

WHAT TO DO IF NDE REFUSES TO ACCEPT RULE 13 PAPERWORK

The NCHEA has been contacted by homeschool families and has seen in homeschool social media that prospective homeschool parents believe that they cannot file for exempt school status under Rule 13 because the Nebraska Department of Education (NDE) has stopped accepting Rule 13 filings before the end of the typical school year.

For example, on May 2, 2022 @ 5:00PM, the following was on the NDE homeschool page¹:

2021/22 School Year

- **NDE has discontinued accepting 2021/22 submissions.**

Since homeschooling outside Rule 13 is not legal, then persons homeschooling without the Rule 13 notifications to NDE may be charged criminally for truancy.² Yet, there is nothing in the statutes or in Rule 13 stating that Rule 13 filings may not be submitted to NDE after a specified date.

The Nebraska Supreme Court has stated, *“As stated, § 79-318(5)(c) authorizes the Department to establish the standards and procedures for exempt schools. But we will not interpret the Department’s regulations to impose a requirement that carries criminal consequences when that requirement is not clearly imposed under the governing statute.”*³

Thus, the NDE by its arbitrary refusal to accept Rule 13 filings without statutory authority imposes *“a requirement that carries criminal consequences when that requirement is not clearly imposed under the governing statute.”*⁴ Hence, we believe that NDE refusal to accept Rule 13 filings before the end of the local public/private school year is a violation of the law as determined by the Nebraska Supreme court.

The NDE Rule 13 FAQs states, 1) “For purposes of the rule, the record-keeping year is July 1, 2021 through June 30, 2022 (refer to Rule 13, Section 002.07)” and 2) “The total instructional hours for the 2021/22 school year must occur during the reporting period of July 1, 2021 through June 30, 2022.”⁵ This makes the NDE discontinuing Rule 13 election submissions even more troubling in that they do know that the NDE defined Rule 13 school year ends on June 30 of each year.

If this NDE created situation should occur for prospective homeschoolers where the NDE has stated that it is no longer accepting Rule 13 submissions, we recommend prospective homeschoolers do the following:

1. Join HSLDA
2. File Rule 13 documents with NDE anyway by:
 - a. Getting the paperwork from other sources (friends, NCHEA, etc.) since NDE may no longer have them available at their website.
 - b. Delivering completed hardcopy forms in person to NDE.
 - i. This may not be possible because **“* As of May 28, 2021, the Nebraska Department of Education offices at 500 S. 84th Street are currently locked during business hours. Please call (402) 471-2795 or (402) 471-1894 to make an appointment to deliver documents.”**⁶ Even if the NDE agrees to an appointment, they will likely ask what for and the appointment probably would be denied. If you were to get in somehow, it would be helpful to get proof that NDE denied the submittals should NDE refuse them.
 - c. Deliver completed hardcopy forms by (United States Postal Service (USPS) mail, using Certified, Return Receipt Requested. Since **the law says that the exempt status becomes effective when the Rule 13**

¹ <https://www.education.ne.gov/fos/exempt-schools/>

² <https://nebraskalegislature.gov/laws/statutes.php?statute=79-210> Any person violating the provisions of sections 79-201 to 79-209 shall be guilty of a Class III misdemeanor.

³ *State v. Thacker*, 286 Neb. 16, p. 26, available at https://www.nebraska.gov/apps-courts-epub/public/supreme?offset=25&max=25#volumeOpinionsHeading_0, then click Volume Number +286, then find *State v. Thacker* at 5/31/2013.

⁴ *Ibid*, *State v. Thacker*, 286 Neb. 16, p. 26

⁵ NDE Rule 13 FAQ, D1. p. 8 and D17 p. 12, available at https://www.education.ne.gov/wp-content/uploads/2021/05/2122_Rule13FAQs_05-28-2021.pdf

⁶ *Ibid*, NDE Rule 13 FAQ, p. 8.

paperwork is received by the commissioner, then a receipt will be proof of such, even if NDE does nothing with the submittal. It may be possible to use the USPS website to observe when delivery took place using the tracking number.

3. Advise your school district that you are filing or have filed the legal paperwork with NDE.
4. If NDE refuses to accept or act on the filing and you are threatened by your local school district, then HSLDA members could contact HSLDA and ask them to intervene with NDE.