Department of Education
Carmen Fariña, Chancellor

MEMORANDUM

November 21, 2014

To: Chief Executives, Heads of Offices, Executive Directors

From: Lawrence Becker
Chief Executive Officer
Division of Human Resources

Re: New York State Retirement and Social Security Law Section 211

OVERVIEW

In accordance with New York State Retirement and Social Security Law Section 211, state agencies and local governments may obtain permission through a "211 waiver" to employ a retiree who is under 65 years of age in a capacity where he or she will earn more than $30,000 in a calendar year while also receiving a New York State or local government pension without diminution of his or her pension benefits. A 211 waiver is not needed for individuals working as consultants who are over 65 years of age and/or who joined the retirement system prior to May 31, 1973 (i.e. Tier I).

This law impacts not only individuals who have retired from the DOE or another agency and have returned to work as direct consultants to the DOE, but also those who return to work through an outside employment agency (the DOE's current vendor is School Professionals).

The following provisions apply to all individuals who are employed in a consultant capacity by the DOE:

- Any individual who is retired from the DOE or any city/state agency who returns to work as a consultant and who anticipates earning more than $30,000 in a calendar year must request a waiver of section 211 in order to earn more than $30,000 without facing a diminution of pension benefits. **The waiver must be requested and granted prior to reaching the $30,000 cap.** This cap is set by law and is amended from time to time.

- No 211 waiver is required if the retiree earns $30,000 or less in a calendar year. However, retirees earning $30,000 or less are covered by Section 212 of the New York State Retirement and Social Security Law, which requires them to file a Certification of Employment with their retirement system in order to notify the retirement system that they are employed as a consultant by the New York City Department of Education. Retirees may obtain this form from their retirement system.

- Individuals who are retired from the DOE or any city/state agency for less than one year cannot work on any project or activity that is the same or similar[1] to the work they did prior to retirement.

- No waiver is required if the retiree is 65 years of age or over and/or if the retiree joined the retirement system prior to May 31, 1973 (i.e. Tier I).

211 WAIVER CRITERIA

The grounds for granting a 211 waiver are extremely restrictive. Waivers can be granted in only two circumstances:

1. When "an urgent need" for the retiree's services exists "as a result of an unplanned, unpredictable and unexpected vacancy where sufficient time is not available to recruit a qualified individual," and where the "hiring shall be deemed as non-permanent rather than the final filling of such position."

OR

2. When the prospective employer "has undertaken extensive recruitment efforts to fill such vacancy and as a result thereof, has determined that there are no available non-retired persons qualified to perform the duties of such positions."

Additionally, the law states that prospective employers are required to have "prepared a detailed recruitment plan to fill such vacancy on a permanent basis," without which approval of the 211 waiver application cannot be granted. The law also specifies that the retiree must be "properly certified where such certification is required."

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[1] Currently, there is no definition of the term "same or similar" in the law. In the Governor's message accompanying the law, he indicated that hiring a person to use the same skill set to perform a different job would not violate the law. So, for example, a retired police detective who returns as a consultant to work as an investigator for a district attorney would utilize the same skill set but perform a different job, and would not be prohibited from working as a consultant within a year of retirement. However, if the retired detective anticipated earning more than $30,000 during the calendar year, a 211 waiver would need to be requested and obtained.

IMPACT OF 211 WAIVER LAW

The intent of the law is to limit 211 waivers to circumstances where there is an unplanned and unexpected vacancy, where the hiring is temporary, or where there are no available non-retired individuals qualified to perform the duties of the position. Individuals and offices should take this into account when planning and be aware of all the restrictions outlined in this memo.

PROCESS FOR REQUESTING A WAIVER

Requests for waivers pursuant to section 211 for pedagogical or administrative retirees to perform consulting work are to be sent to:

	For Pedagogic Retirees	Administrative Retirees
Mail to:	Field Services 65 Court Street, Room 811 Brooklyn, NY 11201	Office of Personnel Investigations 65 Court Street, Room 200 Brooklyn, NY 11201
Email to:	Louise Lupo at Llupo@Schools.nyc.gov	Wanda Wentworth at WWentworth@schools.nyc.gov

While applications for administrative retirees must be submitted to and reviewed by DHR, the Department of Citywide Administrative Services (DCAS) is the final approving agency.

C: C. Fariña
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