

**LETTER OPINION**  
**97-L-189**

November 20, 1997

Honorable Lyle L. Hanson  
State Representative  
337 15th Avenue NE  
Jamestown, ND 58401

Dear Representative Hanson:

Thank you for your letter presenting a question from your local school district superintendent concerning the accuracy of the Superintendent of Public Instruction's interpretation of my July 2, 1997, opinion on 1997 Senate Bill 2173 with respect to "bank time" for school day purposes.

You attached to your letter a copy of the State Superintendent's September 15, 1997, memorandum to school administrators concerning, among other things, making up missed school time by a school district which has established a school day longer than the minimum school day required by N.D.C.C. § 15-47-33. In this regard, the State Superintendent's memorandum stated:

There have also been a number of questions asked about the implications of Senate Bill 2173 which sets the minimum length of school year at 173 student contact days. Specifically a number of you have asked about letting school out early for travel time the day before teachers convention. If school is dismissed early on that day and that day is part of your 173 student contact days you will need to make up whatever time less than the minimum length of a school day is lost. Makeup for early dismissals or late starts is done on an hour by hour basis.

While the law does not permit banking time, if your normal school day is longer than the minimum required by law, the amount of time which your day is longer than the minimum may be used to make up for lost time after the fact. For example, if you dismiss two hours early the day before teachers convention and your normal school day for high school is 6 hours and 15 minutes the two hours necessary makeup could be accomplished with your regular 6 hour and 15 minute day over the next 8 school days.

My July 2, 1997, opinion to the State Superintendent on the subject of bank time provided:

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.

Letter from Attorney General Heidi Heitkamp to Dr. Wayne G. Sanstead (July 2, 1997).

Two questions are raised by the State Superintendent's memorandum: first, whether the amount of time which must be made up when school is either let out early or started late is the statutory minimum number of hours for a school day or the number of hours the school district has determined is the normal school day for that district, and second, whether there is a difference between using a 15-minute (or any number of minutes) extension of time beyond the minimum statutorily required school day to make up lost time based on whether the extension is applied before or after the fact of lost time.

N.D.C.C. § 15-47-33 sets the minimum number of hours for a school day to count as a full day of instruction. For elementary students, at least five and one-half hours of instruction time must be offered. For high school students, the minimum is six hours of instruction time. Because the Legislature has determined the minimum number of hours of instruction which must be held for a day to be considered a "full day of instruction," it is my opinion that the time which must be made up for days in which school is dismissed early or begun later than usual is the amount of time needed for the day to meet the

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statutory minimum number of hours. Therefore, if a school district normally has six and one-half hours of instruction for high school students, but due to weather or other reasons cuts the school day to five hours, only one hour would need to be made up. If the school day were cut to six hours, no time would need to be made up. The State Superintendent's memorandum is consistent with this interpretation.

The next issue is whether that portion of the normal school day which exceeds the statutory minimum number of hours can be used to make up time lost regardless of whether those hours are accumulated before or after the early dismissal. In my opinion, use of that portion of a school district's normal school day which exceeds the statutory minimum number of hours to offset lost time amounts to "banking time" regardless of whether the time used for the offset was earned before or after the time lost. Either way, no extra instruction time is given to the students to make up for the time lost. Rather, the number of instruction minutes is simply reassigned from the day in which it was given to the day which needs more minutes to meet the statutory minimum. This amounts to a bookkeeping entry and not a true makeup of the lost instruction time. Therefore, it is my opinion that the portion of the normal school day for a school district which exceeds the statutory minimum instruction time may not be used to offset lost time.

In conclusion, time lost by a school district which has a school day length longer than the statutory minimum school day must be made up by adding instruction time without reliance on a preset length of school day longer than the statutory minimum. However, a school district with a preset instruction day longer than the statutory minimum may authorize making up lost time by adding instruction time so that the day of instruction on which time was lost equals the minimum statutory number of hours to constitute a full day of instruction rather than requiring the full number of hours of a normal school day to be made up.

N.D.C.C. § 15-40.1-09.1 may also be applicable if the Governor so proclaims.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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