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be retained by the district to pay the district's share of applicable federal taxes, the district's share of contribution to the South Dakota Retirement System, and administrative costs.

Any funds received pursuant to section 20 of this Act which are not distributed according to this section shall be returned to the Department of Education within thirty days.

Section 22. The Department of Education shall provide application forms for teachers wishing to participate in the top teachers reward program. A teacher wishing to participate in the program shall complete and sign the form and provide the form to the business office of the school district by the close of business on October first to be eligible for the program for that school year.

Section 23. A participating teacher shall be full-time and receive a distinguished rating, as referenced in section 38 of this Act, on the teacher's most recent evaluation to be eligible for a top teacher reward. In addition, a distinguished teacher's selection for the reward may be based on consideration of the following factors as determined by the school board:

- (1) Mentoring of less experienced teachers;
(2) Curriculum development;
(3) Assessment development;
(4) Data analysis;
(5) Service to the local district, state, or national committees or task forces;
(6) Leadership in a professional learning community;
(7) National board certification;
(8) Other leadership activities or recognitions; and
(9) Other additional criteria as determined by the school board.

Section 24. No later than August first of each year, the school board of each school district shall determine which participating teachers, if any, are selected to receive top teacher rewards for the previous school year according to the criteria in section 23 of this Act.

Section 25. Department of Education may require each school district to provide any information necessary to verify the district's compliance with sections 20 to 24, inclusive, of this Act.

Section 26. Notwithstanding any other provisions of this Act, public school districts may opt out of the top teacher reward program by providing written notice to the Department of Education. The notice shall be approved by a majority of the school board and signed by the school board president.

If a district opts out pursuant to this section, the teachers employed in the district are not eligible to participate in the top teacher reward program. The district shall provide written notice to each certified teacher of the teacher's ineligibility for the program before executing a teaching contract with the teacher for the school year for which the opt out is effective.

School districts may not opt out of the math and science teacher incentive program established pursuant to this Act.

Section 27. If a school district opts out pursuant to section 26 of this Act, all funds which the district would have been eligible to receive for the top teacher program pursuant to this Act shall be redistributed as follows:

- (1) To obtain the redistribution amount, the Department of Education shall calculate the number of positions that would have been eligible for the top teacher reward program in each opt out district pursuant to section 19 of this Act, and multiply that calculation by five thousand seven hundred dollars;
(2) No later than May first of each year, at the same time that foundation program state aid is distributed to a school district pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the department shall allocate the redistribution amount, on a pro rata basis, to each public school district that did not opt out of the top teacher reward program or is participating in a local teacher reward program pursuant to sections 28 to 35, inclusive, of this Act.

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pro rata share of the redistribution amount shall be based on the number of full-time equivalent certified teacher positions in the district, as measured by the district's annual teacher data collection pursuant to § 13-3-51 and any rules promulgated pursuant to that section; and

(3) No later than September first of each year, the redistribution amount received by each district pursuant to subdivision (2) shall be distributed equally among all teachers receiving top teacher rewards in the district pursuant to sections 17 to 25, inclusive, of this Act, or among all teachers receiving local teacher rewards pursuant to sections 28 to 35, inclusive, of this Act, but each district may withhold an amount necessary to pay the district's share of applicable federal taxes, the district's share of contributions to the South Dakota Retirement System, and administrative costs. Any funds not distributed according to this subdivision shall be returned to the Department of Education within thirty days.

Section 28. Notwithstanding any other provision of this Act, a public school district may create a local teacher reward plan to act as a substitute for the top teacher reward program beginning in the 2014-2015 school year. If the local teacher reward plan is developed in compliance with sections 28 to 35, inclusive, of this Act, the district may utilize the local teacher reward plan to provide the district with the flexibility to use the funds that would otherwise be provided to the district through the top teachers reward program.

Participation in the local teacher reward plan is voluntary. Rewards shall supplement but not replace what a teacher receives under a contract between the teacher and the school district or a collective bargaining agreement between a district and the district's teachers. No collective bargaining agreement between a district and the district's teachers may limit the ability of a teacher to qualify for or receive a local teacher reward.

Nothing in sections 28 to 35, inclusive, of this Act, is intended to create a contractual right or property right in local teacher rewards. Teachers in the district may not participate in the top teacher reward program for any school year for which the district has adopted a local teacher reward plan. The district shall provide written notice to each certified teacher of the teacher's ineligibility for the top teacher reward program and provide a copy of the district's local teacher reward plan to each certified teacher before executing a teaching contract with the teacher for the school year for which the local teacher reward plan is effective.

Section 29. The local teacher reward plan shall reward certified teachers in the district based upon one or more of the following criteria:

- (1) Demonstrating an impact on student achievement;
(2) Demonstrating teacher leadership; or
(3) Market based needs of the school district based upon critical teaching area needs of the school district.

Section 30. There is hereby established the Local Teacher Reward Plan Advisory Council. The council shall provide input in developing one or more model local teacher reward plan applications based upon the criteria in section 29 of this Act. The work group shall be appointed by the secretary of education and consist of the following members:

- (1) A combination of six principals and superintendents: two from an elementary school, two from a middle school, and two from a high school;
(2) Six teachers: two from an elementary school, two from a middle school, and two from a high school; and
(3) Three school board members: one from a small school district, one from a medium-sized school district, and one from a large school district.

Section 31. The Board of Education shall promulgate rules, pursuant to chapter 1-26, establishing the application form for the local teacher reward plan, further guidelines for district applications based on the criteria in section 29 of this Act, a system to monitor whether each participating school district is complying with the local teacher reward plan, and penalties for noncompliance.

Section 32. There is hereby established the Local Teacher Reward Plan Oversight Board. The board shall consist of the following members:

- (1) One member of the Senate appointed by the president pro tempore of the Senate;
(2) One member of the House of Representatives appointed by the speaker of the House of Representatives;
(3) Two representatives of the business community appointed by the Governor;
(4) One representative of an educational association appointed by the Governor;
(5) One current or former teacher appointed by the Governor; and
(6) The secretary of the Department of Education.

Section 33. A school district

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shall submit the local teacher reward plan application to the Department of Education no later than January thirty-first of each year, beginning in 2014, to be eligible to apply the local teacher reward plan to the upcoming school year.

By March fifteenth of each year, the Local Teacher Reward Plan Oversight Board shall review all applications to determine compliance with this Act, and any rules promulgated thereto. The board may request additional information from the district as part of the review of the application. By April first of each year, the board shall inform each district whether the district's local teacher reward plan has been approved for the upcoming school year. If the application is denied, the district may adopt a model plan established pursuant to section 30 of this Act or opt out pursuant to sections 26 and 27 of this Act.

Section 34. If a district's local teacher reward plan is approved, the Department of Education shall calculate the number of positions in the district that would have been eligible for the top teacher reward program pursuant to section 19 of this Act and multiply that calculation by five thousand seven hundred dollars. No later than May first of each year, at the same time that foundation program state aid is distributed to the district pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the secretary of the Department of Education shall distribute this amount to the district in a lump sum payment.

Section 35. No later than September first of each year, the district shall distribute the funds received pursuant to section 34 of this Act to each certified teacher selected for a reward under the local teacher reward program for the previous school year, but the district may withhold an amount necessary to pay the district's share of applicable federal taxes, the district's share of contributions to the South Dakota Retirement System, and administrative costs. Any funds not distributed according to this section shall be returned to the Department of Education within thirty days.

Section 36. A teacher may apply for both the math and science teacher incentive program and the top teachers reward program established pursuant to this Act or both the math and science teacher incentive program and the local teacher reward plan established pursuant to this Act.

Section 37. That § 13-42-34 be amended to read as follows:

13-42-34. Any public school district seeking state accreditation shall evaluate the performance of each certified teacher in years one through to three, inclusive, not less than annually, and each certified teacher in the fourth contract year or beyond, not less than every other year.

Each For the 2012-2013 school year and the 2013-2014 school year, each school district shall may adopt procedures for evaluating the performance of certified teachers employed by the school district that:

- (1) Are based on the minimum professional performance standards established by the Board of Education pursuant to § 13-42-33;
(2) Require multiple measures;
(3) Serve as the basis for programs to increase professional growth and development of certified teachers; and
(4) Include a plan of assistance for any certified teacher, who is in the fourth or subsequent year of teaching, and whose performance does not meet the school district's performance standards.

Section 38. That § 13-42-34 be amended to read as follows:

13-42-34. Any public school district seeking state accreditation shall evaluate the performance of each certified teacher in years one through three not less than annually, and each certified teacher in the fourth contract year or beyond, not less than every other year. Beginning in the 2014-2015 school year, each certified teacher shall be evaluated on an annual basis.

Each school district shall adopt the model evaluation instrument required by section 40 of this Act and procedures for evaluating the performance of certified teachers employed by the school district that:

- (1) Are based on the minimum professional performance standards established by the Board of Education pursuant to § 13-42-33;
(2) Require multiple measures of performance as follows:
(a) Fifty percent of the evaluation of a teacher shall be based on quantitative measures of student growth based on a single year or multiple years of data. This quantitative data shall be based on reports of student performance on state validated assessments established pursuant to § 13-3-55. For those teachers in grades and subjects for which there is no state-validated assessment for the quantitative portion of the evaluation, teachers shall demonstrate success in improving student achievement using objective measures, which can include portfolio assessments, end-of-course exams, or other district approved assessments which demonstrate student growth; and
(b) Fifty percent of the evaluation of a teacher shall be based on qualitative, observable, evidence-based characteristics of good teaching and classroom practices as further defined in the model evaluation instrument referenced in section 40 of this Act. Districts may collect additional evidence using any of the following if not required by the model evaluation instrument:
(i) Classroom drop-ins;
(ii) Parent surveys;
(iii) Student surveys;
(iv) Portfolios; or
(v) Peer review;
(3) Serve as the basis for programs to increase professional growth and development of certified teachers; and
(4) Include a plan of assistance for any certified teacher, who is in the fourth or subsequent year of teaching, and whose performance does not meet the school district's performance standards; and
(5) Are based on the following four-tier rating system:
(a) Distinguished;
(b) Proficient;
(c) Basic; and
(d) Unsatisfactory.

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tion of a teacher shall be based on qualitative, observable, evidence-based characteristics of good teaching and classroom practices as further defined in the model evaluation instrument referenced in section 40 of this Act. Districts may collect additional evidence using any of the following if not required by the model evaluation instrument:

- (i) Classroom drop-ins;
(ii) Parent surveys;
(iii) Student surveys;
(iv) Portfolios; or
(v) Peer review;
(3) Serve as the basis for programs to increase professional growth and development of certified teachers; and
(4) Include a plan of assistance for any certified teacher, who is in the fourth or subsequent year of teaching, and whose performance does not meet the school district's performance standards; and
(5) Are based on the following four-tier rating system:
(a) Distinguished;
(b) Proficient;
(c) Basic; and
(d) Unsatisfactory.

Section 39. The provisions of section 38 of this Act are effective July 1, 2014.

Section 40. That § 13-42-35 be amended to read as follows:

13-42-35. A work group appointed by the secretary of education shall provide input in developing the standards for defining the four-tier rating system required by section 38 of this Act and shall develop in developing a model evaluation instrument that may shall be used by school districts for the 2014-2015 school year and subsequent school years. The work group shall consist of the following members:

- (1) Six teachers: two from an elementary school, two from a middle school, and two from a high school;
(2) Three principals: one from an elementary school, one from a middle school, and one from a high school;
(3) Two superintendents;
(4) Two school board members;
(5) Four parents who have students in various levels of the K-12 system;
(6) One representative of the South Dakota Education Association;
(7) One representative of the School Administrators of South Dakota; and
(8) One representative of the Associated School Boards of South Dakota.

Section 41. That chapter 13-42 be amended by adding thereto a NEW SECTION to read as follows:

Pursuant to chapter 1-26, the South Dakota Board of Education shall promulgate rules establishing standards for defining the four-tier rating system required by section 38 of this Act and adopting the model evaluation instrument referenced in section 40 of this Act.

Section 42. That chapter 3-18 be amended by adding thereto a NEW SECTION to read as follows:

Beginning with the 2014-2015 school year, the procedures for evaluation and the model evaluation instrument referenced in sections 38 to 41, inclusive, of this Act may not be the subject of any collective bargaining agreement between a district and the district's teachers.

Section 43. The Board of Education shall promulgate rules pursuant to chapter 1-26 to establish minimum professional performance standards for certified principals in South Dakota public schools, and to establish best practices for the evaluation of the performance of certified principals that shall be used by individual school districts. The South Dakota Board of Education shall promulgate rules pursuant to chapter 1-26 establishing standards for defining the four-tier rating system required by section 44 of this Act and adopting the model evaluation instrument referenced in section 45 of this Act.

Section 44. Beginning in the 2014-2015 school year, any public school district seeking state accreditation shall evaluate the performance of each certified principal not less than every other year.

Each school district shall adopt the model evaluation instrument required by section 45 of this Act and procedures for evaluating the performance of certified principals employed by the school district that:

- (1) Are based on the minimum professional performance standards established by the Board of Education pursuant to section 43 of this Act;
(2) Require multiple measures of performance;
(3) Serve as the basis for programs to increase professional growth and development of certified principals;
(4) Include a plan of assistance for any certified principal whose performance does not meet the school district's performance standards; and
(5) Are based on the following four-tier rating system:
(a) Distinguished;
(b) Proficient;

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- (c) Basic; and
(d) Unsatisfactory.

Section 45. A work group appointed by the secretary of education shall provide input in developing the standards referenced in section 43 of this Act, the four-tier rating system required by section 44 of this Act, and in developing a model instrument for principal evaluation that shall be used by school districts for the 2014-2015 school year and each school year thereafter. The work group shall consist of the following members:

- (1) Six principals: two from an elementary school, two from a middle school, and two from a high school;
(2) Three teachers: one from an elementary school, one from a middle school, and one from a high school;
(3) Two superintendents;
(4) Two school board members;
(5) Four parents who have students in various levels of the K-12 system;
(6) One representative of the South Dakota Education Association;
(7) One representative of the School Administrators of South Dakota; and
(8) One representative of the Associated School Boards of South Dakota.

Section 46. All persons conducting teacher or principal evaluations required by sections 38 to 45, inclusive, of this Act shall participate in training conducted by the Department of Education before conducting the evaluations.

Section 47. That chapter 13-43 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of this chapter, the term, tenured teacher, means a teacher who is in or beyond the fourth consecutive term of employment as a teacher with the school district prior to July 1, 2016. If, prior to July 1, 2016, the school district and the teacher have entered into a contract pursuant to §§ 13-43-4 and 13-43-5 for the teacher's fourth consecutive term of employment with the district or a subsequent consecutive term of employment with the district, then that teacher is a tenured teacher for purposes of this chapter. The term, nontenured teacher, means a teacher who is not yet in or beyond the fourth consecutive term of employment as a teacher with the school district prior to July 1, 2016. Any teacher who is not in or beyond the fourth consecutive term of employment with the school district prior to July 1, 2016, need not acquire continuing contract status under this chapter. Nothing in this section or section 53 of this Act prohibits a school district from choosing to provide continuing contract to a nontenured teacher beyond what is provided for in this chapter.

Section 48. That § 13-43-6 be amended to read as follows:

13-43-6. The contract shall specify the date at or about which the school shall begin, the term of employment, the wages per month, and the time of payment thereof; such of wages. The contract shall be signed in duplicate and one copy filed in the office of the business manager and the other retained by the teacher. Such The contract may be issued covering any period of years, not to exceed three employment up to one year, over which a teacher holds a certificate which shall remain valid without renewal.

Section 49. That § 13-43-6.1 be amended to read as follows:

13-43-6.1. A tenured or nontenured teacher may be terminated, by the school board, at any time for just cause, including breach of contract, poor performance, incompetence, gross immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of any policy or regulation of the school district. A school district may nonrenew a teacher who is in or beyond the fourth consecutive term of employment as a teacher with the school district pursuant to § 13-43-6.2 for just cause, including breach of contract, poor performance, incompetence, gross immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of any policy or regulation of the school district.

Section 50. That § 13-43-6.2 be amended to read as follows:

13-43-6.2. If nonrenewal of a tenured teacher is contemplated under § 13-43-6.1 § 13-43-6.3, the superintendent or chief executive officer shall give written notice of an intention to recommend nonrenewal to the teacher and the school board; a written statement of the reasons for the recommendation; access to the employment records of the teacher; the opportunity to the teacher for a hearing before the school board to present reasons in person or in writing why the nonrenewal should not occur; and the opportunity to be represented. The teacher shall request the hearing as provided in § 13-43-6.9. The school board shall conduct the hearing not sooner than fourteen days, nor later than forty-five days, after receipt of the teacher's request for hearing. The parties may waive the time limitations provided for in this section.

Section 51. That § 13-43-6.3 be amended to read as follows:

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13-43-6.3. Until a teacher is in or beyond the fourth consecutive term of employment as a teacher with the school district, a school board may or may not renew the teacher's contract of a nontenured teacher. The superintendent or chief executive officer shall give written notice of nonrenewal by April fifteenth but is not required to give further process or a reason for nonrenewal.

After a teacher is in or beyond the fourth consecutive term of employment as a teacher with the school district, §§ 13-43-6.1 and 13-43-6.2 apply to any nonrenewal of the teacher's contract. A school board may refuse to renew the teacher's contract of a tenured teacher for just cause, including breach of contract, poor performance, a rating of unsatisfactory on two consecutive evaluations pursuant to section 38 of this Act, incompetence, gross immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of any policy or regulation of the school district. On or before April fifteenth, the superintendent or chief executive officer shall notify the tenured teacher and the school board in writing of the recommendation to not renew the teacher's contract.

Acceptance by the a tenured or nontenured teacher of an offer from the district to enter into a new contract with the teacher shall be in the manner specified in the offer. Failure of the teacher to accept the offer in the manner specified constitutes the termination of the existing contract between the teacher and the district at the end of its term.

Section 52. That § 13-43-6.4 be amended to read as follows:

13-43-6.4. Notwithstanding §§ 13-43-6.1 to §§ 13-43-6.2 and 13-43-6.3, inclusive, if a teacher's contract is not renewed due to a reduction in staff, only written notice is required, which shall be provided by the school board to the teacher by April fifteenth.

Section 53. That § 13-43-6.6 be amended to read as follows:

13-43-6.6. Although a collective bargaining agreement between a district and its teachers may set forth specific additional grounds for termination or set forth provisions as to the procedure or notice, no agreement may limit the district's right to terminate or refuse to renew the contract of a tenured or nontenured teacher for the grounds set forth in §§ 13-43-6.1 to 13-43-6.3, inclusive. No agreement may limit the protection afforded to a teacher under § 13-43-6.5.

Section 54. For purposes of this Act, the term, school year, means the regular school term as referenced in § 13-26-2.

Section 55. That § 13-3-73 be repealed.

13-3-73. There is hereby created the teacher compensation assistance program within the Department of Education to provide funds to school districts for the purpose of assisting school districts with teacher compensation. School districts are eligible to receive funds from the teacher compensation assistance program based on their fall enrollment numbers. The department shall provide four-fifths of the funds for the teacher compensation assistance program to each participating school district. The Board of Education shall promulgate rules, pursuant to chapter 1-26, to create an oversight board appointed by the secretary of education for approval of applications as well as guidelines for district applications based on district instructional goals, market compensation or other specific district requirements as approved by the department. Participation in the program is discretionary. District applications shall be approved by the local board of education. The applications shall be reviewed by the teacher compensation assistance program oversight board and shall be recommended to the Board of Education for final approval. The Legislature shall review the teacher compensation assistance program in 2012 to determine its effectiveness and to determine whether to continue the program.

Section 56. That § 13-3-74 be repealed.

13-3-74. The Teacher Compensation Assistance Program Oversight Board shall annually monitor the progress of participating school districts with their teacher compensation assistance plans, and submit its findings to the Board of Education.

Section 57. That § 13-3-74.1 be repealed.

13-3-74.1. There is hereby established the Teacher Compensation Assistance Program Advisory Council. The council shall be under the supervision of the Department of Education. The speaker of the House of Representative shall appoint three members of the House of Representatives to the council, including at least one member from each political party, and the president pro tempore of the Senate shall appoint three members of the Senate to the council, including at least one member from each political party. The Governor shall appoint the remaining members of the council, including at least one teacher, one school administrator, and one representative of a statewide education organization.