

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
89th General Assembly  
Regular Session, 2013

As Engrossed: S1/29/13  
**A Bill**

SENATE BILL 114

By: Senator Elliott

### **For An Act To Be Entitled**

AN ACT TO REPEAL § 6-18-206 CONCERNING PUBLIC SCHOOL CHOICE; TO ESTABLISH THE ARKANSAS INTERDISTRICT PUBLIC SCHOOL CHOICE ACT OF 2013; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

### **Subtitle**

TO REPEAL § 6-18-206 CONCERNING PUBLIC SCHOOL CHOICE; TO ESTABLISH THE ARKANSAS INTERDISTRICT 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 Arkansas Code § 6-18-206 is repealed.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 Title 6, Chapter 18, Subchapter 2, is amended to add an additional section to read as follows:

6-18-231. Arkansas Interdistrict Public School Choice Act of 2013.

(a) The General Assembly:

(1) Finds that:

(A) The guiding principle in all decisions involving public school education in Arkansas is the pursuit of educational excellence and the best interest of each individual student as established by the United States Constitution and the Arkansas Constitution;

(B) It is essential that decisions regarding the structure and delivery of public education programs and services be made in accordance with the state's obligation to create and maintain "a unitary, nonracial system of public education," Green v. County School Board of New Kent County, 391 U.S. 430, 436 (1968);

(C) The public school education system should be free from any invidious discrimination on the basis of race, ethnicity, or national origin;

(D) Sound educational and social principles underlie and inform the historic commitment in Arkansas that students should normally attend the schools located in the communities and neighborhoods where the students and their families live and work as outlined in § 6-18-203(a)(1);

(E) Decisions involving public school education and the best interest of each individual student should be assessed and made in light of the state's history of public and private discrimination on the basis of race, the existence of racially segregated public school districts, and the reality that a substantial number of public school districts in Arkansas are subject to federal remedial orders designed to achieve desegregation, prevent segregation, or eliminate the vestiges of the state's prior dual system of education; and

(F) The potential benefits of allowing students to identify and attend public schools that would better meet their demonstrated, individual educational needs justify permitting a student to apply for

permission to attend school in a public school district other than the public school district in which the student resides if the student's transfer would not:

(i) Conflict with a federal remedial desegregation order or plan;

(ii) Adversely affect the desegregation of either public school district;

(iii) Promote the *resegregation* or desegregation of either public school district; or

(iv) Interfere with measures designed to eliminate the vestiges of the state's prior dual system of education;

(2) Recognizes that:

(A) There are situations in which it is in the best educational interest of a student for the student and his or her family to determine the most appropriate and effective school for meeting the demonstrated, individual educational needs of the student;

(B) Permitting a student and his or her family to choose from different public schools with different educational programs and support systems allows the student and family to identify and pursue the best individual education option possible; and

(C) Public school choice options should be designed to meet the constitutionally sound goal of quality, desegregated education, rather than be an end in and of themselves; and

(3) Establishes the Arkansas Interdistrict Public School Choice Act of 2013 to enable a student to attend a school in a public school district in which the student does not reside.

(b)(1)(A) A public school district in Arkansas shall participate in the public school choice program as required under this act.

(B) The board of directors of a public school district shall adopt specific standards for accepting or denying a public school choice application.

(C) Standards adopted by the school board:

(i) May include the capacity of the program, class, grade level, or building;

(ii) Shall give priority to the siblings or step-siblings of a student already attending the public school district under the

public school choice program; and

(iii) Shall not use an applicant's previous academic achievement, athletic ability, other extracurricular ability, disability, English proficiency level, or previous disciplinary proceeding, except an expulsion under § 6-18-510, as a basis for accepting or denying a public school choice application.

(D) A public school district is not required to add teachers, staff, or classrooms or to exceed the required standards adopted by the State Board of Education to accommodate applicants under the public school choice program.

(2)(A) A public school district may request from the state board an exemption to the public school choice program if the school board determines that the public school choice program:

(i) Is inconsistent with the desegregation obligations of the public school district pursuant to a current, binding federal desegregation order or plan;

(ii) Will lead to resegregation or create segregation in the public school district's schools on the basis of race, ethnicity, or national origin; or

(iii) Will interfere with measures designed to eliminate the vestiges of the state's prior dual system of education.

(B) A public school district requesting an exemption to the public school choice program shall submit documents to the state board that evidence:

(i) A current, binding federal desegregation order or plan;

(ii) The basis for determining that the public school choice program will lead to resegregation or create segregation in the public school district; or

(iii) The extent to which participation in the public school choice program will impede the public school district's ability to eliminate the vestiges of the state's prior dual system of education.

(C)(i) The state board may grant an exemption to a public school district for a period of three (3) years upon receipt of the documentation required under subdivision (b)(2)(B) of this section.

(ii) A public school district exempt from the public

school choice program shall not receive or transfer a student except by:

(a) Legal transfer under § 6-18-203, 6-18-204, 6-18-227, 6-18-307, or 6-18-316; or

(b) Determining that it is in the best interest of an individual student's educational, social, or psychological needs.

(3) A public school district under a federal desegregation order or plan that has not requested or received an exemption from the public school choice program under subdivision (b)(2) of this section is exempt if a federal court or federal agency determines that the public school choice program is inconsistent with the desegregation efforts of the public school district.

(c)(1) A public school district shall notify parents or guardians of the availability of the public school choice program, the application deadline, and the requirements and procedures for students to participate in the public school choice program by making public announcements over broadcast and print media.

(2) The parent or guardian of a student applying to participate in the public school choice program shall submit an application on a form approved by the state board to the superintendent of the nonresident school district no later than February 15 before the fall semester in which the student seeks to attend the nonresident school.

(3)(A) The superintendent of the nonresident public school district shall notify the parent or guardian in writing within thirty (30) days of receiving an application whether the application is accepted or denied.

(B) If the application is denied, the notification letter shall state the reason or reasons for denial.

(C) If the application is accepted, the notification letter shall state the deadline for the student to enroll in the nonresident public school district and the process for renewal established by the school district board of directors.

(4)(A) The parent or guardian of a student whose application for public school choice is denied may file a written appeal and request for a hearing before the state board.

(B) The appeal and request for a hearing shall:

(i) Include a statement outlining the basis for the appeal; and

(ii) Be filed within ten (10) days of receiving the notification letter from the nonresident public school district.

(C)(i) The state board shall consider the appeal and render a final decision in writing, stating the specific reason for the decision.

(ii) The state board shall approve the public school choice transfer if the state board determines that the transfer:

(a) Is in the best interest of the individual student;

(b) Would not have a negative impact on a federal desegregation court order or plan;

(c) Would not adversely affect the desegregation of either public school district involved;

(d) Would not promote the segregation or resegregation of either public school district involved; and

(e) Would not interfere with measures designed to eliminate the vestiges of the state's prior dual system of education.

(d)(1) A transfer of a student accepted under the public school choice program shall be valid until the student:

(A) Graduates from high school;

(B) Seeks another public school choice transfer; or

(C) Returns to his or her resident public school district.

(2) A student enrolled in a nonresident public school district on June 30, 2013, may remain enrolled in the nonresident public school district until the student:

(A) Graduates from high school;

(B) Seeks another public school choice transfer; or

(C) Returns to his or her resident public school district.

(3) A sibling or step-sibling of a student enrolled in a nonresident public school district on June 30, 2013, may enroll in the nonresident public school district until the sibling or step-sibling:

(A) Graduates from high school;

(B) Seeks an additional public school choice transfer; or

(C) Returns to his or her resident public school district.

(4) A nonresident school district may at any time terminate the enrollment of a nonresident student for disciplinary problems in addition to the other remedies available for disciplinary problems.

(e) A student who transfers to a nonresident public school district shall be:

(1) Counted in the average daily membership of the nonresident public school district; and

(2) Responsible for transportation to his or her nonresident school.

(f)(1) Each public school district participating in the public school choice program annually shall submit information required by the Department of Education to the Equity Assistance Center, including without limitation the:

(A) Number of students attending the public school district under the public school choice program;

(B) Characteristics and educational accomplishments of students attending the public school district under the public school choice program, including without limitation race, ethnicity, national origin, and gender; and

(C) The number of applications accepted or denied.

(2) The department may withhold state aid from any public school district that:

(A) Fails to file the report required under subdivision (f)(1) of this section; or

(B) Fails to comply with a request for information from the Equity Assistance Center within thirty (30) days of receiving the request.

(3) The department annually shall report to the House Committee on Education and the Senate Committee on Education a summary of information on the public school choice program, including without limitation the:

(A) Number of applications accepted or denied; and

(B) Characteristics and educational accomplishments of students attending the public school district under the public school choice program, including without limitation race, ethnicity, national origin, and gender.

(g) The state board shall adopt:

(1)(A) Rules to implement this section.

(B) The state board shall submit all proposed rules governing this section to the House Committee on Education and the Senate Committee on Education no later than October 1, 2013; and

(2) A public school choice program application form that addresses the:

(A) Reason for requesting a public school choice transfer;  
and

(B) Specific, individual educational and programmatic needs and benefits justifying the public school choice transfer.

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the current litigation regarding desegregation and school choice has led to uncertainty regarding school choice options; that uncertainty in public school choice options has a negative impact on parents, guardians, students, and public school districts; and that this act is immediately necessary to ensure that Arkansas has clear public school choice options for students before the next school year. 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/Elliott*