

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIRST LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1087

FINAL READING

Introduced by Adams, 24.

Read first time January 21, 2010

Committee: Education

A BILL

1 FOR AN ACT relating to schools; to amend sections 79-215, 79-1113,
2 79-1124, 79-1125.01, and 79-1142, Reissue Revised
3 Statutes of Nebraska, and section 79-1110, Revised
4 Statutes Supplement, 2009; to change provisions relating
5 to payments for educational services as prescribed; to
6 define and redefine terms under the Special Education
7 Act; to harmonize provisions; to provide an operative
8 date; and to repeal the original sections.

9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-215, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 79-215 (1) Except as otherwise provided in this section,
4 a student is a resident of the school district where he or she
5 resides or any school district where at least one of his or her
6 parents reside and shall be admitted to any such school district
7 upon request without charge.

8 (2) A school board shall admit any homeless student that
9 requests admission without charge.

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

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

17 (5) A school board may admit nonresident students to
18 the school district pursuant to the enrollment option program as
19 authorized by sections 79-232 to 79-246, and such admission shall
20 be without charge.

21 (6) A school board may admit a student who is a resident
22 of another state to the school district and collect tuition in
23 advance at a rate determined by the school board.

24 (7) When a student as a ward of the state or as a ward
25 of any court (a) has been placed in a school district other than

1 the district in which he or she resided at the time he or she
2 became a ward and such ward does not reside in a foster family home
3 licensed or approved by the Department of Health and Human Services
4 or a foster home maintained or used pursuant to section 83-108.04
5 or (b) has been placed in any institution which maintains a special
6 education program which has been approved by the State Department
7 of Education and such institution is not owned or operated by
8 the district in which he or she resided at the time he or she
9 became a ward, the cost of his or her education and the required
10 transportation costs associated with the student's education shall
11 be paid by the state, but not in advance, to the receiving
12 school district or approved institution under rules and regulations
13 prescribed by the Department of Health and Human Services and the
14 student shall remain a resident of the district in which he or
15 she resided at the time he or she became a ward. Any student who
16 is a ward of the state or a ward of any court who resides in a
17 foster family home licensed or approved by the Department of Health
18 and Human Services or a foster home maintained or used pursuant
19 to section 83-108.04 shall be deemed a resident of the district
20 in which he or she resided at the time he or she became a foster
21 child, unless it is determined under section 43-1311 or 43-1312
22 that he or she will not attend such district in which case he or
23 she shall be deemed a resident of the district in which the foster
24 family home or foster home is located.

25 ~~(8)~~ (8) (a) When a student is not a ward of the state

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

14 (b) If a student is residing in a residential setting
15 as described in subdivision (8)(a) of this section and such
16 residential setting does not maintain an interim-program school as
17 defined in section 4 of this act or an approved or accredited
18 school, the resident school district shall contract with the
19 district in which such residential setting is located for the
20 provision of all educational services, including all special
21 education services. ~~If the parent or legal guardian has requested~~
22 ~~that the resident school district contract with the district in~~
23 ~~which such residential setting is located,~~ and support services
24 as defined in section 79-1125.01, unless a parent or guardian and
25 the resident school district agree that an appropriate education

1 will be provided by the resident school district while the student
2 is residing in such residential setting. If the resident school
3 district is required to contract, the district in which such
4 residential setting is located shall contract with the resident
5 district and provide all educational services, including all
6 special education services, to the student. If the two districts
7 cannot agree on the amount of the contract, the State Department
8 of Education shall determine the amount to be paid by the resident
9 district to the district in which such residential setting is
10 located based on the needs of the student, approved special
11 education rates, the department's general experience with special
12 education budgets, and the cost per student in the district in
13 which such residential setting is located. Once the contract has
14 been entered into, all legal responsibility for special education
15 and related services shall be transferred to the school district in
16 which the residential setting is located. ~~The resident district for~~
17 ~~a student who is not a ward of the state or a ward of any court~~
18 ~~does not change when the student moves from one residential setting~~
19 ~~to another.~~

20 (c) If a student is residing in a residential setting
21 as described in subdivision (8)(a) of this section and such
22 residential setting maintains an interim-program school as defined
23 in section 4 of this act or an approved or accredited school,
24 the department shall reimburse such residential setting for the
25 provision of all educational services, including all special

1 education services and support services, with the amount of
2 payment for all educational services determined pursuant to
3 the average per pupil cost of the service agency as defined
4 in section 79-1116. The resident school district shall retain
5 responsibility for such student's individualized education plan,
6 if any. The educational services may be provided through (i) such
7 interim-program school or approved or accredited school, (ii) a
8 contract between the residential setting and the school district in
9 which such residential setting is located, (iii) a contract between
10 the residential setting and another service agency as defined in
11 section 79-1124, or (iv) a combination of such educational service
12 providers.

13 (d) If a school district pays a school district in which
14 a residential setting is located for educational services provided
15 pursuant to subdivision (8)(b) of this section and it is later
16 determined that a different school district was the resident school
17 district for such student at the time such educational services
18 were provided, the school district that was later determined to be
19 the resident school district shall reimburse the school district
20 that initially paid for the educational services one hundred ten
21 percent of the amount paid.

22 (e) A student residing in a residential setting described
23 in this subsection shall be defined as a student with a handicap
24 pursuant to Article VII, section 11, of the Constitution of
25 Nebraska, and as such the state and any political subdivision

1 may contract with institutions not wholly owned or controlled
2 by the state or any political subdivision to provide the
3 educational services to the student if such educational services
4 are nonsectarian in nature.

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

16 (10) No tuition shall be charged for students who may be
17 by law allowed to attend the school without charge.

18 (11) On a form prescribed by the State Department of
19 Education, an adult with legal or actual charge or control of a
20 student shall provide the name of the student, the name of the
21 adult with legal or actual charge or control of the student, the
22 address where the student is residing, and the telephone number
23 and address where the adult may generally be reached during the
24 school day. If the student is homeless or if the adult does not
25 have a telephone number and address where he or she may generally

1 be reached during the school day, those parts of the form may be
2 left blank and a box may be marked acknowledging that these are the
3 reasons these parts of the form were left blank. The adult with
4 legal or actual charge or control of the student shall also sign
5 the form.

6 (12) The department shall adopt and promulgate rules and
7 regulations to carry out the department's responsibilities under
8 this section.

9 Sec. 2. Section 79-1110, Revised Statutes Supplement,
10 2009, is amended to read:

11 79-1110 Sections 79-1110 to 79-1167 and section 4 of this
12 act shall be known and may be cited as the Special Education Act.

13 Sec. 3. Section 79-1113, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 79-1113 For purposes of the Special Education Act, unless
16 the context otherwise requires, the definitions found in sections
17 79-1114 to 79-1125.01 and section 4 of this act shall be used.

18 Sec. 4. Interim-program school means a school approved
19 by the State Board of Education and located in or operated by
20 (1) a county detention home established under section 43-2,110,
21 (2) a juvenile emergency shelter, or (3) any institution which
22 is a public or private facility, not owned or operated by a
23 school district, which provides a residential program and regular
24 educational or special education services with a special education
25 rate approved by the State Department of Education.

1 Sec. 5. Section 79-1124, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 79-1124 Service agency means the school district,
4 educational service unit, local or regional office of mental
5 retardation, interim-program school, or some combination thereof
6 or such other agency as may provide a special education program
7 approved by the State Department of Education, including an
8 institution not wholly owned or controlled by the state or any
9 political subdivision to the extent that it provides educational or
10 other services for the benefit of children from the age of five
11 to the age of twenty-one years with disabilities if such services
12 are nonsectarian in nature.

13 Sec. 6. Section 79-1125.01, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 79-1125.01 Support services means preventive services
16 for those children from birth to age twenty-one years and, if
17 the child's twenty-first birthday occurs during the school year,
18 until the end of that school year, not identified or verified
19 as children with disabilities pursuant to sections 79-1118.01,
20 79-1138, and ~~79-1137~~ ~~to~~ 79-1139 but demonstrating a need for
21 specially designed assistance in order to benefit from the school
22 district's general education curriculum and to avoid the need for
23 potentially expensive special education placement and services.
24 Support services include the educational services provided to
25 a child pursuant to subdivision (8)(c) of section 79-215 by

1 an interim-program school or an approved or accredited school
2 maintained by a residential setting if such child has not been
3 identified or verified as a child with a disability pursuant
4 to sections 79-1118.01 and 79-1138 but demonstrates a need for
5 specially designed assistance by residing in a residential setting
6 described in subdivision (8)(a) of section 79-215.

7 Sec. 7. Section 79-1142, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 79-1142 (1) Level I services refers to services provided
10 to children with disabilities who require an aggregate of not
11 more than three hours per week of special education services
12 and support services and includes all administrative, diagnostic,
13 consultative, and vocational-adjustment counselor services. ~~Support~~
14 ~~services means preventive services for children from birth to age~~
15 ~~twenty-one years and, if the child's twenty-first birthday occurs~~
16 ~~during the school year, until the end of that school year, not~~
17 ~~identified or verified as having a disability pursuant to sections~~
18 ~~79-1118.01 and 79-1138 but who demonstrate a need for specially~~
19 ~~designed assistance in order to benefit from the school's general~~
20 ~~education curriculum.~~

21 (2) The total allowable reimbursable cost for support
22 services shall not exceed a percentage, established by the
23 State Board of Education, of the school district's or approved
24 cooperative's total allowable reimbursable cost for all special
25 education programs and support services. The percentage established

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

6 ~~(2)~~ (3) For special education and support services
7 provided in each school fiscal year, the State Department of
8 Education shall reimburse each school district in the following
9 school fiscal year a pro rata amount determined by the department.
10 The reimbursement percentage shall be the ratio of the difference
11 of the ~~from~~ appropriations for special education approved by the
12 Legislature and based on ~~on~~ minus the amounts set aside pursuant to
13 subsection (5) of this section divided by the total allowable
14 excess costs for all special education programs and support
15 services.

16 ~~(3)~~ (4) Cooperatives of school districts or educational
17 service units shall also be eligible for reimbursement for
18 cooperative programs pursuant to this section if such cooperatives
19 or educational service units have complied with the reporting and
20 approval requirements of section 79-1155 for cooperative programs
21 which were offered the preceding year. The payments shall be made
22 by the department to the school district of residence, cooperative
23 of school districts, or educational service unit each year in a
24 minimum of seven payments between the fifth and twentieth day of
25 each month beginning in December. Additional payments may be made

1 based upon additional valid claims submitted. The State Treasurer
2 shall, between the fifth and twentieth day of each month, notify
3 the Director of Administrative Services of the amount of funds
4 available in the General Fund for payment purposes. The director
5 shall, upon receiving such certification, draw warrants against
6 funds appropriated.

7 (5) On and after August 1, 2010, residential settings
8 described in subdivision (8)(c) of section 79-215 shall be
9 reimbursed for the educational services, including special
10 education services and support services, provided pursuant to such
11 subdivision on or after August 1, 2010, in an amount determined
12 pursuant to the average per pupil cost of the service agency.
13 Reimbursements pursuant to this section shall be made from funds
14 set aside for such purpose within sixty days after receipt of
15 a reimbursement request submitted in the manner required by
16 the department and including any documentation required by the
17 department for educational services that have been provided, except
18 that if there are not any funds available for the remainder of the
19 state fiscal year for such reimbursements, the reimbursement shall
20 occur within thirty days after the beginning of the immediately
21 following state fiscal year. The department may audit any required
22 documentation and subtract any payments made in error from future
23 reimbursements. The State Board of Education shall set aside
24 separate amounts from the appropriations for special education
25 approved by the Legislature for reimbursements pursuant to this

1 subsection for students receiving special education services and
2 for students receiving support services for each state fiscal year.
3 The amounts set aside for each purpose shall be based on estimates
4 of the reimbursements to be requested during the state fiscal year
5 and shall not be less than the total amount of reimbursements
6 requested in the prior state fiscal year plus any unpaid requests
7 from the prior state fiscal year.

8 Sec. 8. This act becomes operative on August 1, 2010.

9 Sec. 9. Original sections 79-215, 79-1113, 79-1124,
10 79-1125.01, and 79-1142, Reissue Revised Statutes of Nebraska, and
11 section 79-1110, Revised Statutes Supplement, 2009, are repealed.