

LEGISLATIVE BILL 1243

Approved by the Governor April 10, 2000

Introduced by Bohlke, 33; Cudaback, 36; Engel, 17; Hudkins, 21; Lynch, 13; Matzke, 47; D. Pederson, 42; Price, 26; Raikes, 25; Robak, 22; Schimek, 27; Stuhr, 24; Suttle, 10; Thompson, 14; Wickersham, 49; Redfield, 12

AN ACT relating to schools; to amend sections 79-534 and 79-535, Reissue Revised Statutes of Nebraska, sections 79-215 and 79-1115, Revised Statutes Supplement, 1998, and sections 9-812, 79-1125.01, 79-1142, and 79-1145, Revised Statutes Supplement, 1999; to change admission and tuition provisions; to change provisions relating to special education; to change and eliminate definitions and usage of terms; to change reimbursement; to harmonize provisions; to repeal the original sections; and to outright repeal section 79-1123, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 9-812, Revised Statutes Supplement, 1999, is amended to read:

9-812. (1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be deposited in the State Lottery Operation Trust Fund, which fund is hereby created. All payments of expenses of the operation of the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which have been sold. At least twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund. Forty-nine and one-half percent of the money remaining after the payment of prizes and operating expenses shall be transferred to the Education Innovation Fund. Forty-nine and one-half percent of the money remaining after the payment of prizes and operating expenses shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act. One percent of the money remaining after the payment of prizes and operating expenses shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in sections 83-162.01 to 83-162.04.

(2) The Education Innovation Fund is hereby created. Each fiscal year beginning with fiscal year 1994-95, at least seventy-five percent of the lottery proceeds allocated to the Education Innovation Fund shall be available for disbursement. The Education Innovation Fund shall be allocated in the following manner: Up to ten percent to fund the mentor teacher program pursuant to the Quality Education Accountability Act; up to seventy percent as quality education incentives pursuant to the act; and up to twenty percent of the fund shall be allocated by the Governor through incentive grants to encourage the development of strategic school improvement plans by school districts for accomplishing high performance learning and to encourage schools to establish innovations in programs or practices that result in restructuring of school organization, school management, and instructional programs which bring about improvement in the quality of education. Such incentive grants allocated by the Governor are intended to provide selected school districts, teachers or groups of teachers, nonprofit educational organizations, educational service units, or cooperatives funding for the allowable costs of implementing pilot projects and model programs.

From the funds allocated by the Governor, minigrants shall be available to school districts to support the development of strategic school improvement plans which shall include statements of purposes and goals for the districts. The plans shall also include the specific statements of improvement or strategic initiatives designed to improve quality learning for every student.

In addition to the minigrants granted for the development of

strategic school improvement plans, school districts with annual budget expenditures of three hundred fifty thousand dollars or less are eligible for minigrants from the funds allocated by the Governor for the purposes allowed in subdivisions (2)(a) through (q) of this section. The amount of this type of minigrant shall not exceed five thousand dollars. The school district shall present a curriculum support plan with its application for the grant. The curriculum support plan must show how the district is working to achieve one or more of the allowed purposes and how the grant will be used to directly advance the plan to achieve one or more of these purposes. The plan must be signed by the school administrator and a school board representative. The application for the grant shall be brief. The Excellence in Education Council shall select the recipients of this type of minigrant and shall administer such minigrants.

From the funds allocated by the Governor, major competitive grants shall be available to support innovative programs which are directly related to the strategic school improvement plans. The development of a strategic school improvement plan by a school district shall be required before a grant is awarded. Annual reports shall be made by program recipients documenting the effectiveness of the program in improving the quality of education as designed in the strategic school improvement plans. Special consideration shall be given to plans which contain public or private matching funds and cooperative agreements, including agreements for in-kind services. Purposes for which such major competitive grants would be offered shall include:

(a) Professional staff development programs to provide funds for teacher and administrator training and continuing education to upgrade teaching and administrative skills;

(b) The development of strategic school improvement plans by school districts;

(c) Educational technology assistance to public schools for the purchase and operation of computers, telecommunications equipment and services, and other forms of technological innovation which may enhance classroom teaching, instructional management, and districtwide administration pursuant to the state's goal of ensuring that all kindergarten through grade twelve public school districts or affiliated school systems have a direct connection to a statewide public computer information network by June 30, 2000. The telecomputing equipment and services needed to meet this goal may be funded under this subsection, sections 79-1241.01, 79-1243, and 79-1310, or any combination of such subsection and sections. Such telecommunications equipment, services, and forms of technical innovation shall be approved by the State Department of Education only after review by the technical panel created in section 86-1511;

(d) An educational accountability program to develop an educational indicators system to measure the performance and outcomes of public schools and to ensure efficiency in operations;

(e) Alternative programs for students, including underrepresented groups, at-risk students, and dropouts;

(f) Programs that demonstrate improvement of student performance against valid national and international achievement standards;

(g) Early childhood and parent education which emphasizes child development;

(h) Programs using decisionmaking models that increase involvement of parents, teachers, and students in school management;

(i) Increased involvement of the community in order to achieve increased confidence in and satisfaction with its schools;

(j) Development of magnet or model programs designed to facilitate desegregation;

(k) Programs that address family and social issues impairing the learning productivity of students;

(l) Programs enhancing critical and higher-order thinking capabilities;

(m) Programs which produce the quality of education necessary to guarantee a competitive work force;

(n) Programs designed to increase productivity of staff and students through innovative use of time;

(o) Training programs designed to benefit teachers at all levels of education by increasing their ability to work with educational technology in the classroom;

(p) Approved accelerated or differentiated curriculum programs under sections 79-1106 to 79-1108.03; and

(q) Programs for ~~students~~ children from birth to age twenty-one years with disabilities receiving special education under the Special Education Act and ~~students~~ children from birth to age twenty-one years needing

support services as defined in section 79-1125.01, which programs demonstrate improved outcomes for ~~students~~ children from birth to age twenty-one years through emphasis on prevention and collaborative planning.

The Governor shall establish the Excellence in Education Council. The Governor shall appoint eleven members to the council including representatives of educational organizations, postsecondary educational institutions, the business community, and the general public, members of school boards and parent education associations, school administrators, and at least four teachers who are engaged in classroom teaching. The State Department of Education shall provide staff support for the council to administer the Education Innovation Fund, including the Quality Education Accountability Act. The council shall have the following powers and duties:

(i) In consultation with the State Department of Education, develop and publish criteria for the awarding of incentive grants allocated by the Governor for programs pursuant to this subsection, including minigrants;

(ii) Provide recommendations to the Governor regarding the selection of projects to be funded and the distribution and duration of project funding. For projects recommended under subdivision (2)(c) of this section, the council shall also provide recommendations to the Nebraska Information Technology Commission for its review and recommendations to the Governor;

(iii) Establish standards, formats, procedures, and timelines for the successful implementation of approved programs funded by incentive grants allocated by the Governor from the Education Innovation Fund;

(iv) Assist school districts in determining the effectiveness of the innovations in programs and practices and measure the subsequent degree of improvement in the quality of education;

(v) Consider the reasonable distribution of funds across the state and all classes of school districts;

(vi) Carry out its duties pursuant to the Quality Education Accountability Act; and

(vii) Provide annual reports to the Governor concerning programs funded by the fund. Each report shall include the number of applicants and approved applicants, an overview of the various programs, objectives, and anticipated outcomes, and detailed reports of the cost of each program.

To assist the council in carrying out its duties, the State Board of Education shall, in consultation with the council, adopt and promulgate rules and regulations establishing criteria, standards, and procedures regarding the selection and administration of programs funded from the Education Innovation Fund, including the Quality Education Accountability Act.

(3) Recipients of incentive grants allocated by the Governor from the Education Innovation Fund shall be required to provide, upon request, such data relating to the funded programs and initiatives as the Governor deems necessary.

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

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

Sec. 2. Section 79-215, Revised Statutes Supplement, 1998, is amended to read:

79-215. (1) Except as otherwise provided in this section, a student is a resident of the school district where he or she resides and shall be admitted to the school district upon request without charge.

(2) A school board shall admit any homeless student that requests admission without charge.

(3) The school board may allow a student whose residency in the district ceases during a school year to continue attending school in such district for the remainder of that school year.

(4) A school board ~~or board of education~~ may admit nonresident ~~pupils~~ students to the school district, ~~may determine the rate of tuition of the pupils,~~ pursuant to a contract with the district where the student is a resident and shall collect ~~such~~ tuition pursuant to the contract.

(5) A school board may admit nonresident students to the school district pursuant to the enrollment option program as authorized by sections 79-232 to 79-246, and such admission shall be without charge.

(6) A school board may admit a student who is a resident of another state to the school district and collect tuition in advance at a rate

determined by the school board.

~~(7) in advance except as otherwise provided in this section.~~

~~(2) When the pupil student as a ward of the state or as a ward of any court (a) has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used by the Department of Correctional Services pursuant to section 83-108.04 or (b) has been placed in any institution which maintains a special education program which has been approved by the State Department of Education and such institution is not owned or operated by the pupil's resident school district in which he or she resided at the time he or she became a ward, the cost of his or her education and the required transportation costs associated with the child's student's education shall be paid by the state, but not in advance, to the receiving school district or approved institution under rules and regulations prescribed by the Department of Health and Human Services and the student shall remain a resident of the district in which he or she resided at the time he or she became a ward. Any pupil student who is a ward of the state or a ward of any court who resides in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used by the Department of Correctional Services pursuant to section 83-108.04 shall be deemed a resident of the district in which the foster family home or foster home is located.~~

~~(3) (8) When the student is not a ward of the state or a ward of any court and is residing in a residential setting located in Nebraska for reasons other than to receive an education and the residential setting is operated by a service provider which is certified or licensed by the Department of Health and Human Services or is enrolled in the medical assistance program established under sections 68-1018 to 68-1025 and Title XIX or XXI of the federal Social Security Act, as amended, the student shall remain a resident of the district in which he or she resided immediately prior to residing in such residential setting. Upon request by a parent or legal guardian, the resident school district shall contract with the district in which such residential setting is located for the provision of all educational services, including all special education services. If the parent or legal guardian has requested that the resident school district contract with the district in which such residential setting is located, the district in which such residential setting is located shall contract with the resident district and provide all educational services, including all special education services, to the student. If the two districts cannot agree on the amount of the contract, the State Department of Education shall determine the amount to be paid by the resident district to the district in which such residential setting is located based on the needs of the student, approved special education rates, the department's general experience with special education budgets, and the cost per student in the district in which such residential setting is located. Once the contract has been entered into all legal responsibility for special education and related services shall be transferred to the school district in which the residential setting is located. The resident district for a student who is not a ward of the state or a ward of any court does not change when the student moves from one residential setting to another.~~

~~(9) In the case of any individual eighteen years of age or younger who is a ward of the state or any court and who is placed in a county detention home established under section 43-2,110, the cost of his or her education shall be paid by the state, regardless of such individual's district of residency the district in which he or she resided at the time he or she became a ward, to the agency or institution which: (a) Is selected by the county board with jurisdiction over such detention home; (b) has agreed or contracted with such county board to provide educational services; and (c) has been approved by the State Department of Education pursuant to rules and regulations prescribed by the State Board of Education.~~

~~(4) (10) No tuition shall be charged for children students who may be by law allowed to attend the school without charge.~~

~~(11) On a form prescribed by the State Department of Education, an adult with legal or actual charge or control of the student shall provide the name of the student, the name of the adult with legal or actual charge or control of the student, the address where the student is residing, and the phone number and address where the adult may generally be reached during the school day. If the student is homeless or if the adult does not have a phone number and address where he or she may generally be reached during the school day, those parts of the form may be left blank and a box may be marked acknowledging that these are the reasons these parts of the form were left blank. The adult with legal or actual charge or control of the student shall~~

also sign the form.

(12) ~~The department shall adopt and promulgate rules and regulations to carry out the department's responsibilities under this section. The school district in which the parent or guardian of any nonresident pupil maintains his or her legal residence shall not be liable for the payment of tuition and the children of school age of such parent or guardian shall be entitled to free common school privileges the same as any child who is a bona fide resident of such school district whenever the parent or guardian of such nonresident pupil, having entered the public service of the State of Nebraska, has moved from the school district in which he or she maintains legal residence into another school district for temporary purposes incidental to serving the state, without the intention of making the school district to which the parent or guardian has moved his or her legal residence. No tuition shall be charged for a child whose parents are divorced if such child attends school in a district in which either parent resides. The burden of proof as to legal residence shall rest with the person claiming legal residence in any district. The school district may allow a pupil whose residency in the district ceases during a school year to continue attending school for the remainder of that school year without payment of tuition.~~

~~(5) The school board or board of education may admit nonresident pupils to the school district without requiring the payment of tuition if such pupils are in the actual physical custody of a resident of the school district and are not residents of an adjoining school district and the board determines that the pupils would otherwise be denied guaranteed free common school privileges.~~

~~(6) The changes made to this section by Laws 1992, LB 3, Ninety-second Legislature, Third Special Session, shall apply to all reimbursements under this section for school year 1992-93 and all school years thereafter.~~

Sec. 3. Section 79-534, Reissue Revised Statutes of Nebraska, is amended to read:

79-534. All Class III school districts shall be under the direction and control of the boards of education elected pursuant to section 32-543. ~~The schools of such school district shall be free to all children who are five through twenty years of age whose parents or guardians are legal residents of such school district and all children of school age, nonresidents of the school district, who are or may be by law allowed to attend the schools without charge.~~

Sec. 4. Section 79-535, Reissue Revised Statutes of Nebraska, is amended to read:

79-535. All schools erected or organized within the limits of cities of the metropolitan class shall be under the direction and control of the board of education authorized by section 79-552. ~~Such schools shall be free to all children who are five through twenty years of age whose parents or guardians reside within the limits of the school district and to all children of school age, nonresidents of the district, who are or may be by law allowed to attend such school without charge.~~

Sec. 5. Section 79-1115, Revised Statutes Supplement, 1998, is amended to read:

79-1115. Allowable costs means:

(1) For school fiscal years prior to school fiscal year 1999-00, salaries, wages, benefits, and maintenance, supplies, travel, and other expenses essential to carry out the provisions for special education and support services; and

(2) For school fiscal year 1999-00 and each school fiscal year thereafter, salaries, wages, benefits, any medical expenditure by a school district for purposes of providing individualized education plan services for a special education student and health protection to the provider of the services, and maintenance, supplies, travel, and other expenses essential to carry out the provisions for special education and support services.

Sec. 6. Section 79-1125.01, Revised Statutes Supplement, 1999, is amended to read:

79-1125.01. Support services means preventive services for those ~~students~~ children from birth to age twenty-one years and, if the child's twenty-first birthday occurs during the school year, until the end of that school year, not identified or verified as children with disabilities pursuant to sections 79-1118.01 and 79-1137 to 79-1139 but demonstrating a need for specially designed assistance in order to benefit from the school district's general education curriculum and to avoid the need for potentially expensive special education placement and services.

Sec. 7. Section 79-1142, Revised Statutes Supplement, 1999, is amended to read:

79-1142. (1) Level I services refers to services provided to children with disabilities who require an aggregate of not more than three hours per week of special education services and support services and includes all administrative, diagnostic, consultative, and vocational-adjustment counselor services. Support services means preventive services for ~~students~~ children from birth to age twenty-one years and, if the child's twenty-first birthday occurs during the school year, until the end of that school year, not identified or verified as having a disability pursuant to sections 79-1118.01 and 79-1138 but who demonstrate a need for specially designed assistance in order to benefit from the school's general education curriculum. The total allowable reimbursable cost for support services shall not exceed a percentage, established by the State Board of Education, of the school district's or approved cooperative's total allowable reimbursable cost for all special education programs and support services. The percentage established by the State Board of Education for support services shall not exceed ten percent.

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

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

Sec. 8. Section 79-1145, Revised Statutes Supplement, 1999, is amended to read:

79-1145. For each fiscal year, the aggregate amount of General Funds appropriated for special education programs and support services pursuant to sections 79-1129, 79-1132, and 79-1144 shall not exceed the aggregate amount of General Funds appropriated pursuant to such sections for the previous fiscal year, multiplied by one plus a rate of ~~three~~ five percent.

Sec. 9. Original sections 79-534 and 79-535, Reissue Revised Statutes of Nebraska, sections 79-215 and 79-1115, Revised Statutes Supplement, 1998, and sections 9-812, 79-1125.01, 79-1142, and 79-1145, Revised Statutes Supplement, 1999, are repealed.

Sec. 10. The following section is outright repealed: Section 79-1123, Reissue Revised Statutes of Nebraska.