

Forward-thinking leadership: Retirement issues for school boards

As governing bodies, boards of education need to think beyond the most immediate challenges facing their districts to the long-term success of local schools. Few issues present more important choices with long-term implications than questions about employee retirement.

Retirement issues have not generally been among school boards' highest priorities. Many of the decisions relating to public employee retirement policies, after all, continue to be made at the state level. In addition, a report issued in September by the U.S. Government Accountability Office (GAO) report found that, generally speaking, state and local governments have done a good job of planning for retirement liabilities. Nonetheless some realities dictate that local school boards be well versed in retirement issues:

- The GAO report indicated that one key area of vulnerability is health care inflation, as the baby boomers retire and, especially, if pensions continue to fulfill their traditional role of substituting for competitive salaries in a job market that places a premium on highly educated employees.
- The public might not realize the extent to which decisions about retirement benefits are out of the hands of local officials.
- Local officials have an important role to play in informing decisions made at the state level.
- Local accountability for the long-term fiscal health of retirement systems is increasing for school boards.

GASB 45

Every school board member, like other key local officials, should be familiar with the term "GASB 45." This refers to Statement 45 by the Governmental Accounting Standards Board (GASB), an independent

organization that sets financial reporting standards for government agencies.

In 2004, GASB required all cities, school districts, and other public agencies that provide non-pension retirement benefits, such as health insurance, life insurance, and dental and vision care, to recognize and disclose those long-term obligations during the years that an employee is working. This has required districts to take a closer look at how these benefits affect the liabilities of their retirement systems and to plan accordingly.

Early retirement incentives

Retirement issues are playing out in the judicial arena as well. The U.S. Supreme Court is scheduled early in January to hear oral arguments in the case of *Kentucky Retirement System v. Equal Employment Opportunity Commission*. That case reviews a decision by the 6th U.S. Circuit Court of Appeals that found Kentucky's early retirement incentive program facially discriminatory, in violation of the federal Age Discrimination in Employment Act of 1967 (ADEA), because the program used age as a factor in determining benefits.

In NSBA's view, the 6th Circuit's decision, if allowed to stand, would threaten thousands of similar public school district retirement benefit plans, harm public school budgets, and chill the collective bargaining process between school boards and labor unions.

In its brief to the Supreme Court, NSBA argued that early retirement incentive plans are voluntary and desired by employees. More important, NSBA argued, the ADEA prohibits only arbitrary age-based employment decisions grounded in stereotypes, not mere consideration of age in determining retirement benefits.

While the fiscal pros and cons of early retirement programs are debatable, school

boards need the widest range of options for coping with fiscal austerity.

403(b) plans

Numerous regulations have been issued in 2006 and 2007 on Section 403(b) retirement plans. These plans, as well as 457 plans, are similar to 401(k) plans in the private sector but are available to employees of educational institutions. Contributions and investment earnings grow on a tax-deferred basis until withdrawal, generally after retirement, at which time they are taxed as ordinary income.

Regulations issued by the Internal Revenue Service in the summer of 2006 made two major changes to 403(b) plans:

- 403(b) plans that allow for employee contributions must satisfy the "universal availability rule"—that is, if the district offers the plan to some employees, it generally must permit all employees to participate.
- 403(b) plans must now have a written plan document describing how responsibilities will be allocated among the employer, the entity offering investment options, and any other party involved.

In December, the IRS followed up by issuing a model written plan. A school district that adopts this model can rest assured that the IRS will view its 403(b) plan as satisfying the regulatory requirements.

The article in this issue of *Leadership Insider* by Forrest Jack Lance, Fred Reish, and Bruce Ashton, explains the fiduciary duties school boards owe their employees with regard to 403(b) and 457 plans.

The article alludes to a lawsuit recently filed in the state of Washington against the National Education Association, in which employees accuse the union of endorsing retirement products offered by two companies in exchange for lucrative payments and sponsorships without disclosing these facts

to its members. The suit alleges that the administrative fees charged by these plans far exceed those of comparable products.

While this article focuses on one type of retirement program, the duties and practical suggestions the authors outline are applicable to others as well.

Retire-rehire programs

Another big question facing school boards is whether and how to participate in retire-rehire programs, under which school retirees are able to return to the workplace without jeopardizing their benefits. In the other article in this issue, Kansas Association of School Boards legal clerk Angela Stallbaumer provides an overview of considerations at stake for policymakers at all levels when it comes to these plans.

Along with the experience and professional qualifications retirees bring to the system, the main point of retire-rehire programs is, of course, cost savings for the district. These plans, however, raise some difficult policy arguments about the best interests of all of the districts' employees and, more crucially, about the overall fiscal health of the statewide system.

Additional resources on all of these issues—and others related to retirement—are collected online, along with the electronic copy of this publication, at the NSBA National Affiliate website. [Log on to www.nsba.org/na and click on the "Leadership Insider" link.]

In the government, business, and nonprofit worlds, the early 21st century is a time of renewed focus on the importance of effective and assertive governance in American institutions. Just like a corporate or a nonprofit board of directors, today's board of education should expect to be more accountable than ever—legally, politically, and morally—for sound decisions relating to the retirement of its employees. ■

—Thomas Hutton, Co-Editor

District retirement plans: Ignore at your peril

By Forrest Jack Lance, Fred Reish, and Bruce Ashton

Most school board members and district employees know about the potential benefits of 403(b) and 457 retirement plans, but board members often lack the knowledge required to maximize the benefits of these plans for their employees and avoid pitfalls.

This lack of knowledge results, in part, from the fact that government pension plans have, by and large, been well-managed with the help of sophisticated advisers.

Nonetheless, board members owe fiduciary duties to the district's employees for the proper administration of their 403(b)

and 457 plans. Failure to carry out these duties has serious legal, financial, and political implications for boards and administrators.

In recent years, these risks have intensified for a number of reasons:

- The looming inadequacy of Social Security makes employee-deferred retirement plans indispensable for the future welfare of many employees.
- Employees are living longer.
- The baby boomers—who may be the best educated, and most demanding, group in the nation's history—are approaching retirement in record numbers and are expecting adequate retirement benefits.

Finally, public awareness of the need for effective management of retirement plans is increasing, in both the private and public sectors, in large part because of corporate scandals, mutual fund improprieties, and lawsuits alleging hidden fees, secret payments, and "pay to play" arrangements.

Five basic board responsibilities

Because of these events—and the resulting changes in attitudes—school district fiduciaries must have greater awareness of their obligation to make sure the plans offer appropriate investment options and investing tools at rea-

sonable cost. And providers, advisers, and others involved in the process must avoid conflicts of interest, fraud, and other illegal or unethical practices.

Under general trust principles, the members of a school board are fiduciaries of these savings plans. This means they have a number of obligations:

- **The duty of loyalty.** Fiduciaries must operate the plan solely in the interest of the district's employees, avoiding conflicts of interest and placing the interests of employees ahead of their own—or even of the district itself.

For example, it would be inappropriate for a board member to lobby to have a relative hired as a consultant for a district plan without full disclosure of the relationship, proper investigation of the relative's credentials by independent parties, and the official's abstaining from the decision to hire the relative. Similarly, it would be improper for board members to defer payments to employees so they could use the funds for other district purposes.

- **The exclusive purpose requirement.** Fiduciaries must operate the plan for the



Lance



Reish



Ashton

exclusive purpose of providing retirement benefits. An important part of this duty is to ensure that no more than reasonable expenses are charged against participant accounts.

• **The prudent person rule.** Under this rule, board members must act with the care, skill, diligence, and prudence that a knowledgeable person would use in operating a retirement plan on behalf of others under the circumstances that exist at the time a decision is made or action is taken.

This is measured by the steps board members have taken in meeting their responsibilities. While the results of decisions are important, the process board members use in making decisions is regarded as even more significant.

• **Duty to monitor.** After making a decision about plan operations or investments, fiduciaries have an obligation to revisit the decision periodically to make sure the original choice continues to be in the best interests of employees.

• **Selecting investments.** Board members must prudently manage the plan's investments. This consists of setting the plan's investment policies, selecting the investment vehicles by applying the policy, and making changes in the investments if they fail to meet the criteria in the policy. The obligation to make changes in investments that no longer meet the plan's investment policies extends to other decisions as well, including the selection of a provider.

Four things boards must know

To fulfill their responsibilities, board members and other key school officials must know about the following:

• **Fiduciary responsibilities.** In designing and administering savings programs, school officials should focus on participation, deferrals, investments, participants' use of the investments, and fees and expenses.

To assist their employees, they should consider concepts currently being used in the private sector, such as automatic enrollment unless the employee opts out, automatic increases in deferral rates each year unless the employee opts out, and default placement of participant funds into professionally managed investment options unless an employee affirmatively directs his or her own investments.

• **Fees and costs.** School officials need to be aware of the numerous administrative fees that may lurk in these plans. These include the so-called "12b-1 fees," which allow the fund to pay distribution and marketing expenses out of the fund's assets; custodial fees; expense deductions; management fees; mortality and expense charges; transfer fees; and withdrawal or

surrender charges.

Unreasonably high expenses, such as commissions paid to brokers or investment management fees paid on the investments, reduce benefits to participants. Even a 1 percent swing in fees and expenses can make an enormous difference when compounded over 20 or 30 years. Prudent officials must examine the fees carefully—at the outset and periodically thereafter—to ensure they are reasonable and are commensurate with the services provided.

As a plan grows in size, it might be possible to negotiate lower costs. It is important to seek transparency of all terms, especially the fees and costs, in all agreements.

• **Potential for fraud.** Advisers and even some large investment providers have been known to offer significant "gifts," advertising, sponsorships, or other inducements to encourage endorsement or use of their products and services. These payments are often funded by excessive investment costs, which reduce benefits to employees. Some teacher unions have been criticized and even sued over this alleged practice.

• **The work force and the marketplace.** School officials need to know their employees and what is available in the marketplace in order to select appropriate services and investments.

For example, if the work force is generally younger, services geared to helping employees accumulate sufficient retirement savings might be the most pressing need. For an older work force, there might be a need for more assistance with how to prepare for retirement.

Even after a plan is running smoothly, district officials should test the market regularly, perhaps every three or four years, to make sure the products and services are still competitive and the costs reasonable. The costs of 403(b) and 457 plans are being driven down by intense competition. Also, boards can sometimes negotiate enhancements in products and services at no additional cost.

Selecting a provider—12 steps

Here are a dozen steps a school board can take to prudently fulfill its responsibilities in selecting a provider for a district savings plan:

• **Establish a search committee.** The committee will investigate available options in the marketplace and oversee the process of selecting a provider. The committee should have representatives from the interest groups in the district who are qualified by education or experience to make important financial recommendations in their capacity as fiduciaries.

• **Engage a competent consultant.**

Unless the search committee members are especially qualified in relation to 403(b) and 457 plans, it is advisable to hire a consultant to help the committee conduct the search process.

The consultant should be independent from all of the potential providers and investments and should have experience with the type of plans suitable for a district of the same size. To avoid potential conflicts of interest, it might be advisable to compensate the consultant with a fixed fee or at an hourly rate rather than on a percentage-of-assets basis.

• **Create an effective RFP.** The request for proposals would cover all of the issues that need to be addressed by vendors and advisers. The consultant should also help decide whom to send it to—that is, which vendors are competitive for plans of the district's size and type.

• **Critically analyze RFP responses.** Weed out responses that are inadequate, too expensive, or fail to provide the investments and services considered necessary for the plan. Generally, this winnowing process will narrow the field first to a limited number of providers that are the best fit for the district and then to two or three finalists.

• **Engage in a qualitative review of finalists.** This would include checking references and possibly visiting the finalists' facilities to verify whether they can satisfy the district's needs and those of its plan participants. This also would include having counsel review the finalists' proposed contract forms in advance. It might be appropriate to engage specialized legal counsel to help review and negotiate the contracts.

• **Negotiate transparent contracts.** The district needs to understand all costs charged against the participant accounts and all amounts paid to the service providers, either directly by the plan or indirectly by third parties.

Many providers, including the investment provider and the consultants or brokers servicing the plan, will receive "revenue sharing" from the entities that offer the investments—mutual funds and insurance companies. Generally, the original response to the RFP will include some room to lower the costs, provide more services, or have the provider pay some of the fees of third parties helping the district with the negotiations, such as attorneys or consultants.

The larger the plan, the greater the flexibility on fees. Contracts with providers and consultants should also allow for indemnification of the district and its officials, maintenance of adequate liability insurance, and periodic disclosures and

reports of compensation and effectiveness of the services they are providing.

• **Document the plans appropriately.** Proposed federal regulations would require a written plan for 403(b) plans, and 457 plans are already required to have such a document.

• **Require employee education.** Topics should include the importance of saving for retirement; how much replacement income employees will need at retirement; how much they will need to defer in order to achieve their replacement income goals; concepts of investing, such as asset allocation and investing for the long-term rather than "chasing the market"; and options available to have their funds managed for them. Officials should also consider special programs for employees nearing retirement.

• **Create and educate a plan committee.** This committee would perform the monitoring function, for both the investments and the service providers, and would periodically evaluate participant results.

The plan committee could be the same as the search committee or could be composed of different members. It normally would serve in an advisory role, but it also could be empowered to make certain decisions and take some actions without specific board approval. It should meet as often as necessary but at least semi-annually.

• **Adopt an investment policy statement.** This critical document establishes the framework for selecting the investment options offered to the employees and for conducting periodic monitoring of the investments.

• **Require quarterly and annual reports.** All providers and advisers should be required to give periodic reports to be reviewed at the committee meetings. These self-assessments are important to the monitoring function of the school officials. The committee should review the reports, understand them, and assess any action items in those reports.

• **Monitor the plan's services and investments.** The committee should report to the board or superintendent at least annually. This is important to provide oversight of the committee's activities. As the fiduciaries ultimately responsible for the operation of the plan, the board has an obligation to periodically review (and possibly remove and replace) the individuals selected to carry out the committee functions.

Retirement is a serious business. The job is far from impossible. But it requires knowledge about fiduciary responsibility, attentiveness to the duties, and the use of competent and independent advisers. Failure by school officials to act in accordance with their fiduciary duties can have dire consequences for everyone—employees, board members, administrators, and school attorneys. ■

Forrest Jack Lance, general counsel of the Rockdale County school district in Conyers, Ga., serves on the board of directors of the NSBA Council of School Attorneys (COSA) and chairs the COSA committee for in-house school district attorneys. Fred Reish and Bruce Ashton are partners in the Los Angeles law firm of Reish Luftman Reicher & Cohen PC and specialize in employee benefits law.

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Retire and rehire? Policy considerations for school boards

By Angela Stallbaumer



Herbert V. Prochnow, a former banking executive and writer once said, "There is a time when we must firmly choose the course we will follow, or the relentless drift of events will make the decision." Unfortunately, that time is rapidly approaching for many state education and pension systems facing the triple threat of teacher shortages, increased demand for "highly qualified" teachers under the No Child Left Behind Act (NCLB), and strains due to the retiring baby boomer generation.

Gone are the "glory days" of the 1970s and 1980s, when educators were in high supply and lawmakers felt confident in implementing retirement plans to boost the benefits and lower the age at which teachers could consider retiring. While the intentions in adopting plans to pad the pensions of hardworking and often underpaid educators were noble, many states are now trapped between the rock of teacher shortages and the hard place of insolvent education pension systems.

How do we remedy this situation? What solution addresses the multifaceted issues schools are now facing while protecting the investments of the retirees of the future? Most states, reasoning that the possibility of revocation of federal funds for failing to meet NCLB demands is the predominant monetary threat, have chosen to invite retired teachers back into the classroom.

States have undertaken a variety of strategies to address the teacher shortage and have adopted various policies on the rehiring of retirees.

The teacher shortage

In response to research that suggested teacher quality was one of the most important predictors of academic achievement, Congress included in NCLB a provision that required all public schools to employ only "highly qualified" teachers—at every grade level—and in every core academic area by July 1, 2006.

In order to be highly qualified, beginning teachers must:

- have a bachelor's degree;
- be certified and licensed according to their state education agencies' requirements; and
- demonstrate competence in the subject area in which they will be teaching.

Experienced teachers also must have a bachelor's degree and, if they haven't completed the coursework required of new highly qualified teachers, they can demonstrate competency in their subject area by passing the standard evaluation procedure established by their state.

Unfortunately, not a single state was able to meet the 2006 deadline for employing only highly qualified teachers. Instead, the U.S. Department of Education required each state to submit its plans for attaining and maintaining the NCLB goals, which the department evaluated for sufficiency. Subsequently, the department approved nine state plans, partially approved 37, and rejected four.

Despite the challenges presented in NCLB, that law is not the sole cause of the teacher shortage. According to the American Association of Retired Persons (AARP), two-thirds of the nation's K-12 teachers are expected to leave their teach-

ing posts within the next decade.

The effect of this shortage is not uniform, however. Schools in rural communities and inner cities seem to struggle the most with recruiting and keeping teachers. Additionally, certain subject areas, such as math, science, and special education, account for the highest shortages nationally. These subject areas are expected to lose nearly one-fifth of their instructors each year, while student enrollment continues to increase rapidly.

The outlook is bleak on the administrator front, as well. AARP estimates that nearly half of all school principals plan to retire within the next five years.

While the shortage is real, its causes are debated. A study by Richard Ingersoll of the University of Pennsylvania suggests that, although much of the exodus is due to the age of the baby boomer generation, teacher turnover is the real culprit.

Almost one-third of U.S. teachers leave the teaching profession within the first three years, and almost half are gone before their sixth year of teaching. Ingersoll says the most common reasons for teacher burnout are low salaries, student discipline problems, and lack of support from administrators.

On the other hand, Richard Murnane of Harvard University's Graduate School of Education points to the exponential increase of professional opportunities outside education.

Women make up more than 75 percent of the nation's 3 million public school teachers. Although the ratio of men to women in the profession hasn't changed much over the last 40 years, the number of job opportunities for women in higher-paying, traditionally male-dominated professions outside of education has skyrocketed. Scholars like Murnane argue it is this vast, competitive job market that has led to fewer people choosing careers in education.

The costs of hiring retirees

In order to combat teacher shortages, state legislatures, temporary employment agencies, and individual school districts have created "retire-rehire" programs that capitalize on early retirement programs by providing monetary incentives for retired teachers to return to work while still collecting their pensions.

This double-dipping has served as a temporary fix, reducing salary expenditures and tapping into a large source of educators that meet the NCLB highly qualified criteria.

However, this instant gratification could have a negative impact. Retire-rehire programs can deplete state pension systems for future retirees, make it more difficult for younger educators to find jobs and could result in job insecurity for the rehired.

Originally, school boards pushed for early-retirement plans as a way to invest less money in teacher salaries. By giving veteran teachers incentives to retire early, districts were able to replace employees at the highest levels on their salary scales with entry-level teachers receiving much lower salaries.

Some argue that early-retirement incentive programs essentially strong-arm individuals who are still passionate about

teaching into retirement. In essence, these pension formulas encourage teachers seeking to maximize their lifetime pension returns to retire in their early to mid-50s. In effect, they penalize them for teaching longer.

Although the systems vary from state to state, many researchers find they all share the same basic imperfections. In short, they reward teachers who stay in the same job for more than 20 years, offer diminishing incentives for experienced teachers to continue, and make it hard for teachers to move to different jobs.

Another problem, argues Robert M. Costrell, an education reform and economics professor at the University of Arkansas-Fayetteville, is the understandable rift retire-rehire programs can create between younger teachers and rehired retirees.

In several states, rehired retirees are not required to pay back into the pension system, since they are already receiving their benefits. This burdens younger teachers with recharging a system that might not even be viable when they become eligible for retirement, because the expensive, early retirement pensions are depleting the funds available for future benefits.

In Texas, for example, the state teacher retirement system reportedly was \$11 billion short of being able to cover the benefits already promised to teachers in 2005, due in part to early retirement policies.

Not only are retirement benefits eating up more and more of district budgets each year, critics say, but many schools are also forced to pay re-employment surcharges to the state in order to be able to rehire retirees, further depleting available funds for salary increases for traditional teachers.

Adding fuel to the fire is the fact that younger teachers are forced to watch helplessly as retirees flood the job market. These retirees are snatching up positions at lower prices than districts otherwise would be required to pay regular teachers under most negotiated agreements, since retirees are not covered under the collective bargaining units. This trend can be troublesome for teachers in states like Ohio and Michigan, where budget cutbacks and layoffs have become standard operating procedure.

One laid-off teacher, Jay Ackerman, told the *Toledo Blade* in 2004 that he had heard many districts stopped hiring people with more than four years of experience. By eliminating educators with experience, school districts can get by with paying considerably less in salaries. This is good news for districts but bad news for teachers who are too expensive to employ because of their years of experience but too young to qualify for the retire-rehire programs.

Another common, yet underemphasized, cost of retire-rehire programs is instability for the rehired retirees. When these teachers retire, they are likely earning a healthy salary, are tenured, and are receiving some sort of benefit package. Some, if not most, elect to take early retirement because if a teacher can participate in the retire-rehire program long enough to become eligible for an annual Social Security benefit, participation proves monetarily beneficial.

However, retire-rehire programs normally make no guarantee of continued employment, so taking this chance can be a significant risk. In some states, rehired retirees are excluded from the collective bargaining unit, the protections of the continuing contract law, and tenure. They sign annual contracts with no expectation of continued employment

after the contract has expired.

The real bottom line?

Despite the downsides of retire-rehire programs, a new report suggests the option can be beneficial for students—when it comes to the real bottom line for school boards: student achievement.

The Washington State Institute for Public Policy found that teacher experience has a greater effect on how well students succeed than whether teachers have advanced degrees. The study found a remarkable improvement in teacher effectiveness in increasing academic achievement between the first and fifth year of teaching, with more gradual increases in subsequent years.

Conversely, another study showed advanced degrees seemed to have a slight or no impact on achievement. For this reason, the study recommends pay increases for teachers should reward experience, not advanced education.

Other studies suggest that inviting sea-

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soned veterans back into schools boosts the productivity of the younger staff members, as well. Research has shown that mentoring programs are an important factor for younger teachers who choose to stay in education. By pairing new teachers with more experienced educators, schools provide guidance to inexperienced teachers that can lead to a smoother transition into teaching than the all-too-common “sink or swim” approach.

Because each state has tailored its retirement system to its unique needs, retire-rehire programs vary greatly throughout the country. However, state policies generally fit into one of three categories: those that embrace retire-rehire programs; those that restrict their use; and those that discourage them.

Support for re-employment

Arizona has taken a positive approach to re-employing retired teachers. In 2005 the *Arizona Daily Star* reported that hundreds, if not thousands, of Arizona teachers were increasing their pay by 50 percent or more by taking early retirement and returning to work in schools.

Arizona school districts also reportedly learned how to take advantage of a retirement system without restriction. Since districts and rehired retirees do not have to contribute to the state retirement system under this arrangement, schools can save as much as \$17,000 per teacher per year.

In a 2005 interview, David Cannella, spokesperson for the Arizona retirement system, acknowledged that rehiring retirees undercut the retirement system’s actuarial assumptions, since the system was designed with the expectation that retiring educators would be replaced with younger teachers who would contribute to the system.

This drain on the pension system has forced the Arizona legislature to raise teachers’ contribution rates. Although this makes up for some of the deficit now, it provides an additional incentive for schools to rehire retirees to reduce their contributions to the retirement plan.

Re-employment restricted

In Kansas, retirement restrictions apply only if a retiree returns to work for an employer who contributes to the Kansas Public Retirement System (KPERs), not if the retiree enters the private sector. An employee who decides to retire and seek re-employment with a KPERs-covered entity faces the following requirements:

- If the retiree goes back to work for the same district from which he or she retired, the retiree is limited to making \$20,000 per calendar year (which could mean \$40,000 in an academic year).
- If the retiree is employed by another district, there is no earnings limit, but the new employer is required to pay a surcharge to the state equating to approximately 15 percent of the rehired retiree’s salary. That amount is calculated to reimburse the pension system for what this employee would be contributing if he or she had not retired and is already drawing a pension.

Either way, the employee must wait 30 days after retiring before starting to work again and will not be covered under tenure or continuing contract laws. Although rehired retirees still contribute to Social Security, they do not contribute to the KPERs fund.

Mark Tallman, assistant executive director of advocacy for the Kansas Association of School Boards, has mixed feelings about teachers working after retirement. He is often asked for help from school districts arguing the salary caps and surcharges prevent them from retaining the teachers they need—especially in hard-to-fill subject areas and in communities with critical shortages.

Based on his experiences with school districts, Tallman has made the following suggestions to the Kansas legislature:

- The state, not local school districts, should provide full funding for KPERs.
- Because schools lose more employees on account of low salaries than due to retirement benefits, the state should take strides to increase school funding.
- Kansas should preserve the primary purpose of KPERs as a retirement plan to support public employees who are no longer working, unless former employees can fill a need in a critical shortage area outside of the districts from which they retired.

Kentucky also has stricter limitations for retirees who return to work for their previous employers. According to J. Stephen Kirby, director of legal services for the Kentucky School Boards Association, if a retiree chooses to return to work for his or her immediately preceding employer, there is a longer layout requirement that must be satisfied before starting a new job. There are also restrictions on how much income a re-employed retiree can make upon re-entering the work force.

However, unlike Kansas, rehired retirees in Kentucky must open a new retirement pension account, to which they contribute upon re-entry. Retired teachers also have the option of suspending their current retirement benefits, returning to full-time work, and contributing more money into this second account.

In Iowa, retirees are required to take a four-month hiatus before re-entering the work force. If they go back to work for a school and wish to continue to receive their pensions, their salary is capped at \$30,000 a year, explains attorney Mary Gannon of the Iowa Association of School Boards.

What sets Iowa apart is that the state auditor and the pension system have been extremely successful in coordinating school district investigations to uncover sham retirements. If an investigation finds that a district has worked through an independent contractor to allow higher-salary payments for retirees or that a retiree was working during the required four-month layout period, both the rehired retiree and the district are sanctioned by the state.

Wisconsin also cracked down on double-dipping and fake retirements. A 1998 article by the law firm of Lathrop and Clark in a Wisconsin Association of School Boards publication said that in order to be eligible to receive benefits under Wisconsin’s retirement system, the employer-employee relationship must be permanently severed for at least 30 days with no subsequent intent to return to work.

Should an individual in Wisconsin be found to have knowingly presented false or fraudulent proof in support of a claim for benefits, he or she will be guilty of a felony punishable by a fine of up to \$10,000, imprisonment for up to two years, or both.

If a retiree subsequently decides to return to work after a valid termination of employment, he or she can choose whether to continue to receive the pension benefit or suspend the annuity in order to become a participating employee once again and contribute to the previous retirement account.

Re-employment discouraged

In Pennsylvania, former educators sometimes try to return to

work as “independent contractors” in administrative positions, says Stuart L. Knade, chief counsel of the Pennsylvania School Boards Association. But state law strictly limits the circumstances under which retired teachers are allowed to return to school employment while continuing to receive retirement annuities. If an emergency or a shortage of certified personnel is declared in an area, retired teachers can step into those positions only for the remainder of the year.

If retirees choose to re-enter full-time employment, they must give up any pension benefits and any early retirement incentives they would have incurred during that time.

However, there is one caveat to this restriction: Thanks to 2001 legislation, teachers who retired before 2001 and want to return to full employment and work for at least three years can reap the benefits of the post-2001 multiplier and the possibility of a higher salary base. Aside from this provision, Pennsylvania has one of the most stricter re-employment laws.

Georgia also has a tough policy. NSBA Council of School Attorneys Chair-elect Sam S. Harben Jr. of the Harben & Hartley law firm says that although the legislature allows certain teachers and administrators who retired before New Years Eve of 2003 to return to work while receiving benefits because of a teacher shortage in 2004, the law gives no work re-entry incentive to post-2003 retirees.

While some “consulting” businesses have been created in Georgia to try to circumvent the law, the retirement system has been strictly applying the legislation, eliminating loopholes, and carefully auditing school districts to ensure compliance.

On the other hand, Georgia’s pension plan rewards longevity, giving employees who have worked for 30 years an annual annuity of 60 percent of the average of their best two years. This amount increases 2 percent each year up to a maximum of 80 percent after 40 years.

Public vs. private sector

A thorough understanding of pension issues in education requires a comparison

with the private sector to gain a broader perspective.

The key difference between most public and private sector retirement systems is their returns. Most public employees and school districts still have “defined benefit” pensions, in which a retiree’s guaranteed monthly distribution is based on earnings and years of service.

In contrast, most private sector employers opt for “defined contribution” plans, in which, employees and employers make joint contributions into private investment accounts from which retirees can draw.

Although defined contribution arrangements do not guarantee a certain amount of funds will be available at any given time, for planners there is security in knowing the sufficient funds to cover the system’s obligations will be there. There are no deficits to be dealt with, no system expectations of funds that might or might not suffice when retirees are ready for them, and no frills.

Conclusion

Retire-rehire programs are complex animals that should be approached with extreme caution and open eyes. No plan to address them will ever be perfect, but state policymakers and the school officials who advise them can learn from experiences in other states.

Whatever retire-rehire plan a state chooses to adopt, Elizabeth Ewing, director of legal and policy services for the Virginia School Boards Association, says it is imperative that two things happen:

- Legislators must take painstaking care to clearly specify who is eligible to participate.
- School boards and administrators must understand the repercussions of applying eligibility criteria too broadly.

In the end, those who will pay the highest price for indiscretions in the application of retire-rehire policies will be the future retirees themselves. ■

Angela Stallbaumer recently attained her J.D. at the University of Kansas School of Law and is currently working in the legal department of the Kansas Association of School Boards.

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