

LETTER OPINION
98-L-103

August 12, 1998

Dr. Wayne G. Sanstead
Superintendent of Public Instruction
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Dr. Sanstead:

Thank you for your letter asking whether North Dakota Century Code (N.D.C.C.) § 15-40.1-09 permits foundation aid payments for any particular school year to be calculated on the basis of the greater of that current year's fall enrollment or the highest average daily membership for either of the preceding two years.

The relevant portion of N.D.C.C. § 15-40.1-09 provides as follows:

Per student aid as provided under sections 15-40.1-06, 15-40.1-07, and 15-40.1-08 must be computed on the basis of the previous year's average daily membership less the number of students attending school during the current school year in another district under the provisions of open enrollment or the current year's fall enrollment, whichever provides the greatest payment, for all current grade levels. Adjustments must be made in the subsequent year according to a comparison between the average daily membership for the year for which the adjusted payment is being made and the year preceding the year for which the adjusted payment is being made, whichever is greater, for grade levels that existed in both years. The greater of the two preceding years' average daily membership must be used in computing any adjustment in a district's foundation aid payments.

The first sentence of the above-quoted portion of N.D.C.C. § 15-40.1-09 deals with the calculation of the per student aid for the particular school year for which the payments are being made. That sentence requires payments to be made based on either the current year's fall enrollment or the average daily membership for that district for the school year previous to the year for which the

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payments are being made, whichever method provides the greatest payment.

The next two sentences deal with "adjustments" to payments made in a particular year. These adjustments are made in the year after the year being adjusted and are based on a comparison of the average daily membership for the year being adjusted and the year previous thereto. That is, for example, payments made during the year 1997-1998 are based on either the fall enrollment in the fall of 1997 or the average daily membership for the year 1996-1997, whichever produces the greatest payment. In the year 1998-1999, the payments made in 1997-1998 are adjusted. Those adjustments are made on the basis of the greater average daily membership occurring in 1996-1997 or 1997-1998. However, for calculating the foundation aid payments applicable for the year 1998-1999 itself, only the 1998-1999 fall enrollment and the 1997-1998 average daily membership are considered.

Construing the words and phrases in their context and according to the rules of grammar (N.D.C.C. § 1-02-03), it is my opinion that the per student payments for any particular school year are based on the fall enrollment for that year or the average daily membership for only the year previous to that year. Adjustments to a particular year's payments are a separate matter, and they are based on a comparison of two years' average daily membership, i.e., the year being adjusted and the year prior thereto. 1993 N.D. Op. Att'y Gen. L-202 (June 25 opinion to Stuart Larson).

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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