

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 811

Introduced by Murman, 38; Albrecht, 17; Brewer, 43; Clements, 2;
Halloran, 33; Hardin, 48; Holdcroft, 36; Lippincott, 34;
Moser, 22.

Read first time January 18, 2023

Committee:

1 A BILL FOR AN ACT relating to education; to amend sections 9-812, 79-254,
2 79-259, and 79-2,146, Reissue Revised Statutes of Nebraska, and
3 sections 79-258, 79-2,144, and 79-1001, Revised Statutes Cumulative
4 Supplement, 2022; to change provisions relating to lottery funds
5 used for education; to change provisions relating to the Student
6 Discipline Act; to provide for use of physical contact or physical
7 restraint or removal from a class in response to student behavior;
8 to create a fund; to provide for behavioral awareness and
9 intervention training; to provide powers and duties to the state
10 school security director; to harmonize provisions; and to repeal the
11 original sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 9-812, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 9-812 (1) All money received from the operation of lottery games
4 conducted pursuant to the State Lottery Act in Nebraska shall be credited
5 to the State Lottery Operation Trust Fund, which fund is hereby created.
6 All payments of the costs of establishing and maintaining the lottery
7 games shall be made from the State Lottery Operation Cash Fund. In
8 accordance with legislative appropriations, money for payments for
9 expenses of the division shall be transferred from the State Lottery
10 Operation Trust Fund to the State Lottery Operation Cash Fund, which fund
11 is hereby created. All money necessary for the payment of lottery prizes
12 shall be transferred from the State Lottery Operation Trust Fund to the
13 State Lottery Prize Trust Fund, which fund is hereby created. The amount
14 used for the payment of lottery prizes shall not be less than forty
15 percent of the dollar amount of the lottery tickets which have been sold.

16 (2) A portion of the dollar amount of the lottery tickets which have
17 been sold on an annualized basis shall be transferred from the State
18 Lottery Operation Trust Fund to the Education Innovation Fund, the
19 Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund,
20 the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and
21 the Compulsive Gamblers Assistance Fund as provided in subsection (3) of
22 this section. The dollar amount transferred pursuant to this subsection
23 shall equal the greater of (a) the dollar amount transferred to the funds
24 in fiscal year 2002-03 or (b) any amount which constitutes at least
25 twenty-two percent and no more than twenty-five percent of the dollar
26 amount of the lottery tickets which have been sold on an annualized
27 basis. To the extent that funds are available, the Tax Commissioner and
28 director may authorize a transfer exceeding twenty-five percent of the
29 dollar amount of the lottery tickets sold on an annualized basis.

30 (3) Of the money available to be transferred to the Education
31 Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska

1 Education Improvement Fund, the Nebraska Environmental Trust Fund, the
2 Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund:

3 (a) The first five hundred thousand dollars shall be transferred to
4 the Compulsive Gamblers Assistance Fund to be used as provided in section
5 9-1006;

6 (b) Beginning July 1, 2016, forty-four and one-half percent of the
7 money remaining after the payment of prizes and operating expenses and
8 the initial transfer to the Compulsive Gamblers Assistance Fund shall be
9 transferred to the Nebraska Education Improvement Fund;

10 (c) Forty-four and one-half percent of the money remaining after the
11 payment of prizes and operating expenses and the initial transfer to the
12 Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska
13 Environmental Trust Fund to be used as provided in the Nebraska
14 Environmental Trust Act;

15 (d) Ten percent of the money remaining after the payment of prizes
16 and operating expenses and the initial transfer to the Compulsive
17 Gamblers Assistance Fund shall be transferred to the Nebraska State Fair
18 Board if the most populous city within the county in which the fair is
19 located provides matching funds equivalent to ten percent of the funds
20 available for transfer. Such matching funds may be obtained from the city
21 and any other private or public entity, except that no portion of such
22 matching funds shall be provided by the state. If the Nebraska State Fair
23 ceases operations, ten percent of the money remaining after the payment
24 of prizes and operating expenses and the initial transfer to the
25 Compulsive Gamblers Assistance Fund shall be transferred to the General
26 Fund; and

27 (e) One percent of the money remaining after the payment of prizes
28 and operating expenses and the initial transfer to the Compulsive
29 Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers
30 Assistance Fund to be used as provided in section 9-1006.

31 (4) The Nebraska Education Improvement Fund is created. The fund

1 shall consist of money transferred pursuant to subsection (3) of this
2 section, money transferred pursuant to section 85-1920, and any other
3 funds appropriated by the Legislature. The fund shall be allocated, after
4 actual and necessary administrative expenses, as provided in this section
5 for fiscal years 2016-17 through 2023-24. A portion of each allocation
6 may be retained by the agency to which the allocation is made or the
7 agency administering the fund to which the allocation is made for actual
8 and necessary expenses incurred by such agency for administration,
9 evaluation, and technical assistance related to the purposes of the
10 allocation, except that no amount of the allocation to the Nebraska
11 Opportunity Grant Fund may be used for such purposes. On or before
12 December 31, 2022, the Education Committee of the Legislature shall
13 electronically submit recommendations to the Clerk of the Legislature
14 regarding how the fund should be allocated to best advance the
15 educational priorities of the state for the five-year period beginning
16 with fiscal year 2024-25. For fiscal year 2016-17, an amount equal to ten
17 percent of the revenue allocated to the Education Innovation Fund and to
18 the Nebraska Opportunity Grant Fund for fiscal year 2015-16 shall be
19 retained in the Nebraska Education Improvement Fund. For fiscal years
20 2017-18 through 2023-24, an amount equal to ten percent of the revenue
21 received by the Nebraska Education Improvement Fund in the prior fiscal
22 year shall be retained in the fund at all times plus any interest earned
23 during the current fiscal year. The balance of the fund on August 1,
24 2024, shall be transferred to the Behavioral Training Cash Fund. For
25 fiscal years 2016-17 through 2023-24, the remainder of the Nebraska
26 Education Improvement Fund fund shall be allocated as follows:

27 (a) One percent of the allocated funds to the Expanded Learning
28 Opportunity Grant Fund to carry out the Expanded Learning Opportunity
29 Grant Program Act;

30 (b) Seventeen percent of the allocated funds to the Department of
31 Education Innovative Grant Fund to be used for competitive innovation

1 grants pursuant to section 79-1054;

2 (c) Nine percent of the allocated funds to the Community College Gap
3 Assistance Program Fund to carry out the community college gap assistance
4 program;

5 (d) Eight percent of the allocated funds to the Excellence in
6 Teaching Cash Fund to carry out the Excellence in Teaching Act;

7 (e) Sixty-two percent of the allocated funds to the Nebraska
8 Opportunity Grant Fund to carry out the Nebraska Opportunity Grant Act in
9 conjunction with appropriations from the General Fund; and

10 (f) Three percent of the allocated funds to fund distance education
11 incentives pursuant to section 79-1337.

12 (5)(a) On or before September 20, 2022, and on or before each
13 September 20 thereafter, (i) any department or agency receiving a
14 transfer or acting as the administrator for a fund receiving a transfer
15 pursuant to subsection (4) of this section, (ii) any recipient or
16 subsequent recipient of money from any such fund, and (iii) any service
17 contractor responsible for managing any portion of any such fund or any
18 money disbursed from any such fund on behalf of any entity shall prepare
19 and submit an annual report to the Auditor of Public Accounts in a manner
20 prescribed by the auditor for the immediately preceding July 1 through
21 June 30 fiscal year detailing information regarding the use of such fund
22 or such money.

23 (b) The Auditor of Public Accounts shall annually compile a summary
24 of the annual reports received pursuant to subdivision (5)(a) of this
25 section, any audits related to transfers pursuant to subsection (4) of
26 this section conducted by the Auditor of Public Accounts, and any
27 findings or recommendations related to such transfers into a consolidated
28 annual report and shall submit such consolidated annual report
29 electronically to the Legislature on or before January 1, 2023, and on or
30 before each January 1 thereafter.

31 (c) For purposes of this subsection, recipient, subsequent

1 recipient, or service contractor means a nonprofit entity that expends
2 funds transferred pursuant to subsection (4) of this section to carry out
3 a state program or function, but does not include an individual who is a
4 direct beneficiary of such a program or function.

5 (6) Any money in the State Lottery Operation Trust Fund, the State
6 Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the
7 Nebraska Education Improvement Fund available for investment shall be
8 invested by the state investment officer pursuant to the Nebraska Capital
9 Expansion Act and the Nebraska State Funds Investment Act.

10 (7) Unclaimed prize money on a winning lottery ticket shall be
11 retained for a period of time prescribed by rules and regulations. If no
12 claim is made within such period, the prize money shall be used at the
13 discretion of the Tax Commissioner for any of the purposes prescribed in
14 this section.

15 Sec. 2. Section 79-254, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 79-254 Sections 79-254 to 79-294 and sections 5 and 6 of this act
18 shall be known and may be cited as the Student Discipline Act.

19 Sec. 3. Section 79-258, Revised Statutes Cumulative Supplement,
20 2022, is amended to read:

21 79-258 Administrative and teaching personnel may take actions
22 regarding student behavior, other than those specifically provided in the
23 Student Discipline Act, which are reasonably necessary to aid the
24 student, further school purposes, or prevent interference with the
25 educational process. Such actions may include, but need not be limited
26 to, physical intervention, counseling of students, parent conferences,
27 referral to restorative justice practices or services, rearrangement of
28 schedules, requirements that a student remain in school after regular
29 hours to do additional work, restriction of extracurricular activity, or
30 requirements that a student receive counseling, psychological evaluation,
31 or psychiatric evaluation upon the written consent of a parent or

1 guardian to such counseling or evaluation.

2 Sec. 4. Section 79-259, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 79-259 If a student is removed, suspended, expelled, or excluded
5 from school or from any educational function pursuant to the Student
6 Discipline Act, such absence from school shall not be deemed a violation
7 on the part of any person under any compulsory school attendance
8 statutes. Any suspension or expulsion under the act shall comply with the
9 requirements of the Special Education Act and the requirements of the
10 federal Individuals with Disabilities Education Act, 20 U.S.C. 1401 et
11 seq.

12 Sec. 5. (1) Teachers and other school personnel may use reasonable
13 physical intervention to safely manage the behavior of a student to:

14 (a) Protect such student, another student, a teacher or other school
15 personnel, or another person from physical injury; or

16 (b) Secure property in the possession of such student if the
17 possession of such property by such student poses a threat of physical
18 injury to such student, another student, a teacher or other school
19 personnel, or another person.

20 (2) Any physical intervention by a teacher or other school personnel
21 pursuant to subsection (1) of this section shall not be used for the
22 purpose of inflicting bodily pain as a penalty for disapproved behavior.

23 (3) Following the use of physical intervention pursuant to this
24 section, a teacher or other school personnel shall contact and notify the
25 parent or guardian of the use of physical intervention.

26 (4) No teacher or other school personnel shall be subject to
27 professional or administrative discipline for the use of physical
28 intervention pursuant to subsection (1) of this section if such physical
29 intervention was reasonable. Nothing in this section shall be construed
30 to limit any defense that may be available under any provision of law,
31 including, but not limited to, any defense relating to self-protection,

1 the protection of others, or the Political Subdivision Tort Claims Act or
2 State Tort Claim Act.

3 Sec. 6. (1) Each school district shall have a policy that describes
4 the process of removing a student from a class and returning a student to
5 a class. Such policy shall: (a) Describe how and when a student may be
6 removed from a class and returned to a class; (b) use a discipline
7 process that is proactive, instructive, and restorative; (c) require
8 appropriate communication between administrators, teachers or other
9 school personnel, students, and parents or guardians. Such policy shall
10 be made available to the public.

11 (2) Unless prohibited by the federal Individuals with Disabilities
12 Education Act, 20 U.S.C. 1400 et seq., or a plan developed pursuant to
13 section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as such
14 acts existed on January 1, 2023, an administrator or administrator's
15 designee shall immediately remove a student from a class upon request by
16 a teacher or other school personnel if such teacher or other school
17 personnel has followed school policy in requesting the removal of such
18 student.

19 (3) When a student is removed from a class, the goal must be to
20 return the student to the class as soon as possible after appropriate
21 instructional or behavioral interventions or supports have been
22 implemented to increase the likelihood the student will be successful.
23 For a student with a pattern of disruptive behavior, the school shall
24 provide additional interventions or supports.

25 (4) No teacher or other school personnel shall be subject to
26 professional or administrative discipline for the removal of a student
27 from a class pursuant to this section if such teacher or other school
28 personnel acted in a reasonable manner and in accordance with school
29 policy.

30 Sec. 7. Section 79-2,144, Revised Statutes Cumulative Supplement,
31 2022, is amended to read:

1 79-2,144 The state school security director appointed pursuant to
2 section 79-2,143 shall be responsible for providing leadership and
3 support for safety and security for the public schools. Duties of the
4 director include, but are not limited to:

5 (1) Collecting safety and security plans, required pursuant to rules
6 and regulations of the State Department of Education relating to
7 accreditation of schools, and other school security information from each
8 school system in Nebraska. School districts shall provide the state
9 school security director with the safety and security plans of the school
10 district and any other security information requested by the director,
11 but any plans or information submitted by a school district may be
12 withheld by the department pursuant to subdivision (9) of section
13 84-712.05;

14 (2) Recommending minimum standards for school security on or before
15 January 1, 2016, to the State Board of Education;

16 (3) Conducting an assessment of the security of each public school
17 building, which assessment shall be completed by August 31, 2019;

18 (4) Identifying deficiencies in school security based on the minimum
19 standards adopted by the State Board of Education and making
20 recommendations to school boards for remedying such deficiencies;

21 (5) Establishing security awareness and preparedness tools and
22 training programs for public school staff;

23 (6) Establishing research-based model instructional programs for
24 staff, students, and parents to address the underlying causes for violent
25 attacks on schools;

26 (7) Overseeing suicide awareness and prevention training in public
27 schools pursuant to section 79-2,146;

28 (8) Establishing tornado preparedness standards which shall include,
29 but not be limited to, ensuring that every school conducts at least two
30 tornado drills per year;

31 (9) Collecting behavioral awareness and intervention training plans

1 and certifying compliance or noncompliance with section 79-2,146 to the
2 Commissioner of Education for each school district;

3 (10) ~~(9)~~ Responding to inquiries and requests for assistance
4 relating to school security from private, denominational, and parochial
5 schools;

6 (11) ~~(10)~~ Recommending curricular and extracurricular materials to
7 assist school districts in preventing and responding to cyberbullying and
8 digital citizenship issues; and

9 (12) ~~(11)~~ Carrying out the department's responsibilities under the
10 School Safety and Security Reporting System Act.

11 Sec. 8. Section 79-2,146, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 79-2,146 (1)(a) ~~(1)~~ Beginning in school year 2015-16, all public
14 school nurses, teachers, counselors, school psychologists,
15 administrators, school social workers, and any other appropriate
16 personnel shall receive at least one hour of suicide awareness and
17 prevention training each year. This training shall be provided within the
18 framework of existing inservice training programs offered by the State
19 Department of Education or as part of required professional development
20 activities.

21 (b) ~~(2)~~ The department, in consultation with organizations
22 including, but not limited to, the Nebraska State Suicide Prevention
23 Coalition, the Nebraska chapter of the American Foundation for Suicide
24 Prevention, the Behavioral Health Education Center of Nebraska, the
25 National Alliance on Mental Illness Nebraska, and other organizations and
26 professionals with expertise in suicide prevention, shall develop a list
27 of approved training materials to fulfill the requirements of subsection
28 (1) of this section. Such materials shall include training on how to
29 identify appropriate mental health services, both within the school and
30 also within the larger community, and when and how to refer youth and
31 their families to those services. Such materials may include programs

1 that can be completed through self-review of suitable suicide prevention
2 materials.

3 (2)(a) Prior to the end of school year 2026-27, each school district
4 shall ensure that administrators, teachers, paraprofessionals, school
5 nurses, and counselors receive behavioral awareness and intervention
6 training. Each school district may provide such training, or similar
7 training, to any other school employees at the discretion of the school
8 district. In addition, all school employees shall have a basic awareness
9 of the goals, strategies, and schoolwide plans included in such training.

10 (b) Beginning in school year 2024-25, each school district shall
11 ensure that behavioral awareness and intervention training is offered
12 annually. Administrators, teachers, paraprofessionals, school nurses, and
13 counselors who have received such training from the school district in
14 which they are employed shall receive a behavioral awareness and
15 intervention training review at least once every three years.

16 (c) Any protections and defenses found in the Student Discipline Act
17 shall not be made contingent on whether or not an employee of a school
18 district has completed behavioral awareness and intervention training.

19 (d) Behavioral awareness and intervention training shall include,
20 but not be limited to, evidence-based training on a continuum that
21 includes:

22 (i) Recognition of detrimental factors impacting student behavior,
23 including, but not limited to, signs of trauma;

24 (ii) Positive behavior support and proactive teaching strategies,
25 including, but not limited to, expectations and boundaries;

26 (iii) Verbal intervention and de-escalation techniques;

27 (iv) Clear guidelines on removing students from and returning
28 students to a class;

29 (v) Behavioral interventions and supports that will take place when
30 a student has been removed from a class; and

31 (vi) Physical intervention for safety.

1 (e) In addition to the requirements contained in subdivision (2)(d)
2 of this section, behavioral awareness and intervention training shall be
3 consistent with the Student Discipline Act, include an awareness of the
4 protections for school personnel found in the act, include an awareness
5 of the requirement for written consent of a parent or guardian pursuant
6 to section 79-258, and include the identification and role of each
7 employee designated as the behavioral awareness and intervention point of
8 contact.

9 (3)(a) Each school district shall designate one or more school
10 employees as a behavioral awareness and intervention point of contact for
11 each school building or other division as determined by such school
12 district. Each behavioral awareness and intervention point of contact
13 shall be trained in behavioral awareness and intervention and shall have
14 knowledge of community service providers and other resources that are
15 available for the students and families in such school district.

16 (b) Each school district shall maintain or have access to an
17 existing registry of local mental health and counseling resources. The
18 registry shall include resource services that can be accessed by families
19 and individuals outside of school. Each behavioral awareness and
20 intervention point of contact shall coordinate access to support services
21 for students whenever possible. Except as provided in section 43-2101, if
22 information for an external support service is provided to an individual
23 student, school personnel shall notify a parent or guardian of such
24 student in writing unless law enforcement or child protective services is
25 involved. Each school district shall indicate each behavioral awareness
26 and intervention point of contact for such school district on the web
27 site of the school district and in any school directory for the school
28 that the behavioral awareness and intervention point of contact serves.

29 (4)(a) On or before September 1, 2024, and on or before September 1
30 of each year thereafter, each school district shall submit a behavioral
31 awareness and intervention training report to the state school security

1 director. Such report shall include the school district behavioral
2 awareness and intervention training plan, summarize how such plan
3 fulfills the requirements of this section, and provide any other
4 information required by rules and regulations adopted and promulgated
5 pursuant to subsection (5) of this section.

6 (b) Behavioral awareness and intervention training required pursuant
7 to this section shall be funded from the Behavioral Training Cash Fund
8 pursuant to section 11 of this act. Any school district that fails to
9 file the behavioral awareness and intervention training report required
10 pursuant to subdivision (4)(a) of this section with the state school
11 security director or that is found to be in noncompliance with the
12 requirements of this section shall not receive behavioral awareness and
13 intervention training funding pursuant to section 11 of this act for such
14 school year.

15 (c) On or before October 31, 2024, and each October 31 thereafter,
16 the state school security director shall certify the compliance or
17 noncompliance with the requirements of this section of each school
18 district to the Commissioner of Education.

19 (5) ~~(3)~~ The department may adopt and promulgate rules and
20 regulations to carry out this section.

21 Sec. 9. The Behavioral Training Cash Fund is created. The fund
22 shall be administered by the State Department of Education and shall
23 consist of money received pursuant to section 9-812 and any money
24 appropriated by the Legislature. The department shall distribute money in
25 the fund pursuant to section 11 of this act to school districts for
26 behavioral awareness and intervention training required pursuant to
27 section 79-2,146. Any money in the fund available for investment shall be
28 invested by the state investment officer pursuant to the Nebraska Capital
29 Expansion Act and the Nebraska State Funds Investment Act.

30 Sec. 10. Section 79-1001, Revised Statutes Cumulative Supplement,
31 2022, is amended to read:

1 79-1001 Sections 79-1001 to 79-1033 and section 11 of this act shall
2 be known and may be cited as the Tax Equity and Educational Opportunities
3 Support Act.

4 Sec. 11. (1) For school fiscal year 2024-25, and each school fiscal
5 year thereafter, using data from the fall personnel report filed pursuant
6 to section 79-804 for the immediately preceding school fiscal year, each
7 school district shall receive behavioral training funding paid from the
8 Behavioral Training Cash Fund for each school within such school district
9 that has any grade above kindergarten, including, but not limited to, a
10 special education school, an alternative school, or a focus school.

11 (2) Except as otherwise provided in subsection (6) of this section,
12 the behavioral training funding for each school described in subsection
13 (1) of this section shall equal the base training reimbursement plus any
14 additional training reimbursement units calculated pursuant to this
15 section.

16 (3) The base training reimbursement shall be two thousand dollars.

17 (4) Each school that has a full-time teacher equivalent greater than
18 or equal to eighty teachers shall qualify for additional training
19 reimbursement units as follows:

20 (a) Three additional training reimbursement units for each school
21 with a full-time teacher equivalent greater than or equal to two hundred
22 forty teachers;

23 (b) Two additional training reimbursement units for each school with
24 a full-time teacher equivalent greater than or equal to one hundred sixty
25 teachers but less than two hundred forty teachers; and

26 (c) One additional training reimbursement unit for each school with
27 a full-time teacher equivalent greater than or equal to eighty teachers
28 but less than one hundred sixty teachers.

29 (5) The amount to be paid for each additional training reimbursement
30 unit for each school fiscal year shall equal the ratio of (a) the
31 difference of the amount available for distribution in the Behavioral

1 Training Cash Fund on August 10 immediately preceding such school fiscal
2 year minus the total of the base training reimbursements for all school
3 districts divided by (b) the total additional training reimbursement
4 units for all school districts.

5 (6) For any school fiscal year when the amount available for
6 distribution in the Behavioral Training Cash Fund on August 10
7 immediately preceding such school fiscal year is less than the total of
8 the base training reimbursements for all schools as calculated pursuant
9 to subsection (3) of this section, the base training reimbursements shall
10 be reduced proportionally such that the total of the base training
11 reimbursements for all schools equals the amount available for
12 distribution. Payment shall not be made for any additional training
13 reimbursement units pursuant to subsections (4) and (5) of this section
14 for such school fiscal year.

15 (7) For school fiscal year 2024-25, each school district shall
16 qualify for behavioral training funding. For school fiscal year 2025-26
17 and each school fiscal year thereafter, each school district in
18 compliance with the behavioral awareness and intervention training
19 requirements provided in section 79-2,146, as certified by the state
20 school security director, shall be eligible for behavioral training
21 funding.

22 (8) The department shall not include behavioral training funding in
23 the calculation of formula resources pursuant to section 79-1017.01.

24 (9) Behavioral training funding shall be distributed directly to
25 school districts from the Behavioral Training Cash Fund in the same
26 manner as and in conjunction with funds distributed pursuant to section
27 79-1022.

28 Sec. 12. Original sections 9-812, 79-254, 79-259, and 79-2,146,
29 Reissue Revised Statutes of Nebraska, and sections 79-258, 79-2,144, and
30 79-1001, Revised Statutes Cumulative Supplement, 2022, are repealed.