

**NEBRASKA ADMINISTRATIVE CODE**

**TITLE 303, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 14**

**RETIREMENT SYSTEMS, PUBLIC EMPLOYEES  
PUBLIC EMPLOYEES RETIREMENT BOARD**

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

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NEBRASKA ADMINISTRATIVE CODE

TITLE 303 – PUBLIC EMPLOYEES RETIREMENT BOARD

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

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>SECTION</u>
Scope of the Rule	§§ <u>79-902</u> , 79-904, <u>79-934</u> , <u>81-2019</u> , <u>81-2026</u> , and 84-1503	001
Definitions	§§ <u>79-902</u> , 79-904, <u>79-934</u> , <u>81-2019</u> , <u>81-2026</u> , and 84-1503	002
Conventions for Calculation of Final Average Compensation	§§ <u>79-902</u> , 79-904, <u>79-934</u> , <u>81-2019</u> , <u>81-2026</u> , and 84-1503	003
Consistency of Reporting; Annualization and Proration	§§ <u>79-902</u> , 79-904, <u>79-934</u> , <u>81-2019</u> , <u>81-2026</u> , and 84-1503	004
Covered Compensation	§§ <u>79-902</u> , 79-904, <u>79-934</u> , <u>81-2019</u> , <u>81-2026</u> , and 84-1503	005

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>SECTION</u>
Consistency of Reporting; Annualization and Proration	§§ <u>79-902</u> , 79-904, <u>79-934</u> , <u>81-2019</u> , <u>81-2026</u> , and 84-1503	004
Conventions for Calculation of Final Average Compensation	§§ <u>79-902</u> , 79-904, <u>79-934</u> , <u>81-2019</u> , <u>81-2026</u> , and 84-1503	003
Covered Compensation	§§ <u>79-902</u> , 79-904, <u>79-934</u> , <u>81-2019</u> , <u>81-2026</u> , and 84-1503	005
Definitions	§§ <u>79-902</u> , 79-904, <u>79-934</u> , <u>81-2019</u> , <u>81-2026</u> , and 84-1503	002
Scope of the Rule	§§ <u>79-902</u> , 79-904, <u>79-934</u> , <u>81-2019</u> , <u>81-2026</u> , and 84-1503	001

## NEBRASKA ADMINISTRATIVE CODE

### TITLE 303 – PUBLIC EMPLOYEES RETIREMENT BOARD

#### CHAPTER 14 – CAPPING OF ~~SCHOOL~~ RETIREMENT COMPENSATION

##### 001 Scope of the Rule

This rule governs the procedures for applying compensation limits contained in the School Employees Retirement System (School Plan) and Nebraska State Patrol Retirement System (Patrol Plan), and calculating the retirement annuity for the School Plan and Patrol Plan with respect to members who are eligible to receive a retirement benefit.

~~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(30) in the School Employees Retirement System (School plan), calculating the formula annuity retirement allowance for the School Plan under Neb. Rev. Stat. § 79-934, with respect to members who are eligible to receive a retirement benefit.~~

##### 002 Definitions

002.01 For School Plan members, all terms used in this chapter which are defined in the School Employees Retirement Act, as clarified by the Rules and Regulations promulgated by the PERB, shall be so defined for purposes of this chapter unless the context otherwise clearly requires.

002.02 For Patrol Plan members, all terms used in this chapter which are defined in the Nebraska State Patrol Retirement Act, as clarified by the Rules and Regulations promulgated by the PERB, shall be so defined for purposes of this chapter unless the context otherwise clearly requires.

002.03 “Adjusted Compensation” means ~~with respect to a plan year during the capping period,~~ an amount equal to the member’s compensation for ~~such a~~ plan year during the capping period as ~~adjusted~~modified, if at all, pursuant to the applicable statutory capping provisions and/or Section 303 NAC § 14-003.02 hereof.

~~002.02-04~~ “Base Year” means the plan year immediately preceding the capping period.

002.05 “Board” or “PERB” shall mean the Nebraska Public Employees Retirement Board.

~~002.03 Compensation for the purposes of the School Employees Retirement Act is defined by 303 NAC, chapter 13.002.04 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:~~

~~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~~

~~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.~~

~~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.~~

~~002.08 Termination date means the date on which the member experiences a bona fide separation from service of employment with the member's employer; provided, however, that (1) the date of such separation from service shall be determined by the end of the member's contractual agreement or, if there is no contract or only partial fulfillment of a contract, by the employer, and (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 Conventions for Calculation of Final Average Compensation or Final Average Monthly Compensation**

**003.01 DETERMINATION OF 12-MONTH PERIODS.**

**003.01(a)** The calculation of a School Plan member's final average compensation shall commence by dividing the entirety of the member's service with all ~~school employers~~public schools 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.~~

003.01(b) The calculation of a Patrol Plan member's final average monthly compensation shall commence by dividing the entirety of the member's service with the Nebraska State Patrol into a succession of 12 month periods, with the last such period ending the month during which the member's compensation is paid.

003.01(c) 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 a~~ member's final average compensation or final average monthly compensation, as applicable, 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. The capping period begins with the first year following the base year and ends with the most recent year. Such limitation of compensation during the capping period shall be calculated as follows:

003.02(i)a) Compensation for the ~~initial~~ first year of the capping period shall be equal to the lesser of:

003.02(a)(xi) the member's compensation for such year; or

003.02(a)(yii) an amount equal to ~~such the~~ member's compensation for the base year multiplied by 108%.

003.02(a)(iii) This amount is referred to as the member's adjusted compensation for the first year of the capping period.

003.02(ii)b) Compensation for the second year of the capping period shall be equal to the lesser of:

003.02(b)(xi) the member's compensation for such year; or

003.02(b)(yii) an amount equal to 108% of the lesser of:

003.02(b)(ii)(aA) the member's compensation for the first year of the capping period; or

003.02(b)(ii)(bB) the member's adjusted compensation for the first year of the capping period.

003.02(b)(iii) This amount is referred to as the member's adjusted compensation for the second year of the capping period.

003.02(iii)c) Compensation for the third year of the capping period shall be equal to the lesser of:

003.02(c)(xi) the member's compensation for such year; or

003.02(c)(yii) an amount equal to 108% of the lesser of:

003.02(c)(ii)(aA) the member's compensation for the second year of the capping period; or

003.02(c)(ii)(bB) the member's adjusted compensation for the second year of the capping period.

003.02(c)(iii) This amount is referred to as the member's adjusted compensation for the third year of the capping period.

003.02(ivd) Compensation for the fourth year of the capping period shall be equal to the lesser of:

003.02(d)(xi) the member's compensation for such year; or

003.02(d)(yii) an amount equal to 108% of the lesser of:

003.02(d)(ii)(aA) the member's compensation for the third year of the capping period; or

003.02(d)(ii)(bB) the member's adjusted compensation for the third year of the capping period.

003.02(d)(iii) This amount is referred to as the member's adjusted compensation for the fourth year of the capping period.

003.02(ve) Compensation for the fifth year of the capping period shall be equal to the lesser of:

003.02(e)(xi) the member's compensation for such year; or

003.02(e)(yii) an amount equal to 108% of the lesser of:

003.02(e)(ii)(aA) the member's compensation for the fourth year of the capping period; or

003.02(e)(ii)(bB) the member's adjusted compensation for the fourth year of the capping period.

003.02(b)(iii) This amount is referred to as the member's adjusted compensation for the fifth year of the capping period.

003.03 COMPUTATION OF FINAL AVERAGE COMPENSATION OR FINAL AVERAGE MONTHLY COMPENSATION. After determining the twelve-month (12-month) periods as provided in pursuant to 303 NAC § 14-003.01 and adjusting compensation for the capping period as provided in pursuant to 303 NAC § 14-003.02, final average compensation or final average monthly compensation, as applicable, shall be computed as follows:

(+)003.03(a) School Plan Members

003.03(a)(i) If the memberFor an individual who became a member of the School Plan member before July 1, 2013, and who has thirty-six months of compensation or more, 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 303 NAC § 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. The result of such calculation shall be the member's final average compensation.

003.03(a)(ii) For an individual who became a School Plan member before July 1, 2013, and who has; ~~provided however, if the member has compensation for~~ less than thirty-six months of compensation, 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 number of months of creditable service. The result of such calculation shall be the member's final average compensation.

003.03(a)(iii) If the memberFor an individual who became a member of the School Plan member on or after July 1, 2013, and who has sixty months of compensation or more, 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 303 NAC § 14-003.02-above) was the greatest. The total amount of such compensation for such five 12-month periods shall be divided by sixty. The result of such calculation shall be the member's final average compensation.

003.03(a)(iv) For an individual who became a School Plan member after July 1, 2013, and who has; ~~provided however, if the member has compensation for~~ less than sixty months of compensation, 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.

003.03(b) Patrol Plan members

003.03(b)(i) For an individual who became a Patrol Plan member on or after July 1, 2016, and who has sixty months of compensation or more, 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 303 NAC § 14-003.02) was the greatest. The total amount of such compensation for such five 12-month periods shall be divided by sixty. The result of such calculation shall be the member's final average monthly compensation.

003.03(b)(ii) For an individual who became a Patrol Plan member on or after July 1, 2016, and who has less than sixty months of compensation, the sum of the member's total compensation in all months of creditable service as a member of the Nebraska State Patrol shall be divided by the member's total number of months of creditable service. The result of such calculation shall be the member's final average monthly compensation.

**004 Consistency of Reporting; Annualization ~~and~~, Proration, and Reallocation of Compensation**

004.01 A member's retirement benefit is not to be enhanced or reduced solely as a result of ~~(4a) inconsistent timing in the payment or reporting of compensation by the member's employer or (2b) 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. Therefore, to ensure consistent treatment of members of the same plan, NPERS shall, when the facts and circumstances dictate:~~

004.01(a) plot a member's monthly compensation in a consistent manner to account for inconsistent or untimely reporting or payment of compensation by the member's employer; and/or

004.01(b) annualize, prorate, or reallocate a member's reported compensation.

004.02 Circumstances that may ~~require warrant~~ proration, annualization, or ~~recalculation reallocation may of a member's compensation~~ include, but are not ~~necessarily~~ limited to; situations in which:

004.02(ia) The member's termination date is prior to the end of ~~the a~~ pay period;;

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

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

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

004.02(v)e) The member receives simultaneous payments of compensation for full-time employment from more than one employer covered by the plan;

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



004.02 ~~(viig)~~ Other facts and circumstances that artificially distort the calculation of either the member's compensation during the capping period or the member's final average compensation or final average monthly compensation, as applicable.

004.03 NPERS shall ~~be permitted to inquire of obtain from~~ the member's employer(s) ~~as may be all information~~ 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~~ ~~reallocation as described herein~~, NPERS shall include a detailed analysis and explanatory spreadsheet in the member's file reflecting the member's actual retirement calculation ~~for such member.~~

## **005 Covered Compensation**

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

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

005.03 Under no circumstances shall an individual who became a Patrol Plan member on or after July 1, 2016, receive a retirement benefit based upon a final average monthly compensation that includes compensation encompassing more than sixty (60) months of creditable service.

## **ENABLING LEGISLATION:**

NEB. REV. STAT. §§ 79-902, 79-904, 79-934, 81-2019, 81-2026, and 84-1503.