

## LEGISLATIVE BILL 1250

Approved by the Governor April 7, 1994

Introduced by Withem, 14; Bohlke, 33

AN ACT relating to schools and school districts; to amend sections 79-211, 79-4,170 to 79-4,176, 79-4,178, 79-4,179, and 79-4,181 to 79-4,204, Reissue Revised Statutes of Nebraska, 1943, and section 79-4,180, Revised Statutes Supplement, 1992; to provide that certain juveniles obtain vocational education or training or secure and maintain employment; to provide for education, counseling, and other programs for such purpose; to provide for services relating to truancy; to name the Student Discipline Act; to authorize additional disciplinary actions; to require compliance with certain other laws as prescribed; to change provisions relating to giving notice; to change procedures relating to expulsion; to provide for completion of school work as prescribed; to redefine terms; to provide for reassignment agreements among schools; to provide for suspension of an expulsion as prescribed; to change provisions relating to grounds for long-term suspension, expulsion, or reassignment; to provide time periods for expulsion or exclusion; to provide for notification of law enforcement agencies as prescribed; to provide for notification of parents as prescribed; to harmonize provisions; to eliminate provisions relating to special schools for truant and incorrigibles; and to repeal the original sections, and also section 79-212, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. Any individual who is less than nineteen years of age and who is subject to the supervision of a juvenile probation officer or an adult probation officer pursuant to an order of the district court, county court, or juvenile court shall, as a condition of probation, be required to:

(1) Attend school to obtain vocational training or to achieve an appropriate educational level as prescribed by the probation officer after consultation with the school the individual attends or pursuant to section 3 of this act. If the individual fails to attend school regularly, maintain appropriate school behavior, or make satisfactory progress as determined by the probation officer after consultation with the school and the individual does not meet the requirements of subdivision (2) of this section, the district court, county court, or juvenile court shall take appropriate action to enforce, modify, or revoke its order granting probation; or

(2) Attend an on-the-job training program or secure and maintain employment. If the individual fails to attend the program or maintain employment and does not meet the requirements of subdivision (1) of this section, the district court, county court, or juvenile court shall take appropriate action to enforce, modify, or revoke its order granting probation.

Sec. 2. Section 1 of this act shall not apply to individuals who pass the general education development test or who earn a high school diploma. Subdivision (2) of section 1 of this act shall not apply to an individual required to attend school pursuant to section 79-201.

Sec. 3. (1) If the individual chooses to meet the requirements of section 1 of this act by attending a public school and the individual has previously been expelled from school, prior to the readmission of the individual to the school, school officials shall meet with the individual's probation officer and assist in developing conditions of probation that will provide specific guidelines for behavior and consequences for misbehavior at school as well as educational objectives that must be achieved. The district court, county court, or juvenile court shall review the conditions of probation for the individual and may continue the expulsion or return the individual to school under the agreed conditions.

(2) The school board may expel the individual for subsequent actions as provided in section 79-4,180.

(3) The individual shall be screened by the school to which he or she is admitted for possible disabilities and, if the screening so indicates, be referred for evaluation for possible placement in a special education program.

Sec. 4. The school district and the district court, county court, or juvenile court may establish education, counseling, or other programs to improve the behavior and educational performance of individuals covered by section 1 of this act.

Sec. 5. That section 79-211, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-211. In all school districts in this state any superintendent, principal, teacher, or member of the board of education who ~~shall~~ knows of any violation of section 79-201 on the part of any child of school age, his or her ~~parents~~ parent, the person in actual or legal control of such child, or any other person shall within three days report such violation to the city superintendent of schools in districts having an attendance officer and in other districts to the county superintendent of schools. ~~The city or county~~ Such superintendent of schools shall immediately cause an investigation of the case to be made by the attendance officers. When of his or her personal knowledge, by report or complaint from any resident of the district, or by report or complaint as provided ~~herein~~, in this section the attendance officer believes that any child is unlawfully absent from school, he or she shall immediately investigate. ~~The school shall~~ and render all ~~service in his or her~~ services in its power to compel such child to attend some public, private, denominational, or parochial school, which the person having control of the child shall designate, in an attempt to remediate the child's truant behavior. Such services shall include, but need not be limited to:

(1) One or more meetings between a school attendance officer, school social worker, or other person designated by the school administration if such school does not have a school social worker, the child's parent or guardian, and the child, if necessary, to report and to attempt to solve the truancy problem, unless the officer or worker has documented the refusal of the parent or guardian to participate in such meetings;

(2) Educational counseling to determine whether curriculum changes, including, but not limited to, enrolling the child in an alternative education program that meets the specific educational and behavioral needs of the child, would help solve the truancy problem;

(3) Educational evaluation, which may include a psychological evaluation, to assist in determining the specific condition, if any, contributing to the truancy problem, supplemented by specific efforts by the school to help remedy any condition diagnosed; and

(4) Investigation of the truancy problem by the school social worker, or if such school does not have a school social worker, another person designated by the administration, to identify conditions which may be contributing to the truancy problem. If services for the child and his or her family are determined to be needed, the school social worker or other person performing the investigation shall meet with the parent or guardian and the child to discuss any referral to appropriate community agencies for economic services, family or individual counseling, or other services required to remedy the conditions that are contributing to the truancy problem.

If the child continues to be or becomes habitually truant, the attendance officer - Upon failure to do so, he or she shall serve a written notice to the person violating section 79-201 warning him or her to comply with its provisions. If in one week from after the time such notice is given such person is still violating the section, then such attendance officers officer shall file a report with the county attorney of the county in which such person resides. The county attorney who may file a complaint against such person before the judge of the county court of the county in which such person resides charging such person with violation of section 79-201. If after such notice shall have has been sent to any person violating such section 79-201 such person may again violate again violates the same section, no written notice shall be required; but a complaint may be filed at once.

Sec. 6. Sections 79-4,170 to 79-4,205, this section, and sections 16, 42, and 43 of this act shall be known and may be cited as the Student Discipline Act.

Sec. 7. That section 79-4,170, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,170. The purpose of sections 79-4,170 to 79-4,205 is the Student Discipline Act shall be to assure the protection of all elementary and secondary school students' constitutional right to due process and fundamental fairness within the context of an orderly and effective educational process. The sanctions defined in sections 79-4,170 to 79-4,205 the act shall be interpreted at all times in the light of the principles of free speech and assembly protected under the Constitution of the State of Nebraska and of the United States and in recognition of the right of every student to public education.

Sec. 8. That section 79-4,171, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,171. The school board or board of education may authorize the emergency exclusion, short-term or long-term suspension, expulsion, or

mandatory reassignment of any pupil from school for conduct prohibited by the board's rules or standards established pursuant to sections 79-4,170 to 79-4,205, the Student Discipline Act if such emergency exclusion, short-term or long-term suspension, expulsion, or mandatory reassignment shall comply with the procedures required by sections 79-4,170 to 79-4,205 the act.

Sec. 9. That section 79-4,172, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,172. Administrative and teaching personnel may take actions regarding student behavior, other than those specifically provided in sections 79-4,170 to 79-4,205 the Student Discipline Act, which are reasonably necessary to aid the student, further school purposes, or prevent interference with the educational process. Such actions may include, but need not be limited to, counseling of students, parent conferences, rearrangement of schedules, requirements that a student remain in school after regular hours to do additional work, restriction of extracurricular activity, or requirements that a student receive counseling, or restriction of extracurricular activity psychological evaluation, or psychiatric evaluation upon the written consent of a parent or guardian to such counseling or evaluation.

Sec. 10. That section 79-4,173, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,173. If a student is suspended, expelled, or excluded from school or from any educational function pursuant to the provisions of sections 79-4,170 to 79-4,205 Student Discipline Act, such absence from school shall not be deemed a violation on the part of any person under any statutes of the State of Nebraska relating to compulsory school attendance at school statutes. Any suspension or expulsion under the act shall comply with the requirements of the Special Education Act and the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1401 et seq.

Sec. 11. That section 79-4,174, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,174. Any statement, notice, recommendation, determination, or similar action specified in sections 79-4,170 to 79-4,205 the Student Discipline Act shall be effectively given at the time written evidence thereof is delivered personally to or upon receipt of certified or registered mail or upon actual knowledge by a student, or his or her parent or guardian.

Sec. 12. That section 79-4,175, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,175. (1) The school board or board of education may by rule amplify, supplement, or extend the procedures provided in sections 79-4,170 to 79-4,205 the Student Discipline Act if such actions are not inconsistent with sections 79-4,170 to 79-4,205 the act.

(2) Any action taken by the school board or board of education or by its employees or agents in a material violation of sections 79-4,170 to 79-4,205 the act shall be considered null, void, and of no effect.

(3) The school board or board of education may authorize the delegation to other school officials of responsibilities directed to the principal or superintendent by sections 79-4,170 to 79-4,205 the act.

Sec. 13. That section 79-4,176, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,176. (1) The school board or board of education shall establish and promulgate rules and standards concerning student conduct which are reasonably necessary to carry out, or to prevent interference with carrying out, any educational function, if such rules and standards are clear and definite so as to provide clear notice to students the student and his or her parent or guardian as to the conduct prescribed, prohibited, or required thereunder. Notwithstanding any other provisions contained in sections 79-4,170 to 79-4,205 the Student Discipline Act, the school board or board of education may by rule specify a particular action as a sanction for particular conduct. Any such action must be otherwise authorized by section 79-4,172, 79-4,178, or 79-4,180. Any such rule shall be binding on all students, school officials, board members, and hearing examiners. Expulsion may be specified as a sanction for particular conduct only if the school board or board of education finds that the type of conduct for which expulsion is specified has the potential to seriously affect the health, safety, or welfare of the student, other students, staff members, or any other person or to otherwise seriously interfere with the educational process.

(2) All rules and standards established by school officials, other than the board, applicable to students shall not conflict with rules and standards adopted by the board. The board may change any rule or standard in accordance with policies which it may from time to time adopt.

(3) Rules or standards which form the basis for discipline shall be

distributed to students and their parents each student and his or her parent or guardian at the beginning of each school year, or at the time of enrollment; if during the school year, and shall be posted in conspicuous places in each school during the school year. Changes in rules and standards shall not take effect until reasonable effort has been made to distribute such changes to all students and parents each student and his or her parent or guardian.

Sec. 14. That section 79-4,178, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,178. (1) 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 sections 79-4,170 to 79-4,205 the Student Discipline Act; or

(b) Any other violation of rules and standards of behavior adopted under sections 79-4,170 to 79-4,205 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 shall take effect, the student shall be given oral or written notice of the charges against him or her, and an explanation of the evidence the authorities have, and an opportunity to present his or her version.

(4) Within twenty-four hours or such additional time as is reasonably necessary following such suspension, the principal shall send a written statement to the student, student's parents, and his or her parent or guardian describing the student's conduct, misconduct, or violation of the rule or standard and the reasons for the action taken. The principal shall make a reasonable effort to hold a conference with the parents parent or guardian before or at the time the student returns to school.

(5) Any student who is suspended pursuant to this section may be given an opportunity to complete any classwork, including, but not limited to, examinations, missed during the period of suspension. Each public school district shall develop and adopt guidelines stating the criteria school officials shall use in determining whether and to what extent such opportunity for completion will be granted to suspended students. The guidelines shall be provided to the student and parent or guardian at the time of suspension.

Sec. 15. That section 79-4,179, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,179. As used in sections 79-4,170 to 79-4,205 For purposes of the Student Discipline Act, unless the context otherwise requires:

(1) Long-term suspension shall mean the exclusion of a student from attendance in all schools within the system for a period exceeding five school days but less than twenty school days;

(2) Expulsion shall mean exclusion from attendance in all schools within the system for a period not to exceed the remainder of the semester in which it took effect in accordance with section 79-4,196; and

(3) Mandatory reassignment shall mean the involuntary transfer of a student to another school within the system in connection with any disciplinary action.

Sec. 16. A school district that has expelled a student may suspend the enforcement of such expulsion for a period of not more than one full semester in addition to the balance of the semester in which the expulsion takes effect and may, as a condition of such suspended action, assign the student to a school, class, or program which the school district deems appropriate for rehabilitation of the student. Any two or more school boards may join together in providing such schools, classes, or programs, and any district may by agreement with another district send its suspended or expelled students to any school, class, or program already in operation by such other school. Reimbursement under this section shall be in accordance with the Tax Equity and Educational Opportunities Support Act. In lieu of other authorized educational programs to which the student may be assigned, such school, class, or program may be offered as a community-centered classroom and may include experiences for the student as an observer or aide in governmental functions, as an on-the-job trainee, and as a participant in specialized tutorial experiences or individually prescribed educational and counseling programs. Such programs shall include an individualized learning program to enable the student to continue academic work for credit toward graduation.

At the conclusion of the designated period, the school district shall (1) reinstate any student who has satisfactorily participated in the school, class, or program to which such student has been assigned and permit

the student to return to the school of former attendance or to attend other programs offered by the district or (2) if the student's conduct has been unsatisfactory, enforce the expulsion action.

If the student is reinstated, the district may also take action to expunge the record of the expulsion action.

Sec. 17. That section 79-4,180, Revised Statutes Supplement, 1992, be amended to read as follows:

79-4,180. The following student conduct shall constitute grounds for long-term suspension, expulsion, or mandatory reassignment, subject to the procedural provisions of sections 79-4,170 to 79-4,205 the Student Discipline Act, when such activity occurs on school grounds or during an educational function or event off school grounds:

(1) Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purposes;

(2) Willfully causing or attempting to cause substantial damage to ~~private or school~~ property, stealing or attempting to steal ~~private or school~~ property of substantial value, or repeated damage or theft involving ~~private or school~~ property of small value;

(3) Causing or attempting to cause ~~physical~~ personal injury to a school employee, ~~to a school volunteer~~, or to any student. Physical Personal injury caused by accident, self-defense, or other action undertaken on the reasonable belief that it was necessary to protect some other person shall not constitute a violation of this subdivision;

(4) Threatening or intimidating any student for the purpose of or with the intent of obtaining money or anything of value from such student;

(5) Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a weapon;

(6) Engaging in the unlawful possession, selling, dispensing, or use of a controlled substance or an imitation controlled substance, as defined in section 28-401, a substance represented to be a controlled substance, or alcoholic liquor as defined in section 53-103 or being under the influence of a controlled substance or alcoholic liquor;

(7) Public indecency, as defined in section 28-806, except that this subdivision shall apply only to students at least twelve years of age but less than nineteen years of age;

(8) Sexually assaulting or attempting to sexually assault any ~~school employee or any student person~~ if a complaint has been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or attempted to sexually assault ~~the school employee or student.~~ For conduct described in this subdivision any person, including sexual assaults or attempted sexual assaults which occur off school grounds not at an educational function or event, if the student attends the same school as the victim attends or is employed by, the student may be subject to mandatory reassignment to another school within the system and the mandatory reassignment may be in addition to long-term suspension or expulsion. For purposes of this subdivision, sexual assault shall mean sexual assault in the first degree and sexual assault in the second degree as defined in sections 28-319 and 28-320, as such sections now provide or may hereafter from time to time be amended;

(9) Engaging in any other activity forbidden by the laws of the State of Nebraska which activity constitutes a danger to other students or interferes with school purposes; or

(10) A repeated violation of any rules and standards validly established pursuant to section 79-4,176 if such violations constitute a substantial interference with school purposes.

It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a student who is truant, tardy, or otherwise absent from required school activities.

Sec. 18. That section 79-4,181, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,181. 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) 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 of the decision, send written notice by registered or certified mail to the student, the student's parents, and his or her parent or guardian informing them of the rights established under sections 79-4,170 to 79-4,205 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) A statement that, before long-term suspension, expulsion, or mandatory reassignment for disciplinary purposes can be invoked, the student shall have a right to a hearing, upon request, on the specified charges;

(d) A description of the hearing procedures provided by sections 79-4,170 to 79-4,205 the act, along with procedures for appealing any decision rendered at the hearing;

(e) A statement that the principal, legal counsel for the school, the student, the student's parents parent, or the student's representative or guardian shall have 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 the right (ii) to know the identity of the witnesses to appear at the hearing and the substance of their testimony; and

(f) A form on which the student, the student's parents 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 as prescribed in sections 79-4,184 and 79-4,185; and

(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 no hearing is requested or, if a hearing is requested, the date the hearing examiner makes the report of his or her findings and a recommendation of the action to be taken to the superintendent, 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.

Nothing in sections 79-4,170 to 79-4,205 the Student Discipline Act shall preclude the student, or the student's parents parent, guardian, or representative from discussing and settling the matter with appropriate school personnel prior to the hearing stage.

Sec. 19. That section 79-4,182, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,182. (1) If a hearing ~~shall be~~ is requested within five school days ~~of~~ after receipt of the notice as provided in section 79-4,181, the superintendent shall appoint a hearing examiner who shall, within two school days after being appointed, give written notice to the principal, ~~and~~ and the student, ~~and~~ and the student's parents, parent or guardian of the time and place for the hearing.

(2) The hearing examiner shall be any person designated by the school district's superintendent, board of education, or counsel, if such person (a) has not brought the charges against the student, (b) shall not be a witness at the hearing, and (c) has no involvement in the charge.

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

(4) The principal or legal counsel for the school, the student, ~~and~~ and the student's parents, parent or guardian, or representative, shall have the right to examine the records and written statements referred to in sections 79-4,170 to 79-4,205 the Student Discipline Act as well as the statement of any witness in the possession of the school board or board of education at a reasonable time prior to the hearing.

Sec. 20. That section 79-4,183, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,183. In addition to the other duties provided in sections 79-4,170 to 79-4,205 the Student Discipline Act, it shall be the duty of the hearing examiner to remain impartial throughout all deliberations. The hearing examiner shall be available, prior to any hearing held pursuant to sections 79-4,170 to 79-4,205 the act, to answer any questions the principal, the student, ~~or the student's parents, parent~~ parent or guardian may have regarding the nature and conduct of the hearing.

Sec. 21. That section 79-4,184, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,184. If a hearing ~~shall not be~~ is not requested under sections 79-4,181 and 79-4,182 by the student, or the student's parents, parent or

guardian within five school days following receipt of the written notice, the punishment recommended in the charge by the principal or his or her designee shall automatically go into effect upon the fifth school day following receipt of the written notice by the student or his or her parent or guardian as required in section 79-4,181.

Sec. 22. That section 79-4,185, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,185. If a hearing ~~shall be requested after is requested under sections 79-4,181 and 79-4,182 more than five school days,~~ but not later more than thirty calendar days following the actual receipt of written notice, the hearing shall be held; but the imposed punishment shall continue in effect pending final determination.

Sec. 23. That section 79-4,186, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,186. Any hearing conducted pursuant to ~~sections 79-4,170 to 79-4,205~~ the Student Discipline Act shall be attended by the hearing examiner, the student, the student's ~~parents,~~ parent or guardian, the student's representative, if any, and counsel for the school's board of education, if the hearing examiner or the superintendent deems it advisable. Witnesses shall be present only when they are giving information at the hearing. The student may be excluded in the discretion of the hearing examiner at times when the student's psychological evaluation or emotional problems are being discussed. The student's representative may be an attorney. The hearing examiner may exclude anyone from the hearing when his or her actions substantially disrupt an orderly hearing.

Sec. 24. That section 79-4,187, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,187. The school board, acting through the superintendent, may cause legal counsel to be present either for the purpose of acting as the designee of the principal or for the purpose of advising the hearing examiner in the conduct of the hearing requested under sections 79-4,181 and 79-4,182. Any legal counsel who acts as the designee of the principal in presenting the school's case against the student shall not advise the hearing examiner on the conduct of the hearing or later advise administrators or school board members on the conduct of any appeal, but legal counsel may give advice on technical and procedural aspects of the school's presentation and may advise the hearing examiner and the school board as long as the legal counsel does not act as the principal's designee in presenting the school's case.

Sec. 25. That section 79-4,188, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,188. ~~The~~ At a hearing requested under sections 79-4,181 and 79-4,182, the student may speak in his or her own defense and may be questioned on his or her testimony; but he or she may choose not to testify and, in such case, ~~he~~ shall not be threatened with punishment nor be later punished for refusal to testify.

Sec. 26. That section 79-4,189, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,189. ~~The~~ At a hearing requested under sections 79-4,181 and 79-4,182, the principal shall present to the hearing examiner statements, in affidavit form, of any person having information about the student's conduct and the student's records; but not unless such statements and records have been made available to the student; or the student's parents parent, guardian, or representative prior to the hearing. The information contained in such records shall be explained and interpreted, prior to or at the hearing, to the student, ~~parents parent~~ or guardian, or representative, upon at their request, by appropriate school personnel.

Sec. 27. That section 79-4,190, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,190. In conducting the hearing requested under sections 79-4,181 and 79-4,182, the hearing examiner shall not be bound by the rules of evidence or any other courtroom procedure.

Sec. 28. That section 79-4,191, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,191. (1) The student, the student's ~~parents parent,~~ guardian, or representative, the principal, or the hearing examiner; may ask witnesses to testify at the hearing requested under sections 79-4,181 and 79-4,182. Such testimony shall be under oath, and the hearing examiner shall be authorized to administer the oath. The hearing examiner shall make reasonable effort to assist the student; or the student's parents parent, guardian, or representative in obtaining the attendance of witnesses.

(2) The student, ~~the student's~~ parent, guardian, or representative, the principal, or the hearing examiner; shall have the right to question any

witness giving information at the hearing.

Sec. 29. That section 79-4,192, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,192. Any person giving evidence by written statement or in person at a hearing requested under sections 79-4,181 and 79-4,182 shall be given the same immunity from liability as a person testifying in a court case.

Sec. 30. That section 79-4,193, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,193. The proceedings of the hearing requested under sections 79-4,181 and 79-4,182 shall be recorded at the expense of the school district.

Sec. 31. That section 79-4,194, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,194. (1) When more than one student is charged with violating the same rule and having acted in concert, and when the facts are substantially the same for all such students, a single hearing requested under sections 79-4,181 and 79-4,182 may be conducted for such students as a group if the hearing examiner believes that a single hearing is not likely to result in confusion and that no student shall have his or her interests substantially prejudiced by a single hearing.

(2) If during the conduct of the hearing the hearing examiner finds that a student's interests will be substantially prejudiced by a group hearing, or that the hearing is resulting in confusion, he the hearing examiner may order a separate hearing for any student.

Sec. 32. That section 79-4,195, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,195. (1) A After a hearing requested under sections 79-4,181 and 79-4,182, a report shall be made by the hearing examiner of his or her findings and a recommendation of the action to be taken, which report shall explain, in terms of the needs of both the student and the school board, the reasons for the particular action recommended. Such recommendation may range from no action, through the entire field of counseling, to long-term suspension, expulsion, or mandatory reassignment.

(2) A review shall be made of the hearing examiner's report by the superintendent, who may change, revoke, or impose the sanction recommended by the hearing examiner, but shall not impose a sanction more severe than that recommended by the hearing examiner.

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

Sec. 33. That section 79-4,196, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,196. (1) Written notice of the findings and recommendations of the hearing examiner, and the determination of the superintendent under section 79-4,195 shall be made by certified or registered mail or by personal delivery to the student, or the student's parents, parent or guardian. Upon receipt of such written notice by the student, parents parent, or guardian, the determination of the superintendent shall take immediate effect.

(2) Except as provided in subsection (3) of this section, the expulsion of a student shall be for a period not to exceed the remainder of the semester in which it took effect unless the misconduct occurred (a) within ten school days prior to the end of the first semester, in which case the expulsion shall remain in effect through the second semester, or (b) within ten school days prior to the end of the second semester, in which case the expulsion shall remain in effect for summer school and the first semester of the following school year subject to the provisions of subsection (4) of this section. Such action may be modified or terminated by the school district at any time during the expulsion period.

(3) The expulsion of a student for (a) the knowing and intentional use of force in causing or attempting to cause personal injury to a school employee, school volunteer, or student except as provided in subdivision (3) of section 79-4,180 or (b) the knowing and intentional possession, use, or transmission of a firearm or other dangerous weapon shall be for a period not to exceed the remainder of the school year in which it took effect if the misconduct occurs during the first semester. If the expulsion takes place during the second semester, the expulsion shall remain in effect for summer school and may remain in effect for the first semester of the following school year. Such action may be modified or terminated by the school district at any time during the expulsion period.

(4) Any expulsion that will remain in effect during the first semester of the following school year shall be automatically scheduled for review before the beginning of the school year. The review shall be conducted

by the hearing examiner after the hearing examiner has given notice of the review to the student and the student's parent or guardian. This review shall be limited to newly discovered evidence or evidence of changes in the student's circumstances occurring since the original hearing. This review may lead to a recommendation by the hearing examiner that the student be readmitted for the upcoming school year. If the school board or board of education or a committee of such board took the final action to expel the student, the student may be readmitted only by action of the board. Otherwise the student may be readmitted by action of the superintendent.

Sec. 34. That section 79-4,197, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,197. The record in a case under the Student Discipline Act shall consist of the charge, the notice, the evidence presented, the hearing examiner's findings and recommendations, and the action of the superintendent. With respect to any appeal to a court or any subsequent appeal, the record shall consist, in addition, of any additional evidence taken and any additional action taken in the case.

Sec. 35. That section 79-4,198, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,198. (1) The student, parents, or the student's parent or guardian may, within seven school days following receipt of the written notice of the determination of the superintendent under section 79-4,195, appeal the superintendent's determination to the school board or board of education by a written request, which shall be filed with the secretary of the board or with the superintendent.

(2) A hearing shall be held before the school board or the board of education within a period of ten school days after it is requested, and such time for a hearing may be changed by mutual agreement of the student and superintendent, except that the hearing may be held before a committee of the school board or board of education of not less than three members. Such appeal shall be made on the record, except that new evidence may be admitted to avoid a substantial threat of unfairness and such new evidence shall be recorded as provided in section 79-4,193.

Sec. 36. That section 79-4,199, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,199. (1) After examining the record and taking new evidence pursuant to section 79-4,198, if any, the school board or board of education, or the designated committee thereof, may withdraw to deliberate privately upon such record and new evidence. Any such deliberation shall be held in the presence only of board members in attendance at the appeal proceeding, but may be held in the presence of legal counsel who has not previously acted as the designee of the principal in presenting the school's case before the hearing examiner.

(2) If any questions arise during such deliberations, which require additional evidence, the deliberating body may reopen the hearing to receive such evidence, subject to the right of all parties to be present.

(3) The board may alter the superintendent's disposition of the case if it finds ~~his~~ the decision to be too severe, but may not impose a more severe sanction.

Sec. 37. That section 79-4,200, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,200. The final action of the board under section 79-4,199 shall be evidence evidenced by personally delivering or mailing by certified mail a copy of the board's decision to the student and his parents or her parent or guardian.

Sec. 38. That section 79-4,201, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,201. Any person aggrieved by a final decision in a contested case under the Student Discipline Act, whether such decision is affirmative or negative in form, shall be entitled to judicial review under sections 79-4,201 to 79-4,205. Nothing in ~~sections 79-4,198 to 79-4,205~~ the act shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

Sec. 39. That section 79-4,202, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,202. (1) Proceedings for review under sections 79-4,201 to 79-4,205 shall be instituted by filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision by the school board or board of education under sections 79-4,199 and 79-4,200.

(2) All parties of record shall be made parties to the proceedings for review. The court, in its discretion, may permit other interested persons

to intervene.

(3) Summons shall be served as in other actions, except that a copy of the petition shall be served upon the board together with the summons. Service of summons upon a duly elected officer of the board or the appointed secretary of the board shall constitute service on the board.

(4) The filing of the petition or the service of summons upon the board shall not stay enforcement of a decision, but the board may stay enforcement, or the court may order a stay after notice to such board of application therefor and upon such terms as it deems proper.

(5) The court may require the party requesting such stay to give bond in such amount and condition as the court may direct, but only in cases involving injury or damage to person or property.

Sec. 40. That section 79-4,203, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,203. Within fifteen days after service of the petition under section 79-4,202 or within such further time as the court for good cause shown may allow, the school board or board of education shall prepare and transmit to the court a certified transcript of the record, which shall include the rules and regulations of the school board relied upon by the school district in its determination to suspend, reassign, or expel the student, and the proceedings conducted before it, including the final decision sought to be reversed, vacated, or modified. The school board need not file any responsive pleading.

Sec. 41. That section 79-4,204, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,204. (1) The review under sections 79-4,201 to 79-4,205 shall be conducted by the court without a jury on the record.

(2) The court may affirm the decision of the school board or board of education, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the board's decision is:

(a) In violation of constitutional provisions;  
(b) In excess of the statutory authority or jurisdiction of the board;

(c) Made upon unlawful procedure;  
(d) Affected by other error of law;  
(e) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or  
(f) Arbitrary or capricious.

Sec. 42. (1) The principal of a school or the principal's designee shall notify as soon as possible the appropriate law enforcement authorities of the county or city in which the school is located of any act of the student described in section 79-4,180 which the principal or designee knows or suspects is a violation of the Nebraska Criminal Code.

(2) The principal, the principal's designee, or any other school employee reporting an alleged violation of the Nebraska Criminal Code shall not be civilly or criminally liable as a result of any report authorized by this section unless (a) such report was false and the person making such report knew or should have known it was false or (b) the report was made with negligent disregard for the truth or falsity of the report.

Sec. 43. When a principal or other school official releases a minor student to a peace officer as defined in section 49-801 for the purpose of removing the minor from the school premises, the principal or other school official shall take immediate steps to notify the parent, guardian, or responsible relative of the minor regarding the release of the minor to the officer and regarding the place to which the minor is reportedly being taken, except when a minor has been taken into custody as a victim of suspected child abuse, in which case the principal or other school official shall provide the peace officer with the address and telephone number of the minor's parent or guardian. The peace officer shall take immediate steps to notify the parent, guardian, or responsible relative of the minor that the minor is in custody and the place where he or she is being held. If the peace officer has a reasonable belief that the minor would be endangered by a disclosure of the place where the minor is being held or that the disclosure would cause the custody of the minor to be disturbed, the peace officer may refuse to disclose the place where the minor is being held for a period not to exceed twenty-four hours. The peace officer shall, however, inform the parent, guardian, or responsible relative whether the child requires and is receiving medical or other treatment. The juvenile court shall review any decision not to disclose the place where the minor is being held at any subsequent detention hearing.

Sec. 44. That original sections 79-211, 79-4,170 to 79-4,176, 79-4,178, 79-4,179, and 79-4,181 to 79-4,204, Reissue Revised Statutes of

Nebraska, 1943, and section 79-4,180, Revised Statutes Supplement, 1992, and also section 79-212, Reissue Revised Statutes of Nebraska, 1943, are repealed.