

## LEGISLATIVE BILL 518

Approved by the Governor June 7, 1985

Introduced by Beutler, 28

AN ACT relating to the care and education of handicapped children; to amend sections 43-626, 43-627.01, 43-649, 43-661, 43-662, 43-662.01, and 83-366, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to certain special education placements and plans; to change special education appeal procedures; to provide jurisdiction as prescribed; to change provisions relating to costs; and to repeal the original sections.

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 the child is a resident in order to attend an appropriate special education program and must temporarily reside in a residential facility, boarding home, or foster home in order to receive an appropriate special education program, for the duration of the special education program 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 the prior approval by of the State Department of Education or was made pursuant to sections 43-661 to 43-668. No school district shall make a placement in a special education program requiring residential care without advance consultation with the State Department of Education to review the child's needs and the availability and appropriateness of each possible placement in the continuum of alternative services. Applications for approval of special education program placements requiring residential care shall be signed by the parent or legal guardian, submitted via the school district of which the child is a resident to the State Department of Education, and acted upon by the department within thirty days of receipt by the department. If an application is denied, the parent or legal guardian shall be provided written notification by the State Department of Education of his or her right to appeal the decision pursuant to sections 43-661 to 43-668 and right to name the State Department of Education as respondent in the appeal

proceeding. The provisions of this section shall not apply to state-level treatment facilities operated by the Department of Public Institutions.

The State Department of Education and the Department of Social Services shall annually establish the maximum rates that the state will pay for the ordinary and reasonable cost of residential care placements within the state. After the effective date of this act, children whose residential placement was funded by state and regional agencies other than the State Department of Education shall continue to be funded by such agencies.

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 rules and regulations 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~~ require residential care to receive any benefit from their special education program, and to carry out sections 43-626, 43-627.01, and 43-661 to 43-668 pursuant to Chapter 84, article 9. The rules may provide for contracts with the Department of Social Services to assist in the administration of this act.

Sec. 3. Following residential placement, the local school district and the State Department of Education shall continue efforts to develop appropriate programs closer to the handicapped student's home and shall cooperate with the Department of Social Services in preparing families to accommodate returning students. The Department of Social Services shall provide consultative services, as defined by mutual agreement between the State Department of Education and the Department of Social Services, to the children and families initially provided residential care following the effective date of this act.

Sec. 4. That section 43-649, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-649. 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; and

(7) A sample of the written materials to be used to provide parents with specific information about complaint and appeal rights and procedures

Sec. 5. That section 43-661, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-661. 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. A copy of the procedures specified in rules and regulations of the State Department of Education for complaints and hearings under this section shall be provided by school districts to all parents and guardians of handicapped children who are receiving services on the effective date of this act and, thereafter, to all parents and guardians of handicapped children upon initial consideration of the provision of services for their handicapped children. Such hearing shall be initiated by filing a petition with the State Department of Education. A parent, guardian, or competent student of the age of majority shall not be entitled to reimbursement for any expenses incurred more than sixty days prior to the filing of the petition.

Sec. 6. That section 43-662, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-662. The State Department of Education shall conduct hearings, initiated under section 43-661, using hearing officers. The State Department of Education may employ, retain, or approve such qualified hearing officers as are necessary to conduct hearings provided by sections 43-626, 43-627.01, and 43-661 to 43-668. The hearing officers shall not be persons who are employees or officers of a state or 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 43-626, 43-627.01, and 43-661 to 43-668 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. Hearing officers appointed and assigned by the State Department of Education shall have exclusive original

jurisdiction over cases arising under sections 43-626, 43-627.01, and 43-661 to 43-668, and in no event shall juvenile courts have jurisdiction over such matters.

Sec. 7. That section 43-662.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-662.01. Upon the receipt of a petition, the State Department of Education shall assign it to a hearing officer. The hearing officer shall receive all subsequent pleadings and shall conduct the hearing. At the hearing the parties shall present evidence on the issues raised in the pleadings. At the completion of the proceedings, the hearing officer shall prepare a report based on the evidence presented containing findings of fact and conclusions of law. Within forty-five days after the receipt of a request for a hearing, the hearing officer shall prepare a final decision and order directing such action as may be necessary. At the request of either party for good cause shown, the hearing officer may grant specific extensions of time beyond this period. The report and the final decision and order shall be delivered via certified mail to each party or attorney of record and to the Commissioner of Education.

Sec. 8. That section 83-366, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-366. The department shall assess against the patient or his or her relatives all or such part of the cost determined under section 83-365 as they are able to pay, in the judgment of the director, except that a patient who is placed in a state institution to receive appropriate special education pursuant to Chapter 43, article 6, or his or her relatives shall be assessed only for medical care and medical treatment costs as determined pursuant to rules and regulations adopted and promulgated by the department in accordance with section 83-371.

Sec. 9. That original sections 43-626, 43-627.01, 43-649, 43-661, 43-662, 43-662.01, and 83-366, Reissue Revised Statutes of Nebraska, 1943, are repealed.