

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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Little Rock, Arkansas 72201-1094

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Teacher Retirement System

Department N/A

Contact Laura Gilson E-mail laurag@artsr.gov Phone 501-682-1266

Statutory Authority for Promulgating Rules 24-7-305 (b)(1)

Rule Title: Rule 13-1 Administrative Adjudications: Staff Determinations and Appeals

Intended Effective Date

(Check One)

Date

☐ Emergency (ACA 25-15-204)

Legal Notice Published

9/28/2017

☒ 10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment

10/27/2017

☐ Other _____
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council

12/12/2017

Adopted by State Agency

02/05/2018

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Laura Gilson

laurag@artsr.gov

02/06/2018

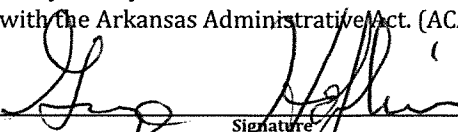
Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)



Signature

501-682-1820

georgeh@artsr.gov

Phone Number

E-mail Address

Executive Director

Title

February 6, 2018

Date

RULE 13-1

ADMINISTRATION ADJUDICATIONS: STAFF DETERMINATIONS AND APPEALS

A.C.A. §§ 25-15-201 to 219

I. Scope and Purpose

A. The purpose of this rule is to govern practice and procedure before ATRS and the Board of Trustees ("Board") involving any issue or claim ("claim(s)") arising as a result of any administrative decision or staff determination of ATRS relating to any retirement plan or program administered by ATRS. ATRS staff is responsible for administering ATRS members' accounts. Sometimes, the staff will make a determination based on ATRS rules and the rule of law that may be adverse to a member's claim. This rule outlines the procedure for a member to appeal a decision of ATRS.

B. This rule applies to any claim of a member. For purposes of this rule, "member" includes any member of ATRS as defined in A.C.A. § 24-7-702, as well as any beneficiary of a member; any retiree of ATRS; any guardian, administrator, or executor of a member, retiree, or beneficiary; or any public school (all such categories of persons shall be referred to within this rule as the "member").

C. This rule should be read in conjunction with the Arkansas Administrative Procedures Act. See A.C.A. §§ 25-15-201 -219 (the "APA"). To the extent any term or provision of this rule conflicts with any term or provision of the APA, the terms and provisions of the APA shall supersede this rule and control. This rule does not apply to claims or causes of action that ATRS or the Board may have against a member or any other person or entity, regardless of the origin or nature of the claim.

D. The Board and the ATRS Executive Director have the power to extend any deadline applicable to a member's appeal upon a showing of good cause, except when a Hearing Officer has been assigned, in which case such power shall rest with the Hearing Officer until the completion of the hearing.

E. When compliance with this Rule is based on "delivery", delivery is the earlier of either the date of the postmark, if posted with the United States Postal Service, or the date of actual delivery by one of the following methods:

- i. Hand delivery;
- ii. Electronic transmission; or
- iii. Delivery service other than USPS.

II. Informal Resolution Encouraged

Claims by a member are usually settled by mutual agreement through correspondence or informal conference between the member and the staff of ATRS. The staff and the member are strongly encouraged to engage in a good faith attempt to mutually resolve claims based upon proper application of the laws, statutes, and rules which govern the operation and administration of ATRS plans and programs to the specific facts of the member's claim.

III. Staff Determinations

A. If the staff makes a determination that is adverse to a member's claim, ATRS shall issue a Staff Determination Letter to the member. The letter shall detail the reasons for the decision. The member may disagree with the staff determination based upon a factual dispute or a dispute regarding the application of the rules and law. All reasonable efforts will be made to informally resolve the issue with the member. For claims that are not resolved informally, a member may appeal the staff determination to the Executive Director.

B. The decision stated in the Staff Determination Letter issued in accordance with this rule will become a final administrative decision and final agency action on the thirty-first (31st) day following the date of the Staff Determination Letter unless the member requests a timely Executive Director review.

IV. Executive Director Review

A. The member may request a review of the staff determination by the Executive Director no later than close of business thirty (30) calendar days after the date of the Staff Determination Letter. If the last day to file the request falls on an official state holiday or weekend, then the request must be delivered to the Executive Director no later than close of business on the next business day. The Executive Director will promptly acknowledge the member's request for review.

B. The member shall not be required to resubmit any documents or information with the written request for Executive Director review. If the member believes that the Executive Director should review any relevant documents or information not previously submitted to ATRS, the member may submit such information to the Executive Director. Any additional information must be delivered to the Executive Director within thirty-five (35) calendar days of the date of Executive Director's acknowledgment letter.

C. The Executive Director will conduct an independent review of the facts and the law, taking into consideration the staff determination as well as any relevant information provided by the member. After the review period, which may vary in

length according to the facts of the member's claim, the Executive Director will issue an Executive Director Review Determination Letter to the member on the claim.

D. The Executive Director may affirm, reverse, or modify the staff determination at any time prior to the final determination of the Board. The Executive Director shall provide to the member the applicable statutes and rules used in reaching the decision and a summary of the factual basis and legal conclusions for the Executive Director's decision. Unless the member initiates a timely appeal of the Executive Director's decision in accordance with this rule, the decision of the Executive Director will become a final administrative decision and final agency action on the 31st day following the date of the Executive Director Review Determination Letter.

V. Appeals to the Board

A. Any decision of the Executive Director regarding a staff determination may be appealed to the Board. In order to initiate an appeal, the member must deliver to the address below a signed written Notice of Appeal to the Board within thirty (30) calendar days of the date of the Executive Director Review Determination Letter. The Notice of Appeal may be in the form of a letter addressed to:

**ATRS Board of Trustees
Member Appeals
ATTN: Legal Department
1400 West Third Street
Little Rock, Arkansas 72201**

B. All appeals from an Executive Director decision to the Board will be assigned to a Hearing Officer, who will conduct an administrative hearing, recommend factual and legal determinations, and prepare a proposed order to the Board that includes findings of fact and conclusions of law. The Executive Director or his designee shall appoint the Hearing Officer from a list of qualified individuals approved by the Executive Director.

C. Following appointment, the Hearing Officer shall issue a written scheduling order to the member, the Executive Director of ATRS, and the legal counsel of ATRS. The scheduling order shall contain all information required under the Arkansas Administrative Procedures Act. (See A.C.A. § 25-15-208.) The Hearing Officer, at his or her discretion, may include in the scheduling order reasonable deadlines for the submission and exchange of exhibits, witness lists, and related materials prior to the hearing, including but not limited to, any requested proposed findings of fact and conclusions of law. Unless otherwise ordered, hearings shall be held at the offices of ATRS, 1400 West Third Street, Little Rock, Arkansas 72201.

D. The Hearing Officer may continue any scheduled matter at his or her discretion for good cause shown by any party or counsel of record.

VI. Filing of Documents

A. Following the appointment of a Hearing Officer, all correspondence, documents, requests, submissions, or filings of any type relating to an appeal shall be mailed or hand delivered to:

**Arkansas Teacher Retirement System
Legal Department
1400 West Third Street
Little Rock, Arkansas 72201**

B. Any party submitting or filing a document relating to an appeal shall simultaneously deliver a copy of the filing or document to the opposing party (or opposing counsel, if applicable). It shall be the responsibility of ATRS to ensure: (a) that copies of all correspondence, documents, requests, submissions, and filings relating to an appeal are provided in a timely manner to the Hearing Officer; and (b) that a complete record of each appellate proceeding before a Hearing Officer and the Board is prepared and maintained in a single, centralized location.

VII. Hearings

A. The hearing is an administrative hearing before the Hearing Officer, and is not a hearing before the Board. Hearings will be conducted according to this rule and the corresponding procedural provisions of the Arkansas Administrative Procedures Act (See A.C.A. § 25-15-213). The member shall at all times have the right to counsel, provided that such counsel: (a) is duly licensed to practice law in the State of Arkansas; or (b) has been granted permission to appear *pro hac vice* by the Hearing Officer. All hearings shall be conducted in an orderly manner. The Hearing Officer shall have the authority to maintain the decorum of the hearing and may clear the hearing room of witnesses not under examination.

B. If the member fails to appear at the hearing, the member waives his or her right to present evidence and argument to the Hearing Officer, and the Hearing Officer may proceed with the hearing and prepare a proposed order to the Board based on the evidence presented.

C. The Hearing Officer shall have the authority to administer oaths and affirmations. Each party shall be entitled to examine and cross-examine witnesses, present evidence, make arguments, and generally participate in the conduct of the proceeding. The Hearing Officer may question a witness during any portion of the direct or cross-examination of such witness. All testimony to be considered by the Hearing Officer, except matters officially noticed or entered by stipulation, shall be sworn testimony. Before giving testimony, each person shall swear or affirm that the

testimony about to be given shall be the truth, the whole truth and nothing but the truth.

D. The hearing shall be informal and formal rules of evidence shall not apply. In conducting a hearing, the Hearing Officer shall not be bound by the formal rules of evidence, and no informality in any proceedings or in the manner of taking of testimony shall invalidate any order or decision of the Board. The Hearing Officer may admit into the record any evidence that in the judgment of the Hearing Officer:

- i. Has a reasonable degree of probative value and trustworthiness; or
- ii. Is of a type or nature commonly relied upon by reasonably prudent people in the conduct of their affairs. The Hearing Officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious. Objections to evidentiary offers may be made and shall be noted of record.
- iii. Following the close of evidentiary submissions and witness testimony, the Hearing Officer may in his or her discretion allow summations and closing arguments by the parties.

E. ATRS shall arrange for a court reporter to attend and record all hearings. Documents received into evidence by the Hearing Officer shall be marked and filed as part of the record. ATRS shall be responsible for payment of the cost of the preparation of the transcript. Upon receipt of the transcript of the hearing, ATRS shall promptly forward a copy of the transcript to the Hearing Officer and the member (or counsel for the member, if applicable).

VIII. Post-hearing Briefs

- A. Upon the completion of the hearing, the Hearing Officer may allow the parties to submit post-hearing briefs to be included as part of the record on appeal. The decision whether to allow the submission of post-hearing briefs is committed to the sole discretion of the Hearing Officer. A decision by the Hearing Officer to not allow post-hearing briefs shall have no effect on the validity of any order or decision issued by the Board.
- B. If the Hearing Officer grants the member or ATRS an opportunity to submit a post-hearing brief, the Hearing Officer shall provide the opposing party an opportunity to submit a response. The Hearing Officer shall have discretion to set reasonable deadlines for the parties to submit post-hearing briefs and responses, provided that the parties shall be allowed a minimum of fourteen (14) calendar days from the date of receipt of the transcript of the hearing before any initial post-hearing brief shall be due for filing.

IX. Proposed Orders

Once the Hearing Officer receives all evidence, arguments, and post-hearing briefs (if any), the record before the Hearing Officer shall be officially closed. Once the record is closed and after considering all of the evidence, the Hearing Officer shall, as soon as practical, prepare a proposed order to be delivered to the Board of Trustees. The proposed order shall include findings of fact based exclusively on the evidence and testimony in the record of the hearing, conclusions of law, and a recommendation to the Board of Trustees. The Hearing Officer shall provide the proposed order to the Board at ATRS via facsimile and United States mail at the address listed in Section VI of this rule. Upon receipt of the proposed order, ATRS shall mail a copy of the proposed order to the member (and his or her counsel, if applicable) via Certified, First Class, United States mail, with a copy to the Executive Director.

X. Written Objections to Proposed Order

The member shall have the right to file a written statement of objections outlining any objections, exceptions, and/or arguments that the member desires the Board to consider in its evaluation of the Hearing Officer's proposed order. Any statement of objections by the member must be delivered to ATRS within twenty-one (21) calendar days of receipt of the Hearing Officer's proposed order. The member may not introduce additional evidence or testimony in the statement of objections. Counsel for ATRS may prepare a written response to any statement of objections filed by the member. A copy of any response by ATRS shall be provided to the member and the Board prior to the Board meeting at which the Hearing Officer's proposed order on the member's appeal is scheduled to be considered by the Board.

XI. Board Consideration of Proposed Order

A. The Board will make a final determination on the Hearing Officer's proposed order. The Board's consideration of the Hearing Officer's proposed order will be scheduled within a reasonable time to be heard, at a regular Board meeting after the issuance of the proposed order. The Board may call an emergency meeting to consider the Hearing Officer's proposed order if the situation warrants. ATRS shall notify the member or the member's counsel in writing of the date, time, and location of the Board Meeting.

B. Before rendering a decision on the Hearing Officer's proposed order, the Board may request that the member (and his or her attorney, if applicable) make a brief statement to the Board concerning the facts and any arguments the member wishes to present and respond to any questions from the Board. The Board's consideration of the matter will not require the Board to conduct another hearing, and will be based on the hearing previously conducted before the Hearing Officer. The Chairman of

the Board will have final authority to set the amount of time any party may have to make a statement to the Board.

C. Failure of the member to appear at the meeting of the Board without prior notification will result in the member waiving his or her right to be heard by the Board. The member may petition the Board for another opportunity to address the Board, and, if the Board determines that the member's absence was for good cause, it may grant the petition.

D. After consideration by the Board of the Hearing Officer's proposed order, the Board has the final authority to accept or reject all or part of the Hearing Officer's proposed order. The Board may:

- i. Accept the Proposed Order;
- ii. Reject the proposed order; or
- iii. Accept the Proposed Order as modified by the Board.

E. If the Board elects to reject the Proposed Order or accept the Proposed Order as modified, the Board may:

- i. Make its own Findings of Fact and Conclusions of Law and issue its own Order based upon those findings and conclusions and may consider manifest injustice as a basis for any remedy; or
- ii. Remand the matter in whole or in part to the Hearing Officer for reconsideration or for additional findings of fact and/or additional conclusions of law.

F. As in all matters before the Board, a quorum of votes is necessary to approve any motion, resolution, or order under consideration.

G. Following a decision of the Board with respect to the Hearing Officer's proposed order, the Board shall cause to be prepared a written final order on the member's appeal. The Board's final order shall include separate findings of fact and conclusions of law relied upon by the Board in formulating the final order. A copy of the Board's final order (including the Board's findings of fact and conclusions of law) will be delivered via Certified, First Class, United States mail to the member (and any counsel) by the Executive Director.

XII. Authority to Settle

At any time prior to the issuance by the Board of a final order, the Executive Director is authorized to settle any claim in a manner mutually agreeable to ATRS and the member. In settling any claim, the Executive Director shall not exceed the authority

previously granted to him or her by the Board. The Executive Director shall report to the Board any settlement that occurs after the Hearing Officer issues a proposed order.

XIII. Appeals Under the APA

Any member receiving an adverse ruling from the Board retains certain rights under the Arkansas Administrative Procedures Act (See A.C.A. §§ 25-15-201 to -219.) The member may file a petition for judicial review. Any petition for judicial review of a final Board administrative decision shall be filed in Pulaski County Circuit Court. See A.C.A. § 25-15-212 and § 24-7-211. Such action must be filed within thirty (30) days after service upon the member of the Board's final order. See *id.*

XIV. Communications With the Hearing Officer and Board of Trustees

A. The Arkansas Administrative Procedures Act prohibits direct or indirect communications by the members and employees of ATRS with a Hearing Officer or the Board in connection with any issue of fact or law regarding an appeal, except upon notice that provides an opportunity for all parties to participate. Hearing Officers and the members of the Board will not consider any "ex-parte" or "off-the-record" evidence or statements made to them by the member or any employee of ATRS in connection with a pending appeal.

B. This Section does not preclude communications by and between the Hearing Officer, ATRS Staff, and/or the Board concerning minor scheduling and procedural matters necessary to the timely and efficient processing and handling of appeals under these rules.

Approved: February 1, 2010 (Emergency)
June 7, 2010 Permanent

Approved by Board: July 26, 2013

Amended: October 9, 2013

Effective: November 8, 2013

FINAL Approval by Board: February 5, 2018
Effective:

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT ATRS

DIVISION Legal

PERSON COMPLETING THIS STATEMENT Laura Gilson

TELEPHONE 501-682-1266 FAX _____ EMAIL: laurag@artrs.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rule 13 Administrative Adjudications

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☐ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☐ No ☐

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;

(b) The reason for adoption of the more costly rule;

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____ N/A

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____ N/A

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☐

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Summary of Proposed Rule Change

for
Arkansas Teacher Retirement System

Rule 13-1 Administrative Adjudications

Substantive changes

This rule change is necessary after the passage of Act 967 of 2017 which allows civil actions to be filed in the county in which a member resides and strikes language which lists Pulaski County only.

Non-substantive changes

From the time this rule was originally promulgated in 2010, there have been changes to improve clarity and consistency of the administrative adjudication process, including staff determinations and member appeals. The current rule changes continue those efforts to ensure that all parts of the administrative adjudication process have been thoroughly explained and are easy to interpret.