

RULES AND REGULATIONS

Title 22—EDUCATION

PUBLIC EMPLOYEES' RETIREMENT BOARD

[22 PA. CODE CHS. 201, 211, 213 AND 215]

Formalization and Clarification of Current Practices

The Public School Employees' Retirement Board (Board) is submitting this final-form rulemaking under 24 Pa.C.S. § 8502(h) (relating to administrative duties of board) to amend its Chapters 201, 211, 213 and 215 to read as set forth in Annex A.

Statutory Authority

This final-form rulemaking is promulgated under 24 Pa.C.S. § 8502(h).

Purpose

The primary purpose of this final-form rulemaking is to formalize and clarify current practices, remedy problems that have arisen and reflect issues unique to the Public School Employees' Retirement System (PSERS). A definition is deleted if it merely repeats the definition in 24 Pa.C.S. Part IV (relating to Public School Employees' Retirement Code) (Retirement Code). Outdated regulations were deleted and new regulations were added to provide a clear, concise understanding of the Board's policies and procedures in accordance with the Retirement Code. In addition, editorial amendments have been made for improved readability.

Summary of Amendments

Chapter 201. Applicability of General Rules

Amendments to § 201.1 (relating to applicability of general rules) were made for the purpose of addressing grammatical errors and clarity.

Sections 201.2—201.5 are rescinded.

Final-form § 201.2a (relating to definitions) contains terms used only in the hearing and appeal process. The definition section of the Retirement Code does not provide a definition of the terms used in the hearing and appeal process. The definitions were added in the beginning of this chapter to provide clarification and understanding of the terms regarding the hearing and appeal process. The distinction between a matter before the Executive Staff Review Committee (ESRC) and a matter appealed to the Board is made through the use of the terms "adjudicatory benefit appeal" and "nonadjudicatory benefit appeal."

Final-form § 201.3a (relating to nonadjudicatory benefit appeal) sets out the procedure before the ESRC for a nonadjudicatory benefit appeal.

Final-form § 201.4a (relating to adjudicatory benefit appeal and request for administrative hearing) clarifies the procedure required of a claimant to file an adjudicatory benefit appeal within the prescribed time.

Final-form § 201.5 (relating to authorization of Secretary of the Board) was taken from an existing Board resolution and added to clarify the Secretary's powers and duties regarding the appeal process in approving uncontested orders.

Final-form § 201.6 (relating to motions practice) provides for the Board to rule directly on a preliminary objection or summary judgment or to delegate the recom-

mendation to the hearing examiner. This section provides more flexibility and clarity in the motions process.

Final-form § 201.7 (relating to service and return of subpoenas) conforms the method of service of subpoenas to the Pennsylvania Rules of Civil Procedure. See 231 Pa. Code.

Final-form § 201.8 (relating to dismissal for nonappearance) was moved from § 201.4 for organizational purposes.

Final-form § 201.9 (relating to introduction of documents from the System's records) clarifies the method of authenticating PSERS' documents to be admitted as evidence in an adjudicatory benefit appeal hearing.

Final-form § 201.10 (relating to briefs) clarifies the process of filing briefs after a hearing. Section (a) supplements 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) in requiring that the claimant shall file the first brief.

Final-form § 201.11 (relating to proposed opinion and recommendation) clarifies the requirements of the hearing examiner's proposed opinion.

Final-form § 201.12 (relating to oral argument before the Board) was added to clarify the process for requesting oral argument before the Board and the procedure to be followed when presenting oral argument. It is adopted from an existing Board resolution.

Chapter 211. Preliminary Provisions

Section 211.1(a) (relating to short title of part) is amended to clarify the chapters to which the definitions are applied.

Section 211.2 (relating to definitions) is amended to delete definitions that repeat the Retirement Code definitions or that are outdated. Some existing definitions are amended to correct grammatical errors. Some definitions are amended to conform to the Internal Revenue Code of 1986 (26 § U.S.C.A.). Some definitions are added or amended for clarification.

Final-form § 211.3 (relating to construction) is moved from § 215.35 (relating to general regulations) for organizational purposes. Section 215.35 is rescinded in this final-form rulemaking.

Chapter 213. Contributions and Benefits

Section 213.1(a) (relating to mandatory and optional membership) is amended to correct grammatical errors. Subsection (b) was moved from § 215.36 (relating to optional alternate retirement programs) for organizational purposes. Section 215.36 is rescinded in this final-form rulemaking.

Sections 213.2 and 213.3 (relating to credited school service; and eligibility points for retention and reinstatement of service credits) are amended to correct grammatical errors and for clarification.

Final-form § 213.3a (relating to waiver of adjustments) reflects the Board's policies in interpreting 24 Pa.C.S. § 8303.1 (relating to waiver of adjustments) regarding adjustments to a member's account that would cause an undue hardship for the member.

Amendments to § 213.4 (relating to creditable nonschool service) correct grammatical errors and the deletion of outdated provisions.

Section 213.5 (relating to classes of service) is to be rescinded because it is outdated.

Section 213.6 (relating to eligibility points) is amended to correct grammatical errors.

Section 213.9 (relating to eligibility for death benefits) is amended to comply with the wording of 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors).

Section 213.23 (relating to member contributions for creditable school service) is rescinded because it is outdated and does not supplement 24 Pa.C.S. § 8323 (relating to member contributions for creditable school service).

Section 213.24 (relating to contributions for the purchase of credit for creditable school and nonschool service) is amended to correct grammatical errors and clarification. Subsection (b) is amended to clarify the requirements of 24 Pa.C.S. § 8324(b) (relating to contributions for purchase of credit for creditable nonschool service) to receive credit for nonintervening military service. The section was also amended to reflect changes in legislation to include service as a Class T-D member.

The amendments to § 213.25 (relating to incomplete payments) clarify that a member's estate may not complete payments of purchasable service but that the annuity benefit will be reduced by the debt, provided that in the case of nonschool service, which purchase is discretionary, the reduction does not negatively impact the present value.

Section 213.27 (relating to payments by employers) is amended to correct grammatical errors and for clarity. Subsection (a) reduces the time for an employer to file monthly reports from 15 days to 10 days following the end of the month to comport with PSERS' current practice. An amendment has also been made to comply with 24 Pa.C.S. § 8535 (relating to payments to school entities by Commonwealth) that requires the employer to pay the bill issued by the Board within 5 business days.

Section 213.30 (relating to appropriations by the Commonwealth) is amended to correct grammatical errors.

Section 213.41 (relating to return of accumulated deductions) is amended to clarify that the member must also qualify for membership into PSERS upon return to service.

Section 213.44 (relating to disability annuities) is amended to be consistent with amendments to the pertinent sections of the Retirement Code.

Section 213.45 (relating to change in benefit payment plan) is amended to correct grammatical errors and to provide consistency with the Retirement Code. Subsection (h)(1) provides that an annuitant has 30 days following certification of the amount due to return money received by PSERS or elect an actuarial reduction to the annuitant's account, in default of which, an actuarial reduction shall be applied.

Section 213.46 (relating to termination of annuities) is amended to reflect changes in the Retirement Code.

Sections 213.47 and 213.49 (relating to death benefits; and payment of benefits) are amended to correct grammatical errors and for clarification.

Chapter 215. General Administration

Section 215.2(a) (relating to administrative duties of the Board) is deleted because it is inconsistent with act of

June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1—66.9), known as the Right-to-Know Law, which controls the subject matter.

Section 215.5 (relating to duties of the Board) is amended for clarification and correction of grammatical errors. This section is also generally amended for consistency with the Retirement Code to clarify that the effective date of a member's disability will be the day after the last day of compensation. Subsections (a)(5) and (b) were amended for purposes of clarity.

Section 215.6 and 215.7 (relating to duties of employers; and rights and duties of school employees and members) are amended to correct grammatical errors. Amendments and deletions were also made to be consistent with changes made to the Retirement Code. Section 215.7(d) is also amended to clarify that a nomination of beneficiary must be in writing but is not required to be on a form issued by the Board.

Section 215.33 (relating to taxation, attachment and assignment of funds) is amended because it is outdated.

Fiscal Impact

The final-form rulemaking is not expected to have significant negative fiscal impact upon the Commonwealth, its political subdivisions or the general public.

Comment and Response Summary

No comments were received from the Committees or the public for the Board to consider in preparing these final-form regulations.

The PSERS received comments from Independent Regulatory Review Commission (IRRC) on the proposed rulemaking. Those comments were reviewed and are discussed in detail as follows.

IRRC's Comments: § 201.2a. Definitions.—Clarity.

The definition of "nonadjudicatory benefit appeal" states in part, "the action of the ESRC will be deemed final unless a claimant files a timely adjudicatory benefit appeal from that action and seeks an administrative hearing." This portion of the definition is substantive. Substantive provisions in definitional sections are unenforceable. Moreover, this substantive rule is also expressed in § 201.4a(c). In the final-form regulation, the Board should strike the last sentence from this definition.

Response:

The PSERS has deleted the second sentence from the definition of "nonadjudicatory benefit appeal."

IRRC's Comments: § 201.3a. Nonadjudicatory benefit appeal.—Reasonableness; Clarity.

Subsection (e) provides that the ESRC will meet "as necessary to review and decide" appeals under this section; the claimant will be notified if the appeal is granted; and the claimant will be notified by means of a denial letter if the appeal is denied. The provision is vague and, consequently, fails to impart useful information to members of the regulated community or their representatives. What is the allowable time period for the ESRC to make a determination regarding an appeal and notify the claimant? If the appeal is granted, how will the claimant be notified? Also, must the claimant exercise his right to appeal within 30 days of the denial letter being written, or within 30 days of the denial letter being postmarked? IRRC recommended that the Board amend this provision for clarity.

Response:

The PSERS has inserted the words “in writing” in § 201.3a(e) after the word “will be notified” in the third line. As to the other questions raised by IRRC, PSERS has made no changes. There is no specific allowable time for the ESRC to make a determination. In addition, the regulations continually use the term “the date of the letter,” which we believe makes clear that it is the date on the letter not the date of postmark or receipt that governs. The PSERS internally has procedures in place to ensure that the date of an ESRC letter coincides with the date of the postmark.

IRRC’s Comments: § 201.4a. Adjudicatory benefit appeal and request for administrative hearing.—Clarity.

Subsection (a) requires that the Board must receive an appeal and request for administrative hearing under this section “within 30 days after the date of the ESRC denial letter.” The regulation should specify whether the 30-day time period for appeal begins on the date noted on the letter, or the date the letter is postmarked.

Response:

The same comment applies as to “the date of the letter” under § 201.4(a).

IRRC’s Comments: § 201.7. Service and return of subpoenas.—Reasonableness; Clarity.

Subsection (a) requires a subpoenaing party to “furnish the fees promptly upon the written request of the witness after service of the subpoena.” IRRC had three concerns. First, the term “promptly” was vague. In the final-form regulation, the Board should provide a specific time period for response.

Second, the final-form regulation should address how a witness will be notified of his obligation to request fees in writing. Will the subpoenaing party be required to alert the witness to the requirement?

Third, the final sentence of subsection (a) is a run-on sentence and is unclear. The Board should revise it in the final-form regulation.

Response:

The PSERS have taken into consideration IRRC’s comments, and have revised the proposed rulemaking in response to the comments, as follows:

§ 201.7 Service and return of subpoenas.

(a) Service of subpoenas will be made by any of the methods authorized by Pa.R.C.P. No. 234.2(b) (relating to Subpoena. Issuance. Service. Compliance. Fees. Prisoners.). It will not be necessary that witness fees be tendered at the time of service of the subpoena, but the subpoena shall include a notice that the witness may request in writing the payment of the witness fees provided in Pa.R.C.P. No. 234.2(c). The written request shall be made to the party (or his counsel) on whose behalf the subpoena is issued. The party (or his counsel) on whose behalf the subpoena is issued shall remit the witness fees to the witness within 14 days after the date of the letter requesting payment of witness fees or before the date of the hearing, whichever comes first.

(b) This section supersedes 1 Pa. Code § 35.142(b) (relating to service and return of subpoenas) and supplements 1 Pa. Code §§ 35.139 and 35.142(c) (relating to fees of witnesses; and subpoenas).

In response to the first comment, PSERS has inserted the requirement that the party on whose behalf the

subpoena is issued must remit the witness fee within 14 days of written request from the subpoenaed witness seeking the fees, or prior to the hearing, whichever comes first.

In response to the second comment, PSERS has added the requirement that the subpoena itself contain a notice of the right of the witness to make a written request to receive the witness fees.

In response to the third comment, PSERS has revised the referenced run-on sentence.

Finally, to stress the mandatory requirements of the regulation, we have substituted the word “shall” for the word “will” in the final form regulation.

IRRC’s Comments: § 201.11. Proposed opinion and recommendation.—Clarity.

Subsection(c) stated, “[w]hen exceptions are filed, the Board will rule on the exceptions.” This is the sole mention of exceptions in this chapter. With which entity should exceptions be filed, and within what time limitations? What information and documentation must be included with the exceptions? How long does the Board have to rule on exceptions? The final-form regulation should provide clear guidance on the substance and procedure of the exceptions process. It should also provide a definition of “exceptions” in the definitional section or a cross-reference to a definition located elsewhere.

Response:

The intention was to incorporate the exceptions procedure already set forth in the General Rules of Administrative Practice and Procedure (GRAPP). IRRC’s comment is well-taken and a new § 201.11(e) has been inserted that provides: “(e). Any party may file exceptions in accordance with 1 Pa. Code §§ 35.211—35.212.”

The cited GRAPP provisions will answer the question as to the entity with which exceptions should be filed and what information and documentation must be included. As to the question how long the Board has to rule on exceptions, the GRAPP does not address this issue and PSERS does not believe it is appropriate to impose such a requirement. The Board has authority to review recommended decisions, to table them, to require additional information and take other actions within its plenary power. It would, therefore, be inappropriate to impose a requirement that does not otherwise exist in the Retirement Code, GRAPP or other applicable law or regulations.

No change in the application of 1 Pa. Code §§ 35.211 and 35.213 (relating to procedure to except to proposed report; and effect of failure to except to proposed report) is intended. The regulation, however, preserves the Board’s discretion to accept, reject or supplement the opinion and recommendation of the hearing examiner, or to issue its own opinion and order, without having to “initiate” the review set forth in 1 Pa. Code § 35.226(a)(2) (relating to final orders). This provision is not intended to relieve the parties from filing exceptions to the proposed opinion and recommendation of the hearing examiner.

IRRC’s Comments: § 201.12. Oral argument before the Board.—Clarity.

Subsection (a) stated, “[t]he right to oral argument will be discretionary with the Board.” This provision was vague and therefore provided insufficient guidance to the regulated community. The final-form regulation should include criteria the Board will consider in determining whether oral argument is necessary or appropriate in a given case.

Subsection (b) requires a party requesting oral argument in a case when exceptions have been filed to file the request for oral argument "with the exceptions." As noted previously, the Board should provide further detail concerning the exceptions process.

Subsection (e) provided that, following oral argument, the Board "may table the case for further consideration at its next meeting." If the Board does choose to table a case, must it decide the case at the next meeting? In other words, may the Board table the case for multiple meetings, or does it have a finite time period during which it must act?

Subsection (f) required that, in accordance with the Board's decision in a case, the "Board's counsel will draft a proposed adjudication" that "will be presented for the Board's approval" at the Board meeting immediately following the meeting in which the Board made its determination in the case. Must the Board vote on the proposed adjudication in the meeting when it is presented, or may it table the matter for one or more meetings? Is there a time period during which the Board is required to act?

Response:

The PSERS notes that § 201.12, the provision in question, supersedes 1 Pa. Code § 35.214 (relating to oral argument on exception). That GRAPP provision states simply that the agency head may order oral argument, without giving any additional guidance. The PSERS therefore does not believe it is necessary to add anything to this provision, but will accede to IRRC's request by amending the first sentence of § 201.12(a) to read:

"The right to oral argument is discretionary with the Board and will be granted to the extent the Board believes it will be helpful in enabling the Board to acquire an understanding of and to resolve the issues." This standard is taken from Pa.R.A.P. 2315(a) (relating to oral arguments).

The comment regarding § 201.12(b) has been addressed in the response previously.

The next comment questioned how long a case may be tabled. As set forth previously, the Board has discretion as to when it will decide a case and can continue tabling a case if it cannot get a consensus to vote on a matter. To resolve any question, the PSERS has deleted the words "at its next meeting" from § 201.12(e).

The next comment questioned whether under § 201.12(f), the Board must vote on a proposed adjudication at the meeting where it is presented. The answer is no. There is no time period. To address IRRC's concerns, PSERS has deleted the words "for the Board's approval" and have inserted the words "to the Board" in § 201.12(f).

IRRC's Comments: § 211.2. Definitions.—Clarity. Certified members.

The final sentence of the definition of this term stated, "[a]ll other members are noncertified members." The definition of "nonprofessional members" also refers to the meaning of "noncertified members" found in this definition. The final-form regulation should strike the final sentence from this definition and provide for a separate and distinct definition of "noncertified members."

Nonprofessional members. The Board should clarify the purpose and meaning of the final sentence of this definition. It is unclear whether the Board intended "noncertified members" to be included in the definition of "nonprofessional members," or whether the Board intended the terms to have the same meaning.

Pickup contributions. The Board proposed to delete the definition of "pickup contributions" currently included in this section. However, this term is used in the definition of "inactive member." The final-form regulation should either maintain this definition, provide a cross-reference to when an applicable definition of the term is found elsewhere, or delete the use of the term in the definition of "inactive member."

Professional members. The Board should clarify the purpose and meaning of the final sentence of this definition. It is unclear whether the Board intended "certified" member to be included in the definition of "professional members," or whether the Board intended the terms to have the same meaning.

School year. The final sentence of this definition was substantive. Substantive provisions in definitional sections are unenforceable. The Board should strike this sentence from the definition and relocate it to a substantive section of the final-form regulation.

Response:

Addressing the first, second and fourth comments, relating to certified members, nonprofessional members and professional members, the intention is that professional members and certified members are the same and nonprofessional members and noncertified members are the same. To clarify this, PSERS has changed the defined words and definitions to read as follows:

Nonprofessional members or noncertified members—

The term includes all school **[employees] employees** who are not "professional **[members] employees," as defined in section 1101 of the Public School Code of 1949, 24 P. S. § 11-1101,** and who also qualify for membership in the System under section 8301 of the Retirement Code (relating to mandatory and optional membership).

Professional members or certified members—[As]

"Professional employees," as defined in section 1101 of the Public School Code of 1949, 24 P. S. § 11-1101, including all temporary professional **[employees] employees,** professional **[employees] employees,** substitutes and commissioned officers currently employed by a school district or intermediate unit and qualifying for membership in the System under section 8301 of the Retirement Code **(relating to mandatory and optional membership).**

The third comment related to the deletion of "pickup contributions," a term defined in the Retirement Code and used in the definition of an "inactive member" and an "active member." The recommendation of IRRC has been accepted, and the phrase: ", as defined in section 8102 of the Retirement Code," has been inserted after "pickup contributions" in the definitions for "inactive member" and "active member."

The fifth comment related to the definition of "school year" and states this is substantive and should be moved to a substantive section. The PSERS has moved this provision to § 211.3(h) (relating to construction).

IRRC's Comments: § 213.1. Mandatory and optional membership.—Clarity.

Subsection (b)(2) required that the remittance of certain contributions or the reinstatement of former credited service "shall be made in accordance with the applicable provisions of the Retirement Code." The final-form regulation should specify the applicable Retirement Code provisions.

Response:

This recommendation has been adopted. The penultimate sentence now reads:

Remittance of contributions or reinstatement of former credited service shall be made in accordance with 24 Pa.C.S. §§ 8303(c) and 8323(a) (relating to eligibility points for retention and reinstatement of service credit; and contributes for purchase of credit for creditable nonschool service).

IRRC's Comments: § 213.3a. Waiver of adjustments.— Clarity; Protection of the public welfare.

Subsection (a) provided the standard for determining whether an adjustment meets the undue hardship test under section 8303.1(a)(l) of the Retirement Code. Under subsection (a)(l), the undue hardship test is met if the "adjustment causes a reduction in excess of 5% of the monthly annuity or other relevant amount." How and why did the Board determine that a 5% reduction was the appropriate benchmark for "undue hardship"? What effect, if any, will this provision have on members who have already experienced an adjustment under section 8534(b) of the Retirement Code (relating to fraud and adjustment of errors) leading to a 5% reduction in monthly benefit?

Additionally, PSERS has a clarity concern. Section (a)(l) references a reduction of the monthly annuity "or other relevant amount." The final-form regulation should clarify whether "other relevant amount" modifies 5%, or whether it modifies "monthly annuity." At a minimum, the final-form regulation should provide criteria to assist the regulated community in ascertaining what might be a "relevant amount."

Response:

Section 213.45(b)(1) of the Board's current regulations uses 5% as the difference between a finally-calculated monthly annuity and an originally-estimated monthly annuity as the significant difference that will allow an annuitant to change an otherwise irrevocable benefit payment plan election. The Board has utilized the 5% difference, by analogy, to determine undue hardship under section 8303.1 of the Retirement Code.

In answer to what effect this provision will have, if a person seeks a waiver, under section 8303.1 of the Retirement Code, of an adjustment made by PSERS under section 8534(b) of the Retirement Code, the Board will apply this percentage to determine whether the undue hardship test under section 8303.1(a)(1) of the Retirement Code (one of the four tests that must be met) has been met. The PSERS has already been applying this standard as a policy and is now seeking to make it a regulation to gain added legal support.

With respect to the second paragraph, the PSERS noted IRRC's concern, and since any adjustment will ultimately impact the annuity, has changed § 213.3.1(a)(1) to read:

- (1) The adjustment causes a reduction in excess of five percent of the monthly annuity;

IRRC's Comments: § 213.25. Incomplete payments.— Clarity; Protection of the public welfare.

Subsection (c) provided that if a member applies for the purchase of service and dies prior to certification by the Board, "purchase of service shall be completed . . . by reducing the annuity benefit by the actuarial equivalent of the debt . . . provided, in the case of nonschool service, the purchase does not negatively impact the present value." There were two concerns.

First, the regulation currently states that if a member dies after applying for the purchase of service but before certification by the Board, "the members legally constituted representative **may** purchase the service by payment of a lump sum" or by reducing the annuity benefit. (Emphasis added.) Will the change from permissive to mandatory language prevent a deceased member's legally constituted representative from opting out of the transaction?

Second, while § 213.24 allowed members to purchase creditable school service as well as nonschool service, the amendment only protected against a purchase of nonschool service that would negatively impact the present value. Why does the final clause not address the purchase creditable school service that would negatively affect the present value?

The preamble did not provide a clear explanation of the reason for either of these changes. In the submittal of the final-form regulation, the Board should further explain the amendments to this section.

Response:

In answer to the first concern, the intent was to prevent a member's legally constituted representative from opting out of a nonschool purchase transaction unless the transaction has a negative impact on present value. The current regulation already is mandatory as to school service, as provided in section 8325 of the Retirement Code. The existing permissive language relates only to how the representative may purchase the service.

Regarding the second concern, PSERS has amended the preamble to read:

The amendments to § 213.25 (relating to incomplete payments) clarify that a member's estate may not complete payments of purchasable service but that the annuity benefit will be reduced by the debt, provided that **in the case of nonschool service, which purchase is discretionary**, the reduction does not negatively impact the present value.

IRRC's Comments: § 213.27. Payments by employers.— Clarity; Reasonableness.

This section reduced the time period for employers to file reports with the Board and to pay the amount billed by the Board. The preamble does not provide a clear explanation of the reason for the reduction of the time period or whether the time period is reasonable. In the submittal of the final-form regulation, the Board should further explain the amendments to this section.

Response:

The time in which to file reports with the Board is not statutorily mandated; however, PSERS' current standard practice requires that the reports to be filed within 10 days instead of 15 days because PSERS' computer system in place allows the employers to streamline the process of reporting. The employers have consistently been filing their reports within 10 days without delay or problems. The Board is merely seeking to solidify the current practice.

Section 8535, which was added to the Retirement Code in 1994, requires school entities to make payment for the employer's liability within 5 days after receipt of the Commonwealth's portion. The Board has already been applying this statutory requirement and is now updating the regulations.

IRRC's Comments: § 213.46. Termination of annuities.—Clarity.

Subsection (d) included a definition of “extracurricular position.” IRRC recommended that the Board move the definition from this section to § 211.2. Moreover, the definition of “extracurricular position” references an “established academic course structure.” The final-form regulation should specify criteria for what the “established academic course structure” includes. For instance, does it include fine arts electives?

Response:

The definition of “extracurricular position” under subsection (d) questioned by IRRC is taken from the definition in section 8346(b.1) of the Retirement Code. The Board does not believe it is advisable, nor is it prepared, to develop specific criteria for this definition at this time, but will rather consider each case individually on its own merits to develop a consistent interpretation.

In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the House and Senate Committees and the public.

Additional Amendments:

In addition to the previous amendments, the Board made some additional revisions.

The definition of “beneficiary” in § 211.2 was amended to read as follows:

Beneficiary—The person (as defined in the Statutory Construction Act, 1 Pa.C.S. § 1991) last designated by a member in writing to the Board to receive accumulated deductions or a lump sum benefit upon the member’s death.

In reviewing IRRC’s comments to § 201.11, the PSERS noticed that the proposed regulation also supplements 1 Pa. Code § 35.226(a)(2) (relating to final orders). The PSERS has added this cross-reference to the final-form regulation in § 201.11(d).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 6, 2007, the Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 3423 (July 21, 2007) and a copy of a Regulatory Analysis Form to the IRRC and to the Chairpersons of the House Education Committee and the Senate Finance Committee for review and comment. A copy of this material is available to the public upon request.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 4, 2008 the final-form rulemaking was deemed approved by the Committees.

Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 5, 2008 and approved the final-form rulemaking.

Effective Date

This final-form rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

Contact Person

For further information, contact Frank Ryder, Director of Government Relations, Public School Employees’ Retirement System, 5 North Fifth Street, P. O. Box 125, Harrisburg, PA 17108, (717) 720-4733; or Charles K. Serine, Deputy Chief Counsel, Public School Employees’ Retirement System, 5 North Fifth Street, P. O. Box 125, Harrisburg, PA 17108, (717) 720-4679.

Findings

The Board finds that:

(1) Public notice of intention to amend these chapters was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form rulemaking is necessary and appropriate for the administration of the Retirement Code.

Order

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Board, 22 Pa. Code Chapters 201, 211, 213 and 215, are amended by amending §§ 201.1, 211.1, 211.2, 213.1—213.4, 213.9, 213.24, 213.25, 213.27, 213.41, 213.44, 213.45—213.47, 213.49, 215.2, 215.5—215.7 and 215.33; by deleting §§ 201.2—201.5, 213.5, 213.23, 215.35 and 215.36; and by adding §§ 201.2a—201.5a, 201.6—201.12, 211.3 and 213.3a to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The final-form amendments shall be submitted to the Office of Attorney General for approval as to legality as required by law.

(c) The Secretary of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

JEFFREY B. CLAY,
Secretary

(Editor’s Note: For the text of the order of the Independent Review Commission relating to this document, see 38 Pa.B. 3461 (June 21, 2008).)

Fiscal Note: Fiscal Note 43-10 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 22. EDUCATION

PART XIII. PUBLIC SCHOOL EMPLOYEES’ RETIREMENT BOARD

CHAPTER 201. PRACTICE AND PROCEDURE

§ 201.1. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), is applicable to the activities of and proceedings before the Board, except as provided in, or inconsistent with, this chapter.

§ 201.2. (Reserved).

§ 201.2a. Definitions.

(a) In addition to the definitions in 1 Pa. Code § 31.3 (relating to definitions), as used in this chapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

Adjudicatory benefit appeal—An appeal from the ESRC to the Board in which a formal hearing is requested and in which an adjudication of the Board is issued under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

Board—The Public School Employees’ Retirement Board.

Claimant—An individual who, or entity that, has requested an adjudicatory benefit appeal.

Executive Director—The appointed executive director of the System. The Executive Director of the System is also the Secretary of the Board.

ESRC—The Executive Staff Review Committee, which consists of the Executive Director and additional senior staff members as appointed by the Executive Director.

Hearing examiner—A presiding officer appointed to hear an adjudicatory benefit appeal in accordance with 1 Pa. Code § 35.185 (relating to designation of presiding officers).

Nonadjudicatory benefit appeal—An appeal to the ESRC, which is resolved without conducting a hearing or issuing an adjudication.

Party—An individual or entity participating in an adjudicatory benefit appeal, including an intervenor and any person or entity joined to the appeal.

Retirement Code—The Public School Employees’ Retirement Code (24 Pa.C.S. §§ 8101—8535).

Secretary of the Board—The appointed Secretary of the Board as provided in the Retirement Code. The Secretary of the Board is also the Executive Director of the System.

Subordinate officer—

- (i) An officer or employee of the System.
- (ii) The term does not include the Executive Director, Secretary of the Board or the Board.

System—The Public School Employees’ Retirement System.

(b) This section supplements 1 Pa. Code § 31.3; the definition of “subordinate officer” supersedes the definition in 1 Pa. Code § 31.3.

§ 201.3. (Reserved).

§ 201.3a. Nonadjudicatory benefit appeal.

(a) Benefit appeals from actions of subordinate officers of the System shall be made to the ESRC and shall be nonadjudicatory.

(b) A letter from the System taking an action or making a determination on behalf of the System shall constitute action of a subordinate officer. A letter shall constitute action of a subordinate officer whether or not the letter states that an appeal must be taken within 30 days.

(c) An appeal to the ESRC shall be received by the System within 30 days after the date of the letter from the System taking an action or making a determination on behalf of the System. If a claimant fails to appeal an action or determination by a subordinate officer to the ESRC within the prescribed time, the action of the subordinate officer will become final.

(d) An appeal to the ESRC must be made in writing and addressed to:

Executive Staff Review Committee
Public School Employees’
Retirement System
P. O. Box 125
Harrisburg, Pennsylvania 17108-0125

(e) The ESRC will meet as necessary to review and decide nonadjudicatory benefit appeals. If the appeal is

granted, the claimant will be notified in writing and the matter will be closed. If the appeal is denied, in full or in part, the claimant shall have the right to appeal the denial to the Board. The ESRC will send the claimant a denial letter explaining why the appeal is denied, and advise the claimant of the right to appeal to the Board and request an adjudicatory benefit appeal and administrative hearing within 30 days after the date of the denial letter.

(f) The Executive Director or a designee will maintain a record of the decisions of the ESRC and report to the Board the results of each decision by the ESRC, which will include a brief summary of the issues involved.

(g) This section supersedes 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

§ 201.4. (Reserved).

§ 201.4a. Adjudicatory benefit appeal and request for administrative hearing.

(a) An adjudicatory benefit appeal and request for administrative hearing from a denial letter from the ESRC must be in writing and received by the Board within 30 days after the date of the ESRC denial letter.

(b) An adjudicatory benefit appeal and request for administrative hearing must be addressed to:

Appeal Docket Administrator
Public School Employees’ Retirement Board
P. O. Box 125
Harrisburg, Pennsylvania 17108-0125

(c) If a claimant fails to appeal a decision of the ESRC to the Board within the prescribed time, the decision of the ESRC is deemed final.

(d) Appeals to the Board from the ESRC as to which no motions are filed under § 201.6 (relating to motions practice) will be referred to a hearing examiner under 1 Pa. Code Chapter 35, Subchapter E (relating to presiding officers) to conduct a hearing and prepare a recommended decision to the Board under 1 Pa. Code §§ 35.202 and 35.205 (relating to proceedings in which proposed reports are prepared; and contents of proposed reports).

§ 201.5. (Reserved).

§ 201.5a. Authorization of Secretary of the Board.

The Secretary of the Board will be authorized to execute and issue routine and uncontested orders on behalf of the Board, including, but not limited to, the following:

- (1) An order to dismiss when a claimant has withdrawn a request for an adjudication.
- (2) An order granting an extension of time to file a document.
- (3) An order granting the right of a third party to intervene in a pending appeal.

§ 201.6. Motions practice.

(a) *Preliminary objections.* The System may, before filing an answer, file preliminary objections directly with the Board. The preliminary objections will conform to Pa.R.C.P. No. 1028 (relating to preliminary objections).

(b) *Summary judgment.* The System or the claimant may file a motion for summary judgment directly with the Board. The motion must conform to Pa.R.C.P. Nos. 1035.1—1035.5.

(c) The Board will rule directly on preliminary objections or motions for summary judgment unless, by order, it delegates the matter to a hearing examiner to prepare a proposed opinion and recommendation under § 201.12 (relating to oral argument before the Board).

(d) This section supersedes 1 Pa. Code § 35.54 (relating to motions as to complaint).

§ 201.7. Service and return of subpoenas.

(a) Service of subpoenas will be made by any of the methods authorized by Pa.R.C.P. No. 234.2(b) (relating to Subpoena. Issuance. Service. Compliance. Fees. Prisoners.). It will not be necessary that witness fees be tendered at the time of service of the subpoena, but the subpoena must include a notice that the witness may request in writing the payment of the witness fees provided in Pa.R.C.P. No. 234.2(c). The written request shall be made to the party (or his counsel) on whose behalf the subpoena is issued. The party (or his counsel) on whose behalf the subpoena is issued shall remit the witness fees to the witness within 14 days after the date of the letter requesting payment of witness fees or before the date of the hearing, whichever comes first.

(b) This section supersedes 1 Pa. Code § 35.142(b) (relating to service and return of subpoenas) and supplements 1 Pa. Code §§ 35.139 and 35.142(c) (relating to fees of witnesses; and subpoenas).

§ 201.8. Dismissal for nonappearance.

(a) Whenever a claimant fails to appear, either in person or through counsel, for a scheduled hearing without good cause, the hearing examiner will issue a recommendation to dismiss the case, without considering the merits of the claim.

(b) This section supplements 1 Pa. Code §§ 35.125, 35.187 and 35.205 (relating to order of procedure; authority delegated to presiding officers; and contents of proposed reports).

§ 201.9. Introduction of documents from the System's records.

(a) Documents from the System's records need not be certified or authenticated under 42 Pa.C.S. §§ 6103 and 6104(a) (relating to proof of official records; and effect of official records generally) to be admitted into evidence in an administrative hearing.

(b) Any subordinate officer who has access to the System's records, and has knowledge regarding the identity and mode of preparation of the records prepared by the System and the filing with, and maintenance of records by the System in the regular course of the System's business will be qualified to identify any documents or other records on file with the System in any hearing and to testify regarding the documents or other records.

(c) This section supplements 1 Pa. Code §§ 35.161 and 35.164 (relating to form and admissibility of evidence; and documents on file with agency).

§ 201.10. Briefs.

(a) After the close of the testimony, the hearing examiner will fix a briefing schedule. Unless otherwise agreed to by all parties and the hearing examiner, the claimant, or other party upon whom rests the burden of proof, shall file the first brief, followed by the brief of the System and a reply brief by the claimant or other party who filed the first brief. Briefs must conform to 1 Pa. Code § 35.192 (relating to content and form of briefs). A party upon whom rests the burden of proof may not be denied the

right to file a reply brief. Any party may waive the right to file a brief or reply brief, either on the record, or in writing to the hearing examiner, in either of which events, the hearing examiner will note that fact on the record, deduct the time allotted for the filing of the briefs from the briefing schedule and prepare an opinion and recommendation for the Board without the benefit of a brief on behalf of the party who elected to waive the filing of a brief.

(b) Both the claimant and the System shall be entitled to file letter briefs to the hearing examiner. The letter briefs need not conform to 1 Pa. Code §§ 35.191 and 35.192 (relating to proceedings in which briefs are to be filed; and content and form of briefs), but the letter briefs may not be more than 3 pages in length.

(c) This section supplements 1 Pa. Code §§ 35.191 and 35.192.

§ 201.11. Proposed opinion and recommendation.

(a) Unless otherwise ordered by the Board, the hearing examiner will file a proposed opinion and recommendation to the Board in cases when an administrative hearing has been held before a hearing examiner. The contents of the proposed opinion and recommendation will be in accordance with 1 Pa. Code § 35.205 (relating to contents of proposed reports) and will also include a discussion of the matter. The proposed opinion and recommendation will not become the opinion and order of the Board unless it is adopted by the Board.

(b) The proposed opinion and recommendation shall be filed with the System, together with the transcript of testimony, exhibits and briefs, all of which shall become part of the record. At the same time the proposed opinion and recommendation is filed with the System, the hearing examiner will serve copies upon all parties and staff counsel.

(c) The Board may adopt or reject, in whole or in part, or supplement the proposed opinion and recommendation or issue its own opinion and order, whether or not exceptions to the proposed opinion and recommendation are filed by any party. When exceptions are filed, the Board will rule on the exceptions.

(d) Any party may file exceptions in accordance with 1 Pa. Code §§ 35.211 and 35.212 (relating to procedure to except to proposed report; and content and form of briefs on exceptions).

(e) This section supplements 1 Pa. Code §§ 35.202, 35.207 and 35.226(a)(2) (relating to proceedings in which proposed reports are prepared; service of proposed reports; and relating to final orders).

§ 201.12. Oral argument before the Board.

(a) The right to oral argument is discretionary with the Board and will be granted to the extent the Board believes it will be helpful in enabling the Board to acquire an understanding of and to resolve the issues. When oral argument is granted, the Secretary of the Board will schedule the argument for the next available Board meeting.

(b) If a party filing exceptions to a recommendation of the hearing examiner wishes oral argument before the Board, the party shall file the request for oral argument with the exceptions.

(c) If a party seeks oral argument in a case in which exceptions have been filed by the System to a recommendation of the hearing examiner that is in favor of a claimant, the request for oral argument shall be filed

with or before the party's response to the System's exceptions. In that case, the Secretary of the Board will grant oral argument and schedule it for the next available Board meeting.

(d) Oral argument will be limited to a maximum of 10 minutes for each party, unless otherwise directed by the Board. The claimant, as the party with the burden of proof, shall argue first. If there are more than two parties to the appeal, the Secretary of the Board will establish the order of argument consistent with who has the burden of proof. New evidence will not be accepted at the oral argument.

(e) At the conclusion of the oral argument, the Board will discuss and decide the case. The Board may table the case for further consideration at a future meeting. The Board may also elect to discuss all or part of the case in executive session in accordance with 65 Pa.C.S. Chapter 7 (relating to the Sunshine Act).

(f) The Board's counsel will draft a proposed adjudication in accordance with the Board's decision. The proposed adjudication will be presented to the Board at the Board meeting next following the Board's determination of the case, unless the Board agrees to have the proposed adjudication issued without further review by the Board.

(g) This section supersedes 1 Pa. Code §§ 35.214 and 35.226(a)(2) (relating to oral argument on exceptions; and final orders).

CHAPTER 211. PRELIMINARY PROVISIONS

§ 211.1. Short title of part.

(a) Chapters 211, 213 and 215 (relating to preliminary provisions; contributions and benefits; and general administration) are promulgated under the Retirement Code.

(b) *Retirement Code reference.* Section 8101 of the Retirement Code (relating to short title of part).

§ 211.2. Definitions.

(a) The definitions in section 8102 of the Retirement Code (relating to definitions) are applicable to Chapters 211, 213 and 215 (relating to preliminary provisions; contributions and benefits; and general administration) as clarified or supplemented by the definitions in subsection (b).

(b) The following words and terms, when used in this part, have, consistent with the Retirement Code definitions, the following meanings, unless the context clearly indicates otherwise:

Active member—

(i) A school employee for whom pickup contributions, as defined in section 8102 of the Retirement Code (relating to definitions), are properly being made to the Fund, including those granted a sabbatical leave of absence, or who are on an approved leave of absence for professional study, as an exchange teacher, or service with a collective bargaining organization, under section 8102 and section 8302 of the Retirement Code (relating to credited school service), or for whom the contributions otherwise required for current school service are not being made solely by reason of any provision in the Retirement Code relating to the limitations under sections 401(a)(17) or 415(b) of the IRC (26 U.S.C.A. §§ 401(a)(17) and 415(b)).

(ii) The term excludes employees who are on leave of absence without pay.

*Actuarially equivalent—*Two benefits are said to be actuarially equivalent if they have equal present values,

computed on the basis of statutory interest and the mortality tables currently adopted and used by the Board.

*Annuitant—*A member on or after the effective date of retirement, until the annuity is terminated, but excludes a beneficiary or survivor annuitant.

*Beneficiary—*The person, (as defined in 1 Pa.C.S. § 1991 (relating to definitions)), last designated by a member in writing to the Board to receive accumulated deductions or a lump sum benefit upon the member's death.

*Board—*The Public School Employees' Retirement Board.

*Certified members—*See definition of "professional members" in this section.

Employer—

(i) A governmental entity directly responsible for the employment and payment of the school employee and charged with the responsibility of providing public education within this Commonwealth.

(ii) The term includes all governmental entities whose employees under prior law and regulations are members of the System as of the effective date of the Retirement Code.

*Final average salary—*The highest average compensation received as an active member during any three nonoverlapping periods of 12 consecutive months. In the case of a part-time employee, compensation shall be annualized by multiplying actual earnings by the reciprocal of the fractional portion of time worked during nonoverlapping periods of 12 consecutive months or equivalent consecutive pay periods during which compensation is received; and, in the case of a member with multiple service credit, the salary shall be determined by reference to include compensation received as a school employee or a State employee, or both. In the case of a member who first became a member on or after July 1, 1996, compensation shall be subject to the application of section 8325.1 of the Retirement Code (relating to annual compensation limit under section 401(a)(17) of the IRC). Final average salary is an average of the 3 highest school years. For terminations before the end of the school year, salary for that part of the year may be used in combination with a proportionate percentage of a prior year. School years with part-time service may be annualized for salary calculation. Either annualized or actual retirement-covered compensation is allocated to months for each school year. For final average salary purposes, retirement-covered compensation is credited in the school year in which it is earned, not paid. Retirement-covered compensation is not recognized for any period of creditable nonschool service purchased by a member.

*Full-day session—*That period of time determined by the employer, without objection from the Department of Education, during which a school employee is employed daily for instructional purposes.

*Full time employee—*An employee employed at least 5 hours per day or 25 hours per week or its equivalent.

* * * * *

*Governmental entity—*In addition to those enumerated in the Retirement Code, the term includes any agency or authority, being a corporate body or body politic created by law, or any entity created by those agencies or authorities, charged with the responsibility of providing public education within this Commonwealth.

* * * * *

Inactive member—

(i) A member for whom no pickup contributions, as defined in section 8102 of the Retirement Code, are being made, who has accumulated deductions standing to the member's credit in the Fund and for whom no pickup contributions have been made within the last 2 school years, except in the case of an active member for whom the contributions otherwise required for current school service are not being made solely by reason of any provision in the Retirement Code relating to the limitations under sections 401(a)(17) of the Internal Revenue Code, who has accumulated deductions standing to his credit in the Fund and for whom contributions have been made within the last 2 school years or a multiple service member who is active in the State Employees' Retirement System.

(ii) The term also includes a member who is on furlough and has elected to leave the accumulated deductions in the Fund at statutory interest during the furlough period, which period may not exceed 2 school years; or a member who is on leave of absence without pay.

*IRC—Internal Revenue Code—*26 U.S.C.A. §§ 1—7872.

*Member's annuity—*An amount determined by dividing the accumulated deductions of the member by the cost of a \$1 annuity based on the nearest age of the member at the effective date of retirement and computed on the basis of statutory interest and mortality tables adopted and used by the Board.

*Noncertified members—*See definition of "nonprofessional members" in this section.

*Nonprofessional members or noncertified members—*The term includes school employees who are not "professional employees," as defined in section 1101 of the Public School Code of 1949 (24 P. S. §11-1101), and who also qualify for membership in the System under section 8301 of the Retirement Code (relating to mandatory and optional membership).

Professional members or certified members—"Professional employees," as defined in section 1101 of the Public School Code of 1949, including all temporary professional employees, professional employees, substitutes and commissioned officers currently employed by a school district or intermediate unit and qualifying for membership in the System under section 8301 of the Retirement Code (relating to mandatory and optional membership).

* * * * *

*Retirement Code—*The Public School Employees' Retirement Code, 24 Pa.C.S. §§ 8101—8535.

* * * * *

School employee—

(i) A person engaged in work relating to a public school for any governmental entity and for which work the person is receiving regular remuneration as an officer, administrator or employee excluding, however, any independent contractor or a person compensated on a fee basis.

(ii) The term does not include a person who is rendering services to the school district on a commission or fee basis, whether an elected official or not.

*School year—*The 12-month period which the governmental entity uses for purposes of administration, regardless of the actual time during which a member renders service. A member will not be credited, during a school year, with credited service in excess of 1 year.

*Statutory interest—*As applied to contributions of members, interest at 4% per annum compounded annually.

(b) *Retirement Code reference:* Section 8102 of the Retirement Code.

§ 211.3. Construction.

(a) Former annuitants who are active members of the System on October 2, 1975, are not subject to the recalculation of annuities of annuitants who return to school service thereafter.

(b) The rights of members of Class T-B, as provided in section 301(2)(c) and (d) of the Public School Employees' Retirement Code of 1959 (24 P. S. § 3301(2)(c) and (d) (repealed)) shall continue.

(c) The provisions relating to former teachers as provided in sections 303(3) and 407(1) of the Public School Employees' Retirement Code of 1959 (24 P. S. §§ 3303(3) and 3407(1) (repealed)), shall continue.

(d) As applicable to members terminating school service on or after March 1, 1974, the provisions relating to the purchase of credit for previous school or creditable nonschool service and the calculation of benefits shall be effective March 1, 1974.

(e) The provisions relating to the crediting of statutory interest to the accounts of members on leave without pay shall become effective on July 1, 1975.

(f) Part-time employee membership, as provided by the Retirement Code, shall become effective with the beginning of the school year 1975-76, subject to the limitations based upon qualification, as provided in this part.

(g) For the purpose of the Retirement Code, the school year commences on July 1 and ends on June 30 of the following year.

(h) The provisions relating to eligibility for disability annuities, shall be effective, as applied to all active or inactive members, from December 1, 1974.

**CHAPTER 213. CONTRIBUTIONS AND BENEFITS
GENERAL PROVISIONS**

§ 213.1. Mandatory and optional membership.

(a) Membership shall be mandatory, as of the effective date of school employment, for all school employees, except the following categories:

(1) An officer or employee, who is a member of the State Employees' Retirement System under any of the categories enumerated under section 8301(a)(1) of the Retirement Code (relating to mandatory and optional membership); or an officer or employee who is a member of an employer approved retirement program as provided under subsection (b).

(2) A person employed on a per diem or hourly basis for less than 80 full-day sessions or 500 hours in a fiscal year. In all cases, a school district shall report to the Board whether a school employee annually qualifies under this section based on the service rendered during a school year. A per diem or hourly school employee employed for less than the minimum eligibility requirements established in this paragraph will not be eligible for membership for that fiscal year period, but shall, if the employee exceeds the minimums stated in this paragraph, be a mandatory member for that fiscal year period only.

(3) Employees in Federal programs shall conform with the following:

(i) A school employee who has joined the System and is employed by a governmental entity in a wholly or partly-funded Federal program, during the period December 22, 1965, and prior to July 1, 1975, may continue membership in the program for continuous service rendered after July 1, 1975, and until termination of service.

(ii) From and after July 1, 1975, an employee entering school service shall be required to join the System until termination of service, although the program in which he is employed is financed, in whole or in part, by the Federal government.

(b) Under section 8301(a)(1) of the Retirement Code, certain school employees may elect not to join the System in favor of an optional alternate retirement program approved by the employer.

(1) Every employee who is eligible for membership in the optional alternate retirement program shall make the election within 30 days of the first date of active employment. Employees not exercising the option to join the optional alternate retirement program shall be deemed to have chosen to commence active membership in the System, unless they have elected membership in the State Employees' Retirement System.

(2) When an eligible employee has elected to participate in the optional alternate retirement program in accordance with paragraph (2) of former § 215.36, as it existed on April 15, 2005, or paragraph (4) of former § 215.36, as it existed on April 15, 2005, or elects to participate in the optional alternate retirement program in accordance with paragraph (1), the election is final and binding so long as the employee remains eligible to remain in the optional alternate retirement program. When an employee later is employed in a capacity which does not qualify for membership in the optional alternate retirement program, the employee shall, upon meeting the qualifications for membership in the system, either make contributions to the fund or reinstate the former credited service for which contributions had been withdrawn. Remittance of contributions or reinstatement of former credited service shall be made in accordance with sections 8303(c) and 8323(a) of the Retirement Code (relating to eligibility points for retention and reinstatement of service credits; and member contributions for creditable school service). Service, salary or other compensation paid to an employee while a member of the optional alternate retirement program will not be credited toward membership in, or retirement benefit from, this System.

(c) *Retirement Code reference.* Section 8301 of the Retirement Code.

§ 213.2. Credited school service.

(a) *Computation.* For the purposes of computing credited school service, the following conditions apply:

(1) A full-time salaried employee shall receive 1 year of credited service for each nonoverlapping period of 12 consecutive employable months for which the employee contributes for at least 180 full-day sessions of employment. A full-time salaried employee is not eligible to earn more than 1 year of credited service during 12 consecutive months although the employee may be employed for full-day sessions or for hours in excess of the limitations set forth in this section.

(2) A part-time salaried employee, that is, one who is compensated as a percentage of annual salary, shall

receive credited service based on the proportion of full-time service for which the employee is employed during a school year.

(3) A per diem employee, having achieved eligibility by virtue of being employed for at least 80 full-day sessions during the fiscal year, shall receive a portion of credited service based on the relationship of actual full-day sessions worked as it relates to the 180 full-day session limitation.

(4) An hourly school employee, having achieved membership eligibility by virtue of being employed at least 500 hours in a fiscal year, shall receive a proportion of credited service based on the actual hours worked as it relates to 1,100 hours.

(5) A member with credit for multiple service or with credit in the School Employees' Retirement Program who is employed on a concurrent basis, in one or more districts or with this Commonwealth, is not entitled to more than 1 year of credited service for a consecutive 12-month period.

(6) Notwithstanding the limitations in paragraphs (1)—(5), employees who may be on strike will not be eligible for credited service during a strike period unless the days or hours lost by virtue of the strike are actually served and compensation paid.

(b) *Approved leaves of absence.* Credited service will be granted to an active member for an approved leave of absence as authorized under sections 8102 and 8302 of the Retirement Code (relating to definitions; and credited school service). Members may be granted other types of leaves of absence, not authorized by the Retirement Code, but the leaves will not entitle the member to any credited service, during the period of the leave. Credited service for the approved leaves of absence will be granted under the following conditions only:

(1) The member shall return to the school district for a period at least equal to the length of the leave or 1 year, whichever is less, unless this condition is waived by the employer.

(2) Proper contributions, based on the salary the member would have received had the member been in regular full-time employment with the employer during the period of the leave, are made by the member and by the employer if required. An employer may not be permitted to suspend the requirement of making its required contributions during the period of the leave. Contributions made by the member during the period of the leave shall be transmitted through the school district on a monthly basis in the same manner as active members.

(c) *Cancellation.* In all cases when a member withdraws accumulated deductions, all credited service shall be canceled. A member who has so withdrawn accumulated deductions and has credited service canceled shall, upon a reentry into the System, be eligible to purchase this service under this section 8303 of the Retirement Code (relating to eligibility points for retention and reinstatement of service credit).

(d) *Improperly credited service.* If the Board finds that any school service has been improperly credited, it will cancel the credit and refund to the member accumulated deductions attributable thereto.

(e) *Retirement Code reference.* Section 8302 of the Retirement Code.

§ 213.3. Eligibility points for retention and reinstatement of service credits.

(a) Every active member shall accrue one eligibility point for each year of credited school service although the actual service rendered may exceed 180 full-day sessions or 1,100 hours of employment during any period of 12 consecutive months.

(b) Every active member or multiple service member who is active in the State Employees' Retirement System, on or subsequent to March 1, 1974, may purchase credit upon which eligibility points shall be applied, as a member of Class T-C for any periods of previous school service or permissible creditable nonschool service, as provided in this part, on the condition that the member pay for the service as provided in this part. An active member or multiple service member seeking to reinstate previous service shall be required to purchase and pay for all the service previously credited. The member is not permitted to purchase only a portion of previously credited service to be reinstated.

(c) In all instances when creditable school or nonschool service may be purchased, an active member, having elected to purchase the service, is not permitted to cancel the purchase.

(d) *Retirement Code reference:* Section 8303 of the Retirement Code (relating to eligibility points for retention and reinstatement of service credits).

§ 213.3a. Waiver of adjustments.

(a) To find that an adjustment made under section 8534(b) of the Retirement Code (relating to fraud and adjustment of errors) meets the undue hardship test under section 8303.1(a)(1) of the Retirement Code (relating to waiver of adjustments), the Board requires that either:

(1) The adjustment causes a reduction in excess of 5% of the monthly annuity.

(2) The adjustment results in the member losing eligibility for a benefit other than an annuity.

(b) *Retirement Code reference:* Section 8303.1 of the Retirement Code.

§ 213.4. Creditable nonschool service.

(a) Creditable nonschool service may be purchased only by an active member or a multiple service active member of the State Employees' Retirement System.

(b) Creditable nonschool service shall be available to all members identified in subsection (a), except those who may be entitled to receive, eligible to receive, now or in the future, or are currently receiving retirement or pension benefits for the service under a retirement or pension program administered and wholly or partially paid for by another governmental agency or by a private employer or by a retirement program approved by the employer in accordance with the optional retirement provisions authorized in section 8301(a)(1) of the Retirement Code (relating to mandatory and optional membership).

(c) Intervening military service shall be service of an active nature rendered to the armed forces of the United States for which an active member had school service interrupted so that the member could serve voluntarily or otherwise to fulfill a draft obligation in time of war or armed conflict. Intervening military service shall be disallowed or canceled when the required military tour of duty

has been voluntarily extended beyond the time of military obligation, with or without the implied or express consent of the employer.

(d) An active member may purchase other military service, of a nonintervening nature, not exceeding 5 years, for service rendered only to the armed forces of the United States before the member commenced his most recent school employment. An active member who is receiving disability compensation based on a service-connected injury or illness as a result of active military service shall be eligible for credit for intervening or nonintervening military service.

(e) Purchase limitations for intervening and nonintervening military service and conditional credit shall be as follows:

(1) An active member may not purchase intervening or nonintervening military service, if the member has obtained credit and is eligible now or in the future to receive a pension for this service from another employer or governmental agency. Upon application to purchase this service, the member shall be required to submit proof as to eligibility or ineligibility for any pension benefits from the other employer or governmental agency, as the Board may require. If the Board determines that this service is ineligible, the application will be denied. If the Board later determines that the purchased service should have been ineligible, it will cancel the service purchased and refund to the member the accumulated deductions attributable to this service at the time of retirement or termination of service, unless cancellation and refund is requested prior thereto. If subsequent to retirement, the Board learns that a member has falsified a record, it may take action as is otherwise provided in the Retirement Code.

(2) Conditional credit for nonintervening military service shall be available for all active military service actually rendered for which purchase shall be requested but may not exceed 5 years of the service, provided the member has 3 years of credited school service subsequent to the military service for which credit is requested.

(f) Nonschool service may be purchased by an active member who was a teacher or instructor in a public school or public educational institution in a state other than this Commonwealth or in a territory or area under the jurisdiction of the United States and the service may also be purchased by an active member who was an administrator, teacher or instructor in the field of public school education for an agency or department of the United States Government whether under its jurisdiction or not. The nonschool service rendered shall be for not less than 1 full year. The total service purchased may not exceed 12 years or the number of years of school service credited in the system, whichever is less.

(g) Nonschool service in the Cadet Nurse Corps may be purchased by an active member for a period of training as a student or graduate nurse under a plan approved under section 2 of the act of June 15, 1943 (Pub. L. No. 78-73, 57 Stat. 153), if the total period of training under the plan was at least 2 years, and the credit for the service does not exceed 3 years.

(h) Previous nonschool service as a nurse in the employ of a county may be purchased by an active member as follows: For every 3 years or major fraction thereof in previous work experience, an individual may buy 1 year of creditable service, not to exceed a total of 5 years.

(i) Creditable nonschool service may also be purchased for previous service as an employee of a county board of

school directors whose employment was terminated because of a transfer of the administration of the service or of the entire agency to another governmental unit. This service is not limited to or subject to the conditions of section 8304(c) of the Retirement Code (relating to creditable nonschool service), dealing with total permissible nonschool service credit.

(j) The total credit of nonschool service, identified in subsections (a)—(i) may not exceed the actual number of years of school service in the System, rendered within this Commonwealth, plus, in the case of an active multiple service member, additional years of State service rendered the Commonwealth and credited in the State Employees' Retirement System. This limitation on total permissible nonschool service credit does not apply to the service provided in subsection (i).

(k) *Retirement Code reference:* Section 8304 of the Retirement Code.

§ 213.5. (Reserved).

§ 213.6. Eligibility points.

(a) An active member shall accrue one eligibility point for each year of credited service or fractional part of a year of credited service based on the corresponding fractional eligibility point, as a member of the System or State Employees' Retirement System. A member shall also accrue an additional 2/3 of an eligibility point for each year of credited Class D-3 service under the State system.

(b) *Retirement Code reference:* Section 8306 of the Retirement Code (relating to eligibility points).

§ 213.9. Eligibility for death benefits.

(a) In the event of the death of a member, the member's beneficiary, or estate shall be entitled to death benefits if the member was eligible for an annuity in accordance with section 8307(a) or (b) of the Retirement Code (relating to eligibility for annuities). If the deceased member is not eligible for an annuity, the member's beneficiary or estate shall only be entitled to receive the accumulated deductions standing to the member's credit in the Fund. The Board may pay the next of kin, in the absence of a beneficiary, under the special circumstances provided in 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors).

(b) *Retirement Code reference:* Section 8309 of the Retirement Code (relating to eligibility for death benefits).

CONTRIBUTIONS

§ 213.23. (Reserved).

§ 213.24. Contributions for the purchase of credit for creditable school and nonschool service.

(a) *Source of contributions.* As provided in sections 8303 and 8304 of the Retirement Code (relating to eligibility points for retention and reinstatement of service credits; and creditable nonschool service), creditable school and nonschool service shall be purchased entirely by the member, except in the following cases:

(1) In the case of former uncredited school service, when an employer has failed to credit service through administrative error, the employer is required to pay its share of the contributions for the service, although the active member is responsible for the member's share.

(2) In the case of service rendered by an active member to a county board of school directors, now designated an intermediate unit, the member is only responsible for the

purchase of the member's share for the previous service rendered to the county board of directors.

(3) Except for sabbatical leaves of absence, in the case of approved leaves of absence, the employee is required to pay for the purchase of creditable nonschool service, both the member's share and the employer's share if it is purchased after the leave of absence has expired. If the employer reports the leaves currently based on the employee's salary as if the employee had been in full-time employment during the leave period, the employee is only required to pay the employee share, whereupon the employer has a corresponding liability based on normal contribution rate.

(b) *Contributions for purchase of nonintervening military service.* The amount due for the purchase of nonintervening military service shall be calculated as follows: The average of the first 3 years' salaries subsequent to the military service, multiplied by the sum of the member's basic contribution rate and the normal contribution rate as determined by section 8328 of the Retirement Code (relating to actuarial cost method), relating to Commonwealth and district shares, and multiplied by the number of years or fractional years of military service. All amounts certified by the Board for the purchase of the service shall be in accordance with methods approved by the actuary. Nonintervening military service may not be purchased unless the active member has received at least 3 years of salary and completed at least 3 years of subsequent credited school service as either a Class T-C or Class T-D member.

(c) *Contributions for purchase of intervening military service.* An active member eligible to purchase credit for intervening military service shall pay the amount due in accordance with the following formula: The member's basic contribution rate at the time of entry into the active military service multiplied by the member's then compensation and by years of the military service together with statutory interest during all periods of subsequent school and State service to the date of purchase, if all the amounts due shall be in accordance with methods certified and approved by the actuary.

(d) *Contributions for purchase of other creditable nonschool service.* An active member shall pay the amount due for creditable nonschool service in accordance with the following formula: The member's basic contribution rate plus the normal contribution rate, applied to the member's first year salary of credited school service subsequent to the creditable nonschool service sought to be purchased, multiplied by the number of years or fractional parts of a year of the service purchased, together with statutory interest during all subsequent years of school or State service to the date of purchase. This formula for purchase does not apply in the case of purchase of creditable nonschool service rendered to a county board of school directors. In this event, the member shall only pay the amount due based on the member's basic contribution rate exclusive of the normal contribution rate.

(e) *Retirement Code reference:* Section 8324 of the Retirement Code (relating to contributions for purchase of credit for creditable nonschool service).

§ 213.25. Incomplete payments.

(a) *Right to make incomplete payments.* The right of a member to complete payments, once commenced, within 30 days after termination of school service, as provided in section 8325 of the Retirement Code (relating to incomplete payments), shall be available only to the member and to no other person, including a beneficiary.

(b) *Result of incomplete payments.* If a member fails to pay the balance of the agreed-upon payments due within 30 days of termination of school service, or if a member dies in school service, or 30 days thereafter, the annuity benefit to which the member would otherwise be entitled shall be reduced by the actuarial equivalent of the debt, including statutory interest.

(c) *Death of a member.* If a member applies for the purchase of service and dies prior to certification by the Board of the amount due for the service, the purchase of service shall be completed after the certification is made, by reducing the annuity benefit by the actuarial equivalent of the debt, including statutory interest; provided, in the case of nonschool service, the purchase does not negatively impact the present value.

(d) *Retirement Code reference.* Section 8325 of the Retirement Code.

§ 213.27. Payments by employers.

(a) To facilitate the payment by employers of the contributions required quarterly based on the compensation paid during the pay period representing that quarter, each employer shall be required to file monthly reports representing the total compensation paid for that month no later than 10 days following the end of that month. The Board will, upon receipt of the monthly reports comprising each quarter, bill the employer no later than 45 days subsequent to the end of the preceding quarter, the billing to be either an actual billing based on payroll for the preceding quarter or an estimated billing, as the case may be. Subsequent to the billing, the employer shall pay the billed amount no later than 5 business days after the employer's receipt of the Commonwealth employer contribution reimbursement subsidy for the quarter. If an employer fails to make timely payments, the Board will certify to the State Treasurer and Secretary of Education, the name of that delinquent employer, whereupon the Commonwealth employer contribution reimbursement subsidy due to that employer nearest the date following the delinquency shall be reduced by the amount of the delinquency or amount found owing.

(b) If an employer is delinquent in paying employer contributions as provided in subsection (a) or in failing to remit employee contributions in a timely manner as required in section 8506(c) of the Retirement Code (relating to duties of employers), the Board will impose an interest charge of 6% per annum to the date of payment, to be added to the amount of the delinquency, whether payment shall occur through the subsidy deduction method or shall be made directly to the Board by the delinquent employer.

(c) *Retirement Code reference.* Section 8327 of the Retirement Code (relating to payments by employers).

BENEFITS

§ 213.41. Return of accumulated deductions.

(a) A member who elected to receive only accumulated deductions, in lieu of any other benefit to which the member would otherwise be entitled, shall, by the election, be deemed to have irrevocably waived entitlement to the other benefits except as otherwise provided in the event a member returns to school service and qualifies for membership in the System.

(b) *Retirement Code reference.* Section 8341 of the Retirement Code (relating to return of accumulated deductions).

§ 213.44. Disability annuities.

(a) An active or inactive member with at least 5 years of credited school service shall be eligible, upon submitting appropriate medical evidence, to a disability annuity, but may not be entitled to elect any option on any portion of the disability annuity. A member entitled to a disability annuity, having five or more eligibility points, is entitled to select a joint and survivor option on that portion of the annuity to which the member is otherwise entitled.

(b) A disability annuitant no longer entitled to disability annuity in accordance with section 8505(c)(2) or 8508(b) or (c) of the Retirement Code (relating to duties of board regarding applications and elections of members; and rights and duties of annuitants), is entitled to either file an application for the election of optional modification of the annuity to which the annuitant would be otherwise entitled in accordance with section 8342 of the Retirement Code (relating to maximum single life annuity) or vest the benefit, if the annuitant has at least five or more eligibility points. If a disability annuity ceases and the member does not return to school service, the member is, if the member has not already received on account of the member's annuity the amount of the accumulated deductions, entitled to the difference upon application.

(c) Payments on account of disability shall be reduced by that amount by which the earned income of the annuitant, as reported in accordance with section 8505(b) of the Retirement Code, for the preceding year together with the disability annuity payments for the year, exceeds the greater of \$5,000 or the last year's salary of the annuitant as a school employee, provided, the annuitant will not receive less than his member's annuity or the amount to which the annuitant may be entitled under section 8342 of the Retirement Code whichever is greater.

(d) *Retirement Code reference.* Sections 8307(d) and 8344 of the Retirement Code (relating to eligibility for annuities; and disability annuities).

§ 213.45. Change in benefit payment plan.

(a) Notwithstanding the otherwise irrevocable nature of the election of a benefit payment plan, an annuitant may declare an intent to change the final terms of the benefit payment plan by filing a written intent with the System within 30 days of the annuitant's receipt of the initial benefit letter sent to the annuitant by the System. The letter will be deemed to be received by the annuitant 3 business days after the date of mailing.

(b) Notwithstanding the otherwise irrevocable nature of the election of a benefit payment plan, an annuitant may declare an intent to change the final terms of the benefit payment plan by filing a written intent with the System within 30 days of the annuitant's receipt of the statement provided for in section 8505(g) of the Retirement Code (relating to duties of board regarding applications and elections of members), which statement will be deemed to be received by the annuitant 3 business days after the date of mailing, if one of the following conditions are met:

(1) The annuitant's retirement records contain an error regarding service credit, salary or accumulated deductions that was not corrected by the System until after the application for an annuity was filed, and either of the following exists:

* * * * *

(d) An annuitant who has declared an intent to change under subsection (a) or (b) will not be permitted to complete the change unless the annuitant receives coun-

seling on the benefits available under the Retirement Code, or executes a written waiver of counseling on a form prescribed by the System. The counseling is subject to the following rules:

(1) The counseling is provided by an employee or authorized representative of the System.

* * * * *

(3) The Secretary of the Board or a designee may extend the period for counseling upon written request filed within the 30-day period, but in no case will the period for counseling be greater than 90 days.

* * * * *

(5) If the annuitant fails to receive counseling, or to file a written waiver of counseling within the allowed time period, the intent to change will be deemed withdrawn.

* * * * *

(h) Changes will be retroactive to the member's original effective date of retirement unless the date is changed as part of the changed application for an annuity.

(1) For a changed application to become effective, the annuitant shall either return any excess monthly annuity payments or moneys withdrawn under Option 4 within 30 days after the date of certification of the amount due or elect an actuarial reduction to be applied to the annuitant's account.

(2) For an annuity to be voided, the annuitant shall either return all moneys received in a lump sum within 30 days after the date of certification of the amount due or elect an actuarial reduction to be applied to the annuitant's account.

(3) If the annuitant fails to return the required amounts or elect an actuarial reduction as set forth in paragraphs (1) and (2), as the case may be, within 30 days, an actuarial reduction shall be applied to the annuitant's account.

(i) For purposes of this section, the System will consider a document as filed only upon actual receipt by the System. For a document properly sent by certified mail, return receipt requested, the System will deem the postmark date to be the date of filing. For a document sent by facsimile, the System will accept the date of the facsimile as the date of filing, if the original document is actually received within 10 days of the date of the facsimile.

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§ 213.46. Termination of annuities.

(a) *Return to school service or entering school service.* An annuity payable under the Retirement Code will be automatically discontinued if the annuitant returns to school service or enters State service and elects multiple service except as otherwise provided in section 8346 of the Retirement Code (relating to termination of annuities).

(b) *Entering State service.* An annuity payable under the Retirement Code shall also cease if the annuitant enters State service and elects multiple service membership within 365 days thereafter, which shall cover all periods of subsequent State service until there is a discontinuance thereof. An annuitant entering State service, who has failed to elect multiple service membership within 365 days thereafter, is not eligible to elect the membership.

(c) *Return to school service in the event of emergency or shortage.* An annuitant returning to school service in an emergency or shortage situation, as provided in section 8346(b) of the Retirement Code, and who works beyond the school year during which the emergency or shortage occurs, shall suffer discontinuance of an annuity thereafter, and the Board will make adjustment as the case may warrant.

(d) *Return to school service in an extracurricular position.* An annuitant may be employed under separate contract by a public school or charter school in an extracurricular position that is performed primarily outside regular instructional hours and is not part of a mandated curriculum without loss of annuity. For purposes of this section, the term "extracurricular position" means a contract position, including the position of athletic director, filled by an annuitant that is separate from the established academic course structure.

(e) *Termination of annuitants—Independent contractor.* An annuitant may render service without discontinuance of an annuity if the annuitant renders it in the capacity of an independent contractor for a sum certain and for a specific period of time, under a contract approved by the employer. The Board has the right to determine whether the services to be performed are such as to warrant the conclusion that it is an independent contract relationship. The Board may also inquire as to the circumstances surrounding an annuitant who seeks to render services as an independent contractor to determine whether the relationship does exist, thereby entitling the person to both an annuity and the contractor or consultant fees simultaneously. In any case in which the Board finds that the relationship may be contrary to the intent of this section, the Board has the right to discontinue the annuity or make the adjustment as the circumstances warrant.

(f) *Retirement Code reference:* Section 8346 of the Retirement Code.

§ 213.47. Death benefits.

(a) If a beneficiary is not designated, or if a designated beneficiary predeceases the member or fails to survive the member by 30 days, the benefits shall be payable to the estate of the member, or to the next of kin, 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors), as the case may be.

(b) If a maximum single life annuitant dies before receiving in monthly annuity payments the total amount of the accumulated deductions, the balance of the total accumulated deductions less total annuity payments received shall be paid to the designated beneficiary without regard to the actual proportion the employer's share represents to the total monthly annuity payments actually received before death.

(c) *Retirement Code reference:* Sections 8347 and 8349 of the Retirement Code (relating to death benefits; and payment of benefits).

§ 213.49. Payment of benefits.

(a) An annuity granted under the Retirement Code will not be paid in other than equal monthly payments. Option 4 may provide for lump sum installments of no more than the accumulated deductions to be paid to the member before or after equal monthly payments commence.

(b) If a beneficiary predeceases a member, or dies within 30 days of the member's death, or if there is no valid beneficiary designation on file to take effect at

death, money payable from the account of the member shall be paid to the estate of the member or next of kin, under 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors) as the case may be.

(c) As in the case of a member, an election by a beneficiary for an annuity, when made, shall be deemed to be irrevocable.

(d) *Retirement Code reference:* Section 8349 of the Retirement Code (relating to payment of benefits).

CHAPTER 215. GENERAL ADMINISTRATION GENERAL PROVISIONS

§ 215.2. Administrative duties of the Board.

(a) The Board will furnish, to the extent required by Federal law, information to members concerning those provisions of the Internal Revenue Code which may impose a tax liability upon a member or beneficiary. The sole responsibility for the tax liability, including the tax computation, is imposed upon the member and not the Board and the member should consult tax counsel or legal counsel for advice in these matters since the Board is not qualified or required to offer advice.

(b) Under section 8502(g) of the Retirement Code (relating to administrative duties of board), an employer failing to comply with procedures as mandated in the Retirement Code dealing with duties imposed upon employers, shall pay for the cost of performing these duties, if the Board initiates action to perform the duties on behalf of the employer not doing so. If an employer is delinquent in the payment of contributions in accordance with section 8327 of the Retirement Code (relating to payments by employers), the Board will notify the Secretary of Education and the State Treasurer of the delinquency for the action as those officials are required to take hereunder, consistent with the billing and delinquency requirements in § 213.27(a) (relating to payments by employers).

(c) Regulations adopted and promulgated for the uniform administration of the System shall be subject to prior approval by the actuary with respect to all computational procedures used in the calculation of contributions, benefits and related matters.

(d) The Board will, each year, in addition to its itemized budget, which is submitted through the Governor's Office for General Assembly approval, also certify to the employers and the Commonwealth that percentage of total member's payroll necessary for the funding of prospective annuities for active members and the rates and amounts of normal accrued liability and supplemental contributions to be paid to the Fund, which actuarial certification will be regarded as final after Board approval. It is not subject to modification by the Budget Secretary or any other Commonwealth official.

(e) The Board will, in compliance with the percentage certifications in subsection (e), determine within 30 days following the end of each quarter the amount due based thereon, taking into consideration the member's total payroll and shall submit simultaneously therewith a requisition for the amount determined to be due from the Commonwealth.

(f) The Board will credit to the account of each member all amounts paid by the member into the fund, including the member's contributions for current service, payroll deductions for the purchase of service as otherwise provided in this part or lump sum payments for the purchase of service. A person or governmental employer may not

make payments on behalf of the member unless authorized by the Retirement Code or this part. Member contributions shall be credited with statutory interest until the date of termination of service, except in the case of the vestee. In that event, statutory interest shall be credited until the effective date of retirement or until a return of the accumulated deductions, if the member so elects. In the case of a multiple service member, interest shall be credited to the member's accounts in each system until a termination of State and school service.

(g) *Retirement Code reference:* Section 8502 of the Retirement Code.

§ 215.5. Duties of the Board.

(a) *Application, elections and disability annuities.* Duties of the Board regarding applications and elections of members and disability annuities include the following:

(1) Subsequent to the receipt of an application for a disability annuity based on physical and mental incapacity for the performance of a job for which the member is employed, the Board will, through its chief medical examiner, and other medical examiners it may engage, cause the applicant to be examined. On the basis of the medical evidence submitted, a recommendation shall be submitted to the Board stating whether a disability should be granted, together with a report as to the permanency of the disability or the need for periodic examinations as well as the time interval for the examinations. The Board will also establish an effective date of disability which shall be the day following the last day of compensation.

(2) A disability applicant who is required by the Board to furnish additional medical documentation to support the application, shall provide the documentation within 30 days of the request, or the Board may render the disability application void.

(3) The chief medical examiner, or other medical examiners the Board may engage, may recommend to the Board, on the basis of subsequent medical examinations, whether a disability annuitant should continue on disability or whether a finding of nondisability may be appropriate. In the latter event, the Board will establish the date of termination of disability, based on the recommendation of the medical examiner, whereupon the disability annuity shall be discontinued in excess of any annuity to which the member may be otherwise entitled under section 8342 of the Retirement Code (relating to maximum single life annuity).

(4) If the Board denies a disability applicant for insufficient medical evidence, the applicant may still file, within 90 days after notification of the denial, an application to vest or take an annuity, if the applicant is eligible. The filing shall be considered timely, as of the original eligibility date, for the purposes of payment of other benefits or vesting, as the case may be.

(5) A disability annuity may also be subject to a disability annuity adjustment depending upon the earned income of the annuitant, as provided in section 8505(c)(3) of the Retirement Code (relating to duties of board regarding applications and elections of members).

(b) *Refund to members.* If the Board finds that a member is terminating service at the end of a school year intending to return the subsequent school year, following vacation periods, and to reinstate accumulated deductions, the Board may choose not to pay the deductions in

the first instance. The Board may require certification from the employer that these events are not intended.

(c) *Payment of annuities.* Payment of annuities shall include tax information required by the Internal Revenue Code.

(d) *Miscellaneous duties.* Miscellaneous duties include the following:

(1) If a member dies in service and is eligible for a death benefit, the Board will, within 60 days after receipt of the necessary data and death certificate, pay the death benefit to the designated beneficiary or survivor annuitant, as the case may be.

(2) If the Board receives notification from an insurance carrier approved by the Board that an annuitant has elected appropriate hospitalization insurance coverage, the Board will deduct from the annuity payments the appropriate monthly installment and forward the deduction to the particular insurance carrier at times as the Board and carrier mutually agree.

(3) In cases of doubt, the Board will determine whether any person is a school employee within the meaning of the Retirement Code. The Board will also determine whether a person is an independent contractor or a person compensated on a fee basis upon review of all the circumstances surrounding the employment of the person seeking membership in the program.

(e) *Retirement Code reference.* Section 8505 of the Retirement Code.

§ 215.6. Duties of employers.

(a) The following procedures shall be employed for reporting salaried, per diem and hourly employees:

(1) *Salaried employees.* Reporting procedures for salaried employees must comply with the following:

(i) Part time salaried employees, irrespective of the percentage of time employed, shall be reported based on the percentage of time employed, as it relates to full time salaried employees. If requested, the employer shall furnish, under section 508 of the Public School Code of 1949 (24 P. S. § 5-508), minutes of board meetings indicating the conditions of employment of the individuals.

(ii) This procedure does not affect the enrollment of salaried employees who are currently members of the System. The member's purchase of the previous part time salaried service in the 1975-76 school year shall be either a lump sum payment or a method agreed upon by the System and the member without application of interest.

(2) *Per diem and hourly employees.* Since a per diem or hourly employee is required to become a member of the System during a school year in which the employee works 80 days or 500 hours, an employer is responsible for determining if that person becomes eligible for membership during the fiscal year.

(i) If the employer anticipates that an employee shall become eligible for membership during the school year, the employee shall be enrolled as a member at the beginning of the school year, or upon employment, and contributions shall be deducted on a current basis. This service shall be counted for retirement purposes.

(ii) If an employee is enrolled as a member at the beginning of the school year, or when employed, and does not qualify during that school year, the employee is then entitled to a refund of accumulated deductions. If an employee is not enrolled at the beginning of the school year, or date of employment, but qualifies during the

school year, the employer shall make deductions from that time forward and the employee and employer shall be billed for the first 500 hours or 80 days.

(b) *Retirement Code reference.* Section 8506 of the Retirement Code (relating to duties of employees).

§ 215.7. Rights and duties of school employees and members.

(a) *Information on new employees.* Each new school employee shall provide the employer with a complete record of previous school or State service, or creditable nonschool service, proof of date of birth, in the order of preference set forth in subsection (b), home address, current status in the System and other information the Board may require. Willful failure to provide the information required by this subsection, to the extent available, or the furnishing of erroneous information upon entrance into the System shall result in the forfeiture of the right of the member to subsequently assert any right to benefits based on the erroneous information or on any of the required information which the member failed to provide, intentionally or otherwise. If the Board finds that a member is receiving an annuity based on false, misleading or improper information, the additional amounts received predicated on the information together with statutory interest doubled and compounded shall be deducted from the present value of any remaining benefits to which the member is legally entitled and the remaining benefits shall be correspondingly decreased.

(b) *Proof of date of birth.* Proof of date of birth will be accepted in the following order of preference:

- (1) Birth certificate.
- (2) Baptismal record.
- (3) Selective service record.
- (4) Armed forces discharge.
- (5) Passport.
- (6) School record.
- (7) Life insurance policy.
- (8) Naturalization record.
- (9) Alien registration record.

(10) Other records as may be submitted by the member, which are acceptable to the Board.

(c) *Election of multiple service.* An active member from and after the effective date of the Retirement Code who was formerly a member in the State Employees' Retirement System, may elect multiple service coverage if the election is made no later than 365 days after active membership in this System.

(d) *Beneficiaries.* Every member shall nominate a beneficiary and, if desired, a contingent beneficiary, in writing with the Board. In all these cases, the designated or contingent beneficiary, as the case may be, shall be the only one entitled to receive the accumulated deductions or the death benefit for those who die in service or those who would be entitled to a benefit under Option 1 under section 8345 of the Retirement Code (relating to member's options). If the beneficiary or designated contingent beneficiary fails to survive the member, the payment, subject to the limitation in 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors) shall be paid to the next of kin. If the applicable limitation cannot be met, the payment, in the absence of a designated beneficiary, shall

be paid to the estate upon the submission of documents required by the Board to authorize payment.

(e) *Termination.* Upon termination of service, a member, by written application, may elect to do one of the following:

(1) Withdraw the accumulated deductions, thereby forfeiting other benefit, to which the member would otherwise be entitled.

(2) Vest the retirement account, thereby making the member eligible for the vesting benefits as otherwise provided in this part. If the member is a joint coverage member, the member may elect to become a full-coverage member and to pay the lump sum required within 30 days subsequent to termination of service.

(3) Receive an immediate annuity and, in the case of joint coverage membership, pay the lump sum required to become a full-coverage member within 30 days of termination of service.

(f) *Rights of vestees.* A vestee may, subsequent to vesting, and at any time during the vesting period, withdraw the accumulated deductions, thereby forfeiting other benefits to which the vestee would be otherwise entitled, or apply for an annuity, if the vestee has at least five eligibility points. The vestee shall also nominate a beneficiary to receive the vested benefits should the vestee fail to survive the receipt of the benefit.

(g) *Right of vestee at superannuation age.* For a vestee to be entitled to, and receive, an annuity, effective the date the vestee attains superannuation age, the vestee shall file an application no later than 90 days thereafter. An application subsequently filed shall be effective upon the date filed. If a vestee dies within the 90-day period subsequent to superannuation age, not having filed an application for benefits, the vestee shall be deemed to have elected the automatic death benefit Option 1.

(h) *Nomination of beneficiary or survivor annuitant.* A member in receipt of a reduced annuity, under any of the options, shall have the following rights with regard to designation of a beneficiary or survivor annuitant:

(1) If a member elects Option 1, the member may change the designated beneficiary at any time.

(2) If the member elects a survivor annuity option, a new survivor annuitant may not be named except when the survivor annuitant predeceases the member or the member has a change in marital status subsequent to the election of the option. In these cases, the annuity shall be recomputed to be actuarially equivalent as of the date of recomputation to the annuity in effect immediately prior thereto. In this case, the member may elect a new option in addition to the new survivor annuitant. A benefit plan may not be changed by an annuitant.

(3) An annuitant having a right to reelect an option and name a new survivor annuitant under the circumstances in paragraphs (1) and (2), may do so at any time after the death of the beneficiary or change in marital status.

(i) *Retirement Code reference:* Section 8507 of the Retirement Code (relating to rights and duties of school employees and members).

MISCELLANEOUS PROVISIONS

§ 215.33. Taxation, attachment and assignment of funds.

(a) The exemption provided in this section also includes a spouse's election authorized under 20 Pa.C.S. §§ 6108 and 6111 (relating to designation of beneficiaries of insurance or employee death benefits not testamentary; and, 6109 = combination of charitable trusts (repealed), 6111 = conveyances to defeat marital rights (repealed)) to the extent applicable.

(b) *Retirement Code reference:* Section 8533 of the Retirement Code (relating to taxation, attachment and assignment of funds).

§ 215.35. (Reserved).

§ 215.36. (Reserved).

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