

# **BOARD OF TRUSTEES COMPOSITION AND ELECTIONS**

A.C.A. § 24-7-301

~~(as amended by Acts 418 of 1997, 866 of 1999, and 97 of 2007)~~

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~~A.C.A. § 24-7-301 provides that the general administration and responsibility for the proper operation of the Arkansas Teacher Retirement System and for making effective the provisions of the Teacher Retirement laws are vested in the Board of Trustees of 15 persons. The Bank Commissioner, the Treasurer of the State, the Auditor of the State, and the Commissioner of the Department of Education serve as ex officio trustees. Eleven (11) members serve as elected trustees, seven (7) who are active members of the System with at least five (5) years of actual service in force, one (1) who is a member of a racial ethnic group and is either an active or retirant member, and three (3) who are retirant members.~~

~~For these purposes, participants in the Teacher Deferred Retirement Plan (T-DROP) will be considered active members. The active and retirant trustees shall be elected in accordance with such rules and regulations as the Board shall from time to time adopt to govern such elections.~~

## **ACTIVE MEMBER TRUSTEES**

- ~~1. There shall be four (4) active member trustees each of whom must be employed in a position requiring state teaching licensure or employed by an ATRS-covered agency in a position between Grades 17-23. Such a trustee shall NOT be employed as a school administrator (superintendent, assistant superintendent, principal, vice principal, president, chancellor or director of a state institution of higher education, community/technical college, or vocational center/cooperative), or employed in a position Grade 24 and above with an ATRS-covered agency. One (1) active member trustee will be elected from each of the four (4) congressional districts of the State of Arkansas.~~

~~Active members employed in positions requiring state licensure, but not administrators' licenses, will elect these trustees. Such members must NOT be employed in positions as school administrators (superintendent, assistant superintendent, principal, vice principal, president, chancellor, or director of a state institution of higher education, community/technical college, or vocational center/cooperative of employed by an ATRS-covered agency in a position Grade 24 and above.~~

- ~~2. There shall be two (2) active member trustees each of whom must be employed in a position requiring school administrator licensure (superintendent, assistant superintendent, principal, vice principal, president, chancellor, or director of a state institution of higher education, community/~~

~~technical college, or vocational center/cooperative), or employed by an ATRS-covered agency in a position Grade 24 and above, one (1) of which must be a superintendent.~~

~~These trustees will be elected by members employed as school administrators (superintendent, assistant superintendent, principal, vice principal, president, chancellor, or director of a state institution of higher education, community/technical college, or vocational center/cooperative) or employed by an ATRS-covered agency in a position Grade 24 and above.~~

- ~~3. There shall be one (1) active member trustee who is employed in a position that does not require state teaching licensure or is employed by an ATRS-covered agency in a position Grade 16 and below.~~

~~This member trustee shall be elected by members who are employed in positions not requiring state teaching licensure or are employed by an ATRS-covered agency in a position Grade 16 and below.~~

### **MINORITY TRUSTEE**

~~There shall be one (1) member trustee of a minority racial ethnic group who is either an active or a retired member of the System. This member trustee shall be elected by the active and retired membership of the System.~~

### **RETIREE MEMBER TRUSTEES**

~~There shall be three (3) retiree member trustees who receive an annuity paid by the System. These trustees shall be elected by the retired membership of the System. Retiree trustees must reside in Arkansas.~~

### **TERM OF OFFICE AND VACANCIES**

- ~~1. The term of office of each elected trustee shall be six (6) years.~~
- ~~2. Each trustee shall continue to serve as trustee until his or her term expires.~~
- ~~3. 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 Policy No. 4-3.~~
- ~~4. 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.~~

## **RULES ON TERM OF OFFICE/VACANCIES**

- ~~1. An active member trustee shall be ineligible to serve after becoming inactive or retiring.~~
- ~~2. 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.~~
- ~~3. A retiree member trustee shall be ineligible to serve after becoming active.~~
- ~~4. An absence that is excused by a majority of the members of the Board shall not constitute a vacancy. Attendance on either day of a two-day Board meeting is sufficient to meet the attendance requirement.~~
- ~~5. The Board of Trustees or its designee will notify the Board member after the second consecutive absence.~~
- ~~6. A vacancy will occur if the Board votes to declare a position vacant due to one of the following:~~
  - ~~A. A trustee is absent for three (3) consecutive regular Board meetings, and the absences are not excused by the Board;~~
  - ~~B. A trustee is ineligible due to a change in status under A.C.A. § 24-7-302(a)(2)(A-B) resulting in three (3) consecutive absences at regular Board meetings prior the expiration of the trustee's term; or~~
  - ~~C. Resignation or death of a trustee that will result in three (3) consecutive absences at regular Board meetings prior to the expiration of the trustee's term.~~
- ~~7. If the Board declares a vacancy under the section above, the Board may vote to hold a special election to fill an unexpired term under ATRS Policy No. 4-3. 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 requirements and procedures for that position.~~

## **BOARD POSITIONS**

Position #1 (1st Congressional District)  
Position #2 (2nd Congressional District)  
Position #3 (3rd Congressional District)

Position #4 (4th Congressional District)  
Position #5 (Administrator - Superintendent only)  
Position #6 (Administrator)  
Position #7 (Nonlicensed)  
Position #8 (Minority)  
Position #9 (Retirant)  
Position #10 (Retirant)  
Position #11 (Retirant)

## **~~POSITION QUALIFICATIONS AND VOTER ELIGIBILITY IN EACH ELECTION~~**

### **~~1. Positions #1-#4 (Active Member Trustees from Congressional Districts)~~**

#### **~~A. Qualifications for candidacy:~~**

- ~~i. Must be an active member of ATRS (includes T-DROP participants);~~
- ~~ii. Must have five (5) years of actual service in ATRS;~~
- ~~iii. Must be employed in a position requiring a state teaching license or employed by an ATRS-covered agency in a position between Grades 17-23. Such candidate shall not be employed as a school administrator (superintendent, assistant superintendent, principal, vice principal, president, chancellor, or director of a state institution of higher education, community/technical college, or vocational center/cooperative) or employed in a position Grade 24 and above with an ATRS-covered agency;~~
- ~~iv. Must be employed in the congressional district from which he/she is seeking election; and~~
- ~~v. If a candidate holds two or more positions, i.e., works as a teacher and bus driver, eligibility shall be determined by his/her primary employment.~~

#### **~~B. Eligible voters include:~~**

~~Active ATRS members (includes T-DROP participants) who are employed in the congressional district. Such members must also be employed in positions that require a state teaching license or employed by an ATRS-covered agency in a position between Grades 17-23. Such members must not be employed in positions as school administrators (superintendent, assistant superintendent, principal, vice principal, president, chancellor, or director of a state institution of higher education, community/technical college, or vocational center/cooperative) or employed in an ATRS-covered position Grade 24 and above.~~

~~2. Position #5 (Administrator - Superintendent only)~~

~~A. Qualifications for candidacy:~~

- ~~i. Must be an active member of ATRS (includes T-DROP participants);~~
- ~~ii. Must have five (5) years of actual service in ATRS;~~
- ~~iii. Must be employed as an Arkansas school superintendent.~~

~~B. Eligible voters include:~~

~~Active ATRS members (includes T-DROP participants) employed as school administrators (superintendent, assistant superintendent, principal, vice principal, president, chancellor, or director of a state institution of higher education, community/technical college, or vocational center/cooperative), or employed by an ATRS-covered employer in a position Grade 24 or above.~~

~~3. Position #6 (Administrator)~~

~~A. Qualifications for candidacy:~~

- ~~i. Must be an active member of ATRS (includes T-DROP participants);~~
- ~~ii. Must have five (5) years of actual service in ATRS;~~
- ~~iii. Must be employed as a school administrator (superintendent, assistant superintendent, principal, vice principal, president, chancellor, or director of a state institution of higher education, community/technical college, or vocational center/cooperative), or employed by an ATRS-covered employer in a position Grade 24 or above.~~

~~B. Eligible voters include:~~

~~Active ATRS members (includes T-DROP participants) employed as school administrators (superintendent, assistant superintendent, principal, vice principal, president, chancellor, or director of a state institution of higher education, community/technical college, or vocational center/cooperative) or employed by an ATRS-covered employer in a position Grade 24 or above.~~

~~4. Position #7 (Nonlicensed)~~

~~A. Qualifications for candidacy:~~

- ~~i. Must be an active member of ATRS (includes T-DROP participants);~~

- ~~ii. Must have five (5) years of actual service in ATRS;~~
- ~~iii. Must be employed in a position that does not require a state teaching license (includes school secretaries, school bus drivers, school cafeteria and maintenance workers) or employed by an ATRS-covered agency in a position Grade 16 and below.~~

~~B. Eligible voters include:~~

~~Active ATRS members (includes T-DROP participants) employed in positions that do not require a state teaching license (includes school secretaries, school bus drivers, school cafeteria and maintenance workers) or employed by an ATRS-covered agency in a position Grade 16 and below.~~

~~5. Position #8 (Minority)~~

~~A. Qualifications for candidacy:~~

- ~~i. Must be an active member of ATRS (includes T-DROP participants) or a retirant member receiving an annuity paid by ATRS;~~
- ~~ii. Must have five (5) years of actual service in ATRS;~~
- ~~iii. Must be of a racial ethnic minority group.~~

~~B. Eligible voters include:~~

~~Active ATRS members (includes T-DROP participants), and retirant members receiving an annuity paid by ATRS.~~

~~6. Positions #9-#11 (Retirant Member Trustees)~~

~~A. Qualifications for candidacy:~~

- ~~i. Must be a retirant member receiving an annuity paid by ATRS; and~~
- ~~ii. Must be a resident of Arkansas.~~

~~B. Eligible voters include:~~

~~ATRS retirant members receiving an annuity paid by ATRS.~~

~~Survivors of ATRS members who receive benefits from the System are not eligible to participate in the election of Board of Trustee members. (Revised November 18, 1997.)~~

# **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 adopted rules and regulations regarding the election of trustees and vacancies.

## **GENERAL RULES FOR CANDIDACY AND VOTING IN TRUSTEE ELECTIONS**

1. For purposes of eligibility for an active member trustee position and voting, “active members” shall mean active members as defined in § 24-7-202 (2) and members participating in T-DROP, if employed by a participating employer and receiving T-DROP plan deposits.
2. 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.
3. 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.
4. 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.
5. For purposes of eligibility for a non licensed trustee position and voting for that position, “nonlicensed” shall mean employed in a position with a participating employer that does not require state licensure including employment of an educationally related agency Grade C116 or below. Non-licensed shall not include any position defined as an administrator or licensure.
6. No person receiving an annuity or benefit from ATRS by reason of being a survivor, dependent, or beneficiary of an ATRS member is eligible to vote in a trustee election.

7. Members who are the subject of a guardianship proceeding relating to his/her estate shall OR a member's attorney-in-fact under a Power of Attorney are not eligible to vote for the member in a trustee election.
8. Terms not defined in these rules shall have the meaning set forth in Arkansas Code § 24-7-202 et. seq.

## **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.

### **1. Active Member Trustee Position Nos. 1-4 - Congressional Districts**

#### **A. 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.

#### **B. Eligible Voters for Trustee Positions 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 (1)( A) (iii) above.

### **2. Active Administrator Trustee Positions Nos. 5 - 6**

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

#### **A. Qualifications for candidacy:**

- i) Active member with a minimum of five (5) years of actual service.
- ii) Candidates for Position No. 5 shall be licensed administrators employed as Arkansas school superintendents by a participating employer.
- iii) Position No. 6 shall be licensed administrators employed by a participating employer.

#### **B. Eligible Voters for Trustee Positions Nos. 5-6**

Eligible voters for Position No. 5 and 6 shall be active members, regardless of credited service, employed as licensed administrators.



### **3. Nonlicensed Trustee Position No. 7**

#### **A. Qualifications for candidacy:**

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

#### **B. 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 non-licensed positions as defined these rules.

### **4. Minority Trustee Position No. 8**

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

#### **A. Qualifications for candidacy:**

- i) An Active or retirant member of ATRS
- ii) Member of a minority racial or ethnic group

#### **B. Eligible Voters for Position No. 8**

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

### **5. 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 (25).

#### **A. Qualifications for Candidacy**

- i. Retirant member of ATRS
- ii. Resident of the State of Arkansas

#### **B. Eligible Voters for Position Nos. 9-11**

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

**ELECTION PROCEDURES AND TERMS OF OFFICE FOR ELECTED TRUSTEE POSITIONS (A.C.A. § 24-7-301 – 302)**

**A. RULES ON ELECTED TRUSTEE NOMINATIONS**

1. 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 state-wide 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.
2. For all elected positions, a candidate must submit a petition signed by at least twenty-five (25) ATRS members that 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.
3. The original petitions for nomination must be submitted to the ATRS Executive Director by U.S. mail, post-marked on or before January 1. Petitions must be received by the System no later than January 10, regardless of postmark.
4. 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.
5. The candidates submitting a petition for nomination will receive notice by the System if the petition is accepted and receive a list of other members who were certified to participate in the election for the trustee position for which he/she seeks nomination.
6. Prior to ballots being mailed, the System or its designee will conduct a random drawing for ballot position with at least 2 independent witnesses present certifying the drawing. Candidates will be notified the order which he/she will be listed on the ballot and shall provide the preferred method of communication of election results to the System.
7. Upon request of a candidate, the System will provide to the election contractor addresses a list of mailing of eligible voters for a candidate's campaign materials. All campaign materials shall be approved by the System. 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.

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

# **ELECTION PROCEDURES AND TERMS OF OFFICE FOR ELECTED TRUSTEES POSITIONS**

A.C.A. § 24-7-301 302

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## **ADVERTISEMENT OF VACANCY**

~~During the month of November prior to the year in which a trustee is to be elected, a notice of such election shall be submitted to the Arkansas Association of Educational Administrators (AAEA), the Arkansas Education Association (AEA), the Arkansas State Employees Association (ASEA), the Arkansas Retired Teachers Association (ARTA), and the ATRS website. The System shall also publish a Public Notice in the Arkansas Democrat-Gazette, which will run for at least five (5) days. This announcement shall include the trustee position number and description of the position for which the election is to be held, a listing of counties if election is for a congressional district, voter qualifications/eligibility to vote, the procedure for nominating a candidate, and an announcement indicating that nominating petitions can be obtained from the Teacher Retirement System.~~

## **NOMINATIONS**

- ~~1. Nomination for election shall be upon petition signed by not less than twenty-five (25) voters eligible to vote in the specified election. The petition must include the last four digits of the Social Security number of the nominee and each signer in order for the Retirement System to verify the petition. Nominating petitions and a candidate information form must be filed with the Executive Director of the Teacher Retirement System not later than January 15 of the year in which the member's or retirant trustee's term expires.~~
- ~~2. Should only one qualified candidate file a timely and verified petition, that person shall be declared by the Board of Trustees as elected to fill the vacant trustee position.~~

## **BALLOTS**

- ~~1. The Board of Trustees shall employ an independent contractor to conduct all or part of the election process. ATRS will provide the contractor with compatible media containing the addresses of eligible voters and any other materials required to conduct the scope of the election process for which the contractor has been employed.~~
- ~~2. The order of candidates listed on the ballot(s) will be determined by a drawing from the petitions received by the Retirement System. The drawing will be~~

~~conducted by representatives of the Retirement System's staff and witnessed by a representative of the group(s) from which a trustee will be elected, i.e., administrator, certified, noncertified, minority, or retiree. A letter to document and verify the drawing will be signed by all in attendance.~~

- ~~3. Ballots will be mailed directly to the homes of eligible voters in accordance with the ATRS policies governing the schedule for active and retirant trustee elections.~~
- ~~4. The date the ballot is to be mailed, the word, "Ballot," and the deadline for receipt of the ballot will be printed on the ballot, along with a brief statement from each candidate. The ballot shall be returned to the contractor. Instructions on the ballots will inform voters that the ballots are not to be copied nor returned to the Retirement System office, which would render them invalid.~~
- ~~5. Neither the voters' addresses nor Social Security numbers will be requested, and no space will be provided for them on the ballot.~~
- ~~6. The System's return address will be printed on the ballots in order for undeliverable pieces to be returned for correction of the System's records.~~
- ~~7. In the event the post office provides corrected addresses for undeliverable ballots, ATRS will correct its records and then remail the ballot to the voter. However, should the undeliverable ballot be received by the System less than (5) days prior to the deadline for returning ballots, the System will correct its records and will not remail the ballot to the voter.~~
- ~~8. The independent contractor will be instructed that ballots will be mailed no earlier, nor later, than the scheduled date ballots are to be mailed. If one of the scheduled dates is on a weekend or holiday, ballots will be mailed on the next regular work day following such weekend or holiday.~~
- ~~9. Should it be determined by the Board of Trustees or its agent that the independent contractor has mailed ballots earlier or later than the contracted date, ATRS will assess the contractor a penalty of not less than five thousand dollars (\$5,000.00) in each instance and for each election the ballots are mailed early or late.~~
- ~~10. The System has final approval of the ballot and accompanying instructions.~~

## **CAMPAIGN MATERIALS**

- ~~1. One (1) set of mailing labels of eligible voters and their addresses will be made available to each candidate upon request.~~

- ~~2. The mailing labels will be printed by the election contractor from eligible voter data provided by the System.~~
- ~~3. Campaign materials sent to voters will be mailed by the election contractor from its place of business. All postage incurred for mailing such materials shall be the responsibility of the candidate requesting the labels. The System shall review and preapprove campaign materials prior to submission to the election contractor for mailing.~~

#### **A. RULES ON ELECTED TRUSTEE NOMINATIONS**

1. 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.
2. For all elected positions, a candidate must submit a petition signed by at least twenty-five (25) ATRS members that 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.
3. The original petitions for nomination must be submitted to the ATRS Executive Director by U.S. mail, post-marked on or before January 1. Petitions must be received by the System no later than January 10, regardless of postmark.
4. 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.
5. The candidates submitting a petition for nomination will receive notice by the System if the petition is accepted and receive a list of other members who were certified to participate in the election for the trustee position for which he/she seeks nomination.
6. 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 the order which he/she will be listed on the ballot and shall provide the preferred method of communication of election results to the System.

7. Upon request of a candidate, the System will provide to the election contractor addresses a list of mailing of eligible voters for a candidate's campaign materials. All campaign materials shall be approved by the System. 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.

## **B. RULES ON TRUSTEE ELECTIONS**

1. The System shall employ an independent election service to conduct the trustee elections.
2. 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.
3. The System shall publish ballots that shall be submitted to the election vendor for mailing to the member's address of record.
4. Completed ballots must be received by the election vendor on or before March 15 to be counted. The vendor shall only count such ballots that are correctly completed and signed by the voter.
5. Results for positions not subject to a run off election shall be certified to the System by April 20. (The Board adopts a resolution first.)
6. If upon certification of the outcome of a trustee election by the vendor, no candidate receives at least 50% of the votes cast by eligible voters, a run off election will be held between the 2 candidates receiving the highest number of votes for the position.
7. Completed ballots for a run off elections must be received by the election vendor on or before June 1 to be counted.
8. Upon the completion of the run off election, results shall be certified to the System by June 5.
9. Any candidate included on the ballot may submit a challenge to an elected trustee election 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.
10. 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.

11. Upon completion of an election, all elected trustee terms begin on July 1 following the election.

### **C. 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 Board 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 Board will verify the validity of petitions; 5) The date ballots will be sent to eligible voters; and 6) the election date.

### **D. TERM OF ELECTED TRUSTEE OFFICE AND VACANCIES 4-1**

1. The term of office of each elected trustee shall be six (6) years.
2. 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.
3. 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.
4. 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.

### **E. RULES ON ELECTED TRUSTEE VACANCIES**

1. An active member trustee shall be ineligible to serve after becoming inactive or retiring.
2. 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.



3. A retirant member trustee shall be ineligible to serve after becoming active.
4. 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.
5. The Board of Trustees or its designee will notify the Board member after the second consecutive absence.
6. A vacancy will occur if the Board votes to declare a position vacant due to one of the following:
  - i) A trustee is absent for three (3) consecutive regular Board meetings and the absences are not excused by the Board;
  - ii) A trustee is ineligible due to a change in status under A.C.A. § 24-7-302(a)(2)(A-B) resulting in three (3) consecutive absences at regular Board meetings prior the expiration of the trustee's term; or
  - iii) 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 rules for special elections. 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, 2009

## **SCHEDULE FOR TRUSTEE ELECTIONS**

A.C.A. § 24-7-302

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### **REGULAR ELECTION SCHEDULE**

The regular election schedule will be as follows:

- ◆ ~~Deadline for nomination: January 15~~
- ◆ ~~Drawing for ballot position: February 1~~
- ◆ ~~Ballots mailed: March 15~~
- ◆ ~~Deadline for ballots to be returned: April 15~~
- ◆ ~~Results certified: April 20~~

If no candidate receives a majority of votes, a run-off will be held between the two candidates receiving the highest number of votes. The schedule for the run-off will be as follows:

- ◆ ~~Run-off ballots mailed: May 1~~
- ◆ ~~Deadline for ballots to be returned: June 1~~
- ◆ ~~Results certified: June 5~~

If one of the above fixed dates is on a weekend or holiday, the above procedures will occur on the next regular work day following such weekend or holiday.

If a candidate receives a majority of the votes cast on the first ballot, he/she will be considered qualified to assume office on July 1. If a run-off is necessary, the candidate receiving the majority of the votes cast will be considered qualified and will assume office on July 1.

### **SPECIAL ELECTION TO FILL UNEXPIRED TERMS FOR ELECTED TRUSTEES**

On the date that an elected trustee position is declared vacant by the Board, if more than two (2) years remain until the term expires, the Board will hold a special election in accordance with this regulation, provided, however, that if the Board determines there is inadequate time to hold a special election so as to allow the newly elected trustee to participate in at least one (1) year of regularly scheduled Board meetings, then no special election will be held, and the vacancy will remain until the next regular election.

~~The Board will notify the System's membership that a special election will be held as soon as administratively feasible upon declaring a vacancy and will announce the schedule for the special election, which will include the following:~~

- ~~1. The date the vacancy occurred;~~
- ~~2. The time period for circulating petitions for nominating signatures;~~
- ~~3. The deadline for filing petitions with the System;~~
- ~~4. The date the Board will verify the validity of petitions;~~
- ~~5. The date ballots will be sent to eligible voters;~~
- ~~6. The election date; and~~
- ~~7. The date results of the election will be announced.~~

### **~~CHALLENGE PROCEDURES~~**

~~A challenge of any ATRS trustee election shall be directed to the ATRS Executive Director within 10 calendar days of the certification of the results of the election in question. The Executive Director will issue a recommendation in writing within 10 calendar days. The Executive Director's recommendation may be appealed to the Board of Trustees within 10 additional days. The Board of Trustees will take action on the appeal within 10 days of its receipt. The challenger will pay expenses incurred by the ATRS System as a result of an election being challenged, unless the Board upholds the challenger's assertion.~~

### **~~TERMS FOR POSITIONS CREATED BY ACT 418 OF 1997~~**

~~The terms of Position No. 6 (Administrator), Position No. 7 (Nonlicensed), and Position No. 8 (Minority), shall commence on January 1, 1998, and shall expire June 30, 2003.~~

**Amended:** ~~April 26, 2007~~  
\_\_\_\_\_ February 11, 2008 \_\_\_\_\_

## REPORTING EMPLOYEE (MEMBER) CONTRIBUTIONS

A.C.A. § 24-7-411; A.C.A. § 24-7-406  
(SEE ALSO RULE NOS. 7-1 AND 7-4.)

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**DEFINITIONS** (Amended by Act 638 of 1995, Act 11 of 1999, and Act 146 of 2005)

1. ~~**Salary** means any remuneration paid an employee in a position or positions covered by the System and on which the employer withholds federal income tax. It includes remuneration received from all covered employers during a school fiscal year; however, compensation in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitations on compensation for "eligible employees" shall not be less than the amount allowed under the System in effect on July 1, 1993. For this purpose, an "eligible employee" is an individual who was a member of the System before the first plan year beginning after December 31, 1995.~~
2. ~~**Covered salary** means, effective July 1, 2003, employees' regular and federal salaries for the current fiscal year plus supplemental salary payments received for the previous fiscal year, plus adjustments agreed upon by both the employer and the Teacher Retirement System. For each member who first became a member before July 1, 1971, the covered salary for each year after June 30, 1969, is the first \$7,800.00 of the member's total annual salary for all covered employment (Salary Option 2) unless he/she has elected to make contributions to the System on full salary. For each member who first became a member after June 30, 1971, or has elected to make contributions on full salary, the covered salary is his or her full salary for all covered employment (Salary Option 1). If, however, a member making contributions only on the first \$7,800.00 of total annual salary (Salary Option 2) receives a refund of contributions and subsequently returns to covered service as a noncontributory member, he or she shall be considered on full salary for reporting purposes (Salary Option 1).~~
3. ~~**Covered employer** means each employer for whom a member renders service in a covered position.~~

**RULES** (Amended by Acts 267 and 465 of 2009 638 of 1995, Act 206 of 1997, and Act 11 of 1999)

1. After June 30, 1997, each employer will remit the member contributions by employer "pick up" from the salary earned y 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. ~~pay the member contributions for each salary earned by contributory members, and those contributions will then be treated as employer contributions in determining tax treatment under the provisions of the federal Internal Revenue Code and the Arkansas Income Tax Act. The contributions will not be included as gross income of the member until they are distributed or made available to the member. The employer will pay these member contributions from the same source of funds used in paying the salary to the member. 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. If member contributions are paid by the employer as provided under this subsection, they shall be treated for all purposes of the Teacher Retirement System in the same manner and to the same extent possible as member contributions made prior to the date the employer began payment of the member's contributions as described.~~

2. Each employer shall deduct the member contributions from the salary of each contributory member on each payroll from the date of ~~entrance into~~ enrollment into the System until retirement, and the employer shall remit the contributions to the System; ~~however, compensation in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for "eligible employees" shall not be less than the amount allowed by the System in effect on July 1, 1993. For this purpose, an "eligible employee" is an individual who was a member of the System before the first plan year beginning after December 31, 1995.~~
3. 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. ~~In order that each member of the Teacher Retirement System may receive credit for days of service, covered salary, and contributions on a timely basis, each employer shall report employee and employer contributions to the System on the following schedule:~~

#### ~~Monthly Contribution Reports~~

~~*Date Due:* Fifteenth (15<sup>th</sup>) calendar day of each month. To avoid the late report penalties (see Nos. 6 and 7 on page 7-4-3), reports must be received by the 15<sup>th</sup> day of the month or must be postmarked by the 14<sup>th</sup> day of the month due. If the 14<sup>th</sup> falls on Saturday, Sunday, or a holiday, the postmarked date is extended to the next working day.~~

#### ~~Quarterly Retirement Reports~~

~~Date Due: Fifteenth (15<sup>th</sup>) calendar day of each quarter. To avoid the late report penalties (see Nos. 6 and 7 page 7-4-3), reports must be received by the 15<sup>th</sup> day of the month or must be postmarked by the 14<sup>th</sup> day of the month due. If the 14<sup>th</sup> falls on Saturday, Sunday, or a holiday, the postmarked date is extended to the next working day.~~

- ~~4. Each of the above reports must be on forms or electronic media either furnished by the Teacher Retirement System or approved by the System.~~
4. Overpayments or underpayments of member contributions reported from the local level shall be handled in pursuant to the following manner by the ATRS office:
  - A. If an underpayment of member contributions of less than \$5.00 \$25.00 occurs, was reported from the local level, no attempt will be made to the If an overpayment of contributions of less than \$5.00 \$25.00 occurs, no refund of this amount will not be made issued to the member, except upon written request from unless requested by the member. The total amount reported by the employing authority shall be credited to contributions.
  - 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 July 1 of that fiscal year. Service credit will not be granted upon completion of contribution and applicable interest payments for that fiscal year 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.
- ~~6. Beginning July 1, 1998, should an employer fail at any time to report the salary of a member and remit the contributions to the System, the System shall have the right to collect from the employee and the employer the contributions due, if any, from each, together with interest beginning with the subsequent fiscal year; provided further that in no case shall a member be given credit for service rendered until any contributions and interest due from each are paid in full. Service credit will be granted upon completion of contribution and applicable interest payments for that fiscal year.~~
- 7 5 For persons who are retiring and who are employed in agencies or other institutions that use the state 26-week payroll, employers should report to Teacher Retirement the salary, contributions, and actual days worked through the current year payroll period. 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.

6. 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. 9-7.

**Amended:** August 11, 1998  
July 18, 2005  
February 11, 2008

## EMPLOYER CONTRIBUTIONS

A.C.A. § 19-5-106, A.C.A. § 24-7-401, A.C.A. § 24-7-1303  
(as amended by Act 1968 of 2005, and Acts 97 and 298 of 2007)  
(SEE ALSO RULE NOS. 7-1 AND 7-3.)

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### DEFINITIONS

1. **Salary** means the remuneration paid to an employee in a position covered by the Arkansas Teacher Retirement System and on which the employer withholds federal income tax.
2. **Participating employers** means local school districts, cooperative education services areas, vocational centers, the Department of Correction, open enrollment charter schools, all public postsecondary institutions, the educational components of certain state agencies and instrumentalities, or an educational nonprofit corporation approved by the Board of Trustees in accordance with rules and regulations established by the Board.
3. **Adjustments** include error corrections, payments for members who were omitted from the correct reporting period, and any adjustments agreed to by both the employer and the Teacher Retirement System.

### RULES FOR THE EMPLOYER CONTRIBUTION RATE

1. Effective July 1, 2003, the The employer contribution (matching) 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(c) and A.C.A. § 24-7-401(c).
2. The rate shall be set by the Board following consultation with its actuary. In determining such rate, the Board shall consider the financial objectives set forth in A.C.A. § 24-2-701 and A.C.A. § 24-7-401 and shall base the rates on the actuary's determination of the rate required to fund the plan in accordance with these financial objectives.
  - A. The employer contribution rates for the fiscal years ending June 30, 2008, and June 30, 2009, shall not exceed fourteen percent (14%).
  - B. If the costs of benefit commitments for service previously rendered are overfunded, the plan may deduct a level payment that, if deducted annually over a reasonable period of future years, will fully liquidate the overfunded portion of the costs.



- ~~3.2~~ The Arkansas Teacher Retirement System shall annually notify ~~the local school districts, the Department of Education, and other participating employers of the employer contribution rate established by the Board for the upcoming fiscal year.~~
- 4 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.
5. 4. The Department of Education shall pay from the Public School Fund the Teacher Retirement employer contributions for eligible employees of participating employers as required by the department's biennial appropriations act and in accordance with rules established by the Board. Beginning with the 1996-97 school year, special language in the Department of Education's biennial appropriations for grants and aids to local school districts requires that the appropriation for Teacher Retirement matching each fiscal year be used for employees of the Cooperative Education Services Areas, Vocational Centers, Arkansas Easter Seals, and the school operated by the Department of Correction.<sup>1</sup>

**RULES FOR REPORTING EMPLOYER CONTRIBUTIONS REMITTANCES AND REPORTS** (A.C.A. § 24-7-401, 411, and A.C.A. § 24-7-1303)

1. ~~The annual employer contributions to be paid each fiscal year by participating employers shall be the current ATRS employer contribution rate multiplied by the active employees' total salaries.~~ Remittances of employer and member contributions are due monthly.
2. ~~The employer contributions are to be remitted to ATRS in the manner, form, and frequency and shall be accompanied by supporting documentation as determined by the System. Timely payment of contributions shall be a condition of continued participation in the System.~~ Active member, T-DROP, and retiree reports are due at the end of each fiscal quarter.

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<sup>1</sup> Active employers as of 2006-2007 are: 1307 SW AR Educ. Coop., 1308 SE AR Educ. Coop., 1330 Western AR Educ. Coop., 1332 North Central Educ. Coop., 1336 Ozark Unlimited Resource Coop., 1337 NE AR Educ. Coop., 1338 Howard Dawson Educ. Coop., 1339 Arch Ford Coop., 1345 Wilbur D. Mills Educ. Serv. Coop., 1349 AR River Educ. Services Coop., 1350 Great Rivers Educ. Coop., 1351 NW AR Educ. Services Coop., 1353 DeQueen-Mena Educ. Coop., 1354 Crowley's Ridge Coop., 1355 South Central Services Coop., 1359 Conway Vocational Center, 1362 Jonesboro Vocational Center, 1363 Monticello Vocational Center, 1365 North Central Career Center, 1366 River Valley Vocational Center, 1370 Russellville Vocational Center, 1371 Metropolitan Vocational Center, 1372 Texarkana Vocational Center, 1373 Warren Vocational Center, 06864 Easter Seals, 1-328 AR Department of Corrections. Inactive employers as of 06-2007 are: 1358 Camden Vocational Center, 1360 Fayetteville Vocational Center, 1367 AR Educ. Service Center.

3. ~~In order to ensure that members of the Teacher Retirement System receive credited service in a timely manner, employers shall report employee and employer contributions to the System on the following schedule: 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.~~

#### ~~Monthly Contributions~~

~~*Date Due:* Fifteenth (15<sup>th</sup>) calendar day following the end of each month. To avoid late report penalties and interest penalties on late contributions (see Nos. 6 and 7 on page 7-4-3), reports must be received by the 15<sup>th</sup> day of the month or must be postmarked by the 14<sup>th</sup> day of the month due. If the 14<sup>th</sup> falls on Saturday, Sunday, or a holiday, the postmarked date is extended to the next working day.~~

#### ~~Quarterly Retirement Reports~~

~~*Date Due:* Fifteenth (15<sup>th</sup>) calendar day following the end of each quarter. To avoid the late report penalties (see Nos. 6 and 7 on page 7-4-3), reports must be received by the 15<sup>th</sup> day of the month or must be postmarked by the 14<sup>th</sup> day of the month due. If the 14<sup>th</sup> falls on Saturday, Sunday, or a holiday, the postmarked date is extended to the next working day.~~

4. ~~Each of the reports listed above must be on forms or electronic media either furnished by the Teacher Retirement System or approved by the System. An employer report or remittance by an employer shall not be delinquent if received by the System on the 15<sup>th</sup> day of the month in which it is due or postmarked by the 14<sup>th</sup> day of the month. If the 14<sup>th</sup> falls on Saturday, Sunday, or a holiday, the postmarked date is extended to the next business day.~~
5. ~~For Cooperative Education Services Areas, Vocational Centers, Arkansas Easter Seals, and the school operated by the Department of Correction (paid by the Department of Education from the Public School Fund), the Teacher Retirement System 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. A \$150.00 late report penalty will be assessed on any required employer reports not received by the date it is due.~~
6. ~~The monthly remittance of employer contributions shall be due in the ATRS office by the tenth (10<sup>th</sup>) calendar day following the end of each month. Under A.C.A. § 24-7-411, a \$150.00 late report penalty and a 6% interest penalty on late contributions will be assessed on reports and contributions not received by the 15<sup>th</sup> day of the month or postmarked by the 14<sup>th</sup> day of the~~

month due. If the 14th falls on Saturday, Sunday, or a holiday, the postmarked date is extended to the next working date. If an employer fails to remit member 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 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) The Board or its design 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, requiring payment of the penalties and/or interest would be unduly penal, burdensome, or manifestly unjust.

8. ~~Supplemental salary payment reports for previous years will be accompanied by the employer contributions (based upon the rate in effect the year payment was due). The Board designates the Executive Director to waive penalties and interest from an employer in an amount not to exceed \$1,000. 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 shall be submitted to the ATRS Board for consideration.~~

- ~~9. The Arkansas Teacher Retirement System shall return to participating employers overpaid matching amounts due to erroneous submission of payments or incorrect reporting of Salary Option 2 (first \$7,800.00) member salaries. If an overpayment of employer matching amount is less than \$25.00, the refund will not be issued to the employer unless requested in writing by the employer.~~

- ~~10. The Arkansas Teacher Retirement System shall not collect from participating employers an underpayment of employer contribution amount if less than \$25.00.~~

- ~~11. For members retiring who are employed by agencies or other institutions that use the state's 26-week payroll schedule, employers should adhere to the state's fiscal year payroll schedule for reporting the last salary payment of the state's fiscal year and for the termination date of employment.~~

## **RULES FOR REPORTING ACTIVE MEMBER EMPLOYER CONTRIBUTIONS**

1. The annual employer contributions to be paid each fiscal year by participating employers shall be the current ATRS employer contribution rate multiplied by the active employees' total salaries.
2. The employer contributions are to be remitted to ATRS the System in the manner, form, and frequency and shall be accompanied by supporting documentation as determined by the System. Timely payment of contributions shall be a condition of continued participation in the System.
3. Each of the reports listed above Remittance and other reports listed above must be on forms or electronic media either furnished by the Teacher Retirement System or approved by the System.
4. For Cooperative Education Services Areas, Vocational Centers, Arkansas Easter Seals, and the school operated by the Department of Correction (paid by the Department of Education from the Public School Fund), the Teacher Retirement System 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.
5. 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)
6. Supplemental salary payment reports for previous years will be accompanied by the employer contributions (based upon the rate in effect the year payment was due).
7. The Arkansas Teacher Retirement System shall return to participating employers overpaid matching amounts due to erroneous submission of payments or incorrect reporting of Salary Option 2 (first \$7,800.00) member salaries. If an overpayment of employer matching amount is less than \$25.00, the refund will not be issued to the employer unless requested in writing by the employer.
8. The Arkansas Teacher Retirement System shall not collect from participating employers an underpayment of employer contribution amount if less than \$25.00.
9. For members retiring who are employed by agencies or other institutions that use the state's 26-week payroll schedule, employers should adhere to the

state's fiscal year payroll schedule for reporting the last salary payment of the state's fiscal year and for the termination date of employment.

## **RULES FOR REPORTING T-DROP EMPLOYER CONTRIBUTIONS**

1. The T-DROP employer contributions shall be the employer contribution rate multiplied by the total T-DROP participant's salaries. (A.C.A. § 24-7-1303)
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.
- ~~1. The annual T-DROP employer contributions to be paid each fiscal year beginning September 1, 2003, by participating employers shall be the contribution rate as defined below multiplied by the total T-DROP member salaries (A.C.A. § 24-7-1303).~~
  - ~~A. For members whose effective date in T-DROP is before September 1, 2003, the employer contribution rate to the Arkansas Teacher Retirement System on behalf of all members in T-DROP shall be at the rate of:~~
    - ~~• One percent (1%) for the period from September 1, 2003, through June 30, 2005~~
    - ~~• Three percent (3%) for the period from July 1, 2005, through June 30, 2007~~
    - ~~• Six percent (6%) for the period from July 1, 2007, through June 30, 2009~~
    - ~~• Nine percent (9%) for the period from July 1, 2009, through June 30, 2011~~
    - ~~• Twelve Percent (12%) for the period from July 1, 2011, through June 30, 2013~~
    - ~~• After July 1, 2013, the percentage rate established by the entity having the authority to set the employer contribution rate for the System pursuant to A.C.A. § 24-7-401.~~
  - ~~B. For members whose effective date in T-DROP is on or after September 1, 2003, the employer contribution rate on behalf of members in T-DROP shall be the rate established by the entity having the authority to set the employer contribution rate for the System pursuant to A.C.A. § 24-7-401.~~
- ~~2. Until and on August 31, 2003, employer contributions on behalf of the members participating in the T-DROP may be retained by the school district.~~
- ~~3. Except for employer contributions to the Arkansas Teacher Retirement System beginning September 1, 2003, the school district shall not make~~

~~contributions to any tax-qualified retirement plan on behalf of any employee participating in the T-DROP.~~

### **RULES FOR REPORTING RETIRED MEMBERS CONTRIBUTIONS**

1. The retired member contribution rate shall be the employer contribution rate multiplied by the total retired member's salaries employed by the employer for that fiscal year.
2. Effective July 1, 2009, and 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

# ERROR CORRECTIONS AND COLLECTION OF OVERPAYMENTS

A.C.A. § 24-7-205, ~~Act 427 of 1973 and Act 1026 of 2005~~

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## DEFINITION

**Receivable**, as used in this section, means monies due the Arkansas Teacher Retirement System from a member, former member, contributor, former contributor, retirant, beneficiary, or alternate payee under a qualified domestic relations order as a result of an overpayment made to which the person is not entitled.

## RULES

## REGULATIONS

1. ~~Should any~~ If a change or error in the System's records results in either an overpayment or underpayment to a member or other 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 amounts. ~~any person's receiving from the System more or less than he or she would have been entitled to receive had the records been correct, the Board of Trustees or its designee(s) shall correct the error and, as far as practicable, shall adjust the benefit, annuity, or refund payable to the person, his or her beneficiary, or his or her estate, in such manner that the actuarial equivalent of the benefit to which the person was correctly entitled shall be paid.~~
2. If a member or other beneficiary, 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 of ~~Trustees~~ or its designee(s), may collect the amount due to the System using the following:
  - A. Withhold the amount due from any benefit or payment due the person, the person's beneficiary, or estate and use the withheld amounts to effect repayment until the total amount withheld equals all receivables owed by the person to the System; or
  - B. Collect the amount in any other manner provided by law.
- ~~3.~~ Prior to making an adjustment of benefits or pursuing any other collection action under this section Nos. 1 and 2 above, a notice shall be provided to the appropriate person who is the subject of the adjustment. The notice will state

the amount determined to be a receivable and the reasons underlying such determination. The notice may also suggest alternate methods for payment of the receivable.

i.A. If a benefit adjustment is proposed, the notice describing such adjustment will be provided to the person who will receive the adjustment ~~or other appropriate person~~. The notice will also describe the process for appealing the determination of the amount of the receivable and/or the proposed adjustment.

ii.B. If another collection action under this section is proposed, the notice will be provided to the appropriate person. The notice shall describe the process for appealing the determination of the ~~amount of the~~ receivable.

iii.C. Appeals will be made to the Executive Director, then to the Board.

**RULES** (As amended by Act 1026 of 2007 and 465 of 2009)

Ø1. The Board or its designee(s) may waive adjustment or repayment of an overpayment to a member or other beneficiary if:

i.A. The overpayment was not the result of the ~~retirant's~~ member's or the beneficiary's nondisclosure, fraud, misrepresentation, or other fault; and

ii.B. The Board's designee finds in his or her sole discretion that recovery of the overpayment could be a manifest injustice.

2. If the System discovers a member owes additional contributions or other amounts 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 find 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 in justice 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.

- ~~E.4.~~ If required, A a receivable under this section that is found by the Board or its designee(s) to be uncollectible or for which adjustment or payment has been waived pursuant to No. 2 above 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

## **RETIREMENT/BENEFITS DEFINITIONS**

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This section defines words, phrases, and terms used in all retirement rules and regulations under ATRS Rules & Regulations, Chapters 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. § 24-7-201 *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. **Board** means the Arkansas Teacher Retirement System (ATRS) Board of Trustees.
3. **Deferred member** means an inactive member who is eligible to receive retirement benefits under A.C.A. § 24-7-707.
4. **DROP** means the deferred retirement option plan under ATRS or a reciprocal system.
5. **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.
6. **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.
7. **Person** for purposes of Rule 9-6 means an individual, corporation, partnership or other legal entity.
8. **System** means the Arkansas Teacher Retirement System.
9. **Participating employer** means an employer who participates in the ATRS whose employees are eligible for membership under A.C.A. § 24-7-501, A.C.A. § 24-7-202, or other applicable law.
10. **Residue beneficiary** means a person(s) nominated by the member to receive the residue, if any, under A.C.A. § 24-7-709.
11. **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.

12. **Retiree** means a retired member who is receiving an annuity from the System.
13. **Retires** means that a member ceases to be active and is eligible to receive an annuity from the System.
14. **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.
15. **T-DROP** means the Teacher Deferred Retirement Option Plan under A.C.A. § 24-7-1301 *et. seq.*
16. **T-DROP plan deposits** means the deposits made to each T-DROP participant's account under A.C.A. § 24-7-1306.

Adopted:

## DISABILITY RETIREMENT

A.C.A. § 24-7-704, Act 487 of 2007

(See ATRS Rule No.10-2 for rules applicable to age and service retirees.)

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### DEFINITIONS

1. **Active member** means any member rendering service to an employer that is covered by the System.
2. **Actual service** means service rendered in a position covered by the System and does not include purchased, free, or reciprocal service.
3. **Board** means the Arkansas Teacher Retirement System (ATRS) Board of Trustees.
- ~~4. **Full-time employment** for a disability retiree is working for a covered employer at least 480 hours in a fiscal year.~~
- ~~45. **Medical Committee** is a committee of three physicians appointed by the Board under A.C.A. § 24-7-303 for the purpose of evaluating disability applications.~~
- ~~6. **Part-time employment** for a disability retiree is working for a covered employer less than 480 hours in a fiscal year.~~
5. **Reciprocal service** means credited service rendered under a reciprocal system as defined by A.C.A. § 24-2-401.
6. **Retiree** means a former member receiving an ATRS annuity.
7. **System** means the Arkansas Teacher Retirement System.

### RULES (As amended by Act 487 of 2007 and Act 743 of 2009)

#### I. ELIGIBILITY AND REVIEW OF DISABILITY RETIREMENT APPLICATIONS

- ~~1. A member who becomes totally and permanently physically or mentally incapacitated for the performance of job duties as a result of personal injury or disease may be retired by the Board.~~
- ~~2. An active member must terminate employment to become eligible for disability retirement benefits.~~

- ~~A. Once the System receives a completed disability application from an active member who has five (5) or more years of actual and reciprocal service, the disability application will be evaluated by the System's Medical Committee.~~
1. 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 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.
  2. 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(a)(1) may be retired by the Board.
- ~~B. The member must have been an active member of the System or a reciprocal system at the onset of the disability. Active membership continues beyond the fiscal year in which actual service is rendered provided the employing institution certifies continued employment. Leave of absence with pay, upon which the member is reported as an active member, also continues active membership. Disability protection continues for deferred members, provided the applicant's physician presents medical information to attest that the onset of the disability occurred while last employed in a position covered by the System.~~
3. Disability benefits shall be granted upon affirmative vote of the Board after a medical examination recommendation is made by or under the direction of the System's Medical Committee, and the Medical Committee reports by majority opinion in writing to the Board that the member is:
    - A. Physically or mentally incapacitated;
    - B. The member is Unable to perform his or her current work duties;
    - C. That the The incapacity will most likely be permanent; and
    - D. That the member should be retired.
- ~~4D. If approved by the Board, Ddisability retirement benefits shall become effective~~ commence the first day of the calendar month following the date the member is granted disability by the Board under A.C.A. § 24-7-704. 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 and shall only be included the days of service credit if it was for paid sick leave from the covered employer. ;or

~~A. For an active member, his/her termination of active membership.~~

~~Termination of active membership for disability benefits shall be the last date of employment.~~

~~B. For a deferred member, no earlier than six months prior to the date written application is filed with the System; or~~

~~C. The date of application for age and service retirement benefits may be used as the date of application for disability benefits; or~~

~~4D5. For a reciprocal member, see Rule No. 6-2 (Reciprocity, No. 2, Disability, on page 6-2-3).~~

6F. For applicants who are eligible and approved by the Board, retirement benefits shall be paid in arrears back to the effective date of benefits. Disability retirement shall be effective the first day of the calendar month following:

A. The member's date of termination of active membership, which is the date the member last rendered service to a covered employer.

~~75. If the application for disability retirement benefits is denied, and the member elected to apply for voluntary retirement, the effective date of application for disability retirement benefits may will be determined used as the date of application for age and service retirement benefits, if applicable under voluntary retirement provisions.~~

8.6 If an active member dies after applying for disability retirement, the following will apply:

A. 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.

B. 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.

97. The annuity formula for computing disability retirement benefits is the same as for age and service retirement.

~~98.~~ A disability retirant shall not be considered terminated from employment for retirement purposes if the disability retirant returns to a position covered by the System within thirty (30) days of the effective date of retirement. A disability retirant failing to meet the termination requirements shall forfeit retirement benefits until the requirements are met.

~~910.~~ The Board or its designee may require a disability retirant 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.

~~B~~ A. If a disability retirant refuses to submit to the medical examination, the disability annuity may be suspended by the Board until the withdrawal of his/her refusal.

~~C~~ B. If a disability retirant's refusal to submit to the medical examination continues for one (1) year, the Board may revoke the disability benefit.

~~D~~ C. If after a retirant'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 retirants who are disapproved for further disability annuities shall be removed from the System's retirant payroll the earlier of six months following the review date or the first of the month following return to full-time employment.

~~40.11.~~ Reciprocal Service - See Rule No. 6-2 (Reciprocity, No. 2, Disability on page 6-2-3).

~~4112.~~ If a member is approved for disability retirement but continues to work, he/she must terminate employment by the proposed disability retirement effective date ~~end of the fiscal year in which disability is approved~~. If covered employment is not terminated after receiving notice of the proposed effective date ~~at that time~~, a new disability application must be submitted, and the Medical Committee's evaluation will be based on the new application. Disability retirement will be cancelled, the member will be considered active, and is eligible to reapply for disability retirement.

~~4213.~~ 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. ~~The effective date of disability benefits will be determined by the filing date of the original disability application.~~

## **II. DISABILITY RETIRANTS RETURN TO EMPLOYMENT**

### **RULES**

#### **A. 1. Disability Retirant Employed Full Time Prior to Attaining Age 60 and ~~Service Retirement Eligibility~~**

~~4A.~~ When a disability retiree returns to a position covered by the System as a full-time employee prior to attaining sixty (60) years of age, his or her disability retirement shall terminate.

~~2B.~~ It is the responsibility of the employee and employer to report a disability retirant's return to employment to the System immediately upon employment by using forms approved by and filed with the System.

~~3C.~~ When a disability retirant under age sixty (60) years of age returns to full-time 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.

~~4D.~~ 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 Part-Time**

~~1i.~~ When a disability retirant returns to a position covered by the System as a part-time employee prior to attaining sixty (60) years of age, his or her disability B retirement will continue; however, his/her disability retirement will be subject to the same earnings limitation as age and service retirees under A.C.A. § 24-7-708.

~~2ii.~~ A disability retiree shall not be permitted to purchase or establish service credit when employed in a part-time position.

~~3iii.~~ A disability retiree shall not be given service credit during the time in which he/she receives a disability annuity (Act 541 of 1977).

#### **2. Disability Retirant Employed Full Time After Attaining Age 60 and ~~Service Eligibility~~**

~~4A.~~ When a disability retirant returns to a position covered by the System as a full-time member 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 and will be subject to the same earnings limitation applicable to age and service retirees.

~~2. The disability retirement benefit will not be suspended unless reaching the earnings limit under A.C.A. § 24-7-708.~~

~~3The earnings limitation in A.C.A. § 24-7-708 shall apply.~~

**Amended:** June 15, 2004  
July 18, 2005  
June 19, 2007

## **RESCINDING RETIREMENT**

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

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~~A retired member of the System may rescind his/her decision to retire and may become an active member upon reemployment by a covered employer subject to the following rules.~~

### **RULES**

- ~~1. A retiree rescinding retirement shall file a written rescission on an approved form with the System.~~
- ~~2. A. For any school year in which a retirant takes a position in a public school, the rescission form shall be filed with the System office on or before June 30 of the previous year.~~  
  
~~B. Should a retiree fail to meet the deadline set out in No. 2A, the school district may file an appeal for a waiver of the required filing date.~~
- ~~3. The rescission shall become effective the month following the date the written rescission is received by the System.~~
- ~~4. Any retirement annuity being paid to the retiree by the System shall terminate upon the effective date of the rescission.~~
- ~~5. Upon rescission, the former retiree shall be considered an active member and shall accrue additional service subject to the following conditions:~~
  - ~~A. If reemployment terminates before the end of the fiscal year in which the rescinded member has accumulated at least three (3) years of actual service, he or she shall become retired, and the payment of annuity shall resume at the benefit level prior to rescission upon termination. The former retirant shall be entitled to receive a refund of any member contributions made during the reemployment period, and no service credit will accrue.~~
  - ~~B. If reemployment terminates after the member has accumulated at least three (3) years of actual service, upon termination of reemployment, the rescinded member shall become a retiree and receive an annuity calculated according to the benefit formula based upon the salary and service credit earned during rescission.~~

- ~~C. All rescinding members who reenter the System will be enrolled in the plan that he or she was in prior to retirement. All rescinding noncontributory members who reenter the System after June 30, 2007, may elect to make member contributions.~~
- ~~6. If a retiree has previously rescinded his/her decision to retire and has become an active member by reemployment, but after becoming a retiree and before rescinding, had been employed in a position covered by the System, as an active member, he/she shall be eligible to purchase such previous service by:~~
- ~~A. Fulfilling the requirements set out in A.C.A. § 24-7-717(e)(2), which is No. 5B of this rule;~~
- ~~B. Returning to the System all retirement benefits received during such employment, together with regular interest, from the date of receipt of such payments to the date of repayment in full; and~~
- ~~C. Paying to the System both member and employer contributions for the previous service rendered after becoming a retiree but before rescinding, plus interest, from the date of reemployment to the date of payment in full.~~
- ~~7. A. An early retiree under A.C.A. § 24-7-702 may rescind the decision to retire and become an active member upon reemployment for the purpose of participating in T-DROP under the following conditions:~~
- ~~i. Retirement rescission form must be filed with the System;~~
- ~~ii. The rescission shall become effective the month following the date the written rescission is received by the Board;~~
- ~~iii. Any annuity benefit formerly due from the System shall be terminated upon the effective date of the rescission; and~~
- ~~iv. Reemployment must be for at least three (3) years.~~
- ~~B. When the early retiree who has rescinded accumulates the minimum number of years required for participation in T-DROP, the member will enter T-DROP at that time.~~
- ~~C. The early retiree's T-DROP account will be based upon his/her voucher amount at the time of his eligibility to participate in the T-DROP.~~
- ~~D. If the early retiree who has rescinded terminates covered employment before the completion of three (3) years of actual service, the following will apply:~~

- ~~i. The retirement annuity will resume at the rate effective at the time of rescission (including any cost of living adjustments and legislative adjustments); and~~
  - ~~ii. Member contributions remitted while rescinded will be refunded; and~~
  - ~~iii. Any funds accumulated in the T-DROP account will be forfeited (Act 481 of 2001).~~
- ~~E. When the early retiree who has rescinded completes three (3) full years of service, he/she may retire and receive benefits accrued from both accounts (T-DROP and retirement) as provided under normal T-DROP provisions.~~

**Amended:** 2001  
June 17, 2003  
June 15, 2004  
April 26, 2007

## **SURVIVOR BENEFITS**

A.C.A. §§ 24-7-710 and 24-7-711 as amended by Act 97 of 2007

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### **DEFINITIONS**

1. ~~**Refund beneficiary** means a person(s) designated by the member in writing on file with ATRS to receive the member's accumulated contributions standing to his or her credit in the member's deposit account at the time of the member's death, together with regular interest thereon from the time of death to the time of payment.~~
2. ~~**Residue beneficiary** means a person(s) designated by the member in writing on file with ATRS to receive the residue amount, if any, at the termination of the survivor benefit annuities payable on account of the member's death under A.C.A. § 24-7-711.~~
3. ~~**Residue** means the amount of the member's accumulated contributions, including regular interest, standing to the member's credit in the members' deposit account at the time of his/her death.~~

### **RULES AND REGULATIONS**

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 in employer 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. Survivors are required to produce sufficient proof of eligibility under these provisions prior to receiving benefit payments.

#### **1. SPOUSE**

- A. The member's surviving spouse, who was married to the member for at least the two (2) years immediately prior to the member's death, shall receive a surviving spouse annuity benefit.
- B. If at the member's death there are no dependent children eligible to receive a dependent child annuity under A.C.A. § 24-7-710, 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 surviving spouse annuity shall commence when the spouse reaches age 62 and is payable until the spouse's remarries or dies. The spouse annuity shall begin under the following schedule:~~

~~D. However, if the member, prior to his or her death, had:-~~

- ~~i. Satisfied the age and service requirements provided for in A.C.A. § 24-7-701 or had acquired twenty (20) years of credited service before his/her death, the spouse annuity shall be payable immediately and be payable for life; or 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. Acquired fifteen (15) years of credited service but had not attained age sixty (60) before his/her death, then the surviving spouse annuity shall commence at age 50 and be payable until the spouse remarries or dies. 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.~~

#### ~~ED.~~ Amount of Surviving Spouse Annuity

~~The surviving spouse annuity shall be calculated as if the member retired on the date of his /her death under A.C.A. § 24-7-705 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.~~

~~However, if the amount payable to the surviving spouse under Option A is less than the amount payable to dependent children as provided in this policy, the greater of the two annuities shall be paid. If a member has three (3) or more dependent children eligible under this section, then the aggregate annuity payable shall not exceed 60% of the member's highest salary and shall be divided equally among the surviving, dependent children.~~

~~F. If a surviving spouse does not otherwise qualify for a spouse annuity but has in his/her custody any of the deceased member's dependent children receiving a dependent child annuity under No. 2 below, a spouse annuity shall be paid to the spouse in the same amount payable to the dependent children under No. 2 below. The annuity paid to the custodial spouse will begin immediately and continue until the entire dependent child annuities terminate or the spouse no longer has custody of the dependent children.~~

~~—To be considered to have “custody” of a dependent child, the spouse must be the primary custodian of the dependent child(ran), having at least 50% custody.~~

## **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 calculated according to the following: 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.~~

~~A. i. If the member had only contributory credited service, the greater of ten percent (10%) of the member's salary for the fiscal year at the time of death or fifty dollars (\$50.00) monthly, plus the benefits applicable under A.C.A. § ~~24-7-713.~~~~

~~ii. If the member had only noncontributory credited service, the greater of six percent (6%) of the member's salary for the fiscal year at the time of death or thirty-one dollars (\$31.00) monthly, plus the benefits applicable under A.C.A. § 24-7-713; or~~

- ~~iii. If the member had a mixture of credited service, the amount payable shall be prorated between the member's contributory and noncontributory credited service and his/her total credited service monthly, plus the benefits applicable under A.C.A. § 24-7-713.~~
- B. However, if a member has three (3) or more dependent children, eligible under this section, then the aggregate annuity payable shall not exceed 60% of the member's highest salary year and shall be divided equally among the surviving dependent children. each dependent child shall receive an annuity in the amount of:
  - ~~i. If the member had only contributory credited service, the greater of twenty-five percent (25%) of the member's salary for the fiscal year at the time of his/her death or one hundred twenty-five dollars (\$125) monthly, plus the benefits applicable under A.C.A. § 24-7-713.~~
  - ~~ii. If the member had only noncontributory credited service, the greater of sixteen (16%) percent of the member's salary for the fiscal year at the time of his/her death or \$79.00 monthly, plus the benefits applicable under A.C.A. § 24-7-713.~~
  - ~~iii. If the member had a mixture of credited service, the amount payable shall be prorated between the contributory credited service and the noncontributory service and his/her total credited service, plus the benefits applicable under A.C.A. § 24-7-713.~~
- C. A member's "child" of a member eligible to receive a child annuity is a "child" under any of the following: ~~is defined in A.C.A. § 24-7-202(9) as:~~
  - 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 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 or becomes legally married.
- F. A ~~deceased member's~~ 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 or post-secondary school (vocational technical school) or 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 or 8 trimester hours in college or four (4) hours per day in a secondary or postsecondary school.
  - 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, ~~not competent 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 under A.C.A. § 24-7-710(c) will terminate.
  - iii. Certification of attendance in an accredited school may be ~~made~~ 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. ~~When a child ceases to be a dependent child, his/her annuity shall terminate, and there shall be a recalculation of the annuities due to the remaining dependent children.~~
- 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**

7CA. 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.

8A.B. 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.

8B.C. 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.

9.D. 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.

10.E. 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.

11. 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.

12.F/ 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.

13-G. 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

### **~~3. DEPENDENT PARENT~~**

~~If at the time of an active member's death, there is no surviving spouse or dependent child eligible to receive a survivor annuity, each dependent parent shall receive a dependent parent annuity in the amount payable to dependent children under No. 2 of this policy.~~

~~A. A parent is dependent upon the member if he/she is dependent for at least fifty percent (50%) of his or her financial support from the member.~~

~~B. A parent is considered 50% dependent for financial support on the deceased member if the parent's annual income was not greater than the amount contributed by the deceased member for his or her support.~~

### **~~4. COMMENCEMENT OF ANNUITIES~~**

~~Annuities payable under the provisions of this rule shall commence the calendar month following the date the survivor becomes eligible to receive the survivor annuity under A.C.A. § 24-7-710.~~

### **~~5. REPAYMENT OF AMOUNTS DUE FROM DECEASED MEMBER~~**

~~In the event a deceased member received benefits from the System that he/she was not due and had failed to repay the amount prior to his/her death, the amount owed to the System shall be withheld from the survivor annuities payable until the amount owed to the System is repaid in full.~~

### **~~6. DISPOSITION OF RESIDUE AFTER SURVIVOR ANNUITIES TERMINATE [(A.C.A. § 24-7-710(e))]~~**

~~A. If upon the member's death, no survivor annuity becomes payable under A.C.A. § 24-7-710, then the residue amount, if any, shall be paid to according to No.7 of this policy.~~

~~B. If a survivor annuity is payable under A.C.A. § 24-7-710, but the survivor annuities terminate before an amount equal to the residue amount has been paid to the survivor annuitants, the remaining residue, if any, shall be paid to the member's designated residue beneficiaries.~~

- ~~C. After June 30, 2006, if no designated residue beneficiaries survive an active member at his/her death, the residue shall be payable to the member's estate.~~
- ~~D. If the designated residue beneficiary survives both the member and the survivor benefit recipient but dies prior to receiving the residue, the residue shall be payable to the last eligible survivor annuitant's estate.~~

## ~~7. DISPOSITION OF RESIDUE CONTRIBUTIONS~~

- ~~A. In the event a member dies and no survivor annuity becomes payable by the System upon the member's death, the residue, if any, shall be paid to the member's designated residue beneficiaries.~~
- ~~B. If no designated residue beneficiaries survive the member, the residue remaining, if any, shall be paid to the member's estate.~~
- ~~C. 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.~~

## ~~8. SURVIVOR BENEFITS UPON DEATH OF DISABILITY RETIREMENT APPLICANT~~

~~If an active member dies after applying for disability retirement, the following rules will apply:~~

- ~~A. 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.~~
- ~~B. 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.~~

## ~~9. MEMBER'S SALARY USED IN CALCULATING SURVIVOR ANNUITIES~~

~~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.~~

**~~10. INCLUSION OF PAYMENTS AFTER DEATH AS SALARY AND DAYS OF SERVICE~~**

~~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.~~

**~~11. CONTINUATION OF ACTIVE MEMBERSHIP STATUS~~**

~~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.~~

**~~12. DEATH BENEFITS PAYABLE BY MORE THAN ONE RECIPROCAL SYSTEM~~**

~~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.~~

**~~13. ACT 793 TRANSFERS~~**

~~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