

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1720

By: Larason of the House

and

Williams (Penny) of the
Senate

COMMITTEE SUBSTITUTE

An act relating to schools; amending 70 O.S. 1991, Sections 1-113, as amended by Section 3, Chapter 262, O.S.L. 1992 (70 O.S. Supp. 1992, Section 1-113) and 18-110, which relate to residence for school purposes and adjustments and limitations on state aid; requiring school districts to pay certain costs of certain students under certain conditions; providing procedure for appeal from certain denials of transfer; providing procedure for determining residency in certain circumstances; requiring certain notice to certain individuals and entities; requiring appointment of certain body to decide certain appeals; setting time limits; limiting certain appeals; providing certain definition; deleting duplicative language; clarifying reimbursement requirements of certain districts; defining certain costs; requiring promulgation of rules; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 70 O.S. 1991, Section 1-113, as amended by Section 3, Chapter 262, O.S.L. 1992 (70 O.S. Supp. 1992, Section 1-113), is amended to read as follows:

Section 1-113. A. When used in this section, unless the context otherwise requires, the residence of any child for school purposes shall be:

1. The school district in which the parents, guardian, or person having the care and custody of the child holds legal residence, if the parents, guardian, or person contributes in major degree to the support of such child; or

2. The foster home, as defined in Section 25 of Title 10 of the Oklahoma Statutes, in which the child has been placed:

- a. by the person or agency having legal custody of the child pursuant to a court order, or
- b. by a state agency having legal custody of the child pursuant to the provisions of Title 10 of the Oklahoma Statutes; or

3. Any orphanage or eleemosynary child care facility having full-time care and custody; or

4. Any state-operated institution in which a child has been placed by a parent or guardian or by a state agency having legal custody of the child pursuant to the provisions of Title 10 of the Oklahoma Statutes for care and treatment due to a physical or mental condition of the child; or

5. The district in which a child who is supporting himself entirely by his own efforts resides and attends school; or

6. The legal residence of the parents or guardian of a child who has been placed in a public or private residential child care or treatment facility, voluntarily by a parent or guardian, or by court order, or by a state agency having legal custody.

B. Except as otherwise provided in this section no school district in which a public or private residential child care or treatment facility is located shall bear the costs of educating any child voluntarily placed by a parent or guardian in the facility unless a transfer has been approved for the child from the district in which the child has legal residence. No school district shall bear the costs of educating children placed in any state-operated institution; provided, a school district may furnish educational services pursuant to contract with such institution as elsewhere provided by law.

C. A transfer shall not be required for a child who is placed in a public or private residential child care or treatment facility by court order or by a state agency having legal custody or for a child who is placed in a public or private residential child care or treatment facility voluntarily by a parent or guardian for the purpose of alcohol or drug treatment if such child is certified as in need of such treatment by a physician in a statement provided by the parent or guardian to the public or

private residential child care or treatment facility to the school district providing educational services and to the school district of legal residence. The district in which the child has legal residence for school purposes shall bear the financial responsibility as defined in Section 18-110 of this title for the child for whom a transfer is not required pursuant to the provisions of this subsection.

D. 1. Except for children for whom no transfer is required pursuant to subsection C of this section, whenever a child is voluntarily placed without a transfer in a public or private residential child care or treatment facility by a parent or guardian, the facility shall, if the child contends he resides in a district other than the district where the facility is located, immediately upon admittance:

- ~~1.~~ a. inform the parent or guardian that the parent or guardian must immediately apply for a transfer from the school district in which the child contends he resides to the school district in which the facility is located~~;~~ and
- ~~2.~~ b. notify the district in which the facility is located of the admittance.

2. The purported district of residence shall be responsible for the educational costs as defined in Section 18-110 of this title until the district ~~of residence~~ acts to approve or disapprove the transfer. Action to approve or disapprove the transfer shall be taken within thirty (30) days of the child's admittance to the facility. If, however, from failure of the parent or guardian to make proper application for transfer, no transfer is approved within thirty (30) days of the child's admittance to the facility, the purported district of residence shall not be required to pay the educational costs for any time beyond thirty (30) days that the child remains in the facility; rather, such costs shall be the responsibility of the facility or parent or guardian. If the purported district of residence disapproves the transfer and an appeal is timely made as provided in paragraph 4 of this subsection, the district shall pay the

educational costs for the child until the district receives notice that the disapproval of the transfer is upheld by the review team as provided in paragraph 4 of this subsection. If the review team determines that the district is the district of residence and that a transfer should be granted, the district shall pay the educational costs of the child as long as the child remains in the facility.

3. Access to the due process procedure guaranteed to children with disabilities shall be available to resolve disagreements about the appropriateness of placements of children with disabilities who require services pursuant to an individualized education plan (IEP) under the Individuals with Disabilities Education Act, Public Law 101-476.

4. For children who are not receiving services pursuant to an individualized education plan (IEP) under the Individuals with Disabilities Education Act, the following procedure shall be available to resolve disagreements about the appropriateness of placement of the child and resulting denial of transfer:

- a. the State Board of Education shall establish within the State Department of Education a review team to consider appeals from denials of transfer under circumstances described in this section. The team shall include the director of the Finance Division of the State Department of Education;
- b. the child's parent or guardian must appeal a denial of transfer to the State Board of Education in writing hand-delivered or postmarked no later than ten (10) days after receipt of notice of the denial of transfer;
- c. the State Board of Education shall refer the appeal to the review team who shall set a hearing on the matter within ten (10) days of the Board's receipt of the appeal. The hearing shall be held at the State Department of Education unless the team determines circumstances warrant holding the hearing in the purported district of residence. The parent

or guardian and the board of education for the purported district of residence shall be notified of the hearing date;

- d. the review team shall determine whether the placement is appropriate. If the purported district of residence denies that it is the district of residence, the review team shall decide that issue also. If the place of residence for school purposes as defined in paragraph 6 of subsection A of this section cannot be determined, the legal residence of such child shall be the district in which the child care or treatment facility is located;
- e. the review team shall decide whether a transfer should be granted. The review team shall render its decision within one (1) day after the conclusion of the hearing and shall notify the parent or guardian, the board of education for the purported district of residence, and the board of education for the district in which the facility is located;
- f. no administrative appeals of the review team's decision shall be allowed;
- g. the State Board of Education shall promulgate rules to implement the provisions of this subsection;
- h. the appeal process provided in this subsection shall not be available to resolve any transfer disputes except those arising out of placement of a child in a public or private residential child care or treatment facility by a parent or legal guardian.

E. Purported district of residence shall mean the district in which the child claims residency.

F. The governing body of any state institution operated pursuant to the provisions of Sections 1401 through 1424 of Title 10 of the Oklahoma Statutes or Sections 31 through 36 and Section 50 of Title 43A of the Oklahoma Statutes and the board of education of the school district in which the institution is located or any other school district in the state willing to

provide necessary educational services may enter into a contract whereby the district will maintain a school for the children of the institution, in which event the residence of such children for school purposes will be considered as being in the district maintaining the school. The governing body of the state institutions specified in this subsection shall pay the costs for educating students placed in the state institution less any amount of funds received for such students by the school district contracting with the state institution to provide necessary educational services.

~~F.~~ G. The school district in which a public or private residential child care or treatment facility is located shall, upon request of the individual or agency operating the facility, contract to provide the educational services to which the residents are entitled.

~~G. Any question as to the place of residence of any child for school purposes shall be decided pursuant to procedures adopted by the State Board of Education. If the place of residence for any child as defined in paragraph 6 of subsection A of this section cannot be determined, the legal residence of such child for school purposes shall be the district in which such public or private child care or treatment facility is located.~~

SECTION 2. AMENDATORY 70 O.S. 1991, Section 18-110, is amended to read as follows:

Section 18-110. A. If any district, or a part of a district, becomes a part of another district by consolidation, annexation, or otherwise, the following procedure shall be followed, except as otherwise provided by law, in calculating aid to the new district or districts so formed:

1. If the action occurs after budgets have been approved by the county excise board and the tax levies approved, the State Aid for the current year shall be calculated for each district as it existed prior to the annexation and prorated to the annexing district or districts on the basis of average daily attendance.

2. If the action occurs prior to approval of the school district budgets by the county excise board, the annexed district

shall be merged with the annexing district or districts and State Aid shall be calculated according to the formula provided by this title.

B. Any school district that does not maintain school for a full term pursuant to Section 1-109 of this title shall have its State Aid reduced proportionately unless it has received written approval to maintain school for less than a full term from the State Board of Education. The State Board of Education shall not approve any request to maintain school for less than a full term unless such request meets the requirements of Section 1-109 of this title.

C. 1. If a school district operates a school located in a state institution for pupils of school age, the attendance of such children shall be included in the attendance of such school district for the purpose of calculating State Aid of the district.

2. If a school district operates a school located in a state institution for the pupils of school age residing in such institution, the attendance of such children shall be included in the attendance of such school district for the purpose of calculating State Aid of the district. Provided, such attendance shall not be used for apportioning other miscellaneous revenue; and such school district State Aid shall be paid in the amount of the Foundation Program Aid and Incentive Aid of such school as provided in this title.

D. ~~If a~~ A public school district in this state that provides educational services to a child who resides in a public or private residential child care or treatment facility, ~~the providing district shall receive from~~ be reimbursed by the district in which the child has residence ~~a fee in~~ for the educational costs of the child. The educational costs shall be the amount of the per capita cost of the providing district for current expenditures for the education of such resident. The amount of the expenditures shall be determined based upon the cost of teachers, equipment, material, and other direct educational costs associated with the education of such child prorated by the number of days the child has been enrolled in the providing district.

Immediately upon beginning to provide such services, the providing district shall send to the district of residence as defined in paragraph 6 of subsection A of Section 1-113 of this title, and to the Finance Division of the State Department of Education, an enrollment form which shall include an estimate of the number of school days such services are to be provided to said child and an itemized estimate of the cost per day of providing said services. The district of residence shall acknowledge receipt of the enrollment form within ten (10) days, notifying both the providing district and the Finance Division. If a dispute is anticipated, the providing district and the district of residence shall begin discussion of points in dispute.

Immediately upon cessation of the provision of said services, the providing district shall send to the district of residence and to the Finance Division a final attendance report and an itemized claim for payment. Within sixty (60) days of receipt of the claim, the district of residence shall deliver payment to the providing district and both districts shall immediately notify the Finance Division that payment has been made; provided, any unsettled disputes as to the appropriateness of the charges shall be referred within said sixty-day period to the Finance Division for resolution. Only upon verification that the payment has been received by the providing district shall the Finance Division credit to the district of residence the average daily attendance (ADA) of the child for the days the child received services from the providing district. Further, if payment still has not been made within sixty (60) days from the time of resolution of the dispute by the Finance Division or one hundred twenty (120) days from the date of receipt of the original claim, whichever is later, the Finance Division shall settle the matter by withholding the entire amount of the claim from State Aid or other payments otherwise due the district of residence and transmitting such amount to the providing district.

E. Upon determination by the Finance Division of the State Department of Education that a legal residence for a child placed in a public or private residential child care or treatment

facility prior to the effective date of this act cannot be identified, the district in which the facility is located shall be the district of residence and the average daily attendance of such child shall be credited to such district. The legal residence, if disputed, for a child placed in a public or private residential child care or treatment facility after the effective date of this act shall be determined as provided in Section 1-113 of this title.

F. If any school district shall fail, neglect or refuse, for any reason whatsoever, to provide special education for a handicapped exceptional child, certified as such by competent authorities and residing in such district, as directed in Section 13-101 of this title, the following is hereby authorized:

1. Such child shall be entitled, upon petition by the child's parent or guardian, without consent or approval of the school district not providing special education, to transfer to any adjacent or nearby school district which will accept the handicapped exceptional child and provide the special education which such child is entitled to receive. The school district in which a child transferring under this section resides shall pay to the district receiving and educating such child, as tuition, a special education transfer fee as provided in paragraph 2 of this subsection. Provided the average daily attendance of such child shall be credited to the home district of such transferee.

2. The special education transfer fee shall be the per capita cost of the receiving district for current expenditures for the special education of such handicapped exceptional child based upon the cost of teachers, equipment, material, and special costs associated with the special education class.

3. It shall be the duty of the school district from which such handicapped exceptional child transfers to appropriate and pay such special education transfer fee to the district which receives and educates such child. If a school district owing such special education transfer fees shall fail, neglect or refuse for any reason whatsoever to appropriate and pay such special education transfer fees, then the school district entitled to

receive such fees shall certify such fact to the Finance Division of the State Department of Education. Upon receipt of such certification, the Finance Division shall deduct the amount of the special education fee from any State Foundation Program or Incentive Aid otherwise due the sending district and transmit such amount to the receiving district.

4. The sending school district shall also be obligated to pay the special education transfer fee whenever it has transferred a student to another school district for purposes other than to acquire special education, but where the student is subsequently found to require such special education, is determined to be eligible by the Special Education Division of the State Department of Education, and is placed in an appropriate special education program by the receiving school district. For purposes of this paragraph, the special education transfer fee shall be as provided by paragraph 2 of this subsection, prorated by the receiving school district according to the number of days the student has been enrolled in the special education program.

SECTION 3. This act shall become effective September 1, 1993.

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