

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine**

SENATE BILL NO. 2154

(Education Committee)

(At the request of the Superintendent of Public Instruction)

AN ACT to create and enact a new subsection to section 15-40.1-07.6 of the North Dakota Century Code, relating to authority of the superintendent of public instruction to withhold state special education funds; and to amend and reenact section 15-59-02.1 of the North Dakota Century Code, relating to special education policies.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 15-59-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-59-02.1. Legislative intent - Special education.** This statement of legislative intent is provided to define more clearly the relationship between the federal government, state, school districts, and parents of students with disabilities in the provision of special education and related services. State special education policies are directed to achieving the purposes set out in the Individuals With Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.]. State funding along with federal resources are matched with local funds to achieve these purposes. "Related services" means transportation and such developmental and corrective or supportive services required to assist a student with disabilities to benefit from special education.

The school administrator or the administrator's appointed representative or director of special education other than the student's teacher is responsible for bringing together professionals and parents to share assessment information related to all areas of suspected disability, develop an individualized education program plan for the student with disabilities, and make recommendations for required special education and related services.

~~The legislative assembly believes that in order to assure equality of services that are provided for by limited state funds, the superintendent of public instruction will be required to approve a contract for services based on an individualized education program developed for each student with disabilities placed in a private school program or in programs outside the student's original special education unit.~~

The legislative assembly recognizes that a student with disabilities whose individualized education program so requires is entitled to an educational program in excess of one hundred eighty days per year if regression caused by an interruption in educational programming, together with a student's limited recoupment capacity, renders it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach in view of the disability. ~~All summer programs attended by these students must have approval of the superintendent of public instruction before receiving foundation aid or state special education reimbursement.~~

In the case of students with disabilities who require boarding care away from the family residence in order to receive special education and related services in an approved program, it is the intent of the legislative assembly that the instructional costs and costs of related services, including boarding care, be borne by state special education funds and school district funds.

"All students with disabilities have the right to a free appropriate public education" means that all students with disabilities have the right to special education and related services which must be provided at public expense, under public supervision and direction and at no cost to parents. "At no cost" means specifically designed instruction and related services as described in the student's individualized education program plan provided without charge but does not preclude incidental fees

that are normally charged to nondisabled students or their parents as a part of the regular education program.

School districts must require use of family insurance, or similar third-party payments, in whatever amount is allowed, as long as there is no financial loss to the student or the student's parent, for determining a student's medically related disability or other required related services which results in the student's need for special education. It is the school district's responsibility to assume costs not covered by the insurer or similar third party in the above situation.

The school district in which a student with disabilities resides is responsible to provide transportation for the student as prescribed in the student's individualized education program.

Costs of transportation for the student to attend an approved special education program are the responsibility of the school district with aid from the superintendent of public instruction.

The district of residence may use any reasonably prudent and safe means of transportation at its disposal to carry out the requirements of the individualized education program. Such means may include a regularly scheduled schoolbus, public or commercial transportation where appropriate, charter or specially contracted transportation, or transportation provided by the parent of a student with disabilities or other responsible party at school district expense.

If the transportation between the district of residence and the educational facility is provided by the parents, the reimbursement to the school district from department of public instruction funds must be for mileage costs only and may not include per diem costs for meals, lodging, lost wages, or other costs of any kind.

As the department of human services has authority under chapter 25-16 to provide early intervention services to meet the needs of children with disabilities ages zero through two years, the legislative assembly recognizes this provision and requires the superintendent of public instruction, the state department of health, and the department of human services to cooperate in planning and coordinating programs for these children.

**SECTION 2.** A new subsection to section 15-40.1-07.6 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

The superintendent of public instruction may enforce the department's determination of a complaint by withholding state special education funds due a school district that is found to be in violation of providing a free appropriate public education in an amount equal to the cost of meeting the affected individual students' needs.

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President of the Senate

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Speaker of the House

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Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2154.

Senate Vote:      Yeas    48          Nays    0          Absent    1

House Vote:      Yeas    87          Nays    4          Absent    7

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 1999,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State