

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF EDUCATION
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INFORMATIONAL

TO: Division Superintendents

FROM: Jo Lynne DeMary
Superintendent of Public Instruction

William H. Leighty
Director, Virginia Retirement System

SUBJECT: Implementation of Legislation Authorizing the
Hiring of Retired Public School Teachers and
Administrators for Critical Shortage Areas

Legislation enacted by the 2001 General Assembly provides that a retired member of the Virginia Retirement System with previous service as a local school board instructional or administrative employee may be hired by a school division to fill vacancies in critical shortage areas with no interruption of retirement benefits, if specified requirements are met. This memorandum provides an explanation of the requirements of the legislation, HB 252 and HB 1589; the criteria for designation of critical shortage areas by the Superintendent of Public Instruction; and directions and procedures for implementation.

The implementation procedures were developed by an advisory committee comprised of school division representatives from each of the Superintendents' Study Regions, as well as representatives from the Department of Education and the Virginia Retirement System (VRS).

Eligibility for Participation in the Program

The legislation permits any person receiving a service retirement allowance under § 51.1-155 of the Code of Virginia who is hired as a school instructional or administrative employee required to be licensed by the Board of Education, to elect to continue to receive the retirement allowance during employment if the required conditions specified in the bills are met. The conditions include the following:

- The person's retirement allowance is based in whole or in part on service as a local school board instructional or administrative employee required to be licensed by the Board of Education;*
- The person has been receiving the retirement allowance for a certain period of time preceding his or her employment as determined jointly by the Board of the Virginia Retirement System and the Joint Legislative Audit and Review Commission (JLARC);*
- The person is not receiving a retirement benefit under an early retirement incentive program from any school division within the Commonwealth; and*
- At the time the person is employed, the position to which he or she is assigned is among those identified by the Superintendent of Public Instruction as having a critical shortage of teachers or administrative personnel licensed by the Board of Education. Critical shortage areas may be identified by geographic area, by school division, or by subject matter.*

Definition of an "Instructional" or "Administrative" employee

The definitions for an "instructional or administrative employee" are those provided in the "Regulations

Governing the Employment of Professional Personnel," 8 VAC 20-440-10. In those regulations, "principal" means a person who holds a valid teaching license issued by the Board of Education and who is regularly employed full-time as a principal or assistant principal. A "teacher" means a person who holds a valid teaching license issued by the Board of Education, and who is regularly employed full time as a teacher, visiting teacher/school social worker, guidance counselor, or librarian.

The holder of a three-year local eligibility license would not be eligible for employment, since the legislation specifies that the employees must hold a valid teaching license issued by the Board of Education. The holder of a provisional license would be eligible for employment.

Designation of Shortage Areas

The legislation specifies that the Superintendent of Public Instruction shall survey all school divisions at least annually to identify critical shortages of teachers and administrative personnel by geographic area, by school division, or by subject matter, and report such critical shortages to each local school division and to the Virginia Retirement System.

Shortages by subject matter will be designated from the top 10 academic disciplines identified as having shortages through the Superintendent's annual survey of school divisions. For this school year, the disciplines are special education; mathematics; sciences; technology education; library media; foreign languages; English as a Second Language; reading (reading specialist); work and family studies; and agricultural education.

School divisions will be designated as the geographic regions for consideration of shortages in addition to those identified by subject matter. Any position vacancy for which a school division receives three or fewer qualified candidates (licensed or eligible for a license) may be designated as a critical shortage. This

three-to-one ratio would apply for all teaching and administrative positions for the 2001-2002 school year.

Requirements for Retired School Employee to Receive Retirement Allowance during Employment

The legislation specifies that in order to continue to receive retirement allowances, a person hired by a school division: (1) must have served as a former licensed instructional or administrative employee; (2) must have been retired under the VRS system for a length of time jointly determined by VRS and JLARC; (3) may not be receiving a retirement benefit under a school division early retirement incentive program; and (4) must be assigned to a shortage area.

Service Break. The length of time between retirement and re-entry into the work force as a school employee determined by VRS and JLARC, through review from their actuaries and legal counsel, is 12 months. The time of service break must satisfy two conditions: (1) it should not affect the decisions of current employees concerning when to retire in future years, resulting in a negative fiscal impact on the Commonwealth; and (2) it should not affect or jeopardize the Internal Revenue tax qualification for VRS through failure to follow regulations for in-service distribution of retirement benefits.

Without the tax qualification status for VRS, earnings on the system's trust fund would be taxed as earned, and employee retirement benefits would be taxed as they accrue. The Internal Revenue Service has indicated that a complete and good faith ending of service at the time of retirement, with no agreement or expectation of future employment, is essential to meeting regulations. **No pre-employment offer may be made, either verbal or written.** Severance of employment under false circumstances in order to retire and then be rehired could result in loss of retirement benefits during the employment period.

Early Retirement Incentive Program. As a general rule, an early retirement incentive program (ERIP) is an enhancement to an individual's basic benefit package available to a specific group of employees who retire during a limited period of time or as the result of reaching specific eligibility criteria. The enhancements may include items such as credit for additional age or service toward pension benefits, additional payments without regard to age or service, or enhanced retiree health benefits. Whenever the goal of such a program is to provide an incentive to an employee to retire prior to his or her eligibility for full, unreduced benefits, an ERIP exists. An employee who has met VRS qualifications for retirement with full benefits, and who is working for a division part-time, would not be considered as receiving benefits from an ERIP. Although some school divisions may have incentives for fully retired employees to come back to work on a limited, part-time basis, at an hourly rate or percentage of full-time salary, these programs would not be considered formal ERIPs.

Administrative Procedures for Certification of Eligibility and Record Keeping

School divisions must maintain records of eligible retired individuals employed by local school boards. A certification form for each retired individual hired for a shortage area must include the following information:

Name
Social Security Number
Date Last Worked on a Full-time Basis
Date of Employment
Teaching Assignment

In addition, the form includes a statement signed by the employee and the superintendent, or designee. The statement will verify that:

No pre-employment offer was made to the employee;

The employee is not participating in an ERIP;

The employee has met the service break requirement of 12 months;

The employee is assigned to a shortage area as defined by criteria;

The employee is licensed and endorsed in the academic area of assignment; and

The employee understands that falsification of information could result in loss of retirement benefits during the time of employment.

The information for each retired employee who is employed by the school division must be provided to the Division of Teacher Education and Licensure in the Department of Education through electronic files twice a year, on October 1 and February 1. The department will forward the information to VRS. Until the availability of transferring forms with electronic signatures, hard copies of the certification statements also must be mailed to the department on October 1 and February 1. Attached is the form for certification of eligibility for employment that must be completed at the time of hire. When the term of employment ends for a hired retiree, the Department of Education must be notified. Attached is a form that must be submitted for that purpose. We will provide an Excel application for electronic submission of these forms.

Questions concerning the information in this memorandum may be directed to Dr. Thomas A. Elliott, assistant superintendent for teacher education and licensure, or to Patty S. Pitts, director of professional licensure, Department of Education, (804) 371-2522. Questions concerning retirement issues may be directed to Mr. Wallace Harris, deputy director, Virginia Retirement System, (804) 344-3121.

JLD/CAC/cjb

Attachments

