

LEGISLATIVE BILL 690

Approved by the Governor March 6, 1972

Introduced by Wayne W. Ziebarth, 37th District; Harold D. Simpson, 46th District

AN ACT to amend sections 43-604, 43-605, 43-606, 43-617, 43-620, 43-621, 43-625, and 43-626, Reissue Revised Statutes of Nebraska, 1943, sections 43-607, 43-616.01, 43-628, and 79-202.01, Revised Statutes Supplement, 1969, and section 43-611, Revised Statutes Supplement, 1971, relating to children; to define orthopedically handicapped children; to change and clarify provisions for transportation of children in special education programs; to clarify terms relating to special education programs; to remove obsolete matter; and to repeal the original sections, and also section 43-616, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 43-604, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-604. (1) Special education shall mean the provision of educational experiences and services through the use of special facilities and special adaptive classrooms, or either of the same, and special instruction for physically handicapped, mentally handicapped, and emotionally disturbed children.

(2) Handicapped children shall mean either physically handicapped, educable mentally handicapped, or emotionally disturbed children.

(3) Physically handicapped children shall mean all children of sound mind (a) who are residents of Nebraska, (b) who are below the age of twenty-one years, (c) who are crippled, visually handicapped, ~~hard-of-hearing~~ acoustically handicapped, defective in speech, cardiopathic, tubercular, cerebral palsied, orthopedically handicapped, or otherwise physically handicapped, and (d) who, by reason of their physical defects, are unable to attend regular public school classes, are not physically adapted to hold full-time membership in regular school facilities, or who, in order to profit from regular school instruction, need facilities and procedure not available in the regular

public school classes attended by physically normal children; Provided, that sections 43-604 and 43-611 shall not apply to visually handicapped, deaf, or other groups of physically afflicted children for whose education there are special statutory provisions in force in the State of Nebraska unless otherwise approved by the Commissioner of Education.

(4) Educable mentally handicapped shall mean children of school age who, because of retarded intellectual development as determined by individual psychological examination, are incapable of being educated profitably and efficiently through the use of ordinary classroom facilities and procedures, but who may be expected to benefit from special educational facilities and methods designed to make them socially adjusted and economically useful.

(5) Sound mind shall mean sufficient mentality to render treatment and education feasible. This includes the physically handicapped child with mental retardation if, in the opinion of the examining physician and the educational psychologist, the child's condition can be improved materially by education and treatment.

(6) Emotionally disturbed shall mean children with behavioral disorders variously designated as neurotic, psychotic, or character disordered, and whose inabilities may manifest themselves in school accomplishment, social relationships or feelings of self adequacy and may result both from experience or biological limitations.

(7) Orthopedically handicapped children shall mean those whose locomotion, mobility, or use of limbs are impaired by crippling because of (a) congenital anomaly, (b) birth injury, (c) trauma, (d) tumor, (e) infection, (f) disease, or (g) other conditions such as fragile bones or cardiac impairment.

Sec. 2. That section 43-605, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-605. It shall be the duty of the board of education or board-of-trustees of every school district to provide educational opportunities for handicapped children as required by sections 43-604 to 43-610.

Sec. 3. 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 provisions of sections 43-604 to 43-610 for handicapped high school pupils residing in districts not maintaining a high school, ~~in any manner provided by and in accordance with the provisions of sections 43-604 to 43-610;~~

Sec. 4. That section 43-607, Revised Statutes Supplement, 1969, be amended to read as follows:

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

(1) Pay the per pupil cost of the special program in which the child is enrolled in any district or educational service unit and ~~an amount not to exceed two hundred dollars to the parent or guardian for actual~~ provide for the transportation expenses per year for those handicapped children who are forced to leave the school district temporarily because of lack of educational and trainable services; Provided, that any parent or guardian having more than one handicapped child in his custody or control shall be limited to an aggregate amount of two hundred dollars for such transportation expenses per year; payments to a parent or guardian for transportation expenses for such child shall be made in accordance with the provisions of section 79-490, but not to exceed four hundred dollars per year, and when any parent or guardian has more than one handicapped child in his custody or control enrolled in programs at the same location, the aggregate amount of payments to such parent or guardian shall not exceed four hundred dollars per year;

(2) ~~Provide transportation for those deaf or visually or orthopedically handicapped and trainable mentally retarded children within the school district who are physically able to take care of themselves in the regular school; Provided, that any parent or guardian shall be limited to an aggregate amount of two hundred dollars for such transportation expenses per year; Provide for the transportation expenses within the school district of any deaf, visually handicapped, orthopedically handicapped, trainable mentally retarded, seriously emotionally disturbed, or specific learning disability child or other handicapped child for whom transportation is otherwise required by law, who is enrolled in a special educational program of the district; Provided, that a parent or guardian~~

transporting such child shall be paid for each day of attendance forty cents per mile for each mile or fraction thereof of the distance between the residence and the school of attendance, but not to exceed four hundred dollars per year, and when any parent or guardian has more than one child in his custody or control enrolled in programs at the same location, the aggregate amount of payments to such parent or guardian shall not exceed four hundred dollars per year;

(3) Provide for the transportation of children enrolled in the Nebraska School for the Deaf or the Nebraska School for the Visually Handicapped through reimbursement of the parent or guardian for expenses incurred in the transportation to and from school of the child in his custody or control, such reimbursement to be paid at the rate of forty cents per mile for the distance between the place of residence and the state-operated school in which the child is enrolled; Provided, that payment to any parent or guardian of a deaf or visually handicapped child enrolled as a residential student in such school shall be limited to an amount determined by no more than five trips per year, but not to exceed four hundred dollars per year. Payment to any parent or guardian of a deaf or visually handicapped child transporting the child daily shall be limited to the number of days of attendance. Any parent or guardian having more than one deaf or visually handicapped child in his custody or control enrolled in such school shall be limited to an aggregate amount not to exceed payment based upon the transportation of one child to the state-operated school for the deaf or visually handicapped in which he is enrolled most distant from his place of residence, but not to exceed four hundred dollars per year;

(3) (4) 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) (5) Provide correspondence instruction approved by the Commissioner of Education; or

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

Sec. 5. That section 43-611, Revised Statutes Supplement, 1971, be amended to read as follows:

43-611. Sufficient funds shall be appropriated by the Legislature to carry out the provisions of section 43-601 and sections 43-604 to 43-616.01, such funds to be

channeled through the office of the State Department of Education and 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 (1) financial reimbursement to local school districts or educational service units, including full reimbursement for the amount expended pursuant to sections 43-607 and 43-616.01 for actual transportation expenses per year not to exceed two four hundred dollars for handicapped and trainable mentally retarded children, forced---to---leave---the---district temporarily because of lack of educational and trainable services, (2) instructional aids and consultative, supervisory, research and testing services to local school districts, and (3) salaries, wages, maintenance, supplies, travel, and other expenses essential to carrying out the provisions for special education.

Sec. 6. That section 43-616.01, Revised Statutes Supplement, 1969, be amended to read as follows:

43-616.01. The resident school district ~~in which the child lives shall pay an amount not to exceed two hundred dollars to the parent or guardian for mileage expenses per year provide for the transportation expenses to and from the program of enrollment~~ for those trainable mentally retarded children who are forced to leave the school district temporarily because of lack of educational and trainable services not available in the district of residence; ~~with such payment to be made at the completion of the full school year; Provided, that any payments to a parent or guardian having more than one for transportation expenses for a trainable mentally retarded child in his custody or control shall be limited to an aggregate amount of two hundred dollars for such transportation expenses be made at the rate of forty cents per mile for the distance between the place of residence and the school of attendance, but not to exceed four hundred dollars per year, and when any parent or guardian has more than one child in his custody or control enrolled in programs at the same location, the aggregate amount of payments to such parent or guardian shall not exceed four hundred dollars per year.~~

Sec. 7. For purposes of sections 43-607 and 43-616.01, the resident school district shall be the district in which the parent or legal guardian of the child has legal residence.

Sec. 8. Payments to a parent or guardian pursuant to section 43-607 or 43-616.01 shall be made only when such parent or guardian is required to travel a distance of more than four miles one way to transport a

child. Such payments shall be based on a rate of ten cents per mile actually traveled. To be eligible for reimbursement for transportation expenses pursuant to section 43-611, each district shall present evidence satisfactory to the State Department of Education that the provisions of this section have been complied with.

Sec. 9. 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 children. These schools shall offer residential facilities for trainable mentally retarded children which facilities shall be under the control and supervision of the State Department of Education.

Sec. 10. That section 43-620, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-620. In addition to the school for trainable mentally handicapped retarded children maintained at Cozad under the provisions of sections 43-617 to 43-619, 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 residential schools for the trainable mentally handicapped retarded children. Such schools shall offer residential facilities for such handicapped children. The control and supervision of such residential 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. The residential schools established under the provisions of sections 43-620 to 43-624 shall be eligible for the contributions of the county, state, and resident school districts as provided in sections 43-613, 43-615, and 43-616.

Sec. 11. That section 43-621, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-621. In determining the number and location of schools provided for by sections 43-620 to 43-624, a public school district, combination of public school districts, educational service unit, or combination of educational service units shall take into consideration the number and geographic distribution of mentally handicapped children and the location and adequacy of

other existing schools for such children. In setting up any such school, a public school district, combination of public school districts, educational service unit, or combination of educational service units shall specify the area to be served by it and each such area shall include a sufficient number of trainable mentally handicapped retarded children to assure the efficient operation of a sound training or educational program by the school. No such school shall be set up unless the necessary land and buildings and other structures are made available within the proposed area at no cost to the state, nor without the approval of the State Board of Education.

Sec. 12. That section 43-625, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-625. The State Board of Education shall approve special training and educational programs for trainable mentally handicapped retarded children 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) The teacher or teachers in charge of any such special program shall be qualified in the training and education of the trainable mentally handicapped retarded children;

(2) All other personnel, to be known as teacher aides, working with any such program, shall have such qualifications as the governing body of the school shall prescribe and shall participate for not less than three nor more than six days in each school year in in-training activities specially designed and made available through the State Department of Education;

(3) When practicable, not more than ten children shall be assigned to one teacher aide; and

(4) Each qualified teacher shall be responsible for the supervision of not more than five teacher aides.

Sec. 13. That section 43-626, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-626. Whenever a physically handicapped, educable or--trainable mentally handicapped, trainable mentally retarded, or an emotionally disturbed child is forced to leave temporarily the school district of which

he is a resident in order to secure special education or treatment, and must reside in a residential facility, boarding home, or foster home for the duration of his special education or treatment, the parent or guardian of such child shall provide for the cost of food and lodging, but no parent or guardian shall be required to pay the cost of food and lodging for such child under such circumstances when the parent or guardian shall have filed an affidavit, or other satisfactory evidence, with the county board of the county in which he has legal settlement showing that he is not possessed of an estate or income sufficient to pay for the food and lodging without depriving himself, or others dependent upon him, of reasonable support and maintenance.

Sec. 14. That section 43-628, Revised Statutes Supplement, 1969, be amended to read as follows:

43-628. In no case shall Nebraska county, state or local funds be expended for children attending programs for the trainable mentally retarded who are residents of states other than Nebraska, nor shall such funds be expended for the purpose of providing wages for trainable mentally retarded individuals engaged in vocational evaluation and training in programs for the trainable mentally retarded.

Each school district of this state having any trainable mentally retarded, or physically handicapped, or educable mentally handicapped children residing in the district, and not providing any special education or training programs for such children, shall provide for special educational or training programs for such children. Any district having any such resident children and not actually furnishing the appropriate program shall contract with another district or educational service unit for the furnishing of such educational or training program if requested by the parents or guardian of such child or children.

Sec. 15. That section 79-202.01, Revised Statutes Supplement, 1969, be amended to read as follows:

~~79-202.01:~~ The county board of any county of this state shall have authority by a majority vote to appropriate from the general fund of the county, funds to the office of the county superintendent to be used by the county superintendent as a revolving fund to set up a program of special education for handicapped educable children of the county. Such fund shall be reimbursed from local school districts of the county by school districts desiring to participate in such program. Participation in the program shall be on the basis of a

contract between the school district and the county superintendent which shall include the extent of a liability of the district and the time and manner of paying the same. The county superintendent shall incur no liabilities against county funds nor expend the same unless assured of proper reimbursement on the basis of written contracts with school districts.

Sec. 16. That original sections 43-604, 43-605, 43-606, 43-617, 43-620, 43-621, 43-625, and 43-626, Reissue Revised Statutes of Nebraska, 1943, sections 43-607, 43-616.01, 43-628, and 79-202.01, Revised Statutes Supplement, 1969, and section 43-611, Revised Statutes Supplement, 1971, and also section 43-616, Reissue Revised Statutes of Nebraska, 1943, are repealed.