

August 10, 2005

Superintendent Linda McCulloch  
Office of Public Instruction  
P.O. Box 202501  
Helena, MT 59620-2501

Re: Request for Attorney General's Opinion

Dear Superintendent McCulloch:

You have requested an Attorney General's Opinion on the following question:

Does Montana law allow Darby public schools to claim for school financing purposes nonresident students enrolled at the Trapper Creek Job Corps Center?

Because your question involves an issue of statutory interpretation and because it is case-specific to the situation in Darby, it has been determined that a letter of advice is the appropriate response.

By way of background you provide the following information. In February 2003, the Darby Public School District (the District) reported an increase in enrollment for the "9-12 Ungraded" category from 0 to 31 annual number belonging (ANB) to the Office of Public Instruction (OPI). Given the significant increase, OPI contacted the District for explanation. The District responded that it had entered into an interlocal agreement with the Trapper Creek Job Corps Center as provided for in Mont. Code Ann. § 20-9-707. The District also informed OPI that none of the 31 students could claim Darby as their district of residence. OPI ultimately denied the increase in ANB after determining that it was contrary to the plain meaning of section 20-9-707.

At the time of your opinion request, section 20-9-707 provided in relevant part:

(1) The trustees of a school district may enter into an interlocal cooperative agreement for the ensuing school fiscal year under the

provisions of title 7, chapter 11, part 1, with a Montana job corps program accredited by the northwest association of schools and colleges to provide educational or vocational services that are supplemental to the educational programs offered by the resident school district.

(2) **A student who receives educational or vocational services at a Montana job cops program pursuant to an agreement authorized under subsection 910 must be enrolled, for the purposes of calculating average number belonging, in a public school in the student's district of residence.** Credits taken at the accredited Montana job corps program must be approved by the school district and meet the requirements for graduation at a school in the student's district of residence, must be taught by an instructor who has a current and appropriate Montana high school certification, and must be reported by the institution to the student's district of residence. Upon accumulating the necessary credits at either a school in the district of residence or at an accredited Montana job corps program pursuant to an interlocal cooperative agreement, a student must be allowed to graduate from the school in the student's district of residence.

Mont. Code Ann. § 20-9-707 (2003) (History: En. Sec. 1, ch. 462, L. 2001) (emphasis added).

I agree with OPI's conclusion that the plain language of section 20-9-707 did not allow the District to include the 31 job corps students in its ANB calculation. The District argued that section 20-9-707 was inapplicable to this situation because none of the students being counted were enrolled in their resident school district. The District contended that the general provisions of Montana law governing calculation of ANB for nonresident students should govern (See Mont. Code Ann. §§ 20-5-101 and 20-5-320) and that the provisions of section 20-9-707 need not be considered.

The District's argument ignores the fact that in enacting section 20-9-707 the Legislature plainly evinced its intent to treat students attending job corps programs differently than students enrolled in and attending school in a Montana school district. Because section 20-9-707 specifically governs the inclusion of job corps students for the purpose of calculating ANB it controls over the more general statutory provisions cited by the District. See Mont. Code Ann. § 1-2-102.

Job Corps is an alternative educational setting for students who, for a variety of reasons, may not be succeeding in the high school of their district of residence. The United States Department of Labor provides this description of Job Corps:

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Job Corps is a no-cost education and vocational training program administered by the U.S. Department of Labor that helps young people ages 16 through 24 get a better job, make more money and take control of their lives.

At Job Corps, students enroll to learn a trade, earn a high school diploma or GED and get help finding a good job. When you join the program, you will be paid a monthly allowance; the longer you stay with the program, the more your allowance will be. Job Corps supports its students for up to 12 months after they graduate from the program.

U.S. Dept. of Labor website, <http://jobcorps.doleta.gov/about.cfm>.

The plain language of section 20-9-707 governs the calculation of ANB where a student is attending the alternative educational setting of a job corps program. The law plainly states that a student who receives “educational or vocational services at a Montana job corps program . . . must be enrolled, for the purposes of calculating average number belonging, in a public school in the student’s district of residence.” Because the intention of the legislature can be determined from the plain meaning of the words used in section 20-9-707, the plain meaning controls and one need go no further to properly interpret its meaning. State v. Marker, 302 Mont. 380, 386, 15 P.3d 373, 377 (2000) (citations omitted).

However, the legislative history of section 20-9-707 also supports the conclusion that the law does not allow the District to claim non-resident job corps students in its ANB calculation. The legislative minutes demonstrate the legislature’s intent to encourage school districts to utilize the alternative educational setting of a job corps program for students who may be in danger of dropping out or not graduating. The legislature created a dual incentive for school districts and students to participate in such programs: school districts could maintain students for purposes of calculating ANB and students could participate and still graduate with their peers and from their resident high school district.

Finally, the passage of Senate Bill 57 by the 2005 legislature provides a definitive answer to the question you pose. The Legislature amended section 20-9-707 to specifically state:

(4) A student attending a job corps program may not claim the job corps program’s facility as the student’s residence for the purpose of this section.

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As succinctly noted by SB 57's title, the law now prohibits "a student who is attending a job corps program from claiming the job corps facility as the student's residence for educational purposes." Thus a school district may not claim non-resident students attending job corps programs for purposes of calculating the district's ANB.

This letter should not be construed as a formal Opinion of the Attorney General.

Sincerely,

ALI N. BOVINGDON  
Assistant Attorney General

anb/jym