

EDUCATIONAL EQUITY AND FUTURE EDUCATIONAL DELIVERY - BACKGROUND MEMORANDUM

Section 16 of House Bill No. 1013 (attached as an appendix) directs the Legislative Council to study the state's elementary and secondary education system, including key measurements of student progress, programs that address the state's competitiveness with other states, costs incurred by the state relating to implementing the No Child Left Behind Act, and the most effective means of using taxpayer dollars at the state and local levels to ensure the best possible education for the children of this state.

BACKGROUND

North Dakota Constitution

Article VIII, Section 1, of the Constitution of North Dakota provides:

A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

Section 1 has not been changed since enacted in 1889. Article VIII, Section 2, of the Constitution of North Dakota follows with the directive that:

The legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.

Article VIII, Section 3, of the Constitution of North Dakota requires that "instruction shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind."

Finally, Article VIII, Section 4, of the Constitution of North Dakota directs the Legislative Assembly to "take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of

uniformity in course of study, and to promote industrial, scientific, and agricultural improvements."

At least since the 1930s, the state has attempted to meet its constitutional directives by providing some level of financial assistance to local school districts. In the mid-1950s, a legislative interim Education Committee determined that state assistance was set at arbitrary levels. The committee also noted that existing statutes did not require "uniform minimum local efforts through the taxation of all property by the local school districts in an effort to support their own education systems, to the degree that is believed desirable by the Committee." It was the 1957-58 interim Education Committee that recommended passage of a state foundation aid program.

Initiation of the State Aid Program

A state aid program designed to provide financial assistance to local school districts has been in effect in North Dakota since 1959, at which time the Legislative Assembly enacted a uniform 21-mill county levy and provided a supplemental state appropriation to ensure that school districts would receive 60 percent of the cost of education from nonlocal sources. This initial program was adopted in part because the Legislative Assembly recognized that property valuations, demographics, and educational needs varied from school district to school district. The Legislative Assembly embraced the broad policy objective that some higher-cost school districts in the state "must continue to operate regardless of future school district reorganization plans." Taking into account the financial burdens suffered by the low valuation, high per student cost school districts, the Legislative Assembly forged a system of weighted aid payments that favored school districts with lower enrollments and higher costs. This initial program also allocated higher weighting factors to districts that provided high school services.

Statewide Study of Education - The Alm Report

In 1965, House Bill No. 815 directed the Legislative Research Committee (the predecessor to the Legislative Council) to study "the requirements, standards, procedures, and laws governing school districts in North Dakota as they relate to a comprehensive state educational program, comprehensive local educational programs, assessed valuation, problems of low-populated areas, rising educational costs and financial ability of districts to meet requirements, and potential educational needs." Consideration was

to be given to "terrain, roads, trading centers, population centers, and any and all other factors relating to needs of education in the coming years." The study was assigned to the Legislative Research Committee's Subcommittee on Education. The University of North Dakota agreed to participate in the study and assigned Dr. Kent Alm to the project. A federal grant provided matching funds for the study, which became identified as the *Statewide Study of Education*.

In his preface to the final report, Dr. Alm states "[t]he study team confronted the fact that North Dakota has modest resources for public services; moreover, the State is losing some of its most precious human resources through migration to other states. It needs to conserve the resources it has. Above all, it needs to use its present and future resources with as much skill and imagination as can be assembled in the public administration of its education system."

After two years of study, the team found that the "public system of education in North Dakota in certain key respects may be demonstrated to be inadequate, ineffective, inefficient, and inequitable." The team tried to get at the root causes of the "unsound educational condition."

The team ascertained that "two basic and powerful deterrents mitigate against significant improvements in the education system. The first constitutes a steady drain upon the State's capacity to use its limited resources wisely. The other makes the development of quality programs--particularly at the elementary school level--virtually unfeasible. These root causes are:

- An overly elaborate system of local school district organization, comprised chiefly of small, high-cost, low-quality, twelve-grade, elementary, and one-teacher school districts.
- Undue reliance--particularly in the small- and medium-size districts--upon underprepared, and therefore partly unqualified, educational personnel."

The study team was "[f]orced by the evidence to conclude that additional funds for public education alone would not correct these basic root conditions. Indeed, additional spending within the present structure could not materially alter these conditions. The root causes have to be attacked directly by legislative and administrative action. . . ."

Among the team's recommendations were:

- The energies of the state's colleges and universities be consolidated and focused on a new program of personnel development, research, and service, thereby making the classroom teacher a vital part of a continuing research and improvement effort;
- Each of North Dakota's schoolchildren be placed in a reasonably organized and administratively effective school district containing at least 12 grades of instruction and enrolling at least 200 students in high school;

- The Department of Public Instruction administer seven regional service centers which would energize and facilitate local district study, planning, evaluation, reorganization, and program improvement;
- The state foundation aid plan equalize inequities among local school districts;
- The state government assume responsibility for the extraordinary cost of education services such as school construction, debt service, transportation, and special services for rural isolated students; and
- State funds be used to reward those local districts that take the initiative to improve the quality and efficiency of their operation.

The results of the *Statewide Study of Education* were not available for action by the 1967 Legislative Assembly, and the final reports were not distributed until September 1968. The 1967-68 interim Subcommittee on Education recommended three bills relating to school district reorganization and school construction as a result of this study. A bill on school construction passed while two bills on school district reorganization, one of which would have created a regional committee system for school district reorganization and the other of which would have required reorganization of all school districts into high school districts, were defeated.

The 1970s

In the early 1970s, federal and state courts were beginning to address issues of spending levels for elementary and secondary education and whether those levels should be dependent upon the wealth of the school district in which a student resides. The Legislative Assembly, in an attempt to preempt the issue in North Dakota, responded by amending the state aid program in a way that evidenced a higher level of sophistication. The state more than doubled the per student payment and replaced the flat weighting factor with one that recognized four classes of high schools. Elementary weighting factors were altered as well. Adjustments continued to be made during the mid-1970s. A new category encompassing seventh and eighth grade students was created, and fiscal protection for schools experiencing declining enrollments was instituted. This latter provision ensured that no school district could receive less in state aid payments for a current year than that district would have received based on its enrollment during the previous school year. For the 1975-77 biennium, the state aid appropriation was \$153.4 million. In 1979 the Legislative Assembly appropriated \$208.4 million for the state aid program and added an additional appropriation of \$1 million to pay for free public kindergartens.

The 1980s

The next major development affecting educational finance occurred with the approval of initiated measure No. 6 at the general election in November 1980. This measure imposed a 6.5 percent oil extraction tax and provided that 45 percent of the funds derived from the tax must be used to make possible state funding of elementary and secondary education at the 70 percent level. To meet this goal, the 1981 Legislative Assembly allocated 60 percent of the oil extraction tax revenues to the school aid program. Initiated measure No. 6 also provided for a tax credit that made the 21-mill levy inapplicable to all but the owners of extremely high-value properties. The Legislative Assembly eliminated the 21-mill county levy and increased state aid to compensate for the revenues that would have been derived from the levy.

During the early 1980s, discussions continued to center around purported funding inequities. Districts spending similar amounts per student and having similarly assessed valuations were not levying similar amounts in property taxes to raise the local portion of education dollars. It was alleged that the system encouraged some districts to levy much smaller amounts than their spending levels and assessed valuations justified.

In response, the Legislative Council's Education Finance Committee, during the 1981-82 interim, examined a method of funding education known as the "70-30" concept. This proposal was a significant departure from the existing state aid formula in that it took into account the cost of providing an education in each school district. The formula required determination of the adjusted cost of education and then required the computation of a 30 percent equalization factor to arrive at each district's entitlement. It was contemplated that a local mill levy would be employed to raise the district's local share of the cost of education.

Proponents touted this approach as one that included a comprehensive equalization mechanism and which recognized local variances in the cost of education. Opponents argued it did nothing more than award high-spending districts and penalize those that had been operating on restricted budgets. The interim committee did not recommend the concept.

Discussions regarding the many aspects of educational finance continued through the 1980s. Legislative Council interim committees explored weighting factors, considered the effects of increasing the equalization factor, and explored the excess mill levy grant concept. During the 1987-88 interim, the Education Finance Committee even established specific goals and guidelines to guide its deliberations on matters of educational finance. While the interim committees articulated the need to alter the state's education funding system, they reached little agreement beyond recommending increases in the level of per student aid.

Bismarck Public School District No. 1 v. State of North Dakota

In 1989 legal action was initiated for the purpose of declaring North Dakota's system of public school finance unconstitutional. The complaint in *Bismarck Public School District No. 1 v. State of North Dakota* charged that disparities in revenue among the school districts had caused corresponding disparities in educational uniformity and opportunity which were directly and unconstitutionally based upon property wealth.

On February 4, 1993, after hearing 35 witnesses and examining over 250 exhibits, the district court issued 593 findings of fact and 32 conclusions of law. The court listed these "constitutionally objectionable" features of the school financing system:

- Disparities in current revenue per student are the result of variations in school district taxable wealth.
- The 22-mill equalization factor in the state aid formula fails to equalize for variations in district wealth because the equalization factor is below the state average school district tax rate for current revenue and leaves much of the school millage outside the state aid formula.
- The low level of state educational support fails to ensure substantial equality of resources for students in similarly situated school districts.
- The use of cost weightings that are inaccurate unjustifiably benefits districts with large amounts of taxable wealth.
- The flat grant allocation of tuition apportionment ignores the vast differences in taxable wealth among school districts and operates as a minimum guarantee for wealthy districts.
- The transportation aid program exacerbates existing resource disparities by reimbursing some, often wealthy, districts for more than the actual cost of transportation and requires other, often poorer, districts to fund a substantial share of transportation costs from other revenue sources.
- The special education funding program exacerbates existing resource disparities by giving higher-spending districts an advantage in obtaining state reimbursement of special education costs and requiring school districts to fund a large share of the excess costs of special education programs from their disparate tax bases.
- The state aid for vocational education exacerbates existing resource disparities.
- The state system for funding school facilities relies on the unequal taxable wealth of school districts.
- The payment of state aid to wealthy districts enables them to maintain large ending fund balances.

- The failure of the state to ensure that resource differences among school districts are based on factors relevant to the education of North Dakota students rather than on the unequal taxable wealth of North Dakota school districts.

The district court declared the North Dakota school financing system to be in violation of Article VIII, Sections 1 and 2, and Article I, Sections 21 and 22, of the Constitution of North Dakota. The Superintendent of Public Instruction was directed to prepare and present to the Governor and the Legislative Assembly, during the 1993 legislative session, plans and proposals for the elimination of the wealth-based disparities among North Dakota school districts.

Response to the Litigation - Superintendent of Public Instruction

In response to the district court's order, the Superintendent of Public Instruction presented the following recommendations to the 1993 Legislative Assembly:

- Raise the per student payment to \$3,134.
- Fund special education by dividing the 13 disabilities categories into three broad categories and assigning weighting factors to each.
- Fund vocational education by assigning weighting factors to high-cost and moderate-cost programs.
- Provide transportation reimbursements based on six categories of density.
- Provide state funding of education at the 70 percent level.
- Establish a uniform county levy of 180 mills.
- Distribute tuition apportionment in the same manner as foundation aid.
- Provide that federal and mineral revenues in lieu of property taxes and districts' excess fund balances be part of a guaranteed foundation aid amount.
- Allow districts the option of levying 25 mills above the 180-mill uniform county levy.
- Require that all land be part of a high school district and that districts having fewer than 150 students become part of a larger administrative unit.
- Provide \$25 million for a revolving school construction fund.

Response to the Litigation - 1993 Legislative Assembly

The Legislative Assembly offered its response by way of House Bill No. 1003 (1993). The bill was the appropriations bill for the Superintendent of Public Instruction and, as it progressed through the legislative process, it became the principal 1993 education funding enactment. The bill:

- Set the state support for education at \$1,572 per student for the first year of the 1993-95 biennium and at \$1,636 for the second year.
- Raised the equalization factor from 21 to 23 mills and then to 24 mills.
- Set weighting factors at 25 percent of the difference between the prior statutory amount and the five-year average cost of education per student, as determined by the Superintendent of Public Instruction, for the first year of the biennium and at 50 percent of the difference for the second year of the biennium.
- Capped state transportation payments at 100 percent for the first year of the 1993-95 biennium and at 90 percent for the second year of the biennium and directed that any savings resulting from imposition of the 90 percent cap during the second year of the biennium be used by the Superintendent of Public Instruction to increase the per student transportation payments available under existing law.
- Reiterated the existing statutory requirement that school districts admitting nonresident students charge tuition but exempted school districts that admit nonresident students from other districts offering the same grade level services.
- Directed the Legislative Council to conduct another study of educational finance and appropriated \$70,000 for purposes associated with the study, including necessary travel and consultant fees.

1993-94 Interim Study and Supreme Court Decision

The Legislative Council's interim Education Finance Committee began its efforts during the 1993-94 interim before an appeal of *Bismarck Public School District No. 1* was taken to the North Dakota Supreme Court. The committee was aware that many of the issues addressed by the trial court had been the subject of interim studies and legislative deliberations for many years. However, the committee also realized that the requisite number of Supreme Court justices (four) might not necessarily agree with the lower court's determination that the state's system of funding education was unconstitutional.

The North Dakota Supreme Court issued its decision on January 24, 1994--*Bismarck Public School District No. 1 v. State of North Dakota*, 511 N.W.2d 247 (N.D. 1994). Although three of the five justices held that the state's education funding system was unconstitutional, Article VI, Section 4, of the Constitution of North Dakota requires four members of the court to declare a statute unconstitutional.

A majority of the Supreme Court indicated there were three principal areas in need of attention--in lieu of revenues, equalization factors,

and transportation payments. The Supreme Court did not, however, mandate specific legislative action. The court indicated the areas of concern and left it up to the Legislative Assembly to determine how those areas should be addressed. In a dissenting opinion, Chief Justice VandeWalle stated ". . . [t]he present funding system is fraught with funding inequities which I believe have not yet transgressed the rational-basis standard of review but which appear to me to be on a collision course with even that deferential standard."

The Supreme Court decision was issued midway through the 1993-94 interim. By the time the Education Finance Committee had completed its work, it had considered 35 bill drafts and 3 resolution drafts. Twenty-seven pieces of legislation were recommended to the Legislative Council for introduction during the 1995 legislative session.

The committee's recommendations included increases in the minimum high school curriculum; establishment of an additional Governor's school; appropriation of funds for elementary summer school programs, professional development programs, professional development centers, and refugee student assistance; placement of all land in a high school district; alteration of the weighting categories; a variable equalization factor; reclassification of special education categories; distribution of tuition apportionment according to average daily membership; an increase in transportation payments from 28 cents to \$1 per day for all students transported by schoolbuses; and an \$80 million increase in the level of foundation aid over that appropriated during the 1993-95 biennium.

Education Finance - 1995 Legislative Assembly

Although the 1995 Legislative Assembly enacted a variety of bills dealing with education and education finance, the most significant provisions were found in three bills--Senate Bill No. 2059, Senate Bill No. 2063, and Senate Bill No. 2519.

Senate Bill No. 2059 dealt with the funding of transportation. The bill maintained the per mile payment of 25 cents for small buses and 67 cents for large buses, and it added a payment for in-city transportation of 25 cents per mile. The per head payment for in-city students riding schoolbuses or commercial buses was increased from 17.5 cents to 20 cents per one-way trip. The 90 percent cap on payments, which was instituted by the 1993 Legislative Assembly, was left in place.

Senate Bill No. 2063 dealt with the funding of special education. The bill provided that \$10 million had to be used to reimburse school districts for excess costs incurred on contracts for students with disabilities, for low-incidence or severely disabled students, and for certain boarding care. The bill also provided that \$400,000 had to be used to reimburse

school districts for gifted and talented programs approved by the Superintendent of Public Instruction, and \$500,000 had to be used to reimburse school districts with above-average incidences of moderately or severely disabled students. Any amount remaining in the special education line item was to be distributed to each school district in accordance with the number of students in average daily membership. The line item for special education was \$36,850,000. The bill also provided that, during the 1995-96 school year, no district or special education unit could receive less than 95 percent of the amount it received during the 1993-94 school year, excluding reimbursements for student contracts, boarding care, and gifted and talented programs. During the 1996-97 school year, no district or special education unit could receive less than 90 percent of that amount.

Senate Bill No. 2519 provided an increase in the per student payment for isolated elementary schools and high schools and increased by 20 percent the weighting factors applied to students attending school out of state. The bill raised the equalization factor from 24 to 28 mills for the first year of the biennium and to 32 mills for the second year of the biennium and provided that thereafter the equalization factor would be tied by a mathematical formula to increases in the level of foundation aid. The equalization factor would not be permitted to fall below 32 mills nor rise above 25 percent of the statewide average school district general fund mill levy. Weighting factors, which had been set at 50 percent of the difference between the factor stated in statute and the five-year average cost of education per categorical student, were left at 50 percent of the difference for the first year of the biennium and then raised to 65 percent of the difference for the second year. High school districts whose taxable valuation per student and whose cost of education per student were both below the statewide average could receive a supplemental payment, again based on a mathematical formula. The sum of \$2,225,000 was appropriated for supplemental payments. Per student payments were set at \$1,757 for the first year of the biennium and \$1,862 thereafter.

The 1995 Legislative Assembly appropriated \$517,598,833 for foundation aid, transportation aid, supplemental payments, tuition apportionment, and special education. That figure exceeded the 1993-95 appropriation by \$41,561,941.

Education Finance - 1997 Legislative Assembly

The 1997 Legislative Assembly incorporated the substantive provisions of its education finance package within Senate Bill No. 2338. That bill set the per student payments at \$1,954 for the 1997-98 school year and \$2,032 for the 1998-99 school year. The equalization factor, which was raised to 32 mills by the 1995 Legislative Assembly and thereafter tied

by a mathematical formula to future increases in the level of foundation aid, was left at 32 mills. All references to formulated increases were removed. Weighting factors, which were set at 65 percent of the difference between the statutory factor and the five-year average cost of education per categorical student, remained at 65 percent for the 1997-98 school year and increased to 75 percent for the 1998-99 school year.

Supplemental payments to high school districts whose taxable valuation per student and average cost of education were below the statewide average were maintained by House Bill No. 1393, but the mill range for eligible districts was raised from the 1995 level of 135 to 200 mills to the 1997 level of 150 to 210 mills. Payments to school districts for the provision of services to students with special needs were increased from the 1995-97 appropriation of \$36,850,000 to the current appropriation of \$40,550,000. Of this amount, \$10,000,000 was set aside for student contracts, \$400,000 for the provision of services to gifted students, and the remainder was to be distributed on a per student basis.

The total amount appropriated for per student payments, transportation, supplemental payments, tuition apportionment, and special education by the 1997 Legislative Assembly was \$559,279,403. That figure exceeds the 1995-97 appropriation by \$41,680,570.

Education Finance - 1999 Legislative Assembly

The impact of declining demographics found its way into a number of bills addressed by the 1999 Legislative Assembly. One of these bills, House Bill No. 1033, was recommended to the Legislative Council by the 1997-98 interim Education Finance Committee. The bill required that on or before June 30, 2002, each school district offer all educational grade levels from 1 through 12 or become attached, through a process of reorganization or dissolution, to a district that offers those grade levels. The bill, which would have had the likely effect of reducing the number of school districts from 231 to approximately 182, was defeated in the House.

Another way in which declining demographics was addressed by the 1999 Legislative Assembly involved authorization for school districts to jointly employ school district superintendents. That concept was embodied in 1999 Senate Bill No. 2162. Senate Bill No. 2162 was enacted and signed.

Declining demographics found their way into discussions regarding school construction approval. Senate Bill No. 2162 provided that the Superintendent of Public Instruction may not approve the construction, purchase, repair, improvement, renovation, or modernization of any school building or facility unless the school district proposing the project demonstrates the need for the project, the educational

utility of the project, and the ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project, or demonstrates potential utilization of the project by a future reorganized school district.

Declining demographics were the impetus behind the provision in Senate Bill No. 2162 which allowed school districts to terminate their operations, become nonoperating districts for up to three years, and during the period of "nonoperation" to provide for education of their students in other school districts.

Senate Bill No. 2162 also set aside up to \$2 million for school districts whose 1999-2000 fall enrollment was less than their 1994-95 fall enrollment and provided up to \$2 million in reorganization bonuses for school districts that reorganized with one or more contiguous districts or portions of districts, provided at least one of the reorganizing districts was a high school district and further provided that the newly reorganized district consisted of at least 800 square miles.

The 1999 Legislative Assembly appropriated \$479,006,259 for foundation aid and transportation, \$3,100,000 for supplemental payments, \$53,528,217 for tuition apportionment payments, and \$46,600,000 for special education payments.

Education Finance - 2001 Legislative Assembly

The 2001 Legislative Assembly provided \$49,898,695 for special education, \$67,239,025 for tuition apportionment, \$2,200,000 for supplemental payments, \$473,971,648 for per student payments and transportation, and for the first time, \$35,036,000 for teacher compensation payments. House Bill No. 1344, which contained the teacher compensation payments, also required school districts to provide each teacher with a minimum salary of \$18,500 for a nine-month contract during the first year of the biennium and \$20,000 for a nine-month contract during the second year of the biennium.

House Bill No. 1344 set the per student payment levels at \$2,287 for the first year of the biennium and \$2,347 for the second year of the biennium. The bill set aside \$2,000,000 from which prorated hold harmless payments could be made to districts that, over the biennium, received less money under the bill than they would have received had the money allocated to teacher compensation payments been included in the per student payments. The bill also provided for contingent declining enrollment payments and capped those payments at \$250 per student for a maximum of 400 students.

Education Finance - 2003 Legislative Assembly

The 2003 Legislative Assembly maintained special education funding at \$49,898,695, raised the appropriation for tuition apportionment from \$67,239,025 to

\$69,495,371, raised the appropriation for per student payments from \$474,971,648 to \$489,379,990, and raised the appropriation for teacher compensation reimbursement from \$35,036,000 to \$51,854,000. In addition, the 2003 Legislative Assembly increased the appropriation for supplemental payments from \$2,200,000 to \$5,000,000.

Whereas per student payments during the 2001-03 biennium were \$2,287 and \$2,347, the payment levels for the 2003-05 biennium were increased to \$2,509 and \$2,623. Senate Bill No. 2154 (2003) also increased the high school and elementary weighting factors from 75 percent of the difference between the stated factors and the five-year average cost of education per category to 85 percent of the difference in the first year of the biennium and thereafter to the five-year average cost of education per category. It provided for an equalization factor that would rise from 32 to 34 mills during the first year of the biennium, to 36 mills during the second year of the biennium, and continue increasing by two mills each year thereafter.

Senate Bill No. 2154 amended the existing formula for calculating supplemental payments so that all tuition payments and county and unrestricted federal revenues would be accounted for in determining eligibility and further provided for the application of an additional equalization factor in the event that a district levied fewer than 140 mills for general fund purposes plus high school transportation and high school tuition. In addition, it provided for the block-granting of transportation payments, thereby ensuring that each school district will receive as much in transportation payments as the district received during the previous biennium.

Senate Bill No. 2154 also articulated the subjects that public and nonpublic schools must make available over the course of a student's high school career. Contingent payments were set aside for joint powers agreements that met specified criteria and for school district reorganizations. Any remaining money was to be distributed as additional per student payments.

Senate Bill No. 2154 was vetoed by the Governor. The veto message indicated the veto was because the bill did "not commit any increase in education funding to teacher compensation in order to continue the progress that we initiated in the last legislative session."

Section 38 of Senate Bill No. 2154 provided that the "board of a school district shall consider continuing the efforts made in the 2001-03 biennium to increase teacher salaries throughout the state." During the special session of May 2003, the content of Senate Bill No. 2154 was introduced as Senate Bill No. 2421. The only change made during the special session concerned Section 38. As Senate Bill No. 2421 was passed by the Legislative Assembly during the special session and subsequently signed by the Governor, Section 38 provides that the board of each school district shall use an amount equal to at

least 70 percent of all new money received for per student payments and tuition apportionment payments for the purpose of increasing the compensation paid to teachers and for the purpose of providing compensation to teachers who begin employment with the district on or after July 1, 2003. The section also provides that the requirement does not apply to a school district if the board of the district, after a public hearing at which testimony and documentary evidence are accepted, determines by a vote of two-thirds of its members that complying with the requirement would place the district in the position of having insufficient fiscal resources to meet its other obligations.

Williston Public School District No. 1 v. State of North Dakota

On October 9, 2003, a complaint was filed in Northwest Judicial District Court (Williams County) alleging that the North Dakota education finance system provides inadequate funding and unfairly and arbitrarily results in widely disparate funding, inequitable and inadequate educational opportunities, and unequal and inequitable tax burdens. It was also alleged that the North Dakota education finance system violates numerous provisions of the Constitution of North Dakota and the Constitution of the United States.

The general allegations included:

- State funding for education is constitutionally inadequate, as evidenced by a 2003 Department of Public Instruction study concluding that the state is severely underfunding kindergarten through grade 12 education and further evidenced by the fact that school districts are forced to make up the difference through increased taxes;
- The No Child Left Behind Act requires participating states to adopt challenging academic content standards and student achievement standards and to develop an accountability system and that the plaintiff districts lack adequate funds to operate and administer the programs and services necessary to meet the constitutionally imposed education standards;
- Per student spending in a majority of school districts falls below the level needed to provide an adequate education to students and that per student spending is inadequate to meet the standards imposed by the Constitution of North Dakota;
- Plaintiff districts have lower than average costs per student and therefore fall below the standard of adequacy imposed by the Constitution of North Dakota;
- Plaintiff districts lack adequate funds to recruit and retain highly qualified teachers;

- Plaintiff districts lack adequate funds to purchase necessary textbooks, equipment, and supplies;
- The state provides no aid for the capital costs of school facilities other than that obtainable from a low-interest state loan fund;
- Even districts with high property values are unable to generate sufficient revenue to meet the adequacy standards imposed by the Constitution of North Dakota;
- Plaintiff districts have significantly less taxable value per student and must therefore tax at a higher rate than property wealthy neighbors;
- Mill levies vary significantly from district to district;
- Some districts have the authority to levy unlimited amounts while others cannot exceed 185 mills without a vote of the people or legislative authorization;
- The mill deduct does not sufficiently equalize or provide for the maintenance of an adequate and uniform system of public education;
- Each mill of school tax above the deduct contributes to inequities in school spending based on taxable wealth;
- Some types of taxable wealth, such as revenues from oil, gas, and coal taxes paid in lieu of property taxes, are not subject to any equalization;
- The disparity in taxable valuation among districts is increasing;
- Disparities in average costs per student are not adequately equalized;
- The same tuition apportionment payment is made to wealthy and poor districts;
- North Dakota children are at risk of failing to become active and productive citizens; and
- Property poor districts are not as able as property wealthy districts to meet their students' education needs and to prepare them for successful matriculation to college and the working world.

The specific constitutionally objectionable features included:

- Inadequate state funding;
- Disparities in costs per student which result from inadequate state aid and variations in school district taxable wealth;
- A mill deduct that fails to equalize;
- Low levels of state aid payments that fail to ensure adequacy and equality of resources;
- The use of inaccurate weighting factors;
- The use of a flat grant tuition apportionment payment that ignores difference in taxable wealth;
- The use of a special education funding formula that gives higher spending districts an advantage in obtaining state reimbursements;

- A system of state aid for vocational education which exacerbates existing resource disparities;
- The primary source for funding school facilities relies on the unequal taxable wealth of school districts;
- The payment of state aid to wealthy districts that maintain large ending fund balances; and
- The failure of the state to ensure that resource differences among school districts are based on factors relevant to the education of students rather than on the unequal taxable wealth of districts.

In their claim for relief, the plaintiffs suggest that:

- The state has a duty to establish an educational system and to maintain and adequately fund that system;
- Because of inadequate funding, the plaintiff districts cannot provide the educational opportunities mandated by the Constitution of North Dakota;
- The right to an adequate and equal educational opportunity is a constitutionally guaranteed fundamental right; and
- The present school finance system is constitutionally inadequate and infringes upon the plaintiffs' right to an adequate and equal education.

The plaintiffs include the school districts of Williston, Des Lacs-Burlington, Devils Lake, Grafton, Hatton, Larimore, Surrey, Thompson, United, and Valley City. The trial is expected to begin in late February 2006.

Education Finance - 2005 Legislative Assembly

The 2005 Legislative Assembly set per student payments at \$2,765 for the first year of the biennium and at \$2,879 for the second year of the biennium. It established a 38-mill deduct with an annual increase of three mills each year thereafter and reconfigured weighting categories as follows:

Effective Through June 30, 2005	Effective Beginning July 1, 2005
High schools under 75	High schools under 120
High schools having 75-149	High schools having 120-299
High schools having 150-549	High schools having 300+
High schools having 550+	
Elementary schools - One room rural	
Elementary schools under 100	Elementary schools under 100
Elementary schools having 100-999	Elementary schools having 100+
Elementary schools having 1,000+	

It amended the eligibility requirements for supplemental payments so that a school district would have to levy at least 180 mills and have an ending fund

balance that was less than 35 percent of its actual expenditures plus \$20,000; \$5,000,000 was appropriated for supplemental payments.

The 2005 Legislative Assembly maintained teacher compensation reimbursement levels at \$3,000 and \$1,000 and set the minimum salary levels at \$22,000 for the first year of the biennium and at \$22,500 for the second year of the biennium; \$50,912,120 was appropriated for teacher compensation payments.

Transportation aid payments were set at \$33,500,000, special education payments were set at \$52,500,000, and tuition apportionment payments were set at \$71,600,000.

The following table compares the appropriations for the major components of education funding set by the 1995 Legislative Assembly immediately after the North Dakota Supreme Court ruling in *Bismarck Public School District No. 1 v. State of North Dakota* and by the 2005 Legislative Assembly.

Funding Component	1995-97	2005-07
Per pupil payments	\$1,757	\$2,765
	\$1,862	\$2,879
Special education	\$36,850,000	\$52,500,000
Tuition apportionment	\$46,017,000	\$71,600,000
Supplemental payments	\$2,225,000	\$5,000,000
Mill deduct	28 mills	38 mills
Weighting factors	32 mills	3-mill annual increase
	50%	5-year average
Transportation	65%	
Teacher compensation	\$36,000,798	\$35,500,000
	N/A	\$50,912,120
Total general fund appropriation for Department of Public Instruction	\$480,912,318	\$633,927,503

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