

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 999

Introduced by Vargas, 7; Wayne, 13.

Read first time January 11, 2018

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 forty-eight hours, following such
4 suspension, the principal shall send a written statement to the student
5 and his or her parent or guardian describing the student's conduct,
6 misconduct, or violation of the rule or standard and the reasons for the
7 action taken. The principal shall make a reasonable effort to hold a
8 conference with the parent or guardian before or at the time the student
9 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 concerning the stating the criteria school officials shall use
15 ~~in determining whether and to what extent such~~ opportunity for completion
16 of such classwork and homework which shall not require the student to
17 attend the school district's alternative programs for expelled students
18 ~~will be granted to suspended students~~. The guidelines shall be provided
19 to the student and parent or guardian at the time of suspension.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (2) Willfully causing or attempting to cause substantial damage to
2 property, stealing or attempting to steal property of substantial value,
3 or repeated damage or theft involving property;

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) The decision as to the recommended discipline shall be made
23 within two school days after the alleged student misconduct. 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, on the specified charges,
9 and that if the student is suspended pending the outcome of the hearing,
10 the student may complete classwork and homework, including, but not
11 limited to, examinations, missed during the period of suspension pursuant
12 to district guidelines which shall not require the student to attend the
13 school district's alternative programs for expelled students;

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 and provide the address to which the hearing request is to be delivered;
28 and

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

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

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

15 (4) For purposes of this section, mandatory reassignment based upon
16 a student's violation of school board or board of education rules,
17 regardless of its implementation date, shall be subject to the procedures
18 of this section.

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

21 79-269 (1) If a hearing is requested within five school days after
22 receipt of the notice as provided in section 79-268, the superintendent
23 shall recommend appointment of ~~appoint~~ a hearing examiner within two days
24 after receipt of the hearing request. The student or the student's parent
25 or guardian may request designation of a hearing officer other than that
26 selected by the superintendent, if notice to the superintendent of this
27 request is given within two days after receipt of the superintendent's
28 recommended appointment. In such cases, appointment of a hearing officer
29 shall be made in the same manner as described in section 79-841. The
30 hearing officer ~~who~~ shall, within two school days after being appointed,
31 give written notice to the principal, the student, and the student's

1 parent or guardian of the time and place for the hearing.

2 (2) The hearing examiner shall be any person designated pursuant to
3 subsection (1) of this section ~~by the school district's superintendent,~~
4 ~~school board or board of education, or counsel,~~ if such person (a) has
5 not brought the charges against the student, (b) shall not be a witness
6 at the hearing, and (c) has no involvement in the charge. Expenses and
7 fees of any hearing officer, in connection with the hearing, shall be
8 paid by the school board.

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

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

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

23 79-271 If a hearing is requested under sections 79-268 and 79-269 by
24 the student or the student's parent or guardian within five school days
25 following receipt of the written notice, and the student has been
26 suspended pending the outcome of such hearing, the student shall be given
27 the opportunity to complete any classwork, including, but not limited to,
28 examinations missed during the period of suspension as provided in
29 section 79-265.

30 If a hearing is not requested under sections 79-268 and 79-269 by
31 the student or the student's parent or guardian within five school days

1 following receipt of the written notice, the punishment recommended in
2 the charge by the principal or his or her designee shall automatically go
3 into effect upon the fifth school day following receipt of the written
4 notice by the student or his or her parent or guardian as required in
5 section 79-268.

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

8 79-272 If a hearing is requested under sections 79-268 and 79-269
9 more than five school days but not more than thirty calendar days
10 following the actual receipt of written notice, the hearing officer shall
11 be appointed and the hearing shall be held pursuant to the requirements
12 of section 79-269 but the imposed punishment shall continue in effect
13 pending final determination.

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

16 79-276 At a hearing requested under sections 79-268 and 79-269, the
17 principal shall present to the hearing examiner statements, in affidavit
18 form, of any person having information about the student's conduct and
19 the student's records but not unless such statements and records have
20 been provided ~~made available~~ to the student or the student's parent,
21 guardian, or representative at least forty-eight hours prior to the
22 hearing. The information contained in such records shall be explained and
23 interpreted, prior to or at the hearing, to the student, parent,
24 guardian, or representative, upon request, by appropriate school
25 personnel.

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

28 79-278 (1) The student, the student's parent, guardian, or
29 representative, the principal, or the hearing examiner may ask witnesses
30 to testify at the hearing requested under sections 79-268 and 79-269.
31 Such testimony shall be under oath, and the hearing examiner shall be

1 authorized to administer the oath. The hearing examiner shall make
2 reasonable effort to assist the student or the student's parent,
3 guardian, or representative in obtaining the attendance of witnesses. The
4 school district shall make available those witnesses who have knowledge
5 of or were involved in the alleged misconduct and subsequent discipline
6 of the student if such witnesses are requested by the student or the
7 student's parent, guardian, or representative and such witnesses are
8 employees or under contract with the school district.

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

12 Sec. 11. Section 79-282, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 79-282 (1) After a hearing requested under sections 79-268 and
15 79-269, a report shall be made by the hearing examiner of his or her
16 findings and a recommendation of the action to be taken, which report
17 shall be made to the superintendent and the student or the student's
18 parent or guardian within ten days after the hearing and shall explain,
19 in terms of the needs of both the student and the school board, the
20 reasons for the particular action recommended. Such recommendation may
21 range from no action, through the entire field of counseling, to long-
22 term suspension, expulsion, mandatory reassignment, or an alternative
23 educational placement under section 79-266.

24 (2) A review shall be made of the hearing examiner's report by the
25 superintendent, who may change, revoke, or impose the sanction
26 recommended by the hearing examiner but shall not impose a sanction more
27 severe than that recommended by the hearing examiner. The superintendent
28 shall notify the student or the student's parent or guardian of the
29 superintendent's determination within five school days after receipt of
30 the hearing examiner's report.

31 (3) The findings and recommendations of the hearing examiner, the

1 determination by the superintendent, and any determination on appeal to
2 the governing body, shall be made solely on the basis of the evidence
3 presented at the hearing or, in addition, on any evidence presented on
4 appeal.

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

7 79-283 (1) Written notice of the findings and recommendations of the
8 hearing examiner and the determination of the superintendent under
9 section 79-282 shall be made by certified or registered mail or by
10 personal delivery to the student or the student's parent or guardian.
11 Upon receipt of such written notice by the student, parent, or guardian,
12 the determination of the superintendent shall take immediate effect
13 unless the student or the student's parent or guardian appeals the
14 written notice of determination of the superintendent pursuant to section
15 79-285.

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

1 been made.

2 (3) The expulsion of a student for (a) the knowing and intentional
3 use of force in causing or attempting to cause personal injury to a
4 school employee, school volunteer, or student except as provided in
5 subdivision (3) of section 79-267 or (b) the knowing and intentional
6 possession, use, or transmission of a dangerous weapon, other than a
7 firearm, shall be for a period not to exceed the remainder of the school
8 year in which it took effect if the misconduct occurs during the first
9 semester. If the expulsion takes place during the second semester, the
10 expulsion shall remain in effect for summer school and may remain in
11 effect for the first semester of the following school year. Such action
12 may be modified or terminated by the school district at any time during
13 the expulsion period.

14 (4) The expulsion of a student for the knowing and intentional
15 possession, use, or transmission of a firearm, which for purposes of this
16 section means a firearm as defined in 18 U.S.C. 921 as of January 1,
17 1995, shall be for a period as provided by the school district policy
18 adopted pursuant to section 79-263. This subsection shall not apply to
19 (a) the issuance of firearms to or possession of firearms by members of
20 the Reserve Officers Training Corps when training or (b) firearms which
21 may lawfully be possessed by the person receiving instruction under the
22 immediate supervision of an adult instructor who may lawfully possess
23 firearms.

24 (5) Any expulsion that will remain in effect during the first
25 semester of the following school year shall be automatically scheduled
26 for review before the beginning of the school year. The review shall be
27 conducted by the hearing examiner after the hearing examiner has given
28 notice of the review to the student and the student's parent or guardian.
29 This review shall be limited to newly discovered evidence or evidence of
30 changes in the student's circumstances occurring since the original
31 hearing. This review may lead to a recommendation by the hearing examiner

1 that the student be readmitted for the upcoming school year. If the
2 school board or board of education or a committee of such board took the
3 final action to expel the student, the student may be readmitted only by
4 action of the board. Otherwise the student may be readmitted by action of
5 the superintendent.

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

8 79-287 The final action of the board under section 79-286 shall be
9 taken within three days after the hearing and be evidenced by personally
10 delivering or mailing by certified mail a copy of the board's decision to
11 the student and his or her parent or guardian within two days after the
12 final action.

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