

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1211

Introduced by Linehan, 39.

Read first time January 20, 2022

Committee: Education

1 A BILL FOR AN ACT relating to education; to amend sections 79-237,
2 79-238, 79-10,143, and 79-2110, Revised Statutes Cumulative
3 Supplement, 2020; to change provisions relating to option
4 enrollment; to harmonize provisions; and to repeal the original
5 sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-237, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 79-237 (1) For a student to begin attendance as an option student in
4 an option school district, the student's parent or legal guardian shall
5 submit an application to the school board of the option school district
6 between September 1 and March 15 for attendance during the following and
7 subsequent school years. Except as provided in subsection (2) of this
8 section, applications submitted after March 15 shall contain a release
9 approval from the resident school district on the application form
10 prescribed and furnished by the State Department of Education pursuant to
11 subsection (8) of this section. A district may not accept or approve any
12 applications submitted after such date without such a release approval.
13 The option school district shall provide the resident school district
14 with the name of the applicant on or before April 1 or, in the case of an
15 application submitted after March 15, within sixty days after submission.
16 The option school district shall notify, in writing, the parent or legal
17 guardian of the student and the resident school district whether the
18 application is accepted or rejected on or before April 1 or, in the case
19 of an application submitted after March 15, within sixty days after
20 submission. An option school district that is a member of a learning
21 community may not approve an application pursuant to this section for a
22 student who resides in such learning community to attend prior to school
23 year 2017-18.

24 (2) A student who relocates to a different resident school district
25 after February 1 or whose option school district merges with another
26 district effective after February 1 may submit an application to the
27 school board of an option school district for attendance during the
28 current or immediately following and subsequent school years unless the
29 applicant is a resident of a learning community and the application is
30 for attendance to begin prior to school year 2017-18 in an option school
31 district that is also a member of such learning community. Such

1 application does not require the release approval of the resident school
2 district. The option school district shall accept or reject such
3 application within forty-five days.

4 (3) A parent or guardian may provide information on the application
5 for an option school district that is a member of a learning community
6 regarding the applicant's potential qualification for free or reduced-
7 price lunches. Any such information provided shall be subject to
8 verification ~~and shall only be used for the purposes of subsection (4) of~~
9 ~~section 79-238.~~ Nothing in this subsection requires a parent or guardian
10 to provide such information. ~~Determinations about an applicant's~~
11 ~~qualification for free or reduced price lunches for purposes of~~
12 ~~subsection (4) of section 79-238 shall be based on any verified~~
13 ~~information provided on the application. If no such information is~~
14 ~~provided, the student shall be presumed not to qualify for free or~~
15 ~~reduced-price lunches for the purposes of subsection (4) of section~~
16 ~~79-238.~~

17 (4) Applications for students who do not actually attend the option
18 school district may be withdrawn in good standing upon mutual agreement
19 by both the resident and option school districts.

20 (5) No option student shall attend an option school district for
21 less than one school year unless the student relocates to a different
22 resident school district, completes requirements for graduation prior to
23 the end of his or her senior year, transfers to a private or parochial
24 school, or upon mutual agreement of the resident and option school
25 districts cancels the enrollment option and returns to the resident
26 school district.

27 (6) Except as provided in subsection (5) of this section or, for
28 open enrollment option students, in section 79-235.01, the option student
29 shall attend the option school district until graduation unless the
30 student relocates in a different resident school district, transfers to a
31 private or parochial school, or chooses to return to the resident school

1 district.

2 (7) In each case of cancellation pursuant to subsections (5) and (6)
3 of this section, the student's parent or legal guardian shall provide
4 written notification to the school board of the option school district
5 and the resident school district on forms prescribed and furnished by the
6 department under subsection (8) of this section in advance of such
7 cancellation.

8 (8) The application and cancellation forms shall be prescribed and
9 furnished by the State Department of Education.

10 (9) An option student who subsequently chooses to attend a private
11 or parochial school and who is not an open enrollment option student
12 shall be automatically accepted to return to either the resident school
13 district or option school district upon the completion of the grade
14 levels offered at the private or parochial school. If such student
15 chooses to return to the option school district, the student's parent or
16 legal guardian shall submit another application to the school board of
17 the option school district which shall be automatically accepted, and the
18 deadlines prescribed in this section shall be waived.

19 Sec. 2. Section 79-238, Revised Statutes Cumulative Supplement,
20 2020, is amended to read:

21 79-238 (1) Except as provided in this section and sections 79-235.01
22 and 79-240, the school board of the option school district shall adopt by
23 resolution specific standards for acceptance and rejection of
24 applications and for providing transportation for option students.
25 Standards ~~shall only~~ may include the capacity of a program, class, grade
26 level, or school building ~~or the availability of appropriate special~~
27 ~~education programs operated by the option school district.~~ For a school
28 district that is not a member of a learning community, capacity shall be
29 determined by setting a maximum number of option students that a district
30 will accept in any program, class, grade level, or school building, based
31 upon available staff, facilities, projected enrollment of resident

1 students, and projected number of students with which the option school
2 district will contract based on existing contractual arrangements, ~~and~~
3 ~~availability of appropriate special education programs~~. To facilitate
4 option enrollment within a learning community, member school districts
5 shall annually (a) establish and report a maximum capacity for each
6 school building under such district's control pursuant to procedures,
7 criteria, and deadlines established by the learning community
8 coordinating council and (b) provide a copy of the standards for
9 acceptance and rejection of applications and transportation policies for
10 option students to the learning community coordinating council. Except as
11 otherwise provided in this section, the school board of the option school
12 district may by resolution declare a program, a class, or a school
13 unavailable to option students due to lack of capacity. ~~Standards shall~~
14 ~~not include previous academic achievement, athletic or other~~
15 ~~extracurricular ability, disabilities, proficiency in the English~~
16 ~~language, or previous disciplinary proceedings except as provided in~~
17 ~~section 79-266.01~~. False or substantively misleading information
18 submitted by a parent or guardian on an application to an option school
19 district may be cause for the option school district to reject a
20 previously accepted application if the rejection occurs prior to the
21 student's attendance as an option student.

22 (2) The school board of every school district shall also adopt
23 specific standards and conditions for acceptance or rejection of a
24 request for release of a resident or option student submitting an
25 application to an option school district after March 15 under subsection
26 (1) of section 79-237. Standards shall not include that a request
27 occurred after the deadline set forth in this subsection and shall be
28 limited to the matters decided in subsection (1) of this section.

29 (3) Notwithstanding any other provision of Chapter 79, an option
30 school district that is not a member of a learning community shall award
31 option enrollment on a first-come, first-served basis and shall not ask

1 or consider whether such student has an individualized education plan
2 during consideration of such student's application. An option school
3 district shall not discriminate on the basis of race, color, religion,
4 national origin, ancestry, citizenship status, gender, sexual
5 orientation, gender identity, disability, or special education status
6 during consideration of a student's application for option enrollment. An
7 option school district shall not be required to accept a student if the
8 district is at capacity as determined pursuant to subsection (1) of this
9 section.

10 (4) Notwithstanding any other provision of Chapter 79, an option
11 school district that is in a learning community shall award option
12 enrollment on a first-come, first-served basis and shall not ask or
13 consider whether a student has an individualized education plan during
14 consideration of a student's application. An option school district shall
15 not discriminate on the basis of race, color, religion, national origin,
16 ancestry, citizenship status, gender, sexual orientation, gender
17 identity, disability, or special education status during consideration of
18 a student's application for option enrollment. An option school district
19 shall not be required to accept a student if the district is at capacity
20 as determined pursuant to subsection (1) of this section.

21 ~~(3) Any option school district that is not a member of a learning~~
22 ~~community shall give first priority for enrollment to siblings of option~~
23 ~~students, except that the option school district shall not be required to~~
24 ~~accept the sibling of an option student if the district is at capacity~~
25 ~~except as provided in subsection (1) of section 79-240.~~

26 ~~(4) Any option school district that is in a learning community shall~~
27 ~~give first priority for enrollment to siblings of option students~~
28 ~~enrolled in the option school district, second priority for enrollment to~~
29 ~~students who have previously been enrolled in the option school district~~
30 ~~as an open enrollment student, third priority for enrollment to students~~
31 ~~who reside in the learning community and who contribute to the~~

1 ~~socioeconomic diversity of enrollment at the school building to which the~~
2 ~~student will be assigned pursuant to section 79-235, and final priority~~
3 ~~for enrollment to other students who reside in the learning community.~~
4 ~~The option school district shall not be required to accept a student~~
5 ~~meeting the priority criteria in this section if the district is at~~
6 ~~capacity as determined pursuant to subsection (1) of this section except~~
7 ~~as provided in section 79-235.01 or 79-240. For purposes of the~~
8 ~~enrollment option program, a student who contributes to the socioeconomic~~
9 ~~diversity of enrollment at a school building within a learning community~~
10 ~~means (a) a student who does not qualify for free or reduced-price~~
11 ~~lunches when, based upon the certification pursuant to section 79-2120,~~
12 ~~the school building the student will be assigned to attend either has~~
13 ~~more students qualifying for free or reduced-price lunches than the~~
14 ~~average percentage of such students in all school buildings in the~~
15 ~~learning community or provides free meals to all students pursuant to the~~
16 ~~community eligibility provision or (b) a student who qualifies for free~~
17 ~~or reduced-price lunches based on information collected voluntarily from~~
18 ~~parents and guardians pursuant to section 79-237 when, based upon the~~
19 ~~certification pursuant to section 79-2120, the school building the~~
20 ~~student will be assigned to attend has fewer students qualifying for free~~
21 ~~or reduced-price lunches than the average percentage of such students in~~
22 ~~all school buildings in the learning community and does not provide free~~
23 ~~meals to all students pursuant to the community eligibility provision.~~

24 Sec. 3. Section 79-10,143, Revised Statutes Cumulative Supplement,
25 2020, is amended to read:

26 79-10,143 A parent or guardian of any student enrolled in, or in the
27 process of enrolling in, any school district in the state may voluntarily
28 provide information on any application submitted pursuant to Nebraska
29 law, rules, and regulations regarding the applicant's potential to meet
30 the qualifications for free or reduced-price lunches solely for
31 determining eligibility pursuant to subsection (4) of section 79-238,

1 subsection (2) of section 79-241, section 79-2,131, section 79-2,133,
2 subsection (2) of section 79-611, subdivision (1)(b) ~~(1)(c)~~ and
3 subsection (3) of section 79-2110, or section 85-2104. Each school
4 district shall process information provided pursuant to this section in
5 the same manner as the district would to determine the qualification
6 status of the student for free or reduced-price meals. Each school
7 district shall comply with the federal Family Educational Rights and
8 Privacy Act of 1974, 20 U.S.C. 1232g, as such act and section existed on
9 January 1, 2015, and regulations adopted thereunder with regard to any
10 information collected pursuant to this section. If no such information is
11 provided pursuant to this section or on an application for free or
12 reduced-price meals, the student shall be presumed not to qualify for
13 free or reduced-price lunches.

14 Sec. 4. Section 79-2110, Revised Statutes Cumulative Supplement,
15 2020, is amended to read:

16 79-2110 ~~(1)(a) Each diversity plan shall provide for open~~
17 ~~enrollment in all school buildings in the learning community for school~~
18 ~~years prior to school year 2017-18, subject to specific limitations~~
19 ~~necessary to bring about diverse enrollments in each school building in~~
20 ~~the learning community. Such limitations, for school buildings other than~~
21 ~~focus schools and programs other than focus programs, shall include~~
22 ~~giving preference at each school building first to siblings of students~~
23 ~~who will be enrolled as continuing students in such school building or~~
24 ~~program for the first school year for which enrollment is sought in such~~
25 ~~school building and then to students that contribute to the socioeconomic~~
26 ~~diversity of enrollment at each building and may include establishing~~
27 ~~zone limitations in which students may access several schools other than~~
28 ~~their home attendance area school. Notwithstanding the limitations~~
29 ~~necessary to bring about diversity, open enrollment shall include~~
30 ~~providing access to students who do not contribute to the socioeconomic~~
31 ~~diversity of a school building, if, subsequent to the open enrollment~~

1 ~~selection process that is subject to limitations necessary to bring about~~
2 ~~diverse enrollments, capacity remains in a school building. In such a~~
3 ~~case, students who have applied to attend such school building shall be~~
4 ~~selected to attend such school building on a random basis up to the~~
5 ~~remaining capacity of such building. A student who has otherwise been~~
6 ~~disqualified from the school building pursuant to the school district's~~
7 ~~code of conduct or related school discipline rules shall not be eligible~~
8 ~~for open enrollment pursuant to this section. Any student who attended a~~
9 ~~particular school building in the prior school year and who is seeking~~
10 ~~education in the grades offered in such school building shall be allowed~~
11 ~~to continue attending such school building as a continuing open~~
12 ~~enrollment student through school year 2016-17.~~

13 (1)(a) ~~(b)~~ To facilitate the open enrollment ~~provisions of this~~
14 ~~subsection~~, each school year each member school district in a learning
15 community shall establish a maximum capacity for each school building
16 under such district's control pursuant to procedures and criteria
17 established by the learning community coordinating council. Each member
18 school district shall also establish attendance areas for each school
19 building under the district's control, except that the school board shall
20 not establish attendance areas for focus schools or focus programs. The
21 attendance areas shall be established such that all of the territory of
22 the school district is within an attendance area for each grade. Students
23 residing in a school district shall be allowed to attend a school
24 building in such school district.

25 (b) ~~(c)~~ For purposes of this section and section ~~sections 79-238 and~~
26 ~~79-611~~, student who contributes to the socioeconomic diversity of
27 enrollment means (i) a student who does not qualify for free or reduced-
28 price lunches when, based upon the certification pursuant to section
29 79-2120, the school building the student will attend either has more
30 students qualifying for free or reduced-price lunches than the average
31 percentage of such students in all school buildings in the learning

1 community or provides free meals to all students pursuant to the
2 community eligibility provision or (ii) a student who qualifies for free
3 or reduced-price lunches based on information collected from parents and
4 guardians when, based upon the certification pursuant to section 79-2120,
5 the school building the student will attend has fewer students qualifying
6 for free or reduced-price lunches than the average percentage of such
7 students in all school buildings in the learning community and does not
8 provide free meals to all students pursuant to the community eligibility
9 provision.

10 (2)(a) On or before March 15 of each year prior to 2017, a parent or
11 guardian of a student residing in a member school district in a learning
12 community may submit an application to any school district in the
13 learning community on behalf of a student who is applying to attend a
14 school building for the following school year that is not in an
15 attendance area where the applicant resides or a focus school, focus
16 program, or magnet school as such terms are defined in section 79-769. On
17 or before April 1 of each year beginning with the year immediately
18 following the year in which the initial coordinating council for the
19 learning community takes office, the school district shall accept or
20 reject such applications based on the capacity of the school building,
21 ~~the eligibility of the applicant for the school building or program, the~~
22 ~~number of such applicants that will be accepted for a given school~~
23 ~~building, and whether or not the applicant contributes to the~~
24 ~~socioeconomic diversity of the school or program to which he or she has~~
25 ~~applied and for which he or she is eligible.~~ The school district shall
26 notify such parent or guardian in writing of the acceptance or rejection.

27 (b) A student may not apply to attend a school building in the
28 learning community for any grades that are offered by another school
29 building for which the student had previously applied and been accepted
30 pursuant to this section, absent a hardship exception as established by
31 the individual school district. On or before September 1 of each year

1 prior to 2017, each school district shall provide to the learning
2 community coordinating council a complete and accurate report of all
3 applications received, including the number of students who applied at
4 each grade level at each building, the number of students accepted at
5 each grade level at each building, the number of such students that
6 contributed to the socioeconomic diversity that applied and were
7 accepted, the number of applicants denied and the rationales for denial,
8 and other such information as requested by the learning community
9 coordinating council.

10 (3) Each diversity plan may include establishment of one or more
11 focus schools or focus programs and the involvement of every member
12 school district in one or more pathways across member school districts.
13 Enrollment in each focus school or focus program shall be designed to
14 reflect the socioeconomic diversity of the learning community as a whole.
15 School district selection of students for focus schools or focus programs
16 shall be on a random basis from two pools of applicants, those who
17 qualify for free and reduced-price lunches and those who do not qualify
18 for free and reduced-price lunches. The percentage of students selected
19 for focus schools from the pool of applicants who qualify for free and
20 reduced-price lunches shall be as nearly equal as possible to the
21 percentage of the student body of the learning community who qualify for
22 free and reduced-price lunches. The percentage of students selected for
23 focus schools from the pool of applicants who do not qualify for free and
24 reduced-price lunches shall be as nearly equal as possible to the
25 percentage of the student body of the learning community who do not
26 qualify for free and reduced-price lunches. If more capacity exists in a
27 focus school or program than the number of applicants for such focus
28 school or program that contribute to the socioeconomic diversity of the
29 focus school or program, the school district shall randomly select
30 applicants up to the number of applicants that will be accepted for such
31 building. A student who will complete the grades offered at a focus

1 program, focus school, or magnet school that is part of a pathway shall
2 be allowed to attend the focus program, focus school, or magnet school
3 offering the next grade level as part of the pathway as a continuing
4 student. A student who completes the grades offered at a focus program,
5 focus school, or magnet school shall be allowed to attend a school
6 offering the next grade level in the school district responsible for the
7 focus program, focus school, or magnet school as a continuing student. A
8 student who attended a program or school in the school year immediately
9 preceding the first school year for which the program or school will
10 operate as a focus program or focus school approved by the learning
11 community and meeting the requirements of section 79-769 and who has not
12 completed the grades offered at the focus program or focus school shall
13 be a continuing student in the program or school. For school year
14 2016-17, students attending a focus program or focus school outside of
15 the school district shall be considered open enrollment students and, for
16 school year 2017-18 and each school year thereafter, students attending a
17 focus program or focus school shall be considered option enrollment
18 students.

19 (4) On or before February 15 of each year, a parent or guardian of a
20 student who is currently attending a school building or program, except a
21 magnet school, focus school, or focus program, outside of the school
22 district where the student resides and who will complete the grades
23 offered at such school building prior to the following school year shall
24 provide notice, on a form provided by the school district, to the school
25 board of the school district containing such school building (a) for
26 years prior to 2017, if such student will attend another school building
27 within such district as a continuing student and which school building
28 such student would prefer to attend or (b) for 2017 and each year
29 thereafter, if such student will apply to enroll as an option student in
30 another school building within such district and which school building
31 such student would prefer to attend. On or before March 1, such school

1 board shall provide a notice to such parent or guardian stating which
2 school building or buildings the student shall be allowed to attend in
3 such school district as a continuing student or an option student for the
4 following school year. If the student resides within the school district,
5 the notice shall include the school building offering the grade the
6 student will be entering for the following school year in the attendance
7 area where the student resides. This subsection shall not apply to focus
8 schools or programs.

9 (5) Prior to the beginning of school year 2017-18, a parent or
10 guardian of a student who moves to a new residence in the learning
11 community after April 1 may apply directly to a school board within the
12 learning community within ninety days after moving for the student to
13 attend a school building outside of the attendance area where the student
14 resides. Such school board shall accept or reject such application within
15 fifteen days after receiving the application, based on the number of
16 applications and qualifications pursuant to subsection (2) or (3) of this
17 section for all other students.

18 (6) A parent or guardian of a student who wishes to change school
19 buildings for emergency or hardship reasons may apply directly to a
20 school board within the learning community at any time for the student to
21 attend a school building outside of the attendance area where the student
22 resides. Such application shall state the emergency or hardship and shall
23 be kept confidential by the school board. Such school board shall accept
24 or reject such application within fifteen days after receiving the
25 application. Applications shall only be accepted if an emergency or
26 hardship was presented which justifies an exemption from the procedures
27 in subsection (4) of this section based on the judgment of such school
28 board, and such acceptance shall not exceed the number of applications
29 that will be accepted for the school year pursuant to subsection (2) or
30 (3) of this section for such building.

31 (7) Each student attending a school building in the resident school

1 district as an open enrollment student for any part of school year
2 2016-17 shall be allowed to continue attending such school building
3 without submitting an additional application unless the student has
4 completed the grades offered in such school building or has been expelled
5 and is disqualified pursuant to section 79-266.01.

6 Sec. 5. Original sections 79-237, 79-238, 79-10,143, and 79-2110,
7 Revised Statutes Cumulative Supplement, 2020, are repealed.