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

FROM: Joel Scherling, Administrator
Human Resources

SUBJECT: Title 93, Nebraska Administrative Code, Chapters 1-16 (93 NAC 1-16)
Nebraska Department of Education Personnel Rules

PROPOSED BOARD ACTION

It is recommended that the State Board of Education approve the proposed revisions to Title 93, Nebraska Administrative Code, Chapters 1-16, *Nebraska Department of Education Personnel Rules.*

BACKGROUND INFORMATION

The State Board of Education approved the hearing draft of the Personnel Rules on April 9, 2013. The legal notice of the hearing was published on April 11, 2013. An e-mail was sent to all staff members on May 9, 2013 to advise them of the hearing date and time.

The hearing was conducted on May 13, 2013. An overview of the proposed changes to the Personnel Rules was presented. The only employees present were those staffing the hearing and no one testified. No written testimony was received. However, I did receive one email with questions regarding holiday and overtime pay.

Estimated Cost

The cost of the public notice, hearing, and printing of the final rule is estimated to be approximately $600.

Supporting Documentation Included:

- Summary of the hearing
- A summary of the major changes to the NDE Personnel Rules
- A copy of the approved Hearing Draft of the NDE Personnel Rules

For additional information on this item: Call Joel Scherling (402) 471-4736 or e-mail joel.scherling@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 revisions to Title 93, Nebraska Administrative Code, Chapters 1-16, *Nebraska Department of Education Personnel Rules*

DATE: May 13, 2013

RE: Summary of rulemaking hearing on proposed revisions to 93 NAC 1-16

On April 9, 2013 the State Board of Education authorized the Commissioner to set a hearing date and location as well as designate a staff person to conduct a hearing on the adoption of proposed revisions to Title 93, Nebraska Administrative Code, Chapters 1-16. By a memorandum dated April 9, 2013, the Commissioner appointed me to conduct a hearing on this Rule on May 13, 2013, commencing at 10:00 a.m. After the proper legal notice was published, this hearing was held at the Nebraska State Office Building, Nebraska Department of Education, State Board Meeting Room, 301 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 the tape.

SUMMARY OF TESTIMONY ON THE PROPOSED REVISIONS TO 93 NAC 1-16
Nebraska Department of Education Personnel Rules

Scott Summers, staff attorney and the hearing official, called this 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 and introduced **Joel Scherling, Administrator of Human Resources, Nebraska Department of Education.**

Joel Scherling, Administrator, NDE Human Resources, introduced and explained the proposed revisions to Title 93, Nebraska Administrative Code, Chapters 1-16. Mr. Scherling testified that NDE Personnel Rules are revised, in large part, to be consistent with the NDE-NAPE/AFSCME bargaining agreement, which was negotiated, ratified and approved in January 2013.

A copy of Mr. Scherling's written testimony is attached to this summary.

No other oral or written testimony was received.

Testimony for the Hearing on Proposed Revisions to the Nebraska Department of Education Personnel Rules (Title 93, NAC, Chapters 1-16) May 13, 2013

For the record, I am Joel Scherling, Administrator of Human Resources. The purpose of this hearing is to receive testimony on the proposed changes to the NDE Personnel Rules. The Personnel Rules have been revised, in large part, to be consistent with the 2013-15 NDE-NAPE/AFSCME bargaining agreement.

The State Board of Education approved the hearing draft of the Personnel Rules at its meeting on April 9th. An e-mail was sent to all staff members to advise them of the hearing. The e-mail included links to the summary of changes as well as the entire document showing proposed changes in legislative format. Staff members were invited to attend and testify at the hearing or to submit written testimony if they were unable to attend. I did receive a couple of questions from the director of accounting regarding holiday pay and overtime pay.

Now, I'll highlight some of the changes to the Personnel Rules. Because we have previously disseminated a summary of the major changes, as well as the entire document, I will review just a few of the significant revisions that are proposed.

In Chapter 5, probationary period length will now be based on an employee's classification rather than exempt or nonexempt status.

In Chapter 9, advancements for sick and vacation leave may be made every three months as opposed to every six months. Once leave is advanced, there is a prohibition on further leave advancements until the advanced leave is earned back. We added some flexibility for employees in a couple leave areas: (1) sick leave advancements will now be allowed for other than the employee's own illness, and (2) employees typically will not have to supply medical certification for Family/Medical Leave when the employee has sufficient paid leave to use for the absence associated with the serious health condition.

Another important change in Chapter 9 involves changes in administrative leave for VR employees and those who work in buildings not owned or operated by the state. VR Office Directors will no longer have the authority to close offices due to inclement weather.

In Chapter 10, the rebuttal period for performance appraisals was revised from 5 *work* days to 7 *calendar* days to correspond with the operation of the new electronic performance appraisal system.

In Chapter 15, the maximum number of credit hours that may be taken in any one quarter during work time for courses taken at postsecondary institutions on the quarter schedule was increased from 4 to 4.5. Some additional information was added to clarify current practices regarding postsecondary coursework.

This concludes my overview of the major changes to the Personnel Rules.

At this time, we plan to request approval of the proposed revisions at the State Board of Education's meeting on June 7th. I would be happy to respond to any questions.

Summary of Changes in NDE Personnel Rules
Title 93, Nebraska Administrative Code, Chapters 1-16
5/13/13

Chapter 1: Coverage

- Add language regarding implementation of these Rules when not covered by the Collective Bargaining Agreement.

Chapter 2: Management Authority

No changes.

Chapter 3: Definitions

- Add/delete definitions regarding service and hire dates to align with new HR software.
- Add definition of "paid work status."
- Delete definition of "position description."

Chapter 4: Employee Selection

- Add language to clarify "Service Date."
- Add language to reflect new law regarding Genetic Information Non-discrimination Act (GINA).

Chapter 5: Probationary Periods

- Revise probationary period length and potential extensions from being based on exempt or nonexempt status to being determined by classification.
- Align appraisal schedule with length of probationary period rather than exempt/nonexempt status.
- Update annual appraisal due date to align with new electronic appraisal system.

Chapter 6: Classification Plan

- Add "The Deputy Commissioner's decision will be final" to achieve consistency in reclassification section.

Chapter 7: Salary Administration

- Remove outdated prohibitions against Horizontal Wage Progression salary increases and merit stipends.

Chapter 8: Overtime

- Require Commissioner/Deputy approval of overtime to align with AM #502.

Chapter 9: Leave and Holidays

- Clarify language regarding working on holidays and the compensation computation.
- Allow sick and vacation leave advancement requests every three months as opposed to every six months; vacation leave advancement requests of 30 hours or less will not be unreasonably denied (decreased from 40 hours due to earnings rate for the new three-month period); add prohibition on further leave advancements until advanced leave is earned back.

Chapter 9: Leave and Holiday (Continued)

- Clarify that sick and vacation leave advancements need not be depleted before granting leave without pay.
- Clarify that accrued vacation leave does not include advanced vacation leave in determining eligibility for leave without pay.
- Clarify that leaves of absence are without pay.
- Change "children-in-law" to "daughter/son-in-law;" revise language to require medical documentation instead of it stating that it *may be* required; strike provision allowing an employee other than the father to use sick leave to care for a newborn baby, as the baby does not meet the definition of an immediate family member.
- Sick leave must be requested in writing for anticipated health reasons but no longer be requested in writing for unanticipated health reasons as long as the Department is advised as soon as possible.
- Allow sick leave advancements for other than the employee's own illness.
- Allow flexibility in requesting medical certification for Family/Medical Leave when the employee has sufficient paid leave to use for the absence(s) associated with the serious health condition.
- Revise provisions for administrative leave or alternate work arrangements due to inclement weather or other local work-related emergencies:
    a. Remove authority for VR Office Directors to close offices due to inclement weather based on city office closure.
    b. Specify options for employees located in buildings not owned or operated by the State, such as ESU 3.
- Clarify that employees receiving Workers Compensation benefits earn prorated sick and vacation leave.
- Clarify that a single parent father is eligible for same adoption leave as an adoptive mother; and a married father of a newly adopted child will receive the same leave on the same terms as a father by natural birth.

Chapter 10: Performance Appraisals

- Change rebuttal period from 5 work days to 7 calendar days to correspond with the operation of the new system.
- Added language to include the Genetic Information Non-discrimination Act (GINA) as grievable content of the performance appraisal.

Chapter 11: Personnel File Information

- Remove requirement for a release of information from to be notarized.
- Account for electronic access to personnel file information.
- Update to reflect passage of LB 959 (2012) and address the issue of sharing personnel file information with other state agencies.
- Account for electronic medical records.

Chapter 12: Layoff, Recall And Resignation

- Update service date terminology to correspond to new HR system of record.
- Recall salary will be based on the salary in effect at the time of layoff.
- Allow personal delivery of vacancy notices for individuals employed by NDE.

Chapter 13: Corrective and Disciplinary Actions

- Add personal delivery option for suspension with pay.

Chapter 14: Grievance Procedure

- Clarify that fifteen-work-day time frame to file grievance doesn't include days on suspension with pay.

Chapter 15: Miscellaneous

- Add language to reflect new law regarding Genetic Information Non-discrimination Act (GINA) for discrimination.
- Increase the maximum credit hours that may be taken in any one quarter during work time for courses taken at postsecondary institutions on the quarter schedule from 4.0 to 4.5.
- Clarify current practices regarding coursework:
    a. Factors that may be considered in approval of work release time are added; release time is not granted for self-paced or online courses.
    b. Tuition, fees, and books/material expenses are prorated when not reimbursing for full course.
    c. Eligibility to take a course on work time or receive reimbursement is determined based on the class start date for classes that cross calendar years.
    d. Work time, computer resources, printers, and office supplies may not be used to work on an online course other than one directed or approved by the supervisor for professional development.
- Make nonexempt employee compensable travel time commensurate with the federal Fair Labor Standards Act.

Chapter 16: Code of Ethics

No changes.

NEBRASKA DEPARTMENT
OF EDUCATION

PERSONNEL RULES

TITLE 93, NEBRASKA ADMINISTRATIVE CODE,
CHAPTERS 1-16

HEARING DRAFT
APRIL 9, 2013

State of Nebraska
Department of Education
301 Centennial Mall South
Lincoln, Nebraska 68509

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES

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Appendix A NDE Personnel Rules Grievance Form

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES

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Appendix A NDE Personnel Rules Grievance Form

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 1 -- COVERAGE

001 Collective Bargaining Agreements. Employees subject to the Nebraska Association of Public Employees, Local 61 of the American Federation of State, County, and Municipal Employees (NAPE/AFSCME) Bargaining Agreement (Agreement) with the Nebraska Department of Education (Department) are not covered by these rules to the extent that wages, hours, and other terms and conditions of employment are provided for by the Agreement, or where the Agreement specifically provides these rules apply.

002 Department Rules and Policies; Conflicts. These rules shall not be construed as limiting, in any way, the power and authority of the Commissioner to make policies governing the conduct of Department employees and the performance of Department functions, provided that such Department policies shall be consistent with, and limited by, the provisions of these rules and any collective bargaining agreements. Provisions of the Nebraska Department of Education Personnel Rules, or the provisions of a collective bargaining agreement, supersede all Department policies.

003 Availability. Each employee has the right to examine these rules. A copy is available for examination in the ~~Department's~~ Human Resources Office and on their intranet web page.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 2 -- MANAGEMENT AUTHORITY

001 The Department retains all of its inherent rights, functions, and responsibilities with the right to determine and make decisions, except where those rights may be modified, restricted, or limited by these rules. The Department retains the right to determine the manner in which the operations of the Department are to be conducted except where those rights may be modified, restricted, or limited by these rules.

002 It is recognized that these management rights shall include, but not be limited to, the following:

002.01 To implement and maintain a classification system and classify employees pursuant to Chapter 6 of this Title;

002.02 To hire, promote, demote, transfer, assign, train, or retain employees in positions within the Department;

002.03 To establish and maintain Department missions, goals, and objectives, and reasonable work rules and workplace expectations, the contents of which are not inconsistent with this Title;

002.04 To suspend, demote, dismiss from employment, or take other appropriate disciplinary action against employees for just cause;

002.05 To schedule work and promote its accomplishments through managing, directing, and assigning duties and work schedules to employees;

002.06 To determine services to be rendered, operations to be performed, technology to be utilized, or matters to be budgeted;

002.07 To determine the overall methods, processes, means, or personnel by which operations are to be conducted;

002.08 To determine the type and number of employees to be employed, and to lay-off employees in the event of lack of work or funds or under conditions where the continuation of such work would be inefficient or nonproductive;

002.09 To determine, in accordance with the Constitutional and statutory mandates, mission, and goals of the Department, the personnel, methods, and means necessary to efficiently fulfill that mission including, but not limited to, implementing a budget and contracting for, altering, curtailing, or discontinuing any goods or services;

002.10 To dismiss an employee from employment in the event the employee is unable to perform the essential functions of the position due to physical or mental impairments even with reasonable accommodations;

002.11 To determine what charitable and/or social activities may be supported or sponsored; and,

002.12 To take all reasonable and necessary steps to comply with the Americans with Disabilities Act (ADA) and/or the Nebraska Fair Employment Practices Act.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 3 -- DEFINITIONS

001 Applicability. The definitions contained in the following Chapters of this Title shall be used throughout this Title except where the context would require another definition. All other words shall have their normal accepted meaning.

~~002 Adjusted Department Service Date shall mean a Department service date that was revised due to employee absence per Chapter 4, Section 003 of this Title.~~

~~003 Adjusted State Service Date shall mean a service date that was revised due to employee absence per Chapter 4, Section 003 of this Title or prior State service, and from which an employee's vacation and sick leave entitlement is computed.~~

00~~4~~2 Appointment shall mean the act of the Department filling a position,

00~~5~~3 Board shall mean the State Board of Education.

00~~6~~4 Classification shall mean a group of positions sufficiently similar as to the duties performed, degree of supervision exercised or required, minimum requirements of training, experience or skill; and such other characteristics that the same title and the same minimum qualifications may be applied to each position in the group, and so that the same ~~salary~~ pay grade may be assigned.

00~~7~~5 Classification Specification shall mean the official written description of a classification of work, which summarizes information such as the purpose of the classification, distinguishing characteristics, examples of duties, minimum qualifications, supervisory and fiscal authority and physical requirements.

00~~8~~6 Commissioner shall mean the Commissioner of Education.

007 "Company Service Date" shall mean the first day the employee starts work for the Department. The service date may be revised due to an absence per Chapter 4, Section 003 of this Title.

008 "Continuous Service Date" shall mean a state service date that may have been revised due to employee absence per Chapter 4, Section 003 of this Title, or prior state service, and from which an employee's vacation and sick leave is computed.

009 "Demotion" shall mean moving an employee from one classification to another classification at a lower pay grade. Demotions may be non-disciplinary as described in Chapter 6, Section 004 of this Title, or disciplinary as described in Chapter 13, Section 004.02 of this Title.

010~~9~~ Department shall mean the State Department of Education, which is comprised of the Board and the Commissioner.

~~010 Department Service Date shall initially be that day upon which an employee begins work with NDE.~~

011 Deputy Commissioner shall mean the Deputy Commissioner of Education.

012 Discharge or Dismissal shall mean the disciplinary termination of employment pursuant to Chapter 12 of this Title.

013 Employee shall mean any person who works for the Department and receives payment through the ~~a~~ state payroll ~~warrant~~ system, but does not include temporary or contract employees. This definition is subject to the limitations of Chapter 4, Section 002 of the Nebraska Department of Education Personnel Rules.

014 Grievance shall be applied throughout this Title as defined in Chapter 14 of this Title.

015 Human Resources Office shall mean the office within the Department that is responsible for personnel administration in the Department.

016 Lateral Transfer shall mean changing an employee from one ~~classification~~ position to another position in the same ~~or different~~ classification at the same ~~salary~~ pay grade.

017 Lay Off shall mean the involuntary termination (reduction in force) of an employee or employees because of a lack of work or lack of funds or under conditions in which the continuation of such work would be inefficient or non-productive.

018 Leave Without Pay shall mean leave or time off from work for the employee's personal reasons granted by the appointing authority for which period the employee receives no pay.

019 "Original Hire Date" shall mean the first day the employee starts work for the State.

0~~19~~20 Original Probationary Period shall mean a period of time during which an employee is required to demonstrate fitness for a particular position as a part of the selection process for permanent appointment.

021 "Paid Work Status" shall mean time paid for work or any paid leave.

02~~0~~2 Part-time Schedule shall mean less than a forty (40) hour work week schedule.

02~~1~~3 Pay Grade shall mean a specified range of salary or wage, the starting and intermediate rates within such range, and the maximum rate of such range.

02~~2~~4 Permanent Employee shall mean an employee in a regular full-time or part-time position who has completed the required probationary period or who had acquired permanent status in accordance with this Title.

02~~3~~5 Position shall mean a group of specific duties, tasks and responsibilities to be performed by one (1) employee. A position may be part-time or full-time; temporary, fixed-term, or permanent; ~~or~~ and occupied or vacant.

~~024 Position Description shall mean the summary of the actual duties and responsibilities assigned to the incumbent of the position.~~

025~~5~~6 Reduction in Force shall mean the same as "lay off."

026~~6~~7 Resignation shall mean the voluntary termination of employment by an employee.

027~~7~~8 Retirement shall mean the transfer of an eligible employee from active to retired status.

028~~8~~9 Series shall mean two (2) or more classifications, similar as to duties and training required but differing primarily in difficulty, responsibility, knowledge and skills, and supervision exercised or received.

0~~29~~30 Suspension shall mean an ordered absence for disciplinary, investigatory or other purposes.

030~~0~~1 Tuition shall mean the cost per credit hour of instruction at an accredited postsecondary institution.

031~~1~~2 Work Rules shall mean those practices, policies, and procedures established and adopted by the Department concerning the employee's terms and conditions of employment.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 4 -- EMPLOYEE SELECTION

001 Hiring Process. The Board, upon the recommendation of the Commissioner, has the final hiring authority for all professional staff. Selection of support staff shall be at the discretion of the appropriate Leadership Council Member or Commissioner's designee who shall have the final hiring authority.

002 Employment Categories.

002.01 Full-Time. Full-time employees are required to work, as a minimum, forty (40) hours per week on a permanent, ongoing basis.

002.02 Part-Time. Part-time employees are required to work fewer hours than full-time employees on a permanent, ongoing basis. Work schedules may fluctuate by week, month, or season. Part-time employees earn benefits on a prorated basis. To be eligible for insurance benefits, employees must be hired to work at least half-time (20 hours per week).

002.03 Temporary Employee. Temporary employees are those employees hired through a temporary agency or via contract for a limited period of time to perform requested job duties on either a full-time or part-time schedule. Temporary employees may be separated, at any time, without notice or grievance rights. Temporary employees do not receive benefits except as provided by Neb. Rev. Stat. §84-1601 et seq. A temporary position may be a full-time or part-time position. Employment in a temporary position shall not count toward a Department service date or original probationary period.

002.04 Fixed-Term. A fixed-term employee is an employee hired in a fixed-term position. A fixed-term position is a position which, due to the funding source, has a predetermined duration of employment which is designated at the time of hire subject to the continuation and availability of funding. Fixed-term positions may be worked on a full-time or part-time schedule and are subject to all the provisions of these Personnel Rules except for the provisions of Chapter 12, Sections 003 through 009 of this Title.

002.05 Contract Employee. Contract employee means an individual with whom the Department has entered into a contract under either Administrative Memorandums #110 or #111, which creates an employer-employee relationship. Terms of the employment are governed by the contract. Contract employees do not receive benefits except as provided by Neb. Rev. Stat. §84-1601 et seq. Contract employees do not have grievance rights.

003 ~~State~~ Service Date. ~~The State service date is the date of hire by the State of Nebraska for a new employee.~~ The continuous service date must be adjusted to reflect suspensions without pay, or periods of unpaid leave which exceed fourteen (14) calendar days (except military leave). Promotion, demotion and transfer of employees shall not change the employee's service date.

Employees who left State service for other than disciplinary reasons, and return after July 1, 2001, following a break in services of less than five (5) years, shall be given credit for previous State service by having their service date reinstated minus the amount of time absent.

004 Equal Opportunity Employment and Nondiscrimination. The Department prohibits the following employment practices which are unlawful under Sections 48-1104 and 48-1004 R.R.S.:

004.01 To fail or refuse to hire, to discharge or to harass any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, disability, marital status, ~~or~~ national origin~~;~~, or genetic information (as prohibited by the Genetic Information Non-discrimination Act [GINA] and Section 48-236 R.R.S.); or

004.02 To limit, advertise, solicit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee, because of such individual's race, color, religion, sex, disability, marital status, or national origin; or

004.03 To refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to terms, conditions, or privileges of employment, otherwise lawful, because of such individual's age, when the reasonable demands of the position do not require such an age distinction; or

004.04 To willfully utilize in the hiring or recruitment of individuals for employment otherwise lawful, any employment agency, placement service, training school or center, labor organization, or any other source which so discriminates against such individuals because of their age.

005 ADA Compliance. It is the policy and practice of the Department to comply with the Americans with Disabilities Act (ADA) and to ensure equal opportunity in employment for all qualified persons with disabilities. The Department is committed to ensuring that there is no discrimination in any terms, conditions or privileges of employment. Reasonable accommodation is available to all employees and applicants. Requests for reasonable accommodations must be forwarded to the ~~Department's~~ Human Resources Office.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 5 -- PROBATIONARY PERIODS

001 Period of Time. Each employee shall serve an appropriate probationary period based on the classification occupied.
~~Exempt Employees. Employees occupying positions which are exempt from time and one-half overtime compensation shall serve a probationary period of twelve (12) months. Such period may be extended by up to six (6) months, not to exceed a total of eighteen (18) months, upon written notification to the affected employee by the appropriate Leadership Council Member or Commissioner's designee. Reasons for such extension shall be made known to the employee. Upon approval of the appropriate Leadership Council Member or Commissioner's designee, an employee may be moved to permanent status at any time during the probationary period.~~

001.01 Six-Month Probationary Periods. Employees occupying the following classifications shall serve a probationary period of six (6) months:

Administrative Associate I – IV
Infrastructure Support Technician
IT Help Desk Specialist
Office Associate I – IV
Office Associate Senior
Office Associate Executive
Program Associate I – IV
VR Associate and Senior Associate

001.02 Twelve-Month Probationary Periods. Employees occupying the following classifications shall serve a probationary period of twelve months:

Administrative Specialist I – III
Administrator
Assistant Commissioner
Disability Adjudicator Trainee
Disability Adjudicator I, II and III
Disability Determination Section Hearings Officer
Education Specialist I – IV
General Counsel
IT Applications Developer, Senior, and Lead
IT Data/Database Analyst, Senior, and Lead
IT Infrastructure Support Analyst, Senior, and Lead
IT Help Desk Specialist Senior
Legal Counsel III
Program Specialist I – IV
Senior Administrator
VR Service Specialist and Senior Service Specialist
VR Rehabilitation Specialist and Senior Rehabilitation Specialist
VR Office Director I and II
VR Program Director I and II

001.03 Extensions. Employees with original probationary periods of six (6) months may be extended by up to six (6) months not to exceed a total of twelve (12) months upon written notification to the affected employee, which includes reasons for such extension. Employees with original probationary periods of twelve (12) months may be extended by up to six (6) months not to exceed a total of eighteen (18) months upon written notification to the affected employee, which includes reasons for such extension.

~~002 Non-Exempt Employees. Employees occupying positions for which time and one-half overtime compensation is paid, shall serve a probationary period of six (6) months. Such probationary period may be extended by up to six (6) months, not to exceed a total of twelve (12) months, upon written notification to the affected employee by the appropriate Leadership Council Member or Commissioner's designee. Reasons for such extension shall be made known to the employee. Upon approval of the appropriate Leadership Council Member or Commissioner's designee, an employee may be moved to permanent status at any time during the probationary period.~~

00~~3~~2 Transfer During Probation. An employee who is transferred by demotion or lateral move within the Department, while serving a probationary period, may have his/her probationary period extended at the discretion of the appropriate Leadership Council Member or Commissioner's designee. When the transfer does result in a promotion, a probationary period shall begin at the time of promotion, just as in any other promotion.

00~~4~~3 ~~Probation Pursuant to Moving into a New Position.~~ Secondary Probationary Periods. An employee accepting promotion, lateral transfer, or a demotion, shall be placed on probation for a period of time as set forth in Sections 001 and 002 of this Chapter to determine his/her ability to perform the job. If the employee is, in the opinion of the Department, not performing satisfactorily in the new position during the probationary period, the employee shall, if the position is still available, be reverted to the employee's previous position and pay rate. If the previous position is no longer available, the Department shall make every reasonable effort to place the employee in a vacant position of a similar classification with the same pay rate as the employee received prior to the promotion or lateral transfer. If no such vacancy is available, the Department may place the employee in a vacant position in a lower classification according to the provisions in Chapter 6, Section 004 of this Title, or may terminate the employee for cause. The Department shall not be required to utilize the disciplinary process to revert an employee back to the employee's former position or a vacant position in the same geographical area (thirty [30] miles from the current work site) equivalent to the former position's ~~salary~~ pay grade. The Department shall document efforts to provide the promoted employee with performance improvement counseling when utilizing this provision.

00~~5~~4 Employees on a part-time schedule may have their probationary period extended according to the provisions in this Chapter in order for the supervisor to have additional opportunities to observe the employee. Probationary periods may also be extended to allow for adequate observation opportunities in cases where employees have been absent for significant periods of time.

00~~6~~5 Termination. Employees serving an original probationary period may, upon the recommendation of the immediate supervisor, and with the approval of the appropriate Leadership Council Member or Commissioner's designee, be terminated without cause or recourse under the rules of Title 93 at any time during the probationary period.

00~~6~~5.01 If at any time during the original probationary period it is determined that the services of the employee have not been acceptable, or if the employee does not successfully pass the Department's background screen, the appropriate Leadership Council Member or Commissioner's designee shall notify the employee in writing of the date services are to be terminated.

00~~7~~6 ~~Performance Appraisals. Performance appraisals for probationary employees shall be scheduled at the discretion of the employee's supervisor.~~
Appraisal Schedule. Written performance appraisals shall be prepared at prescribed intervals during the probationary period and annually thereafter as described in Section 006.03. The absence of any required appraisals shall not prohibit nor delay the ending of a successful probationary period and the establishment of a permanent appointment. If a performance appraisal was not completed during the previous twelve (12) months, an employee's performance shall be considered above satisfactory for salary purposes until such time as a performance appraisal is completed.

00~~7~~6.01 ~~The appraisals may contain a description of problem areas, improvements needed, and any positive points concerning the employee's performance.~~
Six-Month Probationary Period. For employees with a six-month probationary period the following schedule of appraisals shall be maintained:

006.01A Prior to the end of ninety (90) calendar days of employment; and,

006.01B Prior to the end of the 6th month of employment.

006.01C Additional appraisals may be scheduled at the discretion of the employee's supervisor.

0076.02 ~~The absence of any appraisals under this Section shall not prohibit nor delay the ending of a successful probationary period and the establishment of a permanent appointment.~~
Twelve-Month Probationary Period. For employees with a twelve-month probationary period, the following schedule of appraisals shall be maintained:

006.02A Prior to the end of ninety (90) calendar days of employment;

006.02B Prior to the end of the 6th month of employment; and,

006.02C Prior to the end of the 12th month of employment.

006.02D Additional appraisals may be scheduled at the discretion of the employee's supervisor.

006.03 Annual Appraisals. Annual appraisals will be conducted prior to the employee's continuous service date. Additional appraisals may be scheduled at the discretion of the employee's supervisor.

0087 Permanent Appointment. Permanent appointment of full-time or part-time original probationary employees shall begin on the day following the day ending the original probationary period, unless notice of extension has been given to the employee in writing prior to such time. In the event of an extension of the original probationary period, permanent appointment begin on the day following the day ending the extension of the original probationary period.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 6 -- CLASSIFICATION PLAN

001 General. The ~~Department's~~ Human Resources Office shall maintain a master set of all classification specifications used by the Department. Classification specifications shall be available to any employee for examination.

002 Classification Review. An employee or their supervisor may request a review of the employee's position for proper classification at any time providing the position has not been reviewed within the previous six (6) months. The employee's supervisor(s) may waive the six (6) month requirement. An employee may make the request to the ~~Department's~~ Human Resources Office through their immediate supervisor or a supervisor may make the request directly to the ~~Department's~~ Human Resources Office. Following such request by an employee or supervisor, the ~~Department's~~ Human Resources Office shall review the classification of such employee. Such review by the ~~Department's~~ Human Resources Office will include the review of a Position Description Questionnaire completed by the employee and reviewed by the employee's supervisor(s)~~,~~ and the appropriate Leadership Council Member or Commissioner's designee. The Position Description Questionnaire shall be provided to the employee by the ~~Department's~~ Human Resources Office within five (5) work days of such request.

002.01 Employees. A permanent employee shall have fifteen (15) work days to complete the Position Description Questionnaire, obtain supervisor review, and return it to the ~~Department's~~ Human Resources Office.

002.02 Human Resources. The ~~Department's~~ Human Resources Office shall have five (5) work days from the receipt of the completed Position Description Questionnaire to provide a copy to the Classification Panel. The ~~Department's~~ Human Resources Office and the Classification Panel shall have thirty (30) work days from the Classification Panel's receipt of the completed Position Description Questionnaire to complete the review of the reclassification request, meet, and make separate recommendations. A copy of the ~~Department's~~ Human Resources Office and the Classification Panel recommendations shall be forwarded to the supervisor(s), the appropriate Leadership Council Member or Commissioner's designee and the employee. The supervisor(s), the appropriate Leadership Council Member or Commissioner's designee, and the employee shall then have an opportunity to provide comments and/or documentation in response to the recommendations from the ~~Department's~~ Human Resources Office and the Classification Panel within ten (10) work days.

002.03 Request. The employee, supervisor(s) and/or the appropriate Leadership Council Member or Commissioner's designee have the right to request and meet jointly with the ~~Department's~~ Human Resources Office representative and the Classification Panel. The ~~Department's~~ Human Resources Office and the Classification Panel may also request that the employee, supervisor(s), or the appropriate Leadership Council Member or Commissioner's designee, meet with them to provide additional information about the request. If additional information is submitted by the employee, supervisor(s), or appropriate Leadership Council Member or Commissioner's designee, or if a meeting has been requested, the ~~Department's~~ Human Resources Office and the Classification Panel will jointly meet, and within ten (10) work days make final recommendations to the Deputy Commissioner.

002.04 Classification Panel. The Classification Panel shall be made up of five (5) members chosen by the Department. All members shall undergo training provided by the ~~Department's~~ Human Resources Office concerning the classification system. The Department shall designate one alternate to serve on the Classification Panel when a regular member is unable to attend or when a regular member is unable to vote. Recommendations from the Classification Panel shall be decided by a majority vote.

002.05 Deputy Commissioner. The Deputy Commissioner shall have fifteen (15) work days after receiving the recommendations from the ~~Department's~~ Human Resources Office and the Classification Panel to make a final decision. A copy of the action taken by the Deputy Commissioner shall be forwarded to the ~~Department's~~ Human Resources Office, the Classification Panel, the supervisor(s), the appropriate Leadership Council Member or Commissioner's designee, and the employee within five (5) work days of the decision.

If the Deputy Commissioner's decision is made on or before the 15th of the month, and a pay adjustment is warranted, the pay adjustment shall be effective as of the 1st day of the current month. If the Deputy Commissioner's decision is made after the 15th of the month, the pay adjustments shall be effective as of the 1st day of the next month. The Deputy Commissioner's decision will be final.

002.05A The time requirements in this Chapter may be extended by written agreement between the employee and the Deputy Commissioner in cases where additional time is needed in order to conduct the review process. Pay adjustments may be made retroactive by order of the Deputy Commissioner.

003 Promotions. In situations where the employee's job duties have changed significantly, the employee may be reclassified to a new classification at a higher pay grade as a result of the classification review process.

003.01 An employee who is reclassified to another classification at a higher pay grade shall receive a five percent (5%) salary increase for moving up one pay grade, a seven and one-half percent (7.5%) salary increase for moving up two pay grades, or a ten percent (10%) salary increase for moving up three or more pay grades. The new salary shall be at least at the minimum rate of the new pay grade, but no more than the maximum rate of the new pay grade.

003.01A The appropriate Leadership Council Member or Commissioner's designee may recommend to the Deputy Commissioner a pay increase greater than would be provided by Section 003.01 of this Chapter. The Deputy Commissioner's decision will be final.

004 Demotions. In cases in which the employee accepts a demotion to avoid being laid off, voluntarily requests a demotion, or, is reclassified to a lower pay grade ~~pursuant to the review process~~, a non-disciplinary demotion may result. The employee shall have the right to elect demotion as the alternate to a layoff. The right to elect shall be granted to employees in accordance with provisions of Chapter 12 of this Title.

004.01 In all cases involving demotion, the employee must meet the requirements of the position to which he/she is demoted, and except as provided in layoff procedure, no employees in a lower level position shall be laid off by reason of a demotion action involving another employee.

004.02 An employee who is demoted, either voluntarily or involuntarily, from a higher pay grade to a lower pay grade, shall have his/her pay reduced by five percent (5%) for demotions of one pay grade, seven and one-half percent (7.5%) for demotions of two pay grades, or ten percent (10%) for demotions of three or more pay grades. Under no circumstances would the employee's salary be less than the minimum rate of the new pay grade or more than the maximum of the new pay grade.

004.02A The appropriate Leadership Council Member or Commissioner's designee may recommend to the Deputy Commissioner a pay decrease less than would be provided by this Section. The Deputy Commissioner's decision will be final.

005 Salary for Vacant Position. Employees who apply for and are selected as the successful applicant to fill a vacant job opening that was posted, shall be subject to the same salary range that was identified on the posting for all applicants. Employees are not entitled to retain their current salary level if they accept the offer to fill the vacancy. The salary provisions contained in Section 003 and Section 004 of this Chapter do not apply to such a situation.

006 Loss in Pay. No employee shall, as a result of Department action, suffer a loss of pay through a promotion or transfer to a position of the same classification or through an involuntary, non-disciplinary transfer to a differently classified position in the same pay grade. This provision shall not apply in layoff situations.

007 Service Date. Promotions, transfers, or demotions shall not change an employee's Department or State service date.

008 Pay During Temporary Transfer. When an employee performs the duties of a position in a higher pay grade than the classification pay grade currently held by the employee, the employee shall receive a temporary pay increase to the minimum salary of the higher pay grade or an increase in accordance with Section 003.01 of this Chapter, whichever is higher but in no case shall the employee receive a pay reduction. Such temporary pay increase shall apply only when the employee has been requested to perform the duties of someone at a higher pay grade, and when the period of time in which the employee is performing the duties exceeds ten (10) work days.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 7 -- SALARY ADMINISTRATION

001 Pay Plan. Employees are placed in an assigned position and paygrade of a classification and pay plan approved by the Deputy Commissioner. The pay plan may provide scheduled salary increases including, but not limited to, annual salary adjustment increases.

001.01 Horizontal Movement. The Deputy Commissioner may distribute salary increases to employees who meet established criteria as necessary to address internal/external inequities and recognize noteworthy performance. The salary increases will be included in the employee's regular rate of pay and base salary. ~~Horizontal Movement salary increases will not be provided during the period of July 1, 2011 – June 30, 2012, but will be provided during the period July 1, 2012 – June 30, 2013.~~

001.02 Merit Stipends. Upon receiving a recommendation from the appropriate Leadership Council Member or Commissioner's designee, the Deputy Commissioner may distribute merit stipends to recognize employees, with at least two (2) years of service with the Department, who have demonstrated exemplary performance or who have completed temporary assignments that required time, skill and effort beyond the normal scope of the employee's position. The stipend will be a one-time payment, above and beyond the regular rate of pay. The stipend will not become part of the employee's base salary. ~~Merit Stipends will not be provided during the period of July 1, 2011 – June 30, 2012, but will be provided during the period July 1, 2012 – June 30, 2013.~~

002 An employee who, on the effective date of a scheduled pay increase, is under suspension with pay, suspension without pay, or administrative probation, shall not be provided the pay increase until the employee satisfactorily completes the disciplinary action except that no employee shall be paid less than the hiring rate of pay established for the employee's pay grade in effect on the effective date of the last pay increase.

003 If a suspension is for investigative purposes and the employee is subsequently determined not to be subject to disciplinary action, the employee shall be entitled to the appropriate pay rate increases retroactive to the date the pay rate increases would have been granted had not the suspension been in effect.

004 Release of Payroll/Expense Warrants. Payroll and expense warrants will be released to employees named on the warrant or to the person designated by the employee in writing. In case of employee illness or injury, warrants may be released to immediate relatives who do not have a note of authorization but have proof of identification. Immediate relatives shall be considered as: spouse; children including step, adopted, and foster children; parents; and, parents of the spouse.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 8 -- OVERTIME

001 Exempt and Non-~~E~~exempt Defined.

001.01 Exempt employees shall mean employees who, by virtue of their primary duties and responsibilities, are professional, executive and/or administrative under the provisions of the Fair Labor Standards Act (FLSA) and are thereby exempt from overtime compensation payment and/or time off in lieu of such payment.

001.02 Non-exempt employees shall mean employees who are eligible to receive compensatory payment or time off for overtime.

002 FLSA Status Determination. The ~~Department's~~ Human Resources Office shall determine whether or not each position in the Department is exempt or non-exempt under the FLSA. When a new position is created, or an existing position changes, the appropriate Leadership Council Member or Commissioner's designee shall contact the ~~Department's~~ Human Resources Office to request a review of the exempt or non-exempt status. The ~~Department's~~ Human Resources Office shall determine whether or not the position is exempt.

003 Overtime Approval. No overtime shall be worked by non-exempt employees without the prior approval in writing ~~of the~~ by the immediate supervisor, the appropriate Leadership Council Member or Commissioner's designee, and the ~~immediate supervisor~~ Commissioner or Deputy Commissioner.

004 Overtime Compensation Options for Non-~~E~~exempt Employees. Non-exempt employees who accumulate more than forty (40) hours of compensable work time in a work week, shall be eligible for overtime compensation. The method of compensation shall be at the discretion of the appropriate Leadership Council Member or Commissioner's designee and the immediate supervisor. The two (2) options for such compensation are:

004.01 Payment of a sum equivalent to one and one-half (1-1/2) times the hourly rate of pay for time actually worked in excess of forty (40) hours. Payment for overtime hours shall be calculated at the hourly rate that was in effect for overtime at the time excess hours were actually worked.

004.01A The hourly rate of pay shall be computed by dividing the annual rate of pay by the number of hours the employee is normally responsible for per year. Such payment shall be made at the end of the pay period in which it was earned, if administratively feasible, or at the end of the following pay period.

004.02 Compensatory time off when taken in lieu of pay shall be calculated at time and one-half (1-1/2) unless the employee has actually worked less than forty (40) hours during the work week. If the employee has actually worked less than forty (40) hours during the work week, compensatory time off shall be calculated at straight time. Paid vacation, sick, or bereavement leave shall not be counted as work hours for overtime purposes.

004.02A Compensatory time off shall be used in the subsequent sixty (60) calendar day period following the date the hours were worked, unless such period is extended by the Department (within limits established in Section 004.02B of this Chapter).

004.02B Employees who worked overtime hours between July 1, 201~~1~~3 and June 30, 201~~2~~4, shall either be provided time off by June 30, 201~~2~~4 or be paid by July 31, 201~~2~~4 at the June 201~~2~~4 pay rate. Employees who worked overtime hours between July 1, 201~~2~~4 and June 30, 201~~3~~5, shall either be provided time off by June 30, 201~~3~~5 or be paid by July 31, 201~~3~~5 at the June 201~~3~~5 pay rate.

005 Exempt Employees.

005.01 Schedule Deviation. Exempt employees who, in fulfilling their job responsibilities (which may include travel time) extend their accountable work hours beyond the expected eight (8) hour work day or approved work schedule, may deviate from their usual work hours upon advance approval and agreement between the employee and immediate supervisor as to when the schedule deviation will take place. Schedule deviation is defined as an adjustment of work hours or length of the work day.

005.02 Hours worked on a holiday by an exempt employee shall be compensated at straight time.

006 Non-~~E~~exempt Employees – Overtime Calculation.

006.01 Overtime shall include all compensable work time in excess of forty (40) hours either at time and one-half (1-1/2) or at straight time.

006.02 Holidays shall be considered as work hours for overtime purposes. Hours worked by an overtime eligible employee on a holiday shall be compensated at one and one-half (1-1/2) times the~~ir~~ employee's normal hourly rate of pay. All hours worked on a holiday in excess of the employee's normally scheduled work day shall be compensated at two (2) times the employee's normal hourly rate of pay.

006.03 Paid ~~sick, vacation, or bereavement~~ leave (e.g., sick, vacation, bereavement) shall not be considered as work hours for overtime purposes.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 9 -- LEAVE AND HOLIDAYS

001 The following provisions apply to paid and unpaid leave:

001.01 Unauthorized Leave. An absence by an employee which does not meet the requirements specified in this Chapter and is not authorized by the employee's supervisor shall be considered as unauthorized leave. Unauthorized leave may be grounds for corrective or disciplinary action under the provisions of Chapter 13 of this Title.

001.02 Authorized Leave. An absence by an employee which meets the requirements specified in this Chapter and that is authorized by the employee's supervisor shall be considered as authorized leave.

002 ~~State/Department~~Continuous/Company Service Date Adjustments. Employees returning to work on or after July 1, 2001, after a break in service of less than five (5) calendar years, shall have their accumulated unpaid sick leave balance reinstated. The employee's service date(s) shall be adjusted for the period of absence. The employee's vacation and sick leave earning rate will also be adjusted, and the new rate of earning will be based on the adjusted service date(s). Employees returning to work after a break in service of more than five (5) calendar years shall start with a zero (0) sick and vacation leave balance and shall be considered to be new employees for service date purposes, and shall earn vacation and sick leave at the beginning earning rate of a newly hired employee.

Employees may apply available, accumulated paid leave on their monthly timesheet in order to prevent service date adjustment(s). The leave time taken shall be no less than one (1) work day for purposes of this Section. One (1) work day shall be eight (8) hours for a full-time employee or the corresponding percentage of full-time equivalent (FTE) for part-time employees.

The employee's service dates shall be adjusted when an unpaid absence exceeds fourteen (14) consecutive calendar days. The adjustment will correspond to the number of days the employee is on unpaid leave. See also Chapter 4 - Section 003 of this Title.

003 Holidays. The following holidays, and others when declared by law or proclaimed by the Governor or President of the United States as provided in Nebraska Section 84-1001(3) R.R.S., shall be compensated holidays for full-time and part-time employees and are scheduled on the dates indicated. When a holiday falls on Saturday, it shall be observed on the preceding Friday. When a holiday falls on Sunday, it shall be observed on the following Monday.

DAY	DATE
New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
President's Day	Third Monday in February
Arbor Day	Last Friday in April
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Friday following Thanksgiving
Christmas Day	December 25

003.01 Full-Time Employees. Compensation for a holiday is based on an eight (8) hour work day for full-time employees.

003.02 Part-Time Employees. Part-time employees shall receive paid time off for holidays on a prorated basis according to the time they work each pay period.

003.03 Temporary and Contract Employees. Temporary and contract employees are not eligible for holiday leave, and if required to work on a holiday or observed holiday, are paid for the time worked at their normal rate of pay.

003.04 Eligibility for Holiday Pay. Pursuant to Section 84-1001 R.R.S. in order to receive pay for such holiday an employee, whether part-time or full-time, must be in paid work status on both the work day immediately preceding and immediately following the holiday unless excused by his or her supervisor.

003.05 Working on Holidays. An employee may be directed to work on a holiday or may request advance approval from the immediate supervisor to voluntarily work on a holiday. Any work on a day that is defined as a paid holiday by Section 84-1001 R.R.S. shall be compensated for by granting the employee compensatory time off or by paying the employee. Nonexempt employees shall be compensated per Chapter 8, Section 006.02 of this Title. Exempt employees shall be compensated at straight time. The method of compensation for the holiday worked shall be at the discretion of the Department. If compensatory time off is granted, the employee shall determine when such time shall be taken, subject to Chapter 8, Section 004.02A of this Title.

004 Vacation Leave. All employees, excluding temporary and contract employees, earn paid vacation leave. Hours accrue on a monthly basis but are not available to the employee prior to the start of the following month, except as provided by Section 004.04 of this Chapter. Full-time employees earn vacation leave according to the following schedule:

Years of Service	Hours Per Year~~/Month Accumulated (Rounded)~~	Hours Per Month (Average)
1st year through 5th year	96~~/8~~	8.00
6th year	120~~/10~~	10.00
7th year	128~~/10.67~~	10.67
8th year	136~~/11.34~~	11.34
9th year	144~~/12~~	12.00
10th year	152~~/12.67~~	12.67
11th year	160~~/13.34~~	13.34
12th year	168~~/14~~	14.00
13th year	176~~/14.67~~	14.67
14th year	184~~/15.34~~	15.34
15th year	192~~/16~~	16.00
16th year and following years	200~~/16.67~~	16.67

004.01 Vacation Leave for Part-Time Employees. Part-time employees shall earn paid time off for vacation on a prorated basis according to the time they work each pay period.

004.02 Using Vacation Leave. Vacation leave must be requested in advance by the employee. Vacation leave may be used when approved by the employee's supervisor. Denial of vacation leave requests must not be arbitrary and the taking of vacation leave by employees may not be unreasonably deferred. Vacation leave shall be taken and reported in increments of not less than one tenth (1/10) of an hour.

004.03 Vacation leave shall not accrue to any employee on leave of absence without pay, leave without pay, suspension without pay, layoff, or during time off of work that is compensated under Workers' Compensation.

004.04 Advancing Vacation Leave. The appropriate Leadership Council Member or Commissioner's designee may at his/her discretion advance vacation leave to employees with six (6) months of service with the Department in an amount not to exceed that which the employee would earn in the succeeding ~~six (6)~~ three (3) month period. For employees with more than five (5) continuous years service and with no record of leave abuse, request for vacation leave advancement of ~~forty (40)~~ thirty (30) hours or less will not unreasonably be denied. Employees shall reimburse the Department for all used unearned vacation leave upon termination either by a deduction in their final check or by separate payment. Employees may not request more than one advancement in a ~~six (6)~~ three (3) month period. If at the end of the advancement period the employee has not earned back the advanced vacation leave used, another request for advancement of vacation cannot be approved until the employee has earned back the advanced vacation leave used. Written notice of advancement must be provided to the ~~Department's~~ Human Resources Office.

004.05 Balancing of Vacation Leave During Employment. Up to two hundred and eighty (280) hours of an employee's vacation leave may be carried over from one (1) calendar year to the next. Accumulated vacation time in excess of two hundred and eighty (280) hours shall be forfeited as of December 31 of each calendar year. In the event an unforeseen work-related emergency prevents an employee from taking planned vacation leave before December 31 and causes that vacation leave to be lost, additional carryover vacation leave may be requested of and approved in advance of the calendar-year-end by the Deputy Commissioner. In such cases, the hours above two hundred and eighty (280) that are carried over must be used within the next six (6) months.

004.06 Balancing of Vacation Leave Upon Separation. Employees who leave state government employment for any reason shall be paid for any unused accumulated vacation leave earned, calculated at the hourly rate in effect at the time of termination. However, vacation leave, both as to earned unused hours and as to years of service for accumulation purposes, may be transferred when employees transfer between another Nebraska State agency, Nebraska State university or college and the Department without a break in service, upon mutual agreement of the employers.

004.06A A retiree returning to State service will begin earning vacation leave at the beginning rate of a newly hired employee. A retiree shall mean an employee who is qualified to receive retirement allowance under the state or the school retirement system.

004.07 Leave Without Pay. All earned~~, accumulated~~ accrued vacation leave, which does not include advanced vacation leave, shall be used by an employee before being granted leave without pay~~, except when a qualified employee is granted Family and Medical Leave (FML), which is leave without pay~~. Employees may request leave without pay in writing from the appropriate Leadership Council Member or Commissioner's designee; however, granting leave without pay is discouraged and should not be done on a regular basis. Written notice of leave without pay must be provided to the ~~Department's~~ Human Resources Office.

004.08 Holidays falling within a period of vacation leave shall not be counted as work hours for purposes of overtime.

005 Sick Leave. All employees, excluding temporary and contract employees, as defined by Chapter 4 of this Title, earn paid sick leave. Hours accrue on a monthly basis but are not available to the employee prior to the start of the following month except as provided by Section 005.08 of this Chapter. No sick leave is earned by an employee on leave-without-pay status.

Full-time employees accumulate sick leave according to the following schedule:

Years of Service	~~Sick Leave~~ Hours ~~Earned~~ Per Year~~/Month (Rounded)~~	Hours Per Month (Average)
1st through 5th year	96~~/8~~	8.00
6th through 15th year	112~~/9.34~~	9.34
16th and following years	144~~/12~~	12.00

005.01 Sick Leave for Part-Time Employees. Part-time employees shall accumulate paid time off for sick leave on a prorated basis according to the time they work each pay period.

005.02 Conditions for Using Sick Leave. Sick leave may be used only under the following conditions:

005.02A Employee. When an employee is unable to perform his/her duties because of:

005.02A1 Illness,
005.02A2 Absence due to psychological treatment or counseling,
005.02A3 Disability,
005.02A4 Injury,
005.02A5 Employee's presence at work jeopardizes the health of others by exposing them to a contagious disease,
005.02A6 Pregnancy complications, post-natal recovery, and miscarriage,
005.02A7 Absence due to treatment for alcoholism or drug addiction, if medically diagnosed by a licensed physician, and if the employee is receiving assistance or has agreed to an approved course of treatment,
005.02A8 Medical, surgical, dental, audiological or optical examination or treatment, or
005.02A9 Emergency medical treatment.

005.02B Employee's immediate family member(s). When the illness, disability, injury, surgery, medical examination, procedure, or treatment of an immediate family member requires the employee's presence. The seriousness of the illness, disability, injury, or surgery ~~should~~ shall be considered by the immediate supervisor when determining the number of days of sick leave to be granted. The immediate family shall mean: spouse; children including step, adopted~~,~~ and foster children; ~~children-in-law~~ daughter/son-in-law; parents; and parents of the spouse.

At the discretion of the appropriate Leadership Council Member or Commissioner's designee, sick leave benefits may be extended for the care of other individuals with a similar personal relationship (e.g., acted as a mother, father, etc.) to the employee as that of an immediate family member.

005.02C After the birth of a baby, the employee who is the father of the baby may use up to five (5) days of sick leave. If more than five (5) days of sick leave is necessary and required, for medical reasons, to care for the new baby or the mother, a note from the medical provider ~~may~~ shall be required to establish the medical necessity.

005.02D After the birth of a baby, an employee, other than the father, may use sick leave if his or her presence is necessary and required, for medical reasons, to care for ~~the new baby or~~ the mother (if the mother meets the definition of immediate family). A note from the medical provider ~~may~~ shall be required to establish the medical necessity.

005.02E Under this Section, employees may use sick leave to attend school appointments for an immediate family member with a disability.

005.03 ~~Sick Leave Not to be Used as Vacation Leave.~~ Sick leave shall not be used as vacation leave.

005.04 Sick leave shall be taken and reported ~~on a~~ in increments of not less than one tenth (1/10th) ~~work~~ of an hour ~~basis~~. Holidays falling within a period of sick leave shall not be counted as hours worked for overtime purposes.

005.05 Sick leave shall not accrue during leaves without pay, suspensions, layoffs or when leave is compensated under Workers' Compensation.

005.06 Probationary employees shall be entitled to sick leave at the same rate as permanent employees. Sick leave may be granted during the probationary period up to the number of accrued hours available to the employee. When a probationary employee takes sick leave in excess of accrued hours available, the provisions of Section 005.08 of this Chapter shall apply.

005.07 Requesting Sick Leave. Sick leave shall be requested by the employee in writing and in advance whenever possible, for anticipated health reasons such as ~~(e.g., for~~ medical appointments and physical examinations~~)~~. In cases of sickness, injury, emergencies, or any other absence not approved in advance, the employee shall advise appropriate Department personnel of the circumstances as soon as possible ~~and shall submit a written request regarding such absence within one (1) work day after returning to work~~. An employee may be required to submit substantiating evidence and/or documentation when the reason for the leave request was a medical or dental appointment or when the immediate supervisor suspects sick leave abuse. Substantiating evidence may also be required if the sick leave absence exceeds five (5) consecutive work days.

005.07A If an employee has been absent on sick leave exceeding five (5) consecutive work days, the employee may be required to produce written verification from a medical provider to document fitness to return to work, including notice of any necessary work restrictions.

005.07B Independent of an employee's use of sick leave and exceeding the five (5) consecutive work day requirement noted above, if an immediate supervisor has reason to believe that an employee's presence at work poses a significant health or safety risk, the employee may be required to produce medical verification regarding fitness for work.

005.08 Advancing Sick Leave. Sick leave may, at the discretion of the immediate supervisor and appropriate Leadership Council Member or Commissioner's designee, be advanced to employees ~~who are ill~~, with six (6) months of service with the Department, in an amount not to exceed that which the employee would earn in the following ~~six (6)~~ three (3) month period. Employees shall reimburse the Department for all used, unearned sick leave upon termination, either from a deduction in their final check or by separate payment. Employees may not request more than one advancement in a ~~six (6)~~ three (3) month period. If at the end of the advancement period the employee has not earned back the advanced sick leave used, another request for advancement cannot be approved until the employee has earned back the advanced sick leave used. Written notice of advancement must be provided to the ~~Department's~~ Human Resources Office.

005.09 Should an employee require medical treatment while on vacation, vacation leave may be changed to sick leave under the following circumstances:

005.09A For the period of time medical treatment was required and for reasonable periods of bed-rest thereafter that were required and that occurred within the otherwise normally scheduled work hours of the employee;

005.09B Upon submission of a physician's statement substantiating treatment and probable duration of illness; and

005.09C Upon approval of the immediate supervisor and appropriate Leadership Council Member or Commissioner's designee. Denial by the supervisor or Leadership Council Member or Commissioner's designee shall not be arbitrary.

005.10 Balancing Sick Leave During Employment. There shall be no maximum limit on sick leave balances carried from year to year.

005.11 Transfer of Sick Leave. Sick leave, both as to earned unused hours and as to years of service for accumulation purposes, may be transferred when the employee transfers between another Nebraska State agency, Nebraska State university or college and the Department without a break in service by mutual agreement between employers.

005.12 Balancing Sick Leave Upon Separation. Upon separation of employment all sick leave shall be forfeited. However, all accumulated unused sick leave may be transferred when the employee transfers between another Nebraska State agency, Nebraska State university or college and the Department without a break in service, by mutual agreement between employers. In the event of the death of an employee, the employee's beneficiary shall be paid one-fourth (1/4) of the accumulated unused sick leave computed at the rate of pay earned by the employee at the time of death and shall not exceed four hundred and eighty (480) hours. Upon separation of employment, if the employee is at least fifty-five (55) years of age, the employee shall be paid one-fourth (1/4) of the accumulated unused sick leave paid at the hourly rate in effect upon separation. An employee may only receive this payout once, no matter how many times they are re-employed with the State of Nebraska. Payment for one-fourth (1/4) of the accumulated unused sick leave balance in the case of separation or death shall not exceed four hundred and eighty (480) hours.

005.12A Employees who are at least fifty-five (55) years of age, who are laid off, shall have the option to defer the payment of one-quarter (1/4) of their sick leave account for up to twelve (12) months.

Should the laid off employee return to Department employment within twelve (12) months, the employee's sick leave balance and service dates shall be reinstated (minus time in a non-pay status). Should the laid off employee not obtain further Department employment at the end of the twelve (12) month period, the Department shall pay the employee one-quarter (1/4) of their sick leave account, not to exceed four hundred and eighty (480) hours.

005.13 If an absence extends beyond the sick leave accrued to the credit of the employee, such employee ~~may~~ shall be required to utilize (1) accumulated unused compensatory time off and (2) accrued vacation leave, in that order. For purposes of this subsection, accrued sick and vacation leave does not include advanced sick and vacation leave. After all accrued sick leave, compensatory time off, and vacation leave have been exhausted, the employee, upon written request, may be granted leave without pay (outside FML in Section 006 of this Chapter) at the discretion of the appropriate Leadership Council Member or Commissioner's designee. However, granting such leave without pay is discouraged and should not be done on a regular basis. Written notice regarding the leave without pay must be provided to the ~~Department's~~ Human Resources Office.

006 Family and Medical Leave (FML). Family and Medical Leave (FML) is unpaid time off from work and is subject to the provisions of 29 CFR 825. An employee must have at least twelve (12) total months of State service and have worked at least 1250 hours in the previous twelve (12) month period to be eligible for FML. Employees may request that accrued paid leave (e.g., vacation, sick) and compensatory time, if the employee is subject to Chapter 8, Section 004 of this Title, be applied along with the unpaid FML entitlement. In this case, any paid leave will run concurrently with the FML entitlement.

Employees who are absent and receiving Worker's Compensation benefits, or using any paid leave exceeding 40 hours for full-time employees or exceeding the number of hours proportionate to the percentage of FTE for part-time employees taken for any of the reasons listed in Section 006.03 of this Chapter will have such leave credited against the twelve (12) week FML entitlement. Unpaid FML not charged to sick or vacation is subject to service date adjustments under Section 014 of this Chapter.

If FML exceeds forty (40) hours during a twelve month period starting with the date FML is first used for full-time employees, or exceeds the number of hours proportionate to the percentage of FTE for part-time employees, sick leave must be used concurrently if the reason for the FML is also a reason sick leave may be used under Section 005. If the reason for FML is not also a reason sick leave may be used, or if and when accumulated sick leave is exhausted, such employee shall be required to utilize (1) accumulated unused compensatory time off if the employee is subject to Chapter 8, Section 004 of this Title and (2) accrued vacation leave, in that order until exhausted; however, vacation leave may be reserved in an amount up to forty (40) hours for full-

time employees, or proportionate to the percentage of FTE for part-time employees unless Catastrophic Leave is requested per Section 013 of this Chapter.

006.01 Notice of Intent to Use Family and Medical Leave. An employee must provide a minimum of thirty (30) calendar days notice to the Department before he/she may use Family and Medical Leave. Where thirty (30) calendar days notice is not foreseeable, notice must be given as early as possible. If certification of a serious health condition is required, FMLA forms should be obtained from the ~~Department's~~ Human Resources Office.

006.02 Family and Medical Leave Duration. Total unpaid leave time taken for Family and Medical Leave is limited to twelve (12) weeks within a twelve (12) month period, starting with the date the Family and Medical Leave is first credited against the twelve (12) week entitlement pursuant to Section 006 of this Chapter. Employees may use accrued sick leave beyond the twelve (12) week Family and Medical Leave limitation for appropriate sick leave reasons as defined in Section 005.02 of this Chapter, with proper certification from a health care provider. Family and Medical Leave cannot be carried forward beyond the twelve (12) month period and banked for future use.

Incremental Use. With the approval of the Department, Family and Medical Leave may be taken in increments with proper medical certification. Federal law allows employees not eligible for overtime to make incremental use of unpaid Family and Medical Leave without affecting their "salaried" status.

006.03 Conditions for Using Family and Medical Leave. An employee may use Family and Medical Leave for the following reasons:

006.03A Birth of a child of the employee and care for that newborn child;

006.03B Placement of a child with the employee for adoption or foster care;

006.03C In order to care for the employee's spouse, child, or parent, if such spouse, child, or parent has a serious health condition.

006.03C1 Spouse means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized. Child may include a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under eighteen (18) years of age or is eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability. Care for mother-in-law or father-in-law is not included. However, parent may include

individuals other than natural or adoptive parents who served in a long-term parental role for the employee.

006.03D A serious health condition that makes the employee unable to perform the functions of the employee's job.

006.04 Definition of Serious Health Condition. Serious health condition shall mean illness, injury, impairment, or physical or mental conditions that involve:

006.04A In-patient care in a hospital, hospice, or residential medical care facility including any period of incapacity or any subsequent treatment in connection with such in-patient care; or

006.04B Continuing treatment by a health care provider as provided for in 29 C.F.R. §825.115.

006.04C Examples of serious health conditions include: heart attack, heart by-pass or valve operations, most cancers, back conditions requiring extensive therapy or surgery, strokes, severe respiratory conditions, spinal conditions, severe arthritis, severe nervous disorders, mental illness, need for prenatal care, severe morning sickness, childbirth, and recovery from childbirth. This does not include voluntary or cosmetic treatments, unless inpatient hospitalization is required.

006.05 Certification of Serious Health Conditions. Except as provided in Section 006.08, ~~W~~when requesting Family and Medical Leave for a serious health condition, an employee must provide certification from a health care provider, which includes:

006.05A The date on which the serious health condition commenced;

006.05B The probable duration of the condition;

006.05C The appropriate medical facts within the knowledge of the health care provider regarding the condition;

006.05D A statement that the employee is needed to care for the child, spouse, or parent, and an estimate of the amount of time that such employee is needed to care for the child, spouse, or parent; or a statement that the employee is unable to perform the functions of the job; and

006.05E In the case of certification for intermittent leave, or leave on a reduced leave schedule, a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave

schedule; or a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the child, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule. In the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment should be included.

006.06 Medical Second Opinions. The Department may require a second opinion, (the Department's choice of health care provider), and must pay for the cost of the second opinion. If the second opinion differs from the first, a third opinion may be sought, from a mutually agreed upon health care provider, again, at the Department's expense. The results of the third opinion are final.

006.07 Multiple Health Conditions. In the event the employee is requesting leave due to more than one serious health condition, the certification must specifically address each individual condition. Separate forms shall be submitted as appropriate. Regardless of whether a single or multiple health condition(s) is/are involved, the limits in Section 006 of this Chapter apply.

006.08 When paid leave will be used for an absence, which may qualify as Family/Medical Leave, medical certification may be requested at the Department's discretion.

006.0~~8~~9 Health Insurance While on Family and Medical Leave. Employer health insurance contributions shall continue during an employee's unpaid Family and Medical Leave absence, provided the employee makes his/her required contribution. Employer contributions shall be based as if the employee had continued to work his/her normal schedule.

006.10~~9~~ Workers' Compensation and Family and Medical Leave. If an employee requests Family and Medical Leave due to an injury or illness qualifying for Workers' Compensation, the Department will contact the Division of Administrative Services - Risk Management, for coordination of Workers' Compensation and Family and Medical Leave benefits.

007 Family Military Leave. Family Military Leave is available to employees in accordance with the terms and conditions of the *Nebraska Family Military Leave Act*, Sections 55-501 through 55-507 R.R.S. and the amendments to the Family Medical Leave Act made by the National Defense Authorization Act (NDAA) of 2008 (29 U.S.C. §2612 et.seq.).

007.01A Requesting employees shall provide the Department with certification from the proper military authority to verify eligibility for the leave taken under Sections 55-501 through 55-507 R.R.S.

007.01B Requesting employees shall provide the Department with certification by the covered service member's health care provider for leave requested to care for that service member under the provisions of the National Defense Authorization Act amendments to the Family Medical Leave Act.

007.01C Requesting employees shall provide the Department with such certification as may be provided for through regulations issued by the United States Secretary of Labor for leave requested for a "qualifying exigency" arising out of the fact that an employee's spouse, son, daughter or parent is on active duty, or has been notified of impending call for active duty, in the Armed Forces in support of a contingency operation under the provisions of the National Defense Authorization Act amendments to the Family Medical Leave Act.

008 Bereavement Leave. Up to forty (40) hours paid bereavement leave may be granted to employees for a death in the immediate family. For a death not in the immediate family, up to eight (8) hours leave with pay may be granted. For purposes of this Section, immediate family shall mean spouse, parents, grandparents, siblings, children including foster children, grandchildren, spouse of any of these, or someone who bears a similar relationship to the spouse of the employee. Step-persons bearing these relationships are included. At the discretion of the appropriate Leadership Council Member or Commissioner's designee, bereavement leave benefits may be extended for other individuals with a similar personal relationship (e.g., acted as a mother, father, etc.) to the employee as that of an immediate family member. The hours of bereavement leave that may be granted to part-time employees shall be proportionate to the percentage of FTE that they work. Bereavement leave shall not be charged to sick leave or vacation leave.

008.01 Bereavement leave shall be available for a period of thirty (30) calendar days after the death, or first notice of the death, of an immediate family member, and for a period of fifteen (15) calendar days after the death or first notice of the death of persons not immediate family members. Exceptions due to extenuating circumstances may be approved by the appropriate Leadership Council Member or Commissioner's designee.

008.02 No employee shall be unreasonably denied the granting or advancement of up to an additional eighty (80) hours of vacation leave (prorated for less than full-time employees) when such additional time is available and necessary to settle personal matters related to a death in the immediate family. The granting of leave under this Chapter shall not prohibit or interfere with the granting of leave under any other Chapter or provision of this Title.

009 Administrative Leave. Administrative leave, with pay, may be granted by the Commissioner or Deputy Commissioner due to natural disasters, public health emergencies, inclement weather or other local work-related emergencies. ~~Administrative leave due to natural disasters or public health emergencies may be authorized only by the direction of the Commissioner or Deputy Commissioner.~~

~~Administrative leave with pay due to inclement weather or other local, work-related emergencies shall be granted in the following manner:~~

~~009.01 Lincoln area: (Nebraska State Office Building and other Lincoln offices) by direction of the Deputy Commissioner.~~

009.0~~2~~1 ~~VR Area administrators are delegated the responsibility for closing offices due to work-related emergencies, or inclement weather based on the closing of city offices in the pertinent location. Department employees officed at another agency's or entity's offices are subject to the closing decision of these agencies or entities unless otherwise directed. Information on closings shall be forwarded to the Deputy Commissioner and the Department's Human Resources Office.~~ When State offices, located in a building not owned or operated by the State, are closed by other than State officials due to inclement weather or other local work-related emergencies, employees have the following options, subject to advance approval by their immediate supervisor:

009.01A Report to work at a pre-arranged alternate worksite;

009.01B Telecommute from home if practicable due to the nature of the work, as determined by the appropriate Leadership Council Member or Commissioner's designee.

009.01C Use accrued vacation leave, earned compensatory time, or leave without pay as a last resort.

009.01D Make up the missed work time within the work week.

009.01E Absent the ability to exercise any of the above options, employees may be placed on ready to work status. This means they are ready and available to be called back to a work location at any time. Employees in a ready to work status will be compensated and shall perform any state work possible during this status. Ready-to-work status is intended for office closures that are due to clearly unanticipated occurrences such as flooding, fire or other building damage. It is not intended for when the circumstances that resulted in the office closure were reasonably predictable in advance by the Department and the employee, such as a snow storm predicted in advance. In such cases, the employee and his or her supervisor or other designee are to communicate and make arrangements in advance in regard to possible alternate work locations.

009.0~~3~~2 If ~~s~~State offices remain open during inclement weather or other work-related emergencies, employees are expected to make a reasonable effort to report for work or make alternative arrangements for work with their supervisor.

Employees who fail to report for work shall be charged compensatory time, vacation leave, or leave without pay. The appropriate Leadership Council Member or Commissioner's designee, or the immediate supervisor, if authorized by the appropriate Leadership Council Member or Commissioner's designee, may grant permission to both exempt and non-exempt employees to make up missed hours during the same week rather than requiring them to use compensatory time, vacation leave or leave without pay.

009.04 Nonexempt and exempt ~~E~~employees who report for and remain at work in periods during which administrative leave was authorized shall be granted compensatory time off, to be used at a later date.

010 Military Leave. Employees shall be eligible for Military Leave in accordance with applicable federal and state laws. This leave is limited to one hundred and twenty (120) hours a year, with no accumulation of unused leave carried over to the following calendar year. Such military leave may be taken in hourly increments.

011 Civil Leave. The employee shall provide the Department with documentation to verify eligibility for civil leave. Civil leave does not include leave for military duty in connection with national defense, national disaster or civil disturbances. Employees (including temporary) shall be eligible for paid civil leave under the following conditions:

011.01 Jury Duty. When an employee is called to serve as a juror, civil leave without loss of pay shall be granted during the time when the employee's physical presence is required by the court. Employees will return to work when the employee's physical presence is not required by the court.

011.02 Election Board Duty. When an employee serves as a juror, clerk, election inspector, or judge of an election board or a counting board, civil leave without loss of pay shall be granted during the time when the employee's physical presence is required by the court or the board. The employee shall also retain all fees paid them for their civil service.

011.03 Voting Time. An employee who is a registered voter and does not have two (2) consecutive hours in the period between the time of the opening and closing of the polls during which he or she is not required to be present at work for the Department is entitled on election day to be absent from employment for such a period of time as will, in addition the employee's nonworking time, total two (2) consecutive hours between the time of the opening and closing of the polls. If the employee applies for such leave of absence prior to or on election day, paid civil leave of two (2) hours will be granted. The Department may specify the hours during which the employee may be absent. The two (2) hours authorized for voting does not apply to those employees who choose to vote by the use of an absentee ballot or who by reason of their employment must vote by use of an absentee ballot.

011.04 Court/Hearing Appearances. While serving as a witness under a work-related subpoena or voluntarily at the request of the Department, the employee shall be excused from work with pay during the time that the employee's presence is required by the court or administrative body which issued the subpoena, or as required to testify when requested by the Department. At all other times during the employee's regular work day, the employee who is subject to a work-related subpoena shall be on the job and working. Any witness fee received under such subpoena shall be remitted to the funding source from which the employee's salary is paid.

Employees attending court or an administrative hearing as a plaintiff, defendant, or witness on non-work related matters, shall use vacation leave or earned compensatory time, if available. If the employee does not have vacation leave or compensatory time available, the appropriate Leadership Council Member or Commissioner's designee may grant leave without pay. In the event the employee is subpoenaed for non-work related matters and does not have vacation leave or compensatory time, the appropriate Leadership Council Member or Commissioner's designee shall grant leave without pay. Any witness fees paid to the employee for such court appearances may be retained by the employee.

012 Miscellaneous Leave. Employees shall be eligible for the following types of leave:

012.01 Interviews. Interviews with employees for positions within the Department shall be performed during work hours. Time spent for interviews, and travel to attend such interviews which occur during the employee's regular work day shall be compensable.

012.02 Leave of Absence. Employees with at least three (3) years of Department service are eligible for a leave of absence without pay. A leave of absence of three (3) months or less for professional advancement, special training, or other good and sufficient reasons may be granted by the Commissioner. A leave of absence of more than three (3) months is subject to approval by the State Board of Education, which will review the request and the recommendation of the Commissioner of Education. Such leave of absence shall be requested in writing to the Commissioner through the appropriate member of the Leadership Council. ~~Leaves of absence may be with or without pay, or a combination thereof, at the determination of the Department.~~

012.02A At the expiration of an approved leave of absence, employees shall return to a position of a similar classification or pay grade as the position the employee held prior to leave, if available. If no such position is available, the employee shall be considered "laid off" under the provisions of Chapter 12 of this Title. Failure on the part of an employee to return to work on the agreed upon date, except for satisfactory reasons submitted to and approved by the

Commissioner prior to the agreed upon return date, may be cause for dismissal.

012.02B Vacation and sick leave shall not accrue while on leave of absence without pay. However, vacation and sick leave earned but not used prior to leave of absence shall be carried forward upon employee's return to duty.

If the State or Federal program from which the employee was paid prior to the leave is terminated during the leave, the Department may choose to pay the employee on leave for his/her unused vacation leave balance.

012.03 Leave to Donate Blood. With the advance approval of their immediate supervisor, employees may be allowed paid time away from the job to donate blood in state-sponsored drives held in state offices, or to donate blood at the request of blood banks or centers facing a blood supply emergency. The amount of leave time granted shall be at the discretion of the immediate supervisor.

Donating blood under circumstances unrelated to state-sponsored drives or supply emergencies shall require employees to obtain advance approval to use vacation leave or to adjust their work hours to complete a full work day.

012.04 Employee Assistance Program. Employees attending Employee Assistance Program (EAP) sessions at the Department's direction shall do so at the Department's expense and may attend during work time. If an employee wishes to voluntarily attend EAP sessions in order to address personal issues that are affecting work performance, supervisors may authorize the employee to do so during work time without being charged sick or vacation leave. Employees attending EAP sessions on their own initiative shall do so at their own expense and shall use approved sick or vacation leave, compensatory time, or leave without pay.

012.05 Retirement Seminars. Leave with pay shall be provided to eligible employees to attend up to two (2) planning seminars and two (2) pre-retirement planning programs presented by the Nebraska Public Employees Retirement Systems.

012.06 Injury Leave. Employees who are subject to the provisions of the Workers' Compensation Act are entitled to the benefits of that law due to injury or occupational disease arising out of and in the course of their employment.

012.06A Injury or occupational disease arising out of and in the course of employment shall be reported to the ~~Department's~~ Human Resources Office as soon as possible. See Chapter 15, Section 009 of this Title for additional information on Worker's Compensation.

012.06B Employees entitled to be paid Workers' Compensation shall be granted injury leave with full pay for the first five (5) work days they are unable to work due to injury or due to treatments for such injury, including the day of injury (if inability to work began on that day). At the expiration of injury leave, provisions of the Workers' Compensation Act shall apply. Injury leave shall not be charged to vacation or sick leave.

012.06C Employees who are receiving Workers' Compensation for injury or occupational disease occurring out of and in the course of employment, shall have the option of electing to use accumulated unused sick and/or vacation leave and accumulated unused compensatory time (if applicable) to supplement Workers' Compensation up to but not exceeding the regular rate of pay. Employees electing this option shall be charged sick or vacation leave or compensatory time, and earn sick and vacation leave in proportion to the percentage of gross wages paid by the Department. The Department's share of the health insurance premium will be paid during an absence under Workers' Compensation after all accrued leave and compensatory time have been depleted. ~~Sick and vacation leave shall accrue during a period of absence that is being paid for by Workers' Compensation only in proportion to the amount of sick or vacation leave used during the period, if any.~~ Employees on Workers' Compensation shall be treated as part-time employees for purposes of leave earnings. They shall earn prorated sick and vacation leave based on the number of hours worked and/or accrued leave time hours used to supplement the Workers' Compensation payment. If employees do not have, or choose not to use, accrued leave time to supplement the Workers' Compensation payment they will earn leave time only on the number of hours worked, if any.

012.06D Holidays occurring during a pay period during which Workers' Compensation benefits are received shall be paid at a rate proportionate to the number of hours worked and/or accrued leave time hours used during the pay period.

012.07 Disaster Relief Leave. Employees who provide proof of their disaster relief volunteer certification with the American Red Cross may, with appropriate supervisory authorization, be granted paid civil leave, not to exceed fifteen (15) work days in each calendar year, to participate in specialized disaster relief services in Nebraska for the American Red Cross, upon the request of the American Red Cross.

012.08 Adoption Leave. The mother or single parent father of a newly adopted child shall, upon a request~~,~~ that is within thirty (30) calendar days of such adoption, receive ~~the same leave allowances as an employee who is a new mother by natural birth. This leave is~~ up to six (6) weeks of leave, which is the generally accepted medical standard leave period for new mothers by natural birth. The leave shall be taken first as sick leave, and if and when sick leave is exhausted, then as vacation leave, or compensatory time, if available. FMLA leave is also available in accordance with provisions of Section 006 of this Chapter. A married father of a newly adopted child shall receive leave on the same terms as a father by natural birth per Section 005.02D of this Chapter.

An employee is not eligible for adoption leave if the child being adopted is a special needs child over eighteen (18) years of age, a child who is over eight (8) years of age and is not a special needs child, a stepchild being adopted by his or her stepparent, a foster child being adopted by his or her foster parent, or a child who was originally under a voluntary placement for purposes other than adoption without assistance from an attorney, physician, or other individual or agency which later results in a petition for the adoption of the child by the person with whom the voluntary placement was made.

012.09 Attendance at Legislative Hearings. Employees may be allowed to utilize vacation leave or compensatory time off (or modified work schedule for those employees who do not earn compensatory time) for the purpose of attending legislative hearings of their own choosing. Upon notification to the employee's supervisor of the purpose of such request for time off, said request may not be unreasonably denied. Such employee's supervisor shall be given as much prior notice as possible under the circumstances as to when such leave is proposed.

013 Catastrophic Illness Donation. The provisions of this Section are non-grievable. Employees may contribute accrued vacation leave to benefit another employee in the Department who is personally experiencing a catastrophic illness. The recipient must initiate a request by completing and signing a donation request form provided by the Department. Leave shall be donated in no less than four (4) hour increments. The contributing employee must complete and sign a donation authorization form provided by the Department and identify the number of hours of vacation leave being donated and the recipient. Vacation leave donated to, and used by, another employee pursuant to this provision cannot be returned to the credit of the donor's vacation leave account. Catastrophic Leave will be available only to employees who have exhausted their own paid leave through bona fide serious illness or accident.

013.01 Recipient Eligibility. In order to receive a leave donation employees must:

013.01A Be experiencing a serious illness or injury that requires a prolonged absence of at least thirty (30) consecutive calendar days during the past six (6) months;

013.01B Produce satisfactory medical verification of the requirements of Section 013.01A of this Chapter;

013.01C Have one (1) year of service to the Department;

013.01D Have exhausted all earned paid leave time including compensatory time, sick leave, and vacation leave through bona fide serious illness or accident; and,

013.01E Not have offered anything of value in exchange for the donation.

013.02 Donor Eligibility. In order to make a leave donation employees must:

013.02A Not have solicited nor accepted anything of value in exchange for the donation; or,

013.02B Have remaining to his/her credit at least forty (40) hours of accrued vacation leave after the donation has been made.

013.03 Donation Value Conversion. Leave donated will be converted to a dollar value and then converted to hours based on the recipient's hourly rate. No more than 800 converted hours of donated leave may be received by an employee during a twelve (12) month period.

013.04 Donation Period. Donations cannot be retroactively applied to the thirty (30) consecutive calendar day qualifying period required in Section 013.01A of this Chapter.

014 Service Date Adjustments. The employee's service dates shall be adjusted when an unpaid absence exceeds fourteen (14) consecutive calendar days. The adjustment will correspond to the number of days the employee is on unpaid leave. Employees may apply available, accumulated paid leave on their monthly timesheet in order to prevent a service date adjustment, to qualify for paid holiday leave, or for other reasons, in no less than eight (8) hour increments for purposes of this Section. One (1) work day shall be eight (8) hours for a full-time employee or the corresponding percentage of FTE for part-time employees.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 10 -- PERFORMANCE APPRAISALS

001 Conducting Appraisals. Employees shall be appraised on their job performance at regular intervals ~~as determined appropriate by Department supervisors~~ per Chapter 5, Section 006.03 of this Title. ~~Performance appraisals shall be completed on forms developed and/or approved by the Deputy Commissioner.~~

002 Special Performance Appraisal. A special performance appraisal may be submitted whenever the supervisor desires to record instances of performance worthy of recognition, either favorable or unfavorable. Reasons for submission of a special performance appraisal shall be explained in the comments section of the appraisal.

003 Signing the Appraisal. The signatures on the appraisal indicate that the appraisal has been reviewed and discussed. The employee's signature does not imply agreement with the appraisal. Within ~~five (5) work~~ seven (7) calendar days of receipt of the appraisal, employees may submit a written statement that shall ~~be attached to the appraisal and~~ become a permanent part thereof. No additional written observation shall be made on the appraisal after the employee has signed the appraisal without notification to the employee. Employees shall be provided with either electronic access to, or a paper or electronic copy of, the completed performance appraisal ~~immediately after the Reviewer's signing of the appraisal~~.

004 Grievance. Employees shall not grieve the subjective content of a performance appraisal under the provisions of Chapter 14 of this Title. They may, however, grieve the validity of the appraisal as provided below:

004.01 A grievance may be filed if the evaluated employee can establish discrimination by reason of sex, race, color, age, national origin, marital status, religion, ~~or~~ disability, or genetic information (as prohibited by the Genetic Information Non-discrimination Act [GINA] and Section 48-236 R.R.S.); the evaluator maliciously misrepresented an employee's manner of performance; the evaluator provided false information on the appraisal instrument; or the evaluator was not in a direct supervisory or management position covering the daily work of the employee being evaluated.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 11 -- PERSONNEL FILE INFORMATION

001 Home Address. All employees are required to provide a current physical home address to the ~~Department's~~ Human Resources Office.

002 Content. Personnel records shall include all information stored in any form by the ~~Department's~~ Human Resources Office which is personally identifiable with an individual employee or former employee. The Department agrees to maintain one official Department personnel file per individual for the provisions of this Chapter. The one official Department personnel file will be maintained at the State Office Building in the ~~Department's~~ Human Resources Office. Copies of materials from the official personnel file on an employee may be maintained at the work site of the particular employee.

002.01 Public Information. Public information contained in personnel records shall consist only of the full name of the employee; the employee's job title and date(s) of employment; a statement as to whether the individual is or was an employee of the Department; the employee's work location and work phone number; and the gross salary of the employee. Public personnel information shall be provided to any party requesting it. Additionally, pursuant to Section 84-712.05(15) R.R.S., all "job application materials", as defined in that subsection, that are submitted by persons who are hired and become employees of the Department, are public records and are required to be provided upon proper request under the state public records laws.

002.02 Confidential Information. Confidential information contained in personnel records shall include all information ~~which~~ that is not considered public information. Confidential information shall be released only to the employee; the Board; any Department administrator or supervisor in the line of authority to the employee; staff from the ~~Department's~~ Human Resources Office or the ~~Department's~~ General Counsel's Office; any governmental law enforcement, or investigative agency or representative upon presentation of proper identification to the ~~Department's~~ Human Resources Office; a subpoena or court order; anyone who presents a ~~notarized~~ document signed by the employee granting access to confidential information, or as reasonably needed for the Department to defend itself in any legal or administrative proceeding brought against the Department or any of its officials or employees in their professional capacities, or as reasonably needed by the Department to prosecute legal or administrative actions brought by the Department.

003 Inspection and Copies. An employee of the Department shall be allowed to inspect and/or obtain a copy of their own personnel file maintained by Human Resources at any time during work~~ing~~ hours. ~~It is understood that such original files cannot be removed from the premises.~~ Upon ~~the~~ an employee's specific request to the ~~Department's~~ Human Resources Office ~~by an employee~~, the ~~Department~~ Human Resources Office will, within ten (10) work days, provide ~~either~~ electronic access or copies of the specific documents requested ~~or copies thereof or the original personnel file or a copy thereof for the employee's review at the worksite~~.

004 Cost. The cost of any copies of the files will be assumed by the Department unless said copies are of material which had been provided the employee, in which case the cost of such copies shall be assessed to the employee at the rate per copy charged for public records per the Department's Administrative Memorandum #606.

005 Notice. Employees shall be notified by the Department in writing within ten (10) work days of any information being placed in their personnel file by persons other than the employee which information bears upon the character of the employee or the employee's job performance. The Department will be required to reproduce the information for the employee in accordance with Section 003 of this Chapter.

006 Release of Information. All third party inquiries requesting information regarding the employment record of an employee shall be directed to the ~~Department's~~ Human Resources Office. Upon receipt of a completed release of information form, the Human Resources Office will provide the requested information. When the employee does not specify on the release form the information to be disclosed, Human Resources will disclose to the authorized third party the information described in Section 48-201 R.R.S. When a request for other than public information is received, and a completed release form is not on file to allow release of the requested information, ~~T~~the ~~Department's~~ Human Resources Office shall forward an Authorization for Release of Employment Records form to the employee or the requestor ~~who shall be responsible for securing a written authorization from the former employee and returning the form to the Department's Human Resources Office. Upon receipt of a completed and notarized release form, the Department's Human Resources Office shall provide the information to the requestor~~. If no written authorization is received, the ~~Department's~~ Human Resources Office shall release only public information. The release form shall be retained in the employee's personnel file. Documented employment information from a current or former employee's personnel file shall be shared with other state agency human resources staff or hiring supervisors, upon request, when the current or former employee has applied for a position in another department/division/agency on the basis of the release on the state job application.

007 Medical Records. Employee records of medical examination and other miscellaneous medical records will be maintained ~~in~~ electronically by ~~the~~ ~~Department's~~ Human Resources ~~Office in a~~ separate ~~locked filing cabinet~~ from personnel file documents. ~~Appropriate steps will be taken to safeguard the confidentiality of~~ Access to medical records ~~to assure their access~~ will be provided only to personnel who require them to carry out an assigned responsibility.

008 Post-~~E~~employment. This Chapter does not cover the inclusion of information in any employee's personnel file following termination of the employee. Former employees shall have reasonable rights of access to their Department personnel file, subject to the provisions in this Title.

001 Effective. A resignation is effective when accepted in writing or orally by a supervisor or any member of the ~~Department's~~ Human Resources Office or the ~~Department's~~ General Counsel's Office.

001.01 Absent extenuating circumstances, an employee will be considered as abandoning his/her job if absent from their designated work site more than two (2) consecutive work days without giving notice. Abandonment is considered a voluntary resignation.

002 Payment for Vacation Leave. Vacation leave not used prior to the last day of employment shall be paid to the employee in one lump sum, to be mailed to the employee after termination except as provided for in Chapter 9, Section 004.05 of this Title.

003 Determining Authority. The Commissioner, after providing written notification to the Board, may separate any employee without prejudice after thirty (30) calendar days written notice, because of reduction in funds or in work load. It shall be left to the discretion of the Commissioner to determine whether the layoff shall be geographical, organizational, program, by classification, or any combination thereof.

004 Layoff General Rules. When a layoff of employees occurs, the following general rules shall apply:

004.01 Layoffs shall be identified by the budget and program areas within a specific locality. The Department shall identify the classification(s) and affected positions within classification(s) for layoff to provide the most efficient and productive operation of the Department. Within the identified classification(s), the order of layoff will be based on seniority (based on the Department service date or Department ~~adjusted~~ company service date as opposed to any adjusted service date that is calculated due to prior State service at another State Agency).

005 Transfer Rights – Vacant Positions. Employees who have received written notice of layoff shall have the right to exercise transfer rights under this Section. If there is a vacant position in the Department for which the employee satisfies the qualification requirements as determined by the Department, the employee may elect to transfer to such vacant position.

005.01 Within eight (8) calendar days of a laid off employee being provided such notice, the employee must notify the Department in writing of any intentions to transfer in accordance with this Section.

005.02 If more than one laid off employee elects to transfer into a vacant position, the selection will be made based on seniority.

005.03 In determining the priority of transfers identified in this Section, transfers to vacant positions in the same geographical area (i.e., within sixty [60] miles) shall be given priority over transfers to positions in a different geographical area.

005.04 An employee who transfers to another position in the same classification shall be transferred so as to effectuate no loss in pay.

006 Recall and Re-employment. This Section specifies how laid off employees shall be either recalled or given re-employment opportunities for vacancies created following a layoff.

006.01 Recall to Previously Eliminated Position. Following a layoff, when a previously eliminated position is restored, the employee occupying the position at the time of reduction in force shall have recall priority subject to Sections 006.02A through 006.02C of this Chapter. The recall salary will be based on the salary rate in effect at the time of layoff.

006.02 Recall to Vacancy in the Same Classification Series. Following a layoff, when a vacancy is created in the same classification series, employees who satisfy the required qualifications as determined by the Department shall be recalled in reverse order of a layoff or transfer in lieu of layoff as follows:

006.02A At the time the vacancy occurs, the Department shall notify the first five (5) qualified employees in line for recall of the vacancy.

006.02B Such employee(s) shall then have ten (10) work days following date of notification to accept or refuse the recall by providing written notice to the Department. The recall vacancy will be offered to the employee with the most seniority who provides written acceptance within ten (10) work days.

006.02C Failure to Respond. Employees who fail to respond by either accepting or refusing the recall vacancy on two (2) successive notifications shall forfeit further recall rights.

006.03 Re-employment Opportunities. In the event that a vacancy occurs as provided in Section 006.02 of this Chapter and there are no persons laid off or transferred in lieu of layoff who held a position in the classification series at the time layoff began, the Department shall notify all laid off employees of the vacancy and the qualifications required to hold the position. Such employees shall then have ten (10) calendar days following receipt of such notice to apply for said position. The Department has the right to hire the most qualified applicant.

006.04 The pay rate of an employee who occupies a position of a lower classification as a result of recall from layoff or re-employment shall be set in accordance with Chapter 6, Section 004 of this Title.

006.05 Financial Assistance for Relocating. In cases in which employees have received state financial assistance, per Chapter 15, Section 017 of this Title, in geographically relocating to avoid layoff, there shall be no requirement for such assistance if recalled to their previous position.

007 Time Period for Recall and Re-employment. During the twelve (12) month period following layoff or transfer in lieu of layoff of the employee, no new employees will be hired to fill vacant positions until all employees on layoff or transfer in lieu of layoff who desire to return to work and who are qualified for the vacant position(s) have had the opportunity to be recalled or re-employed per Section 006 of this Chapter. It shall be the responsibility of the employee who was laid off or transferred in lieu of layoff to be available for recall or re-employment during such time, and such employee shall be responsible for providing the Department with a current address. It shall be the responsibility of the employee who was laid off or transferred in lieu of layoff to update and/or supplement the written documentation in their personnel file regarding their employment qualifications so as to allow the Department to evaluate their eligibility for recall or re-employment under Section 006 of this Chapter.

007.01 During the twelve (12) month period, employees may waive their rights to receive recall and re-employment notice rights contained in this Chapter by providing a written statement to the ~~Department's~~ Human Resources Office.

008 Accumulated Leave Payoff. Employees who are laid off shall be paid at the time of layoff for all accumulated and unused vacation leave, sick leave if eligible under Chapter 9, Section 005.12A of this Title, compensatory time, and overtime. Statutory provisions for the retention of vacation and sick leave shall not be modified by this Chapter.

009 Notification. "Notification," as used in this Chapter, shall mean Certified Mail to the employee's last known address, or personal delivery, or deposit at last known residence. Notifications issued to an individual employed at the Department may be made by e-mail or personal delivery to the employee's office. In the event of personal delivery, a receipt acknowledging delivery will be signed by the laid off employee.

001 Grounds. Grounds for corrective, disciplinary action, and/or dismissal include, but are not limited to:

001.01 Violation of, or failure to comply with, the State Constitution, any statute; an executive order; published rules and regulations of the Department; Department policies or procedures including work rules, this Chapter, or administrative memoranda.

001.02 Failure or refusal to comply with a lawful order or to accept a reasonable or proper assignment from an authorized supervisor.

001.03 Inefficiency, incompetence, or negligence in the performance of duties.

001.04 Careless, negligent, improper, or unsafe use of state property, equipment, or funds; or, conversion of state property. This includes transmitting threatening, obscene, or harassing material through the State's communication systems.

001.05 Use of bribery or undue influence to gain or attempt to gain promotion, leave, favorable assignment, or other individual benefit or advantage.

001.06 Falsification, fraud, or willful omission of information when applying for a position, applying for or renewing required credentials, performing the duties of a position, or completing records or reports relevant for the Department.

001.07 Unauthorized or improper use of any type of leave, repeated tardiness, repeated failure to comply with scheduled work hours, including meal or rest periods, or absence without approved leave.

001.08 Failure to maintain satisfactory working relationships with the public, other Department employees, supervisors or managers, or with persons placed under the direct care and responsibility of the employee.

001.09 Failure to obtain and maintain a current license or certificate required by law or Department standards as a condition of employment.

001.10 Violation of any provision of the Department's Code of Ethics under the provisions of Chapter 16 of this Title.

001.11 Conviction of a felony or a misdemeanor when the conviction involves any act or conduct that also meets the grounds of Section 001.12 of this Chapter.

001.12 Conduct which brings discredit to the Department, the State, or which impairs an employee's services and/or the Department's performance or function.

001.13 Unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance or alcoholic beverage in the workplace or reporting for duty under the influence of alcohol and/or unlawful drugs.

001.14 Insubordinate acts of language which seriously hamper the Department's ability to control, manage, or function.

001.15 Acts or conduct (on or off the job) which adversely affects the employee's performance and/or the successful completion of the Department's performance or function.

001.16 Unlawful work place discrimination (harassment) based in whole or in part, on race, color, sex, sexual orientation, religion, age, disability, or national origin, which manifests itself in the form of unwelcome comments, jokes, printed material, and/or unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.

001.17 Display of obscene materials and/or the utterance of offensive comments in the workplace that are derogatory toward a group or individual based upon race, sex, sexual orientation, color, religion, disability, age, or national origin.

001.18 Possession of any type of firearm during the course of performing their job. The prohibition includes transporting firearms into any work site or in a state vehicle.

002 Suspension With Pay. A suspension with pay is an ordered absence from duty while on full pay status for a prescribed period of time. A suspension with pay may be ordered only upon approval of the Deputy Commissioner. This action allows for: an immediate response to a suspected but not fully substantiated offense; a period in which an investigation can be thoroughly pursued as expediently as possible; or, for other reasons at the discretion of the Deputy Commissioner. Suspensions with pay are not grievable.

002.01A The ordered suspension with pay shall be in writing, signed by the Deputy Commissioner, and shall become part of the employee's official personnel file. If the employee is absent when a suspension with pay is ordered, the Deputy Commissioner shall direct written notice to the employee either by Certified Mail with instructions to "Deliver to Addressee Only, Return Receipt Requested" or by personal delivery, or deposit to the employee's last known address.

002.01B If a suspension with pay is ordered to allow for an investigation of a suspected offense, and if the offense is not substantiated, then the ordered suspension shall be removed from the employee's personnel file.

002.01C In the absence of the Deputy Commissioner, the appropriate Leadership Council Member or Commissioner's designee may order an employee's suspension with pay for up to ten (10) calendar days. Upon the Deputy Commissioner's return, the Deputy Commissioner will affirm or modify the suspension with pay within five (5) calendar days.

003 Corrective Action.

003.01 Oral Counseling. This is an informal level of corrective action. It is a warning given by an immediate supervisor in conference with an employee in which the matter that caused the corrective action to be taken is discussed and the employee is advised what action is expected of him/her to correct the problem. A written record of the oral counseling may be prepared if a copy is provided to the employee; however, no record of it shall be placed in the employee's personnel file.

003.02 Written Warning. When, in the opinion of the supervisor, oral counseling is not an adequate measure to correct the deficiency, a written warning, which shall be considered a corrective action, may be imposed. The written warning must be fully documented and must include an oral conference between the supervisor and the employee at the time the written warning is presented or as otherwise agreed to by both parties. The written narrative shall be consistent with the oral conference. The written warning shall be dated, shall explain the reason for the warning, and shall explain the action expected of the employee to correct the cause or problem. Both the supervisor and the employee shall sign the written warning, and the employee shall be given a copy of the completed and signed warning. The employee's signature thereon does not imply agreement with the contents of the written warning, but only that he/she has seen it and understands it. The written warning shall be considered effective on the date that it is issued to and received by the employee.

003.02A Written warnings shall be issued on official forms the Department may designate for this purpose.

003.02B The employee has the opportunity to attach written rebuttal, clarification, or objection to the written warning within five (5) work days of receipt by the employee.

003.02C The written warning shall become inactive ninety (90) calendar days after having been issued to the employee unless the originating supervisor shall renew it by additional written commentary on the original form explaining the renewal.

003.02C1 When the written warning is renewed, the employee shall again have the opportunity to offer written commentary in response to the renewal and shall be provided with a copy of the annotated (renewed) form.

003.02C2 A written warning may be renewed no more than one (1) time.

003.02C3 All record of the written warning shall be removed from the employee's personnel file ninety (90) calendar days after it shall become inactive. It may only be retained by the Department in a separate file for warnings and may be referenced by the Department or employee in the event of litigation, personnel action, audit, or other administrative proceeding or complaint, if relevant.

004 Forms of Discipline. Four (4) forms of disciplinary action are available for supervisory use by the Department. The seriousness and/or nature of the situation will determine the form of discipline to be used. These are:

004.01 Suspension Without Pay. A suspension without pay is an ordered suspension from duty for a prescribed period of time for which no pay, vacation, sick, or holiday leave is granted, nor is vacation, sick, or holiday leave accrued. A suspension without pay may be ordered only upon written approval of the Deputy Commissioner.

004.01A The length of the suspension shall be determined by the Deputy Commissioner in view of the seriousness of the violation and/or continued violation after the employee has been duly warned.

004.01B An ordered suspension without pay shall be in writing and signed by the Deputy Commissioner, and shall become part of the employee's official personnel file. If the employee is absent when a suspension without pay is ordered, the Deputy Commissioner shall direct written notice to that employee by Certified Mail with instructions to "Deliver to Addressee Only, Return Receipt Requested" or personal delivery, or deposit to the employee's last known address.

004.02 Disciplinary Demotion. The movement of an employee from the present position to one of lesser responsibility and/or authority and to a lower salary, may be ordered only upon the written approval of the Deputy Commissioner, a copy of which is provided to the employee.

004.02A A request for disciplinary demotion shall be in writing with full documentation, signed by the supervisor and the appropriate Leadership Council Member or Commissioner's designee. The disciplinary demotion shall be signed by the Deputy Commissioner and shall become a part of the employee's official personnel file.

004.03 Administrative Probation. An administrative probation is a period of time, not more than six (6) calendar months, imposed by the appropriate Leadership Council Member or Commissioner's designee, for disciplinary reasons during which the employee must rectify the performance or behavior which led to the imposition of the disciplinary action. The notice of administrative probation shall be in writing, dated, and shall inform the employee of the reason for the probation, the action required for improvement, and state that failure to improve may result in further action. The employee shall acknowledge receipt of the probation notice by signing the document. The employee's signature on the notice of administrative probation does not imply agreement with the notice of administrative probation.

004.03A Employees placed in an administrative probationary status shall not be promoted or granted pay increases during the administrative probationary period.

004.03B Employees granted vacation, sick, holiday, bereavement, civil, administrative, or military leave while on administrative probation may have their probation extended by the number of days absent on leave.

004.03C The administrative probation may be extended by the Deputy Commissioner for a period not to exceed a cumulative total of one (1) calendar year. Reasons for such extension shall be made known to the employee in writing.

004.03D The termination of a permanent employee on administrative probation does not preclude the filing of a grievance by the employee.

004.03E An employee may be placed on administrative probation, upon return to work, following a suspension.

004.03F An employee may be removed from administrative probation at any time.

004.04 Dismissal. An employee may be dismissed from employment with the Department for failure to respond to previous disciplinary actions or when extreme circumstances render any preceding steps unnecessary or inappropriate.

004.04A The Commissioner shall recommend dismissal to the State Board of Education, and the decision to dismiss shall be made by the State Board of Education.

004.04B Prior to the Board making a final decision, the Commissioner may elect to take whatever action he/she chooses which affects the employee.

004.04C The Commissioner shall inform the employee in writing of a time at which the employee may present any additional facts, material, or evidence regarding his/her dismissal to the Commissioner. Failure by the employee to appear before the Commissioner shall act as a waiver by the employee to the aforementioned meeting prior to action by the State Board.

004.04D The employee may be represented by a third party in the meeting with the Commissioner, but the time, date and/or place of said meeting shall not be postponed or rescheduled because the representative of the employee is unable to attend unless both the Commissioner and the employee mutually agree to another time, date and/or place.

004.04E Within three (3) work days following the scheduled date of the meeting with the Commissioner, the Commissioner shall provide the employee a copy of his/her recommendations and the action which the Commissioner has decided to impose. A copy of the Commissioner's dismissal recommendation shall be forwarded to the Board. This written recommendation will be hand delivered or sent by Certified Mail to the employee. If an attempt to deliver is not successful, then delivery may be accomplished by personal delivery or deposit to the employee's last known address. The three (3) work day period may be extended upon agreement between the Commissioner and the employee. The letter shall also contain the following facts:

004.04E1 The employee may obtain a hearing before the Board or, at the Board's option, its designated hearing officer, by delivering a written request to the Commissioner within ten (10) work days of receipt of the Commissioner's letter of notice; and

004.04E2 The date, time, and place of the hearing will be communicated in writing to the employee.

004.04E3 When a hearing is held, the employee may be present and be heard, be represented by counsel, examine documentary evidence presented, cross-examine witnesses, offer documentary evidence, and present witnesses. Hearings shall be conducted in accordance with Title 92, Nebraska Administrative Code, Chapter 61.

004.04E3a The Hearing Officer's findings of fact and recommendation to the State Board and the State Board's order in a contested case shall be considered public records.

004.04F If no timely written request of a hearing is received by the Commissioner, the recommendation for dismissal shall appear in the Commissioner's Report (Consent Agenda), for the next regularly scheduled State Board of Education meeting.

004.04G When the Department determines that immediate disciplinary action is required for an employee not officed in Lincoln, the Commissioner or Deputy Commissioner may designate an individual to sign and deliver the notice of disciplinary action to the employee for the Commissioner or Deputy Commissioner. The disciplinary action will be effective immediately upon the receipt of such notice by the employee. The Commissioner or Deputy Commissioner will subsequently sign and forward a copy of such notice to the disciplined employee.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 14 -- GRIEVANCE PROCEDURE

001 Eligibility. All employees occupying a permanent position have grievance rights. Applicants, temporary employees, contract employees, and employees on original probation have no grievance rights within this Chapter. An employee who has successfully completed an original probation period shall retain grievance rights during subsequent probation periods per Chapter 5, Section 004 of this Title.

002 Definition. A grievance is defined as a contention of misapplication or violation of any of the following: Department policies, rules or regulations including these Personnel Rules, written administrative policies, other written operating procedures, laws, or written instructions pertaining to employees.

002.01 Effective Dates of Management Actions. Filing of a grievance does not delay the effective date of any management action. Initiation of a grievance related to suspension without pay or demotion shall not stay the effective date. In the event that a suspension without pay or demotion is not supported through the grievance procedures, the employee shall be returned to his or her position as though said suspension without pay or demotion had not taken place.

003 Non-Grievable Matters. The following issues, when done in compliance with established law, rule or Department policy, are examples of non-grievable matters. The list below is not to be considered all-inclusive:

003.01 Performance appraisals;
003.02 Department appointments, including promotions to positions;
003.03 Involuntary transfers not requiring the employee to relocate;
003.04 Leave of absence decisions;
003.05 Payment of moving expenditures;
003.06 Merit increase allocations;
003.07 Position classification, including, but not limited to, reclassification per Chapter 6 of this Title;
003.08 Investigatory suspensions with pay;
003.09 Pay adjustments pursuant to Chapter 7 of this Title; and
003.10 Fair Labor Standards Act (FLSA) status determinations;
003.11 Regardless of compliance with laws, rules, regulations, or Department policies, an employee may not grieve actions or inactions that were alleged to have been done to or concern another employee.

004 An employee may grieve layoffs (and/or transfer, recall and re-employment rights) only on the grounds of unlawful discrimination or failure to follow the provisions of the Personnel Rules in regard to the layoff.

005 Disciplinary Dismissals. Employees may contest disciplinary dismissals according to the provisions in Chapter 13, Section 004.04 of this Title.

006 Grievance Procedure. The employee may be accompanied at any step of the grievance procedure by a representative of the employee's selection. The Department may also be accompanied by a representative at any step. A grievance form shall be provided by the Department and made available to each and every employee upon request. This form is reproduced in Appendix A of this Title. No employee shall be denied the right to a grievance hearing by reason of the employee's failure to properly fill out or fully complete the grievance form. However, a signed grievance form must be utilized in order to file a grievance. The Grievance Procedure shall be as follows:

006.01 Step One. Within fifteen (15) work days of the employee's knowledge of the event or condition which caused the grievance, the grievant shall first request a meeting with the immediate supervisor and the next level of supervision. If an employee is placed on suspension with pay, the work days within that period are not counted against the fifteen (15) work day time frame. In cases where the next level of supervision is the Deputy Commissioner, then the Director of Human Resources shall attend the meeting as the Deputy Commissioner's designee. At the time the request is made, the employee shall notify the supervisor(s) in writing that the meeting will constitute Step One in the grievance procedure. Within five (5) work days of the request, the immediate supervisor, next level supervisor, or designee if applicable, and grievant shall meet. The supervisors shall arrive at a response and communicate the same to the grievant, in writing, within four (4) work days of the meeting. If the response is not satisfactory to the grievant, Step One of the grievance shall be reduced to writing by the employee on the approved form within three (3) work days of receipt of the supervisors' response and the supervisors shall have five (5) work days upon receipt of the written grievance to provide the grievant with a written answer. The grievant shall specifically identify the rules, procedures, or policies, as defined in Section 002 of this Chapter, that are contended to be misapplied.

006.01A In cases of disciplinary demotion or disciplinary suspension without pay the grievant shall proceed as specified in Step Four of this procedure without having to convene the meeting described in Section 006.01 of this Chapter. The appeal to the State Board referred to in Step Four below must be filed with the Commissioner, in writing on the appropriate form, within fifteen (15) work days of the grievant's receipt of the Deputy Commissioner's suspension order or disciplinary demotion approval.

006.01B In cases of administrative probation, the grievant shall submit the grievance to the Deputy Commissioner in writing on the appropriate form within ten (10) work days of the date of the receipt of the notice described in Chapter 13, Section 004.03 of

this Title without having to convene the meeting described in Step One. The Deputy Commissioner shall give a written answer within ten (10) work days of receipt of the grievance. If a resolution to the grievance is not reached, the employee may proceed as specified in Step Four of this procedure within fifteen (15) work days of the receipt of the Deputy Commissioner's answer.

006.01C In cases where a Leadership Council Member or Commissioner's designee other than the Director of Human Resources was one of the supervisors that was party to the meeting at Step One, Section 006.01 of this Chapter, then the grievant shall skip Step Two below and proceed directly to Step Three within five (5) work days of the employee's receipt of the written answer to the employee's written grievance described in Section 006.01 of this Chapter.

006.02 Step Two. When the written answer in the preceding step is not satisfactory to the grievant, the grievant may, within five (5) work days of the receipt of the supervisor's written answer, present the completed grievance form to the appropriate Leadership Council Member or Commissioner's designee who shall give a written response to the grievant within five (5) work days thereafter. If the next level of supervision above the grievant's supervisor is the Deputy Commissioner, Step Two shall be skipped and the grievant may proceed directly to Step Three by presenting the completed grievance form to the Deputy Commissioner within five (5) work days of the employee's receipt of the supervisors' written answer in Step One above.

006.03 Step Three. When the response in the preceding step is not satisfactory to the grievant, the grievant may, within five (5) work days of receiving the response from the appropriate Leadership Council Member or Commissioner's designee, present the grievance to the Deputy Commissioner by submitting the completed grievance form. The Deputy Commissioner shall give a written answer to the grievant within five (5) work days, thereafter.

006.04 Step Four. If a resolution to the grievance is not reached, the grievant may, within fifteen (15) work days after receipt of the Deputy Commissioner's decision, appeal the grievance to the State Board of Education. The appeal at this level shall be directed to the Commissioner as Secretary of the State Board of Education. This appeal shall include the filing of the grievance form as described in Section 006.01 of this Chapter.

006.04A Within ninety (90) calendar days after receiving the appeal, the Commissioner shall place the matter on the agenda of a meeting of the State Board of Education for a determination on if the State Board or a hearing officer will conduct the hearing in accordance with Section 006.04B of this Chapter.

006.04B The State Board of Education may elect to conduct the hearing or may designate that a hearing officer, not an employee of the Department, conduct a hearing and recommend a decision to the Board. The employee shall be notified of the Board's determination of who will conduct the hearing and the time and place of the hearing. In cases in which the Board elects to have a hearing officer conduct the hearing, the hearing officer shall cause a complete record to be made of all evidence offered at the time of the hearing. The hearing officer shall prepare written findings of fact and recommend a decision to the Board. The hearing officer shall deliver these findings of fact and recommendation to the State Board of Education together with a complete transcript of all evidence offered at the time of the hearing. Hearings will be conducted in accordance with Title 92, Nebraska Administrative Code, Chapter 61. The hearing shall take place within ninety (90) calendar days of the State Board meeting at which the matter appeared on the agenda under Section 006.04A of this Chapter.

006.04C Both parties in a hearing pursuant to Step Four may present witnesses, and these witnesses shall be subject to cross examination. If the witness is an employee of the Department, he/she shall be paid for those hours outside his/her normal hours of work.

006.04D The Board may affirm, modify, or reverse the decision of the Deputy Commissioner. The State Board of Education shall notify, in writing, the aggrieved employee of the Board's decision within a reasonable time period.

007 Arbitration. At the time said appeal is filed pursuant to Step Four, the employee and/or representative and the Commissioner may mutually agree to submit the dispute to voluntary binding arbitration. Otherwise, the dispute shall be submitted to the State Board of Education in accordance with this Chapter.

007.01 If both parties choose to submit the appeal to voluntary binding arbitration, they shall sign a waiver within ten (10) work days indicating they acknowledge that the decision of the arbitrator is final, except as provided in the Uniform Arbitration Act, and cannot be appealed.

007.02 The arbitrator's scope of review shall be to determine whether or not term(s) of these Personnel Rules has/have been violated, and whether the Department's action was taken in good faith and for cause. Arbitration hearings shall be informal and the rules of evidence shall not apply. The parties may be represented by attorneys in arbitration hearings. In cases involving discipline, the Department shall present its case first, and in all other cases the employee shall present his/her case first. The decision of the arbitrator shall be final and may not be appealed. The arbitrator shall decide the grievance in question based upon the issues presented in the written grievance filed pursuant to the grievance procedure. The arbitrator may interpret relevant provisions of the Personnel Rules and apply them to the particular case presented to him/her, but the arbitrator shall have no authority to add to, subtract from, or in any way modify the terms of the Personnel Rules. The fee and expenses of an arbitrator shall be borne equally by all parties. Arbitrators shall be selected from lists developed and mutually agreed upon by the parties. If the parties cannot agree upon an arbitrator, a method of alternate striking of names shall be employed.

007.03 The Commissioner or Deputy Commissioner shall have the authority to set time limitations for: the length of time within which an arbitrator must be chosen; the amount of time the parties will have to present their case (each party will receive the same amount of time); the time within which a case must be heard after an arbitrator is appointed; the length of time that will be allowed for the parties to submit post-hearing briefs; and the period of time after a hearing within which the arbitrator must enter his/her decision. Post-hearing briefs shall not be allowed in any case unless the parties and the arbitrator are all in agreement as to the need for such briefs.

007.04 The decision of the arbitrator shall be made in writing within sixty (60) calendar days of the hearing and shall include findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding and the ~~Department's~~ Human Resources Office shall receive a copy of the decision by first class U.S. mail. The arbitrator's decision will become public record upon submittal to the parties. If the arbitrator does not render a decision within ninety (90) calendar days from the date the arbitration hearing was held, a penalty of fifty dollars ($50) per day will be imposed and deducted from the arbitrator's fee for each day over ninety (90) calendar days the decision is late, until the decision is received. This penalty may only be waived upon mutual agreement of the parties.

007.05 Both parties must provide the other party and the arbitrator with a listing of all exhibits to be introduced at the hearing, a copy of each exhibit, and a listing of individuals that the party plans to call as witness(es) in the

arbitration/hearing, at least five (5) calendar days prior to the hearing. Such requests and/or notice shall be addressed to the party from which the discovery is sought. Only discovery requests which are relevant or would lead to relevant evidence for the grievance will be granted; however, in no case will discovery be granted which seeks evidence which is recognized as privileged by the Courts of this State. Discovery requests must be provided within ten (10) work days of the receipt of the request, unless objections are entered. Objections to discovery shall be made to the arbitrator, and the arbitrator shall consider the matter and issue a decision.

008 Number of Days. The number of days indicated in each step of the procedure shall be the maximum. Failure of the grievant to proceed to the next step within the maximum time limit shall be considered as termination of the grievance. Failure of the Department in any step to render a decision to the aggrieved employee(s) within the maximum time limits shall automatically allow the aggrieved person(s) to proceed to the next step.

"Days" shall mean regularly scheduled work days when the Nebraska Department of Education, Nebraska State Office Building offices, are open, excluding, however, such regularly scheduled work days during which employees involved in the procedure are absent from the work site on approved leave or travel status. For all employees who are permanently located at work sites other than 301 Centennial Mall South, Lincoln, Nebraska, days as defined above shall be counted from the date of receipt. The day in which an item is received is not counted as a day for the receiving party.

Any time period established herein may be extended upon the written consent of the employee and the Deputy Commissioner.

009 Grievance Statement. The original Employee Grievance Statement shall remain unchanged throughout the grievance procedure. Copies of the grievance statement and response at each step shall be filed with the ~~Department's~~ Human Resources Office by the grievant.

001 Working Schedule. A schedule of working hours, which reflect individual job requirements, shall be determined by the appropriate Leadership Council Member or Commissioner's designee and the immediate supervisor.

001.01 Change in Work Schedule. Supervisors shall provide ten (10) work days written notice to the affected employees prior to making changes in their permanent work schedules. The supervisor may temporarily change an employee's work schedule for cause without the ten (10) work day notification.

001.02 Lunch. Each day, employees shall have an unpaid lunch break of at least thirty (30) minutes and no more than sixty (60) minutes unless they are scheduled to work six (6) hours or less that day. If an employee is working six (6) hours or less and would like to forgo the lunch break, the supervisor can approve the request. Scheduling the time of the lunch break is subject to the approval of the immediate supervisor. Schedule requests shall not be unreasonably denied by the supervisor. Employees may not take a lunch break for a shorter period of time than one-half (1/2) hour. A lunch break may not be saved for use in shortening the work day.

001.03 Breaks. A rest break of fifteen (15) minutes may be taken during each four (4) hours an employee is on the job. Break time may not be saved for use in shortening the work day or in extending the lunch break. Rest breaks are considered work time.

001.04 Overtime. Nothing contained in this Chapter shall be construed as limiting the Department's right to require overtime work by employees, subject to the provisions of Chapter 8 of this Title.

001.05 Job Sharing. Job sharing may be allowed by mutual agreement of the Deputy Commissioner, the appropriate Leadership Council Member or Commissioner's designee and the immediate supervisor. The Department will attempt to maintain job sharing arrangements in effect as of the effective date of this Chapter for as long as is practical and both involved employees remain employed in their current positions.

002 Drug-Free Work Place. The unlawful manufacture, distribution, possession, or use of any illicit drugs or of alcohol is prohibited in the work place. Employees who violate the standards of conduct are subject to referral for prosecution.

002.01 Employees, who are convicted of a criminal-drug-statute violation occurring in the work place, shall be subject to disciplinary action up to and including termination; or shall be required to satisfactorily participate in an approved drug/alcohol abuse or drug/alcohol rehabilitation program approved for such

purposes by a federal, state, or local health law enforcement or other appropriate agency.

002.02 Temporary employees or contractors who are convicted of a criminal-drug-statute violation occurring in the work place shall be subject to termination of employment/contract; or shall be required to participate satisfactorily in an approved drug/alcohol abuse or drug/alcohol rehabilitation program.

002.03 Conviction for any criminal-drug-statute violation occurring in the work place must be reported by the employee or contractor to the ~~Department's~~ Human Resources Office no later than five (5) calendar days after the conviction.

003 ~~Harassment~~ Discrimination. Unlawful work place discrimination (harassment), based in whole or in part on sex, race, color, religion, marital status, national origin, age, disability, ~~or~~ protected activity (such as an employee's opposition to discrimination or participation in complaint proceedings), or genetic information (as prohibited by the Genetic Information Non-discrimination Act [GINA] and Section 48-236 R.R.S.); constitutes unlawful work place discrimination (harassment). Employees who commit unlawful work place discrimination (harassment) while performing duties for the Department may be subject to disciplinary action, up to and including dismissal from employment. Employees who make complaints or assist in investigations of unlawful work place discrimination (harassment) will be protected against retaliation.

003.01 Sexual Harassment. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

003.01A Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

003.01B Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

003.01C Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

003.01D Sexual harassment does not include personal compliments welcomed by the recipient or social interaction, or relationships freely entered into by employees or prospective employees.

003.01E Behavior Constituting Sexual Harassment. In determining whether alleged conduct constitutes sexual harassment, the Department will look at the record as a whole and at the totality

of the circumstances, such as the nature of the sexual behavior and the context in which the behavior occurred. The determination of the legality of a particular action will be made from the facts on a case-by-case basis. Sexual harassment will not be permitted during the work day, nor will acts of sexual harassment be condoned outside the work environment if such are construed to encroach on the normal working relationship.

004 Political Activities. Unless specifically restricted by federal or state law, employees may participate in political activities except during office hours or when otherwise engaged in the performance of their official duties. Employees may not, however, participate in political activity using their status as a state employee to influence others.

005 Nepotism and Supervision of Family Members. Employees shall not engage in nepotism. Nepotism means the act of hiring, promoting, or advancing a family member in state government or recommending the hiring, promotion, or advancement of a family member in state government. This includes within the Department and with other State Agencies. "Family Member" means an individual who is the spouse, child, parent, brother, sister, grandchild, or grandparent, by blood, marriage, or adoption, of an official or employee of the Department.

Employees shall not be assigned to positions in which they directly supervise, evaluate, or review the appraisal of a family member or to positions in which they are directly supervised, evaluated, or reviewed by a family member.

006 Postsecondary Coursework During Work Time. Employees may request approval to use work time to take up to seven (7) credit hours each calendar year from postsecondary institutions on the semester schedule or up to nine (9) credit hours each calendar year from postsecondary institutions on the quarter schedule~~, but~~. However, no more than four (4) credit hours may be taken in any one (1) semester, or no more than four and one-half (4.5) credit hours in any one (1) quarter, during work time without loss of pay. All summer sessions combined will be considered equivalent to one (1) semester period. If a class crosses calendar years, eligibility to take a course will be determined based on the start date of the class. Approval under this section is intended to allow ~~E~~employees ~~may~~ to use work time to attend courses that have a regular meeting schedule as opposed to self-paced, online courses or credits for activities such as thesis or doctoral work ~~as part of regular work time~~. Depending on the distance and location, travel time may also be considered regular work time. Prior approval of course work and/or related travel time during work hours must be obtained from the immediate supervisor, Leadership Council Member or Commissioner's designee, and Deputy Commissioner. Management may limit the amount of work release time granted. Requests and subsequent documentation must be submitted on a form provided by the Department. Requests shall be directed through the employee's immediate supervisor to the ~~Department's~~ Human Resources Office. Any additional credit hours may be scheduled outside the normal work~~ing~~ day. Approval under this Section shall not be unreasonably denied~~.~~; however, approval is discretionary and may be made on bases such as, but not limited

to, fiscal considerations, workload, and employee performance.

For purposes of this Chapter, the term "postsecondary institution" means an institution of higher learning accredited by an accrediting body that is recognized by the United States Secretary of Education and is authorized to grant associate, baccalaureate or post-baccalaureate degrees.

006.01 Reimbursement for Postsecondary Coursework Expenses. As an alternative to the above, employees may be eligible to receive not more than seven (7) credit hours each calendar year of tuition reimbursement for courses from postsecondary institutions on the semester schedule or not more than nine (9) credit hours each calendar year of tuition reimbursement for courses from postsecondary institutions on the quarter schedule for job-related courses. If a class crosses calendar years, eligibility to take a course will be determined based on the start date of the class. Job relatedness shall be determined by the Deputy Commissioner, whose decision shall be final. Reimbursement may be for any portion of the tuition cost, required course fees, and books, with the employee being notified of the amount of reimbursement prior to the beginning of the course. Reimbursement for course-related expenses will be prorated based on the number of credit hours reimbursed. Approval for reimbursement shall not be unreasonably denied; however, approval is discretionary and may be made on bases such as, but not limited to, fiscal considerations, workload, and employee performance. Eligibility for reimbursement requires:

006.01A A course grade of "C" or better for undergraduate courses; or

006.01B A "pass" for pass/fail courses; or

006.01C A course grade of "B" or better for graduate courses.

006.01D Requests for reimbursement and substantiating documentation must be made in writing prior to the beginning of the course on a form provided by the Department. Requests shall be directed through the employee's immediate supervisor to the ~~Department's~~ Human Resources Office. Employees who receive tuition reimbursement shall be required to reimburse the Department if they voluntarily leave their employment with the Department within one (1) year of the course completion date. The Department requires written documentation to verify enrollment including course dates and times, course completion and the grade earned.

006.02 Employees Directed to take Postsecondary Coursework. If an employee is directed by the Department to take a job-related course at a postsecondary institution, the Department shall pay for all costs of said course including tuition, books, other required instructional materials, and fees. Job

relatedness shall be determined by the Deputy Commissioner whose decision shall be final. The employee so directed shall be considered to be working for the Department during classroom time, and any travel incurred to attend such courses shall be treated as travel for the Department. The Department shall require written documentation to verify the employee's enrollment, course completion and the grade earned.

006.02A Employees may use Department computers, Internet access, printers, and office supplies for online courses ~~or~~ and related homework if the employee has been directed to take a job-related course for professional development per Section 006.02 of this Chapter, or if an employee elects and receives supervisory approval to take an online course available through the State's Employee Development Center – Learning. If employees voluntarily take an online postsecondary or other educational or vocational course, the Department's computers, Internet access, printers, and office supplies may not be used.

007 Conference or Meeting Participation. In addition to the assigned activities of each employee, the appropriate Leadership Council Member or Commissioner's designee shall maintain and carry out a policy of approving a reasonable request of each employee to participate in meetings, conferences, or in-service activities related to the employee's job. Determination of reasonable requests and job relatedness shall rest with the appropriate Leadership Council Member or Commissioner's designee. Upon approval of such a request, the employee may attend such meeting, conference, or in-service activity without loss of pay and at the expense of the Department. Additionally, an employee may be permitted to participate in at least one (1) meeting, conference, or in-service activity per year relating to the employee's job consisting of a total of not more than five (5) work days at the expense of said staff member without loss of pay. All decisions made by management pursuant to the application of this Chapter are final.

008 Solicitation Policy. Soliciting employees during work hours is not authorized.

008.01 Vendors offering non work-related products for sale to employees are not authorized to contact employees during the employee's duty hours nor to sell, promote, or distribute information on state property.

008.02 Employees who sell products for a secondary income may only contact other employees during non-duty hours.

008.03 Employees located at all other work sites may, upon the approval of the local administrator, post information on products for sale, and non-duty contact times in locations provided for that purpose.

009 Worker's Compensation. All injuries, no matter how slight, occurring in the course of employment, are to be reported immediately to the supervisor and the ~~Department's~~ Human Resources Office. An Employee Report of Alleged Occupational Injury Form (available from the ~~Department's~~ Human Resources Office) must be completed and forwarded to the ~~Department's~~ Human Resources Office by the employee as soon as possible. In the event that the employee is incapable of completing and signing the report, the employee's immediate supervisor shall complete the report to the best of his/her knowledge. The Employee Report of Alleged Occupational Injury shall be completed and signed by the employee at the earliest possible date.

010 Usage of State Telephone/Telecommunications Resources. Employees should exercise professional judgment in their use of business phones. The State telephone network is provided for official State business only. Long distance personal calls are not authorized and must be charged to one's resident telephone or personal credit card. Such calls may also be placed from a toll phone.

011 Non-~~E~~exempt Employee Travel Time. ~~All required travel time, except as provided in Section 011.01 of this Chapter, between a non-exempt employee's permanent duty station or personal residence and an alternative work site, (whichever of the two is the shorter) to attend meetings, conferences, seminars, or training courses shall be considered hours worked for pay purposes provided that an employee does not exceed normal travel time for the approved mode of transportation from point to point.~~ Required travel time for nonexempt employees will be considered work time per the requirements as set forth in the Fair Labor Standards Act (29 CFR Part 785).

~~011.01 A non-exempt employee traveling by common carrier on overnight business shall be paid for all travel time. However, only hours of travel which are within the employee's normal scheduled work hours are counted when computing hours worked for overtime purposes (this includes travel hours on weekends or holidays). The non-exempt employee's time spent traveling shall be paid at their normal straight time rate when the employee's travel meets all of the following conditions:~~

~~011.01A Outside of normal scheduled work hours;~~
~~011.01B On overnight business;~~
~~011.01C By common carrier; and~~
~~011.01D Employee is not doing actual work while traveling.~~

012 Personal Vehicles. When reasonably requested by the Department, or when requested by the employee and approved by the Department, employees may use their own automobile for work-related travel at a rate of reimbursement per the Department's Administrative Memorandum #205.

013 Lodging and Meal Reimbursement. The Department shall reimburse lodging and meal expenses per the Department's Administrative Memorandum #205.

014 Lodging Arrangements. Single occupancy lodging shall be made available to any employee traveling on Department business unless the employee: waives the option, prefers multiple accommodation lodging, or lodging availability in the town precludes single occupancy.

015 Transportation. Employees including full-time, part-time, contract, temporary and fixed-term, as defined in Chapter 4 of this Title, may be authorized to use a State vehicle on official State business. State vehicles are not to be used for personal use.

015.01 Valid Driver's License Requirement. All persons who operate State or personal vehicles while on Department business are required to have a valid driver's license and to successfully complete a defensive driving course as offered by the State. Should persons who drive on Department business have their driver's license revoked or suspended for any reason, the employee must report such revocation or suspension to their immediate supervisor.

015.02 Supervisor Responsibility. It shall be the responsibility of each Leadership Council Member or Commissioner's designee to ascertain that each person who drives on Department business possess a current valid driver's license and has satisfactorily completed a Defensive Driving Course, as prescribed. This responsibility may be delegated to the section head or person in a division who has the responsibility to authorize/permit use of a vehicle on Department business.

016 Employment Outside of Working Hours. Employees may engage in employment outside of working hours in a private business interest. Such employment outside of Department work or in a private business interest shall not interfere with the efficient performance of duties or conflict with the interests of the Department of Education or with State statutes. The Department may require disclosure of outside employment.

017 Moving Allowance. Employees transferring to or relocating in another geographical section of the State for the benefit of the Department shall be eligible for reimbursement of moving expenses pursuant to Department of Administrative Services' guidelines, upon approval of the Commissioner. For purposes of this Section, a relocation to another geographical section of the state is when the employee is directed to work at a primary work site that is at least thirty (30) miles from both the present work site and the employee's current residence, whichever is the shorter distance.

017.01 Payment. No payment of moving expense shall be made until an invoice is received and approved by the Commissioner or his or her designee.

017.02 Leave. Employees who are transferred to or relocating in another geographical location of the State shall be allowed sixteen (16) hours with pay to attend to their personal affairs in their present location and to establish their personal affairs in their new location. Additional required time off shall be vacation leave, compensatory time, or leave without pay at the employee's discretion.

017.03 Reimbursement. The Department may reimburse newly appointed employees for reasonable expenses incurred in relocating to their place of employment provided that the employee agrees, in writing, to remain in the employment of the State for a period of one (1) year. Termination within the one (1) year period for any reason within their control may be cause to require them to reimburse the Department for moving expenses.

017.04 Commuting Costs. Commuting costs related to transfers and relocations are not reimbursable by the Department.

018 Severability. If any section or portion of the Chapters in this Title, or the applicability thereof, to any person or circumstance is held to be invalid by a court, the remainder of these Chapters shall not be affected thereby.

019 Recognition Programs. The Commissioner may implement an Employee Recognition Program, which may include items such as Employee-of-the-Year/Manager-of-the-Year meals; framed certificates; clocks; bookends; platters; desk accessories; pens; letter openers; gift certificates; food and refreshments; trophies; shirts; plaques, pins, and/or monetary recognition.

020 Business Attire. All employees are expected to dress in attire that is appropriate for conducting his or her work responsibilities. Leadership Council Members or Commissioner's designee and supervisors may identify specific attire requirements depending on the nature of the employee's work.

021 Retiree Health Insurance. In addition to the provisions outlined in Sections 84-1601 through 84-1615 R.R.S., employees who are eligible for retirement and do retire, shall be afforded the opportunity to continue health insurance coverage in the group plan until they become Medicare eligible. The employee shall be responsible for the entire cost of the premium for the plan chosen, which includes the normal employee contribution and the normal State contribution.

022 Insurance Coverage Consistency with Master Contract. The Department agrees to provide employees with the same health, dental and vision insurance plans at the same cost sharing ratio as the Department will provide to its employees who are subject to the 201~~1~~3-201~~3~~5 NDE-NAPE/AFSCME Collective Bargaining Agreement and as identified in the Master Contract between the Employee Relations Division of the Nebraska Department of Administrative Services (DAS) and NAPE/AFSCME. In the event that such insurance programs grant to the employee various options, the Department's

obligation will apply only to the mandatory portion to be paid by the Department under the program. The Department further agrees to provide all employees all other insurance plans that are made available in the Master Contract at the same cost.

TITLE 93 -- NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 16 -- CODE OF ETHICS

001 General. Employees shall comply with the Code of Ethics as provided in this Chapter.

002 Nebraska Political Accountability and Disclosure Act. Employees shall comply with the Nebraska Political Accountability and Disclosure Act, which provides that:

002.01 No person shall offer or give to the following persons anything of value, including a gift, loan, contribution, reward, or promise of future employment, based on an agreement that the vote, official action, or judgment of any public official, public employee, or candidate would be influenced thereby.

002.01A A public official, public employee, or candidate;

002.01B A member of the immediate family of an individual listed in Section 002.01A of this Chapter; or

002.01C A business with which an individual listed under Sections 002.01A or 002.01B of this Chapter is associated.

002.02 No person listed in Section 002.01A of this Chapter shall solicit or accept anything of value, including a gift, loan, contribution, reward, or promise of future employment, based on an agreement that the vote, official action, or judgment of the public official, public employee, or candidate would be influenced thereby.

002.03 An employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.

002.04 An employee shall not use or authorize the use of personnel, resources, property, or funds under that person's official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law.

003 Impairing Independent Judgment. Employees are additionally prohibited from accepting other employment or entering into contractual arrangements which will impair independence of judgment in the exercise of official duties.

004 Securing Unwarranted Privileges. Employees are additionally prohibited from using, or attempting to use their position in the Department to secure unwarranted privileges or exemptions for themselves or others.

005 Conflict of Interest. Employees are additionally prohibited from engaging in any transaction as representatives or agents of the Department with any entity in which direct or indirect financial interests might reasonably tend to conflict with the proper discharge of official duties.

006 Personal Investments. Employees are additionally prohibited from making personal investments in enterprises which might be directly involved in decisions to be made by them as employees of the Department.

007 Selling Goods or Services. Employees are additionally prohibited from selling goods or services to any persons, firms, corporations, public or government entities, or associations which are licensed or whose rates are fixed by the Department, or from having any substantial interest in persons, firms, corporations, or associations which sell goods or services to other persons, firms, corporations, or associations which are licensed by the Department.

008 Partnerships. Employees are additionally prohibited from accepting, or agreeing to accept, or being in partnership with any persons who accept or agree to accept any employment, fees, gifts, or services for taking any action on behalf of the other persons regarding licensing or regulatory matters before the Board.

009 Business Transactions. Employees are additionally prohibited from entering into any private business transactions with any persons or entities that have matters pending or to be pending, upon which such employees are, or will be, called upon to render decisions or pass judgments in an official capacity as representatives of the Department. If any such employees are already engaged in the business transactions at the time the matters arise, they shall be disqualified from rendering any decisions or passing any judgments upon the same.

010 Vested Interest in Contracts. Employees are additionally prohibited from influencing the making of any contracts, or courses of action leading to the making of contracts, between the Department and persons, firms, corporations, or associations in which they may have a direct or indirect vested interest.

011 Gifts or Loans. Employees are additionally prohibited from accepting any gifts of value or loans from any person doing business with the Department. Gifts or favors are to be courteously refused or returned if they are the kind that might influence the conduct of employees.

012 Employee Consulting, Presentations and Speeches. Periodically, employees are asked to consult or to make presentations or speeches in their area of expertise. When such a request is received, the employee involved shall discuss the request with the appropriate Leadership Council Member or Commissioner's designee through their immediate supervisor. If it is determined that providing the consultation or making the presentation or speech will relate to the service, leadership, or regulatory functions of the Department, then any expenses incurred should be reimbursed from the program's budget.

013 Honorariums. If an honorarium is received for consulting or making a presentation or speech, while on Department time and/or on a (work-related) subject area for which the employee has responsibility in the Department, the honorarium shall be submitted to Central Accounting for deposit against the employee's line of coding. In this instance, the Department shall be responsible for employee expenses.

014 Private Consulting. The following restrictions apply to employees providing private consultation services on personal time:

014.01 Employees may not provide outside consulting services for compensation (monetary or non-monetary) to any entity coming under the supervision or regulation of the Department.

014.02 Employees may not provide outside consulting services for compensation (monetary or non-monetary) to any agency within the state for which the service is available from the Department without charge.

014.03 All consulting activities shall require the use of personal vacation time with prior approval of the immediate supervisor and appropriate Leadership Council Member or Commissioner's designee. Approval of the use of vacation time will be based on the extent to which regular duties are not compromised. Approved consulting may not be done in conjunction with any Department related activity and/or travel.

014.04 Employees may not solicit or invite consultative service opportunities for private or personal gain during the discharge of duties as a State employee.

014.05 Employees may not use State resources or products for private consulting even if the cost of such are paid to the State from outside sources.

015 Teaching. College or university teaching is allowed whenever the following conditions are met:

015.01 The employee has received approval of their immediate supervisor and the appropriate Leadership Council Member or Commissioner's designee; and

015.02 Such teaching, preparation, and other activities associated with the teaching duties, shall take place totally outside the regular duty hours of the employee, unless vacation leave is used; and,

015.03 No Department equipment or resources are used for the teaching activities; and,

015.04 The employee has received advance approval of vacation time for such teaching including duty hours spent in travel, preparation, and other activities associated with the teaching duties. Whenever vacation time is used, the outside teaching responsibilities must not interfere or limit the performance of the duties and responsibilities required by the Department; and,

015.05 There is a written agreement between the institution of higher education and the employee outlining the terms and conditions of their teaching and such agreement has been approved by the immediate Department supervisor and is on file in that supervisor's office and in the ~~Department's~~ Human Resources Office; and/or,

015.06 Teaching assignments may be approved or assigned as part of the employee's regular duties. Additional compensation may not be accepted when teaching duties are part of the employee's regular work day.

016 Professional Organization Participation. Employees may be granted time during work hours to participate in the activities of professional organizations which, in the estimation of the appropriate Leadership Council Member or Commissioner's designee, are considered to be job-related. The appropriate Leadership Council Member or Commissioner's designee shall determine whether or not travel expenses shall be reimbursed.

NEBRASKA DEPARTMENT OF EDUCATION
NDE PERSONNEL RULES GRIEVANCE FORM

All employees occupying a permanent position have grievance rights. The purpose of this process is to reduce potential areas of conflict and to secure, at the lowest possible administrative level, equitable and timely resolutions to problems which may arise. A grievance is defined as a contention of misapplication or violation of any of the following: Department policies, rules or regulations including Title 93, NDE Personnel Rules, written administrative policies, other written operating procedures, laws, or written instructions pertaining to employees.

_____
Name of Employee (Grievant)

_____
Home Address | City, State & Zip | Home Phone

_____
Classification | Work Location | Work Phone

_____
Immediate Supervisor | Work Phone

INSTRUCTIONS: Employees must follow all of the steps described in the NDE Personnel Rules, Chapter 14. "Days" shall mean regularly scheduled work days when the Nebraska Department of Education, Nebraska State Office Building offices, are open, excluding, however, such regularly scheduled work days during which employees involved in the procedure are absent from the work site on approved leave or travel status. For all employees who are permanently located at work sites other than 301 Centennial Mall South, Lincoln, Nebraska, days as defined above shall be counted from the date of receipt. The day in which an item is received is not counted as a day for the receiving party.

STEP 1: The grievant has fifteen (15) days from his or her knowledge of the event or condition causing the grievance to request a meeting with the immediate supervisor and next level of supervision. If the supervisors' answer is not satisfactory to the grievant, the grievant may proceed according to the steps and timelines in Chapter 14, Grievance Procedure, using this form and completing the Statement of Grievance and Relief Requested (page 2). Responses at all steps must be attached to this form. The grievant must submit this completed form to the **IMMEDIATE SUPERVISOR AND NEXT LEVEL SUPERVISOR** within three (3) work days after receiving the supervisors' response.

_____
Immediate Supervisor's Signature | Date Received | Date Answered

_____
Next Level Supervisor's Signature | Date Received | Date Answered

STEP 2: This completed form and attachments to the **LEADERSHIP COUNCIL MEMBER (LCM) or Commissioner's designee** within five (5) work days after the supervisors' response in Step 1.

_____
LCM Signature | Date Received | Date Answered

STEP 3: This completed form and attachments to the **DEPUTY COMMISSIONER** within five (5) work days after the written response in Step 2.

_____
Deputy Commissioner Signature | Date Received | Date Answered

STEP 4: Grievance to the **STATE BOARD OF EDUCATION** within fifteen (15) work days after the written response in Step 3.

Date Received: _____

Date of Decision: _____

06.06.13 State Board of Education Work Session & 06.07.13 State Board of Education 2.3-81 & 7.2-81

Date Filed: _____ **Grievance Number:** _____

STATEMENT OF GRIEVANCE

A. **Identify** the management action that you believe involved a misinterpretation or misapplication of Department policies, rules or regulations including Title 93, NDE Personnel Rules, written administrative policies, other written operating procedures, laws, or written instructions pertaining to employees.

B. **Describe** the event or condition which caused the grievance.

C. **Describe** the relief you are requesting.

_____ _____
Employee/Grievant Signature (required) Date

Revised ~~2011~~