

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: CS/HB 199

49th Legislature, 1st Session, 2009

Short Title: School District & Training Center Agreements

Sponsor(s): Representative Thomas A. García and Others

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**HOUSE EDUCATION COMMITTEE SUBSTITUTE
FOR HOUSE BILL 199**

Bill Summary:

CS/HB 199 amends the *Public School Code* to clarify the responsibility of public school districts, the state, the Public Education Department (PED), and parents for special education services provided in private training and residential treatment centers (RTCs). The bill also amends the *Children's Code* to require that Children, Youth and Families Department (CYFD) standards for RTCs include making reasonable provisions for space where school districts may provide the required free appropriate public education (FAPE).

CS/HB 199 repeals a section of the *Public School Code* that addresses the education in private nonsectarian, nonprofit educational training and residential treatment centers, and enacts a new section that:

- adds definitions specific to the section, as follows:
 - “qualified student” means a public school student who:
 - has not graduated from high school;
 - is regularly enrolled in at least one-half of the minimum course requirements approved by PED; and
 - is at least five years old before September 1 of the school year if enrolled in an extended year kindergarten program that begins before the start of the regular school year; *or* is at least three years old at any time during the school year and receiving special education pursuant to PED rules; *or* has not reached the age of 22 on the first day of the school year and is receiving special education in accordance with federal law; and
 - “school-age person” means a person who is *not* a qualified student described above but who meets the federal requirements for special education and who will be at least three years old at any time during the school year, *or* is not more than 21 years old; *and* has not received a high school diploma or its equivalent;
- clarifies that the responsibility of school districts, state institutions and the state to provide a FAPE is not diminished by the availability of private schools and services, and that the state must ensure that all qualified students who need special education receive the education to which federal and state law entitle them, whether the provider is public or private;

- clarifies that the school district in which a private, nonsectarian, nonprofit training or RTC is located shall not be considered to be the resident school district of a school-age person if residency is based solely on enrollment at the facility, and the person would not otherwise be considered a resident of the state;
- clarifies that, for a qualified student in need of special education or school-age person placed in an RTC by a school district or a due process decision, the district in which the student lives, whether in- or out-of-state, is responsible for the educational, non-medical care and room and board costs of the placement;
- clarifies that, for a school-age person placed in an RTC not as a result of a due process decision but by a parent who assumes responsibility for the placement, PED shall ensure that the district where the facility is located is allocating and distributing the student's proportionate share of federal IDEA Part B funds as required by federal law; however, the state is not required to distribute state funds for that person;
- clarifies that, for a qualified student or school-age person in need of special education placed in an RTC by a state agency with custody or control of the person or by a New Mexico court, the district in which the facility is located shall be responsible for planning and delivery of special education and related services, unless the student or person's resident district has an agreement with the facility to provide such services;
- clarifies that for a qualified student placed in an RTC other than by a school district or a due process decision, PED shall determine which district is responsible for the cost of educating the qualified student, and the reasonable reimbursement owed to the receiving district;
- provides that, in consultation with PED, a school district may make an agreement with an RTC to educate qualified students in need of special education for whom the district is responsible to provide and pay for a FAPE under the federal *Individuals with Disabilities Education Act* (IDEA). All financial arrangements between local school boards and RTCs must be negotiated in accordance with PED rules;
- requires that all agreements between local school boards and RTCs be reviewed and approved by the Secretary of Public Education, and that the agreements must ensure that all qualified students placed in RTCs receive the education to which they are entitled pursuant to state and federal law, including:
 - student evaluation and eligibility;
 - an educational program that meets state standards, except that teachers employed by private schools need not be highly qualified;
 - special education and related services in conformance with an individualized education program (IEP) that meets the requirements of federal and state law; and
 - adequate classroom and other physical space provided at the RTC that allows the district to provide an appropriate education;
- requires that agreements acknowledge the authority and responsibility of both the local school board and PED to conduct on-site evaluations of programs and student progress to ensure the education provided to the qualified student meets state standards;

- clarifies that a qualified student attending an RTC for whom the state is responsible to provide a FAPE is a public school student who shall be counted in the special education membership of the school district responsible for the costs of educating that student as provided in the student's IEP; and
- requires PED to adopt a format to report individual student data and costs for any qualified student or school-age person attending a public or private RTC, and to include those reports in the student teacher accountability reporting system (STARS) by using a PED-assigned unique student identifier; and require PED and every public and private RTC that serves school-age persons in the state to comply with this provision.

CS/HB 199 also amends the *Children's Code* to require the Secretary of CYFD to include in the minimum standards for residential treatment programs a requirement that the program make reasonable provisions for adequate physical space for a school district to provide the required FAPE.

Fiscal Impact:

CS/HB 199 does not make an appropriation.

Fiscal Issues:

CS/HB 199 clarifies which individuals in private RTCs are the responsibility of the state and school districts to serve. To the extent that enacting CS/HB 199 appropriately allocates the financial burden of educating those individuals, it could change and potentially reduce that financial burden on local school districts and the state of New Mexico through the state equalization guarantee.

Issues:

During the 2007 interim, the Legislative Education Study Committee (LESC) heard a presentation that identified a number of issues with RTCs located in the state of New Mexico. These related principally to conflicts or ambiguities in state law and in guidance provided by PED concerning which students are eligible for educational services (questions of residency in particular) and which party bears the fiscal responsibility, especially with regard to students from other states placed in facilities in New Mexico. The LESG also heard about the policies and practices of several other states to address these issues, including the reimbursement of school districts for educational services they provide; reviewed recent guidance from the US Department of Education in response to queries from professional associations; and reviewed the results of an LESG staff survey of school districts and regional education cooperatives (RECs).

With fewer than half of the 89 school districts and four of nine RECs responding to the survey, staff testified, it is difficult to determine how many school districts statewide provide educational services to students residing in RTCs or to draw conclusions that apply to all school districts that are providing these services. However, it is possible to identify certain issues among the respondents that may be indicative of conditions statewide, including inconsistency in the:

- type of educational resources being provided by an RTC, such as classroom space and equipment;

- student information available for a school district from an RTC, including the parent's legal residence and student's IEP and, for New Mexico students, the PED-issued ID; and
- negotiation of formal agreements between the school district and RTC for the educational services provided for an RTC student.

A major finding of the LESC survey was that Wagon Mound Public Schools had been providing state and federal funds for 82 out-of-state students who were residing in a private RTC, Valmora High School, and who were included in the student membership of the school district even though the district was not providing any educational services to those students.

Protection and Advocacy System, which states that it is a congressionally mandated service operating as a nongovernmental nonprofit organization that represents the interests of persons with disabilities, also raised concerns about whether state law adequately assigns responsibility and accountability for developing IEPs and implementing them for disabled persons placed in RTCs, particularly when the placement is made by a state agency such as CYFD or by court order.

The original version of HB 199 was endorsed by the LESC. The House Education Committee Substitute for HB 199 clarifies language in the original by defining two types of individuals, qualified students and school-age persons, and the differences in their entitlement to state-supported special education services in New Mexico RTCs. The substitute also eliminates sections in the original bill that amended existing provisions of law not directly related to responsibility for services to individuals in RTCs.

Background:

Like other states receiving federal funding through IDEA, New Mexico is required through its state education agency (PED) to provide a free and appropriate public education (FAPE) to all children between the ages of three and 21 who have disabilities and who reside in the state. This obligation also encompasses school-age youth with disabilities who have been placed in a facility to receive services through an RTC.

According to CYFD, there are 30 certified RTCs and 19 licensed RTCs in New Mexico providing 24-hour therapeutic care to children or adolescents who have severe behavioral, psychological, neurobiological, or emotional problems and who need psychosocial rehabilitation in a residential facility.