

**LETTER OPINION
2003-L-17**

March 13, 2003

Honorable David P. O'Connell
State Senator
2531 County Road 30
Lansford, ND 58750-9737

Dear Senator O'Connell:

Thank you for your letter concerning N.D.C.C. § 15.1-31-02 and denials of open enrollment applications.

Section 15.1-31-01, N.D.C.C., sets forth the sequence for open enrollment decision-making, including required actions by those seeking enrollments, the school district of residence, and the admitting school district. The actions are to be taken by those parties in the school year preceding the school year of enrollment for open enrollment purposes. The section also requires open enrollment applications to be reviewed in the order received and provides for certain exclusions to the open enrollment process for certain students.

Section 15.1-31-02, N.D.C.C., provides:

Except as provided in section 15.1-31-04, the board of a student's school district of residence may deny an application under section 15.1-31-01 only if the application will result in a reduction of the number of students enrolled in the district by more than twenty percent of the average daily membership the previous school year. However, if denying an application would result in the enrollment of children from the same nuclear family in different school districts, the school board of the district of residence may not deny the application.¹

N.D.C.C. § 15.1-31-02.

¹ The reason for the citation to N.D.C.C. § 15.1-31-04 in this section is not apparent because nothing in N.D.C.C. § 15.1-31-04 relates to denying open enrollment applications.

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Other than the “nuclear family” language, an admitting district may only deny an open enrollment application if it would “result in a reduction of the number of students enrolled in the district by more than twenty percent of the average daily membership the previous school year.” Id. (emphasis added). “Average daily membership” is calculated pursuant to N.D.C.C. § 15.1-27-35. A student who, through the open enrollment process, attends school in a district other than the student’s district of residence is not a member of the student’s school district of residence for purposes of calculating the 20% limit. Id. The “previous school year” calculation changes every year. Therefore, it is my opinion that the 20% limit on students leaving a school district by open enrollment is a new calculation every year based on average daily membership for the school year that precedes the school year in which the application for open enrollment is made pursuant to N.D.C.C. § 15.1-31-01.

Sincerely,

Wayne Stenehjem
Attorney General

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