

2020 South Dakota Legislature

House Bill 1173**AMENDMENT 1173B FOR THE HOUSE EDUCATION BILL**

1 **An Act to prohibit a school board from denying an application for open enrollment**
2 **from certain students with autism.**

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

4 **Section 1.** That § 13-28-44 be AMENDED:

5 **13-28-44. Standards for acceptance or rejection of application to enroll.**

6 Each school district by November 1, 1997, shall by resolution adopt relevant
7 standards for the acceptance and rejection of an application to enroll in the district under
8 the provisions of §§ 13-28-40 to 13-28-47, inclusive. The board shall adopt standards
9 through official board action, set them forth in writing, and make them available to any
10 individual upon receiving an oral or written request. Standards shall be limited to the
11 capacity of a program, class, grade level, and school building operated by the board and
12 the pupil/teacher ratio. Discrimination based on race, gender, religious affiliation, or
13 disability is prohibited.

14 If two or more children from a family residing in the same household must enroll
15 in different school districts as the result of a board's denial of an application to transfer
16 from a resident district or to enroll in a nonresident district under the provisions of §§ 13-
17 28-40 to 13-28-47, inclusive, neither the resident board nor the nonresident board may
18 deny the application. However, two or more children from a family residing in the same
19 household who are eligible for kindergarten through twelfth grade may open enroll only
20 if, pursuant to § 13-28-42.1, the nonresident district can provide an appropriate
21 instructional program and facilities, including transportation, for the child in need of special
22 education or special education and related services. If the nonresident district cannot meet
23 the provisions of § 13-28-42.1 for the child in need of special education or special
24 education and related services, the nonresident district may deny that child's application
25 for open enrollment.

26 No school board may deny the application of any nonresident student who:

- 1 (1) In the preceding school year, was enrolled in the school district;
2 (2) In the preceding school year, was determined to have a level four disability or a
3 level five disability with at least one disability being a level four disability; ~~and~~
4 (3) Does not require an assignment to an out of district special education residential
5 or tuition day program; ~~and~~
6 (4) Does not require transportation as a related service under the terms of the
7 student's individualized education program.

8 The decision of a local school board regarding a student's application for open
9 enrollment or a request to return to the resident district under the provisions of §§ 13-
10 28-40 to 13-28-47, inclusive, is subject to de novo appeal under the provisions of chapter
11 13-46. The Department of Education may promulgate rules pursuant to chapter 1-26
12 specifying procedural and administrative requirements for the implementation of the open
13 enrollment program and related transfers and enrollments under the provisions of §§ 13-
14 28-40 to 13-28-47, inclusive.