

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1251**

Introduced by Hansen, B., 16.

Read first time January 20, 2022

Committee: Education

- 1 A BILL FOR AN ACT relating to education; to amend section 9-812, Revised
- 2 Statutes Supplement, 2021; to adopt the Equal Opportunity
- 3 Scholarship for Students with Special Needs Program Act; to change
- 4 provisions relating to the distribution of lottery funds; to provide
- 5 an operative date; and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

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

24           (6) Program means the Equal Opportunity Scholarship for Students  
25 with Special Needs Program;

26           (7) Resident school district means the public school district in  
27 which the student resides;

28           (8) Special education documents means:

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

1       (b) An education plan under Section 504 of the federal  
2 Rehabilitation Act of 1973, 29 U.S.C. 794, as such act existed on January  
3 1, 2022;

4       (c) Any and all documents related to progress monitoring, growth,  
5 student behavior, or others that were developed to assist the student in  
6 such student's progress; or

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

12       (9) Tier A student means an eligible student with a diagnosis and  
13 individualized education plan for autism, emotional disturbance, dual  
14 sensory impairment, multiple impairments or disabilities, visual  
15 impairment, hearing impairment, orthopedic impairment, traumatic brain  
16 injury, or other qualifying needs as determined by the department;

17       (10) Tier B student means an eligible student with a diagnosis and  
18 individualized education plan or a disability under Section 504 of the  
19 federal Rehabilitation Act of 1973, 29 U.S.C. 794, as such act existed on  
20 January 1, 2022, for an emotional handicap, learning disability, mild  
21 mental handicap, developmental delay, other moderate health impairment,  
22 or other qualifying needs as determined by the department;

23       (11) Tier C student means an eligible student identified with a  
24 disability under Section 504 of the federal Rehabilitation Act of 1973,  
25 29 U.S.C. 794, as such act existed on January 1, 2022, who has been  
26 diagnosed as dyslexic or has an individual education plan for speech,  
27 language, a specific learning disability, or other qualifying need as  
28 determined by the department; and

29       (12) Tier D student means an eligible student who attends a  
30 participating school and was previously receiving an Equal Opportunity  
31 Scholarship but who no longer requires special education services.

1           Sec. 3. (1) The parents of an eligible student shall receive an  
2 Equal Opportunity Scholarship for such student to attend the  
3 participating school of their choice. The amount of the scholarship is  
4 based upon the current year's statewide average basic funding per student  
5 as determined by the department and appropriated as follows. The parents  
6 of:

7           (a) A Tier A student shall receive one hundred fifty percent of the  
8 current year's statewide average basic funding per student;

9           (b) A Tier B student shall receive one hundred percent of the  
10 current year's statewide average basic funding per student;

11           (c) A Tier C student shall receive seventy-five percent of the  
12 current year's statewide average basic funding per student; and

13           (d) A Tier D student shall receive fifty percent of the current  
14 year's statewide average basic funding per student as determined by the  
15 department as long as the student remains in the participating school in  
16 which the student received services as a Tier A, Tier B, or Tier C  
17 student.

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

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

23           (i) Graduates from high school;

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

25           (iii) Returns to public school.

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

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

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

1       (a) Annually reviewing scholarship applications, including special  
2 education documents;

3       (b) Confirming applicant special education status;

4       (c) Assigning students to the appropriate tier status if the student  
5 meets such requirements;

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

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

11       (f) Appropriately classifying disabilities as required by subsection  
12 (2) of this section.

13       (2) The department shall classify special education disabilities not  
14 expressly listed in the definitions of Tier A, Tier B, Tier C, and Tier D  
15 students into an appropriate tier.

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

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

20       (b) Hold a valid occupancy permit if required by the municipality in  
21 which such school resides;

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

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

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

27       (2) To ensure that students are receiving an appropriate academic  
28 education, a participating school shall, unless as part of an  
29 accommodation established in the eligible student's special education  
30 document, require each eligible student to take nationally norm-  
31 referenced tests that measure learning gains in math and language arts

1 and provide such results to the parents of such student on an annual  
2 basis, beginning with the first year of testing.

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

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

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

11 (3) A participating school shall not be required to alter its creed,  
12 practices, admissions policy, or curriculum. A participating school  
13 reserves the right to accept or deny any student under the program based  
14 upon the school's ability to serve the student appropriately.

15 Sec. 7. (1) A parent who applies for the program is exercising such  
16 parent's option to place such parent's child in a private school. In  
17 order to qualify for the program a parent must select the participating  
18 school and apply for the admission of such parent's child and for the  
19 program. No eligible student shall receive program funds until at least  
20 sixty days after application for such program is received.

21 (2) Any student participating in the program must remain in  
22 attendance at a participating school throughout the school year unless  
23 excused by the school for illness or other good cause.

24 (3) Each parent and each student have an obligation to the  
25 participating school to comply with the participating school's published  
26 policies. A student and parent who do not comply may lose program  
27 eligibility.

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

30 (1) Ensure that eligible students and their parents are informed  
31 annually of which schools will be participating in the program and which

1 tiers such schools provide services for;

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

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

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

9 (5) Administer an annual parental satisfaction survey that shall ask  
10 parents of students receiving funds under the program to express:

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

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

15 (6) Ensure that parents of students with disabilities receive notice  
16 that participation in the program is considered a parental placement  
17 under the Individuals with Disabilities Act 20 U.S.C. 1400 et seq., as  
18 such act existed on January 1, 2022, along with an explanation of the  
19 rights that parentally placed students possess under such act and any  
20 applicable state laws and regulations;

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

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

30 Sec. 9. A resident school district shall provide a participating  
31 school that has admitted an eligible student under this program from such

1 resident school district with a complete copy of the such student's  
2 school records and special education documents, while complying with the  
3 federal Family Educational Rights and Privacy Act of 1974, as amended, 20  
4 U.S.C. 1232g, and all federal regulations and applicable guidelines  
5 adopted in accordance with such act, as such act, regulations, and  
6 guidelines existed on January 1, 2022.

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

10       (a) Transfers or appropriations by the Legislature; and

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

12       (2) The fund shall be administered by the State Treasurer. Any money  
13 in the fund available for investment shall be invested by the state  
14 investment officer pursuant to the Nebraska Capital Expansion Act and the  
15 Nebraska State Funds Investment Act. The State Treasurer may deduct from  
16 the fund an amount necessary to cover the costs of administering the  
17 program up to a limit of two percent.

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

20       9-812 (1) All money received from the operation of lottery games  
21 conducted pursuant to the State Lottery Act in Nebraska shall be credited  
22 to the State Lottery Operation Trust Fund, which fund is hereby created.  
23 All payments of the costs of establishing and maintaining the lottery  
24 games shall be made from the State Lottery Operation Cash Fund. In  
25 accordance with legislative appropriations, money for payments for  
26 expenses of the division shall be transferred from the State Lottery  
27 Operation Trust Fund to the State Lottery Operation Cash Fund, which fund  
28 is hereby created. All money necessary for the payment of lottery prizes  
29 shall be transferred from the State Lottery Operation Trust Fund to the  
30 State Lottery Prize Trust Fund, which fund is hereby created. The amount  
31 used for the payment of lottery prizes shall not be less than forty



1 percent of the dollar amount of the lottery tickets which have been sold.

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

16 (3) Of the money available to be transferred to the Education  
17 Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska  
18 Education Improvement Fund, the Nebraska Environmental Trust Fund, the  
19 Nebraska State Fair Board, the Equal Opportunities Scholarship Fund, and  
20 the Compulsive Gamblers Assistance Fund:

21 (a) The first five hundred thousand dollars shall be transferred to  
22 the Compulsive Gamblers Assistance Fund to be used as provided in section  
23 9-1006;

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

28 (c) ~~(b)~~ Beginning July 1, 2016, forty-four and one-half percent of  
29 the money remaining after the payment of prizes and operating expenses  
30 and the initial transfers to the Equal Opportunities Scholarship Fund and  
31 transfer to the Compulsive Gamblers Assistance Fund shall be transferred

1 to the Nebraska Education Improvement Fund;

2 (d) ~~(e)~~ Forty-four and one-half percent of the money remaining after  
3 the payment of prizes and operating expenses and the initial transfers to  
4 the Equal Opportunities Scholarship Fund and transfer to the Compulsive  
5 Gamblers Assistance Fund shall be transferred to the Nebraska  
6 Environmental Trust Fund to be used as provided in the Nebraska  
7 Environmental Trust Act;

8 (e) ~~(d)~~ Ten percent of the money remaining after the payment of  
9 prizes and operating expenses and the initial transfers to the Equal  
10 Opportunities Scholarship Fund and transfer to the Compulsive Gamblers  
11 Assistance Fund shall be transferred to the Nebraska State Fair Board if  
12 the most populous city within the county in which the fair is located  
13 provides matching funds equivalent to ten percent of the funds available  
14 for transfer. Such matching funds may be obtained from the city and any  
15 other private or public entity, except that no portion of such matching  
16 funds shall be provided by the state. If the Nebraska State Fair ceases  
17 operations, ten percent of the money remaining after the payment of  
18 prizes and operating expenses and the initial transfer to the Compulsive  
19 Gamblers Assistance Fund shall be transferred to the General Fund; and

20 (f) ~~(e)~~ One 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 Compulsive Gamblers  
24 Assistance Fund to be used as provided in section 9-1006.

25 (4) The Nebraska Education Improvement Fund is created. The fund  
26 shall consist of money transferred pursuant to subsection (3) of this  
27 section, money transferred pursuant to section 85-1920, and any other  
28 funds appropriated by the Legislature. The fund shall be allocated, after  
29 actual and necessary administrative expenses, as provided in this section  
30 for fiscal years 2016-17 through 2023-24. A portion of each allocation  
31 may be retained by the agency to which the allocation is made or the

1 agency administering the fund to which the allocation is made for actual  
2 and necessary expenses incurred by such agency for administration,  
3 evaluation, and technical assistance related to the purposes of the  
4 allocation, except that no amount of the allocation to the Nebraska  
5 Opportunity Grant Fund may be used for such purposes. On or before  
6 December 31, 2022, the Education Committee of the Legislature shall  
7 electronically submit recommendations to the Clerk of the Legislature  
8 regarding how the fund should be allocated to best advance the  
9 educational priorities of the state for the five-year period beginning  
10 with fiscal year 2024-25. For fiscal year 2016-17, an amount equal to ten  
11 percent of the revenue allocated to the Education Innovation Fund and to  
12 the Nebraska Opportunity Grant Fund for fiscal year 2015-16 shall be  
13 retained in the Nebraska Education Improvement Fund. For fiscal years  
14 2017-18 through 2023-24, an amount equal to ten percent of the revenue  
15 received by the Nebraska Education Improvement Fund in the prior fiscal  
16 year shall be retained in the fund at all times plus any interest earned  
17 during the current fiscal year. For fiscal years 2016-17 through 2023-24,  
18 the remainder of the fund shall be allocated as follows:

19 (a) One percent of the allocated funds to the Expanded Learning  
20 Opportunity Grant Fund to carry out the Expanded Learning Opportunity  
21 Grant Program Act;

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

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

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

30 (e) Sixty-two percent of the allocated funds to the Nebraska  
31 Opportunity Grant Fund to carry out the Nebraska Opportunity Grant Act in

1 conjunction with appropriations from the General Fund; and

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

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

15 (b) The Auditor of Public Accounts shall annually compile a summary  
16 of the annual reports received pursuant to subdivision (5)(a) of this  
17 section, any audits related to transfers pursuant to subsection (4) of  
18 this section conducted by the Auditor of Public Accounts, and any  
19 findings or recommendations related to such transfers into a consolidated  
20 annual report and shall submit such consolidated annual report  
21 electronically to the Legislature on or before January 1, 2023, and on or  
22 before each January 1 thereafter.

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

28 (6) Any money in the State Lottery Operation Trust Fund, the State  
29 Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the  
30 Nebraska Education Improvement Fund available for investment shall be  
31 invested by the state investment officer pursuant to the Nebraska Capital

1 Expansion Act and the Nebraska State Funds Investment Act.

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

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

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