

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

226C0443

HOUSE ENGROSSED NO. **HB1178** - 2/23/99

Introduced by: Representatives Richter, Broderick, Brooks, Brown (Richard), Cerny, Chicoine, Davis, Duniphan, Fiegen, Fischer-Clemens, Haley, Koetzle, Konold, Lucas, McIntyre, Michels, Monroe, Munson (Donald), Nachtigal, Peterson, Putnam, Roe, Slaughter, Solum, Sutton (Daniel), Sutton (Duane), Wilson, and Windhorst and Senators Everist, Albers, Brown (Arnold), Dunn (Jim), Flowers, Hainje, Ham, Hutmacher, Madden, Moore, Munson (David), Olson, Paisley, Shoener, Staggers, Symens, and Vitter

1 FOR AN ACT ENTITLED, An Act to revise the state aid for special education funding formula.

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

3 Section 1. That § 13-37-35 be repealed.

4 ~~—13-37-35. Terms used in §§ 13-37-35 to 13-37-48, inclusive, mean:~~

5 ~~—(1)—"Resident average daily membership," the average number of resident kindergarten~~
6 ~~through twelfth grade pupils enrolled in all schools operated by the school district~~
7 ~~during the previous regular school year plus the average number of pupils for whom~~
8 ~~the district pays tuition and plus the average number of resident pupils enrolled in~~
9 ~~another school district under the provisions of § 13-28-40;~~

10 ~~—(2)—"Index factor," is the annual percentage change in the consumer price index for urban~~
11 ~~wage earners and clerical workers as computed by the Bureau of Labor Statistics of~~
12 ~~the United States Department of Labor for the year before the year immediately~~
13 ~~preceding the year of adjustment or three percent, whichever is less;~~

1 ~~— (3) — "Local effort," is the amount of taxes payable each year, using the maximum levy for~~
2 ~~the special education fund of a school district pursuant to § 13-37-16;~~

3 ~~— (4) — "Allocation for a student with a mild disability," for the period January 1, 1997,~~
4 ~~through June 30, 1997, is \$892. For school fiscal year beginning July 1, 1997, the~~
5 ~~allocation for a student with a mild disability shall be \$1,785 increased by the lesser~~
6 ~~of the index factor or three percent. For each school year thereafter, the allocation for~~
7 ~~a student with a mild disability shall be the previous fiscal year's allocation for such~~
8 ~~child increased by the lesser of the index factor or three percent;~~

9 ~~— (5) — "Allocation for a student with a severe disability," for the period January 1, 1997,~~
10 ~~through June 30, 1997, is \$10,707. For school fiscal year beginning July 1, 1997, the~~
11 ~~allocation for a child with a severe disability shall be \$21,415 increased by the lesser~~
12 ~~of the index factor or three percent. For each school year thereafter, the allocation for~~
13 ~~a child with a severe disability shall be the previous fiscal year's allocation for such~~
14 ~~child increased by the lesser of the index factor or three percent;~~

15 ~~— (6) — "Local need," an amount to be determined as follows:~~

16 ~~— (i) — Multiply the resident average daily membership times 0.1025;~~

17 ~~— (ii) — Multiply the result of (i) times the allocation for a student with a mild disability;~~

18 ~~— (iii) — Multiply the resident average daily membership times 0.015;~~

19 ~~— (iv) — Multiply the result of (iii) times the allocation for a student with a severe~~
20 ~~disability;~~

21 ~~— (v) — Add together the result of (ii) and the result of (iv);~~

22 ~~— (7) — "Student with mild disability," is a student whose performance level is not sufficient~~
23 ~~to demonstrate success in the regular education environment without the provision~~
24 ~~of special education, and who meets eligibility criteria under Part B, IDEA, or both;~~

25 ~~— (8) — "Student with severe disability," is a student with a low-incidence disability who:~~

1 ~~_____ (a) Meets eligibility criteria under Part B, IDEA; and~~

2 ~~_____ (b) Presents needs which require intervention skills which are substantially~~
3 ~~different from those provided to nondisabled students, in that the skills are~~
4 ~~disability-specific and require special training, equipment, and facilities to~~
5 ~~perform;~~

6 ~~_____ (9) "Effort factor," the school district's special education tax levy in dollars per thousand~~
7 ~~divided by \$1.40.~~

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

10 Terms used in chapter 13-37 mean:

11 (1) "Level one disability," a speech or language disability;

12 (2) "Level two disability," a learning disability or other health impairment;

13 (3) "Level three disability," a preschool developmental delay;

14 (4) "Level four disability," a mental retardation or emotional disorder;

15 (5) "Level five disability," hearing impairment, deafness, visual impairment, deaf-
16 blindness, orthopedic impairment, or traumatic brain injury;

17 (6) "Level six disability," autism;

18 (7) "Level seven disability," multiple disabilities;

19 (8) "Index factor," is the annual percentage change in the consumer price index for urban
20 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
21 the United States Department of Labor for the year before the year immediately
22 preceding the year of adjustment or three percent, whichever is less;

23 (9) "Local effort," is the amount of taxes payable each year, using the maximum levy for
24 the special education fund of a school district pursuant to § 13-37-16;

25 (10) "Allocation for a student with a level one disability," for the school fiscal year

1 beginning July 1, 1999, is \$1,795. For each school year thereafter, the allocation for
2 a student with a level one disability shall be the previous fiscal year's allocation for
3 such child increased by the lesser of the index factor or three percent;

4 (11) "Allocation for a student with a level two disability," for the school fiscal year
5 beginning July 1, 1999, is \$3,913. For each school year thereafter, the allocation for
6 a student with a level two disability shall be the previous fiscal year's allocation for
7 such child increased by the lesser of the index factor or three percent;

8 (12) "Allocation for a student with a level three disability," for the school fiscal year
9 beginning July 1, 1999, is \$5,987. For each school year thereafter, the allocation for
10 a student with a level three disability shall be the previous fiscal year's allocation for
11 such child increased by the lesser of the index factor or three percent;

12 (13) "Allocation for a student with a level four disability," for the school fiscal year
13 beginning July 1, 1999, is \$7,590. For each school year thereafter, the allocation for
14 a student with a level four disability shall be the previous fiscal year's allocation for
15 such child increased by the lesser of the index factor or three percent;

16 (14) "Allocation for a student with a level five disability," for the school fiscal year
17 beginning July 1, 1999, is \$9,772. For each school year thereafter, the allocation for
18 a student with a level five disability shall be the previous fiscal year's allocation for
19 such child increased by the lesser of the index factor or three percent;

20 (15) "Allocation for a student with a level six disability," for the school fiscal year
21 beginning July 1, 1999, is \$14,072. For each school year thereafter, the allocation for
22 a student with a level six disability shall be the previous fiscal year's allocation for such
23 child increased by the lesser of the index factor or three percent;

24 (16) "Allocation for a student with a level seven disability," for the school fiscal year
25 beginning July 1, 1999, is \$15,126. For each school year thereafter, the allocation for

1 a student with a level seven disability shall be the previous fiscal year's allocation for
2 such child increased by the lesser of the index factor or three percent;

3 (17) "Child count," is the number of students in need of special education or special
4 education and related services according to criteria set forth in rules promulgated
5 pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education
6 and Cultural Affairs in accordance with rules promulgated pursuant to § 13-37-1.1;

7 (18) "Local need," an amount to be determined as follows:

8 (a) Multiply the number students having a level one disability as reported on the
9 child count for the previous school fiscal year by the allocation for a student
10 with a level one disability;

11 (b) Multiply the number of students having a level two disability as reported on the
12 child count for the previous school fiscal year by the allocation for a student
13 with a level two disability;

14 (c) Multiply the number of students having a level three disability as reported on
15 the child count for the previous school fiscal year by the allocation for a
16 student with a level three disability;

17 (d) Multiply the number students having a level four disability as reported on the
18 child count for the previous school fiscal year by the allocation for a student
19 with a level four disability;

20 (e) Multiply the number students having a level five disability as reported on the
21 child count for the previous school fiscal year by the allocation for a student
22 with a level five disability;

23 (f) Multiply the number students having a level six disability as reported on the
24 child count for the previous school fiscal year by the allocation for a student
25 with a level six disability;

1 (g) Multiply the number students having a level seven disability as reported on the
 2 child count for the previous school fiscal year by the allocation for a student
 3 with a level seven disability;

4 (h) Sum the results of (a) through (g);

5 (19) "Effort factor," the school district's special education tax levy in dollars per thousand
 6 divided by the maximum levy for the special education fund of a school district
 7 pursuant to § 13-37-16.

8 Section 3. That § 13-37-36 be repealed.

9 ~~13-37-36. The secretary of the Department of Education and Cultural Affairs shall compute~~
 10 ~~state aid for special education for each school district according to the following calculations:~~

11 ~~(1) Determine each school district's average daily membership;~~

12 ~~(2) Calculate the local need of a school district;~~

13 ~~(3) State aid for special education is:~~

14 ~~(a) Local need minus local effort, the difference multiplied times the effort factor;~~

15 ~~or~~

16 ~~(b) Zero if the calculation in (a) is a negative number.~~

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

19 The secretary of the Department of Education and Cultural Affairs shall compute state aid
 20 for special education for each school district according to the following calculations:

21 (1) Calculate the local need of a school district;

22 (2) State aid for special education is:

23 (a) Local need minus local effort, the difference multiplied by the effort factor; or

24 (b) Zero if the calculation in (a) is a negative number.

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

1 follows:

2 Any records related to the reporting of the child count of a public school district shall be
3 subject to examination by the Department of Education and Cultural Affairs at all times.

4 Section 6. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 If, in the department's examination of the child count, it is determined that the data was
7 overreported, the department shall recover from the district's special education fund the amount
8 of state aid overpaid as a result of the overreporting. Upon recovery of the overpayment, the
9 department shall deposit the overpayment into the state general fund. If the overreporting
10 occurred with the intent to increase the amount of state aid received by overreporting, the
11 individual responsible for the overreporting may be charged with a Class 1 misdemeanor as
12 provided in § 13-8-44, with the maximum penalty as defined in § 22-6-2.

13 Section 7. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 If the amount of funds distributed according to the chapter is less than the amount of funds
16 distributed in the previous fiscal year, each eligible district shall receive a pro rata share of the
17 difference based on the amount of funds it received in the current fiscal year pursuant to § 13-37-
18 36.

19 Section 8. That § 13-37-36.1 be amended to read as follows:

20 13-37-36.1. To establish the school district special education fund statutory carryover
21 excluding federal funds, the following calculations shall be performed:

22 (1) Divide the total federal special education revenue by the total special education
23 revenues; and

24 (2) Multiply the federal special education percentage calculated in (1) times the total
25 special education fund balance; and

1 (3) Deduct the amount of federal revenue calculated in (2) and the special education
2 revenues received pursuant to section 4 of this Act from the special education fund
3 balance.

4 Section 9. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In addition, for the purposes specified in § 13-37-40, money set aside pursuant to § 13-37-40
7 may be used by the Department of Education and Cultural Affairs to establish and maintain a
8 program to assist school districts with legal matters relating to special education or to employ
9 personnel to audit school districts for compliance with the provisions of this Act.

10 Section 10. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 A level seven disability must meet criteria for at least two disability categories in levels four
13 and five, excluding the combination of deafness and blindness.

14 Section 11. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 Any student who is less than six years of age who meets the level three criteria, not including
17 level one criteria, must be reported as a level three disability. However, a student who is younger
18 than six years of age who has a level one disability must be reported as a level one disability.

19 Section 12. The Department of Education and Cultural Affairs may promulgate rules
20 pursuant to chapter 1-26 to define the various disabilities in this Act.

21 Section 13. Section 5 of this Act is effective June 15, 1999.

1 **BILL HISTORY**

2 1/26/99 First read in House and referred to Education. H.J. 194

3 2/16/99 Scheduled for Committee hearing on this date.

4 2/16/99 Education Deferred to another day.

5 2/18/99 Scheduled for Committee hearing on this date.

6 2/18/99 Education Do Pass Amended, Passed, AYES 11, NAYS 2. H.J. 600

7 2/19/99 House of Representatives Placed on Calendar. H.J. 645

8 2/22/99 Motion to Amend, Passed. H.J. 683

9 2/22/99 House of Representatives Do Pass Amended, Passed, AYES 52, NAYS 18. H.J. 688