within the state.

In Memorandum Opinion No. 76-20 with reference to the above statutes, I stated my opinion that SDCL 13-37-8.9 established the rate per mile that an exceptional child is eligible to receive regardless of the type of transportation used.

When the parents go by automobile to Aberdeen to pick up the exceptional child and they then return the child to Aberdeen by automobile, it is my opinion that the necessary transportation is two round trips at eight cents per mile. If the child alone makes the trip by bus, then the necessary transportation is one round trip at eight cents per mile.

In answer to your specific question, it is my opinion that if the child goes from Aberdeen to

his home by chartered airplane, the necessary transportation is one round trip from Aberdeen to the home at eight cents per mile and if the child goes from home to Aberdeen by bus and it is necessary for a parent to accompany him, then the necessary transportation is a one way trip at eight cents per mile for the child and one round trip at eight cents per mile for the parent.

Respectfully submitted,

WILLIAM J. JANKLOW  
ATTORNEY GENERAL

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