ENGROSSED SENATE
BILL NO. 683

By: Lawler of the Senate

and

Staggs of the House

[schools – residential placements for students – special education services – financial responsibility – effective date – emergency]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-130 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Education shall contract for residential placement of a student when the student's Individualized Education Program (IEP) team determines that a residential placement is necessary for the student to receive a free appropriate public education.

1. The State Department of Education shall contract for a residential placement of a student only with either public or private residential facilities that maintain current and valid licensure by the State Department of Education or the Oklahoma Department of Human Services for the particular disabling condition and age of the student. The State Department of Education shall contract for an out-of-state residential placement in accordance with the provisions of paragraph 3 of subsection C of this section.

2. Subject to the provisions of subsections B and C of this section, the State Department of Education shall contract with a residential facility to provide some or all of the special education services listed in the contracted student's IEP. If the facility

provides any educational services listed in the student's IEP, the Oklahoma State Superintendent of Public Instruction must approve the facility's education program in accordance with subsection C of this section.

3. A school district that proposes residential placement of a student under this section shall notify the State Department of Education and the Department of Human Services of the proposal through the process described in subsection B of this section.

4. The school district has the following responsibilities when making a residential placement:

a. before the school district places a student with a disability in, or refers a student to, a residential facility, the district shall initiate and conduct an IEP team meeting to develop an IEP for the student in accordance with federal and state laws and regulations and the Policies and Procedures for Special Education in Oklahoma,

b. for each student, the services that the school district is unable to provide and that the facility will provide shall be listed in the student's IEP,

c. for each student, the IEP team shall establish, in writing, criteria and estimated timelines for the student's return to the school district,

d. the appropriateness of the facility for each student residentially placed shall be documented in the IEP,

e. the school district shall make an initial and an annual on-site visit to verify that the residential facility can and will provide the services listed in the student's IEP that the facility has agreed to provide to the student,

f. for each student placed in a residential facility (both initial and continuing placements), the school

district shall verify, during the initial residential placement IEP team meeting and each subsequent annual IEP team meeting, that:

(1) the facility meets minimum standards for health and safety,

(2) residential placement is necessary and is documented in the IEP, and

(3) the educational program provided at the residential facility is appropriate and the placement is the least restrictive environment for the student,

g. the placement of more than one student, in the same residential facility, may be considered in the same on-site visit to a facility; however, the IEP of each student must be individually reviewed and a determination of appropriateness of placement and service must be made for each student, and

h. when a student who is residentially placed by a school district changes his or her residence to another school district in this state, and the student continues in the contracted placement, the school district that negotiated the contract shall be responsible for the residential contract for the remainder of the fiscal year.

B. The school district, State Department of Education and Department of Human Services will collaborate to support the residential placement determined by the IEP team.

1. The school district will submit a notice, in writing, and documentation of the IEP team's decision to the State Department of Education and the Department of Human Services within five (5) calendar days of the IEP team meeting at which the decision was made. The State Department of Education and/or the Department of

Human Services may object to the IEP team's decision only if the school district indicates that the:

a. placement is due primarily to the student's medical problems,

b. placement is due primarily to problems in the student's home,

c. district does not have a plan, including timelines and criteria, for the student's return to the school district program,

d. district did not attempt to implement lesser restrictive placements prior to residential placement except in emergency situations as documented by the student's IEP team, or

e. placement is not cost effective when compared with other alternative residential placements.

2. The State Department of Education and the Department of Human Services must notify the school district in writing of any objection within five (5) calendar days of receipt of the notice from the district. The State Department of Education and the Department of Human Services forever waive any objection that is not timely made. If either the State Department of Education or the Department of Human Services submits an objection, then representatives of the State Department of Education, the Department of Human Services and the school district shall attend a meeting within ten (10) calendar days of the district's receipt of the objection in an attempt to resolve the objection. The agency representatives in attendance at the meeting will have decision-making authority and the ability to commit agency resources, as necessary. The school district will invite the parents of the involved student to attend the meeting. All participants in the meeting will act in good faith to resolve the objection and implement the IEP team's decision promptly. If the participants

fail to resolve the objection through the meeting process, the State Department of Education will schedule mediation with an impartial mediator in an effort to resolve the dispute. The mediation session will take place within twenty (20) calendar days of the meeting. The State Department of Education will bear the cost of mediation. Representatives of the State Department of Education, the Department of Human Services and the school district shall attend the mediation session. The agency representatives in attendance at the mediation session will have decision-making authority and the ability to commit agency resources, as necessary. The school district will invite the parents of the involved student to attend the mediation. All participants in the mediation will act in good faith to resolve the objection and implement the IEP team's decision promptly. If the participants fail to resolve the objection through mediation, the objecting party may access the due process system established by the State Department of Education to initiate a hearing under the Individuals with Disabilities Education Act (IDEA). Any aggrieved party in the hearing may also access the procedures for appeal and civil action available in IDEA disputes. During the pendency of the procedures described in this subsection, the State Department of Education, the Department of Human Services and the school district will fund the residential placement as set forth in paragraph 3 of this subsection.

3. Except as otherwise provided in this paragraph, the school district's financial responsibility during any fiscal year for the cost of a student's residential placement will be limited to the amount of the average teacher's salary in that school district during the previous fiscal year. The State Department of Education shall reserve for each fiscal year ten percent (10%) of the amount of funds reserved for state-level activities as authorized in Section 611 of Part B of the reauthorization of the Individuals with Disabilities Education Act (Public Law No. 108-446) to pay the

remaining cost of the student's residential placement. If sufficient funds are not available as provided in this paragraph, the school district shall pay the remaining cost of the student’s residential placement. If some portion of the services are Medicaid waiver eligible, then the Department of Human Services shall pay its proportionate share. The State Department of Education is entitled to reimbursement from the Department of Human Services for the cost of any services provided through the placement for which the Department of Human Services is otherwise obligated to provide under federal and state law. Provided, if any other public agency is obligated under federal or state law or assigned responsibility under state policy to provide or pay for any services that are also considered special education or related services (such as, but not limited to, assistive technology devices, assistive technology services, related services, supplementary aids and services, and transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the state, the public agency shall fulfill that obligation or responsibility either directly or through contract or other arrangement.

4. The cost of the student’s residential placement includes but is not limited to the education cost of the placement, related services, residential costs and reasonable transportation costs of both the student and the student’s parents to and from the residential facility. The school district will bear the cost of visits by school district personnel to and from the residential facility.

5. Within fifteen (15) calendar days of the date on which the IEP team made the residential placement decision, the State Department of Education will schedule a meeting with representatives of the Department of Human Services to make funding arrangements for the cost of the student’s residential placement. The agency

representatives in attendance at the meeting will have decision-making authority and the ability to commit agency resources, as necessary. All participants in the meeting will act in good faith to implement the IEP team's decision promptly. The State Department of Education will schedule subsequent meetings as necessary to ensure that funding issues among the agencies do not disrupt the student's residential placement. The school district and the Department of Human Services may participate in the State Department of Education's contract negotiations with the residential facility.

6. The State Department of Education shall keep an accurate and detailed account of the cost of the student's residential placement. The school district, the State Department of Education and the Department of Human Services shall each keep an accurate, detailed and separate account of their agency's payments to support the cost of the student's residential placement. The school district will pay its respective share of the cost of the student's residential placement through one or more payments to the State Department of Education. The Department of Human Services may pay its respective share of the cost of the student's residential placement through one or more payments to the State Department of Education or directly to the residential facility.

C. Residential facilities that provide educational services must have their educational programs approved for contracting purposes by the State Superintendent.

1. If the education program of a residential facility that is not approved by the State Superintendent is being considered for a residential placement by a school district, the school district shall notify the State Department of Education in writing of its intent to place a student at the facility. The State Department of Education shall begin approval procedures and conduct an on-site visit to the facility within thirty (30) calendar days after the State Department of Education has been notified by the school

district. The State Department of Education shall advise the school district of its decision to approve or not to approve the facility within twenty (20) calendar days of its on-site visit to the facility. Approval of the education program of a residential facility may be for one (1), two (2) or three (3) years.

2. The State Superintendent shall renew approvals and issue new approvals only for those facilities that have contract students already placed or that have a pending request for residential placement from a school district. This approval does not apply to residential facilities that only provide related services or residential facilities in which the accredited school district where the facility is located provides the educational program.

3. Out-of-state residential placements shall be made in accordance with the procedures for in-state residential placement pursuant to this section, except that the facility must be approved by the appropriate agency in the state in which the facility is located, rather than by the State Superintendent.

SECTION 2. This act shall become effective July 1, 2005.

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.

Passed the Senate the 9th day of March, 2005.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2005.

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Presiding Officer of the House
of Representatives