

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 414

Introduced by Conrad, 46.

Read first time January 12, 2023

Committee: Education

1 A BILL FOR AN ACT relating to schools; to amend sections 79-239 and
2 79-244, Reissue Revised Statutes of Nebraska, and sections 79-238
3 and 79-2110, Revised Statutes Cumulative Supplement, 2022; to change
4 provisions relating to the enrollment option program; to harmonize
5 provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-238, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 79-238 (1)(a) (1) Except as provided in this section and sections
4 79-235.01 and 79-240, the school board of the option school district
5 shall adopt by resolution specific capacity standards for acceptance and
6 rejection of applications and for providing transportation for option
7 students.

8 (b) Capacity for special education services operated by an option
9 school district shall be determined on a case-by-case basis. If an
10 application for option enrollment received by a school district indicates
11 that the student has an individualized education plan under the
12 Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., or
13 has been diagnosed with a disability as defined in section 79-118.01,
14 such application shall be evaluated by the director of special education
15 services of the school district who shall determine if the school
16 district has the capacity to provide the applicant the appropriate
17 services and accommodations.

18 (c) For all other students, standards ~~Standards~~ may include the
19 capacity of a program, class, grade level, or school building ~~or the~~
20 ~~availability of appropriate special education programs operated by the~~
21 ~~option school district. Capacity~~ For a school district that is not a
22 ~~member of a learning community,~~ capacity shall be determined by setting a
23 maximum number of option students that a district will accept in any
24 program, class, grade level, or school building, based upon available
25 staff, facilities, projected enrollment of resident students, and
26 projected number of students with which the option school district will
27 contract based on existing contractual arrangements, ~~and availability of~~
28 ~~appropriate special education programs.~~

29 (d) To facilitate option enrollment ~~within a learning community,~~
30 ~~member~~ school districts shall annually ~~(a)~~ establish, publish, and report
31 the a maximum capacity for each school building under such district's

1 control pursuant to procedures, criteria, and deadlines established by
2 the State Department of Education learning community coordinating council
3 and (b) ~~provide a copy of the standards for acceptance and rejection of~~
4 ~~applications and transportation policies for option students to the~~
5 ~~learning community coordinating council~~. Except as otherwise provided in
6 this section, a the school board of the option school district may by
7 resolution, prior to October 15 of each school year, declare a program, a
8 class, or a school unavailable to option students for the next school
9 year due to lack of capacity. Standards shall not include previous
10 academic achievement, athletic or other extracurricular ability,
11 disabilities, proficiency in the English language, or previous
12 disciplinary proceedings except as provided in section 79-266.01. False
13 or substantively misleading information submitted by a parent or guardian
14 on an application to an option school district may be cause for the
15 option school district to reject a previously accepted application if the
16 rejection occurs prior to the student's attendance as an option student.

17 (2) The school board of every school district shall also adopt
18 specific standards and conditions for acceptance or rejection of a
19 request for release of a resident or option student submitting an
20 application to an option school district after March 15 under subsection
21 (1) of section 79-237. Standards shall not include that a request
22 occurred after the deadline set forth in this subsection.

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

28 (4) Any option school district that is in a learning community shall
29 give first priority for enrollment to siblings of option students
30 enrolled in the option school district, second priority for enrollment to
31 students who have previously been enrolled in the option school district

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

26 Sec. 2. Section 79-239, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 79-239 (1) If an application is rejected by the option school
29 district or if the resident school district rejects a request for release
30 under subsection (1) of section 79-237, the rejecting school district
31 shall provide written notification to the parent or guardian stating (a)

1 the specific reasons for the rejection including, for students with an
2 individualized education plan under the Individuals with Disabilities
3 Education Act, 20 U.S.C. 1400 et seq., or with a diagnosed disability as
4 defined in section 79-1118.01, a description of services and
5 accommodations required that the school district does not have the
6 capacity to provide, and (b) the process for appealing such rejection to
7 the State Board of Education. Such notification shall be sent by
8 certified mail.

9 (2) The parent or legal guardian may appeal a rejection to the State
10 Board of Education by filing a written request, together with a copy of
11 the rejection notice, with the State Board of Education. Such request and
12 copy of the notice must be received by the board within thirty days after
13 the date the notification of the rejection was received by the parent or
14 legal guardian. Such hearing shall be held in accordance with the
15 Administrative Procedure Act and shall determine whether the procedures
16 of sections 79-234 to 79-241 have been followed.

17 Sec. 3. Section 79-244, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 79-244 The enrollment option program does not preclude a school
20 district from contracting with other school districts, educational
21 service units, or other state-approved entities for the provision of
22 services. ~~A child with a disability receiving services from another~~
23 ~~district pursuant to contract due to lack of appropriate programming in~~
24 ~~his or her resident school district is not eligible to transfer as an~~
25 ~~option student into the district currently providing services but is~~
26 ~~eligible to transfer as an option student into any other district which~~
27 ~~accepts option students and has an appropriate program.~~

28 Sec. 4. Section 79-2110, Revised Statutes Cumulative Supplement,
29 2022, is amended to read:

30 79-2110 (1)(a) Each diversity plan shall provide for open enrollment
31 in all school buildings in the learning community for school years prior

1 to school year 2017-18, subject to specific limitations necessary to
2 bring about diverse enrollments in each school building in the learning
3 community. Such limitations, for school buildings other than focus
4 schools and programs other than focus programs, shall include giving
5 preference at each school building first to siblings of students who will
6 be enrolled as continuing students in such school building or program for
7 the first school year for which enrollment is sought in such school
8 building and then to students that contribute to the socioeconomic
9 diversity of enrollment at each building and may include establishing
10 zone limitations in which students may access several schools other than
11 their home attendance area school. Notwithstanding the limitations
12 necessary to bring about diversity, open enrollment shall include
13 providing access to students who do not contribute to the socioeconomic
14 diversity of a school building, if, subsequent to the open enrollment
15 selection process that is subject to limitations necessary to bring about
16 diverse enrollments, capacity remains in a school building. In such a
17 case, students who have applied to attend such school building shall be
18 selected to attend such school building on a random basis up to the
19 remaining capacity of such building. A student who has otherwise been
20 disqualified from the school building pursuant to the school district's
21 code of conduct or related school discipline rules shall not be eligible
22 for open enrollment pursuant to this section. Any student who attended a
23 particular school building in the prior school year and who is seeking
24 education in the grades offered in such school building shall be allowed
25 to continue attending such school building as a continuing open
26 enrollment student through school year 2016-17.

27 (b) To facilitate the open enrollment provisions of this subsection,
28 each school year each member school district in a learning community
29 shall establish a maximum capacity for each school building under such
30 district's control pursuant to procedures and criteria established by the
31 State Department of Education learning community coordinating council.

1 Each member school district shall also establish attendance areas for
2 each school building under the district's control, except that the school
3 board shall not establish attendance areas for focus schools or focus
4 programs. The attendance areas shall be established such that all of the
5 territory of the school district is within an attendance area for each
6 grade. Students residing in a school district shall be allowed to attend
7 a school building in such school district.

8 (c) For purposes of this section and sections 79-238 and 79-611,
9 student who contributes to the socioeconomic diversity of enrollment
10 means (i) 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 attend either has more students
13 qualifying for free or reduced-price lunches than the average percentage
14 of such students in all school buildings in the learning community or
15 provides free meals to all students pursuant to the community eligibility
16 provision or (ii) a student who qualifies for free or reduced-price
17 lunches based on information collected from parents and guardians when,
18 based upon the certification pursuant to section 79-2120, the school
19 building the student will attend has fewer students qualifying for free
20 or reduced-price lunches than the average percentage of such students in
21 all school buildings in the learning community and does not provide free
22 meals to all students pursuant to the community eligibility provision.

23 (2)(a) On or before March 15 of each year prior to 2017, a parent or
24 guardian of a student residing in a member school district in a learning
25 community may submit an application to any school district in the
26 learning community on behalf of a student who is applying to attend a
27 school building for the following school year that is not in an
28 attendance area where the applicant resides or a focus school, focus
29 program, or magnet school as such terms are defined in section 79-769. On
30 or before April 1 of each year beginning with the year immediately
31 following the year in which the initial coordinating council for the

1 learning community takes office, the school district shall accept or
2 reject such applications based on the capacity of the school building,
3 the eligibility of the applicant for the school building or program, the
4 number of such applicants that will be accepted for a given school
5 building, and whether or not the applicant contributes to the
6 socioeconomic diversity of the school or program to which he or she has
7 applied and for which he or she is eligible. The school district shall
8 notify such parent or guardian in writing of the acceptance or rejection.

9 (b) A student may not apply to attend a school building in the
10 learning community for any grades that are offered by another school
11 building for which the student had previously applied and been accepted
12 pursuant to this section, absent a hardship exception as established by
13 the individual school district. On or before September 1 of each year
14 prior to 2017, each school district shall provide to the learning
15 community coordinating council a complete and accurate report of all
16 applications received, including the number of students who applied at
17 each grade level at each building, the number of students accepted at
18 each grade level at each building, the number of such students that
19 contributed to the socioeconomic diversity that applied and were
20 accepted, the number of applicants denied and the rationales for denial,
21 and other such information as requested by the learning community
22 coordinating council.

23 (3) Each diversity plan may include establishment of one or more
24 focus schools or focus programs and the involvement of every member
25 school district in one or more pathways across member school districts.
26 Enrollment in each focus school or focus program shall be designed to
27 reflect the socioeconomic diversity of the learning community as a whole.
28 School district selection of students for focus schools or focus programs
29 shall be on a random basis from two pools of applicants, those who
30 qualify for free and reduced-price lunches and those who do not qualify
31 for free and reduced-price lunches. The percentage of students selected

1 for focus schools from the pool of applicants who qualify for free and
2 reduced-price lunches shall be as nearly equal as possible to the
3 percentage of the student body of the learning community who qualify for
4 free and reduced-price lunches. The percentage of students selected for
5 focus schools from the pool of applicants who do not qualify for free and
6 reduced-price lunches shall be as nearly equal as possible to the
7 percentage of the student body of the learning community who do not
8 qualify for free and reduced-price lunches. If more capacity exists in a
9 focus school or program than the number of applicants for such focus
10 school or program that contribute to the socioeconomic diversity of the
11 focus school or program, the school district shall randomly select
12 applicants up to the number of applicants that will be accepted for such
13 building. A student who will complete the grades offered at a focus
14 program, focus school, or magnet school that is part of a pathway shall
15 be allowed to attend the focus program, focus school, or magnet school
16 offering the next grade level as part of the pathway as a continuing
17 student. A student who completes the grades offered at a focus program,
18 focus school, or magnet school shall be allowed to attend a school
19 offering the next grade level in the school district responsible for the
20 focus program, focus school, or magnet school as a continuing student. A
21 student who attended a program or school in the school year immediately
22 preceding the first school year for which the program or school will
23 operate as a focus program or focus school approved by the learning
24 community and meeting the requirements of section 79-769 and who has not
25 completed the grades offered at the focus program or focus school shall
26 be a continuing student in the program or school. For school year
27 2016-17, students attending a focus program or focus school outside of
28 the school district shall be considered open enrollment students and, for
29 school year 2017-18 and each school year thereafter, students attending a
30 focus program or focus school shall be considered option enrollment
31 students.

1 (4) On or before February 15 of each year, a parent or guardian of a
2 student who is currently attending a school building or program, except a
3 magnet school, focus school, or focus program, outside of the school
4 district where the student resides and who will complete the grades
5 offered at such school building prior to the following school year shall
6 provide notice, on a form provided by the school district, to the school
7 board of the school district containing such school building (a) for
8 years prior to 2017, if such student will attend another school building
9 within such district as a continuing student and which school building
10 such student would prefer to attend or (b) for 2017 and each year
11 thereafter, if such student will apply to enroll as an option student in
12 another school building within such district and which school building
13 such student would prefer to attend. On or before March 1, such school
14 board shall provide a notice to such parent or guardian stating which
15 school building or buildings the student shall be allowed to attend in
16 such school district as a continuing student or an option student for the
17 following school year. If the student resides within the school district,
18 the notice shall include the school building offering the grade the
19 student will be entering for the following school year in the attendance
20 area where the student resides. This subsection shall not apply to focus
21 schools or programs.

22 (5) Prior to the beginning of school year 2017-18, a parent or
23 guardian of a student who moves to a new residence in the learning
24 community after April 1 may apply directly to a school board within the
25 learning community within ninety days after moving for the student to
26 attend a school building outside of the attendance area where the student
27 resides. Such school board shall accept or reject such application within
28 fifteen days after receiving the application, based on the number of
29 applications and qualifications pursuant to subsection (2) or (3) of this
30 section for all other students.

31 (6) A parent or guardian of a student who wishes to change school

1 buildings for emergency or hardship reasons may apply directly to a
2 school board within the learning community at any time for the student to
3 attend a school building outside of the attendance area where the student
4 resides. Such application shall state the emergency or hardship and shall
5 be kept confidential by the school board. Such school board shall accept
6 or reject such application within fifteen days after receiving the
7 application. Applications shall only be accepted if an emergency or
8 hardship was presented which justifies an exemption from the procedures
9 in subsection (4) of this section based on the judgment of such school
10 board, and such acceptance shall not exceed the number of applications
11 that will be accepted for the school year pursuant to subsection (2) or
12 (3) of this section for such building.

13 (7) Each student attending a school building in the resident school
14 district as an open enrollment student for any part of school year
15 2016-17 shall be allowed to continue attending such school building
16 without submitting an additional application unless the student has
17 completed the grades offered in such school building or has been expelled
18 and is disqualified pursuant to section 79-266.01.

19 Sec. 5. Original sections 79-239 and 79-244, Reissue Revised
20 Statutes of Nebraska, and sections 79-238 and 79-2110, Revised Statutes
21 Cumulative Supplement, 2022, are repealed.