

## LEGISLATIVE BILL 183

Approved by the Governor May 23, 1989

Introduced by Baack, 47; Bernard-Stevens, 42; Withem, 14;  
McFarland, 28; Elmer, 38

AN ACT relating to schools; to amend sections 79-420, 79-701, 79-1331, and 79-3330, Reissue Revised Statutes of Nebraska, 1943; to state intent; to provide students the option of attending a school in a district other than the one in which he or she resides; to define and redefine terms; to provide procedures relating to applications as prescribed; to provide duties for the resident and option districts; to create a fund; to provide for payments as prescribed; to require a study; to change provisions for the amount paid to a servicing agency; to harmonize provisions; and to repeal the original sections.

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

Section 1. The Legislature hereby finds and declares that parents and legal guardians have the primary responsibility of ensuring that their children receive the best education possible. In recognition of this responsibility, the Legislature intends to provide educational options for parents and legal guardians, when deciding what public school or public school district is best for their children, by allowing them to consider the following factors, including, but not limited to:

(1) The size of the schools and school districts in the area;

(2) The distance children have to travel and the ease and availability of transportation;

(3) The course offerings and extracurricular offerings of the schools and school districts in the area;

(4) The quantity and quality of the staff at such schools and school districts; and

(5) The performance of the school district on any indicators of performance established by the State Department of Education.

Sec. 2. For purposes of sections 1 to 17 of this act:

(1) Enrollment option program shall mean the

program established in section 3 of this act;

(2) Option school district shall mean the school district that a student chooses to attend other than his or her resident school district;

(3) Option student shall mean a student that has chosen to attend a school district other than his or her resident school district; and

(4) Resident school district shall mean the school district in which a student resides.

Sec. 3. An enrollment option program is hereby established to enable any student to attend a school in a school district in which the student does not reside subject to the limitations prescribed in section 7 of this act. The option shall be available only once to each student prior to graduation unless the student relocates in a different resident school district. This program shall not apply to any student in the ninth, tenth, eleventh, or twelfth grade who resides in a Class I school district that is not part of a Class VI school district.

Sec. 4. For purposes of all duties, entitlements, and rights established by law, including special education as provided in section 79-3320, except transportation as provided in section 10 of this act, option students shall be treated as resident students of the option school district.

Sec. 5. (1) For the 1990-91 school year, participation in the enrollment option program shall be voluntary and shall be agreed upon by both the resident school district and the option school district.

(2) For the 1991-92 school year, participation in the enrollment option program shall be voluntary on the part of the option school district. The resident school district shall be required to participate in the program until more than five percent of the students choose to attend option school districts at which time the resident school district may choose not to participate further in the program.

(3) For the 1992-93 school year, participation in the enrollment option program shall be voluntary on the part of the option school district. The resident school district shall be required to participate in the program until more than ten percent of the students choose to attend option school districts at which time the resident school district may choose not to participate further in the program.

(4) Beginning with the 1993-94 school year, the enrollment option program shall be implemented by all public school districts.

Sec. 6. For a student to attend a school in an option school district, the student's parent or legal guardian shall initially submit an application to the school board or board of education of the option school district and of the resident school district and to the State Department of Education by January 1 for enrollment during the following and subsequent school years. The application shall set forth in detail the substantial educational opportunity available to the option student in the option school district that is unavailable in the resident school district. A particular school may be requested, but the school assignment of the option student shall be determined by the option school district.

The student shall attend the option school district until graduation or relocation in a different resident school district unless the student chooses to return to the resident school district in which case the student's parent or legal guardian shall submit a cancellation form to the school board or board of education of the option school district and the resident school district and to the department by January 1 for automatic approval for the following school year. No student shall attend an option school district for less than one school year unless he or she relocates to a different resident school district or completes requirements for graduation prior to the end of his or her senior year.

The application and cancellation forms shall be prescribed and furnished by the State Department of Education.

Sec. 7. The school board or board of education of the option school district shall adopt by resolution specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building or the availability of appropriate special education programs. The school board or board of education of the option school district may by resolution declare a program, a class, or a school unavailable to option students due to lack of capacity. Standards shall not include previous academic achievement, athletic or other extracurricular ability, handicapping conditions, proficiency in the English language, or previous disciplinary proceedings.

It shall be unlawful for any employee, agent, or legal representative of any school district to initiate any contact by personal visitation, phone call, written correspondence, or public advertisement with any

parent, legal guardian, or student residing in any other school district for purposes of encouraging such parent or legal guardian to send his or her student to or encouraging such student to attend the school district of such employee, agent, or legal representative.

A school district that has a desegregation plan adopted by the school board or the board of education or ordered by the federal court may limit the number of students who transfer into or out of the school district. The school board or board of education of such school district shall adopt specific standards for acceptance and rejection of applications for transfer into or out of such district. Standards shall be designed to facilitate the school district's desegregation plan and maintain or improve the integration of the school district.

Any option school district shall give first priority for enrollment to option students whose request for enrollment would aid the racial integration of the option school district and the resident school district.

For purposes of this section, racial integration is aided if a student transfers to an option school district in which his or her race is a smaller percentage of the total student enrollment of the option school district than it is of the student's resident school district.

Sec. 8. On or before April 1, the option school district shall notify the parent or legal guardian of the student, the resident school district, and the State Department of Education, in writing, whether the application is accepted or rejected. If an application is rejected, the option school district shall state in the notification the reason for the rejection. The parent or legal guardian may appeal a rejection to the State Board of Education within thirty days of the date the notification of the rejection was sent. Such hearing shall be held in accordance with the Administrative Procedure Act and shall determine whether the procedures of sections 3 to 9 of this act have been followed.

Sec. 9. Upon agreement of the school boards or boards of education of the resident school and option school districts, the deadlines for application and approval or rejection in sections 6 and 8 of this act may be waived.

Sec. 10. Sections 79-490 and 79-3322 shall not apply to the transportation of an option student. The parent or legal guardian of the option student shall be responsible for required transportation. A school



district may upon mutual agreement with the parent or legal guardian of a student provide transportation to the option student.

Sec. 11. A student in the ninth, tenth, eleventh, or twelfth grade who transfers to an option school district shall be ineligible to compete in athletic competition sponsored by the option school district, the resident school district, or both for one school year after his or her attendance in the option school district begins, except that (1) this waiting period shall not apply if the resident school district and option school district have joint teams and (2) the resident school district may waive the waiting period upon a determination by the resident school district that the transfer was sought and granted for the purpose of improvement of educational opportunities for the student unrelated to participation in such athletic competition. No such ineligibility shall occur when the option student returns to his or her resident school district if such student submits a cancellation form.

Sec. 12. An option school district shall accept credits toward graduation that were awarded by another school district. The option school district shall award a diploma to an option student if the student meets its graduation requirements.

Sec. 13. A school district shall make information about the school district and its schools, programs, policies, and procedures available to all interested people.

Sec. 14. The enrollment option program shall not preclude a school district from contracting with other school districts, educational service units, or other state-approved entities for the provision of services.

Sec. 15. The resident school district shall, for each option student who resides in such school district, including option students who are handicapped, remit to the option school district in two equal payments, with the first payment on or before January 15 and the second payment on or before June 15 of each school year, an amount equal to the appropriate rate as established in subdivisions (1) through (4) of section 79-1334 plus the appropriate rate as established in subsection (1) of section 79-1336. The State Department of Education shall notify every school district by July 15 of each year regarding the rates calculated pursuant to such sections for the upcoming school year. The resident school district shall count all students, regardless of whether they attend an option school

district, when making calculations for the School Foundation and Equalization Act.

If an option student relocates in a different school district during the school year, the resident school district shall prorate the amount remitted to the option school district pursuant to this section according to the proportionate amount of time the student attended the option school district.

Sec. 16. The State Department of Education shall reimburse each option school district for special education programs provided to option students in accordance with section 79-3332.

The resident school district of an option student shall be exempted from the payment responsibility set forth in section 79-3330.

For purposes of calculation to determine reimbursement pursuant to section 79-3332, the option school district shall not include the adjusted average per pupil cost, as defined in section 79-3304, of option handicapped students. The resident school district shall include such adjusted average per pupil cost when determining such reimbursement for each Level II handicapped student attending an option school district. Any resident school district in which the adjusted average per pupil cost exceeds the amount of reimbursement due, as calculated pursuant to section 79-3332, shall remit the difference to the State Treasurer for credit to the Special Education Enrollment Options Fund, which fund is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 17. By September 1, 1991, and each year thereafter until 1995, the State Department of Education shall provide a report to the Legislature concerning the operation of the enrollment option program over the previous year. The report shall include, but not be limited to, the following information:

(1) The number of students who applied to attend an option school district and the number of students whose applications were approved by each option school district;

(2) The educational reasons listed for the transfer to option school districts;

(3) The number of students whose applications were rejected by option school districts and the reasons for the rejection;

(4) The number of appeals regarding the rejection of applications before the State Board of

Education and the number of appeals which were successful;

(5) Which school districts participated in the enrollment option program and the number of students from each resident school district who transferred to an option school district;

(6) Any problems that the department became aware of regarding the enrollment option program and any suggestions for improvement in the current provisions of the program; and

(7) Any other pertinent data that would help the Legislature refine the enrollment option program.

Sec. 18. The Education Committee of the Legislature shall conduct a study during the 1989 interim of issues relating to providing students the option of attending a school district outside their place of residence. The study shall include input from educators and parents representing schools of all sizes within the state and data concerning the effect of such a program in any state which has studied this issue or currently has such a program. It shall include, but not be limited to, study of the following issues:

(1) Whether such a program will result in improved educational opportunities for individual students;

(2) Whether such a program will result in the closing of smaller schools;

(3) Whether such a program will result in improvement or cause deterioration of the educational quality of rural schools;

(4) Whether such a program will lead to recruiting of students with special skills and talents;

(5) Whether such a program will lead to deterioration of the financial base of rural schools;

(6) Whether it is feasible to offer transportation based on need to option students as defined in section 2 of this act; and

(7) Whether the provisions of sections 1 to 17 of this act satisfactorily deal with concerns regarding racial integration.

Upon completion of the study, the committee shall make a report of its findings and recommendations to the Legislature on or before January 1, 1990.

Sec. 19. That section 79-420, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-420. When, for a period of one school term, a school district (1) has less than three legal voters residing therein or (2) either fails to maintain

a public elementary school within the district, in which are enrolled and in regular attendance for at least one thousand thirty-two hours one or more pupils of school age residing in the district, other than option students as defined in section 2 of this act, or does not contract for the tuition and transportation of pupils of such district with another district or districts and have pupils attending school regularly for at least one thousand thirty-two hours under such contract or contracts, it shall be the duty of the county superintendent of the county in which such district lies to dissolve such district and attach the territory of such district to one or more neighboring school districts, except that before dissolving a district under this section, the county superintendent shall fix a time for a hearing and shall notify each legal resident of the district at least fifteen days before such hearing. ~~In such instances where such dissolution shall~~ When the dissolution will create extreme hardships on the pupils of the district affected, the State Board of Education may, on application by the school board or board of education of the district and the recommendation of the county superintendent of the county in which the district is located, annually waive the requirements of this section. Notification shall be by mail or by publication in a newspaper of general circulation in the area.

If the county superintendent finds that the district is required by this section to be dissolved, he or she shall enter an order dissolving the district and attach the territory of such district to one or more neighboring school districts. Dissolutions involving the transfer of territory across county lines shall be acted upon jointly by the county superintendents of the counties concerned. Appeals from the action of the county superintendent may be made to the district court of the county of the official concerned. The county superintendent shall distribute the assets of the closed district among the other district or districts to which the property has been attached in proportion to the actual valuation of the property attached to such district or districts.

Sec. 20. That section 79-701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-701. (1) A Class II school district shall be created whenever a Class I school district determines by a majority vote of the electors to establish a high school.



(2) The members of the school board serving when it is decided to establish a high school shall continue in office until the first Tuesday in June following the next statewide primary election at which election a six-member board shall be elected. The three receiving the highest number of votes shall be elected for a ~~term~~ terms of four years, and the three receiving the next highest number of votes shall be elected for a ~~term~~ terms of two years.

(3) If a Class II school district, by a vote of fifty-five percent of the legal voters voting at an annual or special meeting, decides to discontinue the high school and close the same, the school district shall thereupon become a Class I school district on the date designated by such voters. At such meeting a decision shall be made as to when the new board of education shall be elected and whether the board shall consist of three members or six members. No new Class I school district shall establish a six-member board unless the school district contains a minimum of one hundred fifty children between five and twenty-one years of age pursuant to section 79-601. The board of education of the existing Class II school district shall remain in office until the effective date for the formation of the new Class I school district.

If the new board of education is to consist of three members, such members shall be elected at the time the electors vote to change from a Class II school district to a Class I school district or at any annual or special meeting held not less than thirty days prior to the effective date of the change from a Class II school district to a Class I school district. At the annual or special meeting, a treasurer shall be elected for a term of one year, a secretary for a term of two years, and a president for a term of three years, and regularly thereafter their successors shall be elected for ~~the term~~ terms of three years each. ~~All and all~~ officers so elected shall hold their offices until ~~their~~ successors are elected and qualified. After such change becomes effective, the school district and its officers shall have the powers and be governed by the provisions of law applicable to Class I school districts.

If the new board of education is to consist of six members, such members shall be elected after school district electors have voted to change from a Class II school district to a Class I school district. The procedure for electing board members shall be as prescribed in subsection (3) of section 79-601, except that such election may be held at any annual meeting or

at a special meeting called for the purpose of electing school district officers.

(4) No school district may change from Class I to Class II unless that school district has an enrollment of not less than one hundred pupils in grades nine to twelve. This subsection shall not apply to any school district located on an Indian reservation and substantially or totally financed by the federal government.

(5) If for three consecutive years the average daily membership of an existing Class II school district is less than twenty-five pupils in grades nine through twelve or ~~after July 10, 1984~~, if for one year an existing Class II school district contracts with a neighboring school district or districts to provide educational services for all of its pupils in grades nine through twelve, such school district shall, except as provided in subsection (6) of this section, become a Class I school district through the order of the county superintendent if the high school is within fifteen miles on a reasonably improved highway of another high school. A resident school district as defined in section 2 of this act shall not count students attending an option school district as defined in section 2 of this act when calculating average daily membership for purposes of this subsection. This subsection shall not apply to any school district located on an Indian reservation and substantially or totally financed by the federal government.

(6) Any Class II school district maintaining a four-year high school which has an average daily membership of less than twenty-five students in grades nine through twelve for three consecutive years may contract with another school district to provide educational services for its pupils in grades nine through twelve. Such contract may continue for a period not to exceed three years. At the end of such three-year period the school district may resume educational services for grades nine through twelve if the average daily membership in grades nine through twelve for such school district has reached at least fifty students, except that ~~after July 10, 1984~~, a Class II school district may contract pursuant to this subsection for a period of only one year and at the end of such one-year period the school district may resume educational services for grades nine through twelve if the average daily membership in grades nine through twelve for such school district has reached at least fifty students. If the school district has not achieved

such average daily membership, it shall become a Class I school district as prescribed in subsection (5) of this section.

Sec. 21. That section 79-1331, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1331. As used in the School Foundation and Equalization Act, unless the context otherwise requires:

(1) Classroom teacher shall mean a certificated teacher who has major responsibility for the instruction of one or more classes of pupils;

(2) District shall mean a school district approved for continued legal operation under rules and regulations established adopted and promulgated by the State Board of Education pursuant to subdivision (5)(c) of section 79-328;

(3) Per pupil cost shall mean a district's current operating expense, as shown in the district's annual financial report to the State Department of Education, divided by the average daily membership of resident and nonresident pupils for the preceding school year;

(4) Operating funds shall mean a district's current operating revenue for a fiscal year as shown in the district's annual financial report to the State Department of Education;

(5) Summer school program shall mean a program consisting of thirty days of school at three hours per day, or the equivalent, conducted by a district to meet the academic needs of its pupils during a period other than the regular school year;

(6) Fall school district membership report shall mean a report setting forth the number of children between the ages of five and twenty-one enrolled in the district on the last Friday in September of a given school year. The report shall enumerate (a) resident students by grade level and nonresident students and option students as defined in section 2 of this act by grade level and classification, including, but not limited to, nonresident high school, option high school, wards of the court, or contract, (b) eligible children in gifted and deprived programs as approved and verified by the state, (c) children eligible to be transported by bus according to section 79-490, and (d) total assessed valuation for the current fiscal year; and

(7) January school district membership report shall mean a report setting forth the number of children between the ages of five and twenty-one enrolled in the district on the first Friday in January of a given

school year. Such report shall contain the information prescribed in subdivisions (6)(a) through (6)(d) of this section.

Sec. 22. That section 79-3330, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-3330. Except as provided in section 79-3331 and sections 1 to 17 of this act, each school district shall pay an amount equal to the average per pupil cost of the servicing agency of the preceding year or the cost as agreed upon pursuant to the contract to the agency providing the educational program for every child who is a resident of the district and attending an educational program not operated by the school district, including programs operated by the State Department of Education, the Department of Public Institutions, and any other servicing agency whose programs are approved by the State Department of Education.

Sec. 23. That original sections 79-420, 79-701, 79-1331, and 79-3330, Reissue Revised Statutes of Nebraska, 1943, are repealed.