

NEBRASKA ADMINISTRATIVE CODE

TITLE 95
CHAPTER 1

NEBRASKA PROFESSIONAL PRACTICES COMMISSION

REGULATIONS FOR TEACHER AND ADMINISTRATOR PROFESSIONAL PRACTICES HEARINGS

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TITLE 95 – NEBRASKA PROFESSIONAL PRACTICES COMMISSION
 CHAPTER 1 – TEACHER AND ADMINISTRATOR PROFESSIONAL PRACTICES
 HEARINGS

NUMERICAL TABLE OF CONTENTS

<u>Subject of Title</u>	<u>Statutory Authority</u>	<u>Code Section</u>
General Information	79-869	001
Statutory Authority	79-869	001.01
Scope & Application of this Chapter	79-868, 79-869	001.02
Related Regulations	79-869	001.03
Definitions	79-869	002
Petitions	79-868, 79-869	003
Filing, by whom	79-868	003.01
Form of Petition	79-868, 79-869	003.02
Answer, Notice to File	79-869	003.03
Answer, Form	79-869	003.04
Answer, Failure to File	79-869	003.05
Filings Format	79-869	003.06
Filings, Location & Service	79-869	003.07
Filings, Time Limits	79-869	003.08
Hearings	79-868, 79-869	004
Hearing Panel Appointment	79-861	004.01
Hearing, Time & Place	79-869, 89-913	004.02
Consolidation of Petitions	79-869	004.03
Prehearing Conference	79-869	004.04
Hearing, Location	79-869	004.05
Hearing, Closing	79-869	004.06
Hearing, Conduct of	79-869	004.07
Hearing Panel, Legal Counsel	79-869	004.08
Appearance, Representative of Party	79-869	004.09

Briefs	79-869	004.10
Record of Proceedings	79-864, 84-913	004.11
Ex Parte Communication	79-869	004.12
Evidence	79-868-69, 84-914	005
General Provisions	84-914	005.01
Subpoenas, Discovery & Witnesses.....	79-870	005.02
Subpoenas, Procedure	79-870	005.02A
Witness Fee		005.02B
Evidence, Admission of	84-914	005.03
Cross Examination	84-914	005.04
Evidence, Official Notice of	84-914	005.05
Evidence, Copies of	79-869	005.06
Stipulations	79-869	005.07
Exhibits, Filing & Service Prior to Hearing	79-869	005.08
Examination, Hearing Panel	79-869	005.09
Disposition of Cases	79-869, 84-913-915	006
Deliberations	79-869, 84-913	006.01
Final Order	79-869, 84-915	006.02

APPENDIX A – Petition Form
APPENDIX B – Answer Form

TITLE 95 – NEBRASKA PROFESSIONAL PRACTICES COMMISSION
 CHAPTER 1 – TEACHER AND ADMINISTRATOR PROFESSIONAL PRACTICES
 HEARINGS

ALPHABETICAL TABLE OF CONTENTS

<u>Subject of Title</u>	<u>Statutory Authority</u>	<u>Code Section</u>
Definitions	79-869	002
Disposition of Cases	79-869, 84-913	006
Deliberations	79-869, 84-913	006.01
Final Order	79-869, 84-915	006.02
Evidence	79-868-69, 84-914	005
General Provisions	84-914	005.01
Subpoenas, Discovery & Witnesses	79-870	005.02
Subpoenas, Procedure	79-870	005.02A
Witness Fee		005.02B
Evidence, Admission of	84-914	005.03
Cross Examination	84-914	005.04
Evidence, Official Notice of	84-914	005.05
Evidence, Copies of	79-869	005.06
Stipulations	79-869	005.07
Exhibits, Filing & Serving Prior to Hearing	79-869	005.08
Examination, Hearing Panel	79-869	005.09
General Information	79-869	001
Statutory Authority	79-869	001.01
Scope & Application of this Chapter	79-869	001.02
Related Regulations	79-869	001.03
Hearings	79-868, 79-869	004
Hearing Panel Appointment	79-861	004.01
Hearing, Time & Place	79-869, 84-913	004.02
Consolidation of Petitions	79-869	004.03
Prehearing Conference	79-869	004.04
Hearing Location	79-869	004.05
Hearing, Closing	79-869	004.06

Hearing, Conduct of	79-869	004.07
Hearing Panel, Legal Counsel	79-869	004.08
Appearances, Representative of Party	79-869	004.09
Briefs	79-869	004.10
Record of Proceedings	84-913, 79-864	004.11
Ex Parte Communication	79-869	004.12
Petitions	79-868, 79-869	003
Filing, by whom	79-868	003.01
Form of Petition	79-868, 79-869	003.02
Answer, Notice to File	79-869	003.03
Answer, Form	79-869	003.04
Answer, Failure to File	79-869	003.05
Filings Format	79-869	003.06
Filings, Location & Service	79-869	003.07
Filings, Time Limits	79-869	003.08

APPENDIX A – Petition Form
APPENDIX B – Answer Form

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Chapter 1 – TEACHER AND ADMINISTRATOR PROFESSIONAL PRACTICES HEARINGS

001 General Information

001.01 Statutory Authority Section 79-869 of the Revised Statutes of Nebraska (R.R.S.) requires that the Professional Practices Commission adopt rules and regulations for the performance of its functions as set forth in Section 79-859 through 79-871 R.R.S. Section 79-868 R.R.S provides that the State Board of Education may request that the Commission conduct hearings on Petitions filed by the Commissioner of Education and make recommendations to the Board concerning violations of standards of professional ethics and practices by holders of public school certificates.

001.02 Scope and Application of this Chapter This Chapter contains the procedures used by the Commission to hold hearings and make recommendations to the Board concerning alleged violations of standards of professional ethics and practices pursuant to Section 79-868 R.R.S. and Title 92, Nebraska Administrative Code, Chapter 27. The rules of this Chapter shall apply to all proceedings before the Commission unless otherwise specifically provided in the context of an individual rule.

001.03 Related Regulations Procedures for hearings and recommendations to the Board concerning violations of standards of professional ethics and practices by holders of nonpublic school certificates are contained in 92 NAC 28. Procedures for the reinstatement of a public school certificate are contained in 95 NAC 2. Procedures for the reinstatement of a nonpublic school certificate are contained in 92 NAC 29.

002 Definitions The following definitions shall apply herein:

002.01 Administrator – Any holder of a public school certificate for administration and supervision issued pursuant to 92 NAC 21.

002.02 Admonishment – A private sanction to a certificate holder that further violations of standards of professional ethics or practices may result in more serious action, including the suspension or revocation of a certificate.

002.03 Board – The Nebraska State Board of Education

002.04 Commission – The Nebraska Professional Practices Commission

002.05 Commissioner – The Nebraska State Commissioner of Education

002.06 Petitioner – The Nebraska State Commissioner of Education or an individual seeking reinstatement of a revoked public school certificate as provided in 95 NAC 2.

002.07 Reprimand – A public sanction criticizing or rebuking a certificate holder for violations of standards of professional ethics or practices.

002.08 Respondent – An individual charged in a Petition with violating standards of professional ethics or practices as contained in 92 NAC 27 or the Commissioner when an individual is seeking reinstatement of a revoked public school certificate as provided in 95 NAC 2.

002.09 Revocation – A public sanction withdrawing or canceling a certificate holder's certificate(s) for a certain period of time. At the expiration of the revocation period, the former certificate holder may apply for reinstatement in accordance with 95 NAC 2.

002.10 Special Services Counselor – Any holder of a public school special services counseling certificate issued pursuant to 92 NAC 21.

002.11 Suspension – A public sanction withdrawing or canceling a certificate holder's certificate(s) for a certain period of time. Each certificate is automatically reinstated at the expiration of the suspension period if the certificate(s) did not expire during the period of suspension. If the certificate(s) expired during the period of suspension, a new certificate may be obtained by making application and meeting the certification requirements in force at the time of application.

002.12 Teacher – Any holder of a public school certificate for teaching issued pursuant to 92 NAC 21.

003 The Petition

003.01 Filing A Petition may be filed by the Commissioner if he or she finds probable cause to pursue disciplinary action against a teacher, administrator, or special services counselor. Upon filing of the Petition with the Commission, the case shall be assigned a case number.

003.02 Form of Petition The Petition shall comply with Rule 003.032A through 003.02G and be prepared in substantially the form set forth in Appendix A.

003.02A The venue shown as: “BEFORE THE NEBRASKA PROFESSIONAL PRACTICES COMMISSION

003.02B A heading captioned “(Name), COMMISSIONER OF EDUCATION, PETITIONER;

003.02C The full name, address, telephone number, and social security number, if known, of the Respondent;

003.02D The type, rank, level, endorsements, and expiration dates of certificate(s) held by Respondent;

003.02E A concise statement of facts which the Commissioner believes constitutes a violation of professional ethics and/or practices;

003.02F The provision(s) of statute or rule which are alleged to be violated;

003.02G The name of the school or school district, if any, currently employing the Respondent.

003.03 Notice to File Answer Upon filing a Petition, the Commissioner shall send by certified mail, return receipt requested, a copy of the Petition, and a Notice to the Respondent. The Notice shall state that the Respondent has a right to submit an Answer within twenty-one (21) days after the receipt of the Notice. Mailing of any other Notice required under this Chapter shall be to Respondent’s last known address by regular U.S. Mail.

003.04 Answer The Respondent may file an Answer to the Petition. A sample Answer is included in Appendix B of this Chapter. It shall show venue as “Before the Nebraska Professional Practices Commission, State of Nebraska” and shall be captioned “Answer”. The answer shall contain the following information:

003.04A The name and address of the Respondent;

003.04B Specific statements regarding any and all allegations in the Petition, which shall be in the form of admissions, denials, explanatory remarks, or statements of mitigating circumstances; and any additional facts or information the Respondent deems relevant and which may be of assistance in the ultimate determination of the case.

003.05 Failure to Answer In the event the Respondent fails to respond to the Petition by filing an Answer with the Commission within twenty-one (21) days after service of the Petition and Notice to file an Answer, the Respondent shall be considered in default. Such default shall be considered as an admission by the Respondent of the allegations set forth in the Petition and as a waiver by the Respondent to a hearing as provided in Section 004 and

005 of this Chapter. Upon default by the Respondent, the Commission may request the Petitioner to file supporting information in the form of affidavits, court records, or other documentation regarding the allegations in the Petition. Based upon the Petition, any pleadings, and any information filed as requested by the Commission, the Commission shall render a final decision, or in the case of suspension, revocation, or reinstatement, a recommendation shall be made to the Board without any hearing or further notice to the Respondent.

003.06 Format for Filings All Answers, motions, or other pleadings filed in cases arising under this Chapter shall be typewritten on 8 1/2 x 11" white, 3-hole punched paper and shall be accompanied by two copies. All documents shall contain the title signature of the person filing the document, and the name of the party on whose behalf the document is filed.

003.07 Filing Location and Service Period All filings with the Commission shall be made with the Nebraska Professional Practices Commission; P.O. Box 94941, 301 Centennial Mall South; Lincoln, Nebraska 68509. When a party files a document, they shall simultaneously serve copies upon the other party. Any documents filed shall contain a certificate attesting to its service by mail, personal delivery, or otherwise. Service by mail shall be deemed completed upon mailing.

003.08 Filing Deadlines When the filing of a pleading or an act required to be done on or before a given date falls on a Saturday, Sunday, or legal holiday on which the Office of the Commission is closed, the pleading or act need not be filed or done until the next succeeding working day that the Office of the Commission is open for the transaction of business. All time limits referred to in this Chapter shall mean calendar days.

004 Hearings

004.01 Appointment of Hearing Panel If the Petition and Answer meets the procedural requirements of this Chapter, the Chairperson of the Commission shall appoint a hearing panel of not less than seven Commission members to conduct a hearing and determine the Findings of Fact, Conclusions of Law, and a Recommendation or Final Decision of the Commission. The Chairperson of the Commission shall designate one person to serve as the chairperson of the hearing panel.

004.02 Setting of Hearings The chairperson of the hearing panel shall set the time and place for any hearing which shall be at least seven days after the deadline for the filing of answers, unless agreement to set an earlier time is stipulated by Petitioner and Respondent.

004.03 Consolidation The chairperson of the Commission may order two or more petitions that are legally or factually related to be heard together on a consolidated record, unless any party makes a showing, sufficient to satisfy the chairperson, that he or she would be prejudiced thereby.

004.04 Prehearing Conference If the Petitioner or Respondent requests a prehearing conference, the chairperson of the hearing panel or legal counsel may hold a prehearing conference with the parties. The prehearing conference may be held in person or by telephone. A telephonic prehearing conference may be used at the discretion of the chairperson or legal counsel. The conference shall be for the purpose of, but not limited to, the following: simplifying the issues, amending the Petition or Answer, stipulating to the facts, stipulating to a proposed settlement, submission of witness and exhibit lists, identification of exhibits, application for subpoenas, and requests for discovery orders. The chairperson or legal counsel may hold a prehearing conference upon his or her own motion if in his or her discretion he or she determines that a prehearing conference is needed.

004.05 Location The hearing shall be held in Lincoln, Lancaster County, Nebraska. Upon joint application or showing by the parties, or upon an independent determination by the chairperson of the hearing panel, that another location would be more convenient to the parties and witnesses, the chairperson of the hearing panel may set the hearing outside of Lincoln.

004.06 Closed Hearing Upon the specific request of the Respondent or Petitioner to hold a closed hearing, the hearing panel may hold a closed hearing to prevent needless injury to any individual.

004.07 Conduct of Hearing At the time of hearing:

004.07A The chairperson designated to preside at the hearing shall open and close the proceedings and take appearances. The chairperson or legal counsel, if appointed, shall rule on motions, objections, and matters of evidence.

004.07B Reasonable opportunity shall be afforded all parties to present evidence and argument. The chairperson of the hearing panel may set reasonable time limits on presentations and arguments.

004.07C Failure of the Petitioner or his or her representative, to appear at the time and place set for hearing, unless otherwise allowed by the chairperson for good cause shown, shall be deemed sufficient grounds for the hearing panel to dismiss the Petition.

004.07D Informal procedures covering the conduct of hearings shall be subject to the discretion and direction of the hearing panel at the time of such hearing, unless otherwise specified in this Chapter.

004.08 Legal Counsel The Commission shall appoint legal counsel to advise and counsel the chairperson in the performance of his or her duties under this chapter, and upon agreement of the parties, to rule on questions of law during the course of the hearing.

004.09 Appearances Any individual may appear on his or her own behalf before the hearing panel; however, an individual may appear on behalf of another at any proceeding before the hearing panel only if:

004.09A He or she has been admitted to practice law before the Nebraska Supreme Court, or

004.09B He or she has been admitted to practice law before the Supreme Court of any state and is accompanied by a person admitted to practice law before the Nebraska Supreme Court.

004.10 Briefs Submission of briefs may be required by the chairperson or legal counsel of the hearing panel. If required, the time in which briefs shall be filed will be fixed by the chairperson at the close of the hearing.

004.11 Record of Proceedings The certified court reporter appointed by the Commission shall report and transcribe all testimony given in hearings before the Commission.

004.12 Ex Parte Communications No ex parte communications relative to the merits or any threat or offer of reward shall be made to any member of the Commission at any stage of a proceeding by any party to the proceeding, or by any person who has a direct or indirect interest in the proceedings, or by his/her authorized representative or counsel. A member of the Commission who receives an ex parte communication concerning a case shall place on the record of the case, the name of the person making the communication and its nature.

005 Evidence

005.01 General Provisions The hearing shall be conducted pursuant to the rules of evidence applicable to the district courts of Nebraska, unless mutually waived by the parties.

005.02 Subpoenas, Discovery, and Witnesses As provided in Section 84-914 R.R.S., the hearing panel may administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses residing either within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the district courts of Nebraska.

005.02A Subpoenas The use of subpoenas in proceedings before a hearing panel is governed by statutory procedures for issuance of subpoenas by district courts in Nebraska except as hereinafter provided.

005.02A1 A subpoena requiring the attendance of a witness shall be issued by the Commission through the Clerk of the Commission, or the chairperson of the hearing panel or appointed legal counsel, upon written application of any party.

005.02A2 Subpoenas for the production of accounts, books, documents, or papers, will be issued by the Commission only upon written application by a party stating specifically which accounts, books, documents, or papers are required and the facts expected to be proved thereby. All parties directed to produce accounts, books, documents, or papers shall furnish and deliver the same at the time and place specified in the subpoena.

005.02A3 A subpoena issued pursuant to this rule may be served in any manner permitted by law, which shall include service by registered or certified mail, return receipt requested, sent not less than six days prior to hearing.

005.02A4 In the case of disobedience to a subpoena, the Commission may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of accounts, books, documents, or papers.

005.02A5 Charges for serving a subpoena by mail are to be paid prior to the issuance of the subpoena by the party at whose instance the subpoena is issued. Arrangements for personal service, if desired by the party, are to be made by the party requesting such service and they shall be responsible for paying any costs for such service prior to the hearing date.

005.02B Witness Fee Any witness who is summoned and who responds thereto is entitled to the same fee as is paid for like service in the district courts of Nebraska. Applications made pursuant to this Chapter for the attendance of a witness shall be accompanied by a certified check, payable to the order of the witness, and equal in amount to the witness's statutory traveling fee and a fee for one day's attendance at the hearing. Said certified check shall be tendered to the witness when the subpoena is served upon him or her. Additional fees due the witness, if any, shall be paid at the close of the hearing by the party at whose instance the witness is summoned. In addition, Section 25-1228 R.R.S. shall govern subpoenas issued at the request of any agency of state government.

005.03 Offer of Evidence All evidence shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

005.04 Cross Examination Every party shall have the right of cross examination of witnesses who testify and shall have the right to submit rebuttal evidence. The chairperson of the hearing panel or appointed legal counsel may limit cross examination by multiple parties having similar interests.

005.05 Official Notice The chairperson of the hearing panel may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within his or her specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the materials so noticed. They shall be afforded an opportunity to contest the facts so noticed. The chairperson may utilize his or her experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.

005.06 Copies of Evidence All documentary evidence to be offered at a hearing shall be accompanied by sufficient copies for all parties, unless waived by the chairperson of the hearing panel.

005.07 Stipulations Parties to any proceeding may agree upon any facts, either by written stipulation entered into the record as an exhibit, or by oral agreement stated on the record; provided that the hearing panel shall not be irrevocably bound by such stipulation.

005.08 Filing and Serving Exhibits Prior to Hearing In any proceeding where detailed or complicated exhibits are to be used, the Commission may require any party to file and serve copies of such exhibits or other necessary information within a specified time in advance of the hearing in order to enable the other party to study same and prepare cross examination with references thereto.

005.09 Questioning by Hearing Panel The members of the hearing panel may ask additional questions of any witness following direct and cross examination by the parties, provided that redirect and recross is afforded the parties after questioning by the panel members.

006 Disposition of Cases

006.01 Deliberations After consideration of the recommended order (if applicable), briefs, motions, and oral arguments, the hearing panel shall deliberate and vote upon its final decision or recommendations to the Board.

006.02 Final Order Following its decision, the hearing panel shall issue in writing a Final Order to dismiss, admonish, reprimand, or warn, or shall issue a Recommendation to the Board for suspension, revocation, or support or opposition to reinstatement. Such Final Order or Recommendations shall set out the Commission's findings and conclusions of law. The Final Order or Recommendations shall be signed by the chairperson of the hearing panel.

WHEREFORE, the Petitioner requests that the Professional Practices Commission hold hearings and make recommendations to the State Board of Education as is warranted, regarding the certificate(s) of Respondent.

Dated this _____ day of _____, 20_____.

(signature)

(name)
Commissioner of Education
Department of Education
State of Nebraska

VERIFICATION

State of Nebraska)
)
County of _____)

I, _____, Commissioner of Education, being first duly sworn under oath, state that I have read the contents of the Petition and that to the best of my knowledge, information, and belief such contents are true and there is reasonable cause for filing said document.

Subscribed and sworn before me this _____ day of _____, 20_____,

by _____ (name of Commissioner) _____.

(Seal)

Notary Public

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Petition was served upon Respondent by _____
_____ this _____ day of _____, 20_____.

(Signature)

VERIFICATION

State of Nebraska)
)
County of _____)

I, _____, being first duly sworn under oath, state that I have read the contents of the Answer and that to the best of my knowledge, information, and belief such contents are true.

Signature of Respondent

The foregoing instrument was subscribed and sworn to before me on this _____ day of _____, 20____, by _____ (Name of Respondent).

Notary Public

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Answer, was served, U.S. Mail, upon the Commissioner of Education at the following address: _____
this _____ day of _____, 20 _____.

Signature of Respondent