

HOUSE BILL REPORT

2SHB 2113

As Passed House:

March 9, 2009

Title: An act relating to placements of students in residential habilitation centers.

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

Sponsors: House Committee on Education Appropriations (originally sponsored by Representatives Kagi, Chase, Quall and Morrell).

Brief History:

Committee Activity:

Education: 2/17/09, 2/20/09 [DPS];

Education Appropriations: 2/25/09, 2/26/09 [DP2S(w/o sub ED)].

Floor Activity

Passed House: 3/9/09, 97-0.

Brief Summary of Second Substitute 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 notice of student placement in a RHC to an affected school district no later than 24 hours after it becomes known to the DSHS that such a placement will be made.
- 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.

HOUSE COMMITTEE ON EDUCATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Quall, Chair; Probst, Vice Chair; Priest, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Cox, Dammeier, Hunt, Johnson, Liias, Maxwell, Orwall, Santos and Sullivan.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Cece Clynch (786-7195)

HOUSE COMMITTEE ON EDUCATION APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Education. Signed by 14 members: Representatives Haigh, Chair; Sullivan, Vice Chair; Priest, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Anderson, Carlyle, Cox, Haler, Hunter, Kagi, Probst, Quall, Rolfes and Wallace.

Staff: Ben Rarick (786-7349)

Background:

Residential Habilitation Centers.

There are five Residential Habilitation Centers (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 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 the 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; and
- 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 September 2006 and August 2008 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 Second Substitute 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.

The responsibilities of the DSHS relative to funding remain unchanged.

Prior Notice of Placement.

No later than 24 hours after it becomes known to the DSHS that a person between the ages of 3 and 21 will be placed 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: Available.

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

Staff Summary of Public Testimony (Education):

(In support) There has been an increase in the number of very disabled children being placed at RHCs. Often it is because of behavioral issues that a child is placed at a RHC. This transition brings with it tremendous challenges for the school district within which the RHC is located. To date, there have been monies made available to make sure that the school district doesn't have to absorb the additional costs. By placing impact assistance in statute, it will make sure that, in the future, a school district doesn't have to absorb additional costs as a result of these RHC students who, until being placed at the RHC, are generally not residents of the school district. There needs to be a partnership between the RHC and the school district so that these children are served. There appears to be a good working relationship now but there have been times in the past when it was challenging. Lately, there have been more voluntary placements at RHCs, particularly Fircrest and the FHMC. Shoreline School District has seen a huge increase in the number of RHC students. Nineteen of the 20 recent placements each required one full-time adult aide. One of the children recently placed required two full-time, specially trained male aides. Hiring appropriate people on short notice can be extremely difficult. Special education teachers need time to plan educational services for these newly placed children. In addition, the classrooms and school buildings

sometimes need to be specially prepared for these children and this, too, requires time. The school needs notice as well as adequate funding.

(With concerns) The DSHS does not always have 30 days notice that a placement in a RHC will occur and, therefore, could not always comply with the 30 day notice provision. Often these are very emergent situations. To reflect this reality, it would be best if the bill required notice as soon as it becomes known to the DSHS that a placement will be made. Rather than focus on just those children placed at RHCs, other state placements should also be included. Those school districts also need adequate funding and notice.

(Opposed) None.

Staff Summary of Public Testimony (Education Appropriations):

(In support) In recent years, we've seen a significant increase in placements in residential habilitation centers (RHCs). The placements are generally from out-of-district. In years past, districts have absorbed significant costs in serving these children. This issue is revisited every year. The principle that school districts are not responsible for absorbing the costs of serving state-placed students in RHCs should be established in law. A child was placed in the Shoreline School District recently that requires two paraprofessionals. It is really imperative that districts get immediate notification when these children are placed in a district and that the RHC and the school district work as partners to meet the educational needs of these students.

(Opposed) None.

Persons Testifying (Education): (In support) Representative Kagi, prime sponsor; Sue Elliott, The Arc of Washington State; Maren Norton, Shoreline School District; and Alfred Frates Jr.

(With Concerns) Don Clintsman, the Department of Social and Health Services, Developmental Disabilities; and Christie Perkins, Washington State Special Education Coalition.

Persons Testifying (Education Appropriations): Representative Kagi, prime sponsor.

Persons Signed In To Testify But Not Testifying (Education): None.

Persons Signed In To Testify But Not Testifying (Education Appropriations): None.