

N.D.A.G. Letter to Hoy (April 24, 1986)

April 24, 1986

Mr. Robert G. Hoy
Cass County State's Attorney
Cass County Courthouse
P.O. Box 2806
Fargo, ND 58108

Dear Mr. Hoy:

Thank you for your letter of December 24, 1985, regarding the proper method for calculating state foundation aid payments for kindergarten students. I apologize for the delay in responding to your letter.

The amount of foundation aid received by kindergarten is established under N.D.C.C. §15-40.1-08(7) and is calculated by multiplying the factor .50 times the educational support per pupil for the elementary school providing the kindergarten. N.D.C.C. §15-40.1-08(7). The per pupil educational support received by a particular elementary school or district depends upon the size of its elementary school enrollment. In calculating enrollment of elementary schools in the past, the Department of Public Instruction has counted students in grades 1 through 8. The question has now arisen if this is the correct formulation.

As your letter states, the Dakota Public School District No. 3 and the counsel for the North Dakota School Board's Association would contend that the Department of Public Instruction should count only those students attending grades 1 through 6. The question becomes whether the Department of Public Instruction should count students in grades 1 through 6 or in grades 1 through 8 in calculating elementary school enrollment for the purposes of paying foundation aid to kindergarten.

In examining N.D.C.C. §15-40.1-08, there does not appear to be a definition of elementary school student. However, it should be noted that a high school student is defined for N.D.C.C. Ch. 15-40.1 as including only students who have completed all of the work of the first eight grades, but have not completed work of the 12th grade and are residents of the State of North Dakota. N.D.C.C. §15-40.1-01. Although this is not conclusive, it would point to the fact that elementary students may be considered grades 1 through 8 for purposes of foundation aid .

For elementary schools providing kindergartens, there shall be paid that amount of money resulting from multiplying the factor .50 times the educational support per pupil payment for that elementary school as determined in this section. N.D.C.C. §15-40.1-08(7). The educational support per pupil payment for elementary schools is based upon the population of that elementary school or the elementary school population of the entire

district. Payments are made to the school or school district for the number of students attending grades 1 through 6 (N.D.C.C. §15-40.1-08(2), (3), and (4)) and students attending grades 7 and 8 (N.D.C.C. §15-40.1-08(5)). Foundation aid payments for those students attending elementary schools or districts in grades 1 through 6 differ as to the number of students attending those elementary schools. Payments for those students attending the elementary school in grades 7 and 8 remained constant regardless of the number of students attending the elementary school.

For example, the multiplying factor for a one-room school is 1.30. The multiplying factor for elementary schools having 100 pupils in average daily membership is 1.0. The multiplying factor for elementary schools having 100 or more pupils in average daily membership and provided the districts in which the schools are located have an average daily membership of less than 1,000 elementary pupils is .9. The multiplying factor for schools and elementary districts having an average daily membership of 1,000 or more elementary pupils is .95.

The Dakota Public School District No. 3 along with the North Dakota School Board Association contends that the reference in N.D.C.C. §15-40.1-08(7) to the basis for the kindergarten payments be in the "educational support per pupil payment for that elementary school as determined under this section." They contend that since N.D.C.C. §15-40.1-08(2), (3), and (4) seem to refer to the classification of schools as to their population and to the weighting factor for students in grades 1 through 6, that only those students in grades 1 through 6 should be counted for the purposes of determining the population of that school and therefore determine the weighting factor to be multiplied times .50 to determine the payments for kindergarten. The statutory problem is the absence of a formula to determine which students are counted in determining the population of an elementary school.

The reference to grades 1 through 6 in the statute is not limiting or qualifying language in determining the school populations. The statute does not require the Department of Public Instruction only to count students in grades 1 through 6 to determine payments. Rather, the statute also refers to payments for elementary schools for those students attending grades 7 and 8.

The process by which the Department of Public Instruction determines the enrollment at an elementary school is by compiling figures of student enrollments in grades 1 through 8. Upon determining the number of students, the Department of Public Instruction then applies the correct weighting factor and multiplies that factor times the educational support per pupil as provided in N.D.C.C. §15-40.1-06. This particular factor varies for pupil payments in grades 1 through 6 depending on the enrollment of the elementary school. The payment for students attending 7th and 8th grades is constant. It would follow that the legislature intended that grades 1 through 8 be counted in determining the population of elementary schools for purposes of foundation aid. This would also carry over into determination for foundation aid for kindergartens.

Therefore, it is my opinion that the Department of Public Instruction uses the correct method of counting students in grades 1 through 8 in determining the foundation aid payments for kindergartens.

Sincerely,

Nicholas J. Spaeth

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