

Arkansas Department of Education
Emergency Rule ~~and Regulations~~ Governing Waivers of the Earnings Limitations
Under the Teacher Retirement System

1.00 Legislative Authority

1.01 These regulations shall be known as the Arkansas Department of Education (ADE) ~~Regulations~~ Rules Governing Waivers of the Earnings Limitations Under the Teacher Retirement System.

1.02 These regulations are enacted pursuant to the State Board of Education's authority under Ark. Code Ann. § 24-7-708(f), Ark. Code Ann. § 24-7-502, and Ark. Code Ann. § 6-11-105, and Act 911 of Regular Session 2005.

2.00 Purpose

It is the purpose of these regulations to establish the conditions and procedures for requesting from the Board of Trustees of the Teacher Retirement system, or its designee, a Waiver of the Earnings Limitation under Ark. Code Ann. § 24-7-708 (f) and Ark. Code Ann. § 24-7-502, and Act 911 of Regular Session 2005.

3.00 Definitions

3.01 ~~Academic Distress: Schools identified annually by the State Board of Education as being in Phase I, Phase II, or Phase III academic distress as defined in A.C.A. 6-20-1602.~~
Means any public school district failing to meet the minimum level of academic achievement on the state mandated criterion-referenced examinations as required by the state board pursuant to Ark. Code Ann. §6-15-419(28).

3.02 ~~Active Employee: A person currently employed and contributing to the teacher retirement system or a person not currently employed but who is not receiving teacher retirement benefits.~~

~~3.03~~ 3.02 Critical Academic Areas: Academic areas identified annually by the State Board of Education as being critical academic teacher shortage areas.

~~3.04~~ 3.03 ~~Director~~ Commissioner: The ~~Director~~ Commissioner of the Department of Education.

~~3.05~~ 3.04 Earnings Limitation: As outlined in Arkansas Code Ann. § 24-7-708, the maximum amount that a retirant employed by a public employer whose employees are covered by the Arkansas Teacher Retirement System can earn during a twelve-month period ending June 30. The earnings limitation rate is established annually by the Arkansas Teacher Retirement System Board of Trustees.

3.06 ~~Emergency Interim Employee: An employee considered essential for effective and efficient administrative, instructional, and/or financial management of a school district or other entity covered by the Teacher Retirement System.~~

3.07 3.05 Fiscal Distress: Means a public school district determined by the department and classified by the State Board of Education as being placed in fiscal distress status pursuant to this subchapter; Ark. Code Ann. §6-20-1903. Emergency Situations: Examples of emergency situations would include: An unforeseen situation occurs within a district or other entity covered by the Teacher Retirement System that results in the Director ~~Commissioner~~ declaring an emergency situation.

- a. ~~A catastrophic occurrence forces an essential licensed employee to be unable to fulfill his/her essential job duties.~~
- b. ~~An appropriately licensed and appropriately qualified, active employee is unavailable to fill an essential vacant position.~~
- c. ~~A catastrophic occurrence forces an essential classified employee to be unable to fulfill his/her essential job duties.~~

~~3.08 Mentoring Activities: Technical assistance and monitoring activities implemented to support the revised Arkansas teacher and administrator licensure process.~~

~~3.09-3.06 Standard of Accreditation Probationary Status: Means that status assigned to any public school district or school that is deemed by the State Board of Education to have failed to meet the Arkansas Standards of Accreditation beyond a citation violation pursuant to Ark. Code Ann. § 6-15-201 et seq.~~

~~3.07 Retirant: A person currently receiving retirement benefits from the Arkansas Teacher Retirement System.~~

~~3.10-3.08 Waiver: An approval of a set of conditions under which a retirant will not be held to the Earnings Limitation as defined by the Arkansas Teacher Retirement System Board of Trustees.~~

4.0 Waivers for the Earnings Limitations may be requested under the following conditions:
Conditions

4.01 A school district which is without a superintendent due to a reconstitution or reorganization of a public school district as allowed in Ark. Code Ann. § 6-15-201 et seq., Ark. Code Ann. § 6-15-401 et seq., or § 6-20-1901 et seq., following an appropriate determination by the State Board of Education that: ~~A school district or other entity covered by the Teacher Retirement System is left without a superintendent or other essential employee under emergency situations and needs to hire an interim employee who is a retirant for the remainder of that fiscal year.~~

4.01.1 the public school district has failed to meet the standards of accreditation pursuant to Ark. Code Ann. §6-15-201 et seq.; or

4.01.2 the public school district is in academic distress status for failing to meet the minimum level of academic achievement on the state mandated criterion-referenced examinations as required by the State Board of Education pursuant to Ark. Code Ann. §6-15-401 et seq.; or

- 4.01.3 the public school district is in fiscal distress status pursuant to Ark. Code Ann. §6-20-1901 et seq.; and
- 4.01.4 an appropriately qualified applicant, as determined by the Department of Education, who is not an ATRS covered-retirant is not available to be employed.
- 4.02 ~~ADE determines as outlined in Ark. Code Ann. § 6-20-1601 and other applicable ADE rules and regulations that an Arkansas public school district needs technical assistance to such an extent that a professional services contract is needed with a retirant(s) to assist the district for a determined period of time.~~
- 4.03 ~~ADE desires to contract with a retirant(s) to provide mentoring activities for training and professional development as part of the revised Arkansas teacher and administrator licensure process as defined by the State Board of Education.~~
- 4.04 ~~The school district is officially identified by the State Board of Education as being in Phase I, Phase II, or Phase III academic distress.~~
- ~~4.05~~4.02 A school district desires to hire a retirant to teach in one of the critical academic teacher shortage areas identified by the State Board of Education.

5.0 Limitations

- 5.01 Waivers of earnings limitations will be requested annually and shall be effective until the end of that fiscal year.
- 5.02 A Waiver of Earnings Limitation must be requested within thirty days of employment.
- 5.03 To be eligible for an Earnings Limitation Waiver under § 4.02 of this rule, the retirant must be certified in the content area assigned.
- 5.04 Waiver of Earnings Limitation may only be granted due to a teacher shortage in a critical academic content area in a public school district as allowed in § 4.02 or ~~under extreme emergency circumstances declared by the Commissioner~~ due to a vacancy in a superintendent's position in the situation of a reconstitution or reorganization of a public school district as allowed in § 4.01 of this rule.
- 5.04 Waivers of Earnings Limitations may be ~~renewed~~ requested annually for up to a ~~maximum total~~ total of three (3) ~~consecutive~~ years for each individual retirant ~~except in the case of an emergency interim employee which shall be approved until the end of that fiscal year.~~
- 5.05 A member of the Arkansas Teacher Retirement System must have terminated covered employment for at least 30 days before being eligible to apply for a Waiver of the teacher retirement Earnings Limitation.
- 5.06 A retirant cannot be hired under the Earnings Limitation Waiver to teach the exact position vacated by the retirant to the extent that this action would violate any current existing provision and/or laws governing pension funds regulated by the Internal Revenue Service.

6.00 Procedures

- 6.01 Application letters requesting a Waiver of Earnings Limitation ~~in the case of emergency interim employees~~ shall be submitted in writing to the ~~Director~~ Commissioner. The application letter shall include:
- a. A justification of the need for the waiver.
 - b. Documentation that a currently licensed and/or appropriately qualified applicant who is not a retirant was not available to be employed.
 - c. The retirant to be employed.
 - d. The length of time the retirant is to be employed.

~~6.02 In all instances where ADE is requesting the waiver to provide technical assistance or mentoring activities for school districts, the letter requesting a Waiver of Earnings Limitation shall be submitted in writing from the appropriate assistant director to the Director. The application letter shall include a justification of the need for the waiver, the retirant(s) to be contracted, and a description of the scope of the technical assistance or mentoring activities to be rendered.~~

~~6.03 The Director shall appoint a three (3) member committee from ADE to determine a recommendation to be presented to the Director regarding the approval of the waiver, including the hiring of the retirant(s) and the compensation for any retirant(s) employed or contracted pursuant to the waiver being considered.~~

~~6.04~~6.02 The ~~Director~~ Commissioner shall make the request for the waiver of earnings limitation to the Teacher Retirement System Board of Trustees or its designee.

~~6.05~~6.03 No payment for services rendered by any retirant(s) under the conditions of the waiver can occur prior to the effective approval date of the Waiver of Earnings Limitation.

~~6.06~~6.04 The final decision regarding the granting of the waiver will rest with the Board of Trustees of the Teacher Retirement System or its designee.

~~6.07~~6.05 School districts shall maintain audit files which list personnel receiving waivers and provide documentation regarding the justification for the waiver.

6.06 Beginning July 1, 2005, for any retirant granted an Earnings Limitation Waiver, the employer and employee contribution rate to the system on behalf of that member shall be remitted by the employer at the current rate in effect at the time of the employment.

7.0 EMERGENCY CLAUSE:

WHEREAS, the waiver process and procedures allowed in this rule are critical to the Arkansas public educational system in that without this waiver provision various Arkansas public school districts may not be able to provide those necessary and capable staff to address the dire academic shortage areas, and the Arkansas Department of Education would not otherwise possibly be able to place capable and necessary staff in a position of administration over those school districts that are in academic, fiscal or probationary status and, thus, in dire need of immediate assistance and guidance;

therefore, without the waiver provisions of this rule, the Arkansas Department of Education would be impeded in the ability to carry out the educational accountability provisions of Act 1467 of 2003, The Quality Education Act, thus directly impacting the education of children in said school districts which may impact the fiscal welfare and peril of certain students. As a result, the Arkansas State Board of Education hereby promulgates this Emergency Rule. Specifically, the Arkansas State Board of Education hereby determines that imminent peril to the school and school districts of this state, as articulated above, will exist if this rule is not promulgated on an emergency basis. Therefore, pursuant to Ark. Code Ann. §25-15-204, this rule is to immediately take effect for 120 days upon passage by the Arkansas State Board of Education.