

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

505D0190

SENATE EDUCATION COMMITTEE ENGROSSED NO. **HB1058** - 2/18/00

Introduced by: Representatives Eccarius, Brooks, Brown (Richard), Davis, Duniphan, Fiegen, Hennies, Koetzle, Koskan, Peterson, and Richter and Senators Everist, Hainje, Madden, Munson (David), Olson, and Paisley

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to special education.

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

3 Section 1. That § 13-28-42 be repealed.

4 ~~— 13-28-42. The resident district is responsible for the provision of a free appropriate public~~
5 ~~education for students in need of special education or special education and related services.~~

6 ~~Notwithstanding the provisions of § 13-28-44, a request to transfer a student in need of special~~
7 ~~education or special education and related services may be granted only if, through the placement~~

8 ~~committee process, the resident and nonresident districts determine that the nonresident district~~
9 ~~can provide an appropriate instructional program and facilities to meet the student's needs. The~~

10 ~~resident district shall reimburse the nonresident district actual costs incurred in providing an~~
11 ~~appropriate special education for a student in need of special education and related services.~~

12 ~~Notwithstanding the provisions of § 13-28-45, the placement committee, including~~
13 ~~representatives of the resident and nonresident districts, shall determine whether a student in~~

14 ~~need of special education requires transportation as a related service. If so, the resident district~~
15 ~~shall provide or ensure the provision of transportation.~~

1 ~~If a parent or guardian of a student in need of special education or special education and~~
2 ~~related services wishes to transfer the student back to the resident district, the request shall be~~
3 ~~considered by the placement committee. The committee must include representatives of the~~
4 ~~resident and nonresident districts.~~

5 Section 2. That chapter 13-28 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Notwithstanding the provisions of §§ 13-28-44 and 13-37-8.4, a request to transfer a student
8 in need of special education or special education and related services may be granted only if an
9 individualized education program team consisting of representatives from the resident and
10 nonresident districts determines that the nonresident district can provide an appropriate
11 instructional program and facilities, including transportation, to meet the student's needs. If the
12 request to transfer is granted, the nonresident district is responsible for the provision of a free
13 appropriate public education for the student in need of special education or special education and
14 related services. Notwithstanding the provisions of § 13-28-45, the individualized education
15 program team shall also determine whether the student in need of special education requires
16 transportation as a related service. If so, the nonresident district shall provide or ensure the
17 provision of transportation within the boundaries of the attendance center to which the student
18 is assigned.

19 If a parent or guardian of a student in need of special education or special education and
20 related services requests to transfer the student back to the resident district, the individualized
21 education program team shall consider the request.

22 Section 3. That § 13-37-35.1 be amended to read as follows:

23 13-37-35.1. Terms used in chapter 13-37 mean:

- 24 (1) "Level one disability," a mild disability;
25 (2) "Level two disability," a mental retardation or emotional disorder;

- 1 (3) "Level three disability," hearing impairment, deafness, visual impairment,
2 deaf-blindness, orthopedic impairment, or traumatic brain injury;
- 3 (4) "Level four disability," autism;
- 4 (5) "Level five disability," multiple disabilities;
- 5 (6) "Index factor," is the annual percentage change in the consumer price index for urban
6 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
7 the United States Department of Labor for the year before the year immediately
8 preceding the year of adjustment or three percent, whichever is less;
- 9 (7) "Local effort," is the amount of taxes payable each year, using a levy for the special
10 education fund of a school district of one dollar and thirty-five cents per thousand
11 dollars of taxable valuation;
- 12 (8) "Allocation for a student with a level one disability," for the school fiscal year
13 beginning July 1, 1999, is \$3,504. For each school year thereafter, the allocation for
14 a student with a level one 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 (9) "Allocation for a student with a level two disability," for the school fiscal year
17 beginning July 1, 1999, is \$7,914. For each school year thereafter, the allocation for
18 a student with a level two 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 (10) "Allocation for a student with a level three disability," for the school fiscal year
21 beginning July 1, 1999, is \$10,116. For each school year thereafter, the allocation for
22 a student with a level three disability shall be the previous fiscal year's allocation for
23 such child increased by the lesser of the index factor or three percent;
- 24 (11) "Allocation for a student with a level four disability," for the school fiscal year
25 beginning July 1, 1999, is \$14,705. For each school year thereafter, the allocation for

1 a student with a level four 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 (12) "Allocation for a student with a level five disability," for the school fiscal year
4 beginning July 1, 1999, is \$15,808. For each school year thereafter, the allocation for
5 a student with a level five 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 (13) "Child count," is the number of students in need of special education or special
8 education and related services according to criteria set forth in rules promulgated
9 pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education
10 and Cultural Affairs in accordance with rules promulgated pursuant to § 13-37-1.1;

11 (14) ~~"Resident average~~ Average daily membership," the average number of resident
12 kindergarten through twelfth grade pupils enrolled in all schools operated by the
13 school district during the previous regular school year plus the average number of
14 pupils for whom the district pays tuition ~~and plus the average number of resident~~
15 ~~pupils enrolled in another school district under the provisions of § 13-28-40;~~

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

20 (16) "Nonpublic average daily membership," ~~the average number of kindergarten through~~
21 ~~twelfth grade pupils enrolled during the previous regular school year in all nonpublic~~
22 ~~schools located within the boundaries of the public school district plus the average~~
23 ~~number of children under age sixteen who are approved for alternative instruction~~
24 ~~pursuant to § 13-27-2 during the previous school year~~ the average number of children
25 under age sixteen who are approved for alternative instruction pursuant to § 13-27-2

1 during the previous school year plus:

2 (a) For nonpublic schools located within the boundaries of a public school district
3 with an average daily membership of six hundred or more during the previous
4 school year, the average number of kindergarten through twelfth grade pupils
5 enrolled during the previous regular school year in all nonpublic schools
6 located within the boundaries of the public school district;

7 (b) For nonpublic schools located within the boundaries of a public school district
8 with an average daily membership of less than six hundred during the previous
9 school year, the average number of resident kindergarten through twelfth grade
10 pupils enrolled during the previous school year in all nonpublic schools located
11 within the State of South Dakota;

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 ~~If a parent or guardian of a student in need of special education or special education and~~
8 ~~related services wishes to transfer the student back to the resident district, the request shall be~~
9 ~~considered by the placement committee. The committee must include representatives of the~~
10 ~~resident and nonresident districts.~~

11 Section 4. That § 13-13-10.1 be amended to read as follows:

12 13-13-10.1. Terms used in this chapter mean:

13 (1) ~~"General enrollment average~~ Average daily membership," the average number of
14 resident and nonresident kindergarten through twelfth grade pupils enrolled in all
15 schools operated by the school district during the previous regular school year, minus
16 average number of pupils for whom the district receives tuition, except pupils
17 described in subdivision (1A) and pupils for whom tuition is being paid pursuant to
18 § 13-28-42 and plus the average number of pupils for whom the district pays tuition;
19 ~~except pupils for whom the district pays tuition pursuant to § 13-28-42;~~

20 (1A) Nonresident students who are in the care and custody of the Department of Social
21 Services, the Unified Judicial System, the Department of Corrections, or other state
22 agencies and are attending a public school may be included in the average daily
23 membership of the receiving district when enrolled in the receiving district. When
24 counting a student who meets these criteria in its general enrollment average daily
25 membership, the receiving district may begin the enrollment on the first day of

1 attendance. The district of residence prior to the custodial transfer may not include
2 students who meet these criteria in its general enrollment average daily membership
3 after the student ceases to attend school in the resident district;

4 (2) "Adjusted average daily membership," calculated as follows:

5 (a) For districts with a ~~general enrollment~~ an average daily membership of two
6 hundred or less, multiply 1.2 times the ~~general enrollment~~ average daily
7 membership;

8 (b) For districts with a ~~general enrollment~~ an average daily membership of less than
9 six hundred, but greater than two hundred, raise the ~~general enrollment~~ average
10 daily membership to the 0.8293 power and multiply the result times 2.98;

11 (c) For districts with a ~~general enrollment~~ an average daily membership of six
12 hundred or more, multiply 1.0 times their ~~general enrollment~~ average daily
13 membership;

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

18 (4) "Per student allocation," for the period January 1, 1997, to June 30, 1997, inclusive,
19 is \$1,675. For school fiscal year 1998, beginning on July 1, 1997, the per student
20 allocation shall be \$3,350 increased by the index factor. Each school fiscal year
21 thereafter, the per student allocation shall be the previous fiscal year's per student
22 allocation increased by the index factor;

23 (5) "Local need," the per student allocation multiplied by the adjusted average daily
24 membership;

25 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by

1 applying the levies established pursuant to § 10-12-42.

2 Section 5. That § 13-13-1.4 be amended to read as follows:

3 13-13-1.4. If two or more school districts consolidate, for a period of four years after
4 consolidation, the adjusted average daily membership for the newly formed district shall be based
5 upon the ~~general enrollment~~ average daily membership as defined in § 13-13-10.1 of those school
6 districts that have not previously benefited from this section as they existed prior to
7 consolidation. In years two to four, inclusive, after the consolidation, the relationship between
8 the adjusted average daily membership and ~~general enrollment~~ average daily membership shall
9 be proportional to the relationship that existed for the first year.

10 Section 6. That § 13-13-73 be amended to read as follows:

11 13-13-73. The secretary of the Department of Education and Cultural Affairs shall compute
12 state aid to education for each school district under the foundation program according to the
13 following calculations:

- 14 (1) Determine each school district's ~~general enrollment~~ average daily membership;
- 15 (2) Multiply the per student allocation by the adjusted average daily membership to arrive
16 at the local need per district;
- 17 (3) State aid is (a) local need minus local effort, or (b) zero if the calculation in (a) is a
18 negative number;
- 19 (4) If the state aid appropriation for the general support of education is in excess of the
20 entitlement provided for in this section, the excess shall be used to fund any shortfall
21 of the appropriation as provided for in §§ 13-37-36 and 13-37-43. The secretary shall
22 report to the Governor by January seventh of each year, the amount of state aid
23 necessary to fully fund the general aid formula in the current year. If a shortfall in the
24 state aid appropriation for general education exists that cannot be covered by
25 § 13-37-45, the Governor shall inform the Legislature and provide a proposal to

1 eliminate the shortfall.

2 Section 7. That § 13-15-28 be amended to read as follows:

3 13-15-28. Any school district that enters into contractual agreements pursuant to § 13-15-11
4 and sends over fifty percent of its resident students enrolled in grades for which it contracts to
5 an adjoining school district or districts located in South Dakota shall reorganize the school
6 district pursuant to chapter 13-6 within two years of the end of the school year. For the purposes
7 of this section, the number of students attending adjoining districts shall be based on ~~general~~
8 ~~enrollment~~ average daily membership pursuant to subdivision 13-13-10.1(1). This section does
9 not apply to a school district located wholly within the boundaries of an Indian reservation.

10 Section 8. That § 13-28-40 be amended to read as follows:

11 13-28-40. An enrollment options program is established to enable any South Dakota
12 kindergarten through twelfth grade student to attend any public school that serves the student's
13 grade level in any South Dakota school district, subject to the provisions in §§ 13-28-40 to
14 13-28-47, inclusive. For purposes of determining state aid to education as it relates to the
15 provisions of §§ 13-28-40 to 13-28-47, inclusive, ~~general enrollment~~ average daily membership
16 as defined in § 13-13-10.1 is used to compute foundation aid and ~~resident~~ special education
17 average daily membership as defined in § 13-37-35 is used to determine funding for special
18 education.

19 Section 9. That § 13-28-39 be amended to read as follows:

20 13-28-39. The Department of Social Services shall pay tuition costs and related service costs
21 for students in residential treatment centers or group care centers for minors who are under the
22 care and custody of the Department of Social Services, the Unified Judicial System, or other
23 entities approved by the secretary of the Department of Social Services. ~~For students with~~
24 ~~disabilities residing in a foster home, the Department of Social Services shall pay for special~~
25 ~~education or special education and related services. Students residing in foster homes must be~~

1 ~~in the care and custody of the Department of Social Services, the Unified Judicial System, or~~
2 ~~other entities approved by the secretary of the Department of Social Services.~~ The Department
3 of Social Services will have rate setting authority for tuition costs and related service costs.

4 The secretary of the Department of Social Services may promulgate rules, pursuant to
5 chapter 1-26, pertaining to:

- 6 (1) The amount, scope, and duration of services;
- 7 (2) The basis for and extent of provider payments;
- 8 (3) The method and amount of payment;
- 9 (4) The methods of recoupment or recovery of overpayments;
- 10 (5) Administration, record keeping, and audit requirements;
- 11 (6) Compliance monitoring;
- 12 (7) Reporting requirement;
- 13 (8) Such other standards and requirements as may be necessary to ensure the efficient
14 operation and administration of the program.

1 **BILL HISTORY**

2 1/14/00 First read in House and referred to Education. H.J. 45

3 1/20/00 Scheduled for Committee hearing on this date.

4 1/20/00 Deferred by Chair.

5 1/25/00 Scheduled for Committee hearing on this date.

6 1/27/00 Scheduled for Committee hearing on this date.

7 1/27/00 Education Deferred to another day.

8 2/3/00 Scheduled for Committee hearing on this date.

9 2/3/00 Education Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 377

10 2/7/00 House of Representatives Do Pass Amended, Passed, AYES 68, NAYS 0. H.J. 467

11 2/8/00 First read in Senate and referred to Education. S.J. 358

12 2/17/00 Scheduled for Committee hearing on this date.

13 2/17/00 Education Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 545