

ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010
COMMITTEE STATEMENT
LB1087

Hearing Date: Monday February 08, 2010
Committee On: Education
Introducer: Adams
One Liner: Change provisions relating to payment for educational services

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Adams, Ashford, Avery, Giese, Haar, Howard, Sullivan
Nay:
Absent:
Present Not Voting: 1 Senator Cornett

Proponents:
Senator Greg Adams
Tom McBride
Mike Lucas
Mary Fraser Meints

Robert Gehringer
John Bonaiuto
Brian Halstead

Opponents:
Steve Coleman

Neutral:

Representing:
Introducer
Epworth Village - CAFCON
York Public Schools
Uta Halee Girls Village, NE Association of Homes and Services to Children
Boys Town
Nebraska Association of School Boards
Nebraska Department of Education

Representing:
Papillion - LaVista Schools

Representing:

Summary of purpose and/or changes:

Legislative Bill 1087 would modify the obligations of school districts with regard to the education of children who are in residential facilities, but who are not state wards. Resident school districts would be required to pay the facilities directly if there is an interim-program school or an approved or accredited school at the institution. Interim-program schools, which are currently regulated under the Department of Education Rule 18, would also be defined in statute.

A new section would define interim-program schools as schools approved by the State Board of Education and located in or operated by:

1. A county detention home;
2. A juvenile emergency shelter; or
3. Any institution not owned or operated by a school district, which provides a residential program and regular or special education services with a special education rate approved by the State Department of Education.

Section 79-1110 would be amended to include the new section in the Special Education Act. Section 79-1113 would be amended to include the new section in the definitions for the Special Education Act.

Section 79-215 would be amended by revising subsection (8), which provides for the education of students in residential settings who were placed in such settings for reasons other than to receive an education.

The current provisions of subsection (8) allow parents to request that the resident district contract with the district where the residential setting is located for the provision of educational services. With the proposed changes, the parents would no longer need to make the request and the processes would be modified to distinguish between residential settings with interim-program schools or approved or accredited schools and residential settings that do not provide education services. There would also be new provisions to encourage timely action on the part of school districts.

For residential settings that do not have an interim-program school or an approved or accredited school, the process would remain the same, except that the parents would not need to request the contract. For facilities that do have an interim-program school or an approved or accredited school, the resident school district would contract directly with the residential setting at a rate determined pursuant to section 79-1140. The residential setting would then be required to provide education services through the facility's school, a contract between the facility and the local school district, a contract between the facility and another service agency, or a combination of the three. Special education services would be required to comply with the student's current individual education plan.

If it is determined after payments have been made that a different district should have been responsible, the new resident district would be required to repay the original district at a rate of 110%. If the new resident district fails to pay the obligation in a timely manner, the original district would be allowed to file a complaint with the department. In addition, if a resident school district fails to contract or make payments in a timely manner, the residential setting or the school district providing educational services would also be allowed to file a complaint. Upon a determination by the Commissioner of Education that a complaint is valid, special education funding would be withheld at a rate of 200% of the disputed amount until the dispute has been resolved.

Existing language would be moved within subsection (8) for clarity. The language to be transferred provides for the resident district to remain the same when a student moves from one residential setting to another.

The existing requirement to adopt and promulgate rules and regulations to carry out the department's responsibilities is expanded to specify that the Commissioner be given authority to determine the validity of complaints under subsection (8) and that the State Board of Education provide an appeal from the Commissioner's determination.

Section 79-1124 would be amended to include interim-program schools in the definition of service agencies for the Special Education Act.

Section 79-1140 would be amended by clarifying that children in residential settings for reasons other than education are included in the provisions requiring resident school districts to contract for educational services. A minimum contract amount for the children in residential settings is specified as the average per pupil cost of the service agency of the preceding year. The average per pupil cost is defined in section 79-1114 to be 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 financial report.

Explanation of amendments:

The Committee Amendment would replace the original provisions of LB 1087. The amendment would provide for the payment for educational services provided through interim-program schools or approved or accredited schools maintained by residential settings. The payments would be made by the Department of Education using special education funding. The State Board of Education is currently allowed to set a percentage of special education funds that may be used for support services, up to 10%, for students that have not been verified for special education services. Such funding is referred to as "flexible" funding. The educational services received by students that do not receive special education services in a school maintained by residential setting would be defined as support services to be reimbursed using flexible funding. The educational services provided to special education students in those settings would be considered special education services.

Section 79-215 would be amended by amending the residency provisions for students who are not wards of the state or any court and who reside in a residential setting for reasons other than to receive an education. The current provisions requiring the residential settings to be certified or licensed by the Department of Health and Human Services or enrolled in the medical assistance program would not change. Also, the current declarations remain that the resident district for such students is the district in which the student resided immediately prior to residing in the residential setting and that the resident district does not change when the student moves from one residential setting to another.

For residential settings that do not maintain an interim-program school or an approved or accredited school, the provisions would continue to require a contract between the resident district and the district where the residential setting is located for the provisions of all educational services, including special education and support services. However, the parent would no longer be required to make a request for the contract. Also, a contract would not be required if a parent and the resident school district agree that an appropriate education will be provided by the resident school district while the student resides in such setting.

For residential settings that do maintain an interim-program school or an approved or accredited school, the residential setting would be reimbursed by the Department of Education. The amount of reimbursement would be determined pursuant to the average per pupil cost as currently defined in section 79-1116. The resident school district would retain responsibility for the student's individualized education plan. The educational services could be provided through:

1. The interim-program school or approved or accredited school;
2. A contract between the setting and the school district where the setting is located;
3. A contract between the residential setting and another service agency; or
4. A combination of such educational providers.

If a district pays another school district in which a residential setting is located and it is later determined that a different school district was the resident school district that should have made the payments, the school district that made the payments would be reimbursed at a rate of 110% by the district that should have made the payments.

A students residing in residential settings would be defined as a student with a handicap, allowing the state and political subdivisions to contract with institutions not wholly owned or controlled by the state or a political subdivision for non-sectarian educational services without violating Article VII, section 11 of the Constitution of Nebraska.

Section 79-1110 would be amended to include the new definition for interim-program schools in the Special Education Act.

Section 79-1113 would be amended to include the new definition for interim-program schools in the Special Education Act definitions.

A new section would provide that the definition for interim-program school would be a school approved by the State Board of Education and located in or operated by:

1. A county detention home;
2. A juvenile emergency shelter; or
3. Any institution not owned or operated by a school district, which provides a residential program and regular or special education services with a special education rate approved by the Department of Education.

Section 79-1124 would be amended to include interim-program schools in the definition of service agencies.

The definition of support services in section 79-1125.01 would be amended by including educational services provided by an interim-program school or an approved or accredited school maintained by a residential setting if the student has not been identified or verified as a child with a disability but demonstrates a need for specially designed assistance by residing in a residential setting.

Section 79-1142 would be amended by requiring reimbursements to residential setting for educational services.

Residential settings would be reimbursed for the educational services, including special education services and support services, provided on or after August 1, 2010, in an amount determined pursuant to the average per pupil cost of the service agency. Reimbursements would be made from funds set aside for such purpose within 60 days after receipt of a reimbursement request submitted in the manner required by the department and including any required documentation. If there are not any funds available for the remainder of the state fiscal year for that type of reimbursement, the reimbursement would occur within thirty days after the beginning of the immediately following state fiscal year. The department could audit any required documentation and subtract any payments made in error from future reimbursements.

The State Board of Education would be required to set aside separate amounts from the special education appropriation for reimbursements pursuant to this subsection for students receiving special education services and for students receiving support services. The amounts set aside for each purpose would be based on estimates of the reimbursements to be requested but could not be less than the total amount of reimbursements requested in the prior year plus any unpaid requests.

The State Board of Education is currently authorized to set a maximum for support services as a percentage of total reimbursable costs for school districts, cooperatives, and educational service units, up to 10%. The 10% maximum would be reduced by the percentage of the special education appropriation set aside for the reimbursement of support services for children in residential settings. The reimbursement percentage for school districts, cooperatives, and educational service units would be calculated after subtracting the amounts set aside for special education and support services reimbursements to residential settings. In addition, the subsections would be restructured and a current repeat of the definition of support services would be eliminated from the section.

The proposal has an August 1, 2010 operative date.

Greg Adams, Chairperson