

## PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

### GENERAL RULES

(By authority conferred on the public school employees' retirement board by section 25(2) of 1980 Act 300, MCL 38.1325(2).)

#### PART 1. GENERAL PROVISIONS

R 38.1101 Definitions.

Rule 101. As used in these rules:

(a) "Act" means Act No. 300 of the Public Acts of 1980, as amended, being S38.1301 et seq. of the Michigan Compiled Laws.

(b) "Applicant" means a person, member, retirant, or reporting unit claiming benefits under the act.

(c) "Benefits" means any provision in the act dealing with maintenance of the member's account or the computation of the allowance or eligibility therefor, and includes any and all procedures, policies, and proceedings applicable to such provision.

(d) "Board" means the Michigan public school employees' retirement board as provided for in the act.

(e) "Full-time student" means a person who is carrying 12 or more semester hours or its equivalent in any semester or equivalent instructional unit at a junior college, community college, college, or university.

(f) "System" means the Michigan public school employees' retirement system as provided in the act.

History: 1985 AACS.

R 38.1102 Place of meetings.

Rule 102. All meetings of the board, unless otherwise ordered by the president, shall be held in Lansing in the building where the offices of the public school employees' retirement system are situated.

History: 1985 AACS.

R 38.1103 Regular meetings; time.

Rule 103. Regular meetings of the board shall be held at such times as the needs of the board may require and subject to the provisions of Act No. 261 of the Public Acts of 1976, as amended, being S15.267 et seq. of

the Michigan Compiled Laws.

History: 1985 AACS.

R 38.1104 Annual meeting; election of officers.

Rule 104. The annual meeting of the board shall be held in July. A president and vice-president shall be elected at the annual meeting and shall take office immediately upon election and serve until their successors are elected.

History: 1985 AACS.

R 38.1105 Special meetings.

Rule 105. Special meetings of the board may be held at any time consistent with Act No. 267 of the Public Acts of 1976, as amended, being S15.261 et seq. of the Michigan Compiled Laws, on call of the president or on written request to the secretary by the majority of the members of the board. Unless by unanimous consent, a special meeting shall not be held without 3 days' written notice to each member of the board.

History: 1985 AACS.

R 38.1106 Quorum.

Rule 106. (1) A majority of the board shall constitute a quorum for the transaction of business at a meeting of the board.

(2) When only 5 members of the board are present for a meeting, not less than 4 concurring votes shall be necessary for a decision.

History: 1985 AACS.

R 38.1107 Order of business.

Rule 107. The order of business at all regular meetings shall be as follows:

- (a) Roll call.
- (b) Approval of minutes.
- (c) Public comment.
- (d) Consideration of financial report.
- (e) Action on allowance applications.
- (f) Unfinished business.
- (g) New business.
- (h) Special reports.
- (i) Public comment.

(j) Adjournment.

History: 1985 AACCS.

R 38.1108 Declaratory rulings.

Rule 108. (1) A person requesting a declaratory ruling from the board regarding a statute, rule, or order administered by the board shall submit, in duplicate, a sworn petition to the board setting forth all of the following information:

(a) The nature and purpose for the request.

(b) The statute, rule, or order administered by the board to which the request applies.

(c) The person's involvement, interest, or relationship to that statute, rule, or order.

(d) The exact subject of the ruling required.

(2) Requests for more than 1 declaratory ruling regarding the same or different statute, rule, or order shall be submitted separately.

(3) When the board proposes to make a declaratory ruling, it will provide public notice and schedule a time for consideration at a regularly scheduled meeting of the board. The board shall provide public notice of declaratory rulings.

History: 1985 AACCS.

R 38.1109 Consideration and disposition of declaratory ruling requests.

Rule 109. Within 90 days after receipt of a complete petition for a declaratory ruling, the board, after consultation, if necessary, with staff and the attorney general will act on the petition. A declaratory ruling shall receive a majority concurrence of the board members present and voting before it is issued to the interested person.

History: 1985 AACCS.

R 38.1110 Reporting unit; employee reports.

Rule 110. In reporting service credit for all employees, the reporting unit shall include the hours worked along with such other information, as determined by the retirement system, as is necessary to determine eligibility for, and the amount of, retirement benefits. The reports shall be submitted in accordance with the schedules published in the Michigan public school employees' retirement system instruction manual.

History: 1985 AACCS.

R 38.1111 Delinquent member or employer contribution.

Rule 111. (1) A member shall not be entitled to a retirement allowance based upon creditable reporting unit service performed under the contributory plan until the member has contributed to the retirement system an amount equal to the amount the member should have contributed according to the schedule governing contributions in effect at the time the creditable service was performed, together with interest at such rate as the retirement board shall determine. If a member who made payment for service performed under this rule dies or withdraws from service before the member's retirement allowance becomes effective and there is no other person entitled to an allowance, the payment shall be refunded upon request to the member, refund beneficiary, or, if none, a legal representative appointed by the court.

(2) Delinquent contributions for service performed under the noncontributory plan shall be the responsibility of the reporting unit where the service was performed and subject to penalties and interest as determined by the retirement board and statute.

History: 1985 AACS.

R 38.1112 Board-determined rate of interest.

Rule 112. The rate of interest for purposes of repayment of a refund, purchase of out-of-system public education service and other creditable service, and crediting individual member accounts shall be at such rate as the retirement board from time to time determines. For these purposes, the board may determine a rate of interest, hereafter referred to as the "board-determined rate of interest (BDRI)," which shall not exceed the assumed actuarial rate of return.

History: 1985 AACS.

R 38.1113 Granting of service credit.

Rule 113. The board shall grant a year of service credit to any member who has been employed during the school fiscal year from July 1 to June 30 for 170 days of not less than 6 hours per day. A maximum of 30 hours per week shall be accrued. The board may allow a year of service credit if the member was employed for a minimum of 150 days when it is needed to qualify a member or beneficiary for a monthly allowance in the final year of service. This minimum may also be used when the employing school agency's full-time employee's term of employment is less than 170 days.

History: 1985 AACS.

R 38.1114 Fractional year of service.

Rule 114. Where a member serves less than a school fiscal year, such time shall be credited as a fractional part of a school fiscal year in the proportion which the number of days actually served bears to the number of days that constitutes full-time service credit.

History: 1985 AACS.

R 38.1115 Part-time employees; service credit.

Rule 115. Part-time employees shall receive service credit for full-time service on the basis of 30 or more hours per week and proportionate credit for less than 30 hours on the basis of 30 hours for full-time credit in the proportion which the hours employed in the school fiscal year bear to 1,020 hours.

History: 1985 AACS.

R 38.1116 Hours of employment for part-time instructors employed at institutions of higher education; service credit.

Rule 116. Where a member is employed on less than a full-time basis to teach at an institution of higher education, the reporting unit shall report hours worked to the retirement system in the proportion that the member's class hours of credit taught bear to the class hours of credit taught that is required for similarly assigned full-time instructors at that reporting unit. This procedure shall be applicable whether or not the instructor is paid on the basis of credit or semester hours taught or on a per class basis.

History: 1985 AACS.

R 38.1117 Credit for excluded employment.

Rule 117. Service credit shall not be given except as authorized by the act for reporting unit employment which was specifically excluded from membership by statute or administrative directive, which includes, but is not limited to, all of the following:

(a) A retirant of the retirement system.

(b) A student in a reporting unit.

(c) An enrollee in a neighborhood youth corps program which is operated with funds from the office of economic opportunity or a person enrolled in a comparable youth training program designed to prevent high school dropouts and rehabilitate high school dropouts which is operated by an intermediate school district, except for such employment which is

creditable as provided by the act.

(d) An independent contractor.

(e) An enrollee in a national youth administration program.

(f) A member of the optional retirement program provided by Act No. 156 of the Public Acts of 1967, as amended, being S38.381 et seq. of the Michigan Compiled Laws.

(g) A student teacher or similar training experience required for certification or degree purposes, unless that person also received compensation which was reasonably commensurate with the beginning compensation paid to a person already trained for the same position. In that event, the member shall be subject to the payment and certification provisions provided by R 38.1111 and R 38.1119, respectively.

(h) A person employed under Act No. 69 of the Public Acts of 1983, being S409.221 et seq. of the Michigan Compiled Laws, and known as the Michigan Youth Corps Act.

(i) A person engaged in some other type of employment not specifically included by statute or administrative directive.

History: 1985 AACS.

R 38.1118 Student employment during vacation periods; service credit.

Rule 118. Service credit shall be granted for public school employment rendered during the extended vacation period in which the person was enrolled but not attending classes within the same school system if the employment is not excluded as provided in R 38.1117.

History: 1985 AACS.

R 38.1119 Proof of payment; documentation requirements; payment.

Rule 119. (1) A member who requests service credit for public school employment which is provided for in R 38.1117, R 38.1118, or any other creditable reporting unit service, which was not reported to the retirement system shall submit at least 1 of the following proofs of service:

(a) An affidavit completed by the present school officer which certifies the employment on the basis of official payroll records on file with the reporting unit.

(b) If there are no official payroll records available, a member shall submit a missing record affidavit and either of the following proofs of service:

(i) Three citizens' corroborative affidavits and either a W-2 statement or an income tax return.

(ii) Other official school-produced records for the year or years in question.

(2) One of the 3 corroborative affidavits shall be completed by a person whose employment with the same reporting unit can be certified from official records and whose position would have afforded day-to-day knowledge of the member's employment.

(3) The retirement board may permit other proofs of service in addition to those described in subrule (1) of this rule.

(4) The missing record affidavit shall be a form prescribed by the retirement board for use by present school officers in those instances where official school records are not available from which to certify to a person's employment. The form shall require a statement as to why records are not available.

(5) A citizen's corroborative affidavit shall be a form prescribed by the retirement board for corroborating a person's public school employment and shall contain a notarized statement as to why the person is qualified to attest to the employment being certified. The form shall also state the penalty for providing misinformation with intent to deceive.

(6) The school officer's corroborative affidavit shall be a form prescribed by the retirement board for use by the present school officer in those instances where official school records are available from which to certify to a person's employment. The form shall require a statement identifying the records used for completing the form.

History: 1985 AACCS.

R 38.1120 Out-of-system public education and other creditable service; certification; payment procedure.

Rule 120. (1) An active member may, after satisfying the requirements of the act, purchase out-of-system public education and other creditable service. The board shall allow credit for out-of-system public education service if similar service performed in a reporting unit would be creditable. Such service shall not be creditable until the member makes payment in full. Partial payments for service performed before July 1, 1974, will be accepted up to the time of the final payment, which shall be not later than the effective date of the member's retirement allowance. The minimum partial payment shall be established by the board.

(2) The procedure for computing the compensation base for out-of-system public education and other creditable service which is performed after July 1, 1974, and payment procedure shall be the same as for the purchasing of nonintervening military service credit.

(3) It shall be the responsibility of the member to furnish, on forms provided by the retirement office, certification of creditable out-of-system public education and other creditable service. The certification shall be completed from official records in the possession of the educational agency, a public retirement system, or a governmental agency.

(4) It shall be the member's responsibility to obtain completed certification of service, on forms prescribed by the retirement board, of the member's creditable out-of-system public education and other creditable service.

(5) An original copy of the certification of service is required, which shall also include a list of the salaries received each school fiscal year of the member's service. It shall also contain a statement by the school officer completing the certification that his or her statements are based upon official school records on file.

(6) If the support documents do not establish valid service credit, evaluation shall be based on annual composite summary listings.

History: 1985 AACS.

R 38.1121 Nonintervening military service credit; payment procedure.

Rule 121. To be processed, an application for nonintervening military service credit shall be received in the retirement office before June 15 of the school fiscal year upon which payment is to be based. A military payment received which is postmarked after the last date of the school fiscal year upon which the payment is to be based will be returned to the member. If the June 30 deadline is not met, the member shall reapply.

History: 1985 AACS.

R 38.1122 Eligibility to purchase other creditable service or repay a refund.

Rule 122. The purchase of any service creditable by statute, excluding repayment of a refund, shall be made while an individual is a member of the retirement system, except that payment by a disability applicant shall be permitted if full payment is made before the effective date of the allowance.

History: 1985 AACS.

R 38.1123 Evaluation of service credit; insufficient documentation.

Rule 123. If support documents are insufficient to establish valid service credit, evaluation shall be based on composite summary listings compiled and maintained by the retirement system.

History: 1985 AACS.

R 38.1124 Repayment of refunds.

Rule 124. A member, after satisfying the requirements for repaying a refund, may make payment in full or may elect to make installment payments. The minimum installment payment shall be established by the board.

History: 1985 AACS.

R 38.1125 Refunds; probate court orders.

Rule 125. A written order by the judge of probate of the county of residence instructing the retirement board to make a refund to the administrator or executor of the estate of a deceased member or other qualified person designated by such judge of probate may be accepted in place of the written nomination of beneficiary if a valid written nomination of beneficiary is not on file with the system.

History: 1985 AACS.

R 38.1126 Application for retirement; cancellation.

Rule 126. (1) Application for retirement shall be made on forms furnished by the retirement board and shall be filed with the secretary of the retirement board. A letter of inquiry relative to retirement is not an application for retirement.

(2) A completed retirement application may be cancelled by the applicant if the retirement system has not processed the initial monthly payment.

History: 1985 AACS.

R 38.1127 Final average compensation.

Rule 127. (1) Compensation means the remuneration received by a member, as defined in the act, and includes items of an economic value as specifically fixed by the retirement board. Only if the kind of remuneration or item of economic value received by a member is specifically authorized by either the retirement statute or by the retirement board shall it be included in computing the member's final average compensation.

(2) All payments to a member, or made on the member's behalf, recognizable as compensation which were made under the noncontributory plan, but which were not reported to the retirement system at the time the payment was made, shall be verified from official reporting unit records and certified by the president and secretary of the board of control. The respective contribution shall be the responsibility of the reporting unit and is subject to penalties and interest as determined by the retirement board and statute.

History: 1985 AACS.

R 38.1128 Post-retirement employment.

Rule 128. A retirant may, after 1 month immediately following his or her retirement allowance effective date, become employed in a reporting unit or with the state of Michigan in a position which is covered by Act No. 240 of the Public Acts of 1943, as amended, being S38.1 et seq. of the Michigan Compiled Laws, and earn as much as is permitted by the act.

History: 1985 AACS.

R 38.1129 Suspension of retirement allowance; health insurance coverage.

Rule 129. (1) If a retirement allowance is suspended for any reason provided by statute, and if the person is enrolled in the retirement system's health insurance plan, the retirement system's subsidy shall also cease until the date the retirant again becomes eligible to receive a monthly allowance. During the period of suspension, the retirant shall be given the option to continue with the health insurance plan, but without retirement system subsidy, if applicable.

(2) Instead of suspending a retirement allowance where excess post-retirement earnings are involved, the retirant may pay the retirement system, in a single lump sum, the total amount of the excess earnings, in which case the retirement allowance and health insurance subsidy shall not be discontinued. As an alternative, the retirant may choose to have his or her monthly allowance reduced over a period of not more than 12 months by an amount which will repay the system the excess earnings so received, if the reduced allowance is not less than 50% of the unreduced allowance. The retirement system's subsidy for the cost of the health insurance plan shall be continued during the period of reduced allowance payments.

History: 1985 AACS.

R 38.1130 Proof of dependency.

Rule 130. When the act requires that a person be 50% or more financially dependent to be eligible to receive a retirement benefit, or to be designated as a potential retirement allowance beneficiary, a spouse or unmarried child under the age of 18 shall be presumed to be 50% or more dependent. For all other persons, proof of dependency shall be based upon a formula which recognizes all sources of income, including income derived from assets, plus all income received by the member or former member. The resulting sum thereof shall be divided by 4 to determine 50% of the

person's own personal support. A financial statement and any other financial records deemed desirable shall be required for verifying eligibility.

History: 1985 AACS.

R 38.1131 Rescission.

Rule 131. R 38.221 to R 38.235 and R 38.301 to R 38.308 of the Michigan Compiled Laws, appearing on pages 366 to 369 of the 1979 Michigan Administrative Code, are rescinded.

History: 1985 AACS.

## PART 2. HEARING PROCEDURES

R 38.1201 Contested case hearing.

Rule 201. Administrative hearings in contested cases and related proceedings shall be conducted in accordance with these rules, the act, and Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws.

History: 1985 AACS.

R 38.1202 Right to a hearing; initiation of appeal; representation of system by attorney general.

Rule 202. (1) An applicant who disagrees with a decision of the system may appeal that decision to the board.

(2) Any appeal shall be initiated by submission of a demand for hearing on a form provided by the system within 60 days of the date of the decision being appealed from.

(3) In any appeal, the system may be represented by the attorney general.

History: 1985 AACS.

R 38.1203 Notification of hearing.

Rule 203. (1) Notice of hearing held under R 38.1205 shall be served not less than 20 days before the hearing. The notice shall be in a form deemed appropriate by the board.

(2) Notice of hearing served upon an applicant shall be made by enclosing a copy of the notice in a sealed envelope, with first-class

postage fully prepaid, addressed to the applicant or attorney of record, at the last known address on file with the board, and depositing the envelope and its contents in the United States government mail. It is the responsibility of the applicant to assure that the address on file is accurate and to immediately notify the board of a change in address.

(3) Notice of hearing to a party pursuant to a hearing held under R 38.1205(2) or (3) shall be served by registered or certified mail or by such other method as may be permitted by law. It is the responsibility of the party or attorney of record to assure that the address on file is accurate and to immediately notify the board of a change in address.

(4) Service is effective 3 days after mailing.

History: 1985 AACS.

R 38.1204 Representation; counsel; voluntary conference.

Rule 204. (1) An attorney representing a party of interest shall file a written appearance. Thereafter, service upon an attorney of record shall be deemed service upon the party.

(2) The attorney general may appear without the necessity of the filing of a written appearance.

(3) The parties to a contested case are encouraged to voluntarily confer for the purpose of facilitating the disposition of a case.

History: 1985 AACS.

R 38.1205 Notification when allowance is terminated or reduced.

Rule 205. (1) Except in the case of death of the retirant or retirement allowance beneficiary, where the system decides to terminate a monthly age and service or disability benefit granted pursuant to the provisions of section 81, 86, or 87 of the act, the retirant or retirement allowance beneficiary shall be notified in advance of the decision to terminate and the reasons therefor, and shall receive a statement of rights under the act and applicable rules to appeal such decision. If benefits granted under section 89 or 90 of the act are to be terminated, the decision of the system may be implemented 20 days following notice to the retirement allowance beneficiary.

If benefits granted pursuant to section 81, 86, or 87 of the act are to be terminated, the benefits shall be continued if the retirant or retirement allowance beneficiary requests a hearing under R 38.1202 pending the conclusion of the hearing and action of the board subsequent to a recommendation for decision by the hearing officer. Following the decision of the board, its decision may be implemented. If the retirant or retirement allowance beneficiary dies, a decision of the system may be implemented. As set forth in section 88 of the act, the decision of the system may be implemented if a disability retirant refuses to submit to a medical

examination.

(2) Except in the case of death of the retirant or retirement allowance beneficiary, where the system decides to reduce, by more than 10%, a monthly age and service or disability benefit pursuant to the provisions of section 81, 86, or 87 of the act, the retirant or retirement allowance beneficiary shall be notified in advance of the decision to reduce by more than 10% and the reasons therefor, and shall receive a statement of rights under the act and applicable rules to appeal such decision. If benefits granted under section 89 or 90 of the act are to be reduced by more than 10%, the decision of the system may be implemented 20 days following notice to the retirement allowance beneficiary. If benefits granted pursuant to section 81, 86, or 87 of the act are to be reduced by more than 10%, the benefits shall be continued if the retirant or retirement allowance beneficiary requests a hearing under R 38.1202 pending the conclusion of the hearing and action of the board subsequent to a recommendation for decision by the hearing officer.

Following the decision of the board, its decision may be implemented.

History: 2004 AACS.

R 38.1206 Proposed decision; distribution; filing of exceptions.

Rule 206. Following the hearing, a copy of the proposed decision, findings of fact, and conclusions of law shall be forwarded to the parties. Within 15 days of the service, a party may file exceptions to such proposed decision. The exceptions shall be in writing and shall state the findings or conclusions to which exception is taken. Oral argument shall not be granted, except upon direction of the board. The board shall review the record, the proposed decision, findings of fact, conclusions of law, and any exceptions filed and shall issue a decision. Following the decision, a final order shall be entered.

History: 1985 AACS.

R 38.1207 Rehearings.

Rule 207. A party may file a written request for a rehearing or reconsideration pursuant to section 87 of Act No. 306 of the Public Acts of 1969, as amended, being S24.287 of the Michigan Compiled Laws, expressly setting forth the reasons therefor and the scope of the requested relief. Upon the filing of a request for a rehearing or reconsideration, the opposing party or parties shall have 15 days to respond. The request shall be granted or denied and the parties shall be notified of the decision. If reconsideration is granted, the decision may be modified without further proceedings. If a rehearing is granted, it shall be noticed and conducted in the same manner as an original hearing.

History: 1985 AACSB.