



TO: Matthew L. Blomstedt, Ph.D.
Commissioner of Education

FROM: Sharon Katt, Senior Administrator, Adult Program Services; Vicki Bauer, Director, Adult Education

SUBJECT: Hearing Draft of Rule 82 (92NAC 82) Regulations Governing the Diploma of High School Equivalency Assistance Act

Proposed Board Action:

It is recommended that the State Board of Education approve the Hearing Draft, with a non-substantive change made to Section 003.03F, of Title 92, Nebraska Administrative Code, Chapter 82, Regulations Governing the High School Equivalency Assistance Act.

Background Information:

Rule 82 is being created as a result of the passage of LB 366. The Rule contains regulations to provide assistance to institutions which offer high school equivalency programs, in order to defray the costs associated with participation in such programs. In addition, a one-time payment will be made to testing centers to help defray the costs of transitioning to computer-based testing (CBT).
The State Board of Education granted the Deputy Commissioner the authority to adopt a hearing draft of Rule 82 on August 9, 2013. The Deputy Commissioner approved a hearing draft on January 29, 2014. A legal notice of the hearing was published on January 31, 2014.
Based upon input from Metropolitan Community College, the following modification is being recommended as a non-substantive change to the Rule Draft, with the recommendation of no need for another full hearing.
Original Rule 82 Draft dated January 29, 2014:
Section 003.03F Initial Exam means when the participant completes the test battery that is required to obtain the diploma of high school equivalency under Chapter 81 of this Title.
Recommended Non-Substantive Change presented at March 5, 2014 Public Hearing:
Section 003.03F Initial Examination means when the participant completes his/her first module of the test battery that is required to obtain the diploma of high school equivalency under Chapter 81 of this Title.
The hearing was conducted on March 5, 2014 in the State Board Room at the Nebraska Department of Education. An overview of the Rule and a proposed non-substantive change was presented by Vicki Bauer. Sue Raftery from Metropolitan Community College and Jan Sears from Crete Public Schools testified and were both supportive of the Rule and the modification presented.

Estimated Cost:

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

Supporting Documentation Included:

Table with 2 columns: Description of documentation and Page number. Includes 'Hearing Officer's summary of Rule 82 Hearing on March 5, 2014.' (2.8-1) and 'Hearing Draft with a non-substantive change.' (7.5-1).

Copy of letter to Mr. Randy Schmailzl, Metropolitan Community College, in response to his letter of February 4, 2014 to Commissioner Blomstedt, regarding a request for a change in the draft of Rule 82.

**For Additional Information on this item:**

Sharon Katt: phone 402-471-2405 e-mail sharon.katt@nebraska.gov  
Vicki Bauer: phone 402-471-4807 e-mail vicki.l.bauer@nebraska.gov



**Matthew L. Blomstedt, Ph.D., Commissioner**  
**Scott Swisher, Ed.D., Deputy Commissioner**

301 Centennial Mall South Tel: (402) 471-2295  
PO Box 94987 Fax: (402) 471-0117  
Lincoln, NE 68509-4987 Web: www.education.ne.gov

TO: State Board of Education

FROM: Margaret Worth, General Counsel  Commissioner's Appointed Staff Person to Conduct a Rule Hearing on Title 92, Nebraska Administrative Code, Chapter 82, *Regulations Governing the Diploma of High School Equivalency Act*

DATE: March 10, 2014

RE: Summary of rulemaking hearing on proposed 92 NAC 82

*On January 29, 2014, the Deputy Commissioner approved a hearing draft and set a hearing date and location to conduct a hearing on the adoption of proposed Title 92, Nebraska Administrative Code, Chapter 82. By a memorandum dated January 30, 2014, the Deputy Commissioner appointed a representative from the General Counsel's Office to conduct a hearing on this Rule on March 5, 2014, 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 it.*

#### **SUMMARY OF TESTIMONY ON THE PROPOSED REVISIONS TO 92 NAC 82 Regulations Governing the Diploma of High School Equivalency Assistance Act**

**Margaret Worth, General Counsel 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 **Vicki Bauer, Education Specialist IV, Adult Program Services, Nebraska Department of Education**.

**Ms. Bauer** testified that the proposed Rule 82 is the result of the passage of LB366. Rule 82 contains regulations to provide assistance to institutions that offer high school equivalency programs in order to defray the costs associated with participation in such programs pursuant to the Diploma of High School Equivalency Assistance Act.

**Ms. Bauer** proposed one non-substantive change in subsection 003.03F. A copy of **Ms. Bauer's** testimony is attached to this memo.

**Sue Raftery, Dean of Literacy and Workplace Skills, Metropolitan Community College (MCC)**, testified in support of Rule 82 with the proposed non-substantive change that Ms. Bauer introduced. Ms. Raftery thanked NDE for their strong and ongoing support of adult education students and helping the State's GED students benefit from the additional resources and stated the following:

“This new rule underscores how essential it is that the state include strong adult education programs as an integral part of its total educational offerings and these actions recognize that we are at a new place in GED education. Programs across the state are undergoing a paradigm shift and no longer are our programs just focusing on GED as the end result. Today's students must not only be proficient in reading, writing, and math but also be computer literate and have critical thinking and problem solving skills that today's jobs and employers demand. As more employers require a high school education or its equivalent and more occupations requiring training beyond secondary education, we have put greater emphasis on not only helping folks obtain a GED, but also transition seamlessly into postsecondary and/or the work place.”

“MCC serves over 1500 GED students and 3000 adult education students annually. Recognizing the need to do more for these students, MCC recently increased its wrap around services such as education navigators, its innovative course offerings and accessible support systems to help accelerate students' progress and to help them retain and stay in the program to reach their goals. While these services are essential, they are also costly and the funding provided by this bill will do much to support our state's adult education programs in moving us forward toward college and career readiness. It will go far to enhance course offerings and support services that we can provide so that more students can succeed and that success benefits students, families and the community. So, I thank you, again, for all that you have done to improve the lives of adult education students throughout the State of Nebraska.”

**Jan Sears, Special Programs Director, Crete Public Schools**, thanked NDE for the opportunity to review the hearing draft of Rule 82 and provide some input. Ms. Sears testified that the Rule looks like a fair and workable plan and thanked the support of the Adult Education Program. Ms. Sears does support the proposed non-substantive change that Ms. Bauer introduced. Ms. Sears thanked NDE for their support in Adult Education programs.

**Randy Schmailzl, College President, Metropolitan Community College**, provided written testimony in support of proposed new Rule 82 with the one non-substantive change in subsection 00.03F (see attached).

No other oral or written testimony was received.



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

301 Centennial Mall South    Tel: (402) 471-2295  
PO Box 94987    Fax: (402) 471-0117  
Lincoln, NE 68509-4987    Web: www.education.ne.gov

March 5, 2014    NDE State Board Room    10:00 am Hearing on Rule 82

My name is Vicki Bauer and I am the Adult Education Director in the Adult Program Services team at the Nebraska Dept. of Education. In my position, I have specific responsibility for the Adult Education (AE) program, which includes the instructional AE and GED® testing programs.

This rule is being developed as a result of the passage of LB366. Chapter 82 contains regulations to provide assistance to institutions which offer high school equivalency programs in order to defray the costs associated with participation in such programs pursuant to the Diploma of High School Equivalency Assistance Act contained in Section 79-2301 to 79-2307 of the *Revised Statutes of Nebraska (R.R.S.)*.

In December 2013 and January 2014, we requested review and/or comments on Rule 82's Hearing Draft from Senator Cook's office and Adult Education Directors. Based upon the input from Metropolitan Community College in Omaha, we are proposing the following modifications to the Hearing Draft language:

**003.03F Initial Examination means when the participant completes his/her first module of the test battery that is required to obtain the diploma of high school equivalency under Chapter 81 of this Title.**

These modifications to the Hearing Draft will subsequently be included in the version presented at the April 2014 State Board meeting. We plan to request that the Board adopt the final rule with the revisions which we believe can be made as a non-substantive change without another full hearing to section 003.03F. With the Board's approval, Rule 82 will be moved forward to final Attorney General and Governor approval.

In addition, those items enumerated in the Rule include:

\*In Section 003, definitions pertinent to the Rule and implementation of state statute.

\*In Section 004, the methods by which the assistance payments will be provided to the appropriate institutions. Data from NDE AIMS (Adult Information Management System) and GED® Testing Service will be used to calculate a pro-rata share of the available amount of the annual appropriation based on the number of assistance payments an institution is available to receive.

\*In Section 005, the method by which a one-time payment from the Education Innovation Fund for the acquisition and upgrade of equipment and software necessary to administer CBT exams for a high school equivalency diploma.

\*In Section 006, the information for an annual report that is required by the institutions which receive funding under Rule 82.

February 21, 2014

Vicki Bauer  
Director, Adult Education  
Nebraska Department of Education  
301 Centennial Mall South  
P.O. Box 94987  
Lincoln, NE 68509-4987



RE: Title 92 Nebraska Administrative Code Chapter 82  
Regulations Governing the Diploma of High School Equivalency Act

Dear Vicki,

Thank you for your letter of February 14, 2014, in response to the College's concerns with the draft regulations for The Diploma of High School Equivalency Act (Neb.Rev.Stat. §§79-2301 to 2307), Title 92 Nebraska Administrative Code Chapter 82. I, and other College staff, believe that the modification that you propose for §003.03F of the draft regulation sufficiently addresses the College's concerns and is in accord with the plain language and intent of the Act. We believe that the Act, and implementing regulations, will greatly assist all providers of GED preparation and exams to provide affordable assistance to individuals who wish to earn a GED.

The College plans to have a representative at the hearing on the draft regulations on March 5 who will be prepared to discuss the draft regulations and the Act itself. If you wish to discuss this matter please feel free to contact me directly at (402)457-2339 or [rschmailzl@mccneb.edu](mailto:rschmailzl@mccneb.edu). Again, thank you for the extra effort in making this work.

Sincerely,

A handwritten signature in cursive script that reads "Randy Schmailzl".

Randy Schmailzl  
College President

cc: Commissioner Matthew Blomstedt, Ph.D.  
Scott Summers, NDE Legal Counsel

Applied Technology Center Elkhorn Valley Campus Fort Omaha Campus  
Fremont Area Center Sarpy Center South Omaha Campus Washington County Technology Center  
P.O. Box 3777 Omaha, NE 68103-0777 [www.mccneb.edu](http://www.mccneb.edu)

February 4, 2014

Matthew L. Blomstedt, Ph.D.  
Commissioner  
Nebraska Department of Education  
301 Centennial Mall South  
P.O. Box 94987  
Lincoln, NE 68509-4987



RE: Title 92 Nebraska Administrative Code Chapter 82  
Regulations Governing the Diploma of High School Equivalency Act

Dear Matt,

This letter is in regard to the draft regulations for The Diploma of High School Equivalency Act, Title 92 Nebraska Administrative Code Chapter 82. The Diploma of High School Equivalency Act, Neb.Rev.Stat. §§79-2301 to 2307, enacted by the Legislature in 2013 as LB 366, was initiated and drafted for introduction by Senator Cook by staff at Metropolitan Community College as a measure to help defray the increasing unreimbursed costs incurred by the College in its provision of GED preparation and testing. After reviewing the draft regulations, the College would like to bring a major concern to your attention and request that the regulations be revised to better effectuate the intent and plain language of the bill.

The primary concern that Metropolitan Community College has in regard to the proposed 92 NAC Chapter 82 is that the draft regulations misstate the events that are intended to trigger two of the three possible payments from the Nebraska Department of Education (NDE) to the GED preparation and examination providers. The payments to providers referenced in Neb.Rev.Stat. §§79-2304(1)(b) and (c) are intended to be triggered when the participant takes the **initial** (first) exam in the series of four that are required to complete the GED. The regulation, however, states that payment will not be made to the providers until the participant has completed the entire "battery" of exams required to attain the GED. This misstatement of the statutory intent and clear language is caused by the definition ascribed by the NDE to the word "initial" in §003.03F of the proposed regulations. The definition ascribed to the word "initial" in the regulations is the opposite of its everyday meaning and common usage in the English language.

Applied Technology Center Elkhorn Valley Campus Fort Omaha Campus  
Fremont Area Center Sarpy Center South Omaha Campus Washington County Technology Center  
P.O. Box 3777 Omaha, NE 68103-0777 [www.mccneb.edu](http://www.mccneb.edu)

Neb.Rev.Stat. §§79-2304(1)(a), (b) and (c) state as follows:

- (a) Each such institution shall receive one assistance payment for each participant who enrolled in its high school equivalency program in the most recently completed fiscal year;
- (b) Each such institution shall receive one assistance payment for each enrolled participant who took an initial examination for a diploma of high school equivalency program in the most recently completed fiscal year;
- (c) Each such institution shall receive one assistance payment for each participant not enrolled in the institution's high school equivalency program who took the examination for a diploma of high school equivalency in the most recently completed fiscal year;

Section 79-2304 of the Act provides direction to the NDE as to what events trigger the awarding of funds to providers. Section 79-2304(1)(a) provides that each qualifying institution shall receive one assistance payment for each participant who enrolled in its high school equivalency program during the most recently completed fiscal year. Section 79-2304(1)(b) provides that each qualifying institution shall receive one assistance payment for each participant enrolled in its high school equivalency program who **took an initial examination towards a diploma of high school equivalency** during the most recently completed fiscal year.<sup>1</sup> Section 79-2304(1)(c) provides that each qualifying institution shall receive one assistance payment **for each participant who is not enrolled in the institution's program (a/k/a "walk-in") who sits for an examination.**

Sections 004.02(A), (B) and (C) of the draft regulation utilize the same language that is in §§79-2304(1)(a), (b) and (c). In §003.03F of the regulation, however, the term "initial exam", which is not defined in the Act, is inexplicably defined as "...when the participant completes the test battery that is required to obtain the diploma of high school equivalency under Chapter 81 [of the Nebraska Administrative Code]..." This means that, under the NDE definition, in order to qualify as having taken an "initial" exam, a participant is required to have taken all four module exams which are required to earn the GED before the provider earns payment under subsections 004.02(B) or (C). This is in clear conflict with the intent and plain language of the statute.

The Merriam Webster Dictionary defines "initial" as both "of or relating to the beginning", and "placed at the beginning." Since the term "initial" is not defined in the statute it should be

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<sup>1</sup>As of January 1, 2014 there are four separate examinations, or "modules", that comprise the "GED Exam." Each exam is taken at a separate time. The intent of the original drafters of 2013 LB 366 is that once the enrolled or unenrolled (walk-in) participant sits for the first of the four exams (modules) the institution would be eligible to receive the second reimbursement payment.

February 4, 2014  
Matthew L. Blomstedt, Ph.D.  
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ascribed its plain and ordinary meaning. The definition ascribed by the NDE to the term "initial exam" is actually the opposite of what the word "initial" is understood to mean in the English language, yet LB 366 (Neb.Rev.Stat. §§79-4301 to 4307) was written with the intention that "initial exam" be ascribed the term's everyday meaning and common usage. In this context, defining "initial" in the regulation as having completed the "battery" of all four module exams is the opposite of its everyday meaning and completely abrogates the intent and the plain language meaning of the statute.

In closing, the College respectfully requests that the NDE reconsider and remove the definition of "initial exam" in §003.03F of the regulation in order to better harmonize the regulation with the intent and plain language of the statute. The intent of the statute is that providers qualify for assistance payments when either an enrollee or a walk-in takes the first of the four exams, not upon completion of the battery, or four modules, of exams. The College intends to have representatives at the hearing on the 92 NAC 82 on March 5, 2014, and I would be happy to discuss this matter if you would like. If you wish, please feel free to contact me directly at (402)457-2339 or rschmailzl@mccneb.edu.

Sincerely,



Randy Schmailzl  
College President

## Errata Sheet

### Draft of Rule 82 – “Rules and Regulations Governing the Diploma of High School Equivalency Act”

The draft of Rule 82, dated January 29, 2014, was made available to the public on January 31, 2014. Subsequently, a letter dated February 4, 2014, from Mr. Randy Schmailzl, President of Metropolitan Community College, requested a change to the definition of Initial Exam in Section 003.03F of the Hearing Draft.

Upon review of NDE staff and legal counsel, the proposed change will be presented at the March 5, 2014 Public Hearing and also to the State Board of Education on April 7-8, 2014. A letter to this effect was sent to Mr. Schmailzl on February 14, 2014.

Original, January 29, 2014, Hearing Draft language for Section 003.03F reads as follows:

Initial Exam means when the participant completes the test battery that is required to obtain the diploma of high school equivalency under Chapter 81 of this Title.

The proposed modification of the Hearing Draft to be presented to the State Board at its April 2014 meeting reads as follows: (proposed changes in bold and italics)

Initial Examination ***ation*** means when the participant completes ***his/her first module of*** the test battery that is required to obtain the diploma of high school equivalency under Chapter 81 of this Title.

Note: The modification is requested to be made as a non-substantive change without the need for another public hearing.

At the public hearing on March 5, 2014, a representative from Metropolitan Community College and Crete Public Schools testified and noted their approval of the Rule and the proposed modification to the Rule.

**NEBRASKA DEPARTMENT  
OF EDUCATION**

# **RULE 82**

**REGULATIONS GOVERNING THE DIPLOMA OF HIGH SCHOOL  
EQUIVALENCY ASSISTANCE ACT**

**TITLE 92, NEBRASKA ADMINISTRATIVE CODE,  
CHAPTER 82**

**HEARING DRAFT  
JANUARY 29, 2014**

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



TITLE 92 – NEBRASKA DEPARTMENT OF EDUCATION  
CHAPTER 82 – REGULATIONS GOVERNING THE DIPLOMA OF HIGH SCHOOL  
EQUIVALENCY ASSISTANCE ACT

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TITLE 92 – NEBRASKA DEPARTMENT OF EDUCATION  
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001 General Provision.

001.01 Statutory Authority. Section 79-2301 to 79-2307 of the Revised Statutes of Nebraska (R.R.S.) provides that the State Board of Education may adopt and promulgate rules and regulations to carry out the Diploma of High School Equivalency Assistance Act (Act).

001.02 Related Chapters. Title 92, Nebraska Administrative Code, Chapter 81(92 NAC 81), contains regulations for the high school equivalency program.

002 Diploma of High School Equivalency Assistance Act.

002.01 Purpose. The purpose of the Diploma of High School Equivalency Assistance Act is to provide assistance to institutions which offer high school equivalency programs in order to defray the costs associated with participation in such programs.

003 Definitions. For purposes of this Chapter:

003.03A Adult Information Management System (AIMS) means the student data system utilized by the Nebraska Department of Education in the administration of the Nebraska Adult Education program.

003.03B Contact hours means the hours of instruction or instructional activity. Instructional activity includes any program-sponsored activity designed to promote student learning in the program curriculum, such as classroom instruction, assessment, tutoring, distance education, or participation in a learning lab.

003.03C Department means the State Department of Education, which is comprised of the State Board of Education and the Commissioner of Education.

003.03D Fiscal year means a time period commencing on July 1 and ending on June 30 of the following year.

003.03E High School Equivalency Program means a program which is offered by an institution and provides participants with training and examinations for a diploma of high school equivalency.

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003.03F Initial Exam means when the participant completes the test battery that is required to obtain the diploma of high school equivalency under Chapter 81 of this Title.

003.03G Institution means a state agency, a school district as defined in Section 79-101 R.R.S., or a community college area as defined in Section 85-1503 R.R.S.

003.03H Nebraska Adult Education Class means instruction offered to individuals who at least 16 years of age and older, officially withdrawn from school, and who function at or below the 12<sup>th</sup> grade level.

003.03I Participant, except as otherwise provided in Section 003.03J, means an individual over the age of 16 who has officially withdrawn from school and who has enrolled in a high school equivalency program at an institution and has attended a Nebraska Adult Education class a minimum of 12 contact hours.

003.03J Participant not enrolled in the institution's high school equivalency program means an individual over the age of 16 who has officially withdrawn from school and has completed the test battery required to obtain the diploma of high school equivalency under Chapter 81 of this Title.

004 Assistance to Institutions.

004.01 Legislative Intent. Section 79-2304(1) R.R.S. states that it is the intent of the Legislature to appropriate seven hundred fifty thousand dollars (\$750,000.00) from the General Fund for fiscal years 2013-2014 and 2014-2015, and any amount determined by the Legislature for any fiscal year thereafter, to the State Department of Education. Such funds shall be used by the Department to provide assistance to institutions that offer high school equivalency programs.

004.02 Provision of Assistance. Assistance shall be provided based on participation in an institution's high school equivalency instructional and testing programs as follows:

004.02A Each such institution shall receive one assistance payment for each participant who enrolled in its high school equivalency program in the most recently completed fiscal year.

004.02B Each such institution shall receive one assistance payment for each enrolled participant who took an initial examination for a diploma of high school equivalency in the most recently completed fiscal year; and

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004.02C Each such institution shall receive one assistance payment for each participant not enrolled in the institution's high school equivalency program who took the examination for a diploma of high school equivalency in the most recently completed fiscal year.

004.02D An institution shall receive no additional assistance for any participant who failed his or her initial examination for a diploma of high school equivalency and requires additional training and testing.

004.03 Calculation of Payments. The number of participants and the number of participants not enrolled in an institution's high school equivalency program, to be determined using student data from AIMS and testing data from GED® Testing Service, will be used by the Department to set the dollar amount available for each institution's assistance payments annually. This amount will be calculated as a pro-rata share of the available amount of the annual appropriation based on the number of assistance payments an institution is eligible for.

For each year in which funds are available under this Act, the Department will notify eligible institutions in writing, by date to be determined annually by the Department, of the amount of any assistance payments available from the Department. A grant award document will be issued to the institution within 60 days of such written notification.

005 Acquisition and Upgrade of Equipment and Software.

005.01 Using the funds allocated from the Education Innovation Fund pursuant to subdivision (4)(c)(ix) of Section 9-812 R.R.S., the State Department of Education shall provide each institution offering a high school equivalency program a one-time payment for the acquisition and upgrade of equipment and software necessary to administer examinations for diplomas of high school equivalency.

005.01A Payment will be made following claims electronically submitted to the Adult Education section, following Nebraska Adult Education instructions for completion of the "Report for Expenditures for Adult Education." Instructions are available on the Department Adult Education website.

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005.01B Claims shall include copies of receipts, invoices or other similar documentation of the equipment and software purchased together with an explanation or description of its necessity for the institution in administering exams for diplomas of high school equivalency. An institution's claim must be received by the Department no later than May 31, 2015.

005.01C Payment by the Department to an institution under this section shall be the lesser of (a) an amount that is one equal share derived from dividing the amount available for distribution by the number of institutions that offer high school equivalency programs as of July 1, 2013; or (b) the amount of the claim for necessary acquisition and upgrade of equipment and software submitted under subsection 005.01B.

006 Reports. Each institution receiving assistance pursuant to Section 79-2304 R.R.S. shall report annually to the State Department of Education.

006.01 Institutional Reports. Each participating institution shall file an annual report with the Department for the Diploma of High School Equivalency Assistance Act for any fiscal year in which the eligible institution receives funding assistance. The annual report shall include information on the following for the most recently completed fiscal year:

006.01A The number of diplomas of high school equivalency awarded pursuant to such high school equivalency program, as verified through GED® Testing Service;

006.01B The number of participants in the high school equivalency program who moved successfully through the continuum of literacy skill levels offered by the program, as verified through AIMS;

006.01C The number of participants completing the high school equivalency program who secured entry-level career path employment, as verified through AIMS;

006.01D The number of participants completing the high school equivalency program who went on to postsecondary education or additional career training, as verified through AIMS; and

006.01E The number of participants in the high school equivalency program who were Nebraska residents or enrolled in a postsecondary educational institution located in Nebraska, as verified through AIMS.

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006.02 Institutional Report Due Date. The Report described in Section 006.01 of this Chapter shall be received by the Department within 90 days of the completion of the most recent fiscal year.