

LETTER OPINION
97-L-100

July 2, 1997

Dr. Wayne G. Sanstead
Superintendent of Public Instruction
600 East Boulevard Avenue
Bismarck, ND 58505-0440

Dear Dr. Sanstead:

Thank you for your letter asking eight questions concerning the minimum mandatory school term and the length of school days required by 1997 Senate Bill 2173. Your opinion request was supplemented by a May 23, 1997, letter from Dr. Gary Gronberg concerning the length of the school day for kindergarten programs.

The underlying purpose for 1997 Senate Bill 2173 was to "cut out a lot of other time that there is no teacher-student contact." The bill was designed to "require the students to have a certain number of days of contact with the teachers." The bill was introduced to avoid falling behind a nationwide trend "to go to more teacher-student contacts." Hearing on S. 2173 Before the Senate Committee on Education, 55th N.D. Leg. (January 27, 1997) (Statement of Senator Freborg).

Section 2 of 1997 Senate Bill 2173 amended N.D.C.C. § 15-47-04 to delete the definition of school month and school week. Testimony at the 1997 legislative session states that the Department of Public Instruction wanted this change to bring the law into alignment with the actual practice of school districts and allow making up missed classroom time any time of any day, including Saturdays and Sundays. Hearing on S. 2173 Before the Conference Committee on Education, 55th N.D. Leg. (March 31, 1997) (Statement of Senator Freborg). This section 2 of the bill was an emergency measure and became effective on April 8, 1997.

Senate Bill 2173 amends N.D.C.C. § 15-47-33 to specify the apportionment of the minimum 180-day school year to include "one hundred seventy-three full days of instruction" and seven days comprised of non-instructional matters including three holidays, two teacher convention days, and two parent-teacher conference days. The section was also amended to define what constitutes "a full day of instruction." For elementary students, "a full day of instruction" means "at least five and one-half hours of instruction time." For

high school students, "a full day of instruction" means "at least six hours of instruction time."

Your specific questions are:

1. Is it permissible for a school district to hold school six days a week for some months and four days a week in other months since provisions limiting the length of a school week and school month have been eliminated?

Opinion: The purpose of the inclusion of Section 2 of Senate Bill 2173 was to permit districts to make up days lost by conducting school for longer than five days per week. N.D.C.C. § 15-29-08(13) authorizes a public school district board "[t]o adopt, alter, and repeal, when it deems it expedient, rules and regulations for the reception, organization, grading, government and instruction of students and for their suspension, expulsion, or transfer from one school to another." So long as the school calendar for the instruction of students includes the minimum days and hours of instruction time, and N.D.C.C. § 15-38-04.1 is followed, a school district board may schedule classes for any number of days in a week. N.D.C.C. § 15-47-33.1 is also available for the development of pilot programs with a modified school calendar if the superintendent of public instruction adopts rules under that section.

2. S.B. 2173 specifies the length of a school day at the elementary level (five and one-half hours) and at the high school level (six hours) of instruction time per day. The law also specifies 173 student/teacher contact days. Assume a school district calendar includes only 173 student/teacher contact days and a school operates on a schedule which provides a minimum length of school day. In this situation any time missed through early dismissals or late starts would presumably need to be made up. Are there any circumstances such as teacher professional development schedules that would justify or allow a school day of less than the minimum time specified on a 173 day calendar without required make up time?

Opinion: No. The amendments to N.D.C.C. § 15-47-33 set forth the minimum length of school term and school day. Subsection 1 thereof shows deductions from the 180-day school term that are authorized.

Subsection 2, however, does not contain any deductions from the required minimum hours of instruction time.

3. Does the newly specified length of school day based on 173 student/teacher contact day school calendar have any effect on laws which currently govern forgiveness for storm days or other acts of God?

Opinion: No. N.D.C.C. § 15-40.1-09.1 was not amended.

4. If a school district's normal day for high school is six and one-half hours, is it permissible for the district to "bank time"? In other words, can the district add up the half hour per day, which goes on beyond the minimum required, and use it to make up for early dismissals for professional development or athletic activities for example?

Opinion: No. Senate Bill 2173 provides for a five and one-half or six-hour instruction time in terms that make those amounts the minimum provided for 173 days. It does not provide for "bank time" by increasing the length of the school day by a fraction of a school day in anticipation that there may be some future reason for dismissing school for professional development, storm days, athletic activities, holiday anticipation, or hunting season anticipation. However, 1997 House Bill 1055, which also amended N.D.C.C. § 15-47-33, permits a school board to declare parent-teacher conferences held outside normal school hours to be compensatory time and part of that two-day deduction from the 180-day school calendar.

5. How is lunch break treated in regard to length of day? Is the normal day 5.5 hours at the elementary level and 6 hours at the high school level minus any break for noon lunch? Does it matter that lunch breaks are staggered so that some students are in class at all times?

Opinion: Lunch breaks are not included in the minimum five and one-half or six hours of instruction time under Senate Bill 2173. The minimum number of hours of instruction time are to be provided to every student.

6. How would a school district handle circumstances in which school starts on time and ends on time but buses run late or leave early because of stormy

weather so that a significant proportion of the enrollment misses part of the school day? Can this be counted as a full day for purposes of meeting the requirement of 173 full days of instruction?

Opinion: If the school facility and the faculty of the school is in full operation and open and available to provide instruction to students for the minimum number of hours required per day, then the incidental absence of a certain number of students from those classes for reasons beyond the control of the students or school does not reduce the number of days that the school is open. School districts may provide for making up classes missed by students through means such as extra classes, extra homework, or extra testing.

7. If the high school dismisses so that high school teachers can attend an in-service but elementary school students continue through the normal school days, does this count as one of the 173 full days required in the district for all students?

Opinion: No. School must be open and in operation and staffed to provide the required minimum of hours of student-teacher contact for both elementary and high school levels.

8. What percent of the school's total enrollment either in individual buildings or across the district must be in attendance in order to qualify as an instructional day under the statute?

Opinion: Individual student absences may be dealt with as noted in the answer to number 6 above pursuant to school policies for grades, testing, and homework. There is no percentage of enrollment that must be in attendance in order to qualify as an instructional day. The school must be open and staffed sufficiently to provide the minimum number of hours of instruction time for all grades being taught in that school in order to qualify as an instructional day.

9. Does S.B. 2173 regulate the length of the school day for full or half-day kindergarten programs?

Opinion: Yes. Senate Bill 2173 applies to "elementary schools" and sets a minimum school day length (5½ hours of instruction time) for "elementary students." The bill does not specifically mention kindergarten students; however, a kindergarten program is characteristically part of an elementary school program. The

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establishment of kindergartens is optional under N.D.C.C. ch. 15-45, and a school board having a kindergarten program may determine whether to operate it on a full-day or a half-day basis so long as at least the equivalent of 30 full days of instruction is provided. N.D.C.C. § 15-45-02(3).

Per-student foundation aid payments for kindergarten programs are based on a maximum payment for kindergarten students for those programs providing the equivalent of "ninety full days of classroom instruction" during a 12-month period. Prorated payments are made to those kindergarten programs providing shorter periods of instruction. N.D.C.C. § 15-40.1-08(7).

Reading N.D.C.C. §§ 15-40.1-08(7), 15-45-02, and 15-47-33 (as amended by Senate Bill 2173) together to give meaning to all of them (Held v. North Dakota Workers Compensation Bureau, 540 N.W.2d 166 (N.D. 1995)), a full day of kindergarten instruction is 5½ hours, like the other classes taught in elementary schools, and a half-day kindergarten program consists of at least 2¾ hours of instruction per day.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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