

2009 HOUSE EDUCATION

HB 1075

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1075

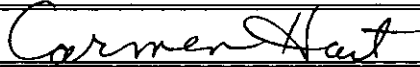
House Education Committee

Check here for Conference Committee

Hearing Date: January 12, 2009

Recorder Job Number: 6825

Committee Clerk Signature



Minutes:

**Rep. Duane DeKrey** put this bill in for the Wing School District. They have a child who is enrolled into the Bismarck School District. There is a question as to who should be on the team. The superintendent, who he put the bill in for, was not present.

**Chairman Kelsch** gave a little bit of background information. The Wing School District was paying for this student to come into the Bismarck School District, and they felt as though they should have a seat at the table when it comes to developing the plan for the student with disabilities. Because the student needed additional services, those costs came back to the Wing School District.

**Rep. David Rust:** Does that mean that the school district must be at those meetings or must be on team and can choose to be there? There is a lot of difference in that.

**Chairman Kelsch:** The way that the bill probably reads is that it must include an individual representing the student's school district. It doesn't say whether they attend or not.

**Rep. David Rust:** What does it mean by must include? If it is included on the team and the school has the option of sending somebody or not, that is a whole lot different than must include meaning must be there. That can hold up some decisions that need to be made, because it is amazing how many times people just can't be there. In the meantime, you are waiting to make a decision.

**Chairman Kelsch:** The way the bill is currently written, the assumption is there that the team would include that person. You don't say that the person must be at the meeting so that is what the assumption is. When they are put on the team, the team assumes that person would be there.

The following were in opposition:

**Mike Ahmann, Director of Special Education for the Bismarck Public Schools,** appeared in opposition of HB 1075. **(See Attachment 1.)**

**Chairman Kelsch:** Who is responsible for paying for those services you determine are necessary for that student?

**Mike Ahmann:** Basically the services that are determined by the IEP team on open enrollment, the special education services are the responsibility of the district that runs it.

Again, I would offer an opinion that part of that is because the property tax does not follow the student on open enrollment. The student is here not because the districts decided they want to come here, but because the parent has. Again, specifically if you would like to hear about a case such as Wing, I suggest one of the reasons they come here is because they don't have the services the child requires.

**Chairman Kelsch:** I totally understand. I just want to make sure. We are sitting here and talking about mandates that we put on school districts, and we talk about this and that and the other thing, there are some of these folks that need to realize that perhaps this is one of those issues where a school district should have at least an interest. This is what I am guessing is going on here even though there is a dispute. Certainly a school district would have an interest in the services that are being provided to those special needs children and whether they are appropriate or excessive. That is just a comment.

**Rep. David Rust:** That was kind of my point. You could have from your school district an enrolled student in another school district, and all of a sudden, you get a bill for which you have no idea about what has happened in between and a resident school district who is paying out dollars—you know it is kind of like taxation without representation. The fact of the matter is that you will get a bill for that and have had no chance to even sit at the meeting to know why.

**Mike Ahmann:** The bill also basically includes under North Dakota administrative rules a breakdown what those costs are. Included in that bill are things such as demographic information about the student, the services, and the amount of time the services are being provided.

**Rep. Phillip Mueller:** You mentioned that you had 45 students that are open enrolled into the Bismarck system that are students with disabilities. Do you have any representation from those other 45 districts on your IEP team?

**Mike Ahmann:** Previous to the current dispute, we always invited the other school district. Participation was unpredictable, quite honestly. After this dispute we then adopt a policy because our sense was that once reviewed, federal and state law that the right for faith and the rights for records had to be at least signed by the parents. Rather than evoke the area of dispute and seek the additional releases, we opted to adopt policy that lined with this quotation from our attorney that basically said we are responsible and we do not invite the home school district. The DPI document that was presented to us last week, the attorney general's opinion agreed with that position.

**Rep. Jerry Kelsh:** How many people are on the IEP team? How many people determine what the student needs?

**Mike Ahmann:** It varies a lot. There is a quorum that is mandatory by federal law. There must be an administrator on the IEP team. There must be someone with knowledge of

evaluation for that student. There must be a general ed. representative. There must be a special educator that has knowledge of the disability, and there must be a parent. That's the minimum—a minimum of five people. Typically, they can run anywhere from 5 to 20 people.

**Rep. Jerry Kelsh:** Then, there is no way that one representative could determine what the outcome of that meeting is? Maybe it could be somewhat disruptive, but maybe there is some history that needs to be known also to make it a quicker decision. If this would continue on, would it be proper to amend that to must include if they want to be on that? You stated some problems where they are invited and do not show up. If they want to be on there, they can be. If they don't want to be on there, they don't have to be.

**Mike Ahmann:** Taking that same scenario, I think there would be more acceptable language if there were more "mays" in there—may participate with permission of the parents perhaps as the rest of the terminology. Again, the opinion we received from our attorney without the written permission from the parents to invite and to release records, we could not invite those other school district representatives. Again, I would suggest if you are looking for alternative language, it might be understandable. I want to reinforce I understand the argument of representation on the \_\_\_ side. This is a not very popular position to take, but I am really trying to protect what both is in the federal law and protect our team. These kids come in, especially kids with dispute, and one of the things we really look at we need time to end that dispute at the door. We are really there to try to come up with a program that meets the needs of the child. Maybe if I need to allude to both—they may be a part of it because that would deal with the issue of not being able to show up or not wanting to show up. By doing that with this must language, they could hold up the whole process. IEPs have a timeline that have to be written by. The district serving them, myself as Bismarck Public Schools, if they took an elect and did not show up or couldn't show up because of storm and it was day 366—every 365 days you

must have an NYP—I am now out of compliance. My district then pays the consequences being out of compliance. Something with more "mays" would probably be more acceptable.

The following appeared for informational purposes:

**Bob Rutten, Director of Special Education, Department of Public Instruction,** appeared.

He fully appreciates that this may be somewhat confusing. He is not an expert on open enrollment but because of some of the questions that have come to their office, they really tried to sort through the issues both from the perspective current state law but also in terms of Federal Individuals with Disabilities Education Act. He presented a document that might be helpful. **(See Attachment 2.)**

**Rep. John Wall:** We know of the one instance that has been talked about this morning. Is this a prevalent problem? Is this one you encountered before? Is it an isolated instance?

**Bob Rutten:** It seems like every late summer and fall, we get questions. Every situation seems to be a variation on one of those three scenarios. In terms of how many actually contact, I would say probably fewer than a half dozen in our office. It is not a large number but in those instances where it does come to our attention, it seems to be pretty drawn out.

**Rep. David Rust:** Have special education directors across the state weighed in on this?

**Bob Rutten:** Not formally to me or the department. I received a letter from a special education director who was actually related to the districts that were involved with the legislation. Mr. Ahmann informed me this morning that the local special education administrators met on Friday, and apparently there is disagreement that is safe to say between the members of the special education study.

**Rep. Phillip Mueller:** He referred his question to the very last square in the open enrollment variation column. Is that in the law currently or in rules in the department? How do we get to that right hand bottom square in this terminology?

**Bob Rutten:** The resident district does not participate and does not have a voice in determination of student services for cost. I don't believe it is in administrative rules.

**Chairman Kelsch:** Is it within the federal code?

**Bob Rutten:** That would make sense because that would go back to those required members of an IEP team.

**Rep. Phillip Mueller:** Is this federal rule then?

**Bob Rutten:** I would say it is interpretation of federal rule.

The hearing is closed.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1075

House Education Committee

Check here for Conference Committee

Hearing Date: January 12, 2009

Recorder Job Number: 6847

Committee Clerk Signature

*Carman Hart*

Minutes:

**Chairman Kelsch** asked a few questions to get the feel of the committee. Is it one incident and that is why we have the legislation? Is it something that we want to put in the state code—something to where we use “may invite” and not have the “must.” Perhaps put something in further in there that if there is a dispute. The reason she is asking this is because if she gets the sense from the committee that we think we need the right to do that, she will put it into a subcommittee and get those amendments drafted for it.

**Rep. Corey Mock:** Didn't Bismarck Public Schools change their policy as a result of this to no longer invite representatives out of other districts?

**Chairman Kelsch:** They did and the reason that they did it was because of this dispute. It is something where they could potentially go back to the way that it originally was because it had been working out just fine. It was because of the dispute that they needed to change the policy.

**Rep. Phillip Mueller:** If this language on the open enrollment variation column of the handout is correct—imposed by the federal government, do we really have a choice in this matter?

**Chairman Kelsch:** What is the interest? Certainly the school district has a monetary interest in that student. In most cases I think that the school district is allowing that student to go because they know they can't provide the services. They know that they will provide services



better by going to another school district. Can we say that it can be allowed? Is it something that happened here and people know now that it can be allowed?

**Rep. David Rust:** Let us suppose we have a dispute. The parents live in Mandan. They decide to open enroll their child in the Bismarck system where there probably would not be a dispute, and Mandan gets hit with the bill for the excess cost without ever attending those meetings. I am torn between that and putting this in the bill and then bogging down the process of maybe not getting everybody to a meeting. As a former administrator, I never liked getting bills for things in which I was not even allowed to get a meeting if that is the case.

**Chairman Kelsch:** That is kind of where I am coming from with this too. How would you like it if your school district gets hit with \$100,000 bill and didn't know anything about it? It all of sudden came to you and you weren't part of it. We are charged with the responsibility of saying okay you are right. We don't want to discriminate against any child. We don't want to encumber the process so that the process doesn't work appropriately. On the other hand, I feel as if though the school districts need to have a heads up somehow. They need to know that this is coming. For some of those small school districts--all of a sudden, a \$50,000 bill can be really drastic for them.

**Rep. David Rust:** Does anybody find it interesting that in the other tuition agreement has a voice and in open enrollment does not have a voice? It works in one place and not in the other?

**Chairman Kelsch:** I do think that probably has to do with the interpretation of the federal law.

**Rep. Phillip Mueller:** It goes back to a tuition agreement. It means that school district gets chosen to pay tuition for that student who is going elsewhere. That would certainly lead me to think that they should have the opportunity as your suggesting, Madam Chair. What does

generally end up being the obligation of that school from which the student was open enrolled from? Does it go back to the formula for special education which is 4-4 ½ times the cost?

**Chairman Kelsch:** The foundation aid and the federal funding follow the child. The special education funds would follow that student and the excess cost that is paid for by the sending school district.

**Dr. Gary Gronberg, DPI:** As you may recall, last session we also changed this law, but not with special education students. Under the old open enrollment law, both districts had to concur—one to be released and the other to accept. Now only a notification to the district of residence has to be applied and the only acceptance is on the part of the new receiving district. This is caught up in and still a part of that, because many open enrollment kids do not have a good relationship with the district they are leaving.

**Rep. Jerry Kelsh:** I guess if the school district of residence is hindering by not showing up with meeting, I don't think we want that to happen either. It could be put in language that if they missed two scheduled meetings or something, the rest of the IEP team can go ahead so they can't stop the process and harm the student. Leaving them totally out is a problem for me. If it is a situation where the accepting school districts want to be vindictive or do what they need to do also as far as that student is concerned and maybe get by with.

**Chairman Kelsch:** If this is just one person on the team and maybe not necessarily on the team. Maybe they are in the room or maybe they're invited in to the meeting so they have an understanding as to what is being proposed. I don't know. Maybe that is a possibility.

**Rep. Jerry Kelsh:** I know the reasons that we can't have anymore facts. Is the school district of residence in this case being obstinate about the situation? Why is this friction happening?

**Chairman Kelsch:** The parents requested the child be moved to the Bismarck Public School system. I do believe it is a fear on the school district that they are going to see excessive cost.

**Rep. Corey Mock:** My biggest concern is especially when it is a situation of a dispute is according to what we had in earlier testimony, it has to be a professional that is outside the IEP team that is allowed at these meetings. A professional may or may not be allowed by federal law. Is a resident school district considered a professional or just an individual of interest? I think that is the question that should be answered first before we even move on to the questions of language and whether this is something to give a recommendation to pass.

**Rep. David Rust:** Someone can open enroll in your school district and at will decide I am going back. You may think that you no longer have an interest with this child is going to be doing, but you might find on a given day, you are walking back in the door. Most of them are there for a reason. Many of them are not for the reason that is stated.

**Rep. Dennis Johnson:** \_\_\_ leave in the first place.

**Chairman Kelsch:** There is still a lot of questions not answered so I will put this into a subcommittee—**Rep. Corey Mock, Vice Chair Lisa Meier, and Rep. David Rust. Vice Chair Lisa Meier** will chair this subcommittee.

**Rep. Phillip Mueller:** Are the IEPs open meetings?

**Chairman Kelsch:** Those are not open meetings because of the privacy of the child.

**Rep. Karen Karls:** Does the school fit the entire bill?

**Chairman Kelsch:** For the educational purposes, yes. If it is services outside of the school district, then the students in those would have a role in those.

The meeting was adjourned.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1075

House Education Committee

Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7365

Committee Clerk Signature

*Carmen Hart*

Minutes:

**Vice Chair Lisa Meier** stated the subcommittee had met. They had some great discussion with Mike Ahmann and DPI on this bill. After visiting with them, Mike Ahmann had stated that the reason why Bismarck has policy that includes parents—this had to do with open enrollment—is because of federal rule. DPI stated that this is the only time that this has actually occurred. The subcommittee decided it was a good idea to not cut this bill.

**Rep. Lyle Hanson** asked **Rep. David Rust** a question. If a special ed. student open enrolls to another district, what is the average cost that the sending district has to pay?

**Rep. David Rust:** It really depends on what the issues are. It depends on the severity of the special education problems. It can be minimal. Suppose they want to send them to speech therapy and you might end up getting billed for \$1,000 or \$2,000. Heavy duty special ed. could cost you \$30,000.

**Chairman Kelsch:** I think it is important for us to have this on record. We reviewed this issue and that if it looks like a school district might be receiving a bill from the school district that is sending a student and if a student is going to have extremely large special ed. costs, the receiving school district at least has the wherewithal within them to contact that school district so that school district knows that the bill is coming.

**Vice Chair Lisa Meier** made a motion for a **Do Not Pass**. **Rep. Corey Mock** seconded the motion.

**DO NOT PASS, 14 YEAS, 0 NAYS.** **Vice Chair Lisa Meier** is the carrier of the bill.

Date: 1-20-09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1075

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep Meier Seconded By Rep. Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman RaeAnn Kelsch	✓		Rep. Lyle Hanson	✓	
Vice Chairman Lisa Meier	✓		Rep. Bob Hunsakor	✓	
Rep. Brenda Heller	✓		Rep. Jerry Kelsch	✓	
Rep. Dennis Johnson	✓		Rep. Corey Mock	✓	
Rep. Karen Karls	✓		Rep. Phillip Mueller	✓	
Rep. Mike Schatz	✓		Rep. Lee Myxter	✓	
Rep. John D. Wall	✓				
Rep. David Rust	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Meier

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
January 26, 2009 1:13 p.m.

Module No: HR-11-0930  
Carrier: L. Meler  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1075: Education Committee (Rep. R. Kelsch, Chairman) recommends DO NOT PASS**  
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1075 was placed on the  
Eleventh order on the calendar.

2009 TESTIMONY

HB 1075



House Education Committee

HB 1075

January 12, 2009

Attachment 1  
HB 1075

Madam Chairman and members of the Committee, my name is Mike Ahmann, I am the Director of Special Education for the Bismarck Public Schools. I am here to speak in opposition to HB 1075. I believe this bill is in response to a situation that occurred involving a student who open enrolled from a small graded elementary school into Bismarck Public Schools. The student has a disability and the parent open enrolled into Bismarck after a history of disputes between the home District and the parent. Upon starting school in Bismarck, the parent requested that the home District representatives not be invited to IEP meetings, and that any records developed here, not be shared with the home school District. Following a series of conversations with the Dept. of Public Instruction, the student's resident District and Bismarck Public Schools, we sought an opinion from our Districts attorney. After researching ND Open Enrollment law including: the liability for providing FAPE; the makeup of the IEP team; and the sharing of educational records, his opinion concluded with the following: "Children attending school under the open enrollment provisions of Chapter 15.1-31 are not placed in the Bismarck Public Schools by the district of residence, are not subject to the "contract for services" provisions of Section 67-23-02-02 of the North Dakota Administrative Code, and are the responsibility of the Bismarck Public Schools for purposes of being provided with a Free Appropriate Public Education (FAPE). For all the above stated reasons, the parents of these open-enrolled students appear to have the right to oppose sharing their students' educational records (other than those necessary to document expenses for which the resident district is financially responsible), as well as the right to oppose the involvement of the resident district in IEP meetings."

On Thursday, January 8, 2009, Bob Rutten, NDDPI Director of Special Education released a document entitled "Responsibility for ND Students with Disabilities Educated in Non-Resident Districts". I have attached this document to my testimony. This document was prepared by the Department following consultation with the office of the ND Attorney General. As you can see, this document concurs with the opinion rendered by our attorney regarding this issue: that the responsibility for development of the IEP rests with the serving District and participation at the meeting is determined by the serving district, and further the records are the responsibility of the serving district.

In conclusion, the issue of open enrolled students is quite different from other cases where the resident district places a student with disabilities in a district other than the resident district for purposes of education. A parent who open enrolls their child into another district does it for a variety of reasons. We currently have 45 students open enrolled in Bismarck Public Schools who have a disability. The reasons the parents have open enrolled vary from reasons such as the parents work in Bismarck and it would be more convenient, to the services their child require are not available in the resident district. Many of the families have open enrolled here because of a previous dispute with the resident district. Especially in these cases, it is to the advantage of the student to not have the dispute follow them into the new placement, and therefore, it is desirable to not include the resident district in future meetings. The last concern I have about the proposed language in HB 1075 is in regards to the language that states the team must include an individual representing the student's school district of residence. This added team members mandatory participation will add a requirement that will complicate, as well as potentially delay meetings, that have mandatory participants with defined deadlines for holding these meetings.

I would like to restate my opposition to HB 1075. I would be happy to answer any questions you may have.

**Michael Ahmann**

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**From:** Souther, Michelle K. [msouther@nd.gov]  
**Sent:** Thursday, January 08, 2009 7:12 AM  
**To:** bell@west-fargo.k12.nd.us; brenda.jordan@sendit.nodak.edu; burleigh@midconetwork.com; carol.jabs@sendit.nodak.edu; carrie.odden@sendit.nodak.edu; cheryl.wold@sendit.nodak.edu; connie.hovendick@sendit.nodak.edu; dena.larson@sendit.nodak.edu; dot.martinson@dickinson.k12.nd.us; eikro@hotmail.com; Fogelson, Dennis; hayley.ness@sendit.nodak.edu; janelle.ferderer@sendit.nodak.edu; jesse.krieger@sendit.nodak.edu; jporter@rrt.net; mary.stammen@sendit.nodak.edu; Michael Ahmann; norma.nosek@sendit.nodak.edu; pam.engelhardt@msd1.org; pamela.m.aman@sendit.nodak.edu; pgss@ndak.net; psec@polarcomm.com; r.charley@sendit.nodak.edu; rhoda.young@sendit.nodak.edu; rhonda.white@sendit.nodak.edu; Schauer, Kathleen F.; sherry.manning@sendit.nodak.edu; shuss@wilmacsped.com; swsped@ndsupernet.com; tori.johnson@gfschools.org; wriver@goesp.com; yatesjo@fargo.k12.nd.us  
**Cc:** Smith, Kathy L.; Gronberg, Gary W.; Coleman, Jerry A.; Vega, Kim A.; -Grp-DPI Special Ed Prgm  
**Subject:** Responsibility for ND Students with Disabilities Educated in Non-Resident Districts  
**Attachments:** ND Students Educated in Nonresident Districts.docx

January 8, 2009

**MEMO TO:** Special Education Unit Administrators  
**FROM:** Bob Rutten, NDDPI Director of Special Education  
**SUBJECT:** Responsibility for ND Students with Disabilities Educated in Non-Resident Districts

Over the past year our office received several requests for clarification regarding the determination of responsibility for students with disabilities who are educated in non-resident districts. Following consultation with the office of the ND Attorney General and meetings within our own agency, the Department prepared a comparison of factors related to open enrollment, tuition agreements, and student contracts. The attached document is intended to provide guidance based on current law. The Department encourages you to use this document to process questions that arise when students with disabilities are educated in non-resident districts. We welcome your feedback on this document and sincerely hope that it will assist you as you fulfill your administrative responsibilities.

## Responsibility for ND Students with Disabilities Educated in Non-Resident Districts

Factors to be Compared	Open Enrollment	Tuition-Agreement	Student Contract
<b>Residency</b>	Student acquires a new school resident district, no longer a relevant issue unless student is a special education student. Open enrollment policy in 15.1-31-04 requires payment by resident district for providing special education and related services to the student. No contract is developed. The resident district is invoiced for services delivered.	Education remains responsibility of the school district of residence. Provision of service is provided by educating district. Payment for tuition is waived through development of a tuition agreement. Third party provider (special education unit) pays or provides for special education and related services.	Education remains responsibility of the school district of residence. Service provided by educating district through a contract for services (tuition agreement).
<b>Educating District</b>	Receives all elements of state aid. Excess costs of providing special education and related services billed to resident school district. 15.1-31-04.	A shared services payment from special education unit is received to offset tuition-waived costs. Educating district receives state aid payment.	Negotiates and approves student contract for provision of special education and related services. Educating district receives state aid payment.
<b>Duration</b>	Ongoing from point of enrollment until child graduates or parent moves out of resident district. IEP annually reviewed.	For duration of needed services specified in the child's IEP. Annual review of contract/tuition agreement.	For duration of needed services specified in the child's IEP. Annual review of contract/tuition agreement.
<b>Responsibility for Payment for costs of education</b>	None if child does not have disability. Excess costs are paid if child has a disability.	Shared by districts participating in unit.	All costs after state aid payment is credited to contract are billed to resident district as a contract cost.
<b>Appeal Options/Recourse</b>	None unless excess costs exceed 4.5 times average cost. If in excess of this amount, may apply to state for payment of 68% of costs	Negotiated agreement. Final say w/ district of residence. May choose to serve in resident district or some other placement .	Negotiated agreement. Final say w/ district of residence.
<b>IEP - Responsibility</b>	Responsibility for development of IEP rests with the serving district.	Responsibility for development of IEP rests with the serving district. School district of residence assumes responsibility for excess costs of providing special education and related services.	Responsibility for development of IEP rests with the serving district. School district of residence assumes responsibility for excess costs of providing special education and related services.
<b>IEP – Participation</b>	Serving district assumes responsibility for IEP. The resident district may be invited, if the serving district so chooses.	IEP team must include both the resident and serving districts.	IEP team must include both the resident and serving districts.
<b>Student Records</b>	Student records are the property and responsibility of the serving district. This includes assignment of the student's performance for AYP purposes.	Under FERPA, district of residence must maintain cumulative records/ permanent file for students, regardless of where the student graduates. Copies of records are kept by the serving district.	Under FERPA, district of residence must maintain cumulative records/ permanent file for students, regardless of where the student graduates. Copies of records are kept by the serving district.

Attachment 2  
tTB 10 75**IEP Meeting  
Participants**

The specific roles and responsibilities of each required participant are detailed in this section.

**Sec. 300.321****IEP Team**

- (a) *General.* The public agency must ensure that the IEP Team for each child with a disability includes-
- (1) The parents of the child;
  - (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
  - (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
  - (4) A representative of the public agency who--
    - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
    - (ii) Is knowledgeable about the general education curriculum; and
    - (iii) Is knowledgeable about the availability of resources of the public agency.
  - (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
  - (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
  - (7) Whenever appropriate, the child with a disability.
- (b) *Transition services participants.*
- (1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under Sec. 300.320(b).
  - (2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.
  - (3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.
- (c) *Determination of knowledge and special expertise.* The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.
- (d) *Designating a public agency representative.* A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

## Comparison Based on Education Circumstances for a Child with a Disability: A Typical Resident Situation compared to Open Enrollment

Factors	How a Typical Situation Works	How Situation Changes When Serving District and Resident Are Not Same.	
		Tuition Agreement	Open Enrollment Variation
Duration	As long as child's parent is a resident of the district	As long as the child's parent is a resident of the district	Ongoing from the point of enrollment until the child graduates or parent moves out of resident district
Decision Making	The IEP team, which includes the child's parent, makes the IEP decisions.	The IEP team in the serving district, which includes the child's parent, and a representative of the resident district make the IEP decisions.	The IEP team in the serving district, which includes the child's parent, makes the IEP decisions.
Funding that supports the child	State foundation aid, local property tax, federal funds	State foundation aid, local property tax, federal funds	State foundation aid and federal funds
Responsibility for Payment	Local school district utilizes state foundation aid, local property tax, and federal funds	State and federal funds follow the child; the resident district and the serving district develop a tuition agreement for other costs of services.	State and federal funds follow the child; the resident district is invoiced for the excess costs of special education (NDCC 15.1-31-04)
Availability of Services	Not an issue	May be a basis for educating in a non-resident district	May be the basis for the open enrollment.
Appeal Options/Recourse	Not an issue relative to costs	The resident district is participating and has a voice in determination of services and related costs	The resident district does not participate and does not have a voice in determination of student services or costs.

<b>Scenario 1</b> <b>Dispute Situation</b>	<b>Scenario 2</b> <b>Parental Choice - Convenience</b>	<b>Scenario 3</b> <b>Availability of Services</b>
<ul style="list-style-type: none"> <li>• Lives in district A</li> <li>• Open Enrolls to district B to remove child from dispute situation</li> </ul>	<ul style="list-style-type: none"> <li>• Lives in district A</li> <li>• Works in district B</li> <li>• Wants to open enroll in district B</li> </ul>	<ul style="list-style-type: none"> <li>• Lives in district A</li> <li>• District B has services that district A does not have</li> <li>• Open enrolls in district B</li> </ul>