

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 831  
Committee Substitute Favorable 6/19/13

Short Title: Ed. Services for Children in PRTFs.

(Public)

Sponsors:

Referred to:

April 11, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR THE EDUCATION OF CHILDREN IN PRIVATE  
3 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 108A-80 reads as rewritten:

6 "**§ 108A-80. Confidentiality of records.**

7 (a) Except as provided in subsections (b) below, and (b1) of this section, it shall be  
8 unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the  
9 use of any list of names or other information concerning persons applying for or receiving  
10 public assistance or social services that may be directly or indirectly derived from the records,  
11 files or communications of the Department or the county boards of social services, or county  
12 departments of social services or acquired in the course of performing official duties except for  
13 the purposes directly connected with the administration of the programs of public assistance  
14 and social services in accordance with federal law, rules and regulations, and the rules of the  
15 Social Services Commission or the Department.

16 (b) The Department shall furnish a copy of the recipient check register monthly to each  
17 county auditor showing a complete list of all recipients of Work First Family Assistance in  
18 Standard Program Counties and State-County Special Assistance, their addresses, and the  
19 amounts of the monthly grants. An Electing County whose checks are not being issued by the  
20 State shall furnish a copy of the recipient check register monthly to its county auditor showing  
21 a complete list of all recipients of Work First Family Assistance in the Electing County, their  
22 addresses, and the amounts of the monthly payments. These registers shall be public records  
23 open to public inspection during the regular office hours of the county auditor, but the registers  
24 or the information contained therein may not be used for any commercial or political purpose.  
25 Any violation of this section shall constitute a Class 1 misdemeanor.

26 (b1) The Department may share confidential information concerning a person receiving  
27 public assistance or social services with a local school administrative unit and with the  
28 Department of Public Instruction. Disclosure is limited to that information necessary to  
29 establish, coordinate, or maintain an appropriate educational program for the person receiving  
30 public assistance or social services.

31 (c) Any listing of recipients of benefits under any public assistance or social services  
32 program compiled by or used for official purposes by a county board of social services or a  
33 county department of social services shall not be used as a mailing list for political purposes.  
34 This prohibition shall apply to any list of recipients of benefits of any federal, State, county or  
35 mixed public assistance or social services program. Further, this prohibition shall apply to the  
36 use of such listing by any person, organization, corporation, or business, including but not



1 limited to public officers or employees of federal, State, county, or other local governments, as  
2 a mailing list for political purposes. Any violation of this section shall be punishable as a Class  
3 1 misdemeanor.

4 (d) The Social Services Commission may adopt rules governing access to case files for  
5 social services and public assistance programs, except the Medical Assistance Program. The  
6 Secretary of the Department of Health and Human Services shall have the authority to adopt  
7 rules governing access to medical assistance case files."

8 **SECTION 2.** G.S. 115C-12 is amended by adding a new subdivision to read:

9 "(40) Duty to Ensure Educational Services in Private Psychiatric Residential Treatment  
10 Facilities. – The Board shall develop and implement rules for the provision and monitoring of  
11 educational services provided to students in private psychiatric residential treatment facilities as  
12 provided under Part 4 of Article 6 of Chapter 122C of the General Statutes."

13 **SECTION 3.** G.S. 122C-23.1 reads as rewritten:

14 **"§ 122C-23.1. Licensure of residential treatment facilities.**

15 (a) The General Assembly finds:

- 16 (1) That much of the care for residential treatment facility residents is paid by  
17 the State and the counties;
- 18 (2) That the cost to the State for care for residents of residential treatment  
19 facilities is substantial, and high vacancy rates in residential treatment  
20 facilities further increase the cost of care;
- 21 (3) That the proliferation of residential treatment facilities results in costly  
22 duplication and underuse of facilities and may result in lower quality  
23 service;
- 24 (4) There is currently no ongoing relationship between some applicants for  
25 licensure and local management entities (LMEs) that are responsible for the  
26 placement of children and adults in residential treatment facilities; and
- 27 (5) That it is necessary to protect the general welfare and lives, health, and  
28 property of the people of the State for the local management entity (LME) to  
29 verify that additional beds are needed in the LME's catchment area before  
30 new residential treatment facilities are licensed. This process is established  
31 to ensure that unnecessary costs to the State do not result, residential  
32 treatment facility beds are available where needed, and that individuals who  
33 need care in residential treatment facilities may have access to quality care.

34 Based on these findings, the Department of Health and Human Services may license new  
35 residential treatment facilities if the applicant for licensure submits with the application a letter  
36 of support obtained from the local management entity in whose catchment area the facility will  
37 be located. The letter of support shall be submitted to the Department of Health and Human  
38 Services, Division of Health Service Regulation and Division of Mental Health, Developmental  
39 Disabilities, and Substance Abuse Services, and shall specify the number of existing beds in the  
40 same type of facility in the catchment area and the projected need for additional beds of the  
41 same type of facility.

42 (b) All private psychiatric residential treatment facilities (PRTFs), as defined in  
43 G.S. 122C-450(a)(3), that serve children eligible to attend the public schools in accordance  
44 with G.S. 115C-366, including a student who has been suspended or expelled but otherwise  
45 meets the requirements of that statute, shall have a facility-based school as a condition of  
46 licensure. Subject to the time limits of subsection (c) of this section, the school shall meet all  
47 the requirements of a qualified nonpublic school under Article 39 of Chapter 115C of the  
48 General Statutes and of a Nonpublic Exceptional Children's Program as defined in  
49 G.S. 122C-450(a)(2). This requirement shall be deemed to be met upon receipt of the approval  
50 of the Department of Public Instruction. The requirements of this subsection and subsection (c)

1 of this section do not apply to PRTFs that are approved charter schools pursuant to Part 6A of  
2 Article 16 of Chapter 115C of the General Statutes.

3 (c) The Department of Health and Human Services may issue an initial license to a  
4 PRTF that meets all licensure requirements except for the approval of the facility-based school  
5 as a Nonpublic Exceptional Children's Program by the Department of Public Instruction. This  
6 initial license is valid for a period of six months during which time the PRTF shall obtain  
7 approval of its facility-based school as a Nonpublic Exceptional Children's Program by the  
8 Department of Public Instruction. If such approval is not obtained before the expiration of the  
9 additional six months, the Department of Health and Human Services shall review the PRTF's  
10 license for appropriate action. If the PRTF obtains approval as a Nonpublic Exceptional  
11 Children's Program, the Department of Health and Human Services may issue a license for the  
12 remainder of the calendar year and the facility is eligible for annual renewal thereafter.

13 (d) At any time upon receipt of a written notice from the Department of Public  
14 Instruction that a PRTF has not provided educational services, the Department of Health and  
15 Human Services shall review the PRTF's license for appropriate action.

16 (e) As used in this subsection, section, "residential treatment facility" means a  
17 "residential facility" as defined in and licensed under this Chapter, but not subject to Certificate  
18 of Need requirements under Article 9 of Chapter 131E of the General Statutes."

19 **SECTION 4.** G.S. 122C-55 is amended by adding a new subsection to read:

20 "(g2) Whenever there is reason to believe that the client is eligible for educational  
21 services through a governmental agency, a facility shall disclose client identifying information  
22 to the local school administrative unit responsible for the client and to the Department of Public  
23 Instruction. Disclosure is limited to that information necessary to establish, coordinate, or  
24 maintain educational services. The Department of Public Instruction may further disclose client  
25 identifying information to any other local school administrative unit that it may designate as the  
26 client's local educational agency while the client is residing in the facility as necessary."

27 **SECTION 5.** Article 6 of Chapter 122C of the General Statutes is amended by  
28 adding a new Part to read:

29 "Part 4. Educational Services in Private Psychiatric Residential Treatment Facilities.

30 **"§ 122C-450. Definitions.**

31 (a) The following definitions apply in this Part:

32 (1) "Educational services" means appropriate education-related assessment and  
33 instruction provided to any child residing in a psychiatric residential  
34 treatment facility, including special education and related services to a child  
35 with a disability as defined in G.S. 115C-106.3(1).

36 (2) "Nonpublic Exceptional Children's Program" means a facility-based school  
37 that has registered with the Department of Administration, Division of  
38 Nonpublic Schools, under Article 39 of Chapter 115C of the General  
39 Statutes and has been approved by the Department of Public Instruction to  
40 provide educational services as promulgated by the rules of the State Board  
41 of Education.

42 (3) "Private psychiatric residential treatment facility" (PRTF) means a facility,  
43 other than a hospital, that is not solely funded by the State that provides  
44 psychiatric services as described in Subpart D of C.F.R. Part 441 of Chapter  
45 42 to individuals under age 21 in an inpatient setting licensed by the  
46 Department of Health and Human Services as provided under Chapter 122C  
47 of the General Statutes. A PRTF does not include a State-operated facility.

48 **"§ 122C-450.1. Eligibility and allocations.**

49 (a) A child who is receiving behavioral health services in a PRTF shall also receive  
50 educational services in accordance with federal and State law if the child is eligible to enroll in  
51 public schools as provided in G.S. 115C-366, including a student who has been suspended or

1 expelled but otherwise meets the requirements of that statute. For a child with a disability, as  
2 defined in G.S. 115C-106.3(1), a PRTF shall ensure that all educational services meet  
3 applicable standards as required under Article 9 of Chapter 115C of the General Statutes. A  
4 PRTF shall be considered a local education agency and therefore be subject to the jurisdiction  
5 of the Office of Administrative Hearings for the resolution of any dispute arising under Part 1D  
6 of Article 9 of Chapter 115C of the General Statutes.

7 (b) A PRTF shall be qualified to receive a funding allocation from the Department of  
8 Health and Human Services to provide educational services if the following conditions are met:

9 (1) The PRTF is licensed by the Department of Health and Human Services  
10 pursuant to Chapter 122C of the General Statutes and has a facility-based  
11 school approved by the Department of Public Instruction as a Nonpublic  
12 Exceptional Children's Program.

13 (2) The PRTF documents deviations from educational and other programmatic  
14 requirements when it is medically necessary for a resident in accordance  
15 with G.S. 122C-62(e).

16 (c) Funds to be Held in Statewide Reserve. – Funds transferred to the Department of  
17 Health and Human Services, Division of Mental Health Developmental Disabilities and  
18 Substance Abuse Services (DMHDDSAS), for the purchase of educational services within the  
19 PRTF shall not be allocated to LME/MCOs but shall be held in a statewide reserve at the  
20 Division of Mental Health Developmental Disabilities and Substance Abuse Services.  
21 DMHDDSAS shall use the reserve funds to pay for educational services authorized by the  
22 Department of Public Instruction and billed by the PRTFs in a process established by the  
23 DMHDDSAS.

24 (d) The Department of Health and Human Services shall cease disbursement of  
25 educational funding to a PRTF upon receipt of a written notice from the Department of Public  
26 Instruction that educational services have not been provided. Educational funding disbursement  
27 shall be reinstated by the Department of Health and Human Services upon written notice from  
28 the Department of Public Instruction that the PRTF is providing educational services.

29 (e) A PRTF that receives educational funding shall comply with all audit and  
30 accounting policies applicable to other public and private entities receiving public funding.

31 **"§ 122C-450.2. Information sharing.**

32 (a) Within three business days of admission, the admitting PRTF shall notify (i) the  
33 Department of Public Instruction and (ii) the local school administrative unit in which the child  
34 was last enrolled, if known. The PRTF shall request a copy of the child's most current  
35 individualized education program and any other available documents related to the provision of  
36 appropriate educational services from the local school administrative unit. To the extent  
37 practicable, the local school administrative unit shall provide this information within three  
38 business days of receiving a request made pursuant to this subsection. Upon withdrawal or  
39 discharge of a child, the PRTF shall notify the Department of Public Instruction within three  
40 business days of such withdrawal or discharge.

41 (b) The PRTF shall work with the receiving local school administrative unit to develop  
42 a transition plan, including a revised individualized education program, if necessary, to be  
43 implemented upon discharge of the child residing in a PRTF.

44 **"§ 122C-450.3. Technical assistance.**

45 The State Board of Education and Department of Public Instruction shall (i) offer training  
46 to PRTFs on compliance with special education laws and regulations, (ii) maintain a current list  
47 of names of children residing in PTRFs along with the name and contact information of the  
48 PRTF in which each child resides, (iii) ensure that all procedural safeguards described in Part  
49 1D of Article 9 in Chapter 115C of the General Statutes are implemented, and (iv) develop and  
50 implement rules to monitor the delivery of educational services in PRTFs, including a process

1 to inform the Department of Health and Human Services when services are not being  
2 provided."

3 **SECTION 6.** As of the effective date of this act, PRTFs that are licensed to serve  
4 children eligible to enroll in public schools as provided in G.S. 115C-366, including a student  
5 who has been suspended or expelled but otherwise meets the requirements of that statute, shall  
6 have six months after their next annual renewal to obtain approval of their facility-based school  
7 by the Department of Public Instruction as a Nonpublic Exceptional Children's Program. If  
8 such approval is not obtained before the expiration of the additional six months, the  
9 Department of Health and Human Services shall review the PRTF's license for appropriate  
10 action. This section does not apply to PRTFs that are approved charter schools pursuant to Part  
11 6A of Article 16 of Chapter 115C of the General Statutes.

12 **SECTION 7.** A PRTF that has a signed educational services agreement with a  
13 local school administrative unit for the 2013-2014 and 2014-2015 school years shall be  
14 qualified to receive a funding allocation from the Department of Health and Human Services  
15 under this act to provide unmet educational services needs not covered in the agreement. A  
16 copy of the agreement(s) shall be submitted to the Department of Health and Human Services  
17 and the Department of Public Instruction and included in the joint report as required in Section  
18 8 of this act.

19 **SECTION 8.** The State Board of Education shall have the authority to adopt  
20 emergency rules pursuant to G.S. 150B-21.1A to monitor the delivery of educational services  
21 in PRTFs, including a process to inform the Department of Health and Human Services when  
22 services are not being provided. An emergency rule adopted in accordance with this section  
23 expires on the earliest of the following dates:

- 24 (1) The effective date of a permanent rule adopted in accordance with  
25 G.S. 150B-21.2 to replace the emergency rules.
- 26 (2) June 30, 2014.

27 **SECTION 9.** The Department of Health and Human Services and the Department  
28 of Public Instruction, in collaboration with other interested agencies, shall submit a joint report  
29 to the Joint Legislative Education Oversight Committee and to the Joint Legislative Oversight  
30 Committee on Health and Human Services by November 1 of each year, including (i) the  
31 annual number of children by age residing in a PRTF both with and without an individualized  
32 education plan, (ii) the average length of stay of these children, (iii) the types of educational  
33 services, including number of hours each type of service has been provided, (iv) the costs for  
34 providing educational services, and (v) recommendations for improving the efficiency and  
35 effectiveness of delivering educational services to children residing in PRTFs.

36 **SECTION 10.(a)** Within 30 days of passage of the Senate Bill 402, 2013 Regular  
37 Session, Appropriations Act of 2013, the State Board of Education shall identify recurring  
38 budget reductions within funds appropriated to the Department of Public Instruction or to State  
39 Aid for Public Schools in the amount of one million six hundred thousand dollars (\$1,600,000)  
40 for the 2013-2014 fiscal year and three million two hundred thousand dollars (\$3,200,000) for  
41 the 2014-2015 fiscal year.

42 **SECTION 10.(b)** There is appropriated to the Department of Public Instruction  
43 one million six hundred thousand dollars (\$1,600,000) for the 2013-2014 fiscal year and three  
44 million two hundred thousand dollars (\$3,200,000) to provide educational services to children  
45 in PRTFs as provided in this act.

46 **SECTION 10.(c)** The Department of Public Instruction shall transfer to the  
47 Department of Health and Human Services for the payment to qualifying PRTFs one million  
48 six hundred thousand dollars (\$1,600,000) for the 2013-2014 fiscal year and three million two  
49 hundred thousand dollars (\$3,200,000) to provide educational services to children in PRTFs as  
50 provided in this act.

1           **SECTION 11.** This act is effective when it becomes law. The Department of  
2 Public Instruction shall process all applications submitted by PRTFs on or before September 1,  
3 2013, for approval as a Nonpublic Exceptional Children's Program no later than December 1,  
4 2013.