

BOARD OF TRUSTEES COMPOSITION AND ELECTIONS

A.C.A. § 24-7-301

The general administration and proper operation of the System is vested in the Board of Trustees that consists of eleven (11) elected members and four (4) ex-officio members. Pursuant to ACA § 24-7-301, the Board shall adopt rules and regulations regarding the election of trustees and vacancies.

I. GENERAL RULES FOR CANDIDACY AND VOTING IN TRUSTEE ELECTIONS

- A. For purposes of eligibility for an active member trustee position and voting, “active members” shall mean active members as defined in A.C.A. § 24-7-202(2) and members participating in T-DROP, if employed by a participating employer and receiving T-DROP plan deposits.
- B. If a candidate is employed in more than one position with a participating employer(s), eligibility shall be determined based on his/her primary position for which he/she receives the greater percentage of covered salary.
- C. For purposes of eligibility for an administrator trustee position or voting for that position, “administrator” shall mean a public school superintendent, assistant superintendent, principal, or vice-principal; a higher education president, chancellor or director; or a community college, vocational/technical or cooperative director, president, or vice president, who is employed by a participating employer OR any employee of an education related agency participating in ATRS that is employed in a position grade C127 or higher, including unclassified employees.
- D. For purposes of eligibility for a licensed trustee position or voting for that position, “licensure” shall mean a person employed in a position requiring state teaching licensure or an education institution grade C117-C126 and not an administrator.
- E. For purposes of eligibility for a nonlicensed trustee position and voting for that position, “nonlicensed” shall mean a member employed in a position with a participating employer that does not require state licensure including employment in an educationally related agency in a position grade C116 or below. Nonlicensed shall not include any position defined as an administrator or licensure.

- F. Only members are authorized to vote in a trustee election. Guardians, attorneys-in-fact, or others may not vote on behalf of a member.
- G. Terms not defined in these rules shall have the meaning set forth in A.C.A. § 24-7-202 *et. seq.*

II. QUALIFICATION AND VOTER ELIGIBILITY FOR ELECTED TRUSTEE POSITIONS

There shall be four (4) active member trustees each of whom will represent one of the four congressional districts in Arkansas.

A. Active Member Trustee Position Nos. 1-4 - Congressional Districts

1. Qualifications for Candidacy

- i. Active member with a minimum of five (5) years of actual service.
- ii. Employed by a participating employer located in the congressional district for which he/she is seeking election.
- iii. Employed in a position requiring state teaching licensure or the equivalent under these rules.

2. Eligible Voters for Trustee Position Nos. 1-4

Active members, regardless of credited service, employed by participating employers located in the respective congressional districts and who are otherwise eligible to be a candidate under subsection IIA iii above.

B. Active Administrator Trustee Position Nos. 5 - 6

There shall be two (2) active member trustees each of whom must be employed as administrators as defined in these rules.

1. Qualifications for candidacy:

- i. Active member with a minimum of five (5) years of actual service.
- ii. As provided in A.C.A. § 24-7-301, at least one of the administrators serving as an active administrator trustee must be employed by a participating employer as an Arkansas school superintendent.
- iii. If an election is being held for either position and the other administrator position is not held by a superintendent, candidates

for the open position must be a superintendent and the notice of election shall so state that requirement.

- iv. Candidates for Position No. 5 and Position No. 6 shall be licensed administrators employed by a participating employer.

B. Eligible Voters for Trustee Position Nos. 5-6

Eligible voters for Position Nos. 5 and 6 shall be active members, regardless of credited service, employed as licensed administrators.

C. Nonlicensed Trustee Position No. 7

1. Qualifications for candidacy:

- i. Active member with a minimum of five (5) years of actual service.
- ii. Employed in a position not requiring state licensure.

2. Eligible Voters for Trustee Position No. 7

Eligible voters for Position No. 7 shall be all active members, regardless of credited service, who are employed by participating employers in nonlicensed positions as defined these rules.

D. Minority Trustee Position No. 8

There shall be one (1) member trustee of a minority racial ethnic group.

1. Qualifications for candidacy:

- i. An active or retirant member of ATRS with a minimum of five (5) years of actual service.
- ii. Member of a minority racial or ethnic group

2. Eligible Voters for Trustee Position No. 8

- i. All active members, regardless of credited service
- ii. Retirant members

E. Retired Member Trustees (At-Large) - Position Nos. 9-11

There shall be three (3) retired member trustees who shall be “retirants” under A.C.A. § 24-7-202.

1. Qualifications for Candidacy
 - i. Retirant member of ATRS
 - ii. Resident of the State of Arkansas
2. Eligible Voters for Trustee Position Nos. 9-11

All retirants of ATRS, regardless of present employment status or residency.

Amended: April 26, 2007
February 11, 2008
December 18, 2009

ELECTION PROCEDURES AND TERMS OF OFFICE FOR ELECTED TRUSTEE POSITIONS

A.C.A. §§ 24-7-301, 302

I. RULES ON ELECTED TRUSTEE NOMINATIONS

- A. During December in a year in which an elected trustee position is subject to election or to fill a vacancy in a special election, the System shall publish a public notice of an upcoming trustee position election in a statewide newspaper for at least five (5) consecutive days. The notice will also be sent to such persons or groups that have requested a notice of Trustee vacancies. The notice shall also be posted on the System's website from December until the closing of the nomination period.
- B For all elected positions, a candidate must submit a petition signed by at least twenty-five (25) ATRS members who are eligible to vote for the trustee position for which the member is seeking nomination. The petition must include the last four digits of each signatory's Social Security number for verification of the member's eligibility to vote for the position.
- C. The original petitions for nomination must be submitted to the ATRS Executive Director no later than January 10. Actual delivery must be made by January 10, regardless of postmark date or other methods to attempt delivery.
- D. Upon receipt of a petition, the System will confirm its receipt and verify the eligibility of the candidate for the trustee position under ACA § 24-7-301. The System will verify the member's signatures signing the petition as eligible voters.
- E. The candidates submitting a petition for nomination will receive notice by the System if the petition is accepted and will receive a list of other members who were certified to participate in the election for the trustee position for which he/she seeks nomination.
- F Prior to ballots being mailed, the System or its designee will conduct a random drawing for ballot position with at least two (2) independent witnesses present certifying the drawing. Candidates will be notified of the order in which he/she will be listed on the ballot.
- G. Upon request of a candidate, the System will provide a list of mailing addresses of eligible voters for the distribution of a candidate's campaign materials. The candidate's message shall not contain information that

would constitute defamation. Campaign materials will be mailed by the election contractor from its place of business. All postage for such materials shall be the candidate's sole expense.

II. RULES ON TRUSTEE ELECTIONS

- A. The System shall employ an independent election service to conduct the trustee elections.
- B. If any position receives only one nomination and the position is not contested, the Board at its next regular or special meeting may certify the nomination and declare the candidate duly elected as a trustee prior to the commencement of the trustee's term.
- C. The System shall publish ballots that shall be submitted to the election vendor for mailing on March 15 to the member's address of record.
- D. Completed ballots must be received by the election vendor on or before April 15 to be counted. The vendor shall only count such ballots that are correctly completed.
- E. Results for positions not subject to a run-off election shall be certified to the System by April 20.
- F. If upon certification of the outcome of a trustee election by the vendor, if no candidate receives at least 50% of the votes cast by eligible voters, a run-off election will be held between the two (2) candidates receiving the highest number of votes for the position. The run-off ballots will be mailed by the election vendor to eligible voters on May 1.
- G. Completed ballots for a run-off election must be received by the election vendor on or before June 1 to be counted.
- H. Upon the completion of the run-off election, results shall be certified by the election vendor to the System by June 5.
- I. Any candidate included on the ballot may submit a challenge to the election vendor's certified results for an elected trustee position by submitting a written challenge to the ATRS Executive Director. A challenge must be received within five (5) calendar days of the certification of the elections results for the position at issue. If a candidate challenges the election results, the election process will be suspended for the same number of days that the resolution of the challenge requires, and the remaining election schedule will be adjusted accordingly.

- J. Upon receipt of a challenge, the ATRS Board will hold a special meeting to consider the challenge. The Executive Director will issue a System recommendation to the Board along with the administrative record relating to the position being challenged.
- K. For any fixed date in the election schedule that falls on a holiday or a weekend, the official date shall become the next business day.
- L. Upon completion of an election, all elected trustee terms, except for special elections, begin on July 1 following the election.

III. BOARD PROCEDURES TO FILL UNEXPIRED TERMS FOR ELECTED TRUSTEES

Staff shall notify the Board of all resignations and vacancies by other causes in any Trustee position as soon as possible after staff has knowledge of the vacancy. The Board shall take appropriate action authorized by law to fill the vacancy. In the event the Board determines that the vacancy should be filled by a special election, then a special election shall be scheduled as follows:

If an elected trustee position is declared vacant by the Board and is to be filled by a special election then, in accordance with this regulation, the System shall publish notice that a special election will be held and will announce the schedule for the special election, which will include the following: 1) the date the vacancy occurred and position being vacated; 2) the time period for circulating petitions for nominating signatures; 3) the deadline for filing petitions with the System; 4) the date the System will verify the validity of petitions; 5) the date ballots will be sent to eligible voters; 6) the election date; and 7) the date the term shall begin.

IV. TERM OF ELECTED TRUSTEE OFFICE AND VACANCIES

- A. The term of office of each elected trustee shall be six (6) years.
- B. Each trustee shall continue to serve as trustee until his or her term expires unless he/she resigns or is otherwise ineligible under these rules.
- C. In a year in which a six (6) year term of a trustee expires, the position shall be filled under the regular election schedule in ATRS Rules.
- D. A trustee elected to fill an unexpired term in a special election will serve for the remainder of the six (6) year term of the vacating trustee.

V. RULES ON ELECTED TRUSTEE VACANCIES

- A. An active member trustee shall be ineligible to serve after becoming inactive or retiring.
- B. An active member trustee shall be ineligible to serve if he or she changes employment category during his or her term of office and the employment category is a requirement of the trustee position, i.e., an administrator becomes a classroom teacher.
- C. A retirant member trustee shall be ineligible to serve after becoming active.
- D. An absence that is excused by a majority of the members of the Board shall not be counted towards a vacancy. Attendance on either day of a two-day Board meeting is sufficient to meet the attendance requirement.
- E. The Board of Trustees or its designee will notify the Board member after the second consecutive absence.
- F. A vacancy will occur if the Board votes to declare a position vacant due to one of the following:
 - 1. A trustee is absent for three (3) consecutive regular Board meetings and the absences are not excused by the Board;
 - 2. A trustee is ineligible due to a change in status under A.C.A. § 24-7-302 resulting in three (3) consecutive absences at regular Board meetings prior to the expiration of the trustee's term; or
 - 3. Resignation or death of a trustee which will create three (3) or more consecutive absences at regular Board meetings prior to the expiration of the trustee's term.

If the Board declares a vacancy by resolution under the section above, the Board may vote to hold a special election to fill an unexpired term under the Board procedures to fill unexpired terms for elected trustees. If the Board does not certify a vacancy under this section, the vacancy will be filled during the next annual ATRS election held upon expiration of an elected trustee's term, utilizing approved election procedures for that position.

Approved: May 10, 2000

Amended: February 11, 2008

December 18, 2009

SCHEDULE FOR TRUSTEE ELECTIONS

A.C.A. § 24-7-302

Amended: April 26, 2007

February 11, 2008

Repealed: December 18, 2009 (Combined with Policy No. 4-2)

EMPLOYEE (MEMBER) CONTRIBUTIONS

A.C.A. §§ 24-7-406, 411

RULES (amended by Acts 465 and 468 of 2009)

1. After June 30, 1997, each employer will remit the member contributions by employer "pick up" from the salary earned by contributory members, and those contributions will then be treated as employer contributions in determining tax treatment under the provision of the federal Internal Revenue Code and the Arkansas Income Tax Act. The employer may pay these contributions by a reduction in the cash salary of the member, or by a setoff against future salary increases, or by a combination of a reduction in salary and a setoff against future salary increases.
2. Member contributions shall be 6% of member salaries for the fiscal year for all contributory members except for members who participate in the System under the \$7,800 salary election.
3. Overpayments or underpayments of member contributions shall be handled pursuant to the following:
 - A. If an underpayment of member contributions of less than \$25.00 occurs, the System shall not collect the difference of this underpayment and no adjustment to member service credit will be made.
 - B. If an overpayment of member contributions of less than \$25 occurs, a refund will not be issued unless requested by the member.
 - C. Should an underpayment of contributions occur as a result of a member's changing status from noncontributory to contributory, the member must remit to the System the contributions due based on gross salary earned retroactive to the beginning of that fiscal year. Service credit will not be credited until the total amounts due are paid in full.
 - D. Should an overpayment of member contributions occur as a result of changing status from contributory to noncontributory, the System will refund the overpayment of member contributions to the employer.
4. If the System is owed member contributions and interest by a member, the interest owed by the member may be waived by the Board or its designee under ATRS Rule No. 9-8 (Error Corrections and Collection of Overpayments).

Amended: August 11, 1998
July 18, 2005
February 11, 2008
December 18, 2009

REPORTING EMPLOYEE AND EMPLOYER CONTRIBUTIONS

A.C.A. §§ 24-7-401, 411, 708, 1303 and A.C.A. § 24-2-701

RULES FOR THE EMPLOYER CONTRIBUTION RATE

(A.C.A. § 24-7-401 as amended by Act 468 of 2009 and A.C.A. § 24-2-701)

1. The employer contribution rate shall be the rate established by the Board of Trustees of the Arkansas Teacher Retirement System prospectively for each year pursuant to A.C.A. § 24-2-701 and A.C.A. § 24-7-401.
2. The Arkansas Teacher Retirement System shall annually notify participating employers of the employer contribution rate established by the Board for the upcoming fiscal year.
3. Pursuant to A.C.A. § 24-7-103, participating employers shall pay the Teacher Retirement employer contributions for eligible employees in accordance with these rules and regulations.

RULES FOR EMPLOYEE AND EMPLOYER REMITTANCES AND REPORTS

(A.C.A. §§ 24-7-401, 411)

1. Remittances of employee and employer contributions are due monthly.
2. Employer reports required by the System are due on a monthly and quarterly basis.
3. The employer reports required by the System must be on forms or electronic media either furnished by the Teacher Retirement System or approved by the System, and shall be accompanied by supporting documentation as determined by the System.
4. An employer report or remittance by an employer shall not be delinquent if received by the System on the 15th day of the month in which it is due or postmarked by the 14th day of the month. If the 14th falls on Saturday, Sunday, or a holiday, the postmarked date is extended to the next business day.
5. A \$150.00 late report penalty will be assessed on any required employer report not received by its due date.
6. If an employer fails to remit employee or employer contributions by the date due under No. 4 above, an interest penalty of 6% shall be assessed with daily interest accrual until paid.

7. The Board or its designee may, but is not required, to waive penalties and interest due from an employer if in its discretion it finds:
 - A. The delinquency was not the result of the employer's nondisclosure, fraud, or other misrepresentation; and
 - B. Based on the facts and circumstances, the required payment of the penalties and/or interest would be unduly penal, burdensome, or manifestly unjust.
8. The Board designates the Executive Director to waive penalties and interest from an employer in an amount not to exceed \$1,000 per fiscal year. The Executive Director shall report to the Board any amounts excused under this section. Any request to waive employer penalties and interest exceeding \$1,000 per fiscal year shall be submitted to the ATRS Board for consideration.

RULES FOR REPORTING EMPLOYER CONTRIBUTIONS FOR ACTIVE MEMBERS (A.C.A. §§ 24-7-401, 411)

1. The active employer contributions to be paid each fiscal year by participating employers shall be the current employer contribution rate multiplied by the active employees' total salaries.
2. The Department of Education shall pay from the Public School Fund, in accordance with rules established by the Board, the ATRS employer contributions due for eligible employees of Cooperative Education Services Areas, Vocational Centers, Arkansas Easter Seals, and the school operated by the Department of Correction. ATRS shall certify to the Department of Education at the close of each quarterly report the amount of employer contributions due. The amount will be based on the employers' reported salaries.
3. The System may certify to the state's Chief Fiscal Officer the names of participating employers who are delinquent in reporting and remitting contributions under this policy. Upon notification, the Chief Fiscal Officer may direct a transfer of funds on deposit in the State Treasurer's Office for any delinquent employer payments plus the six percent (6%) interest penalty to the System. (A.C.A. § 19-5-106)
4. Supplemental salary payment reports for previous years will be accompanied by the employer contributions due.
5. The Arkansas Teacher Retirement System shall return to participating employers overpaid contribution amounts due to erroneous submission of payments or incorrect reporting of Salary Option 2 (first \$7,800.00) member salaries. If an overpayment of a contribution amount is less than \$25.00, the

refund will not be issued to the employer unless requested in writing by the employer.

6. The Arkansas Teacher Retirement System shall not collect from participating employers an underpayment of employer contribution amount if less than \$25.00.
7. For members retiring and who are employed by agencies or other institutions that use the state's 26-week payroll schedule, employers should adhere to and report the salary, contributions, and actual days worked through the state's fiscal year payroll schedule and for the termination date of employment. Contributions should not be withheld on any salary earned after the close of the current year's payroll, nor should any salary or days of service be reported for that period of time.

RULES FOR REPORTING EMPLOYER CONTRIBUTIONS FOR T-DROP MEMBERS (A.C.A. § 24-7-401, 1303 as amended by Act 743 of 2009 and A.C.A. § 24-2-701)

1. The T-DROP employer contributions shall be the employer contribution rate multiplied by the total T-DROP participant's salaries.
2. Effective July 1, 2009, the employer contribution rate for T-DROP participants shall be the percentage rate established by the Board pursuant to A.C.A. § 24-7-401 for the fiscal year.

RULES FOR REPORTING EMPLOYER CONTRIBUTIONS FOR RETIREES (A.C.A. § 24-7-708 as amended by Act 743 of 2009)

1. The retiree contribution rate shall be the employer contribution rate multiplied by the total retirees' salaries employed by participating employers for that fiscal year.
2. Effective July 1, 2009, the employer contribution rate shall be the percentage rate established by the Board pursuant to A.C.A. § 24-7-401 for the fiscal year.

Amended: June 17, 2003
April 6, 2004
Reaffirmed: June 15, 2004
Amended: July 18, 2005
April 26, 2007
February 11, 2008
December 18, 2009

ERROR CORRECTIONS AND COLLECTION OF OVERPAYMENTS

A.C.A. § 24-7-205

REGULATIONS

1. If a change or error in the System's records results in either an overpayment or underpayment to a member or beneficiary of the System, the Board authorizes the System to correct the error in the records and to adjust the benefit or other amount payable to the corrected amount.
2. If a member, former member, contributor, former contributor, retiree, beneficiary, or alternate payee under a qualified domestic relations order pursuant to A.C.A. §§ 9-18-101—103, is paid any benefit or payment by the System to which the person is not entitled, a receivable is created and the Board or its designee(s), may collect the amount due to the System as set forth in A.C.A. § 24-7-205.
3. Before making an adjustment of benefits or pursuing any other collection action under Nos. 1 and 2 above, a notice shall be provided to the person who is the subject of the adjustment. The notice will state the amount determined to be a receivable and the reasons underlying the determination. The notice shall also suggest alternate methods for payment of the receivable.
4. Appeals to dispute collections may be made in writing to the Executive Director if made within 30 days of the date of the original notice to the member, former member, contributor, former contributor, retiree, beneficiary, or alternate payee.

The Executive Director's de novo review may be appealed to the Board of Trustees for a de novo review by the Board. The affected party must send notice in writing to the Executive Director that the Executive Director's decision is being appealed within 30 days of the date of the Executive Director's review. The Board will hear the appeal in a regularly scheduled Board meeting. During the appeal process, retirement benefits will continue to be paid.

RULES (As amended by Acts 465 and 468 of 2009)

1. The Board or its designee may waive adjustment or repayment of an overpayment to a member, former member, contributor, former contributor, retiree, beneficiary, or alternate payee if:

- A. The overpayment was not the result of the member's or the beneficiary's nondisclosure, fraud, misrepresentation, or other fault; and
 - B. The Board or its designee finds in his or her sole discretion that recovery of the overpayment or adjustment could be a manifest injustice.
2. If the System discovers a member owes any other amount relating to his/her service in the System, a notice shall be sent to the member requesting payment of such amount including applicable interest or penalty charges. However, the Board or its designee may, but is not required, to waive payment of any interest charges under this section if it finds that:
 - A. The amount owed was the result of an error by the System;
 - B. The error is not the result of the member's nondisclosure, fraud, misrepresentation, or other fault; and
 - C. Recovery of the amount would result in a manifest injustice to the member.
3. The Board authorizes the Executive Director to waive interest on required contributions under Nos. 1 and 2 above in an amount not to exceed \$5,000. Any request to excuse an interest amount exceeding \$5,000 shall be submitted to the ATRS Board for review. The Executive Director shall report to the Board any amounts excused under this section.
4. If required, a receivable under this section that is found by the Board or its designee to be uncollectible or for which adjustment or payment has been waived will be submitted to the Chief Fiscal Officer of the state for abatement pursuant to A.C.A. §§ 19-2-301 – 307.

Adopted: July 18, 2005
Amended: December 18, 2009

RETIREMENT/BENEFITS DEFINITIONS

This section defines words, phrases, and terms used in all retirement rules and regulations under ATRS Rules & Regulations, Chapters 7, 9, and 10. All words, phrases, and terms not defined in this section in these chapters have the meaning set forth in A.C.A. § 24-7-202 *et. seq.*

1. **Annuity Options** means the member's election at retirement of an annuity that shall be paid throughout the retiree's lifetime in accordance with A.C.A. § 24-7-706.
2. **Medical committee** means the committee of three (3) physicians appointed by the Board under A.C.A. § 24-7-303 for the purpose of evaluating disability retirement applications.
3. **Option beneficiary** means a person(s) nominated by the member, in writing at retirement, who, if eligible, will receive annuity payments under the annuity option selected by the member after the member's death.
4. **Person** for purposes of Rule No. 9-7 (Annuity Options and Disposition of Residue after Retirement) means an individual, corporation, partnership or other legal entity.
5. **Participating employer** means an employer who participates in the Arkansas Teacher Retirement System whose employees are eligible for membership under A.C.A. § 24-7-501, A.C.A. § 24-7-202, or other applicable law.
6. **Residue beneficiary** means a person(s) nominated by the member to receive the residue, if any, under A.C.A. § 24-7-709.
7. **Receivable** means monies due to ATRS from a member, former member, participating employer, contributor, retirant, beneficiary, or alternate payee under a qualified domestic relations order as a result of an overpayment of any payment or benefit by the System.
8. **Retiree** means a retired member who is receiving an annuity from the System.
9. **To terminate covered employment** means that:
 - A. A member shall cease all employment relationships with any ATRS participating employers by his/her retirement effective date.
 - B. A member shall cease to render compensable services to or on behalf of any ATRS participating employers during the termination period.

- C. The member should no longer have the authority to act as a representative of the employer or exercise any authority over its employees by his/her retirement effective date.
 - D. A member must follow normal procedures for resigning from his/her employer unless involuntarily terminated.
 - E. No participating employer has the right to future services rendered by the member.
 - F. Participating employer(s) will have paid any accumulated benefits customarily paid at the time of termination.
 - G. A member shall remain terminated with all participating employers for the minimum number of days required in A.C.A. § 24-7-502; and
 - H. A member shall not form any employment agreements, express or implied, with a participating employer prior to or during the termination period.
10. **T-DROP plan deposits** means the deposits made to each T-DROP participant's account under A.C.A. § 24-7-1306.

Adopted: December 18, 2009

DISABILITY RETIREMENT

A.C.A. § 24-7-704

RULES (as amended by Acts 468 and 743 of 2009)

I. ELIGIBILITY AND REVIEW OF DISABILITY RETIREMENT APPLICATIONS

- A. Active members in employer service with five (5) years of actual and reciprocal service are eligible to apply for disability retirement. For purposes of eligibility for disability retirement, a member will be considered active for an additional fiscal year following the last fiscal year that actual service was rendered to a covered employer. However, service credit used in any benefits paid shall only include days of service paid by a covered employer including paid sick leave.
- B. To qualify for disability retirement, a member who as the result of a personal injury or disease must become totally and permanently incapacitated for the performance of his or her job duties. Members who meet this standard under A.C.A. § 24-7-704 may be retired by the Board.
- C. Disability benefits shall be confirmed upon affirmative vote of the Board after a majority recommendation by the System's Medical Committee that the member is:
 - 1. Physically or mentally incapacitated;
 - 2. Unable to perform his or her current work duties;
 - 3. Most likely permanently incapacitated.
- D. Disability retirement benefits shall commence the first day of the calendar month following the date the member is found to be disabled by the Medical Committee. Termination of active membership for disability benefits shall be the last date of employment with the member's covered employer. Paid sick leave, Family Medical Leave Act (FMLA) leave, if granted for the disability applicant, and other medical leave granted by the employer shall extend the date of active membership; however, service credit shall only include the days of service credit if it was for paid sick leave from the covered employer.
- E. For a reciprocal member, see Rule No. 6-2 (Reciprocity, No. 2, Disability).

- F. If a disability is determined to exist by the Medical Committee, disability retirement benefits shall be paid in arrears beginning with the effective date of benefits. Disability retirement shall be effective the first day of the calendar month following the member's date of termination of active membership, which is the date the member last rendered service to a covered employer.
- G. If the application for disability retirement benefits is denied and the member elects to apply for voluntary retirement, the effective date for retirement will be determined under the voluntary retirement provisions.
- H. If an active member dies after applying for disability retirement, the following will apply:
 - 1. If the member dies before receipt of the first disability retirement check but after receiving final approval for disability retirement, the benefits will be paid under the disability retirement option selected by the member.
 - 2. If the member dies after the disability application is received by the System but before disability retirement is approved, then the System shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 shall be paid.
- I. The annuity formula for computing disability retirement benefits is the same as for voluntary age and service retirement.
- J. The Board or its designee may require a disability retiree who has not attained age 60 to undergo a medical examination to be made by or under the direction of the Medical Committee at least annually during the first five (5) years following a member's disability retirement and at least once in each three (3) year period thereafter.
 - 1. If a disability retiree refuses to submit to the medical examination, the disability annuity may be suspended by the Board until the withdrawal of his/her refusal.
 - 2. If a disability retiree's refusal to submit to the medical examination continues for one (1) year, the Board may revoke the disability benefit.
 - 3. If after a retiree's medical examination, the Medical Committee reports to the Board that the retiree is physically and mentally able and capable of resuming duties in the position held at the time of disability retirement, then the disability retirement shall terminate. Disability retirees who are disapproved for further disability annuities shall be removed from the System's retiree payroll the earlier of six months

following the review date or the first of the month following the return to covered employment.

- K. If a member is approved for disability retirement but continues to work, he/she must terminate employment by the proposed disability retirement effective date. If covered employment is not terminated after receiving notice of the proposed effective date, disability retirement will be cancelled, the member will be considered active, and is eligible to reapply for disability retirement.
- L. If a member applies for disability retirement and is disapproved, he/she has the right to file a new disability application submitting additional information for review.

II. DISABILITY RETIRANTS RETURN TO COVERED EMPLOYMENT

A. Disability Retirant Employed Prior to Attaining Age 60

1. When a disability retirant becomes employed by an employer covered by the System prior to attaining sixty (60) years of age, his or her disability retirement shall terminate.
2. It is the responsibility of the employee and employer to report a disability retirant's return to covered employment to the System immediately upon employment.
3. When a disability retirant under sixty (60) years of age returns to covered employment, he or she shall immediately become an active member of the System, his or her credited service at the time of disability retirement will be restored to the members' deposit account, and the member will be treated and reported as an active member for purposes of earning service credit.
4. The disability retirant shall not be given service credit during the time he or she received a disability retirement benefit and will not be required to repay disability benefits received prior to returning to covered employment.

B. Disability Retirant Employed After Attaining Age 60

When a disability retirant returns to a position covered by the System upon attaining sixty (60) years of age, the retirant shall be treated as if he or she had retired under A.C.A. § 24-7-701.

See ATRS Rule No. 10-2 (Employment of an ATRS Retiree by a Participating Employer) for rules applicable to age and service retirants.

Amended: June 15, 2004
July 18, 2005
June 19, 2007
December 18, 2009

RESCINDING RETIREMENT

A.C.A. § 24-7-717 and A.C.A. § 24-7-702, amended by Acts 435 and 478 of 1993, Act 481 of 2001, and Act 97 of 2007

Amended: 2001

June 17, 2003

June 15, 2004

April 26, 2007

Repealed: December 18, 2009

SURVIVOR BENEFITS

A.C.A. §§ 24-7-710, 713

RULES AND REGULATIONS (as amended by Act 1324 of 2009)

If an active member with five (5) or more years of actual and reciprocal service, including credited service for the year immediately preceding his or her death, dies while in active service before retirement, survivor benefits as provided in A.C.A. § 24-7-710, plus the monthly stipend under A.C.A. § 24-7-713, shall be paid to the following qualifying dependents.

1. SPOUSE

- A. The member's surviving spouse, who was married to the member for at least two (2) years immediately prior to the member's death, shall receive a surviving spouse benefit.
- B. If at the member's death there are no dependent children eligible to receive a dependent child annuity, a surviving spouse who qualifies to receive a surviving spouse annuity may file with the System a waiver of any rights to the spouse annuity.

If the surviving spouse files a waiver of the spouse annuity, the deceased member's residue beneficiary(ies) will receive a single distribution of the member's residue amount, if any.

- C. The spouse annuity shall begin under the following schedule:
 - i. If the member was not eligible for early, regular, or deferred retirement at the time of his/her death, the spouse annuity will begin the date the member would have been eligible to receive retirement benefits and is payable for the spouse's lifetime, regardless of remarriage.
 - ii. However, if the member had either satisfied the age and service requirements provided in A.C.A. §§ 24-7-701 or 702 or attained age sixty (60) and was eligible for deferred retirement under A.C.A. § 24-7-707, then the spouse annuity commences the month following the member's death and is payable for the spouse's lifetime, regardless of remarriage.
 - iii. If the surviving spouse is eligible to receive the survivor annuity upon the member's death but would receive a reduction due to the member being less than 60 years of age, the spouse may defer receipt of the annuity until the member would have been entitled to an unreduced benefit at age 60 under A.C.A. § 24-7-707.

D. Amount of Surviving Spouse Annuity

The surviving spouse annuity shall be calculated as if the member retired on the date of his/her death and elected Option A, nominating his/her spouse as the Option A beneficiary. The System shall use the retirement formula in effect at the time the spouse's annuity commences, including the cost of living adjustment (COLA) and monthly retirement stipend.

Surviving spouses will receive a COLA the July 1 following the annuity commencement date if he/she has received at least 12 monthly benefit payments prior to the COLA implementation date. The cost of living adjustment shall be simple unless the Board elects to compound the COLA for that period.

2. DEPENDENT CHILDREN

A. An active member's dependent children shall each receive a surviving child annuity upon the member's death. The surviving child annuity shall be equal to 20% of the member's highest salary year in covered employment plus the monthly stipend under A.C.A. § 24-7-713. If the member's highest salary year occurs in the year the member died, the System shall calculate the dependent child annuity(ies) on the basis of the full year of salary. Each child's annuity shall begin the month following the member's death and be payable until the annuity terminates.

Surviving children will receive a COLA the July 1 following the annuity commencement date if he/she has received at least 12 monthly benefit payments prior to the COLA implementation date. The cost of living adjustment shall be simple unless the Board elects to compound the COLA for that period.

B. However, if a member has more than three (3) dependent children eligible under this section, then the aggregate annuity payable shall not exceed 60% of the member's highest salary year plus the monthly stipend under A.C.A. § 24-7-713, and shall be divided equally among the surviving dependent children.

C. A member's "child" eligible to receive a child annuity is a "child" under any of the following:

- i. A natural child of the member;
- ii. A child that has been made a child of the member by adoption or other court action prior to the member's death; or

- iii. A child under the permanent care of the member at the time of the death of the member, which permanent care status shall be determined under Rule 2D of this policy.
- D. To be a “dependent child” under these rules, the child must:
- i. Meet requirements and qualify for survivor benefits under Social Security;
 - ii. Have been claimed as a dependent by the deceased member on his or her federal income tax for the immediately preceding calendar year; and
 - iii. Have lived in the same household for at least two (2) years immediately preceding death of the member, unless the child is under two years of age.
- E. A child identified as a dependent will remain eligible to receive a survivor annuity until he/she is no longer a dependent. A child is no longer dependent if he/she reaches the age of 18.
- F. A child will continue to be eligible for a child survivor annuity after reaching age 18 if the child continues consecutively, without interruption as a full-time student at an accredited secondary school, postsecondary school such as a vocational technical school, college, or university. In any event, a dependent child annuity will terminate when the child reaches age 23.
- i. A full-time student is defined as one carrying 12 semester hours or 8 trimester hours in college, four (4) hours per day in a secondary or postsecondary school, or other verifiable indices from an accredited institution that the dependent child is engaged in full time curriculum or field of study.
 - ii. If a child who is receiving a dependent child annuity is age 18 or older but becomes temporarily physically or mentally incapacitated, the Board may continue paying benefits upon receipt of a doctor's certification that the child is temporarily physically or mentally incapacitated, and is unable to attend school for the period of one semester or term. At the beginning of the next semester or term, if the child does not reenter school full-time, the dependent child annuity will terminate.
 - iii. Certification of attendance in an accredited school may be reported by the dependent child in the absence of a parent or legal guardian after the dependent child reaches age 18.

- G. A deceased member's dependent child who is dependent due to having been adjudged physically or mentally incapacitated by a court or legal tribunal continues to be eligible to receive a dependent child annuity as long as the incapacity exists, regardless of age.
- H. A child annuity shall not be adjusted from its initial monthly amount when other dependent annuities terminate except for COLAs.
- I. A dependent child annuity will be paid as separate payments to each child monthly, rather than one lump-sum check payable to the spouse or custodian. Deposit accounts designated to receive survivor annuity payments to a child under age 18 must qualify as custodial accounts in accordance with the Uniform Transfers to Minors Act.

3. GENERAL RULES REGARDING SURVIVOR ANNUITIES

- A. Survivors are required to produce sufficient proof of eligibility under these provisions prior to receiving benefit payments.
- B. If at the time of an active member's death, a surviving spouse is listed on the death certificate, the System will search for the surviving spouse for up to one year. If after one year, ATRS has not located or been contacted by the surviving spouse, ATRS will refund the member's residue amount, if any, to the member's remaining residue beneficiaries surviving the member.
- C. If the member dies before receipt of the first disability retirement check but after receiving final approval for disability retirement, the benefits will be paid under the disability retirement option selected by the member.
- D. If the member dies after the disability application is received by the System but before disability retirement is approved, then the System shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 shall be paid.
- E. For the purposes of determining survivor benefits, the member's salary shall be the salary that the member would have received in the fiscal year in which he/she died had the member lived through the end of the fiscal year.
- F. Salary payments made after the death of a member that were earned prior to death are subject to System deductions and shall be reported in total salary and days of service in the employer's quarterly report. Payments made by an employer after the death of an active member that are made as a mere gratuity and were not earned by the member shall not be included in the member's salary reported to the System and are not subject to contributions.

For purposes of survivor benefits, a member will be considered active for an additional fiscal year following the last fiscal year that actual service was rendered to a covered employer.

- G. If survivor benefits are payable by more than one reciprocal system to eligible survivors of a deceased member, the survivors shall not receive more as a percentage of the deceased member's final pay or as a minimum dollar amount than the largest amount payable by a single, reciprocal system. The System will prorate minimum benefits payable with any other reciprocal systems that have a minimum benefit provision in its plan. Each reciprocal system shall pay only its proportionate share of the minimum amount based on the ratio of service in its system to the total service in all reciprocal systems.
- H. When the member elects to transfer from ATRS to APERS under the provisions of Act 793 of 1977, APERS' law governs the survivors' eligibility for a payment of residue or survivor benefits upon the member's death

Amended: June 15, 2004
February 7, 2006
April 26, 2007
December 18, 2009