**TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION**

**CHAPTER 19 - SCHOOL ENROLLMENT**

**001 General Information**

001.01 Purpose of this Chapter. Article VII, Section 1 of the Constitution of the State of Nebraska states that: The Legislature shall provide for the free instruction in the common schools of this state for all persons between the ages of five and twenty-one years. This Chapter is adopted under the constitutional and statutory authority of the State Department of Education, for the purpose of clarifying responsibilities of public school districts regarding school enrollment so that all persons who are constitutionally entitled to a free public education in Nebraska receive such an education upon request.

001.02 Scope and Application of this Chapter. This Chapter requires each public school district, as a condition of continued accreditation under Title 92, Nebraska Administrative Code, Chapter 10 (92 NAC 10), to enroll and serve persons, upon request, who are entitled to a free public education in that district. This Chapter also contains provisions for students seeking to transfer to other districts under the enrollment option program.

001.03 Statutory Authority. This Chapter is adopted pursuant to Article VII, Section 2 of the Constitution of the State of Nebraska and under Neb. Rev. Stat. §§ 79-215, 79-301, 79-302, 79-318, and 79-319.

001.04 Construction of Enrollment Statutes and Regulations by School Districts. School districts shall liberally construe state statutes and these regulations pertaining to enrollment determinations. In regard to school enrollment determinations, the Nebraska Supreme Court has held that:

> Statutes pertaining to our public schools should be liberally construed to the end that all persons of school age may enjoy their privileges . . . Solicitude for the education of its youth has always been characteristic of Nebraska. It is a settled policy of the state that every person of school age shall have an opportunity to attend its free schools. Martins v. School Dist., 101 Neb. 258 (1917).

**002 Definitions**. As used in this Chapter:

002.01 Adult shall mean a person nineteen years of age or older, except that, for the purposes of entering into binding contracts or leases, a person eighteen years of age or older who is not a ward of the state is legally responsible for the contract or lease. (see Neb. Rev. Stat. §§ 43-2101 and 43-245(2).

002.02 Child shall mean an unmarried person under nineteen years of age.

002.03 Child with a disability is defined in Section 003.08 of 92 NAC 51.

002.04 Commissioner shall mean the Commissioner of Education.

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

002.06 District shall mean a Nebraska public school district, as defined in Neb. Rev. Stat. § 79-101(1).

002.07 Enroll shall mean admitting, allowing to attend, and providing services of the school to a person.

002.08 Guardian shall mean a legal guardian who has been appointed by a court or who has accepted a testamentary appointment, such as provided in Neb. Rev. Stat. § 30-2605.

002.09 Homeless children and youths and homeless student shall mean a person who meets the definition of homeless children and youths in Title 42, United States Code, Section 11434a, which is:

002.09A An individual who lacks a fixed, regular, and adequate nighttime residence (within the meaning of 42

U.S.C. 11302(a)(1)); and

002.09B Includes:

002.09B1 Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency shelters; are abandoned in hospitals.

002.09B2 Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S.C. 11302(a)(2)(C));

002.09B3 Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

002.09B4 Migratory children (as defined in 20 U.S.C. 6399) who qualify as homeless for the purposes of this section because the children are living in circumstances described in subsections 002.09B1 through 002.09B3.

002.10 IEP shall mean an Individualized Education Program, which is a written statement for a child with a verified disability that is developed, reviewed and revised in a meeting in accordance with Section 007 of 92 NAC 51.

002.11 In Loco Parentis shall refer to a situation in which a child, with the consent of a parent or legal guardian, goes to live with another person with the understanding that the person the child lives with is to care for the child and stands in the place of a parent or legal guardian. A person who stands in loco parentis to a child may demand from a school district every right to which his or her own natural child is entitled. (See Mizner v. School Dist. No. 11 of Sherman County, 2 Neb. (Unof.) 238 (1901)). A person standing in loco parentis to a child is one who has put himself or herself in the situation of a lawful parent by assuming the obligations incident to the parental relation without going through the formalities necessary to adoption, and the rights, duties, and liabilities of such person are the same as those of the lawful parent. The assumption of the relation is a question of intention, which may be shown by the acts and declarations of the person alleged to stand in that relation. (See Austin v. Austin, 147 Neb. 109 (1946), which is also referenced in a number of other cases, including State on Behalf of Hopkins v. Batt, 253 Neb. 852 (1998)).

002.12 Legal or Actual Charge or Control shall refer to the status of parents, legal guardians, persons standing in loco parentis to a child, persons with a power of attorney that delegates parental authority, or any other person who has been entrusted with, or assumed, the day-to-day care and full-time supervision of, and responsibility for, a child.

002.13 Nonresident shall mean a person who does not have a residence in the district (see Section 002.16 for definition of Residence).

002.14 Option Student shall mean a student as defined in Neb. Rev. Stat. § 79-233(3) that has chosen to attend an option school district.

002.15 Parent shall mean the lawful father or mother of a child, including adoptive parents. A guardian or any other person in legal or actual charge or control of a child (see definition in Sections 002.09 and 002.11 of this Chapter) who enrolls a child in school under the provisions of this Chapter shall be considered to be acting as a parent for all education purposes, such as release of student records and the making of education decisions for the child unless otherwise restricted by law.

00216 Residence shall mean that place in which a person is actually domiciled, which is one s established home

and the place to which one intends to return when absent therefrom. It is the place where a person is actually living full-time, as opposed to vacationing or visiting. It should be noted that, pursuant to Neb. Rev. Stat. § 79-215 and this Chapter, a child may have a residence for school enrollment purposes that is separate from the residence of his or her parents or guardian. An example of such a situation is when a child resides in a different district than his or her parents, under the legal or actual charge or control of an adult acting in loco parentis, or an adult who has a power of attorney under Neb. Rev. Stat. §30-2604 (See also the opinion of the United States Court of Appeals, Eighth Circuit, in the case of Horton v. Marshall Public Schools, 769 F.2d 1323 (1985)). It should also be noted that the Legislature has provided for several circumstances in which a person may enroll in a school district other than the district in which that person has a residence (See Neb. Rev. Stat. § 79-215 ). Lawful citizenship or presence does not determine residency.

002.17 Residency shall mean having a residence in a place.

002.18 Resident shall mean a person who has his or her residence in a place. It should be noted that the Legislature has specifically provided in Neb. Rev. Stat. § 79-215 (1) . that, except as otherwise provided in Neb. Rev. Stat. § 79-215 , a student is a resident of the school district where he or she resides and shall be admitted to any such school district upon request without charge. The Legislature has also provided in Neb. Rev. Stat. § 79-215 for several circumstances in which a student either shall or may be enrolled in a school district in which they are not a resident. For example, a school board shall admit a student upon request without charge if at least one of the student s parents resides in the school district. (Neb. Rev. Stat. §79-215(2) ).

002.19 Reside shall mean to live in a place that is one s residence.

002.20 Student shall mean all persons (including children, emancipated minors, and adults) between the ages of five and twenty-one who have not completed high school or received a diploma of high school equivalency and who a school district is required or authorized to enroll.

002.21 Sibling. Siblings means all children residing in the same household on a permanent basis who have the same mother or father are stepbrother or stepsister to each other. (Neb. Rev. Stat. § 79-233 (6)).

**003 Enrollment Requirements**. 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 school district is required to enroll under the provisions of Neb. Rev. Stat. § 79-215, subject to the provisions of all other applicable requirements of state law and regulations related to enrollment and attendance.

003.01 Other Statutory and Regulatory Requirements. Other requirements of state law related to enrollment include, but are not limited to: Neb. Rev. Stat. §§ 79-201 through 79-210 regarding compulsory education; § 79-214 regarding kindergarten admission; § 79-216 regarding children of members of the military or of federal employees living on national parks or monuments; §§ 79-217 through 79-223 regarding immunizations; §§ 79-254 through 79-294 regarding the Student Discipline Act; § 79-266.01 regarding enrollment of expelled students; § 79-526 regarding the duty of districts to make provisions for students entering at any time during the school year; and § 43-2007, regarding Missing Children Identification Act dealing with birth certificates or other proof of identity.

003.02 Prohibited prerequisites to enrollment. A student who is entitled to or may lawfully enroll in and attend a public school, or the parent, guardian or other person having charge or control of such student shall not, unless otherwise permitted by law, be made to present any documentation or do any act prior to the student being allowed to enroll or attend. Unless permitted by law, this prohibition includes, but is not limited to, requiring as a pre-condition to enrollment or attendance any of the following:

003.02A Submission of social security card or number, which is subject to the Federal Privacy Act (Title 5, U.S.C., Section 552a (note));

003.02B Presentation of a certified copy of a birth certificate or other proof of identity and age, which is subject

to the Missing Children s Identification Act (Neb. Rev. Stat. § 43-2007). Under that Act, upon enrollment of a child for the first time in a public school district, the person enrolling the student, within 30 days, must provide a certified copy of the student s birth certificate or other reliable proof of identity and age as described in § 43-2007.

003.02C Receipt by the district of transcripts, grades or other records from previously attended schools (see Neb. Rev. Stat. § 79-2,105).

003.02D The payment of any fee, including those fees authorized by the Public Elementary and Secondary Student Fee Authorization Act ( Neb. Rev. Stat. §§ 79-2,125 to 79-2,135), except for fees for enrollment or participation in the specific courses or activities allowed under Neb. Rev. Stat. § 79-2,127.

003.02E Presentation of proof that a child who seeks to enroll or his or her parent, as defined in Section 002.14 of this Chapter, is a citizen of the United States or is a legally admitted alien. See Plyler v. Doe, 457 U.S. 202 (1982); and also Section 011 of this Chapter.

003.03 Termination of Enrollment. If an enrolled student ceases to be eligible for required enrollment for free instruction under the provisions of Neb. Rev. Stat. § 79-215, a district may terminate the enrollment of the student, or may continue the enrollment under the provisions of Subsection (4) of Neb. Rev. Stat. § 79-215 or any other provision of Neb. Rev. Stat. § 79-215 that may subsequently become applicable. When a student is a child of compulsory attendance age and is denied enrollment or his or her enrollment is terminated other than as the result of expulsion under the Student Discipline Act, the district, if it is not aware that the child is enrolled elsewhere, shall (a) report such circumstance to the attendance officer of the district in which the child should be enrolled or, if it cannot determine in what other district the child should be enrolled, report such action to the Department of Health and Human Services or law enforcement officials pursuant to Neb. Rev. Stat. § 28-711 ; and (b) cooperate with and assist such officials in attempting to ensure that the child is not neglected and is promptly re-enrolled in a school.

003.04 Students Entering During the School Year. A district shall make provisions for students that may enter at any time during the school year. A district that enrolls a student during the school year shall give the student the opportunity to earn full credit for the courses in which the student is enrolled if the student is able to demonstrate mastery of the subject matter and/or completion of course requirements, other than attendance, at a level required for other students to receive credit who have been enrolled throughout the period for which the credit is to be granted. The district may use a review of transcripts from prior schools attended, standardized tests, assessments, and/or teacher evaluations of student competency in the subject matter to make such a determination. A school district may use the same evaluation alternatives to award or recognize credit for past course work completed elsewhere and/or through demonstrated mastery of subject matter.

003.05 Students with diplomas or other certificates of completion from other states, territories or countries. If a person under age twenty-one seeks to enroll as is provided for in Sections 001.01 and 003 of this Chapter, and such a person already possesses or was granted a diploma or other certificate of completion of the school system or the course of studies of another state, territory or country, the district has authority, pursuant to Subdivision (3)(a) of Neb. Rev. Stat. §§ 79-201, 79-526 and Section 003.04 of this Chapter to make a professional educational determination regarding whether or not the person s completion of that course of studies is substantially equivalent to completion of the graduation requirements in Neb. Rev. Stat. § 79-729. If so, the person is not required to be enrolled.

**004 Contract Dispute Resolution**. If two school districts cannot agree on the amount of a contract under Subdivision (10)(b) of Neb. Rev. Stat. § 79-215 , that statute provides, in part, that:

. . . the State Department of Education shall determine the amount to be paid by the resident district to the district in which such residential setting is located based on the needs of the student, approved special education rates, the department s general experience with special education budgets, and the cost per student in the district in which such residential setting is located.

004.01 Request for Determination. If the districts cannot agree on a contract amount, either district may submit a written request for determination of the amount to the Commissioner. The Commissioner may designate another person to make the determination on his or her behalf.

004.01A The Commissioner, or his or her designee, shall consider such information as may be provided by the districts in writing, or in any informal meetings the Commissioner, or his or her designee, may choose to conduct with representatives of both districts.

004.01B The Commissioner, or his or her designee, shall base their determination on the factors specified in Subdivision (10)(b) of Neb. Rev. Stat. § 79-215.

004.01C The determination by the Commissioner, or his or her designee, shall be provided to the districts in writing.

004.02 Appeal. If either district is dissatisfied with the determination of the Commissioner, or his or her designee, the determination may be appealed to the State Board of Education pursuant to 92 NAC 61.

**005 Enrollment of homeless children and youths**

005.01 General Requirements. A district shall follow all requirements for the education of the homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et. seq., including, but not limited to, school stability provisions including a best interest determination, school of origin provisions, the provision of comparable services to homeless children or youths enrolled, the designation of local agency education (district) homeless liaison, notification to the parents or guardians of homeless children and youth of the educational rights and opportunities available under law, and a district dispute resolution process for disputes regarding the educational placement of homeless children and youths.

005.02 Dispute Resolution Process. The district s dispute resolution process referred to in Section 005.01 shall provide for (a) the district s written response and explanation of a decision regarding any complaint or dispute of a parent, guardian or other person having legal or actual charge or control of a homeless child or youth within thirty (30) calendar days of the time such complaint or dispute is brought; (b) the enrollment of the homeless child or youth in the school where enrollment is sought pending final resolution of the dispute, including all available appeals; and (c) notice of the right appeal as provided in Section 005.03 below.

005.03 Appeals. Any parent, guardian or other person having legal or actual charge or control of a homeless child or youth that is dissatisfied with the decision of a school district after the dispute resolution process may file an appeal with the Commissioner within thirty (30) calendar days of receipt of the decision. Such appeals are informal and shall be submitted to the Commissioner in writing stating the basis of the disagreement, and shall also include a copy of the district s written response and explanation of its decision as required in Section 005.02. The district shall be supplied a copy of the written appeal by the Commissioner or designee and the district(s) may file a written response thereto within fifteen (15) calendar days of receipt of it. If either party requests a hearing, an informal hearing will be scheduled by the Commissioner or designee within thirty (30) calendar days after the expiration of the time by which the district is to respond. If no hearing is requested, the Commissioner shall decide the matter based on the submissions of the parties, and may also request further written information and clarification from the parties. The Commissioner or designee shall issue a written decision determining whether or not the provisions of the McKinney-Vento Act have been followed.

005.03A A party may appeal the decision of the Commissioner or designee by filing a Petition with the State Board of Education within thirty (30) calendar days of the receipt of the decision. Such appeal shall be governed by 92 NAC 61, and shall also determine whether or not the provisions of the McKinney-Vento Act have been followed.

**006 Compulsory Attendance Enforcement**. The compulsory education statutes contained in Neb. Rev. Stat. §§ 79-

201 through 79-210 impose a number of duties on superintendents, principals, teachers, school board members, and attendance officers, as well as persons in legal or actual charge or control of children. Subdivision (2)(b) of Neb. Rev. Stat. § 79-201 provides that every person who has legal or actual charge or control of any child, and violates the provisions of Subdivision (2)(a) of Neb. Rev. Stat. § 79-201, shall be guilty of a Class III misdemeanor.

**008 Enrollment Option Program**. Pursuant to Neb. Rev. Stat. §§ 79-232 through 79-246 the Legislature has established the enrollment option program to enable any kindergarten through twelfth grade student to attend a school in a Nebraska public school district in which the student does not reside, subject to the limitations prescribed in Neb. Rev. Stat. §79-238. The application, late application waiver/approval and cancellation forms for the enrollment option program are prescribed by the Department, as provided in Neb. Rev. Stat. § 79-237 and available on the Department website. Any appeals under Neb. Rev. Stat. § 79-239 are governed by the provisions of 92 NAC 61, except that the Commissioner may appoint a hearing officer.

008.01 Late Applications. In accordance with Neb. Rev. Stat. § 79-237, no district may enroll as an option student any student whose application for enrollment option was submitted to the district after the March 15 deadline and did not contain a signed and dated release approval form. Such applications shall be considered incomplete. An option district may enroll an option student after such form is subsequently provided. Any student that relocates to a different resident district after February 1st or whose option school district merges with another district effective after February 1st is exempt from the release requirement for a release from any district.

008.02 Option Student Policy Required: The school board of the option school district shall adopt by resolution specific standards for acceptance and rejection of applications and for providing transportation for option students. Each district shall have in place specific standards and conditions for acceptance or rejection of requests for release for applications submitted after March 15. Such standards shall not include in the reasons for denial that an application was submitted after March 15.

008.02A Subdivision (1)(d) of Neb. Rev. Stat. § 79-238 provides, in part, that standards shall not include previous academic achievement, athletic or other extracurricular ability, disabilities, proficiency in the English language, or previous disciplinary proceedings except as provided in Neb. Rev. Stat. § 79-266.01.

008.02B Subdivision (1)(b) of Neb. Rev. Stat. § 79-238 provides, in part, that capacity for special education services operated by an option school district shall be determined on a case-by-case basis. If an application for option enrollment indicates that the student has an IEP or has been diagnosed with a disability as defined in Neb. Rev. Stat. 79-1118.01, such application shall be evaluated by the director of special education services of the school district or the director's designee who shall determine if the school district and the appropriate class, grade level, or school building in such school district has the capacity to provide the applicant the appropriate services and accommodations.

008.02B1 Such evaluation shall include documentation of:

a) a thorough review of the student's existing IEP to determine the level of services needed;

b) a thorough review of the special education program capacity at the school; and

c) a determination of whether the special education program capacity at the school would provide the applicant the appropriate services and accommodations based upon the IEP.

008.02B2 If an application for a student with an IEP is rejected, a summary of such determination described in 008.02B1(c) shall be provided to the person with legal or actual charge or control of the student.

**009 Part-time Enrollment**. Pursuant to Neb. Rev. Stat. § 79-2,136, each school board shall allow the part-time enrollment of students who are residents of the school district pursuant to Subsections (1) and (2) of Neb. Rev. Stat. § 79-215 and who are also enrolled in a private, denominational, or parochial school or in a school which elects pursuant

to Neb. Rev. Stat. § 79-1601 not to meet accreditation or approval requirements and shall establish policies and procedures for such part-time enrollment. Such policies and procedures may include provisions permitting the part-time enrollment of such students who are not residents of such school districts and may require part-time students to follow school policies that apply to other students at any time the part-time student is present on school grounds or at a school-sponsored activity or athletic event. Part-time enrollment shall not entitle a student to transportation or transportation reimbursements pursuant to Neb. Rev. Stat. § 79-611. Nothing in this section shall be construed to exempt any student from the compulsory attendance provisions of Neb. Rev. Stat. §§ 79-201 to 79-207.

010.01 A school board shall allow part-time enrollment of resident students that are ages eighteen up to twenty-one years whose parents or legal guardians did not submit the materials to the Department of Education pursuant to Neb. Rev. Stat. § 79-1601 for the current school year because the student was beyond the mandatory attendance age if the school board is satisfied that the student is continuing his or her instruction in such a school at the time.

**011 Foreign/Foreign Exchange Students**. In cases where a student seeks to enroll based on visa status, various federal laws, regulations and requirements may apply depending on the type of visa. Children and children of parents or guardians who are not citizens or legally present in the United States shall not be denied enrollment on that basis. See Section 003.02 of this Chapter.

011.01 J-1 Exchange Visitor Visas. Students enrolled under this program as foreign exchange students may be classified as contract students attending under Neb. Rev. Stat. § 79-215(8). The district may waive tuition for these students.

**012 Forms**.

012.01 Adult with Legal or Actual Charge or Control of a Student Form. A sample form to be used by a district for the purposes of Neb. Rev. Stat. § 79-215(15), is available on the Department website.

012.02 Sample Power of Attorney Form.A sample power of attorney form delegating powers of a parent under Neb. Rev. Stat. § 30-2604 is available on the Department website. This form is included as a sample for adults in legal or actual control of a child who may find a form of this nature useful in specific situations. No person or district is required to use this form, or any power of attorney form, nor can a district mandate its use as a condition for enrollment of a child. Such a power of attorney may be effective for six (6) months at a time, although a new power of attorney may be created upon its expiration. It is recommended that a person consult their own attorney before using any legal form.