

NASB/NCSA
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**BOARD MEMBER "AUTHORITY" - WHY CAN'T I RUN THIS
SCHOOL?**

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A. Fiduciary Duties of Individual Board Members

The Nebraska Supreme Court has defined the general duties of public officers:

“[Public officers] stand in a fiduciary relationship to the people whom they have been elected or appointed to serve. As fiduciaries and trustees of the public weal 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 not mere theoretical concepts or idealistic abstractions of no practical force and effect; they are obligations imposed by the common law on public officers and assumed by them as a matter of law upon their entering public office.”¹

It is obvious that a single officer of a school district cannot bind the district by acts not authorized by the board, or the majority of the members thereof when convened and acting as a board.

Markay v. School District No. 18, 58 Neb. 479 (1899).

B. Authority of Individual Board Members

A school district acts through its school board. An individual board member has no authority to act for or speak on behalf of the entire school board:

School directors must act as a board, a legal entity; that is, their action must be at a meeting duly assembled, in the manner prescribed, e.g., after the giving of notice, and there must be a quorum present to enable the board to transact business. It has been aptly announced that a board of education, like any other municipal body, speaks only through and by its record of what was done when

¹ *Nebraska Legislature on behalf of the State of Nebraska v. C. David Hergert*, 271 Neb. 976 (2006) (quoting *State v. Douglas*, 217 Neb. 199 (1984) and a New Jersey court opinion). The Court said: “We agree with these statements describing an officer’s duties.”

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acting as a body in a corporate meeting; no two members or all of them acting individually or separately can bind the board or make a contract for it.²

C. Necessity of Statutory Authority

Under “Dillon’s Rule,”³ “a unit of local government may exercise only those powers that the state expressly grants to it, the powers necessarily and fairly implied from that grant, and the powers that are indispensable to the existence of the unit of local government.”⁴

School boards are creatures of statute, and their powers are limited. Any action taken by a school board must be through either an express or an implied power conferred by legislative grant. School boards can bind a school district only within the limits fixed by the Legislature. A school board’s actions exceeding an express or implied legislative grant of power are void.

Citizens of Decatur for Equal Educ. v. Lyons-Decatur Sch. Dist., 274 Neb. 278 (2007)

When a school board takes action within the scope of its statutory powers, the courts will not ordinarily engage in second-guessing: “If a school board acts within the power conferred upon it by the Legislature, the courts cannot question the manner in which a board has exercised its discretion in regard to a subject matter over which it has jurisdiction, unless such action is so unreasonable and arbitrary as to amount to an abuse of the discretion reposed in it.”⁵

D. Authority from the Nebraska Constitution

The Nebraska Constitution states: “The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years.”⁶ The Legislature has created school districts pursuant to this constitutional directive.⁷

² *Busboom v. Southeast Nebraska Technical Community College*, 194 Neb. 448 (1975) (quoting McQuillin’s Treatise). See *Hansen v. Board of Education of Plattsmouth Community Schools*, 106-455 (D. Ct. Cass County, Neb. 2007) (Principal/teacher claimed that her contract could not be amended to a teacher only position because the Board President had previously told her she would continue in the same position as the previous year. The court rejected that claim because “it is axiomatic that school districts act through school boards, not individual members or presidents of school boards”).

³ The rule takes its name from John F. Dillon, a federal circuit judge, chief justice of the Iowa Supreme Court, and a noted law professor. Justice Dillon announced this rule in *Merriam v. Moody’s Ex’r*, 25 Iowa 163, 170 (1868).

⁴ Black’s Law Dictionary 469 (7th ed. 1999).

⁵ *School Dist. v. Hutchinson*, 244 Neb. 665 (1993).

⁶ Nebraska Constitution, Article VII, § 1.

⁷ “A school district is a creation of the Legislature. Its purpose is to fulfill the constitutional duty placed upon the Legislature ‘to encourage schools and the means of instruction’ . . .” *Campbell v. Area Vocational Technical School*, 183 Neb. 318 (1968). See also *Seward Education Association v. School Dist. of Seward*, 188 Neb. 772 (1972).

The Nebraska Constitution grants the State Board of Education the power to regulate schools, to the extent authorized by the Legislature: “The State Department of Education shall have general supervision and administration of the school system of the state and of such other activities as the Legislature may direct [and its] duties and powers shall be prescribed by the Legislature.”⁸

E. Nebraska Statutes Grant of and Limitations on Board Authority

The Legislature has substantial power over schools: “The state may change or repeal all powers of a school district, take without compensation its property, expand or restrict its territorial area, unite the whole or a part of it with another subdivision or agency of the state, or destroy the district with or without the consent of the citizens.”⁹

The Legislature has provided that school districts are to be governed by school boards.¹⁰ The Legislature has empowered schools with “all the usual powers of a corporation for public purposes.”¹¹ Other powers, along with provisions on the governance, duties, limitations, and funding of school districts, are primarily found in Chapter 79 of the Nebraska statutes. Chapter 79 includes the following topics:

CHAPTER 79—SCHOOLS
ARTICLE 1. DEFINITIONS AND CLASSIFICATIONS
ARTICLE 2. PROVISIONS RELATING TO STUDENTS
<ul style="list-style-type: none"> (a) COMPULSORY EDUCATION (b) MINIMUM SCHOOL TERM (c) ADMISSION REQUIREMENTS (d) TRANSFER OF PUPILS (repealed) (e) ENROLLMENT OPTION PROGRAM (f) PHYSICAL EXAMINATIONS (g) STUDENT DISCIPLINE (h) STUDENT ORGANIZATIONS (i) STUDENT FILES (j) STUDENT PERSONNEL SERVICES

⁸ Nebraska Constitution, Article VII, sections 2 and 3. See *Seward Education Association v. School Dist. of Seward*, 188 Neb. 772, 779 (1972) (“The general supervision and administration of the school system of the state granted to the State Board of Education, while a constitutional grant of power, is dependent upon implementing legislative action”); See also *School Dist. No. 8 v. State Board of Education*, 176 Neb. 722 (1964).

⁹ *Board of Education v. Winne*, 177 Neb. 431 (1964) (quoting *Halstead v. Rozmiarek*, 167 Neb. 652 (1959); citing *Bierman v. Campbell*, 175 Neb. 877 (1963)). See also, *Kaup v. Sweet*, 187 Neb. 226 (1971) (“the power of the Legislature over the creation and alteration of school districts is plenary and may be exercised without the consent and even over the protest of the inhabitants of the district”); *Halstead v. Rozmiarek*, 167 Neb. 652 (1959) (same).

¹⁰ Neb. Rev. Stat. § 79-101(11) “School board means the governing body of any school district. Board of education has the same meaning as school board.”

¹¹ Neb. Rev. Stat. § 79-405.

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(k) NEBRASKA STUDENT EXCHANGE ACT (l) EQUAL OPPORTUNITY IN EDUCATION (m) STUDENT FEES (n) PART-TIME ENROLLMENT (o) BULLYING PREVENTION AND EDUCATION
ARTICLE 3. STATE DEPARTMENT OF EDUCATION
ARTICLE 4. SCHOOL ORGANIZATION AND REORGANIZATION
(a) LEGISLATIVE GOALS, DIRECTIVES, AND LIMITATIONS FOR REORGANIZATION (b) LEGAL STATUS, FORMATION, AND TERRITORY (c) PETITION PROCESS FOR REORGANIZATION (d) REORGANIZATION OF SCHOOL DISTRICTS ACT (e) DISSOLUTION OF CLASS I AND CLASS II SCHOOL DISTRICTS (f) FREEHOLDERS' PETITIONS (g) SPECIAL PROPERTY TRANSFERS AND DISSOLUTION AND ANNEXATION (h) PROCEDURES AND RULES FOR NEW OR CHANGED DISTRICTS (i) DEPOPULATED DISTRICTS (j) SPECIAL PROVISIONS FOR AFFILIATED DISTRICTS (k) REORGANIZATION STUDIES (l) UNIFIED SYSTEM (m) REORGANIZATION OF CLASS I AND VI SCHOOL DISTRICTS (n) LEARNING COMMUNITY REORGANIZATION ACT
ARTICLE 5. SCHOOL BOARDS
(a) SCHOOL BOARD POWERS (b) SCHOOL BOARD DUTIES (c) SCHOOL BOARD ELECTIONS AND MEMBERSHIP (d) SCHOOL BOARD MEETINGS AND PROCEDURES (e) SCHOOL BOARD OFFICERS (f) PROVIDING EDUCATION OUTSIDE THE DISTRICT
ARTICLE 6. SCHOOL TRANSPORTATION
ARTICLE 7. ACCREDITATION, CURRICULUM, AND INSTRUCTION
(a) MISSION AND INTENT FOR THE PUBLIC SCHOOLS (b) ACCREDITATION (c) CURRICULUM AND INSTRUCTION REQUIREMENTS (d) HIGH SCHOOL GRADUATION REQUIREMENTS AND EQUIVALENCY DIPLOMA (e) BOOKS, EQUIPMENT, AND SUPPLIES (f) VOCATIONAL EDUCATION (g) SCHOOL RESTRUCTURING (h) NEBRASKA SCHOOLS ACCOUNTABILITY COMMISSION (i) QUALITY EDUCATION ACCOUNTABILITY ACT (j) EDUCATION AND CAREER PREPARATION ACT (k) LEARNING COMMUNITY FOCUS SCHOOL OR PROGRAM (l) CERTIFICATE OF ATTENDANCE
ARTICLE 8. TEACHERS AND ADMINISTRATORS
(a) CERTIFICATES (b) EMPLOYMENT CONTRACTS (c) TENURE (d) REDUCTION IN FORCE (e) UNIFIED SYSTEM OR REORGANIZED SCHOOL DISTRICTS (f) PROFESSIONAL PRACTICES COMMISSION (g) PROFESSIONAL OR LABOR ORGANIZATIONS (h) STUDENT TEACHER OR INTERN (i) PROFESSIONAL STAFF DEVELOPMENT PROGRAM (j) HELP EDUCATION LEAD TO PROSPERITY ACT (k) INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

(l) MISCELLANEOUS (m) CRIMINAL HISTORY RECORD INFORMATION (n) TEACHER SALARY TASK FORCE (o) MASTER TEACHER PROGRAM ACT (p) ATTRACTING EXCELLENCE TO TEACHING PROGRAM ACT (q) TEACHER CORPS AMERICORPS EDUCATION AWARD PROGRAM
ARTICLE 9. SCHOOL EMPLOYEES RETIREMENT SYSTEMS
ARTICLE 10. SCHOOL TAXATION, FINANCE, AND FACILITIES (a) TAX EQUITY AND EDUCATIONAL OPPORTUNITIES SUPPORT ACT (b) SCHOOL FUNDS (c) SCHOOL TAXATION (d) SCHOOL BUDGETS AND ACCOUNTING (e) SITE AND FACILITIES ACQUISITION, MAINTENANCE, AND DISPOSITION (f) SCHOOL BREAKFAST PROGRAM
ARTICLE 11. SPECIAL POPULATIONS AND SERVICES
ARTICLE 12. EDUCATIONAL SERVICE UNITS ACT
ARTICLE 13. EDUCATIONAL TECHNOLOGY AND TELECOMMUNICATIONS
ARTICLE 15. COMPACT FOR EDUCATION
ARTICLE 16. PRIVATE, DENOMINATIONAL, OR PAROCHIAL SCHOOLS
ARTICLE 17. STATUTORY CONSTRUCTION
ARTICLE 18. NEBRASKA ELEMENTARY AND SECONDARY SCHOOL FINANCE AUTHORITY ACT
ARTICLE 19. NEBRASKA READ, EDUCATE, AND DEVELOP YOUTH ACT
ARTICLE 20. NEBRASKA SCHOOLS CONSTRUCTION ALTERNATIVES ACT
ARTICLE 21. LEARNING COMMUNITY

Numerous other state statutes outside of Chapter 79 provide school districts and school boards with authority, as well as limitations on their authority:

Other Nebraska Statutes Affecting Schools
CHAPTER 13. CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS
ARTICLE 5. BUDGETS ARTICLE 8. INTERLOCAL COOPERATION ACT ARTICLE 9. POLITICAL SUBDIVISIONS TORT CLAIMS ACT ARTICLE 22. LOCAL GOVERNMENT MISCELLANEOUS EXPENDITURES (“Coffee Act”)
CHAPTER 32. ELECTIONS
ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS ARTICLE 2. ELECTION OFFICIALS ARTICLE 3. REGISTRATION OF VOTERS ARTICLE 4. TIME OF ELECTIONS ARTICLE 5. OFFICERS AND ISSUES ARTICLE 6. FILING AND NOMINATION PROCEDURES ARTICLE 7. POLITICAL PARTIES ARTICLE 8. NOTICE, PUBLICATION, AND PRINTING OF BALLOTS ARTICLE 9. VOTING AND ELECTION PROCEDURES ARTICLE 10. COUNTING AND CANVASSING BALLOTS ARTICLE 11. CONTEST OF ELECTIONS AND RECOUNTS ARTICLE 12. ELECTION COSTS ARTICLE 13. RECALL

<p>ARTICLE 14. INITIATIVES, REFERENDUMS, AND ADVISORY VOTES ARTICLE 15. VIOLATIONS AND PENALTIES ARTICLE 16. CAMPAIGN FINANCE LIMITATIONS ARTICLE 17. VOTE NEBRASKA INITIATIVE</p>
<p>CHAPTER 48. LABOR</p>
<p>ARTICLE 1. WORKERS' COMPENSATION ARTICLE 2. GENERAL PROVISIONS ARTICLE 3. CHILD LABOR ARTICLE 4. HEALTH AND SAFETY REGULATIONS ARTICLE 6. EMPLOYMENT SECURITY ARTICLE 8. COMMISSION OF INDUSTRIAL RELATIONS ARTICLE 10. AGE DISCRIMINATION ARTICLE 11. NEBRASKA FAIR EMPLOYMENT PRACTICE ACT ARTICLE 12. WAGES ARTICLE 19. DRUG AND ALCOHOL TESTING</p>
<p>CHAPTER 49. LAW</p>
<p>(a) GENERAL PROVISIONS (b) CAMPAIGN PRACTICES (c) LOBBYING PRACTICES (d) CONFLICTS OF INTEREST (e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION</p>
<p>CHAPTER 73. PUBLIC LETTINGS AND CONTRACTS</p>
<p>CHAPTER 77. REVENUE AND TAXATION</p>
<p>ARTICLE 1. DEFINITIONS ARTICLE 2. PROPERTY TAXABLE, EXEMPTIONS, LIENS ARTICLE 7. DEPARTMENT OF PROPERTY ASSESSMENT AND TAXATION ARTICLE 15. EQUALIZATION BY COUNTY BOARD ARTICLE 16. LEVY AND TAX LIST ARTICLE 34. POLITICAL SUBDIVISIONS, BUDGET LIMITATIONS ARTICLE 50. TAX EQUALIZATION AND REVIEW COMMISSION ACT</p>
<p>CHAPTER 84. STATE OFFICERS</p>
<p>ARTICLE 7. GENERAL PROVISIONS AS TO STATE OFFICERS (Public Records Act) ARTICLE 12. PUBLIC RECORDS (Records Management Act) ARTICLE 14. PUBLIC MEETINGS</p>

F. State Board of Education Regulations Limitations on Board Authority

The State Board of Education has been granted the power to act in the following areas:

1. Adopt rules for school operations and school accreditation;¹²
2. Adopt a system of student testing;¹³
3. Administer federal grant programs; and¹⁴

¹² Neb. Rev. Stat. § 79-318 (5)(c) “establish rules and regulations which govern standards and procedures for the approval and legal operation of all schools in the state and for the accreditation of all schools requesting state accreditation.”

¹³ Neb. Rev. Stat. § 79-318 (5)(d) “institute a statewide system of testing to determine the degree of achievement and accomplishment of all the students within the state's school systems if it determines such testing would be advisable.”

Neb. Rev. Stat. § 79-760.01 “The State Board of Education shall adopt measurable academic content standards for at least the grade levels required for statewide assessment.”

¹⁴ Neb. Rev. Stat. § 79-319 (5) “receive and distribute according to law any money, commodities, goods, or services made available to the board from the state or federal government or from any other source and

4. Perform “such other duties as in its judgment may be necessary for the proper and legal exercise of its obligations.”¹⁵

A review of the subjects covered by the State Board’s regulations demonstrates the extent to which the State Board’s regulations affect the authority of school boards:

NEBRASKA DEPARTMENT OF EDUCATION ADMINISTRATIVE RULES¹⁶

CHAPTER NUMBER	SUBJECT	EFFECTIVE DATE	REVISION PENDING
SCHOOL OPERATION AND FINANCE			
1	School Audit Procedures	08-07-04	x
2	Uniform System of Accounting	08-07-04	
3	Identification of High Ability Learners	01-19-08	
4	Private Student Book Loans	10-01-97	
8	School Financing & Budgeting	08-29-06	x
9	Proration of Affiliated School System Bond Funds	11-09-94	
SCHOOL SYSTEM APPROVAL AND CURRICULUM			
10	Accreditation of Schools	07-07-09	
11	Early Childhood Education Programs	08-20-07	
12	Exempt Schools (not for religious reasons)	01-19-05	x
13	Exempt Schools	01-19-05	x
14	Approved Nonpublic Schools	01-14-96	
17	Alternative Schools for Expelled Students	12-09-97	
18	Interim-Program Schools	12-29-03	
19	School Enrollment	12-17-06	
SCHOOL PERSONNEL			
20	Teachers College Approval	01-19-08	
21	Teacher Certification	07-19-08	x
22	Master Teacher Program	01-13-02	
23	Basic Skills Competency Testing	08-12-08	
24	Endorsements	06-02-08	
25	Attracting Excellence to Teaching Program	01-13-02	
26	Mentor Teacher Program	08-04-99	
27	Professional Practices Criteria	11-12-03	
28	Non-Public Professional Practices Investigations	12-25-89	
29	State Board Review of Professional Practices Cases	12-25-89	
VOCATIONAL EDUCATION			

distribute money in accordance with the terms of any grant received, including the distribution of money from grants by the federal government to schools . . . so long as no public funds of the state, any political subdivision, or any public corporation are added to such federal grants.”

¹⁵ Neb. Rev. Stat. § 79-318.

¹⁶ As of July 2009; <http://www.nde.state.ne.us/LEGAL/RULES.html>.

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41	Private Postsecondary Career Schools	06-24-07	
42	Private Postsecondary Career Schools Agent	06-24-07	
43	Private Postsecondary Schools Complaint Investigation Procedures	04-15-91	
44	Private Postsecondary Schools Tuition Recovery Cash Fund	01-10-00	
45	Vocational Student Organizations	12-19-94	
46	Career Education Partnership Act Grants	11-19-07	
SPECIAL EDUCATION			
51	Special Education Programs Standards	08-30-08	
53	Special Education Residential Care	03-09-86	
55	Special Education Appeals	05-02-06	
59	Regulations for School Health and Safety	05-13-06	
PRACTICE AND PROCEDURE			
61	Contested Cases	10-01-97	
62	Declaratory Orders	08-22-95	
63	Rulemaking Petitions	08-22-95	
64	Negotiated Rulemaking	08-22-95	
REHABILITATION SERVICES			
71	Formal Review of Vocational Rehabilitation Determinations	06-07-00	
72	Vocational Rehabilitation Cost Containment	07-01-08	
MISCELLANEOUS			
81	High School Equivalency	01-01-02	
83	State Committee for the Reorganization of School Districts	11-28-05	
84	Educational Service Units Accreditation	08-10-98	
85	Educational Service Unit Boundary Changes	12-15-98	
86	Public School Breakfast Program Reimbursement	02-09-08	
87	Qualified Zone Academy Bonds	11-10-98	x
88	School Technology Fund Program	12-24-96	
89	Education Innovation Fund Program	07-08-07	
TRANSPORTATION			
91	Driver Qualifications and Operational Procedures	03-09-08	
92	Equipment Standards & Safety Inspection Criteria	03-09-08	
TITLE 93			
1 - 16	Nebraska Department of Education Personnel Rules	08-18-07	x

G. Federal Law Limitations on Board Authority

Federal laws that restrict the authority of school boards include:

FEDERAL LAWS	NATURE OF LAW
Title VI—42 USCS § 2000d	Discrimination based on race, color or national origin.
Title VII—42 U.S.C. § 2000e	Employment discrimination based on race, color, religion, sex or national origin.
Title IX—20 U.S.C.A. § 1681	Discrimination based on sex or gender.
Civil Rights Acts—	Enforcement of constitutional and civil rights.

42 U.S.C. §1981 through 1988	
Age Discrimination in Employment Act (ADEA)—29 U.S.C. § 621 et seq.	Discrimination in employment based on age.
Americans with Disabilities Act (ADA)—42 U.S.C. § 12101 et seq.	Discrimination based on disability.
Section 504 of the Rehabilitation Act—29 U.S.C. § 794	Discrimination based on disability.
Pregnancy Discrimination Act—42 U.S.C. § 2000e(k).	Employment pregnancy discrimination.
Family Medical Leave Act (FMLA)—29 U.S.C. § 2601 et seq.	Employment leaves for birth, adoption and serious health conditions (employee’s own or for care of family member), and for family military leaves.
Uniform Service Employment and Reemployment Rights Act (USERRA)—38 U.S.C. § 4301 et seq.	Military leaves and benefits.
Fair Labor Standards Act (FLSA)—29 U.S.C. § 201 et seq.	Minimum wage and overtime.
Drug-Free Workplace Act—41 USC § 701 et seq.	Drug-free employment.
Safe and Drug-Free Schools and Communities Act—20 U.S.C. § 7101	Drug-free schools.
No Child Left Behind Act (NCLB)—20 U.S.C. § 6301 et seq.	Numerous programs (Title I, etc.) with requirements to be met as a condition of federal funding.
Individuals with Disabilities Act (IDEA)—20 U.S.C. § 1400 et seq.	Special education.
Equal Access Act—20 U.S.C. § 4071 et seq.	“Equal access” to school facilities for student groups if the school has a limited public forum.
Family Educational Rights and Privacy Act (FERPA)—20 U.S.C.A. § 1232g	Confidentiality of and access to student records.
McKinney-Vento Homeless Assistance Act—42 U.S.C. § 11431 et seq.	Admission of and services to homeless students.
Asbestos School Hazard Abatement, 20 U.S.C. 4011 et seq.; Asbestos Hazard Emergency Act, 40 C.F.R. Part 763; Toxic Substances Control Act, 15 U.S.C. 2601 et seq.	Asbestos control and notification.
Copyright Law—17 U.S.C. § 101 et seq.	Fair use of a copyrighted work.

In addition, the United States Constitution, of course, impacts the authority of school districts. Of principal note are the first amendment (freedom of speech and religion); the fourth amendment (search and seizure); and the fourteenth amendment (due process and

equal protection, along with rights of association and privacy which the Supreme Court has read into the fourteenth amendment).

H. Duty and Authority to Adopt School Board Policies

School boards are authorized,¹⁷ and in fact required,¹⁸ to adopt policies. Board policies are a primary means by which a school board exercises its authority.

Board policies provide for the internal government and operation of the school district. Board policies further establish the rules and procedures to be followed by the school board, the administration, teachers and other employees, students, parents, and district patrons. In addition, school boards adopt policies for the purpose of meeting legal requirements and reducing legal liability exposure.

Policies Required by Nebraska Law

Policies to be adopted in response to Nebraska statutes and regulations include:

1. general government, health, attendance, and progress of students;¹⁹
2. disenrollment of younger students;²⁰
3. part-time enrollment;²¹
4. option enrollment;²²

¹⁷ General authority to adopt policies: Neb. Rev. Stat. § 79-520 (“The board of education of a Class III school district has power to select its own officers and make its own rules and regulations not inconsistent with any statute applicable to such district”); Neb. Rev. Stat. § 79-521 (“The board of education of a Class IV school district has power to select its own officers and make rules and regulations necessary to carry out the board’s legal duties”); Neb. Rev. Stat. § 79-522 (“The board of education of a Class V school district has power to select its own officers and make its rules and regulations”).

Other statutes grant authority to adopt policies with regard to specified matters. *See e.g.* Neb. Rev. Stat. § 79-734 (requiring public schools to lend textbooks to private school students “subject to such rules and regulations as are or may be prescribed by such school boards or boards of education”); Neb. Rev. Stat. § 79-838 (“Any school board, upon written request, may grant a leave of absence to a permanent certificated employee for such reasons as the school board deems appropriate . . . subject to such rules and regulations governing leaves of absence as may be adopted by the school board”).

¹⁸ NDE Rule 10.012.01A (A requirement of maintaining accredited status is that: “The governing body has a written set of policies for the school system. These policies are [to be] accessible in each school building”).

Educational Service Units are also required to have a set of policies. *See* NDE Rule 84.003.04 (“The ESU board shall adopt a comprehensive set of written policies governing the organization and operation of the ESU”; the rule then sets forth the required policies for ESUs).

¹⁹ Neb. Rev. Stat. § 79-526 (“The school board or board of education . . . shall make rules and regulations as it deems necessary for the government and health of the pupils and devise any means as may seem best to secure the regular attendance and progress of children at school”).

²⁰ Neb. Rev. Stat. § 79-201 (“The board shall adopt policies allowing discontinuation of the enrollment of students who will not reach six years of age prior to January 1 of the then-current school year and specifying the procedures therefore”).

²¹ Neb. Rev. Stat. § 79-2,136 (“Each school board shall allow the part-time enrollment of students who are residents of the school district pursuant to subsection (1) of section 79-215 and who are also enrolled in a private, denominational, or parochial school or in a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements and shall establish policies and procedures for such part-time enrollment”).

²² Neb. Rev. Stat. § 79-238(1) (“the school board of the option school district shall adopt by resolution specific

5. truancy;²³
6. student fees;²⁴
7. student conduct,²⁵ including a specific policy on firearms,²⁶ drugs,²⁷ and steroids;²⁸
8. bullying;²⁹
9. dating violence;³⁰
10. equal opportunity;³¹
11. student and employee records;³²

standards for acceptance and rejection of [enrollment option] applications”).

Neb. Rev. Stat. § 79-238(2) “The school board of every school district shall also adopt standards and conditions for acceptance or rejection of a request for release of a resident student submitting an application to an option school district after March 15”

²³ Neb. Rev. Stat. § 79-209 (“All school districts shall have a written policy on excessive absenteeism”).

²⁴ Neb. Rev. Stat. § 79-2,134 (“[A]nnually . . . , each school board shall hold a public hearing at a regular or special meeting of the board on a proposed student fee policy, following a review of the amount of money collected from students pursuant to, and the use of waivers provided in, the student fee policy for the prior school year. The student fee policy shall be adopted by a majority vote of the school board and shall be published in the student handbook”).

²⁵ Neb. Rev. Stat. § 79-262 (“The school board . . . shall establish and promulgate rules and standards concerning student conduct which are reasonably necessary to carry out or to prevent interference with carrying out any educational function”).

²⁶ Neb. Rev. Stat. § 79-263 (“Each school district shall adopt a policy requiring the expulsion from school for a period of not less than one year of any student who is determined to have knowingly and intentionally possessed, used, or transmitted a firearm on school grounds”).

²⁷ NDE Board Resolution passed December 7, 2006 (“[S]chool districts are encouraged to review, update and/or create comprehensive policies that address the following critical areas” relating to alcohol, tobacco and drug-free schools); Neb. Rev. Stat. § 79-296 (a student who “possesses, dispenses, delivers, or administers anabolic steroids . . . may be prohibited from participating in any extracurricular activities for not more than thirty consecutive days for the first offense. For the second or any subsequent offense, the student may be barred from participation in such activities for any period of time the institution deems appropriate pursuant to the written policy of the institution. Any sanction imposed pursuant to this section shall be in accordance with a written policy of the institution. The institution shall post the written policy in a conspicuous place and shall make a copy of the policy available to any student upon request”).

²⁸ Neb. Rev. Stat. § 79-296.

²⁹ Neb. Rev. Stat. § 79-2,137 (“On or before July 1, 2009, each school district . . . shall develop and adopt a policy concerning bullying prevention and education for all students. The school district shall review the policy annually”); NDE Board Policy adopted February 2003 and reaffirmed December 2006 (“The State Board of Education encourages local school districts to establish policies and strategies to emphasize and recognize positive behaviors that promote a safe and secure learning environment for all students and staff”).

³⁰ Neb. Rev. Stat. § 79-2,138 to 79-2,142 (Lindsay Ann Burke Act) (“On or before July 1, 2010, each school district shall develop and adopt a specific policy to address incidents of dating violence involving students at school, which shall be made a part of the requirements for accreditation Such policy shall include a statement that dating violence will not be tolerated. [T]he policy shall be published in any school district handbook, manual, or similar publication that sets forth the comprehensive rules, procedures, and standards of conduct for students at school.”).

³¹ Neb. Rev. Stat. § 79-2,117 (“The governing boards of educational institutions shall adopt and promulgate rules and regulations needed to carry out the Nebraska Equal Opportunity in Education Act”).

³² Neb. Rev. Stat. § 79-539 (“The school board or board of education of each school district shall adopt and publish an official policy respecting personnel files and student records, which policy shall not conflict in any manner with the rules and regulations of the State Records Administrator adopted pursuant to the Records Management Act”).

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12. parental involvement;³³
13. high ability learners;³⁴
14. special education;³⁵
15. services to students in non-accredited schools;³⁶
16. transportation;³⁷
17. anaphylaxis protocol;³⁸
18. textbook loan;³⁹
19. awarding credits to students in alternative schools;⁴⁰
20. academic content standards for state assessments;⁴¹

³³ Neb. Rev. Stat. § 79-531 (“[E]ach public school district in the state shall develop and adopt a policy stating how the district will seek to involve parents in the schools and what parents’ rights shall be relating to access to the schools, testing information, and curriculum matters”); Neb. Rev. Stat. § 79-532 (required contents of parental involvement policy); Neb. Rev. Stat. § 79-533 (“The policy required by section 79-531 shall be developed with parental input and shall be the subject of a public hearing before the school board or board of education of the school district before adoption by the board. The policy shall be reviewed annually and either altered and adopted as altered or reaffirmed by the board following a public hearing”).

³⁴ Neb. Rev. Stat. §79-1108 (“For school year 1997-98 and each school year thereafter, each school district shall identify learners with high ability and may provide accelerated or differentiated curriculum programs that will address the educational needs of the identified students at levels appropriate for the abilities of those students”); NDE Rule 3.004.05 (“School districts shall annually provide the Department with a copy of their criteria for identifying learners with high ability, the number of students identified according to the criteria, and the number of students participating in an approved accelerated or differentiated curriculum program”).

³⁵ NDE Rule 51.004.08 (“The school district shall develop, adopt and have on file with the Nebraska Department of Education current policies, procedures and forms for special education programs for all resident public and nonpublic school children with disabilities, in accordance with all applicable state and federal requirements”).

³⁶ 1993 NDE Guidance (schools should “formally develop and adopt a policy which stipulates how returning Rule 13 children will be reintegrated into the accredited school setting [and] that specifically addresses providing auxiliary or supplemental educational and activities services to exempt status students”).

³⁷ NDE Rule 91.006.02 (“Each school district providing pupil transportation shall have a safe pupil transportation plan”); Rule 91.003.03A3 (“The school district or employing agency shall obtain a record of satisfactory driving as determined by the local school governing board policy”); Rule 91.005.06A7 (“Provisions shall be made for transporting pupils to their homes or to school as determined by local school policy” in the event of an accident).

³⁸ NDE Rule 59.006.01 (“All . . . schools . . . shall adopt and implement the Emergency Response to Life-Threatening Asthma or Systemic Allergic Reactions (Anaphylaxis) Protocol contained in Appendix A of this Chapter); Rule 59.006.03 (schools “shall comply with the requirement to adopt the protocol and be prepared to begin implementing the protocol in emergency situations no later than the end of the 2003-2004 academic school year”).

³⁹ NDE Rule 4.004.01 (“Each school district shall have local rules and regulations for the distribution of textbooks and the management of funds under this chapter [relating to loans of textbooks to private school students]”).

⁴⁰ NDE Rule 17.003.02 (“The school district shall have a written policy or plan describing how credit is awarded to students participating in alternative schools, classes, or programs for expelled students”).

⁴¹ Neb. Rev. Stat. 79-760.02: “In accordance with timelines that are adopted by the State Board of Education, but in no event later than one year following the adoption or modification of state standards, each school district shall adopt measurable quality academic content standards in the subject areas of reading, writing, mathematics, science, and social studies. The standards may be the same as, or may be equal to or exceed in rigor, the measurable academic content standards adopted by the state board and shall cover at least the same grade levels.”

A May 20, 2009 e-mail from the Commissioner states: “Each school district will need to adopt by new board policy or by revising existing board policy these standards, or standards that are the same as, equal to, or more rigorous.”

21. reduction in force;⁴²
22. caucus election;⁴³
23. designated depository for school funds;⁴⁴
24. method of giving notice of Board meetings;⁴⁵
25. miscellaneous Board expenditures (“coffee act policy”);⁴⁶
26. bidding;⁴⁷
27. personal use of school resources;⁴⁸ and
28. policies to maintain accredited status, including:
 - a. teacher evaluation;⁴⁹
 - b. annual report;⁵⁰

⁴² Neb. Rev. Stat. § 79-846 (“[E]very school board . . . or governing board of any educational institution in Nebraska covered by the provisions of sections 79-824 to 79-842 [(the Teacher Tenure Act)] shall adopt a reduction-in-force policy covering employees subject to such statutory provisions to carry out the intent of sections 79-846 to 79-849 [(the reduction in force statutes)]”). See *Wilder v. Grant County School District No. 0001*, 265 Neb. 742 (2003) (RIF of teacher reversed because the Board’s RIF policy did not specify the criteria to be used to determine the teacher to be reduced in force).

⁴³ Neb. Rev. Stat. § 79-549 (a Class III school district “which uses a caucus for nominations shall develop rules and procedures for conducting the caucus”).

⁴⁴ Neb. Rev. Stat. § 77-2350 (“The treasurer or ex officio treasurer of any school district . . . shall deposit the funds received or held by him or her by virtue of his or her office in such bank, capital stock financial institution, or qualifying mutual financial institution, situated within the boundaries of such district . . . , as shall have been and shall be from time to time designated by the governing body of such school district . . . as official depositories for such funds”).

⁴⁵ Neb. Rev. Stat. § 84-1411(1) (“Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes.”)

⁴⁶ Neb. Rev. Stat. § 13-2203 (“payment or reimbursement of actual and necessary expenses incurred by elected and appointed officials, employees, or volunteers at educational workshops, conferences, training programs, official functions, hearings, or meetings” may be made “if the governing body gave prior approval for participation or attendance at the event and for payment or reimbursement either by the formal adoption of a uniform policy or by a formal vote of the governing body”; “[t]he expenditure of public funds for plaques, certificates of achievement, or items of value awarded to elected or appointed officials, employees, or volunteers” may not be made unless “[b]efore making any such expenditure, the governing body shall, by official action after a public hearing, establish a uniform policy which sets a dollar limit on the value of any plaque, certificate of achievement, or item of value to be awarded. Such policy, following its initial adoption, shall not be amended or altered more than once in any twelve-month period”).

⁴⁷ Neb. Rev. Stat. § 73-106 (schools “shall advertise for bids in the regular manner established by the board” when expending funds for construction, remodeling or repair of school buildings or site improvements).

⁴⁸ Neb. Rev. Stat. § 49-14,101.03(2) (Use of school resources by Board members or employees that is more than “incidental or de minimis” is not permissible unless “the use of the resource for personal purposes is part of the public official’s or public employee’s compensation provided in an employment contract or a written policy approved by a government body and the personal use of the resource as compensation is reported in accordance with the Internal Revenue Code of 1986, as amended, and taxes, if any, are paid. If authorized by the contract or policy, the resource may be used whether or not the public official or public employee is engaged in the duties of his or her public office or public employment.”)

Neb. Rev. Stat. § 49-14,101.03(3) “Use of a government vehicle by a public official or public employee to travel to a designated location or the home of the public official or public employee is permissible when the primary purpose of the travel serves a government purpose and the use is pursuant to a written policy approved by a government body.”

⁴⁹ NDE Rule 10.007.06A (“The school district has a written board policy for the evaluation of teachers. The policy is approved by the Department as required by 79-318 (5)(h) R.R.S.”).

14 School Board Authority

- c. curriculum standards;⁵¹
- d. school improvement plan and mission statement;⁵²
- e. multicultural education;⁵³
- f. minimum school hours;⁵⁴
- g. safety and security plan.⁵⁵

Policies Required by Federal Laws

Policies which school boards are required to adopt as a result of federal statutes and regulations include the following (this is not an all-inclusive list):

- 1. Anti-discrimination policies with a grievance procedure;⁵⁶
- 2. Internet Safety Policy;⁵⁷
- 3. NCLB policies—
 - a. parental involvement for parents of students in Title I;
 - b. homeless students;
 - c. student privacy protection;
 - d. gun-free schools; and
- 4. School Wellness.⁵⁸

⁵⁰ NDE Rule 10.010.01B (“The school system has a written policy for annually preparing and distributing the performance report(s) . . . to the residents of the district”).

⁵¹ NDE Rule 10.004.01A (“The instructional program of the school system is based on written purposes or standards and is approved by the local board of education or governing body. These documents are on file in each school building and each certificated staff member is provided a copy”).

⁵² NDE Rule 10.009.01A (“The school system develops and implements a school improvement process to promote quality learning for all students. . . . In all school systems, the school improvement process includes the following activities at least once within each five years. . . . Review and update of a mission or vision statement . . .”).

⁵³ NDE Rule 10.004.01F1 (“The district has a statement of philosophy or mission for the multicultural education program”).

⁵⁴ NDE Rule 10.012.01B (“The school system has a written policy which assures that each school will meet the statutory requirement of at least 400 hours for kindergarten, at least 1,032 hours for students up through grade eight, and at least 1,080 hours for students in grades nine through twelve. The polic(ies) or regulations stipulate the conditions for which individual students may be excused from the regular school day”).

⁵⁵ NDE Rule 10.011.01B (“Each school system has a safety and security plan for the schools in the system. The plan addresses the safety and security of students, staff, and visitors. The plan is approved by the local governing body”).

⁵⁶ Office of Civil Rights, January 2001, “Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties” (“Schools are required by the Title IX regulations to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints”); *Faragher v. Boca Raton*, 524 U.S. 775 (1998) (important defense to unlawful employment discrimination not available unless the employer has an anti-discrimination policy with an effective grievance procedure).

⁵⁷ Children’s Internet Protection Act of 2001 (CIPA), 47 USC § 254.

⁵⁸ The Child Nutrition and WIC Reauthorization Act of 2004, 42 USC 1751.