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HOUSE BILL 414

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Thomas A. Garcia

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO SPECIAL EDUCATION; CLARIFYING THE STATE'S
RESPONSIBILITY TO PROVIDE SPECIAL EDUCATION SERVICES; REQUIRING
PUBLIC EDUCATION DEPARTMENT PARTICIPATION IN DEVELOPMENT OF
AGREEMENTS BETWEEN SCHOOL DISTRICTS AND PRIVATE TRAINING
CENTERS AND RESIDENTIAL TREATMENT PROGRAMS; REQUIRING STUDENT
IDENTIFICATION NUMBERS FOR STUDENTS ATTENDING TRAINING CENTERS
AND RESIDENTIAL TREATMENT PROGRAMS; REQUIRING TRAINING CENTERS
AND RESIDENTIAL TREATMENT PROGRAMS TO PROVIDE REASONABLE
PHYSICAL SPACE FOR EDUCATIONAL PROGRAMMING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-13-8 NMSA 1978 (being Laws 1972,
Chapter 95, Section 4, as amended) is amended to read:

"22-13-8. SPECIAL EDUCATION--PRIVATE.--

A. The responsibility of school districts, state

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1 institutions and the state to provide a free public education
2 for ~~[exceptional children]~~ school-age persons who need special
3 education is not diminished by the availability of private
4 schools and services. ~~[Whenever such schools or services are~~
5 ~~utilized, it continues to be]~~ It is a state responsibility to
6 ~~[assure]~~ ensure that all ~~[exceptional children]~~ special
7 education students receive the education to which the laws of
8 the state entitle them whether provided by public or private
9 schools and services.

10 B. A school district in which a private,
11 nonsectarian, nonprofit training center or residential
12 treatment center is located shall not be considered a special
13 education student's resident school district if residency is
14 based solely on the student's enrollment at the facility and
15 the student would not otherwise be considered a resident of the
16 state.

17 C. For a student placed in a private, nonsectarian,
18 nonprofit training center or residential treatment center by a
19 school district or by a due process decision, the school
20 district where the student lives, whether in-state or out-of-
21 state, is responsible for the educational costs of that
22 placement.

23 D. For a special education student placed in a
24 private, nonsectarian, nonprofit training center or residential
25 treatment center not as a result of a due process decision but

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1 by a parent who assumes the responsibility for such placement,
2 the department shall ensure that the school district where the
3 facility is located is allocating and distributing that
4 student's proportionate share of the federal Individuals with
5 Disabilities Education Act Part B funds.

6 E. The department shall determine which school
7 district is responsible for the cost of educating a special
8 education student who has been placed in a private,
9 nonsectarian, nonprofit training center or residential
10 treatment center outside the student's resident school
11 district. The department shall determine the reasonable
12 reimbursement owed to the receiving district.

13 ~~[B.]~~ F. A local school board, in consultation with
14 the department, may make an agreement with a private,
15 nonsectarian, nonprofit educational training ~~[centers]~~ center
16 or residential treatment center for educating ~~[exceptional~~
17 children] special education students for whom the school
18 district is responsible for providing a free appropriate public
19 education and for providing ~~[for]~~ payment for ~~[such]~~ that
20 education. All financial agreements between local school
21 boards and private, nonsectarian, nonprofit educational
22 training centers and residential treatment centers must be
23 negotiated in accordance with ~~[regulations]~~ rules promulgated
24 by the ~~[director]~~ department. Payment for education and
25 services under ~~[such]~~ those agreements shall be made by the

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1 local school board [~~of education~~] where the student lives from
2 available funds. [~~available~~

3 ~~G.~~] G. All agreements between local school boards
4 and private, nonsectarian, nonprofit educational training
5 centers and residential treatment centers must be reviewed and
6 approved by the [~~state superintendent~~] secretary. The
7 agreements shall ensure that all special education students
8 placed in a private, nonsectarian, nonprofit training center or
9 residential treatment center receive the education to which the
10 laws of the state entitle them. All agreements must provide
11 for:

12 (1) diagnosis [~~and~~];

13 (2) an educational program for each [~~child~~
14 ~~which~~] public school student that meets state standards for
15 such programs, except that teachers employed by private schools
16 are not required to be highly qualified;

17 (3) special education and related services in
18 conformance with an individualized education program that meets
19 the requirements of federal and state law; and

20 (4) adequate classroom and other physical
21 space provided at the training center or residential treatment
22 center that allows the school district to provide an
23 appropriate education.

24 H. The agreements must also acknowledge the
25 authority and responsibility of the local school board and the

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1 department [~~of education~~] to conduct on-site evaluations of
2 programs and [~~pupil~~] student progress to [~~insure~~] ensure that
3 the education provided to the public school student is meeting
4 state standards.

5 [~~D. Exceptional children~~] I. A special education
6 student for whom the state is required by federal law to
7 provide a free appropriate public education and who is
8 attending a private, nonsectarian, nonprofit training center or
9 a residential treatment center is a public school student and
10 shall be counted in the special education membership of the
11 school district [~~as enrolled in the Class D special education~~
12 program] that is responsible for the costs of educating the
13 student and in the class level identified as appropriate in the
14 individualized educational plan for the student.

15 J. The department shall adopt the format to report
16 individual student data and costs for any school-age person
17 attending public or private training centers or residential
18 treatment programs and shall include those reports in the
19 student teacher accountability reporting system by using the
20 same student identification number issued to a public school
21 student pursuant to Section 22-2C-11 NMSA 1978 or by assigning
22 a unique student identifier for a school-age person who is not
23 a resident of this state but who is attending a private
24 training center or residential treatment program in this state.
25 Every public and private training center and every public and

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1 private residential treatment program that serves school-age
2 persons in this state shall comply with this provision.

3 K. The department shall promulgate rules to carry
4 out the provisions of this section."

5 Section 2. Section 32A-12-2 NMSA 1978 (being Laws 1979,
6 Chapter 227, Section 2, as amended) is amended to read:

7 "32A-12-2. RESIDENTIAL TREATMENT PROGRAMS--~~[REGULATIONS]~~
8 RULES.--The secretary of children, youth and families shall
9 adopt ~~[regulations]~~ rules to provide for:

10 A. minimum standards that shall be met by a
11 residential treatment program, including a requirement that the
12 program make reasonable provisions for adequate physical space
13 for a school district to provide the required free appropriate
14 public education;

15 B. procedures and forms for applying for a
16 departmental grant or contract;

17 C. procedures and criteria for review and approval
18 or denial of such applications;

19 D. procedures for approval of facilities and
20 programs in or through which services are to be performed;

21 E. procedures and specifications of programmatic
22 and financial information to be reported by residential
23 treatment programs to the children, youth and families
24 department for purposes of evaluating the effectiveness of
25 programs funded by the department; and

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1 F. procedures for review of potential clients for
2 residential treatment or therapeutic group home care."

3 Section 3. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2008.

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