

ADMISSION OF NONRESIDENT STUDENTS
(OPEN ENROLLMENT SDCL 13-28-40 THROUGH 13-28-47)
OPEN ENROLLMENT

The board will accept all students from other districts wishing to enroll, provided the Brookings School District's facilities can accommodate the students without adversely affecting the quality of the educational program. This determination will be based upon criteria adopted by the board (see Section II below) and is subject to the following procedures:

1. I. PROCEDURES

1. A student who is a legal resident of another South Dakota district seeking to transfer to the Brookings School District must make application to the Brookings School District. The application must be on forms provided by the South Dakota Department of Education. The application must be made by an un-emancipated student's parent or guardian or by the emancipated student.

II. The application will be approved or denied by the Brookings School Board and the applicant and the resident board must be notified of the decision within five (5) days of the board's decision. Applications will be reviewed in the order received.

III. Transfers into the Brookings School District under the provisions of §§ 13-28-40 to 13-28-47, inclusive, may only take place prior to the last Friday in September during the first semester of any school year, and prior to the last Friday in January during the second semester of any school year. If the Brookings School District approves an application for such a transfer after the deadline in the first semester, the transfer will occur at the start of the second semester. If the Brookings School District approves an application for such a transfer after the deadline in the second semester, the transfer will occur at the start of the following school year. However, the deadlines for transfer do not apply if:

- a. A student is seeking to transfer to an alternative school or a specialized nonpublic educational program;
- b. A student enrolls in the Brookings School District after the deadline in either semester; or
- c. If the Brookings School District School Board determines that special circumstances exist and it is in the best interest of the student and school district to allow a student to transfer after the deadline.

4. The applicant may withdraw the application prior to the approval of the request and upon notification of the district to which the student applied.

5. Once approved by the Brookings School District, the applicant's intent to enroll obligates the student to attend school in the Brookings School District for the next school year, unless the two boards agree in writing to allow a student to return to the original district or assigned school, or if the parent, guardian, or student changes residence to another district.

6. Once enrolled in the Brookings School District, the enrollment will continue unless a bona fide change of residence occurs or a subsequent transfer application is received.

7. The Brookings School District will accept credits granted for any course successfully completed in another accredited district. The Brookings School District may award a diploma to a non-resident only if the student satisfactorily meets the Brookings School District graduation requirements.

8. Transportation of non-resident students to school is the responsibility of the applicant.

IV. CRITERIA FOR MAKING OPEN ENROLLMENT DETERMINATIONS

Discrimination based upon race, religion, gender, gender identity, sexual orientation, age, national origin or disability is prohibited.

1. The board reserves the right to annually establish capacities of programs, classes, grade levels, and buildings within the district, which will be based upon administrative recommendations. The administrative recommendation shall take into account current and projected enrollments in light of physical, fiscal, and human resources projected within the district. Insofar as possible, any numerical factor will be building or attendance center specific.

2. Class size, program capacity, and building capacity restrictions are necessary in order to allow room in schools for students who may move into the assigned school attendance area or in the case of special education programs, students who may be identified as needing special education services or who may move in as students in need of special education. The approval of an open enrollment request may not result in exceeding the established student to teacher ratio or program capacity. The capacity listed for grade level student to teacher ratio indicates district averages for open enrollment purposes only. Actual class sizes may be above these ratios because of students living in the assigned school attendance area.

a) Kindergarten through Grade Three — 22

b) Grade Four and Grade Five — 24

c) Grade Six through Grade Eight — 26

d) Grade Nine through Grade Twelve High School open enrollment students may select from courses available at the time of registration.

e) Special Education program capacity is based on the type of program.

1. Kindergarten through Grade 12 — resource room case manager limits are set at 15 students

2. Kindergarten through Grade 12 — self contained case manager limits are set at 5 students

3. Kindergarten through Grade 12 — speech therapy total service provider limits are set at 35 students

4. Kindergarten through Grade 12 — occupational therapy total service provider limits are 35, physical therapy total service provider limits are set at 10

5. A student in need of special education or special education and related services will be declined for open enrollment if the IEP requires services which exceed these identified limits in #1-4 above or requires additional staffing or programs not in place at the time of application.

3. Nonresident student open enrollment applications to attend school within the District will be reviewed and acted upon in the order in which they are received. However, if the application is a sibling of a student accepted into and currently enrolled in the District, that student's application shall take priority over all other applications.

4. If two or more nonresident students from the same family, residing in the same household, request open enrollment into the District, all requests from that family must be either approved or denied and the District shall not deny an application if doing so would result in children from the same household enrolling in different school district. However, if the District cannot provide an appropriate education for

a child in need of special education or special education and related services, the District may deny that child's application for open enrollment.

5. The board may deny applications for any of the following reasons:

- (a) The applicant is under a suspension or expulsion;
- (b) The applicant has been convicted of possession, use, or distribution of any controlled substance, including marijuana and is under suspension pursuant to SDGL 13-32-43;
- (c) The applicant has been convicted of a weapons charge relating to the schools and is under suspension pursuant to SDGL 13-32-43.
- (d) If misrepresentation of information by the applicant for transfer is determined to exist, before, or after the acceptance process or while the student is in attendance. If the student has previously been accepted, misrepresentation of information will result in revocation of the Acceptance.

V. ACCEPTING NON-RESIDENT STUDENTS IN NEED OF SPECIAL EDUCATION

A request to transfer a student in need of special education or special education and related services may be granted only if, after a review of all relevant student education records and direct communication with the student's parent or guardian and representatives of the resident district, the Brookings School District special education administration determines that the District can provide an appropriate instructional program and facilities, including transportation, to meet the student's needs. If the request to transfer is granted, the Brookings School 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. If the student requires transportation as a related service, the Brookings School District shall provide or ensure the provision of transportation within the boundaries of the District.

A request to transfer a student in need of special education or special education and related services may be denied if the request would exceed program capacities set by the board, pursuant to SDGL 13-28-42.1 and 13-28-44 or if the Brookings School District cannot provide an appropriate instructional program and facilities, including transportation, to meet the student's needs.

If the Brookings School District confirms, based upon the records review and communications with the student's parent or guardian and representatives of the Brookings School 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 with the open enrollment process (see § 13-28-421).

If the Brookings School District is not able to make confirmation of an appropriate instructional program and facilities to meet the needs of the student, the Brookings School District shall initiate an individual education program team meeting consisting of representatives from both the resident and nonresident districts to determine whether the Brookings School District can provide an appropriate instructional program, facilities, and transportation, if necessary. After the determination is made, the Brookings School District will proceed accordingly with regards to accepting or declining the student for open enrollment.

If the Brookings School District cannot meet the provisions of SDGL 13-28-42.1 for the child in need of special education or special education and related services, the Brookings School District may deny that child's application for open enrollment. If two or more children from a family residing in the same household, one of which needs special education and/or related services and both of which are eligible for kindergarten through 12th grade, may open enroll only if pursuant to SDGL 13-28-42.1, the Brookings School 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.

IV. APPEAL OF DENIED REQUESTS

Appeals from board action under the 1997 Open Enrollment Act can be made under SDGL Chapter 13-46 and

~~the court will conduct a *de novo** review. The time for appeal under SDCL Chapter 13-46 is within ninety (90) days from the date of decision.~~

~~*To make a new decision.~~

State law provides nonresident parents and learners an opportunity to apply for enrollment within the District. It also allows resident parents and learners an opportunity to apply for enrollment in an attendance center within the District other than that to which the learner has been assigned.

The parent or legal guardian of a South Dakota kindergarten through twelfth grade learner, or a learner who is at least 18 years old, and resides in another school district (i.e., nonresident learner), and who wishes to enroll the learner in the District, or the parent or legal guardian of a South Dakota kindergarten through twelfth grade learner, or a learner who is at least 18 years old, and resides within the District and wishes to enroll the learner at an attendance center within the District other than that to which the learner has been assigned, must apply to open enroll in the School District.

1. Nonresident learner open enrollment: The District shall grant a request for a transfer into the district of a child who is a resident of another school district unless the transfer would result in an inability to provide a quality educational program based on criteria established by the District pursuant to statute and this policy.
2. Nonresident alternative instruction learner open enrollment: The District shall grant a request to admit into the district a child who is a resident of another school district and who is receiving alternative instruction in the resident district pursuant to law, unless admitting the nonresident child would result in an inability to provide a quality educational program based on criteria established by the District pursuant to statute and this policy.
3. Resident learner open enrollment to different attendance center: The District shall grant a request from a resident of the District for a learner transfer to an attendance center within the District other than that to which the learner has been assigned unless the transfer would result in an inability to provide a quality educational program based on criteria established by the District pursuant to statute and this policy.

A copy of this policy will be provided to parents, guardians and emancipated learners who wish to submit an open enrollment application. It shall also be provided to any other interested person upon request.

A. GENERAL RULES:

1. Transfers from another school district into the District may only take place prior to the last Friday in September during the first semester of any school year, and prior to the last Friday in January during the second semester of any school year. If the District approves an application for such a transfer after the deadline in the first semester, the transfer will occur at the start of the second semester. If the District approves an application for such a transfer after the deadline in the second semester, the transfer will occur at the start of the following school year. The deadlines for transfer do not apply if:
 - a. A learner is seeking to transfer to an alternative school or a specialized nonpublic educational program;
 - b. A learner enrolls in a school district after the deadline in either semester; or
 - c. The District's Superintendent determines that special circumstances exist and allows a learner to transfer into the District after the deadline.
2. All nonresident requests for open enrollment into the District must be submitted to the District's Superintendent on the official application form provided by the South Dakota Department of Education.

3. Nonresident learner open enrollment applications to attend school within the District will be reviewed and acted upon in the order in which they are received. However, if the applicant is a sibling of a learner accepted into and currently enrolled in the District, that learner's application shall take priority over all other applications.
4. The Superintendent shall either approve or deny the application for open enrollment. A decision of the Superintendent to deny an open enrollment application may be appealed to the School Board. A decision of the School Board to deny learner's application for open enrollment may be appealed to the circuit court pursuant to State Law. ^(a)
5. Decisions to accept or reject open enrollment applications will be based on the criteria listed in "Open Enrollment Application Standards" (Section C).
6. The applicant and the resident school board will be notified within five business days of the decision.
7. An application may be withdrawn by the applicant prior to the approval of the request and upon written notification to the District's Superintendent.
8. Once approved by the District, the approved application serves as the applicant's notice of intent to enroll in the District and obligates the learner to attend school within the District during the school year, unless the affected school board or boards agree in writing to allow the learner to transfer back to the resident district or assigned school, or unless the parents, guardians, or emancipated learner change residence to another district. A decision by either school board to deny a request to return to the resident school district may be appealed to circuit court pursuant to law.
9. Once enrolled under open enrollment in the District, the learner may remain enrolled and is not required to resubmit annual applications.
10. If, after the conclusion of a school year, a learner who is open-enrolled into the District wishes to return to the learner's resident school district or assigned school, the learner's parent or legal guardian shall, or the learner (if the learner is emancipated) shall, on forms provided by the Department of Education, notify the affected school board or boards of the learner's intent to return to the resident school district or previously assigned school. The affected school board or boards must receive written notice of the learner's intent to re-enroll in the resident school district or previously assigned school no later than August first. However, if the affected school board or boards determine that special circumstances exist, a learner may be allowed to transfer to the learner's resident school district or assigned school after the deadline.
11. The parent or legal guardian of a learner who has been accepted for transfer under open enrollment is responsible for transporting the learner to and from school without reimbursement. ^(b)
12. The District shall accept credits for any course completed in any other accredited school district but shall award a diploma to a nonresident learner only if the learner satisfactorily meets the District's graduation requirements.
13. If two or more nonresident learners from the same family, residing in the same household, request open enrollment into the District, all requests from that family must be either approved or denied and the District shall not deny an application if doing so would result in children from the same household enrolling in different school districts. However, if the District cannot provide an appropriate education for a child in need of special education or special education and related services, the District may deny that child's application for open enrollment.
14. Any learner under long term suspension or expulsion will not be allowed to open enroll until the suspension or expulsion is completed. ^(c)

15. The rules of the South Dakota High School Activities Association will govern eligibility for participation in activities.

B. RESIDENT LEARNER TRANSFERS:

The provisions of this policy apply to resident learner transfers (applications to attend an attendance center different than that to which the learner is assigned) except as modified below:

1. Resident learner open enrollment applications to attend an attendance center within the District other than that to which the learner has been assigned will be reviewed and acted upon in the order in which they are received. However, if the applicant is a sibling of a learner accepted into and currently enrolled in the attendance center to which the applicant is wishing to enroll, that learner's application shall take priority over all other applications.

2. If a learner is transferred from one attendance center to another attendance center within the District at the request of the learner's parent or guardian, the District shall not provide transportation services to the learner. ^(d)

C. OPEN ENROLLMENT APPLICATION STANDARDS: ^(e)

The following standards will be used to accept or reject nonresident learner open enrollment applications to enroll within the District and resident learner applications to attend an attendance center within the District other than that to which the learner was assigned:

Open enrollment requests will be granted on a space available basis at the time the request is considered at the discretion of the Superintendent. The approval of an open enrollment request may not result in exceeding the average learner to teacher ratio, program capacity, or building capacity criteria listed below. The ratios listed for grade level learner to teacher ratios are for open enrollment purposes only and actual class sizes may be greater than the capacity listed below because of learners residing within the school district and school attendance center area.

- Kindergarten: The learner to teacher ratio shall not exceed 24 learners in each grade as a result of open enrollment.
- Grades one and two: The learner to teacher ratio shall not exceed 25 learners in each grade as a result of open enrollment.
- Grades three through five: The learner to teacher ratio shall not exceed 27 learners in each grade as a result of open enrollment.
- Grades six and seven: The learner to teacher ratio for core classes may not exceed 28 learners in each grade as a result of open enrollment.
- Grade eight: The learner to teacher ratio shall not exceed 29 learners in each grade as a result of open enrollment.
- High school core classes: The learner to teacher ratio shall not exceed 31 learners in each class as a result of open enrollment.
- High school lab classes: The learner to teacher ratio shall not exceed 28 learners in each class as a result of open enrollment.

- High school applied classes: The learner to teacher ratio shall not exceed 24 learners in each class as a result of open enrollment.
- An open enrollment transfer may not cause a building or program to exceed capacity, including special education programs.
- Open enrollment of a special education learner will not be approved if the learners cannot be accommodated at current staffing levels or the program is at capacity.

D. OPEN ENROLLMENT OF SPECIAL EDUCATION LEARNERS:

1. A request to transfer a learner in need of special education or special education and related services may be granted only if, after a review of all relevant learner education records and direct communication with the learner's parent or guardian and representatives of the resident district, the School District determines that the district can provide an appropriate instructional program and facilities, including transportation if required as a related service, to meet the learner's needs. If the request to transfer is granted, the district is responsible for the provision of a free appropriate public education for the learner in need of special education or special education and related services. If the learner requires transportation as a related service, the district shall provide or ensure the provision of transportation within the boundaries of the District.
2. If the District is not able to confirm that the District can provide an appropriate instructional program, facilities, and transportation if necessary, based on the records review and communication with the learner's parent or guardian and representatives of the resident district, the District shall initiate an individual education program team meeting consisting of representatives from the District, the resident school district and the parents or guardians, to determine whether the District can provide an appropriate instructional program, facilities, and transportation necessary.
3. A request to transfer a learner in need of special education or special education and related services may be denied only pursuant to the "Open Enrollment Application Standards" (Section C) or if the individual education program team as set forth in "Open Enrollment of Special Education Students" (Section D.2.) determines that the District cannot provide an appropriate instructional program and facilities, including transportation, to meet the learner's needs.
4. If a parent or guardian of a learner in need of special education or special education and related services request to transfer the learner back to the resident district, the affected school boards must agree in writing to allow the learner to transfer back to the resident district or unless the parents, guardian, or emancipated learner change residence to another district.
5. If two or more learners from the same family residing in the same household request open enrollment and the District determines it can provide an appropriate special education or special education and related services for the special education learner(s), the applications shall be approved subject to consideration of the Open Enrollment Application Standards (Section C). However, if the District cannot provide appropriate special education or special education and related services for one or more of the learners in need of special education or special education and related services, the District may deny the application for open enrollment related to the individual special education learner(s).
6. If it is determined that a parent or guardian of a learner, or an emancipated learner, in need of special education or special education and related services submitted a request for an open enrollment transfer, but did not indicate on the application that the learner has an IEP and needs special education services, as required on the form, any approval by the District of the open enrollment transfer application will be deemed void.

Notes:

(a) SDCL 13-28-43 says the School Board or the Board's designee may approve or disapprove the application. ASBSD recommends that the Superintendent be designated by the Board as most school boards meet only once a month on the second Monday of the month.

(b) For nonresident open enrollments, SDCL 13-28-45 states that the parents/guardians are

responsible for transportation, without reimbursement, of the student but the District may provide the transportation, and if provided, the District may charge a reasonable fee if the student uses District provided transportation. SDCL 13-28-45 also says school boards of both the receiving school district and the resident school district must annually approve the pick-up locations for those students within any incorporated municipality but this requirement does not apply to any school district defined as a sparse school district pursuant to § 13-13-78.

(c) SDCL 13-32-4.3 states that if a student is under suspension or expulsion in a South Dakota school district, the student may not enroll in any other school district until the suspension or expulsion has expired, and also that the superintendent of a school district may prohibit a student from enrolling in that school district if the student is under suspension or expulsion in a school in another state or in a nonpublic school in this state.

(d) SDCL 13-28-41.1. School district not required to provide transportation to student transferred within district. If a student is transferred from one school to another school within a school district at the request of the student's parent or guardian, notwithstanding any other provision of law, the school district is not required to provide transportation services to the student.

(e) SDCL 13-28-44 states that "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" a school board may or may not want to have capacity of the program, class or grade level specifically identified in the school district policy.

Legal References:

SDCL 13-13-10.1 (Definition of terms)
SDCL 13-15-8.1 (Interstate agreements to establish tuition rates)
SDCL 13-15-9 (Interstate assignment of students on reciprocal basis)
SDCL 13-15-11 (Contracts between districts for joint facilities)
SDCL 13-15-21 (Enrollment in adjoining school districts in Minnesota)
SDCL 13-15-21.1 (Reciprocity required for enrolling in Minn sch dist)
SDCL 13-15-23 (Transportation for commuting between SD & MN)
SDCL 13-15-24 (Resident district responsible for tuition in MN school)
SDCL 13-28 (School attendance privileges and tuition)
SDCL 13-32-4.3 (Effect of suspension or expulsion on enrollment)
SDCL 13-32-9 (Suspension for controlled substances violation)
SDCL 13-46 (Appeals in school matters)

Cross References:

IGBA: Programs for Handicapped Children
JECC: Assignment of Learners to Schools
LB: Relation with Other Schools and School Districts

Notification:

06/14/2021

1st Reading:

07/19/2021

2nd Reading:

08/09/2021