

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2433

By: Hager

AS INTRODUCED

An Act relating to schools; amending 70 O.S. 1991, Section 1-113, as last amended by Section 1, Chapter 343, O.S.L. 1997 (70 O.S. Supp. 1997, Section 1-113), which relates to school residency; modifying notice requirement in out-of-home placements; 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 343, O.S.L. 1997 (70 O.S. Supp. 1997, Section 1-113), is amended to read as follows:

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

1. The school district in which the parents, guardian, or person having legal custody holds legal residence.

Each school district board of education shall adopt a policy establishing the requirements for student residency for that district which provides for residence as described in this paragraph. Within the discretion of each school district's board of education, the policy may but is not required to allow for establishment of residency by affidavit when an adult, whether a

relative or not, who does not fall within one of the categories listed above, who holds legal residence in the school district, and who has assumed permanent care and custody of the child files an affidavit with the school district attesting that they have assumed custody and the reasons for assuming custody. Any policy allowing the establishment of residency by affidavit shall require the adult who provides the affidavit to affirm in such affidavit that the custody arrangement is permanent and that the adult contributes the major degree of support to the child. If the school district policy allows establishment of residency by affidavit, any person who willfully makes a statement in the affidavit which the person knows to be false shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year or a fine of not more than Five Hundred Dollars (\$500.00) or both such fine and imprisonment. Each school district shall include in its policy on residency any documentation necessary for the administration of the policy; or

2. The foster home, as defined in Section 402 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 eleemosynary child care facility in which a child is placed by a parent or guardian for full-time residential care; provided, the provision of this paragraph shall apply only to children who attend a district school by joint agreement of the school district and facility and who are not placed in the facility

through a state contract. For purposes of this paragraph,

"eleemosynary child care facility" means a facility:

- a. where child care and services are provided, and
- b. which is funded predominantly by benevolent or charitable funds and is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3); or

5. 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 or Section 3-101 of Title 43A of the Oklahoma Statutes for care and treatment due to a physical or mental condition of the child; or

6. The district in which a child who is entirely self-supporting resides and attends school; or

7. A state-licensed or operated emergency shelter.

B. No school district shall bear the cost of educating children who are not residents of the state of Oklahoma; provided, a school district may furnish educational services pursuant to contract 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 custody resides, an emergency transfer shall be granted if the child is placed in a therapeutic foster home under the supervision of a state agency or a private licensed child placing agency subject to the limitations provided in this subsection.

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. 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.

For the purpose of ensuring that a child placed in a therapeutic foster care home receives an appropriate education, no receiving school district shall be required to accept an emergency student transfer for such a child if the transfer would cause the proportion of students in therapeutic foster care homes as compared to the average daily membership of the receiving district for the preceding school year to exceed two percent (2%). Any school district may accept student transfers for therapeutic foster care home placements which exceed this limit if the school determines it possesses the ability to provide such child an appropriate education. Districts where the enrollment of therapeutic foster care home-placed children for the 1996-97 school year exceed the two percent (2%) limit shall be required to approve the emergency student transfers for those therapeutic foster care children enrolled during the 1996-97 school year.

2. 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. When a child does not meet the criteria for residency provided in subsection A of this section and is placed in a residential facility or treatment program or center, including the facility operated pursuant to Section 485.1 of Title 63 of the Oklahoma Statutes, which is out of the child's home and not in the school district in which the child legally resides, the facility or program shall, if the child contends he or she resides in a district other than the district where the facility or program is located, within ~~seven (7)~~ eight (8) days of admittance, notify the district in which the out-of-home placement or treatment is located of the admittance.

Upon provision of educational services to such children pursuant to the provisions of subsection F of this section, the receiving

district shall receive the State Aid as defined in subsection C of Section 18-110 of this title for those students.

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 for children operated pursuant to the provisions of Title 10 of the Oklahoma Statutes or Section 3-101 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. 1. The school district in which a residential child facility or treatment program or center, including the facility operated pursuant to Section 485.1 of Title 63 of the Oklahoma Statutes, is located shall, upon request of the individual or agency operating the facility or program, contract to provide the educational services to which the children in the facility or program are entitled subject to the limitations provided in subsection D of this section. No individual or entity operating a residential child facility or treatment program or center may contract for the provision of educational services with any school district other than the school district in which the facility or program is located unless the school district in which the facility

or program is located agrees in writing to allow another school district to provide the educational services.

2. Prior to location in a school district, the individual or entity operating a residential facility or treatment program which requires provision of educational services for students from the school district shall notify the local board of education of its anticipated educational needs. No school district shall be required to provide educational services for residents of the facility or participants in the program until at least ninety (90) calendar days have elapsed from the time in which the local board of education was initially notified of the need unless the school district so agrees to provide the educational services sooner.

3. Educational services provided shall meet or exceed state accreditation standards subject to agreement of the operator of the facility or program and the local board of education. No school district shall be responsible for any expenses for students in a residential facility or treatment program which are not directly related to the provision of educational services. Contracts and agreements for provision of such services may allow for the use of public and private sources of support which are available to share the costs of educational services and of therapies, treatments, or support services. Otherwise valid obligations to provide or pay for such services, such as Medicaid, shall remain in effect for children who are eligible for the services from sources other than the school district.

G. Any question as to the place of residence of any child for school purposes shall be decided pursuant to procedures utilized by the State Department of Education.

H. The receiving district shall notify the district of residence immediately upon finding that the student requires special education and related services and the district of residence 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. This act shall become effective July 1, 1998.

SECTION 3. 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.

46-2-7980

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