

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 198

Introduced by Vargas, 7; Hunt, 8; Morfeld, 46; Pansing Brooks, 28.

Read first time January 08, 2021

Committee: Education

1 A BILL FOR AN ACT relating to the Student Discipline Act; to amend
2 sections 79-254, 79-256, 79-265, 79-266, 79-267, 79-268, 79-269,
3 79-272, 79-276, 79-278, 79-282, 79-283, and 79-287, Reissue Revised
4 Statutes of Nebraska; to redefine a term; to change provisions
5 relating to intent, suspension, expulsion, reassignment, discipline,
6 and hearings; to harmonize provisions; and to repeal the original
7 sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-254, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 79-254 Sections 79-254 to 79-294 and section 4 of this act shall be
4 known and may be cited as the Student Discipline Act.

5 Sec. 2. Section 79-256, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 79-256 For purposes of the Student Discipline Act, unless the
8 context otherwise requires:

9 (1) Long-term suspension means the exclusion of a student from
10 attendance in all schools within the system for a period exceeding five
11 school days but less than twenty school days;

12 (2) Expulsion means exclusion from attendance in all schools within
13 the system in accordance with section 79-283;

14 (3) Mandatory reassignment means the involuntary transfer of a
15 student to another school ~~in connection with any disciplinary action~~; and

16 (4) Short-term suspension means the exclusion of a student from
17 attendance in all schools within the system for a period not to exceed
18 five school days.

19 Sec. 3. Section 79-265, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 79-265 (1) The principal may deny any student the right to attend
22 school or to take part in any school function for a period of up to five
23 school days on the following grounds:

24 (a) Conduct constituting grounds for expulsion as set out in the
25 Student Discipline Act; or

26 (b) Any other violation of rules and standards of behavior adopted
27 under the act.

28 (2) Such short-term suspension shall be made only after the
29 principal has made an investigation of the alleged conduct or violation
30 and has determined that such suspension is necessary to help any student,
31 to further school purposes, or to prevent an interference with school

1 purposes.

2 (3) Before such short-term suspension takes effect, the student
3 shall be given oral or written notice of the charges against him or her,
4 an explanation of the evidence the authorities have, and an opportunity
5 to present his or her version.

6 (4) Within twenty-four hours or such additional time as is
7 reasonably necessary, not to exceed an additional forty-eight hours,
8 following such suspension, the principal shall send a written statement
9 to the student and his or her parent or guardian describing the student's
10 conduct, misconduct, or violation of the rule or standard and the reasons
11 for the action taken. The principal shall make a reasonable effort to
12 hold a conference with the parent or guardian before or at the time the
13 student returns to school and shall document such effort in writing.

14 ~~(5) Any student who is suspended pursuant to this section may be~~
15 ~~given an opportunity to complete any classwork, including, but not~~
16 ~~limited to, examinations, missed during the period of suspension. Each~~
17 ~~public school district shall develop and adopt guidelines stating the~~
18 ~~criteria school officials shall use in determining whether and to what~~
19 ~~extent such opportunity for completion will be granted to suspended~~
20 ~~students. The guidelines shall be provided to the student and parent or~~
21 ~~guardian at the time of suspension.~~

22 Sec. 4. Any student who is suspended shall be given an opportunity
23 to complete any classwork and homework missed during the period of
24 suspension, including, but not limited to, examinations. Each school
25 district shall develop and adopt guidelines that provide such student
26 with the opportunity to complete classwork and homework. Such guidelines
27 shall not require the student to attend the school district's alternative
28 programs for expelled students in order to complete classwork and
29 homework. The guidelines shall be provided to the student and a parent or
30 guardian at the time of suspension.

31 Sec. 5. Section 79-266, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 79-266 (1) Beginning July 1, 1997, each school district shall have
3 an alternative school, class, or educational program or the procedures of
4 subsection (2) of this section available or in operation for all expelled
5 students.

6 Any two or more school boards or boards of education may join
7 together in providing alternative schools, classes, or educational
8 programs. Any district may by agreement with another district send its
9 suspended or expelled students to any alternative school, class, or
10 educational program already in operation by such other district. An
11 educational program may include, but shall not be limited to,
12 individually prescribed educational and counseling programs or a
13 community-centered classroom with experiences for the student as an
14 observer or aide in governmental functions, as an on-the-job trainee, or
15 as a participant in specialized tutorial experiences. Such programs shall
16 include an individualized learning program to enable the student to
17 continue academic work for credit toward graduation. The State Department
18 of Education shall adopt and promulgate rules and regulations relating to
19 alternative schools, classes, and educational programs.

20 (2) If a district does not provide an alternative school, class, or
21 educational program for expelled students, the district shall follow the
22 procedures in this subsection prior to expelling a student unless the
23 expulsion was required by subsection (4) of section 79-283: A conference
24 shall be called by a school administrator and held to assist the district
25 in the development of a plan with the participation of a parent or legal
26 guardian, the student, a school representative, and a representative of
27 either a community organization with a mission of assisting young people
28 or a representative of an agency involved with juvenile justice. The plan
29 shall be in writing and adopted by a school administrator and presented
30 to the student and the parent or legal guardian. The plan shall (a)
31 specify guidelines and consequences for behaviors which have been

1 identified as preventing the student from achieving the desired benefits
2 from the educational opportunities provided, (b) identify educational
3 objectives that must be achieved in order to receive credits toward
4 graduation, (c) specify the financial resources and community programs
5 available to meet both the educational and behavioral objectives
6 identified, and (d) require the student to attend monthly reviews in
7 order to assess the student's progress toward meeting the specified goals
8 and objectives.

9 (3) A school district that has expelled a student may suspend the
10 enforcement of such expulsion unless the expulsion was required by
11 subsection (4) of section 79-283. The suspension may be for a period not
12 to exceed the length of the expulsion. As a condition of such suspended
13 action, the school district may require participation in a plan pursuant
14 to subsection (2) of this section or assign the student to a school,
15 class, or educational program which the school district deems
16 appropriate.

17 At the conclusion of such suspension period, the school district
18 shall (a) reinstate any student who has satisfactorily participated in a
19 plan pursuant to subsection (2) of this section or the school, class, or
20 educational program to which such student has been assigned and permit
21 the student to return to the school of former attendance or to attend
22 other programs offered by the district or (b) if the student's conduct
23 has been unsatisfactory, enforce the remainder of the expulsion action.

24 If the student is reinstated, the district may also take action to
25 expunge the record of the expulsion action.

26 (4) At the conclusion of an expulsion, a school district shall
27 reinstate the student and accept nonduplicative, grade-appropriate
28 credits earned by the student during the term of his or her expulsion
29 from any Nebraska accredited institution or institution accredited by one
30 of the six regional accrediting bodies in the United States.

31 Sec. 6. Section 79-267, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 79-267 The following student conduct shall constitute grounds for
3 long-term suspension, expulsion, or mandatory reassignment, subject to
4 the procedural provisions of the Student Discipline Act, when such
5 activity occurs on school grounds, in a vehicle owned, leased, or
6 contracted by a school being used for a school purpose or in a vehicle
7 being driven for a school purpose by a school employee or by his or her
8 designee, or at a school-sponsored activity or athletic event:

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

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

15 (3) Causing or attempting to cause personal injury to a school
16 employee, to a school volunteer, or to any student. Personal injury
17 caused by accident, self-defense, or other action undertaken on the
18 reasonable belief that it was necessary to protect some other person
19 shall not constitute a violation of this subdivision. For purposes of
20 this subdivision, personal injury shall be considered caused by accident
21 when the damage or consequences of the act that caused the injury were
22 unintentional, unforeseen, or unexpected;

23 (4) Threatening or intimidating any student for the purpose of or
24 with the intent of obtaining money or anything of value from such
25 student;

26 (5) Knowingly possessing, handling, or transmitting any object or
27 material that is ordinarily or generally considered a weapon;

28 (6) Engaging in the unlawful knowing possession, selling,
29 dispensing, or use of a controlled substance or an imitation controlled
30 substance, as defined in section 28-401, a substance represented to be a
31 controlled substance, or alcoholic liquor as defined in section 53-103.02

1 or being under the influence of a controlled substance or alcoholic
2 liquor;

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

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

7 (9) Sexually assaulting or attempting to sexually assault any person
8 if a complaint has been filed by a prosecutor in a court of competent
9 jurisdiction alleging that the student has sexually assaulted or
10 attempted to sexually assault any person, including sexual assaults or
11 attempted sexual assaults which occur off school grounds not at a school
12 function, activity, or event. For purposes of this subdivision, sexual
13 assault means sexual assault in the first degree as defined in section
14 28-319, sexual assault in the second degree as defined in section 28-320,
15 sexual assault of a child in the second or third degree as defined in
16 section 28-320.01, or sexual assault of a child in the first degree as
17 defined in section 28-319.01, as such sections now provide or may
18 hereafter from time to time be amended;

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

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

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

28 Sec. 7. Section 79-268, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 79-268 If a principal makes a decision to discipline a student by
31 long-term suspension, expulsion, or mandatory reassignment, the following

1 procedures shall be followed:

2 (1) The decision as to the recommended discipline shall be made
3 within two school days after learning of the alleged student misconduct.

4 On the date of the decision, a written charge and a summary of the
5 evidence supporting such charge shall be filed with the superintendent.
6 The school shall, within two school days after the decision, send written
7 notice by registered or certified mail to the student and his or her
8 parent or guardian informing them of the rights established under the
9 Student Discipline Act;

10 (2) Such written notice shall include the following:

11 (a) The rule or standard of conduct allegedly violated and the acts
12 of the student alleged to constitute a cause for long-term suspension,
13 expulsion, or mandatory reassignment, including a summary of the evidence
14 to be presented against the student;

15 (b) The penalty, if any, which the principal has recommended in the
16 charge and any other penalty to which the student may be subject;

17 (c) A statement that, before long-term suspension, expulsion, or
18 mandatory reassignment ~~for disciplinary purposes~~ can be invoked, the
19 student has a right to a hearing, upon request, and that if the student
20 is suspended pending the outcome of the hearing, the student may complete
21 classwork and homework, including, but not limited to, examinations,
22 missed during the period of suspension pursuant to district guidelines
23 which shall not require the student to attend the school district's
24 alternative programs for expelled students in order to complete classwork
25 or homework on the specified charges;

26 (d) A description of the hearing procedures provided by the act,
27 along with procedures for appealing any decision rendered at the hearing;

28 (e) A statement that the principal, legal counsel for the school,
29 the student, the student's parent, or the student's representative or
30 guardian has the right (i) to examine the student's academic and
31 disciplinary records and any affidavits to be used at the hearing

1 concerning the alleged misconduct and (ii) to know the identity of the
2 witnesses to appear at the hearing and the substance of their testimony;
3 and

4 (f) A form on which the student, the student's parent, or the
5 student's guardian may request a hearing, to be signed by such parties
6 and delivered to the principal or superintendent in person or by
7 registered or certified mail as prescribed in sections 79-271 and 79-272
8 to the address provided on such form;~~and~~

9 (3) When a notice of intent to discipline a student by long-term
10 suspension, expulsion, or mandatory reassignment is filed with the
11 superintendent, the student may be suspended by the principal until the
12 date the long-term suspension, expulsion, or mandatory reassignment takes
13 ~~effect if no hearing is requested or, if a hearing is requested, the date~~
14 ~~the hearing examiner makes the report of his or her findings and a~~
15 ~~recommendation of the action to be taken to the superintendent,~~ if the
16 principal determines that the student must be suspended immediately to
17 prevent or substantially reduce the risk of (a) interference with an
18 educational function or school purpose or (b) a personal injury to the
19 student himself or herself, other students, school employees, or school
20 volunteers.

21 The Student Discipline Act does not preclude the student or the
22 student's parent, guardian, or representative from discussing and
23 settling the matter with appropriate school personnel prior to the time
24 the long-term suspension, expulsion, or mandatory reassignment takes
25 effect; ~~and hearing stage.~~

26 (4) For purposes of this section, mandatory reassignment, regardless
27 of its implementation date, shall be subject to the procedures of this
28 section.

29 Sec. 8. Section 79-269, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 79-269 (1)(a) ~~(1)~~ If a hearing is requested within five school days

1 after receipt of the notice as provided in section 79-268, the
2 superintendent shall recommend appointment of ~~appoint~~ a hearing examiner
3 within two school days after receipt of the hearing request.

4 (b) The student or the student's parent or guardian may request
5 designation of a hearing examiner other than the hearing examiner
6 recommended by the superintendent, if notice to the superintendent of
7 this request is given within two school days after receipt of the
8 superintendent's recommended appointment. Upon receiving such request,
9 the superintendent shall provide one alternative hearing examiner who is
10 not an employee of the school district or otherwise currently under
11 contract with the school district and whose impartiality may not
12 otherwise be reasonably questioned. The superintendent may also provide
13 an additional list of hearing examiners that may include hearing
14 examiners employed by or under contract with the school district. The
15 student or the student's parent or guardian shall, within five school
16 days, select a hearing examiner to conduct the hearing who was
17 recommended, provided as an alternative hearing examiner, or included on
18 an additional list, if any, pursuant to this subdivision and shall notify
19 the superintendent in writing of the selection. The superintendent shall
20 appoint the selected hearing examiner upon receipt of such notice.

21 (c) For purposes of this section, individuals whose impartiality may
22 be reasonably questioned shall include, but not be limited to,
23 individuals who:

24 (i) Have a personal bias or prejudice concerning a party;

25 (ii) Have personal knowledge of evidentiary facts concerning the
26 proceeding;

27 (iii) Have served as legal counsel to the school district; or

28 (iv) Have a spouse who is an employee of, or is under contract with,
29 the school district.

30 (d) For purposes of this section a qualified hearing examiner shall
31 be an individual who has knowledge of the Student Discipline Act,

1 training in its statutory requirements, or experience conducting student
2 hearings.

3 (e) The hearing examiner ~~who~~ shall, within two school days after
4 being appointed, give written notice to the principal, the student, and
5 the student's parent or guardian of the time and place for the hearing.

6 (2) The hearing examiner shall be any person designated pursuant to
7 subsection (1) of this section ~~by the school district's superintendent,~~
8 ~~school board or board of education, or counsel,~~ if such person (a) has
9 not brought the charges against the student, (b) shall not be a witness
10 at the hearing, and (c) has no involvement in the charge. Expenses and
11 fees of any hearing examiner, in connection with the hearing, shall be
12 paid by the school district.

13 (3) The hearing shall be held ~~scheduled~~ within a period of five
14 school days after appointment of the hearing examiner ~~it is requested,~~
15 but such time may be changed by the hearing examiner for good cause with
16 the consent of the parties. No hearing shall be held upon less than two
17 school days' actual notice to the principal, the student, and the
18 student's parent or guardian, except with the consent of all the parties.

19 (4) The principal or legal counsel for the school, the student, and
20 the student's parent, guardian, or representative have the right to
21 receive a copy of all ~~examine the~~ records and written statements referred
22 to in the Student Discipline Act as well as the statement of any witness
23 in the possession of the school board or board of education no later than
24 forty-eight hours ~~at a reasonable time~~ prior to the hearing.

25 Sec. 9. Section 79-272, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 79-272 If a hearing is requested under sections 79-268 and 79-269
28 more than five school days but not more than thirty calendar days
29 following the actual receipt of written notice, the hearing examiner
30 shall be appointed and the hearing ~~shall be held~~ pursuant to the
31 requirements of section 79-269 but the imposed punishment shall continue

1 in effect pending final determination.

2 Sec. 10. Section 79-276, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 79-276 At a hearing requested under sections 79-268 and 79-269, the
5 principal shall present to the hearing examiner statements, in affidavit
6 form, of any person having information about the student's conduct and
7 the student's records but not unless such statements and records have
8 been provided ~~made available~~ to the student or the student's parent,
9 guardian, or representative at least forty-eight hours prior to the
10 hearing. The information contained in such records shall be explained and
11 interpreted, prior to or at the hearing, to the student, parent,
12 guardian, or representative, upon request, by appropriate school
13 personnel.

14 Sec. 11. Section 79-278, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 79-278 (1) The student, the student's parent, guardian, or
17 representative, the principal, or the hearing examiner may ask witnesses
18 to testify at the hearing requested under sections 79-268 and 79-269.
19 Such testimony shall be under oath, and the hearing examiner shall be
20 authorized to administer the oath. The hearing examiner shall make
21 reasonable effort to assist the student or the student's parent,
22 guardian, or representative in obtaining the attendance of witnesses. The
23 school district shall make available those witnesses who have knowledge
24 of or were involved in the alleged misconduct and subsequent discipline
25 of the student if such witnesses are requested by the student or the
26 student's parent, guardian, or representative and such witnesses are
27 employees or under contract with the school district.

28 (2) The student, the student's parent, guardian, or representative,
29 the principal, or the hearing examiner has the right to question any
30 witness giving information at the hearing.

31 Sec. 12. Section 79-282, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 79-282 (1) After a hearing requested under sections 79-268 and
3 79-269, a report shall be made by the hearing examiner of his or her
4 findings and a recommendation of the action to be taken, which report
5 shall be made to the superintendent and the student or the student's
6 parent or guardian within ten calendar days after the hearing and shall
7 explain, in terms of the needs of both the student and the school board,
8 the reasons for the particular action recommended. Such recommendation
9 may range from no action, through the entire field of counseling, to
10 long-term suspension, expulsion, mandatory reassignment, or an
11 alternative educational placement under section 79-266.

12 (2) A review shall be made of the hearing examiner's report by the
13 superintendent, who may change, revoke, or impose the sanction
14 recommended by the hearing examiner but shall not impose a sanction more
15 severe than that recommended by the hearing examiner. The superintendent
16 shall notify the student or the student's parent or guardian of the
17 superintendent's determination within five school days after receipt of
18 the hearing examiner's report.

19 (3) The findings and recommendations of the hearing examiner, the
20 determination by the superintendent, and any determination on appeal to
21 the governing body, shall be made solely on the basis of the evidence
22 presented at the hearing or, in addition, on any evidence presented on
23 appeal.

24 Sec. 13. Section 79-283, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 79-283 (1) Written notice of the findings and recommendations of the
27 hearing examiner and the determination of the superintendent under
28 section 79-282 shall be made by certified or registered mail or by
29 personal delivery to the student or the student's parent or guardian.
30 Upon receipt of such written notice by the student, parent, or guardian,
31 the determination of the superintendent shall take immediate effect

1 unless the student or the student's parent or guardian appeals the
2 written notice of determination of the superintendent pursuant to section
3 79-285.

4 (2) Except as provided in subsections (3) and (4) of this section,
5 the expulsion of a student shall be for a period not to exceed the
6 remainder of the semester in which it took effect unless the misconduct
7 occurred (a) within the last ten school days ~~prior to the end~~ of the
8 first semester, in which case the expulsion shall remain in effect
9 through the second semester, or (b) within the last ten school days ~~prior~~
10 ~~to the end~~ of the second semester, in which case the expulsion shall
11 remain in effect for summer school and the first semester of the
12 following school year subject to the provisions of subsection (5) of this
13 section. Such action may be modified or terminated by the school district
14 at any time during the expulsion period. For purposes of this subsection,
15 if the misconduct occurred prior to the last ten school days of the first
16 semester, and the expulsion takes effect in the second semester because
17 the recommendation for expulsion was appealed to a hearing examiner or
18 the school board or board of education, the length of the expulsion shall
19 not exceed the number of days it would have been in effect had the appeal
20 not been made.

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

1 the expulsion period.

2 (4) The expulsion of a student for the knowing and intentional
3 possession, use, or transmission of a firearm, which for purposes of this
4 section means a firearm as defined in 18 U.S.C. 921 as of January 1,
5 1995, shall be for a period as provided by the school district policy
6 adopted pursuant to section 79-263. This subsection shall not apply to
7 (a) the issuance of firearms to or possession of firearms by members of
8 the Reserve Officers Training Corps when training or (b) firearms which
9 may lawfully be possessed by the person receiving instruction under the
10 immediate supervision of an adult instructor who may lawfully possess
11 firearms.

12 (5) Any expulsion that will remain in effect during the first
13 semester of the following school year shall be automatically scheduled
14 for review before the beginning of the school year. The review shall be
15 conducted by the hearing examiner after the hearing examiner has given
16 notice of the review to the student and the student's parent or guardian.
17 This review shall be limited to newly discovered evidence or evidence of
18 changes in the student's circumstances occurring since the original
19 hearing. This review may lead to a recommendation by the hearing examiner
20 that the student be readmitted for the upcoming school year. If the
21 school board or board of education or a committee of such board took the
22 final action to expel the student, the student may be readmitted only by
23 action of the board. Otherwise the student may be readmitted by action of
24 the superintendent.

25 Sec. 14. Section 79-287, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 79-287 The final action of the board under section 79-286 shall be
28 taken within three calendar days after the hearing and be evidenced by
29 personally delivering or mailing by certified mail a copy of the board's
30 decision to the student and his or her parent or guardian within three
31 calendar days after the final action.

1 Sec. 15. Original sections 79-254, 79-256, 79-265, 79-266, 79-267,
2 79-268, 79-269, 79-272, 79-276, 79-278, 79-282, 79-283, and 79-287,
3 Reissue Revised Statutes of Nebraska, are repealed.