



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: Scott Summers, Legal Counsel III, Commissioner's Appointed Staff Person to Conduct a Rule Hearing on Title 93, Nebraska Administrative Code, Chapters 1-16, *NDE Personnel Rules* 

DATE: March 18, 2015

RE: Summary of rule-making hearing on Proposed Revisions to 93 NAC 1-16

On February 6, 2015 the State Board of Education approved a hearing draft and authorized the Commissioner 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 February 11, 2015, the Commissioner appointed me to conduct the hearing on this Rule on March 18, 2015, commencing at 10:00 a.m. After the proper legal notice was published, the hearing was held at the Nebraska State Office Building, Nebraska Department of Education, State Board Room, 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 recording.

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

Scott Summers, Legal Counsel III and the hearing official, called the hearing to order, read into the record the name of the newspaper in which a legal notice of the hearing was published and the date the notice appeared, outlined the procedures for the hearing and introduced **Joel Scherling, Administrator, Nebraska Department of Education, Human Resources.**

Mr. Scherling 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 2015-2017 NDE-NAPE/AFSCME bargaining agreement, which was negotiated, ratified and approved in December 2014. Mr. Scherling reviewed a few of the significant revisions being proposed:

In Chapter 5, Probationary Periods, policies regarding probationary periods were revised for those employees who move to another position during their original probationary period (§002; p. 10).

- Employees will be required to serve a new probationary period for the new position and will not receive credit for probationary service completed in the previous position.
- Employees who move to positions of the same paygrade under the same Leadership Council Member will be credited with all probationary service in the previous position.

A couple of other changes include:

- Performance appraisals will now be optional during secondary probation (§003.01; p. 10) and
- A 90-day appraisal will no longer be required for employees with a twelve-month probationary period (§006.02; p. 11).

In Chapter 6, Classification Plan, language was added to allow for a lesser pay increase if an employee has already received a salary increase for the same duties which resulted in the reclassification (§003.01B; p. 15) and a provision was added to allow greater flexibility in hiring internal candidates above the posted range (§005.01; p. 16).

In Chapter 8, Overtime, requests for extensions of the 60-calendar-day time period in which compensatory time is to be taken must now be in writing (§004.02A; p.19).

In Chapter 13, Corrective and Disciplinary Actions, a provision was added to allow for email communication of suspension with pay (§002.01A; p. 47), suspension without pay (§004.01B; p. 49), and a dismissal recommendation with prior agreement of the employee (§004.04E; p. 51) Another provision allows for extension of administrative probation period beyond one year due to absence (§004.03C; p.50).

In Chapter 14, Grievance Procedure, an additional item was added to the list of non-grievable matters: Placement on suspension without pay, or other action of the Commissioner, following a decision recommending an employee's dismissal to the Board (§003.11; p. 53).

In Chapter 15, Miscellaneous, additional wording was added to clarify that employee performance issues, in conjunction with requests for release time or tuition reimbursement for postsecondary coursework, mean "documented evidence of employee performance concerns in the prior two-year period" (§§006.01 and 006.02; pp. 61-62).

A section was added to delineate policies concerning online coursework in order to align with the bargaining agreement (§006.04; p. 63).

Mr. Scherling's written testimony is attached.

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)
March 18, 2015**

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 2015-17 NDE-NAPE/AFSCME bargaining agreement.

The State Board of Education approved the hearing draft of the Personnel Rules at its meeting on February 6th. 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.

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 Periods, policies regarding probationary periods were revised for those employees who move to another position during their original probationary period (§002; p. 10).

- Employees will be required to serve a new probationary period for the new position and will not receive credit for probationary service completed in the previous position.
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A section was added to delineate policies concerning online coursework in order to align with the bargaining agreement (§§006.04; p. 63).

This concludes my overview of some 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 April 3. I would be happy to respond to any questions.