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DECLARATORY RULING #25

(Cite as I D.P.I. Dec. Rul. 54)

February 6, 1979

Superintendent Rod Wilbeck
Maurice-Orange City Community
School District
615 8th Street S. E.
Orange City, Iowa 51041

Dear Superintendent Wilbeck:

Your "Petition for Declaratory Ruling" was filed in my office on December 18, 1978. In it you outline a circumstance wherein the Maurice-Orange City Community School District Board of Directors has adopted a policy, to be effective July 1, 1979, regarding nonresident shared-time students. Under the terms of the policy, nonresident students attending a nonpublic high school who participate in a shared-time program will be charged a tuition rate equivalent to the amount of school district revenue generated through local property tax under the state's School Foundation Program. For the current year, approximately 35% of the District's revenue is generated from state aid and about 65% is generated through local property tax. Apparently, in making its decision, the District Board felt that it was not appropriate for the Maurice-Orange City Community School District taxpayers to bear the tax burden for the nonresident shared-time students involved in the program. The District policy reads, in part, as follows:

Tuition will not be assessed for private school students who are residents of the Maurice-Orange City District. Nonresident students are to be charged tuition at a rate equal to a pro-rate share of the allowable tuition rate, reduced by the per pupil state aid for the school district.

From the foregoing facts, you raise five questions:

1. Does Iowa Code 282.1 require the Maurice-Orange City District to charge non-resident students tuition?
2. Does Iowa Code 282.1 require the District to charge non-resident shared-time students tuition?
3. If the answers to questions 1 and 2 are No, does the Maurice-Orange City Board of Education have the authority to impose a tuition cost according to Section 282.24?

- 4. Does Iowa Code 442.4 require that tuition charges be made to parents or guardians of non-resident shared time students, or could the tuition charge be made to Unity Christian High School?
- 5. If the Board is allowed to, by law, and chose not to charge shared time non-resident student tuition, must this same policy be applied to any other non-resident student who may wish to attend Maurice-Orange City schools?

The answers to your first two questions are found in the last sentence of Section 282.1, The Code 1977. That sentence reads as follows:

282.1 School age - nonresidents. . . . Nonresident children shall be charged the maximum tuition rate as determined in section 282.24 with the exception that those sojourning temporarily in any school corporation may attend school therein upon such terms as the board may determine.

Under the mandatory terms of that Section, nonresident students, except for those students residing temporarily in the District, must be charged tuition. Neither Section 282.1, nor any other Code section of which I am aware, excludes nonresident shared-time students from the requirement to pay tuition. The answers to your first two questions are in the affirmative.

Due to my affirmative response to the first two questions, it is not necessary to answer your third question.

In part, the answer to your fourth question is found in the third paragraph of Section 442.4, subsection 1. The provisions of that paragraph read as follows:

442.4 Enrollment.

* * * * *

Shared-time and part-time pupils of school age, irrespective of the districts in which the pupils reside, are included in basic enrollment as of the second Friday of January in the base year, in the proportion that the time for which they are enrolled or receive instruction for the school year is to the time that full-time pupils carrying a normal course schedule, at the same grade level, in the same school district, for the same school year, are enrolled and receive instruction. Tuition charges to the parent or guardian of a shared-time or part-time out-of-district pupil shall be reduced by the amount of any increased state aid occasioned by the counting of the pupil. [emphasis added]

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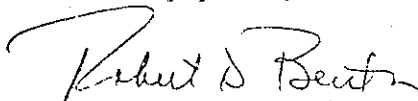
Section 442.4, standing alone, does not require the payment of tuition (that requirement is found in Section 282.1). However, I think it is sufficiently implicit that tuition charges for nonresident shared-time students are the responsibility of the parents and guardians. While there is, to my knowledge, no reason why a third party could not pay the tuition charge, on behalf of the

parent or guardian, it is not likely that any third party, such as the non-public school in your fact circumstance, could be required to pay tuition for shared-time students attending your school.

While not specifically a part of your request for a ruling, I feel that I should emphasize here that under the provisions of Section 442.4, shared-time pupils must be included in the District enrollment count irrespective of their residence, and the tuition charged to parents and guardians must be reduced by "the amount of any increased state aid occasioned by the counting of the pupil." If a district has 35% of revenue generated as state aid and 65% generated from local property tax for the current school year, as you have indicated is true in your District, parents and guardians of non-resident shared-time students must have their tuition charge reduced by 35%. It should be pointed out, however, that to actually relieve the District taxpayers of the tax burden occasioned by the nonresident shared-time students, it would be necessary to reduce the District's tax asking by an amount equal to the tuition collected on such students. While this will not reduce the tax burden in the year the tuition is charged, it will subsequently reduce the tax burden.

Your fifth question appears to be based upon an Attorney General's Opinion appearing at 1974 O.A.G. 82 which ruled that school districts which waived the right to collect tuition from a nonresident pupil must provide equal treatment to all other nonresident students enrolled in its schools. Subsequent to the issuance of that opinion, however, Section 282.1 was amended to require, as quoted above, that receiving districts charge tuition to nonresident students. The receiving school district no longer has the discretionary authority to waive tuition for nonresident students.

Sincerely yours,



Robert D. Benton, Ed.D.

State Superintendent of Public Instruction

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