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An Act To Amend the Process Controlling the Transfer of a Student between School Administrative Units

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 20-A MRSA §5205, sub-§6, ¶A, as amended by PL 2013, c. 337, §1, is further amended to read:

A. Two superintendents may approve the transfer of a student from one school administrative unit to another if:

(1) They find that a transfer is in the student's best interest. For purposes of this subparagraph, a transfer is in the student's best interest if the student or the parent of the student demonstrates that the student has significant and unique educational, health or safety needs that:

(a) Are school-related;

(b) Cannot be met by the school administrative unit in which the student resides; and

(c) Would be met as a result of the transfer and the student's maintaining nonresident status; and

(2) The student's parent approves.

The superintendents shall notify the commissioner of any transfer approved under this paragraph. ~~If either of the superintendents decidedecides not to approve the transfer, the superintendents that superintendent shall provide to the parent of the student requesting transfer under this paragraph a written description of the basis of theirthat superintendent's determination that the transfer is not in the student's best interest.~~

Sec. 2. 20-A MRSA §5205, sub-§6, ¶B, as repealed and replaced by PL 2013, c. 424, Pt. J, §1, is amended to read:

B. On the request of the parent of a student requesting transfer under paragraph A, the commissioner shall review the transfer. The commissioner shall review the superintendents' determination and communicate with the superintendents and with the parent of the student prior to making a decision. ~~TheIf the commissioner finds that the determination of one or both of the superintendents to deny the transfer is not arbitrary and capricious, the commissioner may approve orshall disapprove the transfer and. If the commissioner finds the determination is arbitrary and capricious, the~~

commissioner may approve the transfer. In either case, the commissioner shall provide to the parent of the student and to the superintendents a written decision describing the basis of the commissioner's determination that the transfer is or is not in the student's best interest.

Sec. 3. 20-A MRSA §5205, sub-§6, ¶F, as enacted by PL 2013, c. 337, §2, is amended to read:

F. If dissatisfied with the commissioner's decision, a parent of a student requesting transfer or either superintendent may, within 10 calendar days of the commissioner's decision, request that the state board review the transfer. The state board shall review the ~~commissioner's~~superintendents' determination and communicate with the commissioner, the superintendents and the parent of the student. ~~The~~If the state board finds that the determination of one or both of the superintendents to deny the transfer is not arbitrary and capricious, the state board may approve or shall disapprove the transfer. ~~The~~If the state board finds that the determination is arbitrary and capricious, the state board may approve the transfer. In either case, ~~the~~ state board shall make a decision within ~~30~~45 calendar days of receiving the request and shall provide to the parent of the student, the superintendents and the commissioner a written decision describing the basis of the state board's determination ~~that the transfer is or is not in the student's best interest.~~ The state board's decision is final and binding.

SUMMARY

Under current law, a student or the parent of a student may request a transfer to a school administrative unit in which the student does not reside. The superintendents of both the sending and the receiving school administrative units may approve the transfer if they find that it is in the best interests of the student. The decision is appealable to the Commissioner of Education, who may approve or disapprove the transfer. That decision is appealable to the State Board of Education, which may approve or disapprove the transfer.

This bill provides a standard for what constitutes a student's best interest. The bill requires that, if the decision of one or both of the superintendents to deny the transfer is appealed, the Commissioner of Education must uphold the decision unless the commissioner determines that the decision to deny the transfer was arbitrary and capricious, in which case the commissioner may approve the transfer. If that decision is appealed to the State Board of Education, the board must uphold the decision to deny the transfer unless the board determines that the decision was arbitrary and capricious, in which case the board may approve the transfer.