

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM

CHAPTER 1. ADMINISTRATIVE OPERATIONS

SUBCHAPTER 1. GENERAL PROVISIONS

590:1-1-5. Retirement Coordinators

- (a) Retirement Coordinators shall be appointed for each participating county, city, town or county hospital and each State agency to serve as a representative between the Retirement Board and the participating Employer.
- (b) These Retirement Coordinators shall be responsible for the enrollment, assistance of the completion of forms, and instructions to the members on behalf of the participating employer relating to the Oklahoma Public Employees Retirement System.
- (c) The Retirement Coordinator shall be responsible for ~~insuring~~ ensuring that each participating member of the System is provided a copy of the most current Member Handbook, ~~each year's Summary Annual Report~~, and all other official notices from the System. Each Retirement Coordinator shall establish and maintain sufficient documentation to verify compliance with this rule, and shall furnish said verification upon request by the System.
- (d) The Retirement Coordinator is employed by and under the authority of each participating county, city, town or county hospital and each State agency and is not an employee of the System. The System will make available information and training opportunities, however, it is the responsibility of the Coordinator to become familiar with the Plan provisions and keep abreast of all changes and amendments. Neither the System nor the Board will be liable for or bound by any mistakes, errors or misrepresentations of the Retirement Coordinators.

590:1-1-6. Hearing procedures [REVOKED]

- ~~(a) — **Request for hearing.** Any decision of the System may be appealed to the Board of Trustees. The member or beneficiary must appeal the decision of the System within thirty (30) days of receipt of notification of denial by the System. The appeal shall set forth, in writing, the applicable facts and relevant law in support of the request for a hearing. For purposes of this rule, the System includes the Oklahoma Public Employees Retirement System, the Uniform Retirement System for Justices & Judges, the Oklahoma State Employees Deferred Compensation Plan, and the Oklahoma State Employees Deferred Savings Incentive Plan.~~
- ~~(b) — **Assignment of hearing.** Appeals to the Board of Trustees will be assigned to a hearing examiner, who will conduct an evidentiary hearing and prepare a proposed order for the Board of Trustees. The Chairman of the Board of Trustees or his/her designee shall appoint the hearing examiner from a list of individuals previously selected by the Board of Trustees to act in this role. The Executive Director shall have authority for the purpose of the evidentiary hearing to issue subpoenas for witnesses or subpoenas duces tecum to compel the production of books, records, papers and other objects, which subpoenas may be served by any duly qualified officer of the law or any employee of the Board in any manner prescribed for the service of a subpoena in a civil action.~~
- ~~(c) — **Prehearing Conference; Briefing.** A Prehearing Conference will be scheduled to determine the legal or factual issues. The Prehearing Conference shall be conducted at least seven (7) days prior to the evidentiary hearing, unless waived by the parties. Prior to the hearing~~

~~before the hearing examiner, each party shall be afforded the opportunity to present a written brief setting forth the party's position to be included as part of the record.~~

~~(d) — **Transcript.** The System shall cause a full stenographic record of the hearing(s) to be made by a competent court reporter. If transcribed, such record shall be a part of the record of the hearing(s), and a copy of such stenographic record shall be furnished to any other party having a direct interest therein at the request and expense of such party.~~

~~(e) — **Evidentiary hearing procedure; Rehearing.** Evidentiary hearings will be conducted under the provisions of the Administrative Procedures Act [75 O.S. 250 et. seq.]. Any party shall at all times have the right to counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that such counsel shall have the right to appear and act for and on behalf of the party he/she represents. All hearings shall take place in the offices of the Public Employees Retirement System. Any party to the evidentiary hearing is expected to provide timely notice to all of the other parties if a delay or failure to appear is anticipated. Opportunity shall be afforded to all parties to respond and present evidence and arguments on all issues involved. The party requesting the hearing shall be heard first; those who oppose the relief sought by the requesting party shall be heard next. Once the hearing examiner receives all evidence, arguments and briefs, the record shall be closed. The hearing examiner may grant a rehearing, reopening or reconsideration of the evidentiary hearing upon a showing of good cause by either party prior to the date of the meeting before the Board of Trustees.~~

~~(f) — **Scheduling of deadlines and Board Meeting.** Prior to the close of the evidentiary hearing, each party shall be permitted to submit a proposed schedule including deadlines for filing of objections, responses to objections, and the date of the hearing before the Board of Trustees. After the parties have been afforded an opportunity to submit their proposed schedules, the hearing examiner shall produce, before adjourning the evidentiary hearing, a schedule of deadlines for filings and the date of the hearing before the Board of Trustees.~~

~~(g) — **Hearing Examiner's authority.** The presiding hearing examiner may:~~

- ~~(1) Establish the scheduling order for the hearing which will include all time lines and deadlines for filings and the date of hearing before the Board of Trustees;~~
- ~~(2) Rule on any requests for an extension of time;~~
- ~~(3) Rule on motions and other procedural items;~~
- ~~(4) Regulate the course of the hearing, rule on the admissibility of all evidence, and regulate the conduct of the participants;~~
- ~~(5) Request additional briefs, from either or both parties, on issues and/or law as may be reasonably necessary;~~
- ~~(6) Take official notice of any material fact not appearing as evidence in the record, if the fact is among traditional matters of judicial notice;~~
- ~~(7) Administer oaths or affirmations;~~
- ~~(8) Recess and reconvene the hearing;~~
- ~~(9) Order the proceedings to be expedited in the event of severe financial hardship.~~

~~(h) — **Proposed order.** Each party shall be permitted the opportunity to submit a proposed order, including findings of fact and conclusions of law, to the hearing examiner at the close of the hearing. After the close of the record, the hearing examiner shall prepare a proposed order to be delivered to the Board of Trustees. This proposed order shall include findings of fact, based exclusively on the evidence and on matters officially noted in the record of the hearing, conclusions of law and a recommended order to the Board of Trustees. A copy of this proposed~~

order shall be provided to all parties by the System as soon as practical, and at least fifteen (15) days prior to the Board Meeting. The parties may waive the fifteen (15) day requirement by written stipulation.

~~(i) — **Objections to proposed order.** The parties shall have the right to file a written statement outlining any objections, exceptions and/or arguments they desire the Board of Trustees to consider in its consideration of the hearing judge's proposed order. This statement must be filed with the System within the time limit prescribed by the hearing examiner and shall be provided to the other party. A party which fails to file a written statement outlining any objections, exceptions and/or arguments prior to the deadline waives the opportunity to object to the adoption of the proposed order by the Board of Trustees. The parties may prepare a written response in rebuttal to the other party's objecting statement. A copy of any response shall be filed with the System within the time limit prescribed by the hearing examiner and provided to the other party prior to the Board of Trustees' meeting. The parties may not introduce additional evidence or materials in the written objections or in the responses.~~

~~(j) — **Board of Trustees' hearing procedure.** When the proposed order comes before the Board of Trustees for consideration, the parties shall be afforded an opportunity to make a brief statement to the Board concerning the facts and any arguments he/she wishes to present and will be allowed to respond to questions from Trustees. In addition to oral argument, the Board may review the complete record, including a transcript of the original hearing conducted by the hearing examiner and all documentary evidence, and/or remand the case to receive additional evidence and testimony. The Chairman of the Board of Trustees will have final authority to set the amount of time any party may have to present information to the Board.~~

~~(k) — **Final order.** After consideration of the record and arguments, both oral and written, the Board shall accept, reject or modify the proposed order. If the Board does find the facts to be in error or incomplete, the Board shall remand the case, with instructions, to the hearing examiner for further evidentiary hearing. A copy of the Board's final order will be delivered via mail to the member and/or the member's representative by the System within fifteen (15) days of final action by the Board of Trustees. As in all matters before the Board, seven (7) votes are necessary to approve any motion, resolution or order under consideration.~~

~~(l) — **Appeal; Rehearing.** Any party receiving an adverse final order from the Board retains certain rights under the Administrative Procedures Act. The member may file an action for judicial review in the District Court of Oklahoma County. Such action must be filed within thirty (30) days after the aggrieved party is notified of the Board's order. The member may also file an application for a rehearing, reopening or reconsideration of the decision of the Board. The application must be filed with the System within ten (10) days from the date of the Board's decision and must be in compliance with 75 O.S. §317.~~

~~(m) — **Settlement.** Unless precluded by law, informal disposition may be made of any individual proceedings by stipulation, agreed settlement, consent order, or default. The Executive Director shall report to the Board of Trustees any settlement that occurs after the hearing judge's proposed order is filed.~~

~~(n) — **Expedited proceedings.** A decision by the System that a member or beneficiary does not meet the requirements for a severe financial hardship for the System's deferred compensation plan or a decision that has created a severe financial hardship under any other of the System's plans may be appealed for review before a hearing examiner. The parties may stipulate to expedite proceedings. In the event the parties do not agree to expedite the proceedings, the aggrieved party may make a motion to expedite proceedings to the hearing examiner. The~~

~~hearing examiner shall rule on the party's request for expedited proceedings within seven (7) days after the filing of the motion with the System. The parties shall also be permitted to submit a proposed schedule of the proceedings in the event the hearing examiner does grant the motion. In the event the hearing examiner grants the motion, the hearing examiner shall also produce an expedited schedule of the proceedings to be implemented. In all other aspects, the hearings and proceedings shall be conducted in a similar manner to that of normal hearings and proceedings.~~

~~(e) — **Prohibited communication.** The Administrative Procedures Act prohibits direct or indirect communications by any party and/or the representatives of a party with the hearing examiner and the Board of Trustees in connection with any issue of fact or law regarding an appeal before the hearing examiner or Board, except upon notice which provides an opportunity for all parties to participate. The hearing examiner and the Board of Trustees will not consider any evidence or statements made to them by a party and/or the representatives of a party in connection with a pending appeal.~~

SUBCHAPTER 3. ADMINISTRATIVE REVIEW AND HEARINGS

590:1-3-1. Purpose and general overview of administrative hearings

(a) **Purpose.** The purpose of this Subchapter is to give the member or beneficiary a reasonable way to have a disagreement or controversy considered fairly. In all cases, the member or beneficiary shall have an opportunity to resolve disagreements with the System without a formal hearing.

(b) **Formal hearing.** If a case cannot be resolved informally, the provisions of this Subchapter provide for a formal hearing before a Hearing Examiner, who is not an employee or officer of the System. The Hearing Examiner makes proposed findings, conclusions and recommendations which are reviewed and acted upon by the Board of Trustees.

(c) **Right to appeal.** The member, joint annuitant or beneficiary retains the right to seek relief from a final order in an administrative hearing by the Board of Trustees by way of appeal to the District Court of Oklahoma County.

(d) **Governing rules.** The rules set forth in this Subchapter shall govern all contested proceedings before the System or its delegated Hearing Examiner. These rules shall be given the most reasonable meaning, taken in their total context, and will be construed to secure due process in the proper resolution of each controversy.

590:1-3-2. Definitions

For purposes of this Subchapter:

"**Claimant**" means the member, joint annuitant, beneficiary or participating employer filing an appeal with the System.

"**System**" means the Oklahoma Public Employees Retirement System, the Uniform Retirement System for Justices and Judges, the Oklahoma State Employees Deferred Compensation Plan, and the Oklahoma State Employees Deferred Savings Incentive Plan.

590:1-3-3. Commencement of hearing

(a) **Appeal.** A decision of the System affecting service credit, contributions, benefits, eligibility or any other rights of a claimant may be appealed to the Board of Trustees. The appeal must be commenced by filing a timely written request with the General Counsel. In order for the appeal to be considered timely, it must be filed within thirty (30) days after the date of mailing of the decision.

(b) **Contents of appeal.** The appeal shall be in writing and shall set forth the following:

(1) the name, address and Social Security number of the claimant;

(2) a statement regarding the nature or amount of the disagreement or dispute;

(3) a clear and concise assignment of each error alleged to have been committed;

(4) a brief summary of the argument and relevant legal authority upon which each assignment of error is made; provided, the claimant shall not be bound or restricted in the hearing, or on appeal, to the arguments and legal authorities contained and cited in this initial writing; and

(5) a statement of the relief sought.

(c) **Assignment of hearing number; pre-hearing conference date.** The General Counsel shall assign a hearing number to the appeal, create a court file, notify the Hearing Examiner, and set a date for a pre-hearing conference between the parties and the Hearing Examiner.

590:1-3-4. Hearing Examiner

Appeals to the Board of Trustees shall be assigned to a Hearing Examiner who will conduct a pre-hearing conference and an evidentiary hearing and prepare a proposed order for the Board of Trustees. The Chair of the Board of Trustees, or a designee of the Chair, shall appoint the Hearing Examiner from a list of individuals previously selected by the Board of Trustees to act in this role.

590:1-3-5. Representation and participation in administrative proceedings

(a) **Pro se or legal counsel.** Claimant may appear pro se at any stage of the proceeding or may be represented by legal counsel, provided such counsel must be duly licensed to practice law in the State of Oklahoma, and that such counsel has the right to appear and act for and on behalf of the claimant.

(b) **Other representation.** If the claimant wants to be represented by someone other than himself/herself or an attorney, the Hearing Examiner may require that such person, before being recognized as a representative of the claimant, make a proper showing that he or she has the necessary qualifications to enable the representative to render such services to the claimant. Upon such showing by the representative, the Hearing Examiner shall certify the representative.

(c) **Proof of authority to represent.** Any person representing a claimant may be required to show written proof, in a form satisfactory to the System, of his or her authority to represent the claimant in the matter.

590:1-3-6. Location of hearings

All hearings shall take place in the offices of the Oklahoma Public Employees Retirement System. The hearing may be relocated upon a showing that extreme or unusual circumstances exist which would prejudice the claimant. Any such request for relocating the hearing shall be

made to the Hearing Examiner who may approve only upon good cause shown or if agreed to by the System.

590:1-3-7. Pre-hearing conference

(a) **General provisions.** A pre-hearing conference shall be scheduled with the Hearing Examiner within sixty (60) days of receipt by the System of the appeal and at least thirty (30) days prior to the hearing, unless such time periods are waived by the parties. The conference shall be informal, structured by the Hearing Examiner, and not open to the public. The purpose of the pre-hearing conference is to allow the parties, before the Hearing Examiner, to attempt to resolve the case or parts of it, to discuss the facts, identify legal issues, present discovery requests, make appropriate stipulations, and to propose a procedural schedule. A record of the pre-hearing conference shall not be made unless requested by the parties and ordered by the Hearing Examiner. If ordered, a stenographic record shall be made in accordance with and pursuant to 590:1-3-8(d).

(b) **Notice and continuance.** The claimant shall be notified by the System of the date and time at least seven (7) calendar days prior to the scheduled conference. A request for a continuance shall be filed with the System no less than three (3) calendar days prior to the scheduled conference. A lesser period of time may be permitted for good cause shown.

(c) **Rulings; pre-hearing conference order.** During the pre-hearing conference, the Hearing Examiner shall make all the necessary rulings. At the conclusion of the pre-hearing conference, the Hearing Examiner shall issue a pre-hearing conference order which shall set forth the agreements reached at the pre-hearing conference. The pre-hearing conference order shall be signed by the parties and the Hearing Examiner. The pre-hearing conference order shall set forth, among other things, the following information:

- (1) the date and time of the hearing;
- (2) the date to file a written brief or statement of the case;
- (3) the date to file a list of witnesses, documents and exhibits. Any witnesses for whom a subpoena is required shall include the name, address and a brief statement of the testimony to be offered; and
- (4) any requirements or request for discovery.

(d) **Failure to appear.** If the claimant fails to appear at the scheduled pre-hearing conference or to timely request a continuance of the pre-hearing conference, the Hearing Examiner shall dismiss the appeal and notice shall be sent to the claimant of the dismissal.

590:1-3-8. Hearing procedure

(a) **Purpose and process.** The hearing provides each party the opportunity to present witnesses and evidence in support of his or her respective case. Hearings shall be conducted in accordance with the Administrative Procedures Act and the rules in this Subchapter. The hearing shall be structured by the Hearing Examiner and open to the public. The Hearing Examiner may order parts of the proceedings closed when evidence of a confidential nature is to be introduced or where to do so would be in the best interests of a party, witness, the public or other affected persons.

(b) **Party responsibility.** Each party shall be present, on time, and prepared. Failure to do so may result in dismissal of the appeal unless good cause is shown.

(c) **Hearing Examiner responsibility.** The Hearing Examiner will convene the hearing, note appearances, and consider any motions or preliminary matters. The Hearing Examiner shall administer oaths or affirmations of the witnesses. The Hearing Examiner may also:

(1) question any party or any witness;

(2) establish a scheduling order for the hearing to include time lines for further filings and the date of the hearing before the Board of Trustees;

(3) rule on any request for an extension of time, or on any other motions or other procedural matters;

(4) regulate the course of the hearing, rule on admissibility of all evidence, and regulate the conduct of the participants;

(5) request additional briefs on issues or law as may be reasonably necessary;

(6) take official notice of any material fact not appearing as evidence in the record if the fact is among traditional matters of judicial notice;

(7) recess and reconvene the hearing; or

(8) order the proceedings to be expedited in the event of severe financial hardship, upon good cause shown, in accordance with 590:1-3-17.

(d) **Transcript of hearing.** The System shall cause a full stenographic record of the hearing to be made by a competent court reporter. A copy of the stenographic record shall be provided to any party to the proceeding at the request and expense of such party.

(e) **Arguments; witnesses; evidence.** The party requesting the hearing shall be heard first and has the burden of proof to show in what respect the action or proposed action of the System is incorrect. Each party shall have the opportunity to present its case, to make opening statements, to call and examine witnesses, to offer documentary evidence into the record and to make closing arguments. Each party shall also have the opportunity to cross-examine opposing witnesses on matter covered in direct examination and, in the discretion of the Hearing Examiner, upon matter relevant to the issues even though not covered in direct examination. Any objection to testimony or evidentiary offers should be made, and the basis of the objection stated on the record.

(f) **Scheduling order.** Prior to the closing of the record, each party shall agree to a proposed scheduling order which shall include deadlines for submitting a proposed final order, filing objections to the Hearing Examiner's Proposed Final Order, rebuttals to any objections, requesting a rehearing, and the date of the hearing before the Board of Trustees. The Hearing Examiner shall sign the agreed scheduling order and each party shall receive a copy.

(g) **Closing the record.** The record shall be closed when each party has had an opportunity to be heard and present evidence. Once the record is closed, no additional evidence or arguments shall be considered. The Hearing Examiner may grant a rehearing, reopening or reconsideration of the hearing upon a showing of good cause by either party prior to the date of the scheduled hearing before the Board of Trustees.

590:1-3-9. Pleadings; filing; order

(a) **Filing of pleadings; paper size.** The General Counsel serves as the "Court Clerk" for the administrative hearing process and all original pleadings shall be filed therein. All pleadings shall be filed with the System no later than 5:00 PM on the required date. Pleadings not received by the deadline will be considered as filed out of time. The General Counsel shall forward copies of all original pleadings or other documents filed with the System in the hearing process

to the Hearing Examiner in a timely manner. All pleadings shall be signed, dated and filed on letter size 8 1/2" x 11" paper and double spaced in 12 point type with 1" margins.

(b) **Electronic filing; facsimiles.** Electronic filing is encouraged. Electronic copies or facsimiles will be accepted but must be signed and filed by the appropriate deadline. Electronic copies shall be sent to the General Counsel as an email attachment. The attachment must be a scanned document in a pdf format reflecting the signature of the claimant or the representative of the claimant. Any exhibits filed electronically shall be contained in a separate pdf file and each exhibit properly labeled. It shall be the responsibility of the claimant to verify that the System has received the electronic copy or facsimile and that it is legible and acceptable to the System.

(c) **Order of filing briefs.** Each party shall have the opportunity to file a written brief or statement of the case setting forth the facts, arguments, and legal authorities. The briefs shall be included in the record. The claimant or party requesting the hearing shall submit a brief according to the pre-hearing conference order. The System shall respond to such brief within twenty (20) days of the filing of the claimant's brief. At the discretion of the Hearing Examiner, the claimant may file a reply to the System's response within seven (7) days of the filing of the System's response.

(d) **Continuances or extensions.** A party seeking a continuance or extension shall file a proper motion, and for good cause shown, a continuance or extension will be granted by the Hearing Examiner.

590:1-3-10. Discovery

(a) **Authority of the Hearing Examiner.** The Hearing Examiner may, upon his or her own motion, or on the motion of either party, allow the use of discovery available in a civil action in the District Courts of Oklahoma. The failure of a party to have sufficient time to exercise any discovery mechanism on account of a lack of time shall not of itself constitute good cause for the granting of a continuance of a hearing.

(b) **Subpoenas; costs; fees; service.** Subpoenas to compel the attendance of witnesses, for the furnishing of information required by the Hearing Examiner, and/or for the production of evidence or records of any kind may be issued by the Executive Director of the System. Subpoenas shall be served, and a return made, in any manner prescribed for the service of a subpoena in a civil action. The party requesting the subpoena shall bear the cost of serving it. Fees for a non-party witness who is subpoenaed to appear shall be the same as those fees allowed to witnesses in a civil matter. Party witnesses shall not be entitled to witness fees.

(c) **Confidentiality.** Any information obtained through discovery proceedings shall be used only for matters pending in the case in which they were discovered, and shall be accorded the same degree of confidentiality as any other document or information filed with or generated by the System.

590:1-3-11. Rules of evidence

The rules of evidence used during a hearing shall be those specified by the Oklahoma Administrative Procedures Act.

590:1-3-12. Proposed order; objections; rehearing

(a) **Proposed order.** After the close of the hearing, each party shall be permitted the opportunity to submit a proposed final order which shall include findings of fact and conclusions of law to the Hearing Examiner. The Hearing Examiner shall prepare and file with the System a proposed final order which shall include findings of fact, conclusions of law, and a recommended order to the Board of Trustees. A copy of the proposed order shall be provided to all parties by the System as soon as practical and at least twenty (20) days prior to the scheduled hearing before the Board of Trustees. The parties may waive the twenty-day requirement by written stipulation.

(b) **Objections to proposed order.** Each party shall have the opportunity to file a written statement setting forth any objections, exceptions and/or arguments they desire the Board of Trustees to consider in its review of the proposed order by the Hearing Examiner. This statement shall be filed with the System within the time limit prescribed by the Hearing Examiner in the scheduling order and a copy shall be provided to the other party. The parties may prepare a written response in rebuttal to the other party's objecting statement within the time limit prescribed by the Hearing Examiner in the scheduling order and a copy shall be provided to the other party. In no event shall the objections or the response in rebuttal be filed less than seven (7) days prior to the hearing before the Board. New or additional evidence or materials may not be introduced by either party in the objections or in the responses.

(c) **Rehearing before the Hearing Examiner.** Each party shall have the opportunity to request a rehearing before the Hearing Examiner. Such request must be filed with the System and made within the time limit prescribed by the Hearing Examiner in the scheduling order. A copy shall be provided to the other party.

590:1-3-13. Hearing before the Board of Trustees

(a) **Procedure.** On a date set forth in the scheduling order, the Hearing Examiner's proposed order shall be set before the Board of Trustees for consideration. The parties shall have a reasonable opportunity to make a brief statement to the Board concerning the facts and any arguments and will be allowed to respond to any questions from the Trustees. The Board may review the complete record, including a transcript of the original hearing conducted by the Hearing Examiner and all documentary evidence. The Chair of the Board shall have authority to set the amount of time any party may have to present information to the Board.

(b) **Remand.** If the Board determines the facts to be in error or incomplete, the Board may remand the case, with instructions, to the Hearing Examiner for further evidentiary hearing.

(c) **Final order.** After consideration of the record and arguments, the Board shall accept, reject or modify the Hearing Examiner's proposed order. The final order shall include findings of fact and conclusions of law, separately stated. As in all matters before the Board, seven (7) affirmative votes are necessary to accept, reject or modify the order under consideration. A copy of the Board's final order shall be delivered to the claimant or the representative of the claimant within fifteen (15) days of final action by the Board.

590:1-3-14. Rehearing; appeal

(a) **Rehearing.** Any party receiving an adverse order from the Board may file a petition for rehearing, reopening or reconsideration of the final order of the Board. Such application shall be

filed with the System within ten (10) days from the date of the entry of the Board's order and must be in compliance with 75 O.S. § 317.

(b) **Appeal.** Any party aggrieved by the order of the Board may, within thirty (30) days from the date the aggrieved party is notified of the order, file an action for judicial review in the District Court of Oklahoma County.

590:1-3-15. Settlement

Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default. The Executive Director or the General Counsel shall report to the Board of Trustees any settlement that occurs after the filing of the proposed order by the Hearing Examiner.

590:1-3-16. Prohibited communications

The Administrative Procedures Act prohibits direct or indirect communications by any party or representative of a party with the Hearing Examiner or the Board of Trustees in connection with any issue of fact or law regarding an appeal before the Hearing Examiner or Board, except upon notice which provides an opportunity for all parties to participate. The Hearing Examiner and the Board shall not consider any evidence or statements made to them by a party or a representative of a party in connection with a pending appeal.

590:1-3-17. Expedited proceedings

(a) **Cases which may be expedited.** In an appeal before the Hearing Examiner, the System and the claimant may stipulate to expedite the hearing proceedings in the following cases:

(1) a decision by the System that a claimant does not meet the requirements for a severe financial hardship under the System's deferred compensation plan; or

(2) a decision that has created a severe financial hardship under any other of the System's plans.

(b) **Motion to expedite.** If the parties cannot agree to expedite the proceedings, the aggrieved party may file a motion to expedite proceedings. The Hearing Examiner shall rule on the motion within seven (7) days after the filing of the motion with the System.

(c) **Proposed schedule to expedite.** The parties shall be permitted to submit a proposed schedule of the proceedings in the event the Hearing Examiner grants the motion. If the motion is granted, the Hearing Examiner shall file an expedited schedule of the proceedings.

(d) **Conduct of expedited hearing.** In all other aspects, the hearing shall be conducted in a similar manner as a hearing which has not be expedited.

590:1-3-18. Declaratory rulings

(a) **General provisions.** The Board of Trustees may issue declaratory rulings as to the applicability of any rule or principle of law embodied in an order of the Board which is requested by or on behalf of any member, joint annuitant or beneficiary directly affected thereby subject to the terms and conditions set forth in this section.

(b) Form of petition; where to file. A declaratory ruling petition must be made in writing, be signed by the petitioner or an authorized representative or agent, and filed with the General Counsel of the System. The petition must state:

- (1) that a declaratory ruling is requested pursuant to 590:1-3-18;
- (2) the petitioner's name, address, phone number, and Social Security number;
- (3) the issue(s) and all relevant facts on which a declaratory ruling is requested, stated clearly and concisely;
- (4) the petitioner's desired result and legal basis for that result, including reference to the applicable statutes, rules and case law; and
- (5) whether the petitioner is presently pursuing any administrative review, litigation, or negotiation on the issue with the System, as well as the name of any other person or entity that the petitioner or a duly authorized representative knows is involved with the identical issue pending before or with the System.

(c) Proposed draft. The petitioner may provide a proposed draft ruling for consideration by the Board of Trustees.

(d) Additional information. The Board may request additional information from the petitioner as deemed necessary to issue a declaratory ruling. Failure to provide the requested information shall result in denial of the petition.

(e) Effect of a declaratory ruling. A declaratory ruling shall have the following effect:

- (1) the ruling shall apply only to the particular fact situation stated in the petition;
- (2) the ruling shall apply only to the petitioner;
- (3) the ruling shall bind the Board and the System only prospectively; and
- (4) the ruling may be revoked, altered or amended by the Board at any time.

(f) Exceptions to binding effect of declaratory ruling. The declaratory ruling shall cease to be binding if:

- (1) a pertinent change is made in the applicable law by the Legislature;
- (2) a pertinent change is made in the rules of the Board or the System;
- (3) a pertinent change in the interpretation of the law is made by a court or administrative tribunal; or
- (4) the actual facts are determined to be materially different from the facts set out in the petitioner's declaratory ruling petition.

(g) Issuance of a declaratory ruling. The Board shall make a good faith effort to issue a declaratory ruling within ninety (90) days from the date of receipt of a complete and proper petition unless, in the discretion of the Board, the issue is of such complexity or novelty that additional time is required.

(h) Contents of a declaratory ruling. A written response from the Board or any employee or agent of the Board or System to any inquiry from any person or entity shall not be construed to be a declaratory ruling unless made in conformity with this subsection. A declaratory ruling shall contain:

- (1) a statement that: "This is a declaratory ruling issued by the Board of Trustees of the Oklahoma Public Employees Retirement System pursuant to 75 O.S. § 307" or similar wording; and
- (2) the signature of the Chair or Vice-Chair of the Board of Trustees.

(i) Denial of a petition for declaratory ruling. The Board, in its discretion, may deny a petition for declaratory ruling for good cause. In this instance, the Board shall indicate in writing

the reasons for refusing to issue a declaratory ruling. Good cause includes, but is not limited to, the following:

- (1) the petition does not substantially comply with the information required by this section;
 - (2) the petition involves hypothetical situations or alternative plans;
 - (3) the petitioner requests the Board to interpret or apply a statute, or requests a determination as to whether a statute is constitutional under the Oklahoma Constitution or the United States Constitution;
 - (4) the facts or issues presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue a declaratory ruling;
 - (5) the issue about which the declaratory ruling is requested is primarily one of fact;
 - (6) the issue is presently being considered in a rulemaking, administrative or judicial proceeding that may definitively resolve the issue;
 - (7) the issue cannot be reasonably resolved prior to the issuance of rules;
 - (8) the issue is the subject of an administrative proceeding or litigation; or
 - (9) the petitioner is not identified or is anonymous.
- (j) **Withdrawal of petition for declaratory ruling.** The petitioner may withdraw the petition for a declaratory ruling, in writing, prior to the issuance of the declaratory ruling.
- (k) **Judicial review.** A declaratory ruling, or refusal to issue such ruling, shall be subject to a judicial review, pursuant to the Administrative Procedures Act, in the same manner as individual proceedings.

CHAPTER 10. PUBLIC EMPLOYEES RETIREMENT SYSTEM

SUBCHAPTER 3. CREDITED SERVICE

590:10-3-6. Full-time-equivalent employment

(a) Full-time-equivalent employment is a term which refers to a member's actual employment with a participating employer of the System. Full-time-equivalent employment with a participating Employer must have been service for which required contributions have been paid the System.

- (1) Members obtain full-time-equivalent employment in two ways:
 - (A) actual employment with a participating employer of the System, while participating and paying contributions to the System; and/or
 - (B) making certain types of purchases of service credit which represent actual employment with a participating employer of the System.
- (2) Each hour for which retirement contributions are paid shall credit the member with one (1) hour of full-time-equivalent employment. ~~173~~One hundred seventy-three (173) hours shall constitute one month of full-time-equivalent employment
- (3) Examples of service and/or employment which do not constitute full-time-equivalent employment include, but are not limited to: overtime, leave without pay, unused sick leave, bonus years, temporary or seasonal employment, prior service or military service granted free of charge, purchased military service credit other than purchases pursuant to the Uniformed Services Employment and Reemployment Rights

Act, service purchased from another retirement system including transported service, and purchased incentive, severance or termination credit.

(4) Examples of service and/or employment which do constitute full-time-equivalent employment include, but are not limited to: purchased prior service, repayment of withdrawn contributions, purchase of elected service, purchased temporary total disability credit, purchases pursuant to the Uniformed Services Employment and Reemployment Rights Act, and delinquent service paid for by the employer.

(b) For purposes of determining the full-time-equivalent employment for elected officials, if the elected official is in office and participating for fifteen (15) days or more in either the first or last month in such office, the full month will be credited as service for such official. If an elected official resigns from office effective on a day other than the last day of the month, then such elected official shall not receive credit for a full month, but only those hours of full-time-equivalent employment service for that month.

(c) Elected officials who elect to participate within ninety (90) days after taking office, and those elected officials who fail to file an election within the ninety-day period and are automatically enrolled in the System, shall be deemed to begin service in the System on the date the elected official takes office. The elected official and the employer shall be responsible for the necessary contributions to cover such time period.

590:10-3-9. Purchase price payments

(a) An active member of the System may elect the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating elected service, or to purchase an increase in the contribution rate, or any other purchase or repayment permitted and authorized by the statutes governing the System, to be amortized in monthly installments to the extent allowed by law.

(1) A payment schedule may be established allowing the member to make monthly payments through payroll deductions by the member's employer if the employer agrees to make the deductions and remit payments to the System. Payments remitted by an employer for its employees must be kept separate from employer's regular retirement contributions or any other payments to the System including Deferred Compensation. Such payments do not qualify as "pre-tax" contributions under "employer pick-up" provisions of Section 414(h) of the Internal Revenue Code.

(2) The installment payment schedule provided for in this section must be in monthly increments. The minimum total monthly payment is \$25.00. The member shall be responsible for maintaining the payment schedule. The payment due date will be based on the payroll schedule set by the member's employer. An installment not paid within sixty (60) days of the due date will result in termination of the installment payment schedule with the member given the option of paying the balance of the actuarial cost or receiving partial credit for payments made under the installment schedule as provided for in subsection (4) of this section.

(3) The monthly payment will be determined by amortizing the total amount due for the service to be purchased over the period of the installment schedule using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings for the year in which the payment schedule is commenced.

(4) ~~If Except as provided in subsection (8) of this section, if~~ the installment payment is terminated for any reason, including termination of employment, death of the member or by cessation of payments, the member or ~~his~~ the beneficiary of the member will have the option of paying the remaining balance within six (6) months. If the balance is not paid, the member will receive credit for service prorated for only the principal amount paid and rounded to the last full month paid for. No refunds will be paid to the member.

(5) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in subsection (4) of this section. All payments must be completed in the month prior to the effective retirement date of the member. If any member or beneficiary elects to pay the balance during the 6 month period provided for in Subsection (4) of this Section, no benefits will be payable until the completion of said 6 month period, or receipt of a signed waiver. In no event will retroactive benefit payments be made, and the effective retirement date will be adjusted to the first day of the month following the completion of payments or receipt of waiver.

(6) Payments may be made directly to the System by the member or beneficiary if the member is in an unpaid leave status, if the payroll is not sufficient to handle the entire payment, in the event of payroll error where employer fails to withhold the proper amount or during the six (6) month period referred to in subsection (4) of this Section.

(7) ~~If Except as provided in subsection (8) of this section, if~~ the purchase is terminated for any reason, the purchase cannot be made at anytime in the future, following the 6 month option referred to in Subsection (4) of this Section. By failing to complete this purchase, the member or beneficiary forfeits the right to the purchase at any other time.

(8) If the installment payment for the repayment of a previous withdrawal is terminated for any reason, the member, upon returning to employment and meeting the eligibility requirements for membership, may pay the remaining principal balance at any time prior to the month of the effective retirement date. The total due shall be the unpaid principal balance, plus interest pursuant to 74 O.S. § 917(5), calculated from the date of the last installment payment received and paid in a one-time lump sum amount.

(b) Effective January 1, 2002, in lieu of installment payments, an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating elected service, or to purchase an increase in the contribution rate, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by use of a direct trustee to trustee transfer from a 457 deferred compensation plan or a 403(b) tax sheltered annuity program.

(c) Effective January 1, 2002, in lieu of installment payments or a direct transfer, an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating elected service, or to purchase an increase in the contribution rate, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by a rollover. The payment may be made by participant rollover contributions and/or direct rollovers of eligible rollover distributions made after December 31, 2001, from the following:

- (1) a qualified plan described in section 401(a) or 403(a) of the Internal Revenue Code;
- (2) an annuity contract described in section 403(b) of the Internal Revenue Code;

- (3) 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; or
- (4) a participant rollover contribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includable in gross income.

SUBCHAPTER 7. RETIREMENT BENEFITS

590:10-7-7. Allowable adjustments

Any adjustments made to the retirement benefit due to credit given for unused sick leave, ~~and/or~~ longevity payment or delinquent service shall be retroactive to the effective date of retirement.

590:10-7-9. Fractional year computations

(a) Title 74 O.S. §913(C) provides that a fractional year of six (6) months or more shall be considered as one (1) year, and less than six (6) months shall be disregarded. This round-up provision may be used one time for credited service of a member to establish the benefit of said member. This rule is necessary to prevent the gain or loss of service credit to a member. In no event shall the rounding up provisions apply if it would result in any member receiving an additional year or years that the member would not otherwise be entitled to.

(b) Title 74 O.S. ~~§915A~~ § 915(A) provides for the computation of retirement benefits of Department of Corrections Correctional and Pardon and Parole Officers at 2.25% for certain credit prior to July 1, 1990, and ~~2.50%~~ 2.5% for certain credit after July 1, 1990, and at 2% for all other credit.

(1) Such members may retire with fractional years of service credit in the 2.25% and the ~~2.50%~~ 2.5% categories and the statutes only provide for computation at these rates on full years of service. Due to the fact that only the total credited service can be rounded up, some members may face losing a year of service credit when the fractional years of credit are disregarded.

(2) To prevent such a loss of service credit, the fractional portions of years in the 2.25% and the ~~2.50%~~ 2.5% categories will be added to the years of credit used in the 2% category and rounded up therein, if applicable. If a member still loses a year of service credit after adding the fractional years to the 2% category, the fractional years may be added to the 2.25% category and rounded up therein, if applicable.

~~(c) Title 74 O.S. 94 Supp., §915 A provides for the bifurcated computation of compensation and service credit for both Pre July 1994 and Post July 1994 for those members with a retirement date prior to July 1, 1998. As a result, these rules are necessary to implement this calculation.~~

~~(1) Members may retire with fractional years of service credit in the pre July 1994 and/or the post July 1994 divisions of service and the statutes provide for computation of the benefits using full years of service. Because only credited service may be rounded up, members may lose a year of service credit when fractional years are disregarded.~~

~~(2) — To prevent members losing service credit, the fractional years of pre July 1994 service will be added to the post July 1994 service and the post July 1994 service will be rounded up if applicable.~~

~~(3) — Members who retire with less than one year of service credit after July 1994 (less than six months) and whose fractional years of service credit do not round up when added together, will have both pre July 1994 and post July 1994 benefits computed using the actual number of years and months of service. The months will be expressed in fractions of a full year.~~

~~(d)~~(c) Hazardous Duty Members who elect to participate or are required to participate at the higher employee contribution rate will receive retirement benefits at the 2.5% category only on full years of service as Hazardous Duty Members for which the higher contributions have been paid. The fractional portions of years in the 2.5% category will be added to any other service credit, calculated in the 2% category and rounded up therein, if applicable, for the computation of the retirement benefit.

~~(e)~~(d) Elected officials who do not participate in an elected status for at least six (6) full years will receive retirement benefits only on full the years and months of elected service and instead of full years. The benefit shall be calculated on using the computation factor assigned for corresponding to the contribution rate the official paid during those years and months of elected service and on the highest annual salary earned as an elected official. Any fractional portion of an elected year of service credit or any non-elected Non-elected service credit will be calculated using the 2.0% applicable computation factor. The elected and non-elected service shall be added to determine the total credited service. If this total results in a fractional year of six (6) months or more, it shall be considered as one year, and less than six (6) months shall be disregarded. The years and months of elected service shall then be deducted from the total credited service and the remaining balance of service shall be calculated using the applicable non-elected service computation factor.

~~(f)~~(e) Elected officials who participate at more than one contribution rate during their elected service will receive retirement benefits calculated using (1) the computation factor assigned for each contribution rate paid and (2) the highest annual salary for which that particular contribution rate was paid for each full year of elected service credit. Fractional years of elected service credit will be added to the years of elected service for which the highest contribution rate was paid and rounded up therein, if applicable, for the computation of the retirement benefit.

590:10-7-13. Filing for retirement and Initial retirement benefit

(a) It is the responsibility of all members to file a notice of retirement form with the System at least sixty (60) days but not more than one hundred eighty (180) days prior to the member's requested effective retirement date. Any member who has previously filed an application for vested benefit form will be considered to have met the sixty (60) day notice requirement; however, it is the responsibility of any such vested member to file a retirement form selecting the type of benefit to be paid prior to the member's requested retirement date. All retirement forms shall be prescribed, produced and approved by the System in order to constitute proper notice and retirement selection.

(b) The sixty (60) day notice requirement can be waived by application to the ~~Board of Trustees~~ Executive Director. The application for waiver must state the reason for the request and the decision to grant ~~of~~ or deny the waiver ~~is at the sole discretion of the Board~~ shall be made by

the Executive Director. Upon request of the member, the Board may review at its next regular meeting any denial of a waiver by the Executive Director. Members are presumed to be familiar with the plan provisions and aware of the notice requirement and the ~~Board~~ Executive Director will grant the waiver only for good cause shown. Good cause is generally shown in cases of an unforeseen hardship, such as illness of the member or a member's family, ~~or~~ a reduction in force, ~~or~~ layoff of employment, or other unexpected change in job status. Good cause is also generally shown in cases of error or delay on the part of the employer and the error or delay is due to no fault of the member.

(c) No retirement benefits are payable until the System verifies that the member has been removed from the payroll; therefore, the initial retirement benefit payment to new retirees shall be made at the end of the month following the month of retirement. Two benefit payments will be made at that time representing the month of retirement and the current month. Following this initial verification period, retirement benefits will be payable each month on the last day of that month.

(d) No retirement benefits shall be payable until the System receives a properly completed retirement form requesting such benefits. Unless otherwise specifically provided by law or by these rules, no benefits shall be payable retroactively for any time period prior to receiving the member's properly completed retirement form regardless of when the member may have become eligible for such benefits. The requested retirement date of the member shall be made in accordance with the requirements of this section.

590:10-7-15. Post-retirement employment – calculation of benefits and service

(a) A year of post-retirement service shall be determined as 2076 hours of participation. All retired members who have post-retirement service with a participating employer and are eligible for an additional monthly benefit on or after January 1, 2000, pursuant to 74 O.S. ~~99 Supp. Section §914 (E)~~ § 914(E) shall have said additional benefit calculated using the actual hours worked and reported and the actual compensation reported for which contributions have been paid for each 2076 hour period. Each 2076 hour period shall be calculated separately and benefits added each January 1 as appropriate. All applicable option and early retirement reductions selected by the member at the time of retirement shall be applied to the additional benefit.

(b) The initial addition of post-retirement benefits shall be made effective with the January, 2000 benefit payment. The additional benefits shall be cumulative and paid for the initial period to the extent OPERS can identify and verify post-retirement participation. Post-retirement employment for which the retired member has previously been granted additional benefits or for which a refund of contributions has been made will not be included.

(c) The addition of post-retirement benefits shall be available to retired members who remain members on or after July 1, 1999. Joint Annuitant benefits shall be increased only if the member would have otherwise been eligible for the increase in benefits.

(d) For those retired members who have returned to employment with a participating employer and waived receipt of their monthly retirement benefit pursuant to 74 O.S. ~~Section 914 (E)~~ § 914(E), retirement benefits will be recalculated only upon termination of employment after completion of thirty-six (36) consecutive months of full-time-equivalent employment, as that term is defined under 590:10-3-6 of these rules.

590:10-7-18. Post-retirement employment – eligibility

(a) Retiree subject to restrictions. Returning to work for a participating employer may affect the retirement benefit of a retiree. A retiree returning to work for a participating employer is subject to various state and federal restrictions, including, but not limited to, the requirements set forth in 74 O.S. § 914 and certain Internal Revenue Service regulations.

(b) Bona fide termination of employment. Prior to the payment of any retirement benefit to a member, the participating employer shall certify in writing to the System that the member has terminated their employment. Termination of employment shall be governed by guidelines and regulations set forth by the Internal Revenue Service, and shall generally mean the member must have experienced a bona fide separation, severance or termination of employment or service in which the employer and employee relationship is completely severed. Changing from full-time to part-time employment with the same participating employer does not qualify as a bona fide termination.

(c) Pre-arranged rehires. If any agreement is made between the employee and the employer prior to the retirement of the employee which would allow the employee to return to work for the same participating employer, the retirement of such employee shall not be considered a bona fide termination of employment. Upon discovery of such an agreement, the employee shall be subject to having the retirement benefits stopped pursuant to 74 O.S. § 914(D).

(d) Independent contractors.

(1) A retired member who provides services as an independent contractor to a participating employer shall not participate in the System. However, the employer must submit a copy of the contract to OPERS for approval in advance of the effective date of the contract. The contract must be a true contract labor situation where the individual engages to perform certain services according to his or her own method and manner, free from control and direction of the employer in the performance of the service except the result thereof. Review of the contract shall include, but not be limited to:

- (A)** the degree of the right to control or supervise the work of the individual;
- (B)** payment of self-employment taxes;
- (C)** whether any benefits or leave time are paid;
- (D)** the nature and length of the contract;
- (E)** whether the work is part of the regular business of the employer, and;
- (F)** the right of either party to terminate the relationship without liability.

(2) If an individual after retirement is doing the same work for the same employer as the individual did prior to retirement, the System will consider the individual to be an employee and not an independent contractor. In no event will an employment contract be accepted by the System if it is determined that the contract was arranged or agreed to prior to the retirement of the employee. In such cases, the System will consider the relationship to be that of employer and employee, and the employer and employee will be subject to the laws and rules regarding post-retirement employment.

SUBCHAPTER 19. MEDICARE GAP BENEFIT OPTION

590:10-19-2. Definitions

The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Board" means the Board of Trustees for the Oklahoma Public Employees Retirement System.

"Eligible Member" means a member of the System who retires on or after the Option Effective Date and who is not Medicare-eligible at the time of retirement, except as otherwise provided in this Subchapter.

"Medicare Gap Benefit" means an adjusted retirement benefit which is greater than the member's Regular Retirement Benefit for months of payments prior to ~~becoming~~ and including the month the member becomes Medicare-eligible and an actuarially reduced benefit which is less than the member's Regular Retirement Benefit for months of payments after becoming Medicare-eligible and for the remaining lifetime of the member.

"Medicare Gap Benefit Election" means an irrevocable election made by an Eligible Member prior to his or her effective date of retirement to receive the alternative benefit option payable pursuant to this Subchapter.

"Medicare-eligible" means age 65 or older, or such other age at which a member becomes eligible for Medicare benefits under federal law in effect at the time a member applies for an OPERS retirement benefit. For purposes of this Subchapter, age is calculated as of the first day of the month of birth. For example, a member born September 15, 1940, is considered to be 65 and Medicare-eligible on or after September 1, 2005.

"Minimum Medicare Gap Benefit" means a gross monthly benefit payment of \$200.00 per month after all applicable actuarial reductions for either the Pre-Medicare benefit or the Post Medicare benefit.

"Option Effective Date" means May 1, 2006, which is the date when the System made the Medicare Gap Benefit option available to Eligible Members.

"Post Medicare Benefit" means the actuarially reduced monthly benefit payment for all months of retirement after the member becomes Medicare-eligible.

"Pre-Medicare Benefit" means the increased monthly benefit payment for all months of retirement prior to and including the month the member ~~becoming~~ becomes Medicare-eligible.

"Pre-Medicare Increase" means the amount added to the Regular Retirement Benefit to equal the Pre-Medicare Benefit.

"Regular Retirement Benefit" means the monthly retirement benefit that the Eligible Member would receive absent the Medicare Gap Benefit Election, which includes the actuarial adjustments as a result of the member's election of early retirement and/or survivor benefit options. It does not include amounts refunded of additional contributions paid to a member in the form of a limited retirement benefit under 74 O.S. § 910.5.

"System" or "OPERS" means the Oklahoma Public Employees Retirement System.

590:10-19-3. Medicare Gap Benefit option

(a) ___ An alternate retirement benefit option is available to members of the Oklahoma Public Employees Retirement System provided an election form is properly completed and filed with the System after the Option Effective Date and prior to the member's effective retirement date. This alternate benefit option shall be called the Medicare Gap Benefit option. The Medicare Gap Benefit option is intended to permit certain members of the System to elect to receive an increased retirement benefit amount to help cover the cost of the health insurance premiums prior

to the time that the member becomes Medicare-eligible, however, the Medicare Gap Benefit may not equal or cover the entire cost of the member's actual health insurance premiums.

(b) As a result of the passage of Section 2 of Enrolled Senate Bill 1112 from the 1st Session of the 51st Oklahoma Legislature (2007), members electing the Medicare Gap Benefit Option with a retirement effective date on or after July 1, 2007, shall have the Medicare Gap Benefit determined in accordance with these rules.

(c) Despite any provision to the contrary, all members who made the Medicare Gap Benefit Election with a retirement effective date from May 1, 2006, the Option Effective Date, through June 30, 2007, Medicare Gap Benefit means an adjusted retirement benefit which is greater than the member's Regular Retirement Benefit beginning with the first retirement benefit payment through December of the year the member becomes Medicare-eligible. Beginning in January of the year following such year that the member becomes Medicare-eligible, the retirement benefit will be actuarially reduced making the member's benefit less than the Regular Retirement Benefit for the remaining lifetime of the member.

CHAPTER 15. UNIFORM RETIREMENT SYSTEM FOR JUSTICES AND JUDGES

SUBCHAPTER 1. GENERAL PROVISIONS

590:15-1-10. Purchase price payments

(a) An active member of the System may elect the payment of the actuarial purchase price, the repayment of a previous withdrawal, or any other purchase or repayment permitted and authorized by the statutes governing the System, to be amortized in monthly installments to the extent allowed by law.

(1) A payment schedule may be established allowing the member to make monthly payments through payroll deductions by the member's employer if the employer agrees to make the deductions and remit payments to the System. Payments remitted by an employer for its employees must be kept separate from employer's regular retirement contributions or any other payments to the System including Deferred Compensation. Such payments do not qualify as "pre-tax" contributions under "employer pick-up" provisions of Section 414(h) of the Internal Revenue Code.

(2) The installment payment schedule provided for in this section must be in monthly increments not to exceed sixty (60) months. The minimum total monthly payment is \$25.00. The member shall be responsible for maintaining the payment schedule. The payment due date will be based on the payroll schedule set by the member's employer. An installment not paid within sixty (60) days of the due date will result in termination of the installment payment schedule with the member given the option of paying the balance of the actuarial cost or receiving partial credit for payments made under the installment schedule as provided for in subsection (4) of this section.

(3) The monthly payment will be determined by amortizing the total amount due for the service to be purchased over the period of the installment schedule using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings for the year in which the payment schedule is commenced.

(4) ~~If Except as provided in subsection (8) of this section, if~~ the installment payment is terminated for any reason, including termination of employment, death of the member

or by cessation of payments, the member or ~~his~~ the beneficiary of the member will have the option of paying the remaining balance within six (6) months. If the balance is not paid, the member will receive credit for service prorated for only the principal amount paid and rounded to the last full month paid for. No refunds will be paid to the member.

(5) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in subsection (4) of this section. All payments must be completed in the month prior to the effective retirement date of the member. If any member or beneficiary elects to pay the balance during the ~~6-six~~ (6) month period provided for in Subsection (4) of this Section, no benefits will be payable until the completion of said ~~6-six~~ (6) month period, or receipt of a signed waiver. In no event will retroactive benefit payments be made, and the effective retirement date will be adjusted to the first day of the month following the completion of payments or receipt of waiver.

(6) Payments may be made directly to the System by the member or beneficiary if the member is in an unpaid leave status, if the payroll is not sufficient to handle the entire payment, in the event of payroll error where employer fails to withhold the proper amount or during the six (6) month period referred to in subsection (4) of this Section.

(7) ~~If Except as provided in subsection (8) of this section, if~~ the purchase is terminated for any reason, the purchase cannot be made at anytime in the future, following the ~~6-six~~ (6) month option referred to in Subsection (4) of this Section. By failing to complete this purchase, the member or beneficiary forfeits the right to the purchase at any other time.

(8) If the installment payment for the repayment of a previous withdrawal is terminated for any reason, the member, upon returning to employment and meeting the eligibility requirements for membership, may pay the remaining principal balance at any time prior to the month of the effective retirement date. The total due shall be the unpaid principal balance, plus interest pursuant to 20 O.S. § 1103C, calculated from the date of the last installment payment received and paid in a one-time lump sum amount.

(b) Effective January 1, 2002, in lieu of installment payments, an active member may elect to make the payment of the actuarial purchase price, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by use of a direct trustee to trustee transfer from a 457 deferred compensation plan or a 403(b) tax sheltered annuity program.

(c) Effective January 1, 2002, in lieu of installment payments or a direct transfer, an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by a rollover. The payment may be made by participant rollover contributions and/or direct rollovers of eligible rollover distributions made after December 31, 2001, from the following:

- (1) a qualified plan described in section 401(a) or 403(a) of the Internal Revenue Code;
- (2) an annuity contract described in section 403(b) of the Internal Revenue Code;
- (3) 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; or

(4) a participant rollover contribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includable in gross income.