

1 (a) Under rules adopted by the retirement board, each teacher
2 and nonteaching member shall file a detailed statement of his or
3 her length of service as a teacher or nonteacher for which he or
4 she claims credit. The Retirement Board shall determine what part
5 of a year is the equivalent of a year of service. In computing the
6 service, however, it shall credit no period of more than a month's
7 duration during which a member was absent without pay, nor shall it
8 credit for more than one year of service performed in any calendar
9 year.

10 (b) For the purpose of this article, the retirement board
11 shall grant prior service credit to members of the retirement
12 system who were honorably discharged from active duty service in
13 any of the Armed Forces of the United States in any period of
14 national emergency within which a federal Selective Service Act was
15 in effect. For purposes of this section, "Armed Forces" includes
16 Women's Army Corps, women's appointed volunteers for emergency
17 service, Army Nurse Corps, SPARS, Women's Reserve and other similar
18 units officially parts of the military service of the United
19 States. The military service is considered equivalent to public
20 school teaching, and the salary equivalent for each year of that
21 service is the actual salary of the member as a teacher for his or
22 her first year of teaching after discharge from military service.
23 Prior service credit for military service shall not exceed ten
24 years for any one member, nor shall it exceed twenty-five percent

1 of total service at the time of retirement. Notwithstanding the
2 preceding provisions of this subsection, contributions, benefits
3 and service credit with respect to qualified military service shall
4 be provided in accordance with Section 414(u) of the Internal
5 Revenue Code. For purposes of this section, "qualified military
6 service" has the same meaning as in Section 414(u) of the Internal
7 Revenue Code. The Retirement Board is authorized to determine all
8 questions and make all decisions relating to this section and,
9 pursuant to the authority granted to the retirement board in
10 section one, article ten-d, chapter five of this code, may
11 promulgate rules relating to contributions, benefits and service
12 credit to comply with Section 414(u) of the Internal Revenue Code.
13 No military service credit may be used in more than one retirement
14 system administered by the Consolidated Public Retirement Board.

15 (c) For service as a teacher in the employment of the federal
16 government, or a state or territory of the United States, or a
17 governmental subdivision of that state or territory, the retirement
18 board shall grant credit to the member: *Provided*, That the member
19 shall pay to the system twelve percent of that member's gross
20 salary earned during the first full year of current employment
21 whether a member of the Teachers' Retirement System or the
22 Teachers' Defined Contribution Retirement System, times the number
23 of years for which credit is granted, plus interest at a rate to be
24 determined by the retirement board. The interest shall be deposited

1 in the reserve fund and service credit granted at the time of
2 retirement shall not exceed the lesser of ten years or fifty
3 percent of the member's total service as a teacher in West
4 Virginia. Any purchase of out-of-state service, as provided in this
5 article, shall not be used to establish eligibility for a
6 retirement allowance and the retirement board shall grant credit
7 for the purchased service as additional service only: *Provided,*
8 *however,* That a purchase of out-of-state service is prohibited if
9 the service is used to obtain a retirement benefit from another
10 retirement system: *Provided further,* That salaries paid to members
11 for service prior to entrance into the retirement system shall not
12 be used to compute the average final salary of the member under the
13 retirement system.

14 (d) No members shall be considered absent from service while
15 serving as a member or employee of the Legislature of the State of
16 West Virginia during any duly constituted session of that body, ~~or~~
17 while serving as an elected member of a county commission or any
18 other appointed or elected part-time public office during any duly
19 constituted session of that body.

20 (e) No member shall be considered absent from service as a
21 teacher or nonteacher while serving as an officer with a statewide
22 professional teaching association, or who has served in that
23 capacity, and no retirant, who served in that capacity while a
24 member, shall be considered to have been absent from service as a

1 teacher by reason of that service: *Provided*, That the period of
2 service credit granted for that service shall not exceed ten years:
3 *Provided, however*, That a member or retirant who is serving or has
4 served as an officer of a statewide professional teaching
5 association shall make deposits to the Teachers Retirement System,
6 for the time of any absence, in an amount double the amount which
7 he or she would have contributed in his or her regular assignment
8 for a like period of time.

9 (f) The Teachers Retirement System shall grant service credit
10 to any former or present member of the West Virginia Public
11 Employees Retirement System who has been a contributing member of
12 the Teachers' Retirement System for more than three years, for
13 service previously credited by the Public Employees Retirement
14 System upon his or her written request and: (1) Shall require the
15 transfer of the member's Public Employees Retirement System
16 accumulated contributions to the Teachers Retirement System; or (2)
17 shall require a repayment of the amount withdrawn from the Public
18 Employees Retirement System, plus interest at a rate to be
19 determined by the retirement board, compounded annually from the
20 date of withdrawal to the date of payment, any time prior to the
21 member's effective retirement date: *Provided*, That there shall be
22 added by the member to the amounts transferred or repaid under this
23 subsection an amount which shall be sufficient to equal the
24 contributions he or she would have made had the member been under

1 the Teachers Retirement System during the period of his or her
2 membership in the Public Employees Retirement System. All interest
3 paid or transferred shall be deposited in the reserve fund.

4 (g) For service as a teacher in an elementary or secondary
5 parochial school, located within this state and fully accredited by
6 the West Virginia Department of Education, the retirement board
7 shall grant credit to the member: *Provided*, That the member shall
8 pay to the system twelve percent of that member's gross salary
9 earned during the first full year of current employment whether a
10 member of the Teachers' Retirement System or the Teachers' Defined
11 Contribution Retirement System, times the number of years for which
12 credit is granted, plus interest at a rate to be determined by the
13 retirement board. The interest shall be deposited in the reserve
14 fund and service granted at the time of retirement shall not exceed
15 the lesser of ten years or fifty percent of the member's total
16 service as a teacher in the West Virginia public school system. Any
17 transfer of parochial school service, as provided in this section,
18 may not be used to establish eligibility for a retirement allowance
19 and retirement board shall grant credit for the transfer as
20 additional service only: *Provided, however*, That a transfer of
21 parochial school service is prohibited if the service is used to
22 obtain a retirement benefit from another retirement system.

23 (h) Active members who previously worked in CETA
24 (Comprehensive Employment and Training Act) may receive service

1 credit for time served in that capacity: *Provided*, That in order to
2 receive service credit under the provisions of this subsection the
3 following conditions must be met: (1) The member must have moved
4 from temporary employment with the participating employer to
5 permanent full-time employment with the participating employer
6 within one hundred twenty days following the termination of the
7 member's CETA employment; (2) the retirement board must receive
8 evidence that establishes to a reasonable degree of certainty as
9 determined by the retirement board that the member previously
10 worked in CETA; and (3) the member shall pay to the retirement
11 board an amount equal to the employer and employee contribution
12 plus interest at the amount set by the retirement board for the
13 amount of service credit sought pursuant to this subsection:
14 *Provided, however*, That the maximum service credit that may be
15 obtained under the provisions of this subsection is two years:
16 *Provided further*, That a member must apply and pay for the service
17 credit allowed under this subsection and provide all necessary
18 documentation by March 31, 2003: *And provided further*, That the
19 retirement board shall exercise due diligence to notify affected
20 employees of the provisions of this subsection.

21 (i) If a member is not eligible for prior service credit or
22 pension as provided in this article, then his or her prior service
23 shall not be considered a part of his or her total service.

24 (j) A member who withdrew from membership may regain his or

1 her former membership rights as specified in section thirteen of
2 this article only in case he or she has served two years since his
3 or her last withdrawal.

4 (k) Subject to the provisions of subsections (a) through (l),
5 inclusive, of this section, the retirement board shall verify as
6 soon as practicable the statements of service submitted. The
7 retirement board shall issue prior service certificates to all
8 persons eligible for the certificates under the provisions of this
9 article. The certificates shall state the length of the prior
10 service credit, but in no case shall the prior service credit
11 exceed forty years.

12 (l) Notwithstanding any provision of this article to the
13 contrary, when a member is or has been elected to serve as a member
14 of the Legislature or any elected or appointed part-time public
15 office, and the proper discharge of his or her duties of public
16 office require that member to be absent from his or her teaching or
17 administrative duties, the time served in discharge of his or her
18 duties of the ~~legislative~~ office are credited as time served for
19 purposes of computing service credit: *Provided*, That the retirement
20 board may not require any additional contributions from that member
21 in order for the retirement board to credit him or her with the
22 contributing service credit earned while discharging official
23 ~~legislative~~ duties: *Provided, however*, That nothing in this section
24 may be construed to relieve the employer from making the employer

1 contribution at the member's regular salary rate or rate of pay
2 from that employer on the contributing service credit earned while
3 the member is discharging his or her official ~~legislative~~ duties.
4 These employer payments shall commence as of June 1,2000: *Provided*
5 *further*, That any member to which the provisions of this subsection
6 apply may elect to pay to the retirement board an amount equal to
7 what his or her contribution would have been for those periods of
8 time he or she was serving in the public office ~~legislature~~. The
9 periods of time upon which the member paid his or her contribution
10 shall then be included for purposes of determining his or her final
11 average salary as well as for determining years of service: *And*
12 *provided further*, That a member using the provisions of this
13 subsection is not required to pay interest on any contributions he
14 or she may decide to make.

15 (m) The Teachers Retirement System shall grant service credit
16 to any former member of the State Police Death, Disability and
17 Retirement System who has been a contributing member for more than
18 three years, for service previously credited by the State Police
19 Death, Disability and Retirement System; and: (1) Shall require the
20 transfer of the member's contributions to the Teachers Retirement
21 System; or (2) shall require a repayment of the amount withdrawn
22 any time prior to the member's retirement: *Provided*, That the
23 member shall add to the amounts transferred or repaid under this
24 paragraph an amount which is sufficient to equal the contributions

1 he or she would have made had the member been under the Teachers
2 Retirement System during the period of his or her membership in the
3 State Police Death, Disability and Retirement System plus interest
4 at a rate to be determined by the retirement board compounded
5 annually from the date of withdrawal to the date of payment. The
6 interest paid shall be deposited in the reserve fund.

7 **ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.**

8 **§18-7B-11. Termination of membership.**

9 (a) Any member whose employment with a participating employer
10 terminates after the completion of six complete years of employment
11 service is eligible to terminate his or her annuity account and
12 receive a distribution from the member's annuity account, in an
13 amount equal to the member's contribution plus one third of the
14 employer contributions and any earnings thereon. Any member whose
15 employment with a participating employer terminates after the
16 completion of nine complete years of employment service is eligible
17 to terminate his or her annuity account and receive a distribution
18 from the member's annuity account, in an amount equal to the
19 member's contribution plus two thirds of the employer's
20 contributions and any earnings thereon. Any member whose
21 employment with a participating employer terminates after the
22 completion of twelve complete years of employment service is
23 eligible to terminate his or her annuity account and receive a
24 distribution of all funds contributed and accumulated in his or her

1 annuity account. Any member whose employment with a participating
2 employer terminates prior to the completion of six complete years
3 of employment service is eligible to terminate his or her annuity
4 account and receive a distribution from the member's annuity
5 account, in an amount equal to the member's contribution plus any
6 earnings thereon: *Provided*, That on the death or permanent, total
7 disability of any member, that member is eligible to terminate his
8 or her annuity account and receive all funds contributed to or
9 accumulated in his or her annuity account.

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

21 (2) Any account balances remitted to the suspension account
22 herein shall be maintained by the board in the suspension account
23 in the name of the terminated employee for a period of five years
24 following the member's termination of employment. For each

1 terminated employee at the culmination of the five-year period, the
2 board shall certify in writing to each contributing employer the
3 amount of the account balance plus earnings thereon attributable to
4 each separate contributing employer's previously terminated
5 employee's account which has been irrevocably forfeited due to the
6 elapse of a five-year period since termination pursuant to section
7 sixteen of this article.

8 (c) Upon certification to the several contributing employers
9 of the aggregate account balances plus earnings thereon which have
10 been irrevocably forfeited pursuant to this section, the several
11 contributing employers shall be permitted in the next succeeding
12 fiscal year or years to reduce their total aggregate contribution
13 requirements pursuant to section seventeen of this article, for the
14 then current fiscal year by an amount equal to the aggregate
15 amounts irrevocably forfeited and certified as such to each
16 contributing employer: *Provided*, That should the participating
17 employer no longer be contributing to the Defined Contribution
18 System, any funds in the account shall be paid directly to the
19 employer.

20 (d) Upon the use of the amounts irrevocably forfeited to any
21 contributing employer as a reduction in the then current fiscal
22 year contribution obligation and upon notification provided by the
23 several contributing employers to the board of their intention to
24 use irrevocably forfeited amounts, the board shall direct the

1 distribution of the irrevocably forfeited amounts from the
2 suspension account to be deposited on behalf of the contributing
3 employer to the member annuity accounts of its then current
4 employees pursuant to section seventeen of this article: *Provided,*
5 That notwithstanding any provision of this article to the contrary,
6 when a member is or has been elected to serve as a member of the
7 Legislature, or has been elected or appointed to any other part-
8 time public office, and the proper discharge of his or her duties
9 of public office requires that member to be absent from his or her
10 teaching, nonteaching or administrative duties, the time served in
11 discharge of his or her duties of the ~~legislative~~ office are
12 credited as time served for purposes of computing service credit,
13 regardless when this time was served: *Provided, however,* That the
14 board may not require any additional contributions from that member
15 in order for the board to credit him or her with the contributing
16 service credit earned while discharging official ~~legislative~~
17 duties: *Provided further,* That nothing herein may be construed to
18 relieve the employer from making the employer contribution at the
19 member's regular salary rate or rate of pay from that employer on
20 the contributing service credit earned while the member is
21 discharging his or her official ~~legislative~~ duties. These employer
22 payments shall commence as of July 1, 2003: *And provided further,*
23 That any member to which the provisions of this subsection apply
24 may elect to pay to the board an amount equal to what his or her

1 contribution would have been for those periods of time he or she
2 was serving in the Legislature or any other appointed or elected
3 public office.

4 **CHAPTER 18A. SCHOOL PERSONNEL**

5 **ARTICLE 2. SCHOOL PERSONNEL.**

6 **§18A-2-2. Employment of teachers; contracts; continuing contract**
7 **status; how terminated; dismissal for lack of need;**
8 **released time; failure of teacher to perform contract**
9 **or violation thereof; written notice bonus for**
10 **teachers and professional personnel.**

11 (a) Before entering upon their duties, all teachers shall
12 execute a contract with their county boards, which shall state the
13 salary to be paid and shall be in the form prescribed by the State
14 Superintendent. Each contract shall be signed by the teacher and
15 by the president and secretary of the county board and shall be
16 filed, together with the certificate of the teacher, by the
17 secretary of the office of the county board: *Provided*, That when
18 necessary to facilitate the employment of employable professional
19 personnel and prospective and recent graduates of teacher education
20 programs who have not yet attained certification, the contract may
21 be signed upon the condition that the certificate is issued to the
22 employee prior to the beginning of the employment term in which the
23 employee enters upon his or her duties.

1 (b) Each teacher's contract, under this section, shall be
2 designated as a probationary or continuing contract. A
3 probationary teacher's contract shall be for a term of not less
4 than one nor more than three years, one of which shall be for
5 completion of a beginning teacher internship pursuant to the
6 provisions of section two-b, article three of this chapter, if
7 applicable. If, after three years of such employment, the teacher
8 who holds a professional certificate, based on at least a
9 bachelor's degree, has met the qualifications for a bachelor's
10 degree and the county board enter into a new contract of
11 employment, it shall be a continuing contract, subject to the
12 following:

13 (1) Any teacher holding a valid certificate with less than a
14 bachelor's degree who is employed in a county beyond the three-year
15 probationary period shall upon qualifying for the professional
16 certificate based upon a bachelor's degree, if reemployed, be
17 granted continuing contract status; and

18 (2) A teacher holding continuing contract status with one
19 county shall be granted continuing contract status with any other
20 county upon completion of one year of acceptable employment if the
21 employment is during the next succeeding school year or immediately
22 following an approved leave of absence extending no more than one
23 year.

24 (c) The continuing contract of any teacher shall remain in

1 full force and effect except as modified by mutual consent of the
2 school board and the teacher, unless and until terminated, subject
3 to the following:

4 (1) A continuing contract may not be terminated except:

5 (A) By a majority vote of the full membership of the county
6 board on or before March 1 of the then current year, after written
7 notice, served upon the teacher, return receipt requested, stating
8 cause or causes and an opportunity to be heard at a meeting of the
9 board prior to the board's action on the termination issue; or

10 (B) By written resignation of the teacher on or before March
11 1 to initiate termination of a continuing contract;

12 (2) The termination shall take effect at the close of the
13 school year in which the contract is terminated;

14 (3) The contract may be terminated at any time by mutual
15 consent of the school board and the teacher;

16 (4) This section does not affect the powers of the school
17 board to suspend or dismiss a principal or teacher pursuant to
18 section eight of this article;

19 (5) A continuing contract for any teacher holding a
20 certificate valid for more than one year and in full force and
21 effect during the school year 1984-1985 shall remain in full force
22 and effect;

23 (6) A continuing contract does not operate to prevent a
24 teacher's dismissal based upon the lack of need for the teacher's

1 services pursuant to the provisions of law relating to the
2 allocation to teachers and pupil-teacher ratios. The written
3 notification of teachers being considered for dismissal for lack of
4 need shall be limited to only those teachers whose consideration
5 for dismissal is based upon known or expected circumstances which
6 will require dismissal for lack of need. An employee who was not
7 provided notice and an opportunity for a hearing pursuant to this
8 subsection may not be included on the list. In case of dismissal
9 for lack of need, a dismissed teacher shall be placed upon a
10 preferred list in the order of their length of service with that
11 board. No teacher may be employed by the board until each
12 qualified teacher upon the preferred list, in order, has been
13 offered the opportunity for reemployment in a position for which he
14 or she is qualified, not including a teacher who has accepted a
15 teaching position elsewhere. The reemployment shall be upon a
16 teacher's preexisting continuing contract and has the same effect
17 as though the contract had been suspended during the time the
18 teacher was not employed.

19 (d) In the assignment of position or duties of a teacher under
20 a continuing contract, the board may provide for released time of
21 a teacher for any special professional or governmental assignment
22 without jeopardizing the contractual rights of the teacher or any
23 other rights, privileges or benefits under the provisions of this
24 chapter. Released time shall be provided for any professional

1 educator while serving as a member of the Legislature or any
2 elected or appointed part-time public office during any duly
3 constituted session of that body and its interim and statutory
4 committees and commissions, without jeopardizing his or her
5 contractual rights or any other rights, privileges, benefits or
6 accrual of experience for placement on the state minimum salary
7 schedule in the following school year under the provisions of this
8 chapter, board policy and law.

9 (e) Any teacher who fails to fulfill his or her contract with
10 the board, unless prevented from doing so by personal illness or
11 other just cause or unless released from his or her contract by the
12 board, or who violates any lawful provision of the contract, is
13 disqualified to teach in any other public school in the state for
14 a period of the next ensuing school year and the State Department
15 of Education or board may hold all papers and credentials of the
16 teacher on file for a period of one year for the violation:
17 *Provided*, That marriage of a teacher is not considered a failure to
18 fulfill, or violation of, the contract.

19 (f) Any classroom teacher, as defined in section one, article
20 one of this chapter, who desires to resign employment with a county
21 board or request a leave of absence, the resignation or leave of
22 absence to become effective on or before July 15 of the same year
23 and after completion of the employment term, may do so at any time
24 during the school year by written notification of the resignation

1 or leave of absence and any notification received by a county board
2 shall automatically extend the teacher's public employee insurance
3 coverage until August 31 of the same year.

4 (g) (1) A classroom teacher who gives written notice to the
5 county board on or before January 15 of the school year of his or
6 her retirement from employment with the board at the conclusion of
7 the school year shall be paid \$500 from the Early Notification of
8 Retirement line item established for the Department of Education
9 for this purpose, subject to appropriation by the Legislature. If
10 the appropriations to the Department of Education for this purpose
11 are insufficient to compensate all applicable teachers, the
12 Department of Education shall request a supplemental appropriation
13 in an amount sufficient to compensate all such teachers.
14 Additionally, if funds are still insufficient to compensate all
15 applicable teachers, the priority of payment is for teachers who
16 give written notice the earliest. This payment shall not be
17 counted as part of the final average salary for the purpose of
18 calculating retirement.

19 (2) The position of a classroom teacher providing written
20 notice of retirement pursuant to this subsection may be considered
21 vacant and the county board may immediately post the position as an
22 opening to be filled at the conclusion of the school year. If a
23 teacher has been hired to fill the position of a retiring classroom
24 teacher prior to the start of the next school year, the retiring

1 classroom teacher is disqualified from continuing his or her
2 employment in that position. However, the retiring classroom
3 teacher may be permitted to continue his or her employment in that
4 position and forfeit the early retirement notification payment if,
5 after giving notice of retirement in accordance with this
6 subsection, he or she becomes subject to a significant unforeseen
7 financial hardship, including a hardship caused by the death or
8 illness of an immediate family member or loss of employment of a
9 spouse. Other significant unforeseen financial hardships shall be
10 determined by the county superintendent on a case-by-case basis.
11 This subsection does not prohibit a county school board from
12 eliminating the position of a retiring classroom teacher.

13 **§18A-2-6a. Released time for service personnel.**

14 In the assignment of position or duties of a service person
15 under a continuing contract, the board may provide for released
16 time of a service person for any special professional or
17 governmental assignment without jeopardizing the contractual rights
18 of such service or any other rights, privileges or benefits under
19 the provisions of this chapter. Released time shall be provided
20 for any service person while serving as a member of the Legislature
21 or any elected or appointed part-time public office during any duly
22 constituted session of that body and its interim and statutory
23 committees and commissions, without jeopardizing his or her
24 contractual rights or any other rights, privileges, benefits or

1 accrual of experience for placement on the state minimum salary
2 schedule in the following school year under the provisions of this
3 chapter, board policy and law. For the purposes of this section,
4 service person is the singular of service personnel as defined in
5 section one, article one of this chapter.