LEGISLATIVE BILL 123

Introduced by Heidemann, 1; Adams, 24; Avery, 28; Cornett, 45; Council, 11; Dubas, 34; Fischer, 43; Haar, 21; Hansen, 42; Howard, 9; Krist, 10; Mello, 5; Schilz, 47; Sullivan, 41; Wightman, 36.

Read first time January 06, 2011

Committee: Education

A BILL

1 FOR AN ACT relating to schools; to amend sections 79-283 and 79-2,137, Reissue Revised Statutes of Nebraska, and section 79-267, Revised Statutes Cumulative Supplement, 2010; to provide for disciplinary actions against students and policies relating to cyber-bullying; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 79-267, Revised Statutes Cumulative Supplement, 2010, is amended to read:

79-267 (1) The following student conduct shall constitute grounds for long-term suspension, expulsion, or mandatory reassignment, subject to the procedural provisions of the Student Discipline Act, when such activity occurs on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or by his or her designee, or at a school-sponsored activity or athletic event:

(1) (a) Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purposes;

(2) (b) Willfully causing or attempting to cause substantial damage to property, stealing or attempting to steal property of substantial value, or repeated damage or theft involving property;

(3) (c) Causing or attempting to cause personal injury to a school employee, to a school volunteer, or to any student. Personal injury caused by accident, self-defense, or other action undertaken on the reasonable belief that it was necessary to protect some other person shall not constitute a violation of this subdivision;

(4) (d) Threatening or intimidating any student for the purpose of or with the intent of obtaining money or anything of value from such student;
(e) Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a weapon;

(f) Engaging in the unlawful possession, selling, dispensing, or use of a controlled substance or an imitation controlled substance, as defined in section 28-401, a substance represented to be a controlled substance, or alcoholic liquor as defined in section 53-103.02 or being under the influence of a controlled substance or alcoholic liquor;

(g) Public indecency as defined in section 28-806, except that this subdivision shall apply only to students at least twelve years of age but less than nineteen years of age;

(h) Engaging in bullying as defined in section 79-2,137;

(i) Sexually assaulting or attempting to sexually assault any person if a complaint has been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or attempted to sexually assault any person, including sexual assaults or attempted sexual assaults which occur off school grounds not at a school function, activity, or event. For purposes of this subdivision, sexual assault means sexual assault in the first degree as defined in section 28-319, sexual assault in the second degree as defined in section 28-320, sexual assault of a child in the second or third degree as defined in section 28-320.01, or sexual assault of a child in the first degree as defined in section
28-319.01, as such sections now provide or may hereafter from time to
time be amended;

(10) (j) Engaging in any other activity forbidden by the
laws of the State of Nebraska which activity constitutes a danger to
other students or interferes with school purposes; or

(k) A repeated violation of any rules and standards
validly established pursuant to section 79-262 if such violations
constitute a substantial interference with school purposes.

(2) Cyber-bullying as defined in section 79-2,137 shall
constitute grounds for long-term suspension, expulsion, or mandatory
reassignment, subject to the procedural provisions of the Student
Discipline Act, if such conduct causes or is reasonably projected to
cause a substantial or material disruption of the school environment
or threatens the safety and security of students or school personnel,
regardless of whether such conduct occurs or is initiated on or off
of school grounds.

(3) It is the intent of the Legislature that alternatives
to suspension or expulsion be imposed against a student who is
truant, tardy, or otherwise absent from required school activities.

Sec. 2. Section 79-283, Reissue Revised Statutes of
Nebraska, is amended to read:

79-283 (1) Written notice of the findings and
recommendations of the hearing examiner and the determination of the
superintendent under section 79-282 shall be made by certified or
registered mail or by personal delivery to the student or the
student's parent or guardian. Upon receipt of such written notice by the student, parent, or guardian, the determination of the superintendent shall take immediate effect.

(2) Except as provided in subsections (3) and (4) of this section, the expulsion of a student shall be for a period not to exceed the remainder of the semester in which it took effect unless the misconduct occurred (a) within ten school days prior to the end of the first semester, in which case the expulsion shall remain in effect through the second semester, or (b) within ten school days prior to the end of the second semester, in which case the expulsion shall remain in effect for summer school and the first semester of the following school year subject to the provisions of subsection (5) of this section. Such action may be modified or terminated by the school district at any time during the expulsion period.

(3) The expulsion of a student for (a) the knowing and intentional use of force in causing or attempting to cause personal injury to a school employee, school volunteer, or student except as provided in subdivision (1)(c) of section 79-267 or (b) the knowing and intentional possession, use, or transmission of a dangerous weapon, other than a firearm, shall be for a period not to exceed the remainder of the school year in which it took effect if the misconduct occurs during the first semester. If the expulsion takes place during the second semester, the expulsion shall remain in effect for summer school and may remain in effect for the first semester of the following school year. Such action may be modified or
terminated by the school district at any time during the expulsion period.

(4) The expulsion of a student for the knowing and intentional possession, use, or transmission of a firearm, which for purposes of this section means a firearm as defined in 18 U.S.C. 921 as of January 1, 1995, shall be for a period as provided by the school district policy adopted pursuant to section 79-263. This subsection shall not apply to (a) the issuance of firearms to or possession of firearms by members of the Reserve Officers Training Corps when training or (b) firearms which may lawfully be possessed by the person receiving instruction under the immediate supervision of an adult instructor who may lawfully possess firearms.

(5) Any expulsion that will remain in effect during the first semester of the following school year shall be automatically scheduled for review before the beginning of the school year. The review shall be conducted by the hearing examiner after the hearing examiner has given notice of the review to the student and the student's parent or guardian. This review shall be limited to newly discovered evidence or evidence of changes in the student's circumstances occurring since the original hearing. This review may lead to a recommendation by the hearing examiner that the student be readmitted for the upcoming school year. If the school board or board of education or a committee of such board took the final action to expel the student, the student may be readmitted only by action of the board. Otherwise the student may be readmitted by action of the
Sec. 3. Section 79-2,137, Reissue Revised Statutes of Nebraska, is amended to read:

79-2,137 (1) The Legislature finds and declares that:

(a) Bullying disrupts and cyber-bullying disrupt a school's ability to educate students; and

(b) Bullying threatens and cyber-bullying threaten public safety by creating an atmosphere in which such behavior can escalate into violence.

(2) For purposes of this section:

(a) Bullying means any ongoing pattern of physical, verbal, or electronic abuse, other than cyber-bullying, on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose by a school employee or his or her designee, or at school-sponsored activities or school-sponsored athletic events.

(b) Cyber-bullying means any ongoing use of electronic mail, text messaging, social networking web sites, or any other form of electronic communication, on or off of school grounds, with the intention of causing harm or serious emotional distress to students or school personnel.

(3) On or before July 1, 2009, each school district as defined in section 79-101 shall develop and adopt a policy concerning bullying prevention and education for all students consistent with the Student Discipline Act.
(4) On or before July 1, 2011, each school district as defined in section 79-101 shall develop and adopt a policy concerning cyber-bullying prevention and education for all students consistent with the Student Discipline Act.

(4) (5) The school district shall review the policy such policies annually.

Sec. 4. Original sections 79-283 and 79-2,137, Reissue Revised Statutes of Nebraska, and section 79-267, Revised Statutes Cumulative Supplement, 2010, are repealed.

Sec. 5. Since an emergency exists, this act takes effect when passed and approved according to law.