

**ONE HUNDRED SEVENTH LEGISLATURE - FIRST SESSION - 2021**  
**COMMITTEE STATEMENT**  
**LB198**

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**Hearing Date:** Tuesday February 09, 2021  
**Committee On:** Education  
**Introducer:** Vargas  
**One Liner:** Change provisions relating to the Student Discipline Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**  
**Aye:** 7 Senators Day, Linehan, McKinney, Morfeld, Pansing Brooks, Sanders, Walz  
**Nay:**  
**Absent:**  
**Present Not Voting:** 1 Senator Murman

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**Oral Testimony:**

<b>Proponents:</b> Tony Vargas Elizabeth Eynon-Kokrda Rose Godinez	<b>Representing:</b> Introducer Education Rights Council ACLU of Nebraska
<b>Opponents:</b> David Kramer	<b>Representing:</b> Omaha Public Schools
<b>Neutral:</b>	<b>Representing:</b>

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**Submitted Written Testimony:**

<b>Proponents:</b> Julie Erickson Jason Hayes	<b>Representing:</b> Voices for Children NSEA
<b>Opponents:</b> John Schwartz Jack Moles John Neal	<b>Representing:</b> STANCE NRCSA Lincoln Public Schools
<b>Neutral:</b>	<b>Representing:</b>

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**Summary of purpose and/or changes:**  
Brief Summary

LB 198 requires that suspended students be given an opportunity to complete their homework, in addition to classwork. The

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bill changes certain processes under the Student Discipline Act, such as placing certain deadlines on when procedures must be completed. For example, a written statement explaining a short-term suspension must be sent no later than forty-eight (48) hours after the suspension or a student or parent must receive documents related to a disciplinary hearing sooner than forty-eight (48) hours prior to the hearing. LB 198 also changes the procedure for appointment of a hearing examiner for student discipline actions. Current law provides that the superintendent selects the hearing examiner, but the bill provides a method for student and their parent or legal guardian to request an examiner other than the one recommended by the superintendent. Other changes are made which are described in the Section-by-Section Summary below.

## Section-by-Section Summary

### Section 1

Harmonizes provisions of statute.

### Section 2

Changes the definition of "mandatory reassignment" under the Student Discipline Act. Current law states that a "mandatory reassignment" is an involuntary transfer to another school in connection with any disciplinary action. LB 198 removes the language that the transfer be connected to a disciplinary action. For practical purposes, any involuntary transfer that is imposed as discipline under the Student Discipline Act would be in connection to a disciplinary action.

### Section 3

#### Maximum Time to Send Written Notice in Short-Term Suspensions

Current law provides that when a student is suspended for five days or less (a short-term suspension), the principal is required to send the parent or legal guardian of such student a written statement describing why the student was suspended.

This written statement is supposed to be sent within twenty-four (24) hours following the suspension or "within such additional time as reasonably necessary." How much time is "reasonably necessary" is not currently specified. LB 198 changes this so that the reasonably necessary time cannot exceed forty-eight (48) hours in addition to the initial twenty-four (24) hours.

#### Document Reasonable Effort to Hold Conference

The principal is also required to make a reasonable effort to hold a conference with the parent or guardian before the student returns from suspension. LB 198 mandates that the principal document his or her effort to hold such conference.

### Section 4

#### Opportunity to Complete Homework and Classwork

LB 198 mandates that the suspended student be given an opportunity to complete their homework. Current law only requires that they get an opportunity to complete classwork.

Present law directs school officials to develop criteria to determine if and to what extent suspended students get to complete classwork. LB 198 changes this so school officials must develop guidelines that give suspended students the opportunity to

complete classwork and homework.

## Section 5

Section 5 requires that a student be reinstated at the conclusion of an expulsion. The school district must also accept any credits the student earned while they were expelled if the credits are nonduplicative, grade-appropriate, and from a Nebraska accredited institution or accredited by the six regional accrediting bodies in the U.S.

## Section 6

Causing or attempting to cause personal injury to a student, school volunteer, or school employee is a ground for long-term suspension, expulsion, or mandatory reassignment, unless the personal injury was caused by accident. LB 198 specifies that a personal injury shall be considered caused by accident when the damage or consequences of the act that caused the injury were unintentional, unforeseen, or unexpected.

Possessing, selling, or dispensing drugs or alcohol is also a ground for long-term suspension, expulsion, or mandatory reassignment. LB 198 changes this so that it must be knowing possession, selling, or dispensing.

## Section 7

### Deadline for Deciding When to Discipline

If a principal decides to discipline a student by long-term suspension, expulsion, or mandatory reassignment, LB 198 requires that the principal make this decision within two (2) days after learning of the student's alleged misconduct.

### Maximum Time to Send Written Notice to Student and Parent or Guardian

Presently, when the principal makes a decision to discipline a student, the school must send written notice to the student and their parent or guardian with certain information, such as their rights under the Student Discipline Act and the misconduct that is a ground for discipline. This bill also requires that the notice includes information that the student can complete their classwork and homework, including, but not limited to, examinations if the student is suspended pending the hearing.

### No Alternative Programs for Suspended Students

LB 198 also states that the school district's guidelines for classwork and homework cannot require the suspended student to attend an alternative program for expelled students.

The written notice must also include a form on which the student or their parent or guardian may request a hearing. LB 198 requires that the address to which the form must be returned to is placed on the form.

### Suspension until Effective Date of Discipline

In certain circumstances, a student may be suspended until the long-term suspension, expulsion, or mandatory reassignment goes into effect if a hearing is not requested. If a hearing is requested, the statute provides the student can be suspended until the date the hearing examiner makes the report of the examiner's findings and recommends action to the superintendent.

LB 198 clarifies and simplifies the statute to eliminate language regarding if a hearing is or is not requested. With this

elimination, the statute simply states that, in certain circumstances, the student can be suspended until the long-term suspension, expulsion, or mandatory reassignment goes into effect.

### Settling Matter after Hearing

Current law permits a student, parent, guardian, or representative from settling the matter with school personnel before hearing procedures begin. LB 198 amends the law so that the matter could be settled even after the hearing, but it must be before the discipline takes effect.

### Mandatory Reassignment Subject to Act

LB 198 clarifies that mandatory reassignments are subject to the procedures of Section 7 of LB 198, which includes written notice of rights and the conduct that is a ground for mandatory reassignment is required, regardless of when the mandatory reassignment was implemented.

### Section 8

#### Selection of a Hearing Examiner

Current law states that the superintendent appoints a hearing examiner if a hearing is requested within five (5) school days after the student, parent, or guardian receive the written notice described above.

LB 198 changes this so that a superintendent can recommend a hearing examiner, but not appoint one, and such recommendation must be within two (2) school days of receiving the hearing request.

The student, parent, or guardian may then request a hearing office other than the one recommended by the superintendent. The superintendent must be given notice of the request within two (2) school days after the parents receive the superintendent's original recommendation.

Once the superintendent receives the request from the student, parent, or guardian, the superintendent shall provide one alternative hearing examiner who is not an employee of the school district or otherwise currently under contract with the school district and whose impartiality may not otherwise be reasonably questioned. The superintendent may provide an additional list of hearing examiners from which the student or student's parent or guardian may select from. If provided a list of hearing examiners to choose from the student or parent must notify the superintendent of their choice, in writing, within five school days.

A hearing examiner who is not impartial includes, but is not limited to, an individual who:

- Has a personal bias or prejudice concerning a party;
- Has personal knowledge of facts that could be used as evidence in the proceeding;
- Served as legal counsel to the school district; or
- Has a spouse who is employed by or contracted with the school district.

The hearing examiner on the list must be people who have knowledge of the Student Discipline Act, training in its statutory requirements, and experience conducting student hearings.

#### Hearing Examiner's Expenses & Fees

LB 198 requires that the hearing examiner's expenses and fees connected to the hearing shall be paid by the school board.

## Change of Hearing Date

Current law specifies that the hearing must be held within five (5) school days after appointment of the hearing examiner, but the date may be changed by the hearing examiner for good cause with consent of the parties.

LB 198 changes this so that the hearing must be held within five (5) school days after a hearing examiner is appointed. The date can only be changed if the hearing examiner has good cause and with consent of the parties.

## Right of Student to Receive Records

LB 198 requires that the student, their parent, guardian, or representative have the right to receive a copy of the records and written statements referred to in the Student Discipline Act and witness statements that the school board or board of education has within forty-eight (48) hours prior to the hearing. Current law only gives the student, parent, guardian, or representative the right to examine such records and such must be done at a reasonable time before the hearing.

## Section 9

Section 9 clarifies that when a hearing is requested after five (5) school days, but less than thirty (30) days after the student, parent, or guardians receives written notice, that a hearing examiner must be appointed and the hearing must be conducted in accordance with normal hearing procedures.

## Section 10

Current law requires that statements of persons having information about the student's conduct and records cannot be given to the hearing examiner unless these records have been made available to the student, parent, guardian, or representative before the hearing.

Consistent with other changes made by LB 198, the bill amends this provision so that these statements must be provided to the student, parent, guardian or representative at least forty-eight (48) hours before the hearing.

## Section 11

In a hearing for student discipline, a hearing examiner, principal, student, parent, guardian, or representative can request witnesses to testify at the hearing. LB 198 requires that the school district needs to make any requested witnesses who are employees or under contract with the school district available if such witnesses have knowledge of or were involved in the alleged misconduct and subsequent discipline of the student.

## Section 12

After the hearing concludes, a hearing examiner is required to report his or her findings and recommendations to the superintendent of the school. LB 198 requires that this report be made to the superintendent and the student or the student's parent or guardian within ten (10) calendar days after the hearing.

With the report and recommendations, the superintendent can decide on a sanction, but not one greater than the one recommended by the hearing examiner. LB 198 mandates that this determination be made within five (5) school days after receipt of the report.

## Section 13

LB 198 changes the law so that the discipline determined after a hearing does not take effect immediately if the student, parent, or guardian appeals the determination pursuant to Neb. Rev. Stat. Sec. 79-285.

If misconduct occurs before the last ten (10) days of school in the first semester and an expulsion takes effect in the second semester due to an appeal, LB 198 requires that expulsion shall not last longer than it would have lasted if an appeal was not made.

#### Section 14

LB 198 amends the law so any final action of a school board or board of education (the immediate appellate body in student discipline actions) must be taken within three (3) calendar days after the hearing. Additionally, LB 198 requires that decision of the board be mailed to the student, parent, or guardian, within three calendar days after the final action.

#### Section 15

Repeals original statutes.

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#### **Explanation of amendments:**

AM645 Strikes lines 29 and 30 on page 5 and replaces it with language consistent with Nebraska statute to more clearly dictate that a school shall accept credits earned during a students expulsion from any:

- Approved or accredited public, private, denominational, or parochial school or
- A postsecondary institution that has been accredited by an accrediting agency recognized by the United States Department of Education.

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Lynne Walz, Chairperson