

AMENDMENTS TO LB1251

Introduced by Hansen, B., 16.

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

3 Section 1. Sections 1 to 10 of this act shall be known and may be
4 cited as the Equal Opportunity Scholarship for Students with Special
5 Needs Program Act.

6 Sec. 2. For purposes of the Equal Opportunity Scholarship for
7 Students with Special Needs Program Act:

8 (1) Department means the State Department of Education;

9 (2) Eligible student means any elementary or secondary student who
10 is a student with exceptional needs and who received special education
11 services under an individualized education plan or plan under Section 504
12 of the federal Rehabilitation Act of 1973, 29 U.S.C. 794, as such act
13 existed on January 1, 2022, and attended a public school in Nebraska for
14 at least one course the preceding semester, is starting school in
15 Nebraska for the first time, or has been denied option enrollment by a
16 public school pursuant to section 79-234;

17 (3) Equal Opportunity Scholarship or scholarship means a scholarship
18 granted under the Equal Opportunity Scholarship for Students with Special
19 Needs Program Act;

20 (4) Parent means an individual who is a parent, guardian, custodian,
21 or other person with the authority to act on behalf of an eligible
22 student;

23 (5) Participating school means a school that fulfills the applicable
24 accreditation or approval requirements established by the State Board of
25 Education pursuant to section 79-318;

26 (6) Program means the Equal Opportunity Scholarship for Students
27 with Special Needs Program;

1 (7) Resident school district means the public school district in
2 which the student resides;

3 (8) Special education documents means:

4 (a) An individual education plan under the Individuals with
5 Disabilities Education Act, 20 U.S.C. 1400 et seq., as such act existed
6 on January 1, 2022;

7 (b) An education plan under Section 504 of the federal
8 Rehabilitation Act of 1973, 29 U.S.C. 794, as such act existed on January
9 1, 2022;

10 (c) Any and all documents related to progress monitoring, growth, or
11 student behavior or other documents that were developed to assist the
12 student in such student's progress; or

13 (d) A learning plan developed by a nonpublic school in conjunction
14 with the teachers and parents of an eligible student and includes student
15 strengths, learning goals, qualitative records of student progress, and
16 quantitative data collection of student progress, and which is reviewed
17 no less than once per semester;

18 (9) Tier A level of intervention means the support needed for an
19 eligible student with a diagnosis and individualized education plan for
20 autism, emotional disturbance, dual sensory impairment, multiple
21 impairments or disabilities, visual impairment, hearing impairment,
22 orthopedic impairment, traumatic brain injury, or other qualifying needs
23 as determined by the department;

24 (10) Tier B level of intervention means the support needed for an
25 eligible student with a diagnosis and individualized education plan or a
26 disability under Section 504 of the federal Rehabilitation Act of 1973,
27 29 U.S.C. 794, as such act existed on January 1, 2022, for an emotional
28 handicap, learning disability, mild mental handicap, developmental delay,
29 other moderate health impairment, or other qualifying needs as determined
30 by the department;

31 (11) Tier C level of intervention means the support needed for an

1 eligible student identified with a disability under Section 504 of the
2 federal Rehabilitation Act of 1973, 29 U.S.C. 794, as such act existed on
3 January 1, 2022, who has been diagnosed as dyslexic or has an individual
4 education plan for speech, language, a specific learning disability, or
5 other qualifying need as determined by the department; and

6 (12) Tier D level of intervention means the support needed for an
7 eligible student who attends a participating school and was previously
8 receiving an Equal Opportunity Scholarship but who no longer requires
9 special education services.

10 Sec. 3. (1) The parents of an eligible student shall receive an
11 Equal Opportunity Scholarship for such student to attend the
12 participating school of their choice. The amount of the scholarship shall
13 be based upon the current year's statewide average basic funding per
14 student as determined by the department. The parents of:

15 (a) An eligible student qualified for a Tier A level of intervention
16 shall receive one hundred fifty percent of the current year's statewide
17 average basic funding per student;

18 (b) An eligible student qualified for a Tier B level of intervention
19 shall receive one hundred percent of the current year's statewide average
20 basic funding per student;

21 (c) An eligible student qualified for a Tier C level of intervention
22 shall receive seventy-five percent of the current year's statewide
23 average basic funding per student; and

24 (d) An eligible student qualified for a Tier D level of intervention
25 shall receive fifty percent of the current year's statewide average basic
26 funding per student as determined by the department as long as the
27 student remains in the participating school in which the student received
28 a Tier A, Tier B, or Tier C level of intervention.

29 (2) If an eligible student has scholarship funds remaining upon
30 graduation from a participating school, the funds may be rolled over for
31 educational use at a postsecondary institution for up to one year.

1 (3)(a) An Equal Opportunities Scholarship shall remain in force
2 unless the student:

3 (i) Graduates from high school;

4 (ii) Reaches twenty-two years of age; or

5 (iii) Returns to public school.

6 (b) A parent may move such student from one participating school to
7 another participating school without losing the scholarship.

8 (4) An application for an Equal Opportunity Scholarship is
9 confidential and not a public record subject to release.

10 Sec. 4. (1) The department shall appoint a person or persons
11 responsible for:

12 (a) Annually reviewing scholarship applications, including special
13 education documents;

14 (b) Confirming applicant special education status;

15 (c) Assigning students to the appropriate level of intervention tier
16 if the student meets such requirements;

17 (d) Communicating acceptance or rejection of applications to the
18 applicants and the State Treasurer;

19 (e) Implementing a commercially viable, cost-effective, and parent-
20 friendly system for publicly reviewing and sharing information about
21 participating schools; and

22 (f) Appropriately classifying disabilities as required by subsection
23 (2) of this section.

24 (2) The department shall classify special education disabilities not
25 expressly listed in the definitions of Tier A, Tier B, Tier C, and Tier D
26 levels of intervention into an appropriate tier.

27 Sec. 5. (1) To ensure that students are treated fairly and kept
28 safe, a participating school shall:

29 (a) Comply with all health and safety laws or codes that apply to
30 such school;

31 (b) Hold a valid occupancy permit if required by the municipality in

1 which such school resides;

2 (c) Conduct criminal background checks on potential employees;

3 (d) Exclude from employment any person not permitted by state law to
4 work in such school; and

5 (e) Exclude from employment any person that might reasonably pose a
6 threat to the safety of students.

7 (2) To ensure that students are receiving an appropriate academic
8 education, a participating school shall, unless as part of an
9 accommodation established in the eligible student's special education
10 document, require each eligible student to take nationally norm-
11 referenced tests that measure learning gains in mathematics and language
12 arts and provide such results to the parents of such student on an annual
13 basis, beginning with the first year of testing.

14 Sec. 6. A participating school is autonomous and not an agent of
15 the state or federal government and therefore:

16 (1) Except as otherwise provided by law, the department or any other
17 state agency shall not in any way regulate the educational program of a
18 participating school that accepts eligible students;

19 (2) The creation of the program does not expand the regulatory
20 authority of the state, its officers, or any school district to impose
21 any additional regulation on a participating school; and

22 (3) A participating school shall not be required to alter its creed,
23 practices, admissions policy, or curriculum.

24 (4) Based upon the school's ability to serve the student
25 appropriately, a participating school reserves the right to accept or
26 deny any student under the program.

27 Sec. 7. (1) A parent who applies for the program is exercising such
28 parent's option to place such parent's child in a private school. In
29 order to qualify for the program, a parent shall select the participating
30 school and apply for the admission of such parent's child and for the
31 program. No eligible student shall receive program funds until at least

1 sixty days after application for such program is received.

2 (2) Any student participating in the program shall remain in
3 attendance at a participating school throughout the school year unless
4 excused by the school for illness or other good cause.

5 (3) Each parent and each student have an obligation to the
6 participating school to comply with the participating school's published
7 policies. A student and parent who do not comply may lose program
8 eligibility.

9 Sec. 8. The State Treasurer shall administer qualified Equal
10 Opportunity Scholarship funds in accordance with this section and shall:

11 (1) Ensure that eligible students and their parents are informed
12 annually of which schools will be participating in the program and which
13 level of intervention tiers such schools provide services for;

14 (2) Create a standard form that parents of eligible students can
15 submit to establish their student's eligibility for the program;

16 (3) Ensure that the application is readily available to interested
17 families through various sources, including on the State Treasurer's
18 website;

19 (4) Ensure compliance with all student privacy laws for forms and
20 information received by the State Treasurer;

21 (5) Administer an annual parental satisfaction survey that asks
22 parents of students receiving funds under the program to express:

23 (a) Their level of satisfaction with the program; and

24 (b) Their opinions on other topics, items, or issues that the
25 department finds would elicit information about the effectiveness of the
26 program;

27 (6) Ensure that parents of students with disabilities receive notice
28 that participation in the program is considered a parental placement
29 under the Individuals with Disabilities Act 20 U.S.C. 1400 et seq., as
30 such act existed on January 1, 2022, along with an explanation of the
31 rights that parentally placed students possess under such act and any

1 applicable state laws and regulations;

2 (7) Implement or contract with a private organization to implement a
3 commercially viable, cost-effective, and parent-friendly system for
4 payment on behalf of a parent and the eligible student to a participating
5 school, including, but not limited to, the use of electronic or online
6 fund transfers, except that the scholarship may not be reduced for
7 electronic payment fees; and

8 (8) Not less than twice per year, implement a system for payment to
9 eligible education freedom account families that use electronic or online
10 funds transfer.

11 Sec. 9. A resident school district shall provide a participating
12 school that has admitted an eligible student under the program from such
13 resident school district with a complete copy of the such student's
14 school records and special education documents, while complying with the
15 federal Family Educational Rights and Privacy Act of 1974, as amended, 20
16 U.S.C. 1232g, and all federal regulations and applicable guidelines
17 adopted in accordance with such act, as such act, regulations, and
18 guidelines existed on January 1, 2022.

19 Sec. 10. (1) The Equal Opportunities Scholarship Fund is created.
20 The fund shall be used to carry out the Equal Opportunities Scholarship
21 for Students with Special Needs Program Act. The fund shall consist of:

22 (a) Transfers by the Legislature; and

23 (b) Any gifts, grants, bequests, or donations to the fund.

24 (2) The State Treasurer shall administer the fund. Any money in the
25 fund available for investment shall be invested by the state investment
26 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
27 State Funds Investment Act. The State Treasurer may deduct from the fund
28 an amount necessary to cover the costs of administering the program, up
29 to a limit of two percent.

30 Sec. 11. Section 9-812, Revised Statutes Supplement, 2021, is
31 amended to read:

1 9-812 (1) All money received from the operation of lottery games
2 conducted pursuant to the State Lottery Act in Nebraska shall be credited
3 to the State Lottery Operation Trust Fund, which fund is hereby created.
4 All payments of the costs of establishing and maintaining the lottery
5 games shall be made from the State Lottery Operation Cash Fund. In
6 accordance with legislative appropriations, money for payments for
7 expenses of the division shall be transferred from the State Lottery
8 Operation Trust Fund to the State Lottery Operation Cash Fund, which fund
9 is hereby created. All money necessary for the payment of lottery prizes
10 shall be transferred from the State Lottery Operation Trust Fund to the
11 State Lottery Prize Trust Fund, which fund is hereby created. The amount
12 used for the payment of lottery prizes shall not be less than forty
13 percent of the dollar amount of the lottery tickets which have been sold.

14 (2) A portion of the dollar amount of the lottery tickets which have
15 been sold on an annualized basis shall be transferred from the State
16 Lottery Operation Trust Fund to the Education Innovation Fund, the
17 Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund,
18 the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and
19 the Compulsive Gamblers Assistance Fund as provided in subsection (3) of
20 this section. The dollar amount transferred pursuant to this subsection
21 shall equal the greater of (a) the dollar amount transferred to the funds
22 in fiscal year 2002-03 or (b) any amount which constitutes at least
23 twenty-two percent and no more than twenty-five percent of the dollar
24 amount of the lottery tickets which have been sold on an annualized
25 basis. To the extent that funds are available, the Tax Commissioner and
26 director may authorize a transfer exceeding twenty-five percent of the
27 dollar amount of the lottery tickets sold on an annualized basis.

28 (3) Of the money available to be transferred to the Education
29 Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska
30 Education Improvement Fund, the Nebraska Environmental Trust Fund, the
31 Nebraska State Fair Board, the Equal Opportunities Scholarship Fund, and

1 the Compulsive Gamblers Assistance Fund:

2 (a) The first five hundred thousand dollars shall be transferred to
3 the Compulsive Gamblers Assistance Fund to be used as provided in section
4 9-1006;

5 (b) Beginning in fiscal year 2022-23, after the initial transfer to
6 the Compulsive Gamblers Assistance Fund, five million dollars shall be
7 transferred to the Equal Opportunities Scholarship Fund to be used as
8 provided in section 10 of this act;

9 (c) Forty-four ~~(b)~~ Beginning July 1, 2016, forty-four and one-half
10 percent of the money remaining after the payment of prizes and operating
11 expenses and the initial transfers to the Equal Opportunities Scholarship
12 Fund and transfer to the Compulsive Gamblers Assistance Fund shall be
13 transferred to the Nebraska Education Improvement Fund;

14 (d) ~~(e)~~ Forty-four and one-half percent of the money remaining after
15 the payment of prizes and operating expenses and the initial transfers to
16 the Equal Opportunities Scholarship Fund and transfer to the Compulsive
17 Gamblers Assistance Fund shall be transferred to the Nebraska
18 Environmental Trust Fund to be used as provided in the Nebraska
19 Environmental Trust Act;

20 (e) ~~(d)~~ Ten percent of the money remaining after the payment of
21 prizes and operating expenses and the initial transfers to the Equal
22 Opportunities Scholarship Fund and transfer to the Compulsive Gamblers
23 Assistance Fund shall be transferred to the Nebraska State Fair Board if
24 the most populous city within the county in which the fair is located
25 provides matching funds equivalent to ten percent of the funds available
26 for transfer. Such matching funds may be obtained from the city and any
27 other private or public entity, except that no portion of such matching
28 funds shall be provided by the state. If the Nebraska State Fair ceases
29 operations, ten percent of the money remaining after the payment of
30 prizes and operating expenses and the initial transfer to the Compulsive
31 Gamblers Assistance Fund shall be transferred to the General Fund; and

1 (f) ~~(e)~~ One percent of the money remaining after the payment of
2 prizes and operating expenses and the initial transfers to the Equal
3 Opportunities Scholarship Fund and transfer to the Compulsive Gamblers
4 Assistance Fund shall be transferred to the Compulsive Gamblers
5 Assistance Fund to be used as provided in section 9-1006.

6 (4) The Nebraska Education Improvement Fund is created. The fund
7 shall consist of money transferred pursuant to subsection (3) of this
8 section, money transferred pursuant to section 85-1920, and any other
9 funds appropriated by the Legislature. The fund shall be allocated, after
10 actual and necessary administrative expenses, as provided in this section
11 for fiscal years 2016-17 through 2023-24. A portion of each allocation
12 may be retained by the agency to which the allocation is made or the
13 agency administering the fund to which the allocation is made for actual
14 and necessary expenses incurred by such agency for administration,
15 evaluation, and technical assistance related to the purposes of the
16 allocation, except that no amount of the allocation to the Nebraska
17 Opportunity Grant Fund may be used for such purposes. On or before
18 December 31, 2022, the Education Committee of the Legislature shall
19 electronically submit recommendations to the Clerk of the Legislature
20 regarding how the fund should be allocated to best advance the
21 educational priorities of the state for the five-year period beginning
22 with fiscal year 2024-25. For fiscal year 2016-17, an amount equal to ten
23 percent of the revenue allocated to the Education Innovation Fund and to
24 the Nebraska Opportunity Grant Fund for fiscal year 2015-16 shall be
25 retained in the Nebraska Education Improvement Fund. For fiscal years
26 2017-18 through 2023-24, an amount equal to ten percent of the revenue
27 received by the Nebraska Education Improvement Fund in the prior fiscal
28 year shall be retained in the fund at all times plus any interest earned
29 during the current fiscal year. For fiscal years 2016-17 through 2023-24,
30 the remainder of the fund shall be allocated as follows:

31 (a) One percent of the allocated funds to the Expanded Learning

1 Opportunity Grant Fund to carry out the Expanded Learning Opportunity
2 Grant Program Act;

3 (b) Seventeen percent of the allocated funds to the Department of
4 Education Innovative Grant Fund to be used for competitive innovation
5 grants pursuant to section 79-1054;

6 (c) Nine percent of the allocated funds to the Community College Gap
7 Assistance Program Fund to carry out the community college gap assistance
8 program;

9 (d) Eight percent of the allocated funds to the Excellence in
10 Teaching Cash Fund to carry out the Excellence in Teaching Act;

11 (e) Sixty-two percent of the allocated funds to the Nebraska
12 Opportunity Grant Fund to carry out the Nebraska Opportunity Grant Act in
13 conjunction with appropriations from the General Fund; and

14 (f) Three percent of the allocated funds to fund distance education
15 incentives pursuant to section 79-1337.

16 (5)(a) On or before September 20, 2022, and on or before each
17 September 20 thereafter, (i) any department or agency receiving a
18 transfer or acting as the administrator for a fund receiving a transfer
19 pursuant to subsection (4) of this section, (ii) any recipient or
20 subsequent recipient of money from any such fund, and (iii) any service
21 contractor responsible for managing any portion of any such fund or any
22 money disbursed from any such fund on behalf of any entity shall prepare
23 and submit an annual report to the Auditor of Public Accounts in a manner
24 prescribed by the auditor for the immediately preceding July 1 through
25 June 30 fiscal year detailing information regarding the use of such fund
26 or such money.

27 (b) The Auditor of Public Accounts shall annually compile a summary
28 of the annual reports received pursuant to subdivision (5)(a) of this
29 section, any audits related to transfers pursuant to subsection (4) of
30 this section conducted by the Auditor of Public Accounts, and any
31 findings or recommendations related to such transfers into a consolidated

1 annual report and shall submit such consolidated annual report
2 electronically to the Legislature on or before January 1, 2023, and on or
3 before each January 1 thereafter.

4 (c) For purposes of this subsection, recipient, subsequent
5 recipient, or service contractor means a nonprofit entity that expends
6 funds transferred pursuant to subsection (4) of this section to carry out
7 a state program or function, but does not include an individual who is a
8 direct beneficiary of such a program or function.

9 (6) Any money in the State Lottery Operation Trust Fund, the State
10 Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the
11 Nebraska Education Improvement Fund available for investment shall be
12 invested by the state investment officer pursuant to the Nebraska Capital
13 Expansion Act and the Nebraska State Funds Investment Act.

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

19 Sec. 12. This act becomes operative on August 1, 2023.

20 Sec. 13. Original section 9-812, Revised Statutes Supplement, 2021,
21 is repealed.