

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1864

By: Seikel

AS INTRODUCED

An Act relating to schools; amending 70 O.S. 1991, Section 1-113, as last amended by Section 1, Chapter 168, O.S.L. 1994 (70 O.S. Supp. 1994, Section 1-113), which relates to residence of a child; modifying type of placement entitled to a certain transfer; amending 70 O.S. 1991, Sections 8-103, as last amended by Section 2, Chapter 232, O.S.L. 1994 and 8-104, as last amended by Section 2, Chapter 168, O.S.L. 1994 (70 O.S. Supp. 1994, Sections 8-103 and 8-104), which relate to transfer of students; modifying appeal process of certain transfer decisions; expanding the criteria of an emergency necessary for an emergency transfer; 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 last amended by Section 1, Chapter 168, O.S.L. 1994 (70 O.S. Supp. 1994, 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, except a therapeutic foster home as defined in subsection C of this section, 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 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 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. 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 or private, for profit children's home or group home.

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 an emergency transfer is granted pursuant to the provisions of this subsection.

D. Except for children for whom transfer is 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 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 8-103, as last amended by Section 2, Chapter 232, O.S.L. 1994 (70 O.S. Supp. 1994, Section 8-103), is amended to read as follows:

Section 8-103. A. In order that any child may be transferred an application for transfer shall be approved by the board of education of both the resident and receiving school district as provided for in this section. An application form specified by the State Board of Education must be completed by the parents, custodial parent or guardian of the child. The application shall be obtained from and filed with the superintendent of the receiving school district for transfers to school districts in the State of Oklahoma and with the State Board of Education for transfers to school districts in another state. Applications shall be filed no later than February 1 of the school year preceding the school year for which the transfer is desired. The board of education of the receiving school district shall approve or deny the application for transfer, and if approved, the superintendent of the receiving school district shall notify, in writing, not later than March 1, the clerk of the board of education of the resident school district of the board's decision on the application for transfer. On or before April 10, the board of education of the resident school district shall approve or deny the application for transfer and shall notify, in writing, the superintendent of the receiving district whether the transfer application was approved or denied. If the resident school district denies the transfer application it shall send written notice of the denial to the receiving school district by certified mail. If the resident school district fails to notify the receiving school district by the due date, the application shall be deemed approved by the receiving school district. The superintendent of the receiving school district

shall, not later than May 1, send written notice to the clerk of the board of education of the resident school district and the parents or guardian of the child confirming whether or not the transfer has been granted for each application submitted.

B. On or before August 1, it shall be the duty of the superintendent of the receiving school district to file with the State Board of Education a statement showing the names of the students granted transfers to the school district, the resident school district of the transferred students and their respective grade level.

C. The parent or guardian of a child making application for transfer may appeal the decision of the board of education of either the resident or receiving school district regarding the transfer of the child ~~to the district court of the county where the child resides~~ in accordance with an appeal process developed by the State Board of Education.

SECTION 3. AMENDATORY 70 O.S. 1991, Section 8-104, as last amended by Section 2, Chapter 168, O.S.L. 1994 (70 O.S. Supp. 1994, 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 or mental 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~~ body and nervous system or renders the risk unusually hazardous;

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 4. This act shall become effective July 1, 1995.

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.

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