

ENGROSSED LEGISLATIVE BILL 653

Introduced by Murman, 38; Conrad, 46; Fredrickson, 20; Lippincott, 34;
Lonowski, 33; Sanders, 45.

A BILL FOR AN ACT relating to education; to amend sections 79-238, 79-265, 79-265.01, and 79-268, Reissue Revised Statutes of Nebraska; to change provisions relating to acceptance of students under the enrollment option program; to change provisions relating to requirements for disciplining students under the Student Discipline Act; and to repeal the original sections.

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

Section 1. Section 79-238, Reissue Revised Statutes of Nebraska, is amended to read:

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

(b) Capacity for special education services operated by an option school district shall be determined on a case-by-case basis. If an application for option enrollment received by a school district indicates that the student has an individualized education program under the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., or has been diagnosed with a disability as defined in section 79-1118.01, such application shall be evaluated by the director of special education services of the school district or the director's designee who shall determine if the school district and the appropriate class, grade level, or school building in such school district has the capacity to provide the applicant the appropriate services and accommodations.

(c) For all other students, standards may include the capacity of a program, class, grade level, or school building. Capacity shall be determined by setting a maximum number of option students that a district will accept in

any program, class, grade level, or school building, based upon available staff, facilities, projected enrollment of resident students, and projected number of students with which the option school district will contract based on existing contractual arrangements.

(d) To facilitate option enrollment, school districts shall annually establish, publish, and report the capacity for each school building under such district's control pursuant to procedures, criteria, and deadlines established by the State Board of Education. Except as otherwise provided in this section, a school board may by resolution, prior to October 15 of each school year, declare a program, a class, or a school unavailable to option students for the next school year due to lack of capacity. Standards shall not include previous academic achievement, athletic or other extracurricular ability, disabilities, proficiency in the English language, or previous disciplinary proceedings except as provided in section 79-266.01. False or substantively misleading information submitted by a parent or guardian on an application to an option school district may be cause for the option school district to reject a previously accepted application if the rejection occurs prior to the student's attendance as an option student.

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

(3) Any option school district that is not a member of a learning community shall automatically accept applications for siblings of option students enrolled in the option school district without regard to capacity limitations.

(4) Any option school district that is in a learning community shall automatically accept applications for siblings of option students enrolled in the option school district without regard to capacity limitations, then give

first priority for enrollment to students who have previously been enrolled in the option school district as an open enrollment student, second priority for enrollment to students who reside in the learning community and who contribute to the socioeconomic diversity of enrollment at the school building to which the student will be assigned pursuant to section 79-235, and final priority for enrollment to other students who reside in the learning community. The option school district shall not be required to accept a student meeting the priority criteria in this section if the district is at capacity as determined pursuant to subsection (1) of this section except for siblings of option students or as provided in section 79-235.01 or 79-240. For purposes of the enrollment option program, a student who contributes to the socioeconomic diversity of enrollment at a school building within a learning community means (a) a student who does not qualify for free or reduced-price lunches when, based upon the certification pursuant to section 79-2120, the school building the student will be assigned to attend either has more students qualifying for free or reduced-price lunches than the average percentage of such students in all school buildings in the learning community or provides free meals to all students pursuant to the community eligibility provision or (b) a student who qualifies for free or reduced-price lunches based on information collected voluntarily from parents and guardians pursuant to section 79-237 when, based upon the certification pursuant to section 79-2120, the school building the student will be assigned to attend has fewer students qualifying for free or reduced-price lunches than the average percentage of such students in all school buildings in the learning community and does not provide free meals to all students pursuant to the community eligibility provision.

Sec. 2. Section 79-265, Reissue Revised Statutes of Nebraska, is amended to read:

79-265 (1) Except as provided in section 79-265.01, the principal may deny any student the right to attend school or to take part in any school function for a period of up to five school days on the following grounds:

(a) Conduct constituting grounds for expulsion as set out in the Student

Discipline Act; or

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

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

(3) Before such short-term suspension takes effect, the student and the parent, guardian, or educational decisionmaker as defined in section 79-530 of the student shall be given oral and written notice of the charges against the student, an explanation of the evidence the authorities have, and an opportunity to present the student's version of the events leading to the alleged conduct or violation the principal has determined necessitates a short-term suspension and evidence to support the student's version of such events.

(4)(a) Within twenty-four hours or such additional time as is reasonably necessary, not to exceed an additional forty-eight hours, following such suspension, the principal shall send a written statement to the student and his or her parent or guardian describing:

(i) The student's conduct, misconduct, or violation of the rule or standard;

(ii) The reasons for the action taken;

(iii) The actions made by the school to try to discontinue or alleviate the behavior of the student prior to considering suspension;

(iv) Resources the school is able to provide or recommend to assist the student; and

(v) How the school plans to handle such behavior in the future, including an actionable plan aimed at maximizing strategies to keep the student in school.

(b) The principal shall make a reasonable effort to hold a conference with the parent or guardian before or at the time the student returns to school and shall document such effort in writing. If such conference has not been held, a

parent, guardian, or educational decisionmaker as defined in section 79-530 may submit a written request to the school for a conference with the principal relating to the short-term suspension of such parent's, guardian's, or educational decisionmaker's child pursuant to this section and the written statement received pursuant to subdivision (4)(a) of this section.

Sec. 3. Section 79-265.01, Reissue Revised Statutes of Nebraska, is amended to read:

79-265.01 (1) Except as provided in subsection (2) of this section, an elementary school shall not suspend a student in pre-kindergarten through second grade. Each school district shall develop a policy to implement this section which shall include disciplinary measures inside the school as an alternative to suspension.

(2) An elementary school may suspend a student in pre-kindergarten through second grade if such student:

(a) Brings a deadly weapon as defined in section 28-109 onto school grounds, into a vehicle owned, leased, or contracted by a school being used for a school purpose or into a vehicle being driven for a school purpose by a school employee or his or her designee, or to a school-sponsored activity or athletic event; or

(b) Engages in violent behavior capable of causing physical harm to another student or school employee.

Sec. 4. Section 79-268, Reissue Revised Statutes of Nebraska, is amended to read:

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

(1) The decision as to recommend discipline shall be made within two school days after learning of the alleged student misconduct. On the date of the decision, a written charge and a summary of the evidence supporting such charge shall be filed with the superintendent. The school shall, within two school days after the decision, send written notice by registered or certified

mail to the student and his or her parent or guardian informing them of the rights established under the Student Discipline Act;

(2) Such written notice shall include the following:

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

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

(c) Resources the school is able to provide or recommend to assist the student;

(d) How the school plans to handle such behavior in the future, including an actionable plan aimed at maximizing strategies to keep the student in school;

(e) A statement that, before long-term suspension, expulsion, or mandatory reassignment can be invoked, the student has a right to a hearing, upon request, and that if the student is suspended pending the outcome of the hearing, the student may complete classwork and homework, including, but not limited to, examinations, missed during the period of suspension pursuant to district guidelines which shall not require the student to attend the school district's alternative programs for expelled students in order to complete classwork or homework;

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

(g) A statement that the principal, legal counsel for the school, the student, the student's parent, or the student's representative or guardian has the right (i) to examine the student's academic and disciplinary records and any affidavits to be used at the hearing concerning the alleged misconduct and (ii) to know the identity of the witnesses to appear at the hearing and the substance of their testimony; and

(h) A form on which the student, the student's parent, or the student's

guardian may request a hearing, to be signed by such parties and delivered to the principal or superintendent in person or by registered or certified mail to the address provided on such form, as prescribed in sections 79-271 and 79-272;

(3) When a notice of intent to discipline a student by long-term suspension, expulsion, or mandatory reassignment is filed with the superintendent, the student may be suspended by the principal until the date the long-term suspension, expulsion, or mandatory reassignment takes effect, if the principal determines that the student must be suspended immediately to prevent or substantially reduce the risk of (a) interference with an educational function or school purpose or (b) a personal injury to the student himself or herself, other students, school employees, or school volunteers; and

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

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

Sec. 5. Original sections 79-238, 79-265, 79-265.01, and 79-268, Reissue Revised Statutes of Nebraska, are repealed.

PRESIDENT OF THE LEGISLATURE

THIS IS TO CERTIFY that the within LB 653 was passed by the One Hundred Ninth Legislature of Nebraska at its Second Session on the day of 20.....

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR