

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 653

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

Read first time January 22, 2025

Committee: Education

1 A BILL FOR AN ACT relating to education; to amend sections 79-238,
2 79-239, 79-246, 79-1021, and 79-1142, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to applications, capacity,
4 and reports, and provide for reimbursement for certain students
5 under the enrollment option program; to change authorized uses of
6 the Education Future Fund; to change provisions relating to
7 reimbursement for special education programs and support services;
8 to harmonize provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

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

3 79-238 (1)(a) 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.

7 (b)(i) ~~(b)~~ Capacity for special education services operated by an
8 option school district shall be determined on a case-by-case basis,
9 subject to the requirements of subdivision (ii) of this subsection. If an
10 application for option enrollment received by a school district indicates
11 that the student has an individualized education program under the
12 federal Individuals with Disabilities Education Act, 20 U.S.C. 1400 et
13 seq., or has been diagnosed with a disability as defined in section
14 79-1118.01, such application shall be evaluated by the director of
15 special education services of the school district or the director's
16 designee who shall determine if the school district and the appropriate
17 class, grade level, or school building in such school district has the
18 capacity to provide the applicant the appropriate services and
19 accommodations.

20 (ii) Regardless of capacity for special education services, the
21 number of applications made by students with an individualized education
22 program under the federal Individuals with Disabilities Education Act, 20
23 U.S.C. 1400 et seq., which are denied by such school district cannot
24 exceed sixteen percent of the total enrollment option applications denied
25 by such school district in such school year.

26 (c) For all other students, standards may include the capacity of a
27 program, class, grade level, or school building. Capacity shall be
28 determined by setting a maximum number of option students that a district
29 will accept in any program, class, grade level, or school building, based
30 upon available staff, facilities, projected enrollment of resident
31 students, and projected number of students with which the option school

1 district will contract based on existing contractual arrangements.

2 (d) To facilitate option enrollment, school districts shall annually
3 establish, publish, and report the capacity for each school building
4 under such district's control pursuant to procedures, criteria, and
5 deadlines established by the State Board of Education. Except as
6 otherwise provided in this section, a school board may by resolution,
7 prior to October 15 of each school year, declare a program, a class, or a
8 school unavailable to option students for the next school year due to
9 lack of capacity. Standards shall not include previous academic
10 achievement, athletic or other extracurricular ability, disabilities,
11 proficiency in the English language, or previous disciplinary proceedings
12 except as provided in section 79-266.01. A school district that accepts
13 applications on a school building by school building basis under the
14 enrollment option program and receives an application for a school
15 building that is at capacity for purposes of the enrollment option
16 program shall notify the parent or guardian that submitted such
17 application of the other school buildings in such school district that
18 are not at capacity and are available to the student for purposes of the
19 enrollment option program. False or substantively misleading information
20 submitted by a parent or guardian on an application to an option school
21 district may be cause for the option school district to reject a
22 previously accepted application if the rejection occurs prior to the
23 student's attendance as an option student.

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

30 (3) Any option school district that is not a member of a learning
31 community shall automatically accept as an option student ~~give first~~

1 ~~priority for enrollment to siblings of option students that apply to such~~
2 ~~school district , except that the option school district shall not be~~
3 ~~required to accept the sibling of an option student if the district is at~~
4 ~~capacity except as provided in subsection (1) of section 79-240.~~

5 (4) Any option school district that is in a learning community shall
6 give first priority for enrollment to, and automatically accept
7 regardless of capacity, siblings of option students enrolled in the
8 option school district, second priority for enrollment to students who
9 have previously been enrolled in the option school district as an open
10 enrollment student, third priority for enrollment to students who reside
11 in the learning community and who contribute to the socioeconomic
12 diversity of enrollment at the school building to which the student will
13 be assigned pursuant to section 79-235, and final priority for enrollment
14 to other students who reside in the learning community. The option school
15 district shall not be required to accept a student meeting the priority
16 criteria in this section if the district is at capacity as determined
17 pursuant to subsection (1) of this section except for siblings of option
18 students or as provided in section 79-235.01 or 79-240. For purposes of
19 the enrollment option program, a student who contributes to the
20 socioeconomic diversity of enrollment at a school building within a
21 learning community means (a) a student who does not qualify for free or
22 reduced-price lunches when, based upon the certification pursuant to
23 section 79-2120, the school building the student will be assigned to
24 attend either has more students qualifying for free or reduced-price
25 lunches than the average percentage of such students in all school
26 buildings in the learning community or provides free meals to all
27 students pursuant to the community eligibility provision or (b) a student
28 who qualifies for free or reduced-price lunches based on information
29 collected voluntarily from parents and guardians pursuant to section
30 79-237 when, based upon the certification pursuant to section 79-2120,
31 the school building the student will be assigned to attend has fewer

1 students qualifying for free or reduced-price lunches than the average
2 percentage of such students in all school buildings in the learning
3 community and does not provide free meals to all students pursuant to the
4 community eligibility provision.

5 **Sec. 2.** Section 79-239, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 79-239 (1) A school district that receives an incomplete application
8 shall notify the applicant within ten business days after receipt of such
9 incomplete application that the application is incomplete and will be
10 automatically rejected if not corrected.

11 (2) ~~(1)~~ If an application is rejected by the option school district
12 or if the resident school district rejects a request for release under
13 subsection (1) of section 79-237, the rejecting school district shall
14 provide written notification to the parent or guardian stating (a) the
15 specific reasons for the rejection including, for students with an
16 individualized education program under the federal Individuals with
17 Disabilities Education Act, 20 U.S.C. 1400 et seq., or with a diagnosed
18 disability as defined in section 79-1118.01, a description of services
19 and accommodations required that the school district does not have the
20 capacity to provide, and (b) the process for appealing such rejection to
21 the State Board of Education. Such notification shall be sent by
22 certified mail.

23 (3) ~~(2)~~ The parent or legal guardian may appeal a rejection to the
24 State Board of Education by filing a written request, together with a
25 copy of the rejection notice, with the State Board of Education. Such
26 request and copy of the notice must be received by the board within
27 thirty days after the date the notification of the rejection was received
28 by the parent or legal guardian. Such hearing shall be held in accordance
29 with the Administrative Procedure Act and shall determine whether the
30 procedures of sections 79-234 to 79-241 have been followed. Any rejection
31 based upon capacity limitations established under section 79-238 shall be

1 the responsibility of the school district to prove in any appeal filed
2 with the state board.

3 (4)(a) ~~(3)(a)~~ Beginning July 1, 2024, and on or before July 1 of
4 each year thereafter, each school district shall provide to the State
5 Department of Education information prescribed by the Commissioner of
6 Education relating to all applications rejected by the option school
7 district and applications related to students with an individualized
8 education program. Such information shall include, but not be limited to,
9 (i) ~~(a)~~ the number of applications rejected in each public school in such
10 district, except that incomplete applications rejected by the school
11 district shall not be included, (ii) ~~(b)~~ an explanation why each
12 application was rejected, (iii) ~~(c)~~ whether each application for option
13 enrollment indicated that the student had an individualized education
14 program under the federal Individuals with Disabilities Education Act, 20
15 U.S.C. 1400 et seq., or had been identified as a student with a
16 disability as defined in section 79-1118.01, (iv) ~~and (d)~~ whether
17 information regarding the requirements of subsection (4) of section
18 79-238 was provided to the applicant, and (v) the number of applications
19 accepted in each public school in such district for a student with an
20 individualized education program under the federal Individuals with
21 Disabilities Education Act, 20 U.S.C. 1400 et seq.

22 (b) The Commissioner of Education shall annually compile the
23 information received pursuant to this subsection and provide a report on
24 such information electronically to the Legislature beginning on September
25 1, 2024, and on or before September 1 of each year thereafter. The State
26 Board of Education may adopt and promulgate rules and regulations to
27 carry out this subsection.

28 **Sec. 3.** Section 79-246, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 79-246 (1)(a) The State Department of Education shall reimburse each
31 option school district for special education programs provided to option

1 students in accordance with section 79-1142.

2 (b) The resident school district of an option student shall be
3 exempted from the payment responsibility set forth in section 79-1140.

4 (c) For purposes of calculation to determine reimbursement pursuant
5 to section 79-1142, the option school district shall include the adjusted
6 average per pupil cost as defined in section 79-1114 of the option school
7 district and not the amount received pursuant to section 79-245.

8 (2)(a) On or before October 15 of each school fiscal year, a school
9 district that accepts an application for an option student with an
10 individualized education program under the federal Individuals with
11 Disabilities Education Act, 20 U.S.C. 1400 et seq., with expected costs
12 for education and support services of such student that are at least five
13 times greater than the adjusted average per pupil cost of the preceding
14 year as defined in section 79-1114, may apply to the State Department of
15 Education, in a manner prescribed by the department, for a payment from
16 the Education Future Fund to cover such expenses. Such application shall
17 include detailed expected costs for providing education and support
18 services to such student.

19 (b) The State Department of Education shall make a payment to each
20 qualifying applicant school district on or before November 15 for the
21 school fiscal year in which the application is submitted. Such payment
22 shall equal the expected amount to provide education and support services
23 for such student subtracted from the adjusted average per pupil cost of
24 the preceding school fiscal year, except that if the sum of all payments
25 for applicant school districts for such school fiscal year exceed the
26 available balance for such purpose in the Education Future Fund, each
27 payment shall be reduced proportionally so the sum of all payments for
28 applicant school districts for such school fiscal year equals the
29 available balance for such purpose in the fund.

30 **Sec. 4.** Section 79-1021, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 79-1021 (1) The Education Future Fund is created. The fund shall be
2 administered by the department and shall consist of money transferred to
3 the fund by the Legislature. Transfers may be made from the Education
4 Future Fund to the Computer Science and Technology Education Fund at the
5 direction of the Legislature. Any money in the Education Future Fund
6 available for investment shall be invested by the state investment
7 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
8 State Funds Investment Act.

9 (2) The fund shall be used only for the following purposes, in order
10 of priority:

11 (a) To fully fund equalization aid under the Tax Equity and
12 Educational Opportunities Support Act;

13 (b) To fund reimbursements related to special education under
14 section 79-1142;

15 (c) To fund foundation aid under the Tax Equity and Educational
16 Opportunities Support Act;

17 (d) To increase funding for school districts in a way that results
18 in direct property tax relief, which means a dollar-for-dollar
19 replacement of property taxes by a state funding source;

20 (e) To provide funding for a grant program created by the
21 Legislature to address teacher turnover rates and keep existing teachers
22 in classrooms;

23 (f) To provide funding to increase career and technical educational
24 classroom opportunities for students, including, but not limited to,
25 computer science education. Such funding must provide students with the
26 academic and technical skills, knowledge, and training necessary to
27 succeed in future careers;

28 (g) To provide funding for a grant program created by the
29 Legislature to provide students the opportunity to have a mentor who will
30 continuously engage with the student directly to aid in the student's
31 professional growth and give ongoing support and encouragement to the

1 student;

2 (h) To provide funding for extraordinary increases in special
3 education expenditures to allow school districts with large, unexpected
4 special education expenditures to more easily meet the needs of all
5 students;

6 (i) To provide funding to help recruit teachers throughout the state
7 by utilizing apprenticeships through a teacher apprenticeship program and
8 an alternative certification process;

9 (j) To provide funding to develop and implement a professional
10 learning system to help provide sustained professional learning and
11 training regarding evidence-based reading instruction and for a grant
12 program relating to dyslexia research; ~~and~~

13 (k) To provide funding for a pilot project administered by the State
14 Department of Education to provide menstrual products to school
15 districts; and -

16 (l) To provide funding for education and support services of
17 students with an individualized education program under the federal
18 Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., that
19 are accepted as option students into a school district to allow school
20 districts to accept more option students and allow students to receive
21 the best education possible.

22 (3)(a) The State Treasurer shall transfer one billion dollars from
23 the General Fund to the Education Future Fund in fiscal year 2023-24, on
24 such dates and in such amounts as directed by the budget administrator of
25 the budget division of the Department of Administrative Services.

26 (b) The State Treasurer shall transfer two hundred fifty million
27 dollars from the General Fund to the Education Future Fund in fiscal year
28 2024-25, on such dates and in such amounts as directed by the budget
29 administrator of the budget division of the Department of Administrative
30 Services.

31 (c) It is the intent of the Legislature that two hundred fifty

1 million dollars be transferred from the General Fund to the Education
2 Future Fund in fiscal year 2025-26 and each fiscal year thereafter.

3 **Sec. 5.** Section 79-1142, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 79-1142 (1) Level I services refers to services provided to children
6 with disabilities who require an aggregate of not more than three hours
7 per week of special education services and support services and includes
8 all administrative, diagnostic, consultative, and vocational-adjustment
9 counselor services.

10 (2) The total allowable reimbursable cost for support services shall
11 not exceed a percentage, established by the State Board of Education, of
12 the school district's or approved cooperative's total allowable
13 reimbursable cost for all special education programs and support
14 services. The percentage established by the board for support services
15 shall not exceed the difference of ten percent minus the percentage of
16 the appropriations for special education approved by the Legislature set
17 aside for reimbursements for support services pursuant to subsection (5)
18 of this section.

19 (3) Except as provided in subsection (6) and (7) of this section,
20 for special education and support services provided in each school fiscal
21 year, the department shall reimburse each school district in the
22 following school fiscal year eighty percent of the total allowable excess
23 costs for all special education programs and support services.
24 Cooperatives of school districts or educational service units shall also
25 be eligible for reimbursement for cooperative programs pursuant to this
26 section if such cooperatives or educational service units have complied
27 with the reporting and approval requirements of section 79-1155 for
28 cooperative programs which were offered in the preceding school fiscal
29 year.

30 (4)(a) The payments shall be made by the department to the school
31 district of residence, cooperative of school districts, or educational

1 service unit each school year in a minimum of seven payments between the
2 fifth and twentieth day of each month beginning in December. Additional
3 payments may be made based upon additional valid claims submitted. The
4 State Treasurer shall, between the fifth and twentieth day of each month,
5 notify the Director of Administrative Services of the amount of funds
6 available in the General Fund and the Education Future Fund for payment
7 purposes. The director shall, upon receiving such certification, draw
8 warrants against such funds as appropriated.

9 (b) If the General Fund appropriations for special education
10 approved by the Legislature, minus the amounts set aside pursuant to
11 subsection (5) of this section, are insufficient to reimburse eighty
12 percent of the total allowable excess costs for all special education
13 programs and support services for any school fiscal year:

14 (i) Such allowable excess costs shall be reimbursed from the General
15 Fund appropriations for special education approved by the Legislature,
16 minus the amounts set aside pursuant to subsection (5) of this section,
17 on a pro rata basis at the maximum rate of reimbursement such
18 appropriations will allow as determined by the department; and

19 (ii) The remainder of the eighty percent reimbursement of such
20 allowable excess costs shall be paid from the Education Future Fund.

21 (5) Residential settings described in subdivision (10)(c) of section
22 79-215 shall be reimbursed for the educational services, including
23 special education services and support services, in an amount determined
24 pursuant to the average per pupil cost of the service agency.
25 Reimbursements pursuant to this section shall be made from funds set
26 aside for such purpose within sixty days after receipt of a reimbursement
27 request submitted in the manner required by the department and including
28 any documentation required by the department for educational services
29 that have been provided, except that if there are not any funds available
30 for the remainder of the state fiscal year for such reimbursements, the
31 reimbursement shall occur within thirty days after the beginning of the

1 immediately following state fiscal year. The department may audit any
2 required documentation and subtract any payments made in error from
3 future reimbursements. The department shall set aside separate amounts
4 from the appropriations for special education approved by the Legislature
5 for reimbursements pursuant to this subsection for students receiving
6 special education services and for students receiving support services
7 for each state fiscal year. The amounts set aside for each purpose shall
8 be based on estimates of the reimbursements to be requested during the
9 state fiscal year and shall not be less than the total amount of
10 reimbursements requested in the prior state fiscal year plus any unpaid
11 requests from the prior state fiscal year.

12 (6) For each school district that received a payment pursuant to the
13 Extraordinary Increase in Special Education Expenditures Act in the
14 school fiscal year for which special education expenditures were
15 reimbursed pursuant to subsection (3) of this section, an amount equal to
16 such payment shall be subtracted from the reimbursement calculated
17 pursuant to subsection (3) of this section and such amount shall be
18 transferred to the Education Future Fund.

19 (7) For each school district that received a payment pursuant to
20 subsection (2) of section 79-246 in the school fiscal year for which
21 special education expenditures were reimbursed pursuant to subsection (3)
22 of this section, an amount equal to the payment made pursuant to
23 subsection (2) of section 79-246 shall be subtracted from the
24 reimbursement calculated pursuant to subsection (3) of this section and
25 such amount shall be transferred to the Education Future Fund.

26 ~~(8)~~ (7) On or before November 15 of each year, the department shall
27 submit to the Governor, the Appropriations Committee of the Legislature,
28 and the Education Committee of the Legislature:

29 (a) The total allowable excess costs for all special education
30 programs and support services for all school districts, cooperatives of
31 school districts, and educational service units; and

1 (b) The total reimbursements requested pursuant to subsection (5) of
2 this section for the most recently completed school fiscal year.

3 **Sec. 6.** Original sections 79-238, 79-239, 79-246, 79-1021, and
4 79-1142, Reissue Revised Statutes of Nebraska, are repealed.