

**DATE:**  
**TO:** ESU #1 Board of Directors  
**FROM:** Bill Heimann, Administrator  
**RE:** Tuesday, December 8, 2020 Board Meeting

There will be a meeting of the ESU #1 Board of Directors, on Tuesday, December 8, 2020, at 5:30 PM in the

ESU #1 Conference Room  
211 Tenth Street  
Wakefield, NE 68784-5014

Consideration, discussion and any action necessary will be taken on the following items.

- A. Notification of Open Meetings Law
- B. Roll Call\*
- C. Approve Agenda\*
- D. Consent Agenda\*
  1. Previous Minutes (copy attached)
  2. Financial Reports\*
    - a. Revenue Report/Treasurer's Report
    - b. Cash Summary/Expenditure Report
  3. Bills for December
  4. Administrator's Monthly Report
    - a. Teaching and Learning Team Planning Session
    - b. COVID-19 Update
    - c. Superintendent Positions in ESU #1
- E. Public Comment
- F. Recognition of Board Service
- G. Appoint District 4 Board Member
- H. 2021 Mileage Rate
- I. ESU #1 Board Committees
- J. Nebraska Association of School Boards State Conference
- K. Consider, discuss, and take all necessary action regarding the performance evaluation of ESU #1 Administrator
- L. Virtual Board Meeting Meetings in 2021
- M. Personnel\*
  1. Consider, discuss, and take necessary action on employee contracts and personnel changes.
    - a. Resignation(s)
    - b. New Hire(s)
    - c. Contract Change(s)
    - d. Termination(s)
- N. Adjournment

This agenda contains a list of subjects known at the time of its distribution on . A copy of the agenda reflecting any changes will be kept in the ESU #1 Administrative office and will be readily available for public inspection during normal office hours. Except for items of emergency nature, the agenda will not be enlarged later than twenty-four hours before the scheduled commencement of the meeting. The Board reserves the right to change the order of business discussed.

\*Action Items

# Nebraska Open Meetings Act

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

**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.

**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.

**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.

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

(1)(a) Each public body shall give reasonable advance publicized notice of the time and place of each meeting as provided in this subsection. Such notice shall be transmitted to all members of the public body and to the public.

(b)(i) Except as provided in subdivision (1)(b)(ii) of this section, in the case of a public body described in subdivision (1)(a)(i) of section 84-1409 or such body's advisory committee, such notice shall be published in a newspaper of general circulation within the public body's jurisdiction and, if available, on such newspaper's web site. (ii) In the case of the governing body of a city of the second class or village or such body's advisory committee, such notice shall be published by: (A) Publication in a newspaper of general circulation within the public body's jurisdiction and, if available, on such newspaper's web site; or (B) Posting written notice in three conspicuous public places in such city or village. Such notice shall be posted in the same three places for each meeting. (iii) In the case of a public body not described in subdivision (1)(b)(i) or (ii) of this section, such notice shall be given by a method designated by the public body.

(c) In addition to a method of notice required by subdivision (1)(b)(i) or (ii) of this section, such notice may also be provided by any other appropriate method designated by such public body or such advisory committee.

(d) Each public body shall record the methods and dates of such notice in its minutes.

(e) 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 (i) twenty-four hours before the scheduled commencement of the meeting or (ii) 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 as provided in subsection (1) of this section;

(b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recodation 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 as provided in subsection (1) of this section 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, recodation 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.

**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 instate 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 instate 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.

**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.

**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.

Revised  
10/2020



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**ESU #1 Board Meeting**  
**Tuesday, November 10, 2020**

A meeting of the ESU #1 Board of Directors convened in open and public session on Tuesday, November 10, 2020, at ESU #1 in ESU #1 Conference Room, 211 Tenth Street, Wakefield, NE 68784-5014. Notice is further hereby given that, in accordance with the State Statute, members of the Board appeared by videoconference or telephonic means.

**Present:** Tucker Hight, Shannon Johnson, Lana Oswald, Sally Reinert, Benjamin Schultz, Helen Sorensen, Robby Thompson, Grant Torpin, **Absent:** Traci Haglund, Rhonda Heise, AJ Johnson.

Notice of the meeting was given in advance by publication and/or posting, as shown below, in accordance with the Board approved method for giving notice of meetings. Notice of this meeting was given in advance to all members of the Board of Directors. The Recording Secretary maintains a list of news media requesting notification of meetings and advance notification to the listed media of the time and place of the meeting and the subjects to be discussed at this meeting was provided. Availability of the agenda was communicated in the publicized notice and current copy of the Agenda was maintained as stated in the publicized notice. All proceedings of the Board of Directors, except as may be hereinafter noted, were taken while the convened meeting was open to the attendance of the public.

Posted Locations/Dates:

- Wayne Herald: November 5, 2020
- Central Office Front Door: November 6, 2020
- Sparq: November 6, 2020

A. Notification of Open Meetings Law

At the beginning of this meeting, Vice President Sally Reinert announced and informed the public that a current copy of the Open Meetings Act is available at the meeting site and posted online.

The Zoom link for the virtual meeting is:

<https://zoom.us/j/96511969366>

Meeting ID: 965 1196 9366

Dial by your location

+1 346 248 7799

B. Roll Call\*

Motion by Tucker Hight, seconded by Helen Sorensen, to excuse the absence of members AJ Johnson, Traci Haglund and Rhonda Heise: After discussion and on roll call vote, the Board voted as follows:

**Motion Carried:**

Traci Haglund: Absent, Rhonda Heise: Absent, AJ Johnson: Absent, Tucker Hight: For, Shannon Johnson: For, Lana Oswald: For, Sally Reinert: For, Benjamin Schultz: For, Helen Sorensen: For, Robby Thompson: For, Grant Torpin: For  
For: 8, Against: 0, Absent: 3

#### C. Approve Agenda\*

Motion by Helen Sorensen, seconded by Robby Thompson, to approve the November 10, agenda as presented After discussion and on roll call vote, the Board voted as follows:

#### **Motion Carried:**

Traci Haglund: Absent, Rhonda Heise: Absent, AJ Johnson: Absent, Tucker Hight: For, Shannon Johnson: For, Lana Oswald: For, Sally Reinert: For, Benjamin Schultz: For, Helen Sorensen: For, Robby Thompson: For, Grant Torpin: For  
For: 8, Against: 0, Absent: 3

#### D. Consent Agenda\*

Motion by Robby Thompson, seconded by Lana Oswald, to approve all items on the consent agenda as provided. Items include: October 13, Minutes; October Financial Reports (Treasurer, Revenue and Expense Reports); November bills of \$842,425.83; and Administrator's Report. After discussion and on roll call vote, the Board voted as follows:

#### **Motion Carried:**

Traci Haglund: Absent, Rhonda Heise: Absent, AJ Johnson: Absent, Tucker Hight: For, Shannon Johnson: For, Lana Oswald: For, Sally Reinert: For, Benjamin Schultz: For, Helen Sorensen: For, Robby Thompson: For, Grant Torpin: For  
For: 8, Against: 0, Absent: 3

#### D.1. Previous Minutes (copy attached)

#### D.2. Financial Reports

#### D.2.a. Revenue Report/Treasurer's Report

#### D.2.b. Cash Summary/Expenditure Report

#### D.3. Bills for November

#### D.4. Administrator's Monthly Report

#### D.4.a. Migrant Education Program Report

#### D.4.b. ESU#1 & ESU#8 Collaborative Meeting

#### E. Public Comment

#### F. Educator Health Alliance Rates for 2021-22

There will be an overall increase of 2.96 percent in premiums next year (2021-22) for the medical and dental insurance plans used by nearly every Nebraska school district, following action by the Educators Health Alliance (EHA), a consortium of three statewide public school groups that manages the plan. Medical insurance rates for active employees will increase 3.06 percent. Medical insurance rates for retirees will increase by 4.95 percent as, for the first time,

special services fees will be included in the premium rates for retirees. Dental rates for all employees and retirees will remain unchanged from the 2020-21 rate level.

The single digit increase in premium rates is attributed to several factors, including:

- The impact of the EHA's state-wide wellness and health promotion program;
- A program designed to assist in the management of chronic diseases and emerging diseases;
- Holding the line on health and administrative cost increases; and
- Continued prudent management in the design and choices of benefit plans.

#### G. Policy Change for Notice of Meeting

A change in Nebraska Law necessitates an amendment in Board Policy (Board Meetings>>Section 6 - Notice of Meeting>>A. Notice to Public). The new language is highlighted.

##### A. Notice to Public

Reasonable advance publicized notice shall be given for meetings that are subject to the Open Meetings Act. The notice shall give the time and place of the meeting and contain an agenda of subjects known at the time of the 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 ESU 1 during normal business hours.

The Board will give advance notice of meetings by publishing such notice in a newspaper of general circulation within the ESU's jurisdiction and, if available, on such newspaper's web site. In addition to publishing, the Board may, in its sole discretion, also give advance notice of meetings by posting as an additional means of giving notice to the public.

~~The public notice shall be given by a method designated by the Board. The designated methods are publication or posting a reasonable time in advance of the meeting. Three days advance notice shall be considered sufficient. If notice is given by publication, the notice shall be published in a newspaper of general circulation in the ESU. If notice is given by posting, the notice shall be posted on the front door of the principal office of the ESU. The notice may in addition be posted at post offices, banks and other public places in the boundaries of the ESU or such other places at which the public may reasonably be notified.~~

For an emergency meeting, notice shall not be required to be given; however, the Board will complete minutes for such an emergency meeting as required by law.

The Board meetings that are subject to the notice requirement include all regular, special, or called meetings, formal or informal, of the ESU for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the ESU.

The notice requirement does not apply to:

1. Chance meetings or attendance at or travel to conventions or workshops of members of the Board at which there is no meeting of the Board intentionally convened, if there is no

vote or other action taken regarding any matter over which the Board has supervision, control, jurisdiction, or advisory power.

2. Meetings of subcommittees unless a quorum of the Board attends or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of the Board.
3. Judicial or quasi-judicial proceedings, such as termination hearing proceedings.

Motion by Helen Sorensen, seconded by Robby Thompson, to approve the amended language in Board Policy as presented. After discussion and on roll call vote, the Board voted as follows:

**Motion Carried:**

Traci Haglund: Absent, Rhonda Heise: Absent, AJ Johnson: Absent, Tucker Hight: For, Shannon Johnson: For, Lana Oswald: For, Sally Reinert: For, Benjamin Schultz: For, Helen Sorensen: For, Robby Thompson: For, Grant Torpin: For  
For: 8, Against: 0, Absent: 3

H. Administrator Evaluation Process

I. Personnel\*

I.1. Consider, discuss, and take necessary action on employee contracts and personnel changes.

I.1.a. Resignation(s)

Classified Staff Resignation:

EDN Service Provider Abigail Gustad is resigning effective November 10.

I.1.b. New Hire(s)

I.1.c. Contract Change(s)

I.1.d. Termination(s)

J. Adjournment

As there were no additional agenda items, Vice President Sally Reinert declared the meeting adjourned at 6:11 p.m.

Lisa Salmon, Recording Secretary

Helen Sorensen, Board Secretary

**BEFORE THE NEBRASKA STATE BOARD OF EDUCATION**

IN THE MATTER OF THE COVID-19 ) NDE Case No. 20-24  
PANDEMIC - ACCREDITATION )  
SAFETY STANDARDS ) **RULE 62 PETITION FOR**  
 ) **DECLARATORY ORDER**  
 )

Petitioners, Jennifer A. Benson, individually and in her capacity as President of the Nebraska State Education Association, and the Nebraska State Education Association, hereby submit their Petition for a Declaratory Order pursuant to NDE Rule 62.

1. Petitioner, Jennifer A. Benson, is a resident of the State of Nebraska, is a certificated educator and holds the office of President of the Nebraska State Education Association (“NSEA”). Jennifer A. Benson’s address is 605 South 14<sup>th</sup> Street, Lincoln, Nebraska 68508.

2. Petitioner, the NSEA, is a professional association of approximately 26,000 Nebraska educators and education support personnel organized and existing as a nonprofit corporation under the Nebraska Nonprofit Corporation Act. It is the mission of the NSEA to provide a great public education for every student and advocate for all education professionals, empowering them to provide an excellent public education for every student.

3. Persons or entities which may have an interest in these proceedings include all school districts, public and private, and educational service units in the State of Nebraska, which are known to and governed by the Nebraska Department of Education (“NDE”).

**FACTS**

*The Pandemic and a State in Crisis*

4. Nebraska is facing an exponential and unyielding spread of COVID-19. People with chronic medical conditions, like heart or lung disease, and adults who are 65 years and older

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NEBRASKA DEPARTMENT  
OF EDUCATION

are at a higher risk of death if they contract the virus. However, the virus has resulted in serious illness and death to people of all ages, including those without underlying medical conditions.

5. On January 31, 2020, the Secretary of Health and Human Services declared a public health emergency in response to the coronavirus outbreak.

6. On March 11, 2020, the World Health Organization (“WHO”) characterized the coronavirus outbreak as a pandemic.

7. On March 13, 2020, Nebraska Governor Pete Ricketts issued an emergency declaration effectively putting Nebraska in a State of Emergency.

8. On March 13, 2020, Director of Public Health Dr. Gary Anthonie entered a Directed Health Measure (“DHM”) Order 2020-001 that prohibited gatherings in various Nebraska counties. Between March 13, 2020, and the filing of this Petition, Dr. Anthonie entered several other DHMs with continued limitations on gatherings and other measures to limit the spread of coronavirus.

9. In March 2020, the number of COVID-19 cases increased so dramatically that almost every state, including Nebraska, shut down schools, businesses and workplaces.

10. On July 20, 2020, the NDE published COVID-19 guidance for reopening schools. In the guidance, the NDE indicated four distinct zones: green, yellow, orange and red. The NDE considers number of positive cases, percent of positive cases, hospitalization rate and the increase in positive cases from previous rolling averages to determine the current color zone for Nebraska and the recommended guidance associated with each zone.

11. The NDE suggests that if Nebraska is in the red zone, with significant, uncontrolled community spread, then schools should be closed for in-person instruction and remote learning should be initiated. Although the NDE does not provide specific numbers and

positivity rates to determine the specific zone, Nebraska is currently in the “red” according to guidance published by the Centers for Disease Control (“CDC”), the WHO, the University of Nebraska Medical Center (“UNMC”) and the White House Coronavirus Task Force.

Nevertheless, Nebraska schools opened this fall and remain open and continue to deliver in-person instruction.

12. On November 17, 2020, the White House Coronavirus Task Force issued a report indicating Nebraska has 101 or more new cases per 100,000 population, which is the sixth highest rate in the country. Nebraska is also in the red zone for test positivity, indicating a rate at or above 10.1 percent, with the fourth highest rate in the country. Nebraska had 735 new cases per 100,000 population, compared to a national average of 294 per 100,000.

13. Between November 7 and November 13, on average, 124 patients with confirmed COVID-19 and 38 patients with suspected COVID-19 were reported as newly admitted each day to hospitals in Nebraska. A total of 94 percent of hospitals received new COVID-19 patients in this time period.

14. Nebraska hospitals are currently near capacity and are close to being required to turn away heart attack, stroke and trauma patients because they do not have available beds. Without immediate and meaningful interventions, hospitals will become overwhelmed and will not be able to support those who need care. In a letter signed by 1,700 doctors and nurses on November 17, 2020, “. . . this unimaginable time is fast approaching.”

#### *A School System in Crisis*

15. The uncontrolled transmission of the virus has put the Nebraska school system in crisis. Gubernatorial and NDE recommendations regarding use of face coverings continue to be largely ignored by many school districts leaving educators feeling overwhelmed. Failure to

address this crisis will lead to nearly 1 in 4 teachers leaving the profession by the end of the school year. In Lincoln and Omaha, nearly 1 in 3 teachers have indicated they plan to leave teaching. School buildings and education programs are closing on a daily basis largely due to a shortage of teachers.

16. As “Educational Workers” exempt from the quarantine requirements of the current DHM, teachers are pressured to return to their classroom responsibilities while in quarantine. Educators are being pushed to a breaking point. They are worried about their health and safety and that of their students and families. Many teachers are having to teach students both in-person and remotely at the same time. The workload expected of teachers has left them exhausted and makes it nearly impossible for them to provide quality teaching and learning for students. The majority of teachers do not believe that their district’s learning model is equitably meeting the needs of all students. Teachers are not provided adequate plan time and, because there is a shortage of substitute teachers, they are having to cover the classes of colleagues who are quarantined or who are ill, so they lose the little plan time they do have. The current situation in many school districts is not sustainable.

17. If schools are required to close again, it will be harmful to children. It will lead to severe learning loss and will be particularly damaging for students with heightened behavioral needs. Schools provide a stable and secure environment for developing social skills and peer relationships. Social interaction at school among children in grades PK-12 is particularly important for the development of language, communication, social, emotional and interpersonal skills. Extended school closures deprive children who live in unsafe homes and neighborhoods an important layer of protection from neglect as well as physical, sexual and emotional maltreatment and abuse. Schools are essential to meeting the nutritional needs of children with

many consuming up to half of their daily calories at school. When schools are closed, children lose access to important opportunities for physical activity. Schools play a critical role in supporting the whole child, not just their academic achievement.

18. Unless immediate and meaningful action is taken by the State Board to identify the mitigation strategies that must be undertaken by schools under its jurisdiction, unquantifiable and irreparable harm will occur to our state's education system, educators, students and state as a whole.

***The Constitutional Authority and Responsibility  
of the Nebraska State Board of Education***

19. On November 13, 2020, the Nebraska State Board of Education ("State Board") passed a Resolution affirming the efficacy of face coverings and strongly recommending a statewide mask mandate to ensure the safety of all students, staff and community members. It is now manifest, however, that such encouragement has not produced the kind of change of behavior necessary in order to meaningfully address the crisis affecting Nebraska's school system. The State Board has the constitutional, statutory and regulatory authority to take meaningful action to address the crisis facing Nebraska's schools, students and educators.

20. The State Board is a constitutional body charged with the responsibility and authority to provide "enlightened professional leadership, guidance, and supervision of the state school system . . ." Neb. Rev. Stat. § 79-318(5) (Reissue 2014).

21. The State Board and Commissioner of Education have the authority and responsibility to undertake and maintain accreditation standards and review. Neb. Rev. Stat. § 79-703 (Reissue 2014).

22. Pursuant to its statutory authority, the State Board has adopted 92 NAC 10 ("Rule 10") which recognizes and requires as an accreditation quality indicator that "school

facilities and the general environment are safe, orderly, and supportive of quality learning for all students.” Rule 10, § 011.01. Rule 10 also requires that “each school system maintain safe, healthful, and sanitary conditions within the school building(s) and on the school grounds . . .” Rule 10, § 011.01(A).

23. The State Board is authorized by Neb. Rev. Stat. § 79-318(11) (Reissue 2014) to “interpret its own policies, standards, rules, and regulations and, upon reasonable request, hear complaints and disputes arising therefrom; . . .” Pursuant to this authority, the State Board has adopted Rule 62 under which Petitioners seek issuance of a binding order by the State Board declaring the specific mitigation strategies that all schools under its jurisdiction must implement as safety standards during this pandemic in order to maintain accreditation status under Rule 10.

#### **RELIEF REQUESTED**

24. Petitioners request that the State Board enter a Declaratory Order identifying the following minimum mitigation strategies as safety standards inherent in Rule 10, § 011, to remain in full force and effect until the conclusion of the 2020-2021 school year:

a. All children in grades 3-12 must wear face coverings - with medical caveats - as well as teachers, administrators, staff and volunteers. If tolerated, masks should be used for children between three years of age and third grade.

b. Designate a staff person to be responsible for responding to COVID-19 concerns. Staff, students, parents and volunteers should know who this person is and how to contact the designated staff member if they become sick or are around others diagnosed with COVID-19. The designated staff person should also be aware of state and local regulatory agency policies related to school guidelines and will serve as the contact with local health authorities and

monitor illness among school faculty, staff and students. A backup person should be identified who can fill this role if the designated person becomes unavailable due to illness or other reason.

c. Establish and maintain communication and cooperation with local and state authorities to determine current levels of community mitigation.

d. Review local, state and organization guidelines for schools. Review your facility plans including the size of the building, all points of entry and air handling systems to understand and implement recommended state and local guidelines and the considerations detailed in this Order.

e. Schools are encouraged to continue to use and develop strategies for online and other remote education technologies.

f. Develop strategies to reduce the potential for mass exposure of cases occurring in schools that include social distancing of all persons, defined and consistent groups of students and staff who remain together with limited interaction to others, considerations to reduce the maximum number of people allowed in a building based on social distancing and implementation of mask wearing requirements for indoor activities.

g. ALL sick children and adults will stay home; and, quarantine will be observed by those with COVID-19 infected persons at home.

h. All children and adults with confirmed infection will not be allowed to return to school until completing the DHM-defined period of isolation.

i. Schools and public health authorities will work together to rapidly report, assess and act on frequent per school absenteeism, influenza and other disease reporting health measures.

j. Address the increased behavioral health and emotional needs of students and the mental health of teachers, staff and volunteers.

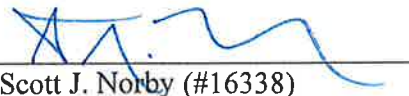
25. All school districts, public and private, and educational service units subject to Rule 10 shall, within three days of the date of service of this Order upon them, confirm in writing to NDE compliance with the face covering requirements of this Order, and identify what action has been or will be taken to comply with all other requirements of this Order.

26. The Commissioner of Education is directed to investigate and report compliance with this Order by all schools and educational service units subject to Rule 10 and submit such reports to the State Board at each State Board meeting through the remainder of the 2020-2021 school year.

JENNIFER A. BENSON, Individually and in Her  
Capacity as President of the Nebraska State  
Education Association, and the  
NEBRASKA STATE EDUCATION  
ASSOCIATION, a Nonprofit Corporation,  
Petitioners,

BY: NORBY & WELDING LLP  
Petitioners' Attorneys  
605 South 14th Street  
Suite 220  
Lincoln, Nebraska 68508  
Telephone (402) 434-2390  
scott.norby@norbylaw.com

By

  
\_\_\_\_\_  
Scott J. Norby (#16338)  
One of Said Attorneys

VERIFICATION

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

Jennifer A. Benson, being first duly sworn, states that she is one of the Petitioners in the above-entitled matter; that she holds the office of President of the NSEA; that she has read the foregoing Rule 62 Petition for Declaratory Order; and that the allegations of fact therein are true.

*Jennifer A. Benson*  
Jennifer A. Benson

Subscribed and sworn to before me on this 19<sup>th</sup> day of November, 2020.

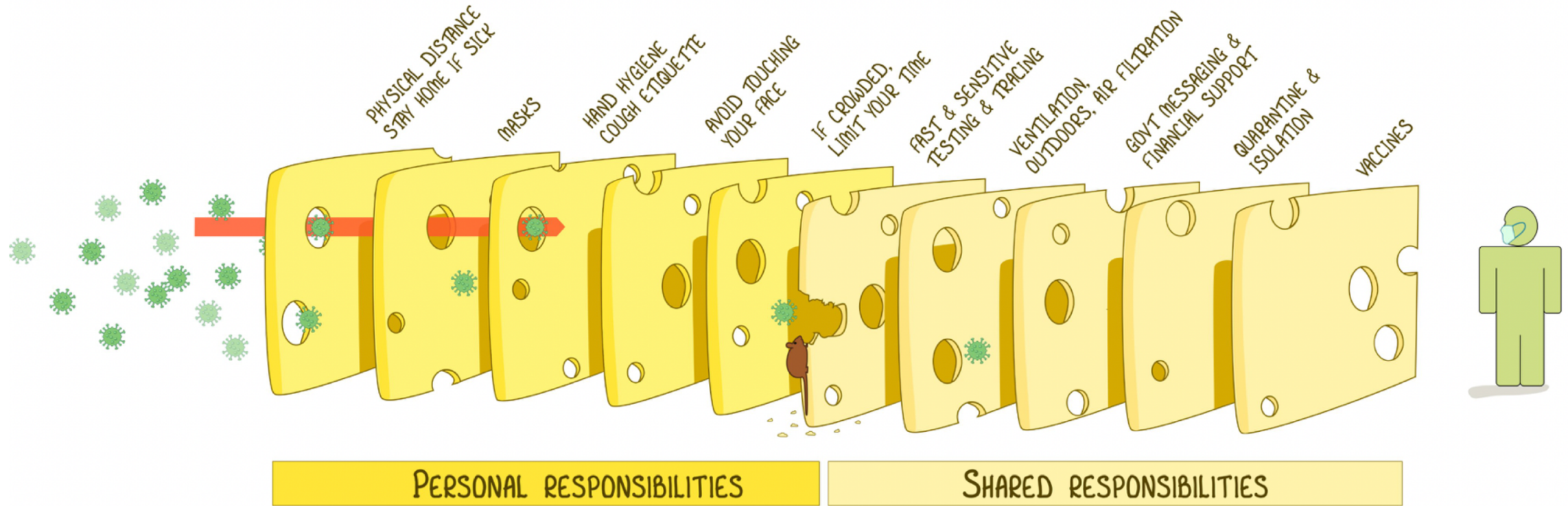


*Kristy M. Kocian*  
Notary Public

My Commission Expires: April 6, 2021

# THE SWISS CHEESE RESPIRATORY VIRUS PANDEMIC DEFENCE

RECOGNISING THAT NO SINGLE INTERVENTION IS PERFECT AT PREVENTING SPREAD



EACH INTERVENTION (LAYER) HAS IMPERFECTIONS (HOLES).  
MULTIPLE LAYERS IMPROVE SUCCESS.

# UNIT ORGANIZATION

## Section 1 ESU Name, Mission and Duties

### A. ESU Name

The legal name of our educational service unit is “Educational Service Unit No. 1 of the State of Nebraska.” It may also be referred to as ESU 1, either with or without a number designation (No. 1 or #1).

Legal Reference:	§ 79-1202
Date of Adoption:	August 14, 2018

### B. Mission

The mission of ESU 1 is to provide innovation, leadership and services for each member school district so they are successful in reaching their targeted educational goals.

Legal Reference:	§ 79-1204
Date of Adoption:	August 14, 2018

### C. Statutory Role

The statutory role of ESU 1 is to serve as an educational service provider in Nebraska’s system of elementary and secondary education. ESU 1 shall:

1. Act primarily as a service agency in providing core services and services identified and requested by member school districts;
2. Provide for economy, efficiency, and cost-effectiveness in the cooperative delivery of educational services;
3. Provide educational services through leadership, research, and development in elementary and secondary education;
4. Act in a cooperative and supportive role with the State Department of Education and school districts in development and implementation of long-range plans, strategies, and goals for the enhancement of educational opportunities in elementary and secondary education;
5. Serve, when appropriate and as funds become available, as a repository, clearinghouse, and administrator of federal, state, and private funds on behalf of school districts which choose to participate in special programs, projects, or grants in order to enhance the quality of education in Nebraska schools.
6. Provide core services to member school districts, including:
  - a. In order of priority, (i) Staff development which shall include access to staff development related to improving the achievement of students in poverty and students with diverse backgrounds; (ii) technology, including distance education services; and (iii) instructional materials services;
  - b. Core services shall improve teaching and student learning by focusing on enhancing school improvement efforts, meeting statewide requirements, and achieving statewide goals in the state's system of elementary and secondary education;

- c. Core services shall provide schools with access to services that: (i) ESU 1 and its member school districts have identified as necessary services; (ii) are difficult, if not impossible, for most individual school districts to effectively and efficiently provide with their own personnel and financial resources; (iii) can be efficiently provided by ESU 1 to its member school districts; and (iv) can be adequately funded to ensure that the service is provided equitably to the public school districts.
  - d. Core services shall be designed so that the effectiveness and efficiency of the service can be evaluated on a statewide basis; and
  - e. Core services shall be provided by ESU 1 in a manner that minimizes the costs of administration or service delivery to member school districts.
7. Meet minimum accreditation standards set by the State Board of Education that will:
- a. Provide for accountability to taxpayers;
  - b. Assure that educational service units are assisting and cooperating with school districts to provide for equitable and adequate educational opportunities statewide; and
  - c. Assure a level of quality in educational programs and services provided to school districts by the educational service units.
8. In fulfilling its role and mission, ESU 1 may contract to provide services to:
- a. Nonmember public school districts;
  - b. Nonpublic school systems;
  - c. Other educational service units; and
  - d. Other political subdivisions, under the Interlocal Cooperation Act and the Joint Public Agency Act.
9. ESU 1 will not regulate school districts unless specifically provided pursuant to law.

Legal Reference:	§ 79-1204; NDE Rule 84.001.03-.06
Date of Adoption:	August 14, 2018

D. Principal Office

The principal office of the ESU shall be: 211 Tenth Street, Wakefield, Nebraska.

Legal Reference:	§ 79-1220
Date of Adoption:	August 14, 2018

E. Boundaries

The boundaries of ESU 1 are set and adjusted by the State Board of Education. A current copy of the boundaries of the ESU shall be kept in the principal office.

Any joint school district located in two or more counties shall be considered a part of the ESU in which the greater number of school-age children of such joint school district reside.

Legal Reference:	§ 79-1205; 79-1217(4)
Date of Adoption:	August 14, 2018

## Section 2 ESU Board

### A. Board's Name and Role

The ESU is governed by a board legally known as the “Board of Educational Service Unit No. 1.” The Board is responsible for the general control and direction of ESU 1.

Legal Reference:	§ 79-1217
Date of Adoption:	August 14, 2018

### B. Duties and Function of the Board

The Board functions as a policy-forming and legislative body, and in some circumstances, as a quasi-judicial body. The general duties and functions of the Board are as follows:

1. Policies: Adopt policies governing the organization and operation of the ESU that are appropriate to serve the role and mission of ESU 1 and meet requirements of law. The Board policies will be available for review upon request at the administrative office of the ESU. The Board may act to suspend policies for a specified purpose and limited time by a majority vote of the Board.
2. Personnel: Appoint and fix the compensation and duties of the Administrator and evaluate the Administrator's performance. The method for selecting the Administrator shall be determined by the Board and may include the use of Administrator Selection Services or committee(s) created by the Board for the sole purpose of identifying candidates for the position. With the advice of the Administrator, the Board shall also employ and fix the compensation and duties of professional and classified staff. The Board shall be responsible for taking action on certain personnel grievances and personnel contracts required pursuant to law or Board policy.
3. Budget: Provide for the preparation and adoption of the annual budget for the operations of the ESU, which shall include contemplated expenditures and expected revenue.
4. Services: Exercise final authority with regard to the determination of services to be provided to member school districts and contracted services to be provided to other schools or entities. The Board shall determine the participation of the ESU in providing supplementary educational services.
5. Purchases and Contracts: Approve purchases and contracts for which Board action is required pursuant to law or Board policy.
6. Audit: Cause a complete and comprehensive annual audit to be made of the books, accounts, records, and affairs of the ESU. The audits shall be conducted annually, except that the Auditor of Public Accounts may determine an audit of less frequency to be appropriate but not less than once in any three-year period. The Board may contract with the Auditor of Public Accounts or select a licensed public accountant or certified public accountant or firm of such accountants to

conduct the audit and shall be responsible for the cost of the audit pursuant to the contract. Such audit shall be conducted in the same manner as audits of county officers. The original copy of the audit shall be filed in the office of the Auditor of Public Accounts.

7. Fulfill Mission: Take any other lawful and appropriate action to fulfill the ESU’s mission.

Legal Reference:	§§ 79-1217 to 79-1224, § 79-1229 NDE Rule 84, section 3.04F
Date of Adoption:	August 14, 2018

**Section 3 ESU Board Members**

A. Election Districts

After each decennial census, the Board shall divide the territory of the ESU into at least five and up to twelve numbered election districts that are compact and contiguous and substantially equal in population.

Board members are elected to represent the geographical boundaries of the ESU. One member is elected to represent each election district for the term provided by law.

Legal Reference:	§ 32-515; § 79-1217; § 79-1217.01
Date of Adoption:	August 14, 2018

B. Filling Vacancies

Whenever a vacancy occurs on the Board, the remaining members of the Board shall appoint an individual residing within the election district for which the vacancy exists who meets the qualifications for the office to fill such vacancy for the balance of the unexpired term.

A “vacancy” may occur when, unless excused by a majority of the remaining members of the Board, a member is absent from the geographical boundaries of ESU 1 for a continuous period of sixty days at one time or from more than two consecutive regular meetings of the Board.

Legal Reference:	79-1217(2)
Date of Adoption:	August 14, 2018

C. Role of Individual Board Members

The role of individual Board members is to express their position by voting on issues presented at duly called meetings of the Board. The Board of ESU 1 functions only when it takes official action at a duly called meeting of the Board. Individual Board members and individual Board officers cannot bind ESU 1 or its Board to a contract or obligation and may not speak on behalf of the Board except when acting upon specific authority given by the Board.

Legal Reference:	<i>Busboom v. Southeast Nebraska Technical Community College</i> , 194 Neb. 448 (1975); <i>Markay v. School District No. 18</i> , 58 Neb. 479 (1899).
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Date of Adoption:	August 14, 2018
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D. Orientation of New Board Members

The Board and the administrative staff will be available to assist each new member-elect to understand the Board’s functions, policies and procedures and operations of the ESU both before and after the member takes office. Each member-elect will be:

1. Given selected material on the functions of the Board and the ESU.
2. Invited to meet with the Administrator and other administrative personnel to discuss services they perform.
3. Invited to attend Board meetings.
4. Given copies of the policies and administrative regulations and other pertinent materials.

Legal Reference:	
Date of Adoption:	August 14, 2018

E. Oath of Office

Board members before taking office shall take and sign the following oath or affirmation:

I, \_\_\_\_\_, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Nebraska, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely and without mental reservations, or for purpose or evasions; and that I will faithfully and impartially perform the duties of the office of member of the Board of Educational Service Unit No. 1, according to law, to the best of my ability. And I do further swear that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or this State by force or violence; and that during such time that I am in this position I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or this State by force or violence. So help me God.

Legal Reference:	§ 11-101 to § 11-101.03
Date of Adoption:	August 14, 2018

F. Code of Ethics for Board Members

Board members of ESU 1, like all public officers in the State, “stand in a fiduciary relationship to the people whom they have been elected or appointed to serve. As fiduciaries and trustees of the public wealth they are under an inescapable obligation to serve the public with the highest fidelity. In discharging the duties of their office they are required to display such intelligence and skill as they are capable of, to be diligent and conscientious, to exercise their discretion not arbitrarily but reasonably, and above all to display good faith, honesty and integrity. They must be impervious to corrupting influences and they must transact their business frankly and openly in the light of public scrutiny so that the public may know and be able to judge them and their

work fairly. These obligations are . . . assumed by them as a matter of law upon their entering public office.”

To assure that the entire Board acts in accordance with the foregoing legal responsibilities and to ensure the effective functioning of the Board, each Board member will sign a Board-approved Code of Ethics for ESU 1 Board Members. The Code of Ethics is to be signed upon assumption of office and at each annual meeting.

Legal Reference:	<i>Nebraska Legislature on behalf of the State of Nebraska v. C. David Hergert</i> , 271 Neb. 976, 1011 (2006)
Date of Adoption:	August 14, 2018

G. Compensation of Board Members

Members of the Board shall receive no compensation for their services. Members may be reimbursed for the actual and necessary expenses incurred in the performance of their duties, pursuant to law and by a majority vote of the Board.

The Board may permit its members to participate in the ESU’s hospitalization, medical, surgical, accident, sickness, or term life insurance coverage or any one or more of such coverages. A Board member electing to participate in the insurance program of the ESU shall pay both the employee and the employer portions of the premium for such coverage.

If the Board opts to permit its members to participate in insurance coverage, the Administrator shall report quarterly at a Board meeting the board members who have elected such coverage. Such a report shall be made available in the ESU office for review by the public upon request.

Legal Reference:	§ 79-1217(3); § 79-1232
Related Policy:	Coffee Act Policy (Reimbursable Expenses)
Date of Adoption:	August 14, 2018

**Section 4 Board Officers**

A. Officer Positions

The Board shall elect one of its members as president, one as vice president, and one as secretary. The Board shall employ a treasurer who shall be paid a salary to be fixed by the board.

Legal Reference:	§ 79-1218
Date of Adoption:	August 14, 2018

B. President

The duties and responsibilities of the President include, but are not necessarily limited to, the following:

1. Call meetings of the Board.
2. Preside at all meetings of the Board.

3. Appoint board members to committees.
4. Serve as ex-officio member of all committees, unless such would create a violation of the open meetings law.
5. Send correspondence connected to the position of President.
6. Vote on any issue that may come before the Board.
7. Sign warrants upon the treasury for claims allowed by the Board.
8. Perform such other duties as required by law or by action of the Board.

Legal Reference:	§ 79-1218; § 79-1221
Date of Adoption:	August 14, 2018

C. Vice President

The Vice President is to assume all duties and responsibilities of the President when the President is absent.

Legal Reference:	§ 79-1218; § 79-1221
Date of Adoption:	August 14, 2018

D. Secretary

The duties and responsibilities of the Secretary include, but are not necessarily limited to, the following:

1. Assure that accurate records of all Board meetings are prepared and maintained.
2. Assure that all Board members are notified of all meetings of the Board.
3. Assure that required reports to county, state, and federal officials are prepared and submitted on a timely basis.
4. Be responsible for correspondence for and in the name of ESU 1 as authorized by the Board.
5. Sign all orders on the treasury for the payment of authorized claims.
6. Act as custodian of all documents, title papers, and records of the Board.
7. Assure that all legal notices are published.

Legal Reference:	§ 79-1218; § 79-1221
Date of Adoption:	August 14, 2018

E. Treasurer

The Board shall employ a Treasurer who shall be paid a salary to be fixed by the Board. The duties and responsibilities of the Treasurer include, but are not necessarily limited to, the following:

1. Be the custodian of all funds of the Board.
2. Attend all meetings of the Board.
3. Prepare and submit to the Board a written monthly report of the state of ESU 1 finances.
4. Pay out money of the Board only upon a warrant signed by the President, or in the President's absence, by the Vice President, and countersigned by the secretary.

5. Assure that funds are placed in depositories approved by the Board and secured as required by law.
6. Assure that accurate accounts of all receipts and disbursements are kept.
7. Assure that accurate reports on the state of finances and other financial reports and statements as required by state and federal statute and board policy are prepared and submitted to the appropriate authority on a timely basis.

The treasurer shall give bond or evidence of equivalent insurance coverage, payable to the Board, in such sum as the Board shall determine conditioned for the faithful performance of the duties as treasurer of the Board and for the safekeeping and proper disbursement of all funds of the Board collected or received by the treasurer. Such bond shall be signed by a corporate surety company or insurance company authorized to do business within this state. Such bond or insurance coverage may be enlarged at any time the Board deems such enlargement necessary or advisable. The cost of such bond or insurance coverage shall be paid out of funds of the Board.

Legal Reference:	§ 79-1218; § 79-1221
Date of Adoption:	August 14, 2018

F. Recording Secretary

The Board may employ a recording secretary who shall be paid compensation to be fixed by the Board. The duties of the recording secretary will include:

1. Notify members of the Board of all regular and special meetings.
2. Publish legal notices.
3. Keep accurate records of all Board meetings.
4. Act as custodian of all documents and records of the meeting of the Board.
5. Perform other duties as directed by the Board.

Legal Reference:	
Date of Adoption:	August 14, 2018

G. Removal from Officer Position

A Board member may be removed from an officer position by a majority vote of the members of the Board.

Legal Reference:	
Date of Adoption:	August 14, 2018

H. Filling Vacancy in Officer Position

In the event of a vacancy in an officer position, the Board shall elect by a majority vote a successor to serve until a majority of the Board elects a different member to serve that office position.

Legal Reference:	
Date of Adoption:	August 14, 2018

## Section 5 Board Committees

### A. Committees

Committees may be created by the President of the Board or by a majority vote of the Board.

Unless otherwise specifically provided, at the time of appointment, all Committees are hereby intended to be and shall operate as a “subcommittee” within the definition of Neb. Rev. Stat. § 84-1409(1)(b). As such, no meeting of any Committee may include a quorum of the Board. In addition, no Committee may hold hearings, make policy, or take formal action on behalf of the Board.

Legal Reference:	§ 84-1409
Date of Adoption:	August 14, 2018

### B. Appointments

The President shall appoint members of committees. However, the entire Board may, by a majority vote, take action in the first instance to make committee appointments and may remove any existing committee members and appoint replacement members.

Legal Reference:	
Date of Adoption:	August 14, 2018

### C. Temporary Committees

Temporary committees may be established by the Board as deemed necessary for specific identified purposes.

Legal Reference:	
Date of Adoption:	August 14, 2018

### D. Committee Operations

No member or Committee of the Board, or staff member of the Unit, shall have the power to act for the Board, or to imply an action on the part of the Board without specific approval authorized by the Board with record of such action recorded in the official minutes.

The Board or Administrator may refer business to a Committee; however, unless otherwise specifically provided, such Committee shall have no power or authority to hold hearings, make policy, or to make any determination or take or effect any formal action on behalf of the Board or the District. The role of a Committee is to gather and serve as an informational avenue only and to guide, make recommendations, and report directly to the Administrator on any referred business, regardless of who appointed same. No Committee may engage in the formation of tentative policy, act as an advisory committee to the Board or as instrumentalities exercising essentially public functions. Any such prohibited actions shall be null and void.

All Board members will be informed of meetings of Committees. Committee reports shall be brought to the Board in written form whenever possible.

Legal Reference:	
Date of Adoption:	August 14, 2018

## **Section 6 Administration**

### **A. Concept of Administration**

The administration of ESU 1 is responsible for the direction, coordination, and control of staff and programs in their efforts to achieve the mission and educational goals adopted by the Board within the guidelines established by Board policy and law.

To demonstrate leadership, develop positive relationships within the community and resolve problems that arise internally and/or externally, the Board expects the administration to specialize in the following:

1. Decision making and communication.
2. Planning, organizing, implementing, and evaluating.
3. Coordinating and guiding the various centers of power within the ESU and the community to enable people to work together as a team for the purpose of education that might not be possible if done separately.

The administration is expected to create and maintain appropriate mechanisms such as councils and committees to:

1. Foster good communications within the staff.
2. Allow representative members of the staff to have a voice in the development of policies and in the making of decisions affecting them.

Legal Reference:	§ 79-1219
Date of Adoption:	August 14, 2018

### **B. Administrator**

The Administrator to be employed by the Board shall be a person experienced in public school administration, shall hold at least a standard administrative certificate and shall meet all other requirements issued through the Nebraska Department of Education.

Legal Reference:	§ 79-1219 NDE Rule 21; NDE Rule 84.005.01
Date of Adoption:	August 14, 2018

### **C. Duties and Function of the Administrator**

The Administrator is the chief executive officer of ESU 1. As chief executive officer, the Administrator is delegated the authority and responsibility for the overall administration of ESU 1 in all of its aspects. The Administrator shall carry out the executive and administrative functions in accordance with Board policies and directives in compliance with law.

The Administrator is delegated the authority and responsibility for the efficient execution of all decisions made by the Board concerning the internal operation of the ESU. The Administrator shall further perform duties which are specifically designated in the policies as duties of the Administrator, duties assigned to the Administrator by the Board, duties that are established in the Administrator's employment contract and job description, and duties that are mandated by law as the responsibility of the Administrator.

The general duties and functions of the Administrator are as follows:

1. Policies: The Administrator's responsibilities related to policies are:
  - a. To present the Board with new or amended policies as appropriate to serve the role and mission of ESU 1 and meet changing requirements of law.
  - b. To implement Board policies and assure compliance with Board policies.
  - c. To assure that the Board policies are available for review upon request at the administrative office of the ESU.
  
2. Personnel: The Administrator is responsible for the overall management of staff. Responsibilities related to personnel include:
  - a. To recommend administrative and supervisory positions for approval by the Board. The Board will approve the broad purpose and function of administrative and supervisory positions.
  - b. To assign, supervise and evaluate administrators and supervisors and direct them in the performance of their duties.
  - c. To recommend candidates for employment and establish terms of employment for approval by the Board.
  - d. To prepare written job descriptions for employees.
  - e. To prepare and distribute staff handbooks. Staff handbooks that are approved by the Board shall be deemed to be policies of the Board and shall have the same effect as Board-adopted policies.
  - f. To develop and provide an effective staff development program.
  - g. To make assignments of personnel to their particular schools and responsibilities as determined appropriate.
  - h. To discipline staff and terminate or recommend termination of employment when appropriate.
  - i. To create and maintain appropriate mechanisms such as councils and committees to foster good communications within the staff and to allow representative members of the staff to have a voice in the development of policies and in the making of decisions affecting them.
  
3. Budget: The Administrator's responsibilities related to the budget are:
  - a. To prepare the annual budget for the operations of the ESU with the assistance of staff, give required budget hearing notices, present the budget for approval by the Board, and file such reports and forms related to the budget and tax levy process as required.
  - b. To make every attempt possible to operate within the limits set forth by the budget.

4. Services: The Administrator shall communicate and provide leadership with regard to the determination of services to be provided to member school districts and services to be provided to other schools or entities via contract. The Administrator shall ensure that the services are provided in a satisfactory manner.
5. Purchases and Contracts: The Administrator's responsibilities related to purchases and contracts are:
  - a. To be in charge of all financial matters of the ESU.
  - b. To study and recommend to the Board fiscally prudent and suitable purchases and contracts for which Board action is required pursuant to law or Board policy. Where Board action is not required, to approve such purchases and contracts after appropriate consultation with other administrators and appropriate staff, or to provide oversight of those staff that are delegated such purchasing responsibilities.
  - c. To maintain a current inventory of ESU property.
  - d. To assure that ESU facilities, equipment and property are appropriately maintained.
  - e. To provide long-range and short term planning concerning facilities.
6. Board and Community Communications. The Administrator's responsibilities related to communications with the Board are:
  - a. To prepare and send out agenda, special reports and minutes for Board meetings.
  - b. To prepare for and attend all Board meetings unless excused.
  - c. To promptly inform the Board of decisions or actions taken that are not covered in Board policies or by Board action. The Administrator shall have authority to make such decisions or take such actions on behalf of the ESU where the Administrator reasonably determines that it is necessary to do so.
  - d. To keep the Board informed concerning the total ESU programs and operations.
  - e. To communicate to the schools and the community information about the activities of the ESU and publish reports on such activities as legally required.
  - f. To coordinate and guide the stakeholders within the ESU and the community to cooperatively enhance efficiency and effectiveness of ESU programs and services.
  - g. To keep abreast of the trends and changes in education for possible implementation of selected programs. The Administrator will be expected to attend district, state, and national conventions of professional educational organizations. The Administrator will secure advance approval from the Board before attending any out of state convention. The Administrator will report to the Board such information that is learned at such programs that will require Board action. Reimbursement for expenses allowed shall be in accordance with Board Policy.
  - h. The Administrator shall, prior to July 1 of each year in which a statewide primary election is to be held, certify to the election commissioner or county clerk of each county located within the ESU the corporate name of each school district located within the county. If a school district is a joint school

district located in two or more counties, the Administrator shall certify to each election commissioner or county clerk the educational service unit of which the school district is considered to be a part.

The Administrator is responsible to maintain the official records of the ESU.

The Administrator shall serve as a member of the Educational Service Unit Coordinating Council.

The Administrator is to delegate duties to other members of the administrative team or other staff as required for the effective administration of the ESU, except in such matters that Board policy, Board action, or law prohibits the delegation. The Administrator remains responsible for assuring that the delegated duties are performed as required.

On or before January 31 of each year, the Administrator shall submit to the Commissioner of Education a report described as the annual financial report showing (a) the amount of money received from all sources during the year and the amount of money expended by the educational service unit during the year, (b) other information as necessary to fulfill the requirements of section 79-1241.03, and (c) such other information as the commissioner directs.

The Administrator is expected to adhere to the “Code of Ethics” for certificated educators as adopted by the Nebraska Department of Education and the ethical code of the American Association of School Administrators.

Legal Reference:	§ 13-905; § 79-1217(6); § 79-1245, § 79-1229(1) NDE Rule 27
Date of Adoption:	August 14, 2018

D. Line of Responsibility

Each ESU employee is responsible to the Board through the Administrator. All personnel shall refer matters requiring administrative action to the administrative officer immediately in charge of the area in which the problem arises. Administrative officers shall refer such matters to the next higher authority when necessary.

Employees have the right to appeal decisions made by an administrative officer to the next higher authority and thus through successive steps to the Board on matters regarding continuation of employment, terms and conditions of employment, and matters of policy and procedures.

Legal Reference:	
Date of Adoption:	August 14, 2018

**Section 7      Consultants and Legal Counsel**

A. Consultants

The Board encourages the use of consultants as a means of providing specialized services not normally required on a continuing basis.

Legal Reference:	
Date of Adoption:	August 14, 2018

B. Legal Counsel

The Board shall use an attorney at law to advise on all legal matters. The attorney of record shall be named annually at the regular January board meeting.

Members of the staff may have access to the Board's legal counsel only at the specific direction of the Administrator.

At times it may become necessary for the Board to obtain additional legal assistance. The Administrator is authorized to make appropriate arrangements for additional legal services.

Legal Reference:	
Date of Adoption:	August 14, 2018

## Code of Ethics for ESU 1 Board Members

Members of the Board of ESU 1 are expected to abide by the following Code of Ethics in performance of their duties as a Board member and will be requested to acknowledge their intent to do so:

1. **Follow Laws:** I will uphold and enforce the constitutions, laws, rules and regulations of the state and federal governments, the state and federal agencies, binding court orders pertaining to educational service units, and the policies and regulations of ESU 1. Desired changes shall be brought about only through legal and ethical procedures.
2. **Non-Discrimination:** I will not make decisions which affect personnel, students, parents, the public, or otherwise on the basis of sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status, or on the basis of constitutionally protected speech.
3. **Welfare of Students:** I will make decisions in terms of the educational welfare of students served by ESU 1 and will seek to develop and maintain services and programs that meet the individual needs of students served by the ESU regardless of their sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status, social standing, or personal feelings not associated with the best interests of ESU 1 and the students.
4. **Role of the Board:** I will confine my action as a member of the Board to policy making, planning, and evaluation of the Administrator. I will carry out my responsibility, not to administer ESU 1 or its services and programs, but, together with my fellow board members, to see that they are well run. I will refer all complaints which I may receive to the Administrator and will act on the complaints at public meetings only after failure of an administrative solution. I will support decisions made by the Board, even if it is not the one I would have made, although I will reserve my independent right to seek a change using appropriate procedures. I will recognize that authority rests with the Board as a whole and will make no personal promises nor take any private action that may compromise the Board.
5. **Meetings of the Board:** I will attend all meetings of the Board except when I am unable to attend for excusable reasons, will be prepared to be an active participant at such meetings, and will follow appropriate rules of order at such meetings. I will fulfill my responsibilities on any committees and any officer positions to which I may be elected, assigned or appointed. I will not attempt to circumvent the open meetings laws by participating in meetings with a quorum of other members of the Board to make decisions on ESU 1 matters. I will not seek closed session meetings or participate in closed session meetings except as permitted by law.
6. **Independent Judgment:** I will refuse to surrender my independent judgment to special interest or partisan political groups.
7. **Confidentiality:** I will hold confidential all matters pertaining to ESU 1 which, if disclosed, would needlessly injure individuals, the Board, or ESU 1. I will not ask for legally confidential information about staff or students when not required

to fulfill my duties as a Board member. When such information is made available to me in my role as a Board member, I will maintain the confidentiality of such information.

8. **Conflicts:** I will not use my position as a Board member for personal gain or for the gain of family or friends. Where I have a personal conflict of interest which affects or may be reasonably seen by others as affecting my ability to make a fair and impartial decision on a matter before the Board, I will follow the law and Board policy to avoid the conflict from affecting the decision of the entire Board.
9. **Personnel Matters:** I will vote to appoint the best qualified personnel available after consideration of the recommendation of the administration. I will support and protect personnel in the proper performance of their duties but likewise will hold staff accountable, on matters which reach the Board, to the standards and expectations of the Board and the administration.
10. **Role Model.** I understand that my personal actions may reflect on ESU 1 and the schools and communities served by ESU 1 due to my position as a Board member. I will in all respects serve as a proper role model and engage in conduct which is reflective of a good citizen in the communities served by ESU 1.

Agreed to by the members of the Board of Educational Service Unit 1 on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

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STATE *of* NEBRASKA  
OFFICE OF THE GOVERNOR  
LINCOLN

**EXECUTIVE ORDER No. 20-36**

**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 meetings of public bodies; and

**WHEREAS**, for public health purposes, meetings and gatherings have now been limited to no more than 10 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 public 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 Meetings Act shall continue to be complied with by all public bodies and are not waived by this executive order.
4. This waiver shall apply to all public governing body meetings that occur from December 1, 2020 through January 31, 2021.

IN WITNESS THEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nebraska to be affixed on this 25th day of November, 2020.

ATTEST:



Pete Ricketts, Governor



Robert B. Evnen, Secretary of State

