

LEGISLATIVE BILL 742

Approved by the Governor June 13, 1995

Introduced by McKenzie, 34, at the request of the Governor

AN ACT relating to special education; to amend sections 79-3301, 79-3325, 79-3332, 79-3333, 79-3366, and 79-3368, Reissue Revised Statutes of Nebraska; to state findings and intent; to define a term; to provide powers and duties relating to special education; to change reimbursement provisions for special education; to provide for waiver of rules and regulations; to harmonize provisions; to provide a termination date; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. The State Department of Education shall review existing rules and regulations relating to special education programs and support services as defined in section 79-3314 and section 3 of this act. The State Board of Education shall report to the Education Committee of the Legislature by June 1, 1996, with recommendations for state laws, rules, and regulations that could be repealed, modified, or retained to reduce restrictions on school districts, educational service units, or approved cooperatives in the provision of special education programs and support services. The report shall also include the estimated fiscal impact of the recommendations of the State Board of Education. The State Department of Education shall strengthen their roles in facilitating the effective and efficient delivery of quality special education programs and support services with an emphasis on technical assistance.

Sec. 2. (1) The Legislature finds that the funding system for special education programs and support services should be neutral as to identification and programming of programs and support services for students with handicaps and students needing support services. Further, the Legislature finds that the funding system for special education programs and support services for students with handicaps and students needing support services should encourage programs and services that are consistent with sound education practice, preventive, and, when appropriate, integrated with regular education services. Educational services for students with handicaps and students needing support services should be driven by educational needs rather than state funding formulas.

(2) It is the intent of the Legislature that, beginning with school year 1998-99, there shall be implemented a new funding system to replace the existing excess cost reimbursement provisions for the funding of special education programs and support services offered by school districts, educational service units, and approved cooperatives. The new funding system shall be identification and program neutral, assure that adequate resources are available to meet the needs of handicapped students and students needing support services, and provide for equity in special education programs and support services to students regardless of the district in which students reside. Further, the new funding system should be designed so that average annual special education costs increase at a rate no greater than the average annual growth rate of general education. State funding should be made available to meet the needs of handicapped students and students needing support services without the requirement that such students be identified and verified as students with disabilities as defined in the Special Education Act and the federal Individuals with Disabilities Education Act and rules and regulations adopted and promulgated pursuant to such acts.

(3) The Legislature recognizes that the shift from an excess cost reimbursement funding formula to a new funding system which meets the intent stated in subsections (1) and (2) of this section for special education programs and support services raises several issues which demand further examination and public discussion prior to implementation, including (a) how to establish the basis for distribution of state funding, (b) how to provide for the financial support of students with extremely disabling conditions and extraordinary needs which result in high costs to school districts beyond the districts' ability to reasonably provide for special education programs and support services utilizing block grant support and local resources, (c) how to establish the state funding level, (d) how to assure that funding for special education programs and support services is maintained at the same levels of growth or decline as funding levels of general education, (e) how to establish educational practices for delivery of quality special education programs and

support services, (f) how the new funding system should be integrated with general state aid to be consistent with the principles of student and taxpayer equity underlying the state's equalization aid program, (g) how to phase in the new funding system to minimize financial impacts on school districts, (h) how accountability for appropriate educational needs shall be established for school districts, educational service units, or approved cooperatives to quality for the new funding system, and (i) how the State Department of Education can integrate the administration of the new funding system to eliminate duplication in aid payments, accounting, and reporting of expenditures. It is the intent of the Legislature that these issues shall be addressed by the Special Education Accountability Commission in consultation with the School Finance Review Committee, the State Department of Education, and the Education Committee of the Legislature. The Education Committee of the Legislature and the Special Education Accountability Commission shall receive written proposals for alternative funding systems for special education services which meet the goals stated in subsections (1) and (2) of this section from any individual, agency, or group until January 15, 1996.

Sec. 3. For purposes of sections 1 and 2 of this act, support services shall mean preventive services for those students not identified or verified as handicapped pursuant to section 79-3309 and sections 79-3316 to 79-3318 but demonstrating a need for specially designed assistance in order to benefit from the school district's general education curriculum and to avoid the need for potentially expensive special education placement and services.

Sec. 4. Section 79-3301, Reissue Revised Statutes of Nebraska, is amended to read:

79-3301. Sections 79-3301 to 79-3370 and section 8 of this act shall be known and may be cited as the Special Education Act.

Sec. 5. Section 79-3325, Reissue Revised Statutes of Nebraska, is amended to read:

79-3325. The State Department of Education shall provide grants for the costs of the special education programs approved by the State Department of Education to the school district of residence for handicapped children of less than five years of age. Educational service units or cooperatives of school districts recognized as regional planning entities by the State Board of Education pursuant to section 79-3328 shall be eligible to receive grants for cooperative programs for such handicapped children of less than five years of age if such educational service units or cooperatives have complied with the reporting and approval requirements of section 79-3328. The grants shall be one hundred percent of the costs of such programs and shall continue to be one hundred percent as long as the funding for such grants comes from federal funds. ~~If~~ For special education programs and transportation provided in fiscal year 1994-95, if the federal funding pursuant to the federal Individuals with Disabilities Education Act, Part B and section 619 flow-through funds is inadequate at any time to pay one hundred percent of the costs of such programs and transportation, the amount of the grant provided by the department shall be ninety percent of such costs which amount shall be made up of federal flow-through funds plus state general funds to be appropriated by the Legislature if necessary. For special education programs and transportation provided to handicapped children below age five in fiscal year 1995-96 and each fiscal year thereafter, if federal funding pursuant to the federal Individuals with Disabilities Education Act, Part B and section 619 flow-through funds is inadequate at any time to pay one hundred percent of the allowable costs of such programs and transportation, the amount of the grant payments provided by the department shall be a pro rata amount as determined by the State Board of Education from appropriations for special education approved by the Legislature and based on such allowable costs for all special education programs and transportation to handicapped children below age five. The grant payments shall be made by the State Department of Education to the resident school district, educational service unit, or regional planning entity recognized by the State Board of Education pursuant to section 79-3328 each year in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning in December.

Sec. 6. Section 79-3332, Reissue Revised Statutes of Nebraska, is amended to read:

79-3332. (1) ~~The State Department of Education shall reimburse each school district for ninety percent of the allowable excess cost of the preceding year's special education programs terminating in fiscal year 1987-88. In each fiscal year subsequent to~~ For special education programs provided in fiscal year 1987-88 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

~~services and 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. ~~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 79-3343 for cooperative programs which were offered the preceding year. The payments shall be made by the State Department of Education to the resident school district, cooperative of school districts, or educational service unit each year in seven a 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 of Administrative Services shall, upon receiving such certification, draw warrants against funds appropriated.~~

(2) Level I services shall refer to services provided to students who require an aggregate of not more than three hours per week of special education services and shall include all administrative, diagnostic, consultative, and vocational-adjustment counselor services.

(2) For special education programs Provided in fiscal year 1995-96 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.

(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 79-3343 for cooperative programs which were offered the preceding year. The payments shall be made by the State Department of Education to the resident school district, 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. 7. Section 79-3333, Reissue Revised Statutes of Nebraska, is amended to read:

79-3333. ~~Sufficient funds~~ Funds shall be appropriated by the Legislature to carry out sections 79-3331 to 79-3333 and 79-3335. Such funds shall be channeled through the office of the State Department of Education. The department shall be authorized to expend such funds upon proper vouchers approved by the department and warrants issued by the Director of Administrative Services for financial reimbursement to local school districts, educational service units, special education cooperatives created by school districts, agencies, and parents or guardians, including (1) reimbursement (a) for ninety percent of the amount expended prior to the 1995-96 fiscal year pursuant to section 79-3322 for actual transportation expenses per year for handicapped children and children with mental retardation and (b) for the amount expended for fiscal year 1995-96 and each fiscal year thereafter pursuant to section 79-3322 for actual transportation expenses per year for handicapped children a pro rata amount which shall be determined by the State Board of Education from appropriations for special education approved by the Legislature based on all actual allowable transportation costs, (2) reimbursement for instructional aids and consultative, supervisory, research, and testing services to local school districts, and (3) reimbursement for salaries, wages, maintenance, supplies, travel, and other expenses essential to carrying out the provisions for special education programs. Minor building modifications shall not be eligible for state reimbursement as an allowable expense beginning with the reimbursement provided in fiscal year 1993-94 except for those projects or portions thereof completed prior to August 31, 1992, and paid for by the school district on or before December 31, 1992.

Documentation of projects or portions thereof completed during the school year shall be provided to the State Department of Education. Applications for state reimbursement for actual transportation expenses shall be submitted to the department annually on a date and on forms prescribed by the department. Amendments to applications for actual transportation expenses shall be submitted on dates prescribed by the department during the school year in which the original application was made.

Sec. 8. For fiscal year 1996-97, the aggregate amount of General Funds appropriated for special education programs and support services pursuant to sections 79-3325, 79-3332, and 79-3333 shall not exceed the aggregate amount of General Funds appropriated pursuant to such sections in fiscal year 1995-96 multiplied by one plus a rate of two and one-half percent, excluding any deficiency appropriations in fiscal year 1995-96. Beginning in fiscal year 1997-98 and each fiscal year thereafter, the aggregate amount of General Funds appropriated for special education programs and support services pursuant to sections 79-3322, 79-3325, and 79-3333 shall not exceed the aggregate amount of General Funds appropriated pursuant to such sections for the previous fiscal year, multiplied by one plus a rate of three percent.

Sec. 9. Section 79-3366, Reissue Revised Statutes of Nebraska, is amended to read:

79-3366. There is hereby created the Special Education Accountability Commission. The commission shall consist of ~~thirteen~~ seventeen members as follows: One representative from the Governor's office, one public school classroom teacher not in special education, one public school special education teacher, ~~one administrator~~ two administrators or administrative staff ~~member~~ members not involved in special education, ~~one~~ two special education ~~administrator~~ administrators or administrative staff ~~member~~ members, two parents, one representative of postsecondary special education, one school district business manager, one school board member, one representative of private schools, and four representatives not directly related to the administration, delivery, or receipt of special education services, all appointed by the Governor with the consent of a majority of the Legislature upon the recommendations of associations and organizations representing parents, teachers, school administrators, and school board members. Members ~~shall be appointed before the effective date of this act no later than September 1, 1993,~~ and shall serve for one three-year term. Members appointed on or after the effective date of this act shall serve terms which terminate on the date the terms of the three-year members terminate. A vacancy shall be filled by the Governor for the remainder of the term. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 10. Section 79-3368, Reissue Revised Statutes of Nebraska, is amended to read:

79-3368. (1) The Special Education Accountability Commission shall develop an accountability system which adequately measures efficiency and effectiveness of special education programs in a cost-effective manner. The commission shall:

- (a) Review all applicable federal and state laws;
- (b) Examine the funding mechanism, address issues, and make recommendations relating to the mechanics for implementation of a funding system as described in section 2 of this act or in the alternative make recommendations for a funding system which will accomplish the goals stated by the Legislature in the findings contained in section 2 of this act. In making such recommendations the commission shall actively collaborate with the members and staff of the School Finance Review Committee, the State Department of Education, and the Education Committee of the Legislature;
- (c) Review any regulatory or procedural changes to determine compatibility with existing law, fiscal impact, and impact on student outcomes;
- (d) Review findings of previous committees which have conducted similar studies; and
- (e) ~~Develop~~ Address issues and make recommendations for accountability measures for special education, including recommendations for (i) broad frameworks for special education program standards, ; (f) Establish (ii) a system for assessing student outcomes, and ; (g) Focus efforts on the establishment of (iii) a system for management and monitoring of special education costs and their impact on total education costs. The commission shall also make recommendations for an accountability report which will describe the special education programs provided to students with handicaps and the impacts of those programs in the education and posteducation performance of such students. Such report shall be incorporated into the State Department of Education data systems and integrated with any

accountability measures or student assessment system recommended by the Nebraska Schools Accountability Commission and implemented by the State Department of Education. ~~and~~

~~(h) Select~~ (2) The Special Education Accountability Commission shall select demonstration sites for the purpose of pilot implementation of program models which can document cost containment while maintaining appropriate special education programs services to children with disabilities. Demonstration sites may continue for up to three school years and shall be exempt from the provisions of the Special Education Act but shall comply with the federal Individuals with Disabilities Education Act, as amended, 20 U.S.C. 1400 et seq. The State Board of Education may also waive the application of any provision in its rules and regulations adopted and promulgated under Chapter 79 when application of such provisions would directly limit the ability of the pilot program to accomplish its stated goals. The commission shall assist the The State Department of Education in monitoring and evaluating ~~shall monitor~~ each demonstration site to determine how such site would differ if it were not exempt from the Special Education Act and the rules and regulations adopted and promulgated under Chapter 79 and waived pursuant to this section.

(3) ~~(2)~~ The commission shall annually report its activities and recommendations to the Education Committee of the Legislature, the Appropriations Committee of the Legislature, and the State Board of Education and shall make its final report on or before September 1, 1996. ~~The , except that~~ initial recommendations for statutory or procedural changes in the funding mechanism shall be made on or before November 1, 1994. The second report shall include any recommendations regarding the implementation of a funding system as described in section 2 of this act and subsection (1) of this section and shall be due June 1, 1996. The final report shall include the commission's evaluation of pilot programs, recommended legislation to implement a funding system as described in section 2 of this act and subsection (1) of this section, and recommendations for accountability measures for special education programs.

Sec. 11. The State Board of Education, with the assistance of the State Department of Education, shall provide a process for the waiver of rules and regulations adopted and promulgated under Chapter 79 as such rules and regulations relate to special education programs and support services related to special education, such waiver shall not apply to any requirements subject to federal laws or federal rules and regulations. Any entity subject to state rules and regulations for special education may apply for a waiver of such rules and regulations each year until August 31, 1998. To the extent practicable, the State Board of Education shall grant or deny a waiver request at the next regularly scheduled meeting of the board following receipt of the written waiver request. The waiver process shall be studied for effectiveness by the State Board of Education, and the board shall provide a report to the Education Committee of the Legislature in January of 1998.

The board may grant a waiver to the rules and regulations if the process set out by the department is followed.

Sec. 12. Sections 79-3325, 79-3332, 79-3333, and 79-3335 terminate on August 31, 1998.

Sec. 13. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 14. Original sections 79-3301, 79-3325, 79-3332, 79-3333, 79-3366, and 79-3368, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 15. Since an emergency exists, this act takes effect when passed and approved according to law.