

LEGISLATIVE BILL 346

Approved by the Governor March 10, 1997

Introduced by Bohlke, 33; McKenzie, 34

AN ACT relating to schools; to amend sections 79-238, 79-241, 79-244, 79-245, 79-549, 79-816, 79-1103, 79-1110, 79-1116, 79-1117, 79-1120, 79-1121, 79-1124 to 79-1138, 79-1140, 79-1142 to 79-1144, 79-1147, 79-1148, 79-1152 to 79-1157, 79-1160 to 79-1163, 79-1165, 79-1167, 79-1168, 79-1170, 79-1185, 79-1187, 79-1191, 79-1194, 79-11,109 to 79-11,111, 79-11,113, 79-11,119, 79-1231, and 85-179, Reissue Revised Statutes of Nebraska, and section 43-2505, Revised Statutes Supplement, 1996; to redefine terms; to change terminology; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 43-2505, Revised Statutes Supplement, 1996, is amended to read:

43-2505. For purposes of the Early Intervention Act:

- (1) Collaborating agencies ~~shall mean~~ means the Department of Health and Human Services and the State Department of Education;
- (2) Developmental delay ~~shall mean~~ means any of the ~~disability classifications or conditions~~ disabilities described in section 79-1120 of this act;
- (3) Early intervention services may include services which:
- (a) Are designed to meet the developmental needs of each eligible infant or toddler with disabilities and the needs of the family related to enhancing the development of their infant or toddler;
- (b) Are selected in collaboration with the parent or guardian;
- (c) Are provided in accordance with an individualized family service plan;
- (d) Meet all applicable federal and state standards; and
- (e) Are provided, to the maximum extent appropriate, in natural environments including the home and community settings in which infants and toddlers without disabilities participate;
- (4) Eligible infant or toddler with disabilities ~~shall mean~~ means a child who needs early intervention services and is two years of age or younger, except that toddlers who reach age three during the school year shall remain eligible throughout that school year. The need for early intervention services is established when the infant or toddler experiences developmental delays which ~~shall mean~~ means any of the ~~disability classifications or conditions~~ disabilities described in the Special Education Act;
- (5) Federal early intervention program ~~shall mean~~ means the federal early intervention program for infants and toddlers with disabilities, 20 U.S.C. 1471 to 1485;
- (6) Individualized family service plan ~~shall mean~~ means the process, periodically documented in writing, of determining appropriate early intervention services for an eligible infant or toddler with disabilities and his or her family;
- (7) Interagency planning team ~~shall mean~~ means an organized group of interdisciplinary, interagency representatives, community leaders, and family members in each local community or region;
- (8) Lead agency or agencies ~~shall mean~~ means the Department of Health and Human Services and State Department of Education and any other agencies designated by the Governor for general administration, supervision, and monitoring of programs and activities receiving federal funds under the federal early intervention program and state funds appropriated for early intervention services under the Early Intervention Act;
- (9) Nebraska Interagency Coordinating Council ~~shall mean~~ means the state council the function of which is to advise and assist the collaborating agencies in carrying out the provisions of the act. The members of the council shall be appointed by the Governor and shall include, but not be limited to, representatives of school districts, social services, health and medical services, parents, mental health services, developmental disabilities services, educational service units, Head Start, higher education, physicians, the Legislature, and the collaborating agencies; and
- (10) Services coordination ~~shall mean~~ means a flexible process of interaction facilitated by a services coordinator to assist the family of an eligible infant or toddler with disabilities within a community to identify and meet their needs pursuant to the Early Intervention Act. Services

coordination under the act shall not duplicate any case management services which an eligible infant or toddler with disabilities and his or her family are already receiving or eligible to receive from other sources.

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

79-238. (1) Except as provided in section 79-240, the school board or board of education of the option school district shall adopt by resolution specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building or the availability of appropriate special education programs operated by the option district. 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, projected number of students with which the option district will contract based on existing contractual arrangements, and availability of appropriate special education programs. The school board or board of education of the option school district may by resolution declare a program, a class, or a school unavailable to option students due to lack of capacity. Standards shall not include previous academic achievement, athletic or other extracurricular ability, handicapping conditions disabilities, proficiency in the English language, or previous disciplinary proceedings.

(2) A school district that has a desegregation plan adopted by the school board or the board of education or ordered by the federal court may adopt standards for acceptance and rejection of applications for transfer into or out of such district which are designed to make desegregation easier to maintain or improve. Desegregation is made easier to maintain or improve by standards which, considering all requests for transfer into or out of the school district received prior to the school district's application deadline established in conformity with section 79-237 or 79-240, prohibit transfers which if granted would increase the racial percentage in the school district's total enrollment of the minority group for whom the desegregation plan was ordered or adopted. Any such standards may apply to students residing within the school district who seek to transfer to a school in another school district and to students who reside in another district who seek to transfer into a school district which has a desegregation plan.

(3) Any option school district shall give first priority for enrollment to option students whose request for enrollment would aid the racial integration of the option school district and the resident school district and to siblings of option students, except that the option school district shall not be required to accept the sibling of an option student if the district is at capacity except as provided in subsections (2) and (4) of section 79-240.

(4) For purposes of this section, racial integration is aided if a student transfers to an option school district in which his or her race is a smaller percentage of the total student enrollment of the option school district than it is of the student's resident school district.

Sec. 3. Section 79-241, Reissue Revised Statutes of Nebraska, is amended to read:

79-241. (1) Except as provided in subsection (2) of this section, section 79-611 does not apply to the transportation of an option student. The parent or legal guardian of the option student shall be responsible for required transportation. Beginning with the 1993-94 school year, a school district may, upon mutual agreement with the parent or legal guardian of an option student, provide transportation to the option student. The school district may charge the parents of each option student transported a fee sufficient to recover the additional costs of such transportation.

(2) Parents or guardians of option students who qualify for free lunches shall be eligible for transportation reimbursement as described in section 79-611, except that they shall be reimbursed at the rate of one hundred forty-two and one-half percent of the mandatorily established mileage rate provided in section 81-1176 for each mile actually and necessarily traveled on each day of attendance by which the distance traveled one way from the residence of such student to the schoolhouse exceeds three miles. The State Department of Education shall reimburse the option school district for transportation expenses paid to the parents of qualifying option students or incurred in actual transportation of qualifying option students. If a parent or guardian of a qualifying option student has an agreement with the option school district for the provision of transportation, the department shall reimburse the option school district only if option students who are not eligible for transportation reimbursement are charged fees for transportation, and reimbursement shall be only for the actual miles traveled one way beyond the normal transportation route at the rate described in this subsection.

Reimbursement shall be made on or before June 30 for expenses incurred during the current school year. If sufficient funds are not appropriated to fully fund the provisions of this section, the department shall make a proportionate reduction in each payment made pursuant to this section.

(3) For option students verified as handicapped having a disability as defined in section 79-1120 12 of this act, the transportation services set forth in section 79-1129 shall be provided by the resident school district. The department shall reimburse the resident school district for the cost of transportation in accordance with section 79-1144.

Sec. 4. Section 79-244, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 5. Section 79-245, Reissue Revised Statutes of Nebraska, is amended to read:

79-245. (1) For school years 1990-91 and 1991-92, the State Department of Education shall pay the option school district the statewide average per pupil cost for the preceding year, as determined by the department, or the option school district's per pupil cost for the preceding year as reported in the district's approved annual financial report, whichever is less, in two approximately equal payments on or before January 30 and on or before June 30, for expenses incurred during the current school year for each option student, including option students who are handicapped children with disabilities.

(2) Beginning with the 1992-93 school year, the Tax Equity and Educational Opportunities Support Act shall apply to the enrollment option program as provided in this subsection. For purposes of the act, (a) option students shall not be counted as formula students by the resident school district and shall be counted by the option school district and (b) the option school district shall include the funds received pursuant to this section in the calculation of other actual receipts as required by section 79-1018.

(3) If an option student relocates in a different school district during the school year, the department shall prorate the amount remitted to the option school district pursuant to this section according to the proportionate amount of time such student was enrolled in the option school district.

(4) If sufficient funds are not appropriated to fully fund this section, the department shall make a proportionate reduction in each payment made pursuant to this section.

Sec. 6. Section 79-549, Reissue Revised Statutes of Nebraska, is amended to read:

79-549. (1) The board of education of a Class III school district of which more than seventy-five percent of the geographical area lies within a city of the metropolitan class shall consist of six members to be elected as provided in section 32-543 and also may include one or more nonvoting student members selected pursuant to section 79-559. Until the registered voters of the district vote not to continue to have a caucus for nominations pursuant to subsection (2) of this section, a caucus shall be held pursuant to subsection (3) of this section not less than seventy days prior to the holding of the election to nominate two or more candidates for each vacancy to be voted upon at the election to be held in conjunction with the statewide primary election. If the registered voters vote not to continue to have a caucus, candidates shall be nominated at a primary election held in conjunction with the primary election for the city of the metropolitan class. No candidate nominated shall have his or her name placed upon the ballot for the general election unless, not more than ten days after his or her nomination, he or she files with the secretary of the board of education a written statement accepting the nomination. The secretary of the board of education shall certify the names of the candidates to the election commissioner or county clerk who shall prepare the official ballot listing the names as certified and without any area designation. All registered voters residing within the school district shall be permitted to vote at such election.

(2) The board of education may place before the registered voters of the school district the issue of whether to continue to have a caucus for nominations by adopting a resolution to do so and certifying the issue to the

election commissioner or county clerk prior to September 1 for placement on the ballot at the next statewide general election. The registered voters of the school district may also have the issue placed on the ballot at the statewide general election by circulating a petition and gathering the signatures of the registered voters residing within the school district at least equal to seven percent of the number of persons registered to vote in the school district at the last statewide primary election. The petitions shall be filed with the election commissioner or county clerk for signature verification on or before August 15 prior to a statewide general election. If the election commissioner or county clerk determines that the appropriate number of registered voters signed the petition, he or she shall place the issue on the ballot for the next statewide general election. The issue shall not be placed on the ballot again within four years after voting on the issue at a statewide general election.

(3) A school district which uses a caucus for nominations shall develop rules and procedures for conducting the caucus which will ensure:

(a) Publication of the rules and procedures by multiple sources if necessary so that every resident of the school district has access to information on the process for placing a name in nomination and voting at the caucus;

(b) Facilities for voting at the caucus which comply with the federal Americans with Disabilities Act of 1990 and which will accommodate a reasonably anticipated number of registered voters;

(c) Election security which will provide for a fair and impartial election, including the secrecy of the ballot, one vote per registered voter, and only registered voters of the school district being allowed to vote;

(d) Equal access to all registered voters of the school district, including the presence of an interpreter at the caucus at the expense of the school district and ballots for the blind and visually impaired to provide access to the process by all registered voters of the school district;

(e) Adequate time and opportunity for registered voters of the school district to exercise their right to vote; and

(f) Notification of nomination to the candidates and to the secretary of the board of education.

The rules and regulations shall be approved by the election commissioner or county clerk prior to use for a caucus.

Sec. 7. Section 79-816, Reissue Revised Statutes of Nebraska, is amended to read:

79-816. A candidate applying for an entry-level teacher or administrator certificate pursuant to section 79-808 shall not receive such certificate unless he or she has completed at least three semester credits of course work or the equivalent thereof in special education. The equivalent may be accomplished in part or in full by including study of the handicapped student children with disabilities in other course work. Course work shall provide the student with all of the following:

(1) Knowledge of the exceptional educational needs of the handicapping classifications and conditions as disabilities defined by section 79-1120 12 of this act;

(2) Knowledge of the major characteristics of each classification or condition disability in order to recognize its existence in children;

(3) Knowledge of various alternatives for providing the least restrictive environment for handicapped children with disabilities;

(4) Knowledge of methods of teaching students with handicapping conditions children with disabilities in the regular classroom; and

(5) Knowledge of preferential alternatives, referral systems, multidisciplinary team responsibilities, the individualized education plan process, and the placement process.

Sec. 8. Section 79-1103, Reissue Revised Statutes of Nebraska, is amended to read:

79-1103. (1) The State Board of Education shall establish the Early Childhood Education Pilot Project Program. The State Department of Education, with the assistance of an Early Childhood Education Pilot Project Steering Committee appointed by the State Board of Education, shall establish guidelines and criteria for pilot projects. Based on such criteria and guidelines, the board shall request proposals from local school districts and cooperatives of school districts and select four proposals for early childhood education pilot projects. Each project selected shall be provided funds of up to one hundred thousand dollars per year.

(2) Each pilot project proposal which is accepted by the board shall include (a) a planning period of at least six months, (b) an agreement to participate in an evaluation of the project to be specified by the department, (c) evidence that the project will be coordinated or contracted with existing

programs, including Head Start and services for handicapped children below children with disabilities who are less than five years of age as provided in the Special Education Act, and (d) a plan to use a combination of funding sources, including sliding fee scales, to maximize the participation of diverse groups.

(3) Each project shall also demonstrate the following elements of quality early childhood education programs, including: (a) A strong family education component recognizing the central role of parents in their children's development; (b) well-trained staff and optimum staff and child ratios; (c) developmentally appropriate curriculum, practices, and assessment; (d) sensitivity to the economic and logistical needs and circumstances of families in the provision of services; (e) integration of children of diverse social and economic characteristics; (f) a sound evaluation component, including at least one objective measure of child performance and progress; and (g) continuity with programs in kindergarten and elementary grades.

(4) One pilot project shall be located in each of the three congressional districts and one shall be located at large according to the decision of the department.

(5) The pilot projects shall continue for three calendar years, and by July 1, 1995, the department shall conduct an overall evaluation of the success or failure of the pilot projects and components thereof. A report evaluating the pilot projects shall be made to the State Board of Education and the Legislature by November 30, 1995.

Sec. 9. Section 79-1110, Reissue Revised Statutes of Nebraska, is amended to read:

79-1110. Sections 79-1110 to 79-1184 and section 12 of this act shall be known and may be cited as the Special Education Act.

Sec. 10. Section 79-1116, Reissue Revised Statutes of Nebraska, is amended to read:

79-1116. Average per pupil cost of the servicing service agency means the amount computed by dividing the total operating expenditure of the preceding year, excluding the cost of sectarian instruction, of the servicing service agency by its preceding year's average daily membership.

Sec. 11. Section 79-1117, Reissue Revised Statutes of Nebraska, is amended to read:

79-1117. Child with a disability means a handicapped child child having a disability listed in section 12 of this act and verified pursuant to sections 79-1137 to 79-1139.

Sec. 12. Section 79-1120, Reissue Revised Statutes of Nebraska, is amended to read:

79-1120. Handicapped child means a child who is Disability means an impairment which causes a child to be classified as mentally retarded, hard of hearing, deaf, speech and language impaired, blind and visually handicapped impaired, behaviorally disordered, orthopedically impaired, other health impaired, deaf-blind, or multihandicapped or has as having multiple disabilities or specific learning disabilities, or a child with traumatic brain injury, or autism and who, because of such impairments, needs causes such child to need special education and related services. For purposes of this section:

(1) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance;

(2) Behaviorally disordered child means a child with means a condition exhibiting in which a child exhibits one or more of the following characteristics over a long period of time and to a marked degree which adversely affects educational performance:

(a) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(c) Inappropriate types of behavior or feelings under normal circumstances;

(d) A general pervasive mood of unhappiness or depression; or

(e) A tendency to develop physical symptoms or fears associated with personal or school problems.

Behaviorally disordered child includes a child who is schizophrenic

includes schizophrenia but does not include a child who is socially maladjusted unless such child exhibits social maladjustment unless the characteristics defined in subdivision (a) or (b) of this subdivision are also present;

(3) Blind and visually impaired means partially seeing or blind, which visual impairment, even with correction, adversely affects a child's educational performance;

(4) Deaf means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects is impaired to the extent that educational performance is adversely affected;

(5) (4) Deaf-blind means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that such impairments cannot be accommodated in special education programs solely for deaf or blind children who are deaf or blind;

(6) (5) Hard of hearing means a hearing impairment, whether permanent or fluctuating, which adversely affects educational performance but is not included under the term deaf in subdivision (3) (4) of this section;

(7) (6) Mentally retarded child means a child who has a means a condition in which a child exhibits significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period which adversely affects the child's educational performance;

(8) (7) Multihandicapped child means a child who has Multiple disabilities means concomitant impairments, such as mentally retarded-blind or mentally retarded-orthopedically impaired, the combination of which causes such severe educational problems that such child a child with such impairments cannot be accommodated in special education programs for one of the impairments. Multihandicapped child Multiple disabilities does not include deaf-blind; children;

(9) (8) Orthopedically impaired child means a child who has means a severe orthopedic impairment which adversely affects such a child's educational performance. Severe orthopedic impairments include impairments caused by (a) congenital anomaly, including, but not limited to, clubfoot or absence of a member, (b) disease, including, but not limited to, poliomyelitis or bone tuberculosis, or (c) other causes, including, but not limited to, cerebral palsy, amputations, and fractures and burns which cause contractures;

(10) (9) Other health impaired child means a child means having limited strength, vitality, or alertness due to chronic or acute health problems, including, but not limited to, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance;

(11) (10) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Specific learning disability includes, but is not limited to, perceptual handicaps disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia;

(12) (11) Speech-and-language-impaired child means a child with means having a communication disorder such as stuttering, impaired articulation, language impairments, or voice impairment which adversely affects the a child's educational performance; and

(13) (12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not include brain injuries that are congenital or degenerative or brain injuries induced by birth trauma, and

(13) Visually handicapped child means a partially seeing or blind child whose visual impairment, even with correction, adversely affects the child's educational performance.

The State Department of Education may group or subdivide the classifications of handicapped children with disabilities for the purpose of program description and reporting.

Sec. 13. Section 79-1121, Reissue Revised Statutes of Nebraska, is

amended to read:

79-1121. Related services means transportation services and such developmental, corrective, and other supportive services, including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, as may be required to assist a handicapped child with a disability to benefit from special education and includes the early identification and assessment of handicapping conditions disabilities in children. Medical services shall be for diagnostic and evaluation purposes only.

Sec. 14. Section 79-1124, Reissue Revised Statutes of Nebraska, is amended to read:

79-1124. Serviceing Service agency means the school district, educational service unit, local or regional office of mental retardation, or some combination thereof or such other agency as may provide a special education program approved by the State Department of Education, including an institution not wholly owned or controlled by the state or any political subdivision to the extent that it provides educational or other services for the benefit of children from the age of five to the age of twenty-one years who are handicapped with disabilities; ~~as such term is from time to time defined by the legislature~~, if such services are nonsectarian in nature.

Sec. 15. Section 79-1125, Reissue Revised Statutes of Nebraska, is amended to read:

79-1125. Special education means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child with a disability, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

Sec. 16. Section 79-1126, Reissue Revised Statutes of Nebraska, is amended to read:

79-1126. The Special Education Act applies to a child with a disability from the date of diagnosis or the date of notification of the school district of residence to age twenty-one and, if the child's twenty-first birthday occurs during a school year, until the end of that school year. All provisions of state law related to special education which apply to a child with a disability who is age twenty shall apply to a child with a disability whose twenty-first birthday occurs during a school year until the end of that school year. The Division of Vocational Rehabilitation of the State Department of Education shall, in compliance with federal guidelines, assume responsibility for the training of those individuals whose education or training is terminated and for whom additional supportive services are required.

Sec. 17. Section 79-1127, Reissue Revised Statutes of Nebraska, is amended to read:

79-1127. The board of education of every school district shall provide or contract for special education programs and transportation for all resident children with disabilities who would benefit from such programs.

Sec. 18. Section 79-1128, Reissue Revised Statutes of Nebraska, is amended to read:

79-1128. The special education programs required by section 79-1127 may be provided by any school district, by contracting with another school district or serviceing service agency, or by some combination of school districts, an educational service unit, combination of educational service units, the local or regional office of mental retardation, any program approved by the State of Nebraska, or any combination thereof, except that only nonsectarian services shall be considered for approval by the State of Nebraska. Any office of mental retardation program receiving funds under the Special Education Act shall not use such funds to match state funds under the provisions of other programs. The members of the school board or board of education of any school district not offering continuous special education programs acceptable to the State Board of Education shall be in violation of the law. No state funds shall be paid to any school district as long as such violation exists, but no deduction shall be made from any funds required by the Constitution of Nebraska to be paid to such district. On December 31 of each year, the Commissioner of Education shall present to the State Board of Education, the Attorney General, the Department of Administrative Services, the State Treasurer, and the Executive Board of the Legislative Council a list of all school districts not providing or contracting for approved programs.

Sec. 19. Section 79-1129, Reissue Revised Statutes of Nebraska, is amended to read:

79-1129. (1) The school board or board of education shall provide one of the following types of services to the handicapped children who are residents of with disabilities for whom the school district is the school

district of residence:

(a) Provide for the transportation expenses for handicapped children with disabilities who are forced to leave the school district temporarily because of lack of educational services. A parent or guardian transporting such a child shall be paid for each day of attendance at the mileage rate provided in section 81-1176 for each actual mile or fraction thereof traveled between the place of residence and the program of attendance, and when any parent or guardian transports more than one handicapped child with a disability in his or her custody or control enrolled in programs at the same location, the amount of payments to such parent or guardian shall be based upon the transportation of one such child. No transportation payments shall be made to a parent or guardian for mileage not actually traveled by such parent or guardian;

(b) Provide for the transportation expenses within the school district of any handicapped child with a disability who is enrolled in a special educational program of the district when either (i) the child is required to attend a facility other than what would be the normal school or attendance facility of the child to receive appropriate special educational services or (ii) the nature of the child's handicapping condition disability is such that special transportation is required. A parent or guardian transporting such child shall be paid for each day of attendance at the mileage rate provided in section 81-1176 for each actual mile or fraction thereof traveled between the place of residence and the program of attendance, and when any parent or guardian transports more than one child with a disability in his or her custody or control enrolled in programs at the same location, the amount of payments to such parent or guardian shall be based upon the transportation of one such child. No transportation payments shall be made to a parent or guardian for mileage not actually traveled by such parent or guardian;

(c) Provide visiting teachers for homebound handicapped children with disabilities. Such ~~which~~ teachers shall be certified and qualified in the same manner as required for other teachers in Nebraska;

(d) Provide correspondence instruction approved by the Commissioner of Education; or

(e) Provide any other method of instruction approved by the Commissioner of Education.

(2) When a handicapped child with a disability resides in or attends a preschool or child care program in a school district other than the school district of residence of his or her parents or guardian, the nonresident school district may, upon mutual agreement with the school district of residence, provide for the transportation expenses of the child.

Sec. 20. Section 79-1130, Reissue Revised Statutes of Nebraska, is amended to read:

79-1130. (1) It is the intent of the Legislature that transportation services for handicapped children with disabilities prescribed in section 79-1129 shall be provided in the most cost-efficient manner consistent with the goal of providing free appropriate special education to all such children. The Legislature finds that educational service units and special education cooperatives created by school districts and recognized by the State Department of Education are in a unique position to improve the coordination and efficiency of transportation services in all areas of the state. It is the intent of the Legislature to authorize and encourage school districts, educational service units, and special education cooperatives to jointly plan, coordinate, and, where feasible, provide transportation services for handicapped children with disabilities. The State Department of Education shall review and approve, approve with modifications, or disapprove all transportation applications to ensure the implementation of the most cost-efficient transportation system, consistent with the goal of providing free appropriate special education to all children.

(2) School districts, educational service units, and special education cooperatives created by school districts and recognized by the State Department of Education are authorized to jointly plan, coordinate, and, where feasible, provide special education transportation services prescribed in section 79-1129. Any educational service unit or special education cooperative may enter into a cooperative arrangement with a school board or board of education of a school district for the provision of such transportation services. Such arrangement shall be approved by the State Department of Education, and upon approval of the arrangement, the educational service unit or special education cooperative providing the transportation services shall be eligible to receive direct reimbursement for such services pursuant to section 79-1144.

Sec. 21. Section 79-1131, Reissue Revised Statutes of Nebraska, is

amended to read:

79-1131. Participation in or attendance at programs by handicapped children with disabilities who are less than five years of age shall be voluntary as specified by the parent or guardian. Programs serving children with disabilities who are less than three years of age shall, to the greatest extent possible, be based upon providing parent training in the home environment.

Sec. 22. Section 79-1132, Reissue Revised Statutes of Nebraska, is amended to read:

79-1132. The State Department of Education shall provide grants for the costs of the special education programs approved by the State Department of Education to the school district of residence for handicapped children of children with disabilities who are less than five years of age. Educational service units or cooperatives of school districts recognized as regional planning entities by the State Board of Education pursuant to section 79-1135 shall be eligible to receive grants for cooperative programs for such handicapped children of children with disabilities who are less than five years of age if such educational service units or cooperatives have complied with the reporting and approval requirements of such section. The grants shall be one hundred percent of the costs of such programs and shall continue to be one hundred percent as long as the funding for such grants comes from federal funds. For special education programs and transportation provided in fiscal year 1994-95, if the federal funding pursuant to the federal Individuals with Disabilities Education Act, Part B and section 619 flow-through funds is inadequate at any time to pay one hundred percent of the costs of such programs and transportation, the amount of the grant provided by the department shall be ninety percent of such costs which amount shall be made up of federal flow-through funds plus state general funds to be appropriated by the Legislature if necessary. For special education programs and transportation provided to handicapped children below age five children with disabilities who are less than five years of age in fiscal year 1995-96 and each fiscal year thereafter, if federal funding pursuant to the federal Individuals with Disabilities Education Act, Part B and section 619 flow-through funds is inadequate at any time to pay one hundred percent of the allowable costs of such programs and transportation, the amount of the grant payments provided by the department shall be a pro rata amount as determined by the State Board of Education from appropriations for special education approved by the Legislature and based on such allowable costs for all special education programs and transportation to handicapped children below age five children with disabilities who are less than five years of age. The grant payments shall be made by the State Department of Education to the school district of residence, educational service unit, or regional planning entity recognized by the State Board of Education pursuant to section 79-1135 each year in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning in December.

Sec. 23. Section 79-1133, Reissue Revised Statutes of Nebraska, is amended to read:

79-1133. Each school district shall pay an amount equal to the average per pupil cost of the servicing service agency of the preceding year or the cost as agreed upon pursuant to the contract to the agency providing the educational program for every handicapped student of child with a disability who is less than five years of age, who is a resident of the district, and who is attending an educational program not operated by the school district, including programs operated by the State Department of Education, the Department of Health and Human Services, and any other servicing service agency whose programs are approved by the State Department of Education.

Sec. 24. Section 79-1134, Reissue Revised Statutes of Nebraska, is amended to read:

79-1134. The State Department of Education shall develop and maintain search and reporting systems which assist in the early identification and provision of educational services to handicapped children with disabilities. Such system shall be operated in consultation and cooperation with public and nonpublic agencies, institutions of postsecondary education postsecondary educational institutions, public and nonpublic schools, educational service units, and medical and mental health professionals. A report describing the number and type of children of with disabilities who are less than five years of age served, the kinds of services provided, and the agencies providing the services shall be presented on December 31 of each year by the Commissioner of Education to the State Board of Education, the Department of Administrative Services, and the Executive Board of the Legislative Council. Such report shall:

(1) Specifically set forth the status of qualifications of program personnel in relation to the standards;

(2) Include an inventory of training program capacity at each institution of higher education postsecondary educational institution; and

(3) Describe the method employed by each institution of higher education postsecondary educational institution to accommodate the previous experience and education of candidates for training.

Sec. 25. Section 79-1135, Reissue Revised Statutes of Nebraska, is amended to read:

79-1135. Each school district shall demonstrate participation in a plan of services for handicapped children of children with disabilities who are less than five years of age. Such plans shall be prepared on a regional basis as determined by the State Department of Education and updated annually. The contents of the plans shall include, but not be limited to:

(1) A listing of the programs existing during the initial planning period and the personnel involved and their qualifications;

(2) A census by name, school district of residence, and handicapping condition disability of all children with disabilities who are less than five years of age;

(3) A procedure for identification and referral of handicapped children with disabilities;

(4) An agreement setting forth the responsibilities and level of participation of each servicing service agency within the region; and

(5) Budgets for the proposed program.

Plans for program expansions, revisions, and reductions and budget information on programs for handicapped children of children with disabilities who are less than five years of age shall be reported annually on dates specified by the State Department of Education. The content of such plans and the required budget information shall be prescribed by the department.

The State Board of Education shall annually approve, approve with modifications, or disapprove the requests for program expansions. Supplementary amendments to any program plans and budgets previously approved by the State Board of Education may be submitted on dates specified by the department during the same school year and shall be subject to the same review as the initial plans and budgets.

Sec. 26. Section 79-1136, Reissue Revised Statutes of Nebraska, is amended to read:

79-1136. The provisions of sections Sections 79-1126 and 79-1131 to 79-1136 do not prevent funding from sources other than the public schools for the program for handicapped children of children with disabilities who are less than five years of age.

Sec. 27. Section 79-1137, Reissue Revised Statutes of Nebraska, is amended to read:

79-1137. The Legislature finds and declares that there is a need to establish a process and criteria to assess, identify, and verify children who may require special education. Research-based criteria and a rational process for the assessment of children who may require special education will lead to greater equity, consistency, and efficiency in the identification of and the provision of services to such handicapped children. It is the intent of the Legislature that all children who require special education services shall be identified and verified pursuant to such criteria and process.

Sec. 28. Section 79-1138, Reissue Revised Statutes of Nebraska, is amended to read:

79-1138. The State Board of Education shall adopt and promulgate rules and regulations to be effective after August 1, 1987, establishing criteria for the assessment, identification, and verification of all handicapping conditions disabilities defined in section 79-1120 12 of this act to the extent that such handicapping conditions disabilities are consistent with federal law and regulation. The rules and regulations shall include provisions for the maximum possible utilization of regular education programs and personnel for applicants whose learning problems do not meet the criteria established for the identification and verification of handicapped children with disabilities.

Sec. 29. Section 79-1140, Reissue Revised Statutes of Nebraska, is amended to read:

79-1140. Except as provided in sections 79-232 to 79-247 and 79-1141, each school district shall pay an amount equal to the average per pupil cost of the servicing service agency of the preceding year or the cost as agreed upon pursuant to the contract to the agency providing the educational program for every child with a disability who is a resident of the district and is attending an educational program not operated by the school district, including programs operated by the State Department of Education,

the Department of Health and Human Services, and any other servicing service agency whose programs are approved by the State Department of Education.

Sec. 30. Section 79-1142, Reissue Revised Statutes of Nebraska, is amended to read:

79-1142. (1) For special education programs provided in fiscal year 1994-95, the State Department of Education shall reimburse each school district, in fiscal year 1995-96, an amount equal to ninety percent of allowable excess cost for all special education programs other than Level I services. The amount appropriated by the Legislature for Level I services shall consist of the amount of the preceding year's Level I services appropriation plus fifty percent of the increase in the ninety percent allowable excess cost in Level I services for the average of the two immediately preceding years, except that the amount to be reimbursed by the State Department of Education for Level I services shall not be less than eighty percent of allowable excess costs. The proportionate share for each school district for Level I services shall be based on the final expenditure report of ninety percent of the allowable excess cost for Level I services for the immediately preceding year's special education program.

Level I services refers to services provided to students children with disabilities who require an aggregate of not more than three hours per week of special education services and includes all administrative, diagnostic, consultative, and vocational-adjustment counselor services.

(2) For special education programs provided in fiscal year 1995-96 and each fiscal year thereafter, the State Department of Education shall reimburse each school district in the following fiscal year a pro rata amount determined by the State Board of Education from appropriations for special education approved by the Legislature and based on allowable excess costs for all special education programs.

(3) Cooperatives of school districts or educational service units shall also be eligible for reimbursement for cooperative programs pursuant to this section if such cooperatives or educational service units have complied with the reporting and approval requirements of section 79-1155 for cooperative programs which were offered the preceding year. The payments shall be made by the State Department of Education to the school district of residence, cooperative of school districts, or educational service unit each year in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning in December. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The director shall, upon receiving such certification, draw warrants against funds appropriated.

Sec. 31. Section 79-1143, Reissue Revised Statutes of Nebraska, is amended to read:

79-1143. The fiscal year for all programs reimbursed pursuant to the Special Education Act shall begin on September 1 of each year and end on August 31 of the following year. Funds appropriated for any period ending on June 30 of a given year for actual transportation expenses for handicapped children with disabilities pursuant to section 79-1129 may be spent or obligated through August 31 of that year for such purpose.

Sec. 32. Section 79-1144, Reissue Revised Statutes of Nebraska, is amended to read:

79-1144. Funds shall be appropriated by the Legislature to carry out sections 79-1141 to 79-1144 and 79-1147. Such funds shall be channeled through the office of the State Department of Education. The department is authorized to expend such funds upon proper vouchers approved by the department and warrants issued by the Director of Administrative Services for financial reimbursement to school districts, educational service units, special education cooperatives created by school districts, agencies, and parents or guardians, including (1) reimbursement (a) for ninety percent of the amount expended prior to fiscal year 1995-96 pursuant to section 79-1129 for actual transportation expenses per year for handicapped children and children with mental retardation children with disabilities and (b) for the amount expended for fiscal year 1995-96 and each fiscal year thereafter pursuant to section 79-1129 for actual transportation expenses per year for handicapped children with disabilities a pro rata amount which shall be determined by the State Board of Education from appropriations for special education approved by the Legislature based on all actual allowable transportation costs, (2) reimbursement for instructional aids and consultative, supervisory, research, and testing services to school districts, and (3) reimbursement for salaries, wages, maintenance, supplies, travel, and other expenses essential to carrying out the provisions for special education programs. Minor building modifications shall not be eligible for state

reimbursement as an allowable expense beginning with the reimbursement provided in fiscal year 1993-94 except for those projects or portions thereof completed prior to August 31, 1992, and paid for by the school district on or before December 31, 1992. Documentation of projects or portions thereof completed during the 1991-92 school year shall be provided to the State Department of Education. Applications for state reimbursement for actual transportation expenses shall be submitted to the department annually on a date and on forms prescribed by the department. Amendments to applications for actual transportation expenses shall be submitted on dates prescribed by the department during the school year in which the original application was made.

Sec. 33. Section 79-1147, Reissue Revised Statutes of Nebraska, is amended to read:

79-1147. Whenever a child with a disability must temporarily reside in a residential facility, boarding home, or foster home in order to receive an appropriate special education program, the State of Nebraska shall provide for the ordinary and reasonable cost of the residential care during the duration of the special education program. The state shall not be required to pay such cost unless placement of the child in a special education program requiring residential care was made by the school district of residence with the prior approval of the State Department of Education or was made pursuant to sections 79-1162 to 79-1167.

Sec. 34. Section 79-1148, Reissue Revised Statutes of Nebraska, is amended to read:

79-1148. The State Department of Education is authorized to set up one or more approved schools for handicapped children with disabilities. These schools shall offer residential facilities for handicapped such children, which facilities shall be under the control and supervision of the State Department of Education.

Sec. 35. Section 79-1152, Reissue Revised Statutes of Nebraska, is amended to read:

79-1152. No school district shall make a placement place a child with a disability in a special education program requiring residential care without advance consultation with the State Department of Education to review the child's needs and the availability and appropriateness of each possible placement in the continuum of alternative services. Applications for approval of special education program placements requiring residential care shall be signed by the parent or legal guardian, submitted via the school district of residence of the child to the State Department of Education, and acted upon by the department State Department of Education within thirty days after receipt by the department. If an application is denied, the parent or legal guardian shall be provided written notification by the State Department of Education of his or her right to appeal the decision pursuant to sections 79-1162 to 79-1167 and right to name the State Department of Education as respondent in the appeal proceeding.

The State Department of Education and the Department of Health and Human Services shall annually establish the maximum rates that the state will pay for the ordinary and reasonable cost of residential care placements within the state. After September 6, 1985, children with disabilities whose residential placement was funded by state and regional agencies other than the State Department of Education shall continue to be funded by such agencies.

Sec. 36. Section 79-1153, Reissue Revised Statutes of Nebraska, is amended to read:

79-1153. Following residential placement of a child with a disability, the school district of residence and the State Department of Education shall continue efforts to develop appropriate programs closer to the handicapped child's home and shall cooperate with the Department of Health and Human Services in preparing families to accommodate returning children with disabilities. The Department of Health and Human Services shall provide consultative services, as defined by mutual agreement between the State Department of Education and the Department of Health and Human Services, to the children and families with disabilities who were initially provided residential care and to their families.

Sec. 37. Section 79-1154, Reissue Revised Statutes of Nebraska, is amended to read:

79-1154. The State Board of Education shall review special training and educational programs offered by or in conjunction with any public school district, combination of public school districts, educational service unit, or combination of educational service units subject to the following:

- (1) Each teacher in any such special program shall be qualified;
- (2) Teacher aides working with any such program shall have such qualifications as the governing body of the school district, educational

service unit, or combination shall prescribe and shall participate in appropriate inservice activities; and

(3) Each qualified teacher shall be responsible for the direct supervision of teacher aides, whose duties shall be limited to those prescribed in section 79-802.

For purposes of this section, qualified teacher means an individual holding a valid State of Nebraska teaching or special services certificate with an endorsement appropriate to the handicaps disabilities served. If such teacher is serving children with more than one handicap disability, qualified teacher means an individual holding a valid State of Nebraska teaching or special services certificate with an endorsement in at least one of the handicaps disabilities served.

Sec. 38. Section 79-1155, Reissue Revised Statutes of Nebraska, is amended to read:

79-1155. All school boards and boards of education shall report annually on a date prescribed by the State Department of Education to the department on forms provided by the department (1) plans for special education program expansions, revisions, or reductions and (2) budget information for special education programs. Cooperatives of school districts or educational service units applying for grants or reimbursement for programs pursuant to section 79-1132, 79-1142, or 79-1144 shall also report unified plans and budget information pursuant to this section. The plans and budget forms shall conform to guidelines provided in section 79-1156. The State Department of Education shall review and take action to approve, approve with modifications, or disapprove the plans for expansions in special education programs of the school district, cooperative of school districts, or educational service unit. Supplementary amendments to any program plans and budgets previously approved by the State Board of Education may be submitted on dates specified by the department during the same school year and shall be subject to the same review and approval as the initial plans and budgets. The State Board of Education shall approve, approve with modifications, or disapprove all supplementary amendments to program plans and budget requests. All final financial reports on special education costs, the actual number of children served, and the handicapping conditions disabilities of such children shall be reported to the State Department of Education by October 31 of each year for the preceding school year on forms prescribed by the State Department of Education. Any program that provides residential care shall show the costs of such care separately from the costs of the education program.

If a servicing service agency chooses to exceed the budget approved by the State Department of Education, costs in excess of the approved budget shall not be reimbursed by the State Department of Education.

Sec. 39. Section 79-1156, Reissue Revised Statutes of Nebraska, is amended to read:

79-1156. The State Department of Education shall coordinate information reporting requirements for special education programs with other educational data reporting requirements of the department to the extent possible. The plans for program expansions, revisions, and reductions shall contain the information required by the department. The information on special education programs shall include the following:

(1) A description of the types of services to be offered and the number of students children with disabilities receiving the services;

(2) The servicing service agencies and the respective services offered;

(3) A presentation of all expected expenditures by source of funds;

(4) A detailed description of the methodology to be used by the agency for evaluating the results of the programs and service being provided for each service group. This methodology shall permit program evaluation, including the relative cost and effectiveness of alternative forms and patterns of services;

(5) A description of the procedures used to insure that students children with disabilities are placed in appropriate educational programs. Such procedures shall be reviewed for approval by the State Department of Education; and

(6) A sample of the written materials to be used to provide parents with specific information about complaint and appeal rights and procedures.

Sec. 40. Section 79-1157, Reissue Revised Statutes of Nebraska, is amended to read:

79-1157. All special education programs shall be reviewed at least once every three years by the State Department of Education.

To enable the State Department of Education to determine the effectiveness of the programs and services being provided, the department shall conduct a program of continuing evaluations of the different types of

programs and services being provided for each of the service groups. In conducting these evaluations, the department shall take into account such factors as numbers and types of students children with disabilities, class sizes, qualifications of staff, and other factors which the department deems appropriate. The department shall conduct evaluations of all programs and services and shall conduct these evaluations in such a manner as to enable the department to compare the relative effectiveness of the same or similar programs or services provided in different locations.

Evaluation studies shall be designed to provide the Legislature, the State Department of Education, the school districts, and other service agencies with the following information:

- (1) A detailed description of groups served;
- (2) A detailed description of the kind of programs or services provided and their cost per unit of service as well as the cost of each service; and
- (3) A detailed description of the effectiveness of the programs or services.

Sec. 41. Section 79-1160, Reissue Revised Statutes of Nebraska, is amended to read:

79-1160. The State Department of Education shall adopt, promulgate, and publish such rules and regulations as shall be necessary to carry out the Special Education Act. Such rules and regulations shall include, but not be limited to, the regulation of costs under section 79-1152, limitation of the program to handicapped children with disabilities who require residential care in order to receive an appropriate special education program, and provisions for contracts with the Department of Health and Human Services to assist in the administration of the act.

Sec. 42. Section 79-1161, Reissue Revised Statutes of Nebraska, is amended to read:

79-1161. (1) A surrogate parent shall be appointed by a school district to protect the rights of a handicapped child with a disability if the district determines that (a) the parents of the child cannot be identified, (b) the parents of the child are unknown or unavailable, or (c) the child is a ward of the state.

(2) The surrogate parent shall (a) have no interest which conflicts with the interest of the child, (b) have knowledge and skills that insure adequate representation, and (c) not be an employee of any agency involved in the care or education of the child. The surrogate parent appointed under this section may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

(3) The services of the surrogate parent shall be terminated when (a) the child is no longer eligible under subsection (1) of this section, (b) a conflict of interest develops between the interest of the child and the interest of the surrogate parent, or (c) the surrogate parent fails to fulfill his or her duties as a surrogate parent. Issues arising from the selection, appointment, or removal of a surrogate parent shall be resolved through hearings established under sections 79-1162 to 79-1167. The surrogate parent and the school district which appointed the surrogate parent shall not be liable in civil actions for damages for acts of the surrogate parent unless such acts constitute willful and wanton misconduct.

Sec. 43. Section 79-1162, Reissue Revised Statutes of Nebraska, is amended to read:

79-1162. A parent, guardian, competent student of the age of majority, or school district may initiate a hearing on matters related to the initiation, change, or termination or the refusal to initiate, change, or terminate the identification, evaluation, or educational placement of a child with a disability or the provision of a free appropriate public education or records relating thereto. A copy of the procedures specified in rules and regulations of the State Department of Education for complaints and hearings under this section shall be provided by school districts to all parents and guardians of handicapped children with disabilities who are receiving services on September 6, 1985, and, thereafter, to all parents and guardians of handicapped children with disabilities upon initial consideration of the provision of services for their handicapped children with disabilities. Such hearing shall be initiated by filing a petition with the State Department of Education. A parent, guardian, or competent student of the age of majority shall not be entitled to reimbursement for any expenses incurred more than sixty days prior to the filing of the petition.

Sec. 44. Section 79-1163, Reissue Revised Statutes of Nebraska, is amended to read:

79-1163. The State Department of Education shall conduct hearings

initiated under section 79-1162 using hearing officers. The State Department of Education may employ, retain, or approve such qualified hearing officers as are necessary to conduct hearings provided by sections 79-1152 and 79-1162 to 79-1167. The hearing officers shall not be persons who are employees or officers of a state or local public agency which is involved in the education or care of the child with a disability on whose behalf the hearing is being held. A person who otherwise qualifies to conduct a hearing under such sections is not an employee of the agency solely because the person is paid by the agency to serve as a hearing officer. No hearing officer shall participate in any way in any hearing or matter in which the hearing officer may have a conflict of interest. Hearing officers appointed and assigned by the State Department of Education shall have exclusive original jurisdiction over cases arising under such sections, and in no event shall juvenile courts shall not in any event have jurisdiction over such matters.

Sec. 45. Section 79-1165, Reissue Revised Statutes of Nebraska, is amended to read:

79-1165. Any party at a hearing conducted under sections 79-1163 and 79-1164 shall have the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing; and

(5) Obtain written findings of fact and decisions.

The hearing officer may also produce evidence on the officer's own motion.

Sec. 46. Section 79-1167, Reissue Revised Statutes of Nebraska, is amended to read:

79-1167. (1) Any party to a hearing conducted under sections 79-1162 to 79-1166 aggrieved by the findings, conclusions, or final decision and order of the hearing officer shall be is entitled to judicial review under this section. Any party of record also may seek enforcement of the final decision and order of the hearing officer pursuant to this section.

(2) Proceedings for judicial review shall be instituted by filing a petition in the district court of the county in which the main administrative offices of the school district are located within thirty days after service of the final decision and order on the party seeking such review. All parties of record shall be made parties to the proceedings. The court, in its discretion, may permit other interested parties to intervene.

(3) The filing of a petition for judicial review shall operate to stay the enforcement of the final decision and order of the hearing officer. While judicial proceedings are pending and unless the school district and the parent or guardian otherwise agree, the child with a disability shall remain in his or her current educational placement or if applying for initial admission to a public school such child shall, with the consent of the parent or guardian, be placed in the public school program until all such proceedings have been completed. If the health or safety of the child or of other persons would be endangered by delaying a change in assignment, the school district may make such change without prejudice to the rights of any party.

(4) Within fifteen days after receiving notification that a petition for judicial review has been filed or if good cause is shown within such further time as the court may allow, the State Department of Education shall prepare and transmit to the court a certified transcript of the proceedings before the hearing officer.

(5) Judicial review shall be conducted by the court without a jury. The court shall receive the records of the administrative proceedings, hear additional evidence at the request of a party, base its decision on the preponderance of the evidence, and grant such relief as the court determines is appropriate.

(6) An aggrieved party may secure a review of any final judgment of the district court under this section by appeal to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

(7) When no petition for judicial review or other civil action is filed within thirty days after service of the final decision and order on all of the parties, the hearing officer's final decision and order shall become effective. Proceedings for enforcement of a hearing officer's final decision and order shall be instituted by filing a petition for appropriate relief in

the district court of the county in which the main administrative offices of the school district are located within one year after the date of the hearing officer's final decision and order.

Sec. 47. Section 79-1168, Reissue Revised Statutes of Nebraska, is amended to read:

79-1168. For purposes of sections 79-1168 to 79-1178, unless the context otherwise requires:

- (1) Board means the State Board of Education;
- (2) Diagnosis means:
 - (a) Systematic observation and assessment of a child in order to gather information on the child's functioning strengths, weaknesses, learning characteristics, and vocational potential;
 - (b) Preparation of individualized educational plans;
 - (c) Trial implementation of the individualized educational plans within the program;
 - (d) Followup procedures to be conducted after a child has been placed in the local education program; and
 - (e) Development of a transitional plan as to coordination of services linking education and employment opportunities;
- (3) Handicapping conditions means those conditions defined or provided for in section 79-1120 Disability has the definition found in section 12 of this act; and
- (4) Program means the program authorized by section 79-1169.

Sec. 48. Section 79-1170, Reissue Revised Statutes of Nebraska, is amended to read:

79-1170. The purposes of the program include:

- (1) Diagnosis of educational handicapping conditions disabilities of children to age twenty-one years;
- (2) Training services for special education teachers and others;
- (3) Research into the improvement of educational services for handicapped children with disabilities;
- (4) Utilization of diagnostic services on a contractual basis with other state agencies; and
- (5) Coordinated delivery of the services available within the State Department of Education for handicapped individuals with disabilities.

Sec. 49. Section 79-1185, Reissue Revised Statutes of Nebraska, is amended to read:

79-1185. For purposes of sections 79-1186 and 79-1187, support services means preventive services for those students not identified or verified as handicapped children with disabilities pursuant to sections 79-1120 and 79-1137 to 79-1139 and section 12 of this act but demonstrating a need for specially designed assistance in order to benefit from the school district's general education curriculum and to avoid the need for potentially expensive special education placement and services.

Sec. 50. Section 79-1187, Reissue Revised Statutes of Nebraska, is amended to read:

79-1187. (1) The Legislature finds that the funding system for special education programs and support services should be neutral as to identification and programming of programs and support services for students with handicaps children with disabilities and students needing support services. Further, the Legislature finds that the funding system for special education programs for children with disabilities and support services for students with handicaps and students needing support services should encourage programs and services that are consistent with sound education practice, preventive, and, when appropriate, integrated with regular education services. Educational services for students with handicaps children with disabilities and students needing support services should be driven by educational needs rather than state funding formulas.

(2) It is the intent of the Legislature that, beginning with school year 1998-99, there shall be implemented a new funding system to replace the existing excess cost reimbursement provisions for the funding of special education programs and support services offered by school districts, educational service units, and approved cooperatives. The new funding system shall be identification and program neutral, assure that adequate resources are available to meet the needs of students with handicaps children with disabilities and students needing support services, and provide for equity in special education programs and support services to such children and students regardless of the district in which such children and students reside. Further, the new funding system should be designed so that average annual special education costs increase at a rate no greater than the average annual growth rate of general education. State funding should be made available to meet the needs of students with handicaps children with disabilities and

students needing support services without the requirement that such students be identified and verified as students children with disabilities as defined in the Special Education Act and the federal Individuals with Disabilities Education Act and rules and regulations adopted and promulgated pursuant to such acts.

(3) The Legislature recognizes that the shift from an excess cost reimbursement funding formula to a new funding system which meets the intent stated in subsections (1) and (2) of this section for special education programs and support services raises several issues which demand further examination and public discussion prior to implementation, including (a) how to establish the basis for distribution of state funding, (b) how to provide for the financial support of students with children with disabilities who have extremely disabling conditions and extraordinary needs which result in high costs to school districts beyond the districts' ability to reasonably provide for special education programs and support services utilizing block grant support and local resources, (c) how to establish the state funding level, (d) how to assure that funding for special education programs and support services is maintained at the same levels of growth or decline as funding levels of general education, (e) how to establish educational practices for delivery of quality special education programs and support services, (f) how the new funding system should be integrated with general state aid to be consistent with the principles of student and taxpayer equity underlying the state's equalization aid program, (g) how to phase in the new funding system to minimize financial impacts on school districts, (h) how accountability for appropriate educational needs shall be established for school districts, educational service units, or approved cooperatives to qualify for the new funding system, and (i) how the State Department of Education can integrate the administration of the new funding system to eliminate duplication in aid payments, accounting, and reporting of expenditures. It is the intent of the Legislature that these issues shall be addressed by the Special Education Accountability Commission in consultation with the School Finance Review Committee, the State Department of Education, and the Education Committee of the Legislature. The Education Committee of the Legislature and the Special Education Accountability Commission shall receive written proposals for alternative funding systems for special education services which meet the goals stated in subsections (1) and (2) of this section from any individual, agency, or group until January 15, 1996.

Sec. 51. Section 79-1191, Reissue Revised Statutes of Nebraska, is amended to read:

79-1191. For purposes of the Children with Disabilities and Family Service System Act:

(1) Children with disabilities means handicapped children with disabilities as defined in section 79-1120 ~~79-1117~~ who are subject to section 79-1126 and who cannot be educated in their home communities or who are at risk of out-of-home placement;

(2) Department means the State Department of Education; and

(3) State plan means the annual plan of services prepared by the department pursuant to section 79-1192.

Sec. 52. Section 79-1194, Reissue Revised Statutes of Nebraska, is amended to read:

79-1194. The state plan shall be responsive to the cultural needs of the hearing-impaired and blind and visually impaired communities.

Sec. 53. Section 79-11,109, Reissue Revised Statutes of Nebraska, is amended to read:

79-11,109. The State Department of Education shall have oversight and general control of all programs of education and welfare for blind and visually handicapped impaired persons of suitable age and capacity from birth until completion of a suitable program of education, to include, but not be limited to, the state school for the blind and visually handicapped impaired known as the Nebraska School for the Visually Handicapped.

Sec. 54. Section 79-11,110, Reissue Revised Statutes of Nebraska, is amended to read:

79-11,110. The purpose of the Nebraska School for the Visually Handicapped is to provide general and special education for persons not to exceed twenty-one years of age for whose benefit such school was created, until completion of a general or special program. The school shall be the state resource center for all educational programs for children who are blind and visually handicapped children impaired in Nebraska and shall provide services such as inservice training of teachers, itinerant teaching, counseling services, and the loan of equipment, books, and learning media to school districts and educational service units.

Sec. 55. Section 79-11,111, Reissue Revised Statutes of Nebraska,

is amended to read:

79-11,111. The State Department of Education shall be responsible for the education and welfare of all persons who are (1) blind and visually handicapped impaired to such an extent that they cannot acquire an education in the public schools of the state, (2) not otherwise provided for, (3) of suitable age and capacity, and (4) of good moral character without charge except as provided by section 79-1141.

Sec. 56. Section 79-11,113, Reissue Revised Statutes of Nebraska, is amended to read:

79-11,113. The State Department of Education shall be responsible for sanitary and hygienic conditions and provide such professional and medical services, either on a full-time or part-time basis, as deemed necessary for the health and welfare of persons who are blind and visually handicapped persons impaired for whom educational programs are provided at the Nebraska School for the Visually Handicapped.

Sec. 57. Section 79-11,119, Reissue Revised Statutes of Nebraska, is amended to read:

79-11,119. Children under the age of sixteen years classified as blind and visually handicapped impaired shall attend either an approved program provided by a local school district, an approved program provided by an educational service unit, or an approved program provided in a nonpublic school or the Nebraska School for the Visually Handicapped. The State Department of Education shall determine the need for and adequacy of all programs of instruction for the blind and visually handicapped impaired in public and nonpublic schools and approve such programs.

Sec. 58. Section 79-1231, Reissue Revised Statutes of Nebraska, is amended to read:

79-1231. When special education is provided by an educational service unit for handicapped children with disabilities as defined in section 79-1120 12 of this act, the payments provided by sections 79-1126 to 79-1144 shall be made to such educational service unit.

Sec. 59. Section 85-179, Reissue Revised Statutes of Nebraska, is amended to read:

85-179. The Board of Regents of the University of Nebraska may cooperate with public or private agencies engaged in the care and rehabilitation of handicapped children, children with disabilities so as to make available an interchange of facilities for teaching and treatment purposes under such terms as may be mutually agreed upon by the Board of Regents and the several agencies desiring the use of such land.

Sec. 60. Original sections 79-238, 79-241, 79-244, 79-245, 79-549, 79-816, 79-1103, 79-1110, 79-1116, 79-1117, 79-1120, 79-1121, 79-1124 to 79-1138, 79-1140, 79-1142 to 79-1144, 79-1147, 79-1148, 79-1152 to 79-1157, 79-1160 to 79-1163, 79-1165, 79-1167, 79-1168, 79-1170, 79-1185, 79-1187, 79-1191, 79-1194, 79-11,109 to 79-11,111, 79-11,113, 79-11,119, 79-1231, and 85-179, Reissue Revised Statutes of Nebraska, and section 43-2505, Revised Statutes Supplement, 1996, are repealed.