

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 774

Introduced by Vargas, 7.

Read first time January 18, 2023

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, 79-268, 79-269, 79-272,
3 79-276, 79-278, 79-282, 79-283, and 79-287, Reissue Revised Statutes
4 of Nebraska; to redefine a term; to change provisions relating to
5 intent, suspension, expulsion, reassignment, discipline, and
6 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 79-268, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 79-268 If a principal makes a decision to discipline a student by
3 long-term suspension, expulsion, or mandatory reassignment, the following
4 procedures shall be followed:

5 (1) The decision as to recommend discipline shall be made within two
6 school days after learning of the alleged student misconduct. On the date
7 of the decision, a written charge and a summary of the evidence
8 supporting such charge shall be filed with the superintendent. The school
9 shall, within two school days after the decision, send written notice by
10 registered or certified mail to the student and his or her parent or
11 guardian informing them of the rights established under the Student
12 Discipline Act;

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

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

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

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

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

31 (e) A statement that the principal, legal counsel for the school,

1 the student, the student's parent, or the student's representative or
2 guardian has the right (i) to examine the student's academic and
3 disciplinary records and any affidavits to be used at the hearing
4 concerning the alleged misconduct and (ii) to know the identity of the
5 witnesses to appear at the hearing and the substance of their testimony;
6 and

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

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

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

29 (4) For purposes of this section, mandatory reassignment, regardless
30 of its implementation date, shall be subject to the procedures of this
31 section.

1 Sec. 7. Section 79-269, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 79-269 (1)(a) ~~(1)~~ If a hearing is requested within five school days
4 after receipt of the notice as provided in section 79-268, the
5 superintendent shall ~~recommend appointment of~~ ~~appoint~~ a hearing examiner
6 within two school days after receipt of the hearing request.

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

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

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

28 (ii) Have personal knowledge of evidentiary facts concerning the
29 proceeding;

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

31 (iv) Have a spouse who is an employee of, or is under contract with,

1 the school district.

2 (d) For purposes of this section a qualified hearing examiner shall
3 be an individual who has knowledge of the Student Discipline Act,
4 training in its statutory requirements, or experience conducting student
5 hearings.

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

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

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

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

28 Sec. 8. Section 79-272, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 79-272 If a hearing is requested under sections 79-268 and 79-269
31 more than five school days but not more than thirty calendar days

1 following the actual receipt of written notice, the hearing examiner
2 shall be appointed and the hearing shall be held pursuant to the
3 requirements of section 79-269 but the imposed punishment shall continue
4 in effect pending final determination.

5 Sec. 9. Section 79-276, Reissue Revised Statutes of Nebraska, is
6 amended to read:

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

17 Sec. 10. Section 79-278, Reissue Revised Statutes of Nebraska, is
18 amended to read:

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

31 (2) The student, the student's parent, guardian, or representative,

1 the principal, or the hearing examiner has the right to question any
2 witness giving information at the hearing.

3 Sec. 11. Section 79-282, Reissue Revised Statutes of Nebraska, is
4 amended to read:

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

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

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

27 Sec. 12. Section 79-283, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 79-283 (1) Written notice of the findings and recommendations of the
30 hearing examiner and the determination of the superintendent under
31 section 79-282 shall be made by certified or registered mail or by

1 personal delivery to the student or the student's parent or guardian.
2 Upon receipt of such written notice by the student, parent, or guardian,
3 the determination of the superintendent shall take immediate effect
4 unless the student or the student's parent or guardian appeals the
5 written notice of determination of the superintendent pursuant to section
6 79-285.

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

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

1 effect for the first semester of the following school year. Such action
2 may be modified or terminated by the school district at any time during
3 the expulsion period.

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

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

27 Sec. 13. Section 79-287, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 79-287 The final action of the board under section 79-286 shall be
30 taken within three calendar days after the hearing and be evidenced by
31 personally delivering or mailing by certified mail a copy of the board's

1 decision to the student and his or her parent or guardian within three
2 calendar days after the final action.

3 Sec. 14. Original sections 79-254, 79-256, 79-265, 79-266, 79-268,
4 79-269, 79-272, 79-276, 79-278, 79-282, 79-283, and 79-287, Reissue
5 Revised Statutes of Nebraska, are repealed.