

James L. Sims, Executive Secretary, 348-2031

TITLE 162

LEGISLATIVE RULES

SERIES 3

CONSOLIDATED PUBLIC RETIREMENT BOARD

TEACHERS' DEFINED CONTRIBUTION SYSTEM

§ 162-3-1. GENERAL

3-1.1 Scope. The scope of this Series of Rules involves the interpretation, administration, and application of the Teachers' Defined Contribution System by the Board.

3-1.2 Authority. -- West Virginia Code Section 18-7B-1, et seq.

3-1.3 Filing Date. -- _____

3-1.4 Effective Date. -- _____

§ 162-3-2. STATUTORY INCORPORATION

All of the statutory provisions of Article 7B, Chapter 18 of the West Virginia Code, 1931, as amended, are hereby incorporated and are to be deemed as Regulations of the Teachers' Defined Contribution Retirement System by the Board. Further, all court decisions, opinions of the Attorney General, and amendments to the Code are hereby incorporated by reference.

§ 162-3-3. LEGAL STATUS

The Teachers' Defined Contribution Retirement System is a body corporate and all business of the System shall be transacted in the name of the Teachers' Defined Contribution Retirement System through the Board pursuant to W. Va. Code § 18-7B-3.

§ 162-3-4. PURPOSE.

3-4.1 General. The purpose of the Teachers' Defined Contribution System is to provide a defined contribution retirement program which is fully funded on a current basis from Employer and Member Contributions.

3-4.2 Exclusive Benefit. The System has been created for the exclusive benefit of the Members and their Beneficiaries subject to the limitations in W. Va. Code § 18-7B-11 with respect to forfeiture. The System shall be interpreted in a manner consistent with this intent and with the intention that the System satisfy the applicable provisions of Section 401 and Section 501

of the Internal Revenue Code of 1986, as amended, with respect to governmental plans.

§ 162-3-5. DEFINITIONS

For the purposes of the Teachers' Defined Contribution System, the following definitions shall apply, unless the context clearly requires a different meaning:

3-5.1 "Accrued Benefit" is the amount credited to the Member's Annuity Account.

3-5.2 "Annuity Account" means a two-part account established for each individual Member to record the deposit of: (1) Member Contributions and interest, dividends or other accumulations credited thereon to the Account on behalf of the Member (the "Member Account"); and (2) Employer Contributions and interest, dividends or other accumulations credited thereon to the Account on behalf of the Member (the "Employer Account").

3-5.3 "Beneficiary" means any person, estate or trust who by operation of law, or under the terms of the System, or otherwise, is entitled to receive any Accrued Benefit of a member under the System. A "Designated Beneficiary" means any individual designated or determined in accordance with Section 162-1-8 of these Rules, except that it shall not include any person who becomes a beneficiary by virtue of the law of inheritance or intestate succession.

3-5.4 "Cash-Out" may be voluntary or involuntary. An involuntary Cash-Out is a distribution of an Accrued Benefit to a

former Member which meets the following requirements: (i) the former Member's entire non-forfeitable Accrued Benefit is distributed to him or her, (ii) the present value of the non-forfeitable Accrued Benefit of the Member does not exceed \$3,500, and (iii) the distribution is made on account of the Employee's termination of participation in the System and no later than thirty (30) days after the end of the Calendar Quarter following such termination. Where the present value of the nonforfeitable Accrued Benefit of a former member is in excess of \$3,500, or ever exceeded \$3,500, no immediate distribution shall be made from the Teachers' Defined Contribution System without the consent of the Member and, when applicable, the Member's spouse. A voluntary Cash-Out is a distribution of Accrued Benefit to a former Member which meets the following requirements: (i) the former Member has voluntarily elected to receive the distribution, and (ii) the distribution is made on account of the Employee's termination of participation in the System and no later than thirty (30) days after the end of the Calendar Quarter following such termination.

3-5.5 "Code" means the West Virginia Code of 1931, as amended.

3-5.6 ~~"Compensation" means the full compensation actually received by a Member for service from an Employer whether or not a part of such compensation is received from other funds, federal or otherwise, than those provided by the State or its political subdivisions. However, compensation shall not include the value of accrued but unused sick leave or vacation leave.~~ "Compensation"

refers to all compensation paid during the Plan Year as wages, salary or commissions by a participating Employer to a Member including overtime payments and amounts contributed to any welfare benefit plans maintained by the Employer or by the State through a reduction in the Member's Compensation which pursuant to I.R.C. § 125 are not included in the gross income of the Member for the year in which such amounts are contributed. However, compensation shall not include the value of accrued but unused sick leave or vacation leave. Compensation further excludes all contributions by the Employer to the Plan and to any other retirement or deferred compensation plan maintained by the Employer and excludes amounts in excess of \$200,000 for the Plan Year or such other amount as may be prescribed by law. In determining the Compensation of an Member for purposes of the \$200,000 limitation, the rules of the I.R.C § 414(q)(6) shall apply, except that in applying such rules, the term "family" shall include only the spouse of the Member and any lineal descendants of the Member who have not attained age 19 before the close of the Plan Year. If the \$200,000 Compensation limitation, as adjusted, applies to the combined Compensation of the Member and one or more Family Members, the contribution and allocation provisions of Section 7 of these Rules will be applied by prorating the \$200,000 limitation, as adjusted, among the Member and his or her Family Members in proportion that each such individual's Compensation determined prior to the application of this limitation bears to the total Compensation of all such individuals determined prior to the application of this limitation.

3-5.7 "Consolidated Board" or "Board" means the West Virginia Consolidated Public Retirement Board created and established pursuant to W. Va. Code § 5-10D-1 et seq.

3-5.8 "Employer" means the public agency of and within the State which employed or employs a Member of the Teachers' Defined Contribution System.

3-5.9 "Employer Contribution" means an amount deposited into the Member's Annuity Account on a periodic basis coinciding with the Member's regular pay period by or on behalf of an Employer.

3-5.10 "Existing Employer" means any Employer who employed or employs a Member of the Teachers' Defined Benefit Retirement System.

3-5.11 "Forfeiture" means the Employer contributions and investment income thereon held in the suspension account created pursuant to W. Va. Code § 18-7B-11 that have been irrevocably forfeited by reason of lapse of time.

3-5.12 "I.R.C." refers to the Internal Revenue Code of 1986, as amended.

3-5.13 "Leave of Absence" shall refer to that period during which the Member is absent without Compensation and for which the Board has determined the Member to be on a "Leave of Absence" instead of having terminated his or her employment.

3-5.14 "Member" or "employee" means the following persons, if regularly employed for full-time service: (a) Any person employed for instructional service in the public schools of West

Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed a non-teaching capacity by the state board of education, any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principles and educational administrator in schools under the supervision of the department of corrections, the department of health or the department of human services; (l) any person who is regularly employed for full-time service by any county board of education, the state board of education of the teachers retirement board; and (m) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries.

3-5.15 "Member contribution" means an amount reduced from the employee's regular pay, and deposited into the Member's

individual Annuity Account within the Teachers' Defined Contribution Retirement System.

3-5.16 "Permanent and Total Disability" means a mental or physical incapacity requiring the absence from employment service for at least six months. Provided, that such incapacity is shown by a physician or physicians selected by the Board in accordance with Section 162-1-10 of these Rules.

3-5.17 "Plan Year" means the period commencing on the 1st day of July and ending on the 30th day of June, the following year.

3-5.18 "Public schools" means all publicly supported schools, including normal schools, colleges and universities in the State.

3-5.19 "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

3-5.20 "Retirement" means a Member's withdrawal from the active employment of a participating Employer and completion of all conditions precedent to retirement.

3-5.21 "Retirement Age" means a Member who has attained at least 55 years of age.

3-5.22 "State" means the State of West Virginia, its political subdivisions and state agencies.

3-5.23 "Termination Date" means the date on which the earliest of the following events occurs: (a) a Member's Retirement, (b) a Member's termination of employment as a result of Permanent

Total Disability, (c) a Member's death, or (d) a Member's termination of employment for any other reason.

3-5.24 "Trust" means the Trust created by State law pursuant to Code § 18-7B-1 et seq.

3-5.25 "Trust Fund" consists of the Employer and Member Contributions held by the System and invested in the various investment options and any income or appreciation thereon.

3-5.26 "Years of Employment Service" means employment for at least ten months, a month defined as twenty employment days. Provided, that no more than one year of service may be accumulated during any one Plan Year.

§ 162-3.6 ELIGIBILITY FOR MEMBERSHIP

Membership in the Teachers' Defined Contribution Retirement System shall be available to any "member" or "employee" who is regularly employed for full-time service as defined and designated in W. Va. Code § 18-7B-2(5) as follows:

3-6.1 All new employees whose employment commences on or after July 1, 1991; and

3-6.2 Any existing member of the Teachers' Defined Benefit Retirement System whose employment continues beyond July 1, 1991 may freeze their status in the Defined Benefit Retirement System. The Member may join the Defined Contribution Retirement System after July 1, 1991 pursuant to W. Va. Code § 18-7B-8.

3-6.3 Any employee who terminates his or her employment without withdrawal of contributions, and who was a member of the Teachers' Defined Benefit Retirement System may re-join that Defined Benefit Retirement System if he or she is re-employed within six (6) months with a participating Employer after the employee's previous termination. Otherwise, an employee who terminates employment without withdrawal of contributions, and is re-employed with a participating Employer beyond six (6) months from the date of termination, must join the Teachers' Defined Contribution Retirement System, and all contributions to the Teachers' Defined Benefit System shall be frozen.

3-6.4 The restrictions, qualifications, and allowances set forth in W. Va. Code § 18-7B-7 with regard to membership are incorporated herein.

§ 162-3.7 CONTRIBUTIONS TO THE TRUST

3-7.1 Member Contributions. Each employee who is a Member of the Teachers' Defined Contribution System shall contribute four and one-half percent (4 1/2%) of his or her gross compensation. ~~by salary reduction.~~ Such Member Contributions shall be picked up by each participating Employer pursuant to W. Va. Code § 5-10C-1 et seq. The Teachers' Defined Contribution Retirement System shall be subject to I.R.C. § 414(h)(2) [26 U.S.C. § 414(h)(2)].

3-7.2 Employer Contributions. Each participating Employer

shall annually make a contribution equal to seven and one-half percent (7 1/2%) of each Members' gross compensation. A pro-rata share of the Employer Contributions shall be paid upon each date that a Member Contribution is made. The Employer Contribution shall be immediately credited to the Annuity account established in the name of the Member and held in trust for the benefit of the Member. Each participating Employer has a fiduciary duty to its Employees to insure that the Employer Contributions are timely made to the Board. In the event that any Employer Contribution is not timely made, it shall be a State debt, contracted as a deficit in State revenues, to be accorded preferred status over other expenditures.

§ 162-3.8 ADMINISTRATION OF ANNUITY ACCOUNTS

3-8.1 Investments. The amounts allocated to the Employer Account and Member Account of each Member's Annuity Account shall be invested by the Board in one or more investment options elected by the Member. Each Member may elect, in writing, at least fifteen (15) days before the beginning of each calendar quarter, to have the balance accumulated in his or her Annuity Account invested by the Board in one or more investment options made available by the Board. Such investment options may include: (a) a money market fund; (b) a bond fund; (c) a stock fund; and (d) other investment options offered by the Board. If the Member elects more than one investment option, such Member's and Employer's Contributions shall

be allocated to each investment option in increments of twenty percent of the total contribution.

3-8.2 Investment in a Single Fund. The Board may cause all contributions paid to it by the Employer and Participant, and any income earned thereon, without distinction between principal and income, to be held and administered in a single fund. The Board may adopt reasonable rules for the administration of such common fund and for the determination of the proportionate interest of each Member in the fund.

3-8.3 Evaluation of Assets and Allocation of Changes. The assets of each investment Fund shall be evaluated at the close of the last day of each Calendar Quarter of the Plan Year at their fair market value and the Member Account and Employer Account, including any Employer Account held in suspense, of each Member's Annuity Account, shall be adjusted for any net appreciation or net depreciation in the assets of such Fund and any net income or net loss of each Fund for such Calendar Quarter, with each individual Annuity Account of each Member participating in such investment being credited or charged in a proportionate ratio with each other Annuity Account with the earnings or losses of such Fund.

3-8.4 Limitations on Allocations to Each Member. Notwithstanding any other provision of the Teachers' Defined Contribution Retirement System, the maximum annual addition for any Plan Year which can be made to an Annuity Account of an individual Member is the lesser of \$30,000 (or, if greater, one-fourth of the defined benefit dollar limitation set forth in I.R.C. § 415(b)(1))

as in effect for the Plan Year) or 25 percent of the Member's Compensation. In no event shall the annual additions to any Member's account exceed the lesser of the preceding three limitations. The annual addition is the sum of the following of the Plan Year (which shall be the limitation year for purpose of I.R.C. § 415) under this and any other defined contribution type plans maintained by the State or the Employer:

- (a) Employer Contributions;
- (b) Forfeitures (if applicable); and
- (c) Member Contributions.

3-8.5 Designation of Beneficiary. Each Member may designate from time to time in writing one or more Beneficiaries, who will receive the Member's vested Accrued Benefit in the event of the Member's Death. If the Member dies without having made a Beneficiary designation, the Board shall distribute such benefits in accordance with Section 162-1-8 of these Rules.

S 162-3-9. VESTING.

3-9.1 Member Contributions 100 Percent Vested. The Accrued Benefit in a Member's Annuity Account comprised of Member Contributions and Rollover Contributions and earnings thereon of a Member shall be 100 percent vested at all times.

3-9.2 Vesting Employer Contributions on Death or Permanent and Total Disability. If a Member's employment with a Participating Employer is terminated on account of death or for Permanent and Total Disability, 100 percent of the Employer

Contributions, with earnings thereon, in the Member's Annuity Account, shall be nonforfeitable and immediately vest in the Member, or his or her Beneficiary as the case may be, and shall be distributed or set aside in accordance with the provisions of Section 10 of these Rules.

3-9.3 Employer Account Vesting on Termination. If a Member's employment is terminated, except for death or Permanent and Total Disability, the following percentages of the Members Accrued Benefit in the Employer Account of the Member's Annuity Account shall vest in the Member and shall be distributed to or set aside for the Member in accordance with Section 10 of these Rules:

Total Years of Employment <u>Service for Vesting</u>	VESTED PERCENTAGE OF EMPLOYER CONTRIBUTIONS <u>AND EARNINGS THEREON</u>
At least 6 complete years, but less than 9	33 1/3 %
At least 9 complete years, but less than 12	66 2/3 %
At least 12 complete years	100 %

The Accrued Benefit of a terminated Member which is not vested as above provided shall be retained by the Board in a suspension account in accordance with Section 18-7B-11 of the West Virginia Code.

3-9.4 Partial Vesting. A member who has less than 200 employment days during a Plan Year shall be entitled to partial vesting credit for purposes of computing Years of Employment Service based upon the actual number of employment days worked during a Plan Year. For example, if a Member was a regular employee of a participating Employer, but only had 100 employment days during the Plan Year, that individual would be given 1/2 Year of Employment Service ($100/200 = 1/2$).

3-9.5 Leave of Absence. The Board shall consider as an approved Leave of Absence any such leave approved by each participating Employer, pursuant to a written policy of such Employer, provided that such Employer provides the Board on an annual basis, or a more frequent basis if directed by the Board, a list of all Members who are currently on an approved Leave of Absence.

3-9.6 Reemployment with Participating Employer. A Member of the Teachers' Defined Contribution System who terminates employment with a participating Employer and does not withdraw any funds from or his her Annuity Account and becomes reemployed with a participating Employer within five years from the date of termination shall retain his or her previous Years of Employment Service for purposes of vesting.

3-9.7 Workers Compensation. Members who are receiving workers compensation benefits and who are not actively employed and not contributing to the Teachers' Defined Contribution System shall not receive any vesting credit until such time as they return to active employment and commence contributing to the System. The Board will consider a ~~participant on~~ Member receiving workers compensation as being on an approved leave of absence therefore allowing reentry. ~~into the defined benefit plan.~~

§ 162-3-10. DISTRIBUTION OF BENEFITS

3-10.1 Method of Distribution of Vested Member Annuity Account. The Member shall elect in writing to receive a distribution of the vested portion of his or her Annuity Account in one of the following forms, to the extent not inconsistent with the applicable provisions of the I.R.C., (a) a lump-sum distribution, (b) a joint and survivor annuity, (c) an increasing annuity which provides for the gradual increase in monthly retirement payments funded solely by the existing current value of the Member's Annuity Account at the time that the Member's retirement payments commence, (d) a Cash-Out, and (e) other annuity forms approved by the Board. Notwithstanding the preceding, if a Member's vested Accrued Benefit in his or her Annuity Account at the time such Member terminates employment (on account of severance, death, or Permanent and Total Disability) does not exceed \$3,500, the entire amount of such Accrued Benefit shall be distributed in the form of a Cash-Out within thirty (30) days

following the end of the Calendar Quarter after such termination of employment.

3-10.2 Time of Distribution. (a) After the Member has attained Retirement Age, he or she may elect to take Retirement by notifying the Board or its designee in writing, on a form approved by the Board, of such intention not less than sixty (60) days prior to the effective date of Retirement. If the preceding requirements are met, retirement payments shall commence within thirty (30) days of the retirement date under such retirement payment option or options provided by the Board and elected by the Member.

(b) If the Member dies, terminates his or her employment with a participating Employer, or has been certified to be permanently and totally disabled, in accordance with the provisions of the System, then the first installment, the lump-sum payment or cash-out, as the case may be, shall be made no more than thirty (30) days following the end of the Calendar Quarter after the Member or the beneficiary, as the case may be, files a written election, on a form approved by the Board, of such intention to receive a distribution of benefits.

(c) Distribution shall commence no later than April 1 of the calendar year following the calendar year in which the Member attains age 70 1/2.

(d) If distributions are made in installments rather than a lump sum distribution or a Cash-Out, then (i) the installments must be over a period of 10 years or less or (ii) the amount of the installment to be distributed each year must be at least an amount

equal to the quotient obtained by dividing the Member's entire interest by the life expectancy of the Member or the joint and last survivor expectancy of the Member and his designated Beneficiary. Life expectancy and joint multiples contained in Treasury Regulations section 1.72-9, or, in the case of payments under a contract issued by an insurance company. For purposes of the computation, a Member's life expectancy may be recalculated no more frequently than annually, but the life expectancy of a nonspouse Beneficiary may not be recalculated. If the Member's spouse is not the designated Beneficiary, the method of distribution selected must assure that at least 50% of the present value of the amount available for distribution is paid within the life expectancy of the Member.

(e) If the Member dies after distributions to him or her have begun but before his or her entire Accrued Benefit has been distributed to him or her, the remaining portion of his or her Accrued Benefit shall be distributed from the Teachers' Defined Contribution Retirement System at least as rapidly as under the method of distribution previously established for him or her, if such method is irrevocable at the time of his or her death.

(f) If the Member dies before distribution of his or her interest commences, then distributions of the Member's remaining Accrued Benefit must be completed by the end of the fifth calendar year following the year of his or her death. However, installment distributions to a designated Beneficiary which begin not later than the end of the calendar year following the death of the Member

shall be treated as complying with this 5 year distribution requirement (even though the installment payments are not completed within 5 years of the Member's death) if the distributions are made at a rate which is not longer than that calculated (in the manner described in paragraph (d) of this Section) to provide payment of all the Member's Accrued Benefit during the anticipated life expectancy of the designated Beneficiary. Provided that if the designated Beneficiary is the surviving spouse of the deceased Member, the distributions can begin as long after the Member's death as the date on which the deceased Member would have attained the age of 70 1/2; if the surviving spouse dies before distributions to the surviving spouse have begun, the Teachers' Defined Contribution Retirement System may make distributions at such times as described in this Section as it would have if the surviving spouse had been a deceased Member.

(g) For purposes of this Section 10, any amount paid to a child of a Member will be treated as if it had been paid to the surviving spouse of the Member if such remaining amount becomes payable to the surviving spouse when the child reaches the age of majority.

3-10.3 Segregation if Installment Distribution. The Board may determine that the Employer and Member Accounts of a Member who is no longer an Employee shall be segregated and set aside, in which event the Board shall segregate the vested portion (as defined in Section 9 of these Rules) of the entire balance of the Member's Employer Account and Member Account, if applicable,

and to deposit such portion in a separate interest bearing account, and said account shall cease to participate in the income or net loss or appreciation or depreciation of the Trust Fund, as of the beginning of the subsequent calendar quarter for the Plan Year in which such segregation occurs, and instead will be credited with the full amount of interest earned thereon.

3-10.4 Non-segregation if Installment Distribution. In the event the Board does not segregate (as provided in Section 10.3) the Employer Account and Member Account, of a Member, said account shall continue to be treated, without interruption, in the same manner as when the Member was an Employee, in which case the installment distributions shall be adjusted upward or downward to reflect appreciation or depreciation, or income or loss in the account balance.

3-10.5 Distribution After Death of Participant. In the event of the death of a Member after installment payments have begun, but prior to completion of such payments, the full amount of such unpaid benefits shall continue to be paid in the form of the previously established installments except that the Beneficiary may request that the remaining Accrued Benefit be paid in a lump sum. In the event of the death of the Member prior to the start of any payments of his Accrued Benefit, distributions shall be made in the form and at the time or times selected by the Beneficiary pursuant to Sections 10.1 and 10.2.

3-10.6 Distribution After Death of Beneficiary. In the event of the death of a Beneficiary (or a contingent Beneficiary,

if applicable) prior to the completion of payment of benefits due the Beneficiary from the Plan, the full amount of such unpaid benefits shall at once vest in and become the property of the estate of said Beneficiary.

3-10.7 Suspense Account for Terminated Members. If a Member has terminated his or her employment but his Employer Account is not 100 percent vested, all funds in his or her Employer Account shall be held in suspense until the happening of the earliest of the following: (i) the Member returning to employment with the Employer, or (ii) the occurrence of 5 consecutive One Year Breaks in Service with respect to the Member, or (iii) the Member attaining Retirement Age. At such time the Member's Employer Account shall cease to be held in suspense. If a Member has returned to employment with a participating Employer prior to incurring 5 consecutive One Year Breaks in Service, his Employer Account which has been held in suspense shall be restored to his credit, less any Cash-Out which is not repaid in accordance with Section 10.9. If 5 consecutive One Year Breaks in Service occur, the non-vested portion of the Employer Account held in suspense will be irrevocably forfeited and reallocated in accordance with Section 18-7B-11 of the Code for the Plan Year in which such forfeiture occurs; the vested portion shall be distributed in accordance with the provisions of Section 10. In the case of a Member attaining Retirement Age while his Employer Account is being held in suspense, the entire amount will be distributed in accordance with the provisions of Section 10.

share in any appreciation, depreciation, or net income or loss as if it were not in suspense, except that an account which is in suspense shall have no Forfeitures allocated to it for a Plan Year in which the Employee does not have a Year of Service for accrual of benefits.

3-10.8 Unable to Locate Member or Beneficiary. If the Member or Beneficiary to whom benefits are to be distributed cannot be located, and reasonable efforts have been made to find him or her, including the sending notification by certified or registered mail to his or her last known address, the Board may distribute the benefits in question to an interest bearing savings account established in the name of the Member or Beneficiary; or, if the benefits are payable to a Member (as reasonably determined by the Board) the Board may distribute the funds to the Member by placing them in a savings account in the Member's name. Alternatively, if the Board has taken the reasonable efforts, as described in the preceding sentence, to locate the Member, the Board may allocate the Member's Accrued Benefits to a segregated account in the manner described in Section 10.3, as if an installment distribution were being made; however, such funds shall be held in the segregated account for distribution to the Member when located.

3-10.9 Repayment of Cash-Out. If a Member receives a Cash-Out distribution from the Plan as a result of ceasing to be an Employee, and is less than 100 percent vested as to his or her Accrued Benefit at such time, he or she shall have the right, to repay to the Plan the Cash-Out distribution he or she has received

repay to the Plan the Cash-Out distribution he or she has received from it.

162-3-11. TERMINATION

3-11.1 100% Vesting on Termination of Plan. U p o n termination or partial termination of the Teachers' Defined Contribution Retirement System and Trust by formal action of the State or for any other reason, or if Employer Contributions are permanently discontinued for any reason, there shall be vested 100 percent in each Member directly affected by such action the amount allocated to the Annuity Account of each member, and payment to such Member shall be made in cash as soon as practicable after liquidation of the assets of the Trust.

3-11.2 Plan Merger of Consolidation. In the case of any merger or consolidation with, or transfer of any assets or liability to, any other plan, each Member in this Plan shall be entitled to receive (if the surviving plan is then terminated) a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he or she would have been entitled to receive immediately before the merger, consolidation, or transfer (if this Plan had terminated).

162-3-12 MISCELLANEOUS

3-12.1 Laws of the State of West Virginia to Apply. This Plan shall be construed according to the laws of the State of West Virginia to the extent federal laws do not control.

3-12.2 Members Cannot Transfer or Assign Benefits. See Sections 162-1-7.1 and 162-1-7.2 of these Rules.

3-12.3 Filing Tax Returns and Reports. The Board, or its duly appointed designee, shall prepare, or cause to be prepared, all tax returns, reports, and related documents, except as otherwise specifically provided.

3-12.4 Number and Gender. When appropriate the singular as used in these Rules shall include the plural and vice versa; and the masculine shall include the feminine and vice versa.

§ 162-3-13, et seq. RESERVED



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

MARIO J. PALUMBO
~~XXXXXXXXXXXX~~
ATTORNEY GENERAL

(304) 348-2522

CONSUMER HOTLINE
(800) 368-8808

August 5, 1991

James L. Sims, Executive Secretary
West Virginia Consolidated Public
Retirement Board
State Capitol, Building 5
Room 1052
Charleston, West Virginia 25305

Re: WV Teachers' Defined Contribution Retirement System

Dear Jim:

Enclosed please find the amendments made, pursuant to the written request of the Internal Revenue Service, to the proposed regulations of the West Virginia Teachers' Defined Contribution Retirement System. These changes are necessary in order for the Teachers' Defined Contribution Retirement System to receive a favorable determination letter from the Internal Revenue Service, thereby allowing the participants in the System to receive favorable tax treatment. Based upon these changes, I anticipate a favorable ruling from the Internal Revenue Service.

Accordingly, I recommend that these technical changes be adopted by the Consolidated Public Retirement Board.

Very truly yours,

JEFFREY W. VANGILDER
SENIOR ASSISTANT ATTORNEY GENERAL

JWV/pc
Encls.