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NEBRASKA
DEPARTMENT OF EDUCATION

TO: State Board of Education

FROM: Sara Hulac, Legal Counsel II, Commissioner's Appointed Staff Person to Conduct a Rule Hearing on Title 92, Nebraska Administrative Code, Chapter 4, *Regulations for Textbook Loans to Children Enrolled in Private Schools in Nebraska*

DATE: July 22, 2016

RE: Summary of rule-making hearing on Proposed Revisions to 92 NAC 4

On June 16, 2016, the Commissioner of Education approved a hearing draft and set a rule-making public hearing date and location as well as designate a staff person to conduct the hearing on the adoption of proposed revisions to Title 92, Nebraska Administrative Code, Chapter 4. By a memorandum dated June 17, 2016, the Commissioner appointed an attorney from the General Counsel's Office to conduct the hearing on this Rule on July 22, 2016, commencing at 10:00 a.m. (Central Time). After the proper legal notice was published, the hearing was held at the Nebraska State Office Building, 301 Centennial Mall South, 6th floor, NDE State Board Meeting Room, Lincoln, NE.

Pursuant to State Board of Education Policy B9, what follows is a written summary of the hearing testimony.

An audio recording of the hearing is available if any members of the Board wish to hear it.

SUMMARY OF TESTIMONY ON THE PROPOSED REVISIONS TO 92 NAC 4, Regulations for Textbook Loans to Children Enrolled in Private Schools in Nebraska

Sara Hulac, staff attorney and the hearing official, called the hearing to order, read into the record the name of the newspaper in which a legal notice of the hearing was published and the date the notice appeared, and outlined the procedures for the hearing. Ms. Hulac received written testimony from Kevin and Laurie Clark, Mrs. Sarah J. Ehlers, Mrs. Carrie Stratman, Susan O'Gara Benes, and Rina Huntwork all in support of the proposed revisions to Rule 4 and all of which will be made a part of the record of the hearing (see attached).

Ms. Hulac introduced **Bryce Wilson, Administrator, Nebraska Department of Education, School Finance and Organization Services.**

Mr. Wilson introduced and explained the proposed revisions to Title 92, Nebraska Administrative Code, Chapter 4. Mr. Wilson testified that the rule hearing today is the result of work done by NDE in conjunction with the Nebraska Catholic Conference. The proposed rule changes include broadening the definition of textbook to include electronic subscriptions and other material that the school district has a subscription or license agreement for; and, the definition of loan is also being added in the proposed rule.

Greg Logsdon, Superintendent of Schools, Catholic Diocese of Grand Island, testified in support of the proposed revisions. Mr. Logsdon testified that the proposed revisions update and improve Rule 4, making it more contemporary, more relevant and more functional, resulting in educational benefits for students. Mr. Logsdon expressed his appreciation to the Commissioner and members of the State Board for their willingness to maintain communication on the issues and working on solutions for Rule 4. (Please see attached written testimony.)

Dr. Jadi Miller, Director, Curriculum and Professional Development, Lincoln Public Schools (LPS). Dr. Miller testified that in addition to overseeing the curriculum adoptions and implementations in K-12 programs within LPS, another of her responsibilities is to collaborate with the nonpublic schools within their district boundaries on both the Title IIA professional development program and the Rule 4 Textbook Loan program.

Dr. Miller testified that LPS has found that more and more curriculum resources are available digitally, both at the elementary and secondary levels. However, there is a great variation in how publishers define a "digital" resource and how the digital subscriptions are assigned, licensed and managed within each school district. Dr. Miller testified that while LPS believes all of these resources have value for students there are certainly challenges with implementing the different systems within one school district and more challenging when considering the differing data systems, protocols, and capacities of the nonpublic school districts LPS serves.

Dr. Miller testified that LPS values the partnership that they have with the nonpublic school colleagues and believes in providing support to benefit all students within the state of Nebraska. By including digital subscriptions, textbooks and resources, a much more complex process than the current system will require school districts, both public and nonpublic to implement extensive new systems and procedures to fully implement the proposed changes. Dr. Miller respectfully requested that the State Board gather more information from public school districts, nonpublic school districts, and publishers before finalizing the language of Rule 4. (Please see attached written testimony.)

Jim Cunningham, Interim Executive Director, Nebraska Catholic Conference. Mr. Cunningham testified that while serving as the Executive Director of the Nebraska Catholic Conference he has worked extensively with the textbook loan program since it started. Mr. Cunningham wanted to specifically address the comments from Dr. Miller regarding the complexities involved in the technology of non-tangible media. Mr. Cunningham testified that he understand that this area involves challenges that are precipitated by the rapidly evolving nature of instructional materials. Mr. Cunningham acknowledged there will be a need for guidance from the Department on certain questions that may come up such as those that have been presented today. The school district does establish the list of available materials that the parents can request to borrow, so there is some discretion by each district to implement this rule and provide policies at a local level. There are ways to address most, if not all, of the challenges together with the guidance that can come from the State Department of Education. Mr. Cunningham expressed concern over the time this Rule has taken to get to this point and if it is elongated further then students may miss the deadline for this year's potentially expanded list of available materials. Mr. Cunningham reiterated that additional guidance can occur over a period of time by the Department to address any challenges and to delay any longer would just mean that students would have restricted access to the materials that otherwise or under consideration for this purpose.

Ted DeTurk, Administrator, ESU 2, Fremont, NE. Dr. DeTurk testified that he appreciated the work that has been put into this draft as opposed to the previous draft. The current draft does clarify many of the questions posed at the previous hearing. However, Dr. DeTurk testified that this draft doesn't clarify all of the questions. Specifically on page 2 of the hearing draft regarding web based online materials. Dr. DeTurk testified that the language specifically includes in the definition of textbook that as a subscription or a license agreement entered into with the school district is a textbook. Dr. DeTurk said that the Department of Education is going to need to address the impact on third party organizations such as postsecondary institutions, educational service units, and school foundations regarding subscription and license agreements. He testified that there are going to be issues that definitely need to be addressed prior to November, with November being that deadline. Dr. DeTurk reiterated concerns for the deadline of getting the list of available materials available to students and agreed with Mr. Cunningham's testimony that there should not be any additional delays.

Dr. Jane E. Stavem, Associate Superintendent for Instruction with Lincoln Public Schools, Lincoln, NE provided written testimony in opposition to the current language of Rule 4. (Please see attached written testimony.)

No other oral or written testimony was received.

Attachments

July 22, 2016

Nebraska Department of Education
Attention: Hearing Officer

RE: Proposed Revisions of 92 NAC 4—Textbook Loan Program

We are the Clarks, Kevin and Laurie. We reside at 3330 Woods Avenue in Lincoln. We have children who are students at St. Teresa's School, an elementary school approved for legal operation by the State of Nebraska, and at Pius X High School, which is fully accredited. We are submitting these comments to express our **support** for the proposed revisions of Rule 4 as set forth in the published hearing draft. Thank you for this opportunity.

We have been following the months-long developments relating to the obvious need to update Rule 4; in fact, Kevin testified at a previous public hearing. While this has been frustrating to us as parents and taxpayers, we are pleased that the Department of Education and the State Board of Education now have the opportunity and means to move forward with reasonable, common-sense rule revisions, which will make the textbook-loan program more realistic, more efficient and more effective in responding to the educational best interests of children. We are especially pleased that the proposed revisions will provide authority for including digital learning tools and subscription-based agreements covering interactive work texts. These modernized approaches for enhancing learning, e.g., increasing text comprehension, are meaningful and important.

The textbook-loan program has been for a long time, and continues to be, an important assist for many children whose parents choose an alternative to public education. It is one of the very few state-funded benefits that our children and others receive in exchange for the education tax dollars we pay. Keeping the program relevant and realistic, as these rule revisions will accomplish, is sound administrative policy.

Again, thank you. We respectfully request that these written comments be included in the hearing record.

Kevin and Laurie Clark

Kevin and Laurie Clark
3330 Woods Avenue
Lincoln, NE 68510

July 22, 2016

Nebraska Department of Education
Attention: Hearing Officer

RE: Proposed Revisions of 92 NAC 4—Textbook Loan Program

My name is Sarah Ehlers. I am a resident of Columbus, Nebraska. My husband and I are parents to nine children, four who attend St. Bonaventure Catholic Elementary and three who attend Scotus Central Catholic High School. My children have had access to wonderful textbooks in the past as a result of the textbook-loan program, as implemented by Rule 4.

I would like the record of the public hearing to reflect my **support** for the proposed revisions of Rule 4 as set forth in the published hearing draft. Foremost among reasons for my support is that the proposed revisions will make a necessary, justified, common-sense adjustment to the definition of "textbook." This will update the current program and cause it to function more effectively, for the educational benefit of the children of Nebraska taxpayers.

By more adequately including modern instructional tools that are more and more replacing traditional hard-bound textbooks as the principal source of study material for individual students, a revised Rule 4 will help ensure that funds appropriated by the Legislature are used responsibly and efficiently to adapt to this ever changing world.

It is certainly my hope and petition that the State Department of Education and the State Board of Education move forward with all due haste in approving and administering the hearing draft's proposed revisions. Thank you for the opportunity to submit my statement of **support**.

Sincerely,

Sarah J Ehlers

Mrs. Sarah J. Ehlers
1754 27th Avenue
Columbus, NE 68601

July 20, 2016

Nebraska Department of Education
Attention: Hearing Officer

RE: Proposed Revisions of 92 NAC 4—Textbook Loan Program

As the parent of 4 children who attend St. Teresa's Catholic School in Lincoln, I **support** the hearing draft of proposed revisions for Rule 4. These revisions will fix a growing deficiency of Rule 4, by creating a more comprehensive, more flexible definition of "textbook." Simply stated, they will update an outdated definition. This will happen in a manner that will give individual private-school students, whose parents make individual requests, access to the same instructional materials that are being loaned to individual public-school students pursuant to the same authorizing statute, to the extent of a designated state appropriation.

Some others have expressed concern that the State Department of Education and the State Board of Education have been motivated to allow the textbook-loan program to become obsolete, in order, perhaps, to create a justification for re-directing the program's funding to other purposes. That would be troubling and presumptively unjust. But it now seems apparent that concern can be withdrawn, because this hearing draft shows a willingness to make the current program more realistic and functional, and thus continue it into the future. For that, I would be very grateful.

Thank you for this process and the opportunity it provides for submitting written comments.

Sincerely,

Carrie Stratman

Mrs. Carrie Stratman
3410 Laura Ave
Lincoln, NE 68510

July 22, 2016

Nebraska Department of Education
Attention: Hearing Officer

RE: Proposed Revisions of 92 NAC 4—Textbook Loan Program

My name is Susan O'Gara Benes. My address is rural Valparaiso, Nebraska. I am using this means to express my **support** for the hearing draft of proposed revisions of Rule 4. I would like for these written comments to be included in the hearing record.

My interest in the textbook-loan program stems from the fact that I am the parent of an upcoming senior student who is being educated at a private school: Bishop Neumann High School in Wahoo. Her education there involves a 50 mile round trip commute, 5 days a week, and approximately 175 days per year. Any extra-curricular school activities also require this 50 mile trip. She is my 5th and last child to receive her education - from Pre-K through 12th grade - at a Catholic school. As a parent, and also as a Nebraska taxpayer, I want the textbook-loan program to be realistic and meaningful. I don't want it to be diminished by unnecessary and unfair limitations. The current, outdated definition of "textbook" imposes just that sort of limitation. The proposed revisions will help to adhere to the authorizing statute: that instructional materials—whether traditional, hard-bound textbooks or materials that are replacing them, such as electronic/digital bundles, eBooks, or multi-year-subscription-based, interactive work texts—being purchased and loaned as textbooks by school districts for individual use by public-school students, are allowed for private-school students pursuant to the textbook-loan program. This is a matter of fairness.

The revised definition of "textbook," as proposed, will more realistically and more equitably facilitate the rapidly evolving availability of technology for the classroom. This impact, and the assistance it will provide for helping children achieve their academic potential, are worthy pursuits.

Thank you for your attention and consideration.

Susan O'Gara Benes

Susan O'Gara Benes
3197 County Road B
Valparaiso, NE

July 22, 2016

Nebraska Department of Education
Attention: Hearing Officer

RE: Proposed Revisions of 92 NAC 4—Textbook Loan Program

Thank you for the opportunity to submit comments about the proposed revisions for Rule 4, as set forth in the hearing draft.

I support the proposed revisions and look forward to them being adopted and implemented. It is clear to me that these revisions are not only necessary, but sound and reasonable, as they will make this meaningful program more contemporary, more realistic, more fiscally responsible and better overall. These revisions are important to me as a taxpayer, but much more significantly, as the parent of a child who attends a private school (and another who is a recent graduate): Central Catholic High School in Grand Island.

The textbook-loan program is a wonderful program; an important benefit for my child and for many others who attend private schools throughout much of Nebraska. Nonetheless, if Rule 4 is not revised as proposed, private-school children will be denied the rapidly expanding range of instructional materials that are often replacing traditional, hard-bound textbooks as principal sources of study. And, any such deficiency will be exacerbated as more time passes. Rather, it makes abundant good sense to more adequately accommodate and facilitate the up-to-date forms of instructional materials.

Please include my comments as part of the hearing record.

Rina Huntwork

Rina Huntwork
2127 Atlanta Street
Grand Island, NE 68803

NEBRASKA
CATHOLIC
CONFERENCE

July 22, 2016

Commissioner Matt Blomstedt
Members, State Board of Education
Nebraska Department of Education
6th Floor, State Office Building
301 Centennial Mall South
Lincoln, NE 68509-4987

RE: Proposed Revisions for 92 NAC 4—Textbook Loans for Private-School Students

These comments about the hearing draft of proposed revisions for Rule 4 are being submitted by the Diocesan Superintendents of Catholic Schools on behalf of the parents and students of the schools sponsored and operated by the Archdiocese of Omaha and the Dioceses of Lincoln and Grand Island. In aggregate, these three systems constitute the largest segment of non-government PreK-12 education in Nebraska, with nearly 25,000 students in 115 approved or accredited elementary and secondary schools.

The Diocesan Superintendents of Catholic Schools are pleased to be in **support** of the proposed revisions presented in this hearing draft. The revisions update and improve Rule 4, making it more contemporary, more relevant and more functional, resulting in educational benefits for students. The revised definition of "textbook" is especially significant and important, because it helps the program keep up with evolving forms of instructional materials. It becomes inclusive of a broader array of modern textbooks, not only the traditional hardbound versions, but also electronic/digital tools and license-based, work texts that accommodate interactive learning.

With these revisions, the funds appropriated by the Legislature will be expended wisely and responsibly. The recipient students will be the beneficiaries of a reasonable, realistic policy; one that is within the scope of the authorizing statute and possible in all respects as confirmed by the Attorney General's courtesy review.

The Diocesan Superintendents of Catholic Schools also use this means to express their appreciation to Commissioner Blomstedt and members of the State Board of Education for acknowledging the deficiencies and limitations of the current Rule 4 and for being willing to maintain communication on the issues and work for solutions. Now, it is important that the process moves forward to full promulgation and implementation. The Catholic School community looks forward to the results and will continue to cooperatively monitor and promote that progress.

ARCHDIOCESE OF OMAHA • DIOCESE OF LINCOLN • DIOCESE OF GRAND ISLAND

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Thank you for the opportunity to submit these comments on this important administrative policy.

Respectfully submitted,

Greg Logsdon

Greg Logsdon
Superintendent of Schools
Catholic Diocese of Grand Island

Lincoln Public Schools

Curriculum and Professional Development Department PO Box 82889 Lincoln, NE 68501-2889 (402) 436-1808

Testimony at Public Hearing on Rule 4
July 22, 2016

My name is Dr. Jadi Miller and I am the Director of Curriculum and Professional Development for Lincoln Public Schools. In addition to overseeing the curriculum adoptions and implementations in K-12 programs within LPS, another of my responsibilities in my position is to collaborate with the nonpublic schools within our district boundaries on both the Title IIA professional development program and the Rule 4 Textbook Loan program. Based on the recent digital curriculum adoptions by Lincoln Public Schools, I believe that I have a unique perspective on the changes proposed within Rule 4.

We have found that more and more curriculum resources are available digitally, at both the elementary and secondary levels. However, there is great variation in how publishers define a "digital" resource. In a recent RFP for middle level math curriculum, we requested proposals for only completely digital curriculum and received proposals for everything from curriculum that included individual digital subscriptions with high degrees of individualization options to a simple pdf of a textbook that was nearly ten years old. Many content areas will offer only supplementary materials in a digital format while the textbook remains as a traditional hardbound book. Others will offer a digital version of the textbook but any supplementary materials are available for an additional cost. Some publishers offer a number of subscriptions for a given school year and if a student leaves the district or course, that subscription cannot be accessed by another student for the remainder of the school year. Other publishers offer a set number of subscriptions that can be used at any one time and the students who access the subscriptions can change throughout the school year.

There are also tremendous variations related to the digital subscriptions assigned to students. Digital subscriptions may range from everything from one year to seven years, depending on the publisher or provider. There are also variations in how they are assigned and managed.

One of the largest digital subscriptions that Lincoln Public Schools has purchased in the past several years was to supplement our literacy adoption in grades K-5 a few years ago. While we did not have all of the digital devices to utilize in the initial years, we have added those devices and continue to utilize more and more of the digital resources. All student reading and student work in this particular text must be assigned to students through the teacher's subscription. This will be very difficult given both the current and revised versions of Rule 4 since the purchase of teacher editions are forbidden. Each school represents a separate site within that subscription system. When students change teachers or schools, those changes must be managed at the district level.

When something as simple as a teacher name change occurs, that requires a district level system administrator to make that change. There are other variations related to authentications of student accounts and the purging of the previous year's accounts to prepare for the assignment of students for a new school year. We are uncertain how similar changes and procedures will be managed and whether that can occur at the nonpublic school or whether only LPS can make those changes, with potential variations by publisher.

While we believe that all of these resources have value for our students there are certainly challenges with implementing these different systems within one school district. That will be exponentially more challenging when we consider the differing data systems, protocols, and capacities of the nonpublic school districts we serve. We continue to build capacity and systems to manage these issues within our own school district. Two years ago we ordered more than 2500 textbooks for nonpublic schools and last year was nearly 1000 textbooks.

I value the partnerships that we have with our nonpublic school colleagues and believe in providing support to benefit all students within the state of Nebraska. If we are to include digital subscriptions, textbooks, and resources represent a much more complex process than the current system and will require school districts, both public an nonpublic to implement extensive new systems and procedures to fully implement the proposed changes. I respectfully request that the State Board gather more information from public school districts, nonpublic school districts, and publishers before finalizing the language of Rule 4.

Lincoln Public Schools
P. O. Box 82889; Lincoln; NE 68510 Instruction Office -- 436-1626
P. O. Box 82889; Lincoln; NE 68510 Instruction Office -- 436-1626

Dr. Jane Stavem
Associate Superintendent for Instruction
Lincoln Public Schools
P.O. Box 82889
Lincoln, NE 68501

July 22, 2016

To the Nebraska State Board of Education:

As stated in the revised draft of Title 92, Chapter 4, the provisions of this rule are to allow for the purchase and loan of textbooks to private school children. The use of the term "loan" fundamentally implies the ability to grant temporary use through the borrowing and returning of a resource.

In section 002.03, the term "textbook" is now broadened to include, "any instructional material that is designed for use by individual students in classroom instruction as the principal source of study material," and is further broadened to include, "electronic and digital subscriptions."

There are two fundamental flaws in the proposed language. The first comes with the concept of broadening language that can include a vast array of resources that are now available to a teacher for any given lesson or unit of study. More and more, districts are curating their digital resources specific to curriculum, but it is not necessarily part of one comprehensive resource that can be accessed with a single use portal.

When I envision districts asking for guidance around this terminology, there is no definition that can be referred to that indicates what would or would not be permissible, and it is impossible to quantify that which is no longer quantifiable. The availability of online resources that may be accessed is limitless.

The second flaw in applying the concept of loaning to a digital subscription environment is the fact that you simply cannot loan resources that are not designed to be shared by multiple users. Libraries have online resources that are available, but they acquire limited copies for limited access, based on a single user portal.

Finally, in section 002.03 there is a reference to "hard-copy, write-in work texts," which are permissible, but "hard-copy supplemental workbooks" are not. These terms do not seem compatible, and are at the very least, confusing. If a resource were to be loaned, it would not be considered returnable if a student has done personal work of any kind, and is made unusable by a future user.

We can no longer acquire resources, hand them over, and take them back in the manner that Rule 4 implies when it comes to digital resources. I would encourage the Nebraska State Board of Education to consider developing a separate mechanism that would allow private schools to access digital resources rather than trying to fit a round hole in a square peg with existing Rule 4 intended language.

Sincerely,

Dr. Jane E. Stavem
Associate Superintendent for Instruction