

DEPARTMENT OF MENTAL HEALTH:  
SPECIAL EDUCATION:  
STATE BOARD OF EDUCATION:

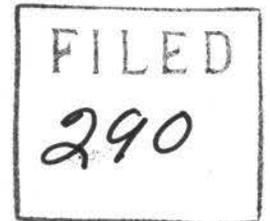
(1) Sections 162.670 et seq., RSMo Supp. 1973, give responsibility for providing special educational

services for all handicapped and severely handicapped children to local school districts, special school districts and the State Board of Education. The Department of Mental Health has the duty to assure that children in its programs are receiving special educational services, either by providing them under the provisions of Chapter 202, RSMo, or by procuring them from the responsible educational agency; (2) The Department of Mental Health may use state-appropriated funds to provide transportation for its patients to and from special educational programs, whether those programs are provided by the Department of Mental Health itself, by a school district or special school district, by the State Board of Education, or by a public or private agency under contract; and (3) Federal developmental disability funds may be used, with the approval of the Governor's Council on Mental Retardation and Other Developmental Disabilities, for the transportation of developmentally disabled students to and from special education programs for the handicapped and severely handicapped.

December 6, 1974

OPINION NO. 290

Harold P. Robb, M.D., Director  
Department of Mental Health  
2002 Missouri Boulevard  
Jefferson City, Missouri 65101



Dear Dr. Robb:

This official opinion is in response to your request for a ruling on the following questions:

1. What is the responsibility and authority of the Department of Mental Health with regard to the education of handicapped and severely handicapped children who are in-patients of state mental health facilities or who are patients of the Department of Mental Health on community placement?
2. May state funds appropriated to the Department of Mental Health be used to

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provide transportation for students receiving special educational services provided under contract to the State Board of Education?

3. May federal funds received by Missouri under the Developmental Disability Act be used to provide transportation for students receiving special educational services provided under contract to the State Board of Education?

1.

On July 1, 1974, a new Missouri statute went into effect creating a comprehensive program of special educational services. Sections 162.670 et seq., RSMo Supp. 1973. Under this law, special educational services are mandated for "handicapped children" and "severely handicapped children," as separately defined in Section 162.675. The education of "handicapped" children is the initial responsibility of local school districts or special school districts, but if those districts do not provide the required education, it is the responsibility of the State Board of Education to arrange for the contracting of services with other districts or with private or public agencies, with the cost to be charged to the school district. Sections 162.700, 162.705. "Severely handicapped" children are the educational and financial responsibility of special school districts, where they exist, or of the State Board of Education directly. Section 162.725. In short, the responsibility for the education of handicapped and severely handicapped children rests with school districts, special school districts and the State Board of Education.

Even though this responsibility is placed on the educational agencies, the Department of Mental Health must assure that all handicapped children admitted to its programs or facilities receive special educational services. This duty is spelled out in the first sentence of Section 162.970, which reads as follows:

"1. Handicapped children who are admitted to the programs or facilities provided by the division of mental health shall have a right to the services provided by sections

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162.670 to 162.995, and shall not be denied admission to any appropriate public school or special school district program where the child actually resides because he is admitted to the program or facility provided by the division of mental health, but nothing in sections 162.670 to 162.995 shall prevent the division of mental health from providing or procuring such special educational services to such [handicapped] children. . . ."<sup>1</sup>

The purpose of this section is twofold. First, it makes clear that a child being treated by the Department of Mental Health has the same right to special education as any other handicapped child in Missouri. In the past there has been some question as to whether a child in a Department of Mental Health facility was the sole responsibility of the Department of Mental Health for education and treatment or whether he or she was also entitled to receive benefits from local school district special programs. This section clearly resolves that question.

The other purpose of this section is to affirm that the Department of Mental Health may, in its discretion, offer educational services to handicapped children otherwise being served by the Department of Mental Health. To the extent that the Department of Mental Health has the expertise or the facilities to provide special education to some or all of its patients, it may do so. Under this section, the Department of Mental Health has two options: it can provide special educational services under the provisions of Chapter 202, RSMo, or it can procure special educational services by sending the children involved to the local school district or special school district in which the Department of Mental Health facility is located.<sup>2</sup>

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<sup>1</sup>Under state government reorganization, the functions formerly assigned to the Division of Mental Health are now assigned to the Department of Mental Health. Section 9, S.B. 1, Seventy-seventh General Assembly, First Extra Session (1974).

<sup>2</sup>Because it is not involved in your question, we offer no opinion concerning the authority of the Department of Mental Health to enter into contracts with public or private agencies for special educational services for the Department's patients.

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After the Department of Mental Health "provides or procures" special educational services to handicapped children pursuant to Section 162.970, it must charge the school district of residence of the child's parent or guardian an amount equal to the local tax effort per child of that district, according to the remainder of Section 162.970, which reads as follows:

"1. . . . The school district, except school districts which are a part of a special school district, or the special school district of residence of the parent or guardian of every handicapped child for whom special educational services are provided or procured by the division of mental health, or the district which would otherwise be responsible for providing gratuitous education for such child, shall be responsible for per pupil costs for special education services for such child in an amount not to exceed the average sum produced per child by the local tax effort of the district.

"2. Failure of a district to pay such amount to the division of mental health within ninety days after a bill is submitted by the division shall result in deduction of the amount due by the state board of education from subsequent payments of any state financial aid due such district and in the payment by the state board of education to the director of mental health of the amount deducted."

This section clearly anticipates that the financial burden of providing special educational services shall rest on the district in which the parent or guardian of the child lives and not on the district which by historical accident happens to contain a Department of Mental Health facility. Therefore, when the services have been procured by the Department of Mental Health from the local school district or special school district, the Department of Mental Health shall make a payment to the district equal to the amount it has collected from the school district of residence of the parent or guardian.

The amounts received by the Department of Mental Health from the districts of the parents' residence under this procedure must be placed in general revenue. Missouri Constitution, Article III, Section 36. Therefore, the Depart-

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ment of Mental Health will need an appropriation from the legislature for the total cost of the services it provides and for the amount it must pay the various local districts educating handicapped Department of Mental Health patients.

With regard to "severely handicapped" children, Section 162.725 provides that the State Board of Education shall provide special educational services, except for children residing in special school districts who are the responsibility of the special district. These services may either be provided by a school operated by the State Board or the special district, Sections 162.725, 162.730, or they may be provided under contract "with another public agency or with a private agency." Sections 162.735, 162.750.

The Department of Mental Health is a public agency with the authority to provide educational services, Section 202.020, RSMo 1969, and therefore the State Board of Education may discharge its responsibility for education by entering into contracts with the Department of Mental Health for the education of severely handicapped children. The contract should provide for the payment by the State Board of Education to the Department of Mental Health for the value of the services. However, as explained above, the money received by the Department of Mental Health must be paid into general revenue, and the Department of Mental Health will need an appropriation of its own to expend money for educational services provided under contract to the State Board of Education.

Since neither Section 162.735 nor 162.970 is limited to in-patients of state mental health facilities, the authority of the Department of Mental Health to educate includes both in-patients and out-patients of mental health facilities.

The decision as to which handicapped and severely handicapped children the Department of Mental Health should educate is one which the Department of Mental Health itself must make, taking into account the special needs of the children and the expertise of the Department of Mental Health. The general policy of the statute favors keeping children in the mainstream of the educational process as much as possible. Section 162.680. However, where a child needs educational services which can best be supplied by the Department of Mental Health, the Department of Mental Health should exercise its powers and offer those services.

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2.

The second and third questions in your request deal with the problem of transporting children to educational services provided under contract to the State Board of Education. Section 162.755 provides with regard to this transportation as follows:

"The state board of education shall provide reasonable transportation for children who attend day schools or programs operated by the board, and the state board of education may provide transportation for children who receive special educational services in other state-operated schools or in programs operated through contract by the state board of education as provided in section 162.735."

A lawsuit is currently pending to determine the extent of the duty this section gives to the State Board of Education to provide transportation. Brooks v. State Board of Education of Missouri, Civ.No. 74-819C (1) (E.D.Mo., filed 11/21/74). We offer no opinion on the merits of that suit. Your questions ask only about the discretionary powers of the Department of Mental Health to provide such transportation on its own.

The children involved in your request are all on the Department of Mental Health's caseload on an out-patient basis. Some of them are in foster homes, while others live with their natural parents. Most of the children receive educational services in private facilities, but some attend programs of the Department of Mental Health. The State Board of Education has not been appropriated sufficient funds for fiscal year 1975 to furnish transportation for a number of these children, and you inquire whether either state community patient placement funds or federal funds received under the Developmental Disability Act may be used for this purpose.

To determine the authority of the Department of Mental Health to provide transportation services, we must turn to the general statute defining the powers of the department, Section 202.020, RSMo 1969, which reads as follows:

"1. The division of mental health of the state department of public health and

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welfare shall provide appropriate full or part-time resident or outpatient care and treatment, examination and report, education and training of persons suffering from mental illness or mental retardation, and shall have the administrative control of the following facilities:  
[here follows a list of facilities] . . .

"2. With the approval of the department of public health and welfare, the division of mental health shall make all necessary orders for the government, administration, discipline and management of all such facilities."

The statute which establishes institutions for the mentally retarded similarly authorizes "all necessary orders for [the] . . . operation, administration, and management" of those institutions. Section 202.591, RSMo 1973 Supp. We believe that the furnishing of transportation for patients is a "necessary order" within those statutes if the transportation enables the patients to obtain one of the enumerated services, whether or not the service itself is furnished by the Department of Mental Health. Thus, the Department of Mental Health may use state funds to provide such transportation to educational programs offered by private or public agencies under contract to the State Board of Education, as well as transportation for handicapped and severely handicapped children in special education programs provided by the Department of Mental Health under the provisions of Chapter 202 or Section 162.970 and for Department of Mental Health patients attending public school special education programs. In most of these cases, the school district or other educational agency has a statutory duty to provide this transportation, but the Department of Mental Health may provide transportation on its own if it wishes, although it is not required to do so.

3.

Your third question deals with the use of federal developmental disability money for special education transportation services. This money arises under the "Developmental Disability Services and Facilities Construction Amendments of 1970," 42 U.S.C., Sections 2670-2677c, which was enacted as Title I of P.L. 91-517. The first section of this law provides as follows:

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"The purpose of this part [42 USCS §§ 2670-2677c] is to authorize --

"(a) grants to assist the several States in developing and implementing a comprehensive and continuing plan for meeting the current and future needs for services to persons with developmental disabilities;

"(b) grants to assist public or nonprofit private agencies in the construction of facilities for the provision of services to persons with developmental disabilities, including facilities for any of the purposes stated in this section;

"(c) grants for provision of services to persons with developmental disabilities, including costs of operation, staffing, and maintenance of facilities for persons with developmental disabilities;

"(d) grants for State or local planning, administration, or technical assistance relating to services and facilities for persons with developmental disabilities;

"(e) grants for training of specialized personnel needed for the provision of services for persons with developmental disabilities, or research related thereto; and

"(f) grants for developing or demonstrating new or improved techniques for the provision of services for persons with developmental disabilities."

The regulations of the United States Department of Health, Education and Welfare which were promulgated to implement this statute appear at 45 C.F.R., Part 416. Section 416.2 includes as a "developmental disability" a disability which "is attributable to (i) mental retardation, cerebral palsy, or epilepsy; . . ." Section 416.2 (d). "Services for persons with developmental disabilities" includes, among others, education and "transportation services necessary to assure delivery of services

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to persons with developmental disabilities." Section 416.2 (n). Therefore, the furnishing of transportation to developmentally disabled children to enable them to receive special educational services would be within the scope of the developmental disability program. Transportation of children whose handicaps are not within the definition of developmental disability would not be authorized under this federal program.

The actual allocation of federal developmental disability money is within the discretion of the Governor's Advisory Council on Mental Retardation and Other Developmental Disabilities, which was created by an Executive Order on July 16, 1971, and must be made according to the Missouri State Plan for Developmental Disabilities, filed pursuant to 45 C.F.R., Part 416. Under this plan the State Board of Education could apply for a grant for transportation purposes. The determination of whether any particular application is to be funded or not is up to the discretion of the Governor's Council, and we offer no opinion as to whether this specific proposal would be an appropriate priority expenditure. However, a request for the remainder of the current fiscal year to help start up a transportation program under the new special education law would be the type of project contemplated by this statutory scheme.

#### CONCLUSION

It is the opinion of this office that:

(1) Sections 162.670 et seq., RSMo Supp. 1973, give responsibility for providing special educational services for all handicapped and severely handicapped children to local school districts, special school districts and the State Board of Education. The Department of Mental Health has the duty to assure that children in its programs are receiving special educational services, either by providing them under the provisions of Chapter 202, RSMo, or by procuring them from the responsible educational agency;

(2) The Department of Mental Health may use state-appropriated funds to provide transportation for its patients to and from special educational programs, whether those programs are provided by the Department of Mental Health itself, by a school district or special school district, by the State Board of Education, or by a public or private agency under contract; and

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(3) Federal developmental disability funds may be used, with the approval of the Governor's Council on Mental Retardation and Other Developmental Disabilities, for the transportation of developmentally disabled students to and from special education programs for the handicapped and severely handicapped.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard E. Vodra.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH  
Attorney General