

AN ACT

ENTITLED, An Act to provide for statewide open enrollment of students in public school districts.

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

Section 1. That chapter 13-28 be amended by adding thereto a NEW SECTION to read as follows:

An enrollment options program is established to enable any South Dakota kindergarten through twelfth grade student to attend any public school that serves the student's grade level in any South Dakota school district, subject to the provisions in this Act. Any student who is enrolled, pursuant to this Act, in a district in which the student does not reside is not subject to the tuition requirements of § 13-28-22. For purposes of determining state aid to education as it relates to the provisions of this Act, general enrollment average daily membership as defined in section 10 of this Act is used to compute foundation aid and resident average daily membership as defined in section 12 of this Act is used to determine funding for special education.

Section 2. That chapter 13-28 be amended by adding thereto a NEW SECTION to read as follows:

A school district shall grant a request for a transfer into the district or within the district unless the transfer would result in an inability to provide a quality educational program based on criteria established by the district pursuant to section 5 of this Act.

Section 3. That chapter 13-28 be amended by adding thereto a NEW SECTION to read as follows:

The resident district is responsible for the provision of a free appropriate public education for students in need of special education or special education and related services. A request to transfer a student in need of special education or special education and related services may be granted only if, through the placement committee process, the resident and nonresident districts determine that the nonresident district can provide an appropriate instructional program and facilities to meet the

student's needs. The resident district shall reimburse the nonresident district actual costs incurred in providing an appropriate special education for a student in need of special education and related services. Notwithstanding the provisions of section 6 of this Act, the placement committee, including representatives of the resident and nonresident districts, shall determine whether a student in need of special education requires transportation as a related service. If so, the resident district shall provide or ensure the provision of transportation.

If a parent or guardian of a student in need of special education or special education and related services wishes to transfer the student back to the resident district, the request shall be considered by the placement committee. The committee must include representatives of the resident and nonresident districts.

Section 4. That chapter 13-28 be amended by adding thereto a NEW SECTION to read as follows:

A student's parent or legal guardian who wishes to enroll the student, or an emancipated student who wishes to enroll, under the provisions of this Act, in a South Dakota school district other than the resident district or in a school within the resident district other than the school to which the student has been assigned shall, not later than February first of the school year preceding the year of enrollment, apply to the affected school boards, on triplicate forms provided by the Department of Education and Cultural Affairs, to enroll the student in a district other than the resident district or to transfer within the district.

By March first, the school board of the district in which the student desires to enroll shall approve or disapprove the application. The board shall notify the applicant and the resident board, if applicable, of its decision within five days of the decision. The district in which the student desires to enroll shall review the applications in the order received.

However, intradistrict transfer applications may be accepted and acted upon at any time at the board's discretion if the policies on which the transfer decisions are based are consistent with the other

requirements of this Act.

An application may be withdrawn by the applicant any time before March first upon notification of all affected school boards. Once approved by the district in which the student wishes to enroll, the approved application serves as the applicant's notice of intent to enroll in the nonresident district or desired school during the next school year and obligates the student to attend school in the nonresident district or desired school during the next school year, unless the affected school board or boards agree in writing to allow the student to transfer back to the resident district or assigned school, or unless the parents, guardians, or emancipated student change residence to another district.

If a student's parents, or an emancipated student, move from a resident district into another district after February first, the parents or emancipated student may apply for enrollment in a nonresident district or in a nonassigned school under provisions of this Act. In such a case, the school boards of both the new resident district and the nonresident district shall waive the application and approval dates outlined in this Act, and the affected board shall review the application in a timely manner as outlined above. The applicant shall be informed of the board's decision within five days of the board's action on the application. Once enrolled in a nonresident district or nonassigned school, the student may remain enrolled and is not required to resubmit annual applications.

Section 5. That chapter 13-28 be amended by adding thereto a NEW SECTION to read as follows:

Each school district by November 1, 1997 shall by resolution adopt relevant standards for the acceptance and rejection of an application to enroll in the district under the provisions of this Act. The board shall adopt standards through official board action, set them forth in writing, and make them available to any individual upon receiving an oral or written request. Standards may define the capacity of a program, class, grade level, and school building operated by the board and the pupil/teacher ratio. Discrimination based on race, gender, religious affiliation, or disability is prohibited. If two or more children from a family residing in the same household must enroll in

different school districts as the result of a board's denial of an application to transfer from a resident district or to enroll in a nonresident district under the provisions of this Act, neither the resident board nor the nonresident board may deny the application. The decision of a local school board regarding a student's application for open enrollment or a request to return to the resident district under the provisions of this Act is subject to de novo appeal under the provisions of chapter 13-46. The Department of Education and Cultural Affairs may promulgate rules pursuant to chapter 1-26 specifying procedural and administrative requirements for the implementation of the open enrollment program and related transfers and enrollments under the provisions of this Act.

Section 6. That chapter 13-28 be amended by adding thereto a NEW SECTION to read as follows:

The parent or guardian of a student who has been accepted for transfer is responsible for transporting the student to school in the receiving district without reimbursement. Either the district of residence or the receiving district may provide transportation to students approved for transfer.

Section 7. That chapter 13-28 be amended by adding thereto a NEW SECTION to read as follows:

A school district shall accept credits for any course completed in any other accredited school district as the result of a transfer under this Act. The nonresident district shall award a diploma to a nonresident student only if the student satisfactorily meets its graduation requirements.

Section 8. That chapter 13-28 be amended by adding thereto a NEW SECTION to read as follows:

Each school district shall make relevant information about the district, schools, programs, policies, and procedures available to all interested people.

Section 9. That § 13-13-1.4 be amended to read as follows:

13-13-1.4. If two or more school districts consolidate, for a period of two years after consolidation, the adjusted average daily membership for the newly formed district shall be based

upon the general enrollment average daily membership as defined in § 13-13-10.1 of the school districts as they existed prior to consolidation.

Section 10. That § 13-13-10.1 be amended to read as follows:

13-13-10.1. Terms used in this chapter mean:

- (1) "General enrollment average daily membership," the average number of resident and nonresident kindergarten through twelfth grade pupils enrolled in the school district during the previous regular school year, minus average number of pupils for whom the district receives tuition, except pupils described in subdivision (1A) and plus the average number of pupils for whom the district pays tuition;
- (1A) Nonresident students who are in the care and custody of the Department of Social Services, the Unified Judicial System, the Department of Corrections, or other state agencies and are attending a public school may be included in the average daily membership of the receiving district when enrolled in the receiving district. When counting a student who meets these criteria in its general enrollment average daily membership, the receiving district may begin the enrollment on the first day of attendance. The district of residence prior to the custodial transfer may not include students who meet these criteria in its general enrollment average daily membership after the student ceases to attend school in the resident district;
- (2) "Adjusted average daily membership," calculated as follows:
 - (a) For districts with a general enrollment average daily membership of two hundred or less, multiply 1.2 times the general enrollment average daily membership;
 - (b) For districts with a general enrollment average daily membership of less than six hundred, but greater than two hundred, raise the general enrollment average daily membership to the 0.8293 power and multiply the result times 2.98;
 - (c) For districts with a general enrollment average daily membership of six hundred or

more, multiply 1.0 times their general enrollment average daily membership;

- (3) "Index factor," is the annual percentage change in the consumer price index for urban wage earners and clerical workers as computed by the Bureau of Labor Statistics of the United States Department of Labor for the year before the year immediately preceding the year of adjustment or three percent, whichever is less;
- (4) "Per student allocation," for the period January 1, 1997, to June 30, 1997, inclusive, is \$1,675. For school fiscal year 1998, beginning on July 1, 1997, the per student allocation shall be \$3,350 increased by the index factor. Each school fiscal year thereafter, the per student allocation shall be the previous fiscal year's per student allocation increased by the index factor;
- (5) "Local need," the per student allocation multiplied by the adjusted average daily membership;
- (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by applying the following levies:
 - (a) The levy for school district purposes is sixteen dollars and seventy-five cents per thousand dollars of taxable valuation subject to the limitations on agricultural property as provided in subsection (b) and owner-occupied property as provided in subsection (c);
 - (b) The tax levy on agricultural property for the school district is five dollars and seventy-five cents per thousand dollars of taxable valuation;
 - (c) The tax levy for owner-occupied single-family dwelling for the school district is nine dollars and twenty cents per thousand dollars of taxable valuation.

For the period January 1, 1997, to June 30, 1997, inclusive, local effort shall be one-half of the amount of ad valorem taxes generated in calendar year 1997 by applying the following levies:

- (a) The levy for school district purposes is sixteen dollars and seventy-five cents per thousand dollars of taxable valuation subject to the limitations on agricultural property as provided in subsection (b) and owner-occupied property as provided in subsection (c);
- (b) The tax levy on agricultural property for the school district is five dollars and seventy-five cents per thousand dollars of taxable valuation;
- (c) The tax levy for owner-occupied single-family dwelling for the school district is nine dollars and twenty cents per thousand dollars of taxable valuation.

All levies shall be based on valuations including valuations pursuant to § 13-13-10.2 and 13-13-20.4 such that the median level of assessment represents eighty-five percent of market value as determined by the Department of Revenue. The total amount of taxes that would be generated at the levies pursuant to this section shall be considered local effort.

Section 11. That § 13-13-73 be amended to read as follows:

13-13-73. The secretary of the Department of Education and Cultural Affairs shall compute state aid to education for each school district under the foundation program according to the following calculations:

- (1) Determine each school district's general enrollment average daily membership;
- (2) Multiply the per student allocation by the adjusted average daily membership to arrive at the local need per district;
- (3) State aid is (a) local need minus local effort, or (b) zero if the calculation in (a) is a negative number;
- (4) If the state aid appropriation for the general support of education is in excess of the entitlement provided for in this section, each eligible district shall receive a pro rata share of such excess based on its adjusted average daily membership.

Section 12. That § 13-37-35 be amended to read as follows:

13-37-35. Terms used in §§ 13-37-35 to 13-37-48, inclusive, mean:

- (1) "Resident average daily membership," the average number of resident kindergarten through twelfth grade pupils enrolled in the school district during the previous regular school year plus the average number of pupils for whom the district pays tuition and plus the average number of resident pupils enrolled in another school district under the provisions of section 1 of this Act;
- (2) "Index factor," is the annual percentage change in the consumer price index for urban wage earners and clerical workers as computed by the Bureau of Labor Statistics of the United States Department of Labor for the year before the year immediately preceding the year of adjustment or three percent, whichever is less;
- (3) "Local effort," is the amount of taxes payable each year, using the maximum levy for the special education fund of a school district of one dollar and forty cents per thousand dollars of taxable valuation. The levy shall be based on valuations such that the median level of assessment represents 85% of market value as determined by the Department of Revenue. For the period January 1, 1997, through June 30, 1997, local effort shall be one-half of the amount of taxes payable in calendar year 1997, using the maximum levy for the special education fund of a school district of one dollar and forty cents per thousand dollars of taxable valuation. The levy shall be based on valuations such that the median level of assessment represents 85% of market value as determined by the Department of Revenue;
- (4) "Allocation for a student with a mild disability," for the period January 1, 1997, through June 30, 1997, is \$892. For school fiscal year beginning July 1, 1997, the allocation for a student with a mild disability shall be \$1,785 increased by the lesser of the index factor or three percent. For each school year thereafter, the allocation for a student with a mild disability shall be the previous fiscal year's allocation for such child increased by the lesser

of the index factor or three percent;

- (5) "Allocation for a student with a severe disability," for the period January 1, 1997, through June 30, 1997, is \$10,707. For school fiscal year beginning July 1, 1997, the allocation for a child with a severe disability shall be \$21,415 increased by the lesser of the index factor or three percent. For each school year thereafter, the allocation for a child with a severe disability shall be the previous fiscal year's allocation for such child increased by the lesser of the index factor or three percent;
- (6) "Local need," an amount to be determined as follows:
 - (i) Multiply the resident average daily membership times 0.1025;
 - (ii) Multiply the result of (i) times the allocation for a student with a mild disability;
 - (iii) Multiply the resident average daily membership times 0.015;
 - (iv) Multiply the result of (iii) times the allocation for a student with a severe disability;
 - (v) Add together the result of (ii) and the result of (iv);
- (7) "Student with mild disability," is a student whose performance level is not sufficient to demonstrate success in the regular education environment without the provision of special education, and who meets eligibility criteria under Part B, IDEA, or both;
- (8) "Student with severe disability," is a student with a low-incidence disability who:
 - (a) Meets eligibility criteria under Part B, IDEA; and
 - (b) Presents needs which require intervention skills which are substantially different from those provided to nondisabled students, in that the skills are disability-specific and require special training, equipment, and facilities to perform;
- (9) "Effort factor," 1.0 if the school district's special education tax levy in dollars per thousand is \$1.40, 0.0 if the school district's special education tax levy in dollars per thousand is less than \$1.30.

Section 13. That § 13-37-36 be amended to read as follows:

13-37-36. The secretary of the department of education and cultural affairs shall compute state aid for special education for each school district according to the following calculations:

- (1) Determine each school district's resident average daily membership;
- (2) Calculate the local need of a school district;
- (3) State aid for special education is:
 - (a) Local need minus local effort, the difference multiplied times the effort factor; or
 - (b) Zero if the calculation in (a) is a negative number.

Section 14. The effective date of sections 9 to 13, inclusive, of this Act is July 1, 1999.

Section 15. That § 13-28-9 be amended to read as follows:

13-28-9. School residence for the purpose of claiming free school privileges means the legal residence of the student's parents or guardian except as provided in § 13-28-10. If a parent or guardian has more than one residence, the school residence is the residence where the parent or guardian actually lives and makes a home or domicile. In case of dispute, if the student's parent or guardian has claimed a credit pursuant to § 10-13-39, it is presumed that the dwelling so claimed is the residence of the parent or guardian. The student or the student's parents or guardian may not establish school residence and be exempt from the payment of tuition if the residence of the parents or guardian of the student is acquired solely or principally for obtaining free school privileges. At the time a child is enrolled in a school district, the school residence of the child as determined by that school district within thirty days after the enrollment may not change during the school fiscal year, unless the child ceases to be an enrolled member of a school within the district. If a student's parents or guardians are separated or divorced, the school residence is the school district in which the custodial parent or guardian has residence. If the parents or guardian have joint custody of a student, school residence is that of the parent or guardian with whom the child resides the greater portion of the school year.

Section 16. That § 13-28-20 be repealed.

Section 17. That § 13-28-22 be repealed.

Section 18. That § 13-28-23 be repealed.

Section 19. That § 13-28-24 be amended to read as follows:

13-28-24. Anyone who must personally pay tuition shall pay in advance the annual or monthly amount of tuition. If the student ceases to be a member of the school before the expiration of the term for which the tuition has been paid, the school board shall refund the unearned portion of the tuition upon the presentation of a proper voucher.

Section 20. That § 13-28-30 be amended to read as follows:

13-28-30. A pupil is a member of the school from the date the pupil arrives at the school and is placed on the current roll until the pupil permanently leaves the school. The date of permanent withdrawal is the day the pupil last attended the school.

Section 21. That § 13-28-34 be amended to read as follows:

13-28-34. A school district board, administrator, or school employee may not give or promise to give, either directly or indirectly, any rebate or refund of any transportation or any other thing of value as an inducement for attending school in a district. Any person violating the provisions of this section is guilty of a Class 2 misdemeanor.

Section 22. That § 13-28-38 be repealed.

Section 23. The effective date of sections 15 to 22, inclusive, of this Act is July 1, 1998.

An Act to provide for statewide open enrollment of students in public school districts.

I certify that the attached Act originated in the

HOUSE as Bill No. 1075

Chief Clerk

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1075

File No. _____

Chapter No. _____

Received at this Executive Office this ____ day of _____ ,

19__ at ____ M.

By _____
for the Governor

The attached Act is hereby approved this _____ day of _____ , A.D., 19__

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 19__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State