

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 238

Introduced by Wayne, 13.

Read first time January 10, 2023

Committee: Education

1 A BILL FOR AN ACT relating to schools; to amend sections 79-528 and
2 79-1003, Revised Statutes Cumulative Supplement, 2022; to change
3 reporting requirements; to define and redefine terms; to include
4 virtual school students in the calculation of aid under the Tax
5 Equity and Educational Opportunities Support Act; to harmonize
6 provisions; and to repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-528, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 79-528 (1)(a) On or before July 20 in all school districts, the
4 superintendent shall file with the State Department of Education a report
5 showing the number of children from five through eighteen years of age
6 belonging to the school district according to the census taken as
7 provided in sections 79-524 and 79-578.

8 (b) The board of any district neglecting to take and report the
9 enumeration shall be liable to the school district for all school money
10 which such district may lose by such neglect.

11 (2) On or before June 30 the superintendent of each school district
12 shall file with the Commissioner of Education a report described as an
13 end-of-the-school-year annual statistical summary showing (a) the number
14 of children attending school during the year under five years of age, (b)
15 the length of time the school has been taught during the year by a
16 qualified teacher, (c) the length of time taught by each substitute
17 teacher, (d) the number of classes a student is required to enroll in for
18 full-time enrollment in the district at each grade level for the school
19 year, (e) the definition of a class used by the district for the purpose
20 of determining full-time and part-time enrollment at each grade level for
21 the school year, (f) the number of classes completed by each virtual
22 school student as defined in section 79-1003 for the school year, and (g)
23 (d) such other information as the Commissioner of Education directs.

24 (3) On or before November 1 the superintendent of each school
25 district shall submit to the Commissioner of Education a report described
26 as the annual financial report showing (a) (i) the amount of money
27 received from all sources during the year and the amount of money
28 expended by the school district during the year, (b) (ii) the amount of
29 bonded indebtedness, (c) (iii) such other information as shall be
30 necessary to fulfill the requirements of the Tax Equity and Educational
31 Opportunities Support Act and section 79-1114, and (d) (iv) such other

1 information as the Commissioner of Education directs.

2 (4)(a) On or before October 15 of each year, the superintendent of
3 each school district shall file with the commissioner the fall school
4 district membership report, which report shall include the number of
5 children from birth through twenty years of age enrolled in the district
6 on October 1 of a given school year. The report shall also include
7 enumerate (i) students by grade level, (ii) school district levies and
8 total assessed valuation for the current fiscal year, (iii) students
9 enrolled in the district as option students, (iv) resident students
10 enrolled in another district as option students, (v) students enrolled in
11 the district as open enrollment students, (vi) and resident students
12 enrolled in another district as open enrollment students, (vii) the
13 number of classes a student is required to enroll in for full-time
14 enrollment in the district at each grade level for such school year,
15 (viii) the definition of a class used by the district for the purpose of
16 determining full-time and part-time enrollment at each grade level for
17 such school year, (ix) the number of classes in which each virtual school
18 student as defined in section 79-1003 is enrolled on October 1 of such
19 school year, and (x) (iv) such other information as the Commissioner of
20 Education directs.

21 ~~(b) On or before October 15 of each year prior to 2017, each~~
22 ~~learning community coordinating council shall issue to the department a~~
23 ~~report which enumerates the learning community levies pursuant to~~
24 ~~subdivision (2)(b) of section 77-3442 and total assessed valuation for~~
25 ~~the current fiscal year.~~

26 (b) (e) When any school district fails to submit its fall membership
27 report by November 1, the commissioner shall, after notice to the
28 district and an opportunity to be heard, direct that any state aid
29 granted pursuant to the Tax Equity and Educational Opportunities Support
30 Act be withheld until such time as the report is received by the
31 department. In addition, the commissioner shall direct the county

1 treasurer to withhold all school money belonging to the school district
2 until such time as the commissioner notifies the county treasurer of
3 receipt of such report. The county treasurer shall withhold such money.

4 Sec. 2. Section 79-1003, Revised Statutes Cumulative Supplement,
5 2022, is amended to read:

6 79-1003 For purposes of the Tax Equity and Educational Opportunities
7 Support Act:

8 (1) Adjusted general fund operating expenditures means the
9 difference of the general fund operating expenditures increased by the
10 cost growth factor calculated pursuant to section 79-1007.10, minus the
11 transportation allowance, special receipts allowance, poverty allowance,
12 limited English proficiency allowance, distance education and
13 telecommunications allowance, elementary site allowance, summer school
14 allowance, community achievement plan allowance, and focus school and
15 program allowance;

16 (2) Adjusted valuation means the assessed valuation of taxable
17 property of each local system in the state, adjusted pursuant to the
18 adjustment factors described in section 79-1016. Adjusted valuation means
19 the adjusted valuation for the property tax year ending during the school
20 fiscal year immediately preceding the school fiscal year in which the aid
21 based upon that value is to be paid. For purposes of determining the
22 local effort rate yield pursuant to section 79-1015.01, adjusted
23 valuation does not include the value of any property which a court, by a
24 final judgment from which no appeal is taken, has declared to be
25 nontaxable or exempt from taxation;

26 (3) Allocated income tax funds means the amount of assistance paid
27 to a local system pursuant to section 79-1005.01;

28 (4) Average daily membership means, as provided in each school
29 district's annual statistical summary pursuant to section 79-528, the
30 average daily membership for grades kindergarten through twelve
31 attributable to the local system, including as provided in each

1 ~~district's annual statistical summary, and includes~~ the proportionate
2 share of students enrolled in a public school instructional program on
3 less than a full-time basis;

4 (5) Base fiscal year means the first school fiscal year following
5 the school fiscal year in which the reorganization or unification
6 occurred;

7 (6) Board means the school board of each school district;

8 (7) Categorical funds means funds limited to a specific purpose by
9 federal or state law, including, but not limited to, Title I funds, Title
10 VI funds, federal career and technical education funds, federal school
11 lunch funds, Indian education funds, Head Start funds, and funds received
12 prior to July 1, 2022, from the Nebraska Education Improvement Fund;

13 (8) Consolidate means to voluntarily reduce the number of school
14 districts providing education to a grade group and does not include
15 dissolution pursuant to section 79-498;

16 (9) Converted contract means an expired contract that was in effect
17 for at least fifteen school years beginning prior to school year 2012-13
18 for the education of students in a nonresident district in exchange for
19 tuition from the resident district when the expiration of such contract
20 results in the nonresident district educating students, who would have
21 been covered by the contract if the contract were still in effect, as
22 option students pursuant to the enrollment option program established in
23 section 79-234;

24 (10) Converted contract option student means a student who will be
25 an option student pursuant to the enrollment option program established
26 in section 79-234 for the school fiscal year for which aid is being
27 calculated and who would have been covered by a converted contract if the
28 contract were still in effect and such school fiscal year is the first
29 school fiscal year for which such contract is not in effect;

30 (11) Department means the State Department of Education;

31 (12) District means any school district or unified system as defined

1 in section 79-4,108;

2 (13) Ensuing school fiscal year means the school fiscal year
3 following the current school fiscal year;

4 (14) Equalization aid means the amount of assistance calculated to
5 be paid to a local system pursuant to section 79-1008.01;

6 (15) Fall membership means, ~~the total membership in kindergarten~~
7 ~~through grade twelve attributable to the local system~~ as reported on the
8 fall school district membership reports for each district pursuant to
9 section 79-528, the total membership in kindergarten through grade twelve
10 attributable to the local system, including the proportionate share of
11 students enrolled in a public school instructional program on less than a
12 full-time basis;

13 (16) Fiscal year means the state fiscal year which is the period
14 from July 1 to the following June 30;

15 (17) Formula students means:

16 (a) For state aid certified pursuant to section 79-1022, the sum of
17 the product of fall membership from the school fiscal year immediately
18 preceding the school fiscal year in which the aid is to be paid
19 multiplied by the average ratio of average daily membership to fall
20 membership for the second school fiscal year immediately preceding the
21 school fiscal year in which the aid is to be paid and the prior two
22 school fiscal years plus sixty percent of the qualified early childhood
23 education fall membership plus tuitioned students from the school fiscal
24 year immediately preceding the school fiscal year in which aid is to be
25 paid minus the product of the number of students enrolled in kindergarten
26 that is not full-day kindergarten from the fall membership multiplied by
27 0.5; and

28 (b) For the final calculation of state aid pursuant to section
29 79-1065, the sum of average daily membership plus sixty percent of the
30 qualified early childhood education average daily membership plus
31 tuitioned students minus the product of the number of students enrolled

1 in kindergarten that is not full-day kindergarten from the average daily
2 membership multiplied by 0.5 from the school fiscal year immediately
3 preceding the school fiscal year in which aid was paid;

4 (18) Free lunch and free milk calculated students means, using the
5 most recent data available on November 1 of the school fiscal year
6 immediately preceding the school fiscal year in which aid is to be paid,
7 (a) for schools that did not provide free meals to all students pursuant
8 to the community eligibility provision, students who individually
9 qualified for free lunches or free milk pursuant to the federal Richard
10 B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq., and the
11 federal Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq., as such acts
12 and sections existed on January 1, 2021, and rules and regulations
13 adopted thereunder, plus (b) for schools that provided free meals to all
14 students pursuant to the community eligibility provision, the greater of
15 the number of students in such school who individually qualified for free
16 lunch or free milk using the most recent school fiscal year for which the
17 school did not provide free meals to all students pursuant to the
18 community eligibility provision or one hundred ten percent of the product
19 of the students who qualified for free meals at such school pursuant to
20 the community eligibility provision multiplied by the identified student
21 percentage calculated pursuant to such federal provision, except that the
22 free lunch and free milk calculated students for any school pursuant to
23 subdivision (18)(b) of this section shall not exceed one hundred percent
24 of the students qualified for free meals at such school pursuant to the
25 community eligibility provision;

26 (19) Full-day kindergarten means kindergarten offered by a district
27 for at least one thousand thirty-two instructional hours;

28 (20) General fund budget of expenditures means the total budget of
29 disbursements and transfers for general fund purposes as certified in the
30 budget statement adopted pursuant to the Nebraska Budget Act, except that
31 for purposes of the limitation imposed in section 79-1023, the general

1 fund budget of expenditures does not include any special grant funds,
2 exclusive of local matching funds, received by a district;

3 (21) General fund expenditures means all expenditures from the
4 general fund;

5 (22) General fund operating expenditures means, for state aid
6 calculated for each school fiscal year, as reported on the annual
7 financial report for the second school fiscal year immediately preceding
8 the school fiscal year in which aid is to be paid, the total general fund
9 expenditures minus (a) the amount of all receipts to the general fund, to
10 the extent that such receipts are not included in local system formula
11 resources, from early childhood education tuition, summer school tuition,
12 educational entities as defined in section 79-1201.01 for providing
13 distance education courses through the Educational Service Unit
14 Coordinating Council to such educational entities, private foundations,
15 individuals, associations, charitable organizations, the textbook loan
16 program authorized by section 79-734, federal impact aid, and levy
17 override elections pursuant to section 77-3444, (b) the amount of
18 expenditures for categorical funds, tuition paid to other school
19 districts, tuition paid to postsecondary institutions for college credit,
20 transportation fees paid to other districts, adult education, community
21 services, redemption of the principal portion of general fund debt
22 service, retirement incentive plans authorized by section 79-855, and
23 staff development assistance authorized by section 79-856, (c) the amount
24 of any transfers from the general fund to any bond fund and transfers
25 from other funds into the general fund, (d) any legal expenses in excess
26 of fifteen-hundredths of one percent of the formula need for the school
27 fiscal year in which the expenses occurred, (e) expenditures to pay for
28 incentives agreed to be paid by a school district to certificated
29 employees in exchange for a voluntary termination of employment for which
30 the State Board of Education approved an exclusion pursuant to
31 subdivision (1)(h), (i), (j), or (k) of section 79-1028.01, (f)(i)

1 expenditures to pay for employer contributions pursuant to subsection (2)
2 of section 79-958 to the School Employees Retirement System of the State
3 of Nebraska to the extent that such expenditures exceed the employer
4 contributions under such subsection that would have been made at a
5 contribution rate of seven and thirty-five hundredths percent or (ii)
6 expenditures to pay for school district contributions pursuant to
7 subdivision (1)(c)(i) or (1)(d)(i) of section 79-9,113 to the retirement
8 system established pursuant to the Class V School Employees Retirement
9 Act to the extent that such expenditures exceed the school district
10 contributions under such subdivision that would have been made at a
11 contribution rate of seven and thirty-seven hundredths percent, and (g)
12 any amounts paid by the district for lobbyist fees and expenses reported
13 to the Clerk of the Legislature pursuant to section 49-1483.

14 For purposes of this subdivision (22) of this section, receipts from
15 levy override elections shall equal ninety-nine percent of the difference
16 of the total general fund levy minus a levy of one dollar and five cents
17 per one hundred dollars of taxable valuation multiplied by the assessed
18 valuation for school districts that have voted pursuant to section
19 77-3444 to override the maximum levy provided pursuant to section
20 77-3442;

21 (23) Income tax liability means the amount of the reported income
22 tax liability for resident individuals pursuant to the Nebraska Revenue
23 Act of 1967 less all nonrefundable credits earned and refunds made;

24 (24) Income tax receipts means the amount of income tax collected
25 pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable
26 credits earned and refunds made;

27 (25) Limited English proficiency students means the number of
28 students with limited English proficiency in a district from the most
29 recent data available on November 1 of the school fiscal year preceding
30 the school fiscal year in which aid is to be paid plus the difference of
31 such students with limited English proficiency minus the average number

1 of limited English proficiency students for such district, prior to such
2 addition, for the three immediately preceding school fiscal years if such
3 difference is greater than zero;

4 (26) Local system means a unified system or a school district;

5 (27) Low-income child means a child under nineteen years of age
6 living in a household having an annual adjusted gross income for the
7 second calendar year preceding the beginning of the school fiscal year
8 for which aid is being calculated equal to or less than the maximum
9 household income pursuant to sections 9(b)(1) and 17(c)(4) of the Richard
10 B. Russell National School Lunch Act, 42 U.S.C. 1758(b)(1) and 42 U.S.C.
11 1766(c)(4), respectively, and sections 3(a)(6) and 4(e)(1)(A) of the
12 Child Nutrition Act of 1966, 42 U.S.C. 1772(a)(6) and 42 U.S.C. 1773(e)
13 (1)(A), respectively, as such acts and sections existed on January 1,
14 2021, for a household of that size that would have allowed the child to
15 meet the income qualifications for free meals during the school fiscal
16 year immediately preceding the school fiscal year for which aid is being
17 calculated;

18 (28) Low-income students means the number of low-income children
19 within the district multiplied by the ratio of the formula students in
20 the district divided by the total children under nineteen years of age
21 residing in the district as derived from income tax information;

22 (29) Most recently available complete data year means the most
23 recent single school fiscal year for which the annual financial report,
24 fall school district membership report, annual statistical summary,
25 Nebraska income tax liability by school district for the calendar year in
26 which the majority of the school fiscal year falls, and adjusted
27 valuation data are available;

28 (30) Poverty students means the unadjusted poverty students plus the
29 difference of such unadjusted poverty students minus the average number
30 of poverty students for such district, prior to such addition, for the
31 three immediately preceding school fiscal years if such difference is

1 greater than zero;

2 (31) Proportionate share of students enrolled in a public school
3 instructional program on less than a full-time basis means, for both
4 virtual school students and students who are not virtual school students
5 who are enrolled in a public school instructional program on less than a
6 full-time basis, (a) for the purposes of fall membership, the number of
7 classes for which such students are enrolled in a public school
8 instructional program in the school district on October 1 divided by the
9 number of classes such students would be required to enroll in for full-
10 time enrollment in the district and (b) for the purposes of average daily
11 membership, the number of classes in a public school instructional
12 program in the school district completed by such students during the
13 school year divided by the number of classes such students would have
14 been required to enroll in for full-time enrollment in the district;

15 (32) ~~(31)~~ Qualified early childhood education average daily
16 membership means the product of the average daily membership of students
17 who will be eligible to attend kindergarten the following school year and
18 are enrolled in an early childhood education program approved by the
19 department pursuant to section 79-1103 for such school district for such
20 school year multiplied by the ratio of the actual instructional hours of
21 the program divided by one thousand thirty-two if: (a) The program is
22 receiving a grant pursuant to such section for the third year; (b) the
23 program has already received grants pursuant to such section for three
24 years; or (c) the program has been approved pursuant to subsection (5) of
25 section 79-1103 for such school year and the two preceding school years,
26 including any such students in portions of any of such programs receiving
27 an expansion grant;

28 (33) ~~(32)~~ Qualified early childhood education fall membership means
29 the product of membership on October 1 of each school year of students
30 who will be eligible to attend kindergarten the following school year and
31 are enrolled in an early childhood education program approved by the

1 department pursuant to section 79-1103 for such school district for such
2 school year multiplied by the ratio of the planned instructional hours of
3 the program divided by one thousand thirty-two if: (a) The program is
4 receiving a grant pursuant to such section for the third year; (b) the
5 program has already received grants pursuant to such section for three
6 years; or (c) the program has been approved pursuant to subsection (5) of
7 section 79-1103 for such school year and the two preceding school years,
8 including any such students in portions of any of such programs receiving
9 an expansion grant;

10 (34) ~~(33)~~ Regular route transportation means the transportation of
11 students on regularly scheduled daily routes to and from the schools such
12 students attend;

13 (35) ~~(34)~~ Reorganized district means any district involved in a
14 consolidation and currently educating students following consolidation;

15 (36) ~~(35)~~ School year or school fiscal year means the fiscal year of
16 a school district as defined in section 79-1091;

17 (37) ~~(36)~~ Sparse local system means a local system that is not a
18 very sparse local system but which meets the following criteria:

19 (a)(i) Less than two students per square mile in the county in which
20 each high school is located, based on the school district census, (ii)
21 less than one formula student per square mile in the local system, and
22 (iii) more than ten miles between each high school and the next closest
23 high school on paved roads;

24 (b)(i) Less than one and one-half formula students per square mile
25 in the local system and (ii) more than fifteen miles between each high
26 school and the next closest high school on paved roads;

27 (c)(i) Less than one and one-half formula students per square mile
28 in the local system and (ii) more than two hundred seventy-five square
29 miles in the local system; or

30 (d)(i) Less than two formula students per square mile in the local
31 system and (ii) the local system includes an area equal to ninety-five

1 percent or more of the square miles in the largest county in which a high
2 school is located in the local system;

3 ~~(38)~~ ~~(37)~~ Special education means specially designed kindergarten
4 through grade twelve instruction pursuant to section 79-1125, and
5 includes special education transportation;

6 ~~(39)~~ ~~(38)~~ Special grant funds means the budgeted receipts for
7 grants, including, but not limited to, categorical funds, reimbursements
8 for wards of the court, short-term borrowings including, but not limited
9 to, registered warrants and tax anticipation notes, interfund loans,
10 insurance settlements, and reimbursements to county government for
11 previous overpayment. The state board shall approve a listing of grants
12 that qualify as special grant funds;

13 ~~(40)~~ ~~(39)~~ State aid means the amount of assistance paid to a
14 district pursuant to the Tax Equity and Educational Opportunities Support
15 Act;

16 ~~(41)~~ ~~(40)~~ State board means the State Board of Education;

17 ~~(42)~~ ~~(41)~~ State support means all funds provided to districts by the
18 State of Nebraska for the general fund support of elementary and
19 secondary education;

20 ~~(43)~~ ~~(42)~~ Statewide average basic funding per formula student means
21 the statewide total basic funding for all districts divided by the
22 statewide total formula students for all districts;

23 ~~(44)~~ ~~(43)~~ Statewide average general fund operating expenditures per
24 formula student means the statewide total general fund operating
25 expenditures for all districts divided by the statewide total formula
26 students for all districts;

27 ~~(45)~~ ~~(44)~~ Teacher has the definition found in section 79-101;

28 ~~(46)~~ ~~(45)~~ Tuition receipts from converted contracts means tuition
29 receipts received by a district from another district in the most
30 recently available complete data year pursuant to a converted contract
31 prior to the expiration of the contract;

1 (47) ~~(46)~~ Tuitioned students means students in kindergarten through
2 grade twelve of the district whose tuition is paid by the district to
3 some other district or education agency;

4 (48) ~~(47)~~ Unadjusted poverty students means the greater of the
5 number of low-income students or the free lunch and free milk calculated
6 students in a district; ~~and~~

7 (49) ~~(48)~~ Very sparse local system means a local system that has:

8 (a)(i) Less than one-half student per square mile in each county in
9 which each high school is located based on the school district census,
10 (ii) less than one formula student per square mile in the local system,
11 and (iii) more than fifteen miles between the high school and the next
12 closest high school on paved roads; or

13 (b)(i) More than four hundred fifty square miles in the local
14 system, (ii) less than one-half student per square mile in the local
15 system, and (iii) more than fifteen miles between each high school and
16 the next closest high school on paved roads; ~~or~~

17 (50) Virtual school means any school or educational program that:

18 (a) Is operated by a school district;

19 (b) Offers courses for credit;

20 (c) Uses predominately Internet-based methods to deliver
21 instruction;

22 (d) Involves instruction that occurs asynchronously with the teacher
23 and student in separate locations;

24 (e) Requires the student to make academic progress toward the next
25 grade level or high school graduation;

26 (f) Requires the student to demonstrate subject matter competence
27 for each course or subject in which the student is enrolled as part of
28 the virtual school; and

29 (g) Requires the student, when age-appropriate, to complete state
30 assessments; and

31 (51) Virtual school student means a student who is a resident of

1 Nebraska enrolled in and attending a virtual school on at least a part-
2 time basis.

3 Sec. 3. Original sections 79-528 and 79-1003, Revised Statutes
4 Cumulative Supplement, 2022, are repealed.