

CS for SB 683

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THE STATE SENATE
Wednesday, March 2, 2005

Committee Substitute for
Senate Bill No. 683

COMMITTEE SUBSTITUTE FOR 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

1 contract for an out-of-state residential placement in accordance
2 with the provisions of paragraph 3 of subsection C of this section.

3 2. Subject to the provisions of subsections B and C of this
4 section, the State Department of Education shall contract with a
5 residential facility to provide some or all of the special education
6 services listed in the contracted student's IEP. If the facility
7 provides any educational services listed in the student's IEP, the
8 Oklahoma State Superintendent of Public Instruction must approve the
9 facility's education program in accordance with subsection C of this
10 section.

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

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

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

- 1 b. for each student, the services that the school
2 district is unable to provide and that the facility
3 will provide shall be listed in the student's IEP,
4 c. for each student, the IEP team shall establish, in
5 writing, criteria and estimated timelines for the
6 student's return to the school district,
7 d. the appropriateness of the facility for each student
8 residentially placed shall be documented in the IEP,
9 e. the school district shall make an initial and an
10 annual on-site visit to verify that the residential
11 facility can and will provide the services listed in
12 the student's IEP that the facility has agreed to
13 provide to the student,
14 f. for each student placed in a residential facility
15 (both initial and continuing placements), the school
16 district shall verify, during the initial residential
17 placement IEP team meeting and each subsequent annual
18 IEP team meeting, that:
19 (1) the facility meets minimum standards for health
20 and safety,
21 (2) residential placement is necessary and is
22 documented in the IEP, and

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

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

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

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

21 1. The school district will submit a notice, in writing, and
22 documentation of the IEP team's decision to the State Department of
23 Education and the Department of Human Services within five (5)

1 calendar days of the IEP team meeting at which the decision was
2 made. The State Department of Education and/or the Department of
3 Human Services may object to the IEP team's decision only if the
4 school district indicates that the:

- 5 a. placement is due primarily to the student's medical
6 problems,
- 7 b. placement is due primarily to problems in the
8 student's home,
- 9 c. district does not have a plan, including timelines and
10 criteria, for the student's return to the school
11 district program,
- 12 d. district did not attempt to implement lesser
13 restrictive placements prior to residential placement
14 except in emergency situations as documented by the
15 student's IEP team, or
- 16 e. placement is not cost effective when compared with
17 other alternative residential placements.

18 2. The State Department of Education and the Department of
19 Human Services must notify the school district in writing of any
20 objection within five (5) calendar days of receipt of the notice
21 from the district. The State Department of Education and the
22 Department of Human Services forever waive any objection that is not
23 timely made. If either the State Department of Education or the

1 Department of Human Services submits an objection, then
2 representatives of the State Department of Education, the Department
3 of Human Services and the school district shall attend a meeting
4 within ten (10) calendar days of the district's receipt of the
5 objection in an attempt to resolve the objection. The agency
6 representatives in attendance at the meeting will have decision-
7 making authority and the ability to commit agency resources, as
8 necessary. The school district will invite the parents of the
9 involved student to attend the meeting. All participants in the
10 meeting will act in good faith to resolve the objection and
11 implement the IEP team's decision promptly. If the participants
12 fail to resolve the objection through the meeting process, the State
13 Department of Education will schedule mediation with an impartial
14 mediator in an effort to resolve the dispute. The mediation session
15 will take place within twenty (20) calendar days of the meeting.
16 The State Department of Education will bear the cost of mediation.
17 Representatives of the State Department of Education, the Department
18 of Human Services and the school district shall attend the mediation
19 session. The agency representatives in attendance at the mediation
20 session will have decision-making authority and the ability to
21 commit agency resources, as necessary. The school district will
22 invite the parents of the involved student to attend the mediation.
23 All participants in the mediation will act in good faith to resolve

1 the objection and implement the IEP team's decision promptly. If
2 the participants fail to resolve the objection through mediation,
3 the objecting party may access the due process system established by
4 the State Department of Education to initiate a hearing under the
5 Individuals with Disabilities Education Act (IDEA). Any aggrieved
6 party in the hearing may also access the procedures for appeal and
7 civil action available in IDEA disputes. During the pendency of the
8 procedures described in this subsection, the State Department of
9 Education, the Department of Human Services and the school district
10 will fund the residential placement as set forth in paragraph 3 of
11 this subsection.

12 3. The school district's financial responsibility during any
13 fiscal year for the cost of a student's residential placement will
14 be limited to the amount of the average teacher's salary in that
15 school district during the previous fiscal year. The State
16 Department of Education shall pay the remaining cost of the
17 student's residential placement unless some portion of the services
18 are Medicaid waiver eligible, then the Department of Human Services
19 shall pay its proportionate share. The State Department of
20 Education is entitled to reimbursement from the Department of Human
21 Services for the cost of any services provided through the placement
22 for which the Department of Human Services is otherwise obligated to
23 provide under federal and state law. Provided, if any other public

1 agency is obligated under federal or state law or assigned
2 responsibility under state policy to provide or pay for any services
3 that are also considered special education or related services (such
4 as, but not limited to, assistive technology devices, assistive
5 technology services, related services, supplementary aids and
6 services, and transition services) that are necessary for ensuring a
7 free appropriate public education to children with disabilities
8 within the state, the public agency shall fulfill that obligation or
9 responsibility either directly or through contract or other
10 arrangement.

11 4. The cost of the student's residential placement includes but
12 is not limited to the education cost of the placement, related
13 services, residential costs and reasonable transportation costs of
14 both the student and the student's parents to and from the
15 residential facility. The school district will bear the cost of
16 visits by school district personnel to and from the residential
17 facility.

18 5. Within fifteen (15) calendar days of the date on which the
19 IEP team made the residential placement decision, the State
20 Department of Education will schedule a meeting with representatives
21 of the Department of Human Services to make funding arrangements for
22 the cost of the student's residential placement. The agency
23 representatives in attendance at the meeting will have decision-

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

9 6. The State Department of Education shall keep an accurate and
10 detailed account of the cost of the student's residential placement.
11 The school district, the State Department of Education and the
12 Department of Human Services shall each keep an accurate, detailed
13 and separate account of their agency's payments to support the cost
14 of the student's residential placement. The school district will
15 pay its respective share of the cost of the student's residential
16 placement through one or more payments to the State Department of
17 Education. The Department of Human Services may pay its respective
18 share of the cost of the student's residential placement through one
19 or more payments to the State Department of Education or directly to
20 the residential facility.

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

1 1. If the education program of a residential facility that is
2 not approved by the State Superintendent is being considered for a
3 residential placement by a school district, the school district
4 shall notify the State Department of Education in writing of its
5 intent to place a student at the facility. The State Department of
6 Education shall begin approval procedures and conduct an on-site
7 visit to the facility within thirty (30) calendar days after the
8 State Department of Education has been notified by the school
9 district. The State Department of Education shall advise the school
10 district of its decision to approve or not to approve the facility
11 within twenty (20) calendar days of its on-site visit to the
12 facility. Approval of the education program of a residential
13 facility may be for one (1), two (2) or three (3) years.

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

21 3. Out-of-state residential placements shall be made in
22 accordance with the procedures for in-state residential placement
23 pursuant to this section, except that the facility must be approved

1 by the appropriate agency in the state in which the facility is
2 located, rather than by the State Superintendent.

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

4 SECTION 3. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

8 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-23-05 - DO
9 PASS, As Amended.