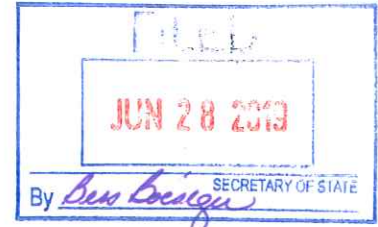


STATE OF NEBRASKA)
)
LANCASTER COUNTY)

ss.



NOTICE OF RULE-MAKING HEARING NEBRASKA DEPARTMENT OF EDUCATION

NOTICE is hereby given that the Department of Education will hold consecutive rule-making hearings on Monday, August 5, 2019 commencing at 1:30 p.m. (CT) at the Nebraska State Office Building, Nebraska Department of Education, 6th floor, State Board Meeting Room, 301 Centennial Mall South, Sixth Floor, Lincoln, Nebraska 68509.

The hearings will be held on the **repeal** of Title 92, Nebraska Administrative Code, Chapter 46 (Rule 46), *Regulations and Procedures for Career Education Partnership Act Grants* AND Title 92, Nebraska Administrative Code, Chapter 53 (Rule 53), *Regulations for Special Education Residential Care*.

The PURPOSE of the **proposed repeal of Rule 46** is that the Legislature (2009) passed and the Governor signed LB 476 which eliminates the Nebraska Career Education Partnership Act and funding for same.

The PURPOSE of the **proposed repeal of Rule 53** is that the Legislature (2019) passed and the Governor signed LB 675 which outright repeals the language in state statute regarding Special Education Residential Care.

The FISCAL IMPACT statements may be obtained and inspected at the Office of the Nebraska Department of Education.

These hearing are being conducted under the provisions of Section 84-907 R.R.S., 1943, which provides that DRAFT COPIES OF THE PROPOSED RULES ARE AVAILABLE for public examination at the Nebraska Department of Education and at the Office of the Secretary of State, State Capitol Building, Lincoln, Nebraska. A copy of the hearing draft for this Rule is also available on the Nebraska Department of Education's webpage at: <https://www.education.ne.gov/legal/current-hearing-drafts/>

All INTERESTED PERSONS are invited to ATTEND and TESTIFY at the location of the hearing. Interested persons may also submit written comments to the Nebraska Department of Education prior to the hearing at NDE.RuleHearing@nebraska.gov. If reasonable accommodations are needed, please contact the Office of Special Education at 402-471-2471 at least five (5) days prior to the hearings. Written comments will be made a part of the hearing record at the time of the hearing.

Dated at Lincoln, Nebraska this 29th day of June, 2019.

Nebraska Department of Education
Matthew L. Blomstedt, Ph.D.
Commissioner of Education



NEBRASKA

DEPARTMENT OF EDUCATION

FISCAL IMPACT STATEMENT

Agency: Nebraska Department of Education
 Prepared by: Greg Prochazka
 Date Prepared: June 24, 2019
 Phone: 471-4314
 Title:
 Chapter: 92 NAC 53
 Name: Special Education Residential Care
 Statement Status: Hearing Draft

Type of Fiscal Impact:

	State Agency	Political Subdivision	Regulated Public
No Fiscal Impact		X	X
Increase Costs	X		
Decrease Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

Description of Impact:

State Agency: \$650.00 – Hearing Cost

Political Subdivision: No Impact

Regulated Public: No Impact

JUN 28 2019

**NEBRASKA DEPARTMENT
OF EDUCATION**

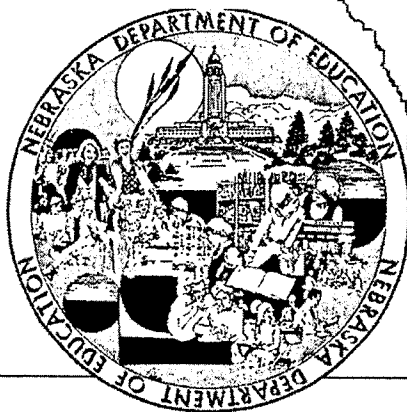
RULE 46

**REGULATIONS AND PROCEDURES FOR CAREER EDUCATION
PARTNERSHIP ACT GRANTS**

**TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 46**

**HEARING DRAFT
JUNE 27, 2019**

**State of Nebraska
Department of Education
301 Centennial Mall South
Lincoln, Nebraska 68509**



TITLE 92
CHAPTER 46

NEBRASKA DEPARTMENT OF EDUCATION
REGULATIONS AND PROCEDURES FOR CAREER EDUCATION
PARTNERSHIP ACT GRANTS

NUMERICAL TABLE OF CONTENTS

SUBJECT	STATUTORY AUTHORITY	CODE <u>SECTION</u>
General Provisions	79-763 to 79-768 and 79-318(5)(i)	001
Definitions	79-763 to 79-768 and 79-318(5)(i)	002
Grant Criteria	79-763 to 79-768 and 79-318(5)(i)	003
Application Procedures	79-763 to 79-768 and 79-318(5)(i)	004
Grant Administration	79-763 to 79-768 and 79-318(5)(i)	005
Grant Termination	79-763 to 79-768 and 79-318(5)(i)	006

TITLE 92
CHAPTER 46

NEBRASKA DEPARTMENT OF EDUCATION
REGULATIONS AND PROCEDURES FOR CAREER EDUCATION
PARTNERSHIP ACT GRANTS

ALPHABETICAL TABLE OF CONTENTS

SUBJECT	STATUTORY AUTHORITY	CODE <u>SECTION</u>
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Grant Termination	79-763 to 79-768 and 79-318(5)(i)	006

~~1~~ ~~General Provisions.~~

~~1.1~~ ~~Statutory Authority.~~ This Chapter is adopted pursuant to the Career Education Partnership Act, Sections 79-763 to 79-768 of the Revised Statutes of Nebraska (R.R.S.) (Initially adopted as LB 690, 2006), and Section 79-318(5)(i) R.R.S.

~~1.2~~ ~~Scope of This Chapter.~~ This Chapter provides the criteria, standards, and procedures for the administration of the competitive grant process to provide grants under the Nebraska Career Education Partnership Act.

~~1.3~~ ~~Legislative Findings.~~ Section 79-764 R.R.S. states that:

~~"The Legislature finds that:~~

- ~~(1) As defined in the Essential Education Policy of the State Board of Education, all students in Nebraska should have equitable opportunities to obtain knowledge and skills to meet the academic, civic, and economic demands of the twenty-first century;~~
- ~~(2) Schools should provide programs for students to learn information and communication skills, thinking and problem solving skills, and interpersonal and self-directional skills for them to be productive and successful in their work, family, and community;~~
- ~~(3) Schools should rethink the high school experience and provide programs that will motivate all students, including high risk students, to graduate from high school;~~
- ~~(4) There is a need to establish strategies and programs that develop skills which enable young people to complete high school, pursue postsecondary education, find jobs, and remain in their communities; and~~
- ~~(5) There is a need to prepare young adults for employment opportunities in the State of Nebraska."~~

~~1.4~~ ~~Purpose of the Act.~~ Section 79-766 R.R.S. states that:

~~"The purpose of the Career Education Partnership Act is to support schools in Nebraska in continuing and enhancing career education programs through state grants. The act shall:~~

- ~~(1) Identify and explore options for Nebraska Career Education implementation in different sizes of schools;~~
- ~~(2) Collaborate with ongoing school improvement efforts;~~
- ~~(3) Create models of collaboration between career and academic education;~~
- ~~(4) Encourage relationships and coordination in support of entrepreneurship education;~~
- ~~(5) Develop partnerships between public secondary and postsecondary institutions; and~~

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CHAPTER 46

~~(6) Develop partnerships with business and industry based on Nebraska workforce development needs."~~

~~2 — Definitions. As used in this chapter:~~

~~2.1 — Advisory Group. Section 79-767(1) R.R.S., states that: "For purposes of this section, an advisory group means a local or regional economic development board, a local or regional chamber of commerce board, or a group specifically designed to support career education and entrepreneurial activities or programs."~~

~~2.2 — Board shall mean the State Board of Education.~~

~~2.3 — Career Education. Section 79-765 R.R.S. states that: "For purposes of the Career Education Partnership Act, career education includes curriculum, work ethics, general employability skills, technical skills, occupational specific skills, and applied learning that integrates academic knowledge and vocational skills taught through the following course areas: agriculture education; business education; career education; family and consumer sciences; health occupations; industrial technology education; marketing education; and trade and industrial education." This includes the following career field areas: Environmental and Agricultural Systems; Business, Marketing and Management; Communication and Information Systems, Health Sciences; Human Services and Resources; and Industrial, Manufacturing, and Engineering Systems.~~

~~2.4 — Commissioner shall mean the State Commissioner of Education.~~

~~2.5 — Department shall mean the State Department of Education, which is comprised of the Board and the Commissioner.~~

~~2.6 — ESU shall mean Educational Service Unit.~~

~~2.7 — Fiscal Agent shall mean the school district that has been designated by the member bodies of the collaborative grant project to receive grant funds from the Department, to distribute grant funds pursuant to the grant, and to report and audit the collaborative grant project expenses.~~

~~2.8 — Grant Representative shall mean an individual who is an employee of the Fiscal Agent school district or of another school district with a school or schools that are involved in the collaborative grant project, and who is authorized to act on behalf of the member bodies of the collaborative grant project in submitting documents and providing information to the Department regarding the grant and in receiving communications regarding the grant from the Department.~~

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~~2.9 — Public Postsecondary Institution shall mean any Nebraska public institution of higher education providing career education instruction in one or more of the areas listed in Section 002.03 of this Chapter.~~

~~002.10 Public School shall mean an individual attendance center under the jurisdiction of a public school district board.~~

~~3 — Grant Criteria.~~

~~3.1 — Eligible Applicants. Section 79-767(1) R.R.S. provides that grants may be provided "to a collaborative project of two or more public schools with an educational service unit, or a public postsecondary institution, and an advisory group related to the purpose of the Career Education Partnership Act." The statutory definition of "advisory group" is quoted at Section 002.01 of this Chapter. Each public school district in which are located one or more of the public schools involved in a collaborative project shall be considered a grant applicant for such public schools under its jurisdiction. Section 79-767(3) R.R.S. provides, in part, that: "No applicant shall receive funding for more than one project at a time."~~

~~3.2 — Use of Funds. Section 79-767(2) R.R.S. provides that: "Grant money shall be used to provide for equitable opportunities for students in a minimum of two of the following areas: (a) Assist schools in developing academic competencies, technical competencies, and basic work skill foundations for students; (b) Assist schools in developing curriculum; (c) Assist schools in employing certified teachers related to the purposes of the act; and (d) Assist schools in providing professional development for certified teachers who provide course instruction."~~

~~3.3 — Duration and Amount of Grants. Section 79-767(3) R.R.S. provides, in part, that: "Grants shall not exceed seventy five thousand dollars per collaborative project. Grant recipients shall have two years to expend the grant funds."~~

~~003.03A For purposes of grants issued under this Chapter, the fiscal year shall be a calendar year of January 1, through December 31. Expenditures for each grant program must occur within a maximum time frame of two fiscal years.~~

~~4 — Application Procedures.~~

~~4.1 — Request for Proposals. The Nebraska Department of Education may at least annually request proposals for a Career Education Partnership Act Grant from potential applicants for collaborative projects, as listed in Section 003.01 of this Chapter.~~

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~~4.2 — Application. Applicant school districts shall submit proposals to the Department electronically through the Department's Grant Management System.~~

~~4.3 — Fiscal Agent and Grant Representative. An application shall designate a school district that that has one or more of its schools involved in the collaborative grant project to act as Fiscal Agent for the grant. An application shall also designate an employee of a school district that has one or more of its schools involved in the collaborative grant project to act as the Grant Representative.~~

~~4.4 — Assurances. A statement of assurances by grant recipients of compliance with applicable state and federal non-discrimination laws and regulations shall be required for all grant applications.~~

~~4.5 — Budget. Each grant application shall include a detailed proposed budget.~~

~~4.6 — Review of Applications. The Commissioner or his or her designee(s) shall review the grant applications for the purpose of making recommendations to the Board for funding approval. In reviewing the applications, priority consideration shall be given to proposals that are best designed to fulfill the purposes of the Career Education Partnership Act, as quoted in Section 001.04 of this Chapter.~~

~~4.7 — Recommendation and Approval. The Commissioner or his or her designee(s) shall submit his or her recommendations for grant approval to the Board. Upon action by the Board, all applicants shall be notified, in writing, of the outcome.~~

~~4.8 — Grant Award Notification. Upon Board action to approve grant recipients, a Grant Award Notification (GAN) is provided to each approved collaborative project. The GAN serves as the written authorization for obligating and expending funds for the purposes of the collaborative project.~~

~~5 — Grant Administration.~~

~~5.1 — Public Records. Project proposals are public records. The Department shall receive a copy of all materials developed using grant funds and such copies shall be public records. The State of Nebraska retains the right to the copyright of any materials produced under a grant unless otherwise specified in the grant. The Department reserves the right to reproduce and distribute any materials produced in whole or in part with grant funds.~~

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~~5.2 — The Department requires final reports on the activities, accomplishments and expenditures of the grant. Recipients of grants shall be required to provide, upon request, such data relating to the funded programs and initiatives as the Department deems necessary.~~

~~5.3 — Audits. All grants from the Career Education Partnership Act may require an annual audit by an independent auditor in accordance with the appropriate auditing standards for that entity (e.g. governmental, non-profit educational organizations) and any additional auditing criteria specified in the grant award. The State of Nebraska shall have access to the financial records for funded projects of all grantees for a period of five complete fiscal years, as defined in Section 003.03A of this Chapter, after the conclusion of the project period.~~

~~5.4 — Grant Funds. Grant funds will be paid to the Fiscal Agent district for distribution to the collaborative grant participants, pursuant to the terms of the approved grant and upon submission of expense documentation.~~

~~5.5 — Allowable Uses of Grant Funds. Grant funds may be expended for any of the purposes listed in Section 79-767 (2) R.R.S. (quoted in Section 003.02 of this Chapter) that are included in the approved grant application, subject to the restrictions included in Section 005.06 of this Chapter.~~

~~5.6 — Restrictions on the Use of Grant Funds. The following uses of grant funds are not allowed:~~

~~005.06A Grant administration expenses (direct or indirect) that exceed five percent (5%) of the total grant award.~~

~~005.06B Payment to consultants or staff to develop grant proposals.~~

~~005.06C Any expenses for goods or services which are unrelated to the Career Education Partnership Act.~~

~~6 — Termination of Grants. Terminations of grants by grant recipients and/or the Department before the completion of the grant period requires written notice to the other parties to the grant and the return to the Department of unexpended and unencumbered funds effective on the date of the receipt of the termination notice. Funds shall be returned within thirty (30) days of receipt of the notice.~~

~~6.1 — The Grant Representative, on behalf of the collaborative grant participants, may terminate a grant at any time. Such a termination request must be in writing and will become effective when received by the Department.~~

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~~6.2 A grant may be terminated by the Department when a determination that the grant activities are outside the approved application, conditions of the grant award notification are not met, there is fraud or fiscal mismanagement, or there is lack of adequate funding. In the event the Commissioner proposes to terminate the grant funding, the Grant Representative shall be provided with written notice of the reasons for such action and an opportunity for a hearing. The Department, using procedures for hearings that the State Board of Education has adopted pursuant to 92 NAC 61, shall conduct any hearing. All requests for hearings require filing with the Department within thirty (30) days of the Grant Representative's receipt of the proposal to terminate. If no such request for a hearing is filed, the Commissioner may terminate the grant.~~

NEBRASKA DEPARTMENT
OF EDUCATION

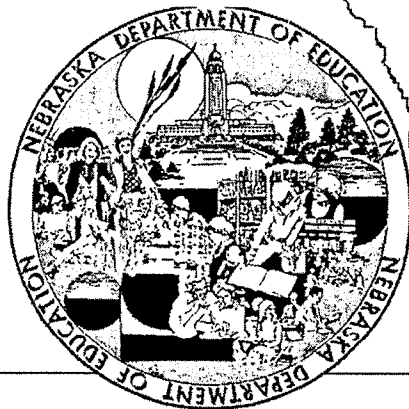
RULE 53

REGULATIONS FOR SPECIAL EDUCATION RESIDENTIAL CARE

TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 53

HEARING DRAFT
JUNE 27, 2019

State of Nebraska
Department of Education
301 Centennial Mall South
Lincoln, Nebraska 68509



TITLE 92—NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 53—SPECIAL EDUCATION RESIDENTIAL CARE

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Inapplicability	43-626	004
Allowable Residential Costs	43-645, 43-626, 43-627.01	005
Reasonable Food and Lodging Costs	43-626, 43-627.01	006
Residential Placement Decisions	43-626, 43-627.01	007
Non-allowable Residential Placements	43-627.01	008
State Level Decision	43-627.01	009

TITLE 92—NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 53—SPECIAL EDUCATION RESIDENTIAL CARE

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State Level Decision	43-627.01	009
Statutory Authority		002

TITLE 92—NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 53—SPECIAL EDUCATION RESIDENTIAL CARE

001—Declaration of Responsibility

~~Neb. Rev. Stat. Section 43-626 declares, "Whenever a child must temporarily reside in a residential facility, boarding home, or foster home in order to receive an appropriate special education program the State of Nebraska shall provide for the ordinary and reasonable cost of the residential care during the duration of the special education program..."~~

002—Statutory Authority

~~Neb. Rev. Stat. Section 43-627.01 declares, "The State Department of Education shall adopt and promulgate rules and regulations to regulate costs under Section 43-626, to limit the program to handicapped children who require residential care to receive any benefit from their special education program, and to carry out Section 43-626 to 43-627.01..."~~

003—Administration of Program

~~The Special Education Office of the Nebraska Department of Education shall administer the requirements of Section 43-626 and 43-627.01 and 92 NAC 53 and shall establish such procedures and forms as are necessary to do so.~~

004—Inapplicability

~~The provisions of this Chapter regarding allowable residential costs and funding shall not apply to:~~

~~004.01—The Nebraska School for the Deaf;~~

~~004.02—The Nebraska School for the Visually Handicapped; and~~

~~004.03—The Nebraska Diagnostic Resource Center. (43-626)~~

005—Allowable Residential Costs

~~The Department of Education shall pay only for the ordinary and reasonable costs of residential care. Ordinary costs shall mean the expenses of food and preparation thereof, lodging including house parents, janitorial services, laundry, and utilities. Costs of ordinary residential care shall not include medical or dental expenses or expenses for related services which are part of the education program.~~

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006 — Reasonable Food and Lodging Costs

The Department of Education shall pay only the reasonable costs of food and lodging. When determining reasonableness, factors will include but need not be limited to:

006.01 — maximum rates jointly established annually by Nebraska Department of Education and Department of Social Services for residential care placements within the state.

006.02 — the age, physical characteristics, and handicap of the particular student,

006.03 — the residential cost on a per pupil basis. In determining the residential costs for a particular student only the following shall be used:

006.03A — facility used for provision of food and lodging;

006.03B — purchase and preparation of food;

006.03C — utilities for and maintenance of facility used for food and lodging;

006.03D — machinery and staff used to care for residents' clothing;

006.03E — non-treatment staff such as houseparents or care attendants on duty during hours devoted to other than special education or related services.

007 — Residential Placement Decisions

When determining whether a residential placement is allowable, the Department of Education and the resident school district shall take into account only the following factors in selecting an appropriate education program as close to the student's resident district as possible:

007.01 — the student's education history. The school district's documentation of student's education history shall include:

007.01A — student's entrance into school through the student's current education program;

007.01B — placement or placement consideration not requiring residential care at each level of the following continuum:

007.01B1 — consultant services within the regular class;

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~~007.01B2~~ — instructional services within the regular class;

~~007.01B3~~ — resource room services in addition to the regular class;

~~007.01B4~~ — part-time regular class instruction in conjunction with self-contained special education placement;

~~007.01B5~~ — full-time self-contained special class services on a regular school campus or in a special public or non-public day school facility;

~~007.02~~ — School-district documentation of efforts to locate or develop an appropriate non-residential education program.

~~007.03~~ — The practicality of daily transportation. In determining when it is possible to use daily transportation for a particular child the following consideration shall be used:

~~007.03A~~ — The distance which must be traveled each day.

~~007.03B~~ — The time the traveling would require.

~~007.03C~~ — The effect of the transportation on the health and well-being of the student.

~~007.04~~ — The handicaps of the student which require special education.

~~007.05~~ — The type of educational programming needed for these handicaps.

~~007.06~~ — The state approval or licensure of the proposed residential facility.

~~008~~ — Non-Allowable Residential Placements

~~008.01~~ — No school district shall make a placement in a special education program requiring residential care without advance consultation with the State Department of Education to review the child's needs and the availability and appropriateness of each possible placement in the continuum of alternative services except as required by other Nebraska or federal law.

~~008.02~~ — If the parents or guardians of the handicapped student place the student in the residential program when the resident school district and the Department of Education determines placement is not allowable under the provisions of this Chapter, neither the resident school district or the Department of Education shall pay for any of the costs of the educational program, the costs of the transportation, or the cost of the residential care except as required by other Nebraska or federal law.

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009 State Level Decision

~~The Department of Education shall permit or deny a residential placement within thirty days after the receipt of necessary forms and information from a school district. Applications for approval of special education program placements requiring residential care shall be signed by the parent or legal guardian and submitted via the school district of which the student is a resident to the State Department of Education. If an application is denied, the parent or legal guardian shall be provided written notification by the State Department of Education of his or her right to appeal the decision pursuant to Sections 43-664 and 43-668 and right to name the State Department of Education as respondent in the appeal proceedings.~~