

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

974N0036

## HOUSE BILL NO. 1116

Introduced by: Representatives Dykstra, Faehn, Gillespie, Halverson, Krebs, McLaughlin,  
and Sigdestad and Senators Albers and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to allow a school district to deny an application for open  
2 enrollment or to return an open-enrolled student to the resident district for disciplinary  
3 reasons.

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

5 Section 1. That § 13-28-43 be amended to read as follows:

6 13-28-43. A student's parent or legal guardian who wishes to enroll the student, or an  
7 emancipated student who wishes to enroll, under the provisions of §§ 13-28-40 to 13-28-47,  
8 inclusive, in a South Dakota school district other than the resident district or in a school within  
9 the resident district other than the school to which the student has been assigned shall apply on  
10 forms provided by the Department of Education.

11 When a school board receives an application for enrollment from a nonresident student, the  
12 board shall request from the resident school district a copy of the applicant's permanent school  
13 record. The school board or the board's designee of the district in which the student desires to  
14 enroll shall approve or disapprove the application and shall notify the applicant and the resident  
15 board, if applicable, of its decision within five days of the decision. If, within the past two years,



1 the resident school district has taken any disciplinary action against the applicant, the  
2 nonresident district may disapprove the application or approve the application on a conditional  
3 basis. If the nonresident school district approves the application on a conditional basis, the  
4 applicant is enrolled in the nonresident district, but that enrollment may be rescinded by the  
5 nonresident district at any time during the first six months of enrollment if any disciplinary  
6 actions are taken against the student during that period of time. If a student's enrollment in the  
7 nonresident district is rescinded, the student shall enroll in the resident district. Once the first  
8 six months of enrollment have passed, however, the nonresident district may not rescind the  
9 student's enrollment pursuant to this section. The district in which the student desires to enroll  
10 shall review the applications in the order received.

11 Intradistrict transfer applications may be accepted and acted upon at any time at the board's  
12 discretion if the policies on which the transfer decisions are based are consistent with the other  
13 requirements of §§ 13-28-40 to 13-28-47, inclusive.

14 An application may be withdrawn by the applicant prior to the approval of the request and  
15 upon notification of the district to which the student applied. Once approved by the district in  
16 which the student wishes to enroll, the approved application serves as the applicant's notice of  
17 intent to enroll in the nonresident district or desired school during the school year and obligates  
18 the student to attend school in the nonresident district or desired school during the school year,  
19 unless the affected school board or boards agree in writing to allow the student to transfer back  
20 to the resident district or assigned school, or unless the student's application was approved on  
21 a conditional basis and the student is returned during the first six months of enrollment to the  
22 resident district due to disciplinary actions, or unless the parents, guardians, or emancipated  
23 student change residence to another district.

24 Once enrolled in a nonresident district or nonassigned school, the student may remain

1 enrolled and is not required to resubmit annual applications.

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

3 13-28-44. Each school district by November 1, 1997 , shall by resolution adopt relevant  
4 standards for the acceptance and rejection of an application to enroll in the district under the  
5 provisions of §§ 13-28-40 to 13-28-47, inclusive. The board shall adopt standards through  
6 official board action, set them forth in writing, and make them available to any individual upon  
7 receiving an oral or written request. Standards shall be limited to the capacity of a program,  
8 class, grade level, and school building operated by the board and the pupil/teacher ratio, except  
9 that a school district may disapprove any application from a student against whom disciplinary  
10 actions have been taken during the previous two years. Discrimination based on race, gender,  
11 religious affiliation, or disability is prohibited. If two or more children from a family residing  
12 in the same household must enroll in different school districts as the result of a board's denial  
13 of an application to transfer from a resident district or to enroll in a nonresident district under  
14 the provisions of §§ 13-28-40 to 13-28-47, inclusive, neither the resident board nor the  
15 nonresident board may deny the application unless it is denied due to disciplinary actions  
16 pursuant to § 13-28-43. However, two or more children from a family residing in the same  
17 household who are eligible for kindergarten through twelfth grade may open enroll only if,  
18 pursuant to § 13-28-42.1, the nonresident district can provide an appropriate instructional  
19 program and facilities, including transportation, for the child in need of special education or  
20 special education and related services. If the nonresident district cannot meet the provisions of  
21 § 13-28-42.1 for the child in need of special education or special education and related services,  
22 the nonresident district may deny that child's application for open enrollment.

23 The decision of a local school board regarding a student's application for open enrollment  
24 or a request to return to the resident district under the provisions of §§ 13-28-40 to 13-28-47,

1 inclusive, is subject to de novo appeal under the provisions of chapter 13-46. The Department  
2 of Education may promulgate rules pursuant to chapter 1-26 specifying procedural and  
3 administrative requirements for the implementation of the open enrollment program and related  
4 transfers and enrollments under the provisions of §§ 13-28-40 to 13-28-47, inclusive.