

SUBJECT: Admission of nonresident children attending public schools

COMMITTEE: Public Education — favorable, without amendment

VOTE: 7 ayes — Grusendorf, Branch, Dawson, Eissler, Griggs, Hochberg, Madden
0 nays
2 absent — Oliveira, Dutton

WITNESSES: For — Diane Jackson, Spring Branch ISD
Against — None

BACKGROUND: Education Code, sec. 25.001(d) sets forth conditions under which a school board can refuse to admit a student who is less than 18 years of age and is not living at home with a parent or legal guardian. The board first must establish that the student is a resident of the district and is not seeking to enroll only for extracurricular activities. Once that condition is met, the board still may refuse to admit a student if he or she has engaged in misconduct leading to removal to an alternative education program or expulsion, needs supervision for delinquent conduct, or is on probation or conditional release for delinquency or a criminal offense.

DIGEST: HB 2013 would allow a school board, beginning with the 2003-04 school year, to refuse admission to a student if the board determined that the student was in the school district primarily to avoid enrolling in another school district outside of Texas.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

SUPPORTERS SAY: HB 2013 would address a problem in border communities where a growing number of out-of-state or out-of-country students are leaving home to attend school in Texas. Legitimate reasons for moving to another school include the divorce or death of the custodial parent, when a child is in foster care, or

when a court orders a temporary residence change. Homeless students also are very transitory and may enroll in a school without proving legal residence. However, one of the main reasons that nonresident students enroll in Texas schools is that their legal guardians believe that they will receive a better education in Texas than they would in their legal residence.

This creates a difficult situation for school districts trying to manage double-digit enrollment growth. Texas border schools are located in the some of the poorest districts in the state, yet they continue to provide a high-quality education to students, even in crowded conditions. At a time when state and local budgets are in fiscal crisis, border school districts need tools for enforcing residency requirements for school attendance.

The addition of hundreds of nonresident students every year drives up facilities costs and student-teacher ratios. For example, when an elementary school must maintain a 22 to 1 student-teacher ratio and one additional child enrolls, the school district then is under a burden to add a new classroom and a new teacher to accommodate the twenty-third student. Passing bond issues to pay for facilities increases a school district's interest and sinking fund, thus driving up local property taxes. Students who are legitimately enrolled in school deserve to have a comfortable learning environment, and Texas taxpayers deserve relief from having to support students who are attending Texas schools under false pretenses.

HB 2013 would ensure that enrolled students had a verifiable local address and that they were living with their parents, guardians, or other people having lawful control over them due to a court order. At one high school in Texas located near a colonias development, as many as 400 new students register for school each day, and the school has only one attendance officer to verify residency for all students. Currently, students need only a notarized letter stating that they are living within school district boundaries. These letters are easily falsified. Some residents have been caught taking in a dozen young boarders at a time and charging them money to provide a notarized letter stating that they are living with a relative or legal resident, when in fact they are not.

Allowing schools to require court-approved documentation that students are living with a resident legal guardian would protect students. In some

instances, a child has been brought across the border illegally, against his or her parent's wishes, and enrolled in school with falsified documents. Requiring court ordered documents would ensure that a child had the parent's consent to be in the district.

Another issue is when students cross state lines to avoid disciplinary issues at their home schools or to evade prosecution in their hometowns. For example, Los Angeles' connection to El Paso is very strong, and L.A. gang members who get into legal trouble in California often move to El Paso to live with friends or relatives and enroll in El Paso schools. When a student transfers within Texas, it is easier to track disciplinary actions in the student's former district, but it is more difficult to do so when the student comes from out of state. Requiring more than a notarized letter would give school districts more to go on when tracking a student's originating school district and the real reason he or she left to come to Texas.

HB 2013 would be permissive, allowing a school board to deny admission to a student if the board found that the student's sole purpose was to avoid enrollment outside of Texas. The bill would not allow school districts to discriminate against immigrants. It simply would allow school districts to require that all nonresident students had proper, legal documentation that they were living with a resident legal guardian. A school board already may adopt reasonable guidelines for determining admission. This bill would give school boards one more option for making that determination.

**OPPONENTS
SAY:**

HB 2013 would allow school boards to discriminate against undocumented immigrants seeking a public education in Texas, which the U.S. Supreme Court has declared unconstitutional. In 1982, the high court ruled in *Plyer v. Doe* (457 U.S. 202) that a Texas statute denying enrollment to undocumented children violated the Equal Protection Clause of the 14th Amendment. The court said that depriving children of a public education is not like depriving them of another governmental benefit and that imposing such "an obstacle to individual achievement" would create a "lifetime hardship" that would take "an inestimable toll on the social, economic, intellectual, and psychological well-being of the individual."

While fast-growth school districts may experience facilities and staffing constraints due to an increasing student population, enrollment growth is fully

funded by the state. Because the addition of one student increases a school district's Foundation School Program entitlement amount by \$5,700, the local share does not increase at the time a new student enrolls. Thus, extra student enrollment creates a state tax burden rather than a local tax burden. Even though a student and his or her resident guardian may not pay local property taxes, they likely are contributing to state sales-tax revenue, so at one level, they are paying their fair share of educational costs.

HB 2013 would create financial difficulties for families in cultures where an extended family structure is common. Obtaining a court-approved certificate declaring a relative to be a student's legal guardian requires the services of a lawyer. Many families that would be affected by this bill might not be able to afford an attorney or qualify for legal aid. Many of the children targeted by the bill are living with grandparents or aunts or uncles legitimately, but it takes time for a family court to rule on such matters. Meanwhile, the child would be out of school, deprived of an education. This flies in the face of American values, which traditionally have welcomed people from across our borders with open arms.

HB 2013 could have unintended consequences in other Texas school districts not located in the border region. At a time of heightened international security because of the threat of terrorism, the bill could lead to racial profiling in schools by giving school districts a legal reason to discriminate against any student who might look different from other children.

NOTES:

The Public Education originally recommended that HB 2013 be sent to the Local and Consent Calendars Committee.