

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 952

Introduced by Lautenbaugh, 18.

Read first time January 16, 2014

Committee: Education

A BILL

- 1 FOR AN ACT relating to schools; to adopt the Working to Improve
- 2 Nebraska Schools Act; and to provide severability.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. This act shall be known and may be cited as
2 the Working to Improve Nebraska Schools Act.

3 Sec. 2. It is the intent of the Legislature that:

4 (1) Each student's progression from one grade to the next
5 grade be determined, in part, by his or her proficiency in reading;

6 (2) School board policies facilitate reading instruction
7 and intervention services to address student reading needs;

8 (3) Each student and his or her parent be informed of the
9 student's reading progress; and

10 (4) Each student in a public school be able to read at or
11 above grade level by grade three.

12 Sec. 3. School districts shall offer an accelerated
13 reading intervention program to each student in kindergarten, first
14 grade, second grade, and third grade who exhibits a reading
15 deficiency, for the purpose of preventing grade three student
16 retention. The accelerated reading intervention program shall:

17 (1) Be provided to all students in kindergarten, first
18 grade, second grade, and third grade who are identified as having a
19 reading deficiency based upon state-approved local or statewide
20 assessments;

21 (2) Screen and monitor the reading progress of each
22 student's foundational reading skills no fewer than three times per
23 year;

24 (3) Provide highly effective core reading instruction
25 that is comprehensive and meets the majority of the general education

1 classroom needs; and

2 (4) Meet at least the following specifications:

3 (a) Assist students exhibiting a reading deficiency in
4 developing the ability to read at grade level;

5 (b) Provide intensive development in phonemic awareness,
6 phonics, fluency, vocabulary, and reading comprehension;

7 (c) Provide scientifically based reliable and valid
8 assessments;

9 (d) Provide initial and ongoing analysis of each
10 student's reading progress; and

11 (e) Be implemented during regular school hours in
12 addition to the regular reading instruction.

13 Sec. 4. Any student who exhibits a deficiency in reading
14 at any time, based upon state-approved local or statewide assessments
15 conducted in grades kindergarten, one, two, or three shall receive an
16 individual reading improvement plan no later than thirty days after
17 identification of the reading deficiency. The reading improvement
18 plan shall be created by the teacher, the principal, other pertinent
19 school personnel, and the parents of the student and shall describe
20 the reading intervention services the student will receive to remedy
21 the reading deficit. Each student receiving reading intervention
22 services shall be screened and his or her progress monitored no fewer
23 than three times per year and be provided with intensive reading
24 intervention services until the student no longer has a reading
25 deficiency.

1 Sec. 5. The school of any student in kindergarten, grade
2 one, grade two, or grade three, which student exhibits a deficiency
3 in reading at any time during the school year, shall notify the
4 student's parent in writing no later than thirty days after the
5 identification of the reading deficiency. The written notification
6 shall include the following:

7 (1) That his or her child has been identified as having a
8 deficiency in reading and an individual reading improvement plan will
9 be established by the teacher, the principal, other pertinent school
10 personnel, and the parent;

11 (2) A description of the current services that are
12 provided to the child;

13 (3) A description of the proposed reading intervention
14 and supplemental instructional services and support that will be
15 provided to the child which are designed to remedy the identified
16 area or areas of reading deficiency;

17 (4) Strategies for parents to use at home in helping the
18 child succeed in reading;

19 (5) That if the student's reading deficiency is not
20 corrected by the end of grade three, the student will not be promoted
21 to grade four unless he or she qualifies for an exemption pursuant to
22 section 7 of this act; and

23 (6) That while the statewide assessment is the initial
24 determinant for promotion at the end of grade three, it is not the
25 sole determinant of promotion and that additional evaluations,

1 including, but not limited to, portfolio reviews and alternative
2 assessments, are available pursuant to such exemptions.

3 Sec. 6. (1) Beginning with school year 2015-16, if the
4 student's reading deficiency identified pursuant to section 5 of this
5 act is not remedied by the end of grade three as demonstrated by the
6 student scoring below grade level on the grade three statewide
7 reading assessment, the student must be retained in grade three
8 unless he or she qualifies for an exemption pursuant to section 7 of
9 this act.

10 (2) Each school district shall provide summer reading
11 camps to all grade three students scoring below grade level on the
12 grade three statewide reading assessment. Summer reading camps shall
13 be staffed with teachers of reading who have attained master teacher
14 status pursuant to the Master Teacher Program Act. The master teacher
15 shall provide reading intervention services and support to correct
16 the identified area or areas of reading deficiency.

17 Sec. 7. (1) A school board may only exempt students from
18 mandatory retention pursuant to section 6 of this act for good cause.
19 The exemption shall apply to the following students:

20 (a) A student who demonstrates grade level performance on
21 an alternative standardized reading assessment approved by the State
22 Board of Education;

23 (b) A student who demonstrates, through a student
24 portfolio, grade level performance as evidenced by demonstrating
25 mastery of all grade three state reading standards through multiple

1 work samples;

2 (c) A child with a disability as defined in section
3 79-1117 who has an individualized education plan which indicates that
4 participation in the statewide assessment program is not appropriate;

5 (d) A limited English proficiency student as defined in
6 section 79-1003 who has had less than two years of instruction
7 pursuant to a limited English proficiency plan;

8 (e) A child with a disability as defined in section
9 79-1117 who participates in the statewide assessment and has an
10 individualized education plan that reflects that the student has
11 received intensive reading intervention services for more than two
12 years but still demonstrates a deficiency in reading and was
13 previously retained in kindergarten, grade one, grade two, or grade
14 three; and

15 (f) A student who has received intensive reading
16 intervention services for two or more years but still demonstrates a
17 deficiency in reading and who was previously retained in
18 kindergarten, grade one, grade two, or grade three for a total of two
19 years.

20 (2) A request to exempt a student from mandatory
21 retention pursuant to one of the exemptions described in subsection
22 (1) of this section shall be made as follows:

23 (a) The student's teacher shall submit documentation to
24 the school principal, recommending promotion of the student. Such
25 documentation shall consist of only material supporting the exemption

1 being requested, the existing reading improvement plan or
2 individualized education plan, and the alternative assessment or
3 student portfolio results as applicable; and

4 (b) The school principal shall review and discuss the
5 recommendation with the teacher and make the determination as to
6 whether the student should be promoted. If the principal determines
7 that the student should be promoted based on the documentation
8 provided, the principal shall make such recommendation in writing to
9 the superintendent of the school district. The superintendent shall
10 accept or reject the principal's recommendation in writing.

11 (3) If a student is promoted to grade four with an
12 exemption pursuant to this section, his or her school shall provide
13 the student with intensive reading intervention services that include
14 specialized diagnostic information and specific reading strategies to
15 meet the needs of such student. The school district shall assist
16 schools and teachers with the implementation of reading strategies
17 demonstrated by research to be successful in improving reading among
18 students with reading deficiencies.

19 Sec. 8. A school district shall assist schools with
20 providing written notification to the parent of any student who is
21 retained pursuant to section 6 of this act that such student has not
22 met the proficiency level required for promotion, the reasons the
23 student is not eligible for an exemption pursuant to section 7 of
24 this act, and that the student will be retained in grade three. The
25 notification shall include a description of the proposed

1 interventions and support that will be provided to the student to
2 remedy the identified area or areas of reading deficiency.

3 Sec. 9. Beginning with school year 2015-16, the school of
4 any student retained pursuant to section 6 of this act shall provide
5 such student with intensive reading intervention to remedy the
6 student's specific reading deficiency, as identified by a valid and
7 reliable diagnostic assessment. Such reading intervention services
8 shall include effective instructional strategies necessary to assist
9 such student in becoming a successful reader and ready for promotion
10 to the next grade. Each school district shall:

11 (1) Conduct a review of student reading improvement plans
12 for all students who scored below grade level on the reading portion
13 of the statewide assessment and who did not meet the criteria for one
14 of the exemptions under section 7 of this act. The review shall
15 address additional support and services as described in this section
16 which are available to correct the identified area or areas of
17 reading deficiency;

18 (2) Provide retained students with teachers of reading
19 who have attained master teacher status pursuant to the Master
20 Teacher Program Act;

21 (3) Provide retained students with reading intervention
22 services and support to correct the identified area or areas of
23 reading deficiency, including, but not limited to:

24 (a) More dedicated time than the previous school year
25 spent in reading instruction and intervention which is based in

1 scientific research;

2 (b) Daily targeted small group reading intervention based
3 on student needs as determined by diagnostic assessment data;

4 (c) Reading programs based in scientific research which
5 have demonstrated results in accelerating student reading achievement
6 within the same school year;

7 (d) Explicit and systematic instruction with more
8 detailed explanations, more extensive opportunities for guided
9 practice, and more opportunities for error correction and feedback;

10 (e) Administration of assessments to frequently monitor
11 student progress; and

12 (f) Before-school or after-school supplemental reading
13 intervention based in research, delivered by a teacher or tutor with
14 specialized reading training; and

15 (4) Provide parents of retained students with a read-at-
16 home plan outlined in a parental contract, including, but not limited
17 to, participation in parent training workshops and regular parent-
18 guided home reading.

19 Sec. 10. (1) Each public school shall establish an
20 intensive acceleration class for any student retained in grade three
21 who was previously retained in kindergarten, grade one, grade two, or
22 grade three. The focus of the intensive acceleration class shall be
23 to increase a child's reading level at least two grade levels in one
24 school year.

25 (2) The intensive acceleration class shall:

- 1 (a) Have a reduced teacher-student ratio;
- 2 (b) Provide students with teachers of reading who have
3 attained master teacher status pursuant to the Master Teacher Program
4 Act;
- 5 (c) Provide reading instruction and intervention for the
6 majority of student contact time each day and incorporate
7 opportunities to master the grade four state standards in other core
8 academic areas;
- 9 (d) Use reading programs based in scientific research
10 which have proven results in accelerating student reading achievement
11 within the same school year;
- 12 (e) Provide intensive language and vocabulary
13 instruction, including, but not limited to, use of a speech-language
14 therapist;
- 15 (f) Administer assessments to frequently monitor student
16 progress;
- 17 (g) Provide students the option of being placed in a
18 transitional instructional setting. Such setting shall be designed
19 specifically to produce learning gains sufficient to meet grade four
20 performance standards while continuing to correct the area or areas
21 of reading deficiency;
- 22 (h) Provide before-school or after-school supplemental
23 reading instruction based in research and delivered by a teacher or
24 tutor with specialized reading training; and
- 25 (i) Provide parents with a read-at-home plan outlined in

1 a parental contract, including, but not limited to, participation in
2 parent training workshops and regular parent-guided home reading.

3 (3) Each school district shall report to the State
4 Department of Education, in the manner prescribed by the department,
5 the progress of every student enrolled in the intensive acceleration
6 class at the end of the first semester.

7 Sec. 11. By September 1 of each year, each school board
8 shall annually report in writing to the State Department of Education
9 the following information on the prior school year:

10 (1) The school board's policies and procedures on student
11 retention and promotion;

12 (2) By grade, the number and percentage of all students
13 in grades kindergarten, one, two, and three who were identified with
14 a reading deficiency at the beginning of the school year and who met
15 grade level standards at the end of the school year, as demonstrated
16 by achieving a passing score on the state-approved local assessment
17 or statewide assessment;

18 (3) By grade, the number and percentage of all students
19 in grades kindergarten, one, two, and three performing below grade
20 level on the state-approved local assessment or statewide assessment;

21 (4) By grade, the number and percentage of all students
22 retained in grades kindergarten, one, two, and three;

23 (5) Information on the total number and percentage of
24 students in grade three who were promoted pursuant to an exemption
25 pursuant to section 7 of this act, by each category of good cause

1 described in such section; and

2 (6) Any revisions to the school board's policy on student
3 retention and promotion from the prior year's report.

4 Sec. 12. The State Department of Education shall
5 establish a uniform format for school districts to report the
6 information required pursuant to section 11 of this act. The format
7 shall be developed with input from school boards and shall be
8 provided to each school district no later than ninety days prior to
9 the annual due date. The department shall annually compile the
10 information required along with state-level summary information and
11 report such information to the State Board of Education, the public,
12 the Governor, and electronically to the Legislature by October 1 of
13 each year. The department shall provide technical assistance as
14 needed to assist school boards in carrying out this section.

15 Sec. 13. For purposes of sections 13 to 20 of this act:

16 (1) Department means the State Department of Education or
17 an organization chosen by the state; and

18 (2) Statewide assessment means the statewide assessment
19 conducted pursuant to the Quality Education Accountability Act.

20 Sec. 14. The department shall prepare an annual report of
21 the results of the statewide assessment to describe student
22 achievement in the state as a whole, in each school district, and in
23 each school. The annual report shall include, but not be limited to:

24 (1) Descriptions of the performance of all schools
25 participating in the statewide assessment system and all of their

1 major student populations as determined by the department; and

2 (2) The median scores of all eligible students who scored
3 in the lowest twenty-fifth percentile on the statewide assessment in
4 the previous reporting period, except that the provisions of the
5 federal Family Educational Rights and Privacy Act, 20 U.S.C. 1232g,
6 as such act existed on January 1, 2014, pertaining to student records
7 and any Nebraska laws pertaining to privacy of student records apply
8 to this section.

9 Sec. 15. (1) The annual report required pursuant to
10 section 14 of this act shall grade each public school pursuant to the
11 grading scale in this subsection:

12 (a) A - Making excellent progress;

13 (b) B - Making above-average progress;

14 (c) C - Making satisfactory progress;

15 (d) D - Making less than satisfactory progress; and

16 (e) F - Failing to make adequate progress.

17 (2) The department shall develop school awards for
18 schools that improve at least one grade level over the previous
19 reporting period or maintain a grade of A.

20 (3) Each school with a grade of A or having improved at
21 least two grade levels over the previous reporting period shall have
22 greater authority over the allocation of the school's total budget,
23 state categorical funds, funds from the Education Innovation Fund,
24 grants, and local funds as specified in rules and regulations of the
25 State Board of Education. Such rules and regulations shall provide

1 that the increased budget authority shall remain in effect until the
2 school's grade pursuant to subsection (1) of this section is reduced.

3 Sec. 16. (1) Each school which has students who are
4 tested and included in the school grading system described in section
5 15 of this act shall earn a school grade, except that a school shall
6 not earn a school grade if the number of its students tested and
7 included in the school grading system is less than the minimum sample
8 size necessary, based on accepted professional practice, for
9 statistical reliability and for prevention of the unlawful release of
10 personally identifiable student data under the federal Family
11 Educational Rights and Privacy Act, 20 U.S.C. 1232g, as such act
12 existed on January 1, 2014, pertaining to student records and any
13 Nebraska laws pertaining to privacy of student records.

14 (2) A school's grade shall be based on a combination of:

15 (a) Student achievement scores on the statewide
16 assessment for all students enrolled in the school;

17 (b) Student learning gains for all students enrolled in
18 the school as measured by the statewide assessment; and

19 (c) Student learning gains of the students enrolled in
20 the school scoring in the lowest twenty-fifth percentile in reading
21 and mathematics on the statewide assessment.

22 (3) The department shall determine school grades based on
23 the following percentages: (a) Fifty percent on overall student
24 achievement; (b) twenty-five percent on the learning gains of all
25 students; and (c) twenty-five percent on the learning gains of the

1 students enrolled in the school scoring in the lowest twenty-fifth
2 percentile in reading and mathematics.

3 (4) Student assessment data used in determining school
4 grades shall include:

5 (a) The aggregate scores of all eligible students
6 enrolled in the school who have been assessed on the statewide
7 assessment;

8 (b) The learning gain scores of all eligible students
9 enrolled in the school who have been assessed on the statewide
10 assessment and who have scored at or in the lowest twenty-fifth
11 percentile of students in the school in reading and mathematics on
12 such statewide assessment; and

13 (c) The learning gain scores of all eligible students.

14 For purposes of this subsection, eligible student does
15 not include a student attending an alternative school who is subject
16 to school board policies for expulsion for repeated or serious
17 offenses, who is in a dropout retrieval program serving students who
18 have officially been designated as dropouts, or who is in a program
19 operated by the Office of Juvenile Services.

20 Sec. 17. The department shall annually develop, in
21 collaboration with the school districts, a school report card to be
22 delivered to parents of students enrolled in each school district.
23 The report card shall include the school's grade pursuant to section
24 15 of this act, information regarding school improvement, an
25 explanation of school performance as evaluated by the federal No

1 Child Left Behind Act of 2001, as such act existed on January 1,
2 2014, and indicators of return on investment. The department on its
3 web site shall publish each school's report card annually, and the
4 school district shall provide the school report card to each parent.

5 Sec. 18. The annual report required by section 14 of this
6 act shall include a school district grade. Such school district grade
7 shall be determined. A school district's grade shall be based on a
8 combination of:

9 (a) Student achievement scores on the statewide
10 assessment for all students enrolled in the school district;

11 (b) Student learning gains for all students enrolled in
12 the school district as measured by the statewide assessment; and

13 (c) Student learning gains of the students enrolled in
14 the school district scoring in the lowest twenty-fifth percentile in
15 reading and mathematics on the statewide assessment.

16 Sec. 19. In any year in which eighty percent or more in
17 the aggregate of elementary, middle, or high schools earn a grade of
18 A or B, the department shall raise the number of points required to
19 earn a school grade for that level of school by five percent
20 statewide.

21 Sec. 20. The Legislature may use the performance of
22 schools as determined by their grade pursuant to section 15 of this
23 act as a factor in calculating any performance-based funding.

24 Sec. 21. In addition to teachers' certificates issued
25 pursuant to sections 79-806 to 79-815, certificates to teach in the

1 public schools in Nebraska shall be granted by the State Board of
2 Education, under rules and regulations prescribed by it, as follows:

3 (1) On the basis of college credit or on the basis of
4 passage of an examination;

5 (2) To any person who presents to the state board a valid
6 doctoral degree from a postsecondary educational institution
7 accredited by a regional accrediting agency. Such certificate shall
8 be limited to the major area of postgraduate study of the holder;

9 (3) To any person holding a valid teaching certificate
10 issued by a national or regional educator credentialing agency
11 approved by the state board. Such certificate holder shall annually
12 complete the requirements for such certification pursuant to rules
13 and regulations of the state board;

14 (4) To any person who possesses a valid teaching
15 certificate from another state. Such certificate holder shall
16 annually complete the requirements for such certification pursuant to
17 rules and regulations of the state board;

18 (5) Pursuant to an alternative certification program
19 developed by the State Department of Education pursuant to rules and
20 regulations of the state board; and

21 (6) To any person who has at least two years of teaching
22 experience at the postsecondary level.

23 Issuance of a certificate under this section shall be
24 subject to a criminal history record information check pursuant to
25 section 79-814.01.

1 Sec. 22. The State Board of Education by rules and
2 regulations shall provide for the issuance of an adjunct teaching
3 certificate to any applicant who has expertise in the subject area to
4 be taught and fulfills the requirements of the rules and regulations.
5 An applicant shall be considered to have expertise in the subject
6 area to be taught if the applicant demonstrates sufficient content
7 mastery through passage of a subject area examination. The adjunct
8 teaching certificate shall only be used for a part-time teaching
9 position. Each adjunct teaching certificate is valid for five school
10 years and is renewable if the applicant has received satisfactory
11 performance evaluations during each year of teaching under the
12 adjunct teaching certificate.

13 Sec. 23. The Legislature finds that:

14 (1) There is a need for a performance-based incentive
15 program for outstanding faculty and staff in highly productive
16 schools offering instruction in any of grades kindergarten through
17 twelve; and

18 (2) Performance-based incentives are commonplace in the
19 private sector and should be introduced into the public sector as a
20 reward for productivity.

21 Sec. 24. (1) The School Recognition Program is created.
22 The purpose of the program is to provide financial awards to public
23 schools that:

24 (a) Sustain high performance by earning a grade of A,
25 making excellent progress, pursuant to the A-Plus Accountability and

1 Transparency Program Act; or

2 (b) Demonstrate exemplary performance by improving at
3 least one letter grade or by improving more than one letter grade
4 pursuant to the act and sustaining the improvement the following
5 school year.

6 (2) All public schools which earn a school grade pursuant
7 to the act are eligible to participate in the School Recognition
8 Program.

9 (3) All eligible schools shall receive financial awards
10 depending on the availability of funds appropriated and the number
11 and size of schools selected to receive an award. Funds shall be
12 distributed to the school's fiscal agent and placed in the school's
13 account and may only be used for purposes listed in section 25 of
14 this act as determined jointly by the school's staff. If school staff
15 cannot reach agreement by November 1 of the year in which the award
16 is made, the funds shall be distributed by the school's principal
17 pursuant to section 25 of this act.

18 Sec. 25. Awards under the School Recognition Program may
19 only be used for:

20 (1) Nonrecurring bonuses to the faculty and staff of the
21 school;

22 (2) Nonrecurring expenditures for educational equipment
23 or materials to assist in maintaining and improving student
24 performance; or

25 (3) Temporary personnel for the school to assist in

1 maintaining and improving student performance.

2 Sec. 26. Awards under the School Recognition Program are
3 not subject to collective bargaining pursuant to the Industrial
4 Relations Act.

5 Sec. 27. Notwithstanding any other provision of law, the
6 transfer of a teacher under contract with a school district to
7 another school within such district shall not take effect until such
8 transfer is approved by the principal of the receiving school.

9 Sec. 28. The State Board of Education may adopt and
10 promulgate rules and regulations to carry out the Working to Improve
11 Nebraska Schools Act.

12 Sec. 29. If any section in this act or any part of any
13 section is declared invalid or unconstitutional, the declaration
14 shall not affect the validity or constitutionality of the remaining
15 portions.