

1809

Living with
Grandmother
December 27, 1928

Mr. Ralph H. Pryor,
Superintendent of Schools,
Plainview, Minn.

Dear Sir:

Your letter of December 24th, addressed to Mr. McConnell, Commissioner of Education, has been referred by him to this department, with a request that we reply directly to you.

Therein you submit briefly the major facts concerning three children attending your school and inquire as to the legal residence within the district of these pupils.

The question of residence is one of fact and not of law, and this office cannot undertake to determine the same. It can advise only on questions of law. At most, we can only give you certain general suggestions that may be of assistance in determining the fact.

The right of a child to attend school without the payment of tuition depends upon whether its legal residence for school purposes is within the district. Such residence may be separate and distinct from the residence of his parents or parent. No definite rule of law can be given that will solve the question in all cases. Generally speaking, however, it may be stated that if the presence of a child within the district is for the purpose

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only of attending school, and the care and attention which it may receive is incidental to that purpose, such child is not a resident of the district, and may be required to pay tuition. On the other hand, if it is within the district for the general purpose of receiving personal care, attention, supervision and nurture, such as is usually provided in a home, such child is a resident of the district. The fact that the parent may pay for such services, or may contribute regularly for the support and maintenance of the child, is immaterial. Thus, it will be observed that the general purpose and object of its presence within the district is the controlling factor. All of the surrounding facts and circumstances must be taken into consideration in determining the question. This office cannot undertake to determine the question upon the bare facts stated, even if it were within the scope of its functions to determine questions of fact.

Yours truly,

OEP/D

Assistant Attorney General

Copy to P. C. Tanning