

Stricken language would be deleted from and underlined language would be added to present law.
Act 1227 of the Regular Session

State of Arkansas *As Engrossed: S1/31/13 S2/14/13 S2/26/13 S3/5/13 S3/12/13*
H4/6/13

89th General Assembly
Regular Session, 2013

A Bill

SENATE BILL 65

By: Senators J. Key, Holland, Bledsoe, A. Clark, J. Hendren, Irvin, Rapert

By: Representatives Biviano, McLean, Alexander, D. Altes, Barnett, Carnine, Cozart, Dale, Deffenbaugh,
D. Douglas, Harris, Hutchison, Lowery, Neal, Ratliff, Scott, Slinkard, Wren

For An Act To Be Entitled

AN ACT TO *ESTABLISH THE PUBLIC SCHOOL CHOICE ACT OF*
2013; TO REPEAL THE PUBLIC SCHOOL CHOICE ACT OF 1989;
TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE PUBLIC SCHOOL CHOICE ACT
OF 2013; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 6-18-206 is repealed.

~~*6-18-206. Public school choice.*~~

~~*(a)(1) This section may be referred to and cited as the "Arkansas Public School Choice Act of 1989".*~~

~~*(2) The General Assembly finds that the students in Arkansas's public schools and their parents will become more informed about and involved in the public educational system if students and their parents or guardians are provided greater freedom to determine the most effective school for meeting their individual educational needs. There is no right school for every student, and permitting students to choose from among different schools with differing assets will increase the likelihood that some marginal students will stay in school and that other, more motivated students will find their full academic potential.*~~

~~*(3) The General Assembly further finds that giving more options*~~



~~to parents and students with respect to where the students attend public school will increase the responsiveness and effectiveness of the state's schools since teachers, administrators, and school board members will have added incentive to satisfy the educational needs of the students who reside in the district.~~

~~(4) The General Assembly therefore finds that these benefits of enhanced quality and effectiveness in our public schools justify permitting a student to apply for admission to a school in any district beyond the one in which the student resides, provided that the transfer by this student would not adversely affect the desegregation of either district.~~

~~(5) A public school choice program is hereby established to enable any student to attend a school in a district in which the student does not reside, subject to the restrictions contained in this section.~~

~~(b)(1)(A) Before a student may attend a school in a nonresident district, the student's parent or guardian must submit an application on a form approved by the Department of Education to the nonresident district by submitting the application to the superintendent of the school district. This application must be postmarked not later than July 1 of the year in which the student would begin the fall semester at the nonresident district.~~

~~(B)(i) Within thirty (30) days of the receipt of an application from a nonresident student seeking admission under the terms of this section, the superintendent of the nonresident district shall notify the parent or guardian and the resident district in writing as to whether the student's application has been accepted or rejected.~~

~~(ii) If the application is rejected, the superintendent of the nonresident district must state in the notification letter the reason for rejection.~~

~~(iii) If the application is accepted, the superintendent of the nonresident district shall state in the notification letter:~~

~~(a) An absolute deadline for the student to enroll in the district, or the acceptance notification is null; and~~

~~(b) Any instructions for the renewal procedures established by the district.~~

~~(iv)(a) Any student who accepts a school choice transfer may return to his or her resident district during the course of the~~

~~school year.~~

~~(b) If a transferred student returns to his or her resident district during the school year, the student's transfer is voided, and the student shall reapply for any future transfer.~~

~~(2)(A) The school board of directors of every public school district must adopt by resolution specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building. Nothing in this section requires a school district to add teachers, staff, or classrooms or in any way to exceed the requirements and standards established by existing law. Standards shall include a statement that priority will be given to applications from siblings or stepsiblings residing in the same residence or household of students already attending the district by choice. Standards may not include an applicant's previous academic achievement, athletic or other extracurricular ability, handicapping conditions, English proficiency level, or previous disciplinary proceedings except that an expulsion from another district may be included pursuant to § 6-18-510.~~

~~(B)(i) Any student who applies for a transfer under this section and is denied a transfer by the nonresident district may request a hearing before the State Board of Education to reconsider the transfer.~~

~~(ii) A request for a hearing before the state board shall be in writing and shall be postmarked no later than ten (10) days after notice of rejection of the application under subdivision (b)(1)(B) of this section is received by the student.~~

~~(3) Each school district shall participate in public school choice consistent with this section.~~

~~(c) The responsibility for transportation of a student from the student's resident school district to a nonresident school district shall be borne by the student or the student's parents. The nonresident school district may enter into a written agreement with the student, the student's parents, or the resident school district to provide transportation to or from any place in the resident district to the nonresident district, or both.~~

~~(d)(1) A nonresident district shall accept credits toward graduation that were awarded by another district.~~

~~(2) The nonresident district shall award a diploma to a nonresident student if the student meets the nonresident district's~~

~~graduation requirements.~~

~~(e) For purposes of determining a school district's state equalization aid, the nonresident student shall be counted as a part of the average daily membership of the district to which the student has transferred.~~

~~(f) The provisions of this section and all student choice options created in this section are subject to the following limitations:~~

~~(1) No student may transfer to a nonresident district where the percentage of enrollment for the student's race exceeds that percentage in the student's resident district except in the circumstances set forth in subdivisions (f)(2) and (3) of this section;~~

~~(2)(A) A transfer to a district is exempt from the restriction set forth in subdivision (f)(1) of this section if the transfer is between two (2) districts within a county and if the minority percentage in the student's race and majority percentages of school enrollment in both the resident and nonresident district remain within an acceptable range of the county's overall minority percentage in the student's race and majority percentages of school population as set forth by the department.~~

~~(B)(i) By the filing deadline each year, the department shall compute the minority percentage in the student's race and majority percentages of each county's public school population from the October Annual School Report and shall then compute the acceptable range of variance from those percentages for school districts within each county.~~

~~(ii)(a) In establishing the acceptable range of variance, the department is directed to use the remedial guideline established in Little Rock School District v. Pulaski County Special School District of allowing an overrepresentation or underrepresentation of black or white students of one fourth ($\frac{1}{4}$) or twenty five percent (25%) of the county's racial balance.~~

~~(b) In establishing the acceptable range of variance for school choice, the department is directed to use the remedial guideline of allowing an overrepresentation or underrepresentation of minority or majority students of one fourth ($\frac{1}{4}$) or twenty five percent (25%) of the county's racial balance;~~

~~(3) A transfer is exempt from the restriction set forth in subdivision (f)(1) of this section if each school district affected by the transfer does not have a critical mass of minority percentage in the~~

~~student's race of more than ten percent (10%) of any single race;~~

~~(4) In any instance in which the provisions of this subsection would result in a conflict with a desegregation court order or a district's court approved desegregation plan, the terms of the order or plan shall govern;~~

~~(5) The department shall adopt appropriate rules and regulations to implement the provisions of this section; and~~

~~(6) The department shall monitor school districts for compliance with this section.~~

~~(g) The state board shall be authorized to resolve disputes arising under subsections (b)-(f) of this section.~~

~~(h) The superintendent of the district shall cause public announcements to be made over the broadcast media and in the print media at such times and in such a manner as to inform parents or guardians of students in adjoining districts of the availability of the program, the application deadline, and the requirements and procedure for nonresident students to participate in the program.~~

~~(i)(1) All superintendents of school districts shall report to the Equity Assistance Center on an annual basis the race, gender, and other pertinent information needed to properly monitor compliance with the provisions of this section.~~

~~(2) The reports may be on those forms that are prescribed by the department, or the data may be submitted electronically by the district using a format authorized by the department.~~

~~(3) The department may withhold state aid from any school district that fails to file its report each year or fails to file any other information with a published deadline requested from school districts by the Equity Assistance Center so long as thirty (30) calendar days are given between the request for the information and the published deadline except when the request comes from a member or committee of the General Assembly.~~

~~(4) A copy of the report shall be provided to the Joint Interim Oversight Committee on Educational Reform.~~

~~(j)(1) The department shall develop a proposed set of rules as it determines is necessary or desirable to amend the provisions of this section.~~

~~(2) The department shall present the proposed rules in written form to the House Interim Committee on Education and the Senate Interim~~

~~Committee on Education by October 1, 2006, for review and consideration by the committees for possible amendments to this section and to the Arkansas Public School Choice Program by the Eighty-sixth General Assembly.~~

SECTION 2. Arkansas Code § 6-15-430(b)(1), concerning student transfers from a school district that is identified as being in academic distress, is amended to read as follows:

(b)(1) Any student attending a public school district classified as being in academic distress shall automatically be eligible and entitled pursuant to the ~~Arkansas Public School Choice Act of 1989, § 6-18-206~~ Public School Choice Act of 2013, § 6-18-1901 et seq., to transfer to another ~~geographically contiguous~~ school district not in academic distress during the time period that a school district is classified as being in academic distress and, therefore, not be required to file a petition by ~~July 1~~ June 1 but shall meet all other requirements and conditions of the ~~Arkansas Public School Choice Act of 1989, § 6-18-206~~ Public School Choice Act of 2013, § 6-18-1901 et seq.

SECTION 3. Arkansas Code § 6-18-202(g), concerning the age and attendance requirements for attending public schools, is amended to read as follows:

(g) This section shall not be construed to restrict a student's ability to participate in a tuition agreement with a nonresident school district or to officially transfer to another school district pursuant to the ~~Arkansas Public School Choice Act of 1989, § 6-18-206~~ Public School Choice Act of 2013, § 6-18-1901 et seq.

SECTION 4. Arkansas Code § 6-18-227(b)(2)(A)(i), concerning the Arkansas Opportunity Public School Choice Act of 2004, is amended to read as follows:

(2)(A)(i) For the purposes of continuity of educational choice, the transfer shall operate as an irrevocable election for each subsequent entire school year and shall remain in force until the student completes high school or the parent, guardian, or the student, if the student is over eighteen (18) years of age, makes application no later than July 30 for attendance or transfer as provided for by §§ 6-18-202, ~~6-18-206,~~ and § 6-18-

316, or by June 1 under the Public School Choice Act of 2013, § 6-18-1901 et seq.

SECTION 5. Arkansas Code § 6-21-812(a), concerning student transfers from a school district that is identified as being in fiscal distress, is amended to read as follows:

(a)(1) Any student attending a public school district classified as being in facilities distress shall automatically be eligible and entitled under the ~~Arkansas Public School Choice Act of 1989, § 6-18-206~~ Public School Choice Act of 2013, § 6-18-1901 et seq., to transfer to another ~~geographically contiguous~~ school district not in facilities distress during the time period that a district is classified as being in facilities distress.

(2) The student is not required to file a petition by ~~July 1~~ June 1 but shall meet all other requirements and conditions of the ~~Arkansas Public School Choice Act of 1989, § 6-18-206~~ Public School Choice Act of 2013, § 6-18-1901 et seq.

SECTION 6. Arkansas Code Title 6, Chapter 18, is amended to add an additional subchapter to read as follows:

Subchapter 19 – Public School Choice Act of 2013
6-18-1901. Title – Legislative findings.

(a) This subchapter shall be known and may be cited as the "Public School Choice Act of 2013".

(b) The General Assembly finds that:

(1) The students in Arkansas's public schools and their parents will become more informed about and involved in the public educational system if students and their parents are provided greater freedom to determine the most effective school for meeting their individual educational needs. There is no right school for every student, and permitting students to choose from among different schools with differing assets will increase the likelihood that some at-risk students will stay in school and that other, more motivated students will find their full academic potential;

(2) Giving more options to parents and students with respect to where the students attend public school will increase the responsiveness and effectiveness of the state's schools because teachers, administrators, and

school board members will have added incentive to satisfy the educational needs of the students who reside in the district; and

(3) These benefits of enhanced quality and effectiveness in our public schools justify permitting a student to apply for admission to a school in any school district beyond the school district in which the student resides, provided that the transfer by the student does not conflict with an enforceable judicial decree or court order remedying the effects of past racial segregation in the school district.

6-18-1902. Definitions.

As used in this subchapter:

(1) "Nonresident district" means a school district other than a student's resident district;

(2) "Parent" means a student's parent, guardian, or other person having custody or care of the student;

(3) "Resident district" means the school district in which the student resides as determined under § 6-18-202; and

(4) "Transfer student" means a public school student who transfers to a nonresident district through a public school choice option under this subchapter.

6-18-1903. Public school choice program established.

(a) A public school choice program is established to enable a student to attend a school in a nonresident district, subject to the limitations under § 6-18-1906.

(b) Each school district shall participate in a public school choice program consistent with this subchapter.

(c) This subchapter does not require a school district to add teachers, staff, or classrooms, or in any way to exceed the requirements and standards established by existing law.

(d)(1) The board of directors of a public school district shall adopt by resolution specific standards for acceptance and rejection of applications under this subchapter.

(2) The standards:

(A) May include without limitation the capacity of a program, class, grade level, or school building;

(B) Shall include a statement that priority will be given to an applicant who has a sibling or stepsibling who:

(i) Resides in the same household; and

(ii) Is already enrolled in the nonresident district

by choice; and

(C) Shall not include an applicant's:

(i) Academic achievement;

(ii) Athletic or other extracurricular ability;

(iii) English proficiency level; or

(iv) Previous disciplinary proceedings, except that an expulsion from another district may be included under § 6-18-510.

(3) A school district receiving transfers under this act shall not discriminate on the basis of gender, national origin, race, ethnicity, religion, or disability.

(e) A nonresident district shall:

(1) Accept credits toward graduation that were awarded by another district; and

(2) Award a diploma to a nonresident student if the student meets the nonresident district's graduation requirements.

(f) The superintendent of a school district shall cause public announcements to be made over the broadcast media and either in the print media or on the Internet to inform parents of students in adjoining districts of the:

(1) Availability of the program;

(2) Application deadline; and

(3) Requirements and procedure for nonresident students to participate in the program.

6-18-1904. General provisions.

(a) The transfer of a student under the Arkansas Public School Choice Act of 1989, § 6-18-206 [repealed], is not voided by this subchapter and shall be treated as a transfer under this subchapter.

(b)(1) A student may accept only one (1) school choice transfer per school year.

(2)(A) A student who accepts a public school choice transfer may return to his or her resident district during the school year.

(B) If a transferred student returns to his or her resident district, the student's transfer is voided, and the student shall reapply if the student seeks a future school choice transfer.

(c)(1) A transfer student attending a nonresident school under this subchapter may complete all remaining school years at the nonresident district.

(2) A present or future sibling of a student who continues enrollment in the nonresident district under this subsection may enroll in or continue enrollment in the nonresident district until the sibling of the transfer student completes his or her secondary education, if the district has the capacity to accept the sibling without adding teachers, staff, or classrooms or exceeding the regulations and standards established by law.

(d)(1) The transfer student or the transfer student's parent is responsible for the transportation of the transfer student to and from the school in the nonresident district where the transfer student is enrolled.

(2) The nonresident district may enter into a written agreement with the student, the student's parent, or the resident district to provide the transportation.

(3) The State Board of Education may resolve disputes concerning transportation arising under this subsection.

(e) For purposes of determining a school district's state aid, a transfer student is counted as a part of the average daily membership of the nonresident district where the transfer student is enrolled.

6-18-1905. Application for a transfer.

(a) If a student seeks to attend a school in a nonresident district, the student's parent shall submit an application:

(1) To the nonresident district with a copy to the resident district;

(2) On a form approved by the Department of Education; and

(3) Postmarked no later than June 1 of the year in which the student seeks to begin the fall semester at the nonresident district.

(b)(1) By August 1 of the school year in which the student seeks to enroll in a nonresident district under this subchapter, the superintendent of the nonresident district shall notify the parent and the resident district in writing as to whether the student's application has been accepted or

rejected.

(2) If the application is rejected, the superintendent of the nonresident district shall state in the notification letter the reason for rejection.

(3) If the application is accepted, the superintendent of the nonresident district shall state in the notification letter:

(A) A reasonable deadline by which the student shall enroll in the nonresident district and after which the acceptance notification is null; and

(B) Instructions for the renewal procedures established by the nonresident district.

6-18-1906. Limitations.

(a) If the provisions of this subchapter conflict with a provision of an enforceable desegregation court order or a district's court-approved desegregation plan regarding the effects of past racial segregation in student assignment, the provisions of the order or plan shall govern.

(b)(1) A school district annually may declare an exemption under this section if the school district is subject to the desegregation order or mandate of a federal court or agency remedying the effects of past racial segregation.

(2)(A) An exemption declared by a board of directors under this subsection is irrevocable for one (1) year from the date the school district notifies the Department of Education of the declaration of exemption.

(B) After each year of exemption, the board of directors may elect to participate in public school choice under this section if the school district's participation does not conflict with the school district's federal court-ordered desegregation program.

(3) A school district shall notify the department by April 1 if in the next school year the school district intends to:

(A) Declare an exemption under this section; or

(B) Resume participation after a period of exemption.

(c)(1)(A) There is established a numerical net maximum limit on school choice transfers each school year from a school district, less any school choice transfers into the school district, under this section of not more than three percent (3%) of the school district's three-quarter average daily

membership for the immediately preceding school year.

(B) For the purpose of determining the percentage of school choice transfers under this subsection, siblings who are counted in the numerator as transfer students shall count as one (1) student, and siblings who are counted in the denominator as part of the average daily membership shall count as one (1) student.

(2) Annually by June 1, the Department of Education shall report to each school district the net maximum number of school choice transfers for the current school year.

(3) If a student is unable to transfer due to the limits under this subsection, the resident district shall give the student priority for a transfer in the following year in the order that the resident district receives notices of applications under § 6-18-1905, as evidenced by a notation made by the district on the applications indicating date and time of receipt.

6-18-1907. Rules – Appeal – Data collection and reporting.

(a) The State Board of Education may promulgate rules to implement this subchapter.

(b)(1) A student whose application for a transfer under § 6-18-1905 is rejected by the nonresident district may request a hearing before the state board to reconsider the transfer.

(2)(A) A request for a hearing before the state board shall be in writing and shall be postmarked no later than ten (10) days after the student or the student's parent receives a notice of rejection of the application under § 6-18-1905.

(B) As part of the review process, the parent may submit supporting documentation that the transfer would be in the best educational, social, or psychological interest of the student.

(3) If the state board overturns the determination of the nonresident district on appeal, the state board shall notify the parent, the nonresident district, and the resident district of the basis for the state board's decision.

(c)(1) The department shall collect data from school districts on the number of applications for student transfers under this section and study the effects of school choice transfers under this subchapter, including without

limitation the net maximum number of transfers and exemptions, on both resident and nonresident districts for up to two (2) years to determine if a racially segregative impact has occurred to any school district.

(2) Annually by October 1, the department shall report its findings from the study of the data under this subsection to the Senate Committee on Education and the House Committee on Education its finding.

6-18-1909. Effective date.

The provisions of this subchapter shall remain in effect until July 1, 2015.

SECTION 7. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Public School Choice Act of 1989, § 6-18-206, have been found to be unconstitutional by a federal court; that thousands of public school students are currently attending public schools in nonresident school districts under that law; that there is now uncertainty about the viability of those transfers and future transfers; that this act repeals the disputed provisions of that law while preserving the opportunity for public school choice; and that this act is immediately necessary to resolve the uncertainty in the law before the 2013-2014 school year and preserve existing student transfers. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/J. Key

APPROVED: 04/16/2013