



# *South Dakota Legislative Research Council*

## *Issue Memorandum 97-15*

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### **SOUTH DAKOTA'S PUBLIC SCHOOL OPEN ENROLLMENT LEGISLATION**

#### **Introduction**

South Dakota's open enrollment bill, passed during the 1997 Legislative Session (HB1075), represents a major change in K-12 education policy and is South Dakota's most ambitious school choice initiative. School choice is a subject that has received much attention and generated considerable controversy nationwide over the past decade, but school choice comes in a wide variety of forms and can mean different things to different people. School choice includes such disparate concepts as voucher programs, mini-vouchers, magnet schools, charter schools, the use of private contractors, second chance options, and public school open enrollment, among others. South Dakota's open enrollment bill provides for interdistrict and intradistrict public school choice, an option that is available in eighteen other states, including the neighboring states of Minnesota, Iowa, North Dakota, and Nebraska.

#### **Background**

Under public, interdistrict open enrollment, a student is free to attend a public school outside the student's resident school district without being required to pay tuition to the nonresident district. Intradistrict open enrollment allows students to select schools within their resident district, rather than being required to attend the school assigned to them. An example would be a policy allowing parents to select the elementary school in their community that their

children would attend, rather than being required to attend an assigned school. South Dakota's new law allows for both interdistrict and intradistrict open enrollment in public schools, although there are some limits to the extent of open enrollment options available.

Before the passage of HB 1075 in 1997 and the creation of the open enrollment program, South Dakota relied on a traditional system in which students attended schools in their resident district or were required to pay tuition to attend a school outside their resident district. The tuition rate was established by law as a percentage of the daily per pupil cost, which was determined by the state Department of Education and Cultural Affairs. The law allowed mutual waiver of tuition in certain circumstances and required that the resident district pay the tuition in cases where the student was assigned by the district to a school outside the resident district and in cases where the district operated no school within ten miles of the student's residence. The statutes continue to provide that tuition for students who utilize certain residential treatment centers, group care centers, or foster homes be paid by the state.

The purpose of tuition payments was to reimburse the nonresident, receiving district for its costs in accepting an additional, nonresident student, given the fact that the student's family did not pay property taxes in the receiving school district and the district did not necessarily receive state financial aid for the

student. One of the challenges faced by open enrollment programs is to ensure that equitable funding arrangements for all parties are in place.

Though not directly related to open enrollment, the issue of school district reorganization, which has been extremely controversial in South Dakota at various times in the past, also contributed to a heightened consciousness of resident versus nonresident districts and of gains and losses to individual districts or communities, a factor that may have made consideration of open enrollment proposals more difficult. Many fear that open enrollment will hasten the closing of low-enrollment schools in small South Dakota communities.

Open enrollment programs have been adopted in eighteen states during the past decade, with more limited open enrollment programs in a number of other states. Minnesota's 1988 open enrollment law was one of the first full open enrollment programs in the nation. Iowa and Nebraska adopted open enrollment programs in 1989, with North Dakota following in 1993.

### **General Issues**

Despite initial fears of sweeping changes resulting from open enrollment, most states have not experienced major enrollment shifts. Generally, less than two percent of the student population in the four neighboring states has participated in open enrollment transfers, with the figure sometimes being less than one percent, although a handful of districts have seen larger shifts. Early studies of the programs in Minnesota and Iowa reported that transfers were generally sought for educational reasons or for family convenience reasons rather than for purposes such as building athletic teams. Open enrollment programs appeared to enjoy public support in the neighboring states and did not result in major dislocations in school systems or in the provision of educational services to their

students.

Problems encountered were generally mundane and included such concerns for school districts as reducing paperwork and difficulties in keeping track of student status. Problems reported by parents included not knowing application dates and deadlines, being unaware of possible transportation assistance, and the need to change certain deadline dates because they did not coincide with the times of the year when families most commonly move to new communities.

More substantive issues that have been voiced in some parts of the country concerning open enrollment have to do with transportation problems and possible financing inequities. South Dakota's policies for dealing with transportation and funding issues are similar to those used in many open enrollment states, and while they are not ideal, they do solve the immediate problem and allow the program to function. Under South Dakota's program, parents are responsible for transportation of students who transfer under the open enrollment program, although the receiving and resident districts are both authorized to provide transportation if they choose. Regarding funding, South Dakota's open enrollment program, like many others, provides that state aid will "follow the student" to the new district.

Another potential problem facing some open enrollment programs is the need to maintain racial balance in urban schools, a problem that does not apply as much in South Dakota as in more populated and urbanized states. Public school open enrollment programs avoid some of the issues associated with other school choice proposals, particularly voucher system proposals, because they do not envision transfers to private schools and the philosophical issues that assistance to private or religious schools would entail.

It is fair to say that public school open

enrollment programs have not caused dramatic problems for school districts in the upper Midwest, but they have not led to dramatic improvements in education systems either. They simply offer additional choice to individual students and families to enroll in a school that fits their educational needs or their personal circumstances more closely, and they seem to enjoy relative public support and parental satisfaction. It can be expected that more states will authorize open enrollment in public schools as time goes on.

### **South Dakota's Open Enrollment Legislation**

South Dakota's open enrollment program was authorized in HB 1075 during the 1997 Legislative Session and was codified primarily in SDCL 13-28. The bill allows any K-12 student to be enrolled in any public school that serves the student's grade level, subject to certain conditions specified in the bill. The bill also amends state aid to education procedures so that the state aid associated with the student will "follow the student" to the nonresident district to reimburse the nonresident district for some of the expenses involved with educating that student. The resident district loses the amount of state aid associated with the student.

The bill requires (in SDCL 13-28-41 and 13-28-44) that school districts accept nonresident students who wish to transfer into the district under the open enrollment program. The only grounds for refusal would be if the transfer would "result in an inability to provide a quality educational program" based on criteria and standards established in advance by the district. The standards must specify capacities of programs, classes, grade levels, and buildings as well as student-teacher ratios. Rejections are only allowed if the transfer would violate these pre-existing standards. Discrimination based on race, gender, religion, or disability is prohibited. Each school district is required to adopt its standards by November 1, 1997.

The bill also specifies procedures and time lines for transfer applications under the open enrollment program. Basically, applications must be made one year before the student actually enrolls in the receiving district. Applications for open enrollment transfers must be made to the affected school boards by February first of the school year preceding enrollment. By March first, the receiving district must approve or disapprove the application and notify the student and the resident district of its decision. Receiving districts are required to review applications in the order in which they are received. The law allows for an exception to the deadlines for students who move into a district after February first. Once enrolled in a new district under the open enrollment program, a student is not required to reapply unless the student wishes to transfer to another district. Requests for intradistrict transfers (transfers to schools within the resident district) may be accepted and acted upon at any time.

As noted above, parents are responsible for transportation of students under the open enrollment program, although both the sending and receiving districts are authorized to provide transportation services if they choose to do so. School districts are required to honor credits earned in other accredited school districts as a result of an open enrollment transfer, although nonresident districts are required to award diplomas to nonresident students only if the student has met the nonresident district's graduation requirements. Finally, each school district is required to make information about the district and its schools and programs available to all interested people.

A somewhat different approach is used for special education students who wish to enroll in nonresident districts under the open enrollment program. A request for transfer of a student in need of special education or related services may be granted only if the resident and nonresident districts and the

student's placement committee determine that the nonresident district is able to meet the student's special needs. The resident district must reimburse the nonresident district for all costs incurred in providing education and services for the special education student. Also, the resident district is responsible for ensuring the provision of transportation for the special education student.

### **Current Open Enrollment Activities in South Dakota**

At the present time, school districts are preparing their standards for acceptance and rejection of students under the open enrollment program, which must be completed by November 1, 1997, so that school districts will be ready to respond to transfer requests in February and March. Interdistrict transfer requests may be accepted beginning February 1, 1998. The first actual enrollments under the open enrollment program will be for the 1998-1999 school year. So far, the Department of Education and Cultural Affairs and the Associated School Boards of South Dakota report receiving requests for information on open enrollment, but the number of requests is not large. It is difficult to predict the number of students who will participate in the open

enrollment program.

Questions and concerns persist about possible problems that may arise, such as the use of the program for athletic purposes or the financial effect on some districts of losing students to larger or more well-to-do districts. However, it is simply too early to tell how well the program will function and how widely it will be used. As with most new programs, it is likely that additional legislation will be required in the future as the program develops.

### **Summary**

South Dakota has taken a major step in enacting a public school, interdistrict and intradistrict open enrollment program during the 1997 Legislative Session, joining a number of other states around the nation, including North Dakota, Minnesota, Iowa, and Nebraska. Open enrollment offers a significant opportunity for school choice in this state and promises to increase educational options for many students and families, although the potential for problems and abuses also exists. Actual enrollment under the program will begin during the 1998-1999 school year; the results of the program will not be known until that time.

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**This issue memorandum was written by Tom Magedanz, Principal Research Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.**

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