

2026 South Dakota Legislature

House Bill 1098

**AMENDMENT 1098A
FOR THE INTRODUCED BILL**

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 allocation
7 for a student with a level two disability must be the previous fiscal year's allocation
8 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 allocation
11 for a student with a level three disability must be the previous fiscal year's allocation
12 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 allocation
15 for a student with a level four disability must be the previous fiscal year's allocation
16 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 allocation
19 for a student with a level five disability must be the previous fiscal year's allocation
20 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 allocation
23 for a student with a level six disability must be the previous fiscal year's allocation
24 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;

- (f) For students with a level 6 disability, multiplying \$11,838.15 by the number of students reported to have a level 6 disability on the child count for the previous school fiscal year; and
- (g) Adding together the products of subsections (a) to (f), inclusive.

(14) "Nonpublic fall enrollment," the sum of the number of children under age eighteen, who are approved for alternative instruction, pursuant to § 13-27-3, on the last Friday of September of the previous school year and:

- (a) For a nonpublic school located within the boundaries of a school district that had a fall enrollment of at least six hundred students, the number of students in any grade from kindergarten through twelve, enrolled on the last Friday of September of the previous regular school year in all nonpublic schools located within the boundaries of the school district; or
- (b) For a nonpublic school located within the boundaries of a school district that had a fall enrollment of fewer than six hundred students, the number of resident students in any grade from kindergarten through twelve, enrolled on the last Friday of September of the previous school year in all nonpublic schools located within this state;

(15) "Nonpublic school," a sectarian organization or entity accredited by the secretary of the Department of Education for the purpose of instructing children of compulsory school age, provided that the organization or entity does not receive a majority of its revenues from public funds;

(16) "Nonresident student," any student who is in the care and custody of a state agency and attends a public school outside of the school district in which the student is a resident;

(17) "Special education fall enrollment," the enrollment number used to calculate funding for students with a level one disability, as determined by adding the district's fall enrollment and nonpublic fall enrollment; and

(18) "Statewide local need," the amount of money required to provide special education or special education and related services in this state, as calculated by adding together:

- (a) The sum of local need of each school district in this state, calculated pursuant to subdivision (7);
- (b) The amount set aside for extraordinary expenses, as defined in § 13-37-40; and

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

3 Beginning July 1, 2026, and every year thereafter, the amount of money allocated
4 to provide special education or special education and related services to each student in
5 each level of disability, pursuant to subsections (13)(a) to (13)(f), inclusive, must be
6 increased by the index factor.

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

13-37-55. Up to fifteen percent of the local need as defined in subdivision 13-37-35.1(18) § 13-37-35.1 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.

15 Coordinated, early intervening services include:

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