



Nebraska Council
of School Administrators

May 2, 2019

Dear Senator Groene and Members of the Education Committee:

Enclosed is suggested language for amending LB147 (Change the Student Discipline Act to provide for use by a teacher or administrator of necessary physical contact and provide procedures and grounds for removal from a class in response to student behavior).

Representatives of the Nebraska State Education Association, the Nebraska Association of School Boards, and the Nebraska Council of School Administrators met this week and agreed to these suggested revisions to the introduced version of the bill.

We strongly believe our proposed language provides a suitable alternative that adheres to the original intent of the bill, specifically to:

- (1) codify state case law into statute to provide that teachers and school personnel may use reasonable physical intervention to safely manage the behavior of a student; and,
- (2) provide a process through which teachers and other school personnel may remove a student from the classroom for the needed duration to ensure the student's return to the classroom is not disruptive of the learning environment.

The undersigned groups agree to the attached revision of LB147. Furthermore, if there are substantive changes to the suggested language that have not been agreed to by the four groups, our support for the underlying bill may be withdrawn.

Sincerely,

Maddie Fennell
NSEA Exec. Director

Mike Dulaney
NCSA Exec. Director

John Spatz
NASB Exec. Director

Jack Moles
NRCSA Exec. Director

Working Group Proposed AM Based on AM 1417 to LB 147

Section 1. Section 79-254, Reissue Revised Statutes of Nebraska, is amended to read:

79-254 Sections 79-254 to 79-294 and sections 3 and 4 of this act shall be known and may be cited as the Student Discipline Act.

Sec. 2. Section 79-258, Reissue Revised Statutes of Nebraska, is amended to read:

79-258 Administrative and teaching personnel may take actions regarding student behavior, other than those specifically provided in the Student Discipline Act, which are reasonably necessary to aid the student, further school purposes, or prevent interference with the educational process. Such actions may include, but need not be limited to, physical intervention, counseling of students, parent conferences, rearrangement of schedules, requirements that a student remain in school after regular hours to do additional work, restriction of extracurricular activity, or requirements that a student receive counseling, psychological evaluation, or psychiatric evaluation upon the written consent of a parent or guardian to such counseling or evaluation.

Sec. 3. (1) School personnel may use reasonable physical intervention to safely manage the behavior of a student to:

(a) Protect such student, another student, school personnel, or another person from physical injury; or

(b) Secure property in the possession of such student if the possession of such property by such student poses a threat of physical injury to such student, another student, school personnel, or another person.

(2) Any physical intervention by school personnel pursuant to subdivision (1)(a) or (b) of this section shall not be used for the purpose of inflicting bodily pain as a penalty for disapproved behavior.

(3) Following the use of physical intervention pursuant to this section, school personnel shall contact the parent or guardian and notify them of the use of physical intervention.

(4) No school personnel or District shall be criminally or civilly liable or subject to professional or administrative discipline for the use of physical intervention pursuant subdivision (1)(a) or (b) of this section if such physical intervention was reasonable. Nothing in this section shall be construed to limit any defense that may be available under any provision of law, including, but not limited to, any defense relating to self-protection or the protection of others.

Sec. 4. (1) A school district must have a policy that requires and explains its process on how and when a student can be removed from class and how and when a student returns to class using a discipline process that is proactive, instructive, and restorative that includes appropriate communication among administrators, teachers, students and parents. This policy will be publicly available.

(2) Unless prohibited by the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., or a plan developed pursuant to section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as such acts existed on January 1, 2019, an administrator or administrator's designee shall immediately remove a student from a classroom upon request by a teacher or other school personnel if such teacher or other school personnel has followed school policy in requesting the removal of a student.

(3) When there is a removal of a student from class, the goal must be to return the student to class as soon as possible after appropriate instructional and/or behavioral interventions or supports have been implemented to increase the likelihood the student can be successful. For students with patterns of disruption, schools should provide additional interventions or supports.

(4) A teacher or other school personnel or District shall not be subject to legal action or administrative discipline for having a student removed from a class pursuant to this section if such teacher or other school personnel was acting in a reasonable manner and in accordance with school policy.

Sec. 5. Original sections 79-254 and 79-258, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 6. Section 4 of this act becomes operative on August 1, 2020. The other sections of this act become operative on their effective date.