

18A:7A-3

LEGISLATIVE HISTORY CHECKLIST

**NJSA:** 18A:7A-3 ("Public School Education Act of 1975--amend to include private schools under contract with Human Services)

**LAWS OF:** 1986

CHAPTER 10

**BILL NO:** S366

**Sponsor(s):** Ewing

**Date Introduced:** September 12, 1985

**Committee: Assembly:** Education

**Senate:** Education

**Amended during passage:** No

Substituted for A284 (not attached since identical to S366).

**Date of Passage:**

**Assembly:**

March 10, 1986

**Senate:**

February 3, 1986

**Date of Approval:**

April 23, 1986

**Following statements are attached if available:**

**Sponsor statement:**

Yes

**Committee statement:**

**Assembly**

Yes

**Senate**

Yes

**Fiscal Note:**

No

**Veto Message:**

No

**Message on Signing:**

Yes

**Following were printed:**

**Reports:**

No

**Hearings:**

No

Ruling by Attorney General, as mentioned in Assembly statement--attached.

10 86  
4-23-86

**SENATE, No. 366**  
**STATE OF NEW JERSEY**

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator EWING

AN ACT to amend the "Public School Education Act of 1975,"  
approved September 29, 1975, (P. L. 1975, c. 212).

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Section 3 of P. L. 1975, c. 212 (C. 18A:7A-3) is amended to  
2 read as follows:

3 3. For the purposes of this act, unless the context clearly re-  
4 quires a different meaning:

5 "Adjusted net current expense budget" means the balance after  
6 deducting (1) State support for categorical programs pursuant  
7 to section 20 of P. L. 1975, c. 212 (C. 18A:7A-20), (2) the difference  
8 between the transportation amount in the current expense budget  
9 and 10% of the estimated approved transportation amount, and  
10 (3) all other revenue in the current expense budget except the  
11 amount to be raised by local taxation, equalization State support,  
12 and State support for approved transportation, appropriation  
13 from free balances, and miscellaneous revenue.

14 "Adjusted net current expenses per pupil" means the quotient  
15 resulting from dividing the adjusted net current budget by the  
16 resident enrollment.

17 "Adjusted State average net current expense budget per pupil"  
18 means the quotient resulting from dividing the total adjusted net  
19 current expense budget of all districts in the State by the total  
20 resident enrollment in the State.

21 "Administrative order" means a written directive ordering  
22 specific corrective action by a district which has shown insufficient

23 educational progress within a reasonable period of time in meeting  
24 goals and standards.

25 “Approved special class pupil” means a pupil enrolled in any  
26 class for atypical pupils pursuant to chapter 46 of Title 18A of the  
27 New Jersey Statutes.

28 “Approved special education services pupil” means a pupil  
29 receiving specific services pursuant to chapter 46 of Title 18A of  
30 the New Jersey Statutes but excluding pupils attending county  
31 special services school districts.

32 “Bilingual education pupil” means a pupil enrolled in a program  
33 of bilingual education approved by the State board.

34 “Budgeted capital outlay” means those capital outlay expendi-  
35 tures that are included in the annual school budget.

36 “Categorical programs” means those programs and services  
37 recognized in this act as requiring per pupil expenditures over and  
38 above those applicable to regular programs, as provided in section  
39 20 of this act.

40 “Current expense” means all expenses of the school district, as  
41 enumerated in N. J. S. 18A:22-8, other than those required for  
42 interest and debt redemption charges and any budgeted capital  
43 project.

44 “Debt service” means and includes payments of principal and  
45 interest upon school bonds and other obligations issued to finance  
46 the acquisition of school sites and the acquisition, construction or  
47 reconstruction of school buildings, including furnishings, equip-  
48 ment and the costs of issuance of such obligations and shall include  
49 payments of principal and interest upon bonds heretofore issued to  
50 fund or refund such obligations, and upon municipal bonds and  
51 other obligations which the commissioner approves as having been  
52 issued for such purposes. Debt service pursuant to the provisions  
53 of P. L. 1971, c. 10 (C. 18A:58-33.6 et seq.) and P. L. 1968, c. 177  
54 (C. 18A:58-33.2 et seq.) is excluded.

55 “District equalized valuation per pupil” means the quotient  
56 resulting from dividing the total equalized valuations in the school  
57 district by the resident enrollement of the district; provided that in  
58 the determination of the equalized valuation per pupil of a county  
59 vocational school the total equalized valuations in the county shall  
60 be divided by the total resident enrollment in all school districts  
61 of the county to obtain the county vocational school equalized valua-  
62 tion per pupil.

63 “Equalized valuations” means the equalized valuation of the  
64 taxing district for taxing districts as certified by the Director of the  
65 Division of Taxation on October 1 of the prebudget year.

66 With respect to regional districts and their constituent districts,  
67 however, the equalized valuations as described above shall be  
68 allocated among the regional and constituent districts in proportion  
69 to the number of pupils in each of them.

70 "Evening school pupils" means the equated full-time resident  
71 enrollment of pupils enrolled in an accredited evening high school,  
72 an evening vocational high school, and in other evening schools  
73 except schools offering programs for self-improvement and social  
74 enrichment.

75 "Goals" means a written statement of educational aspirations  
76 for learner achievement and the educational process stated in  
77 general terms.

78 "Guaranteed valuation per pupil" means the product, rounded  
79 to the nearest dollar, of 1.344 times the State average valuation  
80 per pupil for the year in which the calculation of aid is made.

81 "Joint Committee on the Public Schools" means the committee  
82 created pursuant to P. L. 1975, c. 16 (C. 52:9R-1 et seq.).

83 "Local vocational pupils" means the full-time equivalent of  
84 pupils enrolled in approved categorical vocational programs in  
85 school districts designated as local area vocational school districts.

86 "Minimum aid guaranteed valuation per pupil" means the  
87 product, rounded to the nearest whole dollar, of 11.5 times the  
88 State average equalized valuation per pupil for the year in which  
89 the calculation of aid is made.

90 "Needs assessment" means a written analysis of the current  
91 status of an educational system in terms of achieving its goals.

92 "Net current expense budget" means the balance after deduct-  
93 ing (1) State support for categorical programs pursuant to sec-  
94 tion 20 of this act, (2) the difference between the transportation  
95 amount in the current expense budget and 10% of the estimated  
96 approved transportation amount, and (3) all other revenue in the  
97 current expense budget except the amount to be raised by local  
98 taxation, equalization State support, the State support for ap-  
99 proved transportation.

100 "Net current expenses per pupil" means the quotient resulting  
101 from dividing the net current expense budget by the resident en-  
102 rollment.

103 "Net debt service and budgeted capital outlay" means the  
104 balance after deducting all revenues from the school debt service  
105 and budgeted capital outlay budgets of the school district and the  
106 school debt service amount included in the municipal budget, except  
107 the amount to be raised by local taxation and State support.

108 "Objective" means a written statement of the intended outcome  
109 of a specific educational process.

110 "Prebudget year" means the school year preceding the year in  
111 which the school budget will be implemented.

112 "Resident enrollment" means the number of pupils who are resi-  
113 dent of the district and are enrolled in day or approved evening  
114 schools on the last school day of September of the prebudget year  
115 and are attending: (1) the public schools of the district; (2) another  
116 school district or a State college demonstration school to which the  
117 district of residence pays tuition; or (3) a State facility; provided  
118 that a district shall count pupils regularly attending both the  
119 schools of the district and of a county vocational school in the  
120 same county on an equated full-time basis.

121 Handicapped children between three and five years of age and  
122 receiving programs and services pursuant to N. J. S. 18A:46-6  
123 shall be included in the resident enrollment of the district on an  
124 equated full-time basis.

125 "Standards" means the process and stated levels of proficiency  
126 used in determining the extent to which goals and objectives are  
127 being met.

128 "State average net current expense budget per pupil" means  
129 the quotient resulting from dividing the total net current expense  
130 budget of all districts in the State by the total resident enrollment  
131 in the State.

132 "State average valuation per pupil" means the quotient result-  
133 ing from dividing the total equalized valuations in the State as  
134 certified by the Director of the Division of Taxation on October 1  
135 by the total resident enrollment in the State. In the event that the  
136 equalized table certified by the Director of the Division of Taxation  
137 shall be revised by the tax court on or before January 30 of the  
138 next succeeding year, such revised valuation shall be used in any  
139 recomputation of aid for an individual district filing such appeal  
140 but will have no effect upon the State average valuation per pupil.

141 "State compensatory education pupil" means a pupil who is en-  
142 rolled in preventive and remedial programs offered during the  
143 normal school day, or in programs offered beyond the normal school  
144 day or during summer vacation, which are integrated and co-  
145 ordinated with programs operated during the regular school day  
146 and year. Said programs shall be approved by the State board,  
147 supplemental to the regular programs and designed to assist pupils  
148 who have academic, social, economic or environmental needs that  
149 prevent them from succeeding in regular school programs.

150 "State facility" means a State residential facility for the  
151 retarded; a day training center which is operated by or under  
152 contract with the State and in which all the children have been

153 placed by the State *including a private school approved by the*  
 154 *Department of Education which is operated under contract with*  
 155 *the Bureau of Special Residential Services in the Division of*  
 156 *Developmental Disabilities in the Department of Human Services;*  
 157 a State residential youth center; a State training school or correc-  
 158 tional facility; a State child treatment center or psychiatric hos-  
 159 pital.

160 “State support limit” means the sixty-fifth percentile net current  
 161 expense budget per pupil for the prebudget year when all district  
 162 figures are ranked from low to high. The State support limit  
 163 shall be calculated and applied separately for (a) limited purpose  
 164 regional districts offering grades nine through 12, (b) limited pur-  
 165 pose regional districts offering grades seven through 12, provided,  
 166 however, that the figure used for such districts shall be not less  
 167 than 90% of the sixty-fifth percentile for limited purpose regional  
 168 districts offering grades nine through 12, (c) constituent districts  
 169 of limited purpose regional districts offering grades nine through  
 170 12, (d) constituent districts of limited purpose regional districts  
 171 offering grades seven through 12, provided, however, that the figure  
 172 used for such districts shall be not less than 90% of the sixty-  
 173 fifth percentile for constituent districts of limited purpose regional  
 174 districts offering grades nine through 12, and (e) all other districts.

1 2. This act shall take effect immediately.

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#### EDUCATION—HANDICAPPED

St. aid—elig. for day training

Provides statutory bases for payment of tuition for eligible day  
 training children placed in private schools by the Department of  
 Human Services.

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153 placed by the State *\*including a private school approved by the*  
 154 *Department of Education which is operated under contract with*  
 155 *the Bureau of Special Residential Services in the Division of*  
 156 *Developmental Disabilities in the Department of Human Services\**;  
 157 a State residential youth center; a State training school or correc-  
 158 tional facility; a State child treatment center or psychiatric hos-  
 159 pital\***]; a private school approved by the Department of Education**  
 160 *which is operated under contract with the Bureau of Special Resi-*  
 161 *dential Services in the Department of Human Services]\**

162 “State support limit” means the sixty-fifth percentile net current  
 163 expense budget per pupil for the prebudget year when all district  
 164 figures are ranked from low to high. The State support limit  
 165 shall be calculated and applied separately for (a) limited purpose  
 166 regional districts offering grades nine through 12, (b) limited pur-  
 167 pose regional districts offering grades seven through 12, provided,  
 168 however, that the figure used for such districts shall be not less  
 169 than 90% of the sixty-fifth percentile for limited purpose regional  
 170 districts offering grades nine through 12, (c) constituent districts  
 171 of limited purpose regional districts offering grades nine through  
 172 12, (d) constituent districts of limited purpose regional districts  
 173 offering grades seven through 12, provided, however, that the figure  
 174 used for such districts shall be not less than 90% of the sixty-  
 175 fifth percentile for constituent districts of limited purpose regional  
 176 districts offering grades nine through 12, and (e) all other districts.

1 2. This act shall take effect immediately.

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#### STATEMENT

This bill amends the “Public School Education Act of 1975,”  
 P. L. 1975, c. 212 (C. 18A:7A-1 et seq.) to include all of those  
 classified children placed by the Bureau of Special Residential  
 Services in the Division of Developmental Disabilities in the De-  
 partment of Human Services.

5366(1986)

ASSEMBLY EDUCATION COMMITTEE

STATEMENT TO

**SENATE, No. 366**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 27, 1986

The Assembly Education Committee favorably reports Senate Bill No. 366.

This bill provides the statutory basis for the provision of funds for the education of children who are eligible for day training and who are placed in an approved private school by the Bureau of Special Residential Services in the Department of Human Services.

The "State Facilities Education Act of 1979", P. L. 1979, c. 207, (C. 18A:7B-1 et seq.) provided for the payment of tuition for each child who is in a State facility. Under a ruling by the Attorney General, this would include all children in institutions who are eligible for day training. This bill clarifies the language in statute to conform to this opinion.

According to the Department of Human Services, no additional funds will be necessary since these children are currently being funded under P. L. 1979, c. 207.

This bill is identical to Assembly Bill No. 284 (OCR) which was reported favorably by this committee of January 30, 1986.



SENATE EDUCATION COMMITTEE

STATEMENT TO

Senate Bill No. 366

DATE: January 23, 1986

The committee favorably reports this bill.

This bill provides the statutory basis for the provision of funds for the education of children who are eligible for day training and who are placed in an approved private school by the Bureau of Special Residential Services in the Department of Human Services.

The "State Facilities Education Act of 1979", P.L. 1979, c. 207, (C. 18A:7B-1 et seq.) provided for the payment of tuition for each child who is in a State facility. Under a ruling by the Attorney General, this would include all children in institutions who are eligible for day training. This bill clarifies the language in statute to conform to this opinion.

According to the Department of Human Services, no additional funds will be necessary since these children are currently being funded under P.L. 1979, c. 207.

This bill was released by the Senate Education Committee in December of 1985.

This bill was pre-filed for introduction in the 1986 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

S 366  
1/23/86/ahb

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EDUCATION - HANDICAPPED

St. aid - elig. for day training

Provides statutory bases for payment of tuition for  
eligible day training children placed in private  
schools by the Department of Human Services.



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661

# OFFICE OF THE GOVERNOR NEWS RELEASE

**CN-001**

**Contact:** CARL GOLDEN  
609-292-8956 or  
**609-292-6000, Ext. 285**

**TRENTON, N.J. 08625**

**Release:** WED., APRIL 23, 1986

Governor Thomas H. Kean today signed legislation to permit the Department of Human Services to receive State education aid directly for the cost of programs for handicapped children it places in private facilities.

The legislation, S-366, was sponsored by Senator John Ewing, R-Somerset.

The bill will enable the release of State aid from the Department of Education to the Department of Human Services for the educational cost of handicapped youngsters placed in private facilities under a written contract.

# # # #

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State of New Jersey

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DIVISION OF LAW  
EDUCATION AND PUBLIC EMPLOYMENT SECTION  
STATE HOUSE ANNEX

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ATTORNEY GENERAL

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SECTION CHIEF

ALAN D. HANLY JR.  
DEPUTY ATTORNEY GENERAL  
ASSISTANT SECTION CHIEF

May 4, 1981

CONFIDENTIAL AND PRIVILEGED

Timothy Carden, Commissioner  
Department of Human Services  
222 S. Warren Street  
Trenton, New Jersey 08625

Fred A. Burke, Commissioner  
Department of Education  
225 W. State Street  
Trenton, New Jersey 08625

Gentlemen:

Pursuant to the State Facilities Education Act of 1979, L. 1979, ch. 207 (the Act) the Department of Human Services has placed retarded children who are classified as "eligible for day training" in residential facilities which provide such training on a contract basis. Some of these placements have been made in out-of-State facilities. A question has arisen as to whether the Department of Education may provide State aid funds to the Department of Human Services to pay the costs of such placements. For the reasons which follow, it is our advice that the Department of Education may provide such aid under the Act where the aid is spent for the benefit of all the children placed with the facility by the Department of Human Services, and the terms of the placement are governed by a contract between the facility and the Department of Human Services.

Children "eligible for day training" are those who "are so severely mentally retarded as to be incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and who cannot in some manner express basic wants and needs." N.J.S.A. 18A:46-11(c). Local boards of education are not responsible for providing programs of education for such children. N.J.S.A. 18A:46-13; see Guempel v. State, 159 N.J. Super. 166, 170 (Law Div. 1978), modified, 84 N.J.

134 (1980). Rather, the Act provides that:

"It shall be the duty of the Department of Human Services to provide suitable facilities and programs for all the children who are classified as eligible for day training, and to provide transportation for all such children who attend day training centers." N.J.S.A. 46:18A-18.1.

The facilities and programs which the Department of Human Services may choose are enumerated in N.J.S.A. 18A:46-14, which includes placement out-of-State.

The local school district of residence of children "eligible for day training" is obligated, however, to pay tuition for each such child classified as eligible for day training who is placed in a "State facility." N.J.S.A. 18A:46-18.1. As a practical matter, however, such children in State facilities are included in the enrollment count of their school district of residence and thereby generate State equalization and categorical aid. N.J.S.A. 18A:7A-17; -18. Since tuition is equal to the average net current expense budget per pupil attending a regular school, and since children in State facilities are eligible for categorical aid, the balance of the cost for such children will be paid primarily by the State. N.J.S.A. 18A:7B-3. State payments are to be made by deductions from State aid to local districts as follows:

"For each child who is resident in a district and in a State facility on the last school day in September of the prebudget year, the Commissioner of Education shall deduct from the State aid payable to such district an amount equal to the State average net current expense budget per pupil plus the appropriate categorical program support.

"This amount shall be forwarded to the Department of Human Services if the facility is operated by or under contract with that department. . . ." N.J.S.A. 18A:7B-2.

The Department of Human Services has placed some children who are "eligible for day training" in out-of-State facilities. Children in such facilities, however, are eligible for funding according to the statutory scheme outlined above if the facility is a "State facility" as defined by N.J.S.A. 18A:7A-3:

"'State facility' means a State

residential facility for the retarded; a day training center which is operated by or under contract with the State and in which all the children have been placed by the State; a State residential youth center; a State training school or correctional facility; a State child treatment center or psychiatric hospital." (emphasis added).

With particular regard to out-of-state facilities for children deemed eligible for day training, the pertinent statutory language refers to a "day training center which is operated by or under contract with the State and in which all the children have been placed by the State." There is no available legislative history to illuminate the meaning of this phrase. Therefore, it is necessary to interpret the legislative language consistent with the overall legislative purpose and with related phrases with which it is associated. *Loboda v. Clark Tp.*, 40 N.J. 424, 435 (1963). In this regard the principal objective of the State Facilities Education Act was to provide for appropriate placement of children deemed eligible for day training and a funding mechanism to allow for that program to be financially implemented. That legislative purpose is manifested by placement not only in state operated facilities within the confines of the State of New Jersey but also in privately operated day training centers either within or without the State of New Jersey which are "operated by or under contract with the State and in which all the children have been placed by the State."

It is therefore reasonable to assume that in order to equate the privately operated facility to the greatest extent possible with a state operated facility there must be an omnibus operating contract between the State and the private facility which would contain, at a minimum, broad guidelines and standards which specify the nature of the care and maintenance to be provided, as well as guidelines which delineate the quality of the educational program.\* Further,

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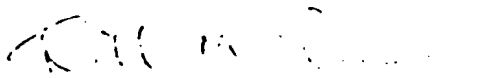
\* We have been informed that the Department of Human Services uses a purchase of care agreement which is executed upon the individual placement of a child. It is characterized as a "statement of understanding" and does not in our judgment approach the operating contract between the State and the facility which is contemplated by the statutory definition. Therefore, it is recommended that the Department of Human Services immediately, in consultation with this office, prepare appropriate operating contracts to be entered into between the Department and out-of-state facilities to guarantee that existing relationships with those facilities are in full conformance with the statute.

it was mandated that in order to invoke the funding mechanism for the provision of state aid on behalf of the children deemed eligible for day training, all such children who qualify for public reimbursement must be genuinely and appropriately placed in those facilities by competent state authority. Although the statute could be read to mandate that all of the children physically housed in such a facility must be placed by the State in order for the funding mechanism to apply, it is a recognized rule of statutory interpretation that a statute should not be construed in a manner to reach unreasonable and absurd results. *Davis v. Eeil*, 132 N.J. Super. 283, 293 (App. Div. 1975), *aff'd*, 68 N.J. 423 (1975). To suggest that a few private placements would disallow the use of State aid in an instance where State placed children are housed in such a facility is not, in our judgment, consistent with the overall legislative purpose to provide for the placement of children eligible for day training in these privately operated facilities.

For these reasons, you are advised that the Department of Human Services has the responsibility to provide for appropriate programs for children classified as eligible for day training and the authority to provide for those programs in privately operated facilities either within or without the State of New Jersey. You are further advised that the Commissioner of Education has the authority to deduct from State aid payable to the local districts in which such children reside and to pay the same to the Department of Human Services for payment to private facilities under an appropriate operating contract with the Department. Finally, it should be noted that while this conclusion is supported by the legislative intent underlying the entire Act, it may not be clear under a literal reading of the isolated terms of N.J.S.A. 18A:7A-3. It is therefore our recommendation that appropriate amendatory legislation be obtained to expressly and unequivocally provide that privately operated facilities outside of the State qualify as eligible "State facilities."

Very truly yours,

JAMES R. ZAZZALI  
Attorney General of New Jersey

  
Richard M. Hluchan  
Deputy Attorney General

RMH : mab