



**Substitute House Bill No. 5447**

**Public Act No. 18-183**

**AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE AUDITORS OF PUBLIC ACCOUNTS CONCERNING PRIVATE PROVIDERS OF SPECIAL EDUCATION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 10-91j of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):

(a) Any agreement entered into or amended on or after July 1, [2017] 2018, but prior to June 30, 2019, or any contract entered into or amended on or after July 1, 2019, pursuant to section 10-76d, as amended by this act, between a local or regional board of education and a private provider of special education services, as defined in section 10-91g, as amended by this act, shall include an explanation of how the tuition or costs for services provided under the agreement or contract are to be calculated. Any such agreement or contract may include the following provisions: (1) A requirement that such private provider of special education services submit monthly or quarterly reports to such board regarding the specific services and frequency of such services being provided by such private provider of special education services to students under the agreement or contract, and (2) authorization for such board to (A) review and reconcile such reports

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to the contracted services described in the agreement or contract, or (B) conduct periodic site visits at the location where such private provider of special education services provides services.

(b) On and after July 1, 2019, a local or regional board of education shall not be eligible for reimbursement pursuant to section 10-76g for any costs of special education paid by such board of education to a private provider of special education services unless such board of education has entered into a written contract with such private provider of special education services for the provision of such special education services. The individualized education program of a child shall not be considered a contract between a local or regional board of education and a private provider of special education services for purposes of this section. Nothing in this subsection shall be construed to limit or interrupt the provision of special education and related services to a child by a local or regional board of education or private provider of special education services.

Sec. 2. Subsection (b) of section 10-91h of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):

(b) Each local and regional board of education that has entered into an agreement or contract pursuant to section 10-76d, as amended by this act, or 10-91j, as amended by this act, with a private provider of special education services, shall submit to an audit conducted by the Auditors of Public Accounts for the purposes of examining such board's monitoring of student attendance at such private provider of special education services to ensure that proper services are being provided and costs are being controlled. Such board shall provide access to all records and accounts necessary to said auditors for purposes of conducting such audit.

Sec. 3. Section 10-91g of the 2018 supplement to the general statutes

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is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):

(a) As used in this section, [and] sections 10-91h [and 10-91i] to 10-91j, inclusive, as amended by this act, and sections 4 and 5 of this act, "private provider of special education services" means any private school or private agency or institution, including a group home, that receives any state or local funds as a result of providing special education services to any student with an individualized education program or for whom an individual services plan has been written by the local or regional board of education responsible for educating such student.

(b) In accomplishing their duties as set forth in section 7-396a and in accordance with the authority granted under chapter 111, the Auditors of Public Accounts shall act as an agent of a local or regional board of education for the purposes of conducting an audit to examine the records and accounts of any private provider of special education services that (1) has entered into an agreement or contract with a local or regional board of education, pursuant to section 10-76d, as amended by this act, or 10-91j, as amended by this act, or (2) receives any state or local funds to provide special education and related services, in connection with any grant made by any state agency pursuant to any section of the general statutes or any public or special act. Such examination shall include a compliance audit of whether such state or local funds to provide special education and related services have been expended for allowable costs, in accordance with state and federal law and the individualized education program or individual services plan for each child receiving special education and related services from such private provider of special education services.

(c) The Auditors of Public Accounts shall conduct the audit described in subsection (b) of this section as follows: (1) The Auditors of Public Accounts, using a risk-based approach, shall audit private

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providers of special education services at a frequency that they deem necessary, except that no private provider of special education services shall have its records and accounts so examined more than once during such five-year period, unless the auditors have found a problem with the records and accounts of such private provider of special education services during such five-year period; (2) audits shall be of private providers of special education services approved by the Department of Education and of private providers of special education services not approved by the Department of Education; and (3) priority of conducting such audits, as practical, shall be given to those private providers of special education services (A) that receive the greatest total amount of state or local funds for the provision of special education services to students, (B) that provide special education services to the highest number of students for whom an individual services plan has been written by a local or regional board of education, and (C) that have a highest proportion of state and local funds for the provision of special education services in relation to their total operational expenses.

(d) The Auditors of Public Accounts may (1) consult the Department of Education during the course of an audit described in subsection (b) of this section for the purposes of conducting such audit, and (2) share any preliminary audit findings with the department.

(e) The Auditors of Public Accounts shall report their findings to (1) the local or regional board of education that has entered into an agreement or contract with the private provider of special education services, pursuant to section 10-76d, as amended by this act, or 10-91j, as amended by this act, or that has completed an individualized education program or individual services plan for a student receiving special education and related services from a private provider of special education services, (2) the Commissioner of Education, and (3) the joint standing committee of the General Assembly having

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cognizance of matters relating to education, in accordance with the provisions of section 11-4a.

Sec. 4. (NEW) (*Effective July 1, 2018*) The Department of Education shall develop standards and a process for the documentation of the provision of special education services by a private provider of special education services. Such standards and process shall include the use of standard forms or other electronic reporting systems that can be used by a private provider of special education services, provided such standard forms or other electronic reporting systems allow a private provider of special education services to (1) document the scope and type of services provided to an individual student on a daily, weekly and monthly basis, (2) record the number of such services provided on a daily, weekly and monthly basis, and (3) include, but need not be limited to, the name of the student receiving services, the service being provided to the student, the date such service was provided, the length of time such service was provided and the name and signature of the person providing such service. In developing such standards and process, the department shall consult with private providers of special education services.

Sec. 5. (NEW) (*Effective July 1, 2018*) Whenever any child is identified by a local or regional board of education as a child requiring special education and said board of education determines that the requirements for special education could be met by a program provided by an agreement or a contract with a private provider of special education services, except for the child's need for services other than educational services such as medical, psychiatric or institutional care or services, such private provider of special education services shall submit its operating budget to the Department of Education on or before October first of the school year in which such private provider of special education services is providing such program, except that such private provider of special education services shall not be

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required to submit its operating budget more than once in a single school year.

Sec. 6. Subsection (d) of section 10-76d of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):

(d) To meet its obligations under sections 10-76a to 10-76g, inclusive, any local or regional board of education may make agreements with another such board or subject to the consent of the parent or guardian of any child affected thereby, make agreements, or on and after July 1, 2019, enter into a contract with any private provider of special education services, as defined in section 10-91g, as amended by this act, private school, or [with any] public or private agency or institution, including a group home to provide the necessary programs or services, but no expenditures made pursuant to a contract with a private provider of special education services, private school, agency or institution for such special education shall be paid under the provisions of section 10-76g, unless (1) such contract includes a description of the educational program and other treatment the child is to receive, a statement of minimal goals and objectives which it is anticipated such child will achieve, [and] an estimated time schedule for returning the child to the community or transferring such child to another appropriate facility, and an explanation of how the tuition or costs for services provided under the agreement or contract are to be calculated, (2) subject to the provisions of this subsection, the educational needs of the child for whom such special education is being provided cannot be met by public school arrangements in the opinion of the commissioner who, before granting approval of such contract for purposes of payment, shall consider such factors as the particular needs of the child, the appropriateness and efficacy of the program offered by such private school, agency or institution, and the economic feasibility of comparable alternatives, and (3) commencing

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with the 1987-1988 school year and for each school year thereafter, each such private provider of special education services, private school, agency or institution has been approved for special education by the Commissioner of Education or by the appropriate agency for facilities located out of state, except as provided in subsection (b) of this section. Notwithstanding the provisions of subdivision (2) of this subsection or any regulations adopted by the State Board of Education setting placement priorities, placements pursuant to this section and payments under section 10-76g may be made pursuant to such a contract if the public arrangements are more costly than the private provider of special education services, private school, institution or agency, provided the private provider of special education services, private school, institution or agency meets the educational needs of the child and its program is appropriate and efficacious. Notwithstanding the provisions of this subsection to the contrary, nothing in this subsection shall (A) require the removal of a child from a nonapproved facility if the child was placed there prior to July 7, 1987, pursuant to the determination of a planning and placement team that such a placement was appropriate and such placement was approved by the Commissioner of Education, or (B) prohibit the placement of a child at a nonapproved facility if a planning and placement team determines prior to July 7, 1987, that the child be placed in a nonapproved facility for the 1987-1988 school year. Each child placed in a nonapproved facility as described in subparagraphs (A) and (B) of subdivision (3) of this subsection may continue at the facility provided the planning and placement team or hearing officer appointed pursuant to section 10-76h determines that the placement is appropriate. Expenditures incurred by any local or regional board of education to maintain children in nonapproved facilities as described in said subparagraphs (A) and (B) shall be paid pursuant to the provisions of section 10-76g. Any local or regional board of education may enter into a contract with the owners or operators of any sheltered workshop or rehabilitation center for provision of an education occupational training program for

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children requiring special education who are at least sixteen years of age, provided such workshop or institution shall have been approved by the appropriate state agency. Whenever any child is identified by a local or regional board of education as a child requiring special education and such board of education determines that the requirements for special education could be met by a program provided within the district or by agreement with another board of education except for the child's need for services other than educational services such as medical, psychiatric or institutional care or services, such board of education may meet its obligation to furnish special education for such child by paying the reasonable cost of special education instruction in a private provider of special education services, private school, hospital or other institution provided such board of education or the commissioner concurs that placement in such institution is necessary and proper and no state institution is available to meet such child's needs. Any such private provider of special education services, private school, hospital or other institution receiving such reasonable cost of special education instruction by such board of education shall submit all required documentation to such board of education for purposes of submitting claims to the Medicaid School Based Child Health Program administered by the Department of Social Services.

Approved June 14, 2018