

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 1293
SENATE BILL 1238

AN ACT TO ESTABLISH EQUAL EDUCATIONAL OPPORTUNITIES IN THE PUBLIC
SCHOOLS; AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly of North Carolina finds:

(a) That the people of North Carolina have historically had a high regard for equal educational opportunities, and have set forth a mandate in the Constitution of North Carolina providing in Article I, Section 15 and in Article IX, Section 2 that the people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right, and that the General Assembly shall provide a general and uniform system of free public schools;

(b) That past program development for children has resulted in a great variation of services, particularly to those children with special needs, with some children having a greater educational opportunity than others; that the labeling of children, and defining the needs of children within the boundaries of those labels, have had a stigmatizing effect and have caused service and education programs to be overly narrow and rigid, both in their content and their inclusion and exclusion policies.

Sec. 2. The General Assembly of North Carolina hereby declares that the policy of the State is to ensure every child a fair and full opportunity to reach his full potential and that no child as defined in this act shall be excluded from service or education for any reason whatsoever.

Sec. 3. The General Assembly of North Carolina further declares that the public policy of North Carolina is defined in greater detail to carry out the foregoing stated policies as follows:

(a) The State shall provide for a comprehensive early childhood development program by emphasizing preventative and remedial measures designed to provide the services which will enable children to develop to the maximum level their physical, mental, social, and emotional potentials and to strengthen the role of the family as the first and most fundamental influence on child development.

(b) The State shall develop a system of educational opportunities for all children with special needs and require the identification and evaluation of the needs of children and the adequacy of various education programs before placement of children, and shall provide for periodic evaluation of the benefits of programs to the individual child and the nature of the child's needs thereafter;

(c) The State shall prevent denial of equal educational and service opportunity on the basis of national origin, sex, economic status, race, religion, and physical, mental, social or emotional handicap in the provision of services to any child;

(d) It is recognized that children have a variety of characteristics and needs, all of which must be considered if the potential of each child is to be realized; that in order to accomplish this the State must develop a full range of service and education programs, and that a program must actually benefit a child or be designed to benefit a particular child in order to provide such child with appropriate educational and service opportunities.

Sec. 4. The General Assembly of North Carolina finds that various studies and various programs have been undertaken and that tremendous public interest exists to seek ways of more effectively rendering a beneficial service to all of our children, and especially with children who have special needs.

In this context the term "child with special needs" means any child who because of temporary or permanent disabilities arising from intellectual, sensory, emotional, physical, environmental factors, or other specific learning disability is inhibited from achieving his full potential; to include, but not limited to, the educable, trainable, profoundly, and functionally retarded, emotionally disturbed, learning disabled, the physically handicapped or other impairments including hospitalized, homebound, or pregnant, the deaf or hearing-impaired, the language or speech-impaired, the blind or visually-impaired, gifted and talented, autistic, dependent, abused, neglected, multiple-impaired, and socially maladjusted.

Sec. 5. The General Assembly finds that a separate legislative act (Senate Bill 1382, Chapter, Session Laws of 1974) creates a permanent Legislative Commission on Children with Special Needs which will address itself to the policy matters that have been declared in this act.

The Department of Human Resources and the Department of Public Education are hereby declared vital departments of State Government to especially assist said Commission and to furnish them with information, and to the extent permitted by the Commission, to actively participate in the work and deliberations of the Commission.

Sec. 6. The General Assembly of North Carolina finds that a current census of all children with special needs is urgently needed and is necessary in order that appropriate legislation may be enacted to provide service and education programs for all of said children and for this purpose there is hereby appropriated from the General Fund the sum of fifty thousand dollars (\$50,000) to the Department of Human Resources and fifty thousand dollars (\$50,000) to the Department of Public Education with the requirement that they work in cooperation for the purpose of planning and conducting the census. The result of the census shall be used by the Department of Human Resources, the Department of Public Education, the Commission on Children with Special Needs, and other agencies of government for program planning.

Sec. 7. The Department of Human Resources and the Department of Public Education shall use the results of the census to jointly develop a State plan for providing equal education and services to children with special needs.

The plan shall include: the number and geographic distribution of all children residing in the State who have special needs, a listing of all public and private special education and service programs available in the State and the number of children served by each program. A preliminary plan shall be submitted to the 1975 General Assembly and shall contain the actions required by the Department of Human Resources and the Department of Public Education for securing full compliance with the policy of this act. The plan shall also specify a date by which the State shall accomplish the intent of this act and shall also include an estimate of the cost of full implementation of the policy.

Sec. 8. The General Assembly finds that the Governor's Advocacy Council on Children and Youth is actively interested and involved in the matter of public policy set forth in this act. In order to more properly carry out their responsibilities said Council needs additional authority.

Sec. 9. G.S. 110-71 relating to the Governor's Advocacy Council on Children and Youth is amended by adding the following subsections:

"(9) Each State agency and department having responsibilities for providing services to children and their families, including children with special needs and children in early childhood, shall submit to the Council upon request a plan of services for children that includes:

- (a) Descriptions of the kinds of services and programs it provides;
- (b) The characteristics of the children to be served through each program, including eligibility and entrance requirements;
- (c) The geographic distribution of services;
- (d) The projected budgets for each service or program as well as the cost per unit of service;
- (e) The client fees to be charged for each service;
- (f) The mechanism for evaluating and providing technical assistance and staff development to each service or program; and (g) Provisions for parent and child participation and involvement.

(10) The Council shall review each plan and make recommendations to agencies and departments, and reports to the General Assembly, relative to the expansion, deletion, improvement and coordination of programs and services for children.

(11) To assist children and their parents or guardians in obtaining the assistance and services which the child needs and which are provided by State, local and private agencies or organizations.

(12) To inform the public concerning the importance of early childhood development and related family services, and programs for children with special needs."

Sec. 10. Right of Appeal. A child, his parent or guardian, may obtain review, as herein provided, of an action or omission by State or local authorities on the ground that the child has been or is about to be:

- (1)
 - (a) denied entry or continuance in a program appropriate to his condition and needs;
 - (b) placed in a program which is inappropriate, unsuitable, or inadequate to his condition and needs; or
 - (c) assigned to a special program when he is not a child with special need.

(2) The parent or guardian of a child placed or denied placement in a program shall be notified promptly, by registered or certified mail, return receipt requested, of his placement, denial or impending placement or denial. Such notice shall contain a statement informing the parent or guardian that he is entitled to review of the determination and of the procedure for obtaining such review. The notice shall contain information that a hearing may be had before the local school board for educational matters or the Advocacy Council for Human Resource matters, upon written request, no less than 15 days nor more than 30 days from the date on which the notice was received. The parent or guardian of a child may, upon written request, not more than 30 days from the date of a decision, appeal said decision to the State Superintendent of Public Instruction or the Secretary of Human Resources. Any appeal of these decisions to the General Court of Justice must occur within 30 days after notice of such decision.

(3) All hearings shall be closed unless otherwise requested by the parent or guardian of a child.

(4) Ordinarily no change in the program assignment or status of a child with special needs shall be made within the period afforded the parent or guardian to request a hearing, except that such change may be made with the written consent of the parent or guardian. However, if the health or safety of the child or any other individual would be endangered by delaying the change in assignment, the change may be sooner made, but without prejudice to any rights that the child and his parent or guardian may have pursuant to this subsection or otherwise pursuant to law.

(5) The parent or guardian shall have access to any reports, records, clinical evaluations or other materials upon which the determination to be reviewed was wholly or partially based or which could reasonably have a bearing on the correctness of the determination. At any hearing held pursuant to this section, the child and his parent or guardian shall be entitled to examine and cross-examine witnesses, to introduce evidence, to appear in person, and to be represented by counsel.

(6) The Superintendent and the Secretary shall make, amend or revise rules and regulations for the conduct of hearings authorized by this subsection and otherwise for the implementation of its purpose. Among other things, such rules and regulations shall allow the appointment of a hearing officer or board to hear such cases as may be appealed. Copies of such rules shall be filed in the office of the Secretary of State as by law provided.

(7) The determination of the appeal shall be subject to judicial review in the manner provided for in Article 31, Chapter 134 of the General Statutes.

(8) The remedies provided by this subsection are in addition to any other remedies which a child, his parent or guardian may otherwise have pursuant to law.

Sec. 11. There shall be transferred from the State Department of Public Education to the Department of Human Resources: The \$830,766 Child Health Fund.

Sec. 12. The Revisor of Statutes is directed to codify the provisions of this Act within various sections of the General Statutes.

Sec. 13. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 14. This act shall be in full force and effect on July 1, 1974.

In the General Assembly read three times and ratified, this the 11th day of April, 1974.