



2026 South Dakota Legislature

House Bill 1098

Introduced by: **Representative Wittman**

1 **An Act to amend certain provisions pertaining to special education funding.**

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

3 **Section 1. That § 13-37-16.2 be AMENDED:**

4 **13-37-16.2.** If local effort increases on a statewide aggregate basis by a greater
 5 percentage than local need on a statewide aggregate basis from any one year to the next,
 6 for the following year, the levy ~~specified in subdivision 13-37-35.1(7)~~ shall constituting
 7 local effort, as defined in § 13-37-35.1, must be reduced proportionally so that the
 8 percentage increase in local effort on a statewide aggregate basis equals the percentage
 9 increase in need on a statewide aggregate basis.

10 **Section 2. That § 13-37-35.1 be AMENDED:**

11 **13-37-35.1.** Terms used in this chapter ~~13-37~~ mean:

- 12 (1) ~~"Level one disability," a mild disability;~~
- 13 (2) ~~"Level two disability," cognitive disability or emotional disorder;~~
- 14 (3) ~~"Level three disability," hearing impairment, deafness, visual impairment, deaf-~~
 15 ~~blindness, orthopedic impairment, or traumatic brain injury;~~
- 16 (4) ~~"Level four disability," autism;~~
- 17 (5) ~~"Level five disability," multiple disabilities;~~
- 18 (5A) ~~"Level six disability," prolonged assistance;~~
- 19 (6) ~~"Index factor," is the annual percentage change in the consumer price index for~~
 20 ~~urban wage earners and clerical workers as computed by the Bureau of Labor~~
 21 ~~Statistics of the United States Department of Labor for the year before the year~~
 22 ~~immediately preceding the year of adjustment, or three percent, whichever is less;~~
- 23 (7) ~~"Local effort," must be calculated for taxes payable in 2026 and thereafter using a~~
 24 ~~special education levy of one dollar and twenty six and two tenths cents per one~~
 25 ~~thousand dollars of valuation;~~

- 1 ~~(8) "Allocation for a student with a level one disability," for the school fiscal year~~
2 ~~beginning July 1, 2025, is \$7,650.45. For each school year thereafter, the allocation~~
3 ~~for a student with a level one disability must be the previous fiscal year's allocation~~
4 ~~for the child increased by the index factor;~~
- 5 ~~(9) "Allocation for a student with a level two disability," for the school fiscal year~~
6 ~~beginning July 1, 2025, is \$16,759.91. For each school year thereafter, the~~
7 ~~allocation for a student with a level two disability must be the previous fiscal year's~~
8 ~~allocation for the child increased by the index factor;~~
- 9 ~~(10) "Allocation for a student with a level three disability," for the school fiscal year~~
10 ~~beginning July 1, 2025, is \$23,139.68. For each school year thereafter, the~~
11 ~~allocation for a student with a level three disability must be the previous fiscal~~
12 ~~year's allocation for the child increased by the index factor;~~
- 13 ~~(11) "Allocation for a student with a level four disability," for the school fiscal year~~
14 ~~beginning July 1, 2025, is \$18,053.89. For each school year thereafter, the~~
15 ~~allocation for a student with a level four disability must be the previous fiscal year's~~
16 ~~allocation for the child increased by the index factor;~~
- 17 ~~(12) "Allocation for a student with a level five disability," for the school fiscal year~~
18 ~~beginning July 1, 2025, is \$37,039.28. For each school year thereafter, the~~
19 ~~allocation for a student with a level five disability must be the previous fiscal year's~~
20 ~~allocation for the child increased by the index factor;~~
- 21 ~~(12A) "Allocation for a student with a level six disability," for the school fiscal year~~
22 ~~beginning July 1, 2025, is \$11,838.15. For each school year thereafter, the~~
23 ~~allocation for a student with a level six disability must be the previous fiscal year's~~
24 ~~allocation for the child increased by the index factor;~~
- 25 ~~(13) "Child count," is the number of students in need of special education or special~~
26 ~~education and related services according to criteria set forth in rules promulgated~~
27 ~~pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education;~~
- 28 ~~(14) "Fall enrollment," the number of kindergarten through twelfth grade students~~
29 ~~enrolled in all schools operated by the school district on the last Friday of~~
30 ~~September of the previous school year minus the number of students for whom~~
31 ~~the district receives tuition, except any nonresident student who is in the care and~~
32 ~~custody of a state agency and is attending a public school and any student for~~
33 ~~whom tuition is being paid pursuant to § 13-28-42.1, plus the number of students~~
34 ~~for whom the district pays tuition;~~

- 1 ~~(15) "Nonpublic school," a sectarian organization or entity accredited by the secretary of~~
2 ~~education for the purpose of instructing children of compulsory school age. This~~
3 ~~definition excludes any school that receives a majority of its revenues from public~~
4 ~~funds;~~
- 5 ~~(16) "Nonpublic fall enrollment," the number of children under age eighteen, who are~~
6 ~~approved for alternative instruction pursuant to § 13-27-3 on the last Friday of~~
7 ~~September of the previous school year plus:~~
- 8 ~~(a) — For nonpublic schools located within the boundaries of a public school~~
9 ~~district with a fall enrollment of six hundred or more on the last Friday of~~
10 ~~September of the previous school year, the number of kindergarten-~~
11 ~~through twelfth grade students enrolled on the last Friday of September of~~
12 ~~the previous regular school year in all nonpublic schools located within the~~
13 ~~boundaries of the public school district;~~
- 14 ~~(b) — For nonpublic schools located within the boundaries of a public school~~
15 ~~district with a fall enrollment of less than six hundred on the last Friday of~~
16 ~~September of the previous school year, the number of resident~~
17 ~~kindergarten through twelfth grade students enrolled on the last Friday of~~
18 ~~September of the previous school year in all nonpublic schools located~~
19 ~~within this state;~~
- 20 ~~(17) "Special education fall enrollment," fall enrollment plus nonpublic fall enrollment;~~
- 21 ~~(18) "Local need," an amount to be determined as follows:~~
- 22 ~~(a) — Multiply the special education fall enrollment by 0.1062 and multiply the~~
23 ~~result by the allocation for a student with a level one disability;~~
- 24 ~~(b) — Multiply the number of students having a level two disability as reported on~~
25 ~~the child count for the previous school fiscal year by the allocation for a~~
26 ~~student with a level two disability;~~
- 27 ~~(c) — Multiply the number of students having a level three disability as reported~~
28 ~~on the child count for the previous school fiscal year by the allocation for a~~
29 ~~student with a level three disability;~~
- 30 ~~(d) — Multiply the number of students having a level four disability as reported on~~
31 ~~the child count for the previous school fiscal year by the allocation for a~~
32 ~~student with a level four disability;~~
- 33 ~~(e) — Multiply the number of students having a level five disability as reported on~~
34 ~~the child count for the previous school fiscal year by the allocation for a~~
35 ~~student with a level five disability;~~

- 1 ~~(f) — Multiply the number of students having a level six disability as reported on~~
 2 ~~the child count for the previous school fiscal year by the allocation for a~~
 3 ~~student with a level six disability;~~
- 4 ~~(g) — When calculating local need at the statewide level, include the amount set~~
 5 ~~aside for extraordinary expenses defined in § 13-37-40;~~
- 6 ~~(h) — When calculating local need at the statewide level, include the amount set~~
 7 ~~aside for the South Dakota School for the Blind and Visually Impaired; and~~
- 8 ~~(i) — Sum the results of subdivisions (18)(a) to (h), inclusive; and~~
- 9 ~~(19) "Effort factor," the school district's special education tax levy in dollars per~~
 10 ~~thousand divided by \$1.262. The maximum effort factor is 1.0~~
- 11 (1) "Child count," the number of students in a school district in need of special
 12 education or special education and related services according to the criteria
 13 established in rules promulgated pursuant §§ 13-37-1.1 and 13-37-46;
- 14 (2) "Deaf-blindness," concomitant hearing and visual impairments resulting in severe
 15 communication, developmental, and educational needs that cannot be
 16 accommodated in a special education program designed solely for students with
 17 deafness or students with blindness;
- 18 (3) "Effort factor," the school district's special education tax levy in dollars per
 19 thousand divided by \$1.262, provided that the effort factor does not exceed 1.0;
- 20 (4) "Fall enrollment," the number of students enrolled in a school district, as
 21 determined by:
- 22 (a) Adding the number of students in any grade from kindergarten through
 23 twelve, enrolled in all schools operated by a school district on the last Friday
 24 of September of the previous school year to the number of students for
 25 whom the district pays tuition; and
- 26 (b) Subtracting from the sum of subsection (a), the number of students for
 27 whom the district receives tuition, provided that the number does not
 28 include any nonresident student or student for whom tuition is being paid
 29 pursuant to § 13-28-42.1;
- 30 (5) "Index factor," the annual percentage change in the consumer price index for urban
 31 wage earners and clerical workers, as computed by the Bureau of Labor and
 32 Statistics of the United States Department of Labor, for the year before the year
 33 immediately preceding the year of adjustment, or three percent, whichever is less;

- 1 (6) "Level 1 disability," a mild disability that affects a student's learning, thinking, or
2 daily functioning but allows for significant independence when the student is
3 provided with appropriate accommodation or support;
- 4 (7) "Level 2 disability," a cognitive disability, an emotional disorder, or a chronic or
5 acute health problem that:
- 6 (a) Causes the student to experience limited strength, vitality, or alertness,
7 including a heightened alertness to environmental stimuli resulting in
8 limited alertness to the educational environment; and
- 9 (b) Adversely affects the student's educational performance;
- 10 (8) "Level 3 disability," a hearing impairment, deafness, visual impairment, deaf-
11 blindness, orthopedic impairment, or traumatic brain injury;
- 12 (9) "Level 4 disability," autism spectrum disorder;
- 13 (10) "Level 5 disability," multiple disabilities, other than deaf-blindness, the combination
14 of which causes severe educational needs that cannot be accommodated in a
15 special education program designed solely for a student with one of the
16 impairments;
- 17 (11) "Level 6 disability," prolonged assistance;
- 18 (12) "Local effort," the amount of ad valorem taxes generated in a school district using
19 a special education levy of \$1.262 per one thousand dollars of valuation;
- 20 (13) "Local need," the amount of money required by a school district to provide special
21 education or special education and related services, and calculated as follows:
- 22 (a) For students with a level 1 disability, multiplying \$7,650.45 by the product
23 of special education fall enrollment multiplied by 0.1062;
- 24 (b) For students with a level 2 disability, multiplying \$16,759.91 by the number
25 of students reported to have a level 2 disability on the child count for the
26 previous school fiscal year;
- 27 (c) For students with a level 3 disability, multiplying \$23,139.68 by the number
28 of students reported to have a level 3 disability on the child count for the
29 previous school fiscal year;
- 30 (d) For students with a level 4 disability, multiplying \$18,053.89 by the number
31 of students reported to have a level 4 disability on the child count for the
32 previous school fiscal year;
- 33 (e) For students with a level 5 disability, multiplying \$37,039.28 by the number
34 of students reported to have a level 5 disability on the child count for the
35 previous school fiscal year;

- 1 (f) For students with a level 6 disability, multiplying \$11,838.15 by the number
2 of students reported to have a level 6 disability on the child count for the
3 previous school fiscal year; and
- 4 (g) Adding together the products of subsections (a) to (f), inclusive.
- 5 (14) "Nonpublic fall enrollment," the sum of the number of children under age eighteen,
6 who are approved for alternative instruction, pursuant to § 13-27-3, on the last
7 Friday of September of the previous school year and:
- 8 (a) For a nonpublic school located within the boundaries of a school district that
9 had a fall enrollment of at least six hundred students, the number of
10 students in any grade from kindergarten through twelve, enrolled on the
11 last Friday of September of the previous regular school year in all nonpublic
12 schools located within the boundaries of the school district; or
- 13 (b) For a nonpublic school located within the boundaries of a school district that
14 had a fall enrollment of fewer than six hundred students, the number of
15 resident students in any grade from kindergarten through twelve, enrolled
16 on the last Friday of September of the previous school year in all nonpublic
17 schools located within this state;
- 18 (15) "Nonpublic school," a sectarian organization or entity accredited by the secretary
19 of the Department of Education for the purpose of instructing children of
20 compulsory school age, provided that the organization or entity does not receive a
21 majority of its revenues from public funds;
- 22 (16) "Nonresident student," any student who is in the care and custody of a state agency
23 and attends a public school outside of the school district in which the student is a
24 resident;
- 25 (17) "Special education fall enrollment," the enrollment number used to calculate
26 funding for students with a level one disability, as determined by adding the
27 district's fall enrollment and nonpublic fall enrollment; and
- 28 (18) "Statewide local need," the amount of money required to provide special education
29 or special education and related services in this state, as calculated by adding
30 together:
- 31 (a) The sum of local need of each school district in this state, calculated
32 pursuant to subdivision (7);
- 33 (b) The amount set aside for extraordinary expenses, as defined in § 13-37-
34 40; and

1 (c) The amount set aside for the South Dakota School for the Blind and Visually
2 Impaired.

3 **Section 3. That § 13-37-55 be AMENDED:**

4 **13-37-55.** Up to fifteen percent of the local need as defined in ~~subdivision 13-37-~~
5 ~~35.1(18)~~ § 13-37-35.1 may be used to develop and implement coordinated, early
6 intervening services for students in kindergarten through grade twelve who are not
7 currently identified as needing special education or special education and related services,
8 but who need additional academic and behavioral interventions to succeed in a general
9 education environment to prevent them from being identified as having a special education
10 disability.

11 Coordinated, early intervening services include:

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