

## LEGISLATIVE BILL 367

Approved by the Governor April 8, 1987

Introduced by Baack, 47

AN ACT relating to handicapped children; to amend sections 43-606, 43-607, 43-611.01, 43-617 to 43-619, 43-625, 43-642, 43-646, 43-646.01, 43-646.03, 43-646.06, 43-646.09, 43-647, 43-647.01, 43-650, 43-651, 43-653, 43-660, 43-664 to 43-666, 43-669 to 43-677, 43-679, 43-680, 79-1369, 79-1903, 79-1911, and 79-2003, Reissue Revised Statutes of Nebraska, 1943, sections 43-605 to 43-605.03, 43-607.02, 43-611, 43-626, 43-626.01, 43-641, 43-643, 43-646.02, 43-646.08, 43-649, 43-661 to 43-662.01, 79-444, 79-4,102, 79-2213, 83-366, and 83-382, Revised Statutes Supplement, 1986, and section 43-648, Revised Statutes Supplement, 1986, as amended by section 2, Legislative Bill 2, Eighty-ninth Legislature, Fourth Special Session, 1986; to adopt the Special Education Act; to change and eliminate certain provisions relating to handicapped children; to harmonize provisions; to provide an operative date; to repeal the original sections, and also sections 43-601, 43-602, 43-607.01, 43-608, 43-610.01, 43-616.03, 43-622, 43-623, 43-624, 43-629, 43-630, 43-632, 43-640, 43-645, 43-646.04, 43-646.05, 43-646.07, 43-646.10, 43-667, 43-668, 43-678, 79-203, 79-204, and 79-318, Reissue Revised Statutes of Nebraska, 1943, sections 43-620, 43-621, 43-627.01, and 43-631, Revised Statutes Supplement, 1986, and section 43-604, Revised Statutes Supplement, 1986, as amended by section 1, Legislative Bill 2, Eighty-ninth Legislature, Fourth Special Session, 1986; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 65 of this act shall be known and may be cited as the Special Education Act.

Sec. 2. It is the intent of the Legislature that all children in the State of Nebraska, regardless of physical or mental capacity, are entitled to a meaningful educational program.

Sec. 3. As used in the Special Education Act, unless the context otherwise requires, the definitions found in sections 4 to 14 of this act shall be used.

Sec. 4. Adjusted average per pupil cost of the preceding year shall mean the amount computed by dividing the total instructional expenditure, excluding special education expenditures, by the preceding year's average daily membership as reported in the annual finance report. The costs of sectarian instruction shall not be included in determining the adjusted average per pupil cost of the preceding year, and the computation shall be subject to audit by appropriate state agencies.

Sec. 5. Allowable costs shall mean salaries, wages, benefits, and maintenance, supplies, travel, and other expenses essential to carry out the provisions for special education.

Sec. 6. Average per pupil cost of the servicing agency shall mean the amount computed by dividing the total operating expenditure of the preceding year, excluding the cost of sectarian instruction, of the servicing agency by its preceding year's average daily membership.

Sec. 7. Diagnosis shall mean those procedures carried out by professionally certified or licensed personnel but shall not include those activities which involve screening and analysis of student populations prior to the provision of diagnostic services by professionally certified or licensed personnel.

Sec. 8. Excess cost shall mean the difference between the total cost of the special education program excluding residential care and the number of students in the special education program multiplied by the adjusted average per pupil cost of the preceding year for the resident school district of each child.

Sec. 9. Handicapped child shall mean that child who is classified as mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, behaviorally disordered, orthopedically impaired, other health impaired, deaf-blind, or multihandicapped or has specific learning disabilities and who, because of such impairments, needs special education and related services. For purposes of this section:

(1) Behaviorally disordered child shall mean a child with a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree which adversely affects educational performance:

(a) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(c) Inappropriate types of behavior or feelings under normal circumstances;

(d) A general pervasive mood of unhappiness or depression; or

(e) A tendency to develop physical symptoms or fears associated with personal or school problems.

The term shall include a child who is schizophrenic but shall not include a child who is socially maladjusted unless such child exhibits characteristics defined in subdivision (a) or (b) of this subdivision;

(2) Deaf shall mean a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance;

(3) Deaf-blind shall mean concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that such impairments cannot be accommodated in special education programs solely for deaf or blind children;

(4) Hard of hearing shall mean a hearing impairment, whether permanent or fluctuating, which adversely affects educational performance but is not included under the term deaf in subdivision (2) of this section;

(5) Mentally retarded child shall mean a child who has a significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period which adversely affects the child's educational performance;

(6) Multihandicapped child shall mean a child who has concomitant impairments, such as mentally retarded-blind or mentally retarded-orthopedically impaired, the combination of which causes such severe educational problems that such child cannot be accommodated in special education programs for one of the impairments. The term shall not include deaf-blind children;

(7) Orthopedically impaired child shall mean a child who has a severe orthopedic impairment which adversely affects such child's educational performance.

Severe orthopedic impairments shall include impairments caused by (a) congenital anomaly, including, but not limited to, clubfoot or absence of a member, (b) disease, including, but not limited to, poliomyelitis or bone tuberculosis, or (c) other causes, including, but not limited to, cerebral palsy, amputations, and fractures and burns which cause contractures:

(8) Other health impaired child shall mean a child:

(a) Having an autistic condition which is manifested by severe communication and other developmental and educational problems; or

(b) Having limited strength, vitality, or alertness due to chronic or acute health problems, including, but not limited to, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance;

(9) Specific learning disability shall mean a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such term shall include, but not be limited to, perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia;

(10) Speech and language impaired child shall mean a child with a communication disorder such as stuttering, impaired articulation, language impairments, or voice impairment which adversely affects the child's educational performance; and

(11) Visually handicapped child shall mean a partially seeing or blind child whose visual impairment, even with correction, adversely affects the child's educational performance.

The State Department of Education shall be authorized to group or subdivide the classifications of handicapped children for the purpose of program description and reporting.

Sec. 10. Related services shall mean transportation services and such developmental, corrective, and other supportive services, including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, as may be required to assist a handicapped child to benefit from special education and shall include the early identification and

assessment of handicapping conditions in children. Medical services shall be for diagnostic and evaluation purposes only.

Sec. 11. Special education shall mean specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

Sec. 12. Residence of a child shall mean the legal residence of the parent or legal guardian.

Sec. 13. Residential care shall mean food and lodging and any other related expenses which are not a part of the education program, but such care shall not include expenditures for medical or dental services. Expenditures for medical and dental services shall be the responsibility of the parent or legal guardian.

Sec. 14. Servicing agency shall mean the school district, educational service unit, local or regional office of mental retardation, or some combination thereof or such other agency as may provide a special education program approved by the State Department of Education, including an institution not wholly owned or controlled by the state or any political subdivision to the extent that it provides educational or other services for the benefit of children from the age of five to the age of twenty-one years who are handicapped, as such term is from time to time defined by the Legislature, if such services are nonsectarian in nature.

Sec. 15. That section 43-646, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

**43-646-** This act The Special Education Act shall apply to any children from the date of diagnosis or the date of notification of the resident school district to age twenty-one. The State Department of Education, Division of Vocational Rehabilitation, shall, in compliance with federal guidelines, assume responsibility for the training of those individuals whose education or training is terminated and for whom additional supportive services are required.

Sec. 16. That section 43-605, Revised Statutes Supplement, 1986, be amended to read as follows:

**43-605-** The Legislature hereby finds and declares that there is a need to establish a process and criteria to assess, identify, and verify children who may require special education. Research-based criteria

and a rational process for the assessment of children who may require special education will lead to greater equity, consistency, and efficiency in the identification of and the provision of services to such handicapped children. It is the intent of the Legislature that all children who require special education services shall be identified and verified pursuant to such criteria and process.

Sec. 17. That section 43-605.01, Revised Statutes Supplement, 1986, be amended to read as follows:

~~43-605-01-~~ The State Board of Education shall by ~~January 1, 1987~~ adopt and promulgate rules and regulations to be effective ~~after~~ August 1, 1987, establishing criteria for the assessment, identification, and verification of all handicapping conditions ~~specified defined in section 43-604 section 9 of this act~~ to the extent that such handicapping conditions are consistent with federal law and regulation. The rules and regulations shall include provisions for the maximum possible utilization of regular education programs and personnel for applicants whose learning problems do not meet the criteria established for the identification and verification of handicapped children.

Sec. 18. That section 43-605.02, Revised Statutes Supplement, 1986, be amended to read as follows:

~~43-605-02-~~ Each school district shall include only students identified and verified pursuant to sections 16 and 17 of this act 43-605 and 43-605-01 in special education programs and shall not provide special education services pursuant to Chapter 43, article 6, the Special Education Act to any child who has not been so identified and verified, except that the verification requirements established by rules and regulations adopted and promulgated by the State Board of Education shall not apply to students who have been included in special education programs pursuant to Chapter 43, article 6, the special education act statutes and rules and regulations adopted and promulgated pursuant thereto in effect immediately prior to July 17, 1986, until such time as such children are required to be reverified for special education.

Sec. 19. That section 43-605.03, Revised Statutes Supplement, 1986, be amended to read as follows:

~~43-605-03-~~ (1) The State Department of Education shall conduct pilot projects using regional

assessment teams for the assessment, identification, and verification of children who may require special education pursuant to Chapter 43, article 6, the Special Education Act and for the development of individual educational plans for each child so identified and verified. The department shall establish guidelines for the use and designation of regional assessment teams by educational service units and special education cooperatives created by school districts which elect to participate in such pilot projects.

(2) The State Department of Education shall, by December 1, 1988, report to the Legislature regarding the success or failure of the regional assessment teams. The report shall address the cost efficiency of the regional assessment teams, the effectiveness of such teams in making the assessment of handicapped children and planning programs for such children, and the sensitivity of the regional assessment teams to local needs and resources.

Sec. 20. That section 43-641, Revised Statutes Supplement, 1986, be amended to read as follows:

~~43-641- The legislature desires to reaffirm its position that all children in the State of Nebraska, regardless of physical or mental capacity, are entitled to a meaningful educational program. It shall be the duty of the board of education of every school district to provide or contract for special education programs and transportation for all resident children who would benefit from such programs. Such programs shall include, but not be restricted to, the development of self-realization, social awareness, economic usefulness, and civic responsibility.~~

Sec. 21. That section 43-642, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-642- The special education programs may be provided by any school district, by contracting with another school district or servicing agency, or by some combination of school districts, an educational service unit, combination of educational service units, the local or regional office of mental retardation, any program approved by the State of Nebraska, or any combination thereof. PROVIDED, except that only nonsectarian services shall be considered for approval by the State of Nebraska. Any office of mental retardation program receiving funds under the provisions of this act the Special Education Act shall not use such funds to match state funds under the provisions of other~~

programs. The members of the board of education of any school districts not offering continuous special education programs acceptable to the State Board of Education ~~on or before December 31, 1976, and continuously thereafter,~~ shall be in violation of the law. No state funds shall be paid to any school district as long as such violation exists, but no deduction shall be made from any funds required by the Constitution of the State of Nebraska to be paid to such district. On ~~December 31, 1976, and on~~ December 31 of each ~~succeeding~~ year, the Commissioner of Education shall present to the State Board of Education, the Attorney General, the Department of Administrative Services, the State Treasurer, and the Executive Board of the Legislative Council, a list of all school districts not providing or contracting for approved programs.

Sec. 22. That section 43-607, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-607-~~ The local board of education shall furnish one of the following types of services to the handicapped children who are residents of the school district:

(1) Provide for the transportation expenses for those handicapped children who are forced to leave the school district temporarily because of lack of educational services. ~~A ; PROVIDED, that a parent or guardian transporting such child shall be paid for each day of attendance at the rate of eighty-six per cent of the mileage rate provided in section 84-306.03 for state employees for each actual mile or fraction thereof traveled between the place of residence and the program of attendance, and when any parent or guardian transports more than one handicapped child in his or her custody or control enrolled in programs at the same location, the amount of payments to such parent or guardian shall be based upon the transportation of one child. No transportation payments shall be made to a parent or guardian for mileage not actually traveled by such parent or guardian;~~

(2) Provide for the transportation expenses within the school district of any handicapped child who is enrolled in a special educational program of the district when either (a) the child is required to attend a facility other than what would be the normal school ~~of~~ or attendance facility of the child to receive appropriate special educational services; or (b) the nature of the child's handicapping condition is such

that special transportation is required. ~~A~~ ; ~~PROVIDED,~~ that a parent or guardian transporting such child shall be paid for each day of attendance at the rate of eighty-six per cent of the mileage rate provided in section 84-306.03 for state employees for each actual mile or fraction thereof traveled between the place of residence and the program of attendance, and when any parent or guardian transports more than one child in his or her custody or control enrolled in programs at the same location, the amount of payments to such parent or guardian shall be based upon the transportation of one child. No transportation payments shall be made to a parent or guardian for mileage not actually traveled by such parent or guardian;

(3) Provide visiting teachers for the homebound handicapped child, such teachers to be certified and qualified in the same manner as required for other teachers in Nebraska;

(4) Provide correspondence instruction approved by the Commissioner of Education; or

(5) Provide any other method of instruction approved by the Commissioner of Education.

Sec. 23. That section 43-607.02, Revised Statutes Supplement, 1986, be amended to read as follows:

43-607-02- (1) It is the intent of the Legislature that transportation services for handicapped children prescribed in section 43-607 22 of this act shall be provided in the most cost-efficient manner consistent with the goal of providing free appropriate special education to all such children. The Legislature finds that educational service units and special education cooperatives created by school districts and recognized by the State Department of Education are in a unique position to improve the coordination and efficiency of transportation services in all areas of the state. It is the intent of the Legislature to authorize and encourage school districts, educational service units, and special education cooperatives to jointly plan, coordinate, and, where feasible, provide transportation services for handicapped children. The State Department of Education shall review and approve, approve with modifications, or disapprove all transportation applications to ensure the implementation of the most cost-efficient transportation system, consistent with the goal of providing free appropriate special education to all children.

(2) School districts, educational service units, and special education cooperatives created by

school districts and recognized by the State Department of Education are hereby authorized to jointly plan, coordinate, and, where feasible, provide special education transportation services prescribed in section 43-607 22 of this act. Any educational service unit or special education cooperative may enter into a cooperative arrangement with a board of education of a school district for the provision of such transportation services. Such arrangement shall be approved by the State Department of Education, and upon approval of the arrangement, the educational service unit or special education cooperative providing the transportation services shall be eligible to receive direct reimbursement for such services pursuant to section 43-611 33 of this act.

Sec. 24. That section 43-646.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-646-01- Participation in or attendance at programs by handicapped children below the age of five less than five years of age shall be voluntary as specified by the parent or guardian. Programs serving children below age three less than three years of age shall, to the greatest extent possible, be based upon providing parent training in the home environment.

Sec. 25. That section 43-646.02, Revised Statutes Supplement, 1986, be amended to read as follows:

43-646-02- The State Department of Education shall provide grants for the costs of the special education programs approved by the State Department of Education to the school district of residence for handicapped children of less than five years of age, as defined in section 43-604- Educational service units or cooperatives of school districts recognized as regional planning entities by the State Board of Education pursuant to section 43-646-08 28 of this act shall be eligible to receive grants for cooperative programs for such handicapped children of less than five years of age if such educational service units or cooperatives have complied with the reporting and approval requirements of section 43-646-08 28 of this act. The grants shall be one hundred per cent of the costs of such programs and shall continue to be one hundred per cent as long as the funding for such grants comes from federal funds. If the federal funding is inadequate at any time to pay one hundred per cent of the costs of such programs, the amount of the grant provided by the department shall be ninety per cent of

such costs. The grant payments shall be made by the State Department of Education to the resident school district, educational service unit, or regional planning entity recognized by the State Board of Education pursuant to section 43-646-08 28 of this act each year in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning in December.

Sec. 26. That section 43-646.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-646-03- Effective July 1, 1979, each Each school district shall pay an amount equal to the average per pupil cost of the servicing agency of the preceding year or the cost as agreed upon pursuant to the contract to the agency providing the educational program for every handicapped student of less than five years of age who is a resident of the district and attending an educational program not operated by the school district, including programs operated by the State Department of Education, the Department of Public Institutions, and any other servicing agency whose programs are approved by the State Department of Education.

Sec. 27. That section 43-646.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-646-06- The State Department of Education shall develop and maintain search and reporting systems which assist in the early identification and provision of educational services to handicapped children. Such system shall be operated in consultation and cooperation with public and nonpublic agencies, institutions of higher education, public and nonpublic schools, educational service units, and medical and mental health professionals. A report describing the number and type of students of less than five years of age served, the kinds of services provided, and the agencies providing the services shall be presented on December 31, 1978, and December 31 of each succeeding year by the Commissioner of Education to the State Board of Education, the Department of Administrative Services, and the Executive Board of the Legislative Council. Such report shall:

- (1) Specifically set forth the status of qualifications of program personnel in relation to the standards;
- (2) Include an inventory of training program capacity at each institution of higher education; and
- (3) Describe the method employed by each

institution of higher education to accommodate the previous experience and education of candidates for training.

Sec. 28. That section 43-646.08, Revised Statutes Supplement, 1986, be amended to read as follows:

~~43-646-08-~~ Each school district shall demonstrate participation in a plan of services for handicapped children of less than five years of age. Such plans shall be prepared on a regional basis as determined by the State Department of Education and updated annually. The contents of the plans shall include, but not be limited to:

(1) A listing of the programs existing during the initial planning period, and the personnel involved, and their qualifications;

(2) A census by name, resident school district, and handicapping condition of all children less than five years of age;

(3) A procedure for identification and referral of handicapped children;

(4) An agreement setting forth the responsibilities and level of participation of each servicing agency within the region; and

(5) Budgets for the proposed program.

Plans for program expansions, revisions, and reductions and budget information on programs for handicapped children of less than five years of age shall be reported annually on dates specified by the State Department of Education. The content of such plans and the required budget information shall be prescribed by the department.

The State Board of Education shall annually approve, approve with modifications, or disapprove the requests for program expansions. Supplementary amendments to any program plans and budgets previously approved by the State Board of Education may be submitted on dates specified by the department during the same school year and shall be subject to the same review as the initial plans and budgets.

Sec. 29. That section 43-646.09, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-646-09-~~ The provisions of sections ~~43-646 to 43-646-10~~ 15 and 24 to 29 of this act shall not be construed to prevent funding from sources other than the public schools for the program for handicapped children of less than five years of age.

Sec. 30. That section 43-647, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

~~43-647-~~ Except as provided in section ~~43-647-01~~ 31 of this act, each school district shall pay an amount equal to the average per pupil cost of the servicing agency of the preceding year or the cost as agreed upon pursuant to the contract to the agency providing the educational program for every child who is a resident of the district and attending an educational program not operated by the school district, including programs operated by the State Department of Education, the Department of Public Institutions, and any other servicing agency whose programs are approved by the State Department of Education.

Sec. 31. That section 43-647.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-647-01-~~ The school district of residence of each student who attends the Nebraska School for the Visually Handicapped or the Nebraska School for the Deaf shall pay an amount equal to the school district's adjusted average per pupil cost of the preceding year plus ten per cent of the allowable excess cost. The remainder of the cost for each student shall be accounted for in the budget for the Nebraska School for the Visually Handicapped or the Nebraska School for the Deaf.

Sec. 32. That section 43-648, Revised Statutes Supplement, 1986, as amended by section 2, Legislative Bill 2, Eighty-ninth Legislature, Fourth Special Session, 1986, be amended to read as follows:

~~43-648-~~ (1) The State Department of Education shall reimburse each school district for ninety per cent of the allowable excess cost of the preceding year's special education programs. In each fiscal year subsequent to fiscal year 1987-88, this subsection shall apply only to special education programs not described in subsection (2) of this section. Cooperatives of school districts or educational service units shall also be eligible for reimbursement for cooperative programs pursuant to this section if such cooperatives or educational service units have complied with the reporting and approval requirements of section ~~43-643~~ 43 of this act for cooperative programs which were offered the preceding year. The payments shall be made by the State Department of Education to the resident school district, cooperative of school districts, or educational service unit each year in seven as nearly as possible equal monthly payments between the fifth and

twentieth day of each month beginning in December. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, upon receiving such certification, draw warrants against funds appropriated.

(2) It is the intent of the Legislature that programs for (a) handicapped children who require special education programs outside of the regular classroom for a period of time less than six hours per week and (b) handicapped children who are in special education programs for the learning disabled or speech impaired shall be reimbursed pursuant to this subsection. The State Department of Education shall establish procedures and standards to enforce this subsection. Such procedures and standards shall include, but not be limited to, provisions for monitoring assignment of staff by type and extent of service provided and provisions for conducting random onsite audits and examinations of special education programs.

In each fiscal year subsequent to fiscal year 1987-88, the Legislature shall appropriate an amount for special education programs for (i) handicapped children who require special education programs outside of the regular classroom for a period of time less than six hours per week and (ii) for handicapped children who are in special education programs for the learning disabled or speech impaired which is the lesser of (A) ninety per cent of the allowable excess costs of the special education programs for the preceding year or (B) an amount equal to the amount appropriated for the preceding fiscal year adjusted by the per cent of the increase or decrease appropriated for general state aid pursuant to sections 79-1331 to 79-1344.01 for the fiscal year for which the appropriation is being made compared to the preceding fiscal year.

(3) School districts, educational service units, and cooperatives of school districts shall submit financial data for special education programs offered in the 1987-88 school year as requested by the State Department of Education which shall separate such programs for the learning disabled, for the speech impaired, and for handicapped children who require special education programs outside of the regular classroom for a period of time less than six hours per week, from other special education programs.

If the amount appropriated by the Legislature

for the fiscal year for which the appropriation is being made for special education programs is less than ninety per cent of the allowable excess costs for the preceding year, the amount so appropriated shall be prorated by the State Department of Education based on plans and budgets in reports submitted to such department pursuant to section 43-643 43 of this act.

Sec. 33. That section 43-611, Revised Statutes Supplement, 1986, be amended to read as follows:

43-611- Sufficient funds shall be appropriated by the Legislature to carry out sections 43-601 and 43-604 to 43-611-01, such funds to 31 to 34 and 36 of this act. Such funds shall be channeled through the office of the State Department of Education. The department shall be authorized to expend such funds upon proper vouchers approved by the department and warrants issued by the Director of Administrative Services for financial reimbursement to local school districts, educational service units, special education cooperatives created by school districts, agencies, and parents or guardians, including (1) reimbursement for ninety per cent of the amount expended pursuant to section 43-607 22 of this act for actual transportation expenses per year for handicapped children and children with mental retardation, (2) reimbursement for instructional aids and consultative, supervisory, research, and testing services to local school districts, and (3) reimbursement for salaries, wages, maintenance, supplies, travel, and other expenses essential to carrying out the provisions for special education. Applications for state reimbursement for actual transportation expenses shall be submitted annually on a date prescribed by the State Department of Education to the department on forms prescribed by the department. Amendments to applications for actual transportation expenses shall be submitted on dates prescribed by the department during the school year in which the original application was made.

Sec. 34. Whenever a child must temporarily reside in a residential facility, boarding home, or foster home in order to receive an appropriate special education program, the State of Nebraska shall provide for the ordinary and reasonable cost of the residential care during the duration of the special education program. The state shall not be required to pay such cost unless placement of the child in a special education program requiring residential care was made by the resident school district with the prior approval of

the State Department of Education or was made pursuant to sections 49 to 54 of this act.

Sec. 35. That section 43-611.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-611-01-~~ The school district or educational service unit which received such funds as provided in section 33 of this act 43-611 may contract with another school district, educational service unit, state school, or public agency.

Sec. 36. That section 43-606, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-606-~~ The county superintendent of schools shall use county high school tuition money to provide educational opportunities in accordance with the Special Education Act the provisions of sections 43-604 to 43-610 for handicapped high school age pupils residing in districts not maintaining a high school. The State Department of Education shall reimburse each county in an amount equal to ninety per cent of the excess cost of educating each handicapped high school age pupil. Excess cost shall be that amount by which the approved allowable rate of the servicing agency exceeds the average tuition rate paid by the county for that school year for nonhandicapped children. Payments to the county shall be made the following year by the State Department of Education in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning in December, ~~1981, and each December thereafter-~~

Sec. 37. That section 43-617, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-617-~~ The State Department of Education is hereby authorized to set up one or more approved schools for handicapped children. These schools shall offer residential facilities for handicapped children which facilities shall be under the control and supervision of the State Department of Education.

Sec. 38. That section 43-618, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-618-~~ The admission, as provided by the provisions of sections 43-617 and 43-618 section 37 of this act, shall be by rules and regulations to be adopted, promulgated, and administered by the State Department of Education.

Sec. 39. That section 43-619, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

**43-619-** All money derived from any source other than state General Fund appropriations by any school as provided by the provisions of sections 43-617 and 43-618, 37 and 38 of this act shall be remitted to the state treasury and by the State Treasurer credited to the State Department of Education Cash Fund, and such money shall be made available to any such school for purposes of education, training, or maintenance of students.

Sec. 40. That section 43-625, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

**43-625-** The State Board of Education shall review special training and educational programs offered by or in conjunction with any public school district, combination of public school districts, educational service unit, or combination of educational service units subject to the following:

(1) Each The teacher or teachers in any such special program shall be qualified;

(2) Teacher aides, working with any such program, shall have such qualifications as the governing body of the school shall prescribe and shall participate in appropriate in-service activities; and

(3) Each qualified teacher shall be responsible for the direct supervision of teacher aides, whose duties shall be limited to those prescribed in section 79-1233.

As used in this section, qualified teacher shall mean an individual holding a valid State of Nebraska teaching or special services certificate with an endorsement appropriate to the handicaps served. If such teacher is serving children with more than one handicap, qualified teacher shall mean an individual holding a valid State of Nebraska teaching or special services certificate with an endorsement in at least one of the handicaps served.

Sec. 41. That section 43-626, Revised Statutes Supplement, 1986, be amended to read as follows:

**43-626-** Whenever a child must temporarily reside in a residential facility, boarding home, or foster home in order to receive an appropriate special education program, the State of Nebraska shall provide for the ordinary and reasonable cost of the residential care during the duration of the special education program. The state shall not be required to pay such

cost unless placement of the child in a special education program requiring residential care was made by the resident school district with the prior approval of the State Department of Education or was made pursuant to sections 43-661 to 43-668. No school district shall make a placement in a special education program requiring residential care without advance consultation with the State Department of Education to review the child's needs and the availability and appropriateness of each possible placement in the continuum of alternative services. Applications for approval of special education program placements requiring residential care shall be signed by the parent or legal guardian, submitted via the school district of which the child is a resident to the State Department of Education, and acted upon by the department within thirty days of receipt by the department. If an application is denied, the parent or legal guardian shall be provided written notification by the State Department of Education of his or her right to appeal the decision pursuant to sections 43-661 to 43-668 49 to 54 of this act and right to name the State Department of Education as respondent in the appeal proceeding.

The State Department of Education and the Department of Social Services shall annually establish the maximum rates that the state will pay for the ordinary and reasonable cost of residential care placements within the state. After September 6, 1985, children whose residential placement was funded by state and regional agencies other than the State Department of Education shall continue to be funded by such agencies.

Sec. 42. That section 43-626.01, Revised Statutes Supplement, 1986, be amended to read as follows:

~~43-626-01-~~ Following residential placement, the local school district and the State Department of Education shall continue efforts to develop appropriate programs closer to the handicapped student's home and shall cooperate with the Department of Social Services in preparing families to accommodate returning students. The Department of Social Services shall provide consultative services, as defined by mutual agreement between the State Department of Education and the Department of Social Services, to the children and families initially provided residential care, ~~following September 6, 1985-~~

Sec. 43. That section 43-643, Revised Statutes Supplement, 1986, be amended to read as follows:

**43-643-** All school boards shall report annually on a date prescribed by the State Department of Education to the department on forms provided by the department (1) plans for special education program expansions, revisions, or reductions and (2) budget information for special education programs. Cooperatives of school districts or educational service units applying for grants or reimbursement for programs pursuant to section ~~43-611, 43-646-02, or 43-648 25, 32, or 33 of this act~~ shall also report unified plans and budget information pursuant to this section. The plans and budget forms shall conform to guidelines provided in section ~~43-649 44 of this act~~. The State Department of Education shall review and take action to approve, approve with modifications, or disapprove the plans for expansions in special education programs of the school district, cooperative of school districts, or educational service unit. Supplementary amendments to any program plans and budgets previously approved by the State Board of Education may be submitted on dates specified by the department during the same school year and shall be subject to the same review and approval as the initial plans and budgets. The State Board of Education shall approve, approve with modifications, or disapprove all supplementary amendments to program plans and budget requests. All final financial reports on special education costs, the actual number of children served, and the handicapping conditions of such children shall be reported to the State Department of Education by October 31 of each year for the preceding school year on forms prescribed by the State Department of Education. Any program that provides residential care shall show the costs of such care separately from the costs of the education program.

If a servicing agency chooses to exceed the budget approved by the State Department of Education, costs in excess of the approved budget shall not be reimbursed by the State Department of Education.

Sec. 44. That section 43-649, Revised Statutes Supplement, 1986, be amended to read as follows:

**43-649-** The State Department of Education shall coordinate information reporting requirements for special education programs with other educational data reporting requirements of the department to the extent possible. The plans for program expansions, revisions, and reductions shall contain the information required by the department. The information on special education programs shall include the following:

(1) A description of the types of services to be offered and the number of students receiving the services;

(2) The servicing agencies and the respective services offered;

(3) A presentation of all expected expenditures by source of funds;

(4) A detailed description of the methodology to be used by the agency for evaluating the results of the programs and service being provided for each service group. This methodology shall permit program evaluation including the relative cost and effectiveness of alternative forms and patterns of services;

(5) A description of the procedures used to insure that students are placed in appropriate educational programs. Such procedures shall be reviewed for approval by the State Department of Education; and

(6) A sample of the written materials to be used to provide parents with specific information about complaint and appeal rights and procedures.

Sec. 45. That section 43-650, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

**43-650-** All special education programs shall be reviewed no less than biennially by the State Department of Education.

To enable the State Department of Education to determine the effectiveness of the programs and services being provided, the department shall conduct a program of continuing evaluations of the different types of programs and services being provided for each of the service groups. In conducting these evaluations, the department shall take into account such factors as numbers and types of students, class sizes, qualifications of staff, and other factors which the department deems appropriate. The department shall conduct evaluations of all programs and services and shall conduct these evaluations in such a manner as to enable the department to compare the relative effectiveness of the same or similar programs or services provided in different locations.

Evaluation studies shall be designed to provide the Legislature, the State Department of Education, the school districts, and other servicing agencies with the following information:

(1) A detailed description of groups served;

(2) A detailed description of the kind of programs or services provided and their cost per unit of service as well as the cost of each service; and

(3) A detailed description of the effectiveness of the programs or services.

Sec. 46. That section 43-651, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-651-~~ No reimbursement for special education programs shall be allowed, unless the program ~~shall meet~~ meets the standards established by the State Department of Education. ~~PROVIDED, a special education program may be given a one-year temporary approval when standards have not been met. No one-year temporary approval shall be granted after the third year of operation of any special education program or after August 31, 1976.~~

Sec. 47. That section 43-653, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-653-~~ The State Department of Education, upon the request of any school district, shall provide technical assistance in the promulgation of any plan, program, or report required by ~~this act~~ the Special Education Act. Such assistance shall be given only in an advisory capacity and shall not be designed or construed to transfer, either in whole or in part, the responsibility for or actual development or implementation of such plan, program, or report.

Sec. 48. That section 43-660, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-660-~~ The State Department of Education shall ~~adopt~~ promulgate and publish such rules and regulations as shall be necessary to carry out the ~~provisions of sections 43-604, 43-609, 43-620, 43-625, 43-626, 43-627, 43-627-01, 43-641 to 43-653, 79-202, and 79-444~~ the Special Education Act. Such rules and regulations shall include, but not be limited to, the regulation of costs under section 41 of this act, limitation of the program to handicapped children who require residential care in order to receive an appropriate special education program, and provisions for contracts with the Department of Social Services to assist in the administration of the act.

Sec. 49. That section 43-661, Revised Statutes Supplement, 1986, be amended to read as follows:

~~43-661-~~ A parent, guardian, competent student of age of majority, or a school district may initiate a hearing on matters related to the initiation, change, or termination or the refusal to initiate, change, or

terminate the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education or records relating thereto. A copy of the procedures specified in rules and regulations of the State Department of Education for complaints and hearings under this section shall be provided by school districts to all parents and guardians of handicapped children who are receiving services on September 6, 1985, and, thereafter, to all parents and guardians of handicapped children upon initial consideration of the provision of services for their handicapped children. Such hearing shall be initiated by filing a petition with the State Department of Education. A parent, guardian, or competent student of the age of majority shall not be entitled to reimbursement for any expenses incurred more than sixty days prior to the filing of the petition.

Sec. 50. That section 43-662, Revised Statutes Supplement, 1986, be amended to read as follows:

~~43-662-~~ The State Department of Education shall conduct hearings initiated under section ~~43-661~~ 49 of this act using hearing officers. The State Department of Education may employ, retain, or approve such qualified hearing officers as are necessary to conduct hearings provided by sections ~~43-626, 43-627-01, and 43-661~~ to 43-668 41 and 49 to 54 of this act. The hearing officers shall not be persons who are employees or officers of a state or local public agency which is involved in the education or care of the child. A person who otherwise qualifies to conduct a hearing under sections ~~43-626, 43-627-01, and 43-661~~ to 43-668 41 and 49 to 54 of this act is not an employee of the agency solely because the person is paid by the agency to serve as a hearing officer. No hearing officer shall participate in any way in any hearing or matter in which the hearing officer may have a conflict of interest. Hearing officers appointed and assigned by the State Department of Education shall have exclusive original jurisdiction over cases arising under sections ~~43-626, 43-627-01, and 43-661~~ to 43-668 41 and 49 to 54 of this act, and in no event shall juvenile courts have jurisdiction over such matters.

Sec. 51. That section 43-662.01, Revised Statutes Supplement, 1986, be amended to read as follows:

~~43-662-01-~~ Upon the receipt of a petition, the State Department of Education shall assign it to a hearing officer. The hearing officer shall receive all

subsequent pleadings and shall conduct the hearing. At the hearing the parties shall present evidence on the issues raised in the pleadings. At the completion of the proceedings, the hearing officer shall prepare a report based on the evidence presented containing findings of fact and conclusions of law. Within forty-five days after the receipt of a request for a hearing, the hearing officer shall prepare a final decision and order directing such action as may be necessary. At the request of either party for good cause shown, the hearing officer may grant specific extensions of time beyond this period. The report and the final decision and order shall be delivered via certified mail to each party or attorney of record and to the Commissioner of Education.

Sec. 52. That section 43-664, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-664-~~ Any party at a hearing conducted under section 50 of this act ~~43-662~~ has shall have the right to:

- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;
- (4) Obtain a written or electronic verbatim record of the hearing; and
- (5) Obtain written findings of fact and decisions.

The hearing officer may also produce evidence on the officer's own motion.

Sec. 53. That section 43-665, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-665-~~ The hearing officer shall have the power by subpoena to compel the appearance of witnesses and the production of any relevant evidence. Any witness compelled to attend or produce evidence shall be entitled to the fees and expenses allowed in district court. Any failure to respond to such subpoena shall be certified by the hearing officer to the district court of Lancaster County for enforcement or for punishment for contempt of the district court.

Sec. 54. That section 43-666, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

43-666- (1) Any party aggrieved by the findings, conclusions, or final decision and order of the hearing officer ~~is~~ shall be entitled to judicial review under this section. Any party of record also may seek enforcement of the final decision and order of the hearing officer pursuant to this section.

(2) Proceedings for judicial review shall be instituted by filing a petition in the district court of the county where the main administrative offices of the school district are located within thirty days after service of the final decision and order on the party seeking such review. All parties of record shall be made parties to the proceedings. The court, in its discretion, may permit other interested parties to intervene.

(3) The filing of a petition for judicial review shall operate to stay the enforcement of the final decision and order of the hearing officer. While judicial proceedings are pending and unless the school district and the parent or guardian otherwise agree, the child shall remain in his or her current educational placement or if applying for initial admission to a public school such child shall, with the consent of the parent or guardian, be placed in the public school program until all such proceedings have been completed. If the health or safety of the child or of other persons would be endangered by delaying a change in assignment, the school district may make such change without prejudice to the rights of any party.

(4) Within fifteen days after receiving notification that a petition for judicial review has been filed, or if good cause is shown, within such further time as the court may allow, the State Department of Education shall prepare and transmit to the court a certified transcript of the proceedings before the hearing officer. Any deposition or exhibit introduced before the hearing officer shall, upon demand of the party who introduced such deposition or exhibit, be returned to such party for use in the review proceedings.

(5) Judicial review shall be conducted by the court without a jury. The court shall receive the records of the administrative proceedings, hear additional evidence at the request of a party, base its decision on the preponderance of the evidence, and grant such relief as the court determines is appropriate.

(6) An aggrieved party may secure a review of any final judgment of the district court under this

section by appeal to the Supreme Court. Such appeal shall be taken in the manner provided by law for appeals to the Supreme Court in civil cases and shall be heard de novo on the record.

(7) When no petition for judicial review or other civil action is filed within thirty days after service of the final decision and order on all of the parties, the hearing officer's final decision and order shall become effective. Proceedings for enforcement of a hearing officer's final decision and order shall be instituted by filing a petition for appropriate relief in the district court of the county where the main administrative offices of the school district are located within one year after the date of the hearing officer's final decision and order.

Sec. 55. That section 43-669, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-669-~~ As used in sections ~~43-617, 43-619, 43-620, and 43-669 to 43-680~~ 55 to 65 of this act, unless the context otherwise requires:

(1) Board shall mean the State Board of Education;

(2) Center or program shall mean the Diagnostic Resource Center at Cozad authorized by section ~~43-670~~ 56 of this act;

(3) Diagnosis shall mean:

(a) Systematic observation and assessment of a ~~child children~~ in order to gather information on the child's functioning strengths, weaknesses, learning characteristics, and vocational potential;

(b) Preparation of individualized educational plans;

(c) Trial implementation of the individualized educational plans within the center;

(d) Followup procedures to be conducted after a child has been placed in the local education program; and

(e) Development of a transitional plan as to coordination of services linking education and employment opportunities; and

(4) Handicapping conditions shall mean those conditions defined or provided for in ~~section 43-604~~ section 9 of this act.

Sec. 56. That section 43-670, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-670-~~ The ~~State Board of Education board~~ is authorized to establish, within the State Department of

Education, a program to be known as the Diagnostic Resource Center at Cozad.

Sec. 57. That section 43-671, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-671-~~ The purposes of the program shall include:

- (1) Diagnosis of educational handicapping conditions of children to age twenty-one;
- (2) Training services for special education teachers and others;
- (3) Research into the improvement of educational services for handicapped children;
- (4) Utilization of diagnostic services on a contractual basis with other state agencies; and
- (5) Coordinated delivery of the services available within the State Department of Education for handicapped individuals.

Sec. 58. That section 43-672, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-672-~~ Admission to the program shall be open to all Nebraska children who are in need of diagnostic services. The State Department of Education shall in consultation with appropriate state agencies approve criteria, priorities, and procedures for admission to insure the most efficient and effective use of facilities, staff, and financial resources. The board may set rates for diagnostic services to be paid by the school districts of residence for the school-age children receiving such services or by state agencies.

Sec. 59. That section 43-673, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-673-~~ The board shall establish criteria, priorities, and procedures under which nonresident children may be admitted to the program. No nonresident child shall be granted admission if such would result in denial of services to any eligible Nebraska resident nor unless satisfactory arrangements have been made for payment of all costs for services at a rate fixed by the board.

Sec. 60. That section 43-674, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~43-674-~~ No child shall remain in the residential care component of the program for longer than is necessary to complete appropriate diagnosis.

Sec. 61. That section 43-675, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

**43-675-** The parents or legal guardian shall furnish suitable clothing for any children admitted to the program.

Sec. 62. That section 43-676, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

**43-676-** The board shall appoint and fix the compensation of a director who shall be the chief administrative officer of the program. The board shall also employ such additional personnel as shall be necessary and desirable to accomplish the purposes of the program.

Sec. 63. That section 43-677, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

**43-677-** There is hereby established in the state treasury a special fund to be known as the Diagnostic Resource Center Cash Fund which, when appropriated by the Legislature, shall be expended solely to aid in defraying the expenses of the center. All funds received by the center shall be deposited in such fund. All money in the Diagnostic Resource Center Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska State Funds Investment Act sections 72-1237 to 72-1269.

Sec. 64. That section 43-679, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

**43-679-** The board State Board of Education shall have the power and it shall be its duty to accept, on behalf of the Diagnostic Resource Center at Cozad center, devises of real property or donations or bequests of other property, or both, if in its judgment any such devise, donation, or bequest is for the best interest of such school, its students, or both, and upon acceptance of any devise, donation, or bequest as provided in this section, to administer and carry out any devise or bequest in accordance with its terms and conditions. If not prohibited by the terms and conditions of any devise, donation, or bequest, it may sell, convey, exchange, or lease such property as it deems best and deposit all money derived from any such sale or lease in the State Department of Education Trust Fund. However, lease agreements should give priority first to state agencies and second to regional or local agencies. In the case of lease agreements with regional or local agencies, such lease agreements shall not

exceed a period of one year.

Sec. 65. That section 43-680, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-680. The State Department of Education and the Department of Social Services shall enter into a written agreement under which the State Department of Education shall furnish to the Department of Social Services evaluations, diagnoses, and treatment for children who are otherwise served by the Department of Social Services. The Department of Social Services shall, under the agreement, reimburse the State Department of Education for the costs of such services to children.

Sec. 66. That section 79-444, Revised Statutes Supplement, 1986, be amended to read as follows:

79-444. (1) The district board or the board of education, in all classes of school districts, shall not admit any child to the first grade of any school of such district unless such child has reached the age of six years or will reach such age on or before October 15 of the current year, except that in the event any child has successfully completed the kindergarten or beginner grade such child may enter the first grade of any such school regardless of age.

(2) The board in all classes of school districts shall not admit any child into the kindergarten or beginner grade of any school of such school district unless (a) such child has reached the age of five years or will reach such age on or before October 15 of the current year or (b) such child has demonstrated through recognized testing procedures approved by the State Board of Education that he or she is capable of carrying the work of those grades.

(3) The school board or board of education may require a birth certificate prior to entrance of a child into the beginner grade and shall require evidence of a physical examination by a qualified physician within six months prior to the entrance of a child into the beginner grade and the seventh grade, or in the case of a transfer from out of state to any other grade of the local school, except that no such physical examination shall be required of any child whose parent or guardian shall object thereto in writing. The cost of such physical examination shall be borne by the parent or guardian of each child who is examined.

Any district board or board of education in its discretion may establish and financially support

programs, including programs providing before-and-after-school services, to which attendance shall be voluntary and which the board may deem beneficial to the education of prekindergarten or school-age children. The board may charge a fee for providing before-and-after-school services but may waive such fee on the basis of need. This section shall not be construed to allow any school district to fail to meet its responsibilities under Chapter 43, article 6 the Special Education Act.

Sec. 67. That section 79-4,102, Revised Statutes Supplement, 1986, be amended to read as follows:

79-4,102. (1) The county superintendent of each county in which a Class VI school is not maintained shall, within thirty days after the annual meeting, certify to the county board of supervisors or commissioners the number of qualified pupils whose parents or guardians have applied to the county superintendent for nonresident high school tuition privileges or special education requirements and a list of school districts and servicing agencies for handicapped pupils which have been approved by the State Board of Education as schools or service agencies qualified to grant nonresident public high school education or special education programs to nonresident pupils under the provisions of sections 79-494 to 79-4,106 79-4,105 for nonhandicapped pupils and under the provisions of sections 43-606 and 43-646 15 and 36 of this act for handicapped high school age pupils.

(2) The high school tuition rate for nonresident pupils shall be determined annually by the finance division of the State Department of Education on a uniform taxation basis for the support of the high school program of the receiving district. Based on data provided to the State Department of Education pursuant to the requirements of sections 79-451, 79-1331, and 79-1333.02, data identifying the residence of enrolled nonresident students provided by the county superintendents, and such other data necessary to complete the calculations required by this section, the high school tuition charge shall be determined as follows:

(a) The total current expense of the receiving district as shown under the secondary column on the most recent annual term summary report on file with the State Department of Education, for operations supporting the program in grades nine through twelve only, and when necessary, adjustments shall be made to reflect such

expenses for grades nine through twelve based on the weighted values per grade level established in section 79-1334, shall be determined;

(b) A combined valuation tax base shall be established, from data on file with the county assessors and the Department of Revenue, based on the sum of the total current valuation of the receiving district and a proportionate share of the current valuation of all Class I school districts not a part of any Class VI school district in each county where nonresident students registered to attend the receiving district for the ensuing school year reside. The receiving district's proportionate share of Class I district valuation shall be determined by multiplying the total current valuation of Class I districts not a part of any Class VI district in each county times a ratio equal to the total number of nonresident students from each such county who have registered to attend the receiving district for the immediately preceding five-year period for which enrollment data is available compared to the total number of nonresident students who have registered in each such county for the immediately preceding five-year period;

(c) The receiving district's proportionate share of Class I valuation, determined in subdivision (b) of this subsection, shall be divided by the combined valuation tax base, determined in subdivision (b) of this subsection, to derive a percentage. Such percentage shall be multiplied by the total current expense figure of the receiving district, determined in subdivision (a) of this subsection, to arrive at a figure representing the nonresident students' unadjusted share of operational expense. To such share shall be added a facility rental charge equal to five per cent of the insurable or present value of the school plant and equipment used in support of the program operated in grades nine through twelve multiplied by the per cent equal to the number of nonresident students who have registered to attend the receiving district for the immediately preceding five-year period for which enrollment data is available divided by the total enrollment of the receiving district in grades nine through twelve for such five-year period;

(d) The total current charge for nonresident high school students, determined in subdivision (c) of this subsection, shall be adjusted to reflect increasing or decreasing costs. The total current charge for nonresident students shall be multiplied by the annual cost of education index to be established by the State

Department of Education. Such index shall be based on the average of the annual increases and decreases in the total disbursements in support of the operation of the public schools during the immediately preceding five-year period for which such information is available. The cost of education index shall be computed annually pursuant to guidelines established in the rules and regulations adopted and promulgated by the State Board of Education;

(e) There shall be added to the adjusted nonresident tuition charge, determined in subdivision (d) of this subsection, an additional service charge for handicapped pupils as provided by the rules and regulations adopted and promulgated by the State Board of Education pursuant to section 43-660 4B of this act; and

(f) The State Department of Education shall certify such total high school tuition charge to the receiving district which may reduce such charge to any amount decided by the receiving district's school board or board of education, except that such amount shall not be less than the per pupil cost in the district as stated in the immediately preceding annual term finance report on file with the State Department of Education. The superintendent of the receiving district shall certify the nonresident high school tuition charge to the county superintendent for transmittal to the county treasurer and each receiving district on or before March 31 of each year.

(3) Any taxpayer may appeal from the action of the county board of equalization in resident high school tuition in the manner provided in sections 77-1606 to 77-1610. The county treasurer, the county superintendent, and each school district receiving funds from the nonresident high school tuition affected by the appeal shall be necessary parties. If the taxpayer alleges that the levy for nonresident high school tuition is for an unlawful or unnecessary purpose or in excess of the requirements of the school district fixing nonresident high school tuition, such appeal shall not in any manner suspend the collection of any tax nor the duties of the officers relating to such tax collection while such appeal is pending. Notwithstanding the provisions of section 77-1606, such appeal shall not suspend or stay in any manner the distribution of nonresident high school tuition funds.

(4) A taxpayer initiating an appeal may, as a part of such appeal and without instituting a separate action, apply to the court for injunctive relief

pursuant to the provisions of sections 25-1062 to 25-1080 to stay or suspend the distribution of nonresident high school tuition funds while the appeal is pending. If an appeal is brought under this subsection and the court orders the taxpayer to give security, such security shall be an amount sufficient to secure the party enjoined and any other necessary party the damages he, she, or it may sustain, if the court decides that the injunction was wrongfully granted.

Sec. 68. That section 79-1369, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1369. The State Department of Education shall withhold any aid payments provided under section ~~43-648,~~ 32 of this act or section 79-4,160, or 79-1333 to school districts which, after final determination, received funds in excess of the appropriate allocation for the previous year. Aid payments which are withheld shall be no greater than the amount of the overpayment. The State Department of Education shall maintain an accurate account and a record of the reasons for such overpayments and the manner in which adjustments were made.

Sec. 69. That section 79-1903, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1903. All the residents of this state who are (1) acoustically handicapped to such an extent that they cannot acquire an education in the public schools of this state, and who are (2) of suitable age and capacity, and (3) of good moral character, shall be entitled to an education in the Nebraska School for the Deaf without charge except as provided by section ~~43-647-01~~ 31 of this act.

Sec. 70. That section 79-1911, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1911. There shall be established on behalf of any school as provided for by sections ~~43-617 and 43-618,~~ 37 and 38 of this act the Nebraska School for the Deaf as provided for by Chapter 79, article 19, and the Nebraska School for the Visually Handicapped as provided for by Chapter 79, article 20, an emergency cash fund for each such school in an amount which at no time shall exceed five hundred dollars. Such emergency cash fund shall be used to provide for immediate and unusual needs as may be required and shall be reimbursed from the General Fund appropriation of each such school.

Sec. 71. That section 79-2003, Reissue

Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-2003. The State Department of Education shall be responsible for the education and welfare of all persons who are (1) visually handicapped to such an extent that they cannot acquire an education in the public schools of the state, (2) and who are not otherwise provided for, and who are (3) of suitable age and capacity, and (4) of good moral character without charge except as provided by section 43-647-01 31 of this act.

Sec. 72. That section 79-2213, Revised Statutes Supplement, 1986, be amended to read as follows:

79-2213. When special education is provided by an educational service unit for handicapped children, as defined in ~~section 43-604~~ section 9 of this act, the payments provided by ~~sections 43-604 to 43-611 15 to 33 of this act~~ shall be made to such educational service unit.

Sec. 73. That section 83-366, Revised Statutes Supplement, 1986, be amended to read as follows:

83-366. The department shall assess against the patient or his or her relatives all or such part of the cost determined under section 83-365 as they are able to pay, in the judgment of the director, except that a patient who is placed in a state institution to receive appropriate special education pursuant to ~~Chapter 43, article 6, the Special Education Act~~ or his or her relatives shall be assessed only for medical care and medical treatment costs as determined pursuant to rules and regulations adopted and promulgated by the department in accordance with section 83-371.

Sec. 74. That section 83-382, Revised Statutes Supplement, 1986, be amended to read as follows:

83-382. Except as provided in sections ~~43-617 and 43-618 37 and 38 of this act~~, the Department of Public Institutions shall have jurisdiction of the admission of persons with mental retardation to a residential facility. Applications for admission to a residential facility shall be filed with the director.

Sec. 75. This act shall become operative August 1, 1987.

Sec. 76. That original sections 43-606, 43-607, 43-611.01, 43-617 to 43-619, 43-625, 43-642, 43-646, 43-646.01, 43-646.03, 43-646.06, 43-646.09, 43-647, 43-647.01, 43-650, 43-651, 43-653, 43-660,

43-664 to 43-666, 43-669 to 43-677, 43-679, 43-680, 79-1369, 79-1903, 79-1911, and 79-2003, Reissue Revised Statutes of Nebraska, 1943, sections 43-605 to 43-605.03, 43-607.02, 43-611, 43-626, 43-626.01, 43-641, 43-643, 43-646.02, 43-646.08, 43-649, 43-661 to 43-662.01, 79-444, 79-4,102, 79-2213, 83-366, and 83-382, Revised Statutes Supplement, 1986, and section 43-648, Revised Statutes Supplement, 1986, as amended by section 2, Legislative Bill 2, Eighty-ninth Legislature, Fourth Special Session, 1986, and also sections 43-601, 43-602, 43-607.01, 43-608, 43-610.01, 43-616.03, 43-622, 43-623, 43-624, 43-629, 43-630, 43-632, 43-640, 43-645, 43-646.04, 43-646.05, 43-646.07, 43-646.10, 43-667, 43-668, 43-678, 79-203, 79-204, and 79-318, Reissue Revised Statutes of Nebraska, 1943, sections 43-620, 43-621, 43-627.01, and 43-631, Revised Statutes Supplement, 1986, and section 43-604, Revised Statutes Supplement, 1986, as amended by section 1, Legislative Bill 2, Eighty-ninth Legislature, Fourth Special Session, 1986, are repealed.

Sec. 77. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.