

TITLE 34. PUBLIC FINANCE
PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS
CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER A. 34 TAC §31.1

The Teacher Retirement System of Texas (TRS) adopts, on an emergency basis, amendments to §31.1, relating to Definitions, in Title 34, Part 3, of the Texas Administrative Code.

EXPLANATION AND JUSTIFICATION FOR THE EMERGENCY RULE

School districts, legislators, and other TRS stakeholders have reported to TRS that Texas schools face an emergency staffing shortage for summer school this year. Specifically, as a result of widespread and severe learning loss caused by the COVID-19 pandemic, school districts have reported a greatly expanded need for summer school capacity and programming during Summer 2021. In addition to this expanded need for summer school, school districts also report a decrease in interest from current staff to continue teaching during the summer session after completing a full year of teaching through the COVID-19 pandemic. The combination of these factors has created a critical staffing shortage for school districts throughout Texas for Summer 2021.

Further, Texas remains in a declared state of disaster based on the COVID-19 pandemic. On March 13, 2020, the Governor of Texas issued a proclamation certifying that COVID-19 poses an imminent threat of disaster and declaring a state of disaster for all counties in Texas. In the proclamation, the Governor authorized the use of all available resources of state government and political subdivisions that are reasonably necessary to cope with this disaster, and the Governor has renewed the disaster declaration each month since March 2020, most recently on April 5, 2021.

In accordance with the resolution and order adopted by the TRS Board of Trustees on April 16, 2021, TRS finds that the critical staffing shortage faced by Texas school districts in conjunction with the unprecedented statewide learning loss caused by the COVID-19 pandemic presents imminent peril to the public health, safety, and welfare of the state of Texas. For this reason and pursuant to Government Code §2001.034, TRS adopts amended §31.1 on an emergency basis to assist Texas school districts with this critical staffing shortage and to expand their access to all available resources necessary to cope with COVID-19 disaster.

The amendments to §31.1(b) revises the definition of “substitute” to include, for the purposes of employment after retirement, a service retiree employed by a school district on a temporary basis during the months of June 2021 through August 2021 if the employment is expected or contracted to end by no later than August 31, 2021 and is paid no more than the daily rate of pay set by the employer for non-retiree employees in the same or similar positions. The amendments also make other non-substantive, conforming changes to existing §31.1(b) to accommodate the formatting of the change.

While this revised definition is a departure from TRS’ current definition of the term “substitute,” TRS finds that the inherently seasonal and temporary nature of summer employment with a school district is similar to employment that already qualifies as substitute employment under current

§31.1. Further, the revised definition is narrowly tailored to address the staffing emergency facing Texas school districts and justified and circumscribed by that emergency. TRS's actuary of record, Gabriel, Roeder, Smith & Company, has also determined that the amendments will not have a detrimental impact on the pension fund.

Pursuant to this amendment, a TRS service retiree that works for a Texas school district on a temporary basis during the Summer 2021 months will qualify as a "substitute" for the purposes of employment after retirement if the work is not expected to or contracted to extend beyond August 31, 2021 and is not paid more than non-retirees are paid for the same or similar temporary work. Because this employment will qualify as substitute employment, it will not be subject to the limits on one-half time employment prescribed by TRS rules or to surcharges under Government Code §825.4092. In addition, this change applies to TRS service retirees working in any position for a school district, not only as a teacher, if that employment meets the requirements of the amended definition because school districts will also require sufficient support and auxiliary staff to implement their summer programs in addition to the necessary teaching staff.

This adopted amendments to §31.1 will become effective immediately upon filing with the Secretary of State pursuant to Government Code §2001.036 because, for the same reasons that TRS adopts this rule on an emergency basis, TRS finds that an imminent peril to the public health, safety, and welfare of Texas requires an immediate effective date. Though the expanded definition under amended §31.1(b) will not apply to the employment of a TRS service retiree until June 2021, school districts are already making hiring and staffing decisions for summer school. An immediate effective date will provide both school districts and TRS service retirees necessary notice and assurance that the amended rule will apply to employment this summer.

The adopted amendments will remain in effect for 120 days after filing with the Secretary of State and shall be extended to remain in effect for a period of up to 60 days to ensure that the adopted amendments remain in effect through August 31, 2021. Once the adopted amendments expire, Section 31.1 as adopted prior to this emergency rule shall become effective once again.

STATUTORY AUTHORITY

The emergency rule is adopted under the authority of Government Code §824.601(f), which authorizes the TRS Board of Trustees to adopt rules necessary to implement Subchapter G of Chapter 824, Government Code, relating to Loss of Benefits on Resumption of Service, and Government Code §824.602(j), which requires the TRS Board of Trustees to adopt rules regarding the employment of retirees as substitutes. In addition, the emergency rule is adopted on an emergency basis under the authority of Government Code §2001.034, which authorizes a state agency to adopt an emergency rule with no prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice, and Government Code §2001.036, which authorizes a state agency to adopt a rule that is effective immediately on filing with the secretary of state, or on a stated date less than 20 days after the filing date if the agency finds that an expedited effective date is necessary because of imminent peril to the public health, safety, or welfare.

CROSS-REFERENCE TO STATUTE

The adopted amendments to §31.1 implements Subchapter G of Chapter 824, Government Code, relating to Loss of Benefits on Resumption of Service and Government Code §825.4092, which relates to Employer Contributions for Employed Retirees.

TEXT

§31.1. Definitions

(a) School year--For purposes of employment after retirement, a twelve-month period beginning on September 1 and ending on August 31 of the calendar year.

(b) Substitute--For purposes of employment after retirement: [5]

(1) a person who serves on a temporary basis in the place of a current employee(s). A substitute may be paid no more than the daily rate of pay set by the employer. Effective September 1, 2016, a substitute includes a retiree who serves in a vacant position for no more than 20 days. A retiree may serve as a substitute in more than one vacant position each school year provided the retiree serves no more than 20 days in each vacant position. In no event may a retiree be considered a substitute while serving in a vacant position that was last held by that retiree;[.] ~~or [Service as a substitute that does not meet this definition is not eligible substitute service for purposes of an exception to forfeiture of annuity payments under §31.13 of this title (relating to Substitute Service).]~~

(2) a service retiree employed by a school district on a temporary basis during the months of June 2021 through August 2021 if the employment is expected or contracted to end by no later than August 31, 2021 and is paid no more than the daily rate of pay set by the employer for non-retiree employees in the same or similar positions.

(c) Third party entity--For purposes of employment after retirement, an entity retained by a Texas public educational institution to provide personnel to the institution who perform duties or provide services that employees of that institution would otherwise perform or provide.

CERTIFICATION

The agency certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.