

**2.82.2 NMAC, MEMBERSHIP**

**2.82.2.1 ISSUING AGENCY:**

Educational Retirement Board, P. O. Box 26129, Santa Fe, New Mexico 87502-0129

**2.82.2.2 SCOPE:**

This rule defines membership status and processes within the Educational Retirement Act, Section 22-11-1 to 22-11-53, NMSA 1978.

**2.82.2.3 STATUTORY AUTHORITY:**

The Educational Retirement Act Section 22-11-1 to 22-11-52, NMSA 1978.

**2.82.2.4 DURATION:**

Permanent

**2.82.2.5 EFFECTIVE DATE:**

June 30, 1999, unless a later date is cited at the end of a section or paragraph.

**Comment [A1]:** The proposed amendment would be effective upon its adoption by the ERB.

**2.82.2.6 OBJECTIVE:**

The purpose of this rule is to govern operations and define the types of membership eligible for coverage, as well as employees excluded from coverage.

**2.82.2.7 DEFINITIONS:**

[RESERVED]

**2.82.2.8 EMPLOYEES AND EMPLOYERS COVERED BY THE EDUCATIONAL RETIREMENT ACT:**

A. Employers who are designated by statute as "local administrative units" shall be the following schools, institutions, and agencies:

- (1) all public school districts in New Mexico;
- (2) the educational institutions enumerated in Article XII, Section 11 of the Constitution of New Mexico;
- (3) state department of education;
- (4) the educational retirement board;
- (5) the New Mexico school for the visually handicapped at Alamogordo;
- (6) the girls' welfare home;
- (7) the New Mexico boys' school at Springer;
- (8) the Los Lunas hospital and training school;

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(9) technical and vocational institutes created pursuant to the Technical and Vocational Institute Act;

(10) junior colleges created pursuant to the Junior Colleges Act;

(11) and the New Mexico activities association. (The NMAA was added to the statute effective July 1, 1982.)

B. In addition to the [local](#) administrative units enumerated in Subsection A of this section, any state institution or agency providing an educational program and employing certified school instructors shall be an [local](#) administrative unit with coverage in such unit limited to certified school instructors.

C. All employees of the schools, institutions and agencies enumerated in Subsection A of this section, except for those employees enumerated in Section 11 of this rule, are either "regular" "retired" or "provisional" members under the "Educational Retirement Act."

**2.82.2.9 REGULAR MEMBERS:**

A. In the institutions of higher learning, technical and vocational institutes and junior colleges, "regular members" shall be all regularly employed teaching staff, whether full-time or part-time (except retired members participating in the return to work program and exclusions under Section 11 of this rule); all regularly employed administrators, whether full-time or part-time, who hold a bachelor's degree ~~or~~ the professional equivalent thereof and who have managerial and supervisory responsibilities, (except retired members participating in the return to work program and exclusions under Section 11 of this rule); and all regularly employed nurses, whether full-time or part-time (except retired members participating in the return to work program and exclusions under Section 11 of this rule).

B. In the public school districts and state operated schools other than colleges, "regular members" shall be all regularly employed teachers, administrators, and nurses who are holders of appropriate certificates issued by the state department of education, regardless of whether employed full-time or part-time, (except retired members participating in the return to work program and exclusions under Section 11 of this rule).

C. Any member except a retired member participating in the return to work program, who is regularly employed in any of the following [local](#) administrative units, shall be a "regular member" if he holds a teacher's, nurse's or administrator's certificate (which is issued by the state department of education) at the time of commencement of employment in such [local](#) administrative units:

- (1) northern New Mexico state school
- (2) N.M. boys' school
- (3) girls' welfare home

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- (4) Los Lunas hospital and training school
- (5) state department of education
- (6) educational retirement board
- (7) New Mexico school for the visually handicapped
- (8) New Mexico school for the deaf
- (9) New Mexico activities association (was added to the statute effective July 1, 1982).

D. Except retired members participating in the return to work program, regular membership is a condition of employment and all local administrative unit employees who qualify as "regular members" must be covered under ERA, commencing with the first day of employment.

E. Except retired members participating in the return to work program, any person regularly employed, whether full-time or part-time, in any state institution or agency described in Subsection B of 2.82.2.8 NMAC, shall be a regular member if he is employed in an educational program and if he holds a certified school instructor's certificate issued by the state board.

**2.82.2.10 PROVISIONAL MEMBERS:**

A. All persons regularly employed by the schools, institutions, and agencies outlined in Section 8 of this rule who are not "regular members" are "provisional members" and if employed or re-employed after July 1, 1971 must be covered under ERA beginning with the first day of employment or re-employment, as a condition of employment, or if employed by a local administrative unit set forth in Subsection E of 2.82.2.10 NMAC, such provisional member may make the election provided therein.

B. Provisional members who entered employment prior to July 1, 1971 could exempt themselves from coverage under ERA in the manner provided in Section 22-11-17 NMSA 1978 Compilation, as that section existed prior to July 1, 1971. If such provisional member did not exempt himself, he must be covered under the provisions of the Educational Retirement Act beginning with the first day of his employment.

C. For the purpose of coverage under the ERA, school bus owner-drivers shall be considered as provisional members. The term "owner-driver" shall be taken to mean the person who drives a school bus owned by him, over a regularly established route, under a regular contract in his name, approved by the state director of school transportation, and using equipment approved by the state director of school transportation for the regular transportation of children.

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D. Any provisional member who has exempted himself may, at any future date, revoke such exemption and commence coverage under ERA on the first day of the month following his revocation.

E. Any provisional member employed by any of the following [local](#) administrative units may elect to be covered under the public employees' retirement association in lieu of coverage under the Educational Retirement Act within the first 6 months of his employment or reemployment, but may not exempt himself.

- (1) N.M. boys' school
- (2) girls' welfare home
- (3) N.M. school for the deaf
- (4) educational retirement board
- (5) state department of education
- (6) northern New Mexico state school
- (7) Los Lunas hospital & training school
- (8) N.M. school for the visually handicapped

(9) Until or unless such provisional member does elect coverage under PERA, he must be covered under the Educational Retirement Act commencing with the first day of his employment, or re-employment in any of the [local](#) administrative units enumerated in this section. Likewise, the selection of PERA requires the continued PERA coverage for the duration of employment or re-employment in any of the units specified in this section.

(10) It shall be the policy of the board, in cooperation with PERA, to determine annually if there are provisional members employed by these [local](#) administrative units who are retired from one system while having elected to participate in the second system.

F. To elect membership under PERA, a provisional member must complete ERA Form 44, "election of coverage under PERA," in triplicate. The [local](#) administrative unit shall obtain all three copies from the member and forward them to the educational retirement board. The director of the educational retirement shall approve the election if it is in order, and forward one copy to the executive secretary of the public employees' retirement association which shall serve as the employees' notice to said association of his election to be covered by PERA. One copy of the election shall be returned to the [local](#) administrative unit as evidence of approval of the member's election to be covered under PERA, and the original copy shall be a permanent record on file with the educational retirement board.

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G. No provisional member may be covered under the public employees' retirement association in lieu of ERA unless a properly executed "election of coverage under PERA," Form 44, is filed with the director of educational retirement.

H. All employees of the public schools who are engaged as teacher aides or classroom aides but who do not teach shall be classified as provisional members even though such employees may hold certificates in some form issued by the department of education.

I. There shall be no provisional membership extended to employees of the local administrative units described in Subsection B of 2.82.2.8 NMAC.

**2.82.2.11 EMPLOYEES EXCLUDED FROM COVERAGE:**

A. Any person enrolled as a student in any of the local administrative units outlined in Subsection A of 2.82.2.8 NMAC, and who is also employed by the local administrative unit in which he is enrolled, shall be considered a student and not eligible for either "regular" or "provisional" membership under the ERA, except that members of the faculty or full-time staff, who may be incidentally enrolled in classes, shall not be affected by this rule. Under no circumstances shall graduate assistants, teaching fellows, or students in positions of similar nature, be considered eligible for coverage under the ERA. This includes any and all participation in the teacher enhancement program or participation in similar graduate programs.

B. Any person whose full time equivalency is .25 or less, and who is not a covered employee of another local administrative unit, shall not be covered for contribution purposes. Any person employed on the effective date of this rule and who is currently covered under the act shall continue to be covered for the duration of that employment.

(1) An ERA retiree may return to employment (includes "substitution") and earn up to \$15,000 per fiscal year or the amount possible under the .25 or less FTE provision, whichever is greater, without effect to the retirement benefit if:

(2) In the event a retired member enters into an agreement which provides for or actually has earnings in excess of the above limits, the retirement benefit will be suspended for the duration of the employment, and the member will be returned to an active status.

C. Any employee engaged on a day-to-day basis to replace another employee who is temporarily absent shall be considered a "substitute" and shall not be covered under the ERA. An employee engaged to fill a vacant position (including a position vacated by an extended leave of absence) is not considered a "substitute" and must be covered under ERA.

D. Independent contractors who perform services for local administrative units on a fee basis are not eligible for membership under the ERA as a result of having performed such service, and sums paid for such service shall not be covered for contributory purposes. To be classified as an independent contractor a person must meet at least the following criteria:

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(1) registered with the New Mexico department of taxation and revenue to pay gross receipts tax;

(2) contract must have been bid in accordance with the State Procurement Code;

(3) the person is not eligible for fringe benefits afforded regular employees of the local administrative unit and is not paid through the unit's payroll system;

(4) consultants must meet the criteria for an independent contractor established by FICA;

(5) the board shall provide each local administrative unit with "employee vs. independent contractor" (IC) determination forms for their use;

(6) the board shall further reserve the right to examine such completed forms and copies of contracts or other agreements that exist between employers and individuals for the purpose of determining the relationship.

E. All students enrolled in any public school, grade 1-12.

F. Employees who have a portion of their salaries paid through the Comprehensive Employment and Training Act (Public Law 95-524), shall not be covered for contributions on that portion except those employees who have vested.

**2.82.2.12 RETIRED MEMBERS:** For the purposes of the return to work program, a retired member shall be defined as any member who has retired pursuant to the Educational Retirement Act.

**2.82.2.13 MEMBERSHIP ENROLLMENT; RECORDS:**

A. Enrollment; changes in contact information.

(1) Members are required to complete a new employment form each time that they are hired or rehired by a local administrative unit and to provide the board with contact information, including their mailing address and e-mail address.

(2) Active members and retirees are responsible for providing the board notice in writing of any change of their mailing address or e-mail address.

B. Local Administrative Units: For the purposes of providing members information regarding the board and the members' accounts, local administrative units are required to provide the educational retirement board the e-mail addresses assigned to members by a local administrative unit upon the board's request.

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