ENROLLED SENATE
BILL NO. 967

By: Haney, Cole, Long (Ed) and Williams (Penny) of the Senate

and

Larason, Tyler and Johnson (Rob) of the House

An Act relating to schools; amending 70 O.S. 1991, Sections 1-113, as amended by Section 3, Chapter 262, O.S.L. 1992, 8-104, as amended by Section 36, Chapter 239, O.S.L. 1993 and 18-110 (70 O.S. Supp. 1993, Sections 1-113 and 8-104), which relate to residence of a child for school purposes, emergency transfers and adjustments of State Aid; modifying certain residency requirements; modifying transfer requirements for certain children under certain circumstances; defining certain terms; requiring the preparation and distribution of certain lists; requiring certain notification and participation relating to students requiring special education; modifying conditions which constitute an emergency for transfer purposes; modifying conditions under which State Aid is adjusted; authorizing adjustment of average daily membership of certain district; requiring certain notice of certain students' eligibility for certain services; requiring participation in certain planning by certain school districts; modifying and updating certain terminology; providing an effective date; and declaring an emergency.

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. 1993, 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, <u>except a therapeutic foster home as defined in subsection C of this section,</u> 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~~ entirely self-supporting 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~~ an out-of-home placement under conditions enumerated in subsection C of this section.

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.~~

1. When a child is placed out of the child's home and outside the school district in which the parent, guardian, or person having legal custody resides:

a. an emergency transfer shall be required if the child is placed by the parent, guardian, or person having legal custody:

(1) in a public or private child care facility or group home which provides residential psychiatric treatment,

(2) in a drug or alcohol treatment facility without a physician's written certificate that such treatment is needed, or

(3) in a voluntary arrangement with an adult not having legal custody or guardianship of the child,

b. a parent shall not be required to request a transfer but an emergency transfer shall be granted if the child is placed:

(1) pursuant to a court order,

(2) in a public or private child care or treatment facility by a state agency having legal custody of the child,

(3) in a therapeutic foster home under the supervision of a state agency or a private licensed child placing agency,

(4) in a drug or alcohol treatment facility by the parent, guardian, or person having legal custody upon written certification by a physician that such treatment is needed, or

(5) by the parent, guardian, or person having legal custody in a private, nonprofit children's home or group home which does not provide residential psychiatric treatment.

2. a. For purposes of this section a therapeutic foster home is defined as a foster home which has been certified as meeting the standards set by the Department of Human Services for therapeutic foster homes.

b. The agency placing a child in a therapeutic foster home shall be responsible for notifying the receiving district of the legal residence of the child's parent or guardian.

3. a. For purposes of this section a nonprofit children's home or group home is defined as a residential child care facility which is not operated by the state, a county, or a local government and which:

(1) is operated by an organization that qualifies as a nonprofit organization pursuant to Section 501(c) (3) of Title 26 of the United States Code,

(2) is in compliance with the Oklahoma Child Care Facilities Licensing Act, Section 401 et seq. of Title 10 of the Oklahoma Statutes, and

(3) does not provide residential psychiatric treatment.

b. Each year the Department of Human Services shall provide to the State Department of Education a list of facilities that meet the definition of a nonprofit children's home or group home as provided in subparagraph a of this paragraph. The State Department of Education shall distribute the list of facilities to each school district.

4. 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~~ an emergency transfer is ~~not required~~ granted pursuant to the provisions of this subsection.

D. Except for children for whom ~~no~~ transfer is ~~required~~ automatic 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. 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. Notify the district in which the facility is located of the admittance.

The 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 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. 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.

E. 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. 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~~ the out-of-home placement is located.

H. The receiving district shall notify the sending district immediately upon finding that the student requires special education and related services and the sending district shall participate in planning the student's Individualized Education Program (IEP) and in subsequent reviews of the program in accordance with the Individuals with Disabilities Education Act (IDEA).

SECTION 2. AMENDATORY 70 O.S. 1991, Section 8-104, as amended by Section 36, Chapter 239, O.S.L. 1993 (70 O.S. Supp. 1993, Section 8-104), is amended to read as follows:

Section 8-104. A. A written application for an emergency transfer designating the district to which the transfer is desired shall be made by either the parent or guardian and filed with the superintendent of the receiving school district. On an adequate showing of emergency the superintendent of the receiving school district may make and order a transfer, subject to approval by the State Board of Education. An emergency shall include only:

1. The destruction or partial destruction of a school building;

2. The inability to furnish the grade of study the pupil is entitled to pursue;

3. The inability to offer the subject a pupil desires to pursue;

4. A catastrophic medical problem of a student, which for purposes of this section shall mean an acute or chronic serious illness, disease, disorder or injury which has a permanently detrimental effect on the body's system or renders the risk unusually hazardous; ~~and~~

5. The total failure of transportation facilities previously had or contemplated; and

6. The purposes detailed in paragraph 1 of subsection C of Section 1-113 of this title.

Provided that a transfer shall also be approved when such transfer has the approval of the boards of education of the sending and receiving districts. Similarly, a transfer previously made may be canceled, with the concurrence of the board of the receiving district and the parent or guardian of the child.

B. On affidavit of parent or guardian, or of the school board of the transferring district, disclosing removal of residence from the transferring district, a transfer previously made may be canceled, and the appropriation made therefor relieved of such encumbrance to the extent not earned; and, with concurrence of the boards of education of both the transferring and transferee districts, a parent or guardian may show by affidavit that, by discontinuance of transportation facilities previously afforded or contemplated, the pupil or pupils are unable to attend the school of the transferee district, whereupon the transfer so made may be canceled and the appropriation therefor relieved of any encumbrance to the extent not earned.

SECTION 3. 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 public school district in this state provides educational services to a child who resides in ~~a public or private residential child care or treatment facility~~ the district as a result of the child's placement in an out-of-home living situation within the district under any circumstances enumerated in subsection C of Section 1-113 of this title, the providing district shall receive from the district in which the child has residence a fee in 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~~ education and special education 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 or include the child in the average daily membership (ADM) of the district of residence 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~~ an out-of-home placement cannot be identified, the district in which the ~~facility~~ placement is located shall be the district of residence

and the average daily attendance of such child shall be credited to such district.

F. If any school district shall fail, neglect or refuse, for any reason whatsoever, to provide special education and related services for a ~~handicapped exceptional~~ child with disabilities, 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 and related services, to transfer to any adjacent or nearby school district which will accept the ~~handicapped exceptional~~ child with disabilities and provide the special education and related services 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 and related services of such ~~handicapped exceptional~~ child with disabilities 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 with disabilities 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 and related services, 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. The receiving district shall notify the sending district immediately upon finding that the student requires special education and related services and the sending district shall participate in planning the student's Individualized Education Program (IEP) and in subsequent reviews of the program in accordance with the Individuals with Disabilities Education Act (IDEA).

SECTION 4. This act shall become effective July 1, 1994.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 28th day of April, 1994.

President of the Senate

Passed the House of Representatives the 18th day of April, 1994.

Speaker of the House of Representatives