

NEBRASKA STATE BOARD OF EDUCATION MEETING NOTIFICATION AND AGENDA

- Meeting Date:** Wednesday, June 17, 2020 9:00 AM
- Meeting Title:** State Board of Education Special Meeting Notification and Agenda
- Location:** Live Stream
<https://www.education.ne.gov/live-video-stream/>
Lincoln, NE 68509
- Web Streaming:** Live web streaming will be available through the State Board of Education website: www.education.ne.gov/StateBoard/
- Agenda:** Except for emergency items added at the time of the meeting, the agenda will not be changed less than 24 hours prior to the start of the meeting and any changes will be immediately posted on the website. The Board will attempt to adhere to the sequence of the published agenda, but reserves the right to adjust the order of items if necessary and may elect to take action on any of the items listed.
- Interpreter:** If you need interpreter services or other reasonable accommodations, please contact the Nebraska Department of Education at (402) 471-5059 five (5) days prior to the meeting to coordinate arrangements.
- Website:** An electronic version of the agenda and support materials are available on the State Board of Education's Agenda page: www.education.ne.gov/StateBoard/Agendas.html
- Lunch:** On Wednesday, June 17, 2020, if necessary, the State Board of Education may break for lunch at 12:00 p.m. The lunch will take place in Conference Room C at the State Office Building, Sixth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The Board may resume work on the agenda at approximately 1:00 p.m.

1. CALL TO ORDER President Nickels

1. Roll Call
President Nickels

2. Pledge of Allegiance
President Nickels

3. Announcement of the placement of the Open Meetings Act information
President Nickels

2. COMMISSIONER'S REPORT Commissioner Blomstedt

3. BUSINESS

President Nickels

1. Consider the adoption of the Commissioner's Recommended Declaratory Order under NDE Rule 62 in Response to THE MATTER OF THE COVID-19 PANDEMIC, NDE Case No. 20-06, submitted by Dr. Kraig Lofquist, Executive Director of the Educational Service Unit Coordinating Commission
Commissioner Blomstedt and President Nickels

4. ADJOURNMENT

President Nickels

5. The next regularly scheduled meeting of the State Board of Education will be held on Friday, August 7, 2020, at 9:00 a.m. at the Nebraska State Office Building, Nebraska Department of Education, Sixth Floor, 301 Centennial Mall South, Lincoln, NE 68509. A work session will be held as needed on Thursday, August 6, 2020 at a time to be determined at the Nebraska State Office building, Nebraska Department of Education, Sixth Floor, 301 Centennial Mall South, Lincoln, NE 68509.
6. The agenda contains a list of subjects known at the time of its distribution on June 15, 2020. A copy of the agenda reflecting any changes will be available for public inspection during the normal business hours in the Office of the Commissioner of Education and on the State Board of Education's Agenda page: www.education.ne.gov/StateBoard/Agendas.html.
Except for items of an emergency nature, the agenda will not be changed later than 24 hours before the scheduled commencement of the meeting.
- 7.



I pledge allegiance to the Flag of the

UNITED STATES OF AMERICA,

and to the Republic for which it stands,
one Nation under God, indivisible,
with liberty and justice for all.

OPEN MEETING ACT (2019)

84-1407. Act, how cited.

Sections 84-1407 to 84-1414 shall be known and may be cited as the Open Meetings Act.

Source:Laws 2004, LB 821, § 34.

84-1408. Declaration of intent; meetings open to public.

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

Source:Laws 1975, LB 325, § 1; Laws 1996, LB 900, § 1071; Laws 2004, LB 821, § 35.

84-1409. Terms, defined.

For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions; and

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, except that all meetings of any subcommittee established under section 81-15,175 are subject to the Open Meetings Act, and (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Videoconferencing means conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

Source:Laws 1975, LB 325, § 2; Laws 1983, LB 43, § 1; Laws 1989, LB 429, § 42; Laws 1989, LB 311, § 14; Laws 1992, LB 1019, § 124; Laws 1993, LB 635, § 1; Laws 1996, LB 1044, § 978; Laws 1997, LB 798, § 37; Laws 2004, LB 821, § 36; Laws 2007, LB296, § 810; Laws 2011, LB366, § 2.

84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Discussion regarding deployment of security personnel or devices;

(c) Investigative proceedings regarding allegations of criminal misconduct;

(d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting;

(e) For the Community Trust created under section 81-1801.02, discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster; or

(f) For public hospitals, governing board peer review activities, professional review activities, review and discussion of medical staff investigations or disciplinary actions, and any strategy session concerning transactional negotiations with any referral source that is required by federal law to be conducted at arms length.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion

to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

(4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

Source:Laws 1975, LB 325, § 3; Laws 1983, LB 43, § 2; Laws 1985, LB 117, § 1; Laws 1992, LB 1019, § 125; Laws 1994, LB 621, § 1; Laws 1996, LB 900, § 1072; Laws 2004, LB 821, § 37; Laws 2004, LB 1179, § 1; Laws 2006, LB 898, § 1; Laws 2011, LB390, § 29; Laws 2012, LB995, § 17.

84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than one county in this state, of the governing body of a public power and irrigation district having a chartered territory of more than one county in this state, of a board of an educational service unit, of the Educational Service Unit Coordinating Council, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, or of a community college board of governors may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

(a) Reasonable advance publicized notice is given;

(b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;

(c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;

(d) At least one member of the state entity, advisory committee, board, council, or governing body is present at each site of the videoconference or telephone conference, except that a member of an organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis, an organization created under the Municipal Cooperative Financing Act, or a governing body of a risk management pool or an advisory committee of such organization or pool may designate a nonvoting designee, who shall not be included as part of the quorum, to be present at any site; and

(e)(i) Except as provided in subdivision (2)(e)(ii) of this section, no more than one-half of the state entity's, advisory committee's, board's, council's, or governing body's meetings in a calendar year are held by videoconference or telephone conference; or

(ii) In the case of an organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis or an organization created under the Municipal Cooperative Financing Act, such organization holds at least one meeting each calendar year that is not by videoconferencing or telephone conferencing.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of a board of an educational service unit, of the Educational Service Unit Coordinating Council, of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a risk management pool or its advisory committees organized in accordance with the

Intergovernmental Risk Management Act, of a community college board of governors, of the governing body of a public power district, of the governing body of a public power and irrigation district, or of the Nebraska Brand Committee may be held by telephone conference call if:

(a) The territory represented by the educational service unit, member educational service units, community college board of governors, public power district, public power and irrigation district, Nebraska Brand Committee, or member public agencies of the entity or pool covers more than one county;

(b) Reasonable advance publicized notice is given which identifies each telephone conference location at which there will be present: (i) A member of the educational service unit board, council, community college board of governors, governing body of a public power district, governing body of a public power and irrigation district, Nebraska Brand Committee, or entity's or pool's governing body; or (ii) A nonvoting designee designated under subdivision (3)(f) of this section;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the educational service unit board, council, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, Nebraska Brand Committee, or entity or pool or at a place which will accommodate the anticipated audience;

(d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the educational service unit board, council, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, Nebraska Brand Committee, or governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice, except that a member of an organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis, an organization created under the Municipal Cooperative Financing Act, or a governing body of a risk management pool or an advisory committee of such organization or pool may designate a nonvoting designee, who shall not be included as part of the quorum, to be present at any site;

(g) The telephone conference call lasts no more than five hours; and

(h) No more than one-half of the board's, council's, governing body's, committee's, entity's, or pool's meetings in a calendar year are held by telephone conference call, except that:

(i) The governing body of a risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by telephone

conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing; and

(ii) An organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis or an organization created under the Municipal Cooperative Financing Act may hold more than one-half of its meetings by telephone conference call if the organization holds at least one meeting each calendar year that is not by videoconferencing or telephone conference call.

Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

Source:Laws 1975, LB 325, § 4; Laws 1983, LB 43, § 3; Laws 1987, LB 663, § 25; Laws 1993, LB 635, § 2; Laws 1996, LB 469, § 6; Laws 1996, LB 1161, § 1; Laws 1999, LB 47, § 2; Laws 1999, LB 87, § 100; Laws 1999, LB 461, § 1; Laws 2000, LB 968, § 85; Laws 2004, LB 821, § 38; Laws 2004, LB 1179, § 2; Laws 2006, LB 898, § 2; Laws 2007, LB199, § 9; Laws 2009, LB361, § 2; Laws 2012, LB735, § 1; Laws 2013, LB510, § 1; Laws 2017, LB318, § 1; **Laws 2019, LB212, § 5.**

Effective Date: September 1, 2019

84-1412. Meetings of public body; rights of public; public body; powers and duties.

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body may require any member of the public desiring to address the body to identify himself or herself.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(6) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if:

(a) A member entity of the public body is located outside of this state and the meeting is in that member's jurisdiction;

(b) All out-of-state locations identified in the notice are located within public buildings used by members of the entity or at a place which will accommodate the anticipated audience;

(c) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including making a telephone conference call available at an in-state location to members, the public, or the press, if requested twenty-four hours in advance;

(d) No more than twenty-five percent of the public body's meetings in a calendar year are held out-of-state;

(e) Out-of-state meetings are not used to circumvent any of the public government purposes established in the Open Meetings Act;

(f) Reasonable arrangements are made to provide viewing at other in-state locations for a videoconference meeting if requested fourteen days in advance and if economically and reasonably available in the area; and

(g) The public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.

(7) The public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting.

(8) Public bodies shall make available at the meeting or the instate location for a telephone conference call or videoconference, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

Source:Laws 1975, LB 325, § 5; Laws 1983, LB 43, § 4; Laws 1985, LB 117, § 2; Laws 1987, LB 324, § 5; Laws 1996, LB 900, § 1073; Laws 2001, LB 250, § 2; Laws 2004, LB 821, § 39; Laws 2006, LB 898, § 3; Laws 2008, LB962, § 1.

84-1413. Meetings; minutes; roll call vote; secret ballot; when.

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written, except as provided in subsection (6) of this section, and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

(6) Minutes of the meetings of the board of a school district or educational service unit may be kept as an electronic record.

Source:Laws 1975, LB 325, § 6; Laws 1978, LB 609, § 3; Laws 1979, LB 86, § 9; Laws 1987, LB 663, § 26; Laws 2005, LB 501, § 1; Laws 2009, LB361, § 3; Laws 2015, LB365, § 2; Laws 2016, LB876, § 1.

84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.

(1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged

violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

Source:Laws 1975, LB 325, § 9; Laws 1977, LB 39, § 318; Laws 1983, LB 43, § 5; Laws 1992, LB 1019, § 126; Laws 1994, LB 621, § 2; Laws 1996, LB 900, § 1074; Laws 2004, LB 821, § 40; Laws 2006, LB 898, § 4.

ATTORNEY GENERAL GUIDANCE ON EXECUTIVE ORDER NO. 20—03 CORONAVIRUS — PUBLIC MEETINGS REQUIREMENT LIMITED WAIVER

Posted:

Tuesday, March 17, 2020

Nebraskans are facing unprecedented challenges to conduct open, public meetings in the face of the Coronavirus pandemic. Recommendations to limit social gatherings to fight the spread of the virus have generated several questions and concerns about the ability of public bodies to meet electronically. In response, earlier today Governor Ricketts issued Executive Order No. 20—03 (“Order”), which provides a limited waiver of certain requirements of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2018, Supp. 2019). The Order permits all public bodies in the state to meet by videoconferencing, telephone conference call, and other telecommunications applications, so long as members of the public and the media are provided access to the meetings in some manner. The Order requires that any public body that elects to meet by these means (1) provide reasonable advance publicized notice of its meeting and (2) prepare an agenda of items to be discussed at the meeting. See Neb. Rev. Stat § 84-1411(1) (Supp. 2019). Provisions in Neb. Rev. Stat. § 84-1411(2) and (3) requiring public access to videoconference sites and telephone conference sites are waived by the Order. All other requirements of the Act relating to closed sessions, voting, minutes, etc., must be met. The Order applies to all public meetings beginning today through May 31, 2020.

Updated Thursday, March 19, 2020

Since the issuance of the Order, our office has received numerous calls about its meaning and application. Some callers have interpreted the Order to mean that they can continue to have regular “in-person” meetings, but exclude the public from such meetings. Some have indicated that they plan to close the meeting and post a sign on the door giving the public a call-in number to the meeting being conducted.

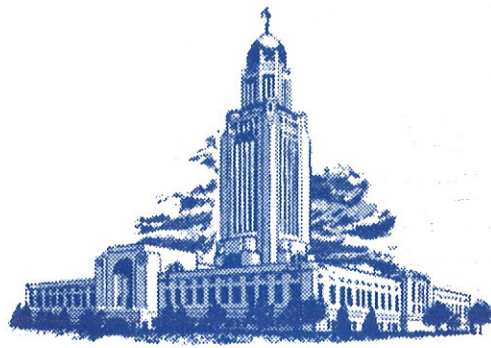
Please keep in mind that the Order is a *limited* waiver of some of the provisions of the Open Meetings Act, specifically relating to videoconference and telephone conference meetings. The Order permits all public bodies in the state to meet by videoconferencing, telephone conference call, and other telecommunications applications, so long as access to the meeting is provided to members of the public and the media. All other provisions of the Open Meetings Act have not been waived. If a public body elects to have an in-person meeting, there is no legal basis in the Open Meetings Act or the Order to close the meeting to the members of the public and press who wish to attend.

Our conclusion above is also applicable to instances where there is a “mixed meeting”—i.e., a portion of the public body meets in person and a portion participates electronically. This office has indicated on multiple occasions that a “meeting” subject to the Open Meetings Act occurs when there is a quorum present and the members of the quorum are engaged in any of the

activities included in the definition of “meeting” set out in Neb. Rev. Stat. § 84-1409(2) (2014). If a quorum of the public body elects to physically meet to discuss public business, even though other members may be participating electronically, then members of the public and media should be allowed physical access to the meeting.

The Attorney General highly recommends that public bodies that wish to conduct virtual meetings in accordance with the Order indicate this in the meeting notice. The notice should clearly state how the members of the public and media may access the meeting. The notice should also indicate that since the meeting will be held electronically, and no quorum of the public body will be physically present together, there will be no public in-person attendance.

The Attorney General urges members of public bodies in Nebraska to use their best judgment in deciding how to proceed in light of the Coronavirus pandemic and the Governor’s Order.



STATE *of* NEBRASKA
OFFICE OF THE GOVERNOR
LINCOLN

EXECUTIVE ORDER NO. 20—03
CORONA VIRUS – PUBLIC MEETINGS REQUIREMENT LIMITED WAIVER

WHEREAS, In order to provide flexibility to assist in meeting the emergency conditions and subsequent impacts brought on from COVID-19, a state of emergency was declared in Nebraska on March 13, 2020; and

WHEREAS, the State of Nebraska is committed to providing seamless government operations to the people of Nebraska throughout the state of emergency; and

WHEREAS, state and local governmental boards, commissions and other public bodies must comply with the Open Meetings Act so that citizens may exercise their democratic privilege of participating in meeting of public bodies; and

WHEREAS, for public health purposes, meetings and gatherings have now been limited to no more than 50 people and may be further limited if the presence of COVID-19 warrants;

NOW THEREFORE, I, Pete Ricketts, Governor of the State of Nebraska, by virtue of the authority vested in me by the Constitution and laws of Nebraska, hereby issue this limited waiver of certain requirements of the Nebraska Open Meetings Act.

Pursuant to this declaration, I hereby order the following:

1. This executive order applies to all governing bodies as defined in Neb. Rev. Stat. §84-1409 (1) and to all public meetings as defined in Neb. Rev. Stat. § 84-1409 (2).
2. All governing bodies may meet by videoconference or by telephone conferencing or by conferencing by other electronic communication so long as there is made available at such meeting access to members of the public and to members of the media.

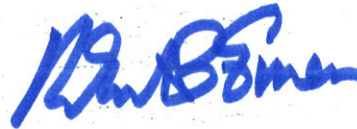
3. The advanced publicized notice and the agenda requirements for meetings that are set forth in Neb. Rev. Stat. §84-1411 and the remaining provisions of Nebraska's Open Meeting Act shall continue to be complied with by all governing bodies and are not waived by this executive order.
4. This waiver shall apply to all public governing body meetings that occur from today through May 31, 2020.

IN WITNESS THEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nebraska to be affixed on this 17th day of March, 2020.

ATTEST:



Pete Ricketts, Governor



Robert B. Evnen, Secretary of State



STATE *of* NEBRASKA
OFFICE OF THE GOVERNOR
LINCOLN

**EXECUTIVE ORDER NO. 20-24
CORONAVIRUS – CONTINUED LIMITED WAIVER OF
PUBLIC MEETINGS REQUIREMENTS**

WHEREAS, in order to provide flexibility to assist in meeting the emergency conditions and subsequent impacts brought on from COVID-19, a state of emergency was declared in Nebraska on March 13, 2020; and

WHEREAS, the State of Nebraska is committed to providing seamless government operations that are open to the people of Nebraska throughout the state of emergency.

NOW THEREFORE, I, Pete Ricketts, Governor of the State of Nebraska, by virtue of the authority vested in me by the Constitution and laws of Nebraska, hereby issue this continued limited waiver of certain requirements of the Nebraska Open Meetings Act.

Pursuant to this declaration, I hereby order the following:

1. Executive Order No. 20-03, which is currently scheduled to end on May 31, 2020, shall remain in effect through June 30, 2020; and
2. The identical statutory waivers and conditions contained within Executive Order No. 20-03 shall continue through June 30, 2020.

IN WITNESS THEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nebraska to be affixed on this 19th day of May, 2020.



Pete Ricketts, Governor
State of Nebraska

Attest:

Robert B. Evnen,
Secretary of State
State of Nebraska

BEFORE THE NEBRASKA STATE BOARD OF EDUCATION

IN THE MATTER OF)	NDE Case No. 20-06
THE COVID-19 PANDEMIC)	
)	DECLARATORY
)	ORDER
)	
)	

This matter comes before the Board as a result of a Petition for Declaratory Order filed on May 4, 2020, by Dr. Kraig J. Lofquist, Executive Director of the Educational Service Unit Coordinating Council.

On May 8, 2020, the Board determined the matter was properly filed in accordance with 92 NAC 62, the Department of Education's regulations governing declaratory orders, and entered an order directing the Commissioner of Education to prepare an order for the Board to consider in this matter under the provisions of said Rule.

NAMES OF ALL PARTIES TO THE PROCEEDINGS

The Petitioner is Dr. Lofquist, and upon request of the Commissioner, Petitioner's Counsel supplied documentation of serving a copy of the Petition by electronic means, (emails), through the various ESUs to school districts and private schools within their geographic boundaries. This documentation is attached to this Order as Exhibit 1, and contains the names of such entities. Petitioner has indicated to the Department that this method of service was used in large part due to the COVID Pandemic.

THE FACTS UPON WHICH THE PETITION IS BASED

- i. On March 13, 2020, President Trump declared a national emergency and Governor Ricketts declared a state emergency over the COVID-19 pandemic.
- ii. On March 13, 2020, Chief Medical Officer/Director of Public Health Dr. Gary Anthonie entered "Directed Health Measure Order 2020-001" that prohibited "gatherings" at schools in Cass, Douglas, Sarpy and Washington Counties.
- iii. Between March 13, 2020 and the date of filing this petition, Dr. Anthonie and Governor Ricketts entered various other Executive Orders and Directed Health Measures that either limited "gatherings" in schools or closed precluded in-person student instruction and other activities.
- iv. On April 1, 2020, Dr. Anthonie issued Directed Health Measure 2020-008, which ordered all schools "to cease all in-person instruction through May 31, 2020 . . ."
- v. On April 3, 2020, the State Board adopted a resolution supporting and authorizing the Commissioner of Education, as the executive officer of the Board, and as administrative head of the Department, to facilitate broad flexibility for the operation of schools during this emergency that is effective for one year from adoption by the Board.

vi. On April 20, 2020, Governor Ricketts issued “Executive Order No. 20-20,” which waives certain assessment, accountability, and Reading Improvement Act requirements.

vii. At the time of the filing of this Petition, Nebraska school districts and Educational Service Units have been prevented from having students physically present in attendance centers and have shifted to remote or distance learning or enrichment activities for the remainder of the 2019-2020 school year, and may similarly have such arrangements for at least some of the 2020-2021 school year.

GENERAL AUTHORITY OF THE STATE DEPARTMENT OF EDUCATION

The State Board, Commissioner of Education, and the Department are created and provided with the general supervision and administration of the school system of this state by sections 2, 3, and 4 of Article VII of the Nebraska Constitution, and assigned duties by the Legislature generally found in Article 3 of Chapter 79 of the Reissue Revised Statutes of Nebraska.

The intent of . . . the Constitution, was to confer powers upon the state board, which it did not and could not previously have. If this is not so there would have been no purpose in adopting it as an amendment to the Constitution in 1952. The Legislature was already authorized to delegate administrative authority to the state board and the constitutional grant of the general supervision and administration of the school system of the state, and such other activities as the Legislature may direct, necessarily included authority by the Legislature to grant purely legislative power if it was to have any added meaning at all. School Dist No. 8. v. State Board of Education, 176 Neb. 722, 723, 127 N.W.2d 458, 460, (1964).

Generally, for purposes of construction, a rule or order of an administrative agency or political subdivision is treated like a statute. Absent a statutory or regulatory indication to the contrary, language contained in a rule or regulation is to be given its plain and ordinary meaning. A rule is open for construction only when the language used requires interpretation or may reasonably be considered ambiguous. Deference is accorded to an agency or political subdivision's interpretation of its own rules unless plainly erroneous or inconsistent. Prokop v. Lower Loup Nat. Res. Dist., 302 Neb. 10, 13, 921 N.W.2d 375, 383, (2019).

In certain circumstances, administrative agencies are permitted to depart from their own regulations. It is within the discretion of an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it. Jantzen v. Diller Tel. Co. (In re Application of Jantzen), 245 Neb. 81, 83, 511 N.W.2d 504, 508, (1994). An agency must have sufficient latitude in its operations and in matters under its jurisdiction to exercise that jurisdiction fairly. *Id.*

The Board issues this Order consistent with the purpose of its existing emergency authority resolution conferring authority to the Commissioner and his delegees, and the Board remains

committed to using the full scope of its constitutional authority whether executive, legislative, or judicial, to ensure access to quality educational opportunities by providing relief, flexibility, and clarity to schools, school districts, and educational service units, to the maximum extent permitted by law. In addition to the items contained in this Order and including those contained in this Order, the Board and Commissioner intend to provide flexibility to the fullest extent permitted by law, pursuant to sections 79-305, 79-703, 79-318 & 79-319 and other laws, regulations, and rules, provided that such flexibility will be a benefit to students as well as any Nebraska school, ESU, and ESUCC impacted by COVID-19, unless such school, ESU, or ESUCC has evidenced bad faith as determined by the Commissioner and the Board.

The Board finds that the Commissioner has exercised proper authority in considering the petition, requesting additional information, and presenting recommendations to the Board. The Board desires for this Order to be wholly severable, such that any specific words, clauses, sentences, or provisions deemed unenforceable do not render the entire Order unenforceable.

CONCLUSIONS AND ORDER

Consistent with the authority to issue this Order declaring the “applicability,” as described in sec. 003.03 of Rule 62, of existing statutes, rules and regulations in light of COVID-19 emergency, the Board finds, orders, and declares as follows:

1. With respect to 92 NAC 3 (Rule 3) Secs. 004.04 and 004.06 are “procedural rules” adopted by the Board intended to provide timely information that can be accomplished electronically by schools, and the Commissioner shall encourage innovation and provide reasonable flexibility to any school demonstrating the need for such flexibility in these rules during the 2019-20, and 2020-2021 school years. The Board will consider requests for waivers under Rule 10, Sec. 013 regarding any noncompliance with requirements in Rule 3 due to COVID-19 since noncompliance with Rule 3 constitutes a violation of a mandatory provision of Rule 10;
2. With regard to 92 NAC 4 (Rule 4), these are duties of school districts under *Neb. Rev. Stat*, Sec. 79-734 and Rule 4 itself, and can be accomplished during the 2020-2021 school year without unreasonable impediment. Districts may provide flexibility to parents/guardians concerning the return of textbooks within 15 days after the end of the 2019-2020 school year for the return of textbooks without penalty from NDE.
3. With respect to 92 NAC 10, (Rule 10), and 92 NAC 14 (Rule 14), the Board has already granted accreditation to school districts and school systems for the 2020-21 school year, and granted approval of schools for the 2020-21 school year, under the provisions of these Rules with knowledge that *Neb. Rev. Stat*, Sec. 79-213 already provides these school districts with a means to have the Board accredit the schools due to “epidemic sickness”. The Board directs the Commissioner to promote innovation and provide reasonable flexibility and guidance on the provisions of Rule 10 and Rule 14 for the 2020-21 school year to school systems and school districts.
4. With respect to 92 NAC 11 (Rule 11) which permits school systems to utilize the same affidavit process contained in *Neb. Rev. Stat*, Sec. 79-213 for epidemic sickness, the Commissioner shall provide similar relief as provided under Rules 10 and 14. The Commissioner shall provide reasonable flexibility to any school demonstrating the need for such flexibility in this rule during the 2019-20, and 2020-2021 school years.

5. With respect to 92 NAC 15 (Rule 15), the Commissioner will provide as much flexibility as authorized by law in implementing the Rule for the 2019-2020 and 2020-2021 school years which includes electronic communications accomplishing any of the requirements. The federal requirement for participation in the State ELP assessment was waived for the 2019-2020 school year by the U.S. Department of Education. The Board will consider requests for waivers under Rule 10, Sec, 013 regarding any noncompliance with requirements in Rule 15 due to COVID-19 since noncompliance with Rule 15 constitutes a violation of a mandatory provision of Rule 10;

6. With respect to 92 NAC 47 (Rule 47), the curriculum requirements related to work-based learning and career exploration opportunities do not require physical presence, and may be accomplished anywhere along the workplace experiences continuum, including awareness, exploration, and/or work-based learning activities. Advisory Board meetings may be delayed as long as necessary to prevent the continued spread of COVID-19, and all prior work and guidance provided by the Advisory Board may be utilized during the 2020-2021 school year if the Advisory Board does not meet prior to the conclusion of the 2020-2021 school year. No Career Academy Program will be subjected to a loss of approval for continued operation based on disruptions and/or limitations due to COVID-19, and the Commissioner is encouraged to utilize maximum flexibility under section 005.03 of the Rule.

7. With respect to special education and any rule adopted by the Board, the Board recognizes the regulations in these rules adopted by the Board are governed by federal laws for which any rights must not be prejudiced. The Board reaffirms the work of the Commissioner to date and expects the Commissioner to permit innovation and flexibility in compliance to the extent required by Congress or the U.S. Department of Education considering the impact of COVID-19 on any Complaints made pursuant to Rules 51 or 52. The right of the person or entity to file such a Complaint shall not be infringed.

8. With respect to 92 NAC 84 (Rule 84), the Board has already accredited educational service units for the 2020-21 school year, and Sec. 004 of Rule 84 provides a process allowing for future correction of any prior non-compliance before any recommendation is considered by the Commissioner on accreditation. The Commissioner shall provide reasonable flexibility and guidance on the provisions of Rule 84 for the 2020-21 school year, and the Board will not consider any noncompliance of this rule due to COVID-19 to constitute a violation resulting in the loss of accreditation;

9. With respect to 92 NAC 91 (Rule 91), the Commissioner has already issued guidance on the topic of driver training requirements which the Board supports. The Commissioner shall continue to provide reasonable flexibility and guidance on the provisions of this rule.

10. With respect to state statutory provisions identified in the petition, the Board to the maximum extent permitted by law will not pursue adverse action with regard to any provision of the law that cannot be reasonably addressed due to disruptions caused by the pandemic. However, provisions of the law that can reasonably be addressed by a Nebraska school, school district, ESU, and ESUCC should be addressed. The Commissioner shall continue to provide reasonable flexibility and guidance and may proceed with requests for executive orders from the Governor or changes in statutes from the Legislature as appropriate.

11. With respect to all other matters not expressly addressed in this order or under the express authority of the Commissioner of Education, whether raised in the Petition in this matter or otherwise, the Board declines to address by way of a Declaratory Order all such matters for the reason such matters do not require a response by the Board at this time.

12. The Commissioner shall from time to time during the pandemic and as appropriate continue to address matters presented through guidance in accordance with this order and publish such guidance on the Department's web site.

Signed this ___ day of June 2020.

President, State Board of Education