

LEGISLATIVE BILL 843

Passed over the Governor's veto April 9, 1990.

Introduced by Baack, 47

AN ACT relating to schools and school districts; to amend section 79-1338, Reissue Revised Statutes of Nebraska, 1943, sections 79-1331, 79-3402 to 79-3407, 79-3409, 79-3410, and 79-3414 to 79-3416, Revised Statutes Supplement, 1989, and section 45, Legislative Bill 1059, Ninety-first Legislature, Second Session, 1990; to change provisions relating to the enrollment option program; to redefine terms; to change provisions relating to limitations on transfers, eligibility for the program and transportation reimbursement, attendance requirements, and acceptance standards as prescribed; to provide for determining enrollment and capacity; to eliminate restrictions on solicitation of transfers; to change provisions relating to deadlines as prescribed; to change provisions relating to payments under the enrollment option program as prescribed; to change a calculation under the School Foundation and Equalization Act as prescribed; to change provisions relating to the repeal of certain statutes; to eliminate funds, provisions on payment of tuition by former county high school districts, the School Foundation and Equalization Act, and a restriction on eligibility for athletic competition; to harmonize provisions; to provide operative dates; to provide severability; to repeal the original sections, and also sections 79-1103.02, 79-1103.03, 79-1332, 79-1332.01, 79-1333.01, 79-1334, 79-1336, 79-1337, 79-1339, 79-1340, and 79-1342 to 79-1344.01, Reissue Revised Statutes of Nebraska, 1943, section 79-1335, Revised Statutes Supplement, 1988, sections 79-1330, 79-1333, 79-1333.02, and 79-3411, Revised Statutes Supplement, 1989, section 79-1338, Reissue Revised Statutes of Nebraska, 1943, as amended by section 2, Legislative Bill 843, Ninety-first Legislature, Second Session, 1990, and section

79-1331, Revised Statutes Supplement, 1989, as amended by section 1, Legislative Bill 843, Ninety-first Legislature, Second Session, 1990; and to declare an emergency.

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

Section 1. That section 79-1331, Revised Statutes Supplement, 1989, be amended to read as follows:

79-1331. As used in For purposes of the School Foundation and Equalization Act, unless the context otherwise requires:

(1) Classroom teacher shall mean a certificated teacher who has major responsibility for the instruction of one or more classes of pupils;

(2) District shall mean a school district approved for continued legal operation under rules and regulations adopted and promulgated by the State Board of Education pursuant to subdivision (5)(c) of section 79-328;

(3) Per pupil cost shall mean a district's current operating expense, as shown in the district's annual financial report to the State Department of Education, divided by the average daily membership of resident and nonresident pupils for the preceding school year;

(4) Operating funds shall mean a district's current operating revenue for a fiscal year as shown in the district's annual financial report to the State Department of Education;

(5) Summer school program shall mean a program consisting of thirty days of school at three hours per day, or the equivalent, conducted by a district to meet the academic needs of its pupils during a period other than the regular school year; and

(6) Fall school district membership report shall mean a report setting forth the number of children between the ages of five and twenty-one enrolled in the district on the last Friday in September of a given school year. The report shall enumerate (a) resident students by grade level and nonresident students and option students as defined in section 79-3402 by grade level and classification, including, but not limited to, nonresident high school, ~~option high school~~, wards of the court, or contract, (b) eligible children in gifted and deprived programs as approved and verified by the state, (c) children eligible to be transported by bus according to section 79-490, and (d) total assessed valuation for the current fiscal year.

Sec. 2. That section 79-1338, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1338. From the sum calculated pursuant to section 79-1336, each district shall subtract operating funds obtained ~~from~~ (1) ~~from~~ the State of Nebraska under section 79-1334, (2) ~~from~~ the qualifying levy prescribed in section 79-1335, except that ; PROVIDED; operating funds received from that portion of the local tax levy which exceeds the minimum prescribed in section 79-1335 shall be excluded from this computation, (3) ~~from~~ tuition receipts as defined in this section, (4) ~~from~~ fines, (5) ~~from~~ license fees, (6) ~~from~~ transportation reimbursements, (7) ~~from~~ the Insurance Tax Fund, and (8) pursuant to funds received under the provisions of Chapter 79, article 13, and (9) pursuant to section 79-3415.

For purposes of making the computations required in subdivision (3) of this section, the school district shall exclude all special education tuition receipts. Tuition receipts shall include only those receipts which exceed one hundred twenty-five percent of the elementary or secondary per pupil costs, whichever is applicable, as reported in the annual financial report for the appropriate year based on the enrollment of nonresident students as reported in the fall school district membership report for the appropriate year. Such tuition receipts shall be computed separately for elementary and secondary pupils.

Sec. 3. That section 79-3402, Revised Statutes Supplement, 1989, be amended to read as follows:

79-3402. For purposes of sections 79-3401 to 79-3417:

(1) Enrollment option program shall mean the program established in section 79-3403;

(2) Option school district shall mean the public school district that a student chooses to attend other than his or her resident school district;

(3) Option student shall mean a student that has chosen to attend a public school district other than his or her resident school district; and

(4) Resident school district shall mean the public school district in which a student resides.

Sec. 4. That section 79-3403, Revised Statutes Supplement, 1989, be amended to read as follows:

79-3403. An enrollment option program is hereby established to enable any Nebraska student to

attend a school in a Nebraska public school district in which the student does not reside subject to the limitations prescribed in section 79-3407. The option shall be available only once to each student prior to graduation unless (1) the student relocates in a different resident school district, (2) the option school district merges with another district, or (3) the option school district is a Class I district. The option student shall be given the option to attend school in another district at the time of relocation or merger or upon completion of the grades offered at the Class I district. This program shall not apply to any student in the ninth, tenth, eleventh, or twelfth grade who resides in a Class I ~~school~~ district that is not part of a Class VI ~~school~~ district or to a student who resides in a district which contracts with another district or districts in such student's grade level pursuant to section 79-486.

Sec. 5. That section 79-3404, Revised Statutes Supplement, 1989, be amended to read as follows:

79-3404. For purposes of all duties, entitlements, and rights established by law, including special education as provided in section 79-3320, except ~~transportation~~ as provided in section 79-3410, option students shall be treated as resident students of the option school district.

Sec. 6. That section 79-3405, Revised Statutes Supplement, 1989, be amended to read as follows:

79-3405. (1) For the 1990-91 school year, participation in the enrollment option program shall be voluntary and shall be agreed upon by both the resident school district and the option school district.

(2) For the 1991-92 school year, participation in the enrollment option program shall be voluntary on the part of the option school district. The resident school district shall be required to participate in the program until more than five percent of the students, based upon resident enrollment set out in the fall school district membership report required by law, choose to attend option school districts at which time the resident school district may choose not to participate further in the program.

(3) For the 1992-93 school year, participation in the enrollment option program shall be voluntary on the part of the option school district. The resident school district shall be required to participate in the program until ~~more than ten~~ an additional five percent

of the students, based upon resident enrollment set out in the fall school district membership report required by law, choose to attend option school districts at which time the resident school district may choose not to participate further in the program.

(4) Beginning with the 1993-94 school year, the enrollment option program shall be implemented by all public school districts.

(5) In no event shall the number of students who may participate in the enrollment option program from the resident school district be less than one student for the 1991-92 school year and for the 1992-93 school year.

Sec. 7. That section 79-3406, Revised Statutes Supplement, 1989, be amended to read as follows:

79-3406. For a student to attend a school in an option school district, the student's parent or legal guardian shall ~~initially~~ submit an application to the school board or board of education of the option school district and of the resident school district and to the State Department of Education by between September 1 and January 1 for enrollment during the following and subsequent school years. The application shall set forth in detail the substantial educational opportunity available to the option student in the option school district that is unavailable in the resident school district. A particular school may be requested, but the school assignment of the option student shall be determined by the option school district.

The student shall attend the option school district until graduation ~~or relocation~~ unless the student relocates in a different resident school district, transfers to a private or parochial school, or unless the student chooses to return to the resident school district. In each case, in which case the student's parent or legal guardian shall submit a cancellation form to the school board or board of education of the option school district and the resident school district and to the department by January 1 for automatic approval for the following school year. No student shall attend an option school district for less than one school year unless he ~~or she~~ the student relocates to a different resident school district, ~~or completes requirements for graduation prior to the end of his or her senior year, or transfers to a private or parochial school.~~

The application and cancellation forms shall be prescribed and furnished by the State Department of

Education.

Sec. 8. That section 79-3407, Revised Statutes Supplement, 1989, be amended to read as follows:

79-3407. The school board or board of education of the option school district shall adopt by resolution specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building or the availability of appropriate special education programs operated by the option district. Capacity shall be determined by setting a maximum number of option students that a district will accept in any program, class, grade level, or school building, based upon available staff, facilities, projected enrollment of resident students, projected number of students with which the option district will contract based on existing contractual arrangements, and availability of appropriate special education programs. The school board or board of education of the option school district may by resolution declare a program, a class, or a school unavailable to option students due to lack of capacity. Standards shall not include previous academic achievement, athletic or other extracurricular ability, handicapping conditions, proficiency in the English language, or previous disciplinary proceedings.

~~It shall be unlawful for any employee, agent, or legal representative of any school district to initiate any contact by personal visitation, phone call, written correspondence, or public advertisement with any parent, legal guardian, or student residing in any other school district for purposes of encouraging such parent or legal guardian to send his or her student to or encouraging such student to attend the school district of such employee, agent, or legal representative.~~

A school district that has a desegregation plan adopted by the school board or the board of education or ordered by the federal court may limit the number of students who transfer into or out of the school district. The school board or board of education of such school district shall adopt specific standards for acceptance and rejection of applications for transfer into or out of such district. Standards shall be designed to facilitate the school district's desegregation plan and maintain or improve the integration of the school district.

Any option school district shall give first priority for enrollment to option students whose request for enrollment would aid the racial integration of the

option school district and the resident school district.

For purposes of this section, racial integration is aided if a student transfers to an option school district in which his or her race is a smaller percentage of the total student enrollment of the option school district than it is of the student's resident school district.

Sec. 9. That section 79-3409, Revised Statutes Supplement, 1989, be amended to read as follows:

79-3409. Upon agreement of the school boards or boards of education of the resident school district and the option school ~~districts~~ district, the deadlines for application and approval or rejection in sections 79-3406 and 79-3408 may be waived. Beginning with the 1993-94 school year, the deadlines in sections 79-3406 and 79-3408 shall be automatically waived if the option student relocates in a different resident school district during the school year but wishes to continue attending the option school district.

Sec. 10. That section 79-3410, Revised Statutes Supplement, 1989, be amended to read as follows:

79-3410. Sections (1) Except as provided in subsection (2) of this section, section 79-490 and 79-3322 shall not apply to the transportation of an option student. The parent or legal guardian of the option student shall be responsible for required transportation. A school district may upon mutual agreement with the parent or legal guardian of a student provide transportation to the option student.

(2) Parents or guardians of option students who qualify for free or reduced-price lunches shall be eligible for transportation reimbursement as described in section 79-490, which reimbursement shall be made by the State Department of Education. Parents or guardians of qualified students shall complete a form prescribed by the department. Payment shall be made to the parent or guardian in two approximately equal payments on or before January 30 and on or before June 30 for expenses incurred during the current school year. If sufficient funds are not appropriated to fully fund the provisions of this section, the department shall make a proportionate reduction in each payment made pursuant to this section.

(3) For option students verified as handicapped as defined in section 79-3309, the transportation services set forth in section 79-3322 shall be provided by the resident school district. The

department shall reimburse the resident school district for the cost of transportation in accordance with section 79-3333.

Sec. 11. That section 79-3414, Revised Statutes Supplement, 1989, be amended to read as follows:

79-3414. The enrollment option program shall not preclude a school district from contracting with other school districts, educational service units, or other state-approved entities for the provision of services. A handicapped student receiving services from another district pursuant to contract due to lack of appropriate programming in his or her resident school district shall not be eligible to transfer as an option student into the district currently providing services but shall be eligible to transfer as an option student into any other district which accepts option students and has an appropriate program.

Sec. 12. That section 79-3415, Revised Statutes Supplement, 1989, be amended to read as follows:

79-3415. The resident school district shall, for each option student who resides in such school district, including option students who are handicapped, remit to the option school district in two equal payments, with the first payment on or before January 15 and the second payment on or before June 15 of each school year, an amount equal to the appropriate rate as established in subdivisions (1) through (4) of section 79-1334 plus the appropriate rate as established in subsection (1) of section 79-1336. The State Department of Education shall notify every school district by July 15 of each year regarding the rates calculated pursuant to such sections for the upcoming school year. The resident school district shall count all students, regardless of whether they attend an option school district, when making calculations for the School Foundation and Equalization Act. Except as provided in section 79-3403, the State Department of Education shall pay the option school district the statewide average per pupil cost for the preceding year, as determined by the department, or the option school district's per pupil cost for the preceding year as reported in the district's approved annual finance report, whichever is less, in two approximately equal payments on or before January 30 and on or before June 30, for expenses incurred during the current school year for each option student, including option students who are handicapped. For purposes of the School Foundation and Equalization

Act and any successor state aid program, (1) option students shall not be counted by the resident school district and shall be counted by the option school district, (2) the option school district's computation of insured financial support rate pursuant to section 79-1336 or similar computation pursuant to any successor state aid program for any option student shall be equal to the revenue received from the state pursuant to this section, and (3) the option school district shall include the funds received pursuant to this section in the calculation of receipts as required by subdivisions (1) through (9) of section 79-1338 or similar calculation pursuant to any successor state aid program.

If an option student relocates in a different school district during the school year, the ~~resident school district~~ department shall prorate the amount remitted to the option school district pursuant to this section according to the proportionate amount of time the student attended was enrolled in the option school district.

If sufficient funds are not appropriated to fully fund the provisions of this section, the department shall make a proportionate reduction in each payment made pursuant to this section.

Sec. 13. That section 79-3416, Revised Statutes Supplement, 1989, be amended to read as follows:

79-3416. The State Department of Education shall reimburse each option school district for special education programs provided to option students in accordance with section 79-3332.

The resident school district of an option student shall be exempted from the payment responsibility set forth in section 79-3330.

For purposes of calculation to determine reimbursement pursuant to section 79-3332, the option school district shall ~~not~~ include the adjusted average per pupil cost, as defined in section 79-3304, ~~of option handicapped students of the option school district and not the amount received pursuant to section 79-3415.~~ The resident school district shall include such adjusted average per pupil cost when determining such reimbursement for each level ~~if~~ handicapped student attending an option school district. Any resident school district in which the adjusted average per pupil cost exceeds the amount of reimbursement due, as calculated pursuant to section 79-3332, shall remit the difference to the State Treasurer for credit to the Special Education Enrollment Options Fund, which fund is

hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 14. That section 45, Legislative Bill 1059, Ninety-first Legislature, Second Session, 1990, be amended to read as follows:

Sec. 45. That original sections 77-2701.02, 79-201.09, 79-470, 79-490, 79-12,145, 79-1369, and 79-2317, Reissue Revised Statutes of Nebraska, 1943, sections 77-678 and 77-2701.01, Revised Statutes Supplement, 1988, and sections 72-1237.01, 77-2715.02, 79-451, and 79-4,102, Revised Statutes Supplement, 1989, and also section sections 79-1332, 79-1332-01, 79-1333-01, 79-1334, 79-1336 to 79-1340, 79-1342 to 79-1344-01, and 79-1368, Reissue Revised Statutes of Nebraska, 1943, sections 79-1335, 79-1344.03, 79-1380, and 79-1381, Revised Statutes Supplement, 1988, and sections 79-1330, 79-1331, 79-1333, 79-1333-02, 79-1344.02, 79-1378, 79-1379, 79-1382, and 79-1383, Revised Statutes Supplement, 1989, are repealed.

Sec. 15. Sections 1 to 13 and 17 of this act shall become operative three calendar months after adjournment of the Ninety-first Legislature, Second Session, 1990. Section 19 of this act shall become operative on January 1, 1991, only if Legislative Bill 1059, Ninety-first Legislature, Second Session, 1990, is in effect on such date. The other sections of this act shall become operative on their effective date.

Sec. 16. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 17. That original section 79-1338, Reissue Revised Statutes of Nebraska, 1943, and sections 79-1331, 79-3402 to 79-3407, 79-3409, 79-3410, and 79-3414 to 79-3416, Revised Statutes Supplement, 1989, and also sections 79-1103.02 and 79-1103.03, Reissue Revised Statutes of Nebraska, 1943, and section 79-3411, Revised Statutes Supplement, 1989, are repealed.

Sec. 18. That original section 45, Legislative Bill 1059, Ninety-first Legislature, Second Session, 1990, is repealed.

Sec. 19. That sections 79-1332, 79-1332.01, 79-1333.01, 79-1334, 79-1336, 79-1337, 79-1339, 79-1340, and 79-1342 to 79-1344.01, Reissue Revised Statutes of Nebraska, 1943, section 79-1335, Revised Statutes Supplement, 1988, sections 79-1330, 79-1333, and 79-1333.02, Revised Statutes Supplement, 1989, section

79-1338, Reissue Revised Statutes of Nebraska, 1943, as amended by section 2, Legislative Bill 843, Ninety-first Legislature, Second Session, 1990, and section 79-1331, Revised Statutes Supplement, 1989, as amended by section 1, Legislative Bill 843, Ninety-first Legislature, Second Session, 1990, are repealed.

Sec. 20. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.