

AN ACT

ENTITLED, An Act to provide for expenditures for early learning services from the special education fund, and to revise certain provisions regarding state aid to special education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as follows:

Up to fifteen percent of the local need as defined in subdivision 13-37-35.1(18) may be used to develop and implement coordinated, early intervening services for students in kindergarten through grade twelve who are not currently identified as needing special education or special education and related services, but who need additional academic and behavioral interventions to succeed in a general education environment to prevent them from being identified as having a special education disability.

Coordinated, early intervening services include:

- (1) Professional development for teachers and other school staff to enable them to deliver scientifically-based academic instruction and behavioral interventions, including scientifically-based literacy instruction, and, if appropriate, instruction on the use of adaptive and instructional software; and
- (2) Providing educational and behavioral evaluations, services and supports, including scientifically-based literacy instruction.

Section 2. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as follows:

A school district seeking to use funds pursuant to section 1 of this Act shall apply for approval for the use of such funds from the Department of Education on forms provided by the department.

Section 3. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as

follows:

Any school district that uses funds pursuant to section 1 of this Act shall annually report to the Department of Education on:

- (1) The number of students who receive coordinated, early intervening services; and
- (2) The number of students who received early intervening services, and who subsequently receive special education or special education and related services within two years after receiving the coordinated, early intervening services.

Section 4. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as follows:

The Board of Education shall promulgate rules pursuant to chapter 1-26 establishing the application process, the application timelines, the criteria the department will use in approving a district's use of special education funds pursuant to section 1 of this Act, and the collection of data on children served pursuant to section 3 of this Act.

Section 5. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as follows:

A school district that provides early intervening services pursuant to section 1 of this Act is not eligible for funding from the money set aside pursuant to § 13-37-40 within a period of three years following the expenditure of such funds.

Section 6. That § 13-37-2.1 be amended to read as follows:

13-37-2.1. As used in this chapter, the term, surrogate parent, means any individual assigned by the district to act in place of the parent of a child in need of special education when the school district cannot identify or locate the parent or the child is a ward of the state.

Section 7. That § 13-37-16 be amended to read as follows:

13-37-16. For taxes payable in 2014, and each year thereafter, the school board shall levy no

more than one dollar and fifty-five and two tenths cents per thousand dollars of taxable valuation, as a special levy in addition to all other levies authorized by law for the amount so determined to be necessary, and such levy shall be spread against all of the taxable property of the district. The proceeds derived from such levy shall constitute a school district special education fund of the district for the payment of costs for the special education of all children in need of special education or special education and related services who reside within the district pursuant to the provisions of §§ 13-37-8.2 to 13-37-8.10, inclusive. The levy in this section shall be based on valuations such that the median level of assessment represents 85% of market value as determined by the Department of Revenue. The total amount of taxes that would be generated at the levy pursuant to this section shall be considered local effort. Money in the special education fund may be expended for the purchase or lease of any assistive technology that is directly related to special education and specified in a student's individualized education plan. This section does not apply to real property improvements.

Section 8. That § 13-37-16.2 be amended to read as follows:

13-37-16.2. If local effort increases on a statewide aggregate basis by a greater percentage than local need on a statewide aggregate basis from any one year to the next, for the following year, the levy specified in subdivision 13-37-35.1(7) shall be reduced proportionally so that the percentage increase in local effort on a statewide aggregate basis equals the percentage increase in need on a statewide aggregate basis.

Section 9. That § 13-37-16.3 be amended to read as follows:

13-37-16.3. Any adjustments in the levy specified in subdivision 13-37-35.1(7) made pursuant to § 13-37-16.2 shall be based on maintaining the relationship between statewide local effort as a percentage of statewide local need in the fiscal year succeeding the fiscal year in which the adjustment is made. However, for fiscal year 2014, and each year thereafter, if the levy specified in subdivision 13-37-35.1(7) is not adjusted to maintain this relationship, the funding allocation for

each disability level as defined in § 13-37-35.1 shall be reduced proportionally to maintain the relationship between statewide local effort as a percentage of statewide local need.

Section 10. That § 13-37-18 be amended to read as follows:

13-37-18. Special education costs and statistical information shall be included in the annual financial report as provided in § 13-13-37.

Section 11. That § 13-37-35.1 be amended to read as follows:

13-37-35.1. Terms used in chapter 13-37 mean:

- (1) "Level one disability," a mild disability;
- (2) "Level two disability," cognitive disability or emotional disorder;
- (3) "Level three disability," hearing impairment, deafness, visual impairment, deaf-blindness, orthopedic impairment, or traumatic brain injury;
- (4) "Level four disability," autism;
- (5) "Level five disability," multiple disabilities;
- (5A) "Level six disability," prolonged assistance;
- (6) "Index factor," is the annual percentage change in the consumer price index for urban wage earners and clerical workers as computed by the Bureau of Labor Statistics of the United States Department of Labor for the year before the year immediately preceding the year of adjustment or three percent, whichever is less;
- (7) "Local effort," shall be calculated for taxes payable in 2014 and thereafter using a special education levy of one dollar and thirty-five and two tenths cents per one thousand dollars of valuation;
- (8) "Allocation for a student with a level one disability," for the school fiscal year beginning July 1, 2012, is \$4,525. For each school year thereafter, the allocation for a student with a level one disability shall be the previous fiscal year's allocation for such child increased

- by the lesser of the index factor or three percent;
- (9) "Allocation for a student with a level two disability," for the school fiscal year beginning July 1, 2012, is \$11,124. For each school year thereafter, the allocation for a student with a level two disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;
- (10) "Allocation for a student with a level three disability," for the school fiscal year beginning July 1, 2012, is \$14,788. For each school year thereafter, the allocation for a student with a level three disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;
- (11) "Allocation for a student with a level four disability," for the school fiscal year beginning July 1, 2012, is \$13,204. For each school year thereafter, the allocation for a student with a level four disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;
- (12) "Allocation for a student with a level five disability," for the school fiscal year beginning July 1, 2012, is \$19,993. For each school year thereafter, the allocation for a student with a level five disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;
- (12A) "Allocation for a student with a level six disability," for the school fiscal year beginning July 1, 2012, is \$7,205. For each school year thereafter, the allocation for a student with a level six disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;
- (13) "Child count," is the number of students in need of special education or special education and related services according to criteria set forth in rules promulgated pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education in accordance with rules

promulgated pursuant to § 13-37-1.1;

- (14) "Fall enrollment," the number of kindergarten through twelfth grade pupils enrolled in all schools operated by the school district on the last Friday of September of the previous school year minus the number of students for whom the district receives tuition, except any nonresident student who is in the care and custody of a state agency and is attending a public school and any student for whom tuition is being paid pursuant to § 13-28-42.1, plus the number of students for whom the district pays tuition;
- (15) "Nonpublic school," a sectarian organization or entity which is accredited by the secretary of education for the purpose of instructing children of compulsory school age. This definition excludes any school that receives a majority of its revenues from public funds;
- (16) "Nonpublic fall enrollment," until June 30, 2008, the number of children under age sixteen, and beginning July 1, 2009, the number of children under age eighteen, who are approved for alternative instruction pursuant to § 13-27-2 on the last Friday of September of the previous school year plus:
 - (a) For nonpublic schools located within the boundaries of a public school district with a fall enrollment of six hundred or more on the last Friday of September of the previous school year, the number of kindergarten through twelfth grade pupils enrolled on the last Friday of September of the previous regular school year in all nonpublic schools located within the boundaries of the public school district;
 - (b) For nonpublic schools located within the boundaries of a public school district with a fall enrollment of less than six hundred on the last Friday of September of the previous school year, the number of resident kindergarten through twelfth grade pupils enrolled on the last Friday of September of the previous school year in all nonpublic schools located within the State of South Dakota;

- (17) "Special education fall enrollment," fall enrollment plus nonpublic fall enrollment;
- (18) "Local need," an amount to be determined as follows:
- (a) Multiply the special education fall enrollment by 0.1004 and multiply the result by the allocation for a student with a level one disability;
 - (b) Multiply the number of students having a level two disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level two disability;
 - (c) Multiply the number of students having a level three disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level three disability;
 - (d) Multiply the number of students having a level four disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level four disability;
 - (e) Multiply the number of students having a level five disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level five disability;
 - (f) Multiply the number of students having a level six disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level six disability;
 - (g) When calculating local need at the statewide level, include the amount set aside for extraordinary costs defined in § 13-37-40;
 - (h) Sum the results of (a) to (g), inclusive;
- (19) "Effort factor," the school district's special education tax levy in dollars per thousand divided by \$1.352. The maximum effort factor is 1.0.

Section 12. That § 13-37-36.1 be amended to read as follows:

13-37-36.1. To establish the school district special education fund statutory carryover, deduct from the total ending fund balance the amount of Title VIII of the Elementary and Secondary Education Act funds received or transferred to the special education fund.

Section 13. That § 13-37-40 be amended to read as follows:

13-37-40. Subject to the limitation in § 13-37-42, the secretary of the Department of Education shall, for school fiscal year 2014 and each year thereafter, set aside four million dollars of the state aid to districts for special education appropriation for extraordinary expenses incurred in providing special education programs or services to one or more children with disabilities, with expenditures to be made as recommended by an oversight board and approved by the secretary of the Department of Education. Any funds not expended or obligated pursuant to this section shall not be subject to reversion pursuant to § 4-8-19. The total amount set aside for extraordinary expenses each fiscal year plus the total amount not reverted from previous fiscal years may not exceed five million five hundred thousand dollars.

The amount appropriated for extraordinary expenses shall be recalculated at the same time as the amount of the allocations for disability levels as provided in § 13-37-35.2.

Section 14. That § 13-37-40.1 be amended to read as follows:

13-37-40.1. A school district is not eligible for funding from the money set aside in §§ 13-37-38 to 13-37-40, inclusive, unless the school district certifies to the secretary of education that its ending special education fund balance will not exceed ten percent of its special education expenditures for the current fiscal year.

Section 15. That § 13-37-44 be amended to read as follows:

13-37-44. A school district's state aid for special education as calculated pursuant to § 13-37-36.1 shall be reduced by the amount which its ending special education fund balance exceeds twenty-five

percent of its special education expenditures for the prior fiscal year or one hundred thousand dollars, whichever is greater, if the school district did not receive money set aside in § 13-37-40 during the prior fiscal year; or the amount which its ending special education fund balance exceeds ten percent of its special education expenditures for the prior fiscal year if the school district received money set aside in §§ 13-37-38 to 13-37-40, inclusive, during the prior fiscal year.

Section 16. That § 13-37-48.1 be repealed.

Section 17. That § 13-37-51 be repealed.

Section 18. That § 13-37-53 be repealed.

Section 19. That § 13-37-54 be amended to read as follows:

13-37-54. The Department of Education may promulgate rules pursuant to chapter 1-26 to provide for the reallocation of state aid to special education as provided for in § 13-28-9.1.

Section 20. That § 13-16-7.1 be amended to read as follows:

13-16-7.1. For taxes payable in 2014 and 2015, the provisions of §§ 13-10-6 and 13-16-7 that limit the maximum amount of revenue that may be generated by the pension and capital outlay tax levies do not apply to any school district that has less than a ten percent change in the total taxable valuation from the previous year of all real property in the school district, not including the increase of value resulting from any improvements or change in use of real property.

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I certify that the attached Act originated in the

SENATE as Bill No. 15

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 15
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State