

Opinion No. 52-5595

September 26, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Tom Wiley Superintendent of Public Instruction Santa Fe, New Mexico

{*307} This is in reply to your letter of September 16, 1952, in which you request an interpretation of Section 55-1201 N.M.S.A. In this connection, you mention that at the present time certain negro high school children who live in the Anthony, New Mexico School District are being transported to the Las Cruces School District where they attend high school in segregated buildings. You further state that some of those negro students are requesting entrance to the high school at Anthony, which is in their own district. Finally, you ask whether these negro children "may legally insist upon a school within their own district." Section 55-1201 N.M.S.A. reads as follows:

"Admittance of residents of district to its schools -- Separate schools for colored pupils -- Restrictions. -- Pupils who are residents of a district shall be permitted to attend school in the same regardless of the time when they acquired such residence, whether before or after the enumeration. Provided, that where, in the opinion of the county school board or municipal school board and on approval of said opinion by the state board of education, it is for the best advantage and interest of the school that separate rooms be provided for the teaching of pupils of African descent, and said rooms are so provided, such pupils may not be admitted to the school rooms occupied and used by pupils of Caucasian or other descent, and teaching therein shall be efficient. Provided, further, that pupils of Caucasian or other descent may not be admitted to the school rooms so provided for those of African descent."

In answer to your inquiry, it is my opinion that this statute gives all pupils, including the negro students you mention, the right to attend school in the District where they are resident. This does not mean, however, that they may insist upon a separate school. As I stated in Attorney General's Opinion No. 5409, dated August 29, 1951, it is my opinion that whereas the term "separate rooms" in Section 55-1201 N.M.S.A., is broad enough to include "separate buildings," the statute does not authorize a separate school for negro students, in the sense of a distinct administrative unit.

{*308} Under the terms of the statute, however, if the Anthony school board should determine that it is for the best interest of the school to provide "separate rooms" for the instruction of negro pupils, such steps may be taken with the approval of the State Board of Education. Any rooms so provided for negro pupils under Section 55-1201 must be "as good and as well kept as those by pupils of Caucasian or other descent, and teaching therein shall be as efficient." See also Attorney General's Opinion No. 5409 for a further discussion of this point. In any event, whether the school board decides to take action to provide separate rooms or not, the right of these pupils to attend school in the district of their residence remains fixed by Section 55-1201.

I trust that this opinion answers fully your inquiry on this subject.