

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 515

Introduced by Vargas, 7.

Read first time January 22, 2019

Committee:

- 1 A BILL FOR AN ACT relating to the Student Discipline Act; to amend
2 sections 79-256, 79-265, 79-266, 79-267, 79-268, 79-269, 79-271,
3 79-272, 79-276, 79-278, 79-282, 79-283, and 79-287, Reissue Revised
4 Statutes of Nebraska; to redefine a term; to change provisions
5 relating to intent, suspension, expulsion, reassignment, discipline,
6 and hearings; to harmonize provisions; and to repeal the original
7 sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-256, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 79-256 For purposes of the Student Discipline Act, unless the
4 context otherwise requires:

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

8 (2) Expulsion means exclusion from attendance in all schools within
9 the system in accordance with section 79-283;

10 (3) Mandatory reassignment means the involuntary transfer of a
11 student to another school ~~in connection with any disciplinary action~~; and

12 (4) Short-term suspension means the exclusion of a student from
13 attendance in all schools within the system for a period not to exceed
14 five school days.

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

17 79-265 (1) The principal may deny any student the right to attend
18 school or to take part in any school function for a period of up to five
19 school days on the following grounds:

20 (a) Conduct constituting grounds for expulsion as set out in the
21 Student Discipline Act; or

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

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

29 (3) Before such short-term suspension takes effect, the student
30 shall be given oral or written notice of the charges against him or her,
31 an explanation of the evidence the authorities have, and an opportunity

1 to present his or her version.

2 (4) Within twenty-four hours or such additional time as is
3 reasonably necessary, not to exceed an additional forty-eight hours,
4 following such suspension, the principal shall send a written statement
5 to the student and his or her parent or guardian describing the student's
6 conduct, misconduct, or violation of the rule or standard and the reasons
7 for the action taken. The principal shall make a reasonable effort to
8 hold a conference with the parent or guardian before or at the time the
9 student returns to school and shall document such effort in writing.

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

19 Sec. 3. Section 79-266, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 79-266 (1) Beginning July 1, 1997, each school district shall have
22 an alternative school, class, or educational program or the procedures of
23 subsection (2) of this section available or in operation for all expelled
24 students.

25 Any two or more school boards or boards of education may join
26 together in providing alternative schools, classes, or educational
27 programs. Any district may by agreement with another district send its
28 suspended or expelled students to any alternative school, class, or
29 educational program already in operation by such other district. An
30 educational program may include, but shall not be limited to,
31 individually prescribed educational and counseling programs or a

1 community-centered classroom with experiences for the student as an
2 observer or aide in governmental functions, as an on-the-job trainee, or
3 as a participant in specialized tutorial experiences. Such programs shall
4 include an individualized learning program to enable the student to
5 continue academic work for credit toward graduation. The State Department
6 of Education shall adopt and promulgate rules and regulations relating to
7 alternative schools, classes, and educational programs.

8 (2) If a district does not provide an alternative school, class, or
9 educational program for expelled students, the district shall follow the
10 procedures in this subsection prior to expelling a student unless the
11 expulsion was required by subsection (4) of section 79-283: A conference
12 shall be called by a school administrator and held to assist the district
13 in the development of a plan with the participation of a parent or legal
14 guardian, the student, a school representative, and a representative of
15 either a community organization with a mission of assisting young people
16 or a representative of an agency involved with juvenile justice. The plan
17 shall be in writing and adopted by a school administrator and presented
18 to the student and the parent or legal guardian. The plan shall (a)
19 specify guidelines and consequences for behaviors which have been
20 identified as preventing the student from achieving the desired benefits
21 from the educational opportunities provided, (b) identify educational
22 objectives that must be achieved in order to receive credits toward
23 graduation, (c) specify the financial resources and community programs
24 available to meet both the educational and behavioral objectives
25 identified, and (d) require the student to attend monthly reviews in
26 order to assess the student's progress toward meeting the specified goals
27 and objectives.

28 (3) A school district that has expelled a student may suspend the
29 enforcement of such expulsion unless the expulsion was required by
30 subsection (4) of section 79-283. The suspension may be for a period not
31 to exceed the length of the expulsion. As a condition of such suspended

1 action, the school district may require participation in a plan pursuant
2 to subsection (2) of this section or assign the student to a school,
3 class, or educational program which the school district deems
4 appropriate.

5 At the conclusion of such suspension period, the school district
6 shall (a) reinstate any student who has satisfactorily participated in a
7 plan pursuant to subsection (2) of this section or the school, class, or
8 educational program to which such student has been assigned and permit
9 the student to return to the school of former attendance or to attend
10 other programs offered by the district or (b) if the student's conduct
11 has been unsatisfactory, enforce the remainder of the expulsion action.

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

14 (4) At the conclusion of an expulsion, a school district shall
15 reinstate the student and accept nonduplicative, grade-appropriate
16 credits earned by the student during the term of his or her expulsion
17 from any Nebraska accredited institution or institution accredited by one
18 of the six regional accrediting bodies in the United States.

19 Sec. 4. Section 79-267, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 79-267 The following student conduct shall constitute grounds for
22 long-term suspension, expulsion, or mandatory reassignment, subject to
23 the procedural provisions of the Student Discipline Act, when such
24 activity occurs on school grounds, in a vehicle owned, leased, or
25 contracted by a school being used for a school purpose or in a vehicle
26 being driven for a school purpose by a school employee or by his or her
27 designee, or at a school-sponsored activity or athletic event:

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

31 (2) Willfully causing or attempting to cause substantial damage to

1 property, stealing or attempting to steal property of substantial value,
2 or repeated damage or theft involving property;

3 (3) Causing or attempting to cause personal injury to a school
4 employee, to a school volunteer, or to any student. Personal injury
5 caused by accident, self-defense, or other action undertaken on the
6 reasonable belief that it was necessary to protect some other person
7 shall not constitute a violation of this subdivision. For purposes of
8 this subdivision, personal injury shall be considered caused by accident
9 when the damage or consequences of the act that caused the injury were
10 unintentional, unforeseen, or unexpected;

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

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

16 (6) Engaging in the unlawful knowing possession, selling,
17 dispensing, or use of a controlled substance or an imitation controlled
18 substance, as defined in section 28-401, a substance represented to be a
19 controlled substance, or alcoholic liquor as defined in section 53-103.02
20 or being under the influence of a controlled substance or alcoholic
21 liquor;

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

25 (8) Engaging in bullying as defined in section 79-2,137;

26 (9) Sexually assaulting or attempting to sexually assault any person
27 if a complaint has been filed by a prosecutor in a court of competent
28 jurisdiction alleging that the student has sexually assaulted or
29 attempted to sexually assault any person, including sexual assaults or
30 attempted sexual assaults which occur off school grounds not at a school
31 function, activity, or event. For purposes of this subdivision, sexual

1 assault means sexual assault in the first degree as defined in section
2 28-319, sexual assault in the second degree as defined in section 28-320,
3 sexual assault of a child in the second or third degree as defined in
4 section 28-320.01, or sexual assault of a child in the first degree as
5 defined in section 28-319.01, as such sections now provide or may
6 hereafter from time to time be amended;

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

10 (11) A repeated violation of any rules and standards validly
11 established pursuant to section 79-262 if such violations constitute a
12 substantial interference with school purposes.

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

16 Sec. 5. Section 79-268, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 79-268 If a principal makes a decision to discipline a student by
19 long-term suspension, expulsion, or mandatory reassignment, the following
20 procedures shall be followed:

21 (1) The decision as to the recommended discipline shall be made
22 within two school days after learning of the alleged student misconduct
23 and initiating proceedings under the Student Discipline Act. On the date
24 of the decision, a written charge and a summary of the evidence
25 supporting such charge shall be filed with the superintendent. The school
26 shall, within two school days after the decision, send written notice by
27 registered or certified mail to the student and his or her parent or
28 guardian informing them of the rights established under the Student
29 Discipline Act;

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

31 (a) The rule or standard of conduct allegedly violated and the acts

1 of the student alleged to constitute a cause for long-term suspension,
2 expulsion, or mandatory reassignment, including a summary of the evidence
3 to be presented against the student;

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

6 (c) A statement that, before long-term suspension, expulsion, or
7 mandatory reassignment ~~for disciplinary purposes~~ can be invoked, the
8 student has a right to a hearing, upon request, and that if the student
9 is suspended pending the outcome of the hearing, the student may complete
10 classwork and homework, including, but not limited to, examinations,
11 missed during the period of suspension pursuant to district guidelines
12 which shall not require the student to attend the school district's
13 alternative programs for expelled students on the specified charges;

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

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

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

28 (3) When a notice of intent to discipline a student by long-term
29 suspension, expulsion, or mandatory reassignment is filed with the
30 superintendent, the student may be suspended by the principal until the
31 date the long-term suspension, expulsion, or mandatory reassignment takes

1 ~~effect if no hearing is requested or, if a hearing is requested, the date~~
2 ~~the hearing examiner makes the report of his or her findings and a~~
3 ~~recommendation of the action to be taken to the superintendent, if the~~
4 principal determines that the student must be suspended immediately to
5 prevent or substantially reduce the risk of (a) interference with an
6 educational function or school purpose or (b) a personal injury to the
7 student himself or herself, other students, school employees, or school
8 volunteers.

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

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

17 Sec. 6. Section 79-269, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 79-269 (1)(a) (1) If a hearing is requested within five school days
20 after receipt of the notice as provided in section 79-268, the
21 superintendent shall recommend appointment of ~~appoint~~ a hearing examiner
22 within two school days after receipt of the hearing request.

23 (b) The student or the student's parent or guardian may request
24 designation of a hearing officer other than that selected by the
25 superintendent, if notice to the superintendent of this request is given
26 within two school days after receipt of the superintendent's recommended
27 appointment. Upon receiving such request, the superintendent shall
28 provide a list of at least five qualified hearing officers who are not
29 employees of the school district, or otherwise currently under contract
30 with the school district, and whose impartiality may not otherwise be
31 reasonably questioned. The student or the student's parent or guardian

1 shall, within five school days, select a hearing officer from the list
2 and notify the superintendent in writing of the selection and the
3 superintendent shall appoint the selected hearing officer upon receipt of
4 such notice.

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

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

9 (ii) Have personal knowledge of evidentiary facts concerning the
10 proceeding;

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

12 (iv) Have a spouse who is an employee of, or is under contract with,
13 the school district.

14 (d) For purposes of this section a qualified hearing officer shall
15 be an individual who has knowledge of the Student Discipline Act,
16 training in its statutory requirements, and experience conducting student
17 hearings.

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

21 (2) The hearing examiner shall be any person designated pursuant to
22 subsection (1) of this section by the school district's superintendent,
23 school board or board of education, or counsel, if such person (a) has
24 not brought the charges against the student, (b) shall not be a witness
25 at the hearing, and (c) has no involvement in the charge. Expenses and
26 fees of any hearing officer, in connection with the hearing, shall be
27 paid by the school board.

28 (3) The hearing shall be held scheduled within a period of five
29 school days after appointment of the hearing officer it is requested, but
30 such time may be changed by the hearing examiner for good cause with the
31 consent of the parties. No hearing shall be held upon less than two

1 school days' actual notice to the principal, the student, and the
2 student's parent or guardian, except with the consent of all the parties.

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

9 Sec. 7. Section 79-271, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 79-271 If a hearing is requested under sections 79-268 and 79-269
12 by the student or the student's parent or guardian within five school
13 days following receipt of the written notice, and the student has been
14 suspended pending the outcome of such hearing, the student shall be given
15 the opportunity to complete any classwork, including, but not limited to,
16 examinations missed during the period of suspension as provided in
17 section 79-265.

18 If a hearing is not requested under sections 79-268 and 79-269 by
19 the student or the student's parent or guardian within five school days
20 following receipt of the written notice, the punishment recommended in
21 the charge by the principal or his or her designee shall automatically go
22 into effect upon the fifth school day following receipt of the written
23 notice by the student or his or her parent or guardian as required in
24 section 79-268.

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

27 79-272 If a hearing is requested under sections 79-268 and 79-269
28 more than five school days but not more than thirty calendar days
29 following the actual receipt of written notice, the hearing officer shall
30 be appointed and the hearing shall be held pursuant to the requirements
31 of section 79-269 but the imposed punishment shall continue in effect

1 pending final determination.

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

4 79-276 At a hearing requested under sections 79-268 and 79-269, the
5 principal shall present to the hearing examiner statements, in affidavit
6 form, of any person having information about the student's conduct and
7 the student's records but not unless such statements and records have
8 been provided ~~made available~~ to the student or the student's parent,
9 guardian, or representative at least forty-eight hours prior to the
10 hearing. The information contained in such records shall be explained and
11 interpreted, prior to or at the hearing, to the student, parent,
12 guardian, or representative, upon request, by appropriate school
13 personnel.

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

16 79-278 (1) The student, the student's parent, guardian, or
17 representative, the principal, or the hearing examiner may ask witnesses
18 to testify at the hearing requested under sections 79-268 and 79-269.
19 Such testimony shall be under oath, and the hearing examiner shall be
20 authorized to administer the oath. The hearing examiner shall make
21 reasonable effort to assist the student or the student's parent,
22 guardian, or representative in obtaining the attendance of witnesses. The
23 school district shall make available those witnesses who have knowledge
24 of or were involved in the alleged misconduct and subsequent discipline
25 of the student if such witnesses are requested by the student or the
26 student's parent, guardian, or representative and such witnesses are
27 employees or under contract with the school district.

28 (2) The student, the student's parent, guardian, or representative,
29 the principal, or the hearing examiner has the right to question any
30 witness giving information at the hearing.

31 Sec. 11. Section 79-282, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 79-282 (1) After a hearing requested under sections 79-268 and
3 79-269, a report shall be made by the hearing examiner of his or her
4 findings and a recommendation of the action to be taken, which report
5 shall be made to the superintendent and the student or the student's
6 parent or guardian within ten calendar days after the hearing and shall
7 explain, in terms of the needs of both the student and the school board,
8 the reasons for the particular action recommended. Such recommendation
9 may range from no action, through the entire field of counseling, to
10 long-term suspension, expulsion, mandatory reassignment, or an
11 alternative educational placement under section 79-266.

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

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

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

26 79-283 (1) Written notice of the findings and recommendations of the
27 hearing examiner and the determination of the superintendent under
28 section 79-282 shall be made by certified or registered mail or by
29 personal delivery to the student or the student's parent or guardian.
30 Upon receipt of such written notice by the student, parent, or guardian,
31 the determination of the superintendent shall take immediate effect

1 unless the student or the student's parent or guardian appeals the
2 written notice of determination of the superintendent pursuant to section
3 79-285.

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

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

1 the expulsion period.

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

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

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

27 79-287 The final action of the board under section 79-286 shall be
28 taken within three calendar days after the hearing and be evidenced by
29 personally delivering or mailing by certified mail a copy of the board's
30 decision to the student and his or her parent or guardian within three
31 calendar days after the final action.

1 Sec. 14. Original sections 79-256, 79-265, 79-266, 79-267, 79-268,
2 79-269, 79-271, 79-272, 79-276, 79-278, 79-282, 79-283, and 79-287,
3 Reissue Revised Statutes of Nebraska, are repealed.