

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

192A0337

SENATE EDUCATION COMMITTEE ENGROSSED

NO. **HB1075** - 2/25/97

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 compute foundation aid and resident average daily membership
13 as defined in section 12 of this Act is used to determine funding for special education.

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

1 follows:

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

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

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

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

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

24 A student's parent or legal guardian who wishes to enroll the student, or an emancipated
25 student who wishes to enroll, in a South Dakota school district other than the resident district

1 under the provisions of this Act shall, not later than February first of the school year preceding
2 the year of enrollment, apply to the school boards of the resident district and nonresident district,
3 on triplicate forms provided by the Department of Education and Cultural Affairs, to enroll the
4 student in a district other than the resident district.

5 By March first, the school board of the nonresident district in which the student wants to
6 enroll shall approve or disapprove the application. The board of the nonresident district shall
7 notify the applicant and the resident board of its decision within five days of the decision.

8 The nonresident district shall review the applications in the order received.

9 An application may be withdrawn by the applicant any time before March first upon
10 notification of both school boards. Once approved by the nonresident board, the approved
11 application serves as the applicant's notice of intent to enroll in the nonresident district during
12 the next school year and obligates the student to attend school in the nonresident district during
13 the next school year, unless the school boards of the resident and nonresident districts agree in
14 writing to allow the student to transfer back to the resident district, or unless the parents,
15 guardians, or emancipated student change residence to another district.

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

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

1 Each school district by November 1, 1997 shall by resolution adopt relevant standards for
2 the acceptance and rejection of an application to enroll in the district under the provisions of this
3 Act. The board shall adopt standards through official board action, set them forth in writing, and
4 make them available to any individual upon receiving an oral or written request. Standards may
5 define the capacity of a program, class, grade level, and school building operated by the board
6 and the pupil/teacher ratio. Discrimination based on race, gender, religious affiliation, or
7 disability is prohibited. If two or more children from a family residing in the same household must
8 enroll in different school districts as the result of a board's denial of an application to transfer
9 from a resident district or to enroll in a nonresident district under the provisions of this Act,
10 neither the resident board nor the nonresident board may deny the application. The decision of
11 a local school board regarding a student's application for open enrollment or a request to return
12 to the resident district under the provisions of this Act is subject to de novo appeal under the
13 provisions of chapter 13-46. The Department of Education and Cultural Affairs may promulgate
14 rules pursuant to chapter 1-26 specifying procedural and administrative requirements for the
15 implementation of the open enrollment program and related transfers and enrollments under the
16 provisions of this Act.

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

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

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

25 A school district shall accept credits for any course completed in any other accredited school

1 district as the result of a transfer under this Act. The nonresident district shall award a diploma
2 to a nonresident student only if the student satisfactorily meets its graduation requirements.

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

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

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

8 13-13-1.4. If two or more school districts consolidate, for a period of two years after
9 consolidation, the adjusted average daily membership for the newly formed district shall be based
10 upon the general enrollment average daily membership as defined in § 13-13-10.1 of the school
11 districts as they existed prior to consolidation.

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

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

14 (1) "~~Average~~ General enrollment average daily membership," the average number of
15 resident and nonresident kindergarten through twelfth grade pupils enrolled in the
16 school district during the previous regular school year, minus average number of
17 pupils for whom the district receives tuition, except pupils described in subdivision
18 (1A) and plus the average number of pupils for whom the district pays tuition;

19 (1A) Nonresident students who are in the care and custody of the Department of Social
20 Services, the Unified Judicial System, the Department of Corrections, or other state
21 agencies and are attending a public school may be included in the average daily
22 membership of the receiving district when enrolled in the receiving district ~~for more~~
23 ~~than thirty school days~~. When counting a student who meets these criteria in its
24 general enrollment average daily membership, the receiving district may begin the
25 enrollment on the first day of attendance. The district of residence prior to the

1 custodial transfer may not include students who meet these criteria in its general
2 enrollment average daily membership after the student ceases to attend school in the
3 resident district ~~for more than thirty school days;~~

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

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

8 (b) For districts with ~~an~~ a general enrollment average daily membership of less than
9 six hundred, but greater than two hundred, raise the general enrollment average
10 daily membership to the 0.8293 power and multiply the result times 2.98;

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

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

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

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

25 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by

1 applying the following levies:

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

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

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

21 All levies shall be based on valuations including valuations pursuant to § 13-13-10.2 and
22 13-13-20.4 such that the median level of assessment represents eighty-five percent of market
23 value as determined by the Department of Revenue. The total amount of taxes that would be
24 generated at the levies pursuant to this section shall be considered local effort.

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

1 13-13-73. The secretary of the Department of Education and Cultural Affairs shall compute
 2 state aid to education for each school district under the foundation program according to the
 3 following calculations:

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

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

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

- 14 (1) "~~Average~~ Resident average daily membership," the average number of resident
 15 kindergarten through twelfth grade pupils enrolled in the school district during the
 16 previous regular school year ~~minus~~ plus the average number of pupils for whom the
 17 district ~~receives~~ pays tuition and ~~plus~~ the average number of ~~pupils for whom the~~
 18 ~~district pays tuition~~ resident pupils enrolled in another school district under the
 19 provisions of section 1 of this Act;
- 20 (2) "Index factor," is the annual percentage change in the consumer price index for urban
 21 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
 22 the United States Department of Labor for the year before the year immediately
 23 preceding the year of adjustment or three percent, whichever is less;
- 24 (3) "Local effort," is the amount of taxes payable each year, using the maximum levy for
 25 the special education fund of a school district of one dollar and forty cents per

1 thousand dollars of taxable valuation. The levy shall be based on valuations such that
2 the median level of assessment represents 85% of market value as determined by the
3 Department of Revenue. For the period January 1, 1997, through June 30, 1997, local
4 effort shall be one-half of the amount of taxes payable in calendar year 1997, using the
5 maximum levy for the special education fund of a school district of one dollar and
6 forty cents per thousand dollars of taxable valuation. The levy shall be based on
7 valuations such that the median level of assessment represents 85% of market value
8 as determined by the Department of Revenue;

9 (4) "Allocation for a student with a mild disability," for the period January 1, 1997,
10 through June 30, 1997, is \$892. For school fiscal year beginning July 1, 1997, the
11 allocation for a student with a mild disability shall be \$1,785 increased by the lesser
12 of the index factor or three percent. For each school year thereafter, the allocation for
13 a student with a mild disability shall be the previous fiscal year's allocation for such
14 child increased by the lesser of the index factor or three percent;

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

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

- 22 (i) Multiply the resident average daily membership times 0.1025;
- 23 (ii) Multiply the result of (i) times the allocation for a student with a mild disability;
- 24 (iii) Multiply the resident average daily membership times 0.015;
- 25 (iv) Multiply the result of (iii) times the allocation for a student with a severe

1 disability;

2 (v) Add together the result of (ii) and the result of (iv);

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

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

7 (a) Meets eligibility criteria under Part B, IDEA; and

8 (b) Presents needs which require intervention skills which are substantially
9 different from those provided to nondisabled students, in that the skills are
10 disability-specific and require special training, equipment, and facilities to
11 perform;

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

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

16 13-37-36. The secretary of the department of education and cultural affairs shall compute
17 state aid for special education for each school district according to the following calculations:

18 (1) Determine each school district's resident average daily membership;

19 (2) Calculate the local need of a school district;

20 (3) State aid for special education is:

21 (a) Local need minus local effort, the difference multiplied times the effort factor;
22 or

23 (b) Zero if the calculation in (a) is a negative number.

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

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

1 13-28-9. School residence for the purpose of claiming free school privileges means the legal
2 residence of the student's parents or guardian except as provided in § 13-28-10. If a parent or
3 guardian has more than one residence, the school residence is the residence where the parent or
4 guardian actually lives and makes a home or domicile. In case of dispute, if the student's parent
5 or guardian has claimed a credit pursuant to § 10-13-39, it is presumed that the dwelling so
6 claimed is the residence of the parent or guardian. The student or the student's parents or
7 guardian may not establish school residence and be exempt from the payment of tuition if the
8 residence of the parents or guardian of the student is acquired solely or principally for obtaining
9 free school privileges. At the time a child is enrolled in a school district, the school residence of
10 the child as determined by that school district within thirty days after the enrollment may not
11 change during the school fiscal year, unless the child ceases to be an enrolled member of a school
12 within the district. If a student's parents or guardians are separated or divorced, the school
13 residence is the school district in which the custodial parent or guardian has residence. If the
14 parents or guardian have joint custody of a student, school residence is that of the parent or
15 guardian with whom the child resides the greater portion of the school year.

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

17 ~~13-28-20. If a student lives more than ten miles from the nearest school being operated in~~
18 ~~the student's district and bus service or dormitories are not provided the student, the school~~
19 ~~board shall by March first assign and agree to pay the tuition for the student to any public school~~
20 ~~in this state or any other state which the student's parent or guardian requests. The change in~~
21 ~~enrollment may occur only at the commencement of a regular school term. In all other cases, the~~
22 ~~board shall consider its duty to provide an education within the guidelines of the South Dakota~~
23 ~~Board of Education's accreditation rules, the wishes of the parents or guardians of the child being~~
24 ~~assigned and the district patrons, the miles and time involved in transporting the student to~~
25 ~~school, and the educational and financial impact on the district. Any patron who is aggrieved by~~

1 a decision of the school board may request a hearing within thirty days before the Department
2 of Education and Cultural Affairs. If the Department of Education and Cultural Affairs has not
3 rendered a decision within thirty days following final submission of the appeal, the board's
4 decision is affirmed. Any costs for transporting a student to the requested school are the
5 responsibility of the parent or guardian.

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

7 ~~13-28-22. All nursery, kindergarten, elementary, and secondary students not entitled to the
8 free school privileges of the district wherein they are enrolled may be charged tuition.~~

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

10 ~~13-28-23. If a student has been assigned by the school board of the district where the student
11 has a school residence or has been assigned as provided by statute, that school board shall pay
12 the student's tuition. The school boards shall take action on any request regarding the
13 establishment of the tuition rate or the payment of tuition within forty-five days after receiving
14 the request. The school board may negotiate the rate of tuition with a school board or any other
15 payer. A school board's decision with respect to the rate of tuition may be appealed to the circuit
16 court in the time and manner specified by § 13-46-1 or to the secretary of the Department of
17 Education and Cultural Affairs within thirty days from the date of the decision of the school
18 board by filing a notice with the secretary of the school board and mailing a copy of the notice
19 to the secretary of the Department of Education and Cultural Affairs. The board shall take into
20 consideration when negotiating the rate of tuition the average cost of educating a student in the
21 district including transportation if required.~~

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

23 13-28-24. Anyone who must personally pay tuition shall pay in advance the annual or
24 monthly amount of tuition following a decision on school residency made pursuant to §§ 13-28-9
25 and 13-28-10. If the student ceases to be a member of the school before the expiration of the

1 term for which the tuition has been paid, the school board shall refund the unearned portion of
2 the tuition upon the presentation of a proper voucher.

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

4 13-28-30. A pupil is a member of the school from the date the pupil arrives at the school and
5 is placed on the current roll until the pupil permanently leaves the school. The date of permanent
6 withdrawal is the day the pupil last attended the school. ~~Tuition for a pupil's period of enrollment~~
7 ~~is charged for each day the school is in session, plus days of legal discontinuance as defined by~~
8 ~~law.~~

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

10 13-28-34. A school district board, administrator, or school employee may not give or
11 promise to give, either directly or indirectly, any rebate or refund of any ~~part of the tuition or~~
12 transportation or any other thing of value as an inducement for attending school in a district. Any
13 person violating the provisions of this section is guilty of a Class 2 misdemeanor.

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

15 ~~— 13-28-38. Tuition required pursuant to § 13-28-22 may be waived if agreed to by the school~~
16 ~~boards involved. Notwithstanding §§ 13-6-85, 13-28-9, 13-28-10, 13-28-20, and 13-28-21, the~~
17 ~~decision of a school board to waive or not to waive tuition is final except as specifically provided~~
18 ~~in this section. Any request for a waiver of tuition shall be made to the affected school boards~~
19 ~~by the parent or guardian of the affected student. The school boards shall take action on the~~
20 ~~request within forty-five days after receiving the request. A school board's decision pursuant to~~
21 ~~this section may be appealed to the circuit court in the time and manner specified by § 13-46-1~~
22 ~~or to the secretary of the Department of Education and Cultural Affairs within thirty days from~~
23 ~~the date of the decision of the school board by filing a notice with the secretary of the school~~
24 ~~board and mailing a copy of the notice to the secretary of the Department of Education and~~
25 ~~Cultural Affairs. The granting of any waiver is not a legal precedent for any future request for~~

1 ~~waiver.~~

2 Section 23. The effective date of sections 15 to 22, 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, Passed, AYES 11, NAYS 1. H.J. 290

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

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

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

11 2/11/97 Motion to Amend, Passed. H.J. 416

12 2/11/97 Motion to Amend, Failed, AYES 24, NAYS 44. H.J. 416

13 2/11/97 House of Representatives Do Pass Amended, Passed, AYES 51, NAYS 17. H.J. 417

14 2/11/97 House of Representatives Title Amended. H.J. 418

15 2/12/97 First read in Senate and referred to Education. S.J. 416

16 2/21/97 Scheduled for Committee hearing on this date.

17 2/24/97 Scheduled for Committee hearing on this date.

18 2/24/97 Education Do Pass Amended, Passed, AYES 4, NAYS 3. S.J. 596