

**NEBRASKA DEPARTMENT
OF EDUCATION**

RULE 19

REGULATIONS REGARDING SCHOOL ENROLLMENT

**TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 19**

**EFFECTIVE DATE
December 17, 2006
(REVISED)**



**TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 19 - SCHOOL ENROLLMENT**

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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. Article VII, Section 2 of the Constitution of the State of Nebraska and Section 79-301 of the Revised Statutes of Nebraska (R.R.S.) provide, in part, that: “The State Department of Education shall have general supervision and administration of the school system of the state and of such other activities as the Legislature may direct.” This Chapter is adopted pursuant to the constitutional and statutory authority of the Department to prescribe regulations for the accreditation and operation of public schools under Sections 79-301, 79-302, 79-318, and 79-319 R.R.S.; plus Section 79-215 R.R.S., which requires the Department to adopt rules and regulations to carry out the Department’s responsibilities under that statute.

001.04 Related regulations. Several other Nebraska State Department of Education regulation chapters in Title 92 of the Nebraska Administrative Code (NAC) deal with matters related to this Chapter. Chapter 10 deals with accreditation of public schools. Compliance with this Chapter is a condition of continued accreditation under Chapter 10. Chapter 17 deals with alternative education for students expelled under the Student Discipline Act. Chapter 51 is the primary regulation for the provision of special education services and reimbursement after a person is enrolled under this Chapter. Chapter 61 provides procedures for appeals under the enrollment option program and certain provisions of this Chapter. Chapter 81 deals with the General Educational Development (G.E.D.) examination and diplomas of high school equivalency. Regulations of the State Department of Health and Human Services regarding state wards and reimbursement are contained in Title 390, Nebraska Administrative Code, Chapter 10.

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001.05 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 (see Sections 43-2101 and 43-245(1) R.R.S.).

002.02 Child shall mean a person under nineteen years of age who is not an emancipated minor (See Section 43-2101 R.R.S. and definition of emancipated minor at 002.06).

002.03 Commissioner shall mean the Commissioner of Education.

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

002.05 District shall mean a Nebraska public school district, as defined in Section 79-101 R.R.S.

002.06 Emancipated Minor shall mean a person under nineteen years of age who is married or in the military, and it shall also mean a person under nineteen years of age who resides apart from his or her parents; is not under the care, custody, control, or supervision of his or her parents; and who receives no financial support or services from his or her parents and is responsible for securing his or her own support. The emancipation of a child is a question of fact, to be determined by the peculiar facts and circumstances of each case, and may be proved by circumstantial evidence, by an express agreement, or implied from the conduct of the parties. Emancipation may be terminated by a change of circumstances. For a general discussion of emancipation of minors, see Accent Service Company v. Ebsen, 209 Neb. 94 (1981) and Wulff v. Wulff, 243 Neb. 616 (1993).

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

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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 Section 30-2605 R.R.S.

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; or are awaiting foster care placement;

002.09B2 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 children are living in circumstances described in subsections 002.09B1 through 002.09B3.

002.10 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.

002.11 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.

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(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 Nonresident shall mean a person who does not have a residence in the district (see Section 002.14 for definition of Residence).

002.13 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 002.08 and 002.10 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.

002.14 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 Section 79-215 R.R.S. 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 their 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 §30-2604 R.R.S. (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 Section 79-215 R.R.S. in Appendix C).

002.15 Residency shall mean having a residence in a place.

002.16 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 Section 79-215 (1) R.R.S. that, except as otherwise provided in §79-215 R.R.S., a student is a resident of the school district where he or she resides or any school district where at least one of his or her parents reside and shall be admitted to any such school district upon request without charge. The Legislature has also provided in §79-215 R.R.S. for

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several circumstances in which a student may be enrolled in a school district in which they are not a resident. (See Appendix C).

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

002.18 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.

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 Section 79-215 R.R.S., subject to the provisions of all other applicable requirements of state law and regulations related to enrollment and attendance. A text of that statute is included in Appendix C.

003.01 Other Statutory and Regulatory Requirements. Other requirements of state law related to enrollment include, but are not limited to: §§79-201 through 79-210 R.R.S. regarding compulsory education; §79-214 R.R.S. regarding kindergarten admission; §79-216 R.R.S. regarding children of members of the military or of federal employees living on national parks or monuments; §§79-217 through 79-223 R.R.S. regarding immunizations; §§79-254 through 79-294 R.R.S. regarding the Student Discipline Act; §79-266.01 R.R.S. regarding enrollment of expelled students; §79-526 R.R.S. regarding the duty of districts to make provisions for students entering at any time during the school year; and §43-2007 R.R.S., regarding Missing Children Identification Act dealing with birth certificates or other proof of identity. Other regulatory requirements related to enrollment include, but are not limited to, those listed in Section 001.04.

003.02 Prohibited pre-requisites to enrollment. A student that is entitled to or may lawfully enroll and attend a public school, or the parent, guardian or other person in whose charge or control such student is in shall not, unless otherwise provided for by law, be required to present any documentation or do any act prior to the student being allowed to enroll or attend. 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 (Section 43-2007 R.R.S.);

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003.02C Receipt by the district of transcripts, grades or other records from previously attended schools (see Section 79-2,105 R.R.S.).

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

003.03 Termination of Enrollment. If an enrolled student ceases to be eligible for required enrollment for free instruction under the provisions of Section 79-215 R.R.S., a district may terminate the enrollment of the student, or may continue the enrollment under the provisions of §79-215(3) R.R.S. or any other provision of §79-215 R.R.S. that may subsequently become applicable. When a student is a child of compulsory attendance age and is denied enrollment or their 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 truancy officials 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 pursuant to Section 28-711 R.R.S.; 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.

004 Contract Dispute Resolution. If two school districts cannot agree on the amount of a contract under subsection (8) of §79-215 R.R.S. (see Appendix C of this Chapter for full text of the law), 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

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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 §79-215(8) R.R.S.

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 the provision of comparable services to homeless children or youths enrolled, the designation of local agency education (district) homeless liaison, notification to 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 during the time such dispute is being considered; 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

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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-Vinto Act have been followed.

005.03C 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-Vinto Act have been followed.

006 Compulsory Attendance Enforcement. The compulsory education statutes contained in Sections 79-201 through 79-210 R.R.S. 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. State law provides that persons violating the provisions of those statutes shall be guilty of a Class III misdemeanor (See Section 79-210 R.R.S.).

007 Compliance as a Mandatory Condition for School Accreditation. Each public school district shall comply with all the provisions of this Chapter as a condition for accreditation. Failure to comply with this Chapter shall be treated as if it were a violation of a mandatory provision of 92 NAC 10, and may subject the district to loss of accreditation as provided in that chapter.

008 Enrollment Option Program. Pursuant to Sections 79-232 through 79-246 R.R.S. 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 Section 79-238 R.R.S. Copies of the enrollment option program statutes are contained in Appendix D. The application, late application waiver/approval and cancellation forms for the enrollment option program are available from the Department, as provided in Section 79-237 R.R.S., and are available on the internet at <http://ess.nde.state.ne.us/OrgServices/EnrollmentOption/Application.htm> Any appeals under Section 79-239 R.R.S. are governed by the provisions of 92 NAC 61.

008.01 Late Applications. In accordance with Section 79-237(1)(a) R.R.S., no district may enroll as an option student any student whose application for enrollment option was

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submitted to the district after the March 15 deadline and did not contain a signed and dated waiver of an authorized resident school district official. Such applications shall be considered incomplete. An option district may enroll an option student after such waiver is subsequently provided.

008.01A In addition to the consequences provided for violations of this Chapter, 92 NAC 8-006.02B provides authority for the Department to investigate violations of this section and to adjust a district's option funding if violations are found.

009 Forms. Included as appendices to this Chapter are two forms.

009.01 Statement of Person Acting as a Parent Form (Appendix A). This form is to be used by a district for purposes of Section 79-215 R.R.S., which provides, in part, that:

(11) On a form prescribed by the State Department of Education, an adult with legal or actual charge or control of the student shall provide the name of the student, the name of the adult with legal or actual charge or control of the student, the address where the student is residing, and the phone number and address where the adult may generally be reached during the school day. If the student is homeless or if the adult does not have a phone number and address where he or she may generally be reached during the school day, those parts of the form may be left blank and a box may be marked acknowledging that these are the reasons these parts of the form were left blank. The adult with legal or actual charge or control of the student shall also sign the form.

009.02 Sample Power of Attorney Form (Appendix B). This sample form is a power of attorney delegating powers of a parent under Section 30-2604 R.R.S. 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.

**STATEMENT OF PERSON IN LEGAL OR ACTUAL CHARGE OR CONTROL OF A CHILD
SUBMITTED TO _____ FOR PURPOSES OF SCHOOL ENROLLMENT**
(School District Name)

The undersigned state that I am an adult in legal or actual charge or control of _____,
(Child's Name)
a child who resides in this school district at _____.
(Child's Address)

- I state that I am the child's parent, or
- I state that I have been entrusted with, or assumed, day-to-day care and full-time supervision of, and responsibility for, the child and have been given the authority to act as parent or guardian in educational matters as established by (check all that apply):
- a) a court or testamentary appointment as a legal guardian (attach copy) and/or
 - b) a power of attorney delegating such parental powers (attach copy), and/or
 - c) through an in loco parentis designation by a parent in which I have been authorized to stand in the place of the parent in caring for and raising the child (attach any written documentation of such designation), and/or
 - d) through any contract or judicial or administrative proceeding placing the child in such a living arrangement (attach copy of such documents), and/or
 - e) through some other set of circumstances (please explain on a separate sheet).

I understand that I may be requested to provide additional information regarding this child. The names and current or last known address of his or her parents are:

I understand that I will be responsible for, and will be expected to make, decisions regarding education (including, but not limited to, records, discipline, and special education unless otherwise provided under special education laws and regulations), emergency medical care, and other matters for this child while in legal or actual charge or control of this child and I state that I have the authority to take such responsibility and to make such decisions and to so act. I also understand that I will have responsibilities under the state truancy laws to cause this child to attend school.

Signature of Adult In Legal or Actual Charge or Control

Dated _____, _____.

Home Address of Adult in Legal or Actual Charge or Control

Home Phone: _____

Daytime Work Address

Daytime Work Phone: _____

NOTE: SECTION 79-215 R.R.S. PROVIDES THAT IF THE STUDENT IS HOMELESS OR IF THE ADULT DOES NOT HAVE A PHONE NUMBER AND ADDRESS WHERE HE OR SHE MAY GENERALLY BE REACHED DURING THE SCHOOL DAY, THOSE PARTS OF THE FORM MAY BE LEFT BLANK AND A BOX MAY BE MARKED ACKNOWLEDGING THAT THESE ARE THE REASONS THESE PARTS OF THE FORM WERE LEFT BLANK. THE ADULT WITH LEGAL OR ACTUAL CHARGE OR CONTROL OF THE STUDENT SHALL ALSO SIGN THE FORM.

- This child is homeless, which is the reason items were left blank.
- This adult does not have a phone number or address where they may generally be reached during the school day.

Further Note: It is contrary to state law for persons to intentionally submit false information to a school district in an attempt to fraudulently obtain services of the district for themselves or another or to impede the district in its enrollment determination.

SAMPLE FORM

POWER OF ATTORNEY DELEGATING POWERS UNDER
NEBRASKA REVISED STATUTES SECTION 30-2604

The undersigned, being residents of _____, Nebraska, state that we are the parent(s) or guardian(s) of _____, a minor, and hereinafter referred to as the “ward”. Pursuant to Nebraska Revised Statutes Section 30-2604, we hereby delegate to _____ of _____, Nebraska, who is designated attorney-in-fact for this purpose, all powers delegable under Nebraska Revised Statutes Section 30-2604, regarding the care, custody and property of said ward including power to make decisions regarding the education of said ward (including but not limited to decisions regarding special education, discipline, and the individuals who may take said ward out of school prior to the dismissal hour), to consent to surgical operations and medical and dental treatment and to receive delivery or payment of money and property due said ward. This Power of Attorney does not delegate to the attorney-in-fact the power to consent to marriage of said ward or the adoption of said ward, if a minor.

This delegation is made for a period of six (6) months beginning _____, _____, or until written notice of earlier revocation signed by the parent(s) or guardian(s) is received by the designated attorney-in-fact and any person dealing with the designated attorney-in-fact regarding said ward.

This Power of Attorney shall not be affected by subsequent disability or incapacity of the undersigned parent(s) or guardian(s) and shall remain in effect, notwithstanding later disability or incapacity of the undersigned or later uncertainty as to whether the undersigned may be dead or alive.

Dated _____, _____.

Parent (or Guardian)

Parent (or Guardian)

STATE OF NEBRASKA)
) ss.
COUNTY OF)

Before me, a Notary Public, qualified in and for said county, personally came _____ and _____, known to me to be the identical person(s) and signed the foregoing instrument and acknowledged the execution thereof to be his/her/their voluntary act and deed. Witness my hand and notarial seal on _____, _____.

Notary Public

My Commission Expires: _____, _____.

NOTE: THIS IS A SAMPLE FORM. IT IS RECOMMENDED A PERSON CONSULT THEIR OWN ATTORNEY BEFORE EXECUTING THIS OR ANY LEGAL FORM. THIS CHAPTER DOES NOT REQUIRE A PERSON OR SCHOOL DISTRICT TO USE THIS SPECIFIC FORM OR ANY POWER OF ATTORNEY FORM, NOR MAY A SCHOOL DISTRICT REQUIRE ITS COMPLETION AS A CONDITION FOR ENROLLING A CHILD.

Section 79-215 of the Revised Statutes of Nebraska, as amended by through LB 1248 (2006 Session), provides as follows:

§ 79-215. Students; admission; tuition; persons exempt; department; duties.

(1) Except as otherwise provided in this section, a student is a resident of the school district where he or she resides or any school district where at least one of his or her parents reside and shall be admitted to the school district upon request without charge.

(2) A school board shall admit any homeless student that requests admission without charge.

(3) A school board may allow a student whose residency in the district ceases during a school year to continue attending school in such district for the remainder of that school year.

(4) A school board may admit nonresident students to the school district pursuant to a contract with the district where the student is a resident and shall collect tuition pursuant to the contract.

(5) A school board may admit nonresident students to the school district pursuant to the enrollment option program as authorized by sections 79-232 to 79-246, and such admission shall be without charge.

(6) A school board may admit a student who is a resident of another state to the school district and collect tuition in advance at a rate determined by the school board.

(7) When a student as a ward of the state or as a ward of any court (a) has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used pursuant to section 83-108.04 or (b) has been placed in any institution which maintains a special education program which has been approved by the State Department of Education and such institution is not owned or operated by the district in which he or she resided at the time he or she became a ward, the cost of his or her education and the required transportation costs associated with the student's education shall be paid by the state, but not in advance, to the receiving school district or approved institution under rules and regulations prescribed by the Department of Health and Human Services and the student shall remain a resident of the district in which he or she resided at the time he or she became a ward. Any student who is a ward of the state or a ward of any court who resides in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used pursuant to section 83-108.04 shall be deemed a resident of the district in which the foster family home or foster home is located.

(8) When a student is not a ward of the state or a ward of any court and is residing in a residential setting located in Nebraska for reasons other than to receive an education and the residential setting is operated by a service provider which is certified or licensed

by the Department of Health and Human Services or is enrolled in the medical assistance program established pursuant to the Medical Assistance Act and Title XIX or

XXI of the federal Social Security Act, as amended, the student shall remain a resident of the district in which he or she resided immediately prior to residing in such residential setting. Upon request by a parent or legal guardian, the resident school district shall contract with the district in which such residential setting is located for the provision of all educational services, including all special education services. If the parent or legal guardian has requested that the resident school district contract with the district in which such residential setting is located, the district in which such residential setting is located shall contract with the resident district and provide all educational services, including all special education services, to the student. If the two districts cannot agree on the amount of the contract, 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. Once the contract has been entered into all legal responsibility for special education and related services shall be transferred to the school district in which the residential setting is located. The resident district for a student who is not a ward of the state or a ward of any court does not change when the student moves from one residential setting to another.

(9) In the case of any individual eighteen years of age or younger who is a ward of the state or any court and who is placed in a county detention home established under section 43-2,110, the cost of his or her education shall be paid by the state, regardless of the district in which he or she resided at the time he or she became a ward, to the agency or institution which: (a) Is selected by the county board with jurisdiction over such detention home; (b) has agreed or contracted with such county board to provide educational services; and (c) has been approved by the State Department of Education pursuant to rules and regulations prescribed by the State Board of Education.

(10) No tuition shall be charged for students who may be by law allowed to attend the school without charge.

(11) On a form prescribed by the State Department of Education, an adult with legal or actual charge or control of the student shall provide the name of the student, the name of the adult with legal or actual charge or control of the student, the address where the student is residing, and the telephone number and address where the adult may generally be reached during the school day. If the student is homeless or if the adult does not have a telephone number and address where he or she may generally be reached during the school day, those parts of the form may be left blank and a box may be marked acknowledging that these are the reasons these parts of the form were left blank. The adult with legal or actual charge or control of the student shall also sign the form.

(12) The department shall adopt and promulgate rules and regulations to carry out the department's responsibilities under this section.

**Sections 79-232 to 79-246 of the Revised Statutes of Nebraska
(Enrollment Option Program)**

Sections 79-232 to 79-246 of the Revised Statutes of Nebraska, as amended through LB 1024 (2006 Session), provides as follows:

§ 79-232. Legislative findings.

The Legislature finds and declares that parents and legal guardians have the primary responsibility of ensuring that their children receive the best education possible. In recognition of this responsibility, the Legislature intends to provide educational options for parents and legal guardians when deciding what public school or public school district is best for their children, by allowing them to consider the following factors, including, but not limited to:

- (1) The size of the schools and school districts in the area;
- (2) The distance children have to travel and the ease and availability of transportation;
- (3) The course offerings and extracurricular offerings of the schools and school districts in the area;
- (4) The quantity and quality of the staff at such schools and school districts; and
- (5) The performance of the school district on any indicators of performance established by the State Department of Education.

§ 79-233. Terms defined.

For purposes of sections 79-232 to 79-246:

- (1) Enrollment option program means the program established in section 79-234;
- (2) Option school district means the public school district that a student chooses to attend instead of his or her resident school district, except when a student chooses to attend another school district in a learning community in which the student resides pursuant to section 16 of this act;
- (3) Option student means a student that has chosen to attend an option school district;
- (4) Resident school district means the public school district in which a student resides; and

(5) Siblings mean all children residing in the same household on a permanent basis who have the same mother or father or who are stepbrother or stepsister to each other.

§ 79-234. Enrollment option program; established; limitations.

(1) An enrollment option program is hereby established to enable any kindergarten through twelfth grade Nebraska student to attend a school in a Nebraska public school district in which the student does not reside subject to the limitations prescribed in section 79-238. The option shall be available only once to each student prior to graduation unless (a) the student relocates in a different resident school district, (b) the option school district merges with another district, or (c) the option school district is a Class I district. The option student shall be given the option to attend school in another district at the time of relocation or merger or upon completion of the grades offered at the Class I district.

(2) The program shall not apply to (a) any student who resides in a Class I district which has not affiliated and which contracts or has contracted in either or both of the two prior school years with another district or districts in such student's grade level pursuant to section 79-598 or (b) any student who resides in a district which has entered into an annexation agreement pursuant to section 79-473, except that such student may transfer to another district which accepts option students.

§ 79-235. Option students; treatment.

For purposes of all duties, entitlements, and rights established by law, including special education as provided in section 79-1127, except as provided in section 79-241, option students shall be treated as resident students of the option school district. The option student may request a particular school building, but the building assignment of the option student shall be determined by the option school district. In determining eligibility for extracurricular activities as defined in section 79-2,126, the option student shall be treated similarly to other students who transfer into the school from another public, private, denominational, or parochial school.

§ 79-236. Program; implementation.

Beginning with the 1993-94 school year, the enrollment option program shall be implemented by all public school districts.

§ 79-237. Attendance; application; cancellation; forms.

(1) For a student to attend school in an option school district, the student's parent or legal guardian shall submit an application to the school board of the option school district between September 1 and March 15 for enrollment during the following and subsequent school years. Applications submitted after March 15 shall be accompanied by

a written release from the resident school district. The option school district shall provide the resident school district with the name of the applicant on or before April 1. The option school district shall notify, in writing, the parent or legal guardian of the student and the resident school district, and the State Department of Education whether the application is accepted or rejected on or before April 1.

(2) Applications for students who do not actually attend the option school district may be withdrawn in good standing upon mutual agreement by both the resident and option school districts.

(3) No option student shall attend an option school district for less than one school year unless the student relocates to a different resident school district, completes requirements for graduation prior to the end of his or her senior year, transfers to a private or parochial school, or upon mutual agreement of the resident and option school districts cancels the enrollment option and returns to the resident school district.

(4) Except as provided in subsection (3) of this section, the option student shall attend the option school district until graduation unless the student relocates in a different resident school district, transfers to a private or parochial school or chooses to return to the resident school district.

(5) In each case of cancellation pursuant to subsections (3) and (4) of this section, the student's parent or legal guardian shall notify the school board of the option school district and the resident school district and the department by March 15 for automatic approval for the following school year.

(6) The application and cancellation forms shall be prescribed and furnished by the State Department of Education.

(7) An option student who subsequently chooses to attend a private or parochial school shall be automatically accepted to return to either the resident school district or option school district upon the completion of the grade levels offered at the private or parochial school. If such student chooses to return to the option school district, the student's parent or legal guardian shall submit another application to the school board of the option school district which shall be automatically accepted, and the deadlines prescribed in this section shall be waived.

§ 79-238. Application acceptance and rejection; standards; desegregation plan; racial integration.

(1) Except as provided in section 79-240, the school board of the option school district shall adopt by resolution specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building or the availability of appropriate special education programs operated by the

option district. Capacity shall be determined by setting a maximum number of option students that a district will accept in any program, class, grade level, or school building, based upon available staff, facilities, projected enrollment of resident students, projected number of students with which the option district will contract based on existing contractual arrangements, and availability of appropriate special education programs. The school board of the option school district may by resolution declare a program, a class, or a school unavailable to option students due to lack of capacity. 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 section 79-266.01.

(2) Any option school district shall give first priority for enrollment to siblings of option students, except that the option school district shall not be required to accept the sibling of an option student if the district is at capacity except as provided in subsections (2) and (4) of section 79-240.

§79-239. Application; rejection; notice; appeal.

If an application is rejected by the option school district or by the resident school district, the rejecting school district shall state in the notification the reason for the rejection. The parent or legal guardian may appeal a rejection to the State Board of Education within thirty days after the date the notification of the rejection was received by the parent or legal guardian. Such hearing shall be held in accordance with the Administrative Procedure Act and shall determine whether the procedures of sections 79-234 to 79-241 have been followed.

§ 79-240. Deadlines; waiver; relocation; automatic acceptance; siblings; eligibility.

(1) Upon agreement of the school boards or boards of education of the resident school district and the option school district, the deadlines for application and approval or rejection prescribed in section 79-237 may be waived.

(2) The application of a student who relocates in a different school district but wants to continue attending his or her original resident school district and who has been enrolled in his or her original resident school district for the immediately preceding two years shall be automatically accepted, and the deadlines prescribed in section 79-237 shall be waived.

(3) The application of an option student who relocates in a different school district but want to continue attending the option school district shall be automatically accepted, and the deadlines prescribed

in section 79-237 shall be waived.

(4) The sibling of any option student who has, before April 6, 1996, been accepted as an option student in the district in which the option student is enrolled shall be eligible to continue attending the option school district as an option student as provided in section 79-234.

§ 79-241. Transportation; fee authorized; reimbursement; when.

(1) Except as provided in subsection (2) of this section, section 79-611 does not apply to the transportation of an option student. The parents or legal guardian of the option student shall be responsible for required transportation. A school district may, upon mutual agreement with the parent or legal guardian of an option student, provide transportation to the option student on the same basis as provided for resident students. The school district may charge the parents of each option student transported a fee sufficient to recover the additional costs of such transportation.

(2) Parents or guardians of option students who qualify for free lunches shall be eligible for transportation reimbursement as described in section 79-611, except that they shall be reimbursed at the rate of one hundred forty-two and one-half percent of the mandatorily established mileage rate provided in section 81-1176 for each mile actually and necessarily traveled on each day of attendance by which the distance traveled one way from the residence of such student to the schoolhouse exceeds three miles. The State Department of Education shall reimburse the option school district for transportation expenses paid to the parents of qualifying option students or incurred in actual transportation of qualifying option students. If a parent or guardian of a qualifying option student has an agreement with the option school district for the provision of transportation, the department shall reimburse the option school district only if option students who are not eligible for transportation reimbursement are charged fees for transportation, and reimbursement shall be only for the actual miles traveled one way beyond the normal transportation route at the rate described in this subsection. Reimbursement shall be made on or before June 30 for expenses incurred during the current school year. If sufficient funds are not appropriated to fully fund the provisions of this section, the department shall make a proportionate reduction in each payment made pursuant to this section.

(3) For option students verified as having a disability as defined in section 79-1118.01, the transportation services set forth in section 79-1129 shall be provided by the resident school district. The department shall reimburse the resident school district for the cost of transportation in accordance with section 79-1144.

§ 79-242. Graduation credits; award of diploma.

An option school district shall accept credits toward graduation that were awarded by another school district. The option school district shall award a diploma to an option student if the student meets its graduation requirements.

§ 79-243. School district; provide information.

A school district shall make information about the school district and its schools, programs, policies, and procedures available to all interested people.

§ 79-244. Program; effect on contracting; child with a disability; restriction on transfer.

The enrollment option program does not preclude a school district from contracting with other school districts, educational service units, or other state-approved entities for the provision of services. A child with a disability receiving services from another district pursuant to contract due to lack of appropriate programming in his or her resident school district is not eligible to transfer as an option student into the district currently providing services but is eligible to transfer as an option student into any other district which accepts option students and has an appropriate program.

§ 79-245. Tax Equity and Educational Opportunities Support Act; applicability.

The Tax Equity and Educational Opportunities Support Act shall apply to the enrollment option program as provided in this section. For purposes of the act, (1) option students shall not be counted as formula students by the resident school district and shall be counted by the option school district and (2) the option school district shall include the funds received pursuant to this section in the calculation of other actual receipts as required by section 79-1018.01.

§ 79-246. Special education programs; reimburse to option school district.

The State Department of Education shall reimburse each option school district for special education programs provided to option students in accordance with section 79-1142.

The resident school district of an option student shall be exempted from the payment responsibility set forth in section 79-1140.

For purposes of calculation to determine reimbursement pursuant to section 79-1142, the option school district shall include the adjusted average per pupil cost as defined in section 79-1114 of the option school district and not the amount received pursuant to section 79-245.