

TITLE 2 PUBLIC FINANCE
CHAPTER 82 EDUCATIONAL RETIREMENT
PART 2 MEMBERSHIP

2.82.2.1 ISSUING AGENCY: Educational Retirement Board, P.O. Box 26129, Santa Fe, New Mexico 87502-0129.
[2.82.2.1 NMAC - Rp, 2.82.2.1 NMAC, 10/31/2017]

2.82.2.2 SCOPE: This rule defines membership status and processes within the Educational Retirement Act, Sections 22-11-1 through 22-11-55 NMSA 1978.
[2.82.2.2 NMAC - Rp, 2.82.2.2 NMAC, 10/31/2017]

2.82.2.3 STATUTORY AUTHORITY: The Educational Retirement Act, Sections 22-11-1 to 22-11-55 NMSA 1978.
[2.82.2.3 NMAC - Rp, 2.82.2.3 NMAC, 10/31/2017]

2.82.2.4 DURATION: Permanent.
[2.82.2.4 NMAC - Rp, 2.82.2.4 NMAC, 10/31/2017]

2.82.2.5 EFFECTIVE DATE: October 31, 2017, unless a later date is cited at the end of a section.
[2.82.2.5 NMAC - Rp, 2.82.2.5 NMAC, 10/31/2017]

2.82.2.6 OBJECTIVE: The purpose of this rule is to govern operations and define the types of membership eligible for coverage, as well as employees excluded from coverage.
[2.82.2.6 NMAC - Rp, 2.82.2.6 NMAC, 10/31/2017]

2.82.2.7 DEFINITIONS: [Reserved]

2.82.2.8 EMPLOYEES AND EMPLOYERS COVERED BY THE EDUCATIONAL RETIREMENT ACT:

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

(1) all public school districts in New Mexico;
(2) educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico;

(3) public education department;
(4) educational retirement board;
(5) girls' welfare home;
(6) New Mexico boys' school;
(7) Los Lunas medical center;
(8) technical and vocational institutes created pursuant to the Technical and Vocational Institute Act;

(9) community colleges (also known as "junior colleges") created pursuant to the Community College Act;

(10) New Mexico activities association; and
(11) regional education cooperatives.

B. In addition to the local administrative units enumerated in Subsection A, any state institution or agency providing an educational program and employing certified school instructors shall be a local administrative unit with coverage in such unit limited to certified school instructors.

[2.82.2.8 NMAC - Rp, 2.82.2.8 NMAC, 10/31/2017]

2.82.2.9 REGULAR MEMBERS:

A. In four-year colleges, technical and vocational institutes and community or junior colleges, public school districts, and state operated schools, "regular members" shall be all employees other than retired members, participants in the return to work program, participants in the return to work exception; participants in the alternative retirement plan (ARP) or employees excluded under 2.82.2.11 NMAC.

B. Any member except retired members participating in the return to work program, participants in the return to work exception, participants in the alternative retirement plan (ARP), or employees excluded under 2.82.2.11 NMAC, who is regularly employed in any of the following local administrative units, shall be a "regular member" if the member holds a license issued by the public education department at the time of commencement of employment in such local administrative units:

- (1) northern New Mexico college;
- (2) New Mexico boys' school;
- (3) girls' welfare home;
- (4) Los Lunas medical center;
- (5) public education department;
- (6) educational retirement board;
- (7) New Mexico school for the blind and visually impaired;
- (8) New Mexico school for the deaf;
- (9) New Mexico activities association; and
- (10) regional education cooperatives.

C. Except retired members participating in the return to work program, participants in the return to work exception; participants in the alternative retirement plan (ARP) or employees excluded under 2.82.2.11 NMAC, regular membership is a condition of employment and all local administrative unit employees who qualify as "regular members" must be covered under the Educational Retirement Act, commencing with the first day of employment.

D. Except retired members participating in the return to work program, participants in the return to work exception; participants in the alternative retirement plan (ARP) or employees excluded under 2.82.2.11 NMAC, any person regularly employed, whether full-time or part-time, in any state institution or agency described in Subsection B of 2.82.2.8 NMAC, shall be a regular member if employed in an educational program and holds a license issued by the public education department.

[2.82.2.9 NMAC - Rp, 2.82.2.9 NMAC, 10/31/2017]

2.82.2.10 PROVISIONAL MEMBERS:

A. Any provisional member employed by any of the following local administrative units may elect to be covered under the public employees retirement association in lieu of coverage under the Educational Retirement Act within the first six months of employment or re-employment, but may not be exempted completely from being covered under either retirement system unless excluded from coverage under 2.82.2.11 NMAC:

- (1) New Mexico boys' school;
- (2) girls' welfare home;
- (3) New Mexico school for the deaf;
- (4) educational retirement board
- (5) public education department;
- (6) northern New Mexico college;
- (7) Los Lunas medical center;
- (8) New Mexico school for the blind and visually impaired;
- (9) until or unless such provisional member does elect coverage under the Public Employees Retirement Act that provisional member must be covered under the Educational Retirement Act commencing with the first day of his employment, or re-employment in any of the local administrative units enumerated in this section. Likewise, the election of coverage under the Public Employees Retirement Act requires continued coverage under that act for the duration of employment or re-employment in any of the units specified in this section.

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

B. To elect coverage under the Public Employees Retirement Act, a provisional member must complete a form provided by the board for that purpose. The local administrative unit shall forward the completed form to the director. The director shall approve the election of such coverage if it is in order and forward a copy of the approved form to PERA and to the local administrative unit as notice that the employee's election to be covered under the Public Employees Retirement Act has been approved. The director shall retain the original approved election form as the board's record of the approved election.

C. No provisional member may be covered under the Public Employees Retirement Act in lieu of the Educational Retirement Act unless a properly approved form electing such coverage is on file with the director.

[2.82.2.10 NMAC - Rp, 2.82.2.10 NMAC, 10/31/2017]

2.82.2.11 EMPLOYEES EXCLUDED FROM COVERAGE:

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

B. Any person whose full time equivalency ("FTE") is .25 or less, and who is not a covered employee of another local administrative unit, shall not be covered for contribution purposes. For purposes of calculating a person's FTE, employment with all local administrative units shall be aggregated. Any person employed on July 1, 1994 who was then covered under the Educational Retirement Act shall continue to be covered for the duration of that employment.

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

D. Independent contractors who perform services for local administrative units on a fee basis are not eligible for membership under the Educational Retirement Act as a result of having performed such service, and sums paid for such service shall not be covered for purposes of contributions. The following factors shall be considered in determining whether an individual qualifies as an independent contractor:

- (1) registration with the New Mexico department of taxation and revenue to pay gross receipts tax;
- (2) the existence of a written contract with the local administrative unit setting forth the services to be provided and the compensation to be paid;
- (3) whether the person receives benefits such as paid annual or sick leave, health insurance and other benefits that the local administrative unit provides its regular employees or is paid as an employee by the local administrative unit;
- (4) whether the person satisfies internal revenue service guidelines for determining that an individual is an independent contractor rather than an employee;
 - (a) as necessary, the director shall make available forms for use by local administrative units for use in making this determination;
 - (b) the board reserves the right to examine the complete forms, contracts and other agreements, and any other materials as may be necessary for the purpose of determining whether an individual is an independent contractor or employee.

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

[2.82.2.11 NMAC - Rp, 2.82.2.11 NMAC, 10/31/2017]

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

[2.82.2.12 NMAC - Rp, 2.82.2.12 NMAC, 10/31/2017]

2.82.2.13 MEMBERSHIP ENROLLMENT; RECORDS:

- A.** Enrollment; changes in contact information.
- (1) Members are required to complete a new employment form each time that they are hired or rehired by a local administrative unit and to provide the board with contact information, including their mailing address and e-mail address.
 - (2) Active members and retirees are responsible for providing the board notice in writing of any change of their mailing address or e-mail address on forms made available for this purpose by the director.

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

[2.82.2.13 NMAC - Rp, 2.82.2.13 NMAC, 10/31/2017]

HISTORY OF 2.82.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ERB 67-3, Rules and Procedures, filed 6-30-67.

ERB 78-1, Rules and Procedures, filed 8-7-78.

ERB Rule II, Membership, filed 7-2-82.

History of Repealed Material:

2.82.2 NMAC, Membership, filed 6/30/99, repealed effective 10/31/2017.