

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 conduct consecutive rule-making hearings Tuesday, June 22, 2021 at 10:00 a.m. (CT) via ZOOM (<https://educationne.zoom.us/j/97735033113>).

These hearings will be held on the **repeal** of Title 92, *Nebraska Administrative Code*, Chapter 29 (Rule 29), *Regulations and Standards for Professional Practices Case Determinations by the State Board* AND the proposed **revisions** to Title 92, *Nebraska Administrative Code*, Chapter 28 (Rule 28), *Professional Practices Investigations, Nonpublic Certificate Hearings and Determinations by the State Board*.

The PURPOSE of the **proposed repeal of Rule 29** is remove outdated an unnecessary regulation and incorporate necessary provisions into Rule 28.

The PURPOSE of the **proposed revisions to Chapter 28** is to update current language so it is consistent with current law and best practices and includes provisions related to confidentiality, permanent revocation, and disposition of cases without a formal hearing.

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

These consecutive hearings 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 drafts for these Rules are 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 via ZOOM (<https://educationne.zoom.us/j/97735033113>). Interested persons may also submit written comments to the Nebraska Department of Education prior to the hearing at NDE.RuleHearing@nebraska.gov. Written comments will be made a part of the hearing record at the time of the hearing.

Dated at Lincoln, Nebraska this 5th day of May, 2021.

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



FISCAL IMPACT STATEMENT

Agency: Nebraska Department of Education
 Prepared by: Sara Hulac
 Date Prepared: 3/18/2021
 Phone: 402-471-0312
 Title: Title 92
 Chapter: 29
 Name: Regulations and Standards for Professional Practices Case
 Determinations by the State Board
 Statement Status: Hearing Draft (Repeal)

Type of Fiscal Impact:

	State Agency	Political Subdivision	Regulated Public
No Fiscal Impact			X
Increase Costs	\$650	X	X
Decrease Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

Description of Impact:

State Agency: The agency cost is for the public notice for hearing.

Political Subdivision: None.

Regulated Public: None.



Client

NEBRASKA DEPT. OF EDUCATION-
Phone: 4024712598
Account: 1029918
Address: 301 CENTENNIAL MALL SOUTH, 6TH FLOOR
LINCOLN NE 68509

Payor

NEBRASKA DEPT. OF EDUCATION-
Phone: 4024712598
Account: 1029918
Address: 301 CENTENNIAL MALL SOUTH, 6
LINCOLN NE 68509

Ad Content Proof

Note: Ad size does not reflect actual ad

Sales Rep

tchandler

Acct Rep

owh_open

Ordered By

Brenda Wid

Fax:

EMail:

Total Amount \$494.04
Payment Amount \$0.00

Amount Due \$494.04
Tax Amount: 0.00
Payment Meth: Invoice Statement
Tear Sheets 0
Proofs 0
Affidavits 0
Blind Box
PO Number: 132512

Table with columns: Ad Number, Ad Type, Ad Size, Color. Row: 0000228917-01, OWH CLS Legal Lir, 1 X 92 li, \$0.00

Production Method
AdBooker (Liner)

Table with columns: Product and Zone, Placement, Position, # Inserts. Row: OWH World Herald, C-Legal Ads, Legal Notices, 1

TagLine: STATEOFNEBRASKASSLANCASTERCOUNTYNOTICEOFRULEMAKINGHEARINGNEBRASKADEPARTME
NTOFEDUCATIONNOTICE

STATE OF NEBRASKA)
LANCASTER COUNTY)
NOTICE OF RULE-
MAKING HEARING
NEBRASKA DEPARTMENT
OF EDUCATION
NOTICE is hereby given that the
Department of Education will
conduct consecutive rule-making
hearings Tuesday, June 22, 2021
at 10:00 a.m. (DT) via ZOOM
(https://educationne.zoom.us/j/9
773503113).
These hearings will be held on the
repeal of Rule 29, Nebraska
Administrative Code, Chapter 29
(Rule 29), Regulations and
Standards for Professional
Practices Case Determinations by
the State Board AND the
proposed revisions to Title 92,
Nebraska Administrative Code,
Chapter 28 (Rule 28), Profes-
sional Practices Investigations,
Nonpublic Certificate Hearings
and Determinations by the State
Board.
The PURPOSE of the proposed
repeal of Rule 29 is remove
outdated and unnecessary
regulation and incorporate
necessary provisions into Rule 28.
The PURPOSE of the proposed
revisions to chapter 28 is to
update current language so it is
consistent with current law and
best practices and includes
provisions related to
confidentiality, permanent
revocation, and disposition of
cases without a formal hearing.
The FISCAL IMPACT statements
may be obtained and inspected
at the Office of the Nebraska
Department of Education.
These consecutive hearings are
being conducted under the
provisions of Section 84-507/
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 drafts for these Rules are
also available on the Nebraska
Department of Education's
website at: https://www.
education.ne.gov/legal/hearing-
drafts/
ALL INTERESTED PERSONS are
limited to ATTEND and TESTIFY
via ZOOM (https://educationne
.zoom.us/j/9773503113).
Interested persons may also
submit written comments to the
Nebraska Department of
Education prior to the hearing at
NDE rulemaking@nebraska.gov.
Written comments will be made a
part of the hearing record at the
close of the hearing.
Dated at Lincoln, Nebraska this
5th day of May, 2021.
Nebraska Department
of Education
Kurt Dorn, L. BARNETT, Ph.D.
Commissioner of Education
2NE2

**NEBRASKA DEPARTMENT
OF EDUCATION**

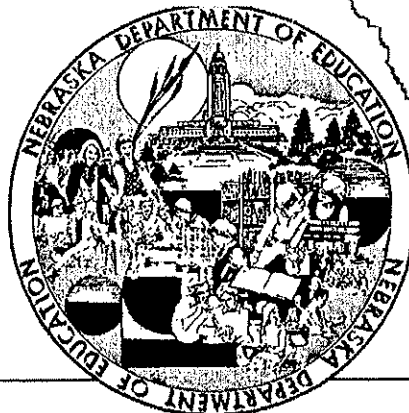
RULE 29

**REGULATIONS AND STANDARDS FOR PROFESSIONAL PRACTICES
CASES DETERMINATIONS BY THE STATE BOARD**

**TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 29**

**HEARING DRAFT (REPEAL)
APRIL 26, 2021**

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



~~TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION~~
~~CHAPTER 29 - PROFESSIONAL PRACTICES CASE DETERMINATIONS~~
~~BY THE STATE BOARD~~

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
Definitions	79-328(5)(j) 79-1283, 79-1284	002
Disposition of Cases	79-328(5)(j) 79-1283, 79-1284	005
General Information	79-328(5)(j) 79-1283, 79-1284	001
Publicity	79-328(5)(j) 79-1283, 79-1284	007
Recommendations to the Board	79-328(5)(j) 79-1283, 79-1284	003
Reinstatement	79-328(5)(j) 79-1283, 79-1284	006
Review of Recommendations	79-328(5)(j) 79-1283, 79-1284	004

~~TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION~~
~~CHAPTER 29 - PROFESSIONAL PRACTICES CASE DETERMINATIONS~~
~~BY THE STATE BOARD~~

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY</u> <u>AUTHORITY</u>	<u>CODE</u> <u>SECTION</u>
General Information	79-328(5)(j) 79-1283, 79-1284	001
Definitions	79-328(5)(j) 79-1283, 79-1284	002
Recommendations to the Board	79-328(5)(j) 79-1283, 79-1284	003
Review of Recommendations	79-328(5)(j) 79-1283, 79-1284	004
Disposition of Cases	79-328(5)(j) 79-1283, 79-1284	005
Reinstatement	79-328(5)(j) 79-1283, 79-1284	006
Publicity	79-328(5)(j) 79-1283, 79-1284	007

~~TITLE 92 — NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 29 — PROFESSIONAL PRACTICES CASE DETERMINATIONS
BY THE STATE BOARD~~

~~001 — General Information~~

~~001.01 — Statutory Authority. — Sections 79-1284 and 79-328(5)(j) R.R.S. authorize the Board to adopt regulations for carrying out its responsibilities, which include developing standards for revocation and suspension of certificates issued by the Board. Section 79-1283 R.R.S. provides for the Nebraska Professional Practices Commission to make recommendations to the Board in certain cases where there is a public school certificate holder and also provides for a hearing officer to make recommendations to the Board in certain cases where there is a nonpublic school certificate holder.~~

~~001.02 — Scope and Application of this Chapter. — This chapter governs procedures before the Board when a recommendation has been made to the Board by the Professional Practices Commission pursuant to 95 Nebraska Administrative Code (NAC), Chapter 1, or 95 NAC 2, in public school certificate cases, or by a Board-appointed hearing officer pursuant to 92 NAC 28 in nonpublic school certificate cases.~~

~~001.03 — Related Regulations. — Standards of professional practices and ethics for holders of both public and nonpublic school certificates are contained in 92 NAC 27. Procedures for hearings in public school certificate cases are contained in 92 NAC 28 and 95 NAC 1. Procedures for investigation in all cases and hearings in nonpublic school certificate cases are contained in 92 NAC 28. Regulations for the issuance of public school and nonpublic school certificates are contained in 92 NAC 21. Procedures for the reinstatement of a public school certificate are contained in 95 NAC 2.~~

~~002 — Definitions. — As used in this chapter:~~

~~002.01 — Administrator shall mean any holder of a public or nonpublic certificate for administration or supervision issued pursuant to 92 NAC 21.~~

~~002.02 — Admonishment shall mean a private sanction to a certificate holder that further unprofessional or unethical conduct may result in more serious action, including the suspension or revocation of a certificate. This sanction may be imposed by the Commissioner, Commission, or Board.~~

~~002.03 — Board shall mean the State Board of Education.~~

~~002.04 — Certificated person shall mean any holder of a certificate issued pursuant to 92 NAC 21.~~

~~002.05 — Commission shall mean the Professional Practices Commission.~~

TITLE 92
CHAPTER 29

~~002.06 Commissioner shall mean the State Commissioner of Education.~~

~~002.07 Department shall mean the Nebraska State Department of Education, which is comprised of the Board and the Commissioner.~~

~~002.08 Parties shall mean petitioner and respondent.~~

~~002.09 Petitioner shall mean the Commissioner pursuant to 95 NAC 1 or 92 NAC 28.~~

~~002.10 Reprimand shall mean a public sanction criticizing or rebuking a certificate holder for unprofessional or unethical conduct. This sanction may be imposed by the Commissioner, Commission, or Board.~~

~~002.11 Respondent shall mean any educator who shall be charged in a petition under 92 NAC 28 or 95 NAC 1 with allegedly violating standards of professional ethics or practices as contained in 92 NAC 27.~~

~~002.12 Revocation shall mean a public sanction withdrawing or canceling a certificate holder's certificate for a certain period of time. At the expiration of the revocation period, the former certificate holder may apply for reinstatement in accordance with 92 NAC 29. This sanction may be imposed by the Board.~~

~~002.13 Special services counselor shall mean any person holding a special services counseling certificate issued pursuant to 92 NAC 21.~~

~~002.14 Suspension shall mean a public sanction withdrawing or canceling a certificate holder's certificate for a certain period of time. The certificate is automatically reinstated at the expiration of the suspension period if it has not expired during the period of suspension. This sanction may be imposed by the Board.~~

~~002.15 Teacher shall mean any holder of a Nebraska public or nonpublic certificate for teaching issued pursuant to 92 NAC 21.~~

~~003 Recommendation to the Board~~

~~003.01 Filing Recommendations with the Board. Recommendations of the Commission pursuant to 95 NAC 1, or of a hearing officer appointed under 92 NAC 28, which are filed with the Board shall include recommended findings of fact, recommended conclusions of law, and a recommended decision. Such recommendations shall also include a verbatim transcript of the hearing and a copy of all pleadings and exhibits.~~

~~003.02 Format. All filings shall be typed on 8 1/2 x 11 inch white paper. Exhibits shall be reduced, if possible, to 8 1/2 x 11 inch white paper.~~

TITLE 92
CHAPTER 29

~~003.03 Copies to Parties.~~ At the time of filing of recommendations, the Commission or the hearing officer shall send a copy of the findings, conclusions, and recommended decision to the respondent certified mail, return receipt requested and to the petitioner by mail or hand delivery.

~~004 Review of Recommendations~~

~~004.01 Scheduling Review Hearing.~~ The Board shall schedule a hearing for the purpose of reviewing the recommendations received from the Commission or hearing officer, and shall notify the parties and Commission or hearing officer of the time and location by mailing or delivering a notice at least 21 days prior to such scheduled hearing.

~~004.02 Conduct of Review Hearing.~~ The review hearing shall be conducted as follows:

~~004.02A~~ The Board President or any other member designated by the Board to preside shall open and close the proceedings, enter the recommendations of the Commission or hearing officer into the record, and shall rule on all matters, although such rulings may be altered or reversed at the time of such rulings by majority vote of the Board members present for the review hearing.

~~004.02B~~ A representative of the Commission or the hearing officer whose recommendations are being considered shall be given an opportunity to summarize the recommendations and address questions from the Board.

~~004.02C~~ The petitioner and respondent shall each be given an opportunity to present oral arguments regarding the recommendations. The Board may set time limits for such arguments.

~~004.02D~~ The Board shall receive no additional evidence and shall limit summarizations and oral arguments to matters reflected in the record before it.

~~005 Disposition of Cases~~

~~005.01 Order of Board.~~ Following the review hearing, the Board shall enter an order setting forth findings of fact, conclusions of law, and decision. A copy of such an order shall be mailed to each party.

~~005.02 Suspension or Revocation Order.~~ An order of suspension or revocation terminates the employment of such person. The Board shall immediately notify the school or school district where such person is employed of such revocation or suspension. The revocation or suspension of a person's certificate by the Board automatically shall revoke or suspend any and all Department certificates held by the person.

TITLE 92
CHAPTER 29

~~005.03 Admonishments or Reprimands. The Board may issue admonishments or reprimands. Release of information about such orders shall be governed by section 007.~~

~~005.04 Filing of Order. A copy of the order directing suspension or revocation shall be filed with the Teacher Certification unit of the Department.~~

~~006 Reinstatement~~

~~006.01 Former Public School Certificate Holders. The application, filing, and hearing procedures for reinstatement of public school certificates are governed by 95 NAC 2.~~

~~006.02 Former Nonpublic School Certificate Holders. Upon expiration of the time period fixed in the revocation order of the Board, a person whose nonpublic school certificate has been revoked may petition the Board for reinstatement of his or her certificate.~~

~~006.03 Reinstatement Petition. Petitions to the Board shall be in writing and shall contain the following information:~~

~~006.03A The venue shown as "BEFORE THE STATE BOARD OF EDUCATION";~~

~~006.03B A heading captioned "IN THE MATTER OF THE REINSTATEMENT OF:";~~

~~006.03C The name and address of the applicant;~~

~~006.03D The case number and the caption "PETITION FOR REINSTATEMENT" under the case number.~~

~~006.03E A statement that "The undersigned applicant for reinstatement of a revoked Nebraska nonpublic teaching, nonpublic administrative, or nonpublic special services counseling certificate alleges:";~~

~~006.03E1 Applicant shall set forth the type, rank, level, endorsements, and expiration dates of the certificate(s) revoked, and his or her social security number.~~

~~006.03E2 Applicant shall set forth the Final Decision of the Board revoking the certificate(s).~~

~~006.03E3 Applicant shall set forth the name(s), address(es), and telephone number(s) of all witnesses, including applicant, that will testify on behalf of petitioner at the hearing.~~

~~006.03E4 Applicant shall set forth the name(s), address(es), telephone number(s), and date(s) of employment for all employers of applicant during the period of certificate revocation. If unemployed for over three months during any time period, the~~

TITLE 92
CHAPTER 29

~~applicant shall set forth his or her activities during that time period.~~

~~006.03F A statement indicating the applicant has fully complied with the Order of Revocation that he or she will not, in the future, engage in any practice which is listed in the statutes as grounds for revocation or suspension of a certificate, and that he or she is familiar with the criteria of professional practices adopted as 92 NAC 27.~~

~~006.03C The applicant's signed, dated, and notarized affirmation that the statements in the petition are true, correct, and complete to the best of his or her knowledge and belief.~~

~~006.04 Filing of Petition. The petition shall be filed with the Board and a copy of the petition shall be served upon the Commissioner.~~

~~006.04A Upon receipt of the Petition for Reinstatement, the Commissioner or his or her designee may investigate the applicant in order to determine the propriety of contesting the petition.~~

~~006.04B If the Commissioner contests the petition, he or she shall file an Answer to the petition with the Board within thirty (30) days from the date the petition was filed, setting forth the grounds for objection.~~

~~006.04C Upon the filing of an Answer by the Commissioner, the Board shall appoint a hearing officer under the terms and conditions provided in 92 NAC 28-005.~~

~~006.04D If the Commissioner does not contest the Reinstatement Petition, he or she shall forward either a written recommendation in support of petition or a written document with no recommendation to the Board.~~

~~006.05 Reinstatement Hearing. The hearing shall be conducted in accordance with the procedures established in 92 NAC 28, as modified below.~~

~~006.05A The burden shall be upon the applicant to prove to the hearing officer by a preponderance of the evidence that applicant meets all certification requirements in force at the time of the application.~~

~~006.06 Board Review. The recommendations of the Commission or of a hearing officer shall include findings of fact, conclusions of law, and a recommendation of reinstatement or a recommendation of denial of reinstatement. Such recommendations shall be in writing and shall also include a summary of the testimony of the hearing in addition to a copy of all pleadings and exhibits.~~

TITLE 92
CHAPTER 29

~~006.06A~~ The format and filing requirements for a board review shall be in accordance with the provisions of section 003.02 and section 003.03 of this chapter.

~~006.06B~~ The board review and disposition shall be conducted in accordance with the procedures established in section 004 and section 005 of this chapter.

007 Publicity

~~007.01~~ Confidential Matters. The Department may withhold the following records from the public as confidential documents, except as provided in 007.04:

~~007.01A~~ Personal information regarding a student, prospective student, or former student other than routine directory information;

~~007.01B~~ Medical records in any form concerning any person;

~~007.01C~~ Records or documents which represent the work product of an attorney or public body;

~~007.01D~~ Investigative records or documents developed or received by the Department relating to possible unprofessional or unethical conduct on the part of a school certificate holder; and

~~007.01E~~ Any other record or document, the release of which may cause needless injury to the reputation of a witness, complainant, or other person.

~~007.02~~ Loss of Confidential Status. The records or documents outlined in 007.01 remain confidential unless:

~~007.02A~~ Publicly disclosed in an open court, open administrative proceeding, or open meeting, or disclosed by a public entity pursuant to its duties;

~~007.02B~~ The Department agrees to the release and the certificate holder waives confidentiality, either in writing or by public disclosure of information, regarding the matter; or

~~007.02C~~ The certificate holder voluntarily surrenders his or her certificate(s), in which case the voluntary surrender becomes public record, and information regarding any investigation may be provided to any other state or federal agency.

~~007.03~~ Limited Disclosure. A limited disclosure of information is permitted in the following situations:

TITLE 92
CHAPTER 29

~~007.03A~~ The sanction imposed with a dismissal, settlement agreement or other disposition of a complaint or petition shall be reported to the complainant; and

~~007.03B~~ An investigator may release information necessary to identify the matter under investigation to potential witnesses in the course of an investigation.

~~007.04~~ Specific Documents. The following provisions regarding confidentiality of various documents shall apply:

~~007.04A~~ A complaint shall not be made public;

~~007.04B~~ An investigator's report shall not be made public;

~~007.04C~~ A petition shall be a public record upon filing;

~~007.04D~~ An answer shall be a public record upon filing;

~~007.04E~~ A settlement agreement shall not be made public, except as provided in 007.03A;

~~007.04F~~ A final order shall be a public record upon filing; and

~~007.04G~~ A reinstatement application shall be a public record upon filing.

~~007.05~~ Deletion of Information. Any record or document to be made public which contains information that may cause needless injury to a complainant, witness, or other person, or information that may lead to the personal identification of a student, shall be deleted from every record before being made public.

~~007.06~~ Purpose. This section is intended to protect the public interest and to prevent needless injury to the reputation of a certificate holder, witness, complainant, or other person. This section is not intended to prohibit the exchange of confidential information with other agencies authorized by the Board to receive such information.