

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 511

Introduced by Education Committee: Groene, 42, Chairperson; Ebke, 32; Erdman, 47; Kolowski, 31; Linehan, 39; Morfeld, 46; Pansing Brooks, 28; Walz, 15.

Read first time January 18, 2017

Committee: Education

1 A BILL FOR AN ACT relating to education; to amend sections 43-1311,
2 79-1125.01, and 79-1142, Reissue Revised Statutes of Nebraska, and
3 section 79-215, Revised Statutes Cumulative Supplement, 2016; to
4 provide duties for school districts, the State Department of
5 Education, and the Department of Health and Human Services; to
6 provide for the payment of the cost of education and required
7 transportation; to harmonize provisions; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1)(a) Except as otherwise provided in this section, the
2 resident school district, as determined pursuant to section 79-215, shall
3 pay the cost of education and any required transportation associated with
4 education for any student who (i) is a ward of the state or ward of the
5 court or (ii) is residing in a residential setting as described in
6 subsection (10) of section 79-215 that does not maintain either an
7 approved or accredited school or an interim-program school as defined in
8 section 79-1119.01.

9 (b) The Department of Health and Human Services shall pay the cost
10 of education and any required transportation associated with education
11 for a student who (i) is a ward of the state or a ward of the court, (ii)
12 does not reside in a foster family home licensed or approved by the
13 Department of Health and Human Services or a foster home maintained or
14 used pursuant to section 83-108.04, and (iii) is placed in a school
15 district other than the school district in which he or she resided at the
16 time he or she became a ward of the state or a ward of the court.

17 (c) The Department of Health and Human Services shall pay the cost
18 of education and any required transportation associated with education
19 for a student who (i) is a ward of the state or a ward of the court and
20 (ii) is placed in an institution which maintains a special education
21 program approved by the State Department of Education and such
22 institution is not owned or operated by the school district in which such
23 student resided at the time he or she became a ward.

24 (d) The Department of Health and Human Services shall pay the cost
25 of education and any required transportation associated with education
26 for a student who (i) is a ward of the state or a ward of the court, (ii)
27 is eighteen years of age or younger, and (iii) is placed in a county
28 detention home established under section 43-2,110.

29 (e) Except as provided in subdivision (c) of this subsection, the
30 State Department of Education shall pay the cost of education and any
31 required transportation associated with education for any student who is

1 residing in a residential setting as described in subsection (10) of
2 section 79-215 that maintains either an approved or accredited school or
3 an interim-program school as defined in section 79-1119.01.

4 (2)(a) Except as provided in subdivision (b) of this subsection,
5 when the cost of education and any required transportation associated
6 with education for a student who is a ward of the state or a ward of the
7 court is to be paid by the Department of Health and Human Services, such
8 cost shall be paid, but not in advance, to the receiving school district
9 or approved institution under rules and regulations adopted and
10 promulgated by the Department of Health and Human Services. If the
11 Department of Health and Human Services and a school district cannot
12 agree on any additional cost for transportation for such student, the
13 cost shall be determined by the State Department of Education.

14 (b) When the cost of education and any required transportation
15 associated with education for a student who is placed in a county
16 detention home established under section 43-2,110 is to be paid by the
17 Department of Health and Human Services, such cost shall be paid to the
18 agency or institution which (i) is selected by the county board with
19 jurisdiction over such detention home, (ii) has agreed or contracted with
20 such county board to provide educational services, and (iii) has been
21 approved by the State Department of Education pursuant to rules and
22 regulations adopted and promulgated by the State Board of Education.

23 (c) When the cost of education and any required transportation
24 associated with education for a student who is residing in a residential
25 setting as described in subsection (10) of section 79-215 is to be paid
26 by the resident school district, the resident school district shall
27 contract with the school district in which such residential setting is
28 located and such cost shall be paid pursuant to the contract, unless a
29 parent or guardian and the resident school district agree that an
30 appropriate education will be provided by the resident school district
31 while the student is residing in such residential setting. If the two

1 school districts cannot agree on a contract, the State Department of
2 Education shall determine the amount to be paid by the resident school
3 district to the school district in which such residential setting is
4 located based on the needs of the student, approved special education
5 rates, the department's general experience with special education
6 budgets, and the cost per student in the school district in which such
7 residential setting is located. Once the contract has been entered into,
8 all legal responsibility for special education and related services shall
9 be transferred to the school district in which the residential setting is
10 located.

11 (d) When the cost of education and any required transportation
12 associated with education for a student who is residing in a residential
13 setting as described in subsection (10) of section 79-215 is to be paid
14 by the State Department of Education, such cost shall be determined
15 pursuant to the average per pupil cost of the service agency as defined
16 in section 79-1116 and paid through reimbursements pursuant to subsection
17 (5) of section 79-1142. Educational services may be provided by such
18 residential setting through (i) the residential setting's interim-program
19 school or approved or accredited school, (ii) a contract between the
20 residential setting and the school district in which such residential
21 setting is located, (iii) a contract between the residential setting and
22 another service agency as defined in section 79-1124, or (iv) a
23 combination of such educational service providers. The resident school
24 district shall retain responsibility for such student's individualized
25 education plan, if any.

26 (3) For purposes of this section, the cost of education and any
27 required transportation associated with education for a student who is a
28 ward of the state or a ward of the court includes all educational
29 services for the student, including all special education and support
30 services as defined in section 79-1125.01.

31 (4) If a resident school district pays another school district for

1 educational services pursuant to this section and it is later determined
2 that a different school district was the resident school district for
3 such student at the time such educational services were provided, the
4 school district that was later determined to be the resident school
5 district shall reimburse the school district that initially paid for the
6 educational services one hundred ten percent of the amount paid.

7 (5) A student residing in a residential setting described in
8 subsection (10) of section 79-215 shall be defined as a student with a
9 handicap pursuant to Article VII, section 11, of the Constitution of
10 Nebraska, and as such the state and any political subdivision may
11 contract with institutions not wholly owned or controlled by the state or
12 any political subdivision to provide the educational services to the
13 student if such educational services are nonsectarian in nature.

14 Sec. 2. Section 43-1311, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 43-1311 (1) Except as otherwise provided in the Nebraska Indian
17 Child Welfare Act, immediately following removal of a child from his or
18 her home pursuant to section 43-284, the person or court in charge of the
19 child shall:

20 (a) (1) Conduct or cause to be conducted an investigation of the
21 child's circumstances designed to establish a safe and appropriate plan
22 for the rehabilitation of the foster child and family unit or permanent
23 placement of the child;

24 (b) (2) Require that the child receive a medical examination within
25 two weeks of his or her removal from his or her home;

26 (c) (3) Subject the child to such further diagnosis and evaluation
27 as is necessary; and

28 ~~(4) Require that the child attend the same school as prior to the~~
29 ~~foster care placement unless the person or court in charge determines~~
30 ~~that attending such school would not be in the best interests of the~~
31 ~~child; and~~

1 (d) ~~(5)~~ Notify the Department of Health and Human Services to
2 identify, locate, and provide written notification to adult relatives of
3 the child as provided in section 43-1311.01.

4 (2) Except as otherwise provided in the Nebraska Indian Child
5 Welfare Act, a child shall continue to attend the same school as prior to
6 placement outside his or her home unless a determination is made in
7 writing by either the person in charge, after consultation with the
8 Commissioner of Education or his or her designee, or the court in charge
9 that, based on facts provided by school officials, continued attendance
10 at such school would not be in the best interest of the child. For
11 purposes of this subsection, a determination of the best interest of the
12 child for school purposes means a determination made taking into account
13 all relevant factors, including, but not limited to, the appropriateness
14 of the current school setting, the proximity to the school the child is
15 currently attending, the history of school transfers and the impact on
16 the student, the services the student is currently receiving, and any
17 additional services the student needs. When a child is moved to another
18 setting other than his or her home, a determination of the best interest
19 of the child for school purposes shall be conducted by the person or
20 court in charge as provided by this subsection.

21 Sec. 3. Section 79-215, Revised Statutes Cumulative Supplement,
22 2016, is amended to read:

23 79-215 (1) Except as otherwise provided in this section, a student
24 is a resident of the school district where he or she resides and shall be
25 admitted to any such school district upon request without charge.

26 (2) A school board shall admit a student upon request without charge
27 if at least one of the student's parents resides in the school district.

28 (3) A school board shall admit any homeless student upon request
29 without charge if the district is the district in which the student (a)
30 is currently located, (b) attended when permanently housed, or (c) was
31 last enrolled.

1 (4) A school board may allow a student whose residency in the
2 district ceases during a school year to continue attending school in such
3 district for the remainder of that school year.

4 (5) A school board may admit nonresident students to the school
5 district pursuant to a contract with the district where the student is a
6 resident and shall collect tuition pursuant to the contract.

7 (6) A school board may admit nonresident students to the school
8 district pursuant to the enrollment option program as authorized by
9 sections 79-232 to 79-246, and such admission shall be without charge.

10 (7) For school years prior to school year 2017-18, a school board of
11 any school district that is a member of a learning community shall admit
12 nonresident students to the school district pursuant to the open
13 enrollment provisions of a diversity plan in a learning community as
14 authorized by section 79-2110, and such admission shall be without
15 charge.

16 (8) A school board may admit a student who is a resident of another
17 state to the school district and collect tuition in advance at a rate
18 determined by the school board.

19 (9) A ~~When~~ a student shall remain a resident of the school district
20 where he or she resides at the time he or she becomes as a ward of the
21 state or as a ward of any court unless a determination is made in writing
22 pursuant to subsection (2) of section 43-1311 or a determination is made
23 pursuant to section 43-1312 that the best interest of a student placed in
24 either a foster family home licensed or approved by the Department of
25 Health and Human Services or a foster home maintained or used pursuant to
26 section 83-108.04 would require immediate enrollment in a different
27 school district, in which case the resident district for such student
28 shall be the school district in which the foster family home or foster
29 home is located. When a student changes placement, a determination of the
30 best interest of the student for school purposes is required. For
31 purposes of this subsection, a determination of the best interest of the

1 student for school purposes means a determination made taking into
2 account all relevant factors, including, but not limited to, the
3 appropriateness of the current school setting, the proximity to the
4 school the child is currently attending, the history of school transfers
5 and the impact on the student, the services the student is currently
6 receiving, and any additional services the student needs. The cost of
7 education and any required transportation associated with education shall
8 be paid as prescribed in section 1 of this act (a) has been placed in a
9 school district other than the district in which he or she resided at the
10 time he or she became a ward and such ward does not reside in a foster
11 family home licensed or approved by the Department of Health and Human
12 Services or a foster home maintained or used pursuant to section
13 83-108.04 or (b) has been placed in any institution which maintains a
14 special education program which has been approved by the State Department
15 of Education and such institution is not owned or operated by the
16 district in which he or she resided at the time he or she became a ward,
17 the cost of his or her education and the required transportation costs
18 associated with the student's education shall be paid by the state, but
19 not in advance, to the receiving school district or approved institution
20 under rules and regulations prescribed by the Department of Health and
21 Human Services and the student shall remain a resident of the district in
22 which he or she resided at the time he or she became a ward. Any student
23 who is a ward of the state or a ward of any court who resides in a foster
24 family home licensed or approved by the Department of Health and Human
25 Services or a foster home maintained or used pursuant to section
26 83-108.04 shall be deemed a resident of the district in which he or she
27 resided at the time he or she became a foster child, unless it is
28 determined under section 43-1311 or 43-1312 that he or she will not
29 attend such district in which case he or she shall be deemed a resident
30 of the district in which the foster family home or foster home is
31 located.

1 (10) ~~(10)(a)~~ When a student is not a ward of the state or a ward of
2 any court and is residing in a residential setting located in Nebraska
3 for reasons other than to receive an education and the residential
4 setting is operated by a service provider which is certified or licensed
5 by the Department of Health and Human Services or is enrolled in the
6 medical assistance program established pursuant to the Medical Assistance
7 Act and Title XIX or XXI of the federal Social Security Act, as amended,
8 the student shall remain a resident of the district in which he or she
9 resided immediately prior to residing in such residential setting. The
10 resident district for a student who is not a ward of the state or a ward
11 of any court does not change when the student moves from one residential
12 setting to another. The costs for education and any required
13 transportation associated with education shall be paid as prescribed in
14 section 1 of this act.

15 ~~(b) If a student is residing in a residential setting as described~~
16 ~~in subdivision (10)(a) of this section and such residential setting does~~
17 ~~not maintain an interim program school as defined in section 79-1119.01~~
18 ~~or an approved or accredited school, the resident school district shall~~
19 ~~contract with the district in which such residential setting is located~~
20 ~~for the provision of all educational services, including all special~~
21 ~~education services and support services as defined in section 79-1125.01,~~
22 ~~unless a parent or guardian and the resident school district agree that~~
23 ~~an appropriate education will be provided by the resident school district~~
24 ~~while the student is residing in such residential setting. If the~~
25 ~~resident school district is required to contract, the district in which~~
26 ~~such residential setting is located shall contract with the resident~~
27 ~~district and provide all educational services, including all special~~
28 ~~education services, to the student. If the two districts cannot agree on~~
29 ~~the amount of the contract, the State Department of Education shall~~
30 ~~determine the amount to be paid by the resident district to the district~~
31 ~~in which such residential setting is located based on the needs of the~~

1 ~~student, approved special education rates, the department's general~~
2 ~~experience with special education budgets, and the cost per student in~~
3 ~~the district in which such residential setting is located. Once the~~
4 ~~contract has been entered into, all legal responsibility for special~~
5 ~~education and related services shall be transferred to the school~~
6 ~~district in which the residential setting is located.~~

7 ~~(c) If a student is residing in a residential setting as described~~
8 ~~in subdivision (10)(a) of this section and such residential setting~~
9 ~~maintains an interim-program school as defined in section 79-1119.01 or~~
10 ~~an approved or accredited school, the department shall reimburse such~~
11 ~~residential setting for the provision of all educational services,~~
12 ~~including all special education services and support services, with the~~
13 ~~amount of payment for all educational services determined pursuant to the~~
14 ~~average per pupil cost of the service agency as defined in section~~
15 ~~79-1116. The resident school district shall retain responsibility for~~
16 ~~such student's individualized education plan, if any. The educational~~
17 ~~services may be provided through (i) such interim-program school or~~
18 ~~approved or accredited school, (ii) a contract between the residential~~
19 ~~setting and the school district in which such residential setting is~~
20 ~~located, (iii) a contract between the residential setting and another~~
21 ~~service agency as defined in section 79-1124, or (iv) a combination of~~
22 ~~such educational service providers.~~

23 ~~(d) If a school district pays a school district in which a~~
24 ~~residential setting is located for educational services provided pursuant~~
25 ~~to subdivision (10)(b) of this section and it is later determined that a~~
26 ~~different school district was the resident school district for such~~
27 ~~student at the time such educational services were provided, the school~~
28 ~~district that was later determined to be the resident school district~~
29 ~~shall reimburse the school district that initially paid for the~~
30 ~~educational services one hundred ten percent of the amount paid.~~

31 ~~(e) A student residing in a residential setting described in this~~

1 ~~subsection shall be defined as a student with a handicap pursuant to~~
2 ~~Article VII, section 11, of the Constitution of Nebraska, and as such the~~
3 ~~state and any political subdivision may contract with institutions not~~
4 ~~wholly owned or controlled by the state or any political subdivision to~~
5 ~~provide the educational services to the student if such educational~~
6 ~~services are nonsectarian in nature.~~

7 ~~(11) In the case of any individual eighteen years of age or younger~~
8 ~~who is a ward of the state or any court and who is placed in a county~~
9 ~~detention home established under section 43-2,110, the cost of his or her~~
10 ~~education shall be paid by the state, regardless of the district in which~~
11 ~~he or she resided at the time he or she became a ward, to the agency or~~
12 ~~institution which: (a) Is selected by the county board with jurisdiction~~
13 ~~over such detention home; (b) has agreed or contracted with such county~~
14 ~~board to provide educational services; and (c) has been approved by the~~
15 ~~State Department of Education pursuant to rules and regulations~~
16 ~~prescribed by the State Board of Education.~~

17 ~~(11) (12) No tuition shall be charged for students who may be by law~~
18 ~~allowed to attend the school without charge.~~

19 ~~(12) (13) On a form prescribed by the State Department of Education,~~
20 ~~an adult with legal or actual charge or control of a student shall~~
21 ~~provide the name of the student, the name of the adult with legal or~~
22 ~~actual charge or control of the student, the address where the student is~~
23 ~~residing, and the telephone number and address where the adult may~~
24 ~~generally be reached during the school day. If the student is homeless or~~
25 ~~if the adult does not have a telephone number and address where he or she~~
26 ~~may generally be reached during the school day, those parts of the form~~
27 ~~may be left blank and a box may be marked acknowledging that these are~~
28 ~~the reasons these parts of the form were left blank. The adult with legal~~
29 ~~or actual charge or control of the student shall also sign the form.~~

30 ~~(13) (14) The department may adopt and promulgate rules and~~
31 ~~regulations to carry out the department's responsibilities under this~~

1 section.

2 Sec. 4. Section 79-1125.01, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 79-1125.01 Support services means preventive services for those
5 children from birth to age twenty-one years and, if the child's twenty-
6 first birthday occurs during the school year, until the end of that
7 school year, not identified or verified as children with disabilities
8 pursuant to sections 79-1118.01, 79-1138, and 79-1139 but demonstrating a
9 need for specially designed assistance in order to benefit from the
10 school district's general education curriculum and to avoid the need for
11 potentially expensive special education placement and services. Support
12 services include the educational services provided to a child pursuant to
13 subsection (10) subdivision—(10)(c) of section 79-215 by an interim-
14 program school or an approved or accredited school maintained by a
15 residential setting if such child has not been identified or verified as
16 a child with a disability pursuant to sections 79-1118.01 and 79-1138 but
17 demonstrates a need for specially designed assistance by residing in a
18 residential setting described in subsection (10) subdivision—(10)(a) of
19 section 79-215.

20 Sec. 5. Section 79-1142, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 79-1142 (1) Level I services refers to services provided to children
23 with disabilities who require an aggregate of not more than three hours
24 per week of special education services and support services and includes
25 all administrative, diagnostic, consultative, and vocational-adjustment
26 counselor services.

27 (2) The total allowable reimbursable cost for support services shall
28 not exceed a percentage, established by the State Board of Education, of
29 the school district's or approved cooperative's total allowable
30 reimbursable cost for all special education programs and support
31 services. The percentage established by the State Board of Education for

1 support services shall not exceed the difference of ten percent minus the
2 percentage of the appropriations for special education approved by the
3 Legislature set aside for reimbursements for support services pursuant to
4 subsection (5) of this section.

5 (3) For special education and support services provided in each
6 school fiscal year, the State Department of Education shall reimburse
7 each school district in the following school fiscal year a pro rata
8 amount determined by the department. The reimbursement percentage shall
9 be the ratio of the difference of the appropriations for special
10 education approved by the Legislature minus the amounts set aside
11 pursuant to subsection (5) of this section divided by the total allowable
12 excess costs for all special education programs and support services.

13 (4) Cooperatives of school districts or educational service units
14 shall also be eligible for reimbursement for cooperative programs
15 pursuant to this section if such cooperatives or educational service
16 units have complied with the reporting and approval requirements of
17 section 79-1155 for cooperative programs which were offered the preceding
18 year. The payments shall be made by the department to the school district
19 of residence, cooperative of school districts, or educational service
20 unit each year in a minimum of seven payments between the fifth and
21 twentieth day of each month beginning in December. Additional payments
22 may be made based upon additional valid claims submitted. The State
23 Treasurer shall, between the fifth and twentieth day of each month,
24 notify the Director of Administrative Services of the amount of funds
25 available in the General Fund for payment purposes. The director shall,
26 upon receiving such certification, draw warrants against funds
27 appropriated.

28 (5) Residential ~~On and after August 1, 2010, residential~~ settings
29 described in subsection (10) subdivision (10)(c) of section 79-215 shall
30 be reimbursed in compliance with section 1 of this act ~~for the~~
31 ~~educational services, including special education services and support~~

1 ~~services, provided pursuant to such subdivision on or after August 1,~~
2 ~~2010, in an amount determined pursuant to the average per pupil cost of~~
3 ~~the service agency.~~ Reimbursements pursuant to this section shall be made
4 from funds set aside for such purpose within sixty days after receipt of
5 a reimbursement request submitted in the manner required by the
6 department and including any documentation required by the department for
7 educational services that have been provided, except that if there are
8 not any funds available for the remainder of the state fiscal year for
9 such reimbursements, the reimbursement shall occur within thirty days
10 after the beginning of the immediately following state fiscal year. The
11 department may audit any required documentation and subtract any payments
12 made in error from future reimbursements. The State Board of Education
13 shall set aside separate amounts from the appropriations for special
14 education approved by the Legislature for reimbursements pursuant to this
15 subsection for students receiving special education services and for
16 students receiving support services for each state fiscal year. The
17 amounts set aside for each purpose shall be based on estimates of the
18 reimbursements to be requested during the state fiscal year and shall not
19 be less than the total amount of reimbursements requested in the prior
20 state fiscal year plus any unpaid requests from the prior state fiscal
21 year.

22 Sec. 6. Original sections 43-1311, 79-1125.01, and 79-1142, Reissue
23 Revised Statutes of Nebraska, and section 79-215, Revised Statutes
24 Cumulative Supplement, 2016, are repealed.