

LEGISLATIVE BILL 2

Approved by the Governor December 12, 1986

Introduced by Vickers, 38, for the Governor

AN ACT relating to special education; to amend sections 43-604 and 43-648, Revised Statutes Supplement, 1986; to redefine terms; to change provisions relating to reimbursement for special education program costs; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 43-604, Revised Statutes Supplement, 1986, 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, to provide special instruction to handicapped children or the supportive services necessary to diagnose, place, and maintain children in special education.

(2) Handicapped children shall mean either physically handicapped children, seriously emotionally disturbed behaviorally impaired children, speech-impaired children, children with specific learning disabilities, children with mental retardation, or such other children as shall be defined by the State Department of Education.

(3) Physically handicapped children shall mean children (a) who are residents of Nebraska, (b) who are visually handicapped, acoustically handicapped, defective in speech; cardiopathic, tubercular, cerebral palsied, orthopedically handicapped, or otherwise physically handicapped, and (c) 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. Such definition shall include the physically handicapped with mental retardation if, in the opinion of the examining physician, educational psychologist, psychologist, or psychiatrist, the

condition can be improved materially by education and treatment.

(4) Seriously emotionally disturbed Behaviorally impaired children shall mean children with a serious condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

(a) An inability to learn which cannot be explained by intellectual, sensory, or health factors; characteristics specified in this subsection in sufficient frequency, duration, or intensity to require intervention for educational, social, or emotional growth and development. The term shall include children who are autistic. The behavioral impairment cannot be explained by intellectual, sensory, or health factors. The characteristics of behaviorally impaired children include:

(b) ~~(a)~~ An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(c) ~~(b)~~ Inappropriate types of behavior or feelings under normal circumstances;

(d) ~~(c)~~ A general pervasive mood of unhappiness or depression; or

(e) ~~(d)~~ A tendency to develop physical symptoms or fears associated with personal or school problems.

The term shall include children who are schizophrenic but shall not include children who are socially maladjusted, unless it is determined that such children are seriously emotionally disturbed.

(5) 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.

(6) Specific learning disability children shall mean those children of school age who have a verified disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in an inability to listen, think, speak, write, spell, or do mathematical calculations. The term shall include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term shall not include children who have learning problems which are primarily

the result of visual, hearing, or motor handicaps, mental retardation, emotional disturbance, or educational disadvantage environmental, cultural, or economic disadvantage.

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

(8) 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.

(9) Speech-impaired children shall mean children with a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

Sec. 2. That section 43-648, Revised Statutes Supplement, 1986, be amended to read as follows:

43-648. (1) The State Department of Education shall reimburse each school district for ninety per cent of the allowable excess cost of the preceding year's special education programs. In each fiscal year subsequent to fiscal year 1987-88, this subsection shall apply only to special education programs not described in subsection (2) of this section. 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 43-643 for cooperative programs which were offered the preceding year. The payments shall be made by the State Department of Education to the resident school district, cooperative of school districts, or educational service unit each year in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning in December. 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 of Administrative Services shall, upon receiving such certification, draw warrants against funds appropriated.

(2) It is the intent of the Legislature that programs for (a) handicapped children who require special education programs outside of the regular classroom for a period of time less than six hours per week and (b) handicapped children who are in special education programs for the learning disabled or speech impaired shall be reimbursed pursuant to this subsection. The State Department of Education shall establish procedures and standards to enforce this subsection. Such procedures and standards shall include, but not be limited to, provisions for monitoring assignment of staff by type and extent of service provided and provisions for conducting random onsite audits and examinations of special education programs.

In each fiscal year subsequent to fiscal year 1987-88, the Legislature shall appropriate an amount for special education programs for (i) handicapped children who require special education programs outside of the regular classroom for a period of time less than six hours per week and (ii) for handicapped children who are in special education programs for the learning disabled or speech impaired which is the lesser of (A) ninety per cent of the allowable excess costs of the special education programs for the preceding year or (B) an amount equal to the amount appropriated for the preceding fiscal year adjusted by the per cent of the increase or decrease appropriated for general state aid pursuant to sections 79-1331 to 79-1344.01 for the fiscal year for which the appropriation is being made compared to the preceding fiscal year.

(3) School districts, educational service units, and cooperatives of school districts shall submit financial data for special education programs offered in the 1987-88 school year as requested by the State Department of Education which shall separate such programs for the learning disabled, for the speech impaired, and for handicapped children who require special education programs outside of the regular classroom for a period of time less than six hours per week, from other special education programs.

If the amount appropriated by the Legislature for the fiscal year for which the appropriation is being made for special education programs is less than ninety per cent of the allowable excess costs for the preceding year, the amount so appropriated shall be prorated by

the State Department of Education based on plans and budgets in reports submitted to such department pursuant to section 43-643.

Sec. 3. Sections 1 and 4 of this act shall become operative on August 31, 1987. The remaining sections shall become operative on their effective date.

Sec. 4. That original section 43-604, Revised Statutes Supplement, 1986, is repealed.

Sec. 5. That original section 43-648, Revised Statutes Supplement, 1986, is repealed.

Sec. 6. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.