

## **Opinion No. 68-31**

March 4, 1968

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. Harry Wugalter, Chief Public School Finance Division Department of Finance & Administration State Capitol Santa Fe, New Mexico

### **QUESTIONS**

What weighting factor should be used for distribution to school districts having a nonprofit training center for handicapped students?

### **CONCLUSION**

See analysis.

### **OPINION**

#### **{\*55} ANALYSIS**

Handicapped students may be educated in either an educational program for handicapped students within the school or in a non-profit training center. Prior to 1967 nonprofit training centers received no basic support from the state.

Section 77-6-18, N.M.S.A., 1953 Compilation provides in part that:

"In weighting membership, the chief (Chief of Public School Finance) shall take as the membership to be weighted the estimated membership of the first eighty days of the current school year, exclusive of membership in any educational program for handicapped students that has been approved by the state superintendent."

The weighting of membership is accomplished by following the table set forth in Section 77-6-18 B, supra, Section 77-6-18 D, supra, requires that the membership in any educational program for handicapped students shall be separately weighted by the Chief of Public School Finance by a factor of two. Section 77-6-18, supra is a part of the Public School Finance Act, which was enacted as a part of Chapter 16, Laws of 1967.

Also enacted in 1967 is Chapter 290, Laws of 1967 which was compiled as Section 77-13-3.1, N.M.S.A., 1953 Compilation. Subsection B of Section 77-11-3.1, supra provides as follows:

"Mentally or physically handicapped students in computing membership of the school district for distribution of the basic state-support distribution of the public school equalization fund."

Thus we see that Section 77-6-18 D, *supra*, provides that the weighting factor for handicapped students in a program that has been approved by the state superintendent is to be a factor of two. Section 77-11-3.1, *supra*, enacted by the same session of our legislature provides that handicapped students attending a non-profit training center are to be computed as non-handicapped students in computing membership of the school district for purposes of distribution. It is fundamental that when two statutes relate to the same subject matter, whenever possible, we must give effect to both and construe them as consistent with each other. **A.T. & S.F. Ry. Co. v. Town of Silver City**, 40 N.M. 305, 59 P.2d 351 (1936); **State ex rel. State Park and Recreation Commission v. New Mexico State Authority**, 76 N.M. 1, 411 P.2d 984 (1966). As will be seen below Sections 77-6-18 and 77-11-3.1, *supra*, may be construed as consistent with each other.

We pointed out above that there are two types of educational programs for handicapped students, {\*56} those that are a part of the educational program of the school and those that are conducted in nonprofit training centers. It is our opinion that when the program is a part of the educational program of the school, the membership in the program should be separately weighted by the Chief of Public School Finance by a factor of two pursuant to Section 77-6-18 D, *supra*. However, when handicapped students are attending a nonprofit training center within their school district the Chief of Public School Finance must count those students as non-handicapped students, and their membership must be weighted pursuant to subsections A and B of Section 77-6-18, *supra*.

We realize that it is impossible to determine whether mentally handicapped students should be given an "Elementary Factor" a "Junior High Factor" or a "High School Factor" pursuant to Section 77-6-18 B, *supra*. In order to carry out the legislative intent we believe that it is proper to use the method of weighting handicapped students in nonprofit training centers suggested by the Public School Finance Division. That is handicapped students in nonprofit training centers approved by the state superintendent should be given the average weighting factor of the school district to which the distribution will be made. The Chief of the Division of Public School Finance will then multiply the basic support figure appropriated for the year by the total weighted 80 day average daily membership.

The school district will receive an amount equal to the product of the basic support figure appropriated for the year and the weighted average daily membership for the school district from the date that the superintendent of public instruction approves the nonprofit training center for educating or training mentally or physically handicapped students within the school district.

If the training center program has been in effect for five months, a school district will receive five-ninths of the product of the total weighted 80 day average daily membership and the basic support figure. For example if the total weighted 80 day average daily membership is 12.50 with a basic support of \$ 272.50, the school district would receive

\$ 3,406.25 in state support. If the training center has operated for five months of the year, the school district will receive five-ninths of \$ 3,406.25 or \$ 1,892.35.

By: Gary O'Dowd

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