

JUNE 17, 1957

HONORABLE FREDERICK M. RAUBINGER
Commissioner of Education
175 West State Street
Trenton, New Jersey

FORMAL OPINION, 1957—No. 8

DEAR COMMISSIONER RAUBINGER :

You have requested our opinion as to whether or not State aid is payable under N.J.S.A. 18:10-29.35 for instruction given by a Board of Education pursuant to N.J.S.A. 18:14-71.23 (d), which provides for the education of physically handicapped children "by instruction supplementary to the regular program of the school not to exceed 5 hours weekly, whenever, in the judgment of the board of education with the consent of the commissioner, the physically handicapped pupil will be best served thereby".

We are of the opinion that the question should be answered in the affirmative.

The State School Aid Act of 1954 makes the following provision for atypical pupils (N.J.S.A. 18:10-29.35) :

"(a) In addition to all other aid, each school district operating an approved special class or classes shall be paid \$2,000.00 per class for such classes, and each school district sending atypical children to special classes outside the district of residence shall be paid $\frac{1}{2}$ the amount by which the tuition charged for such pupils exceeds \$200.00.

"(b) For every mentally retarded or physically handicapped pupil furnished individual instruction or training at home or in school, by reason of the fact that there are too few mentally retarded or physically handicapped pupils in the district to form a class or by reason of the impracticability of transporting such a pupil to a class maintained in another district, the school district shall be paid $\frac{1}{2}$ the cost of such education as determined by the Commissioner of Education."

We note that N.J.S.A. 18:14-71.23 provides for five different methods of education of physically handicapped pupils as follows :

"(a) By establishing a special class or classes in the district, including a class or classes in hospitals, convalescent homes, or other institutions; or

(b) By sending pupils to a special class in the public schools of another district; or

(c) By agreement with 1 or more school districts to provide joint facilities, including a class or classes in hospitals, convalescent homes, or other institutions; or

(d) By instruction supplementary to the regular program of the school not to exceed 5 hours weekly, whenever, in the judgment of the board of education with the consent of the commissioner, the physically handicapped pupil will be best served thereby; or

(e) By individual instruction at home or in school whenever in the

judgment of the board of education with the consent of the commissioner, there are too few physically handicapped pupils to form a class in the district or whenever it is impracticable to transport a child because of distance or other good reason to a class referred to in subsections a, b, c or d."

Our opinion is that N.J.S.A. 18:10-29.35, read in the light of the entire State School Aid Act, was intended to provide State aid for all forms of authorized education given to atypical pupils at the expense of a local Board of Education. The supplementary instruction of 5 hours a week authorized by section 18:14-71.23(d) falls within the term "individual instruction * * * in school, by reason of the fact that there are too few mentally retarded or physically handicapped pupils in the district to form a class or by reason of the impracticability of transporting such a pupil to a class maintained in another district", and therefore one-half of the cost of such education, i.e., the supplementary education, must be paid to the school district under subdivision (b) of section 18:10-29.35.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: THOMAS P. COOK
Deputy Attorney General

TPC:tb.

JULY 10, 1957

HON. JOSEPH E. MCLEAN, *Commissioner*
Department of Conservation and Economic Development
State House Annex
Trenton, New Jersey

FORMAL OPINION, 1957—No. 9

DEAR COMMISSIONER MCLEAN:

You have requested our opinion as to the eligibility of municipalities which have no organized planning board for Federal and State financial assistance under Title VII of the Federal Housing Act (Title 40 U.S.C.A., Sec. 461) and the State Appropriations Act (L. 1957, c. 113) in drafting master plans and zoning ordinances.

Title VII of the Federal Housing Act authorizes Federal contributions not exceeding fifty per centum of the estimated cost for planning assistance including surveys, land use studies, urban renewal plans, technical services and other planning work. The Federal funds are payable to State planning agencies for distribution to eligible municipalities with a population of less than 25,000. By a recent amendment (70 Stat. 1102, effective August 7, 1956), planning assistance may be furnished as well to municipalities with a population of 25,000 or more: "which have suffered substantial damage as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe which the President, pursuant to section 1855(a) of Title 42, has determined to be a major disaster".

The State Appropriations Act for 1957-58 provides an appropriation to the Division of Planning and Development in the amount of \$50,000 for an expanded and