NEBRASKA ADMINISTRATIVE CODE

TITLE 303, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 14

RETIREMENT SYSTEMS, PUBLIC EMPLOYEES
PUBLIC EMPLOYEES RETIREMENT BOARD

RULES AND REGULATIONS FOR ~~LIMITATION FOR~~CAPPING OF SCHOOL RETIREMENT COMPENSATION

Last Revision: ~~NEW~~September 24, 2012
Current Revision: September ~~24, 2012~~23, 2013
Effective Date: ~~December 8, 2012~~

NEBRASKA ADMINISTRATIVE CODE

TITLE 303 – PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 14 – ~~LIMITATION FOR~~CAPPING OF SCHOOL RETIREMENT COMPENSATION

NUMERICAL TABLE OF CONTENTS

SUBJECT	STATUTORY AUTHORITY	SECTION
Scope of the Rule	§§ 79-904 and 84-1503	001
Definitions	§§ 79-904 and 84-1503	002
~~School Plan Compensation Limit~~Conventions for Calculation of Final Average Compensation~~ Limitation Percentage Rate~~	§§ 79-904 and 84-1503	003
Consistency of Reporting; Annualization and Proration	§§ 79-904 and 84-1503	004
Covered Compensation	§§ 79-904 and 84-1503	005

ALPHABETICAL TABLE OF CONTENTS

SUBJECT	STATUTORY AUTHORITY	SECTION
Consistency of Reporting; Annualization and Proration	§§ 79-904 and 84-1503	004
Conventions for Calculation of Final Average Compensation	§§ 79-904 and 84-1503	003
Covered Compensation	§§ 79-904 and 84-1503	005
Definitions	§§ 79-904 and 84-1503	002
~~Compensation Limitation Percentage Rate~~	~~§§ 79-904 and 84-1503~~	~~004~~
~~School Plan Compensation Limit~~	~~§§ 79-904 and 84-1503~~	~~003~~
Scope of the Rule	§§ 79-904 and 84-1503	001

NEBRASKA ADMINISTRATIVE CODE

TITLE 303 – PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 14 – ~~LIMITATION FOR~~CAPPING OF SCHOOL RETIREMENT COMPENSATION

001 Scope of the Rule

This rule governs the procedures for applying compensation limits contained in Neb. Rev. Stat. § 79-902(35) for purposes of determining final average compensation under Neb. Rev. Stat. ~~§ 79-902(35~~§ 79-902(30) in the School Employees Retirement System (School plan), and calculating the formula annuity retirement allowance for the School Plan ~~in~~under Neb. Rev. Stat. § 79-934, with respect to members who are eligible to receive a retirement benefit.

002 Definitions

~~002.01 Category of school employee means either all employees of the employer who are administrators or certificated teachers, or all employees of the employer who are not administrators or certificated teachers, or both;~~

002.01 Adjusted Compensation means with respect to a plan year during the capping period, an amount equal to the member's compensation for such plan year as adjusted, if at all, pursuant to Section 003.02 hereof.

002.02 Base Year means the plan year immediately preceding the capping period.

002.03 Compensation for the purposes of the School Employees Retirement Act is defined by ~~Neb.~~ 303 NAC, chapter 13.~~Rev. Stat. § 79-902(35).~~

~~002.03 Compensation base year is the first full (twelve-month) plan year that is within seventy-one (71) months prior to a member's retirement date. For members newly hired or hired by a separate employer, the compensation base is the first full plan year following the member being hired that occurs within seventy-one (71) months of a member's retirement date.~~

~~002.04 Compensation limitation rate is the amount of compensation excluded when calculating the formula annuity retirement allowance in Neb. Rev. Stat. § 79-934, and is the percentage rate established in Neb. Rev. Stat. § 79-902(35) and described in section 004.~~

~~002.05 Per diem means a specified amount that employers will pay to employees as reimbursement for various expenses, such as, but not limited to meals, lodging, travel and other miscellaneous work-related expenses.~~

~~002.06 Recognized collective-bargaining unit means a group of employees similarly situated with a similar community of interest appropriate for bargaining recognized as such by a school board.~~

~~002.07 Retirement effective date means the date a member qualifies for and accepts a school or disability retirement allowance granted under the School Employees Retirement Act, and defined by Neb.~~ 002.04 Capping period means, with respect to a member of the School Plan, the five plan years preceding the later of (1) such member's retirement date or (2) such member's final compensation date.

002.05 Final average compensation means:

1. For an individual who became a member of the School Plan before July 1, 2013, (A) the sum of the member's total compensation, as adjusted, if required, by 303 NAC 14-003 below, during the three twelve-month periods of service as a school employee in which such compensation was the greatest divided by thirty-six; or (B) If the member has such compensation for less than thirty-six months, the sum of the member's total compensation in all months of service as a school employee divided by the total number of months of his or her creditable service therefor; and

2. For an individual who became a member of the School Plan on or after July 1, 2013, (A) the sum of the member's total compensation, as adjusted, if required, by 303 NAC 14-003 below, during the five twelve-month periods of service as a school employee in which such compensation was the greatest divided by sixty; or (B) If a member has such compensation for less than sixty months, the sum of the member's total compensation in all months divided by the total number of months of his or her creditable service therefor.

3. Final average compensation does not include any payments received by the member under the Retirement Incentive Plan pursuant to Neb. Rev. Stat. § 79-855 and/or the Staff Development Assistance pursuant to Neb. Rev. Stat. § 79-856.

002.06 Final compensation date means the later of (1) the date on which a retiring member's final compensation, including such member's final contribution to the school plan, is actually paid or (2) if a retiring member's final compensation is paid in advance as a lump sum, the date on which such final compensation would have been paid to the member in the absence of such advance payment.

002.07 Retirement date means (1) with respect to a member whose termination date has occurred, the first day of the month following the date upon which such member's retirement application is received by NPERS or (2) with respect to a member who files a retirement application prior to his or her termination date, the first day of the month following such member's termination date.

~~Rev. Stat. § 79-902(13).~~

002.08 Termination date means the date on which the member experiences a bona fide separation from service of employment with the member's ~~current~~ employer~~,~~; provided, however, that (1) the date of ~~which~~such separation ~~is~~ from service shall be determined by the ~~employer~~end of the member's contractual agreement or ~~employment~~, if there is no contract or only partial fulfillment of a contract, by the employer, and ~~defined by Neb. Rev. Stat. § 79-902(36).~~(2) the termination date for a member who is compensated for a full contractual period shall be deemed to occur as of the end date of the contract.

003 ~~School Plan~~ Conventions for Calculation of Final Average Compensation ~~Limitation~~

003.01 DETERMINATION OF 12-MONTH PERIODS The calculation of a member's final average compensation shall commence by dividing the entirety of the member's service with all school employers into a succession of 12 month periods, with the last such period ending the month during which the member's final compensation date occurs. For example, and illustrative purposes only, if a member's final compensation date occurs during August of a given year, the member's service shall be divided into a series of the 12-month periods, each of which shall begin with the month of September and end with the month of August.

003.02 ADJUSTMENT OF COMPENSATION RECEIVED DURING THE CAPPING PERIOD Solely for purposes of calculating the member's final average compensation, the compensation received by a member during the capping period shall be limited pursuant to Neb. Rev. Stat. § 79-902(35)(f), by excluding the portion, if any, of such member's compensation for a plan year that exceeds the member's compensation for the preceding plan year, as adjusted below, by more than eight percent. Such limitation of compensation during the capping period shall be calculated as follows:

(i) Compensation for the initial year of the capping period shall be equal to the lesser of (x) the member's compensation for such year or (y) an amount equal to such member's compensation for the base year multiplied by 108%.

(ii) Compensation for the second year of the capping period shall be equal to the lesser of (x) the member's compensation for such year or (y) an amount equal to 108% of the lesser of (a) the member's compensation for the first year of the capping period or (b) adjusted compensation for the first year of the capping period.

(iii) Compensation for the third year of the capping period shall be equal to the lesser of (x) the member's compensation for such year or (y) an amount equal to 108% of the lesser of (a) the member's compensation for the second year of the capping period or (b) adjusted compensation for the second year of the capping period.

(iv) Compensation for the fourth year of the capping period shall be equal to the lesser of (x) the member's compensation for such year or (y) an amount equal to 108% of the lesser of (a) the member's compensation for the third year of the capping period or (b) adjusted compensation for the third year of the capping period.

(v) Compensation for the fifth year of the capping period shall be equal to the lesser of (x) the member's compensation for such year or (y) an amount equal to 108%

of the lesser of (a) the member's compensation for the fourth year of the capping period or (b) adjusted compensation for the fourth year of the capping period.

003.03 COMPUTATION OF FINAL AVERAGE COMPENSATION. After determining the 12-month periods as provided in 303 NAC 003.01 and adjusting compensation for the capping period as provided in 303 NAC 003.02, final average compensation shall be computed as follows:

(i) If the member became a member of the School Plan before July 1, 2013, NPERS shall compare all of the 12-month periods during the member's service to determine the three 12-month periods during which the member's compensation (including any adjustments pursuant to Section 14-003.02 above) was the greatest. The total amount of such compensation for such three 12-month periods shall be divided by thirty-six; provided however, if the member has compensation for less than thirty-six months, the sum of the member's total compensation in all months of creditable service as a school employee shall be divided by the number of the member's total months of creditable service. The result of such calculation shall be the member's final average compensation.

(ii) If the member became a member of the School Plan on or after July 1, 2013, NPERS shall compare all of the 12-month periods during the member's service to determine the five 12-month periods during which the member's compensation (including any adjustments pursuant to Section 14-003.02 above) was the greatest. The total amount of such compensation for such five 12-month periods shall be divided by sixty; provided however, if the member has compensation for less than sixty months, the sum of the member's total compensation in all months of creditable service as a school employee shall be divided by the number of the member's total months of creditable service. The result of such calculation shall be the member's final average compensation.

004 Consistency of Reporting; Annualization and Proration

004.01 ~~003.01 The compensation limitation provision contained in Neb. Rev. Stat. §79-902(35), covers compensation earned by a school member during the sixty (60) months prior to their retirement date.~~

~~003.02 Compensation received following a member's retirement date shall be treated as though the income was received prior to the member's retirement date for the purposes of applying the compensation limitation rate. Compensation received after the member's retirement date will receive the same compensation limitation rate and compensation base year as compensation received just prior to a member's retirement date.~~

~~003.03 Compensation received following a member's retirement date shall first be annualized and if the annualized monthly amount exceeds the compensation limitation rate for the preceding full (twelve month) plan year then such compensation shall be excluded at the percentage rate determined in subsection 003.02.~~

A member's retirement benefit is not to be enhanced or reduced solely as a result of (1) inconsistent timing in the payment or reporting of compensation by the member's employer or (2) an irregular work schedule. Therefore, for purposes of determining final average salary and calculating retirement benefits, a member's monthly compensation shall be plotted in a consistent manner by NPERS, as necessary to account for

inconsistent or untimely reporting and/or payment of compensation by the member's employer. Where presented with a compelling reason, such member's compensation as reported by the employer, may be annualized, prorated, or recalculated by NPERS as necessary to treat plan members on a consistent basis, as dictated by facts and circumstances.

004.02 Circumstances that may require proration, annualization or recalculation may include, but are not necessarily limited to, situations in which:

(i) The member's termination date is prior to the end of the pay period,

(ii) The member's termination date is prior to the end date of the contract;

(iii) There are gaps in the member's creditable service during the capping period;

(iv) The member's retirement date does not coincide with the end of a plan year;

(v) The member receives simultaneous payments of compensation for full-time employment from more than one employer;

(vi) Successive employers report payment of compensation to the member on incompatible schedules; or

(vii) Other facts and circumstances artificially distort the calculation of either the member's compensation during the capping period or the member's final average compensation.

004.03 NPERS shall be permitted to inquire of the member's employer(s) as may be necessary to clarify and contextualize the compensation reported by the employer(s) with respect to such member.

004.04 In the event that a member's reported compensation is subject to proration, annualization or recalculation as described herein, NPERS shall include a detailed analysis and explanatory spreadsheet in the member's file reflecting the actual retirement calculation for such member.

005 Covered Compensation

005.01 Under no circumstances shall a member who became a member of the School Plan before July 1, 2013, receive a retirement benefit based upon Final Average Compensation that includes compensation encompassing more than thirty-six (36) months of creditable service.

005.02 Under no circumstances shall a member who became a member of the School Plan on or after July 1, 2013, receive a retirement benefit based upon Final Average Compensation that includes compensation encompassing more than sixty (60) months of creditable service.

~~003.04 If a member's retirement date does not immediately follow a member's termination date, then the months occurring in between the member's termination date~~

~~and the member's retirement date shall comprise a portion of the sixty (60) months described in subsection 003.01.~~

~~004 Compensation Limitation Percentage Rate~~

~~004.01 As provided in Neb. Rev. Stat. § 79-902(35)(d), in the determination of compensation for members on or after July 1, 2005, that part of a member's compensation for the plan year which exceeds the member's compensation with the same employer for the preceding plan year by more than seven percent (7%) of the compensation base during the sixty (60) months preceding the member's retirement shall be excluded unless:~~

~~(a) The member experienced a substantial change in employment position;~~

~~(b) As verified by the school board, the excess compensation above seven percent occurred as the result of a collective-bargaining agreement between the employer and a recognized collective-bargaining unit or category of school employee, and the percentage increase in compensation above seven percent shall not be excluded for employees outside of a collective-bargaining unit or within the same category of school employee; or,~~

~~(c) The excess compensation occurred as the result of a district-wide permanent benefit change made by the employer for a category of school employee in accordance with subdivision (35)(a)(iv) of this section.~~

~~004.02 As provided in Neb. Rev. Stat. § 79-902(35)(e), in the determination of compensation for members on or after July 1, 2012, that part of a member's compensation for the plan year which exceeds the member's compensation with the same employer for the preceding plan year by more than nine percent (9%) of the compensation base during the sixty months preceding the member's retirement shall be excluded.~~

~~004.03 As provided in Neb. Rev. Stat. § 79-902(35)(f), in the determination of compensation for members on or after July 1, 2013, that part of a member's compensation for the plan year which exceeds the member's compensation with the same employer for the preceding plan year by more than eight percent (8%) of the compensation base during the sixty months preceding the member's retirement shall be excluded.~~

ENABLING LEGISLATION:

NEB. REV. STAT. §§ 79-904 and 84-1503.