

**NOTICE OF PUBLIC HEARING
COORDINATING COMMISSION
FOR POSTSECONDARY EDUCATION
STATE OF NEBRASKA**

The Coordinating Commission for Postsecondary Education will hold consecutive public hearings on Monday, August 29, 2022, commencing at 9:00 a.m. CDT in the conference room of its office at 140 N. 8th St., Suite 300, in Lincoln, Nebraska.

These hearings will be held on the amendments to Title 281, Nebraska Administrative Code, Chapter 6 – Rules and Regulations Concerning the Access College Early Scholarship Program Act; and Title 281, Nebraska Administrative Code, Chapter 12 – Rules of Practice.

The purposes of the proposed amendments to Chapter 6 (281 NAC 6) are to update Rule 6 to implement a method to certify student eligibility for the Access College Early scholarship for students attending a high school participating in the U.S. Department of Agriculture’s Community Eligibility Program for free school lunches and to make other technical changes.

The purpose of the proposed amendments to Chapter 12 (281 NAC 12) is to repeal rules of procedure specific to the Coordinating Commission for Postsecondary Education adopted in 1992 and replace them with model rules of practice promulgated by the Attorney General pursuant to Neb. Rev. Stat. § 84-909.01.

For information on these hearings, contact the Coordinating Commission for Postsecondary Education at 140 N. 8th St, Suite 300, Lincoln, Nebraska 68508 or by phone at (402) 471-2847. Draft copies of the chapters proposed to be amended can be obtained from the Coordinating Commission at the above address or by viewing the Commission website at ccpe.nebraska.gov, as well as from the Office of the Secretary of State, State Capitol, 1445 K St., Suite 2300, Lincoln, NE 68508, (402) 471-2554.

Members of the public are invited to attend and present oral or written testimony at the public hearing. Written comments in advance of the public hearing are also solicited and may be sent to the Commission at the above address. If received by August 26, 2022, such advance comments will be made part of the hearing record at the time of the hearing. Individuals with disabilities may request auxiliary aids or other services necessary for participating by contacting the Commission at the address or phone number listed above no later than August 26, 2022.

A copy of the fiscal impact statement for each rule can be obtained at the Commission’s address or website listed above.

Dated at Lincoln, Nebraska this 27th day of July, 2022.

Coordinating Commission for Postsecondary Education

Dr. Michael Baumgartner
Executive Director

FISCAL IMPACT STATEMENT

AGENCY: Coordinating Commission for
Postsecondary Education

Title: 281

Chapter: 6

Name: Access College Early Scholarship
Program Act

Prepared By: Gary Timm

Date prepared: July 26, 2022

Phone: (402) 471-0020

State Status: (X) Draft

() Final

Type of Fiscal Impact:

	<u>State Agency</u>	<u>Political Subdivision</u>	<u>Regulated Public</u>
No Fiscal Impact	X	X	X
Increase costs			
Decrease costs			

Description of Impact:

State Agency: No fiscal impact on any state agency.

Political Subdivisions: No fiscal impact on any political subdivisions.

Regulated Public: No fiscal impact on the regulated public.

FISCAL IMPACT STATEMENT

AGENCY: Coordinating Commission for
Postsecondary Education

Title: 281

Chapter: 12

Name: Rules of Practice

Prepared By: Gary Timm

Date prepared: July 26, 2022

Phone: (402) 471-0020

State Status: (X) Draft

() Final

Type of Fiscal Impact:

	<u>State Agency</u>	<u>Political Subdivision</u>	<u>Regulated Public</u>
No Fiscal Impact	X	X	X
Increase costs			
Decrease costs			

Description of Impact:

State Agency: No fiscal impact on any state agency.

Political Subdivisions: No fiscal impact on any political subdivisions.

Regulated Public: No fiscal impact on the regulated public.

HEARING DRAFT, AUGUST 29, 2022

TITLE 281, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 6
COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION
RULES AND REGULATIONS CONCERNING THE ACCESS COLLEGE EARLY
SCHOLARSHIP PROGRAM ACT

~~Adopted June 9, 2016~~

TITLE 281 – COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION
CHAPTER 6 – RULES AND REGULATIONS CONCERNING THE ACCESS COLLEGE EARLY
SCHOLARSHIP PROGRAM ACT

NUMERICAL TABLE OF CONTENTS

SUBJECT	STATUTORY AUTHORITY	CODE SECTION
Purpose and Objectives	Neb. Rev. Stat. § 85-2103	001
Statutory Authority	Neb. Rev. Stat. §§ 85-1411, 85-1412, and 85-2108	002
Definitions	Neb. Rev. Stat. § 85-2102	003
Student Application	Neb. Rev. Stat. §§ 85-2102, 85-2104, and 85-2105	004
Commission Responsibilities	Neb. Rev. Stat. §§ 85-2105, 85-2106	005
Qualified Postsecondary Educational Institution Responsibilities	Neb. Rev. Stat. §§ 85-2102, 85-2105, and 85-2106	006
Appeal Process	Neb. Rev. Stat. § 85-2107	007

TITLE 281 – COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION
CHAPTER 6 – RULES AND REGULATIONS CONCERNING THE ACCESS COLLEGE EARLY
SCHOLARSHIP PROGRAM ACT

ALPHABETICAL TABLE OF CONTENTS

SUBJECT	STATUTORY AUTHORITY	CODE SECTION
Appeal Process	Neb. Rev. Stat. § 85-2107	007
Commission Responsibilities	Neb. Rev. Stat. §§ 85-2105, 85-2106	005
Definitions	Neb. Rev. Stat. § 85-2102	003
Purpose and Objectives	Neb. Rev. Stat. § 85-2103	001
Qualified Postsecondary Educational Institution Responsibilities	Neb. Rev. Stat. §§ 85-2102, 85-2105, and 85-2106	006
Statutory Authority	Neb. Rev. Stat. §§ 85-1411, 85-1412, and 85-2108	002
Student Application	Neb. Rev. Stat. §§ 85-2102, 85-2104, and 85-2105	004

TITLE 281 – COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION
CHAPTER 6 – RULES AND REGULATIONS CONCERNING THE ACCESS COLLEGE EARLY
SCHOLARSHIP PROGRAM ACT

001. PURPOSE AND OBJECTIVES. The purpose of the Access College Early Scholarship Program is to provide financial assistance to low-income students for courses to be taken for credit from a qualified postsecondary educational institution while still enrolled in high school.

002. STATUTORY AUTHORITY. This rule is adopted pursuant to authority granted to the Coordinating Commission for Postsecondary Education in Neb. Rev. Stat. §§ 85-1411, 85-1412, and 85-2108.

003. DEFINITIONS.

003.01 Commission means the Coordinating Commission for Postsecondary Education.

003.02 Extreme hardship means any event, including but not limited to fire, illness, accident, or job loss, that has recently resulted in a significant financial difficulty for a student or the student's parent or legal guardian.

003.03 Postsecondary educational institution means a two-year or four-year college or university which is a member institution of an accrediting body recognized by the United States Department of Education.

003.04 Qualified postsecondary educational institution means a postsecondary educational institution located in Nebraska which has agreed, on a form developed and provided by the Commission, to comply with the requirements of the act. The form may be found on the Commission's website.

003.05 Student means a student attending a Nebraska high school with a reasonable expectation that such student will meet the residency requirements of Neb. Rev. Stat. § 85-502 upon graduation from a Nebraska high school.

003.06 Career program or plan of study means a sequence of at least three high school courses that (a) may include dual-credit or college credit courses, (b) are part of a career pathway program of study aligned with (i) the rules and regulations of the State Department of Education, (ii) a professional certification requirement, or (iii) the requirements for a postsecondary certification or diploma, and (c) have at least one local member of business or industry partnering as an official advisor to the program.

004. STUDENT APPLICATION.

004.01 A student who is applying to take one or more courses for credit from a qualified postsecondary educational institution is eligible for the Access College Early Scholarship Program if:

004.01(A) Such student or the student's parent or legal guardian is eligible to receive:

004.01(A)(i) Supplemental Security Income;

004.01(A)(ii) Supplemental Nutrition Assistance Program;

004.01(A)(iii) Free or reduced-price lunches under United States Department of Agriculture child nutrition programs subject to subsection 004.01(D);

004.01(A)(iv) Temporary Assistance for Needy Families; or

004.01(A)(v) Assistance under the ~~F~~ederal Special Supplemental Nutrition Program for Women, Infants, and Children; or

004.01(B) The student or the student's parent or legal guardian has experienced an extreme hardship; or

004.01(C) The student is enrolled in a career program or plan of study and the student's family has an annual household income at or below two hundred percent of the federal poverty level.

004.01(D) A student attending a high school that participates in the U.S. Department of Agriculture's Community Eligibility Provision or other federal program that allows all students to receive free meals shall demonstrate to the school district individual eligibility to participate in the U.S. Department of Agriculture's Free or Reduced-Price Lunch program by:

004.01(D)(i) inclusion on the direct certification list available from the Nebraska Department of Education, or

004.01(D)(ii) submission of the household application for free or reduced-price lunches or a district-specific equivalent application to the school district.

004.02 The student must complete an application developed by the Commission for each term. The Commission shall determine the date when the application process for each term opens. The application may be found on the Commission's website.

004.03 An applicant must submit the completed application to an official designated by the high school. The application must include documentation supporting eligibility under section 004.01.

004.04 The official designated by the high school shall verify the student's eligibility, except under subsection 004.01(B), for the scholarship. The official designated by the high school shall forward the application to the Commission for review within 15 days following receipt of the form from the student.

004.05 The student must submit an application prior to the deadline date established by the Commission for each term.

005. COMMISSION RESPONSIBILITIES.

005.01 The Commission shall verify the student's eligibility under the act by reviewing the submitted application to ensure it has been properly completed.

005.02 The Commission shall notify the student and the official designated by the high school of the verification of eligibility and the award amount in writing within thirty days following receipt of enrollment verification from the postsecondary institution. Notification must be given in writing, whether by U.S. mail or e-mail.

005.03 The Commission shall establish priority dates for each term. Priority shall be given to students applying for the scholarship who meet the requirements in subsection 004.01A and 004.01B.

005.04 The Commission shall credit the amount of any returned scholarship awards to the Access College Early Scholarship Program Fund to provide additional scholarships.

006. QUALIFIED POSTSECONDARY EDUCATIONAL INSTITUTION RESPONSIBILITIES.

006.01 The qualified postsecondary educational institution agrees to provide the following information required by the Commission to carry out the act:

006.01(A) The course ID;

006.01(B) The course credit hours;

006.01(C) The grade earned for the course; and

006.01(D) The tuition and mandatory fees charged for the course. Should the course be a part of a career program or plan of study, the amount the ACE program will reimburse is the actual charges for tuition and mandatory fees or \$250, whichever is less.

Otherwise, the amount the ACE program will reimburse is the actual charges for tuition and mandatory fees or an amount equal to the tuition and fees for the same number of credit hours if the student were taking the course as a full-time, resident, undergraduate student from the University of Nebraska-Lincoln, whichever is less.

006.02 The Commission may withhold payment of the scholarship award amount from a qualified postsecondary educational institution until the period passes when a student may receive a full refund for withdrawing from a course.

006.02(A) When a student withdraws from a course during the full refund period and the Commission has paid a scholarship award to the qualified postsecondary educational institution, the institution must notify the Commission of the withdrawn course and may either refund the scholarship money to the Commission or reduce the requested amount in the next distribution ~~must refund the scholarship money directly to the Commission.~~

006.02(B) When a student withdraws from a course after the full refund period and the Commission has paid a scholarship award to the qualified postsecondary educational institution, the institution may either refund the scholarship money to the Commission or

~~reduce the requested amount in the next distribution must refund the scholarship money directly to the Commission~~ pursuant to the institution's refund policy.

006.03 A qualified postsecondary educational institution must provide a refund when an overpayment occurs for a course for which a scholarship was awarded.

006.03(A) When an overpayment exists and the student and/or the student's parent/guardian made a payment on the account, the student and/or the student's parent/guardian must be refunded first, up to the amount paid by such person.

006.03(B) When an overpayment occurs due to a payment from any source other than those identified in 006.03A, the qualified postsecondary educational institution must first refund the overpayment to the Commission, up to the amount paid by the Commission pursuant to the Access College Early Scholarship Program Act.

007. APPEAL PROCESS.

007.01 A student or the student's parent or legal guardian may request in writing a review of any adverse decision by requesting such review within 20 days following notice of the adverse decision, addressed to the Executive Director of the Commission. The review shall be pursuant to the Administrative Procedure Act.

HEARING DRAFT, AUGUST 29, 2022

TITLE 281 – COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION

Chapter 12 - RULES OF PRACTICE

001. NEGOTIATED RULEMAKING. This section establishes the rules and regulations to petition for negotiated rulemaking on controversial issues under the jurisdiction of the Coordinating Commission for Postsecondary Education (“Commission”).

001.01 The Commission hereby adopts the model rules of procedures for negotiated rulemaking promulgated by the Attorney General pursuant to Neb. Rev. Stat. § 84-909.01, Title 53, *Nebraska Administrative Code*, Chapter 1, “Model Procedures for Negotiated Rulemaking,” including any amendments thereto.

002. PETITION FOR RULEMAKING. This section establishes the rules and regulations for a person or entity to petition for rulemaking to promulgate, amend, or repeal a rule or regulation regarding matters under the jurisdiction of the Commission.

002.01 The Commission hereby adopts the model rules of procedures for petitioning for rulemaking promulgated by the Attorney General pursuant to Neb. Rev. Stat. § 84-909.01, Title 53, *Nebraska Administrative Code*, Chapter 2, “Petitioning for Rulemaking,” including any amendments thereto.

003. AGENCY DECLARATORY ORDERS. This section establishes the rules and regulations for a person seeking the issuance of a declaratory order regarding matters under the jurisdiction of the Commission.

003.01 The Commission hereby adopts the model rules of procedures for declaratory orders promulgated by the Attorney General pursuant to Neb. Rev. Stat. § 84-909.01, Title 53, *Nebraska Administrative Code*, Chapter 3, “Model Regulations and Procedures Governing Agency Declaratory Orders,” including any amendments thereto.

004. HEARINGS IN CONTESTED CASES BEFORE THE AGENCY. This section establishes the rules and regulations for hearings to determine the legal rights, duties, or privileges of specific parties when required by law or constitutional right on matters under the jurisdiction of the Commission.

004.01. The Commission hereby adopts the model rules of procedures for contested case hearings promulgated by the Attorney General pursuant to Neb. Rev. Stat. § 84-909.01, Title 53, *Nebraska Administrative Code*, Chapter 4, “Rules of Practice and Procedure for Hearings in Contested Cases Before an Agency,” including any amendments thereto.

HEARING DRAFT

~~TITLE 281 - COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION
CHAPTER 12 - CONTESTED CASES, DECLARATORY RULING, PETITIONS FOR
RULES~~

NUMERICAL TABLE OF CONTENTS

SUBJECT	STATUTORY AUTHORITY	CODE SECTION
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Scope and Application of this Rule	84-901, 84-909 to 84-917	002
Definitions	85-121, 85-121.03, 85-121.05, 85-401, 85-403, 85-404, 85-408, 85-890, 85-943, 85-945, 85-947.01, 85-952, 85-956, 85-958, 85-963, 85-1111, 85-1402, 85-1413, 85-1414, 85-1415, 85-9132 and 85-9141	003
Purpose and Intent	84-901, 84-909 to 84-917	004
Notice and Public Hearings in Contested Cases	84-913 and 84-914	005
Disposition of Contested Cases	84-914, 84-915, 84-916 and 84-917	006
Declaratory Rulings	84-1412	007
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SUBJECT	STATUTORY AUTHORITY	CODE SECTION
Sample Petitions for Declaratory Ruling	84-912	Appendix A
Sample Response Form for Declaratory Ruling	84-912	Appendix B
Sample Petition for Rule Change	84-912	Appendix C

FILED
SECRETARY OF STATE
APR 14 930043911

~~TITLE 281 - COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION
CHAPTER 12 - CONTESTED CASES, DECLARATORY RULING, PETITIONS FOR
RULES~~

~~001 - STATUTORY AUTHORITY~~

~~Section 84-909 of the Revised Statutes of Nebraska (R.R.S.) requires each state agency to adopt rules governing the formal and informal procedures prescribed or authorized by Sections 84-901 and 84-909 to 84-916 R.R.S. The statute also requires that such rules shall include rules of practice before the agency together with forms and instructions. Section 84-912 (R.R.S.) requires each state agency to adopt rules governing declaratory ruling petitions. In addition, Section 84-910 (R.R.S.) directs each state agency to adopt rules governing petitions for the adoption, repeal, and amendment of rules.~~

~~002 - SCOPE AND APPLICATION OF THIS RULE~~


~~This Chapter governs contested case hearings and appeal procedures before the Coordinating Commission for Postsecondary Education. In addition, this Chapter deals specifically with declaratory rulings. This chapter is not applicable to appeal or hearing procedures which have been specified by statute or by other rules or regulations of the Coordinating Commission for Postsecondary Education. Practice and procedure before the Coordinating Commission are also governed by the applicable Revised Statutes of Nebraska and by decisions of Nebraska and federal courts relating to contested cases heard by the Commission. This Chapter also governs procedures for petitions to the Commission requesting the Commission to adopt new rules and regulations, or amend or repeal existing rules and regulations.~~

~~003 - DEFINITIONS~~

~~As used in this Chapter, unless the contract requires otherwise:~~

~~003.01 Applicant shall mean any private or public institution of higher education seeking the approval of the Commission to take any action specified in Section 003.03 of this Chapter.~~

~~003.02 Commission shall mean the Coordinating Commission for Postsecondary Education.~~

APPROVED
DOY STENBERG
ATTORNEY GENERAL
BY 
Assistant Attorney General
DATE 4-2-93

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~~003.03 Contested Case shall mean a proceeding before the Coordinating Commission for Postsecondary Education in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a hearing. Contested cases before the Commission may include, but are not limited to:~~

- ~~1. Action by the Commission to discontinue instructional programs pursuant to §85-1414 (5) (R.R.S.);~~
- ~~2. An action by the Commission to approve or disapprove proposed new instructional programs pursuant to §85-1414 (2) and (3) (R.R.S.);~~
- ~~3. An action by the Commission to approve operation in Nebraska of new two or four-year private colleges pursuant to §85-1105 (R.R.S.);~~
- ~~4. An action by the Commission to authorize out of state institutions to offer instructional programs in the State pursuant to §85-1102 (R.R.S.);~~
- ~~5. An action by the Commission to authorize public institutions to operate outside of their assigned geographic/programmatic service area pursuant to §85-1413 (5)(f) (R.R.S.);~~
- ~~6. An action by the Commission to approve or disapprove public institution participation in an education center pursuant to §85-1414(8) (R.R.S.);~~
- ~~7. An action by the Commission to approve or disapprove capital construction project proposals of public institutions pursuant to §85-1414 (10) (R.R.S.);~~
- ~~8. An action by the Commission to approve or disapprove revenue bond finance of capital construction projects of public institutions pursuant to §§85-1415, 85-401, 85-403, 85-404, and 85-408 (R.R.S.);~~
- ~~9. An action by the Commission to approve or disapprove the establishment of new colleges, schools, major divisions or institutions within a public institution pursuant to §85-1402 (5) and 85-1414 (R.R.S.);~~
- ~~10. An action to change the role and mission assignment of any public institution as authorized in §§85-121, 85-121.03 (2), 85-121.05, 85-943, 85-945, 85-947.01, 85-952, 85-956, 85-958, and 85-963 (R.R.S.);~~

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- ~~11. An action by the Commission to provisionally accredit private colleges pursuant to §§85-1111 (R.R.S.); and~~
- ~~12. An action by the Commission to determine allocation of funds and institutional participation in student financial aid programs pursuant to §§85-890 et seq., §§85-9,132 et. seq. or §§85-9,141 et. seq. (R.R.S.).~~

~~003.04 Executive Director shall mean the Executive Director of the Coordinating Commission for Postsecondary Education.~~

~~003.05 Petitioner shall mean any person, public institution, or other entity or organization that (1) files a petition for a declaratory ruling of the Commission; or (2) files a petition requesting that the Commission initiate proceedings to promulgate, amend or repeal a rule or regulation.~~

~~003.06 Public Institution shall mean each campus of a public postsecondary educational institution, which is or may be established by the Legislature, which is under the direction of a governing board, and which is administered as a separate unit by the board; including the University of Nebraska-Lincoln, University of Nebraska at Omaha, University of Nebraska at Kearney, University of Nebraska Medical Center, the Nebraska College of Technical Agriculture, Chadron State College, Peru State College, Wayne State College, Central Community College, Metropolitan Community College, Mid-Plains Community College, Northeast Community College, Southeast Community College and Western Nebraska Community College.~~

~~003.07 Rule or regulation shall mean any rule, regulation or standard issued by the Commission, including the amendment or repeal thereof whether with or without prior hearing and designed to implement, interpret or make specific the laws enforced or administered by the Commission or governing its organization or procedure, but not including regulations concerning the internal management of the Commission not affecting private rights, private interests, or procedures available to the public.~~

~~004 PURPOSE AND INTENT~~

~~The Commission finds that the approval processes specified in Section 003.03 are quasi-legislative, quasi-executive and quasi-judicial in nature. The Commission was created by the voters and Legislature of Nebraska to~~

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~~coordinate public postsecondary educational institutions in the state. The Commission sees the coordinative function as essentially a guiding, facilitative process which is not primarily adversarial in tone. With the exception of the Commission's responsibility with respect to private postsecondary educational institutions of higher education, the Commission's approval authority stands in relation to the legal authority of other state institutions and political subdivisions.~~

~~Therefore, it is the intent of the Commission in this chapter to comply with the notice and hearing procedures and other procedures requirements of the Administrative Procedures Act and provide appropriate due process of law and yet remain consistent with the coordinating function of the Commission. To that end, this rule provides a minimum of the formal practice procedures which are more suitable to a judicial role and an adversarial context and encourages informal dispute resolution and public hearing requirements. The Commission will honor the request of parties to hearings of the Commission to use of rules of evidence applicable to district court as prescribed in §84-914 (R.R.S.)~~

~~In addition to the public hearing requirement pursuant to §85-913 (R.R.S.), the Commission may schedule purely informational hearings pursuant to any of its responsibilities and duties assigned by law.~~

~~005 NOTICE AND PUBLIC HEARINGS IN CONTESTED CASES~~

~~005.01 Except for those hearings specified in §005.02A, the Commission will give at least two weeks public notice in one or more newspapers of general circulation prior to public hearings in contested cases. The notice shall state the time, place, issues involved in the public hearing and the Commission's authority to take action on the issue. In the alternative, the Commission may give notice via circulation in its regular meeting agenda for public hearings to be held in conjunction with regular meetings of the Commission. The Commission shall also mail or personally deliver a copy of the notice of hearing to each applicant and party specifically impacted pursuant to any of the statutes listed in Section 003.03 of the chapter.~~

~~005.02 The Commission will hold public hearings in the following situations:~~

~~005.02A Prior to any final Commission action on issues arising under §§85-1102 or 85-1105 (R.R.S.) and prior to Commission action to~~

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~~discontinue instructional programs at public institutions pursuant to §85-1415(5) (R.R.S.)~~

~~005.02B Prior to final Commission action on issues arising under §§85-121, 85-121.03(2), 85-121.05, 85-401, 85-403, 85-404, 85-408, 85-890, 85-901, 85-945, 85-947.01, 85-952, 85-956, 85-958, 85-963, 85-1111, 85-1402(5), 85-1413(5)(f), 85-1414(2)(3)(8)(10), 85-1415, 85-9,132, 85-9,141.~~

~~005.03 Conduct of Hearings~~

~~005.03A The Chair of the Commission, or an appropriate committee, or a hearing officer designated by the Commission, shall preside at the hearing, open and close the proceeding, enter the notice of hearing into the record, and receive testimony. Formal rules of evidence shall not apply to public hearings of the Commission unless an applicant, who may appeal the Commission's decision to the courts of the state, has submitted a written request that the Commission be bound by the rules of evidence applicable to district court and has agreed to be liable for all costs incurred thereby. When the rules of evidence applicable to the district court apply, the presiding officer shall rule on motions, objections and matters of evidence.~~

~~005.03B Reasonable opportunity shall be afforded all parties to present evidence and argument. The presiding officer may set reasonable time limits on presentations and arguments.~~

~~005.03C Failure of the applicant to appear at the time and place set for hearing, unless otherwise allowed by the Commission for good cause shown, shall be deemed sufficient grounds for the Commission to dismiss the petition.~~

~~005.03D Informal procedures governing the conduct of hearings shall be subject to the discretion and the direction of the presiding officer at the time of such hearings, unless otherwise specified in this Chapter.~~

~~005.04 Commission Review of Hearing Officer Cases. In cases where a hearing officer has conducted the hearing and made findings of fact, conclusions of law, and a recommendation to the Commission, the Commission~~

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~~shall make such materials a part of its record, together with a transcript of the proceedings and may, at its discretion, allow the parties the opportunity to make further summary arguments before the Commission.~~

~~006 DISPOSITION OF CONTESTED CASES~~

~~006.01 Informal Disposition. Pursuant to Section 84-913 (R.R.S.), informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.~~

~~006.02 Official Record. The Commission shall prepare an official record in each case which shall include testimony and exhibits, but recorded testimony need not be transcribed except as indicated in this section. When a judicial appeal is taken, the Commission shall prepare and file a transcript with the court which shall consist of copies of the application, exhibits, and orders in the case. An electronic recording of the hearing shall be made, but it will not be transcribed unless requested by a party, in which case it will be prepared upon the tender of the cost of preparation. Alternatively, the Commission on its own motion may authorize the use of a court reporting service to record the hearing, or may do so upon the motion of any party, in which case the requesting party or parties shall pay the costs of such service. The cost of obtaining verbatim transcripts from a court reporting service shall be paid directly to such service by the parties requesting a copy of the transcripts from the Commission.~~

~~006.03 Findings of Fact and Conclusion of Law. Pursuant to §84-915 (R.R.S.), every decision or order adverse to an applicant or other specifically impacted parties to a contested case proceeding shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Applicants or other specifically impacted parties may submit proposed findings of fact and conclusions of law for consideration by the Commission at the time of hearing, or subsequent to the hearing if directed by the Commission.~~

~~006.04 Preparation of Orders. Upon direction of the Commission, the Executive Director shall prepare and issue on behalf of the Commission a final order in any contested case incorporating findings of fact, conclusions of law, and the decision on the case arrived at by the Commission. The Executive~~

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~~Director shall have the authority to sign such orders on behalf of the Commission.~~

~~006.05 Notification. The Executive Director shall notify applicants and other specifically impacted parties of the final decision or order of the Commission by certified mail, return receipt requested.~~

~~006.06 Appeals. §84-917 and 85-1418(4) (R.R.S.) refer to procedures for appeal to the district courts of Nebraska for contested cases, and require that such action be taken within 30 days after the service of the final decision.~~

~~007- DECLARATORY RULINGS~~

~~007.01 Statutory Authority and Applicability of Other Regulations. §84-912 (R.R.S.) provides that on petition of any interested person, the Commission may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the Commission. The statute also provides that the Commission shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition. Except as hereinafter set forth, the other sections of this Chapter relating to contested cases are not applicable to declaratory ruling procedures.~~

~~007.02 Effect. §84-912 (R.R.S.) provides that a declaratory ruling, if issued after argument and stated to be binding, is binding between the Commission and the petitioner on the state of facts alleged unless it is altered or set aside by a court.~~

~~007.03 Form of Declaratory Ruling Petitions. (A sample petition is included as Appendix A.) A petition for a declaratory ruling shall be typed double spaced on 8 1/2 x 11 inch white paper and shall:~~

~~007.03A Show the venue: "BEFORE THE COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION, STATE OF NEBRASKA";~~

~~007.03B Contain a heading specifying the subject matter, and the name and address of petitioner;~~

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~~007.03C Contain a concise statement of the grounds upon which the Board's authority or jurisdiction depends;~~

~~007.03D Contain a specific statement regarding the legal capacity of the petitioner to instigate the proceedings;~~

~~007.03E Concisely set forth all material facts upon which the declaratory ruling is asked plus a demand for the relief to which the petitioner alleges he or she is entitled;~~

~~007.03F State the names and addresses of all known persons, political subdivisions, corporations, organizations, or other entities who have or claim any interest that would be affected by a declaration by the Commission;~~

~~007.03G Be subscribed and notarized by the petitioner, or by a duly authorized officer of the petitioner, if it be a corporation.~~

~~007.04 Submission and Service of Declaratory Ruling Petitions~~

~~007.04A The original and twelve copies on three hole punched paper of each petition for a declaratory ruling shall be filed with the Executive Director of the Coordinating Commission for Postsecondary Education at P. O. Box 95005, Lincoln, NE 68509-5005 or 140 North Eighth, Suite 300, Lincoln, Nebraska 68508, by mail or in person during normal business hours of the Commission.~~

~~007.04B At the same time the petition is filed, the petitioner shall serve the Attorney General by certified mail, return receipt requested, with a copy of any petition in which a declaratory ruling is requested with respect to the constitutionality or validity of any rule or statute enforceable by the Commission, and shall file proof of such service with the Executive Director's office within seven days of the return of the receipt. The petitioner shall also serve a copy of the petition by certified mail, return receipt requested, on all interested parties, including all persons, political subdivisions, corporations, organizations, or other entities who are known to have or claim any interest, legal right, duty, or privilege which would be directly affected by a declaration of the Commission; attach a certificate of service; and file proof of such service~~

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~~with the Executive Director's office within seven days of the return of the receipt. Personal or residence service on interested parties may be used.~~

~~007.04C At the same time the petition is filed, a notice of the option to file a response should be attached and served on all interested parties, indicating that they may file a response within 21 days and that a copy of this Chapter is enclosed with the petition sent to each interested party. Extra copies of this Chapter are available from the Commission. (A sample notice and certificate of service are included in the Appendix.) The petition shall include a list of all interested parties to whom the notice of option to file a response was served.~~

~~007.04D Return of Contested Case Petitions. If the petition appears to the Executive Director not to comply with the procedural requirements of 007.04A and 007.04B, he or she shall return it to the petitioner, stating the reasons, and shall notify all interested parties that the petition has been returned. In such a case, the petitioner may file an amended petition. If the petitioner does not file an amended petition or appeal the rejection to the Commission within 30 days, the petition shall be considered to be dismissed.~~

~~007.05 Response by Interested Parties. Any interested party may file a response to the petition. A sample response is included in Appendix B to this Chapter. It shall consist of the same type of heading as required for petitions, except that it shall contain the word "Response." A response shall advise all parties of the nature of the objection to the petition, if any, and shall specifically admit or deny any material allegation contained in the petition. It shall be subscribed and verified by the interested party, or by a duly authorized officer of a corporate interested party. The Response shall be filed with the Executive Director's office within twenty-one calendar days from when the date service was completed, unless waived by the Commission for good cause shown. A copy of the response shall be served on the petitioner by regular first-class mail, postage prepaid, and a certificate of service affixed to the Response, a sample of which is contained in Appendix B to this Chapter.~~

~~007.06 Hearings on Declaratory Ruling Petitions. The Commission shall set the time and place for any hearing on a petition for a declaratory ruling which shall be any time at least seven days after the deadline for the filing of all~~

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~~responses, unless agreement to set an earlier time for hearing is stipulated by all parties, and the Commission elects to set at such an earlier time. The Executive Director shall serve notice of such hearing by return receipt requested, to the petitioner and to the Attorney General, if applicable, and to interested parties listed in the petition or who have filed responses. The petitioner shall reimburse the Commission for the cost of such service prior to the hearing.~~

~~007.07 Disposition of Declaratory Ruling Petitions~~

~~007.07A The provisions of sections 006.01 and 006.02 of this Chapter relating to informal disposition and preparation of official records in contested cases shall also be applicable to declaratory ruling proceedings.~~

~~007.07B Disposition of Declaratory Ruling Petitions. The Commission, after considering the contents of the petition, and any testimony or evidence presented if a hearing is held, will dispose of the petition in one of the following manners, with notice of such action given by the Executive Director by regular U.S. mail to the petitioner and any interested party:~~

~~007.07B1 Dismiss the petition and decline to enter a declaratory ruling, which is within the statutory discretion of the Commission in such matters; or~~

~~007.07B2 Issue a declaratory ruling either affirmative or negative in form and effect, which, if issued after argument and stated to be binding, by statute is binding between the Commission and petitioner on the state of facts alleged unless it is altered or set aside by a court.~~

~~008 RULES PETITIONS~~

~~008.01 Statutory Authority. Section 84-910 (R.R.S.) provides that any interested person may petition the Commission requesting the promulgation, amendment, or repeal of any rule, and that the Commission shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition.~~

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~~008.02 Form of Rules Petition. A sample petition is contained in Appendix C of this chapter. A petition for the promulgation, amendment, or repeal of any rule subject to the authority or jurisdiction of the Department shall be typed double spaced on 8 1/2 x 11 inch white paper and shall:~~

~~008.02A Show the venue: "BEFORE THE COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION, STATE OF NEBRASKA";~~

~~008.02B Be entitled "In the matter of . . .," specifying the subject matter and the name and address of petitioner;~~

~~008.02C Contain a specific statement regarding the legal capacity of the petitioner to instigate the proceedings;~~

~~008.02D State the precise wording of the proposed rule or amendment, or the precise wording of the present rule to be repealed;~~

~~008.02E State in ordinary and concise language, without repetition, the reasons for such promulgation, amendment, or repeal; and~~

~~008.02F Be subscribed and verified by the petitioner, or by a duly authorized officer of the petitioner, if it be a corporation.~~

~~008.03 Submission of Rules Petitions. The original and twelve copies on three-hole punched paper of each petition for the promulgation, amendment, or repeal of rules, shall be filed with the Executive Director of the Coordinating Commission for Postsecondary Education at P. O. Box 95005, Lincoln, NE 68509-5005 or 140 North Eighth, Suite 300, Lincoln, Nebraska 68508 by mail or in person during normal business hours of the Commission.~~

~~008.04 Format for Filings. All pleadings, exhibits, and other documents filed with the Executive Director or offered in evidence at the hearing shall be accompanied by twelve copies and be on 8 1/2 x 11 inch white three-hole punched paper, unless waived by the Commission or hearing officer.~~

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~~008.05 Rules Petition Hearings.~~

~~008.05A The time and place for hearings on rule petitions shall be subject to the discretion of the Commission. The Commission may elect to consolidate hearings on related petitions and may elect to assign the Executive Director or a member of the Commission staff to conduct such hearings as a hearing officer in place of the Commission and to provide a summary of the testimony to the Commission.~~

~~008.05B At the time and place set for hearing, an appropriate committee thereof or appointed hearing officer shall afford the petitioner a reasonable time to discuss the petition and may request additional testimony from the Executive Director and/or Commission staff regarding the effect of the proposed changes. At the discretion of the Committee or hearing officer, other persons requesting time to testify may also be granted such opportunity. Failure of any petitioner to appear at the time and place set for hearing, unless otherwise allowed by the Committee or hearing officer for good cause shown, will be deemed sufficient grounds for the Committee or hearing officer to recommend dismissal of the petition. Informal procedures governing the conduct of such hearings shall be subject to the discretion of the Committee or hearing officer at the time of such hearings, unless otherwise specified in this Chapter.~~

~~008.05C The Commission, after considering the contents of the petition and any testimony, evidence, or summary of the hearing (if conducted by a hearing officer), will dispose of the petition in one of the following manners, with notice of such action given to the petitioner by regular U.S. mail:~~

~~008.05C1 Dismiss the petition if the Commission finds that it does not wish to schedule a formal public hearing on rule changes relating to the petition;~~

~~008.05C2 Schedule a formal public hearing as provided in Section 84-907 (R.R.S.) regarding the proposed rule changes, or related changes, in which case the petition, exhibits, and any hearing officer summary previously obtained will be entered into the record of such public hearing; or~~

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~~008.05C3 Refer the material contained in the petition, exhibits, and any hearing officer summary to the Executive Director for further study regarding the need for changes in the regulations of the Commission in areas related to the petition.~~

~~008.06 Subsequent Petitions. When any petition for rule changes covers substantially the same subject matter as a prior petition disposed of by the Commission within the previous 365 calendar days, the Executive Director is hereby authorized to issue an order on behalf of the Commission dismissing the petition, unless the Executive Director determines that a change in circumstances has been shown by the petitioner justifying a rehearing of the subject matter.~~

~~Rev. 1.1.1993~~

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APPENDIX A: SAMPLE PETITION FOR DECLARATORY RULING

~~BEFORE THE COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION
STATE OF NEBRASKA~~

~~IN THE MATTER OF A REQUESTED
DECLARATORY RULING INVOLVING~~

~~CASE NO. (LEAVE BLANK)~~

~~(Name)
(Address)~~

~~PETITION~~

~~Petitioner~~

~~Petitioner, in accordance with Section 84-912 of the Revised Statutes of Nebraska and
Title 281, Nebraska Administrative Code, Chapter 12, states and alleges as follows:~~

- ~~1. (Provide a concise statement of the grounds upon which the Commission authority or jurisdiction depends.)~~
- ~~2. (State the legal capacity of the petition to instigate the proceedings.)~~
- ~~3. (Concisely set forth all material facts upon which the declaratory ruling is asked plus the proposed declaratory ruling to which the petitioner alleges entitlement.)~~
- ~~4. (State the names and addresses of all known persons, political subdivisions, corporations, organizations, or other entities who have or claim any interest that would be affected by a declaration by the Commission.)~~

~~WHEREFORE, Petitioner prays that the Coordinating Commission for Postsecondary
Education (state action sought, including declaratory ruling language).~~

~~Dated this _____ day of _____, 19__.~~

~~_____
(Signature)~~

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~~APPENDIX A: SAMPLE PETITION FOR DECLARATORY RULING, Page 2~~

~~VERIFICATION~~

~~State of Nebraska }
 } ss
County of _____ }~~

~~I, _____, being first duly sworn under oath, state that I have read the contents of the petition and that to the best of my knowledge, information, and belief such contents are true and there is reasonable cause for filing said petition.~~

~~Subscribed and sworn before me this _____ day of _____, 19____,
by _____ (Name of Petitioner).~~

~~(Seal)~~

Notary Public

~~NOTICE OF OPTION TO FILE RESPONSE~~

~~You are hereby notified that 281 NAC 12 provides that you may file a response to this petition within 21 days. A copy of 281 NAC 12 (Rule 12) is attached.~~

~~CERTIFICATE OF SERVICE~~

~~I hereby certify that a copy of the above Petition, including a copy of any exhibits cited therein, Notice of Option to File Response, and a copy of 281 NAC 12 (Rule 12) were mailed to the following persons by certified mail, return receipt requested, this _____ day of _____, 19____, and a copy of the receipt(s) will be filed with the Executive Director of the Coordinating Commission for Postsecondary Education within seven days of their return.~~

(Signature of Petitioner)

~~(List names and addresses)~~

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APPENDIX B: SAMPLE RESPONSE FORM FOR DECLARATORY RULINGS, Page 2

VERIFICATION

State of Nebraska }
 } ss
County of _____ }

I, _____, being first duly sworn under oath, state that I have read :
the contents of the petition and that to the best of my knowledge, information, and belief such
contents are true and there is reasonable cause for filing said petition.

Subscribed and sworn before me this _____ day of _____, 19__
by _____ (Name of Interested Party)

(Seal)

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Response, including a copy of any exhibits
cited therein, were mailed to the following persons by regular first class mail, postage prepaid,
this _____ day of _____, 19__.

(Signature of Interested Party)

(List names and addresses)

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~~APPENDIX C: SAMPLE PETITION FOR RULE CHANGE~~

~~BEFORE THE COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION
STATE OF NEBRASKA~~

~~IN THE MATTER OF THE PROMULGATION }
(OR REPEAL OR AMENDMENT) OF }
(STATE SUBJECT MATTER OF PROPOSED }
RULE OR CURRENT RULE NUMBER) }
} }
(Name) } }
(Address) } }
} }
Petitioner } }~~

~~CASE NO. (LEAVE BLANK)

PETITION~~

~~Petitioner, in accordance with Section 84-910 of the Revised Statutes of Nebraska and
Title 281, Nebraska Administrative Code, Chapter 12, states and alleges as follows:~~

- ~~1. (State the legal capacity of petitioner to instigate proceedings.)~~
- ~~2. (State the precise wording of the proposed rule or amendment or the number of present rule to be repealed.)~~
- ~~3. (State in ordinary and concise language, without repetition, the reasons for such promulgation, amendment, or repeal.)~~
- ~~4. (Attach any exhibits that are applicable or documents referred to above.)~~

~~WHEREFORE, Petitioner requests that the Coordinating Commission for
Postsecondary Education (state action sought)~~

~~Dated this ___ day of ___, 19__.~~

~~_____
(Signature)~~

FILED
~~SECRETARY OF STATE~~
APR 14 93004391

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~~APPENDIX C: SAMPLE PETITION FOR RULE CHANGE, Page 2~~

~~VERIFICATION~~

State of Nebraska }
 } ss
County of _____ }

I, _____ (~~Name of Petitioner~~), being first duly sworn under oath, state that I have read the contents of the petition and that to the best of my knowledge, information, and belief such contents are true and there is reasonable cause for filing said petition.

(Signature of Petitioner)

Subscribed and sworn before me this _____ day of _____, 19____,
by _____ (~~Name of Petitioner~~).

(Seal)

Notary Public

APPROVED
DOX STENBERG
~~ATTORNEY GENERAL~~
By _____
Assistant Attorney General
DATE 4-27-93 19