

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

226C0443

SENATE ENGROSSED NO. **HB1178** - 3/3/99

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 That § 13-37-35 be repealed.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 mild disability;

12 (2) "Level two disability," a mental retardation or emotional disorder;

13 (3) "Level three disability," hearing impairment, deafness, visual impairment, deaf-
14 blindness, orthopedic impairment, or traumatic brain injury;

15 (4) "Level four disability," autism;

16 (5) "Level five disability," multiple disabilities;

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

21 (7) "Local effort," is the amount of taxes payable each year, using a levy for the special
22 education fund of a school district of one dollar and thirty-five cents per thousand
23 dollars of taxable valuation;

24 (8) "Allocation for a student with a level one disability," for the school fiscal year
25 beginning July 1, 1999, is \$3,504. For each school year thereafter, the allocation for

1 a student with a level one 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 (9) "Allocation for a student with a level two disability," for the school fiscal year
4 beginning July 1, 1999, is \$7,914. For each school year thereafter, the allocation for
5 a student with a level two disability shall be the previous fiscal year's allocation for
6 such child increased by the lesser of the index factor or three percent;

7 (10) "Allocation for a student with a level three disability," for the school fiscal year
8 beginning July 1, 1999, is \$10,116. For each school year thereafter, the allocation for
9 a student with a level three disability shall be the previous fiscal year's allocation for
10 such child increased by the lesser of the index factor or three percent;

11 (11) "Allocation for a student with a level four disability," for the school fiscal year
12 beginning July 1, 1999, is \$14,705. For each school year thereafter, the allocation for
13 a student with a level four disability shall be the previous fiscal year's allocation for
14 such child increased by the lesser of the index factor or three percent;

15 (12) "Allocation for a student with a level five disability," for the school fiscal year
16 beginning July 1, 1999, is \$15,808. For each school year thereafter, the allocation for
17 a student with a level five disability shall be the previous fiscal year's allocation for
18 such child increased by the lesser of the index factor or three percent;

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

23 (14) "Resident average daily membership," the average number of resident kindergarten
24 through twelfth grade pupils enrolled in all schools operated by the school district
25 during the previous regular school year plus the average number of pupils for whom

1 the district pays tuition and plus the average number of resident pupils enrolled in
2 another school district under the provisions of § 13-28-40;

3 (15) "Nonpublic school," a sectarian organization or entity which is accredited by the
4 secretary of education and cultural affairs for the purpose of instructing children of
5 compulsory school age. This definition excludes any school that receives a majority
6 of its revenues from public funds;

7 (16) "Nonpublic average daily membership," the average number of kindergarten through
8 twelfth grade pupils enrolled during the previous regular school year in all nonpublic
9 schools located within the boundaries of the public school district plus the average
10 number of children under age sixteen who are approved for alternative instruction
11 pursuant to § 13-27-2 during the previous school year;

12 (17) "Special education average daily membership," resident average daily membership
13 plus nonpublic average daily membership;

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

15 (a) Multiply the special education average daily membership by 0.089 and multiply
16 the result by the allocation for a student with a level one disability;

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

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

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

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

4 (f) Sum the results of (a) through (e);

5 (19) "Effort factor," the school district's special education tax levy in dollars per thousand
 6 divided by \$1.35. The maximum effort factor is 1.0.

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

8 ~~13-37-36. The secretary of the Department of Education and Cultural Affairs shall compute~~
 9 ~~state aid for special education for each school district according to the following calculations:~~

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

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

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

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

14 ~~or~~

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

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

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

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

21 (2) State aid for special education is:

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

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

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

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

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

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

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

14 For the transition period from school fiscal year 2000 through school fiscal year 2003, state
15 aid for special education shall be determined according to the following calculations:

- 16 (1) Multiply local need of a school district by 0.96 in school fiscal year 2000, 0.97 in
17 school fiscal year 2001, 0.98 in school fiscal year 2002, and 0.99 in school fiscal year
18 2003;
- 19 (2) After making the adjustment to local need pursuant to subdivision (1) of this section,
20 calculate state aid for special education pursuant to section 4 of this Act;
- 21 (3) Subtract the result of subdivision (2) from the amount of state aid received pursuant
22 to § 13-37-36 or 13-37-43 in school fiscal year 1999;
- 23 (4) Multiply the result of subdivision (3) by 0.80 in school fiscal year 2000, 0.60 in school
24 fiscal year 2001, 0.40 in school fiscal year 2002, and 0.20 in school fiscal year 2003;
- 25 (5) Add the result of subdivision (2) to the result of subdivision (4);

1 (6) State aid for special education is the greater of the result of subdivision (2) or the
2 result of subdivision (5).

3 Section 8. That § 13-37-44 be amended to read as follows:

4 13-37-44. A school district's state aid for special education as calculated pursuant to section
5 4 or section 7 of this Act shall be reduced by the amount which its ending special education fund
6 balance exceeds twenty percent of its special education expenditures for the prior fiscal year or
7 fifty thousand dollars, whichever is greater, if the school district did not receive money set aside
8 in §§ ~~13-37-38 to 13-37-40, inclusive~~, during the prior fiscal year; or the amount which its
9 ending special education fund balance exceeds five percent of its special education expenditures
10 for the prior fiscal year if the school district received money set aside in §§ 13-37-38 to
11 13-37-40, inclusive, during the prior fiscal year.

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

14 In addition to the purposes specified in § 13-37-40, money set aside pursuant to § 13-37-40
15 may be used by the Department of Education and Cultural Affairs to establish and maintain a
16 program to assist school districts with legal matters relating to special education, to employ
17 personnel to audit school districts for compliance with the provisions of this Act, to establish and
18 maintain state protocols to assist school districts in developing individualized education plans,
19 or to purchase assistive technology for students with a level two, three, four, or five disability.

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

22 For the purpose of calculating state aid pursuant to this chapter, a level five disability must
23 meet criteria for at least two disability categories in levels two and three, excluding the disability
24 of deaf-blindness. Any child reported on the child count between ages three to five years old,
25 inclusive, may not be included as either a level two, three, four, or five disability.

1 Section 11. The Department of Education and Cultural Affairs may promulgate rules
2 pursuant to chapter 1-26 to define the various disabilities in this Act.

3 Section 12. Section 9 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

10 2/23/99 First read in Senate and referred to State Affairs. S.J. 645

11 2/26/99 Scheduled for Committee hearing on this date.

12 2/26/99 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 1. S.J. 703

13 3/2/99 Motion to Amend, Passed. S.J. 739

14 3/2/99 Senate Do Pass Amended, Passed, AYES 32, NAYS 3. S.J. 740