

# MINUTES

## Extraordinary Cost Fund for Special Education 2018 Interim Study Committee



Representative Mary Duvall, Chair  
Senator Jim Bolin, Vice Chair

**First Meeting, 2018 Interim  
Wednesday, June 13, 2018**

**Room 362 – State Capitol  
Pierre, South Dakota**

The first meeting of the Extraordinary Cost Fund for Special Education Study Committee was called to order by Representative Mary Duvall at 8:30 a.m. in Room 362 of the State Capitol, Pierre, South Dakota. A quorum was determined with the following members answering the roll call: Representatives Dan Ahlers, Hugh Bartels, Lana Greenfield, Tom Holmes, Elizabeth May, and Kyle Schoenfish; Senators Ryan Maher, Jeff Monroe, Reynold Nesiba, and Jordan Youngberg; Senator Jim Bolin, Vice Chair; and Representative Mary Duvall, Chair. Excused: Representative Jamie Smith.

Staff members present included Clare Charlson, Principal Research Analyst; Lucas Martin, Fiscal Analyst; and Cindy Tryon, Senior Secretary.

*NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was webcast live. The archived webcast is available at the LRC website at [sdlegislature.gov](http://sdlegislature.gov).*

### Opening Remarks

Representative Mary Duvall, Chair, welcomed everyone attending in person or listening via the Internet to the meeting. Representative Duvall explained the interim process and reviewed the agenda for the meeting. Senator Jim Bolin, Vice Chair, thanked the committee members for taking time to serve on the committee. He noted that this is a worthy topic, and the study should make for some positive recommendations.

Mr. Don Kirkegaard, Secretary, Department of Education, said special education enrollments are increasing at a rate much faster than general enrollments, and this will not be an easy challenge. Funding for special education is an area that is of concern for all schools in South Dakota.

### Overview of Committee Scope

**Mr. Lucas Martin, Fiscal Analyst, LRC**, presented the scope of study as set by the Executive Board, *"The specific issue to be addressed is the increasing need for special education and related services in the schools in our state and how to adequately fund special education in light of that increased need. One of the main concerns is that the state aid dollars currently being set aside for the extraordinary cost fund for special education are not adequate to meet the demands on that fund. What is causing the need for increased funding? What are the state and federal requirements? How are children being identified for the levels of disability? Some school districts receive little to no funding for special education, due to the small number of special education students in their school district, while other school districts must utilize the extraordinary cost fund to try to meet their demands for special education. What can be done to ensure adequate funding to the schools that need it?"*

Mr. Martin said every school district is facing various challenges in funding special education. Funding for special education has increased by 50% while the number of special education students has only increased by 19%.

## Overview of Special Education – History and Process

**Ms. Linda Turner, Director of Special Education Programs, Department of Education**, presented a PowerPoint presentation, "Extraordinary Cost Fund of Special Education" which includes the history and the process. ([Document #1](#)).

Ms. Turner gave an overview of the history of special education in the United States, explaining the federal legislation that has passed over the years and the impact that legislation had on special education. Public Law 94-142, Education for All Handicapped Children Act (EHA), was enacted in 1975, and is considered the groundwork legislation for the laws in place today. A summary of federal legislation affecting special education was distributed by Ms. Turner ([Document #2](#)).

In response to a question from Representative May, Ms. Turner explained that related services are anything a student needs to further the student's education that is outside the realm of academics, such as interpreters or healthcare providers, and those special services are funded through special education.

The Americans with Disabilities Act (ADA) in 1990 brought about changes in all areas of public life. The Individuals with Disabilities Education Act (IDEA) amendments of 1997 set the requirements, and that is when behavioral issues were included. IDEA was further amended in 2004 and those requirements are in place today. Ms. Turner provided a document listing the various acronyms used regarding special education ([Document #3](#)).

The Zero Reject requirement states that all students with disabilities eligible under the IDEA must receive a free appropriate public education (FAPE), and there are no exceptions based on disability type or severity. In response to a question from Representative Duvall, Ms. Turner said if a parent decides a child's disabilities are too severe to attend school, the parent can choose to home school the child.

Committee members asked questions about the Birth to 3 program. Children are usually placed in the Birth to 3 program based on a physician's screening. Representative Holmes said there is research showing that fifty percent of the children who participate in the Birth to 3 program enter school in the normal kindergarten setting. Representative Duvall requested the Department of Education to present more information on the Birth to 3 program at the next committee meeting.

Ms. Turner explained the evaluation process for the students ages three to twenty-one. The Every Student Succeeds Act (ESSA) enacted in 2015 includes provisions that help ensure success for all students and schools.

Senator Bolin asked about funding for private schools that accept special education students. Ms. Turner said those schools do not receive state or local funding, but do receive federal funding for those students.

Representative Greenfield asked when the definition for special education was broadened allowing for more students with behavioral problems. Ms. Turner said more behavioral components were added in 1997, and in 2004, there was a push to bring those students into the special education environment.

The evaluation process includes recognition, collaboration, pre-referral, review, and consent. The evaluation is done at no cost to the parents. The student is eligible for special education services if the student has a disability as defined by IDEA which negatively impact the student's educational performance, and the student needs special education services in order to benefit from education.

Representative Holmes asked about the broadening of the definition of autism. Ms. Turner said the definition did not change at the federal level. At the state level, the diagnostic system used by doctors in determining autism is used. The definition now captures more of a range under autism spectrum disorder.

The number of students by disability in South Dakota is listed on slide 53 of the PowerPoint presentation broken down by category. Senator Youngberg asked what types of disabilities fall under the *Other Health Impaired* category. Ms. Turner said some disabilities included in that category are ADD, ADHD, Tourettes, Epilepsy, FASD, and seizure disorders. Ms. Turner also explained the Department of Education does not collect data on home schooled students with disabilities unless a student takes some classes at a public school.

Senator Nesiba asked how the number of students with disabilities in South Dakota compares with those students in other states. Ms. Turner said the national average is 13% of the students, and South Dakota is just over that average at 15% of the students having disabilities.

Ms. Turner explained the process for setting the Individualized Educational Program (IEP) which is a legal document describing the specially designed program developed to meet the needs of an individual child written on an annual basis. The IEP sets the goals, level measurements, and assessments for the individual child. There are various services and supports provided based on each child's IEP.

Senator Maher asked how many staff hours are spent on an IEP. Ms. Barbara Lindquist, Bon Homme School District, said an IEP can take as little as three hours or more than two weeks, it depends on the severity of the disability. Ms. Lindquist explained the federal government sets the requirements for the IEP and the state government develops the forms needed to meet those requirements. School districts can use the forms provided by the state or develop their own forms. Ms. Turner added that the IEP sets out the plan for the student and the parents and then provides documentation regarding each student.

Senator Nesiba said he has had constituents talk to him about their special education children and what happens to them when they reach the age of 21. There appears to be a disconnect when the child is handed off to another agency. Ms. Turner explained that students who "age out" have higher levels of disabilities, and other programs are needed to take over once a student reaches the age of 21.

### **Overview of Special Education – Funding**

**Ms. Tamara Darnall, Director, Division of Finance & Management, Department of Education**, presented the "Overview of Special Education Funding for School Districts" ([Document #4](#)). The three funding sources for special education are the federal government, state government, and local governments (property taxes). Ms. Darnall gave the history of funding for special education starting in 1966 for federal funds, and starting in 1995 for state funds.

The amount of funding for special education is based on the disability level of the student. There are six levels and each disability is categorized in a level. The levels, the disabilities that fall within each level, and the amount of funding for each level can be found on slide 8 of document #4.

Ms. Darnall presented the "History of Special Education Disability Allocations" which details the amount allocated by level of disability for each year since FY2000 ([Document #5](#)).

To determine the amount of state funding each school will receive for special education, a child count is done annually by December 1, and that count is used for the next fiscal year funding. For example, funding for FY2019 is based on the count done in December of 2017. This count is used for state aid to special education funding and does not affect the amount of federal dollars received at the state or local level. Ms. Darnall distributed data regarding the child count summary by disability from 1998 through 2017 ([Document #6](#)).

Ms. Darnall said the rapid increase in the number of students with autism was due to the change in the definition for autism spectrum disorder.

Ms. Darnall presented a March 2018 briefing paper that explains the changes to the extraordinary cost fund as a result of legislation passed in 2013 ([Document #7](#)). The brief explains that, in 1997, a new formula was implemented that based allocating special education aid on a student count and average cost per disability. Included in that legislation was supplemental aid for which districts may apply known as extraordinary cost funds. The legislation passed in 2013 significantly changed the special education formula funding and the extraordinary cost fund application process.

In response to a question, Ms. Darnall explained if a school district's fund balance is higher than the previous year, a request for funding from the ECF is reduced by that difference. When a school district returns funds it has not spent, those dollars go back into the general fund, not to the extraordinary cost fund. The school districts have to make a projection as to the funding they will need, and several things can happen to change the amount actually used.

Ms. Darnall distributed a document listing the approved extraordinary cost funding since 1997 by school district ([Document #8](#)). Tax levies for funding special education are the same for all property classes. The maximum amount that can be levied is set by state statute. In 2018, the maximum levy for special education was 1.461. The document, "Special Education Levies by District Pay 2018," lists the school districts and the special education levies ([Document #9](#)). The levy for special education goes into a fund and can only be used for special education costs.

School districts must pass at least one of the four maintenance of effort (MOE) tests to demonstrate compliance. The overview of IDEA MOE for special education can be found in [Document #10](#).

State law provides for a recalculation of the payments by disability level on a triennial basis. The last rebase was in FY2017 and was based on FY2013 through FY2015. The triennial adjustment of special education funding levels can be found in [Document #11](#).

### **The Role of Property Taxes in Special Education Funding**

**Mr. Michael Houdyshell, Department of Revenue**, presented a PowerPoint presentation detailing South Dakota's property tax system ([Document #12](#)). The state does not collect or spend any property tax revenues. The collection and spending is all at the local level. The school general fund levy is set every year by the Legislature. Property tax caps do not apply to school levies or special education levies.

Representative Duvall asked if school districts use their capital outlay funds for other education purposes. Ms. Darnall said the schools can transfer capital outlay funds into the school's general fund and can then transfer from the school's general fund into the special education fund. Ms. Darnall said she would provide the information as to which schools have transferred from the general fund to the special education fund.

Mr. Houdyshell said \$93 billion is the total value of all property assessed in the state. This includes all classifications. Agricultural land is valued at about \$42 billion.

Representative Duvall asked how TIF districts affect school funding. Mr. Houdyshell said when a TIF district is created the value of the property continues to be taxed at the value. The taxes on the increment value go to the TIF fund and those dollars go to pay the expenses in the TIF. If the local entity loses \$1,000 to the TIF fund the other property taxpayers make up for those lost dollars. There is a new classification for affordable housing TIFs and those values are excluded from the formula.

Mr. Houdyshell distributed the Special Education Levy Analysis based on taxes payable in 2018 ([Document #13](#)).

## School District Perspectives on Special Education

**Ms. Barbara Lindquist, Special Education Director, Bon Homme School District, Tyndall**, said when she started 32 years ago there were 800 students in the school district, and now there are just over 500 students. About 15 years ago, the school district had three special education students who aged out and the school district was responsible for finding them training. That was very costly to the school district. Those situations are why the extraordinary cost fund is so important.

The school district has a deaf student who needs a sign language interpreter, and the cost for the interpreter is \$6,000 per month, which would cost more if the interpreter had to travel some distance, as the fees include all travel time. Other examples of students who have special needs are a student who is going deaf, a student who is attending McCrossan's Boys Ranch, an autistic student who is transferring in, and a student who needs an aid to protect other students from him. The student with the aid to protect other students will be placed elsewhere, and the cost for that placement is \$106 per day.

Senator Bolin asked if the school district is obligated to serve the students in the summer months. Ms. Lindquist said they do have three students who receive extended school year services, and the school had to submit information showing the students would not be able to retain the information without this assistance. Those costs are part of the special education budget.

Representative Holmes asked if the number of students needing this type of attention has grown over the years. Ms. Lindquist said there were 100 students in the year 2000, and 70 students now. However, the students now need more assistance. At this time, there are five and one half special education teachers for those 70 students.

Representative Bartels asked about the aging out process. Ms. Lindquist explained that school officials start talking about the student's future needs when the student is about 17 years old, and at that time, start looking at possible facilities. The school district is responsible for some of the special needs students through the age of 21. In response to a question from Senator Maher, Ms. Lindquist said the aging out requirements are set by the federal government.

Representative May asked about the different level breakdowns and the funding and requested more information on that topic be available at the next meeting.

Representative Bartels asked if the juvenile justice reform program has had an effect on the number of students in the special education program. Ms. Lindquist said the juvenile justice reform act has complicated things, and the schools are not receiving any assistance with these challenges.

**Mr. Klint Willert, Mr. Brian Lueders, and Ms. Wendy Othein, Brookings School District**, distributed a handout regarding the special education program in that school district ([Document #14](#)). The Brookings School District has grown 7.5% over the past four years, while the number of special needs students has grown about 28%. The document lists the costs of the special needs students and demonstrates the growing number of students needing this assistance.

Representative May asked who determines that a student qualifies for special education. Ms. Othein said a team decides who qualifies by following state regulations. Every five years the state does review the decisions. Mr. Willert said the process is quite data intensive.

Senator Youngberg asked what prompts the start of the process. Ms. Othein explained there are many issues that can trigger the process, such as behavior, problems with reading, or upon the advice of a doctor. There are more mental health issues now than in the past. The eligibility guide for the IEP process can be found on the

Department of Education's website. Representative Duvall asked that the Department of Education present more information specific to the IEP process at the next committee meeting.

Representative May asked if ADHD students remain in the regular classrooms. Ms. Othein said it depends on the student, and Mr. Willert said there are still additional expenses for students who remain in the classroom, as each special needs student has a very specific plan designed to meet the student's needs.

In response to questions about juvenile justice reform, Mr. Willert said those changes greatly affected the school district in that they now must make accommodations for ten to twenty students who might have been placed elsewhere in the past.

Mr. Willert said another challenge the school district faces is staffing. There is a disparity between special education teachers and general education teachers. The increase in teacher funding is for general education teachers so the pay increase did not help in recruiting special education teachers. The specialized staffing needed for specific students is difficult to find as there is competition with local healthcare facilities, and those facilities have the ability to offer better salaries. The school district has reached out to the healthcare facilities to partner with the schools in working with these students.

Mr. Lueders is the chair of the Extraordinary Cost Fund Committee. The committee of ten members reviews the requests for funding from the extraordinary cost fund and makes recommendations to the secretary of the Department of Education, who makes the final decision. Mr. Lueders said the committee expects a reduction in the number of requests once the triennial adjustment is completed.

**Mr. Jeff Danielsen and Ms. Jennifer Heggelund, Watertown School District,** said their school district has 607 special education students out of a total school enrollment of 3,900 students. The cost for special education continues to increase while funding continues to decrease. There is concern that the larger school districts, such as the Watertown School district, may soon need to start accessing the extraordinary cost fund, and those requests will most likely be more than the fund can support.

Ms. Heggelund said there are extreme costs in funding care for medical conditions such as seizures and diabetes. The Watertown School District has two students who require one-on-one nursing care, and each nurse costs about \$55,000. The school district also has several students at LifeScape, and that is very expensive. Ms. Heggelund receives at least one phone call a week from parents wanting to open enroll a special education student.

Mr. Danielsen said the goal of special education is to get a student into the least restrictive environment while meeting the student's needs.

Mr. Danielsen is the President of the South Dakota School Superintendents Association. The association has discussed this issue at great length, and one solution they bring forward is to increase funding for the extraordinary cost fund by taking a dime from the special education levy. This would provide a steadying force for the fund.

### **Committee Discussion**

The committee suggested the following topics for future meetings: the development of an IEP; autism spectrum disorders; Birth to 3 program; the impact of the juvenile justice reform on schools; diagnosing ADD and ADHD; and additional cost breakdowns.

Senator Monroe said there is a need to find the root cause to the rapidly increasing number of students who qualify for special education.

Senator Nesiba asked for more information on what happens to a special education student after reaching the age of 21.

Senator Bolin said this committee needs to look at the extraordinary cases, and if there is an increasing number of severely disabled students. Senator Bolin would like to have a comparison of the volume of students and the severity of disabilities. He would also like to review the original intent of the extraordinary cost fund.

Senator Youngberg would like to see the new federal mandates that are being placed on the schools, since there seems to be an increasing number of unfunded mandates.

Representative Bartels said the schools can be reimbursed for some of the medical care by Medicaid, but not from private insurance. The committee may want to look at these Medicaid reimbursements. The committee should also look at the timing of the payments, as the school has the expenses for care but doesn't get reimbursed for several months. Representative Bartels said he would also like to learn how the different levels and costs are determined.

Representative May said she would like to invite several school district representatives to discuss special education issues with the committee.

### **Next Meeting**

The next meeting of the Extraordinary Cost Fund for Special Education Study Committee will be held July 26, 2018, in Pierre.

### **Adjourn**

**A motion was made by Senator Youngberg, seconded by Senator Bolin, that the Extraordinary Cost Fund for Special Education Study Committee be adjourned. The motion prevailed on a voice vote.**

The committee adjourned at 3:25 p.m.