

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 204

Introduced by Council, 11; Cook, 13.

Read first time January 07, 2011

Committee: Education

A BILL

1 FOR AN ACT relating to students; to amend sections 79-219, 79-220,
2 79-221, and 79-222, Reissue Revised Statutes of Nebraska,
3 and sections 79-217 and 79-1601, Revised Statutes
4 Cumulative Supplement, 2010; to require blood lead
5 testing prior to school enrollment; to provide for
6 exceptions; to provide duties for the Department of
7 Health and Human Services; to harmonize provisions; and
8 to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-217, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 79-217 (1) Except as provided in sections 79-221 and
4 79-222, the school board or board of education of each school
5 district and the governing authority of each private, denominational,
6 or parochial school in this state shall require each student to be
7 protected against measles, mumps, rubella, poliomyelitis, diphtheria,
8 pertussis, and tetanus by immunization prior to enrollment and to
9 have undergone blood lead testing after the age of eighteen months
10 and before the age of four years or, in the case of a transfer
11 student four years of age or older enrolling in the district for the
12 first time, within six months prior to enrollment. Any student who
13 does not comply with this section shall not be permitted to continue
14 in school until he or she so complies, except as provided by section
15 79-222. Each school district shall make diligent efforts to inform
16 families prior to the date of school registration of the immunization
17 and blood lead testing requirements of this section.

18 (2) Except as provided in sections 79-221 and 79-222, on
19 and after July 1, 2010, every student entering the seventh grade
20 shall have a booster immunization containing diphtheria and tetanus
21 toxoids and an acellular pertussis vaccine which meets the standards
22 approved by the United States Public Health Service for such
23 biological products, as such standards existed on January 1, 2009.

24 (3) Except as provided in the Childhood Vaccine Act, the
25 cost of such immunizations or such blood lead testing shall be borne

1 by the parent or guardian of each student who is immunized or tested
2 or by the Department of Health and Human Services for those students
3 whose parent or guardian is financially unable to meet such cost.

4 (4) For purposes of this section and sections 79-219 to
5 79-222:

6 (a) Blood lead testing means taking a capillary sample of
7 blood or venous sample of blood and sending it to a laboratory to
8 determine the level of lead in the blood;

9 (b) Capillary sample of blood means a blood sample taken
10 from the finger or heel;

11 (c) Laboratory means a clinical laboratory certified
12 pursuant to the federal Clinical Laboratories Improvement Act of
13 1967, as such act existed on January 1, 2011; and

14 (d) Venous sample of blood means a blood sample taken
15 from a vein in the arm.

16 Sec. 2. Section 79-219, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 79-219 The Department of Health and Human Services shall
19 adopt and promulgate rules and regulations relating to the required
20 levels of protection, blood lead testing, provisional enrollment
21 under the provisions of section 79-222, the evidence necessary to
22 prove that the required examination, blood lead testing, or
23 immunization has been received, and the reporting of each student's
24 immunization and blood lead testing status. The department may
25 modify, add to, or delete from the list of required immunizations set

1 out in section 79-217. The department shall furnish local school
2 authorities with copies of such rules and regulations and any other
3 material which will assist in the carrying out of sections 79-214 and
4 79-217 to 79-223.

5 Sec. 3. Section 79-220, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 79-220 At the time the parent or guardian of any child is
8 notified that such child must have a physical examination and a
9 visual evaluation pursuant to section 79-214 or immunizations and
10 blood lead testing pursuant to section 79-217, the parent or guardian
11 shall also be notified in writing of (1) his or her right to submit a
12 written statement refusing a physical examination, a visual
13 evaluation, blood lead testing, or immunization for his or her child
14 and (2) a telephone number or other contact information to assist the
15 parent or guardian in receiving information regarding free or
16 reduced-cost visual evaluations for low-income families who qualify.

17 Sec. 4. Section 79-221, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 79-221 Immunization or blood lead testing shall not be
20 required for a student's enrollment in any school in this state if he
21 or she submits to the admitting official: ~~either of the following:~~

22 (1) A statement signed by a physician, a physician
23 assistant, or an advanced practice registered nurse practicing under
24 and in accordance with his or her respective certification act,
25 stating that, in the health care provider's opinion, the

1 immunizations or blood lead testing required would be injurious to
2 the health and well-being of the student or any member of the
3 student's family or household; ~~or~~

4 (2) An affidavit signed by the student or, if he or she
5 is a minor, by a legally authorized representative of the student,
6 stating that the immunization or blood lead testing conflicts with
7 the tenets and practice of a recognized religious denomination of
8 which the student is an adherent or member or that immunization or
9 blood lead testing conflicts with the personal and sincerely followed
10 religious beliefs of the student; or -

11 (3) A statement signed by a physician, a physician
12 assistant, or an advanced practice registered nurse practicing under
13 and in accordance with his or her respective certification act,
14 stating that, in such physician's physician assistant's, or advanced
15 practice registered nurse's opinion, the child is at very low risk
16 for elevated blood lead levels. For purposes of this subdivision,
17 very low risk means that the child (a) has not lived in or spent
18 significant time in any building built before 1960, (b) has not eaten
19 nonfood items, (c) has not lived with or frequently come in contact
20 with an adult who works with lead on the job or as part of a hobby,
21 (d) has not lived near a battery manufacturing plant, battery
22 recycling plant, lead smelter, or other source of significant lead
23 emissions, (e) was not born in or has not spent more than three
24 months in Mexico, Central America, Eastern Europe, or Southeast Asia,
25 (f) has not ingested food, candy, or remedies containing lead, (g)

1 has not played with toys, jewelry, or other items recalled by the
2 United States Consumer Product Safety Commission due to lead
3 contamination, or (h) has not had significant exposure to any other
4 product or substance determined to contain lead by the United States
5 Environmental Protection Agency, the United States Department of
6 Housing and Urban Development, or the Centers for Disease Control and
7 Prevention or the Food and Drug Administration of the United States
8 Department of Health and Human Services.

9 Sec. 5. Section 79-222, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 79-222 (1) A student may be provisionally enrolled in a
12 school in Nebraska if he or she meets ~~either~~any of the following
13 qualifications:

14 (a) The student has begun the immunizations required
15 under section 79-217 and is receiving the necessary immunizations as
16 rapidly as is medically feasible; ~~or~~

17 (b) The student is scheduled to undergo blood lead
18 testing; or

19 ~~(b)-(c)~~ (c) The student is the child or legal ward of an
20 officer or enlisted person on active duty in any branch of the
21 military services of the United States or of his or her spouse,
22 enrolling in a Nebraska school following residence in another state
23 or in a foreign country.

24 (2) As a condition for the provisional enrollment of a
25 student qualified for such enrollment under subdivision ~~(1)(b)-(1)(c)~~

1 of this section, a parent or adult legal guardian of the student
2 shall provide the school with a signed written statement certifying
3 (a) that the student has completed the course of immunizations
4 required by section 79-217 or (b) that the student will undergo blood
5 lead testing within fifteen days or the date and results of the
6 student's blood lead testing.

7 (3) The provisional enrollment of a student qualified for
8 such enrollment under subdivision ~~(1)(b)~~ (1)(c) of this section shall
9 not continue beyond sixty days from the date of such enrollment. At
10 such time the school shall be provided, with regard to the student,
11 written evidence of compliance with section 79-217. The student shall
12 not be permitted to continue in school until such evidence of
13 compliance is provided.

14 Sec. 6. Section 79-1601, Revised Statutes Cumulative
15 Supplement, 2010, is amended to read:

16 79-1601 (1) Except as provided in subsections (2) through
17 (6) of this section, all private, denominational, and parochial
18 schools in the State of Nebraska and all teachers employed or giving
19 instruction in such schools shall be subject to and governed by the
20 provisions of the general school laws of the state so far as the same
21 apply to grades, qualifications, and certification of teachers and
22 promotion of students. All private, denominational, and parochial
23 schools shall have adequate equipment and supplies, shall be graded
24 the same, and shall have courses of study for each grade conducted in
25 such schools substantially the same as those given in the public

1 schools which the students would attend in the absence of such
2 private, denominational, or parochial schools.

3 (2) All private, denominational, or parochial schools
4 shall either comply with the accreditation or approval requirements
5 prescribed in section 79-318 or, for those schools which elect not to
6 meet accreditation or approval requirements, the requirements
7 prescribed in section 79-318 and subsections (2) through (6) of this
8 section. Standards and procedures for approval and accreditation
9 shall be based upon the program of studies, guidance services, the
10 number and preparation of teachers in relation to the curriculum and
11 enrollment, instructional materials and equipment, science facilities
12 and equipment, library facilities and materials, and health and
13 safety factors in buildings and grounds. Rules and regulations which
14 govern standards and procedures for private, denominational, and
15 parochial schools which elect, pursuant to the procedures prescribed
16 in subsections (2) through (6) of this section, not to meet state
17 accreditation or approval requirements shall be based upon evidence
18 that such schools offer a program of instruction leading to the
19 acquisition of basic skills in the language arts, mathematics,
20 science, social studies, and health. Such rules and regulations may
21 include a provision for the visitation of such schools and regular
22 achievement testing of students attending such schools in order to
23 insure that such schools are offering instruction in the basic skills
24 listed in this subsection. Any arrangements for visitation or testing
25 shall be made through a parent representative of each such school.

1 The results of such testing may be used as evidence that such schools
2 are offering instruction in such basic skills but shall not be used
3 to measure, compare, or evaluate the competency of students at such
4 schools.

5 (3) The provisions of subsections (3) through (6) of this
6 section shall apply to any private, denominational, or parochial
7 school in the State of Nebraska which elects not to meet state
8 accreditation or approval requirements. Elections pursuant to such
9 subsections shall be effective when a statement is received by the
10 Commissioner of Education signed by the parents or legal guardians of
11 all students attending such private, denominational, or parochial
12 school, stating that (a) either specifically (i) the requirements for
13 approval and accreditation required by law and the rules and
14 regulations adopted and promulgated by the State Board of Education
15 violate sincerely held religious beliefs of the parents or legal
16 guardians or (ii) the requirements for approval and accreditation
17 required by law and the rules and regulations adopted and promulgated
18 by the State Board of Education interfere with the decisions of the
19 parents or legal guardians in directing the student's education, (b)
20 an authorized representative of such parents or legal guardians will
21 at least annually submit to the Commissioner of Education the
22 information necessary to prove that the requirements of subdivisions
23 (4)(a) through (c) of this section are satisfied, (c) the school
24 offers the courses of instruction required by subsections (2), (3),
25 and (4) of this section, and (d) the parents or legal guardians have

1 satisfied themselves that individuals monitoring instruction at such
2 school are qualified to monitor instruction in the basic skills as
3 required by subsections (2), (3), and (4) of this section and that
4 such individuals have demonstrated an alternative competency to
5 monitor instruction or supervise students pursuant to subsections (3)
6 through (6) of this section.

7 (4) Each such private, denominational, or parochial
8 school shall (a) meet minimum requirements relating to health, fire,
9 and safety standards prescribed by state law and the rules and
10 regulations of the State Fire Marshal, (b) report attendance pursuant
11 to section 79-201, (c) maintain a sequential program of instruction
12 designed to lead to basic skills in the language arts, mathematics,
13 science, social studies, and health, and (d) comply with the
14 immunization and blood lead testing requirements in section 79-217 if
15 the statement signed by the parents or legal guardians indicate a
16 nonreligious reason pursuant to subdivision (3)(a)(ii) of this
17 section for the student attending a private, denominational, or
18 parochial school which elects not to meet state accreditation or
19 approval requirements. The State Board of Education shall establish
20 procedures for receiving information and reports required by
21 subsections (3) through (6) of this section from authorized parent
22 representatives who may act as agents for parents or legal guardians
23 of students attending such school and for individuals monitoring
24 instruction in the basic skills required by subsections (2), (3), and
25 (4) of this section.

1 (5) Individuals employed or utilized by schools which
2 elect not to meet state accreditation or approval requirements shall
3 not be required to meet the certification requirements prescribed in
4 sections 79-801 to 79-815 but shall either (a) take appropriate
5 subject matter components of a nationally recognized teacher
6 competency examination designated by the State Board of Education as
7 (i) including the appropriate subject matter areas for purposes of
8 satisfying the requirements of subsections (3) and (4) of this
9 section and (ii) a nationally recognized examination or (b) offer
10 evidence of competence to provide instruction in the basic skills
11 required by subsections (3) and (4) of this section pursuant to
12 informal methods of evaluation which shall be developed by the State
13 Board of Education. Such evidence may include educational
14 transcripts, diplomas, and other information regarding the formal
15 educational background of such individuals. Information concerning
16 test results, transcripts, diplomas, and other evidence of formal
17 education may be transmitted to the State Department of Education by
18 authorized representatives of parents or legal guardians. The results
19 of such testing or alternative evaluation of individuals who monitor
20 the instruction of students attending such schools may be used as
21 evidence of whether or not such schools are offering adequate
22 instruction in the basic skills prescribed in subsections (2), (3),
23 and (4) of this section but shall not be used to prohibit any such
24 school from employing such individuals. Failure of a monitor, who is
25 tested for the purpose of satisfying in whole or in part the

1 requirements of subsections (3) through (6) of this section, to
2 attain a score equal to or exceeding both the state or national
3 average score or rating on appropriate subject matter components of
4 recognized teacher competency examinations designated by the State
5 Board of Education may be by itself sufficient proof that such school
6 does not offer adequate instruction in the basic skills prescribed in
7 subsections (3) and (4) of this section.

8 (6) The demonstration of competency to monitor
9 instruction in a private, denominational, or parochial school which
10 has elected not to meet state accreditation or approval requirements
11 shall in no way constitute or be construed to grant a license,
12 permit, or certificate to teach in the State of Nebraska. Any school
13 which elects not to meet state accreditation or approval requirements
14 and does not meet the requirements of subsections (2) through (6) of
15 this section shall not be deemed a school for purposes of section
16 79-201, and the parents or legal guardians of any students attending
17 such school shall be subject to prosecution pursuant to such section
18 or any statutes relating to habitual truancy.

19 Sec. 7. If a child's blood-lead level is ten micrograms
20 or more of lead per deciliter of blood, the Department of Health and
21 Human Services shall notify such child's parent or guardian of the
22 availability of special education services pursuant to the Special
23 Education Act and of the contact information for and resources
24 available through Nebraska ChildFind or any successor entity that
25 provides information to parents, school personnel, and service

1 providers on child development and special education for children
2 from birth to date of diagnosis to age twenty-one and helps parents
3 access information on rights and resources to help them advocate for
4 an appropriate education for their child.

5 Sec. 8. Original sections 79-219, 79-220, 79-221, and
6 79-222, Reissue Revised Statutes of Nebraska, and sections 79-217 and
7 79-1601, Revised Statutes Cumulative Supplement, 2010, are repealed.