

**LETTER OPINION**  
**93-L-202**

June 25, 1993

Stuart A. Larson  
Traill County State's Attorney  
PO Box 847  
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Dear Mr. Larson:

Thank you for your May 26, 1993, letter concerning state foundation aid payments to school districts. You cite N.D.C.C. ? 15-40.1-09, and ask whether the Department of Public Instruction can use the larger of the previous year's average daily membership or the current year's fall enrollment to calculate per-pupil aid payments even if it results in a lower payment being made to the school district.

The formula and procedure for determining foundation aid payments is contained in N.D.C.C. ?? 15-40.1-06, 07, 08, and 09. N.D.C.C. ? 15-40.1-06 contains the basic per-pupil aid amount.

In N.D.C.C. ?? 14-40.1-07 and 08, what are known as "weighting factors" are multiplied by the high school and elementary pupils, respectively, in average daily membership in school districts times the per-pupil aid payments to calculate weighted per-pupil payments. Smaller schools ranked in categories based on a range of pupils in average daily membership, have a higher weighting factor applied for both elementary and high school districts. Id. Both of these sections contain a provision that the district must receive at least as much in total payments "as it would have received if it had the highest number of pupils in the next lower category [or size of school]." These provisions

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require a dual calculation to determine the total payment to be made.

The payments discussed in N.D.C.C. ?? 15-40.1-06, 07, and 08 relate to the current school year or the year for which payments are actually made. The Legislature requires payments during the year to be based on the greater number of pupils in average daily membership for the previous year or the current year's fall enrollment. N.D.C.C. ? 15-40.1-09. This section further requires adjustments to per-pupil aid payments in the following year using the higher of the average daily membership for the actual year in question for which an adjustment is to be made or for the year preceding that year.

The portion of N.D.C.C. ? 15-40.1-09 quoted in your letter deals with the number of students (the previous year's average daily membership or the current year's fall enrollment, whichever is greater) used in calculating the initial per-pupil aid payment. It does not relate to computation of the adjusted payment made to the district.

Regardless, the Department of Public Instruction must follow the formula set forth by the Legislature. If that formula results in a lower payment to a district based on its increasing enrollment, it is only because of the legislatively crafted formula discussed above. However, the adjustments provided for in N.D.C.C. ? 15-40.1-09 and the assured minimum payments provided for in N.D.C.C. ?? 15-04.-07 and 15-40.1-08 may help a school district by delaying impact of declining enrollments as well as by protecting a district where increasing enrollment has just put it into the next higher category or size of school and therefore reduces its weighting factor.

It is my opinion that the Department of Public Instruction must make the payment required by the statutory formula in N.D.C.C. ? 15-40.1-09, regardless if it results in a lower payment than anticipated by a

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school district.

Sincerely,

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ATTORNEY GENERAL

tam/jfl

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