

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

192A0337

HOUSE ENGROSSED NO. **HB1075** - 2/12/97

Introduced by: Representatives Eccarius, Brown (Richard), DeMersseman, Derby, Duniphan, Fitzgerald, Hagg, Konold, Madden, Pederson (Gordon), and Wick and Senators Everist, Ham, Lawler, Olson, Paisley, Shoener, and Whiting

1 FOR AN ACT ENTITLED, An Act to provide for statewide open enrollment of students in
2 public school districts in which they do not reside.

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

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

6 An enrollment options program is established to enable any South Dakota kindergarten
7 through twelfth grade student to attend a public school in a South Dakota school district in
8 which the student does not reside, subject to the provisions in this Act. Any student who is
9 enrolled, pursuant to this Act, in a district in which the student does not reside is not subject to
10 the tuition requirements of § 13-28-22. For purposes of determining state aid to education as it
11 relates to the provisions of this Act, general enrollment average daily membership as defined in
12 section 10 of this Act is used to determine funding for resident and nonresident students not
13 enrolled in a special education program defined in §§ 13-37-35 to 13-37-48, inclusive; and
14 resident average daily membership as defined in section 12 of this Act is used to determine
15 funding for special education.

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

3 A school district is not required to grant a request for a transfer into the district if the transfer
4 would result in an inability to provide a quality educational program based on criteria established
5 by the district pursuant to section 5 of this Act.

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

8 The resident district is responsible for the provision of a free appropriate public education
9 for students in need of special education or special education and related services. A request to
10 transfer a student in need of special education or special education and related services may be
11 granted only if, through the placement committee process, the resident and nonresident districts
12 determine that the nonresident district can provide an appropriate instructional program and
13 facilities to meet the student's needs. The resident district shall reimburse the nonresident district
14 actual costs incurred in providing an appropriate special education for a student in need of
15 special education and related services. Notwithstanding the provisions of section 6 of this Act,
16 the placement committee, including representatives of the resident and nonresident districts, shall
17 determine whether a student in need of special education requires transportation as a related
18 service. If so, the resident district shall provide or ensure the provision of transportation.

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

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

25 In order that a student may attend a school or program in a nonresident district pursuant to

1 section 1 of this Act, the student's parent or guardian shall submit an application to the resident
2 and nonresident districts on a form provided by the Department of Education and Cultural
3 Affairs. The application shall include a written statement of the reason for the requested transfer.
4 The application shall be submitted by January fifteenth for initial enrollment beginning the
5 following school year. The resident and nonresident districts shall each notify the parent or
6 guardian in writing by April first of the districts' approval or rejection of the application for
7 transfer and the reasons for any rejection. The same procedures apply to any student who
8 subsequently applies to transfer from one nonresident district to a different nonresident district
9 or to return to the resident district. The parent or guardian of any student who becomes a new
10 resident of a school district after January fifteenth of any school year may submit an application
11 for transfer to a nonresident district within forty-five days after establishing residency, and the
12 districts shall notify the parent or guardian of their decision no sooner than April first after
13 receipt of the application. If accepted, an application to enroll in the nonresident district obligates
14 the student to attend the nonresident district, unless the school boards of the resident and the
15 nonresident districts agree in writing to allow the student to transfer back to the resident district,
16 or the student's parent or guardian changes residence to another district. Once enrolled in a
17 nonresident district, the student may remain enrolled and is not required to resubmit annual
18 applications.

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

21 Each school district by November 1, 1997 shall by resolution adopt relevant standards for
22 the acceptance and rejection of an application to enroll in the district under the provisions of this
23 Act. The board shall hold a public hearing on the standards, adopt them through official board
24 action, set them forth in writing, and make them available to any individual upon receiving an
25 oral or written request. Standards may include the capacity of a program, class size, pupil/teacher

1 ratio, impact on facilities, or other related relevant factors. The decision of a local school board
2 regarding a student's application for open enrollment or a request to return to the resident district
3 under the provisions of this Act is subject to de novo appeal under the provisions of chapter 1-
4 26D. The Department of Education and Cultural Affairs may promulgate rules pursuant to
5 chapter 1-26 specifying procedural and administrative requirements for the implementation of
6 the open enrollment program and related transfers and enrollments under the provisions of this
7 Act.

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

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

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

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

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

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

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

24 13-13-1.4. If two or more school districts consolidate, for a period of two years after
25 consolidation, the adjusted average daily membership for the newly formed district shall be based

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

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

4 13-13-10.1. Terms used in this chapter mean:

5 (1) "~~Average~~ General enrollment average daily membership," the average number of
6 resident and nonresident kindergarten through twelfth grade pupils enrolled in the
7 school district during the previous regular school year, minus average number of
8 pupils for whom the district receives tuition, except pupils described in subdivision
9 (1A) and plus the average number of pupils for whom the district pays tuition;

10 (1A) Nonresident students who are in the care and custody of the Department of Social
11 Services, the Unified Judicial System, or other state agencies and are attending a
12 public school may be included in the average daily membership of the receiving
13 district when enrolled in the receiving district for more than thirty school days. When
14 counting a student who meets these criteria in its general enrollment average daily
15 membership, the receiving district may begin the enrollment on the first day of
16 attendance. The district of residence prior to the custodial transfer may not include
17 students who meet these criteria in its general enrollment average daily membership
18 after the student ceases to attend school in the resident district for more than thirty
19 school days;

20 (2) "Adjusted average daily membership," calculated as follows:

21 (a) For districts with ~~an~~ a general enrollment average daily membership of two
22 hundred or less, multiply 1.2 times the general enrollment average daily
23 membership;

24 (b) For districts with ~~an~~ a general enrollment average daily membership of less than
25 six hundred, but greater than two hundred, raise the general enrollment average

1 daily membership to the 0.8293 power and multiply the result times 2.98;

2 (c) For districts with ~~an~~ a general enrollment average daily membership of six
3 hundred or more, multiply 1.0 times their general enrollment average daily
4 membership;

5 (3) "Index factor," is the annual percentage change in the consumer price index for urban
6 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
7 the United States Department of Labor for the year before the year immediately
8 preceding the year of adjustment or three percent, whichever is less;

9 (4) "Per student allocation," for the period January 1, 1997, to June 30, 1997, inclusive,
10 is \$1,675. For school fiscal year 1998, beginning on July 1, 1997, the per student
11 allocation shall be \$3,350 increased by the index factor. Each school fiscal year
12 thereafter, the per student allocation shall be the previous fiscal year's per student
13 allocation increased by the index factor;

14 (5) "Local need," the per student allocation multiplied by the adjusted average daily
15 membership;

16 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by
17 applying the following levies:

18 (a) The levy for school district purposes is sixteen dollars and seventy-five cents
19 per thousand dollars of taxable valuation subject to the limitations on
20 agricultural property as provided in subsection (b) and owner-occupied
21 property as provided in subsection (c);

22 (b) The tax levy on agricultural property for the school district is five dollars and
23 seventy-five cents per thousand dollars of taxable valuation;

24 (c) The tax levy for owner-occupied single-family dwelling for the school district
25 is nine dollars and twenty cents per thousand dollars of taxable valuation.

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

4 (a) The levy for school district purposes is sixteen dollars and seventy-five cents
5 per thousand dollars of taxable valuation subject to the limitations on
6 agricultural property as provided in subsection (b) and owner-occupied
7 property as provided in subsection (c);

8 (b) The tax levy on agricultural property for the school district is five dollars and
9 seventy-five cents per thousand dollars of taxable valuation;

10 (c) The tax levy for owner-occupied single-family dwelling for the school district
11 is nine dollars and twenty cents per thousand dollars of taxable valuation.

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

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

17 13-13-73. The secretary of the Department of Education and Cultural Affairs shall compute
18 state aid to education for each school district under the foundation program according to the
19 following calculations:

- 20 (1) Determine each school district's general enrollment average daily membership;
- 21 (2) Multiply the per student allocation by the adjusted average daily membership to arrive
22 at the local need per district;
- 23 (3) State aid is (a) local need minus local effort, or (b) zero if the calculation in (a) is a
24 negative number;
- 25 (4) If the state aid appropriation for the general support of education is in excess of the

1 entitlement provided for in this section, each eligible district shall receive a pro rata
2 share of such excess based on its adjusted average daily membership.

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

4 13-37-35. Terms used in §§ 13-37-35 to 13-37-48, inclusive, mean:

- 5 (1) "~~Average~~ Resident average daily membership," the average number of resident
6 kindergarten through twelfth grade pupils enrolled in the school district during the
7 previous regular school year ~~minus~~ plus the average number of pupils for whom the
8 district ~~receives~~ pays tuition and plus the average number of ~~pupils for whom the~~
9 ~~district pays tuition~~ resident pupils enrolled in another school district under the
10 provisions of section 1 of this Act;
- 11 (2) "Index factor," is the annual percentage change in the consumer price index for urban
12 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
13 the United States Department of Labor for the year before the year immediately
14 preceding the year of adjustment or three percent, whichever is less;
- 15 (3) "Local effort," is the amount of taxes payable each year, using the maximum levy for
16 the special education fund of a school district of one dollar and forty cents per
17 thousand dollars of taxable valuation. The levy shall be based on valuations such that
18 the median level of assessment represents 85% of market value as determined by the
19 Department of Revenue. For the period January 1, 1997, through June 30, 1997, local
20 effort shall be one-half of the amount of taxes payable in calendar year 1997, using the
21 maximum levy for the special education fund of a school district of one dollar and
22 forty cents per thousand dollars of taxable valuation. The levy shall be based on
23 valuations such that the median level of assessment represents 85% of market value
24 as determined by the Department of Revenue;
- 25 (4) "Allocation for a student with a mild disability," for the period January 1, 1997,

1 through June 30, 1997, is \$892. For school fiscal year beginning July 1, 1997, the
2 allocation for a student with a mild disability shall be \$1,785 increased by the lesser
3 of the index factor or three percent. For each school year thereafter, the allocation for
4 a student with a mild disability shall be the previous fiscal year's allocation for such
5 child increased by the lesser of the index factor or three percent;

6 (5) "Allocation for a student with a severe disability," for the period January 1, 1997,
7 through June 30, 1997, is \$10,707. For school fiscal year beginning July 1, 1997, the
8 allocation for a child with a severe disability shall be \$21,415 increased by the lesser
9 of the index factor or three percent. For each school year thereafter, the allocation for
10 a child with a severe disability shall be the previous fiscal year's allocation for such
11 child increased by the lesser of the index factor or three percent;

12 (6) "Local need," an amount to be determined as follows:

- 13 (i) Multiply the resident average daily membership times 0.1025;
- 14 (ii) Multiply the result of (i) times the allocation for a student with a mild disability;
- 15 (iii) Multiply the resident average daily membership times 0.015;
- 16 (iv) Multiply the result of (iii) times the allocation for a student with a severe
17 disability;
- 18 (v) Add together the result of (ii) and the result of (iv);

19 (7) "Student with mild disability," is a student whose performance level is not sufficient
20 to demonstrate success in the regular education environment without the provision
21 of special education, and who meets eligibility criteria under Part B, IDEA, or both;

22 (8) "Student with severe disability," is a student with a low-incidence disability who:

- 23 (a) Meets eligibility criteria under Part B, IDEA; and
- 24 (b) Presents needs which require intervention skills which are substantially
25 different from those provided to nondisabled students, in that the skills are

1 disability-specific and require special training, equipment, and facilities to
2 perform;

3 (9) "Effort factor," 1.0 if the school district's special education tax levy in dollars per
4 thousand is \$1.40, 0.0 if the school district's special education tax levy in dollars per
5 thousand is less than \$1.30.

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

7 13-37-36. The secretary of the department of education and cultural affairs shall compute
8 state aid for special education for each school district according to the following calculations:

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

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

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

17 13-28-9. School residence for the purpose of claiming free school privileges means the legal
18 residence of the student's parents or guardian except as provided in § 13-28-10. If a parent or
19 guardian has more than one residence, the school residence is the residence where the parent or
20 guardian actually lives and makes a home or domicile. In case of dispute, if the student's parent
21 or guardian has claimed a credit pursuant to § 10-13-39, it is presumed that the dwelling so
22 claimed is the residence of the parent or guardian. ~~The student or the student's parents or~~
23 ~~guardian may not establish school residence and be exempt from the payment of tuition if the~~
24 ~~residence of the parents or guardian of the student is acquired solely or principally for obtaining~~
25 ~~free school privileges.~~ At the time a child is enrolled in a school district, the school residence of

1 the child as determined by that school district within thirty days after the enrollment may not
2 change during the school fiscal year, unless the child ceases to be an enrolled member of a school
3 within the district. If a student's parents or guardians are separated or divorced, the school
4 residence is the school district in which the custodial parent or guardian has residence. If the
5 parents or guardian have joint custody of a student, school residence is that of the parent or
6 guardian with whom the child resides the greater portion of the school year.

7 Section 16. That § 13-28-15 be repealed.

8 ~~13-28-15. Every school board shall make assignment and distribution of all elementary~~
9 ~~students with school residence within the district. The board shall take into consideration in~~
10 ~~assigning and distributing students its duty to provide an education within the guidelines of the~~
11 ~~State Board of Education's accreditation rules, the wishes of the parents or guardians of the child~~
12 ~~being assigned and the district patrons, the miles and time involved in transporting the child to~~
13 ~~school, and the educational and financial impact on the district. Any patron who is aggrieved by~~
14 ~~a decision of the school board may request a hearing within thirty days before the secretary of~~
15 ~~the department of education and cultural affairs or his representative. If the Department of~~
16 ~~Education and Cultural Affairs has not rendered a decision within thirty days following final~~
17 ~~submission of the appeal, the board's decision is affirmed.~~

18 Section 17. That § 13-28-20 be repealed.

19 ~~13-28-20. If a student lives more than ten miles from the nearest school being operated in~~
20 ~~the student's district and bus service or dormitories are not provided the student, the school~~
21 ~~board shall by March first assign and agree to pay the tuition for the student to any public school~~
22 ~~in this state or any other state which the student's parent or guardian requests. The change in~~
23 ~~enrollment may occur only at the commencement of a regular school term. In all other cases, the~~
24 ~~board shall consider its duty to provide an education within the guidelines of the South Dakota~~
25 ~~Board of Education's accreditation rules, the wishes of the parents or guardians of the child being~~

1 ~~assigned and the district patrons, the miles and time involved in transporting the student to~~
2 ~~school, and the educational and financial impact on the district. Any patron who is aggrieved by~~
3 ~~a decision of the school board may request a hearing within thirty days before the Department~~
4 ~~of Education and Cultural Affairs. If the Department of Education and Cultural Affairs has not~~
5 ~~rendered a decision within thirty days following final submission of the appeal, the board's~~
6 ~~decision is affirmed. Any costs for transporting a student to the requested school are the~~
7 ~~responsibility of the parent or guardian.~~

8 Section 18. That § 13-28-22 be repealed.

9 ~~— 13-28-22. All nursery, kindergarten, elementary, and secondary students not entitled to the~~
10 ~~free school privileges of the district wherein they are enrolled may be charged tuition.~~

11 Section 19. That § 13-28-23 be repealed.

12 ~~— 13-28-23. If a student has been assigned by the school board of the district where the student~~
13 ~~has a school residence or has been assigned as provided by statute, that school board shall pay~~
14 ~~the student's tuition. The school boards shall take action on any request regarding the~~
15 ~~establishment of the tuition rate or the payment of tuition within forty-five days after receiving~~
16 ~~the request. The school board may negotiate the rate of tuition with a school board or any other~~
17 ~~payer. A school board's decision with respect to the rate of tuition may be appealed to the circuit~~
18 ~~court in the time and manner specified by § 13-46-1 or to the secretary of the Department of~~
19 ~~Education and Cultural Affairs within thirty days from the date of the decision of the school~~
20 ~~board by filing a notice with the secretary of the school board and mailing a copy of the notice~~
21 ~~to the secretary of the Department of Education and Cultural Affairs. The board shall take into~~
22 ~~consideration when negotiating the rate of tuition the average cost of educating a student in the~~
23 ~~district including transportation if required.~~

24 Section 20. That § 13-28-24 be repealed.

25 ~~— 13-28-24. Anyone who must personally pay tuition shall pay in advance the annual or~~

1 ~~monthly amount of tuition following a decision on school residency made pursuant to §§ 13-28-9~~
2 ~~and 13-28-10. If the student ceases to be a member of the school before the expiration of the~~
3 ~~term for which the tuition has been paid, the school board shall refund the unearned portion of~~
4 ~~the tuition upon the presentation of a proper voucher.~~

5 Section 21. That § 13-28-30 be amended to read as follows:

6 13-28-30. A pupil is a member of the school from the date the pupil arrives at the school and
7 is placed on the current roll until the pupil permanently leaves the school. The date of permanent
8 withdrawal is the day the pupil last attended the school. ~~Tuition for a pupil's period of enrollment~~
9 ~~is charged for each day the school is in session, plus days of legal discontinuance as defined by~~
10 ~~law.~~

11 Section 22. That § 13-28-34 be amended to read as follows:

12 13-28-34. A school district board, administrator, or school employee may not give or
13 promise to give, either directly or indirectly, any rebate or refund of any ~~part of the tuition or~~
14 ~~transportation or any other thing of value as an inducement for attending school in a district. Any~~
15 ~~person violating the provisions of this section is guilty of a Class 2 misdemeanor.~~

16 Section 23. That § 13-28-38 be repealed.

17 ~~—13-28-38. Tuition required pursuant to § 13-28-22 may be waived if agreed to by the school~~
18 ~~boards involved. Notwithstanding §§ 13-6-85, 13-28-9, 13-28-10, 13-28-20, and 13-28-21, the~~
19 ~~decision of a school board to waive or not to waive tuition is final except as specifically provided~~
20 ~~in this section. Any request for a waiver of tuition shall be made to the affected school boards~~
21 ~~by the parent or guardian of the affected student. The school boards shall take action on the~~
22 ~~request within forty-five days after receiving the request. A school board's decision pursuant to~~
23 ~~this section may be appealed to the circuit court in the time and manner specified by § 13-46-1~~
24 ~~or to the secretary of the Department of Education and Cultural Affairs within thirty days from~~
25 ~~the date of the decision of the school board by filing a notice with the secretary of the school~~

1 ~~board and mailing a copy of the notice to the secretary of the Department of Education and~~
2 ~~Cultural Affairs. The granting of any waiver is not a legal precedent for any future request for~~
3 ~~waiver.~~

4 Section 24. The effective date of sections 15 to 23, inclusive, of this Act is July 1, 1998.

1 **BILL HISTORY**

2 1/23/97 First read in House and referred to Education. H.J. 93

3 1/28/97 Scheduled for Committee hearing on this date.

4 1/30/97 Scheduled for Committee hearing on this date.

5 1/31/97 Scheduled for Committee hearing on this date.

6 2/4/97 Scheduled for Committee hearing on this date.

7 2/4/97 Education Do Pass Amended, AYES 11, NAYS 1. H.J. 290

8 2/11/97 Motion to Amend. H.J. 412

9 2/11/97 Motion to Amend, AYES 39, NAYS 27. H.J. 414

10 2/11/97 Motion to Amend. H.J. 415

11 2/11/97 Motion to Amend, AYES 24, NAYS 44. H.J. 416

12 2/11/97 House of Representatives Do Pass Amended, AYES 51, NAYS 17. H.J. 417

13 2/11/97 House of Representatives Title Amended. H.J. 418