

**Arkansas Department of Education
Proposed Rules 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 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 2005 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.
- 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 Critical Academic Areas:** Academic areas identified annually by the State Board of Education as being critical academic teacher shortage areas.
- 3.04 ~~Director~~ Commissioner:** The ~~Director~~ Commissioner of the Department of Education.
- 3.05 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 Emergency Situations:** Examples of emergency situations would include:
 - 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.
- e. ~~A catastrophic occurrence forces an essential classified employee to be unable to fulfill his/her essential job duties.~~
- c. 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.

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

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

3.103.09 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 Conditions

Waivers for the earnings limitation may be requested under the following conditions:

4.01 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.

4.02 ~~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.

4.03 Under extreme emergency circumstances, the Commissioner of the Department of Education may request an earnings limitation waiver to hire an interim employee for a public educational entity.

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, the retirant must be certified in the content area assigned.
- 5.04 A waiver of earnings limitation may only be granted due to a teacher shortage in a critical academic content area in a public school district or under extreme emergency circumstances declared by the Commissioner.
- 5.05 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.
- 5.06 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.
- 5.07 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.~~

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

6.056.03 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.

6.066.04 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.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY AR Department of Education
DIVISION Internal Administration
DIVISION DIRECTOR Dr. Bobbie Davis
CONTACT PERSON Dr. Bobbie Davis
ADDRESS #4 Capitol Mall, Little Rock, AR 72201
PHONE NO. 501-682-1297 FAX NO. 501-682-4487 E-MAIL bdavis@arkedu.k12.ar.us

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire & financial impact statement attached to the front of two (2) copies of your proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

- 1. What is the short title of this rule?
Rules Governing Waivers of the Earnings Limitation Under the Teacher Retirement System
- 2. What is the subject of the proposed rule?
Amends the rules for allowing a retiree to receive a waiver of the earnings limitation.
- 3. Is this rule required to comply with federal statute or regulations? Yes____No__X____
If yes, please provide the federal regulation and/or statute citation.
- 4. Was this rule filed under the emergency provisions of the Administrative Procedures Act?
Yes____No__X____
If yes, what is the effective date of the emergency rule?

When does the emergency rule expire?

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes____No__X____

5. Is this a new rule? Yes _____ No X _____ If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes _____ No X _____ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes X _____ No _____ If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes. **NOTE: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law grants the authority for this proposed rule. If codified, please give Arkansas Code citation. A.C.A. 24-7-708, A.C.A. 24-7-502, A.C.A. 6-11-105 and Act 911 of 2005.
7. What is the purpose of this proposed rule? Why is it necessary?
The rule is necessary to implement changes enacted in the waiver process by Act 911 of 2005.
8. Will a public hearing be held on this proposed rule? Yes X _____ No _____
If yes, please complete the following:
- Date: July 6, 2005
Time: 9:00 a.m.
Place: ADE Auditorium
9. When does the public comment period expire for permanent promulgation? (Must provide a date.) **July 18, 2005**
10. What is the proposed effective date of this proposed rule? (Must provide a date.)
August 16, 2005
11. Do you expect this rule to be controversial? Yes _____ No X _____
If yes, please explain.

12. Please give the names of persons, groups, or organizations that you expect to comment on these rules. Please provide their position (for or against) if known.
AR Association of School Administrators
AR Education Association
AR School Boards Association

FINANCIAL IMPACT STATEMENT

DEPARTMENT AR Department of Education
DIVISION Internal Administration
PERSON COMPLETING THIS STATEMENT Dr. Bobbie Davis
TELEPHONE NO. 501-682-1297 FAX NO. 501-682-4487
E-MAIL bdavis@arkedu.k12.ar.us

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

Rules Governing Waivers of the Earnings Limitation Under the Teacher Retirement System

1. Does this proposed, amended, or repealed rule or regulation have a financial impact? Yes X No
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

General Revenue -0-
Federal Funds
Cash Funds
Special Revenue
Other (Identify)

Total -0-

Next Fiscal Year

General Revenue -0-
Federal Funds
Cash Funds
Special Revenue
Other (Identify)

Total -0-

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation and explain how they are affected.

Current Fiscal Year

\$ 10,000
School districts must pay employer and employee match on any retiree hired.

Next Fiscal Year

\$ 10,000

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

Current Fiscal Year

\$ 2,000

Tracking and handling the waiver requests requires minimal resources.

Next Fiscal Year

\$ 2,000

DEPARTMENT OF EDUCATION
FISCAL IMPACT STATEMENT OF PROPOSED REGULATION
(In compliance with Acts 884 and 1253 of 1995)

Regulation Title: **Rules Governing Waivers of the Earnings Limitation Under the Teacher Retirement System**

Summary Description of Regulatory Proposal:

This rule amends the current rule on waivers of earnings limitation.

Cite Statutory Authority for this Regulatory Proposal: **A.C.A. 24-7-708, A.C.A. 24-7-502, A.C.A. 6-11-105, and Act 911 of 2005**

- I. Fiscal Impact on the Department: (include whether impacts are non-recurring or recurring) Impact would be recurring every year.
 - A. Resources Required - Personnel, equipment, office space.
Minimal for tracking and handling waiver documentation.
 - B. Time Required for Implementation.
Three months
 - C. Procedural Changes.
Limits eligible entity to public schools, limits waiver to three years.
 - D. Other.
Requires district to pay employer and employee match on retiree.
- II. Fiscal Impact on Local School District or Others? (Include whether impacts are non-recurring or recurring)
Recurring – will have to pay both employer and employee match.
 - A. Resources Required - Personnel, equipment, office space.
Funds to pay match.
 - B. Time Required for Implementation.
Three months
 - C. Procedural Changes.
Still follows same procedures to apply. Eligible entity and total years allowed are changing.
 - D. Other.
- III. Additional Comments.
Districts have to pay employer and employee required match if retiree is on a waiver.

Prepared by: (Name) Dr. Bobbie Davis
(Title) Assistant Director, Internal Administration
(Date) June 14, 2005