

## Opinion No. 79-36

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**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** John F. Kennedy, Assistant Attorney General

**TO:** The Honorable Thomas T. Rutherford, Senate Majority Whip, 729 Loma Vista Drive, N.E., Albuquerque, New Mexico 87106

### PUBLIC SCHOOLS

School boards may impose boundaries within the school district for the purpose of allocating students among the public schools.

### QUESTIONS

May a school district impose boundaries designating which schools students must attend within the district even if the content and quality of the programs in the schools in the district are not equal?

### CONCLUSIONS

Yes.

### ANALYSIS

Section 22-12-4, of the School Attendance Law [Section 22-12-1 to 22-12-7 NMSA 1978], provides in part:

"All school age persons in the state shall have a right to a free public education as follows:

A. except for school age persons who are detained or enrolled in state institutions other than those school age persons provided for in Subsection C of this section, any school age person shall have a right to attend public school within the school district in which he resides or is present. . . ."

### OPINION

Residents of a school district are thus entitled to attend public school in the district where they reside or are present but not necessarily any particular public school. So long as the provisions of Section 22-12-4, **supra**, are satisfied, the school board may allocate attendance within the district.

Section 22-5-4A NMSA 1978 authorizes the local school board to "supervise and control all public schools within the school district, and all property belonging to or in the possession of the school district," subject to the regulations of the State Board of Education. This duty includes management of curriculum and daily operation of education programs. Pursuant to statutory directive, Section 22-2-8 NMSA 1978, the State Board of Education has prescribed minimum educational standards for all public schools of the State. These standards have been promulgated by the State Board of Education as Regulation No. 78-9. Once properly adopted, these standards have the force and effect of law. **Brininstool v. New Mexico State Board of Education**, 81 N.M. 319, 466 P.2d 885 (Ct. App. 1970).

Chapter eight of these standards covers staffing patterns and maximum teaching loads for instructional personnel within each district. The teaching load for the various grade levels does vary but the standards require that "[t]he overall district ratio of students to teachers shall not exceed twenty-five to one (25:1)." Section 8.1.1, {**\*88**} Minimum Educational Standards for New Mexico Schools, April, 1978 rev. ed. (Minimum Standards). Thus, local school boards should develop attendance patterns which do not exceed maxima, and informal districting for attendance purposes is warranted in order to maximize utilization of staff and facilities.

Nevertheless, students may not be forced to attend a particular public school. See Opinion of the Attorney General No. 73-59, dated August 13, 1973. Non-residents of a school district may enroll in a particular school where "there are sufficient school accommodations to provide for them. . . ." Section 22-12-5(A) NMSA 1978. Enrollment in another school within the district would be subject to similar conditions. Availability of accommodations may be the controlling factor, see **Carter v. Montoya**, 75 N.M. 730, 410 P.2d 951 (1966), and must be determined by the local board.

This conclusion is not affected by inequality of program content or quality in the various schools within a particular district. The Minimum Standards address assessment of student and district needs in instructional program planning, curriculum development, and inservice education within the public schools in New Mexico. These standards are intended to ensure a minimum basic educational program in New Mexico in accordance with the Compulsory School Attendance Law and the constitutional provision that there be a free and uniform system of public schools contained in Art. XII, Section 1, N.M. Constitution. Particular local schools will vary in their capacities to exceed these minimum educational requirements, but the Constitution and statutes require only that the minimum be met.

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