

**NEBRASKA DEPARTMENT
OF EDUCATION**

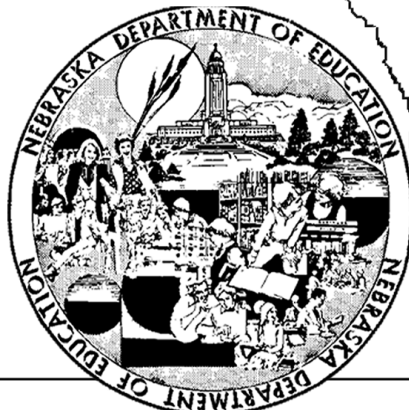
RULE 85

REGULATIONS REGARDING ESU BOUNDARY CHANGE PETITIONS

**TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 85**

**EFFECTIVE DATE
DECEMBER 15, 1998
(REVISED)**

**State of Nebraska
Department of Education
P.O. Box 94987
Lincoln, Nebraska 68509**



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CHAPTER 85 - ESU BOUNDARY CHANGE PETITIONS

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001 General Information

001.01 Statutory Authority. Sections 79-1206 to 79-1211 of the Revised Statutes of Nebraska (R.R.S.) establish general procedures for the filing of petitions with the State Board of Education to change educational service unit (ESU) boundaries. Section 79-318, R.R.S. authorizes the Board to adopt rules and regulations for carrying out the Board's responsibilities.

001.02 Scope and Application of this Chapter. This chapter governs hearings on ESU boundary change petitions before the State Board of Education, as provided in Sections 79-1206 to 79-1211 R.R.S. It is not applicable to any other type of hearings. Regulations of the Department of Education governing contested cases are not applicable to ESU petition hearings.

002 Definitions. As used in this chapter:

002.01 Affected Districts shall refer to districts that would be added to, or withdrawn from, an ESU or transferred to a different ESU by the petition. Other districts that are already members of an affected ESU in a merger or dissolution petition shall not be considered affected districts.

002.02 Affected ESUs shall refer to Educational Service Units that merge, dissolve, or would have districts added to or, withdrawn from, their territory by the petition.

002.03 Board shall mean the State Board of Education.

002.04 Commissioner shall mean the State Commissioner of Education.

002.05 Department shall mean the State Department of Education, which is comprised of the Board and the Commissioner.

002.06 ESU shall mean educational service unit, as established by Article 12 of Chapter 79 of the Revised Statutes of Nebraska.

002.07 Petitioners shall mean the school boards or ESUs that have filed a petition with the Board.

002.08 School Board shall mean local boards of education.

003 General Procedures for ESU Boundary Change Petitions

003.01 Content of Petition. An ESU boundary change petition may be filed by one or more ESUs or school boards as provided in Section 79-1207 R.R.S., either as a result of a resolution adopted by a majority vote of the ESU board or school board or when they are required to initiate the petition upon receipt of a reorganization petition signed by ten percent of the registered voters of the ESU or school district and certified by the county clerk or election commissioner. The petition must comply in all respects with Sections 79-1207 through 79-1209 R.R.S. A sample petition is contained in Appendix A. The petition shall be typed double spaced on 8 2 x 11 inch white paper and shall:

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003.01A Show the venue: "BEFORE THE STATE BOARD OF EDUCATION, STATE OF NEBRASKA";

003.01B Contain a heading captioned "IN THE MATTER OF THE BOUNDARY CHANGE PETITION OF" and then specifying the name(s) of the educational service unit(s) and school district(s) that is (are) bringing the petition and their mailing addresses;

003.01C State that the petition has been initiated by a resolution adopted by a majority vote of the petitioning ESU(s) and/or district(s), and contain, as an attachment a copy or copies of all such resolution(s). If the ESU(s) and/or districts(s) are initiating a petition upon the receipt of a petition signed by ten percent of the registered voters of such ESU or district, a copy of such petition, as certified by the county clerk or election commissioner, shall also be made an attachment.

003.01D State the legal names of all of the affected districts and ESUs, their mailing addresses, the name(s) of the county or counties in which all of the land in the affected districts and ESUs is located, and the class of each district.

003.01E Specifically state which boundary changes are sought, which shall include one or more of the following:

003.01E1 A transfer of a school district or districts from one established ESU to another established ESU;

003.01E2 A withdrawal from an established ESU by two or more school districts to form a new ESU;

003.01E3 An addition of a school district or districts which are not part of an ESU to an established or new ESU; and/or

003.01E4 The dissolution of one or more entire educational service units for attachment to existing educational service units or the merger of two or more educational service units into a new educational service unit.

003.01F Contain a clear and specific detailed description of the current and proposed boundaries listing affected districts and affected ESUs, and shall include as an attachment a map or maps clearly showing the current and proposed boundaries of the affected districts and ESUs.

003.01G Contain as an attachment a plan of reorganization, which shall include a summary of the reasons for the proposed reorganization, which shall specifically address the following:

003.01G1 The educational needs of students in the affected school districts and the affected educational service units;

003.01G2 The economic viability of the proposal as it relates to affected established educational service units or affected proposed educational service units;

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003.01G3 Any community of interest among affected school districts and affected educational service units;

003.01G4 Geographic proximity as such would affect the ability of affected educational service units to deliver service in a cost-effective manner; and

003.01G5 In the dissolution of one or more entire educational service units, evidence of consent from each educational service unit board and two-thirds of the school boards or boards of education of member school districts representing a majority of students in each affected educational service unit.

003.01H Contain as an attachment a plan for the provision of services to districts affected by the reorganization plan.

003.01I In cases when the petition proposes dissolution of an entire ESU or ESUs for attachment to an existing ESU or the merger of two or more ESUs into a new ESU, contain as an attachment a summary of the terms on which such reorganization is proposed, including:

003.01I1 Provision for the utilization of existing facilities, equipment, and materials; and

003.01I2 Provision for the disposition of assets and any unbonded indebtedness of affected ESUs.

003.01J When the petition deals with the attachment of new territory to an existing ESU, verification of approval by majority vote of the receiving ESU Board.

003.01K Contain a statement requesting the Board, after public hearing, to approve such petition. In the case of petitions initiated by voters, the initiating board(s) and/or ESU(s) may choose to request rejection of the petition and may add attachments outlining their reasons for such request.

003.01L Be subscribed and verified by a representative of each petitioning district or ESU or by their attorney(s), in which case each attorney shall list his or her address.

003.02 Submission and Service of Petition

003.02A The petition and all attachments and exhibits shall be filed on 8 2 x 11 inch white paper with the Office of the Commissioner of Education at 301 Centennial Mall South, Sixth Floor, Lincoln, NE 68509, by mail or in person during normal business hours of the Department.

003.02B The petitioner(s) shall serve a copy of the petition on each affected district which is not a petitioner and affected ESU which is not a petitioner by certified mail, return receipt requested. The petitioners shall file proof of completion of such service with the Commissioner's Office by filing a returned copy of the receipt. A certificate of service shall be filed with the petition, a sample of which is included in Appendix A.

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003.03 Notice of Hearing

003.03A Following the filing of a petition, the petitioner(s) shall secure a hearing date and location from the hearing officer appointed by the Commissioner. At least ten (10) days prior to such hearing date, the petitioner(s) shall cause a notice of the filing of the petition and hearing thereon to be published in a newspaper of general circulation in the community in which the main administrative offices are located for each affected ESU, or in a newspaper with statewide circulation. A sample notice is included in Appendix C. Prior to the hearing, the petitioner shall file a copy of such notice(s) and an affidavit of publication prepared by the newspaper(s) with the hearing officer. Such notice(s) must designate the specific ESU(s) and district(s) affected and summarize the proposed change in boundaries.

003.03B At least ten (10) days prior to the hearing the petitioner shall mail a copy of a notice of the time and place of hearing to all affected districts and ESUs by certified mail, return receipt requested, and file copies of the return receipts with the hearing officer. A sample notice is included in Appendix B.

003.04 Format for Subsequent Filings. All responses, or other pleadings or documents filed with the hearing officer shall be typewritten on 8 2 x 11 inch white paper. Copies shall be served on all affected districts and ESUs by regular mail, postage prepaid, and a certificate of such service attached. A sample of such certificate is included in Appendix B. All exhibits or other documents that cannot be typewritten shall be reduced to 8 2 x 11 inch size, if possible.

003.05 Response. Prior to the hearing, any affected district or ESU may file a response with the hearing officer. Such response shall:

003.05A Contain the same type of heading as required for petitions, except that it shall contain the word "Response";

003.05B Be limited to the issue of whether the petitioner(s) meet(s) the statutory requirements for such petition(s) and to any irregularities, inaccuracies, or misrepresentations contained in said petition and its attachments;

003.05C Specifically address the reasons for or against the proposed reorganization, addressing the grounds as required in 003.01G;

003.05D Specifically admit or deny each material allegation of the petition.

003.05E A copy of the response shall be served on all petitioners, affected districts, and affected ESUs by regular first class mail, postage prepaid, and a certificate of service affixed to the response, a sample of which is contained in Appendix D to this chapter.

004 Hearings

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004.01 Setting of Hearings. The Commissioner shall appoint a hearing officer to conduct the hearing on behalf of the Board and the hearing officer shall set the time and place for any hearing within 90 days from the receipt of the petition.

004.02 Continuances. The hearing officer may at any time order a continuance of a hearing on his or her own motion, so long as the hearing may be completed within 90 days from the receipt of the petition.

004.03 Consolidation. The hearing officer may order two or more petitions which are legally or factually related to be heard and considered together on a consolidated record, unless any petitioner makes a showing, sufficient to satisfy the hearing officer, that it would be prejudiced thereby.

004.04 Conduct of Hearings. The hearing will be an informal proceeding. Hearings will be conducted before a hearing officer appointed by the Commissioner on behalf of the Board. The hearing officer will recommend a decision to the Board. At the time of hearing:

004.04A The hearing officer shall open and close the proceedings, enter the notices of hearing into the record, take appearances, and rule on any other matter.

004.04B Reasonable opportunity shall be afforded representatives of all petitioners; affected ESUs, affected districts, other districts that are members of affected ESUs, county officials and Department officials to testify. The hearing officer, at his/her request and discretion, may also take testimony and receive exhibits from other persons. The hearing officer may set reasonable time limits on presentations and may limit repetitious testimony.

004.04C Informal procedures governing the conduct of hearings shall be subject to the discretion and the direction of the hearing officer, at the time of such hearings, unless otherwise specified in this chapter.

005 Exhibits

005.01 Copies of Exhibits. All exhibits to be offered at a hearing shall be on 8 2 x 11 inch white paper, unless waived by the hearing officer.

005.02 Filing Exhibits Prior to Hearing. In any proceeding where detailed or complicated exhibits are to be used, the hearing officer may require any petitioner to file copies of such exhibits or other necessary information within a specified time in advance of the hearing in order to enable the hearing officer to study same.

006 Disposition of Cases

006.01 Official Record. The hearing officer shall prepare an official record in each case which shall include pleadings, exhibits, orders, and recorded testimony, which need not be transcribed unless directed by the Board. Upon request by any person, a written copy of the testimony will be prepared upon the tender of the cost of preparation. The hearing officer may authorize the use of a court reporting service to record the hearing. The cost of obtaining verbatim transcripts from a court reporting service shall be paid directly to

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such service by the persons requesting the transcripts.

006.02 Recommended Order. The hearing officer shall submit a copy of the official record and a recommended order to the State Board.

006.03 Final Order. Within one hundred twenty days of the receipt of the petition, the Board shall grant or deny the petition based upon the following criteria:

006.03A The educational needs of students in the affected school districts and the affected educational services units;

006.03B The economic viability of the proposal as it relates to the affected established educational service units or affected proposed educational service units;

006.03C Any community of interest among affected school districts and affected educational service units;

006.03D Geographic proximity as such would affect the ability of affected educational service units to deliver service in a cost-effective manner; and,

006.03E In the dissolution of one or more entire educational service units, evidence of consent from each educational service unit board and two-thirds of the school boards or boards of education of member school districts representing a majority of students in each affected educational service unit.

006.04 Preparation of Orders. Upon direction of the Board, the Commissioner shall prepare and issue a final order on behalf of the Board. The Commissioner, as Board Secretary, shall have the authority to sign such orders on behalf of the Board.

006.05 Notification. The Commissioner shall notify affected districts and ESUs, and appropriate county officials, of the final decision or order of the Board by certified mail, return receipt requested.

006.06 Educational Service Unit Numbers. For educational service units created by merger after July 1, 1998, the number of the unit shall be the number of one of the educational service units dissolving into the new educational service unit. For all other educational service units created after July 1, 1998, the number shall be any number not otherwise assigned to an existing educational service unit, as determined by the State Board of Education.

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APPENDIX A: Sample Petition Form

BEFORE THE STATE BOARD OF EDUCATION
 STATE OF NEBRASKA

IN THE MATTER OF THE EDUCATIONAL)	
SERVICE UNIT BOUNDARY CHANGE)	
PETITION OF)	
)	CASE NO. <u>(Leave Blank)</u>
_____)	
(Names of initiating ESUs)	
and/or school districts))	
)	PETITION
_____)	
Addresses)	
)	
_____)	
)	
Petitioner(s).)	

Petitioner(s), in accordance with Sections 79-1207 through 79-1209 R.R.S., and Title 92 Chapter 85, of the Nebraska Administrative Code, state(s) and allege(s) as follows:

1. (State that the petition has been initiated by a resolution adopted by a majority vote of the petitioning ESU(s) and/or district(s), and contain, as an attachment, a copy or copies of all such resolution(s). If the ESU(s) and/or district(s) are/is initiating a petition upon the receipt of a petition signed by ten percent of the registered voters of such ESU or district, a copy of such petition, as certified by the county clerk or election commissioner shall also be made an attachment.)
2. (State the legal names of all of the affected districts and ESUs, their mailing addresses, the name(s) of the county or counties in which all of the land in the affected districts and ESUs are located, and the class of each district.)
3. (Specifically state which boundary changes are sought, which shall include one or more of the following:
 - a. A transfer of a school district or districts from one established ESU to another established ESU;
 - b. A withdrawal from an established ESU by two or more school districts to form a new ESU;

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APPENDIX A: Sample Petition, Page 2

- c. An addition of a school district or districts which are not part of an ESU to an established or new ESU; and/or
 - d. A withdrawal from a new or established ESU by two or more districts to form a new educational service unit. The dissolution of one or more entire educational service units for attachment to existing educational service units or the merger of two or more educational service units into a new educational service unit.)
4. (Contain a description of the current and proposed boundaries, and shall include as an attachment a map or maps clearly showing the current and proposed boundaries of the affected districts and ESUs.)
5. (Contain as an attachment a plan of reorganization, which shall include a summary of the reasons for the proposed reorganization, which shall specifically address the following:
 - a. The educational needs of students in the affected school districts and the affected educational service units;
 - b. The economic viability of the proposal as it relates to affected established educational service units or affected proposed educational service units;
 - c. Any community of interest among affected school districts and affected educational service units;
 - d. Geographic proximity as such would affect the ability of affected educational service units to deliver service in a cost-effective manner; and,
 - e. In the dissolution of one or more entire educational service units, evidence of consent from each educational service unit board and two-thirds of the school boards or boards of education of member school districts representing a majority of students in each affected educational service unit.)
6. (Contain as an attachment a plan for the provision of services to districts affected by the reorganization plan.)
7. (In cases when the petition proposes dissolution of an entire ESU for attachment to an existing ESU or the merger of two or more ESUs into a new ESU, contain as an attachment a summary of the terms on which such reorganization is proposed, including:
 - a. Provision for the utilization of existing facilities, equipment, and materials; and,

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APPENDIX A: Sample Petition, Page 3

b. Provision for the disposition of assets and any unbonded indebtedness of affected ESUs.)

WHEREFORE, Petitioner requests that the State Board of Education, after public hearing, approve (reject) this petition.

Dated this _____ day of _____, _____.

(Signature(s) and Title(s) of
Representative(s) of Petitioner(s))
(If attorney for petitioner, list address)

VERIFICATION

State of Nebraska)
) ss
County of _____)

I, (name of representative 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.

(Signature and Title)

Subscribed and sworn before me this _____ day of _____, _____, by (name of petitioner's representative).

(SEAL)

Notary Public

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APPENDIX A: Sample Petition, Page 4

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Petition, including a copy of any exhibits cited therein, was mailed to the following school districts, and ESUs by certified mail, return receipt requested, this ____ day of _____, _____, and a copy of the receipt(s) will be filed with the Office of the Commissioner.

(Signature of Petitioner or Representative)

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APPENDIX B: Sample Notice of Hearing

BEFORE THE STATE BOARD OF EDUCATION
 STATE OF NEBRASKA

IN THE MATTER OF THE EDUCATIONAL)
 SERVICE UNIT BOUNDARY CHANGE)
 PETITION OF)

 (Name(s) of initiating ESUs)
 and/or school districts))

 Address(es))

_____,)
 Petitioner(s).)

CASE NO. (Leave Blank
 Unless Known)

NOTICE OF
 HEARING

Notice is hereby given that a hearing on the petition in this case has been set before the hearing officer for the State Board of Education on _____ (date) _____, at _____ (time) _____, at _____ (specific location) _____.

(Petitioner or Representative)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Notice was mailed to the following school districts, and ESUs by certified mail, return receipt requested, this _____ day of _____, _____, and a copy of the receipt(s) will be filed with the hearing officer.

(Signature)

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APPENDIX C: Sample Newspaper Notice

NOTICE OF THE FILING OF AN EDUCATIONAL SERVICE UNIT
BOUNDARY CHANGE PETITION AND HEARING THEREON

Notice is hereby given that (name(s) of petitioning ESUs and/or districts) has (have) filed an educational service unit boundary change petition with the State Board of Education pursuant to Sections 79-1207 through 79-1209 R.R.S., asking that the following changes in ESU boundaries be made:

(Give specific description of proposed boundary change and designate the affected districts and ESUs)

Notice is hereby given that a hearing on this petition will be held before a hearing officer for the State Board of Education on (date) , at (time) , at (location) . Copies of the petition are available for review at the central administrative office of each petitioning ESU and school district, and at the Office of the Commissioner of Education in Lincoln.

By: (Name of Petitioner or Representative)

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APPENDIX D: Sample Certificate of Service for Regular Mail

CERTIFICATE OF SERVICE

(Not for use when certified mail service is required.)

I hereby certify that a copy of the above (list document) , including a copy of any exhibits cited therein, was mailed to the following persons or political subdivisions by regular first-class mail, postage prepaid, this day of , .

(List names and addresses)

(Signature)

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APPENDIX E: Sample Response Form

BEFORE THE STATE BOARD OF EDUCATION
 STATE OF NEBRASKA

IN THE MATTER OF THE EDUCATIONAL)
 SERVICE UNIT BOUNDARY CHANGE)
 PETITION OF)

 (Name(s) of initiating ESUs
 and/or school districts)

CASE NO. (Leave Blank
Unless Known)

 Address(es)

RESPONSE

 Petitioner(s).

COMES NOW _____ (Name) _____, affected district (or ESU), and, for its Response to the Petition filed in this case, admits, denies, and alleges as follows:

1. (Address the issue of whether the petitioner(s) meet(s) the statutory requirements for such petition(s) and to any irregularities, inaccuracies, or misrepresentations contained in said petition and its attachments.)
2. (Specifically address the reasons for or against the proposed reorganization, addressing the grounds required in 003.01G.)
3. (Specifically admit or deny each material allegation of the petition.)

WHEREFORE, this Representative of the affected district or ESU requests that the State Board of Education (approve or not approve) the boundary change sought in this matter (and/or state any additional action sought) _____.

(Signature of Representative of affected district or ESU and address of its attorney)

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APPENDIX E: Sample Response Form, 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 response and that to the best of my knowledge, information, and belief such contents are true.

Subscribed and sworn before me this _____ day of _____, _____, by _____ (name and title) _____.

(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 _____, _____.

(Signature)