

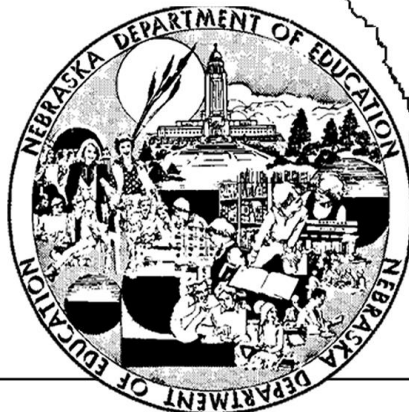
**NEBRASKA DEPARTMENT
OF EDUCATION**

PERSONNEL RULES

**TITLE 93, NEBRASKA ADMINISTRATIVE CODE,
CHAPTERS 1-16**

**EFFECTIVE DATE
DECEMBER 2, 2018
(REVISED)**

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



TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CHAPTER</u>	<u>PAGE</u>
Coverage	<u>Neb. Rev. Stat. §79-306</u>	1	1
Management Authority	<u>Neb. Rev. Stat. §79-306</u>	2	2
Definitions	<u>Neb. Rev. Stat. §79-306</u>	3	4
Employee Selection	<u>Neb. Rev. Stat. §79-306</u>	4	8
Probationary Periods	<u>Neb. Rev. Stat. §79-306</u>	5	10
Job Classification Plan	<u>Neb. Rev. Stat. §79-306</u>	6	14
Salary Administration	<u>Neb. Rev. Stat. §79-306</u>	7	18
Overtime	<u>Neb. Rev. Stat. §79-306</u>	8	19
Leave and Holidays	<u>Neb. Rev. Stat. §79-306, 81-1317.01</u>	9	21
Performance Appraisals	<u>Neb. Rev. Stat. §79-306</u>	10	43
Personnel File Information	<u>Neb. Rev. Stat. §79-306</u>	11	44
Layoff, Recall & Resignation	<u>Neb. Rev. Stat. §79-306</u>	12	46
Corrective and Disciplinary Actions	<u>Neb. Rev. Stat. §79-306</u>	13	49
Grievance Procedure	<u>Neb. Rev. Stat. §79-306</u>	14	57
Miscellaneous	<u>Neb. Rev. Stat. §79-306</u>	15	64
Code of Ethics	<u>Neb. Rev. Stat. §79-306</u>	16	74
Appendix A	NDE Personnel Rules Grievance Form		78

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CHAPTER</u>	<u>PAGE</u>
Code of Ethics	<u>Neb. Rev. Stat. §79-306</u>	16	74
Corrective and Disciplinary Actions	<u>Neb. Rev. Stat. §79-306</u>	13	49
Coverage	<u>Neb. Rev. Stat. §79-306</u>	1	1
Definitions	<u>Neb. Rev. Stat. §79-306</u>	3	4
Employee Selection	<u>Neb. Rev. Stat. §79-306</u>	4	8
Grievance Procedure	<u>Neb. Rev. Stat. §79-306</u>	14	57
Job Classification Plan	<u>Neb. Rev. Stat. §79-306</u>	6	14
Leave and Holidays	<u>Neb. Rev. Stat. §79-306, 81-1317.01</u>	9	21
Management Authority	<u>Neb. Rev. Stat. §79-306</u>	2	2
Miscellaneous	<u>Neb. Rev. Stat. §79-306</u>	15	64
Overtime	<u>Neb. Rev. Stat. §79-306</u>	8	19
Performance Appraisals	<u>Neb. Rev. Stat. §79-306</u>	10	43
Personnel File Information	<u>Neb. Rev. Stat. §79-306</u>	11	44
Probationary Periods	<u>Neb. Rev. Stat. §79-306</u>	5	10
Layoff, Recall & Resignation	<u>Neb. Rev. Stat. §79-306</u>	12	46
Salary Administration	<u>Neb. Rev. Stat. §79-306</u>	7	18
Appendix A	NDE Personnel Rules Grievance Form		78

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 will 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 such Department policies are 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, which are publicly available on the website of the Department.

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 Management rights include, but are not limited to, the following:
- 002.01 To implement and maintain a job 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 the transfer of any goods or services; or altering, curtailing, or discontinuing any goods or services;

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

- 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 are used throughout this Title except where the context would require another definition. All other words have their normal accepted meaning.
- 002 Absence Without Approved Leave means the unauthorized absence of an employee from work or the workstation during normal duty hours.
- 003 Appointment means the act of the Department filling a position.
- 004 Assigned Activities as it relates to determinations of staff travel requests includes any activity which is a normal or anticipated part of the sequence of completion of responsibilities of job tasks assigned to the employee, or assignments or approved activities which provide a non-repetitive opportunity for the employee to maintain a level of currency, expertise and leadership in the fields in which the employee has assigned job responsibilities commensurate with management expectations of the employee's capacity to serve the needs of the Department and the State in those fields.
- 005 Board means the State Board of Education.
- 006 Classification means 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 pay grade may be assigned.
- 007 Commissioner means the Commissioner of Education.
- 008 Company Service Date means 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.
- 009 Continuous Service Date means 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.
- 010 Contract Employee means an individual with whom the Department has entered into a contract under the Department's policies regarding contracting, which creates an employer-employee relationship.
- 011 Demotion means moving an employee from one job classification to another 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.
- 012 Department means the State Department of Education, which is comprised of the Board and the Commissioner.

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

- 013 Deputy Commissioner means, unless otherwise indicated, an individual appointed to that position under 79-318(3) R.R.S., and designated by the Commissioner to oversee Human Resources for the Department. Except in instances where the Deputy Commissioner is taking action as the immediate supervisor of an employee under this Title, whenever this Title provides that any Deputy Commissioner has the authority to act, the Commissioner likewise has the authority to do the same.
- 014 Discharge or Dismissal means the disciplinary termination of employment pursuant to Chapter 12 of this Title.
- 015 Employee means any person who works for the Department and receives payment through the state payroll 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.
- 016 Fixed-Term Employee means an employee in a fixed-term position.
- 017 Fixed-Term Position means 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 of the terms of this Title except for the provisions of Chapter 12 of this Title.
- 018 Full-Time Schedule means a forty- (40) hour workweek schedule.
- 019 Grievance means throughout this Title as defined in Chapter 14 of this Title.
- 020 Human Resources Office means the office within the Department that is responsible for personnel administration in the Department.
- 021 Job Family means groups of job classifications related by shared work.
- 022 Job Series means two (2) or more job classifications, similar as to duties and training required but differing primarily in difficulty, responsibility, knowledge and skills, and supervision exercised or received.
- 023 Job Specifications means the official written description of a classification of work, which summarizes information such as the purpose of the job, distinguishing characteristics, and examples of duties, minimum qualifications, supervisory and fiscal authority and physical requirements.
- 024 Lateral Transfer means changing an employee from one position to another position in the same pay grade. In the case of VR positions, it means maintaining the same job classification but transferring to a different VR office.

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

- 025 Lay Off means 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.
- 026 Leave Without Pay means 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.
- 027 Minimum Qualifications means the least amount of training and experience and other qualifications required to perform adequately in a specific position or series of positions.
- 028 Original Probationary Period means 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 regular appointment.
- 029 Paid Work Status means time paid for work or any paid leave.
- 030 Part-time Schedule means less than a forty- (40) hour workweek schedule.
- 031 Pay Grade means a specified range of salary or wage, the starting and intermediate rates within such range, and the maximum rate of such range.
- 032 Personnel Files means the files retained by the Human Resources Office of the Department, which is personally identifiable with an individual employee or former employee.
- 033 Position means 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 regular; and occupied or vacant.
- 034 Professional Growth as it relates to determinations on staff travel requests includes approved travel related to activities which are ancillary to the assigned field of responsibility or which will provide opportunities for leadership and expertise in the field(s) of the employee's assigned responsibility which are in excess of management expectations or which serve a professional interest of the employee which is outside the area(s) of assigned responsibility.
- 035 Promotion means changing an employee from one job classification to another at a higher pay grade.
- 036 Reduction in Force means the same as "lay off."
- 037 Regular Employee means an employee in a regular full-time or part-time position who has completed the required probationary period or who has acquired permanent status in accordance with this Title.

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

- 038 Resignation means the voluntary termination of employment by an employee.
- 039 Retirement means the transfer of an eligible employee from active to retired status.
- 040 Schedule Deviation means an adjustment of work hours or length of the workday.
- 041 Secondary Probation means an employee on probation under Chapter 5, Section 003 of this Title.
- 042 Suspension means an ordered absence for disciplinary, investigatory or other purposes.
- 043 Temporary Employee means an employee hired through an agency or via contract for a limited period of time to perform requested job duties on either a full-time or part-time schedule.
- 044 Transfer of Employee means the movement of an employee from one (1) position to another position within the Department. A transfer action does not require termination of the employee.
- 045 Treatment means the provision of medical, dental or psychological services or procedures performed (including surgery) on the employee or immediate family member by treating professionals or their staff. "Treatment" for purposes of sick leave does not include participating in activities that are, as determined by the Department, primarily considered recreational activities and engaged in frequently by persons who are not ill or suffering from a medical, dental or psychological condition or disability, even when such activity is beneficial to the employee's physical or mental health (i.e., trips to a destination to relax or relieve stress, running in marathons, etc.).
- 046 Tuition means the cost per credit hour of instruction at an accredited postsecondary institution.
- 047 Work Rules means 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 newly created professional positions, including any Deputy Commissioner. Selection of other staff will be at the discretion of the Commissioner who will 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 regular 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 will 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 the Department's policies regarding contracting, 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 Service Date. 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 will not change the employee's service date.

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

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, are 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 age, race, color, religion, sex, disability, marital status, 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 age, 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 Human Resources Office.

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

001 Period of Time. Each employee serves an appropriate probationary period based on the job classification occupied. The probationary period for new or revised classifications created after the effective date of this Title will be determined by the Department per the provisions of Chapter 2, Section 002.01 and Chapter 6, Section 001.

001.01 Six-Month Probationary Periods. Employees occupying the following jobs, or successor job titles, serve a probationary period of six (6) months:

Administrative Associate
IT Infrastructure Support Technician
IT Help Desk Specialist
Office Associate
Office Associate Executive
Paralegal
Program Associate
VR Associate and Senior Associate

001.02 Twelve-Month Probationary Periods. Employees occupying the following jobs, or successor job titles, serve a probationary period of twelve months:

Administrative Specialist
Administrator
Deputy Commissioner
Disability Adjudicator
Disability Determination Section Hearing Officer
Education Specialist
General Counsel
IT Applications Developer
IT Data/Database Analyst
IT Infrastructure Support Analyst
IT Help Desk Specialist
IT Project Management Lead
Legal Counsel
Officer
Program Specialist
Project Manager
Psychometrician
Senior Administrator
VR Service Specialist
VR Rehabilitation Specialist
VR Office Director
VR Program Director

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

- 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. Secondary probation periods may not be extended.
- 002 Change of Position During Probationary Period. Employees who move to another position during their original probationary period are required to serve a complete new probationary period in the new position and will not be credited with probationary service completed in the previous position. However, employees who move to positions that are under the same Office Administrator, and are of the same pay grade, will be credited with all probationary service in the previous position.
- 003 Secondary Probationary Periods. Employees who have previously completed an original probationary period in their current position, and accept a new position, or who are demoted as the result of a disciplinary demotion, will be placed on a secondary 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. The supervisor and appropriate Office Administrator may request approval from the Human Resource Office to waive or end the secondary probationary period early. If the employee is, in the opinion of the Department, not performing satisfactorily in the new position during the secondary probationary period, the employee may be reverted to the employee's previous position and pay rate (secondary probation following promotions only) or may be placed in a vacant position of a similar classification with the same pay rate as the employee received prior to the new position. 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 in the manner described in Chapter 5 of this Title. Notice of such change in position must be provided to the employee within the secondary probation period and the change effective within thirty (30) calendar days of the end of the secondary probation period. The Department is not 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 pay grade. Any of the Department action described above are grievable only if and to the extent that the employee is alleging that (i) such action was based upon unlawful discrimination by reason of sex, race, color, age, national origin, marital status, religion, disability or genetic information; or (ii) their previous position was vacant and available or a vacant position of similar job level was available but they were not placed in such a position. The Department will document efforts to provide the promoted employee with performance improvement counseling when utilizing this provision.

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

- 003.01 During the secondary probationary period for the new position, probationary performance appraisals may be conducted according to the schedule as set forth in Chapter 5, Section 006 of this Title.
- 004 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.
- 005 Termination of Employment. Employees serving an original probationary period may, upon the recommendation of the immediate supervisor, and with the approval of the appropriate Office Administrator, be terminated without cause or recourse under the rules of Title 93 at any time during the probationary period.
- 005.01 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 applicable background screens, the appropriate Office Administrator and supervisor will notify the employee in writing of the date services are to be terminated. There is no recourse for such terminations under this Title.
- 006 Appraisal Schedule. Written performance appraisals will be prepared at prescribed intervals during the probationary period and annually thereafter as described in Section 006.03. The absence of any required appraisals does not prohibit nor delay the ending of a successful probationary period and the establishment of a regular appointment. If a performance appraisal was not completed during the previous twelve (12) months, an employee's performance will be considered as meeting expectations for salary purposes until such time as a performance appraisal is completed. Employees will be provided with either electronic access to, or a paper or electronic copy of, the completed performance appraisal.
- 006.01 Six-Month Probationary Period. For employees with a six-month probationary period the following schedule of appraisals will 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.

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

006.02 Twelve-Month Probationary Period. For employees with a twelve-month probationary period, the following schedule of appraisals will be maintained:

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

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

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

006.03 Annual Appraisals. Annual appraisals will be conducted on an annual basis covering the previous calendar year. Additional appraisals may be scheduled at the discretion of the employee's supervisor.

007 End of Probation. If the supervisor determined that the services of an employee have been acceptable, the employee will move from probationary to regular employee status. An employee will move to regular employee status on the day following the day ending the 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, an employee will move to regular employee status on the day following the day ending the extension of the original probationary period.

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

- 001 General. The Human Resources Office will maintain a master set of all job specifications used by the Department, which will be available on the Department's intranet website.
- 002 Job Classification Review. Regular employees or their supervisors may request a review of the employee's job classification at any time providing the position has not been reviewed within the previous twelve (12) months. The employee's supervisor(s) may request of Human Resources a waiver of the twelve (12) month interval requirement. An employee may make the request to the Human Resources Office through their immediate supervisor or a supervisor may make the request directly to the Human Resources Office. Following such request by an employee or supervisor, the Human Resources Office will review the placement of such employee. Such review by the 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 Office Administrator. The Position Description Questionnaire will be provided to the employee by the Human Resources Office within five (5) workdays of such request.
- 002.01 Form Completion. The employee or supervisor will have fifteen (15) workdays to complete the Position Description Questionnaire, including supervisor's and Office Administrator's review, and return it to the Human Resources Office.
- 002.02 Human Resources. The Human Resources Office will have twenty (20) workdays from the receipt of the completed Position Description Questionnaire to complete the review of the job reclassification request and make a decision. A copy of Human Resources' decision will be forwarded to the supervisor(s), the Office Administrator and the employee. If Human Resources' decision is to retain the employee's classification or reclassify the employee to a higher job specification, the decision is final. If the decision of the Human Resources Office is to reclassify to a lower job specification, the supervisor(s), the Office Administrator, and the employee will then have an opportunity to provide comments and/or documentation to the Deputy Commissioner to appeal Human Resources' decision within ten (10) workdays.
- 002.03 Deputy Commissioner. The Deputy Commissioner will have fifteen (15) workdays after receiving the appeal to make a final decision. The Deputy Commissioner will communicate the final decision to the Human Resources Office, supervisor(s), the appropriate Office Administrator, and the employee within five (5) workdays of the decision.

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

If the decision of the Human Resources Office is to classify the employee to a higher job specification is made on or before the 15th of the month, and a pay adjustment is warranted, the pay adjustment will be effective as of the 1st day of the current month. If the decision is made after the 15th of the month, the pay adjustments will be effective as of the 1st day of the next month.

002.03A The time requirements in this Chapter may be extended by written agreement between the employee and the Human Resources Office in cases where additional time is needed in order to conduct the review process. Retroactive pay adjustments may be made under Section 002.03 of this Chapter.

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

003.01 An employee who is reclassified to another job classification at a higher pay grade will 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. In no case will the employee receive a salary that is less than the minimum or more than the maximum of the new pay grade.

003.01A The appropriate Office Administrator may request approval from the Deputy Commissioner to award a salary increase greater than would be provided by Section 003.01 of this Chapter. The Deputy Commissioner's decision will be final.

003.01B The appropriate Office Administrator may request approval from the Deputy Commissioner to award a salary increase less than would be provided by Section 003.01 of this Chapter if the employee has already received an increase for the same duties which resulted in the reclassification.

003.01C An employee's job classification modified by Human Resources outside of the Job Classification Review Process is not subject to the salary increases in Section 003 of this Chapter.

004 Demotions. An employee may receive a disciplinary demotion per Chapter 13, Section 004.02, or be demoted due to unsatisfactory performance during a secondary probation period per Chapter 5, Section 003. 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, a non-disciplinary demotion may result. The employee will have the right to elect demotion as the alternate to a layoff. The right to elect will be granted to employees in accordance with provisions of Chapter 12 of this Title.

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

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 will 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, will 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 Office Administrator may recommend to the Deputy Commissioner a salary 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, will 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.

005.01 The Commissioner or the Deputy Commissioner may authorize a higher salary than was identified in the posting in cases where it is determined that the current Department employee selected possesses superior or unique experience or qualifications that will provide added benefit to the Department in the job.

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

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

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

008 Pay During Temporary Transfer. When an employee performs the duties of a position in a higher pay grade than the job classification pay grade currently held by the employee, the employee will 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 will the employee receive a pay reduction. Such temporary pay increase will 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) workdays.

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

- 001 Pay Plan. Employees are placed in an assigned position and pay grade of a job classification and pay plan approved by the 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.
- 001.02 Merit Stipends. Upon receiving a recommendation from the appropriate Office Administrator, 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.
- 002 An employee who, on the effective date of a scheduled pay increase, is under suspension with pay, suspension without pay, or administrative probation, will not be provided the pay increase until the employee satisfactorily completes the disciplinary action except that no employee will 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 will 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 are: 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 Nonexempt Defined.

001.01 Exempt employees means 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 Nonexempt employees means employees who are eligible to receive compensatory payment or time off for overtime.

002 FLSA Status Determination. The Human Resources Office determines the Fair Labor Standards Act (exempt or nonexempt) status of each existing, new or restructured position.

003 Overtime Approval. For all employees other than those in the Disability Determination Section (DDS), no overtime will be worked by nonexempt employees without the prior approval in writing by the immediate supervisor, the appropriate Office Administrator, and the Commissioner or the Deputy Commissioner. No overtime is to be worked by a nonexempt DDS employee unless authorized by the Social Security Administration and approved by the DDS Office Administrator.

004 Overtime Compensation Options for Nonexempt Employees. Nonexempt employees, who accumulate more than forty (40) hours of compensable work time in a work week, will be eligible for overtime compensation. The method of compensation will be at the discretion of the appropriate Office Administrator 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 will 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 will be computed by dividing the annual rate of pay by the number of hours the employee is normally responsible for per year. Such payment will 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 will be calculated at time and one-half (1-1/2) unless the employee has actually worked less than forty (40) hours during the workweek. If the employee has actually worked less than forty (40) hours during the workweek, compensatory time off will be calculated at straight time. Paid vacation, sick, or bereavement leave will not be counted as work hours for overtime purposes.

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

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

004.02B Employees who worked overtime hours between July 1, 2017 and June 30, 2018, will either be provided time off by July 31, 2018 or be paid by August 31, 2018 at the June 2018 pay rate. Employees who worked overtime hours between July 1, 2018 and June 30, 2019, will either be provided time off by July 31, 2019 or be paid by August 31, 2019 at the June 2019 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 workday or approved work schedule, may deviate from their usual work hours upon advance approval and agreement between the employee and immediate supervisor as to the number of hours of deviation and when the schedule deviation will take place. Schedule deviation is defined as an adjustment of work hours or length of the workday.

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

006 Nonexempt Employees – Overtime Calculation.

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

006.03 Paid leave (e.g., sick, vacation, bereavement) will 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 will 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 will be considered as authorized leave.

002 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, will have their accumulated unpaid sick leave balance reinstated. The employee's service date(s) will 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 will start with a zero (0) sick and vacation leave balance and will be considered to be new employees for service date purposes, and will 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 will be no less than one (1) workday for purposes of this Section. One (1) workday will 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 date will be adjusted when an unpaid absence exceeds fourteen (14) consecutive calendar days, except when an employee is still eligible for workers' compensation payments. 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., will be compensated holidays for full-time and part-time employees and are scheduled on the dates indicated. When a holiday falls on Saturday, it will be observed on the preceding Friday. When a holiday falls on Sunday, it will be observed on the following Monday.

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

<u>DAY</u>	<u>DATE</u>
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 workday for full-time employees.
- 003.02 Part-Time Employees. Part-time employees will 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 workday 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. will be compensated for by granting the employee compensatory time off or by paying the employee. Nonexempt employees will be compensated per Chapter 8 - Section 006.02 of this Title. Exempt employees will be compensated at straight time. The method of compensation for the holiday worked will be at the discretion of the Department. If compensatory time off is granted, the employee will determine when such time will be taken, subject to Chapter 8 - Section 004.02A of this Title.

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

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:

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

004.01 Vacation Leave for Part-Time Employees. Part-time employees will 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 will be taken and reported in increments of not less than one tenth (1/10) of an hour.

004.03 Vacation leave will 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, except as provided in Chapter 9, Section 012.06C.

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

004.04 Advancing Vacation Leave. The appropriate Office Administrator 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 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 thirty (30) hours or less will not unreasonably be denied. Employees will 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 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 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 will 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 will 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 means an employee who is qualified to receive retirement allowance under the state or the school retirement system.

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

004.07 Leave Without Pay. All earned accrued vacation leave, which does not include advanced vacation leave, will be used by an employee before being granted leave without pay. Employees may request leave without pay in writing from the appropriate Office Administrator; 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 Human Resources Office.

004.08 Holidays falling within a period of vacation leave will 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:

<u>Years of Service</u>	<u>Hours Per Year</u>	<u>Hours Per Month (Average)</u>
1st through 5th year	96	8.00
6th through 15th year	112	9.34
16th and following years	144	12.00

005.01 Sick Leave for Part-Time Employees. Part-time employees will 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 (see definition in Chapter 3, Section 045 of this Title)

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, or miscarriage,

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

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 will be considered by the immediate supervisor when determining the number of days of sick leave to be granted. The immediate family means: spouse; children including step, adopted and foster children; daughter/son-in-law; parents; and parents of the spouse. At the discretion of the appropriate Team Leader, 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 not the biological mother or primary care giver 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 will be required to establish the medical necessity.

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

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

005.03 Sick leave will not be used as vacation leave.

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

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

005.05 Sick leave will not accrue to any employee on leave of absence without pay, leaves without pay, including Family and Medical Leave, suspension without pay, layoff, or during time off of work that is compensated under workers' compensation, except as provided in Chapter 9, Section 012.06C.

005.06 Probationary employees will be entitled to sick leave at the same rate as regular 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 will apply.

005.07 Requesting Sick Leave. Sick leave will be requested by the employee in writing and in advance whenever possible, for anticipated health reasons such as medical treatment, physical examinations, and meetings with school personnel described in Section 005.02E of this Chapter. In cases of sickness, injury, emergencies, or any other absence not approved in advance, the employee will advise appropriate Department personnel of the circumstances as soon as possible. An employee may be required to submit substantiating evidence and/or documentation when the reason for the leave request was for medical or dental treatment, a meeting with school personnel described in Section 005.02E of this Chapter, or when the immediate supervisor suspects sick leave abuse. Substantiating evidence may also be required if the sick leave absence exceeds five (5) consecutive workdays.

005.07A If an employee has been absent on sick leave exceeding five (5) consecutive workdays, 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 workday 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.

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

- 005.08 Advancing Sick Leave. Sick leave may, at the discretion of the immediate supervisor and appropriate Office Administrator, be advanced 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 following three (3) month period. Employees will reimburse the Department for all used, unearned sick leave upon termination, either from a deduction in their final check or by separate payment on a schedule agreed to by the Department. Employees may not request more than one advancement in a 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 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 Office Administrator.
- 005.10 Balancing Sick Leave During Employment. There will 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.

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

005.12 Balancing Sick Leave Upon Separation. Upon separation of employment all sick leave will 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 will 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 will 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 will 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 will 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, will 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 will 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 will 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 will be required to utilize (1) accumulated unused compensatory time off if the employee is a nonexempt employee as defined in Chapter 8, Section 001.02 of this Title 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 Office Administrator. 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 Human Resources Office.

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

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 workers' 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 beginning with the first date of absence. 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 will 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 must be obtained from the 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.

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

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 (e.g., exempt employees) 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 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 means 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.

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

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, 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.

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

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

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

007.01C Requesting employees will 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 means 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 Office Administrator, 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 will be proportionate to the percentage of FTE that they work. Bereavement leave will not be charged to sick leave or vacation leave.

008.01 Bereavement leave will 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 Office Administrator.

008.02 No employee will 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 will 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 the Deputy Commissioner due to natural disasters, public health emergencies, inclement weather or other local work-related emergencies.

009.01 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:

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

- 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 Team Leader.
- 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 will 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.

009.02 If 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 will be charged compensatory time, vacation leave, or leave without pay. The appropriate Office Administrator, or the immediate supervisor, if authorized by the appropriate Office Administrator, may grant permission to both exempt and nonexempt 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 employees who report for and remain at work in periods during which administrative leave was authorized will be granted compensatory time off, to be used at a later date.

010 Military Leave. Employees will 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.

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

011 Civil Leave. The employee will 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) will 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 will 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 will be granted during the time when the employee's physical presence is required by the court or the election or counting board. The employee will 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 will 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 workday, the employee who is subject to a work-related subpoena will be on the job and working. Any witness fee received under such subpoena will be remitted to the funding source from which the employee's salary is paid.

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

Employees attending court or an administrative hearing as a plaintiff, defendant, or witness on non-work related matters, will use vacation leave or earned compensatory time, if available. If the employee does not have vacation leave or compensatory time available, the appropriate Office Administrator 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 Office Administrator will 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 will be eligible for the following types of leave:

012.01 Interviews. Interviews with employees for positions within the Department will be performed during work hours. Time spent for interviews, and travel to attend such interviews which occur during the employee's regular workday will 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 twelve (12) 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 twelve (12) months is subject to approval by the Board, which will review the request and the recommendation of the Commissioner of Education. Such leave of absence will be requested in writing to the Commissioner through the appropriate Office Administrator.

012.02A At the expiration of an approved leave of absence, employees will return to a position of a similar job classification or pay grade as the position the employee held prior to leave, if available and the employee is otherwise qualified. If no such position is available, the employee will be considered "laid off" under the provisions of Chapter 12 of this Title. In the alternative, an employee may also accept demotion in accordance with Chapter 6, Section 004 of this Title, if available. 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 will not accrue while on leave of absence without pay. However, vacation and sick leave earned but not used prior to leave of absence will be carried forward upon employee's return to duty.

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

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 will be at the discretion of the immediate supervisor. Donating blood under circumstances unrelated to state-sponsored drives or supply emergencies will require employees to obtain advance approval to use vacation leave or to adjust their work hours to complete a full workday.

012.04 Employee Assistance Program. Employees attending Employee Assistance Program (EAP) sessions at the Department's direction will 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 will do so at their own expense and will use approved sick or vacation leave, compensatory time, or leave without pay.

012.05 Retirement Seminars. Leave with pay will 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 will be reported to the Human Resources Office as soon as possible. See Chapter 15 - Section 008 of this Title for additional information on workers' compensation.

012.06B Employees entitled to be paid workers' compensation will be granted injury leave with full pay for the first five (5) workdays 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 will apply. Injury leave will not be charged to vacation or sick leave.

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

012.06C Employees who are receiving workers' compensation for injury or occupational disease occurring out of and in the course of employment, will 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 will 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. Employees on workers' compensation will be treated as part-time employees for purposes of leave earnings and will 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 will 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) workdays 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. The primary caregiver of a newly adopted child will, upon a request that is within thirty (30) calendar days of such adoption, receive up to six (6) weeks of leave, which is the generally accepted medical standard leave period for new mothers by natural birth. The leave will 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.

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

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 will 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 will 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.

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

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 Maternity Leave Donation (MLD) Program. An employee may participate in the MLD program with the approval of the Human Resources Office.

014.01 Eligibility of Recipient. Employees must submit a written request on the form provided by the Human Resources Office and;

014.01A Be the expectant mother of a newborn baby or be the adoptive mother;

014.01B Have an agency-approved FML request;

014.01C Have exhausted all earned sick leave for eligible sick leave reasons; and

014.01D Have not offered anything of value in exchange for the donation.

014.02 Contributing Maternity Leave Donations. Employees may contribute accrued vacation leave or earned compensatory time to benefit another employee in the Agency who requests MLD. Vacation leave and earned compensatory time will be donated in no less than 4 - hour increments. The contributing employee must identify the specific amount of time donated and the name of the recipient of the donated time on the appropriate forms for that purpose. Vacation leave and compensatory time donated and transferred to another employee pursuant to this provision will be irrevocably credited to the recipient's MLD account.

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

014.02A Vacation leave and compensatory time transferred will be converted to a dollar value and then converted to hours based on the recipient's hourly rate. No more than an equivalent of 480 hours of MLD may be received by an employee during the approved FML period. The Agency will transfer donated leave to the recipient's MLD account from the donor's accruals in chronological order based on the date the form was received and on an as needed basis.

014.03 Eligibility of the Donor. Before donating vacation leave or earned compensatory time employees will meet the following criteria:

014.03A Only increments of four (4) hours may be donated;

014.03B Have not solicited nor accepted anything of value in exchange for the donation; and

014.03C Have remaining to his/her credit at least 40 hours of accrued vacation leave (earned compensatory time can be donated completely, leaving a zero balance).

015 Service Date Adjustments. The employee's service date will be adjusted when an unpaid absence exceeds fourteen (14) consecutive calendar days except when an employee is still eligible for workers' compensation payments. The adjustment will correspond to the number of days the employee is on unpaid leave.

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

- 001 Conducting Appraisals. Employees will be appraised on their job performance at regular intervals per Chapter 5 - Section 006.03 of this Title.
- 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 will be explained in the comments section of the appraisal.
- 003 Rebuttal. The employee may, within seven (7) calendar days of the appraisal conference, make written comments within the employee signature area or submit a separate written statement to the Human Resources Office that will become a permanent part of the personnel file. No additional written observation will be made on the appraisal after the appraisal conference has been held without notification to the employee.
- 004 Grievance. Employees will 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, disability, or genetic information (as prohibited by the Genetic Information Non-discrimination Act [GINA] and Section 48-236 R.R.S.); 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. A supervisor's subjective assessment of a matter of performance is not false information for purposes of this subsection.

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 Human Resources Office.
- 002 Content. Personnel records include all information stored in any form by the Human Resources Office, which is personally identifiable with an individual 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 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 will 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 will 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 will include all information that is not considered public information. Confidential information will be released only to the employee; the Board; any Department administrator or supervisor in the line of authority to the employee; staff from the Human Resources Office or the General Counsel’s Office; any governmental law enforcement, or investigative agency or representative upon presentation of proper identification to the Human Resources Office; a subpoena or court order; anyone who presents a 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 will be allowed to inspect and/or obtain a copy of their own personnel file maintained by Human Resources at any time during work hours. Upon an employee’s specific request to the Human Resources Office, the Human Resources Office will, within ten (10) workdays, provide electronic access or copies of the specific documents.

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

- 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 previously provided to the employee, in which case the cost of such copies will be assessed to the employee at the rate per copy charged for public records per the Department's administrative policies regarding public access to records and reproduction costs.
- 005 Notice. Employees will be notified by the Department in writing within ten (10) workdays 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 will be directed to the 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, the Human Resources Office will forward an Authorization for Release of Employment Records form to the employee or the requestor. If no written authorization is received, the Human Resources Office will release only public information. The release form will be retained in the employee's personnel file. Documented employment information from a current or former employee's personnel file will 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 electronically by Human Resources separate from personnel file documents. Access to medical records will be provided only to personnel who require them to carry out an assigned responsibility.
- 008 Post-employment. This Chapter does not cover the inclusion of information in any employee's personnel file following termination of the employee. Former employees will have reasonable rights of access to their Department personnel file, subject to the provisions in this Title.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 12 – LAYOFF, RECALL AND RESIGNATION

001 Effective. A resignation is effective when accepted in writing or orally by a supervisor or any member of the Human Resources Office or the Legal Services 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 workdays 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 will 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. The Commissioner has discretion to determine whether the layoff will be geographical, organizational, program, by classification, or any combination thereof.

004 Layoff General Rules. When a layoff of employees occurs, the following applies:

004.01 Layoffs will be identified by the budget and program areas within a specific locality. The Department will identify the job classification(s) for layoff to provide the most efficient and productive operation of the Department. Within the identified job classification(s), the order of layoff will be based on seniority (based on the Department service date or Department 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 will 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.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 12 – LAYOFF, RECALL AND RESIGNATION

- 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) will be given priority over transfers to positions in a different geographical area.
- 005.04 An employee who transfers to another position in the same job classification will be transferred so as to effectuate no loss in pay.
- 006 Recall and Re-employment. This Section specifies how laid off employees will 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 will 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 Job Series. Following a layoff, when a vacancy is created in the same job series, employees who satisfy the required qualifications as determined by the Department will 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 will notify the first five (5) qualified employees in line for recall of the vacancy.
- 006.02B Such employee(s) will then have ten (10) workdays 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) workdays.
- 006.02C Failure to Respond. Employees who fail to respond by either accepting or refusing the recall vacancy on two (2) successive notifications will 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 job series at the time layoff began, the Department will notify all laid off employees of the vacancy and the qualifications required to hold the position. Such employees will 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.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 12 – LAYOFF, RECALL AND RESIGNATION

- 006.04 The pay rate of an employee who occupies a position of a lower job classification as a result of recall from layoff or re-employment will 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 016 of this Title, in geographically relocating to avoid layoff, there will 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 will 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 will be responsible for providing the Department with a current address. It will 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 Human Resources Office.
- 008 Accumulated Leave Payoff. Employees who are laid off will 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 will not be modified by this Chapter.
- 009 Notification. "Notification," as used in this Chapter, means 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.

TITLE 93 NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 13 – CORRECTIVE AND DISCIPLINARY ACTIONS

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 directive 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, responding to work-related questions or inquiries of any supervisor, 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 Conduct while on- or off-duty, which brings discredit to the Department, the State, or which impairs an employee's services and/or the Department's performance or function, including criminal charges arising from such conduct.

TITLE 93 NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 13 – CORRECTIVE AND DISCIPLINARY ACTIONS

- 001.12 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, or when prior consumption of same is plainly detected.
- 001.13 Insubordinate acts of language which seriously hamper the Department's ability to control, manage, or function.
- 001.14 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.
- 001.15 Unlawful work place discrimination (harassment) based in whole or in part, on race, color, sex, sexual orientation, religion, age, disability, genetic information (as prohibited by the Genetic Information Non-discrimination Act [GINA] and Section 48-236 R.R.S.), 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.
- 001.16 Display of sexually explicit or 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.
- 001.17 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 or the 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 or the Commissioner. Suspensions with pay are not grievable.
- 002.01A The ordered suspension with pay will be in writing, signed by the Deputy Commissioner or the Commissioner, and will become part of the employee's official personnel file. If the employee is absent when a suspension with pay is ordered, the Deputy Commissioner or the Commissioner will direct written notice to the employee either by Certified Mail with instructions to "Deliver to Addressee Only, Return Receipt Requested," by personal delivery, or deposit to the employee's last known address, or by email to the employee with agreement of the employee.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 13 – CORRECTIVE AND DISCIPLINARY ACTIONS

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 will be removed from the employee's personnel file.

002.01C In the absence of the Deputy Commissioner or the Commissioner, the appropriate Office Administrator may order an employee's suspension with pay for up to ten (10) calendar days. Upon the Deputy Commissioner's or the Commissioner's return, the Deputy Commissioner or the 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 will 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 will 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 will be consistent with the oral conference. The written warning will be dated, explain the reason for the warning, and explain the action expected of the employee to correct the cause or problem. Both the supervisor and the employee will sign the written warning, and the employee will 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 documents only that he/she has seen it and the oral conference described above has been held. The written warning will be considered effective on the date that it is issued to and received by the employee.

003.02A Written warnings will 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) workdays of receipt by the employee.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 13 – CORRECTIVE AND DISCIPLINARY ACTIONS

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

003.02C1 When the written warning is renewed, the employee will again have the opportunity to offer written commentary in response to the renewal and will 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 will be removed from the employee's personnel file ninety (90) calendar days after it will 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, (including subsequent disciplinary or corrective 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 will 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.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 13 – CORRECTIVE AND DISCIPLINARY ACTIONS

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

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 will be in writing with full documentation, signed by the supervisor and the appropriate Office Administrator. The disciplinary demotion will be signed by the Deputy Commissioner and will become a part of the employee's official personnel file. An employee who is the subject of a disciplinary demotion will also be placed on secondary probation as described in Chapter 5, Section 003 of this Title.

004.03 Administrative Probation. An administrative probation is a period of time, not more than six (6) calendar months, imposed by the appropriate Team Leader, 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 will be in writing, dated, and will 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 will 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 will 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.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 13 – CORRECTIVE AND DISCIPLINARY ACTIONS

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 unless extended in accordance with the provisions of Section 004.03B of this Chapter. Reasons for such extension will be made known to the employee in writing.

004.03D The termination of a regular 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 corrective or disciplinary actions or when circumstances render any preceding steps unnecessary or inappropriate.

004.04A The Office Administrator and the employee's immediate supervisor, if other than the Office Administrator, will recommend dismissal to the Commissioner in writing, and the decision to dismiss or take another action will be made by the Commissioner.

004.04B The Commissioner will 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 acts as a waiver by the employee to the aforementioned meeting prior to action by the Board.

004.04C 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 will 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.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 13 – CORRECTIVE AND DISCIPLINARY ACTIONS

004.04D Within five (5) workdays following the scheduled date of the meeting with the Commissioner, the Commissioner will provide the employee a copy of his/her decision and the action which the Commissioner has decided to impose. This written decision may be hand-delivered, sent by Certified Mail, sent by regular U.S. Mail to the employee, or provided by email with prior agreement of the employee. The five (5) workday period may be extended upon agreement between the Commissioner and the employee. For the purposes of this subsection, the date the written decision is “provided” to the employee is (a) two (2) business days after it was deposited in the regular U.S. Mail; or (b) the date of personal or certified delivery, or the date it was e-mailed.

004.04D1 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) workdays of receipt of the Commissioner’s letter of notice; and

004.04D2 The date, time, and place of the hearing will be communicated in writing to the employee.

004.04D3 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 are conducted in accordance with Title 92, Nebraska Administrative Code, Chapter 61.

004.04D3a The Hearing Officer’s findings of fact and recommendation to the Board and the Board’s order in a contested case are public records.

004.04E If the Commissioner’s decision is to dismiss the employee, the Commissioner may elect to take whatever action he/she chooses which affects the employee until the dismissal becomes final, including placing the employee on suspension without pay. Such action will be in writing and be included with the written decision provide under Section 004.04D of this Chapter.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 13 – CORRECTIVE AND DISCIPLINARY ACTIONS

004.04F If no timely written request of a hearing is received by the Commissioner, the dismissal decision becomes final and will appear in the Commissioner's Report for the next regularly scheduled Board meeting.

004.04G When the Department determines that immediate disciplinary action is required for an employee not officed in Lincoln, the Commissioner or a Deputy Commissioner may designate an individual to sign and deliver the notice of disciplinary action to the employee for the Commissioner or a Deputy Commissioner. The disciplinary action will be effective immediately upon the receipt of such notice by the employee. The Commissioner or a 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 regular employees 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 will retain grievance rights during subsequent probation periods per Chapter 5 - Section 003 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. In the event that a suspension without pay or demotion is not supported through the grievance procedures, the employee will 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 Placement on suspension without pay or other action of the Commissioner following a decision recommending an employee's dismissal to the Board as described in Chapter 13, Section 004.04.

003.12 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.

003.13 Maternity Leave Donation Program participation.

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.

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

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 will 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 will 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 will be as follows:

006.01 Step One. Within fifteen (15) workdays of the employee's knowledge of the event or condition which caused the grievance, the grievant will first request a meeting with the immediate supervisor and the next level of supervision. If an employee is placed on suspension with pay, the workdays within that period are not counted against the fifteen (15) workday time frame. In cases where the next level of supervision is the Deputy Commissioner, then the Director of Human Resources will attend the meeting as the Deputy Commissioner's designee. At the time the request is made, the employee will notify the supervisor(s) in writing that the meeting will constitute Step One in the grievance procedure. Within five (5) workdays of the request, the immediate supervisor, next level supervisor, or designee if applicable, and grievant will meet. The supervisors will arrive at a response and communicate the same to the grievant, in writing, within four (4) workdays of the meeting. If the response is not satisfactory to the grievant, Step One of the grievance will be reduced to writing by the employee on the approved form within three (3) workdays of receipt of the supervisors' response and the supervisors will have five (5) workdays upon receipt of the written grievance to provide the grievant with a written answer. The grievant will 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 will proceed as specified in Step Four of this procedure by filing an appeal to the Board without having to convene the meeting described in Section 006.01 of this Chapter. The appeal to the Board referred to in Step Four below must be filed with the Commissioner, in writing on the appropriate form, within fifteen (15) workdays of the grievant's receipt of the Deputy Commissioner's suspension order or disciplinary demotion approval.

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

006.01B In cases of administrative probation, the grievant will submit the grievance to the Deputy Commissioner in writing on the appropriate form within ten (10) workdays 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 will give a written answer within ten (10) workdays 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) workdays of the receipt of the Deputy Commissioner's answer.

006.01C In cases where an Office Administrator 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 will skip Step Two below and proceed directly to Step Three within five (5) workdays 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) workdays of the receipt of the supervisor's written answer, present the completed grievance form to the appropriate Office Administrator who will give a written response to the grievant within five (5) workdays thereafter. If the next level of supervision above the grievant's supervisor is the Deputy Commissioner, Step Two will be skipped and the grievant may proceed directly to Step Three by presenting the completed grievance form to the Deputy Commissioner within five (5) workdays 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) workdays of receiving the response from the appropriate Office Administrator, present the grievance to the Deputy Commissioner by submitting the completed grievance form. The Deputy Commissioner will give a written answer to the grievant within five (5) workdays, thereafter.

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

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

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

006.04B The Board 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 will 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 will cause a complete record to be made of all evidence offered at the time of the hearing. The hearing officer will prepare written findings of fact and recommend a decision to the Board. The hearing officer will deliver these findings of fact and recommendation to the Board 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 will take place within ninety (90) calendar days of the 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 will be subject to cross examination. If the witness is an employee of the Department, he/she will 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 Board will 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 will be submitted to the Board in accordance with this Chapter.

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

- 007.01 If both parties choose to submit the appeal to voluntary binding arbitration, they will sign a waiver within ten (10) workdays 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 will 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 will be informal and the rules of evidence will not apply. The parties may be represented by attorneys in arbitration hearings. In cases involving discipline, the Department will present its case first, and in all other cases the employee will present his/her case first. The decision of the arbitrator will be final and may not be appealed. The arbitrator will 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 will 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 will be borne equally by all parties. Arbitrators will 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 will be employed.
- 007.03 The Commissioner or the Deputy Commissioner will 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 will not be allowed in any case unless the parties and the arbitrator are all in agreement as to the need for such briefs.

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

007.04 The decision of the arbitrator will be made in writing within sixty (60) calendar days of the hearing and will include findings of fact and conclusions of law. The findings of fact will consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding and the Human Resources Office will 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 will 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) workdays of the receipt of the request, unless objections are entered. Objections to discovery will be made to the arbitrator, and the arbitrator will consider the matter and issue a decision.

008 Number of Days. The number of days indicated in each step of the procedure will be the maximum. Failure of the grievant to proceed to the next step within the maximum time limit will 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 will automatically allow the aggrieved employee(s) to proceed to the next step.

“Days” will mean regularly scheduled workdays when the Nebraska Department of Education, Nebraska State Office Building offices, are open, excluding, however, such regularly scheduled workdays 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 will 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.

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

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

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 15 – MISCELLANEOUS

001 Working Schedule. A schedule of working hours, which reflect individual job requirements, will be determined by the appropriate Office Administrator and the immediate supervisor. All employees will use the electronic calendar provided by the Department that will be accessible with full details to the immediate supervisor, indirect supervisor of the employee, and to others as directed by anyone in the employee's chain of command. All employees will establish their schedule of work hours approved by their supervisor, and record that schedule of work hours in their electronic calendar. All employees are accountable for a forty (40) hour workweek unless employed less than full-time for which work hours for a workweek are equivalent to the percentage of their employment for each week. All employees will record in advance on their electronic calendar all meetings, travel and leave time. Emergencies or unforeseen medical needs are exceptions to advance recording so long as an employee immediately provides a written explanation to their supervisor no later than when first returning to work and promptly records the leave on their electronic calendar.

001.01 Change in Work Schedule. Supervisors will provide ten (10) workdays 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) workday notification.

001.02 Lunch. Each day, employees will 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 will 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 workday.

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 workday or in extending the lunch break. Rest breaks are considered work time.

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

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 15 – MISCELLANEOUS

- 001.05 Job Sharing. Job sharing may be allowed by mutual agreement of the Deputy Commissioner, the appropriate Office Administrator 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, will be subject to disciplinary action up to and including termination; or will 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 will be subject to termination of employment/contract; or will 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 Human Resources Office no later than five (5) calendar days after the conviction.
- 003 Discrimination. Unlawful work place discrimination (harassment), based in whole or in part on sex, race, color, religion, marital status, national origin, age, disability, 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. Reports of alleged unlawful discrimination will be made to a staff member of the Human Resources Office, or any NDE Office Administrator. Employees covered by the Agreement may utilize grievance procedures contained in the Agreement, and employees not covered by the Agreement may utilize the grievance procedures contained in Chapter 14 of this Title.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 15 – MISCELLANEOUS

- 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 workday, 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 will 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 will 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.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 15 – MISCELLANEOUS

006 Employee Education Opportunities

006.01 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 that award credit on the semester schedule or up to nine (9) credit hours each calendar year from postsecondary institutions that award credit on the quarter schedule. 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 employees 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. 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, Office Administrator, and the 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 will be directed through the employee's immediate supervisor to the Human Resources Office. Any additional credit hours may be scheduled outside the normal workday. Approval under this Section will not be unreasonably denied; however, approval is discretionary and may be made on bases such as, but not limited to, fiscal considerations, workload, and documented evidence of employee performance concerns in the prior two-year period. 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 postbaccalaureate degrees.

006.02 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 that award credit on the semester schedule or not more than nine (9) credit hours each calendar year of tuition reimbursement for courses from postsecondary institutions that award credit 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 will be determined by the Deputy Commissioner, whose decision will 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.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 15 – MISCELLANEOUS

Reimbursement for course-related expenses will be prorated based on the number of credit hours reimbursed. Approval for reimbursement will not be unreasonably denied; however, approval is discretionary and may be made on bases such as, but not limited to, fiscal considerations, workload, and documented evidence of employee performance concerns in the prior two-year period. Eligibility for reimbursement requires:

006.02A A course grade of “C” or better for undergraduate courses, or

006.02B A “pass” for pass/fail courses, or

006.02C A course grade of “B” or better for graduate courses; and

006.02D Proof of payment or a deferred payment agreement with the postsecondary institution.

006.02E 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 will be directed through the employee’s immediate supervisor to the Human Resources Office. Employees who receive tuition reimbursement will 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.

006.03 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 will pay for all costs of said course including tuition, books, other required instructional materials, mandatory fees, and associated travel costs. Job relatedness will be determined by the Deputy Commissioner whose decision will be final. The employee so directed will be considered to be working for the Department during classroom time, and any travel incurred to attend such courses will be treated as travel for the Department. The Department will require written documentation to verify the employee’s enrollment, course completion and the grade earned.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 15 – MISCELLANEOUS

006.03A 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.

006.04 Online Coursework. Online postsecondary coursework may be taken, and reimbursement for any portion of the tuition cost, required course fees and books may be allowed, if the course is job-related and prior approval to take the course is granted by the immediate supervisor, Office Administrator, and the Deputy Commissioner. Online courses may not be taken on work time unless dedicated online sessions with the instructor, or related to the class, are required as specified by a course catalog and only occur during the employee's regular work time. Employees may use Department computers, Internet access, printers, and office supplies for online courses and related homework if the employee has been directed to take a job-related course for professional development per Section 006.03 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.

006.05 Conference or Meeting Participation. In addition to the assigned activities of each employee, the appropriate Office Administrator will 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 will rest with the appropriate Office Administrator. 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) workdays at the expense of said employee without loss of pay.

006.06 All decisions made by management pursuant to the application of this Chapter are final.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 15 – MISCELLANEOUS

- 007 Solicitation Policy. Soliciting employees during work hours is not authorized.
- 007.01 Vendors offering non-work-related products for sale to employees are not authorized to contact employees during the employee’s duty hours or to sell, promote, or distribute information on state property.
- 007.02 Employees who sell products for a secondary income may only contact other employees during non-duty hours.
- 007.03 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.
- 008 Workers’ Compensation. All injuries, no matter how slight, occurring in the course of employment, are to be reported immediately to the supervisor and the Human Resources Office. An Employee Report of Alleged Occupational Injury Form (available from the Human Resources Office) must be completed and forwarded to the 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 will complete the report to the best of his/her knowledge. The Employee Report of Alleged Occupational Injury will be completed and signed by the employee at the earliest possible date.
- 009 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.
- 010 Nonexempt Employee Travel Time. 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).
- 010.01 Under this federal regulation, the Department does not consider time spent in overnight travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus or automobile to be “work time.”
- 011 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 policies regarding employee expense reimbursement.
- 012 Lodging and Meal Reimbursement. The Department will reimburse lodging and meal expenses per the Department’s policies regarding employee expense reimbursement.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 15 – MISCELLANEOUS

- 013 Lodging Arrangements. Single occupancy lodging will 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.
- 014 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.
- 014.01 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.
- 014.02 Supervisor Responsibility. It will be the responsibility of the Office Administrator 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.
- 015 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 will 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.
- 016 Moving Allowance. Employees transferring to or relocating in another geographical section of the State for the benefit of the Department will be eligible for reimbursement of moving expenses in accordance with the State Accounting Manual issued by the Department of Administrative Services, 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.
- 016.01 Payment. No payment of moving expense will be made until an invoice is received and approved by the Commissioner or his or her designee.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 15 – MISCELLANEOUS

- 016.02 Leave. Employees who are transferred to or relocating in another geographical location of the State will 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 will be vacation leave, compensatory time, or leave without pay at the employee's discretion.
- 016.03 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.
- 016.04 Commuting Costs. Commuting costs related to transfers and relocations are not reimbursable by the Department.
- 017 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 will not be affected thereby.
- 018 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.
- 019 Business Attire. All employees are expected to dress in attire that is appropriate for conducting his or her work responsibilities. Office Administrators and supervisors may identify specific attire requirements depending on the nature of the employee's work.
- 020 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, will be afforded the opportunity to continue health insurance coverage in the group plan until they become Medicare eligible. The employee will be responsible for the entire cost of the premium for the plan chosen, which includes the normal employee contribution and the normal State contribution.

TITLE 93 – NEBRASKA DEPARTMENT OF EDUCATION PERSONNEL RULES
CHAPTER 15 – MISCELLANEOUS

021 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 Agreement. 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.

022 Reporting of Waste, Fraud, or Violations of Law. Employees who are aware of fraud, fiscal waste, or violations of law will report such information to the Commissioner, any Deputy Commissioner, or staff in the Human Resources Office. Employees may also give such information to the Office of Auditor of Public Accounts.

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

- 001 General. Employees will comply with the Code of Ethics as provided in this Chapter.
- 002 Nebraska Political Accountability and Disclosure Act. Employees will comply with the Nebraska Political Accountability and Disclosure Act, which provides that:
- 002.01 No person will 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 will 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 will 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 will 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.

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

- 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 will 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.

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

- 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 will discuss the request with the appropriate Office Administrator 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 will be submitted to Central Accounting for deposit against the employee's line of coding. In this instance, the Department will 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 will require the use of personal vacation time with prior approval of the immediate supervisor and appropriate Office Administrator. 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 Office Administrator; and

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

- 015.02 Such teaching, preparation, and other activities associated with the teaching duties, will 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 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 workday.
- 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 Office Administrator, are considered to be job-related. The appropriate Office Administrator will determine whether or not travel expenses will be reimbursed.

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 that caused the grievance.

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

Employee/Grievant Signature (required)

Date

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