

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1251

Introduced by Hansen, B., 16.

Read first time January 20, 2022

Committee: Education

- 1 A BILL FOR AN ACT relating to education; to amend section 9-812, Revised
- 2 Statutes Supplement, 2021; to adopt the Equal Opportunity
- 3 Scholarship for Students with Special Needs Program Act; to change
- 4 provisions relating to the distribution of lottery funds; to provide
- 5 an operative date; and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 10 of this act shall be known and may be
2 cited as the Equal Opportunity Scholarship for Students with Special
3 Needs Program Act.

4 Sec. 2. For purposes of the Equal Opportunity Scholarship for
5 Students with Special Needs Program Act:

6 (1) Department means the State Department of Education;

7 (2) Eligible student means any elementary or secondary student who
8 is a student with exceptional needs who received special education
9 services under an individualized education plan or plan under Section 504
10 of the federal Rehabilitation Act of 1973, 29 U.S.C. 794, as such act
11 existed on January 1, 2022, and attended a public school in Nebraska in
12 the preceding semester, is starting school in Nebraska for the first
13 time, or has been denied option enrollment by a public school pursuant to
14 section 79-234;

15 (3) Equal Opportunity Scholarship or scholarship means a scholarship
16 granted under the Equal Opportunity Scholarship for Students with Special
17 Needs Program Act;

18 (4) Parent means an individual who is a parent, guardian, custodian,
19 or other person with the authority to act on behalf of the eligible
20 student;

21 (5) Participating school means a school that fulfills the applicable
22 accreditation or approval requirements established by the State Board of
23 Education pursuant to section 79-318;

24 (6) Program means the Equal Opportunity Scholarship for Students
25 with Special Needs Program;

26 (7) Resident school district means the public school district in
27 which the student resides;

28 (8) Special education documents means:

29 (a) An individual education plan under the Individuals with
30 Disabilities Education Act, 20 U.S.C. 1400 et seq., as such act existed
31 on January 1, 2022;

1 (b) An education plan under Section 504 of the federal
2 Rehabilitation Act of 1973, 29 U.S.C. 794, as such act existed on January
3 1, 2022;

4 (c) Any and all documents related to progress monitoring, growth,
5 student behavior, or others that were developed to assist the student in
6 such student's progress; or

7 (d) A learning plan developed by a nonpublic school in conjunction
8 with the teachers and parents of an eligible student and includes student
9 strengths, learning goals, qualitative records of student progress, and
10 quantitative data collection of student progress, and which is reviewed
11 no less than once per semester;

12 (9) Tier A student means an eligible student with a diagnosis and
13 individualized education plan for autism, emotional disturbance, dual
14 sensory impairment, multiple impairments or disabilities, visual
15 impairment, hearing impairment, orthopedic impairment, traumatic brain
16 injury, or other qualifying needs as determined by the department;

17 (10) Tier B student means an eligible student with a diagnosis and
18 individualized education plan or a disability under Section 504 of the
19 federal Rehabilitation Act of 1973, 29 U.S.C. 794, as such act existed on
20 January 1, 2022, for an emotional handicap, learning disability, mild
21 mental handicap, developmental delay, other moderate health impairment,
22 or other qualifying needs as determined by the department;

23 (11) Tier C student means an eligible student identified with a
24 disability under Section 504 of the federal Rehabilitation Act of 1973,
25 29 U.S.C. 794, as such act existed on January 1, 2022, who has been
26 diagnosed as dyslexic or has an individual education plan for speech,
27 language, a specific learning disability, or other qualifying need as
28 determined by the department; and

29 (12) Tier D student means an eligible student who attends a
30 participating school and was previously receiving an Equal Opportunity
31 Scholarship but who no longer requires special education services.

1 Sec. 3. (1) The parents of an eligible student shall receive an
2 Equal Opportunity Scholarship for such student to attend the
3 participating school of their choice. The amount of the scholarship is
4 based upon the current year's statewide average basic funding per student
5 as determined by the department and appropriated as follows. The parents
6 of:

7 (a) A Tier A student shall receive one hundred fifty percent of the
8 current year's statewide average basic funding per student;

9 (b) A Tier B student shall receive one hundred percent of the
10 current year's statewide average basic funding per student;

11 (c) A Tier C student shall receive seventy-five percent of the
12 current year's statewide average basic funding per student; and

13 (d) A Tier D student shall receive fifty percent of the current
14 year's statewide average basic funding per student as determined by the
15 department as long as the student remains in the participating school in
16 which the student received services as a Tier A, Tier B, or Tier C
17 student.

18 (2) If an eligible student has scholarship funds remaining upon
19 graduation from a participating school, the funds may be rolled over for
20 educational use at a postsecondary institution for up to one year.

21 (3)(a) An Equal Opportunities Scholarship shall remain in force
22 unless the student:

23 (i) Graduates from high school;

24 (ii) Reaches twenty-two years of age; or

25 (iii) Returns to public school.

26 (b) A parent may move such student from one participating school to
27 another participating school without losing the scholarship.

28 (4) An application for an Equal Opportunity Scholarship is
29 confidential and not a public record subject to release.

30 Sec. 4. (1) The department shall appoint a person or persons
31 responsible for:

1 (a) Annually reviewing scholarship applications, including special
2 education documents;

3 (b) Confirming applicant special education status;

4 (c) Assigning students to the appropriate tier status if the student
5 meets such requirements;

6 (d) Communicating acceptance or rejection of applications to the
7 applicants and the State Treasurer;

8 (e) Implementing a commercially viable, cost-effective, and parent-
9 friendly system for publicly reviewing and sharing information about
10 participating schools; and

11 (f) Appropriately classifying disabilities as required by subsection
12 (2) of this section.

13 (2) The department shall classify special education disabilities not
14 expressly listed in the definitions of Tier A, Tier B, Tier C, and Tier D
15 students into an appropriate tier.

16 Sec. 5. (1) To ensure that students are treated fairly and kept
17 safe, a participating school shall:

18 (a) Comply with all health and safety laws or codes that apply to
19 such school;

20 (b) Hold a valid occupancy permit if required by the municipality in
21 which such school resides;

22 (c) Conduct criminal background checks on potential employees;

23 (d) Exclude from employment any person not permitted by state law to
24 work in such school; and

25 (e) Exclude from employment any person that might reasonably pose a
26 threat to the safety of students.

27 (2) To ensure that students are receiving an appropriate academic
28 education, a participating school shall, unless as part of an
29 accommodation established in the eligible student's special education
30 document, require each eligible student to take nationally norm-
31 referenced tests that measure learning gains in math and language arts

1 and provide such results to the parents of such student on an annual
2 basis, beginning with the first year of testing.

3 Sec. 6. A participating school is autonomous and not an agent of
4 the state or federal government and therefore:

5 (1) Except as otherwise provided by law, the department or any other
6 state agency shall not in any way regulate the educational program of a
7 participating school that accepts eligible students;

8 (2) The creation of the program does not expand the regulatory
9 authority of the state, its officers, or any school district to impose
10 any additional regulation on a participating school; and

11 (3) A participating school shall not be required to alter its creed,
12 practices, admissions policy, or curriculum. A participating school
13 reserves the right to accept or deny any student under the program based
14 upon the school's ability to serve the student appropriately.

15 Sec. 7. (1) A parent who applies for the program is exercising such
16 parent's option to place such parent's child in a private school. In
17 order to qualify for the program a parent must select the participating
18 school and apply for the admission of such parent's child and for the
19 program. No eligible student shall receive program funds until at least
20 sixty days after application for such program is received.

21 (2) Any student participating in the program must remain in
22 attendance at a participating school throughout the school year unless
23 excused by the school for illness or other good cause.

24 (3) Each parent and each student have an obligation to the
25 participating school to comply with the participating school's published
26 policies. A student and parent who do not comply may lose program
27 eligibility.

28 Sec. 8. The State Treasurer shall administer qualified Equal
29 Opportunity Scholarship funds in accordance with this section and shall:

30 (1) Ensure that eligible students and their parents are informed
31 annually of which schools will be participating in the program and which

1 tiers such schools provide services for;

2 (2) Create a standard form that parents of eligible students can
3 submit to establish their student's eligibility for the program;

4 (3) Ensure that the application is readily available to interested
5 families through various sources, including on the State Treasurer's
6 website;

7 (4) Ensure compliance with all student privacy laws for forms and
8 information received by the State Treasurer;

9 (5) Administer an annual parental satisfaction survey that shall ask
10 parents of students receiving funds under the program to express:

11 (a) Their level of satisfaction with the program; and

12 (b) Their opinions on other topics, items, or issues that the
13 department finds would elicit information about the effectiveness of the
14 program;

15 (6) Ensure that parents of students with disabilities receive notice
16 that participation in the program is considered a parental placement
17 under the Individuals with Disabilities Act 20 U.S.C. 1400 et seq., as
18 such act existed on January 1, 2022, along with an explanation of the
19 rights that parentally placed students possess under such act and any
20 applicable state laws and regulations;

21 (7) Implement or contract with a private organization to implement,
22 a commercially viable, cost effective, and parent-friendly system for
23 payment on behalf of a parent and the eligible student to a participating
24 school, including, but not limited to, the use of electronic or online
25 fund transfers, except that the scholarship may not be reduced for
26 electronic payment fees;

27 (8) Not less than twice per year implement a system for payment to
28 eligible education freedom account families that use electronic or online
29 funds transfer.

30 Sec. 9. A resident school district shall provide a participating
31 school that has admitted an eligible student under this program from such

1 resident school district with a complete copy of the such student's
2 school records and special education documents, while complying with the
3 federal Family Educational Rights and Privacy Act of 1974, as amended, 20
4 U.S.C. 1232g, and all federal regulations and applicable guidelines
5 adopted in accordance with such act, as such act, regulations, and
6 guidelines existed on January 1, 2022.

7 Sec. 10. (1) The Equal Opportunities Scholarship Fund is created.
8 The fund shall be used to carry out the Equal Opportunities Scholarship
9 for Students with Special Needs Act. The fund shall consist of:

10 (a) Transfers or appropriations by the Legislature; and

11 (b) Any gifts, grants, bequests, or donations to the fund.

12 (2) The fund shall be administered by the State Treasurer. Any money
13 in the fund available for investment shall be invested by the state
14 investment officer pursuant to the Nebraska Capital Expansion Act and the
15 Nebraska State Funds Investment Act. The State Treasurer may deduct from
16 the fund an amount necessary to cover the costs of administering the
17 program up to a limit of two percent.

18 Sec. 11. Section 9-812, Revised Statutes Supplement, 2021, is
19 amended to read:

20 9-812 (1) All money received from the operation of lottery games
21 conducted pursuant to the State Lottery Act in Nebraska shall be credited
22 to the State Lottery Operation Trust Fund, which fund is hereby created.
23 All payments of the costs of establishing and maintaining the lottery
24 games shall be made from the State Lottery Operation Cash Fund. In
25 accordance with legislative appropriations, money for payments for
26 expenses of the division shall be transferred from the State Lottery
27 Operation Trust Fund to the State Lottery Operation Cash Fund, which fund
28 is hereby created. All money necessary for the payment of lottery prizes
29 shall be transferred from the State Lottery Operation Trust Fund to the
30 State Lottery Prize Trust Fund, which fund is hereby created. The amount
31 used for the payment of lottery prizes shall not be less than forty

1 percent of the dollar amount of the lottery tickets which have been sold.

2 (2) A portion of the dollar amount of the lottery tickets which have
3 been sold on an annualized basis shall be transferred from the State
4 Lottery Operation Trust Fund to the Education Innovation Fund, the
5 Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund,
6 the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and
7 the Compulsive Gamblers Assistance Fund as provided in subsection (3) of
8 this section. The dollar amount transferred pursuant to this subsection
9 shall equal the greater of (a) the dollar amount transferred to the funds
10 in fiscal year 2002-03 or (b) any amount which constitutes at least
11 twenty-two percent and no more than twenty-five percent of the dollar
12 amount of the lottery tickets which have been sold on an annualized
13 basis. To the extent that funds are available, the Tax Commissioner and
14 director may authorize a transfer exceeding twenty-five percent of the
15 dollar amount of the lottery tickets sold on an annualized basis.

16 (3) Of the money available to be transferred to the Education
17 Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska
18 Education Improvement Fund, the Nebraska Environmental Trust Fund, the
19 Nebraska State Fair Board, the Equal Opportunities Scholarship Fund, and
20 the Compulsive Gamblers Assistance Fund:

21 (a) The first five hundred thousand dollars shall be transferred to
22 the Compulsive Gamblers Assistance Fund to be used as provided in section
23 9-1006;

24 (b) Beginning in fiscal year 2022-23, after the initial transfer to
25 the Compulsive Gamblers Assistance Fund, five million dollars shall be
26 transferred to the Equal Opportunities Scholarship Fund to be used as
27 provided in section 10 of this act;

28 (c) ~~(b)~~ Beginning July 1, 2016, forty-four and one-half percent of
29 the money remaining after the payment of prizes and operating expenses
30 and the initial transfers to the Equal Opportunities Scholarship Fund and
31 transfer to the Compulsive Gamblers Assistance Fund shall be transferred

1 to the Nebraska Education Improvement Fund;

2 (d) ~~(e)~~ Forty-four and one-half percent of the money remaining after
3 the payment of prizes and operating expenses and the initial transfers to
4 the Equal Opportunities Scholarship Fund and transfer to the Compulsive
5 Gamblers Assistance Fund shall be transferred to the Nebraska
6 Environmental Trust Fund to be used as provided in the Nebraska
7 Environmental Trust Act;

8 (e) ~~(d)~~ Ten percent of the money remaining after the payment of
9 prizes and operating expenses and the initial transfers to the Equal
10 Opportunities Scholarship Fund and transfer to the Compulsive Gamblers
11 Assistance Fund shall be transferred to the Nebraska State Fair Board if
12 the most populous city within the county in which the fair is located
13 provides matching funds equivalent to ten percent of the funds available
14 for transfer. Such matching funds may be obtained from the city and any
15 other private or public entity, except that no portion of such matching
16 funds shall be provided by the state. If the Nebraska State Fair ceases
17 operations, ten percent of the money remaining after the payment of
18 prizes and operating expenses and the initial transfer to the Compulsive
19 Gamblers Assistance Fund shall be transferred to the General Fund; and

20 (f) ~~(e)~~ One percent of the money remaining after the payment of
21 prizes and operating expenses and the initial transfers to the Equal
22 Opportunities Scholarship Fund and transfer to the Compulsive Gamblers
23 Assistance Fund shall be transferred to the Compulsive Gamblers
24 Assistance Fund to be used as provided in section 9-1006.

25 (4) The Nebraska Education Improvement Fund is created. The fund
26 shall consist of money transferred pursuant to subsection (3) of this
27 section, money transferred pursuant to section 85-1920, and any other
28 funds appropriated by the Legislature. The fund shall be allocated, after
29 actual and necessary administrative expenses, as provided in this section
30 for fiscal years 2016-17 through 2023-24. A portion of each allocation
31 may be retained by the agency to which the allocation is made or the

1 agency administering the fund to which the allocation is made for actual
2 and necessary expenses incurred by such agency for administration,
3 evaluation, and technical assistance related to the purposes of the
4 allocation, except that no amount of the allocation to the Nebraska
5 Opportunity Grant Fund may be used for such purposes. On or before
6 December 31, 2022, the Education Committee of the Legislature shall
7 electronically submit recommendations to the Clerk of the Legislature
8 regarding how the fund should be allocated to best advance the
9 educational priorities of the state for the five-year period beginning
10 with fiscal year 2024-25. For fiscal year 2016-17, an amount equal to ten
11 percent of the revenue allocated to the Education Innovation Fund and to
12 the Nebraska Opportunity Grant Fund for fiscal year 2015-16 shall be
13 retained in the Nebraska Education Improvement Fund. For fiscal years
14 2017-18 through 2023-24, an amount equal to ten percent of the revenue
15 received by the Nebraska Education Improvement Fund in the prior fiscal
16 year shall be retained in the fund at all times plus any interest earned
17 during the current fiscal year. For fiscal years 2016-17 through 2023-24,
18 the remainder of the fund shall be allocated as follows:

19 (a) One percent of the allocated funds to the Expanded Learning
20 Opportunity Grant Fund to carry out the Expanded Learning Opportunity
21 Grant Program Act;

22 (b) Seventeen percent of the allocated funds to the Department of
23 Education Innovative Grant Fund to be used for competitive innovation
24 grants pursuant to section 79-1054;

25 (c) Nine percent of the allocated funds to the Community College Gap
26 Assistance Program Fund to carry out the community college gap assistance
27 program;

28 (d) Eight percent of the allocated funds to the Excellence in
29 Teaching Cash Fund to carry out the Excellence in Teaching Act;

30 (e) Sixty-two percent of the allocated funds to the Nebraska
31 Opportunity Grant Fund to carry out the Nebraska Opportunity Grant Act in

1 conjunction with appropriations from the General Fund; and

2 (f) Three percent of the allocated funds to fund distance education
3 incentives pursuant to section 79-1337.

4 (5)(a) On or before September 20, 2022, and on or before each
5 September 20 thereafter, (i) any department or agency receiving a
6 transfer or acting as the administrator for a fund receiving a transfer
7 pursuant to subsection (4) of this section, (ii) any recipient or
8 subsequent recipient of money from any such fund, and (iii) any service
9 contractor responsible for managing any portion of any such fund or any
10 money disbursed from any such fund on behalf of any entity shall prepare
11 and submit an annual report to the Auditor of Public Accounts in a manner
12 prescribed by the auditor for the immediately preceding July 1 through
13 June 30 fiscal year detailing information regarding the use of such fund
14 or such money.

15 (b) The Auditor of Public Accounts shall annually compile a summary
16 of the annual reports received pursuant to subdivision (5)(a) of this
17 section, any audits related to transfers pursuant to subsection (4) of
18 this section conducted by the Auditor of Public Accounts, and any
19 findings or recommendations related to such transfers into a consolidated
20 annual report and shall submit such consolidated annual report
21 electronically to the Legislature on or before January 1, 2023, and on or
22 before each January 1 thereafter.

23 (c) For purposes of this subsection, recipient, subsequent
24 recipient, or service contractor means a nonprofit entity that expends
25 funds transferred pursuant to subsection (4) of this section to carry out
26 a state program or function, but does not include an individual who is a
27 direct beneficiary of such a program or function.

28 (6) Any money in the State Lottery Operation Trust Fund, the State
29 Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the
30 Nebraska Education Improvement Fund available for investment shall be
31 invested by the state investment officer pursuant to the Nebraska Capital

1 Expansion Act and the Nebraska State Funds Investment Act.

2 (7) Unclaimed prize money on a winning lottery ticket shall be
3 retained for a period of time prescribed by rules and regulations. If no
4 claim is made within such period, the prize money shall be used at the
5 discretion of the Tax Commissioner for any of the purposes prescribed in
6 this section.

7 Sec. 12. This act becomes operative on August 1, 2023.

8 Sec. 13. Original section 9-812, Revised Statutes Supplement, 2021,
9 is repealed.