

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

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**Authority**

The provisions of this Chapter 213 issued and amended under the Public School Employees' Retirement Code, 24 Pa.C.S. § 8502(h), unless otherwise noted.

**Source**

The provisions of this Chapter 213 adopted April 2, 1976, effective April 3, 1976, 6 Pa.B. 827, unless otherwise noted.

**§ 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.

#### Source

The provisions of this § 213.1 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial page (249402).

### § 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.

**Source**

The provisions of this § 213.2 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial pages (249402) to (249404).

**Notes of Decisions***Leave of Absence*

There was no mention in the termination agreement that the employee was being granted a leave of absence; thus, the employee is not entitled to receive credited service to the official resignation date set forth in the termination agreement. *Hoerner, Jr. v. Public School Employees' Retirement Board*, 684 A.2d 112 (Pa. 1996).

*Regulation Invalid*

The Commonwealth Court did not err in concluding that the Board's regulation defining a full school year as 1,100 hours rather than 180 days was contrary to the Retirement Code. The regulation was properly held invalid. *Commonwealth v. Pennsylvania School Boards Association, Inc.*, 682 A.2d 291 (Pa. 1996).

Because the full-time salaried school employe worked for only 163 days of the school year due to a lawful strike, the employe was entitled to service credit for the corresponding fraction of the full year under 24 P. S. § 8302 (relating to credited school service). However, under this regulation, the employe was entitled to 1 year of service credit. The result produced by the regulation is clearly contrary to the one reached via the formula articulated in the enabling statute; therefore, the regulation is invalid. *Pennsylvania Sch. Bds. Ass'n v. Public Sch. Employees' Retirement Sys.*, 659 A.2d 86 (Pa. Cmwlth. 1995); appeal granted 670 A.2d 140 (Pa. 1995); affirmed 682 A.2d 291 (Pa. 1996).

**§ 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).

**Authority**

The provisions of this § 213.3 amended under the Public School Employees' Retirement Code, 24 Pa.C.S. §§ 8502(h) and 8507(d).

**Source**

The provisions of this § 213.3 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended May 10, 2002, effective May 11, 2002, 32 Pa.B. 2326; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial pages (249404) and (288185).

**§ 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.

**Authority**

The provisions of this § 213.3a adopted under the Public School Employees' Retirement Code, 24 Pa.C.S. § 8502(h).

**Source**

The provisions of this § 213.3a adopted August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083.

**§ 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.

#### Source

The provisions of this § 213.4 amended December 16, 1994, effective December 17, 1994, 24 Pa.B. 6282; amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial pages (288185) to (288187).

#### Notes of Decisions

##### *Civilian Service By Conscientious Objectors*

The civilian service of a conscientious objector does not constitute military service and that service therefore is not creditable nonschool service for retirement credit purposes. *Worley v. Public School Employees' Retirement Board*, 689 A.2d 334 (Pa. Cmwlth. 1997); appeal denied 701 A.2d 580 (Pa. 1997); cert. denied 118 S.Ct. 1562 (U. S. 1998).

##### *Maternity Leave*

The order of the Retirement Board denying the teacher's request to purchase retirement credit for out-of-State service for a maternity leave of absence during the 1969-1970 school year was affirmed because the leave was neither certified by the out-of-State employer nor credited by the out-of-State retirement system. *Day v. Public School Employees' Retirement System*, 682 A.2d 398 (Pa. Cmwlth. 1996).

##### *Public School*

The phrase "in the field of public school education," as used in 24 Pa.C.S. § 8304(b)(4) does not include service as a manual arts therapist at a Veterans Hospital since the goal of rehabilitating mentally and physically disabled adults is not similar to the goal of seeking "to educate and advance children aged six to seventeen and to teach them to become responsible members of society." *Panko v. Public School Employees' Retirement System*, 492 A.2d 805 (Pa. Cmwlth. 1985).

**§ 213.5. [Reserved].****Source**

The provisions of this § 213.5 reserved August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial page (288187).

**§ 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).

**Source**

The provisions of this § 213.6 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial page (288188).

**§ 213.7. Eligibility for annuities.**

(a) To be eligible for any annuity payable under the Retirement Code and this part a member shall have at least one eligibility point.

(b) *Retirement Code reference:* Section 8307 of the Retirement Code (relating to eligibility for annuities).

**Source**

The provisions of this § 213.7 adopted April 22, 1977, 7 Pa.B. 1084; amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226. Immediately preceding text appears at serial page (233074).

**§ 213.8. [Reserved].****Source**

The provisions of this § 213.8 reserved October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226. Immediately preceding text appears at serial page (233074).

**§ 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).

**Source**

The provisions of this § 213.9 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial pages (288188) to (288189).

**§ 213.10. Eligibility for refunds.**

(a) An active member, upon termination of service, may elect to receive the member's accumulated deductions in lieu of any benefit to which the member would otherwise be entitled and the election shall constitute an irrevocable waiver of the entitlement unless there is a subsequent return to and reinstatement of service.

(b) *Retirement Code reference*: Section 8310 of the Retirement Code (relating to eligibility for refunds).

**Source**

The provisions of this § 213.10 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226. Immediately preceding text appears at serial page (233074).

**CONTRIBUTIONS**

**§ 213.21. [Reserved].**

**Source**

The provisions of this § 213.21 reserved October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226. Immediately preceding text appears at serial page (227293).

**§ 213.22. Joint coverage member contributions.**

(a) New members of the System, or former members returning to school service, are not eligible to make joint coverage member contributions. These contributions shall be limited to members who meet all the following criteria:

- (1) They were in active membership in the System subsequent to May 28, 1957.
- (2) Their current period of membership began prior to January 1, 1966.
- (3) They are covered by Federal Social Security.
- (4) They have not filed an election to convert to the full coverage group.

(b) *Retirement Code reference*: Section 8322 of the Retirement Code (relating to joint coverage member contributions).

**Source**

The provisions of this § 213.22 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226. Immediately preceding text appears at serial page (227293).

**§ 213.23. [Reserved].****Source**

The provisions of this § 213.23 amended April 21, 1978, 8 Pa.B. 1617; amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended May 10, 2002, effective May 11, 2002, 32 Pa.B. 2326; reserved August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial pages (288189) to (288190).

**§ 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).

#### Authority

The provisions of this § 213.24 amended under the Public School Employees' Retirement Code, 24 Pa.C.S. §§ 8502(h) and 8507(d).

#### Source

The provisions of this § 213.24 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended May 10, 2002, effective May 11, 2002, 32 Pa.B. 2326; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial pages (288190) to (288192).

#### Notes of Decisions

Subsection (a) contemplates that employe contributions serve as full payment for employes' purchases of prior service credits for retirement benefits and, except for instances specified therein, neither mandate nor warrant employer contributions. *Board of School Directors for Tredyffrin/Easttown School District v. Public School Employees' Retirement Board*, 430 A.2d 1018 (Pa. Cmwlth. 1981), *appeal docketed* No. 81-2-266 (Pa. 1981).

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**§ 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.

**Authority**

The provisions of this § 213.25 amended under the Public School Employees' Retirement Code, 24 Pa.C.S. §§ 8502(h) and 8507(d).

**Source**

The provisions of this § 213.25 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended May 10, 2002, effective May 11, 2002, 32 Pa.B. 2326; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial pages (288192) and (328581).

**§ 213.26. [Reserved].****Source**

The provisions of this § 213.26 reserved October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226. Immediately preceding text appears at serial page (203008).

**§ 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).

**Source**

The provisions of this § 213.27 amended October 20, 1978, 8 Pa.B. 2880; amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial page (328581).

**§ 213.28. Actuarial cost method.**

[Reserved].

**§ 213.29. [Reserved].**

**§ 213.30. Appropriations by the Commonwealth.**

(a) The Board will prepare and, through the Governor, submit annually to the General Assembly, an itemized budget consisting of the amounts necessary to be appropriated based on the actuarial cost method as certified by the actuary and presented to the Board. The sum of the various contribution rates established by the actuary, as certified by the Board, shall be applied to the total projected member payroll for the succeeding fiscal year.

(b) *Retirement Code reference:* Section 8330 of the Retirement Code (relating to appropriations by the Commonwealth).

**Source**

The provisions of this § 213.30 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226. Immediately preceding text appears at serial pages (203009) to (203010).

**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).

**Source**

The provisions of this § 213.41 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial page (328583).

**§ 213.42. [Reserved].****Source**

The provisions of this § 213.42 reserved October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226. Immediately preceding text appears at serial page (203010).

**§ 213.43. [Reserved].****§ 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).

#### Source

The provisions of this § 213.44 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial pages (328583) to (328584).

### § 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:

(i) The difference between the monthly annuity as corrected and the monthly annuity calculated with the error is more than 5%.

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

(2) The annuitant demonstrates that the annuitant, or the annuitant's agent, made a written error on the application for an annuity. The System will not consider a change in the life circumstances of the annuitant, beneficiaries or survivor annuitants (for example, death, divorce, illness, accident) as evidence of a written error.

(c) The intended changes may include one or a combination of the following:

(1) A change in the amount of money withdrawn under Option 4.

(2) A change in the retirement annuity type, if the member is otherwise eligible for the annuity.

- (3) A change in the retirement option, including a change in the survivor annuitant under the existing option selection.
- (4) A voiding of the application for an annuity.
- (5) A change in the effective date of retirement, if the date is not:
  - (i) Before the earliest date the annuitant was eligible to select on the date the original application for an annuity was filed.
  - (ii) Later than 90 days after the intent to change is filed.
- (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 counseling 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.
  - (2) Counseling, or a written waiver, takes place within 30 days of the filing of the intent to change.
  - (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.
  - (4) If counseling takes place over several sessions, the sessions take place within the allowed time period.
  - (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.
  - (6) Counseling may be conducted by telephone when approved, and under conditions specified by the Secretary.
- (e) A formal request to void or change the application for an annuity shall be filed with the System within 30 days of the date of completion of counseling, or within 30 days of the filing of the written waiver of counseling. If the System does not receive the formal request to void or change the application for an annuity within the prescribed time period, the intent to change will be deemed withdrawn.
- (f) The right to void or change a benefit payment plan is personal to the annuitant and may only be exercised by the annuitant or the annuitant's attorney in fact. The estate, spouse, alternate payee, survivor annuitants or beneficiaries of an annuitant may neither file nor complete an intent to void or change the benefit payment plan. If an annuitant dies before filing or completing an intent to void or change the benefit payment plan, the intent will be deemed withdrawn.
- (g) An annuitant may file an intent to change one time under subsection (a) and one time under subsection (b).
- (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.
  - (ii) Actuarial reduction.
    - (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 a debt to be applied to the annuitant's account.
    - (3) If the annuitant fails to return the required amounts or elect a debt as the case may be, the intent to change or void will be deemed withdrawn.
      - (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 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.
- (j) This section shall be effective June 13, 1998. This section also applies to annuitants who, prior to June 13, 1998:
  - (1) Requested a change in their benefit payment plan.
  - (2) Appealed the System's denial.
  - (3) Otherwise qualify under this section.
- (k) This section does not allow the annuitant to change a benefit payment plan in a manner inconsistent with the terms of an approved domestic relations order under sections 8533.1—8533.4 of the Retirement Code.
  - (l) Retirement Code reference: Section 8345 of the Retirement Code (relating to member's options).

**Source**

The provisions of this § 213.45 amended June 12, 1998, effective June 13, 1998, 28 Pa.B. 2688; amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial pages (328584) and (249417) to (249418).

**Notes of Decisions***Application*

The death benefits payable to a decedent's beneficiary is governed by the retirement benefits option elected by the decedent in her retirement application, and that application may not be changed after her death to increase the death benefits of her beneficiary, where the Retirement System and the decedent entered into a binding retirement benefits contract when she filed the properly completed application before the effective date of her retirement. *Krill v. Public School Employees' Retirement Board*, 713 A.2d 132 (Pa. Cmwlth. 1998).

**§ 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.

**Source**

The provisions of this § 213.46 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial page (328585).

**§ 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).

**Source**

The provisions of this § 213.47 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial pages (328585) to (328586).

**§ 213.48. [Reserved].**

**§ 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).

**Source**

The provisions of this § 213.49 amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226; amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial page (328586).

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