NEW YORK CITY DEPARTMENT OF EDUCATION
DIVISION OF HUMAN RESOURCES
65 COURT STREET
BROOKLYN, N.Y. 11201

PERSONNEL MEMORANDUM NO. 8 , 2005-2006 May 22, 2006

TO: **All Superintendents, Executive Directors, Heads of Offices, Principals of All Day Schools, ROC Directors, and Human Resources Managers**

FROM: **Gary Barton** Gary Barton
Executive Director-Regional Services

SUBJECT: **EMPLOYMENT OF RETIREES FROM NEW YORK CITY AND NEW YORK STATE AGENCIES AS PEDAGOGICAL EMPLOYEES**

I am writing to remind you that all pedagogical employees of the Department of Education who are retired from another City agency, a New York State agency or the Department of Education itself, must advise their retirement systems of their employment. Such retirees may be employed if they file a **Certification of Employment under Section 212** of the **Retirement and Social Security Law,** obtain a waiver in accordance with **Section 211 of Article 7 of the Retirement and Social Security Law or waive their pensions. For information concerning retirees who are employed in administrative (non-pedagogical) positions, please see Personnel Memorandum No. 7, 2003-2004.**

I. SECTION 212 - CERTIFICATION OF EMPLOYMENT

This section applies if:
- Total earnings are below the allowable annual limit

Retiree may be employed if:
- Notification has been made to retirement system of employment

Section 212 of the Retirement and Social Security Law allows for the employment of City and State retirees without diminution of their retirement allowances, provided that their earnings do not exceed the established earnings limitation in a calendar year. (NOTE: The earnings limitation for calendar year **2006 is $27,500**. The 2007 limit will be conveyed as soon as it is made available.) Retirees must file a Certification of Employment under Section 212 with their retirement system in order to notify them that they are employed by the New York City Board of Education. Retirees may obtain Certification of Employment under Section 212 forms from their retirement system.

II. SECTION 211 - WAIVER

This section applies if:
- Total earnings will exceed the allowable annual limit.

Retiree eligibility:
- Retiree must apply and be approved for Section 211 Waiver

A. CRITERIA FOR EMPLOYMENT OF RETIREES COVERED BY SECTION 211

Retirees who plan to earn in excess of the earnings limitation in a calendar year (January 1 - December 31) may obtain waivers in accordance with Section 211 of Article 7 of the Retirement and Social Security Law if the following circumstances exist:

1. The retired person is duly qualified, competent and physically fit for performance of the duties of the position in which he/she is to be employed;

2. There is a need for his/her services in such position;

3. There are no qualified non-retired persons available to perform the duties of such position through the normal recruitment process.

   IMPORTANT NOTE: A demonstrated, genuine and documented effort must be made to recruit non-retirees. Detailed documentation regarding the recruitment process utilized to staff the position, as well as a satisfactory explanation of the school's inability to hire a non-retiree, must be submitted with the attached application and a copy maintained at the location of the assignment.

4. His/her employment is in the best interests of government service.

Special attention will be paid to circumstance #3. The granting of waivers for retirees who are employed as pedagogues will be authorized in strict accordance with existing staffing conditions, and only in actual shortage license areas or remaining vacancies that it has not been possible to fill with a non-retiree. **Important Note**: The performance or individual qualifications of retirees will not be sufficient to satisfy the above criteria.

See "Criteria for Approval of 211 Waivers" in Section F below.

Teachers' Retirement System members should review the "Earnings After Retirement" circular for detailed information concerning their earnings limitation under a Section 211 Waiver. This informative booklet is available at: http://www.trs.nyc.ny.us/brochure/brochure93.pdf

IMPORTANT NOTE: Retirees who exceed the annual earnings limitation prior to receiving approval of their Section 211 Waiver should be made aware that waivers may be denied. The denial may result in the suspension of part or all of their retirement benefits for the period of their employment by the Department of Education. Retirees who are not granted waivers should contact their retirement systems regarding their options.

B. EXCLUSIONS FROM APPLICATION REQUIREMENT

* Employees over the age of 65 are not required to submit 211 Waivers.

* Retirees employed as consultants who joined their retirement system on or before May 31, 1973 do not have to apply for a 211 Waiver. The consultant employment of these retirees will not affect pension benefits. Retirees employed as consultants who joined their retirement system after May 31, 1973 should be made aware that they are subject to the earnings limitation under Section 211 Law.

III. APPLICATION PROCESS

A. APPROVAL PERIOD

The approval period for Section 211 Waivers has been expanded to encompass the entire school year, September through June. **Application for 211 Waivers must be made at the beginning of each school year.** For the next application period, the approval of a Section 211 Waiver for employment with the New York City Department of Education will **cover the period from September 1, 2006 through June 30, 2007.**

NOTE: Allowable earnings are calculated on a calendar year basis.

B. FILING PERIOD AND AUTHORIZATION

All retirees who will be working or intend to work from September 1, 2006 through June 30, 2007 and who expect to exceed the earnings limitation during the calendar year of 2006 (January 1, 2006 through December 31, 2006) must file an application immediately. Responsibility centers and retirees are advised that filing of an application does not constitute an automatic authorization. Authorization may only be given by the Division of Human Resources.

Approval of 211 Waivers for retirees will depend upon the prevalent staffing conditions. In order to avoid any disruption to the retiree's pension benefits, it is mandated that applications for Section 211 Waivers be submitted to the Division of Human Resources prior to the commencement of employment by the retiree.

C. APPLICATION BY PEDAGOGICAL EMPLOYEES

City and State retirees employed in pedagogical positions who will exceed the annual earnings limitation can apply for a Section 211 Waiver utilizing the attached form, "Request for Waiver In Accordance With Section 211 of the Retirement and Social Security Law for Pedagogical Employees." The application form has been revised for this application period. **The Division of Human Resources will accept and consider only those applications that are complete and submitted using the attached form for calendar year 2006and 2007.**

In **Section II,** the Principal/Supervisor must provide a statement indicating the reasons that it is necessary to employ a retiree, and also indicate the proposed payroll status of the applicant. (Important Note: Full-time employees only will be considered. Since Per Diem/Day-to-Day; Full-Time Regular Sub; "F" Status - Part-Time; "Z" Status; Per Session; Consultants can regulate their amount of employment in order to remain below the cap, approvals will not be given for part-time employment).

D. EARNINGS CALCULATIONS OF RETIREES FROM THE TEACHERS' RETIREMENT SYSTEM (TRS)

The earnings limitation for TRS members under Section 211 is based on the difference between the current salary of their pre-retirement title and their maximum retirement allowance without options, rounded to the next higher multiple of $500. **TRS members can call 1-(888) 8-NYC-TRS [1- (888) 869-2877] for clarification of any questions regarding the determination of the maximum earnings limitation.**

TRS retirees should be aware that due to the possible ramifications resulting from employment under two (2) different authorization types (i.e., Section 211 Waiver and 212 Certification of Employment) in a single calendar year, TRS strongly urges its retirees to contact them at 1 (888) 8-NYC-TRS to discuss any possible earnings limitation before commencing employment under the different waiver. TRS retirees should review the "Earnings After Retirement" circular available from their retirement system (see web link information above) for more detailed information regarding this topic.

E. DETERMINATION OF ELIGIBILITY FOR WAIVERS

In Section III of the waiver application, the Superintendent/Executive Director must indicate approval of submission of the request and must also certify that there are no non-retirees readily available for the position. Final determination of eligibility for waivers will be made by the Division of Human Resources, which will review all applications for waivers for pedagogical employees and determine if the employment of the retiree is in compliance with the criteria established by law.

Waivers will be granted for the period stipulated and may be withdrawn if circumstances warrant. The appropriate retirement system will be notified of all approvals and disapprovals of waivers granted by the Division of Human Resources.

F. CRITERIA FOR APPROVAL OF 211 WAIVERS

In order for a 211 waiver to be approved, Principals are asked to be advised of the following:

- Principals are reminded that the retiree may be granted a 211 waiver only because the school is able to document that a non-retiree cannot be found for the position. Therefore, the school must make every effort to secure the employment of a non-retiree. If, after attempts to recruit a non-retiree are not successful, documentation must be submitted with the 211 waiver request confirming that the school has made an active effort to interview and hire a non-retiree for the vacancy.

This must include a list of recruitment and outreach efforts made by the school (e.g., position must be posted in the transfer plan each year; advertisements for the position; list and number of candidates interviewed; qualifications of the candidates; duties of the position; the unique qualifications of the candidate that justify the selection; the benefits of hiring the retiree, etc.);

- A signed letter from the Principal must be included confirming that the vacancy is a shortage area position and providing reasons (as indicated above) for the selection of the non-retiree after making the demonstrated effort to select a non-retiree.

Failure to submit satisfactory supporting documentation confirming that the request for a 211 waiver for the retiree is justified under pension and social security law will give the Division of Human Resources no alternative than to deny this request.

Once again, disapproval of an application for a 211 waiver does not mean that the public-sector retiree is precluded from working with the New York City public schools. It does indicate, however, that under the provisions of the Law we are unable to grant a waiver permitting a retiree to exceed the amount of earnings allowed while receiving retirement benefits. The earnings cap is currently $27,500 (2006).

Important Note: The Division of Human Resources will not honor any requests for 211 waivers for hourly, day-to-day substitute, F-status, or any other part-time positions. Employees working part-time can regulate their earnings in order to ensure that they do not exceed the cap.

G. EMPLOYMENT PRIOR TO AUTHORIZATION

Responsibility centers have an obligation to inform retirees they are hiring that the Retirement and Social Security Law affects their post-retirement earnings. Copies of this memorandum should be distributed to affected employees as deemed necessary. It is crucial that responsibility centers advise retirees of the potential impact of Section 211 Waivers prior to commencement of their employment. Retroactive approvals will not be granted (i.e., for a prior year of service).

H. RE-APPLICATION

Retirees who do not meet the requirements for approval of waivers at this time may re-apply at the next filing period if their services are again requested. Waivers will be granted based on the prevalent staffing conditions at that time. Once again, no retirees covered by the provisions of this memorandum should be permitted to commence employment without the required authorization.

I. QUESTIONS

Questions regarding earnings should be directed to your retirement system. Completed forms and inquiries concerning application procedures for pedagogical employees should be addressed to:

NEW YORK CITY DEPARTMENT OF EDUCATION
DIVISION OF HUMAN RESOURCES
OFFICE OF REGIONAL SERVICES
65 COURT STREET - ROOM 811 – ATT: "211 Waivers"
BROOKLYN, N.Y. 11201
(718) 935 - 2900

Thank you for your cooperation.

ATTACHMENTS
C: Dr. Elizabeth Arons
Lawrence Becker

New York City Department of Education
Division of Human Resources

Request for Waiver in Accordance with Section 211 of the Retirement and Social Security Law for Pedagogical Employees

Please supply all requested information. It is recommended that the completed form be faxed to **718-935-4559** and mailed to: **Office of Regional Services, 65 Court Street - Room 811, Brooklyn, New York 11201**

SECTION I: TO BE COMPLETED BY RETIREE for calendar year_____

School Year of Waiver:_____ Length of Waiver: From_____ to_____

Name_____ Home Phone(____)_____

Home Address_____

Pension # _____ File #_____ Soc. Sec. #_____

License Subject:_____ Level:_____

School:_____ District:_____ Region:_____ Boro:_____

Date of Retirement:_____

Date of Birth*:_____ *(If applicant is age 65 or over, no waiver is required by law. If applicant turns 65 during the calendar year, no waiver is required by law.)

Type of Retirement: ☐ Service ☐ Disability

Retirement system:

☐ *NYC Teachers' ☐ NY State Teacher ☐ NYC Employees
☐ NYC Fire Department ☐ NYC Department of Education
☐ NYC Police Department ☐ NY State & Local Employees

***TRS Members only: a retiree's earnable limit under Section 211 is based on the difference between the current salary of /his pre-retirement title and his/her maximum retirement allowance. This difference is figured to the next higher multiple of $500.TRS member who has questions regarding the determination of his/her earnable limit, should call 1-888-869-2877.**

I certify that the statements made in this application, to the best of my knowledge and belief, are true and correct. I understand this waiver is subject to approval and conditions set forth in Section II, III, and IV below.

Retiree's Signature_____ Date_____

SECTION II: ALL INFORMATION TO BE COMPLETED BY PRINCIPAL.

Briefly describe the recruitment process used to determine that there were no non-retiree available for position in question. Attached substantiating documentation: _____
_____
_____
_____
_____

Payroll Status (Check appropriate box.) ☐ Full-Time Regularly Appointed Staff Only ☐ Other:_____

IMPORTANT NOTE: Since all part-time staff (including Per Diem/Day-to-Day; "Z" Status; Per Session; "F" Status) can regulate their amount of employment to ensure that they do not exceed the cap, the Division of Human Resources will not grant approval of 211 waivers for any part-time employment.

- Employees over the age of 65 are not required to submit 211 Waivers.
- Retirees employed as consultants who joined their retirement system on or before May 31, 1973 do not have to apply for a 211 Waiver. The consultant employment of these retirees will not affect pension benefits. Retirees employed as consultants who joined their retirement system after May 31, 1973 should be made aware that they are subject to the Section 211 Law earnings limitation .

I certify that there is a need for the services of this retiree in this position and that the statements made in support of this application are true and correct to the best of my knowledge and belief. I also certify that there are not readily available for recruitment, persons qualified to perform the duties of the position described above. Supporting documentation verifying that the recruitment process was undertaken and completed and no qualified non-retirees applied for the position is attached.

PRINCIPAL'S SIGNATURE_____PHONE#_____DATE_____

SECTION III: SUPERINTENDENT'S APPROVAL (Regional Superintendent or LIS)

SUPERINTENDENT'S SIGNATURE_____DATE_____

SECTION IV: DEPARTMENT OF EDUCATION DETERMINATION OF WAIVER

The requested waiver is hereby:

☐ APPROVED ☐ DISAPPROVED LENGTH OF WAIVER from _____to_____

DEPARTMENT OF EDUCATION AUTHORIZED SIGNATURE:

Rev 5-2006 _____ DATE:_____