

AN ACT

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

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

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

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

- (1) Upon receipt of an open enrollment application, obtains copies of all relevant student education records on the student applying to open enroll from the resident district;
- (2) Completes a review of those relevant student education records; and
- (3) Directly communicates with the student's parent or guardian and representatives of the resident district regarding the student's special education or special education and related services needs.

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

A request to transfer a student in need of special education or special education and related services may be denied only pursuant to § 13-28-44 or if an individual education program team

consisting of representatives from the resident and nonresident districts determines that the nonresident district cannot provide an appropriate instructional program and facilities, including transportation, to meet the student's needs. Notwithstanding the provisions of §§ 13-37-1.3 and 13-37-8.4, if the request to transfer is granted, the nonresident district is responsible for the provision of a free appropriate public education for the student in need of special education or special education and related services. Notwithstanding the provisions of § 13-28-45, the nonresident district shall also determine whether the student in need of special education requires transportation as a related service. If so, the nonresident district shall provide or ensure the provision of transportation within the boundaries of the attendance center to which the student is assigned.

If a parent or guardian of a student in need of special education or special education and related services requests to transfer the student back to the resident district, the provisions of § 13-28-43 apply.

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

13-28-44. 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 §§ 13-28-40 to 13-28-47, inclusive. 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 shall be limited to 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 §§ 13-28-40 to 13-28-47, inclusive, neither the resident board nor the nonresident board may deny the application. However, two or more children from a family residing in the same

household who are eligible for kindergarten through twelfth grade may open enroll only if, pursuant to § 13-28-42.1, the nonresident district can provide an appropriate instructional program and facilities, including transportation, for the child in need of special education or special education and related services. If the nonresident district cannot meet the provisions of § 13-28-42.1 for the child in need of special education or special education and related services, the nonresident district may deny that child's application for open enrollment.

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 §§ 13-28-40 to 13-28-47, inclusive, is subject to de novo appeal under the provisions of chapter 13-46. The Department of Education 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 §§ 13-28-40 to 13-28-47, inclusive.

An Act to allow students in need of special education to open enroll without a joint individual education program team meeting under certain circumstances.

=====

I certify that the attached Act originated in the

HOUSE as Bill No. 1133

Chief Clerk

=====

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1133
File No. _____
Chapter No. _____

=====

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State