

# Enrollment and Attendance: What are the Requirements and the Law?

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2013 Administrators' Days  
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## §79-201 Compulsory Attendance

Requirement set forth in Section 79-201(2) – a single sentence containing almost 125 words

Simplified version:

- Each parent of any child of mandatory attendance age shall cause such child to enroll in and attend regularly a school each day that such school is open and in session, except when excused by school authorities or when illness or severe weather conditions make attendance impossible or impracticable.

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## §79-215 Enrollment in Public Schools

(1) Except as otherwise provided in this section, a student is a resident of the school district where he or she resides and shall be admitted to such school district upon request without charge.

NDE Rule 19, § 003:

A public school district shall, upon request, enroll and provide free instruction to any person between the ages of 5 and 21 who has not completed high school or received a diploma of high school equivalency, and who the district is required to enroll under §79-215.

Question: Can you decline to enroll an individual who requests enrollment if the individual is 19 years of age and has not completed high school?

Answer: NO, you are required to enroll the individual

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**Rule 19 Enrollment requirements (continued)**

Prohibited Pre-requisites to Enrollment

- Submission of social security card or number
- Presentation of certified copy of birth certificate or other proof of identity or age
- Receipt of transcripts, records or grades from previous school
- Payment of fee except those specified in §79-2,127

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**State vs. Thacker, 286 Neb. 16 (5/31/13)**

- Thackers move to Nebraska in March 2011
- After "couple weeks" Principal contacts county attorney
- Sheriff's officer contacts Thackers in April 2011
- Thackers tell officer they were homeschooling children and finished curriculum for 10-11 school year
- Thackers contact Principal who informs them of need to file paperwork with NDE "over the summer" if they intend to homeschool
- Thackers do nothing "over the summer"

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**State vs. Thacker (cont.)**

- Mid-September 2011 Principal contacts county attorney
- September 27, 2011, Thackers' notarized signatures on exempt school forms
- October 6, 2011, Commissioner acknowledges receipt of exempt school paperwork from Thackers
- Mother testifies family thought they were moving to Kentucky in September 2011, but Husband got promotion from Nebraska employer
- Mother testifies exempt school forms signed & mailed to NDE, but returned as not properly addressed. Forms resent to NDE

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### State vs. Thacker (cont.)

- County Court finds Thackers could complete hours of instruction required for 11-12 school year, but guilty of violating §79-201(2) from 8/17 thru 10/4 since children not enrolled in public school
- Thackers appeal to District Court which reverses decision of county court since statutes and rules for 1<sup>st</sup> year of exempt school operation only require completion of minimum hours of instruction
- State appeals to Supreme Court
  - Argued that child had to be enrolled in public school until parent receives NDE recognition of exempt school

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### State vs. Thacker (cont.)

- Supreme Court agrees that school districts have duty to enforce school attendance requirements
- Section 79-201(2) does not make the start of the public school calendar the default start date for other schools
- §79-318(5)(c) authorizes NDE to adopt rules for exempt schools
- Rules define school year as July 1 thru the following June 30
- "But nothing in Nebraska's statutes or regulations sets a deadline for filing requirements in the first year of an exempt school's operation."

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### State vs. Thacker (cont.)

- "But neither Nebraska's statutes nor the Department's regulations set out a deadline for an exempt school to begin operations."
- "So although the regulations set a filing deadline for an exempt school's second year of operation, they conspicuously omit a filing deadline for the first year."
- "But we will not interpret the Department's regulations to impose a requirement that carries a criminal consequences when that requirement is not clearly imposed under the governing statute."

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**Proposed Solutions to Thacker Ruling**  
**Amend Rules 12 and 13**  
 Clarify responsibilities about starting exempt schools

- 003.02A ~~Thirty days prior to the date on which the exempt school is to begin operation, and annually thereafter by July 15~~ *By July 1 of each school year the school will be in operation*, the parent representative will file *with the Commissioner* a statement containing the names and ages of all children in the school and the names of their parents or guardians, and containing assurances regarding submission of information on enrollment and attendance, signed in the presence of and acknowledged by a notary public upon oath or affirmation.

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**Proposed Solutions – Amend Rules 12 and 13**

- 003.02A1 - *When parents or guardians did not reside in a Nebraska school district as of July 1 of any school year in which they wish their child(ren) to attend an exempt school, they shall cause the parent representative to file the forms described in Section 003.02A immediately upon becoming a resident.*

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**Proposed Solutions – Amend Rules 12 and 13**

- 003.02A2 – *Parents or guardians of any child enrolled in and attending an approved or accredited Nebraska school who elect to transfer such child to a school established or to be established under this Chapter shall cause the parent representative to file the forms described in Section 003.02A as soon as practicable before transferring. In no case shall such child be exempt from the mandatory attendance requirements of 79-201 R.R.S. on the basis that the parents intend to enroll the child in an exempt school or have filed the forms described in Section 003.02A. In order to comply with 79-201 R.R.S. in such cases, any child shall not cease attending the approved or accredited school until such time as the Letter of Acknowledgement described in Section 005 is received.*

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**Rule 2 – Uniform System of Accounting for Public School Districts**

Updated during summer!  
 Student membership and attendance reporting in 006 changed:

- Student no longer in membership when student:
  - transfers to another school
  - is withdrawn
  - or graduates

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**Rule 2**

**Membership and Attendance Reporting**

- Students shall be counted in membership on the first day of their official enrollment
- Students shall be counted in attendance when they are present on days when school is in session
  - Present only when student is actually at the school or is present at a school sponsored activity supervised by school staff
  - May include independent study, work-study programs, field trips, athletic contests, music festivals, student conventions, instruction for homebound students, or similar activities officially authorized under local school board policy
- Does not include “making up” school-work at home or activities supervised or sponsored by private individuals or groups

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### Reporting Attendance to NDE

- LB 410 eliminated Monthly Excessive Absenteeism Report
- §79-527(2) Superintendent of public school district shall report on a quarterly basis to the Commissioner individual student information on attendance

[Quarterly Reporting of Individual Student Attendance](#)

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### §79-202 Withdrawal from Mandatory Attendance

- LB 996 in 2012 struck 2004 language that permitted any parent to discontinue enrollment of 16 or 17 year old child
- Replaced with §79-202 setting forth procedures & form to used for withdrawing 16 or 17 year old child from mandatory attendance under certain limited circumstance
- Child experiencing:
  - financial hardships **requiring** the child to be employed to support child's family or dependents of child; or
  - illness making attendance impossible or impracticable.

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### §79-202 Withdrawal from Attendance

Outline of Procedure:

1. Written request to school district (simple letter);
2. Exit Interview required;
3. Prescribed form completed **only if** child meets standards set by Legislature; and
4. Form filed with NDE.

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**§79-202**  
**Withdrawal from Attendance**

1. Requires written request of "any person" who has legal or actual charge or control of child (Requester)
  - If child is enrolled in private, denominational, or parochial school, Requester sends written request to school district *in which child resides*.
  - Example: Child lives in Hickman, but attends Lincoln Pius X High School – Written request made to superintendent of Norris School District #160

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**§79-202**  
**Withdrawal from Attendance**

2. Supt. or designee sets time & place for exit interview (EI).
  - Required attendees at EI: Requester, child (unless illness is reason), supt. or designee, principal or designee if child enrolled in school district.
  - Others may be requested & agree to attend EI (e.g. principal of non-public school if child enrolled in non-public);
3. EI: Requester must present evidence that (a) person has legal or actual charge or control of child (PLACCOC), and (b) child is (i) required to work, or (ii) illness makes attendance impossible or impracticable.

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**§79-202**  
**Withdrawal from Attendance**

4. Superintendent or designee shall then identify all alternative educational opportunities, include vocational courses of study, available to child in the school district, and how withdrawal is likely to reduce potential future earnings for child and increase likelihood of child being unemployed in future.
5. Other relevant information may be presented and discussed.

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**§79-202**  
**Withdrawal from Attendance**

6. Conclusion of EI:

- PLACCOC may rescind written request, or may sign form;
- Child required to sign form only if child required to work to support child's family or dependents of child; and
- Superintendent or designee determines preponderance of evidence presented that person making written request is PLACCOC and child is experiencing (i) financial hardship requiring child to work, or (ii) illness makes attendance impossible or impracticable by signing form.

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**§79-202**  
**Withdrawal from Attendance**

Prescribed form located in NDE Portal under Forms:  
[Withdrawal from Mandatory Attendance Form](#)

- Please read the directions
- Complete Online
- Commissioner directed copy of completed form be sent to me

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**§79-202**  
**Withdrawal from Attendance (cont.)**

How many will be effected?  
STATEWIDE - Public School Dropouts

Year	07-08	08-09	09-10	10-11
Total	692	595	581	468

NDE received 63 completed Withdrawal from Attendance Forms for 2012-13 school year

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**§79-209**  
**School Policy & Report to County Attorney**

- Written policy on excessive absenteeism developed in collaboration with county attorney
  - Shall include provision on how district & county attorney will handle excessive absences due to documented illness that makes attendance impossible
  - Number of absences shall not exceed 5 days per quarter

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**§79-209**  
**School Policy & Report to County Attorney**

Required to report to the county attorney when child is absent more than 20 days per year.

- If **all** absences of a child are excused or due to documented illness that makes attendance impossible or impracticable, then school may report matter to county attorney.
- Any letter sent must include two statements one of which must be designated:
  - School requests more time to work with student;
  - School has used all reasonable efforts & recommends county attorney intervention.

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