WEST VIRGINIA CODE CHAPTER 18 ARTICLE 7B

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§18-7B-1. Short title.

This article shall be known and may be cited as the "Teacher's Retirement Reform Act".

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§18-7B-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

"Annual addition" means, for purposes of the limitations under Section 415(c) of the Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A) Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cash-outs or contributions as described in §415(k)(3) of the Internal Revenue Code, rollover contributions and picked-up employee contributions to a defined benefit plan may not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1.

"Annuity account" or "annuity" means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends, or other accumulations credited on behalf of the member.

"Compensation" means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions: *Provided*, That annual compensation for determining contributions during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and §401(a)(17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of applying the limitations of §415 of the Internal Revenue Code to any annual addition, "compensation" has the meaning given it in §18-7B-13(d) of this code.

"Consolidated board" or "board" means the Consolidated Public Retirement Board created and established pursuant to §5-10D-1 *et seq*. of this code.

"Defined contribution system" or "system" means the Teachers' Defined Contribution Retirement System created and established by this article.

"Electing charter school" means a public charter school established pursuant to §18-5G-1 *et seq*. of this code which has elected to participate in this retirement system as permitted in the definition of "Member" or "employee" in this section.

"Employer" means the agency of and within the State of West Virginia which has employed or employs a member, a county board of education which has employed or employs a member, or an electing charter school which has employed or employs a member. "Participating public employer" or "participating employer" means "employer" unless the context clearly requires otherwise.

"Employer contribution" means an amount deposited into the member's individual annuity account on a periodic basis coinciding with the employee's regular pay period by an employer from its own funds.

"Employer error" means an omission, misrepresentation, or deliberate act in violation of

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relevant provisions of the West Virginia Code, the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

"Employment term" means employment for at least 10 months in any plan year with a month being defined as 20 employment days.

"Existing employer" means any employer who employed or employs a member of the system.

"Existing retirement system" means the State Teachers Retirement System established in §18-7A-1 *et seq*. of this code.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

"Member" or "employee" means the following persons, if regularly employed for full-time service: (A) Any person employed by a public school for instructional service in the public schools of West Virginia; (B) principals employed by a public school; (C) librarians employed by a public school; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, an electing charter school, or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and the Department of Human Services; (K) any person who is regularly employed for full-time service by any county board of education, electing charter school, educational services cooperative, or the State Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers' Defined Contribution Retirement System established by this article; and (N) any person employed by a public charter school established pursuant to §18-5G-1 *et seq*. of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article, subject to §18-7B-7a and §18-7A-1 *et seq*. of this code.

"Member contribution" means an amount reduced from the employee's regular pay periods and deposited into the member's individual annuity account within the Teachers' Defined Contribution Retirement System.

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"Permanent, total disability" means a mental or physical incapacity requiring absence from employment service for at least six months: *Provided*, That the incapacity is shown by an examination by a physician or physicians selected by the board: *Provided, however*, That for employees hired on or after July 1, 2005, "permanent, total disability" means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness.

"Plan year" means the 12-month period commencing on July 1 of any designated year and ending on the following June 30.

"Public schools" means all publicly supported schools, including normal schools, colleges, and universities, in this state. Unless the context clearly requires otherwise, "public school" shall not include a public charter school which is not an "electing charter school" as defined herein.

"Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

"Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

"Retirement" means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement.

"Year of employment service" means employment for at least 10 months, with a month being defined as 20 employment days: *Provided*, That no more than one year of service may be

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accumulated in any 12-month period.

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§18-7B-3. Defined contribution retirement system created and established; body corporate.

The teachers' defined contribution retirement system is hereby created and established to provide for the secure, fair and orderly retirement of the teachers and related personnel of the state. The defined contribution retirement system shall constitute a body corporate and all business of the system shall be transacted in the name of the teachers' defined contribution retirement system.

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§18-7B-4. Article to be liberally construed; purpose; federal qualification requirements.

The provisions of this article shall be liberally construed so as to provide a general annuity based retirement system for teachers in this state. The purpose of this article is to provide a defined contribution retirement program which is fully funded on a current basis from employer and employee contribution.

The retirement system is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one, article ten-d, chapter five of this code to assure compliance with the requirements of this section.

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§18-7B-5. Administration of the teachers' defined contribution retirement system.

The Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code shall administer the teachers' defined contribution retirement system. The board may sue and be sued, contract and be contracted with and conduct all the business of the defined contribution system in the name of the teachers' defined contribution retirement system.

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§18-7B-6. Powers and duties of the consolidated board in the administration of the defined contribution system.

The board has all powers necessary to effectuate the purposes of this article. The board shall contract with a private pension, insurance, annuity, mutual fund or other qualified company or companies to administer the day-to-day operations of the system. In selecting such company or companies the board shall take into account as its highest duty, the proper safeguard and protection of the member and employer contributions and the interest dividends, or other return thereon. The board shall promulgate rules regarding the proper investment of funds notwithstanding the provisions of article six, chapter twelve of this code.

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§18-7B-7. Participation in Teachers' Defined Contribution Retirement System; limiting participation in existing Teachers Retirement System.

(a) Beginning July 1, 1991, and except as provided in this section, the Teachers' Defined Contribution Retirement System shall be the single retirement program for all new employees whose employment commences on or after that date and all new employees shall be required to participate. No additional new employees except as may be provided in this section may be admitted to the existing Teachers Retirement System.

(b) Members of the existing Teachers Retirement System whose employment continues beyond July 1, 1991, and those whose employment was terminated after June 30, 1991, under a reduction in force are not affected by subsection (a) of this section and shall continue to contribute to and participate in the existing Teachers Retirement System without a change in plan provisions or benefits.

(c) Any person who was previously a member of the Teachers Retirement System and who left participating employment before the creation of the Teachers' Defined Contribution Retirement System on July 1, 1991, and who later returns to participating employment after the effective date of this section shall return to the existing Teachers Retirement System.

(d) Any person who was, prior to July 1, 1991, a member of the existing Teachers Retirement System who left participating employment before the creation of the Teachers' Defined Contribution Retirement System on July 1, 1991, and who later returned to participating employment after that date and who was precluded from returning to the existing Teachers Retirement System as a result of prior provisions of this section, may become a member of the Teachers Retirement System upon meeting the requirements provided in article seven-d of this chapter.

(e) Any employee whose employment with an employer was suspended or terminated while he or she served as an officer with a statewide professional teaching association, is eligible for readmission to the existing retirement system in which he or she was a member.

(f) An employee whose employment with an employer or an existing employer is suspended as a result of an approved leave of absence, approved maternity or paternity break in service or any other approved break in service authorized by the board is eligible for readmission to the existing retirement system in which he or she was a member.

(g) In all cases in which a question exists as to the right of an employee to readmission to membership in the existing Teachers Retirement System, the Consolidated Public Retirement Board shall decide the question.

(h) Any individual who is not a "member" or "employee" as defined by section two of this article and any individual who is a leased employee is not eligible to participate in the Teachers' Defined Contribution Retirement System. For purposes of this section, a "leased" employee means any individual who performs services as an independent contractor or

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pursuant to an agreement with an employee leasing organization or other similar organization. In all cases in which a question exists as to whether an individual is eligible for membership in this system, the Consolidated Public Retirement Board shall decide the question.

(i) Effective July 1, 2005 and continuing through January 1, 2006, any employee of River Valley Child Development Services, Inc., who is a member of the Teachers' Defined Contribution Retirement System may elect to withdraw from membership and join the private pension plan provided by River Valley Child Development Services, Inc.

(j) River Valley Child Development Services, Inc., and its successors in interest shall provide for their employees a pension plan in lieu of the Teachers' Defined Contribution Retirement System on or before July 1, 2005, and continuing thereafter during the existence of the River Valley Child Development Services, Inc., and its successors in interest. All new employees hired after June 30, 2005, shall participate in the pension plan in lieu of the Teachers' Defined Contribution Retirement System.

(k) The administrative body of River Valley Child Development Services, Inc., shall, on or before June 1, 2005, give written notice to each employee who is a member of the Teachers' Defined Contribution Retirement System of the option to withdraw from or remain in the system. The notice shall include a copy of this section and a statement explaining the member's options regarding membership. The notice shall include a statement in plain language giving a full explanation and actuarial projection figures, prepared by an independent actuary, in support of the explanation regarding the individual member's current account balance, vested and nonvested, and his or her projected return upon remaining in the Teacher's Defined Contribution Retirement System until retirement, disability or death, in comparison with the projected return upon withdrawing from the Teachers' Defined Contribution Retirement System and joining a private pension plan provided by River Valley Child Development Center, Inc., and remaining therein until retirement, disability or death. The administrative body shall keep in its records a permanent record of each employee's signature confirming receipt of the notice.

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§18-7B-7a. Plan closed to persons employed for the first time after June, 2005; former employees.

The retirement system created and established in this article shall be closed and no new members accepted in the system after June 30, 2005. Notwithstanding the provisions of sections seven and eight of this article, all persons who are regularly employed for full-time service as a member or an employee whose initial employment commences after June 30, 2005, shall become a member of the state Teachers' Retirement System created and established in article seven-a of this chapter: Provided, That any person rehired after June 30, 2005, shall become a member of the Teachers' Defined Contribution Retirement System created and established in this article, or of the Teachers Retirement System created and established in article seven-a of this chapter, depending upon which system he or she last contributed to while he or she was employed with an employer mandating membership and contributions to one of those plans: Provided, however, That a rehired person who thereby becomes a member of the Teachers' Defined Contribution Retirement System may become a member of the Teachers Retirement System within the applicable time periods and upon meeting the requirements provided in article seven-d of this chapter: Provided further, That any person rehired after December 31, 2007, who did not have at least $1 in the Teachers Defined Contribution Retirement System on December 31, 2007, and for whom the Teachers Defined Contribution Retirement System was the system to which he or she last contributed while employed by an employer who required membership and contributions to one of the two teachers retirement plans, shall, within ten days of returning to employment, affirmatively choose to reenter the Teachers Defined Contribution Retirement System or to become a contributing member of the Teachers Retirement System. Those rehired prior to July 1, 2008, and who did not have at least $1 in the Teachers Defined Contribution Retirement System on December 31, 2007, as determined by the Consolidated Public Retirement Board, shall be permitted to voluntarily elect to transfer effective August 1, 2008, upon written request to the Consolidated Public Retirement Board received no later than July 15, 2008.

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§18-7B-8. Voluntary participation in system; expiration of right to elect membership in defined contribution system.

(1) Any employee who is a member of the existing retirement system may, upon written election, voluntarily elect membership in the Teachers' Defined Contribution Retirement System, on a prospective basis, on or after July 1, 1991. All benefits earned by any employee making a voluntary election under the existing retirement system prior to the voluntary election shall be frozen and made available to that employee upon retirement as provided by the existing retirement system. A member of the existing retirement system who has less than five years of contributing service in the existing retirement system may elect to withdraw his or her contribution plus interest thereon as if the member is terminating employment and upon withdrawal shall deposit the funds in the defined contribution system: Provided, That the member's years of contributing service in the existing system shall be applied toward the years of employment service required under section eleven of this article: Provided, however, That this election is allowed on a retroactive basis to July 1, 1991. For the purposes of this section, "frozen" means that the member's salary, years of service and any other factor to determine benefits shall be calculated as of the date that the member elected membership in the defined contribution system and after that date no increase in salary, years of service or any other factor may be used to increase the retirement benefit above that which it would be if a person retired upon the date that the election is made. After having made the election, the employee may not change such election or again become a member of the existing retirement system.

(2) Notwithstanding any provision of this section to the contrary, after June 30, 2005, no person who is a member of the state Teachers Retirement System may elect membership in the Teachers' Defined Contribution Retirement System.

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§18-7B-8a. Qualified military service.

Contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

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§18-7B-9. Members' contributions; annuity account established.

(a) Each employee who is a member of the Defined Contribution System shall contribute four and one-half percent of his or her gross compensation by salary deduction. The salary deductions shall be made by the employer and shall be paid to the Teachers' Defined Contribution Retirement System within fifteen days of the end of the pay period: Provided, That the board may require any employer to make the payments within such shorter period as it may determine, upon at least sixty days notice to the employer, if the board determines the employer has the technological capacity to transfer the funds within the shorter period. The employer payments shall be remitted by the board within five working days to the private pension, insurance, annuity, mutual fund, or other qualified company or companies designated by the board to administer the day-to-day operations of the system.

(b) All member contributions shall be immediately deposited to an account or accounts established in the name of the member and held in trust for the benefit of the member. An account agreement shall be issued to each member setting forth the terms and conditions under which contributions are received, and the investment and retirement options available to the member. The Board shall propose for legislative approval in accordance with article three, chapter twenty-nine-a of this code, pursuant to section six of this article, rules defining the minimum requirements for the investment and retirement options to be provided to the members.

(c) The legislative rules proposed by the board, to the extent not inconsistent with the applicable provisions of the Internal Revenue Code of the United States, shall provide for varied retirement options including, but not limited to:

(1) Lump sum or periodic payment distributions;

(2) Joint and survivor annuities;

(3) Other annuity forms in the discretion of the board;

(4) Variable annuities which gradually increase monthly retirement payments: Provided, That said increased payments are funded solely by the existing current value of the member's account at the time the member's retirement payments commence and not, to any extent, in a manner which would require additional employer or employee contributions to any member's account after retirement or after the cessation of employment; and

(5) The instances in which, if any, distributions or loans can be made to members from their annuity account balances prior to having attained the age of fifty-five.

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§18-7B-10. Employer contributions.

Each participating employer shall annually make a contribution equal to seven and one-half percent of each member's gross compensation. The pro rata share of this amount shall be paid upon each date that a member contribution is made and shall be remitted as provided for in section nine of this article for credit to the member's annuity account. Each participating employer has a fiduciary duty to its employees to ensure that the employer contributions are timely made. In the case of an officer or employee of the state, any unpaid contribution shall be a state debt, contracted as a result of a casual deficit in state revenues, to be accorded preferred status over other expenditures.

In the event that any payment is not timely made, the participating employer shall immediately give to the employee and the State Auditor notice in writing of the nonpayment, in such form and accompanied by such documentation as may be required by the Auditor. Notice to the Auditor shall operate in the manner of a requisition, and the Auditor shall transmit a warrant to the treasurer. At such time as funds are available in the appropriate account, the treasurer shall pay the employer contribution, together with appropriate daily interest.

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§18-7B-11. Termination of membership.

(a) Any member whose employment with a participating employer terminates after the completion of six complete years of employment service is eligible to terminate his or her annuity account and receive a distribution from the member's annuity account, in an amount equal to the member's contribution plus one third of the employer contributions and any earnings thereon. Any member whose employment with a participating employer terminates after the completion of nine complete years of employment service is eligible to terminate his or her annuity account and receive a distribution from the member's annuity account, in an amount equal to the member's contribution plus two thirds of the employer's contributions and any earnings thereon. Any member whose employment with a participating employer terminates after the completion of twelve complete years of employment service is eligible to terminate his or her annuity account and receive a distribution of all funds contributed and accumulated in his or her annuity account. Any member whose employment with a participating employer terminates prior to the completion of six complete years of employment service is eligible to terminate his or her annuity account and receive a distribution from the member's annuity account, in an amount equal to the member's contribution plus any earnings thereon: Provided, That on the death or permanent, total disability of any member, that member is eligible to terminate his or her annuity account and receive all funds contributed to or accumulated in his or her annuity account.

(b)(1) Upon termination of employment, regardless of whether the member has taken a distribution of all or a portion of his or her vested account, the remaining balance, if any, in the member's employer account that is not vested shall be remitted and paid into a suspension account to be administered by the board. The Board shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code regarding the distribution of any balance in the special account created by this section: Provided, That any funds in the account shall be used solely for the purpose of reducing employer contributions in future years.

(2) Any account balances remitted to the suspension account herein shall be maintained by the board in the suspension account in the name of the terminated employee for a period of five years following the member's termination of employment. For each terminated employee at the culmination of the five-year period, the board shall certify in writing to each contributing employer the amount of the account balance plus earnings thereon attributable to each separate contributing employer's previously terminated employee's account which has been irrevocably forfeited due to the elapse of a five-year period since termination pursuant to section sixteen of this article.

(c) Upon certification to the several contributing employers of the aggregate account balances plus earnings thereon which have been irrevocably forfeited pursuant to this section, the several contributing employers shall be permitted in the next succeeding fiscal year or years to reduce their total aggregate contribution requirements pursuant to section seventeen of this article, for the then current fiscal year by an amount equal to the

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aggregate amounts irrevocably forfeited and certified as such to each contributing employer: Provided, That should the participating employer no longer be contributing to the Defined Contribution System, any funds in the account shall be paid directly to the employer.

(d) Upon the use of the amounts irrevocably forfeited to any contributing employer as a reduction in the then current fiscal year contribution obligation and upon notification provided by the several contributing employers to the board of their intention to use irrevocably forfeited amounts, the board shall direct the distribution of the irrevocably forfeited amounts from the suspension account to be deposited on behalf of the contributing employer to the member annuity accounts of its then current employees pursuant to section seventeen of this article: Provided, That notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office requires that member to be absent from his or her teaching, nonteaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit, regardless when this time was served: Provided, however, That the board may not require any additional contributions from that member in order for the board to credit him or her with the contributing service credit earned while discharging official legislative duties: Provided further, That nothing herein may be construed to relieve the employer from making the employer contribution at the member's regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of July 1, 2003: And provided further, That any member to which the provisions of this subsection apply may elect to pay to the board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature.

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§18-7B-11a. Rollovers and transfers to repay cashed-out or withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after January 1, 2002. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the defined contribution system shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of repayment of cashed-out or withdrawn contributions, in whole or in part, as otherwise provided in this article or the rules applicable to the defined contribution system: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with the policies established by the board from time to time.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the repayment of cashed-out or withdrawn contributions.

(c) Nothing in this section shall be construed as permitting the repayment of cashed-out or withdrawn contributions except as otherwise permitted in this article or the rules applicable to the defined contribution system.

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§18-7B-12. Retirement, commencement of annuity payments, payments under a qualified domestic relations order.

(a) Subject to the provisions of section twelve-a of this article, an employee attaining fifty-five years of age, may elect to take retirement by notifying the board or its designee in writing of his or her intention to retire. The notice of retirement must be received by the board or its designee no fewer than sixty days prior to the effective date of retirement. Retirement payments shall commence within thirty days of the retirement date under the payment option selected by the employee.

(b) An alternate payee named in a qualified domestic relations order may elect to receive a distribution awarded from this plan. If the alternate payee elects, the board or its designee shall promptly compute the amount due without regard to whether the employee is receiving benefits at the time of election. After the amount due has been computed, the board shall promptly initiate payments to the alternate payee.

(c) For purposes of this section, the term "qualified domestic relations order" means a "qualified domestic relations order" as defined in Section 414(p) of the Internal Revenue Code with respect to government plans.

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§18-7B-12a. Federal minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this defined contribution system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in this system to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of § 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the defined contribution system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary subject to the provisions of subsection (g) of this section: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under §401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this retirement system which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death (subject to the provisions of subsection (g) of this section).

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's

interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary (subject to the provisions of subsection (g) of this section), commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §18-7B-2 of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution (subject to the provisions of subsection (g) of this section, if applicable): *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §18-7B-2 of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

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(f) For purposes of this section, any amount paid to a child of a member will be treated as if it had been paid to the surviving spouse of the member if the remaining amount becomes payable to the surviving spouse when the child reaches the age of majority.

(g) The provisions of this subsection will apply to distributions with respect to members who die on or after January 1, 2022, and to the designated beneficiaries of members who die prior to January 1, 2022, as described in subdivision (2) of this subsection. This subsection will not apply to qualified annuities described in SECURE Act §401(b)(4)(B)[P.L. 116-94, Div. O].

(1) 10-Year Rule. — If the distributee of a deceased member's account is a designated beneficiary who is not an "Eligible Designated Beneficiary," then the system will distribute the member's vested account in full no later than December 31 of the 10th year following the year of the member's death.

(2) Beneficiary Death. — If an Eligible Designated Beneficiary dies before receiving distribution of the beneficiary's entire interest in the member's account, the system will distribute the remaining interest in full no later than December 31 of the 10th year following the year of the Eligible Designated Beneficiary's death. Similarly, if a member died before January 1, 2022, the limitations of this subsection (g) shall apply to distributions to the beneficiary of the member's designated beneficiary.

(3) Eligible Designated Beneficiary. — An individual is an "Eligible Designated Beneficiary" of a member if the individual qualifies as a designated beneficiary under § 401(a)(9)(E) of the Internal Revenue Code and is (1) the member's spouse, (2) the member's child who has not reached the age of majority, as defined for purposes of § 401(a)(9)(F) of the Internal Revenue Code, (3) an individual not more than 10 years younger than the member, (4) a disabled individual, as defined in § 72(m)(7) of the Internal Revenue Code, or (5) an individual who has been certified to be chronically ill, as defined in § 7702B(c)(2) of the Internal Revenue Code, for a reasonably lengthy period, or indefinitely. Certain trusts may be treated as Eligible Designated Beneficiaries pursuant to § 401(a)(9)(H)(iv) and (v) of the Internal Revenue Code. When a child of the member reaches the age of majority, the system will distribute the child's account in full no later than 10 years after that date.

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§18-7B-13. Amount of annuity payments; federal law maximum benefit limitations.

(a) The amount of annuity payments a retired member shall receive shall be based solely upon the balance in the member's annuity account at the date of retirement, the retirement option selected, or in the event of an annuity option being selected, the actuarial life expectancy of the member and such other factors as normally govern annuity payments.

(b) The board, or its designee, is authorized upon retirement of a member, with the approval of that member, to purchase an annuity with the balance of the member's account. Upon delivery of the annuity to the member upon his or her retirement, the member shall execute a release surrendering any claim the member may have against the retirement trust.

(c) Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code (as such limitations are adjusted for cost of living in accordance with Section 415(d) of the Internal Revenue Code) and Treasury Regulations thereunder to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 annual addition limitation(s)") so that an annual addition made under this system shall not exceed those limitations. Any annual addition made under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which an annual addition under this retirement system shall be reduced, as compared to the extent which an annual addition under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annual addition required by this section. The 415 limitations shall apply as if the total annual additions under all defined contribution plans in which a member has been a member were payable from one plan for any member who has at any time been a member in any other defined contribution plan maintained by the member's participating employer. For purposes of the 415 limitations, the "limitation year" shall be the calendar year.

(d) Solely for purposes of calculating and applying the 415 limitations, a member's compensation for a limitation year is defined to be wages within the meaning of Section 3401(a) of the Internal Revenue Code (including amounts that would be included in wages but for an election under Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b) of the Internal Revenue Code), plus all other payments of compensation to a member by a participating employer (in the course of the employer's trade or business) for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code, and determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed. In addition:

(1) For limitation years beginning on or after January 1, 2009, compensation for a limitation year shall also include:

(A) Compensation paid by the later of two and one-half months after a member's severance from employment with the employer or the end of the limitation year that includes the date of the member's severance from employment with the employer maintaining the plan, if the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer;

(B) Back pay, within the meaning of Treasury Regulation §1.415(c)-2(g)(8), for the limitation year to which the back pay relates, but only to the extent the back pay represents wages and compensation that would otherwise be included in compensation under this definition; and

(C) For an employee in qualified military service (within the meaning of Section 414(u)(5) of the Internal Revenue Code), compensation such employee would have received during such period if the employee were not in qualified military service, to the extent required pursuant to Section 414(u)(7) of the Internal Revenue Code.

(2) For limitation years beginning on or after January 1, 2009, compensation for a limitation year may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code.

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§18-7B-13b. Direct rollovers.

(a) Except where otherwise stated, this section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least $500 paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions reasonably expected to total less than $200 during a year. For distributions after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or (for taxable years beginning before January 1, 2007) to a qualified trust which is part of a defined contribution plan described in Section 401(a) or (for taxable years beginning after December 31, 2006) to a qualified trust or to an annuity contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable, or (for taxable years beginning after December 31, 2007) to a Roth IRA described in Section 408A of the Internal Revenue Code.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution prior to January 1, 2002, to the surviving spouse, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity. For distributions after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is

maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system. For distributions after December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408A of the Internal Revenue Code: Provided, That in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2007, "distributee" also includes a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code.

(4) "Direct rollover" means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this retirement system or any other retirement system administered by the board.

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§18-7B-14. Supplemental annuity contracts.

The board shall authorize the private pension, insurance, annuity, mutual fund or other qualified company or companies with whom it contracts to make available to members such supplemental annuity options, disability and other insurance or benefits as the board deems appropriate: Provided, That such supplemental annuities, insurance and benefits shall be funded solely from employee contributions.

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§18-7B-15. Account statements.

The board shall prepare or cause to be prepared, on an annual basis, an account statement for each members' annuity account. The statement shall include, but not be limited to, a statement of the current market value of the members' account. The board shall prescribe the form and content of the account statement not inconsistent with the provisions of this section.

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§18-7B-16. Years of employment service.

(a) A member of the Defined Contribution System who terminates employment with a participating employer and does not remove any funds from his or her vested employee and employer account, or who removes the funds and repays them within five years after termination, and becomes reemployed with a participating employer within five years does not forfeit any amounts placed into the suspension account pursuant to section eleven of this article and they shall be returned to his or her employer account.

(b) All years of employment service shall be counted for vesting purposes under section eleven of this article.

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§18-7B-17. Deposits to the members' annuity accounts.

Beginning on July 1, 1991 and thereafter, each county board of education or electing charter school shall deposit in the member's annuity account created pursuant to §18-7B-9 of this code an amount equal to seven and one-half percent of all compensation paid to members of the defined contribution system in excess of that authorized for minimum salaries in §18A-4-2 and §§18A-4-8a of this code to the extent that the excess exceeds the amount distributed for salary equity to the county.

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§18-7B-18. Right to benefits not subject to execution, etc.; exception for qualified domestic relations orders.

The right of any person to a benefit provided for in this article shall not be subjected to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever with the exception that the benefits or contributions under this system shall be subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, nor shall any assignment thereof be enforceable in any court.

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§18-7B-19. Benefits not forfeited if system terminates.

If the retirement system is terminated or contributions are completely discontinued, the rights of all members to contributions made to the date of such termination or discontinuance, to the extent then funded, are not forfeited.

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§18-7B-20. Prohibition of involuntary cash-outs.

Notwithstanding any provision of this section or of any legislative rule contained in series three, involuntary cash-outs to members may not be made after June 30, 2005.

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§18-7B-21. Correction of errors; underpayments; overpayments.

(a) *General rule*. — Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) *Underpayments to the system*. — Any error resulting in an underpayment to the system, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the existing employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board Refund, Reinstatement, Retroactive Service, Loan and Correction of Error Interest Factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the system will result in the system paying the retirant an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) *Overpayments to the system by an employer*. — When mistaken or excess employer contributions or other employer overpayments have been made to the system, the board shall credit the employer with an amount computed by the board, to be offset against the employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer.

(d) *Overpayments to the retirement system by an employee*. — When mistaken or excess employee contributions or overpayments, have been made to the retirement system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq*. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the existing employer employing the individual to pay the individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual are not considered compensation for any purposes of this article.

(e) *Overpayments from the retirement system*. — If any error results in any member, retirant beneficiary, entity or other individual receiving from the system more than he would have

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been entitled to receive had the error not occurred the board upon learning of the error shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the retirement system pursuant to this subsection.

(f) *Underpayments from the retirement system*. — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) *Eligibility errors*. — If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the retirement system. Any erroneous payments to the retirement system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the retirement system to such individual shall be returned to the retirement system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. Service credit for service prior to the date on which the individual prospectively commences participation in the retirement system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

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