

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

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,
2 79-1113, 79-1124, and 79-1140, Reissue Revised Statutes
3 of Nebraska, and section 79-1110, Revised Statutes
4 Supplement, 2009; to change provisions relating to
5 payments for educational services as prescribed; to
6 define and redefine terms under the Special Education
7 Act; 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. 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 residential setting described in subdivision
15 (8)(a) of this section does not maintain an interim-program
16 school as defined in section 4 of this act or an approved or
17 accredited school, the resident school district shall contract with
18 the district in which such residential setting is located for
19 the provision of all educational services, including all special
20 education services. ~~If the parent or legal guardian has requested~~
21 ~~that the resident school district contract with the district~~
22 ~~in which such residential setting is located,~~ the The district
23 in which such residential setting is located shall contract
24 with the resident district and provide all educational services,
25 including all special education services, to the student. If the

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

14 (c) If a residential setting described in subdivision
15 (8)(a) of this section maintains an interim-program school as
16 defined in section 4 of this act or an approved or accredited
17 school, the resident school district shall contract with such
18 residential setting for the provision of all educational services,
19 including all special education services, with the amount of
20 payment for all educational services determined pursuant to section
21 79-1140. The residential setting shall contract with the resident
22 school district and provide all educational services, including
23 special education services which shall be provided pursuant to
24 any current individual education plan established by the resident
25 school district for such student. The educational services may

1 be provided through (i) such interim-program school or approved
2 or accredited school, (ii) a contract between the residential
3 setting and the school district in which such residential setting
4 is located, (iii) a contract between the residential setting and
5 another service agency as defined in section 79-1124, or (iv) a
6 combination of such educational providers.

7 (d) If a school district pays either a residential
8 setting or school district in which a residential setting is
9 located for educational services provided pursuant to this
10 subsection and it is later determined that a different school
11 district was the resident school district for such student at the
12 time such educational services were provided, the school district
13 that was later determined to be the resident school district
14 shall reimburse the school district that initially paid for the
15 educational services one hundred ten percent of the amount paid. If
16 the school district that was later determined to be the resident
17 school district fails to reimburse such amount, the school district
18 that initially paid for the educational services may file a
19 complaint with the department, setting out the issue and the amount
20 in dispute.

21 (e) If a resident school district fails to contract with
22 a residential setting or a school district in which a residential
23 setting is located pursuant to this subsection or fails to pay
24 for educational services provided pursuant to such contract, the
25 residential setting or school district in which a residential

1 setting is located may file a complaint with the department,
2 setting out the issue and the amount in dispute.

3 (f) Upon a determination by the Commissioner of
4 Education, or the State Board of Education if an appeal has been
5 filed, that a complaint filed pursuant to subdivision (d) or (e)
6 of this subsection is valid, the department shall withhold special
7 education payments calculated pursuant to the Special Education Act
8 from the resident school district in the amount of two hundred
9 percent of the disputed amount until the dispute is resolved.

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

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

23 (11) On a form prescribed by the State Department of
24 Education, an adult with legal or actual charge or control of a
25 student shall provide the name of the student, the name of the

1 adult with legal or actual charge or control of the student, the
2 address where the student is residing, and the telephone number
3 and address where the adult may generally be reached during the
4 school day. If the student is homeless or if the adult does not
5 have a telephone number and address where he or she may generally
6 be reached during the school day, those parts of the form may be
7 left blank and a box may be marked acknowledging that these are the
8 reasons these parts of the form were left blank. The adult with
9 legal or actual charge or control of the student shall also sign
10 the form.

11 (12) The department shall adopt and promulgate rules
12 and regulations to provide for the Commissioner of Education
13 to determine the validity of complaints filed pursuant to
14 subsection (8) of this section, to provide for an appeal of such
15 determinations to the State Board of Education, and to carry out
16 the department's responsibilities under this section.

17 Sec. 2. Section 79-1110, Revised Statutes Supplement,
18 2009, is amended to read:

19 79-1110 Sections 79-1110 to 79-1167 and section 4 of this
20 act shall be known and may be cited as the Special Education Act.

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

23 79-1113 For purposes of the Special Education Act, unless
24 the context otherwise requires, the definitions found in sections
25 79-1114 to 79-1125.01 and section 4 of this act shall be used.

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

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

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

21 Sec. 6. Section 79-1140, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 79-1140 Except as provided in sections 79-232 to 79-246,
24 each school district shall pay an amount equal to the average per
25 pupil cost of the service agency of the preceding year or the cost

1 as agreed upon pursuant to the contract to the agency providing the
2 educational program for (1) every child with a disability who is
3 a resident of the district and is attending an educational program
4 not operated by the school district, including programs operated
5 by the State Department of Education, the Department of Health
6 and Human Services, and any other service agency whose programs
7 are approved by the State Department of Education, and (2) every
8 child who is in a residential setting described in subdivision
9 (8)(a) of section 79-215 that maintains an interim-program school
10 as defined in section 4 of this act or an approved or accredited
11 school, who is in such residential setting for reasons other than
12 education, and who is a resident of the district. For such children
13 in residential settings, the minimum contract amount shall be the
14 average per pupil cost of the service agency of the preceding year.

15 Sec. 7. Original sections 79-215, 79-1113, 79-1124, and
16 79-1140, Reissue Revised Statutes of Nebraska, and section 79-1110,
17 Revised Statutes Supplement, 2009, are repealed.