

RULES OF PRACTICE AND PROCEDURES FOR ADMINISTRATIVE HEARINGS
BEFORE THE DEPARTMENT OF PUBLIC INSTITUTIONS

Chapter 1

001 DEFINITIONS As used in these rules:

001.01 APPLICANT means any party on whose behalf an application for authority or permission, which the Director is authorized by law to grant or deny, is made.

001.02 COMPLAINANT means any person filing a complaint or appeal with the Department of any violation subject to the authority or jurisdiction of the Department. The Department may also chose to act as complainant on its own motion.

001.03 DECISION MAKER means the individual(s) who issued the decision under appeal.

001.04 DEFENDANT means the person defending or denying; the party against whom relief or recovery is sought in an administrative action.

001.05 DEPARTMENT means the Department of Public Institutions or any of its components.

001.06 DIRECTOR means the Director of Public Institutions or his/her designee, except that in cases of appeals made pursuant to 34 C.F.R. ' 361.48 of determinations made by a rehabilitation counselor or coordinator concerning the furnishing or denial of services, then DIRECTOR shall mean the Director of Rehabilitation Services for the Visually Impaired.

001.07 HEARING OFFICER means an individual appointed by the Director to preside at an administrative Hearing.

001.08 INTERVENTION means any person or party having an interest in any proceeding before the Department and with the consent of the Hearing Officer or the Department, intervenes in the proceeding.

001.09 OFFICIAL NOTICE means use by the Hearing Officer or the decision maker of facts not appearing on the record and legal conclusions drawn from those facts. Official notice must be taken in accordance with Neb. Rev. Stat. 84-914(5).

001.10 PETITIONERS means any person who files a petition with the Department for the promulgation, amendment, or repeal of specific rules subject to the authority or jurisdiction of the Department; or persons filing a petition with the Department for a declaratory ruling subject to the authority or jurisdiction of the Department.

001.11 PARTY means those by or against whom an administrative proceeding is brought.

001.12 PLEADING means any written application, petition, complaint, answer, motion, or other formal written document used in any proceeding before the Department.

001.13 PROCEEDING means all matters formally made in connection with any application or petition for any right which the Department is empowered to grant; or in connection with any denial, suspension, modification, or revocation of any certification, or any other type of authority, approval, or permission which the Department is empowered to grant or deny; or in connection with any violation subject to the authority or jurisdiction of the Department; or in connection with the promulgation, amendment, or repeal of any rule subject to the authority or jurisdiction of the Department; or in connection with any declaratory ruling which the Department is empowered to issue.

001.14 RESPONDENT the party who contends against the agency action.

002 TITLE AND SCOPE. These rules shall be known as the Rules of Practice and Procedure Before the Nebraska Department of Public Institutions and they shall govern all administrative hearings conducted by the Department of Public Institutions.

002.01 These rules shall apply to proceedings commenced prior to the effective date of these rules, except the Director or his designated Hearing Officer, in his or her discretion may by order prescribe that the proceedings may continue in whole or in part in the matter prescribed by the former rules or practices if they would expedite the just and efficient disposition of the pending proceeding.

002.02 These rules are intended to govern the administrative proceedings conducted by the Director or designee which are for the purpose of adjudicating a decision that has been either rendered by the Director or adjudicating a decision of a subordinate of the Director, appealed to the Director. All administrative hearings conducted by the Director are open for public attendance.

002.03 If any portion of these rules shall be amended, repealed, or found to be unconstitutional or in conflict with law, the validity of the remainder shall not be affected.

002.04 If any statute upon which these rules are based shall be amended or repealed, the affected portion of these rules shall be deemed to be amended to conform with said statute.

002.05 Copies of these Rules shall be kept at the Department's Central Office and shall be available to any person on request.

003 COMMENCEMENT OF PROCEEDINGS

003.01 A proceeding is commenced either by:

003.01A The issuance of an order by the decision maker giving notice of his intention to revoke, suspend, or deny;

003.01B The issuance of an order by the decision maker revoking, suspending, or denying;

003.01C The issuance of an order by the decision maker for a show cause hearing;

003.01D The issuance of an order by the decision maker compelling or prohibiting performance or any action by any persons.

003.01E The filing of a petition or complaint by an interested party requesting action by the Department.

003.02 Unless otherwise prescribed by statute, a party must file a request for hearing or complaint, as appropriate, within 30 working days of the date of issuance of the decision being objected to or the decision becomes final thirty days after its issuance.

003.02A A person or organization so affected may waive the 30-day waiting period before finality by notifying the decision maker of its intent not to appeal and requesting that the action be deemed final as of the date of the decision.

004 TIME. In computing time prescribed or allowed by these rules or by any applicable statute in which the method of computing time is not specifically provided, the days will be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a state holiday, in which event the period runs until the end of the next day on which the office shall be open.

005 SERVICE

005.01 Notices, motions, pleadings, orders or other papers may be served personally or by mail to all parties by the Hearing

Officer and by all parties except where the statute prescribes a specific mode of service, which then shall be followed.

005.02 All parties who have entered their appearances in any proceeding shall be served with all notices, motions, pleadings, orders or other papers filed in said matter by the Hearing Officer and all parties. Service upon an attorney of record shall be deemed to be service upon the party represented by such attorney.

005.03 At the time any pleading or document is mailed or delivered to the Director or Hearing Officer for filing it shall contain a certificate of service endorsed thereon, showing the time, place and manner of service on all parties.

006 APPOINTMENT OF HEARING OFFICER

006.01 The Director, upon receipt of a request for a hearing, shall make written appointment of a Hearing Officer. The Director may designate himself, any person or a panel of more than one person to serve as Hearing Officer.

006.01A The Hearing Officer shall be unbiased and impartial as to the subject proceeding.

006.01B The Hearing Officer may be an employee of the Nebraska Department of Public Institutions but shall not be anyone, excluding the Director, who has participated in the decision making process which led to the decision under appeal.

006.02 The Director may designate in writing any person employed by the DPI to appoint Hearing Officers. Such designation shall be of public record in the Director's office.

006.03 For good cause shown or on the Director's motion, the Director shall recuse himself as to the decision making. In case of such recusal, the Hearing Officer, if other than the Director or another person designated by the Director, shall make the final administrative decision in the case.

007 INTERVENTION

007.01 The following factors should be considered in ruling for or against intervention:

007.01A The extent to which agency proceeding has progressed.

007.01B Whether the original parties are adequately protecting the interest sought to be protected by the intervenor.

007.01C Whether the intervenor seeks to introduce new issues into the proceedings.

007.01D Whether intervention will cause undue delay, repetition of evidence or will have similar adverse results to the original parties.

007.01E Whether the intervenor will be "injured in fact" by the final decision.

008 PRE-HEARING CONFERENCE PROCEDURE

008.01 The Hearing Officer shall, on the request of any party, or may in his or her own discretion without such request, direct the attorneys for the parties, (or parties if pro se) to appear personally or by telephone before him or her for a pre-hearing conference to consider:

008.01A Simplification of the issues;

008.01A(1) In hearings concerning certification or funding, the issues shall be whether the program in question meets standards, and whether the proposed action is warranted for failure to meet standards or failure to provide necessary services.

008.01B The obtaining of admissions as to, or stipulations of, facts not remaining in the dispute, or the authenticity of documents which might properly shorten the hearing;

008.01C The limitation of the number of witnesses;

008.01D The discovery or production of evidence;

008.01E Matters of which official notice shall be taken;

008.01F Disclosure of the names of witnesses;

008.01G Consideration of offers to resolve the issue being appealed.

008.01H The issues of law the determination of which may eliminate or affect the hearing and the issues of the fact;

008.01I The necessity or desirability of amendments to the pleadings; and

008.01J Petitions for leave to intervene.

008.01K Invoking rules of evidence.

008.01K(1) The party requesting district court rules shall arrange and pay for the services of a court reporter.

008.01L Such other matters as may aid in the disposition of the proceedings;

008.02 The Hearing Officer at any conference may dispose of by ruling, irrespective of the consent of the parties, any procedural matters which the Hearing Officer is authorized to rule upon during the course of the proceedings; and which it appears may appropriately and usefully be disposed of at that stage. The rulings of the Hearing Officer made at such conference shall control the subsequent course of the hearing, unless modified by the Director as provided in these rules.

008.03 The Hearing Officer, in his or her discretion or upon the request of any party, shall make a preliminary order to reflect the action taken at the pre-hearing conference, and any agreements by the parties relating to any of the matters considered. All agreements by the parties or their attorneys which limit the issues for hearing to those not disposed of by admissions or pre-trial order shall be in writing and shall be filed with the Hearing Officer.

008.04 In the event of a telephone pre-hearing conference, all documents shall be exchanged in time that all parties and Hearing Officers shall have the document three days prior to the hearing.

009 CONTINUANCES. A hearing before a Hearing Officer shall commence at the time and place fixed in the notice of such hearing, but thereafter may be adjourned from time to time by the Hearing Officer. The Hearing Officer for good cause shown and consistent with agency directives regarding the setting of the matter may continue a hearing or adjourn any hearing. Continuances and adjournments may be requested orally or in writing by parties and such requests may be granted or denied at the discretion of the Hearing Officer. For purposes of this regulation, the word hearing applies to pre-hearing conferences as well as hearings.

010 SETTLEMENTS

010.01 The parties at a pre-hearing conference, or at any other time, may explore proposed settlements and if agreement is reached by all parties or by all parties except Department of Public Institutions counsel, it must be committed to writing and submitted to the Hearing Officer or the Director. If submitted to the Hearing Officer with the signature of all parties, he/she shall adjourn the proceedings and submit the proposed resolution to the Director. The Hearing Officer may include a recommendation as well as procedural questions. The Director will advise the Hearing Officer whether the case is concluded or the Hearing Officer is to resume the proceedings.

010.02 Offers of settlement shall be filed in camera. The consent agreement and order shall be signed by all parties and accompanied by a motion to transmit the proposed agreement and order to the Director or other decision maker if not the Director. The motion shall outline the substantive provisions of the agreement and state reasons why it should or should not be accepted by the Director or other decision maker as the case may be.

010.03 The proposed consent agreement and order, which constitutes the offer of settlement, shall contain:

010.03A An admission of all jurisdictional facts;

010.03B Provisions that the allegations of the complaint are resolved by the consent agreement and order;

010.03C A description of the alleged hazard, non-compliance, or violation;

010.03D If appropriate, a listing of the acts or practices from which the respondent shall refrain; and

010.03E If appropriate, a detailed statement of the corrective action which the respondent shall undertake.

010.03F Signature of all parties or all parties except Department of Public Institutions counsel.

010.04 When an offer of settlement has been agreed to by all parties and has been transmitted to the Director, the proceedings shall be stayed until the Director has ruled on the offer. When an offer of settlement has been made, agreed to by all parties except Department of Public Institutions counsel, and transmitted to the Director, the proceedings shall not be stayed pending the Director's decision on the offer, unless otherwise ordered by the Director.

010.05 The Hearing Officer shall make a recommendation upon all transmitted offers of settlement submitted to him/her. If the Director accepts the offer, the Director shall issue an appropriate order, which shall become effective upon issuance or as specified by the Director in the order.

010.06 If the Director rejects an offer of settlement, the Director, in writing, shall give notice to the parties and the Hearing Officer. If the proceedings have been stayed, the Hearing Officer shall promptly issue an order notifying the parties of the resumption of the proceedings, including any modifications to the schedule resulting from the stay of the proceedings.

010.07 Neither rejected offers of settlement nor the fact of the proposal of offers of settlement including proposed consent agreements, orders, and motions requesting settlement are admissible in evidence or become a part of the record.

011 **WAIVER OF HEARING** In any proceedings, if the parties waive the hearing, the Hearing Officer may forthwith dispose of the matter on the basis of the pleadings, submittals, or other documentary evidence appearing in the record of the case; the Hearing Officer may require oral argument or briefs by the parties. The Hearing Officer shall then submit his findings, determinations and recommendations to the Director.

012 DISCOVERY The discovery established in this sub-part is applicable to the discovery of information among the parties in any administrative hearing proceeding before the Director. Parties seeking information from persons not parties may do so by subpoena in accordance with Section 013 of these rules.

012.01 Parties may obtain discovery by the Nebraska Discovery Rules for all Civil Cases promulgated by the Nebraska Supreme Court except as modified by these rules.

012.02 The Hearing Officer shall set the timelines in all discovery proceedings before it.

012.03 The Hearing Officer shall grant or deny discovery when the ends of justice will be served.

013 SUBPOENAS

013.01 Subpoenas may be issued by the Hearing Officer, upon written petition therefore by any party to the proceeding. Every subpoena shall contain the caption of the docket and shall command each person to whom it is directed to attend and give testimony at the time and place therein specified.

013.02 A subpoena duces tecum shall be issued in the manner and form as the subpoena for the attendance of a witness, and may command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein.

013.03 A subpoena or subpoena duces tecum, may be served by certified mail, by any other person designated by the Hearing Officer, or by an employee of the party requesting issuance thereof who is not a participant in the proceeding and is 18 years of age. Service by other than certified mail or the sheriff must be shown by affidavit of the person serving the subpoena or subpoena duces tecum. Each person who shall appear as a witness before the Hearing Officer in answer to a subpoena or subpoena duces tecum may receive for his or her attendance such fees and mileage as are provided by law for such witnesses. Service of a subpoena or a subpoena duces tecum upon a person named therein, shall be made by delivering a copy thereof to such person.

013.04 Each party shall be responsible for the payment of witness fees and mileage, including the fees and expenses of

the subpoena or subpoena duces tecum and draft as requested in the petition.

013.05 Department personnel will be provided upon receipt of a subpoena without payment of witness fees or mileage fees.

013.06 The decisionmaker and/or Director will never be required to testify.

014 INTERLOCUTORY CERTIFICATIONS TO THE DIRECTOR

014.01 Ruling of the Hearing Officer may not be appealed to the Director except as provided in this section.

014.02 The Director may, in his discretion, consider interlocutory appeals where a ruling of the Hearing Officer:

014.02A Requires the production of records of the Department of Public Institutions which are claimed to be confidential or privileged under the law.

014.02B Requires the testimony of an employee of the Department of Public Institutions other than one knowledgeable of the facts of the matter in adjudication.

014.03 Within three days of an issuance of a ruling, any party may petition the Director to consider an interlocutory appeal of a ruling in the categories enumerated in 207 NAC 1 013.02A and 207 NAC 1 013.02B above. Any other party may file a response to the petition within three days of its service. The Director shall decide if the petitioner may request such further briefings or oral presentations as he or she deems necessary.

014.04 Interlocutory appeals from all other rulings by the Hearing Officer may proceed only upon motion to the Hearing Officer and a determination by the Hearing Officer in writing that the ruling involves a controlling question of law or policy to which there is a substantial ground for differences of opinion and that an immediate appeal from the ruling may materially advance the ultimate determination of the litigation, or that subsequent review will be an inadequate remedy. The Hearing Officer's certification shall state the reasons for the determination.

014.05 A petition or motion for interlocutory appeal shall not stay the proceedings before the Hearing Officer unless the Hearing Officer or the Director so orders.

015 HEARING PROCEDURES

015.01 Any individual may appear in his own behalf before the Department. An attorney may appear on behalf of another only if: (a) he is admitted to practice law by order of the Nebraska Supreme Court, or (b) he is admitted to practice law before the Supreme Court of any State and is accompanied by a person admitted to practice law before the Courts of this State.

015.02 Every party shall have the right of timely notice and all other rights essential to a fair hearing, including but not limited to, the rights to present evidence, to conduct such cross-examination as may be necessary for full and complete disclosure of the facts, and to be heard by objection, motion, brief and argument.

015.03 All hearings shall be open to the public unless a party shows good cause for closing the hearing. If the hearing will deal with matters within the recognized laws on confidentiality and privilege, the hearing examiner shall order that the hearing be closed to the public, unless the person protected waives the privilege or confidentiality on the record.

015.04 Every party shall have the right to make a written or oral statement of position and to file a hearing brief, proposed findings of fact, conclusions of law and a post-hearing brief, in accordance with these rules.

015.05 Every party shall receive a copy of the Recommended Findings Fact and Conclusion of Law made by the Hearing Officer. Each party can file a written reply to the Hearing Officer's Report within seven days of the issuance of said report.

015.06 Any person compelled to testify in any proceedings in response to a subpoena may be accompanied, represented, and advised by legal counsel, and may purchase a transcript of his or her testimony.

015.07 After the calling of the docket, the Hearing Officer shall state the scope and purpose of the hearing, the entry of the appearance of attorneys for parties who meet the above requirements (including non-resident attorneys who have complied with Neb. Rev. Stat. '7-103). Thereafter, the following matters shall be disposed of in the following order:

015.07A Petitions for leave to intervene;

015.07B Any other pending petitions or motions;

015.07C Stipulation of the parties;

015.07D Opening statements of attorneys for the parties. Opening statements by each party shall be less than 30 minutes in duration. Parties may make written or oral stipulations in conformance with these rules, and stipulations of fact will be regarded as evidence at the hearing. Opening statements, if any, should be made immediately prior to the introduction of any testimony.

015.08 The Hearing Officer may regulate the use of photographic equipment or recording devices so as to ensure the orderly conduct of the proceedings.

015.09 The appealing/complaining party shall go first unless the Hearing Officer rules otherwise.

015.10 The Hearing Officer may authorize any party to the proceeding to file specific documentary evidence as a part of the record within a time to be fixed by the Hearing Officer but not to exceed 10 days after the closing of a record at the hearing. Exhibit numbers may be assigned in advance at the hearing to such items of documentary evidence.

016 POWERS AND DUTIES OF HEARING OFFICER

016.01 A presiding officer shall have the duty to conduct full, fair, and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order. He/she shall have all the powers necessary to that end, including the following powers:

016.01A To administer oaths and affirmations;

016.01B Issue subpoena as authorized by law;

016.01C To compel discovery and to impose appropriate sanctions for failure to make discovery;

016.01D To rule upon offers of proof and receive relevant, competent, and probative evidence;

016.01E To regulate the course of the proceedings in the conduct of the parties and their representatives;

016.01F To hold conferences for simplification of the issues, settlement of the proceedings, or any other proper purpose;

016.01G To consider and rule orally or in writing, upon all procedural and other motions appropriate in adjudicative proceedings;

016.01H To fix the time for filing briefs;

016.01I To issue recommended decisions, rulings and orders as appropriate;

016.01J To certify questions to the decisionmaker for its determination;

016.01K To exclude people from the hearing;

016.01L To see that facts are fully developed including witness examination and cross examination, if needed.

016.01M Take any other action consistent with the purpose of the law as administered by the Department and consistent with these rules.

016.02 No Hearing Officer shall participate in the hearing of an appeal in which he or she has an interest. Challenges to the interest of any Hearing Officer may be made to the Hearing Officer on, or prior to, the date set for hearing unless good cause is shown for later challenge. Such challenge as to the interest of the Hearing Officer may be heard and decided immediately by the Hearing Officer or in his or her discretion referred to the Director. In the event the challenge is not heard immediately or is referred to the Director, the hearing of the appeal shall be continued until the disposal of such challenges. The Hearing Officer shall cause all parties to be notified of the new date set for such hearing by mailing the notice to all parties to the appeal at least five days before the date set for the hearing.

016.03 The Director has the authority for good cause to substitute hearing officers.

017 PROMULGATION, AMENDMENT, OR REPEAL OF RULES

017.01 PETITION - FORM. A petition for the promulgation, amendment, or repeal of any rule subject to the authority or jurisdiction of the Department may be filed by any interested person.

017.02 The petition must:

017.02A Contain a specific statement setting out the legal capacity of the petitioner to instigate the proceedings;

017.02B State the precise wording of the rule to be repealed;

017.02C State the precise wording of the proposed rule of amendment;

017.02D State the reason for the rule or amendment or the proposed repeal of a publication;

017.02E State the names of interested parties, known to determine who is likely to be affected by the proposed changes; and

017.02F Be subscribed by the petitioner or by a duly authorized officer of the petitioner if the petitioner is a corporation organization, other legal entity, or for the petitioner by his attorney in which case the attorney shall also state his telephone number and address.

017.03 Parties to a promulgation, amendment, or repeal of rules proceeding are petitioners. Provided, any interested person may intervene in any promulgation, amendment, or repeal of rules proceeding without any prior notice or filing if such intervention will not delay the proceeding.

017.04 Each petition for the promulgation, amendment, or repeal of rules must be accompanied by the original and parties named as interested persons by the petitioner.

017.05 At the time and place set for hearing, the Department shall then and there afford the petitioner and any intervenor a reasonable time to discuss the petition.

017.06 Failure of any petitioner to appear at the time and place set for hearing, unless otherwise allowed by the Department on good cause shown will be deemed sufficient grounds for the Department to dismiss the petition.

017.07 Parties to a promulgation, amendment, or repeal of rules proceeding shall be notified of the decision and order of the Department in person or by certified mail, return receipt requested.

017.08 When any petition for the promulgation, amendment, or repeal of any rule by the Department has been denied, in whole or in part, a subsequent petition covering substantially the same subject matter will not be considered by the Department within one hundred and eighty (180) calendar days from the date of the final denial in whole or in part of the previous petition, except for good cause shown.

018 DECLARATORY RULINGS

018.01 A petition for a declaratory ruling may be filed by any interested person with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the Department.

018.02 The petition must:

018.02A contain a heading specifying the subject matter, the name and address of the petitioner;

018.02B the names and addresses of all defendants who claim any interest which would be affected by the disposition of the petition by the Department;

018.02C shall contain a short and plain statement of the grounds upon which the Department's authority or jurisdiction depends;

018.02D shall contain a specific statement averring the legal capacity of the petitioner to instigate the proceedings;

018.02E shall concisely set forth all material facts upon which the declaratory ruling is asked plus a demand of the relief to which the petitioner supposes himself entitled;

018.02F and shall be subscribed by the petitioner, or by a duly authorized officer of the petitioner, if it be a corporation, organization, or other legal entity, or for the petitioner by his attorney, in which case the attorney shall also state his address and telephone number.

018.03 The only parties to a declaratory proceeding are petitioners and defendants.

018.04 Each petition for a declaratory ruling must be accompanied by copies in sufficient number to enable the Director to serve one copy on each defendant and retain an original. An additional number of copies may be required for use by members of the Department. The Director shall serve a copy of the petition on each defendant in the manner permitted by law, which shall include service by certified or registered mail, return receipt requested. Whenever a declaratory ruling is sought with respect to the constitutionality or validity of any rule or a statute enforceable by the Department, the Attorney General of the State of Nebraska shall also be served a copy of the petition and shall be entitled to be heard. Charges for serving a copy of the petition on each defendant, including service, and when applicable, on the Attorney General of the State of Nebraska, are to be paid by the petitioner prior to the date set by the Department for hearing.

018.05 The Department shall set the matter for hearing within 20 days of receipt of the petition requesting Declaratory Judgment.

018.06 Evidence in a declaratory rule proceeding will ordinarily be received in the following order: (1) Petitioner; (2) Defendant; and (3) Rebuttal by the Petitioner.

018.07 The Department shall prepare an official record in all declaratory proceedings including testimony and exhibits, but it shall not transcribe the tape or court reporter's record unless requested for purpose of rehearing or judicial review, in which event the transcript and record shall be furnished by the Department upon request and tender of the cost of preparation.

018.08 The Department may issue a declaratory ruling either affirmative or negative in form and effect.

018.09 The Department may refuse to issue a declaratory ruling where such ruling, if issued, would not terminate the uncertainty or controversy giving rise to the proceeding, or where the petitioner seeks a declaratory ruling applicable to any class.

018.10 Parties to a declaratory proceeding shall be notified of the decision and order of the Department by certified or registered mail, return receipt requested.

019 RULES OF EVIDENCE

019.01 When an objection is made to the admissibility of evidence, the person presiding at the hearing shall rule upon the objection. The Hearing Officer may exclude inadmissible evidence on the Hearing Officer's own motion. All parties may note their exceptions on the record to any ruling or other action of the person presiding at the hearing.

019.02 In any proceeding before the Hearing Officer relevant and material evidence shall be admissible, but there shall be excluded such evidence as is incompetent, irrelevant, immaterial, and unduly repetitious.

019.03 The Hearing Officer shall rule on the admissibility of all evidence, and shall otherwise control the reception of evidence so as to confine it to the issues in the proceedings. The production of further evidence upon any issue may be ordered.

019.04 No more than one attorney for each party or the pro se party shall examine or cross-examine a witness, and the Hearing Officer may require that only one attorney or party may cross-examine a witness on behalf of all parties united in interest.

019.05 A party may call as a witness an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and may interrogate and contradict and impeach such witness in all respects, as if such witness had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, but such witness may be cross-examined by the adverse party only upon the subject matter of his examination in chief.

019.06 If an objection to a question propounded to a witness is sustained by the Hearing Officer, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. Upon request, such evidence will be taken and reported in the record in full unless it clearly appears that the evidence is not admissible on any ground, or that the witness is privileged. The Hearing Officer may add such other statements as clearly show the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon.

019.07 The party appealing the agency's decision order, or practice, has the burden of proof.

020 CLOSING ARGUMENT

020.01 After all parties rest their case, each party may give a closing argument, not to exceed 30 minutes.

020.02 At the close of the arguments the Hearing Officer shall fix the time for filing of briefs including suggested findings of fact and conclusions of law.

020.03 The parties may waive either or both submissions.

021 CLOSING THE RECORD

021.01 The record shall close at the conclusion of the testimony of both sides and after closing statements of both sides. However, when exhibits, other evidence, briefs or suggested findings of fact or conclusions of law are to be filed, the record shall remain open for the sole purpose of receiving these items.

021.02 The RECORD shall include, unless provided otherwise by law or regulations:

021.02A All applications and other papers seeking action by the Director or any officer subordinate to him from whom an appeal is taken to the Director;

021.02B All orders, answers, replies, responses, objections, motions, stipulations, exceptions, other pleadings, notices, certificates, proofs of service, and briefs in any matter or proceeding;

021.02C All evidence received;

021.02D A statement of all matters officially noticed;

021.02E All questions and proffers of proof, objections and rulings thereon;

021.02F All proposed findings and exceptions;

021.02G Any decision, opinion or report by the Hearing Officer presiding at the hearing, and any response to Hearing Officer's report by parties;

021.02H Any order of the decisionmaker initiating the matter or proceedings;

021.02I Any order by the Director designating the hearing officers;

021.02J A transcript of the hearing if transcribed, by a certified shorthand reporter designated by the Director for the hearing or a tape recording of the matter;

021.02K All exhibits offered but through omission not received in evidence but treated by both counsel and Hearing Officer as received.

022 REHEARING

022.01 An application for rehearing is a permissive step and does not toll the time for appeal to District Court. Any request for hearing shall be filed with the Department at its office in Lincoln within five days after the issuance of any adjudication or other final order by the Department. Such application shall be made by petition, stating specifically the grounds relied on. A copy of such application shall be served on all other persons receiving a copy of the original order in conformity with the service provisions of these rules, by the party making such application.

022.02 Every application for rehearing shall contain the following:

022.02A The docket number of the case for which such application is being made.

022.02B The name of the party making such application, together with such other identifying information as it otherwise required for any appearance or submittal by these rules.

022.02C The name and address of each person served with a copy of such application in conformity with the service provisions of these rules.

022.02D Such petition shall state concisely and specifically alleged errors in the adjudication or other order of the Department.

022.03 Applications for rehearing shall be filed and served by personal delivery or by certified mail, return receipt requested.

022.04 The date of an application for rehearing is filed the day it is received in the Director's office in Lincoln whether by personal delivery or by mail.

022.05 The Director has the discretion to not grant a rehearing if the reason stated in the application does not constitute good cause and would not change the outcome of the hearing even if true or alleged.

022.06 When the Director grants an application for rehearing, he/she shall so notify the parties in writing.

022.07 The date an application for rehearing is granted shall be the date on which the Director makes such decision.

022.08 The rehearing shall follow the same procedural rules of the hearing, except to the extent otherwise directed by the Director.

022.09 An application for rehearing will be granted for one of the following reasons:

022.09A Specific rehearing by reason of a consequence that would result in compliance therewith;

022.09B Rehearing for oral argument or legal authorities relating to legal issues and the Director's conclusion of law;

022.09C Rehearing for submission of additional evidence which was either not available or not known to exist at the time of the hearing.

023 PERFECTING PLEADINGS TO THE DEPARTMENT

023.01 Petitions, applications, or other pleadings shall set forth the facts upon which they are based, a request for whatever action or relief is being sought and a reference to the applicable laws, rules and regulations; together with whatever further statement shall be required by provisions of law.

023.02 Each pleading must be signed at the end by the individual or organization bringing the action, or by an individual authorized to act in such matters on behalf of the complainant. The mailing address and phone number of each person signing shall be included directly below the signature.

023.03 Pleadings shall be typed or legibly printed on white paper, 8 1/2" wide and 11" long, unless otherwise allowed by the Department on good cause shown. A letter to the Director may be accepted in lieu of a pleading if its contents substantially comply with these rules as determined by the Director.

023.04 The pleading shall be filed with the Department by mailing or hand-delivering to the Director of the Department of Public Institutions, P.O. Box 94728, Lincoln, NE 68509. The pleading must be received by the Director or a Hearing Officer appointed by the Director within the timeframes allowed to be considered filed.

023.05 Failure to comply with any section of this Rule may result in dismissal of the complaint or petition with prejudice or return of the complaint, petition or other pleading, to the party for amendment, at the discretion of the Director and as the interests of justice dictate.

024 DEFAULT JUDGMENT

024.01 If no response is filed in the time set by the Hearing Officer to a pleading a default judgment order will be recommended

and written by the Hearing Officer and entered by the Director. No default judgment will be set aside except for proof of lack of notice of the proceedings or good cause shown by the party against whom the judgment was entered.

025 TEACHER APPEALS

025.01 Any teacher, except one in the first two years of employment as a teacher with the Department, given notice that the teacher's contract will be amended or terminated for following year may file a complaint and request for hearing with the Director.

025.01A The complaint and request for hearing must be filed with the Director within five days of the teacher receiving notice of the proposed amendment or termination of the contract.

025.02 The Director shall schedule a hearing within ten days of the filing of the Complaint and Request for Hearing.

025.02A The hearing date may be continued beyond the ten days with the written stipulation of all parties.