

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1141

Introduced by McKinney, 11.

Read first time January 11, 2024

Committee: Education

1 A BILL FOR AN ACT relating to the Student Discipline Act; to amend
2 sections 79-259 and 79-264, Reissue Revised Statutes of Nebraska,
3 section 79-258, Revised Statutes Cumulative Supplement, 2022, and
4 sections 79-254 and 79-265.01, Revised Statutes Supplement, 2023; to
5 change provisions relating to the suspension, expulsion, or
6 exclusion of students under the act; to provide a civil cause of
7 action; to harmonize provisions; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-254, Revised Statutes Supplement, 2023, is
2 amended to read:

3 79-254 Sections 79-254 to 79-294 and section 6 of this act shall be
4 known and may be cited as the Student Discipline Act.

5 Sec. 2. Section 79-258, Revised Statutes Cumulative Supplement,
6 2022, is amended to read:

7 79-258 Administrative and teaching personnel may take actions
8 regarding student behavior, other than those specifically provided in the
9 Student Discipline Act, which are reasonably necessary to aid the
10 student, further school purposes, or prevent interference with the
11 educational process so long as such actions do not result in removal from
12 school without the due process provided for in the Student Discipline
13 Act. Such actions may include, but need not be limited to, counseling of
14 students, parent conferences, referral to restorative justice practices
15 or services, rearrangement of schedules, requirements that a student
16 remain in school after regular hours to do additional work, restriction
17 of extracurricular activity, or requirements that a student receive
18 counseling, psychological evaluation, or psychiatric evaluation upon the
19 written consent of a parent or guardian to such counseling or evaluation.

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

22 79-259 If a student is suspended, expelled, or excluded from school
23 or from any educational function pursuant to the Student Discipline Act,
24 such absence from school shall not be deemed a violation on the part of
25 any person under any compulsory school attendance statutes. Any
26 suspension, ~~or~~ expulsion, or exclusion under the act shall comply with
27 the requirements of the Special Education Act and the requirements of the
28 federal Individuals with Disabilities Education Act, 20 U.S.C. ~~1400~~ 1401
29 et seq.

30 Sec. 4. Section 79-264, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 79-264 (1) Any student may be excluded from school in the following
2 circumstances, subject to the procedural provisions of section 79-265,
3 ~~and, if longer than five school days, subject to the provisions of~~
4 ~~subsection (3) of this section:~~

5 (a) If the student has a dangerous communicable disease
6 transmissible through normal school contacts and poses an imminent threat
7 to the health or safety of the school community. Any such exclusion that
8 is longer than five school days shall be subject to subsection (3) of
9 this section; or

10 (b) If the student's conduct presents a clear threat to the physical
11 safety of himself, herself, or others, or is so extremely disruptive as
12 to make temporary removal necessary to preserve the rights of other
13 students to pursue an education. Any such exclusion shall be for no more
14 than five school days. After five school days a student shall not be
15 excluded unless such student meets the requirements for suspension or
16 expulsion, and in such case, such student shall have the due process
17 rights provided for by law.

18 (2) Any emergency exclusion shall be based upon a clear factual
19 situation warranting it and shall last not longer than is necessary to
20 avoid the dangers described in subsection (1) of this section.

21 (3) If the superintendent or his or her designee determines an ~~that~~
22 ~~such~~ emergency exclusion under subdivision (1)(a) of this section shall
23 extend beyond five days, the school board shall adopt a procedure for a
24 hearing to be held and a final determination made within ten school days
25 after the initial date of exclusion. Such procedure shall substantially
26 comply with the provisions of sections 79-266 to 79-287, and such
27 provisions shall be modified only to the extent necessary to accomplish
28 the hearing and determination within this shorter time period.

29 Sec. 5. Section 79-265.01, Revised Statutes Supplement, 2023, is
30 amended to read:

31 79-265.01 (1) Except as provided in subsection (2) of this section,

1 an elementary school shall not suspend, expel, or exclude a student in
2 pre-kindergarten through second grade for behavioral infractions. Each
3 school district shall develop a policy to implement this section which
4 shall include disciplinary measures inside the school as an alternative
5 to suspension, expulsion, or exclusion. Such measures shall (a) comply
6 with the requirements of the Special Education Act and the federal
7 Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., (b)
8 continue to provide the student the opportunity to engage in school work,
9 (c) not include seclusion, and (d) ensure that the student obtains
10 behavioral intervention instruction and supports.

11 (2) An elementary school may suspend, expel, or exclude a student in
12 pre-kindergarten through second grade if such student brings a deadly
13 weapon as defined in section 28-109 onto ~~on~~ school grounds; into ~~in~~ a
14 vehicle owned, leased, or contracted by a school being used for a school
15 purpose; into ~~or in~~ a vehicle being driven for a school purpose by a
16 school employee or his or her designee; ~~or~~ to ~~at~~ a school-sponsored
17 activity or athletic event.

18 Sec. 6. In addition to any due process right enumerated in the
19 Student Discipline Act, a parent, guardian, or student aggrieved by a
20 violation of the act or by a violation of the prohibition against
21 corporal punishment in schools may bring a civil action for appropriate
22 relief. Appropriate relief in an action under this section shall include:

23 (1) Damages;

24 (2) Such preliminary and other equitable or declaratory relief as
25 may be appropriate; and

26 (3) Reasonable attorney's fees and other litigation costs reasonably
27 incurred.

28 Sec. 7. Original sections 79-259 and 79-264, Reissue Revised
29 Statutes of Nebraska, section 79-258, Revised Statutes Cumulative
30 Supplement, 2022, and sections 79-254 and 79-265.01, Revised Statutes
31 Supplement, 2023, are repealed.