

## LEGISLATIVE BILL 403

Approved by the Governor May 30, 1973

Introduced by Stahmer, 8

AN ACT to amend sections 43-627, 79-202, and 79-444, Reissue Revised Statutes of Nebraska, 1943, and sections 43-604, 43-609, 43-620, 43-625, and 43-626, Revised Statutes Supplement, 1972, relating to the care and education of handicapped children; to provide special education programs; to fund such programs; to define terms; to provide an operative date; to repeal the original sections, and also section 43-610, Reissue Revised Statutes of Nebraska, 1943, sections 43-605, 43-612, 43-613, 43-615, 43-615.01, and 43-628, Revised Statutes Supplement, 1972, and section 43-613.01, Revised Statutes Supplement, 1972, as amended by section 1, Legislative Bill 336, Eighty-third Legislature, First Session, 1973, and section 43-614, Revised Statutes Supplement, 1972, as amended by section 2, Legislative Bill 336, Eighty-third Legislature, First Session, 1973.

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

Section 1. 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 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. 2. The special education programs may be provided by any school district, by contracting with another school district, 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 operated by the State of Nebraska, or any combination thereof. Any office of mental retardation program receiving funds under the provisions of this 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 special education programs acceptable to the



State Board of Education on or before October 1, 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. On September 15, 1976, and on September 15 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. 3. In order to assist the school districts in determining the needs for special education programs in their districts and the establishment of needed programs, all school boards within the State of Nebraska are hereby directed to report on or before February 1, 1974, on forms provided by the State Department of Education, all children who reside in the respective school districts who would benefit from special education programs together with a plan for providing special education programs for the school years 1973-74 and 1974-75, and budgets therefor. The plan and budget forms shall conform to guidelines as provided in section 9 of this act. The identification of children, special education program plans, and budget requests shall be amended annually, on or before August 1, such that there shall always be on file with the State Department of Education a two-year projection of special education program plans, number of children to be educated, and budget requests. The State Department of Education shall review the report of the school district and its budgets. Any program that provides residential care shall show the costs of such care separately from the costs of the education program.

The State Department of Education shall also review the budget request and approve a budget for the special education programs. 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. 4. In order to assist the State Department of Education in determining the needs for special education programs in the State of Nebraska and the establishment of such programs, each educational service unit, county superintendent of schools, and each local or regional office of mental retardation within the State of Nebraska is hereby directed to report on or before February 1, 1974, on forms provided by the State Department of Education, all children currently receiving



services from such offices.

Sec. 5. As used in this act, 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 average per pupil cost of the resident school district of each child for the preceding year;

(2) Average per pupil cost shall mean the amount computed by dividing the total current operating expenditure excluding special education expenditures, by the average daily membership;

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

(4) 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;

(5) 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 or diagnosis and evaluation. Expenditures for medical services, dental services, diagnosis, and evaluation shall be the responsibility of the parent or legal guardian; and

(6) 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.

Sec. 6. This act shall apply to any children from age five to age eighteen. The State Department of Education, Division of Vocational Rehabilitation shall assume responsibility for the training of those individuals whose education or training is terminated and for whom additional supportive services are required.

Sec. 7. Each school district shall pay an amount equal to the average per pupil cost of the preceding year to the agency providing the educational program for every child who is a resident of the district and attending an educational program outside 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. 8. Effective July 1, 1974, the State Department of Education shall reimburse each school district for ninety per cent of the excess cost of the special education programs, as defined in section 5 of this act. The payments shall be made by the State Department of Education to the resident school district in four approximately equal payments, on September 30, December 30, March 30, and June 30.

Sec. 9. Each plan for the provision of 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 five-year projection of needs for each service group commencing with the fiscal year for which the plan is adopted. This projection shall include a priority listing of the resources required to meet the needs of each service group and the estimated cost of developing and acquiring these resources;

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

(5) 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; and

(6) 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.

Sec. 10. That section 43-604, Revised Statutes Supplement, 1972, 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, emotionally disturbed, and specific learning disability children to provide special instruction to handicapped children.~~

(2) Handicapped children shall mean either physically handicapped, educable mentally handicapped, or mentally retarded, emotionally disturbed children, children with specific learning disabilities, or such other children as shall be defined by the State Department of Education.

(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 ~~nineteen~~ years, (c) who are crippled, visually handicapped, 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 43-644 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. Such definition shall include the physically handicapped child with mental retardation if, in the opinion of the examining physician, educational psychologist, psychologist, or psychiatrist, the child's condition can be improved materially by education and treatment.~~

(4) Educable mentally handicapped shall mean children of school age who, because of retarded intellectual development as determined by individual psychological examination and deficiencies in social adjustment, require additional supportive services in order to function profitably within regular educational programming. ~~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) (5) 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) (6) 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.

(8) (7) Specific learning disability children shall mean those children who manifest an educationally significant discrepancy between their estimated intellectual potential and their actual level of performance in one or more of the processes of language, perception, reading, spelling, arithmetic or writing, which may or may not be accompanied by demonstrable central nervous system dysfunctions or behavioral disturbances. Such term shall not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, of environmental disadvantage or other problems otherwise provided for in this section.

(8) A mentally retarded child shall mean a child who would benefit from training or education in the areas of self-care, social adjustment to his immediate surroundings, and vocationally-related activities which will contribute to his economic usefulness in the home or in a specialized situation providing for activities such as sheltered work experience and a supervised living environment.

(9) Multihandicapped children shall mean children who have two or more coincidental and educationally significant physical or psychological handicaps or both physical and psychological handicaps. This includes physically handicapped children with mental retardation if, in the opinion of the examining physician and psychologist, the child's condition can be improved materially by education and treatment.



Sec. 11. That section 43-609, Revised Statutes Supplement, 1972, be amended to read as follows:

43-609. The For the period ending June 30, 1974, the school board of a school district, wherein handicapped children reside, shall include in its annual budget for each child not less than the regular per pupil cost in the school of the district. When an amount equal to the regular per pupil cost has been spent for the education and therapy of the handicapped child, the school district qualifies for state aid for handicapped children; provided, that the education and therapy shall have been secured within the State of Nebraska. After programs have been approved by the Commissioner of Education, state aid shall be provided to the servicing school district, educational service unit, state school or public agency for the education of physically handicapped, educable mentally handicapped, and emotionally disturbed children. The amount of state funds for the education and therapy of these children shall be equal to the actual excess cost expenditures of the school district but shall not exceed the following amounts per annum: (1) Physically handicapped children, six hundred dollars per pupil, (2) educable mentally handicapped children, three hundred dollars per pupil, and (3) emotionally disturbed children, six hundred dollars per pupil; provided, that in no instance shall the total amount of state aid and the per pupil cost provided for in this section exceed the actual per pupil cost of the special education program of the servicing district or four thousand five hundred dollars per teacher or therapist holding a valid Nebraska prestandard or provisional certificate, or five thousand dollars per teacher or therapist holding a valid Nebraska standard certificate, or six thousand dollars per teacher or therapist holding a valid Nebraska professional certificate, whichever is the lesser.

Sec. 12. 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. 13. No reimbursement for special education programs shall be allowed, unless the program shall meet 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 October 1, 1976.

Sec. 14. That section 43-620, Revised Statutes Supplement, 1972, be amended to read as follows:

43-620. In addition to the school for trainable mentally 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 retarded children. Such schools shall offer residential facilities for such 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 43-643, 43-645, and 43-646.

Sec. 15. That section 43-625, Revised Statutes Supplement, 1972, be amended to read as follows:



43-625. The State Board of Education shall ~~approve~~ review special training and educational programs for ~~trainable~~ mentally 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 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 ~~not more than six~~ days in each school year in in-training activities specially designed and made available through the State Department of Education; and

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

~~(4) (3) Each qualified teacher shall be responsible for the direct supervision of not more than five two 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 certificate with an endorsement for the teaching of the trainable mentally retarded.

Sec. 16. That section 43-626, Revised Statutes Supplement, 1972, be amended to read as follows:

43-626. Whenever a ~~physically--handicapped, educable--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 residential care~~, but no parent or guardian shall be required to pay the cost of food ~~and lodging residential care~~ 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~~ State Board of Education showing that he is not possessed of an estate or income sufficient to pay for the ~~food--and--lodging~~



residential care without depriving himself, or others dependent upon him, of reasonable support and maintenance.

Sec. 17. That section 43-627, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-627. Whenever a parent or guardian shall have filed with the county-board State Department of Education an affidavit, or other satisfactory evidence, showing inability to provide for the child's ~~food--and--lodging~~ residential care as provided in section 43-626, the county State of Nebraska shall provide ~~from funds of--the county--the for payment of~~ ordinary and reasonable costs for the ~~food-and-lodging--for~~ residential care of the child during the duration of the special education or treatment secured outside the resident school district, but only if the special education or treatment is secured within this state and within a program approved by the State Department of Education. Sections 43-626 and 43-627 shall not apply to children enrolled in the Nebraska School for the Deaf, ~~or the Nebraska School for~~ Trainable Children.

Sec. 18. The State Department of Education shall adopt appropriate rules and regulations for making the determinations required by sections 16 and 17 of this act. Such rules and regulations shall be consistent with those adopted by the Department of Public Institutions under the provisions of section 83-371.

Sec. 19. That section 79-202, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-202. Section 79-201 shall not apply ~~where the child is physically or--mentally--incapacitated--for--the work done in--the--school;--or--in--any--case~~ where the services or earnings of a child, who is fourteen years or more of age and has completed the work of the eighth grade, are necessary for his own support or the support of those actually dependent upon him, or when illness or severe weather conditions make attendance impossible or impracticable.

Sec. 20. That section 79-444, Reissue Revised Statutes of Nebraska, 1943, 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; provided, 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 is capable of carrying the work of those grades.

(3) The school board or board of education may require a birth certificate and evidence of a physical examination by a qualified physician and such immunization as required by the board within six months prior to the entrance of a child into the local school; provided, no such physical examination or immunization shall be required of any child whose parent or guardian shall object thereto in writing on the grounds that such physical examination or immunization is contrary to the religious tenets of an established church of which he is a member or adherent.

This section shall not be construed to prohibit any district board or board of education in its discretion, from establishing and supporting financially, programs to which attendance shall be voluntary which they deem beneficial to the education of prekindergarten children, nor shall this section be construed to allow any school district to fail to meet its responsibilities under Chapter 4<sup>3</sup>, article 6.

Sec. 21. The parent or guardian of any child who believes the child is not in an appropriate educational program may file a written appeal to the State Department of Education. The State Department of Education shall review the facts in all such cases and determine whether the child is in an appropriate educational program. If the State Department of Education shall determine that the educational program is not appropriate for such child it shall assist the school district of which the child is a resident in placing the child in an appropriate education program. If the State Department of Education determines that the child is in an appropriate educational program, the parent or guardian shall be notified in writing of such finding and



the basis thereof.

Sec. 22. 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. 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. 23. There is hereby created the Nebraska Coordinating Council for the Handicapped, hereinafter referred to as the council, for the purpose of coordinating programs for the handicapped, including children from birth. The council shall maintain a directory of services available for the handicapped in the State of Nebraska; distribute information to parents, doctors, and other persons concerning such services; initiate coordinated planning by and between the agencies and departments of the state, private associations, organizations, and corporations for the handicapped; maintain records and information concerning handicapping conditions and the handicapped in Nebraska; and make recommendations to the public and private agencies working with the handicapped concerning needs for additional services or areas in which coordination of services may benefit the handicapped. The council shall consist of the following official voting members:

(1) From the Department of Public Welfare, the Director of Social Services or his designated representative, the Director of Medical Services or his designated representative, and the Director of Services for Crippled Children or his designated representative;

(2) From the Department of Public Institutions, the Director of Medical Services or his designated representative, the Director of Mental Retardation or his designated representative, the Director of Rehabilitative Services for Visually Impaired or his designated representative, and the Director of the Beatrice State Home or his designated representative;

(3) From the Department of Education, the Director of Special Education or his designated representative, the Director of Vocational Rehabilitation or his designated representative, the Superintendent of the Nebraska School for the Deaf or his designated representative, the Superintendent of the Nebraska School for Visually Handicapped or his designated representative, and the administrator of the Nebraska School for Trainable Children; and



14) From the Department of Health, the Director of Maternal and Child Health or his designated representative.

The council may appoint ex officio, nonvoting members to represent private associations, organizations, or corporations for the handicapped.

Sec. 24. The council shall annually elect from its members a chairman and a vice-chairman.

Sec. 25. On or before the thirtieth day of November of each year the council shall make a written report of its activities, studies and proposals to the Governor, and a sufficient number of copies of such report shall be typed or printed so that at least each of the agencies and organizations having membership on the council and the proper committees of the legislature shall have a copy. Each state agency represented by membership on the council is hereby authorized to furnish such information, data, reports, and statistics requested by the council, which are not confidential in nature, and shall furnish the same within six months after a request therefor.

Sec. 26. The council shall initially meet within ninety days of the effective date of this act and bi-monthly thereafter. Special meetings may be called by the chairman. A quorum shall consist of seven members, and the chairman shall be entitled to vote only in case of a tie. The council shall at its first meeting adopt its rules of procedure and may adopt such by-laws and other rules and regulations as it deems necessary. Neither the members nor the secretary of the council shall receive any compensation for their services, but they shall be reimbursed for their actual and necessary expenses incurred incident to travel and holding of meetings in connection with the work of the council.

Sec. 27. For administration purposes, the council shall be placed within the State Office of Planning and Programming as a separate program.

Sec. 28. Office facilities, equipment, and supplies may be made available to the council by the state agencies represented by membership thereon.

Sec. 29. The State Department of Education shall promulgate and publish such rules and regulations as shall be necessary to carry out the provisions of sections 1 to 22 of this act.



Sec. 30. This act shall become operative on July 1, 1974, except that sections 1 to 11 of this act shall become operative on the effective date of this act.

Sec. 31. That original sections 43-627, 79-202, and 79-444, Reissue Revised Statutes of Nebraska, 1943, and sections 43-604, 43-609, 43-620, 43-625, and 43-626, Revised Statutes Supplement, 1972, and also section 43-610, Reissue Revised Statutes of Nebraska, 1943, sections 43-605, 43-612, 43-613, 43-615, 43-615.01, and 43-628, Revised Statutes Supplement, 1972, section 43-613.01, Revised Statutes Supplement, 1972, as amended by section 1, Legislative Bill 336, Eighty-third Legislature, First Session, 1973, and section 43-614, Revised Statutes Supplement, 1972, as amended by section 2, Legislative Bill 336, Eighty-third Legislature, First Session, 1973, are repealed.