

CHAPTER 211. PRELIMINARY PROVISIONS

Sec.	
211.1.	Short title of part.
211.2.	Definitions.
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Authority

The provisions of this Chapter 211 issued under Public School Employes' Retirement Code, 24 Pa.C.S. § 8502(h), unless otherwise noted.

Source

The provisions of this Chapter 211 adopted April 2, 1976, 6 Pa.B. 827; amended October 16, 1998, effective October 17, 1998, 28 Pa.B. 5226, unless otherwise noted. Immediately preceding text appears at serial pages (215611) to (215612) and (227881) to (227883).

§ 211.1. Short title of part.

(a) Chapters 211, 213 and 215 (relating to preliminary provisions; contributions and benefits; and general administration) are promulgated under the Retirement Code.

(b) *Retirement Code reference:* Section 8101 of the Retirement Code (relating to short title of part).

Authority

The provisions of this § 211.1 amended under the Public School Employees' Retirement Code, 24 Pa.C.S. § 8502(h).

Source

The provisions of this § 211.1 amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial page (249395).

§ 211.2. Definitions.

(a) The definitions in section 8102 of the Retirement Code (relating to definitions) are applicable to Chapters 211, 213 and 215 (relating to preliminary provisions; contributions and benefits; and general administration) as clarified or supplemented by the definitions in subsection (b).

(b) The following words and terms, when used in this part, have, consistent with the Retirement Code definitions, the following meanings, unless the context clearly indicates otherwise:

Active member—

(i) A school employee for whom pickup contributions, as defined in section 8102 of the Retirement Code (relating to definitions), are properly being made to the Fund, including those granted a sabbatical leave of absence, or who are on an approved leave of absence for professional study, as an exchange teacher, or service with a collective bargaining organization, under section 8102 and section 8302 of the Retirement Code (relating to

credited school service), or for whom the contributions otherwise required for current school service are not being made solely by reason of any provision in the Retirement Code relating to the limitations under sections 401(a)(17) or 415(b) of the IRC (26 U.S.C.A. §§ 401(a)(17) and 415(b)).

(ii) The term excludes employees who are on leave of absence without pay.

Actuarially equivalent—Two benefits are said to be actuarially equivalent if they have equal present values, computed on the basis of statutory interest and the mortality tables currently adopted and used by the Board.

Annuitant—A member on or after the effective date of retirement, until the annuity is terminated, but excludes a beneficiary or survivor annuitant.

Beneficiary—The person, (as defined in 1 Pa.C.S. § 1991 (relating to definitions)), last designated by a member in writing to the Board to receive accumulated deductions or a lump sum benefit upon the member's death.

Board—The Public School Employees' Retirement Board.

Certified members—See definition of "professional members" in this section.

Employer—

(i) A governmental entity directly responsible for the employment and payment of the school employee and charged with the responsibility of providing public education within this Commonwealth.

(ii) The term includes all governmental entities whose employees under prior law and regulations are members of the System as of the effective date of the Retirement Code.

Final average salary—The highest average compensation received as an active member during any three nonoverlapping periods of 12 consecutive months. In the case of a part-time employee, compensation shall be annualized by multiplying actual earnings by the reciprocal of the fractional portion of time worked during nonoverlapping periods of 12 consecutive months or equivalent consecutive pay periods during which compensation is received; and, in the case of a member with multiple service credit, the salary shall be determined by reference to include compensation received as a school employee or a State employee, or both. In the case of a member who first became a member on or after July 1, 1996, compensation shall be subject to the application of section 8325.1 of the Retirement Code (relating to annual compensation limit under section 401(a)(17) of the IRC). Final average salary is an average of the 3 highest school years. For terminations before the end of the school year, salary for that part of the year may be used in combination with a proportionate percentage of a prior year. School years with part-time service may be annualized for salary calculation. Either annualized or actual retirement-covered compensation is allocated to months for each school year. For final average salary purposes, retirement-covered compensation is credited

in the school year in which it is earned, not paid. Retirement-covered compensation is not recognized for any period of creditable nonschool service purchased by a member.

Full-day session—That period of time determined by the employer, without objection from the Department of Education, during which a school employee is employed daily for instructional purposes.

Full time employee—An employee employed at least 5 hours per day or 25 hours per week or its equivalent.

Fund—The Public School Employees' Retirement Fund.

Governmental entity—In addition to those enumerated in the Retirement Code, the term includes any agency or authority, being a corporate body or body politic created by law, or any entity created by those agencies or authorities, charged with the responsibility of providing public education within this Commonwealth.

Government service—Service as an administrator, teacher, or instructor in the field of public school education for an agency or department of the government of the United States.

Inactive member—

(i) A member for whom no pickup contributions, as defined in section 8102 of the Retirement Code, are being made, who has accumulated deductions standing to the member's credit in the Fund and for whom no pickup contributions have been made within the last 2 school years, except in the case of an active member for whom the contributions otherwise required for current school service are not being made solely by reason of any provision in the Retirement Code relating to the limitations under sections 401(a)(17) of the Internal Revenue Code, who has accumulated deductions standing to his credit in the Fund and for whom contributions have been made within the last 2 school years or a multiple service member who is active in the State Employees' Retirement System.

(ii) The term also includes a member who is on furlough and has elected to leave the accumulated deductions in the Fund at statutory interest during the furlough period, which period may not exceed 2 school years; or a member who is on leave of absence without pay.

IRC—Internal Revenue Code—26 U.S.C.A. §§ 1—7872.

Member's annuity—An amount determined by dividing the accumulated deductions of the member by the cost of a \$1 annuity based on the nearest age of the member at the effective date of retirement and computed on the basis of statutory interest and mortality tables adopted and used by the Board.

Noncertified members—See definition of "nonprofessional members" in this section.

Nonprofessional members or noncertified members—The term includes school employees who are not "professional employees," as defined in section 1101 of the Public School Code of 1949 (24 P. S. § 11-1101), and who also

qualify for membership in the System under section 8301 of the Retirement Code (relating to mandatory and optional membership).

Professional members or certified members—“Professional employees,” as defined in section 1101 of the Public School Code of 1949, including all temporary professional employees, professional employees, substitutes and commissioned officers currently employed by a school district or intermediate unit and qualifying for membership in the System under section 8301 of the Retirement Code (relating to mandatory and optional membership).

Public school—Any or all classes or schools within this Commonwealth conducted under the order and superintendence of the Department of Education including, but not limited to: all educational classes of an employer charged with the responsibility of public education within this Commonwealth as well as those classes financed wholly or in part by the Federal Government, State-owned colleges and universities, the Pennsylvania State University, community colleges, area vocational-technical schools, intermediate units, the State Board of Education, Scotland School for Veterans’ Children, Thaddeus Stevens College of Technology and the Pennsylvania State Oral School for the Deaf. In all cases of doubt, the Board will determine whether any particular governmental entity is eligible as an employer within the meaning of the Retirement Code.

Retirement Code—The Public School Employees’ Retirement Code, 24 Pa.C.S. §§ 8101—8535.

Salary deductions—The amounts certified by the Board to be deducted from the compensation, as determined for retirement purposes, of an active member and paid into the Fund for the purposes of purchasing current service, previous school service, pickup contributions and creditable nonschool service, as the case may be.

School employee—

(i) A person engaged in work relating to a public school for any governmental entity and for which work the person is receiving regular remuneration as an officer, administrator or employee excluding, however, any independent contractor or a person compensated on a fee basis.

(ii) The term does not include a person who is rendering services to the school district on a commission or fee basis, whether an elected official or not.

School year—The 12-month period which the governmental entity uses for purposes of administration, regardless of the actual time during which a member renders service. A member will not be credited, during a school year, with credited service in excess of 1 year.

Statutory interest—As applied to contributions of members, interest at 4% per annum compounded annually.

(b) *Retirement Code reference*: Section 8102 of the Retirement Code.

Authority

The provisions of this § 211.2 amended under the Public School Employees' Retirement Code, 24 Pa.C.S. § 8502(h).

Source

The provisions of this § 211.2 amended August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083. Immediately preceding text appears at serial pages (249395) to (249398) and (316193) to (316194).

Notes of Decisions*Compensation*

Letters of agreement between the superintendent and the school board president which stated, inter alia, that the superintendent would be paid for all unused vacation and sick days in lieu of an annual raise, and that the superintendent would reimburse the school district for its share of the retirement cost allocable to the inclusion of this amount. The hearing examiner and the board were also presented with an agreement between the superintendent and the school board president which stated that the parties had reached certain agreements concerning the termination of his employment and severance payments. This evidence was sufficient to support the Public School Employees' Retirement Board's conclusion that the money paid to the superintendent constituted a severance payment and not compensation. *Wyland v. Public School Employees' Retirement Bd.*, 669 A.2d 1098 (Pa. Cmwlth. 1996); appeal denied 680 A.2d 1165 (Pa. 1996).

The court did not err in concluding that none of the superintendent's annuity purchases were includable as compensation for purposes of determining the final average salary. There is substantial evidence in the record to support the Public School Employees' Retirement Board's conclusions that the annuity payments were remuneration that was not based on the standard salary schedule for which the superintendent was rendering service, and that the other payment was a severance payment. Therefore, under the Retirement Code and applicable regulations, the annuity payments were properly excluded from the computation of the superintendent's final average salary. *Christiana v. Public School Employees' Retirement Board*, 669 A.2d 940 (Pa. 1996).

Whether or not a payment must be considered a severance payment is a question of law. *Wyland v. Public School Employees' Retirement Bd.*, 669 A.2d 1098 (Pa. Cmwlth. 1996).

Because a payment to a school district employee was a severance payment and not compensation, the payment was not a part of the employee's final average salary for purposes of computing retirement benefits, as it was not a part of the employee's regular salary upon agreeing to retire. *Dowler v. Public School Employees' Retirement Board*, 620 A.2d 639 (Pa. Cmwlth. 1993).

Credited Service

Active member of Public School Employees' Retirement System (PSERS) was not entitled to purchase service credit for years she provided educational services to nonpublic school students pursuant to Act 89 while employed by two non-for-profit corporations; neither corporation fit the definition of "governmental entity" under the Retirement Code and regulations, and she was not engaged in work that related to a public school for governmental entity and therefore did not fall with the Retirement Code definition of "school employee" for purposes of receiving retirement credit. *Thorpe v. Public School Employees' Retirement Board*, 879 A.2d 341 (Pa. Cmwlth. 2005).

The Public School Employees' Retirement Board did not err in finding that the school superintendent ceased being a school employee entitled to earn credited service as of January 5, 1988, the last day appellee performed actual employment duties for regular remuneration, rather than June 30, 1988, the official resignation date set forth in a termination agreement. *Hoerner, Jr. v. Public School Employees' Retirement Board*, 684 A.2d 112 (Pa. 1996).

Forms; Content not Prescribed

The regulation which requires designation of the beneficiary for death benefits under the Public School Employees' Retirement Code only mandates that the designation must be in writing. It does not specify the contents of the form, nor does it require that the designation be witnessed. *Lowing v. Public School Employees' Retirement Board*, 775 A.2d 306 (Pa. Cmwlth. 2001).

General Comments

The restrictive definitions of compensation under the Retirement Code and these regulations reflect the Legislature's intention to preserve the actuarial integrity of the retirement fund. *Christiana v. Public School Employees' Retirement Board*, 669 A.2d 940 (Pa. 1996).

Salary Increases

Salary increases made strictly pursuant to termination agreements are tantamount to severance payments, such increases should not be used in calculating a party's final average salary for purposes of retirement benefits. *Hoerner v. Public School Employees' Retirement Board*, 684 A.2d 112 (Pa. 1996).

§ 211.3. Construction.

(a) Former annuitants who are active members of the System on October 2, 1975, are not subject to the recalculation of annuities of annuitants who return to school service thereafter.

(b) The rights of members of Class T-B, as provided in section 301(2)(c) and (d) of the Public School Employees' Retirement Code of 1959 (24 P. S. § 3301(2)(c) and (d) (repealed)) shall continue.

(c) The provisions relating to former teachers as provided in sections 303(3) and 407(1) of the Public School Employees' Retirement Code of 1959 (24 P. S. §§ 3303(3) and 3407(1) (repealed)), shall continue.

(d) As applicable to members terminating school service on or after March 1, 1974, the provisions relating to the purchase of credit for previous school or creditable nonschool service and the calculation of benefits shall be effective March 1, 1974.

(e) The provisions relating to the crediting of statutory interest to the accounts of members on leave without pay shall become effective on July 1, 1975.

(f) Part-time employee membership, as provided by the Retirement Code, shall become effective with the beginning of the school year 1975-76, subject to the limitations based upon qualification, as provided in this part.

(g) For the purpose of the Retirement Code, the school year commences on July 1 and ends on June 30 of the following year.

(h) The provisions relating to eligibility for disability annuities, shall be effective, as applied to all active or inactive members, from December 1, 1974.

Authority

The provisions of this § 211.3 adopted under the Public School Employees' Retirement Code, 24 Pa.C.S. § 8502(h).

Source

The provisions of this § 211.3 adopted August 1, 2008, effective August 2, 2008, 38 Pa.B. 4083.

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