

## LEGISLATIVE BILL 1087

Approved by the Governor April 1, 2010

Introduced by Adams, 24.

FOR AN ACT relating to schools; to amend sections 79-215, 79-1113, 79-1124, 79-1125.01, and 79-1142, Reissue Revised Statutes of Nebraska, and section 79-1110, Revised Statutes Supplement, 2009; to change provisions relating to payments for educational services as prescribed; to define and redefine terms under the Special Education Act; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 79-215, Reissue Revised Statutes of Nebraska, is amended to read:

79-215 (1) Except as otherwise provided in this section, a student is a resident of the school district where he or she resides or any school district where at least one of his or her parents reside and shall be admitted to any such school district upon request without charge.

(2) A school board shall admit any homeless student that requests admission without charge.

(3) A school board may allow a student whose residency in the district ceases during a school year to continue attending school in such district for the remainder of that school year.

(4) A school board may admit nonresident students to the school district pursuant to a contract with the district where the student is a resident and shall collect tuition pursuant to the contract.

(5) A school board may admit nonresident students to the school district pursuant to the enrollment option program as authorized by sections 79-232 to 79-246, and such admission shall be without charge.

(6) A school board may admit a student who is a resident of another state to the school district and collect tuition in advance at a rate determined by the school board.

(7) When a student as a ward of the state or as a ward of any court (a) has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used pursuant to section 83-108.04 or (b) has been placed in any institution which maintains a special education program which has been approved by the State Department of Education and such institution is not owned or operated by the district in which he or she resided at the time he or she became a ward, the cost of his or her education and the required transportation costs associated with the student's education shall be paid by the state, but not in advance, to the receiving school district or approved institution under rules and regulations prescribed by the Department of Health and Human Services and the student shall remain a resident of the district in which he or she resided at the time he or she became a ward. Any student who is a ward of the state or a ward of any court who resides in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used pursuant to section 83-108.04 shall be deemed a resident of the district in which he or she resided at the time he or she became a foster child, unless it is determined under section 43-1311 or 43-1312 that he or she will not attend such district in which case he or she shall be deemed a resident of the district in which the foster family home or foster home is located.

~~(8)~~ (8)(a) When a student is not a ward of the state or a ward of any court and is residing in a residential setting located in Nebraska for reasons other than to receive an education and the residential setting is operated by a service provider which is certified or licensed by the Department of Health and Human Services or is enrolled in the medical assistance program established pursuant to the Medical Assistance Act and Title XIX or XXI of the federal Social Security Act, as amended, the student shall remain a resident of the district in which he or she resided immediately prior to residing in such residential setting. Upon request by a parent or legal guardian, The resident district for a student who is not a ward of the state or a ward of any court does not change when the student moves from one residential setting to another.

(b) If a student is residing in a residential setting as described in subdivision (8)(a) of this section and such residential setting does not maintain an interim-program school as defined in section 4 of this act

or an approved or accredited school, the resident school district shall contract with the district in which such residential setting is located for the provision of all educational services, including all special education services. If the parent or legal guardian has requested that the resident school district contract with the district in which such residential setting is located, and support services as defined in section 79-1125.01, unless a parent or guardian and the resident school district agree that an appropriate education will be provided by the resident school district while the student is residing in such residential setting. If the resident school district is required to contract, the district in which such residential setting is located shall contract with the resident district and provide all educational services, including all special education services, to the student. If the two districts cannot agree on the amount of the contract, the State Department of Education shall determine the amount to be paid by the resident district to the district in which such residential setting is located based on the needs of the student, approved special education rates, the department's general experience with special education budgets, and the cost per student in the district in which such residential setting is located. Once the contract has been entered into, all legal responsibility for special education and related services shall be transferred to the school district in which the residential setting is located. The resident district for a student who is not a ward of the state or a ward of any court does not change when the student moves from one residential setting to another.

(c) If a student is residing in a residential setting as described in subdivision (8)(a) of this section and such residential setting maintains an interim-program school as defined in section 4 of this act or an approved or accredited school, the department shall reimburse such residential setting for the provision of all educational services, including all special education services and support services, with the amount of payment for all educational services determined pursuant to the average per pupil cost of the service agency as defined in section 79-1116. The resident school district shall retain responsibility for such student's individualized education plan, if any. The educational services may be provided through (i) such interim-program school or approved or accredited school, (ii) a contract between the residential setting and the school district in which such residential setting is located, (iii) a contract between the residential setting and another service agency as defined in section 79-1124, or (iv) a combination of such educational service providers.

(d) If a school district pays a school district in which a residential setting is located for educational services provided pursuant to subdivision (8)(b) of this section and it is later determined that a different school district was the resident school district for such student at the time such educational services were provided, the school district that was later determined to be the resident school district shall reimburse the school district that initially paid for the educational services one hundred ten percent of the amount paid.

(e) A student residing in a residential setting described in this subsection shall be defined as a student with a handicap pursuant to Article VII, section 11, of the Constitution of Nebraska, and as such the state and any political subdivision may contract with institutions not wholly owned or controlled by the state or any political subdivision to provide the educational services to the student if such educational services are nonsectarian in nature.

(9) In the case of any individual eighteen years of age or younger who is a ward of the state or any court and who is placed in a county detention home established under section 43-2,110, the cost of his or her education shall be paid by the state, regardless of the district in which he or she resided at the time he or she became a ward, to the agency or institution which: (a) Is selected by the county board with jurisdiction over such detention home; (b) has agreed or contracted with such county board to provide educational services; and (c) has been approved by the State Department of Education pursuant to rules and regulations prescribed by the State Board of Education.

(10) No tuition shall be charged for students who may be by law allowed to attend the school without charge.

(11) On a form prescribed by the State Department of Education, an adult with legal or actual charge or control of a student shall provide the name of the student, the name of the adult with legal or actual charge or control of the student, the address where the student is residing, and the telephone number and address where the adult may generally be reached during the school day. If the student is homeless or if the adult does not have a telephone number and address where he or she may generally be reached during

the school day, those parts of the form may be left blank and a box may be marked acknowledging that these are the reasons these parts of the form were left blank. The adult with legal or actual charge or control of the student shall also sign the form.

(12) The department shall adopt and promulgate rules and regulations to carry out the department's responsibilities under this section.

Sec. 2. Section 79-1110, Revised Statutes Supplement, 2009, is amended to read:

79-1110 Sections 79-1110 to 79-1167 and section 4 of this act shall be known and may be cited as the Special Education Act.

Sec. 3. Section 79-1113, Reissue Revised Statutes of Nebraska, is amended to read:

79-1113 For purposes of the Special Education Act, unless the context otherwise requires, the definitions found in sections 79-1114 to 79-1125.01 and section 4 of this act shall be used.

Sec. 4. Interim-program school means a school approved by the State Board of Education and located in or operated by (1) a county detention home established under section 43-2,110, (2) a juvenile emergency shelter, or (3) any institution which is a public or private facility, not owned or operated by a school district, which provides a residential program and regular educational or special education services with a special education rate approved by the State Department of Education.

Sec. 5. Section 79-1124, Reissue Revised Statutes of Nebraska, is amended to read:

79-1124 Service agency means the school district, educational service unit, local or regional office of mental retardation, interim-program school, 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 with disabilities if such services are nonsectarian in nature.

Sec. 6. Section 79-1125.01, Reissue Revised Statutes of Nebraska, is amended to read:

79-1125.01 Support services means preventive services for those children from birth to age twenty-one years and, if the child's twenty-first birthday occurs during the school year, until the end of that school year, not identified or verified as children with disabilities pursuant to sections 79-1118.01, 79-1138, and ~~79-1137~~ to 79-1139 but demonstrating a need for specially designed assistance in order to benefit from the school district's general education curriculum and to avoid the need for potentially expensive special education placement and services. Support services include the educational services provided to a child pursuant to subdivision (8)(c) of section 79-215 by an interim-program school or an approved or accredited school maintained by a residential setting if such child has not been identified or verified as a child with a disability pursuant to sections 79-1118.01 and 79-1138 but demonstrates a need for specially designed assistance by residing in a residential setting described in subdivision (8)(a) of section 79-215.

Sec. 7. Section 79-1142, Reissue Revised Statutes of Nebraska, is amended to read:

79-1142 (1) Level I services refers to services provided to children with disabilities who require an aggregate of not more than three hours per week of special education services and support services and includes all administrative, diagnostic, consultative, and vocational-adjustment counselor services. ~~Support services means preventive services for children from birth to age twenty-one years and, if the child's twenty-first birthday occurs during the school year, until the end of that school year, not identified or verified as having a disability pursuant to sections 79-1118.01 and 79-1138 but who demonstrate a need for specially designed assistance in order to benefit from the school's general education curriculum.~~

(2) The total allowable reimbursable cost for support services shall not exceed a percentage, established by the State Board of Education, of the school district's or approved cooperative's total allowable reimbursable cost for all special education programs and support services. The percentage established by the State Board of Education for support services shall not exceed the difference of ten percent minus the percentage of the appropriations for special education approved by the Legislature set aside for reimbursements for support services pursuant to subsection (5) of this section.

~~(2)~~ (3) For special education and support services provided in

each school fiscal year, the State Department of Education shall reimburse each school district in the following school fiscal year a pro rata amount determined by the department. The reimbursement percentage shall be the ratio of the difference of the ~~from~~ appropriations for special education approved by the Legislature and based on minus the amounts set aside pursuant to subsection (5) of this section divided by the total allowable excess costs for all special education programs and support services.

~~(3)~~ (4) 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 79-1155 for cooperative programs which were offered the preceding year. The payments shall be made by the department to the school district of residence, cooperative of school districts, or educational service unit each year in a minimum of seven payments between the fifth and twentieth day of each month beginning in December. Additional payments may be made based upon additional valid claims submitted. 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 shall, upon receiving such certification, draw warrants against funds appropriated.

(5) On and after August 1, 2010, residential settings described in subdivision (8)(c) of section 79-215 shall be reimbursed for the educational services, including special education services and support services, provided pursuant to such subdivision on or after August 1, 2010, in an amount determined pursuant to the average per pupil cost of the service agency. Reimbursements pursuant to this section shall be made from funds set aside for such purpose within sixty days after receipt of a reimbursement request submitted in the manner required by the department and including any documentation required by the department for educational services that have been provided, except that if there are not any funds available for the remainder of the state fiscal year for such reimbursements, the reimbursement shall occur within thirty days after the beginning of the immediately following state fiscal year. The department may audit any required documentation and subtract any payments made in error from future reimbursements. The State Board of Education shall set aside separate amounts from the appropriations for special education approved by the Legislature for reimbursements pursuant to this subsection for students receiving special education services and for students receiving support services for each state fiscal year. The amounts set aside for each purpose shall be based on estimates of the reimbursements to be requested during the state fiscal year and shall not be less than the total amount of reimbursements requested in the prior state fiscal year plus any unpaid requests from the prior state fiscal year.

Sec. 8. This act becomes operative on August 1, 2010.

Sec. 9. Original sections 79-215, 79-1113, 79-1124, 79-1125.01, and 79-1142, Reissue Revised Statutes of Nebraska, and section 79-1110, Revised Statutes Supplement, 2009, are repealed.