

LEGISLATIVE BILL 871

Approved by the Governor April 26, 1978

Introduced by Education Committee, George, 16, V Chmn.;
Koch, 12; Fitzgerald, 14; Maxey, 46; Kahle, 37

AN ACT relating to education; to amend sections 43-617, 43-619, 43-620, 43-626, 43-627.01, 79-1903, and 79-2003, Reissue Revised Statutes of Nebraska, 1943, and sections 43-645 and 43-647, Revised Statutes Supplement, 1977; to define terms; to provide for hearings and procedures; to provide for appeals; to provide for payment of certain costs as prescribed; to authorize the establishment and operation of a Diagnostic Resource Center at Cozad as prescribed; to provide for schools for handicapped children; to provide duties; to create a fund; to provide an operative date; to repeal the original sections, and also section 43-627, Reissue Revised Statutes of Nebraska, 1943, and sections 43-651.01 to 43-652.03, Revised Statutes Supplement, 1976; and to declare an emergency.

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

Section 1. That section 43-626, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-626. Whenever a child is forced to leave temporarily the school district of which he the child is a resident in order to secure attend an appropriate special education program or treatment, and must reside in a residential facility, boarding home, or foster home for the duration of his the special education program or treatment, ~~the parent or guardian of such child 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 prior approval by the State Department of Education. The provisions of this section shall not apply to state-level treatment facilities operated by the Department of Public Institutions. 7 but no parent or guardian shall be required to pay the cost of residential care for such child under such circumstances when the parent or guardian shall have filed an affidavit, or other~~

satisfactory evidence, with the State Board of Education showing that he is not possessed of an estate or income sufficient to pay for the residential care without depriving himself, or others dependent upon him, of reasonable support and maintenance.

Sec. 2. That section 43-627.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-627.01. The State Department of Education shall adopt and promulgate appropriate rules and regulations for making ~~the determinations required by sections 43-626 and 43-627~~ to regulate costs under section 43-626, to limit the program to handicapped children who are forced to leave their resident school districts for educational reasons and for whom daily transportation is not reasonable, and to carry out sections 1, 2, and 4 to 11 of this act pursuant to Chapter 84, article 9. The rules may provide for contracts with the Department of Public Welfare to assist in the administration of this act. ~~Such rules and regulations shall be consistent with those adopted by the Department of Public Institutions under the provisions of section 83-374.~~

Sec. 3. That section 43-645, Revised Statutes Supplement, 1977, be amended to read as follows:

43-645. As used in Chapter 43, article 6, unless the context otherwise requires:

(1) 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 resident school district of each child for the preceding year;

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

(3) 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;

(4) The residence of a child shall mean the legal residence of the parent or guardian;

(5) 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 that term is from time to time defined by the legislature, if such services are nonsectarian in nature;

(6) 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;

(7) Supportive services shall mean all resources available to the individual to help meet appropriate educational goals and objectives, and shall include auxiliary and resource personnel and material and facility resources;

(8) Board shall mean the Special Education Appeal Board; and

(9) 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. 4. 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.

Sec. 5. The State Department of Education shall conduct hearings, initiated under section 4 of this act,

using hearing officers who shall prepare a report containing findings of facts based on the evidence presented and decisions based on such findings. After reviewing such findings and decisions the Commissioner of Education shall then recommend or direct such action as may be necessary.

Sec. 6. The State Department of Education may employ, retain, or approve such qualified hearing officers as are necessary to conduct hearings provided by sections 1, 2, and 4 to 11 of this act. The hearing officers shall not be persons who are employees or officers of a 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 1, 2, and 4 to 11 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.

Sec. 7. Any party at a hearing conducted under section 5 of this act has 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. 8. 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. 9. Any party aggrieved by the findings, decisions, recommendations, or orders of the Commissioner of Education, whether such findings, decisions, recommendations, or orders are affirmative or negative in form, is entitled to judicial review under sections 84-917 to 84-919.

Sec. 10. Any appeals pending under sections 43-651.01 to 43-652.03 on the effective date of this act shall be transferred to the State Department of Education.

Sec. 11. The State Department of Education shall adopt and promulgate rules and regulations to carry out sections 1, 2, and 4 to 11 of this act pursuant to Chapter 84, article 9.

Sec. 12. That section 43-647, Revised Statutes Supplement, 1977, be amended to read as follows:

43-647. Except as provided in section 15 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. 13. 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 acoustically handicapped to such an extent that they cannot acquire an education in the public schools of this state, and who are of suitable age and capacity, and 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 15 of this act.

Sec. 14. 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 visually handicapped to such an extent that they cannot acquire an education in the public schools of the

state and who are not otherwise provided for, and who are of suitable age and capacity, and of good moral character without charge except as provided by section 43-647 15 of this act.

Sec. 15. 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. 16. As used in sections 16 to 30 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 17 of this act;

(3) Diagnosis shall mean:

(a) Systematic observation and assessment of 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) Follow-up 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.

Sec. 17. The State Board of Education is authorized to establish, within the State Department of Education, a program to be known as the Diagnostic Resource Center at Cozad.

Sec. 18. 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. 19. 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. 20. 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. 21. 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. 22. No child shall remain in the residential care component of the program for longer than is necessary to complete appropriate diagnosis.

Sec. 23. The parents or legal guardian shall furnish suitable clothing for any children admitted to the program.

Sec. 24. 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.

Sec. 25. The board may adopt reasonable rules and regulations for the administration of sections 16 to 24 of this act.

Sec. 26. The 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, devise 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. 27. The State Department of Education and the Department of Public Welfare shall enter into a written agreement under which the State Department of Education shall furnish to the Department of Public Welfare evaluations, diagnoses, and treatment for children who are otherwise served by the Department of Public Welfare. The Department of Public Welfare shall, under the agreement, reimburse the State Department of Education for the costs of such services to children.

Sec. 28. 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 residential schools for trainable--mentally---retarded handicapped children. These schools shall offer

residential facilities for ~~trainable--mentally--retarded~~ handicapped children which facilities shall be under the control and supervision of the State Department of Education.

Sec. 29. 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, shall be remitted to the state treasury and by the State Treasurer credited to the ~~Nebraska--School--for--the~~ Mentally-Retarded State Department of Education Cash Fund, ~~which fund is hereby created,~~ and such money shall be made available to any such school for purposes of education, training, or maintenance of students.

Sec. 30. That section 43-620, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-620. ~~In addition to the school for mentally retarded children maintained at Cozad under the provisions of sections 43-647 to 43-649, a~~ A public school district, combination of public school districts, educational service unit, or combination of educational service units may set up one or more approved schools for mentally retarded children. The control and supervision of such schools shall be under the governing body or bodies by which they were set up; Provided, that every school shall comply with the rules and regulations as adopted by the State Department of Education.

Sec. 31. Sections 16 to 31 and 33 of this act shall become operative on July 1, 1978 and the other sections of this act shall become operative on their effective date.

Sec. 32. That original sections 43-626, 43-627.01, 79-1903, and 79-2003, Reissue Revised Statutes of Nebraska, 1943, and sections 43-645 and 43-647, Revised Statutes Supplement, 1977, and also section 43-627, Reissue Revised Statutes of Nebraska, 1943, and sections 43-651.01 to 43-652.03, Revised Statutes Supplement, 1976, are repealed.

Sec. 33. That original sections 43-617, 43-619, and 43-620, Reissue Revised Statutes of Nebraska, 1943, are repealed.

LB871

Sec. 34. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.