
Education Committee

HB 2113

Brief Description: Regarding placements of students in residential habilitation centers.

Sponsors: Representatives Kagi, Chase, Quall and Morrell.

Brief Summary of Bill

- Creates Residential Habilitation Center (RHC) impact assistance for which certain school districts may apply.
- Requires the Department of Social and Health Services (DSHS) to provide 30 days notice to an affected school district prior to placing a person between the ages of 3 and 21 at a RHC.
- Provides that the DSHS and school districts must cooperate and collaborate to facilitate the smooth transition of educational services for students who become residents of a RHC.

Hearing Date: 2/17/09

Staff: Cece Clynch (786-7195)

Background:

Residential Habilitation Centers (RHC)

There are five RHCs in the state: Lakeland Village, Spokane County; Rainier School, Pierce County; Yakima Valley School, Yakima County; Fircrest School, King County; and Frances Haddon Morgan Children's Center (FHMC), Kitsap County. The purpose of the RHCs is to provide residential care for those children and adults who are exceptional in their needs for care, treatment, and education by reason of developmental disabilities.

A school district within which there is located a RHC must conduct a program of education for the RHC residents. There has recently been an increase in voluntary placement of school-aged children at the RHCs. Where a RHC such as Fircrest may have had two to five school-aged

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children residing there in the past, it now has 15 to 20. Many of these placements have occurred very suddenly.

Recent Legal History Regarding Fircrest and the Shoreline School District

During 2006 and 2007, the Department of Social and Health Services (DSHS) placed several students at Fircrest because they needed an out of home placement. Prior to their placement at Fircrest, many of these students had been educated in a traditional public school setting and some had been placed in a regular education classroom within those schools.

For a period of time in 2006, Shoreline School District provided a public education in district schools to every disabled student that DSHS placed at Fircrest. In early 2007, the district notified Fircrest, the DSHS, and the Office of the Superintendent of Public Instruction (OSPI) that it could not accommodate additional Fircrest students in district schools and that Fircrest and the DSHS would have to provide a facility for the students' education. Between February and May, the district did not provide educational services to several Fircrest students. On May 15, 2007, following an agreement with Fircrest and the DSHS, the district began providing educational services in a segregated facility at Fircrest.

On April 11, 2007, a complaint was filed with the United States Department of Education, Office for Civil Rights (OCR) alleging that the district had discriminated against the students on the basis of disability by failing to provide each student a free appropriate public education (FAPE). The OCR investigated and issued its findings and conclusions on August 7, 2008, ultimately finding and concluding that the district had discriminated against the students by failing to provide them a FAPE.

In its findings, the OCR noted that the federal Individuals with Disabilities Act (IDEA) prohibits a district from excluding a disabled student from public education and that the district has an obligation to promptly identify disabled students within its jurisdiction and provide each such student a FAPE, including services comparable to those described in the student's previous individualized education program (IEP), until such time that the district adopts the student's previous IEP or develops, adopts, and implements a new IEP. Placement decisions must be individualized for each student and "[p]lacing a disabled student in a separate facility identifiable as being for disabled students violates [IDEA] unless it is necessary to provide a FAPE to the student." According to the OCR, a one size fits all approach is not consistent with the IDEA.

Shoreline School District and the OCR entered into a settlement agreement resolving the compliance concerns. Pursuant to the agreement, the district agreed to:

- Promptly identify each disabled student residing at Fircrest and provide each student a FAPE according to the student's previous IEP until such time as the district adopts and implements a new IEP.
- Educate each Fircrest student in a public school setting to the maximum extent appropriate to the needs of each student consistent with the IDEA. Only if a segregated educational setting is necessary to that student will a student be educated in a segregated facility.
- Evaluate each Fircrest student consistent with the IDEA before any significant changes are made to a student's educational placement.
- Make individualized placement decisions for each student.

- Ensure that educational services are designed to meet an individual student's educational needs.
- Provide staff training.
- By December 31, 2008, provide the OCR with a report identifying the independent team of professionals/case manager appointed to review the education records of the Fircrest students who resided at Fircrest between 9/06 and 8/08 and determine student- specific recommendations to compensate for the previous denial of FAPE.

With the approval of the OCR, and pursuant to its own settlement agreement with the OCR, the OSPI conducted the review contemplated by the settlement agreement. A final report was issued by the OSPI on December 12, 2008. The district has 90 calendar days from receipt of the report to provide the OSPI with a proposed corrective action/improvement plan setting forth the measures the district will take and the time frame within which they will be accomplished. All corrective actions must be completed no later than one year from the date of notification.

Summary of Bill:

RHC Impact Assistance

School districts, within which the RHCs are located, are eligible for the RHC impact assistance for actual costs associated with educational services provided to students who are RHC residents to the extent that those costs exceed funding otherwise provided to serve those students. Eligible school districts must apply to the OSPI for such assistance and demonstrate that these actual costs were legitimate expenditures associated with educational services and that the costs exceed the total of other state and federal allocations and grants as well as private grants, bequests, and gifts made for the purpose of maintaining and operating the program of education for these students. Differences in program costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for impact assistance awards.

The OSPI may adopt rules and procedures necessary for administration of the impact assistance. Prior to revising any standards, procedures, or rules, the OSPI shall consult with the Office of Financial management and the fiscal committees of the Legislature.

Prior Notice of Placement

At least 30 days prior to placing a person between the ages of 3 and 21 at a RHC, the DSHS must provide notice to the superintendent of the school district in which the RHC is located. The DSHS and the district shall cooperate and collaborate to facilitate, to the maximum extent possible, the smooth transition of educational services and assure that the school district is able to provide the necessary educational services.

Appropriation: None.

Fiscal Note: Requested on February 11, 2009.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.