

CHAPTER 13 (READING STATUTES):

In italics below, you will find some thoughts from the author about ways you might have responded to this chapter's practice exercises. If you responded differently, you may have had good reason for doing so. Take the author's ideas as food for further thought as you develop your legal reading skills.

Practice Exercises:

1. The following excerpt is from North Carolina General Statute sec. 115C-140.1(a), a statute that appears in North Carolina's Special Education legislation. It is a very difficult statute to read and understand, at least in part because of the long sentences included in the statute and the lack of tabulation.

Try to read this statute exactly as it appears below [**printed on p. 232 of the main text**], looking for answers to the following three concrete questions as you read:

(a) A school-aged child whose parents both reside in Durham County has been placed temporarily in a special in-patient program sponsored by the University of North Carolina Hospitals in Orange County. She has left her Durham County school, where she was receiving special services for a visual impairment. What entity is legally responsible for the cost of that child's public education?

Assuming this child has a "disability" within the meaning of this statute, and that the in-patient program is a "group home or foster home" within the meaning of this statute, and that the child has been placed in the program "pursuant to State and federal law," Orange County would be responsible for the cost of her education

(b) Does any other entity or government agency have an obligation to reimburse all or part of those costs to the agency you identified in answer to (a) above? If so, what portion of the costs is this second agency responsible for?

After available State and federal funds run out, it looks like Durham County (assuming she is "domiciled" in Durham County) would have to transfer funds to Orange County to cover the cost of her education there. The last sentence in the statute is pretty ambiguous – it is unclear to me whether Durham County is only responsible for any excess costs that accrue beginning the year that the State and federal funds have been exhausted, or if Durham County would be retroactively responsible for ALL excess costs, but would begin to pay them only in the fiscal year that the State and federal funding ran out.

(c) Is the entity that is responsible for the child's free public education while in a group home also responsible for the costs of her care and maintenance?

No, at least not under this statute. This statute only addresses the obligation of the local Board of Education where the group home is located and the school administrative unit where the child is domiciled to pay for the costs of her public education, not her maintenance and care.

2. On a scale of 1-10, with 10 being the most difficult, how difficult was it to find the answers to these questions?

Answers will, of course, vary. I would expect to see a lot of very high numbers if your students have been engaged in the reading assigned.

3. On a scale of 1-10, with 10 being the most confident, how confident are you that you have the right answer to these questions?

I would expect to see low numbers re: confidence, because the wording of this statute is so convoluted and because there are so many undefined but significant terms.

4. Did you have any emotional reactions as you read this statute?

Answers to this question will, of course, vary by student. The intent of the question was to get you to recognize that it is frustrating to read difficult material and/or that it is hard to read material if you have personal experiences about the content that are emotional triggers for you.

5. Often rewriting a cumbersome statute in simpler form can make a world of difference, and is well worth the time it takes to do so. I have rewritten N.C. Gen. Stat. sec. 115C-140.1(a) in a more straightforward way below. Read the statute in its new form, looking for answers to the same questions you responded to above.

(a) A school-aged child whose parents both reside in Durham County has been placed temporarily in a special in-patient program sponsored by the University of North Carolina Hospitals in Orange County. She has left her Durham County school, where she was receiving special services for a visual impairment. What entity is legally responsible for the cost of that child's public education?

The one where the group home is located: Orange County.

(b) Does any other entity or government agency have an obligation to reimburse all or part of those costs to the agency you identified in answer to (a) above? If so, what portion of the costs is this second agency responsible for?

Yes, Durham County would have to reimburse Orange County for any costs above and beyond those covered by State or federal funds.

(c) Is the entity that is responsible for the child's free public education while in a group home also responsible for the costs of her care and maintenance?

No, the entity is clearly not responsible for the costs of her care and maintenance.

Sec. 115C-140.1. Cost of education of children in group homes, foster homes, etc.

Despite any other statutes and regardless of a parent or guardian's place of domicile, the cost of a free public education for a child with special needs who is placed under state or federal law in: (i) a group home, (ii) a foster home, or (iii) a similar facility shall be borne by the local board of education in which that foster home or group facility is located. The local school administrative unit where the child is "domiciled" must reimburse the local board of education where the facility is located for any expenses that local board of education incurs beyond those paid by State and federal funding. The local board of education where the facility is located is not responsible for any care and maintenance costs of the child with special needs.

6. Most readers would find this second version of the statute easier to read. Why do you think that is? Can you see other ways you could improve upon this statute to make it even easier to understand?

It is definitely easier to read (the tabulation helps a lot). Shorter sentences help a lot. Firm statements help a lot. It could be further improved if the word "domiciled" was defined. You might be able to think of even better ways to improve this rewrite of the statute.

7. Can you tell by the description provided concerning this child's temporary placement whether her situation is covered by this statute? What additional information would you want to have to so you could make that decision?

I might guess that the placement by the University of North Carolina Hospitals might be a placement by a state agency acting under state or federal law, but I couldn't be sure. I would want to know more about the legislative intent when it chose those words, and about the program itself to see if it fits with the legislative intent. I would also want to know if the temporary placement was similar to a group home or a foster home. It would help to know if this matter had been litigated in the past in similar situations and how it was resolved, and if an appellate court had any published opinions that would help clarify the meaning, as a matter of law, of important terms in the statute.

8. If you knew of a recent N.C. Supreme Court case that had held that an *out-patient* program sponsored by a hospital was not a "group home" within the meaning of this statute, how would that influence your conclusions about who is responsible for this girl's appropriate public education expenses?

I would want to read the case to see what it was about the outpatient facility that caused the court to conclude it was not a "group home" within the meaning of the statute. I would then want to know if this inpatient program had those same characteristics (the characteristics that caused the Court to distinguish it from a "group home"), or if the inpatient program had more characteristics of a group home that might cause the Court to reach a different result in this case.