NEBRASKA DEPARTMENT OF EDUCATION

TO: Roger Breed, Ed.D.
Commissioner of Education

FROM: Russ Inbody, Administrator of Finance & Organizational Services

SUBJECT: Adopt the proposed revised Rule 8 ("Regulations for School Financing and Budgeting/State Funding of Educational Service Units and Learning Communities").

Proposed Board Action:

It is recommended that the State Board adopt the proposed revised Rule 8 ("Regulations for School Financing and Budgeting/State Funding of Educational Service Units and Learning Communities").

Background Information:

Rule 8 was last revised 2006, with an effective date of August 29, 2006.

At the September 7, 2012 meeting, the Board granted the Commissioner the authority to approve a hearing draft for the proposed Rule 8, and the authority to set a time and place for the hearing, and to appoint a hearing officer to conduct the hearing on behalf of the State Board.

The hearing draft was approved by the Commissioner on September 11, 2012.

A hearing on the proposed revised rule was held on Thursday, October 18, 2012. A summary of the hearing is attached.

The proposed revised Rule 8 will incorporate updates due to legislative changes as well as procedural changes within the Department.

Estimated Cost:

$600

Supporting Documentation Included:

Proposed Revised Rule 8 and Hearing Summary.

For Additional Information on this item:

Russ Inbody: (402) 471-4320 or e-mail russ.inbody@nebraska.gov.

Roger D. Breed, Ed.D., Commissioner
Scott Swisher, Ed.D., Deputy Commissioner

NEBRASKA DEPARTMENT OF EDUCATION

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TO: State Board of Education

FROM: Scott Summers, Legal Counsel, III Commissioner's Appointed Staff Person to Conduct a Rule Hearing on Title 92, Nebraska Administrative Code, *Chapter 8, Regulations for School Financing and Budgeting/ State Funding of Educational Service Units and Learning Communities*

2.5.

DATE: October 18, 2012

RE: Summary of rule-making hearing on Proposed Revisions to 92 NAC 8

On September 7, 2012, the State Board of Education granted the Commissioner the authority to approve a hearing draft and set a hearing date and location as well as designate a staff person to conduct a hearing on behalf of the State Board on the adoption of proposed revisions to Title 92, Nebraska Administrative Code, Chapter 8. By a memorandum dated September 12, 2012, the Commissioner appointed me to conduct the hearing on this Rule on October 18, 2012, commencing at 1:00 p.m. After the proper legal notice was published, the hearing was held at the Nebraska State Office Building, Nebraska Department of Education, State Board Room, Centennial Mall South, Sixth Floor, Lincoln, Nebraska. Pursuant to State Board of Education Policy B9, what follows is a written summary of the hearing testimony.

An audio recording of the hearing is available if any members of the Board wish to hear it.

SUMMARY OF TESTIMONY ON THE PROPOSED REVISIONS TO 92 NAC 8, Regulations for School Financing & Budgeting/State Funding of Educational Service Units and Learning Communities

Scott Summers, Legal Counsel III and the hearing official, called the hearing to order, read into the record the name of the newspaper in which a legal notice of the hearing was published and the date the notice appeared, outlined the procedures for the hearing.

Mr. Summers introduced **Russ Inbody, Administrator, Nebraska Department of Education, School Finance and Organization Services.**

Mr. Inbody introduced and explained the reason for the revisions to Title 92, Nebraska Administrative Code, Chapter 8 by reading his written testimony. A copy of Russ Inbody's testimony is attached to this memo.

The proposed revised Rule 8 will include the following changes:

Changes in the definition section including eliminating references to the Allowable Growth Range and the Applicable Allowable Growth Rate;

Added language to describe how funds are allocated to school districts that are in a learning community;

Procedures were updated to conform with current statutes and Department procedures;

Updated language as to how schools submit reports and other information through NDE's portal;

Added a provision that the Commissioner could direct a school district to provide additional information to NDE if the school district did not comply with the enrollment option statutes' and,

Language was added to include information that is required from a learning community.

No other oral or written testimony was received.

Testimony received from Russ Inbody

Rule 8 Testimony

October 18, 2012

State Board Room

The proposed revised Rule 8 will incorporate updates due to legislative changes as well as procedural changes within the Department. The changes also include updating statutory references.

Changes to the definition section included eliminating references to the Allowable Growth Range and the Applicable Allowable Growth Rate for school district budgeting and adding Educational Services Units and Learning Community. We also expanded the definition of an Option Student.

Language was added to describe how funds are allocated to school districts that are in a learning community.

The procedures for districts to exceed their General Fund budget of expenditures were updated to conform with current statutes and Department procedures.

The method of submitting reports and other information was also updated throughout the Rule. School districts now file reports and other information electronically through the NDE portal.

A provision was added that if NDE has reason that any school district did not comply with the enrollment option program statutes then the Commissioner could direct the school district to provide additional information to NDE.

Language was also added to include the information that is required to be received from a Learning Community.

A section was added addressing the State Funding of Educational Service Units and Learning Communities. The title of the Rule was changed to include this section – School Finance & Budgeting/State Funding of Educational Service Units and Learning Communities.

TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 8 - SCHOOL FINANCE & BUDGETING/STATE FUNDING OF EDUCATIONAL SERVICE UNITS AND LEARNING COMMUNITIES

NUMERICAL TABLE OF CONTENTS

SUBJECT	STATUTORY AUTHORITY	CODE SECTION
General Provisions	79-234, 79-237, 79-302, 79-306 79-1001 through 79-1093	001
Definitions	77-3446, 79-1003, 79-234, 79-1025~~, 79-1026, 79-1028~~	002
General Procedures for Financing and Budgeting	79-485, 79-498	003
State Aid	79-1022, 79-1065, 79-1065.01 79-1016(6), 79-1033(2), 79-1065.02	004
Budgeting	79-302, 79-306, 79-1023 through 79-1030	005
Data Collection and Penalties	79-528, 79-1089, 79-237 79-1024, 79-1033, 79-1009	006
State Board/Commissioner Determinations and Opportunities to be Heard Before the Commissioner	79-302, 79-306, 79-318, 79-1003~~(40)~~, 79-1033, 79-1016(6)	007

TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 8 - SCHOOL FINANCE & BUDGETING/STATE FUNDING OF EDUCATIONAL SERVICE UNITS AND LEARNING COMMUNITIES

ALPHABETICAL TABLE OF CONTENTS

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TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 8 - SCHOOL FINANCE & BUDGETING/STATE FUNDING OF EDUCATIONAL SERVICE UNITS AND LEARNING COMMUNITIES

001 General Provisions

001.01 Statutory Authority. This chapter is adopted pursuant to sections 79-234, 79-302, 79-306, and 79-1001 through 79-1093 of the Revised Statutes of Nebraska (R.R.S.).

001.02 Scope and Application of this Rule. This chapter governs school financing and budgeting under the provisions of the Tax Equity and Educational Opportunities Support Act, sections 79-1001 to 79-1033 R.R.S.. The amount of assistance paid to a district is calculated pursuant to the Tax Equity and Educational Opportunities Support Act. These regulations govern other related matters under the Tax Equity and Educational Opportunities Support Act and the Educational Service Units Act (at 79-1241 R.R.S.) and the statutes regarding learning communities in Article 21 of Chapter 79 of the *Nebraska Revised Statutes*.

001.03 Related Regulations. In addition to the financing and budgeting requirements of this chapter, public school systems are also governed by regulations contained in Title 92, Nebraska Administrative Code (NAC), Chapter 1, dealing with School Audit Procedures; 92 NAC 2, dealing with the Uniform System of Accounting; 92 NAC 19, dealing with School Enrollment; and 92 NAC 61, dealing with contested cases before the State Board of Education.

002 Definitions. As used in this chapter:

~~002.01 Allowable Growth Range shall mean a range of percentages from the basic allowable growth rate to three percent above the basic allowable growth rate;~~

~~002.02 Applicable Allowable Growth Rate shall mean a calculated percentage established pursuant to the provisions of section 79-1026 R.R.S. for which a Class II, III, IV, V or VI district, with district board approval, is allowed to increase their general fund budget of expenditures over the previous year's general fund budget of expenditures, except for items which are excludable from this limitation pursuant to the provisions of section 79-1028 R.R.S.;~~

002.~~03~~01 Basic Allowable Growth Rate shall mean the base limitation established under section 77-3446 R.R.S. for general fund expenditures other than expenditures for special education;

002.~~04~~02 Board shall mean the school board or board of education of each district;

002.~~05~~03 Commissioner shall mean the Commissioner of Education who is the executive officer of the State Board of Education and the administrative head of the professional, technical, and clerical staff of the State Department of Education;

002.~~06~~04 Department shall mean the State Department of Education;

002.~~07~~05 District shall mean any Class I, II, III, IV, V or VI school district;

002.06 Educational Service Unit (ESU) shall mean an entity established by Article 12 of Chapter 79 of the *Revised Statutes of Nebraska*.

002.~~08~~07 Enrollment Option Program shall mean the program established in section 79-234 R.R.S.;

002.~~09~~08 Ensuing School Year shall mean the school year following the current school year;

002.09 Learning Community shall mean a political subdivision which shares the territory of member school districts and is governed by a learning community board as provided in sections 79-2101 and 79-2102 R.R.S.

002.10 Most Recently Available Complete Data Year shall mean the most recent single school fiscal year for which the Annual Financial Report, Fall School District Membership Report, Annual Statistical Summary Report, Nebraska Income Tax Liability by School District (for the calendar year in which the majority of the school fiscal year falls), and the adjusted valuation data are available;

002.11 Option School District shall mean the public school district that a student chooses to attend ~~other than~~ instead of his or her resident school district;

002.12 Option Student shall mean a student that has chosen to attend ~~a public school district Other than his or her resident school district;~~ an option school district, including a student who resides in a learning community and began attendance as an option student in an option school district in such learning community prior to the end of the first full school year for which the option school district will be a member of such learning community, but not including a student who resides in a learning community and who attends pursuant to section 79-2110 R.R.S. another school district in such learning community;

002.13 Resident School District shall mean the public school district in which a student resides or the school district in which the student is admitted as a resident of the school district pursuant to section 79-215 R.R.S.;

002.14 School year or school fiscal year shall mean the fiscal year of a school district as defined in section 79-1091 R.R.S.;

002.15 Special Grant Funds shall mean budgeted receipts for grants as defined in section 79-1003~~(40)~~ R.R.S.;

002.16 State Aid shall mean the amount of assistance paid to a district pursuant to the Tax Equity and Educational Opportunities Support Act;

002.17 State Board shall mean the State Board of Education;

002.18 State Support shall mean all funds provided to districts by the State of Nebraska for the general fund support of elementary and secondary education; and

002.19 Vital Services or Functions, as used in section 79-1033(2) R.R.S. and section 004.02, shall mean services or functions required of public schools under 92 NAC 10 or 92 NAC 51, and any

services or functions that, if discontinued by a district, would lead to noncompliance with any federal or state rules, regulations, or laws.

003 General Procedures for Financing and Budgeting. For purposes of this chapter, all assets and unbonded indebtedness of districts merged, dissolved, or annexed shall be transferred to the receiving district or districts on the basis of the proportionate share of assessed valuation received at the time of such reorganization. Unless otherwise specified, such proportions shall be used in all instances where the provisions of this chapter necessitate the reallocation of data, of payments, or of budgeting authority from dissolved, merged or annexed districts.

004 State Aid. State Aid for the ensuing school fiscal year shall be calculated pursuant to sections 79-1001 to 79-1033 R.R.S. which is known and may be cited as the Tax Equity and Educational Opportunities Support Act.

004.01 Application for Early Payment of Postponed State Aid. Section 79-1016(8) R.R.S. states: "A school district whose State Aid is to be calculated [for correction of adjusted valuation due to clerical error, or for agricultural or horticultural land, assessed value changes by reason of land qualified or disqualified for special use valuation pursuant to sections 77-1343 to 77-13~~48~~47.01 R.R.S.] and whose State Aid payment is postponed as a result of failure to calculate State Aid in such manner, may apply to the State Board for lump sum payment of such postponed State Aid. Such application may be for any amount up to one hundred percent of the postponed state aid. The State Board may grant the entire amount applied for or any portion of such amount. The State Board shall notify the Director of Administrative Services of the amount of funds to be paid in a lump sum and the reduced amount of the monthly payments. The Director of Administrative Services shall, at the time of the next State Aid payment pursuant to section 79-1022 R.R.S., draw a warrant for the lump sum amount from appropriated funds and forward such warrant to the district."

004.02 Application for Early Payment of State Aid Due to Financial Hardship. Section 79-1033(2) R.R.S. states, in part: "A district which receives, or has received in the most recently available complete data year or in either of the two fiscal years preceding the most recently available complete data year, federal funds in excess of twenty-five percent of its general fund budget of expenditures may apply for early payment of State Aid paid pursuant to the Act when such federal funds are not received in a timely manner. Such application may be made at any time by a district suffering such financial hardship and may be for any amount up to fifty percent of the remaining amount to which the district is entitled during the current school fiscal year. The State Board may grant the entire amount applied for or any portion of such amount if the State Board finds that a financial hardship exists in the district. The State Board shall notify the Director of Administrative Services of the amount of funds to be paid in lump sum and the reduced amount of the monthly payments. The Director of Administrative Services shall, at the time of the next State Aid payment made pursuant to section 79-1022 R.R.S., draw a warrant for the lump sum amount from appropriated funds and forward such warrant to the district. Financial hardship means a situation in which income to a district is exceeded by liabilities to such a degree that if early payment is not received it will be necessary for the district to discontinue vital services or functions."

004.03 Prior Year State Aid Correction. Section 79-1065 R.R.S. states: "The State Department of Education shall adjust payments provided under Chapter 79 to school districts which, after final determination, received funds not equal to the appropriate allocation for the previous school fiscal year such that the district will receive the funds to which it was finally determined to be entitled. If the total adjustment cannot be made from the funds to be provided in the current school fiscal year, the adjustment shall be prorated, with additional adjustments made to payments for future school fiscal years. The Department shall maintain an accurate account and a record of the reasons the adjustments were made and the amount of such adjustments." The Commissioner, or his or her designee(s), shall adjust such payments in accordance with this law.

004.04 Application for Lump-Sum Payment of Prior Year State Aid Correction. Section 79-1065.01 R.R.S. states in part: "If the adjustment under section 79-1065 results in a school district being entitled to the payment of additional funds, the district may apply to the State Department of Education for a lump-sum payment for any amount up to one hundred percent of the adjustment, except that when a school district is to receive a lump-sum payment pursuant to section 79-1022 R.R.S., one hundred percent of the adjustment shall be paid as one lump-sum payment on the last business day of December during the ensuing school fiscal year. The Department shall notify the Director of Administrative Services of the amount of funds to be paid in a lump-sum and the reduced amount of the monthly payments pursuant to section 79-1022. The Department shall make such payment in a lump-sum not later than the last business day of September of the year in which the final determination under this section is made~~, except that when a school district is to receive a monthly payment of less than one thousand dollars, such payment shall be one lump-sum payment on the last business day of December during the ensuing school fiscal year~~."

004.04A On or before July 15, the Commissioner, or his or her designee(s), will provide written notification to each school district with a positive prior year correction pursuant to section 79-1065 R.R.S. that they are entitled to receive a lump-sum payment for any amount up to one hundred percent of the positive prior year correction.

004.04B The lump-sum amount to be distributed to an eligible school district which is part of a local system shall be proportional based on the weighted formula students attributed to each district in the local system.

004.04C A school district with a positive prior year State Aid correction pursuant to section 79-1065 R.R.S. shall inform the Commissioner in writing of its request to receive a lump-sum payment for any amount up to one hundred percent of the positive prior year State Aid correction. Such written request must be received by the Department on or before August 15.

004.04D The Commissioner, or his or her designee(s), will review the submitted request, and provide written notification on or before September 15 to the school district of the lump-sum payment of the positive prior year State Aid correction and the reduced amount of the monthly payments pursuant to section 79-1022 R.R.S..

004.04E A school district is not eligible to receive a lump-sum payment of the positive prior year State Aid correction if a school district is to receive a monthly State Aid payment of less than one thousand dollars pursuant to section 79-1022(2) R.R.S..

004.05 Application for Adjustment to State Aid Payments for Transfers of Property Due to Annexation. Section 79-1065.02 R.R.S. provides that whenever property within the boundaries of a Class II, III, IV, V or VI school district is transferred to another school district due to a change in the school district boundaries in response to annexation of the transferred property by a city or village, school districts from which property is being transferred may apply for an adjustment to the state aid payments for the ensuing year. This procedure is implemented as follows:

004.05A On or before August 20 preceding the first school fiscal year for which the property will not be available for taxation for the school district's general fund levy, the school district from which property is being transferred shall apply to the Department, on forms prescribed by the Commissioner, for an adjustment to the state aid payments for the ensuing year. On or before August 20, copies of the application must be sent by the applicant school district to the high school district(s) of the local systems receiving valuation in the transfer. Property is deemed transferred from the school district whether the property was within the boundaries of the school district or the property was affiliated with the school district.

004.05B Upon receipt of the application, with the assistance of the Property Tax Administrator, the Commissioner or his or her designee(s), shall calculate the amount of additional state aid, if any, that the local system for the applicant school district would have received for such school fiscal year if the adjusted valuation for the transferred property had not been included in the adjusted valuation of such local system for the calculation of state aid for such school fiscal year. An amount equal to the additional state aid for the local system of an applicant school district shall be attributed to the local systems receiving valuation in such transfer based upon the ratio of the adjusted valuation received by each local system divided by the total adjusted valuation transferred from the applicant school district.

004.05C On or before September 20 of such school fiscal year, the Commissioner or his or her designee(s), shall certify to the applicant school district the amount of additional state aid, if any, the district will receive and shall certify to the high school district of the receiving local system the amount of the reduction in state aid attributed to the school district.

004.05D If the applicant school district receives a lump sum payment pursuant to section (2) of section 79-1022 R.R.S., such lump sum payment shall be increased by the amount of additional state aid, if any. If the high school district receiving valuation receives a lump sum payment pursuant to section (2) of section 79-1022 R.R.S., such lump sum payment shall be reduced by the amount of the reduction in state aid attributed to the receiving local system.

004.05E If the applicant school district does not receive a lump sum payment, state aid payments shall be increased by one-tenth of the amount of additional state aid for each of the ten state aid payments for such school fiscal year. If the high school district of a receiving local system does not receive a lump sum payment, state aid payments shall be reduced by one-tenth of the amount attributed to such receiving local system for each of the ten state aid payments for such school fiscal year.

004.05F If a portion of the total reduction in state aid for local systems receiving valuation in the transfer of property that is the subject of the application is delayed until future years, the additional state aid to be paid to the applicant school district shall be reduced by the amount of the total reduction that is delayed until future years. The amount of the reduction shall be paid as additional state aid to the applicant school district in the next school fiscal year.

004.05G If the total reduction in state aid attributed to the school district receiving valuation in the transfer of property that is the subject of the application is greater than the total state aid payments for such school fiscal year, the remainder shall be subtracted from state aid payments in future years until the total reduction has been subtracted from state aid payments.

005 Budgeting

005.01 General Requirements. Each school district shall submit a duplicate copy of its budget statement to the Department. The Department may verify any data used to meet the requirements of the Tax Equity and Educational Opportunities Support Act. The Auditor of Public Accounts shall review each district's budget statement for statutory compliance, make necessary changes in the budget documents for districts to effectuate the budget limitations imposed pursuant to sections 79-1023 to 79-1030 R.R.S., and notify the Commissioner of Education (a) of any districts failing to submit to the Department or the Auditor the budget documents required by the date established in subsection (1) of section 13-508 R.R.S. or failing to make any corrections of errors in the documents pursuant to sections 13-504 or 13-511 R.R.S. ~~and (b) of any Class I district failing to submit the items required by such subsection to its high school districts by the date established in section 79-1083.03 R.R.S.~~

005.01A Failure to Submit Budget Documents:

005.01A1 If a school district fails to submit to the Department or the Auditor the budget documents required pursuant to subsection (1) of section 79-1024 R.R.S. by the date established in subsection (1) of section 13-508 R.R.S. or fails to make any corrections of errors in the documents pursuant to sections 13-504 or 13-511 R.R.S., ~~or a Class I district fails to submit the items required by 79-1024(1) R.R.S. to its high school districts by the date established in section 79-1083.03 R.R.S.,~~ the Commissioner, upon notification from the Auditor or upon his or her own knowledge that the required budget document(s) and any required corrections of errors from any school district have not been properly filed in accordance with the Nebraska Budget

Act and after notice to the district and an opportunity to be heard, shall direct that any State Aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the required budget documents or corrections of errors are received by the Auditor and the Department. In addition, the Commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the Commissioner notifies the county treasurer of receipt of the required budget documents or corrections of errors. For school districts that are members of learning communities, a determination of school money belonging to the district shall be based on the proportionate share of property tax receipts allocated to the school district by the learning community coordinating council, and the county treasurer shall withhold any such school money in the possession of the county treasurer from the school district.

005.01A2 If the school district does not comply with section 79-1024 R.R.S. prior to the end of the state's biennium following the biennium which included the fiscal year for which State Aid was calculated, the State Aid funds shall revert to the General Fund. The amount of any reverted funds shall be included in data provided to the Governor in accordance with section 79-1031 R.R.S. The board of any district failing to submit to the Department or the Auditor the budget documents required pursuant to section 79-1024 R.R.S. by the date established in subsection (1) of section 13-508 R.R.S., or failing to make any corrections of errors in the documents pursuant to sections 13-504 or 13-511 R.R.S., or the board of a Class I district failing to submit the items required by such subsection to its high school districts by the date established in section 79-1083.03 R.R.S., shall be liable to the school district for all school money which such district may lose by such failing.

005.02 Growth Rate Determinations. Section 79-1028.01 R.R.S. requires the Department State Board to determine whether applicable allowable growth rates the budget authority for the General Fund budget of expenditures may be exceeded. The following procedures shall be followed by a district seeking to exceed its applicable allowable growth rate budget authority for the General Fund budget of expenditures:

005.02A The school district shall inform the Commissioner in writing that it has expenditures that are excluded from the expenditure limitations as provided in the Tax Equity and Educational Opportunities Support Act. submit requests to exceed the budget authority for the General Fund budget of expenditures to the Commissioner. The district shall also submit additional written justification for the requested increases as the Commissioner Department may direct.

005.02A1 The school shall inform the Commissioner, on forms designated by the Commissioner, if it has situations where the applicable allowable growth rate may be exceeded as stated in section 79-1028 R.R.S., subsections (1) and (2).

005.02A2 The school district shall inform the Commissioner in writing when it has situations where the applicable allowable growth rate may be exceeded as stated in section 79-1028 R.R.S., subsections (3) and (4). Such written submissions

~~shall contain information documenting that the district meets the criteria for exceeding the applicable allowable growth rate in section 79-1028 R.R.S., subsections (3) and (4).~~

005.02B The Commissioner, or his or her designee(s) will review the submitted data, and make a recommendation to the State Board to either approve, deny or modify the requests. ~~decision in accordance with section 79-1028 R.R.S. on such application and provide a written notice to the district approving, denying, or modifying the requested increases. For district requests to exceed the applicable allowable growth rate due to a projected increase in formula students, (section 79-1028(2) R.R.S.), the request must: (a) Project an increase that meets the minimum number/percentages in section 79-1028(2) R.R.S.; and (b) Be based upon a reasonable belief that such increase will occur. In determining if (b) is met, the Commissioner, or his or her designee(s), will review any written justification(s) for the projected increase submitted by the district and/or review student membership data as shown by the average daily membership of the district for the previous five years, if the request is based in whole or in part upon an expectation of an increase in formula students due to previous continuing student enrollment growth.~~

005.02C The State Board will then approve, deny or modify the amount allowed for any exclusions to the budget authority for the general fund budget of expenditures pursuant to section 79-1028.01 R.R.S.

006 Data Collection and Penalties

006.01 Annual Financial Report. Except as otherwise provided in the Tax Equity and Educational Opportunities Support Act, State Aid payable pursuant to this chapter for each school year shall be based upon data found in applicable reports for the most recently available complete data year.

006.01A On or before November 1 the superintendent ~~or head administrator~~ of each school district shall ~~submit~~ file electronically, via the Nebraska Department of Education portal, to the Commissioner of Education~~, to be filed in his or her office,~~ a report ~~under oath~~ 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 school district during the year, (b) the amount of bonded indebtedness, (c) such other information as shall be necessary to fulfill the requirements of the Tax Equity and Educational Opportunities Support Act and section 79-1114 R.R.S., (d) the information required by sections 79-1007.07 and 79-1007.09 R.R.S., and (~~d~~e) such other information as the Commissioner of Education directs.

006.01B When any school district fails to timely submit its Annual Financial Report to the Commissioner, the Commissioner shall, after notice to the district and an opportunity to be heard, direct that any State Aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the report is received by the Department. In addition, the Commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as

the Commissioner notifies the county treasurer of receipt of such report. The county treasurer shall withhold such money.

006.02 Fall School District Membership Report. On or before October 15 of each year, the superintendent ~~or head administrator~~ of each school district shall file electronically, via the Nebraska Department of Education portal in the Nebraska Student and Staff Record System (NSSRS), with the Commissioner ~~deliver to the Department~~ the Fall School District Membership Report, which report shall include the number of children from birth through twenty years of age enrolled in the district on the last Friday in September of a given school year. ~~When any school district fails to submit its Fall School District Membership Report by November 1, the Commissioner shall, after notice to the district and an opportunity to be heard, direct that any State Aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the report is received by the Department. In addition, the Commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the Commissioner notifies the county treasurer of receipt of such report. The county treasurer shall withhold such money.~~ The report shall enumerate~~:~~ (i) students by grade level, (ii) school district levies and total assessed valuation for the current fiscal year, and (iii) such other information as the Commissioner of Education directs.

006.02A Students by grade level. This shall include, but not be limited to, ~~e~~Enrollment ~~o~~Option students, as defined in section 79-233 R.R.S., wards of the court, or contract students. Each student must be associated with one grade within the grade levels of the district. Special Education or other ungraded students must be placed in a grade level based on their chronological age, but not higher than the grade levels offered in that school. Students may not be placed at a grade level outside of those taught in the school district;

006.02B Enrollment Option Students. ~~Section 79-237(1)(a) R.R.S., states, in part: "For a student to attend school in an option school district, the student's parent or legal guardian shall submit an application to the school board of the option school district between September 1 and March 15 for enrollment during the following and subsequent school years. Applications submitted after March 15 shall be accompanied by a written release from the resident school district. The option school district shall provide the resident school district with the name of the applicant on or before April 1. The option school district shall notify, in writing, the parent or legal guardian of the student and the resident school district, and the State Department of Education whether the application is accepted or rejected on or before April 1.~~

~~When the Department has reason to believe any school district may have violated any provisions of section 79-237 R.R.S., the Commissioner may direct school districts to provide the Department documentation of the applications of enrollment option students for the enrollment option program and written releases of the option students from the resident districts.~~ The laws governing the enrollment option program, (sections 79-232 to 79-246 R.R.S.), provide for various requirements and limitations on school districts in regard to enrollment of option students. Whenever the Department has any reason to believe any school district may have not complied with any such requirements or

limitations, the Commissioner may direct school districts to provide records and documentation concerning such matter, including, but not limited to, applications of enrollment option students and release approvals of resident districts. Pursuant to section 79-1065 R.R.S., the Department shall adjust net option funding payments provided under Chapter 79 to school districts which are determined to have received state aid not equal to the appropriate allocation. Such adjustments may be made for reasons including the enrollment of any student in an option district pursuant to an application submitted to the option district after March 15 which was not accompanied by a written release from the resident district. The Department shall maintain an accurate account and record of the reasons the net option funding payment was adjusted.

006.02C School district levies for the current fiscal year;

006.02D Learning community levies for the current fiscal year;

006.02~~D~~E ~~and~~ Total assessed valuation for school districts for the current fiscal year;

006.02F Total assessed valuation for the Learning Community for the current fiscal year; and

006.02~~E~~G Such other information as the Commissioner of Education directs.

006.03 Annual Statistical Summary Report. On or before June 30, the superintendent ~~or head administrator~~ of each school district shall file electronically, via the Nebraska Department of Education portal in the Nebraska Student and Staff Record System (NSSRS), with the Commissioner of Education, a report ~~under oath~~ described as an end-of-the-school-year annual statistical summary~~. Such reports shall show:~~ showing (a) the number of children attending school during the year under five years of age, (b) the length of time the school has been taught during the year by a qualified teacher, (c) the length of time taught by each substitute teacher ~~and the wages paid to each~~, and (d) such other information as the Commissioner of Education directs. On or before July 31, the Commissioner shall issue to each learning community coordinating council an end-of-the-school-year annual statistical summary for the learning community based on the member school districts according to the school district reports filed with the Commissioner.

006.04 School District Census Report. On or before July 20, in all school districts, the superintendent ~~or head administrator~~ shall file electronically, via the Nebraska Department of Education portal the School District/Census Report with the State Department of Education a report ~~under oath~~ showing the number of children from five through eighteen years of age belonging to the school district according to the census taken as provided in sections 79-524 R.R.S. and 79-578 R.R.S. ~~The report shall identify the number of boys and the number of girls in each of the respective age categories.~~ On or before August 31, the Department shall issue to each learning community coordinating council a report showing the number of children from five through eighteen years of age belonging to the learning community based on the member school districts according to the school district reports filed with the Department.

006.04A Each Class I school district which is part of a Class VI school district offering instruction (i) in grades kindergarten through five shall report the children from five through ten years of age, (ii) in grades kindergarten through six shall report children from five through eleven years of age, and (iii) in grades kindergarten through eight shall report children from five through thirteen years of age. Each Class VI school district offering instruction (i) in grades six through twelve shall report children who are eleven through eighteen years of age, ~~and~~ (ii) in grades seven through twelve shall report children who are twelve through eighteen years of age, and (iii) in grades nine through twelve children who are fourteen through eighteen years of age. Each Class I district which has affiliated in whole or in part shall report children from five through thirteen years of age. Each Class II, III, IV, or V district shall report children who are fourteen through eighteen years of age residing in Class I districts or portions thereof which have affiliated with such district. The board of any district neglecting to take and report the enumeration shall be liable to the school district for all school money which such district may lose by such neglect.

006.05 Audit Report. In each school district the school board shall cause to be examined annually by a public accountant or by a certified public accountant all financial records which are maintained directly or indirectly in the administration and management of public school funds. A copy of the audit report shall be filed with the Commissioner of Education on or before November 5. When any school district fails to comply with section 79-1089 R.R.S., the Commissioner shall, after notice to the district and an opportunity to be heard, direct that any State Aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the district has complied. In addition, the Commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the Commissioner notifies the county treasurer of compliance by the district. The county treasurer shall withhold such money.

006.05A Rules and Regulations governing the scope, extent, pattern and report of examination have been adopted and promulgated by the State Board with the advice and counsel of the Auditor of Public Accounts and appear in Title 92, Nebraska Administrative Code (NAC), Chapter 1, dealing with School Audit Procedures and 92 NAC Chapter 2, dealing with the Uniform System of Accounting.

007 State Board/Commissioner Determinations and Opportunities to be Heard Before the Commissioner. Several provisions of State Statute require the State Board to make certain determinations concerning local budgets. The following procedures apply to such determinations and hearings:

007.01 Special Grant Fund List. Section 79-1003 R.R.S., ~~subsection (37)~~ requires the State Board to approve a listing of special grant funds that are excluded from the expenditure limitations as provided in the Tax Equity and Educational Opportunities Support Act. The following procedures shall be followed by the Department in approving special grant fund list:

007.01A The Commissioner shall provide school districts with a list of current special grant funds.

007.01B School districts must notify the Commissioner of special grant funds not included on the current special grant fund list.

007.01C The State Board shall approve the effective special grant fund list and any supplementary grant not listed on the State Board approved special grant fund list (see Section 007.02).

007.02 Special Grant Fund Exclusion Determinations. Section 79-1003~~(40)~~ R.R.S., requires the State Board to approve a listing of special grant funds that are excluded from the expenditure limitations as provided in the Tax Equity and Educational Opportunities Support Act. The following procedures shall be followed by districts seeking special grant fund exclusions for any supplementary grant not listed on the State Board approved special grant fund list:

007.02A The school district shall submit a letter to the Commissioner requesting approval for exclusions to the expenditure limitation for insurance settlements, inter-fund loans, reimbursements for wards of the court, repayments to county governments for previous overpayments, and for short-term borrowings. The district should provide details regarding the purpose of the item and the amount of funds anticipated to be received or disbursed.

007.02B The Commissioner, or his or her designee(s), will review the submitted data, and make a recommendation to the State Board in accordance with section 79-1003 R.R.S., on such applications. The Commissioner, or his or her designee(s), will provide a written notice to the district of the State Board's approval, denial, or modification of the requested increases.

007.03 Financial Hardship Determinations. Section 004.02 provides for the State Board to make financial hardship determinations in cases where federal funds exceed twenty-five percent of a district's general fund budget and are not received in a timely manner.

007.03A Such applications shall be made to the Department, in writing, at any time and shall include a resolution of the district board supporting the application and a written summary of the hardship.

007.03B The Department will review the submitted data, and prepare a recommendation to the State Board, a copy of which will be provided to the district, along with a time at which the matter will be presented to the State Board.

007.03C The State Board may review the recommendations of the Department and may take additional oral testimony from the district and any other interested person at its discretion, or may assign a hearing officer to take such testimony and prepare a summary for the Board.

007.03D The State Board shall make a decision on the hardship application in accordance with section 79-1033(2) R.R.S. and provide a written notice to the district approving, denying, or modifying the request.

007.04 Early Payment of Postponed State Aid. Section 004.01 provides for the State Board to grant early payment of postponed State Aid in cases where there has been a clerical error in adjusted valuation or, assessed value changes by reason of special use valuation pursuant to sections 77-1343 to 77-134847.01 R.R.S., which have not been included in the calculation of State Aid. The following apply to such cases:

007.04A Clerical error means transposition of numbers, allocation of value to the wrong school district, mathematical error, and omitted value.

007.04B Such applications shall be made to the Department, in writing, at any time and shall include a resolution of the district board supporting the application and a written summary of the clerical error in adjusted valuation, or assessed value changes by reason of special use valuation. The Department may assist the district in determining the amount of postponed State Aid that is due the district.

007.04C The Department will review the submitted data, and prepare a recommendation to the State Board, a copy of which will be provided to the district, along with a time at which the matter will be presented to the State Board.

007.04D The State Board may review the recommendations of the Department and may take additional oral testimony from the district and any other interested person at its discretion.

007.04E The State Board may grant the entire amount applied for or any portion of such amount it determines appropriate under the statutory standards in section 004.01.

007.04F The State Board shall make a decision, unless the district and the Department reach an alternative agreement, on the early payment of postponed State Aid and provide a written notice to the district approving, denying, or modifying the request.

007.05 Failure to Submit Budget Documents. Section 005.01A provides that if a school district fails to submit budget documents pursuant to section 79-1024 R.R.S., or fails to make any corrections of errors in the documents pursuant to sections 13-504 or 13-511 R.R.S., the Commissioner after notice and an opportunity to be heard, shall direct that any State Aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the required budget documents or corrections of errors are received. The following apply to such cases:

007.05A The Auditor of Public Accounts shall inform the Department, in writing, of the failure of any school district to submit budget documents or the failure of a school district to make any corrections of errors in the documents~~, and of any Class I district failing to submit the items required in subsection 13-504 R.R.S. and 13-508 R.R.S. to its high school districts by the date established in section 79-1083.03 R.R.S.~~; or

007.05A1 The Department, upon its own review, may determine that any school district has failed to submit budget documents to the Department, or has failed to make the corrections of errors in the documents as required by the Department~~, or a Class I district has failed to submit items required in subsection 13-504 R.R.S. and 13-508 R.R.S. to its high school districts by the date established in section 79-1083.03 R.R.S.~~.

007.05B Upon review of the data on file in the Department, and/or the data submitted by the Auditor of Public Accounts, the Department shall prepare a recommendation to the Commissioner.

007.05C The Commissioner, or his or her designee, shall provide the district an opportunity to be heard and present any evidence relevant to the issue of the failure to submit the required document(s) or correct errors. The district shall be notified in writing of the time and place of such hearing, together with a copy of the Department's recommendations. If, after reviewing the recommendations of the Department and any evidence adduced at the hearing, the Commissioner is thereafter satisfied that the required document(s) or corrections of errors were not submitted to the Department as required by law and continue to have not been submitted, the Commissioner shall order that State Aid be withheld until such time as the required documents or corrections of errors are received by the Department. The decision and order of the Commissioner shall be in writing and shall be provided to the district. The decision and order may be appealed to the State Board under 92 NAC 61 within 15 days of its receipt, however, such appeal does not preclude the order from taking effect.

007.05D State Aid shall be withheld until such time as the required budget documents or corrections of errors have been received by the Department and/or the Auditor of Public Accounts. The Commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the Commissioner notifies the county treasurer in writing of receipt of the required budget documents or corrections of errors.

007.05E If the school district does not submit the required budget documents or corrections of errors to the Department and/or the Auditor of Public Accounts prior to the end of the state's biennium following the biennium which included the fiscal year for which State Aid was calculated, the State Aid funds shall revert to the General Fund. The amount of any reverted funds shall be included in data provided to the Governor in accordance with section 79-1031 R.R.S..

007.06 Failure to Submit Annual Financial Report, Fall School District Membership Report, Annual Statistical Summary Report, and Audit Report.

Sections 006.01, 006.02, 006.03, and 006.05 provide the statutory requirements for submission of various required reports. Such requirements provide that if the reports are not received by the required date, the Commissioner, after notice to the district and an opportunity to be heard, shall direct that any State Aid granted to the district be withheld until such time as the reports are received. The following apply to such cases:

007.06A The Department, upon its own review, may determine that a school district has failed to file the Annual Statistical Summary Report by June 30, that a school district has failed to file the Annual Financial Report by November 1, that a school district has failed to file the required Audit Report by November 5, or that a school district has failed to file the Fall School District Membership Report by November 1.

007.06B Upon review of the data on file in the Department, the Department shall prepare a recommendation to the Commissioner.

007.06C The Commissioner, or his or her designee, shall provide the district an opportunity to be heard and present any evidence relevant to the issue of the failure to submit the required document(s). The district shall be notified in writing of the time and place of such hearing, together with a copy of the Department's recommendations. If, after reviewing the recommendations of the Department and any evidence adduced at the hearing, the Commissioner is thereafter satisfied that the required document(s) were not submitted to the Department as required by law and continue to have not been submitted, the Commissioner shall order that State Aid be withheld until such time as the required documents are received by the Department. The decision and order of the Commissioner shall be in writing and shall be provided to the district. The decision and order may be appealed to the State Board under 92 NAC 61 within 15 days of its receipt, however, such appeal shall not preclude the order from taking effect.

007.06D State Aid shall be withheld until such time as the required Annual Statistical Summary Report, Annual Financial Report, Fall School District Membership Report, and/or Audit Report has been received by the Department. The Commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the Commissioner notifies the county treasurer in writing, of the receipt of the required Annual Financial Report, Fall School District Membership Report, and/or Audit Report.

007.06E If the school district does not submit its Annual Statistical Summary Report, Annual Financial Report, Fall School District Membership Report, and/or Audit Report to the Department prior to the end of the state's biennium following the biennium which included the school fiscal year for which State Aid was calculated, the State Aid funds shall revert to the General Fund. The amount of any reverted funds shall be included in data provided to the Governor in accordance with section 79-1031 R.R.S..

007.07 Contested Cases. Any allegation of error, miscalculation, or mistake in computations or activities performed by the Department,(or learning community per sections 79-1013 and 79-1014 R.R.S.), shall be first reported to the Commissioner in writing within fourteen days of receipt of the alleged incorrect computation or activity for his or her review. Following his or her determination, such matters shall be considered contested cases if they affect the legal rights, duties, or privileges of individuals and shall be subject to appeal under 92 NAC 61. An appeal must be filed within fourteen days of the receipt of the Commissioner's determination.

008 State Funding of Educational Service Units and Learning Communities

008.01 Funding of Educational Service Units (ESUs)

008.01A The Department will distribute funding to ESUs for core services in accordance with the provisions of section 79-1241.03 R.R.S. Any allegation by an ESU of error, miscalculation, or mistake in the distribution of such funds by the Department shall be handled in the manner as described in section 007.07 of this Chapter.

008.01B Section 79-1229 R.R.S. requires each ESU to file an annual financial report with the Department on or before January 31 of each year. That report includes "…information as necessary to fulfill the requirements of section 79-1241.03" (the distribution of core service funds to ESUs). Failure of an ESU to provide this report to the Department by the January 31 deadline may result in delay of distribution of core service funds to an ESU.

008.02 Funding of Learning Communities

008.02A The Department will provide learning community funds to learning communities in accordance with section 79-2103 R.R.S.. Any allegation by the learning community of error, miscalculation, or mistake in the distribution of such funds by the Department shall be handled in the manner as described in section 007.07 of this Chapter.