

LEGISLATIVE BILL 865

Approved by the Governor June 10, 1997

Introduced by Education Committee: Bohlke, 33, Chairperson; Beutler, 28; Bromm, 23; McKenzie, 34; Stuhr, 24; Suttle, 10; Warner, 25; Wickersham, 49; and Brashear, 4; Engel, 17; Hartnett, 45; Hillman, 48; Maurstad, 30; Robinson, 16; Schimek, 27

AN ACT relating to special education; to amend sections 79-1018, 79-1110, 79-1113, 79-1115, 79-1138, 79-1142, 79-1155, 79-1156, 79-1158, and 79-1184, Reissue Revised Statutes of Nebraska, and section 9-812, Revised Statutes Supplement, 1996; to change provisions relating to special education; to provide for grants; to define and redefine terms; to establish a commission; to provide for an assistive technology device registry; to change a termination date; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 9-812, Revised Statutes Supplement, 1996, is amended to read:

9-812. (1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be deposited in the State Lottery Operation Trust Fund, which fund is hereby created. All payments of expenses of the operation of the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which have been sold. At least twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Solid Waste Landfill Closure Assistance Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund. Forty-nine and one-half percent of the money remaining after the payment of prizes and operating expenses shall be transferred to the Education Innovation Fund. Beginning on July 15, 1993, and continuing through July 1, 1997, twenty-four and one-half percent of the money remaining after the payment of prizes and operating expenses shall be transferred to the Solid Waste Landfill Closure Assistance Fund and twenty-five percent of the money remaining after the payment of prizes and operating expenses shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act. After July 1, 1997, forty-nine and one-half percent of the money remaining after the payment of prizes and operating expenses shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act. One percent of the money remaining after the payment of prizes and operating expenses shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in sections 83-162.01 to 83-162.04.

(2) The Education Innovation Fund is hereby created. Each fiscal year beginning with fiscal year 1994-95, at least seventy-five percent of the lottery proceeds allocated to the Education Innovation Fund shall be available for disbursement. The Education Innovation Fund shall be allocated by the Governor through incentive grants to encourage the development of strategic school improvement plans by school districts for accomplishing high performance learning and to encourage schools to establish innovations in programs or practices that result in restructuring of school organization, school management, and instructional programs which bring about improvement in the quality of education. Such grants are intended to provide selected school districts, teachers or groups of teachers, nonprofit educational organizations, educational service units, or cooperatives funding for the allowable costs of implementing pilot projects and model programs.

Minigrants shall be available to school districts to support the development of strategic school improvement plans which shall include statements of purposes and goals for the districts. The plans shall also include the specific statements of improvement or strategic initiatives designed to improve quality learning for every student.

Major competitive grants shall be available to support innovative programs which are directly related to the strategic school improvement plans. The development of a strategic school improvement plan by a school district shall be required before a grant is awarded. Annual reports shall be made by program recipients documenting the effectiveness of the program in improving the quality of education as designed in the strategic school improvement plans. Special consideration shall be given to plans which contain public or private matching funds and cooperative agreements, including agreements for in-kind services. Purposes for which incentives would be offered shall include:

(a) Professional staff development programs to provide funds for teacher and administrator training and continuing education to upgrade teaching and administrative skills;

(b) The development of strategic school improvement plans by school districts;

(c) Educational technology assistance to public schools for the purchase and operation of computers, telecommunications equipment and services, and other forms of technological innovation which may enhance classroom teaching, instructional management, and districtwide administration pursuant to the state's goal of ensuring that all kindergarten through grade twelve public school districts or affiliated school systems have a direct connection to a statewide public computer information network by June 30, 2000. The telecomputing equipment and services needed to meet this goal may be funded under this subsection, sections 79-1233 and 79-1310, or any combination of such subsection and sections. Such telecommunications equipment, services, and forms of technical innovation shall be approved by the State Department of Education in consultation with the Department of Administrative Services to insure compatibility of technologies and compliance with statewide priorities;

(d) An educational accountability program to develop an educational indicators system to measure the performance and outcomes of public schools and to ensure efficiency in operations;

(e) Alternative programs for students, including underrepresented groups, at-risk students, and dropouts;

(f) Programs that demonstrate improvement of student performance against valid national and international achievement standards;

(g) Early childhood and parent education which emphasizes child development;

(h) Programs using decisionmaking models that increase involvement of parents, teachers, and students in school management;

(i) Increased involvement of the community in order to achieve increased confidence in and satisfaction with its schools;

(j) Development of magnet or model programs designed to facilitate desegregation;

(k) Programs that address family and social issues impairing the learning productivity of students;

(l) Programs enhancing critical and higher-order thinking capabilities;

(m) Programs which produce the quality of education necessary to guarantee a competitive work force;

(n) Programs designed to increase productivity of staff and students through innovative use of time;

(o) Training programs designed to benefit teachers at all levels of education by increasing their ability to work with educational technology in the classroom; and

(p) Approved programs or services under sections 79-1106 to 79-1109; and

(g) Programs for students with disabilities receiving special education under the Special Education Act and students needing support services as defined in section 79-1185 which programs demonstrate improved outcomes for students through emphasis on prevention and collaborative planning.

The Governor shall establish the Excellence in Education Council. The Governor shall appoint eleven members to the council including representatives of educational organizations, postsecondary educational institutions, the business community, and the general public, members of school boards and parent education associations, school administrators, and at least four teachers who are engaged in classroom teaching. The State Department of Education shall provide staff support for the council. The council shall have the following powers and duties:

(i) In consultation with the State Department of Education, develop and publish criteria for the awarding of grants for programs pursuant to this

subsection;

(ii) Provide recommendations to the Governor regarding the selection of projects to be funded and the distribution and duration of project funding;

(iii) Establish standards, formats, procedures, and timelines for the successful implementation of approved programs funded by the Education Innovation Fund;

(iv) Assist school districts in determining the effectiveness of the innovations in programs and practices and measure the subsequent degree of improvement in the quality of education;

(v) Consider the reasonable distribution of funds across the state and all classes of school districts; and

(vi) Provide annual reports to the Governor concerning programs funded by the fund. Each report shall include the number of applicants and approved applicants, an overview of the various programs, objectives, and anticipated outcomes, and detailed reports of the cost of each program.

To assist the council in carrying out its duties, the State Board of Education shall, in consultation with the council, adopt and promulgate rules and regulations establishing criteria, standards, and procedures regarding the selection and administration of programs funded from the Education Innovation Fund.

(3) Recipients of grants from the Education Innovation Fund shall be required to provide, upon request, such data relating to the funded programs and initiatives as the Governor deems necessary.

(4) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the Education Innovation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

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

Sec. 2. Section 79-1018, Reissue Revised Statutes of Nebraska, is amended to read:

79-1018. District formula resources include other actual receipts as determined by the department for the most recently available complete data year, except that receipts from the Community Improvements Cash Fund and receipts acquired pursuant to the Low-Level Radioactive Waste Disposal Act shall not be included. Other actual receipts include:

(1) Public power district sales tax revenue;

(2) Fines and license fees;

(3) Nonresident high school tuition receipts, except that for the calculation of state aid to be paid in school years 1992-93, 1993-94, and 1994-95, other actual receipts shall include the district's total nonresident high school tuition charge for each such school year as certified by the department pursuant to section 79-4,102 as such section existed immediately prior to July 1, 1993;

(4) Tuition receipts from individuals, other districts, or any other source except those derived from adult education;

(5) Transportation receipts;

(6) Interest on investments;

(7) Other miscellaneous local receipts, not including receipts from private foundations, individuals, associations, or charitable organizations;

(8) Special education receipts, excluding grant funds received pursuant to section 9-812;

(9) Receipts from the state for wards of the court and wards of the state;

(10) All receipts from the temporary school fund;

(11) Receipts from the Insurance Tax Fund, except that for the calculation of state aid to be paid in school year 1996-97 and each school year thereafter, other actual receipts do not include Insurance Tax Fund receipts;

(12) Pro rata motor vehicle license fee receipts;

(13) Amounts provided by the state on behalf of the district as reimbursement for repayment of personal property taxes by centrally assessed pipeline companies pursuant to section 77-3617;

(14) Other miscellaneous state receipts excluding revenue from the textbook loan program authorized by section 79-734;

(15) Impact aid entitlements for the school fiscal year which have actually been received by the district to the extent allowed by federal law;

(16) All other noncategorical federal receipts;

(17) All receipts pursuant to the enrollment option program under sections 79-232 to 79-247; and

(18) Receipts under the federal Medicare Catastrophic Coverage Act of 1988 as authorized pursuant to sections 43-2510 and 43-2511 but only to the extent of the amount the district would have otherwise received pursuant to the Special Education Act.

Sec. 3. Section 79-1110, Reissue Revised Statutes of Nebraska, is amended to read:

79-1110. Sections 79-1110 to 79-1184 and sections 6, 12, and 13 of this act shall be known and may be cited as the Special Education Act.

Sec. 4. Section 79-1113, Reissue Revised Statutes of Nebraska, is amended to read:

79-1113. For purposes of the Special Education Act, unless the context otherwise requires, the definitions found in sections 79-1114 to 79-1125 and section 6 of this act shall be used.

Sec. 5. Section 79-1115, Reissue Revised Statutes of Nebraska, is amended to read:

79-1115. Allowable costs means salaries, wages, benefits, and maintenance, supplies, travel, and other expenses essential to carry out the provisions for special education and support services.

Sec. 6. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off-the-shelf or modified or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities.

Sec. 7. Section 79-1138, Reissue Revised Statutes of Nebraska, is amended to read:

79-1138. (1) The State Board of Education shall adopt and promulgate rules and regulations to be effective after August 1, 1987, establishing criteria for the assessment, identification, and verification of all handicapping conditions defined in section 79-1120 to the extent that such handicapping conditions are consistent with federal law and regulation. The rules and regulations shall include provisions for the maximum possible utilization of regular education programs and personnel for applicants whose learning problems do not meet the criteria established for the identification and verification of handicapped children.

(2) The State Board of Education shall develop guidelines prior to August 1, 1998, to assist school districts, educational service units, and approved cooperatives with the assessment, identification, and verification of the need for related services defined in section 79-1121.

Sec. 8. Section 79-1142, Reissue Revised Statutes of Nebraska, is amended to read:

79-1142. (1) For special education programs provided in fiscal year 1994-95, the State Department of Education shall reimburse each school district, in fiscal year 1995-96, an amount equal to ninety percent of allowable excess cost for all special education programs other than level I services. The amount appropriated by the legislature for level I services shall consist of the amount of the preceding year's level I services appropriation plus fifty percent of the increase in the ninety percent allowable excess cost in level I services for the average of the two immediately preceding years; except that the amount to be reimbursed by the State Department of Education for level I services shall not be less than eighty percent of allowable excess costs. The proportionate share for each school district for level I services shall be based on the final expenditure report of ninety percent of the allowable excess cost for level I services for the immediately preceding year's special education program. Level I services refers to services provided to students who require an aggregate of not more than three hours per week of special education services and support services and includes all administrative, diagnostic, consultative, and vocational-adjustment counselor services. Support services means preventive services for students not identified or verified as having a disability pursuant to sections 79-1120 and 79-1138 but who demonstrate a need for specially designed assistance in order to benefit from the school's general education curriculum. The total allowable reimbursable cost for support services shall not exceed a percentage, established by the State Board of Education, of the school district's or approved cooperative's total allowable reimbursable cost for all special education programs and support services. The percentage established by the State Board of Education for support services shall not exceed ten percent.

(2) For special education programs provided in fiscal year years 1995-96 and each fiscal year thereafter 1996-97, the State Department of Education shall reimburse each school district in the following fiscal year a pro rata amount determined by the State Board of Education from appropriations

for special education approved by the Legislature and based on allowable excess costs for all special education programs. For special education and support services provided in fiscal year 1997-98 and each fiscal year thereafter, the State Department of Education shall reimburse each school district in the following fiscal year a pro rata amount determined by the State Board of Education from appropriations for special education approved by the Legislature and based on allowable excess costs for all special education programs and support services.

(3) Cooperatives of school districts or educational service units shall also be eligible for reimbursement for cooperative programs pursuant to this section if such cooperatives or educational service units have complied with the reporting and approval requirements of section 79-1155 for cooperative programs which were offered the preceding year. The payments shall be made by the State Department of Education to the school district of residence, cooperative of school districts, or educational service unit each year in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning in December. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The director shall, upon receiving such certification, draw warrants against funds appropriated.

Sec. 9. Section 79-1155, Reissue Revised Statutes of Nebraska, is amended to read:

79-1155. All school boards and boards of education shall report annually on a date prescribed by the State Department of Education to the department on forms provided by the department (1) plans for special education program expansions, revisions, or reductions and (2) budget information for special education programs and support services. Cooperatives of school districts or educational service units applying for grants or reimbursement for programs pursuant to section 79-1132, 79-1142, or 79-1144 shall also report unified plans and budget information pursuant to this section. The plans and budget forms shall conform to guidelines provided in section 79-1156. The State Department of Education shall review and take action to approve, approve with modifications, or disapprove the plans for expansions in special education programs of the school district, cooperative of school districts, or educational service unit. Supplementary amendments to any program plans and budgets previously approved by the State Board of Education may be submitted on dates specified by the department during the same school year and shall be subject to the same review and approval as the initial plans and budgets. The State Board of Education shall approve, approve with modifications, or disapprove all supplementary amendments to program plans and budget requests. All final financial reports on special education and support services costs, the actual number of children served, and the handicapping disabling conditions of such children who are verified as having a disability shall be reported to the State Department of Education by October 31 of each year for the preceding school year on forms prescribed by the State Department of Education. Any program that provides residential care shall show the costs of such care separately from the costs of the education program.

If a servicing agency chooses to exceed the budget approved by the State Department of Education, costs in excess of the approved budget shall not be reimbursed eligible for reimbursement by the State Department of Education.

Sec. 10. Section 79-1156, Reissue Revised Statutes of Nebraska, is amended to read:

79-1156. The State Department of Education shall coordinate information reporting requirements for special education and support services programs with other educational data reporting requirements of the department to the extent possible. The plans for program expansions, revisions, and reductions shall contain the information required by the department. The information on special education and support services programs shall include at least the following:

- (1) A description of the types of services to be offered and the number of students receiving the services;
- (2) The servicing agencies and the respective services offered;
- (3) A presentation of all expected expenditures by source of funds;
- (4) A detailed description of the methodology to be used by the agency for evaluating the results of the programs and service being provided for each service group. This methodology shall permit program evaluation, including the relative cost and effectiveness of alternative forms and patterns of services;
- (5) A description of the procedures used to insure that students are placed in appropriate educational programs. Such procedures shall be reviewed

for approval by the State Department of Education; and

(6) A sample of the written materials to be used to provide parents with specific information about complaint and appeal rights and procedures.

Sec. 11. Section 79-1158, Reissue Revised Statutes of Nebraska, is amended to read:

79-1158. No reimbursement for special education and support services programs shall be allowed unless the program meets the standards established by the State Department of Education.

Sec. 12. The Transition Commission is hereby created. The members of the commission shall be:

(1) One representative of the Division of Rehabilitation Services of the State Department of Education, appointed by the Commissioner of Education;

(2) One representative of the Office of Special Populations of the State Department of Education, appointed by the Commissioner of Education;

(3) One representative of the Department of Health and Human Services from the area of developmental disabilities, appointed by the Director of Health and Human Services;

(4) One representative of the Department of Health and Human Services in the area of mental health, appointed by the Director of Health and Human Services;

(5) One representative of school district administration, appointed by the Commissioner of Education;

(6) One representative of a school board or board of education, appointed by the Commissioner of Education;

(7) One representative of a third-party provider, appointed by the Commissioner of Education; and

(8) Two parents of students receiving special education services, appointed by the Commissioner of Education.

The commission shall develop legislation and proposed rule and regulation changes which will create a cooperative interagency service model for the provision of transitional and vocational services for individuals with disabilities ages fourteen through twenty-one and beyond. The intent of this legislation will be to create a seamless delivery system which will allow students to move from public school services to adult services without interruption or the requirement to meet new eligibility requirements. All agencies should share in the program and services management and fiscal responsibilities associated with this new delivery model which will begin at age fourteen. The services identified shall be incorporated into the student's educational and transitional vocational plans and shall be based upon a developmental model designed to respond to student's individual assessment of needs, provided in the least restrictive environment. The goal of the interagency plan shall be the elimination of duplication of effort and the enhancement of fiscal and human resource efficiency. The interagency model should require the development of a transitional vocational plan that, along with the student's individualized education plan, will guide the provision of services and the completion of the student's public education through the high school level. This plan should allow most students to complete high school prior to age twenty-one, and by age eighteen if possible, with the necessary services developed by multiple agencies in order to enable the young adult to successfully transition into his or her community. The legislation shall be submitted to the Education Committee of the Legislature on or before December 1, 1998. The rule and regulation changes shall be submitted to the State Board of Education and the Director of Health and Human Services on or before December 1, 1998.

Sec. 13. The State Department of Education shall establish a registry for assistive technology devices to encourage and facilitate cooperation and shared usage of assistive technology devices. Participation by school districts, educational service units, and approved cooperatives shall be voluntary.

Sec. 14. Section 79-1184, Reissue Revised Statutes of Nebraska, is amended to read:

79-1184. Sections 79-1132, 79-1142, 79-1144, and 79-1147 terminate on August 31, 1998 1999.

Sec. 15. Original sections 79-1018, 79-1110, 79-1113, 79-1115, 79-1138, 79-1142, 79-1155, 79-1156, 79-1158, and 79-1184, Reissue Revised Statutes of Nebraska, and section 9-812, Revised Statutes Supplement, 1996, are repealed.