

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

686J0557

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

HB 1133 - 02/02/2004

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Murschel, Buckingham, Christensen, Cutler, Dykstra, Hennies, Kraus, LaRue, Olson (Mel), and Teupel and Senators Olson (Ed), Albers, Dempster, Duniphan, Koetzle, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to allow students in need of special education to open enroll
2 without a joint individual education program team meeting under certain circumstances.

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

4 Section 1. That § 13-28-42.1 be amended to read as follows:

5 13-28-42.1. Notwithstanding the provisions of §§ 13-28-44 and 13-37-8.4, a request to
6 transfer a student in need of special education or special education and related services may be
7 granted only if the nonresident district:

8 (1) Upon receipt of an open enrollment application, obtains copies of all relevant student
9 education records on the student applying to open enroll from the resident district;

10 (2) Completes a review of those relevant student education records; and

11 (3) Directly communicates with the student's parent or guardian and representatives of
12 the resident district regarding the student's special education or special education and
13 related services needs.

14 If the nonresident district confirms, based upon the records review and communications with



1 the student's parent or guardian and representatives of the nonresident district, that it can provide
2 an appropriate instructional program and facilities, including transportation, if necessary, to
3 meet the needs of the student, it may proceed under the provisions of § 13-28-43. If the
4 nonresident district is not able to make that confirmation, the nonresident district shall initiate
5 an individual education program team meeting consisting of representatives from both the
6 resident and nonresident districts to determine whether the nonresident district can provide an
7 appropriate instructional program, facilities, and transportation, if necessary.

8 A request to transfer a student in need of special education or special education and related
9 services may be denied only pursuant to § 13-28-44 or if an individualized individual education
10 program team consisting of representatives from the resident and nonresident districts
11 determines that the nonresident district can cannot provide an appropriate instructional program
12 and facilities, including transportation, to meet the student's needs. If Notwithstanding the
13 provisions of §§ 13-37-1.3 and 13-37-8.4, if the request to transfer is granted, the nonresident
14 district is responsible for the provision of a free appropriate public education for the student in
15 need of special education or special education and related services. Notwithstanding the
16 provisions of § 13-28-45, the individualized education program team nonresident district shall
17 also determine whether the student in need of special education requires transportation as a
18 related service. If so, the nonresident district shall provide or ensure the provision of
19 transportation within the boundaries of the attendance center to which the student is assigned.

20 If a parent or guardian of a student in need of special education or special education and
21 related services requests to transfer the student back to the resident district, the individualized
22 education program team shall consider the request provisions of § 13-28-43 apply.

23 Section 2. That § 13-28-44 be amended to read as follows:

24 13-28-44. Each school district by November 1, 1997, shall by resolution adopt relevant

1 standards for the acceptance and rejection of an application to enroll in the district under the
2 provisions of §§ 13-28-40 to 13-28-47, inclusive. The board shall adopt standards through
3 official board action, set them forth in writing, and make them available to any individual upon
4 receiving an oral or written request. Standards shall be limited to the capacity of a program,
5 class, grade level, and school building operated by the board and the pupil/teacher ratio.
6 Discrimination based on race, gender, religious affiliation, or disability is prohibited. If two or
7 more children from a family residing in the same household must enroll in different school
8 districts as the result of a board's denial of an application to transfer from a resident district or
9 to enroll in a nonresident district under the provisions of §§ 13-28-40 to 13-28-47, inclusive,
10 neither the resident board nor the nonresident board may deny the application. However, two
11 or more children from a family residing in the same household who are eligible for kindergarten
12 through twelfth grade may open enroll only if, pursuant to § 13-28-42.1, the nonresident district
13 can provide an appropriate instructional program and facilities, including transportation, for the
14 child in need of special education or special education and related services. If the nonresident
15 district cannot meet the provisions of § 13-28-42.1 for the child in need of special education or
16 special education and related services, the nonresident district may deny that child's application
17 for open enrollment.

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