

AMENDMENTS TO LB1089
(Amendments to E & R amendments, ER240)

Introduced by Vargas, 7.

1 1. Strike section 2 and insert the following new sections:

2 Section 1. Section 79-254, Reissue Revised Statutes of Nebraska, is
3 amended to read:

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

6 Sec. 2. Section 79-256, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 79-256 For purposes of the Student Discipline Act, unless the
9 context otherwise requires:

10 (1) Long-term suspension means the exclusion of a student from
11 attendance in all schools within the system for a period exceeding five
12 school days but less than twenty school days;

13 (2) Expulsion means exclusion from attendance in all schools within
14 the system in accordance with section 79-283;

15 (3) Mandatory reassignment means the involuntary transfer of a
16 student to another school ~~in connection with any disciplinary action~~; and

17 (4) Short-term suspension means the exclusion of a student from
18 attendance in all schools within the system for a period not to exceed
19 five school days.

20 Sec. 3. Section 79-265, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 79-265 (1) The principal may deny any student the right to attend
23 school or to take part in any school function for a period of up to five
24 school days on the following grounds:

25 (a) Conduct constituting grounds for expulsion as set out in the
26 Student Discipline Act; or

1 (b) Any other violation of rules and standards of behavior adopted
2 under the act.

3 (2) Such short-term suspension shall be made only after the
4 principal has made an investigation of the alleged conduct or violation
5 and has determined that such suspension is necessary to help any student,
6 to further school purposes, or to prevent an interference with school
7 purposes.

8 (3) Before such short-term suspension takes effect, the student
9 shall be given oral or written notice of the charges against him or her,
10 an explanation of the evidence the authorities have, and an opportunity
11 to present his or her version.

12 (4) Within twenty-four hours or such additional time as is
13 reasonably necessary, not to exceed an additional forty-eight hours,
14 following such suspension, the principal shall send a written statement
15 to the student and his or her parent or guardian describing the student's
16 conduct, misconduct, or violation of the rule or standard and the reasons
17 for the action taken. The principal shall make a reasonable effort to
18 hold a conference with the parent or guardian before or at the time the
19 student returns to school and shall document such effort in writing.

20 ~~(5) Any student who is suspended pursuant to this section may be~~
21 ~~given an opportunity to complete any classwork, including, but not~~
22 ~~limited to, examinations, missed during the period of suspension. Each~~
23 ~~public school district shall develop and adopt guidelines stating the~~
24 ~~criteria school officials shall use in determining whether and to what~~
25 ~~extent such opportunity for completion will be granted to suspended~~
26 ~~students. The guidelines shall be provided to the student and parent or~~
27 ~~guardian at the time of suspension.~~

28 Sec. 4. Any student who is suspended shall be given an opportunity
29 to complete any classwork and homework missed during the period of
30 suspension, including, but not limited to, examinations. Each school
31 district shall develop and adopt guidelines that provide such student

1 with the opportunity to complete classwork and homework. Such guidelines
2 shall not require the student to attend the school district's alternative
3 programs for expelled students in order to complete classwork and
4 homework. The guidelines shall be provided to the student and a parent or
5 guardian at the time of suspension.

6 Sec. 5. Section 79-266, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 79-266 (1) Beginning July 1, 1997, each school district shall have
9 an alternative school, class, or educational program or the procedures of
10 subsection (2) of this section available or in operation for all expelled
11 students.

12 Any two or more school boards or boards of education may join
13 together in providing alternative schools, classes, or educational
14 programs. Any district may by agreement with another district send its
15 suspended or expelled students to any alternative school, class, or
16 educational program already in operation by such other district. An
17 educational program may include, but shall not be limited to,
18 individually prescribed educational and counseling programs or a
19 community-centered classroom with experiences for the student as an
20 observer or aide in governmental functions, as an on-the-job trainee, or
21 as a participant in specialized tutorial experiences. Such programs shall
22 include an individualized learning program to enable the student to
23 continue academic work for credit toward graduation. The State Department
24 of Education shall adopt and promulgate rules and regulations relating to
25 alternative schools, classes, and educational programs.

26 (2) If a district does not provide an alternative school, class, or
27 educational program for expelled students, the district shall follow the
28 procedures in this subsection prior to expelling a student unless the
29 expulsion was required by subsection (4) of section 79-283: A conference
30 shall be called by a school administrator and held to assist the district
31 in the development of a plan with the participation of a parent or legal

1 guardian, the student, a school representative, and a representative of
2 either a community organization with a mission of assisting young people
3 or a representative of an agency involved with juvenile justice. The plan
4 shall be in writing and adopted by a school administrator and presented
5 to the student and the parent or legal guardian. The plan shall (a)
6 specify guidelines and consequences for behaviors which have been
7 identified as preventing the student from achieving the desired benefits
8 from the educational opportunities provided, (b) identify educational
9 objectives that must be achieved in order to receive credits toward
10 graduation, (c) specify the financial resources and community programs
11 available to meet both the educational and behavioral objectives
12 identified, and (d) require the student to attend monthly reviews in
13 order to assess the student's progress toward meeting the specified goals
14 and objectives.

15 (3) A school district that has expelled a student may suspend the
16 enforcement of such expulsion unless the expulsion was required by
17 subsection (4) of section 79-283. The suspension may be for a period not
18 to exceed the length of the expulsion. As a condition of such suspended
19 action, the school district may require participation in a plan pursuant
20 to subsection (2) of this section or assign the student to a school,
21 class, or educational program which the school district deems
22 appropriate.

23 At the conclusion of such suspension period, the school district
24 shall (a) reinstate any student who has satisfactorily participated in a
25 plan pursuant to subsection (2) of this section or the school, class, or
26 educational program to which such student has been assigned and permit
27 the student to return to the school of former attendance or to attend
28 other programs offered by the district or (b) if the student's conduct
29 has been unsatisfactory, enforce the remainder of the expulsion action.

30 If the student is reinstated, the district may also take action to
31 expunge the record of the expulsion action.

1 (4) At the conclusion of an expulsion, a school district shall
2 reinstate the student and accept nonduplicative, grade-appropriate
3 credits earned by the student during the term of his or her expulsion
4 from any Nebraska accredited institution or institution accredited by one
5 of the six regional accrediting bodies in the United States.

6 Sec. 6. Section 79-267, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 79-267 The following student conduct shall constitute grounds for
9 long-term suspension, expulsion, or mandatory reassignment, subject to
10 the procedural provisions of the Student Discipline Act, when such
11 activity occurs on school grounds, in a vehicle owned, leased, or
12 contracted by a school being used for a school purpose or in a vehicle
13 being driven for a school purpose by a school employee or by his or her
14 designee, or at a school-sponsored activity or athletic event:

15 (1) Use of violence, force, coercion, threat, intimidation, or
16 similar conduct in a manner that constitutes a substantial interference
17 with school purposes;

18 (2) Willfully causing or attempting to cause substantial damage to
19 property, stealing or attempting to steal property of substantial value,
20 or repeated damage or theft involving property;

21 (3) Causing or attempting to cause personal injury to a school
22 employee, to a school volunteer, or to any student. Personal injury
23 caused by accident, self-defense, or other action undertaken on the
24 reasonable belief that it was necessary to protect some other person
25 shall not constitute a violation of this subdivision. For purposes of
26 this subdivision, personal injury shall be considered caused by accident
27 when the damage or consequences of the act that caused the injury were
28 unintentional, unforeseen, or unexpected;

29 (4) Threatening or intimidating any student for the purpose of or
30 with the intent of obtaining money or anything of value from such
31 student;

1 (5) Knowingly possessing, handling, or transmitting any object or
2 material that is ordinarily or generally considered a weapon;

3 (6) Engaging in the unlawful knowing possession, selling,
4 dispensing, or use of a controlled substance or an imitation controlled
5 substance, as defined in section 28-401, a substance represented to be a
6 controlled substance, or alcoholic liquor as defined in section 53-103.02
7 or being under the influence of a controlled substance or alcoholic
8 liquor;

9 (7) Public indecency as defined in section 28-806, except that this
10 subdivision shall apply only to students at least twelve years of age but
11 less than nineteen years of age;

12 (8) Engaging in bullying as defined in section 79-2,137;

13 (9) Sexually assaulting or attempting to sexually assault any person
14 if a complaint has been filed by a prosecutor in a court of competent
15 jurisdiction alleging that the student has sexually assaulted or
16 attempted to sexually assault any person, including sexual assaults or
17 attempted sexual assaults which occur off school grounds not at a school
18 function, activity, or event. For purposes of this subdivision, sexual
19 assault means sexual assault in the first degree as defined in section
20 28-319, sexual assault in the second degree as defined in section 28-320,
21 sexual assault of a child in the second or third degree as defined in
22 section 28-320.01, or sexual assault of a child in the first degree as
23 defined in section 28-319.01, as such sections now provide or may
24 hereafter from time to time be amended;

25 (10) Engaging in any other activity forbidden by the laws of the
26 State of Nebraska which activity constitutes a danger to other students
27 or interferes with school purposes; or

28 (11) A repeated violation of any rules and standards validly
29 established pursuant to section 79-262 if such violations constitute a
30 substantial interference with school purposes.

31 It is the intent of the Legislature that alternatives to suspension

1 or expulsion be imposed against a student who is truant, tardy, or
2 otherwise absent from required school activities.

3 Sec. 7. Section 79-268, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 79-268 If a principal makes a decision to discipline a student by
6 long-term suspension, expulsion, or mandatory reassignment, the following
7 procedures shall be followed:

8 (1) The decision as to the recommended discipline shall be made
9 within two school days after learning of the alleged student misconduct.

10 On the date of the decision, a written charge and a summary of the
11 evidence supporting such charge shall be filed with the superintendent.
12 The school shall, within two school days after the decision, send written
13 notice by registered or certified mail to the student and his or her
14 parent or guardian informing them of the rights established under the
15 Student Discipline Act;

16 (2) Such written notice shall include the following:

17 (a) The rule or standard of conduct allegedly violated and the acts
18 of the student alleged to constitute a cause for long-term suspension,
19 expulsion, or mandatory reassignment, including a summary of the evidence
20 to be presented against the student;

21 (b) The penalty, if any, which the principal has recommended in the
22 charge and any other penalty to which the student may be subject;

23 (c) A statement that, before long-term suspension, expulsion, or
24 mandatory reassignment ~~for disciplinary purposes~~ can be invoked, the
25 student has a right to a hearing, upon request, and that if the student
26 is suspended pending the outcome of the hearing, the student may complete
27 classwork and homework, including, but not limited to, examinations,
28 missed during the period of suspension pursuant to district guidelines
29 which shall not require the student to attend the school district's
30 alternative programs for expelled students in order to complete classwork
31 or homework on the specified charges;

1 (d) A description of the hearing procedures provided by the act,
2 along with procedures for appealing any decision rendered at the hearing;

3 (e) A statement that the principal, legal counsel for the school,
4 the student, the student's parent, or the student's representative or
5 guardian has the right (i) to examine the student's academic and
6 disciplinary records and any affidavits to be used at the hearing
7 concerning the alleged misconduct and (ii) to know the identity of the
8 witnesses to appear at the hearing and the substance of their testimony;
9 and

10 (f) A form on which the student, the student's parent, or the
11 student's guardian may request a hearing, to be signed by such parties
12 and delivered to the principal or superintendent in person or by
13 registered or certified mail as prescribed in sections 79-271 and 79-272
14 to the address provided on such form;~~and~~

15 (3) When a notice of intent to discipline a student by long-term
16 suspension, expulsion, or mandatory reassignment is filed with the
17 superintendent, the student may be suspended by the principal until the
18 date the long-term suspension, expulsion, or mandatory reassignment takes
19 ~~effect if no hearing is requested or, if a hearing is requested, the date~~
20 ~~the hearing examiner makes the report of his or her findings and a~~
21 ~~recommendation of the action to be taken to the superintendent,~~ if the
22 principal determines that the student must be suspended immediately to
23 prevent or substantially reduce the risk of (a) interference with an
24 educational function or school purpose or (b) a personal injury to the
25 student himself or herself, other students, school employees, or school
26 volunteers.

27 The Student Discipline Act does not preclude the student or the
28 student's parent, guardian, or representative from discussing and
29 settling the matter with appropriate school personnel prior to the time
30 the long-term suspension, expulsion, or mandatory reassignment takes
31 effect; ~~and hearing stage.~~

1 (4) For purposes of this section, mandatory reassignment, regardless
2 of its implementation date, shall be subject to the procedures of this
3 section.

4 Sec. 8. Section 79-269, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 79-269 (1)(a) ~~(1)~~ If a hearing is requested within five school days
7 after receipt of the notice as provided in section 79-268, the
8 superintendent shall recommend appointment of ~~appoint~~ a hearing examiner
9 within two school days after receipt of the hearing request.

10 (b) The student or the student's parent or guardian may request
11 designation of a hearing examiner other than the hearing examiner
12 recommended by the superintendent, if notice to the superintendent of
13 this request is given within two school days after receipt of the
14 superintendent's recommended appointment. Upon receiving such request,
15 the superintendent shall provide one alternative hearing examiner who is
16 not an employee of the school district or otherwise currently under
17 contract with the school district and whose impartiality may not
18 otherwise be reasonably questioned. The superintendent may also provide
19 an additional list of hearing examiners that may include hearing
20 examiners employed by or under contract with the school district. The
21 student or the student's parent or guardian shall, within five school
22 days, select a hearing examiner to conduct the hearing who was
23 recommended, provided as an alternative hearing examiner, or included on
24 an additional list, if any, pursuant to this subdivision and shall notify
25 the superintendent in writing of the selection. The superintendent shall
26 appoint the selected hearing examiner upon receipt of such notice.

27 (c) For purposes of this section, individuals whose impartiality may
28 be reasonably questioned shall include, but not be limited to,
29 individuals who:

30 (i) Have a personal bias or prejudice concerning a party;

31 (ii) Have personal knowledge of evidentiary facts concerning the

1 proceeding;

2 (iii) Have served as legal counsel to the school district; or

3 (iv) Have a spouse who is an employee of, or is under contract with,
4 the school district.

5 (d) For purposes of this section a qualified hearing examiner shall
6 be an individual who has knowledge of the Student Discipline Act,
7 training in its statutory requirements, or experience conducting student
8 hearings.

9 (e) The hearing examiner who shall, within two school days after
10 being appointed, give written notice to the principal, the student, and
11 the student's parent or guardian of the time and place for the hearing.

12 (2) The hearing examiner shall be any person designated pursuant to
13 subsection (1) of this section by the school district's superintendent,
14 school board or board of education, or counsel, if such person (a) has
15 not brought the charges against the student, (b) shall not be a witness
16 at the hearing, and (c) has no involvement in the charge. Expenses and
17 fees of any hearing examiner, in connection with the hearing, shall be
18 paid by the school board.

19 (3) The hearing shall be held scheduled within a period of five
20 school days after appointment of the hearing examiner it is requested,
21 but such time may be changed by the hearing examiner for good cause with
22 the consent of the parties. No hearing shall be held upon less than two
23 school days' actual notice to the principal, the student, and the
24 student's parent or guardian, except with the consent of all the parties.

25 (4) The principal or legal counsel for the school, the student, and
26 the student's parent, guardian, or representative have the right to
27 receive a copy of all examine the records and written statements referred
28 to in the Student Discipline Act as well as the statement of any witness
29 in the possession of the school board or board of education no later than
30 forty-eight hours at a reasonable time prior to the hearing.

31 Sec. 9. Section 79-272, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 79-272 If a hearing is requested under sections 79-268 and 79-269
3 more than five school days but not more than thirty calendar days
4 following the actual receipt of written notice, the hearing examiner
5 shall be appointed and the hearing shall be held pursuant to the
6 requirements of section 79-269 but the imposed punishment shall continue
7 in effect pending final determination.

8 Sec. 10. Section 79-276, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 79-276 At a hearing requested under sections 79-268 and 79-269, the
11 principal shall present to the hearing examiner statements, in affidavit
12 form, of any person having information about the student's conduct and
13 the student's records but not unless such statements and records have
14 been provided made available to the student or the student's parent,
15 guardian, or representative at least forty-eight hours prior to the
16 hearing. The information contained in such records shall be explained and
17 interpreted, prior to or at the hearing, to the student, parent,
18 guardian, or representative, upon request, by appropriate school
19 personnel.

20 Sec. 11. Section 79-278, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 79-278 (1) The student, the student's parent, guardian, or
23 representative, the principal, or the hearing examiner may ask witnesses
24 to testify at the hearing requested under sections 79-268 and 79-269.
25 Such testimony shall be under oath, and the hearing examiner shall be
26 authorized to administer the oath. The hearing examiner shall make
27 reasonable effort to assist the student or the student's parent,
28 guardian, or representative in obtaining the attendance of witnesses. The
29 school district shall make available those witnesses who have knowledge
30 of or were involved in the alleged misconduct and subsequent discipline
31 of the student if such witnesses are requested by the student or the

1 student's parent, guardian, or representative and such witnesses are
2 employees or under contract with the school district.

3 (2) The student, the student's parent, guardian, or representative,
4 the principal, or the hearing examiner has the right to question any
5 witness giving information at the hearing.

6 Sec. 12. Section 79-282, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 79-282 (1) After a hearing requested under sections 79-268 and
9 79-269, a report shall be made by the hearing examiner of his or her
10 findings and a recommendation of the action to be taken, which report
11 shall be made to the superintendent and the student or the student's
12 parent or guardian within ten calendar days after the hearing and shall
13 explain, in terms of the needs of both the student and the school board,
14 the reasons for the particular action recommended. Such recommendation
15 may range from no action, through the entire field of counseling, to
16 long-term suspension, expulsion, mandatory reassignment, or an
17 alternative educational placement under section 79-266.

18 (2) A review shall be made of the hearing examiner's report by the
19 superintendent, who may change, revoke, or impose the sanction
20 recommended by the hearing examiner but shall not impose a sanction more
21 severe than that recommended by the hearing examiner. The superintendent
22 shall notify the student or the student's parent or guardian of the
23 superintendent's determination within five school days after receipt of
24 the hearing examiner's report.

25 (3) The findings and recommendations of the hearing examiner, the
26 determination by the superintendent, and any determination on appeal to
27 the governing body, shall be made solely on the basis of the evidence
28 presented at the hearing or, in addition, on any evidence presented on
29 appeal.

30 Sec. 13. Section 79-283, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 79-283 (1) Written notice of the findings and recommendations of the
2 hearing examiner and the determination of the superintendent under
3 section 79-282 shall be made by certified or registered mail or by
4 personal delivery to the student or the student's parent or guardian.
5 Upon receipt of such written notice by the student, parent, or guardian,
6 the determination of the superintendent shall take immediate effect
7 unless the student or the student's parent or guardian appeals the
8 written notice of determination of the superintendent pursuant to section
9 79-285.

10 (2) Except as provided in subsections (3) and (4) of this section,
11 the expulsion of a student shall be for a period not to exceed the
12 remainder of the semester in which it took effect unless the misconduct
13 occurred (a) within the last ten school days ~~prior to the end~~ of the
14 first semester, in which case the expulsion shall remain in effect
15 through the second semester, or (b) within the last ten school days ~~prior~~
16 ~~to the end~~ of the second semester, in which case the expulsion shall
17 remain in effect for summer school and the first semester of the
18 following school year subject to the provisions of subsection (5) of this
19 section. Such action may be modified or terminated by the school district
20 at any time during the expulsion period. For purposes of this subsection,
21 if the misconduct occurred prior to the last ten school days of the first
22 semester, and the expulsion takes effect in the second semester because
23 the recommendation for expulsion was appealed to a hearing examiner or
24 the school board or board of education, the length of the expulsion shall
25 not exceed the number of days it would have been in effect had the appeal
26 not been made.

27 (3) The expulsion of a student for (a) the knowing and intentional
28 use of force in causing or attempting to cause personal injury to a
29 school employee, school volunteer, or student except as provided in
30 subdivision (3) of section 79-267 or (b) the knowing and intentional
31 possession, use, or transmission of a dangerous weapon, other than a

1 firearm, shall be for a period not to exceed the remainder of the school
2 year in which it took effect if the misconduct occurs during the first
3 semester. If the expulsion takes place during the second semester, the
4 expulsion shall remain in effect for summer school and may remain in
5 effect for the first semester of the following school year. Such action
6 may be modified or terminated by the school district at any time during
7 the expulsion period.

8 (4) The expulsion of a student for the knowing and intentional
9 possession, use, or transmission of a firearm, which for purposes of this
10 section means a firearm as defined in 18 U.S.C. 921 as of January 1,
11 1995, shall be for a period as provided by the school district policy
12 adopted pursuant to section 79-263. This subsection shall not apply to
13 (a) the issuance of firearms to or possession of firearms by members of
14 the Reserve Officers Training Corps when training or (b) firearms which
15 may lawfully be possessed by the person receiving instruction under the
16 immediate supervision of an adult instructor who may lawfully possess
17 firearms.

18 (5) Any expulsion that will remain in effect during the first
19 semester of the following school year shall be automatically scheduled
20 for review before the beginning of the school year. The review shall be
21 conducted by the hearing examiner after the hearing examiner has given
22 notice of the review to the student and the student's parent or guardian.
23 This review shall be limited to newly discovered evidence or evidence of
24 changes in the student's circumstances occurring since the original
25 hearing. This review may lead to a recommendation by the hearing examiner
26 that the student be readmitted for the upcoming school year. If the
27 school board or board of education or a committee of such board took the
28 final action to expel the student, the student may be readmitted only by
29 action of the board. Otherwise the student may be readmitted by action of
30 the superintendent.

31 Sec. 14. Section 79-287, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 79-287 The final action of the board under section 79-286 shall be
3 taken within three calendar days after the hearing and be evidenced by
4 personally delivering or mailing by certified mail a copy of the board's
5 decision to the student and his or her parent or guardian within three
6 calendar days after the final action.

7 Sec. 16. Original sections 79-254, 79-256, 79-265, 79-266, 79-267,
8 79-268, 79-269, 79-272, 79-276, 79-278, 79-282, 79-283, 79-287, and
9 79-729, Reissue Revised Statutes of Nebraska, are repealed.

10 2. Renumber the remaining section accordingly.