



TERRY E. BRANSTAD GOVERNOR

DEPARTMENT OF EDUCATION
TED STILWILL DIRECTOR

DECLARATORY RULING #50
(Cite as 15 D.o.E. App. Dec. 181)

February 9, 1998

Mr. Lynn Hansen, Superintendent
Graettinger Community School Dist.
400 Lost Island Street
Graettinger, IA 51342

Dear Mr. Hansen:

This is in response to the Petition for a Declaratory Ruling, which was filed with our office on November 3, 1997. In your request, you asked for an interpretation of Iowa Code §§282.19 and 282.31 as they apply to court-ordered student placements in a foster care facility for daytime educational programs only.

FACTS

The Boys and Girls Home of Graettinger [hereinafter referred to as, "the Home"] was established approximately three years ago. Most of the students in the facility are placed there by court order. The Home presently provides programs for sex offenders, regular education students, and special education students. Residential treatment is provided for the sex offenders. However, approximately nine regular education and ten special education students attend the Home for daytime classes and counseling only. These students are not residents of the Graettinger Community School District. They are bused to the Home from surrounding districts on a daily basis.

The educational program is provided at the Home through a 28E agreement with the District and statutory oversight by the area educational agency. As part of this arrangement, Graettinger acts as the fiscal agent for the purpose of billing the students' resident districts for the special education services provided by the Home. Graettinger Community School District did not count the regular education students attending the Home on its 1996 September Enrollment Count. This past year, the District was told it should count the regular education students attending the Home because that is required by Iowa Code §282.31(1)(b)

ISSUE

Since the Home is a licensed foster care facility under Iowa Code §282.19, does Iowa Code §282.31(1)(b) govern how the instructional costs are paid for the regular education students who attend only for the day?¹

ANALYSIS

Iowa Code §282.19(1997) provides as follows:

A child who is living in a licensed child foster care facility as defined in section 237.1, or in a facility that provides residential treatment as “facility” is defined in section 125.2, which is located in a school district other than the school district in which the child resided before receiving foster care may enroll in and attend an accredited school in the school district in which the child is living. The instructional costs for students who do not require special education shall be paid as provided in section 282.31, subsection 1, paragraph “b” or for students who require special education shall be paid as provided in section 282.31, subsections 2 or 3.

Id. (Emphasis added).

Iowa Code §282.31(1)(b) provides in pertinent part that “[a] child who lives in a facility or home pursuant to section 282.19 and who does not require special education, and who is not enrolled in the educational program of the district of residence of the child, shall be included in the basic enrollment of the school district in which the facility or home is located.” Initially, this subsection seems to fit the Graettinger situation: The Boys and Girls Home is a facility or home pursuant to §282.19; the regular education students, by definition, do not require special education; and they are not enrolled in the educational programs of their home districts, to which they return each day. In spite of this, the payment provisions of §282.31(1)(b) do not apply to these students because they do not “live in” the facility or home.

Iowa Code §282.31(1)(b) governs the payment of instructional costs for “[a] child who lives in a facility or home . . .” The regular education students who travel to and from the Home by bus every day, do not “live in” the facility. “The place where a person lives . . . is the place of his residence.” *Glottfelty v. Brown*, 126 N.W. 797, 798, 148 Iowa 124(1910). “The term ‘lived in’ . . . is the same as residence, domicile and place of adobe.” *Freund v. Hastie*, 537 P.2d 804, 806(Cal. 1995).

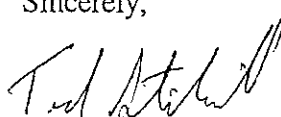
Because these students commute to the Home, they are not residents of the Home or of the Graettinger Community School District. They should not have been counted by Graettinger as part of its September Enrollment Count. You were correct in not doing so. As fiscal agent for the Home, you will need to bill the home districts of the regular education students for their non-resident tuition.

¹ It is our understanding that Graettinger is presently billing the districts of the special education students. Since that arrangement is not affected by our interpretation of §282.31(1)(b), this ruling will be limited to the billing of the instructional costs for regular education students.

CONCLUSION

Your concerns about the application of §282.31(1)(b) to regular education students who are court-placed in the Home for a daytime only educational program, were well founded. These students are not "living in" the Graettinger Boys and Girls Home, and therefore, cannot be included in the basic enrollment of the Graettinger Community School District as provided by §282.31(1)(b). They are attending the day program at the Home as non-residents and should be charged tuition as required by Iowa Code §282.1(1997).

Sincerely,



Ted Stilwill
Director

TS:jmr