

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 962

Introduced by Council, 11; Campbell, 25; Coash, 27; Cook, 13; Fulton, 29; Gloor, 35; Haar, 21; Harms, 48; McGill, 26; Mello, 5; Nordquist, 7; Rogert, 16; Sullivan, 41; Wallman, 30; White, 8.

Read first time January 14, 2010

Committee: Education

A BILL

1 FOR AN ACT relating to students; to amend sections 79-219,
2 79-220, 79-221, and 79-222, Reissue Revised Statutes
3 of Nebraska, and sections 79-217 and 79-1601, Revised
4 Statutes Supplement, 2009; to require blood lead testing
5 prior to school enrollment; to provide for exceptions;
6 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 79-217, Revised Statutes Supplement,
2 2009, is amended to read:

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

19 (2) Except as provided in sections 79-221 and 79-222,
20 on and after July 1, 2010, every student entering the seventh
21 grade shall have a booster immunization containing diphtheria and
22 tetanus toxoids and an acellular pertussis vaccine which meets the
23 standards approved by the United States Public Health Service for
24 such biological products, as such standards existed on January 1,
25 2009.

1 (3) Except as provided in the Childhood Vaccine Act, the
2 cost of such immunizations shall be borne by the parent or guardian
3 of each student who is immunized or by the Department of Health
4 and Human Services for those students whose parent or guardian is
5 financially unable to meet such cost.

6 (4) For purposes of this section and sections 79-219 to
7 79-222:

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

11 (b) Capillary means a blood sample taken from the finger
12 or heel for lead analysis;

13 (c) Laboratory means a clinical laboratory certified
14 pursuant to the federal Clinical Laboratories Improvement Act of
15 1967, as such act existed on January 1, 2010; and

16 (d) Venous means a blood sample taken from a vein in the
17 arm for lead analysis.

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

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

1 immunization and blood lead testing status. The department may
2 modify, add to, or delete from the list of required immunizations
3 set out in section 79-217. The department shall furnish local
4 school authorities with copies of such rules and regulations and
5 any other material which will assist in the carrying out of
6 sections 79-214 and 79-217 to 79-223.

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

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

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

22 79-221 Immunization or blood lead testing shall not be
23 required for a student's enrollment in any school in this state
24 if he or she submits to the admitting official: either of the
25 ~~following:~~

1 (1) A statement signed by a physician, a physician
2 assistant, or an advanced practice registered nurse practicing
3 under and in accordance with his or her respective certification
4 act, stating that, in the health care provider's opinion, the
5 immunizations or blood lead testing required would be injurious
6 to the health and well-being of the student or any member of the
7 student's family or household; ~~or~~

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

15 (3) A statement signed by a physician, a physician
16 assistant, or an advanced practice registered nurse practicing
17 under and in accordance with his or her respective certification
18 act, stating that, in the health care provider's opinion, the
19 child is at very low risk for elevated blood lead levels. For
20 purposes of this subdivision, very low risk means that the child
21 (a) has not lived in or spent significant time in any building
22 built before 1960, (b) has not eaten nonfood items, (c) has not
23 lived with or frequently come in contact with an adult who works
24 with lead on the job or as part of a hobby, (d) has not lived
25 near a battery manufacturing plant, battery recycling plant, lead

1 smelter, or other source of significant lead emissions, (e) was not
 2 born in or has not spent more than three months in Mexico, central
 3 America, eastern Europe, or southeast Asia, (f) has not ingested
 4 food, candy, or remedies containing lead, (g) has not played
 5 with toys, jewelry, or other items recalled by the United States
 6 Consumer Products Safety Commission due to lead contamination,
 7 or (h) has not had significant exposure to any other product
 8 or substance determined to contain lead by the United States
 9 Environmental Protection Agency, the United States Department of
 10 Housing and Urban Development, or the Centers for Disease Control
 11 and Prevention or the Food and Drug Administration of the United
 12 States Department of Health and Human Services.

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

15 79-222 (1) A student may be provisionally enrolled in a
 16 school in Nebraska if he or she meets ~~either~~ any of the following
 17 qualifications:

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

21 (b) The student is scheduled to undergo blood lead
 22 testing; or

23 ~~(b)~~ (c) The student is the child or legal ward of an
 24 officer or enlisted person on active duty in any branch of the
 25 military services of the United States or of his or her spouse,

1 enrolling in a Nebraska school following residence in another state
2 or in a foreign country.

3 (2) As a condition for the provisional enrollment of
4 a student qualified for such enrollment under subdivision ~~(1)(b)~~
5 (1)(c) of this section, a parent or adult legal guardian of the
6 student shall provide the school with a signed written statement
7 certifying (a) that the student has completed the course of
8 immunizations required by section 79-217 or (b) that the student
9 will undergo blood lead testing within fifteen days or the date and
10 results of the student's blood lead testing.

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

18 Sec. 6. Section 79-1601, Revised Statutes Supplement,
19 2009, is amended to read:

20 79-1601 (1) Except as provided in subsections (2) through
21 (6) of this section, all private, denominational, and parochial
22 schools in the State of Nebraska and all teachers employed or
23 giving instruction in such schools shall be subject to and governed
24 by the provisions of the general school laws of the state so far
25 as the same apply to grades, qualifications, and certification of

1 teachers and promotion of students. All private, denominational,
2 and parochial schools shall have adequate equipment and supplies,
3 shall be graded the same, and shall have courses of study for each
4 grade conducted in such schools substantially the same as those
5 given in the public schools which the students would attend in the
6 absence of such private, denominational, or parochial schools.

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

1 the visitation of such schools and regular achievement testing
2 of students attending such schools in order to insure that such
3 schools are offering instruction in the basic skills listed in
4 this subsection. Any arrangements for visitation or testing shall
5 be made through a parent representative of each such school. The
6 results of such testing may be used as evidence that such schools
7 are offering instruction in such basic skills but shall not be used
8 to measure, compare, or evaluate the competency of students at such
9 schools.

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

1 parents or legal guardians will at least annually submit to the
2 Commissioner of Education the information necessary to prove that
3 the requirements of subdivisions (4) (a) through (c) of this section
4 are satisfied, (c) the school offers the courses of instruction
5 required by subsections (2), (3), and (4) of this section, and
6 (d) the parents or legal guardians have satisfied themselves that
7 individuals monitoring instruction at such school are qualified to
8 monitor instruction in the basic skills as required by subsections
9 (2), (3), and (4) of this section and that such individuals have
10 demonstrated an alternative competency to monitor instruction or
11 supervise students pursuant to subsections (3) through (6) of this
12 section.

13 (4) Each such private, denominational, or parochial
14 school shall (a) meet minimum requirements relating to health,
15 fire, and safety standards prescribed by state law and the rules
16 and regulations of the State Fire Marshal, (b) report attendance
17 pursuant to section 79-201, (c) maintain a sequential program
18 of instruction designed to lead to basic skills in the language
19 arts, mathematics, science, social studies, and health, and (d)
20 comply with the immunization and blood lead testing requirements
21 in section 79-217 if the statement signed by the parents or legal
22 guardians indicate a nonreligious reason pursuant to subdivision
23 (3) (a) (ii) of this section for the student attending a private,
24 denominational, or parochial school which elects not to meet
25 state accreditation or approval requirements. The State Board of

1 Education shall establish procedures for receiving information and
2 reports required by subsections (3) through (6) of this section
3 from authorized parent representatives who may act as agents for
4 parents or legal guardians of students attending such school and
5 for individuals monitoring instruction in the basic skills required
6 by subsections (2), (3), and (4) of this section.

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

1 who monitor the instruction of students attending such schools may
2 be used as evidence of whether or not such schools are offering
3 adequate instruction in the basic skills prescribed in subsections
4 (2), (3), and (4) of this section but shall not be used to prohibit
5 any such school from employing such individuals. Failure of a
6 monitor, who is tested for the purpose of satisfying in whole or
7 in part the requirements of subsections (3) through (6) of this
8 section, to attain a score equal to or exceeding both the state
9 or national average score or rating on appropriate subject matter
10 components of recognized teacher competency examinations designated
11 by the State Board of Education may be by itself sufficient proof
12 that such school does not offer adequate instruction in the basic
13 skills prescribed in subsections (3) and (4) of this section.

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

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1 Sec. 7. Original sections 79-219, 79-220, 79-221, and
2 79-222, Reissue Revised Statutes of Nebraska, and sections 79-217
3 and 79-1601, Revised Statutes Supplement, 2009, are repealed.