

BOARD OF EDUCATION RETIREMENT SYSTEM

Rules and Regulations

Section 33 and Section 35

Vested Rights

Section 33. (Deemed amended by chapter 509, laws of 1993. See subdivision 20 of section 2575 of the education law.) Tax deferred annuity program. a. Any member for whom a salary reduction agreement is executed pursuant to section three thousand one hundred nine -A of the education law shall thereby become a participant in the tax-deferred annuity program. The Board of Education shall adjust the salary payments of each participant in accordance with the salary reduction agreement in effect for the participant. Each of such amount so deducted shall be paid to the retirement system. Such agreement and any change in such agreement shall become effective on the first effective date which follows the date of execution of such agreement or change by at least 60 days. Effective dates shall be February 1, 1970 and such subsequent dates as may be determined by the Retirement Board each calendar year. However, the participant may terminate the agreement as of the first day of any calendar month which commences at least 60 days after appropriate written notice thereof has been filed.

b. A portion of each such payment may be withheld by the retirement board to provide for the additional expenses that are attributable to the tax-deferred annuity program. The remainder shall be referred to in this section as the participant's tax-deferred annuity net contributions. The portion to be withheld shall be determined in advance in accordance with rules established by the retirement board.

c. 1. A participant in the tax-deferred annuity program, by written notice duly filed with the retirement board shall

elect whether all, or a portion in increments of 5%, or none of such net contributions is to be currently deposited in the variable annuity savings fund and credited to a separate individual tax-deferred account maintained for him in such fund. The balance, if any, of such net contributions shall be currently deposited in the annuity savings fund and credited to a separate individual tax-deferred account maintained for him in such fund. An election made pursuant to this paragraph may be changed quarterly.

2. A participant quarterly may elect to transfer, from one fund to the other, all, or a portion in increments of 5%, of the amount credited to his account in either the annuity savings fund or the variable annuity savings fund under the tax-deferred annuity program. Such transfer shall be made, at the participant's election, in three or twelve monthly installments as nearly equal as possible, at a rate resulting in a quarterly or annual transfer of the full amount requested for transfer at the time of election.

3. A participant may change an election made pursuant to paragraphs 1 or 2 of this subdivision to another election permitted by those paragraphs.

4. An election or change made pursuant to paragraphs 1, 2, or 3 of this subdivision shall take effect no later than the first business day of the calendar quarter which follows by at least 30 days the filing of the required written notice.

d. Interest shall be allowed on the participant's tax-deferred account in the annuity savings fund, as provided in these rules and regulations.

e. Any deposit or transfer to the variable annuity savings fund pursuant to subdivision c above shall be converted at once into units having a total value equal to such deposit or transfer. The number of units in a participant's tax-deferred account in such fund shall be increased each month in the same manner as any account in the

variable annuity savings fund would be increased, as set forth in subdivision f of section 36 and the value of a unit shall be determined as set forth in subdivision g thereof.

f. Section 2., 3., 5, 5a., 7., 8., 9., 10., 11., 12., 13., 14., 14a., 15., 16., 17., 18., 19., 20., 21., 23., 24., 25., 26., 27., 28., 29., 30., 31., 32., of these rules and regulations as they apply to the contributions made by a contributor and the benefits provided thereby, shall apply separately and independently to the tax-deferred annuity net contributions and the benefits provided thereby, except as otherwise specified in this section 33. Sections 7 (1) and 7 (3), as they apply to the contributions made by a contributor and the benefits provided thereby, shall apply to the tax-deferred annuity net contributions and the benefits provided thereby, except as otherwise specified in this section 33.

g. If the full amount of the participant's accounts in the annuity savings fund and the variable annuity savings fund, other than the tax-deferred accounts, are paid to him pursuant to the provisions of section 10, subdivision g of section 32, then the full amount of the corresponding tax-deferred accounts must also be paid to him.

h. the tax-deferred annuity net contributions shall not be included in determining the amount, if, any, that may be withdrawn pursuant to paragraph 5c of section 10.

i. Subject to the following provisions and to such additional terms and conditions and rules and regulations as the retirement board may adopt to accomplish the purpose of the tax-deferred annuity program, a participant may withdraw all or part of his accumulations in the annuity savings fund and the variable annuity savings fund arising from tax-deferred annuity net contributions.

1. As a condition for such withdrawal, the participant's salary reduction agreement, if still effective, shall automatically

terminate as of the first day of the calendar month which commences at least sixty days after the date of request for such withdrawal, and no subsequent salary reduction agreement shall become effective before the first January 1 which follows such termination.

2. The amount of any such withdrawal from the variable annuity savings fund shall be based on the value of a unit for the month following the date written request for such withdrawal is filed with the retirement board.

3. If a transfer of the member's tax-deferred accounts pursuant to subdivision c of this section has not yet been completed on the date of a partial withdrawal pursuant to this subdivision, the subsequent monthly transfers shall be continued in the same number of dollars or units, as the case may be, until the transfer requested has been completed. In case of a partial withdrawal, the member's tax-deferred account in the annuity savings fund shall be exhausted first before any portion of his tax-deferred account in the variable annuity savings fund is so used. Furthermore, if only a portion of the member's tax-deferred account in the annuity savings fund is being transferred as provided in said subdivision c, the portion not being transferred shall be exhausted first before the transferable portion is used.

4. The exemption from state and municipal tax provided in section 26 for return of contributions shall not apply to withdrawal of tax-deferred annuity net contributions.

j. Nothing contained in this section shall be construed to diminish or impair any benefits to which a member or his legal representatives would be otherwise entitled had such member not participated in the tax-deferred annuity program in accordance with the provisions of this section.

k. Notwithstanding any other provision of the rules and regulations to the contrary, the beneficiary of a deceased participant in the tax deferred annuity program who had not, prior to his or her death, selected an option governing the manner in which his or her tax deferred annuity account would be payable to his or her beneficiary, may, elect, at such time and in such manner as determined by the retirement board, to defer the distribution to him or her from the participant's tax deferred annuity account to the extent permitted by, and in a manner consistent with, the provisions of section 403(b) of the Internal Revenue Code and the regulations promulgated pursuant to such section. A beneficiary's election pursuant to this subdivision shall be in lieu of any options or elections for the distribution to such beneficiary of the deceased participant's tax deferred account provided in any other provision of the rules and regulations or law. An election pursuant to this subdivision shall be made within six months of the date of death of the participant. If a beneficiary of a deceased participant elects the deferral provided for in this subdivision, the funds held in the tax-deferred account for such beneficiary may be held only in the variable annuity funds provided pursuant to section 34 of the rules and regulations.

Section 35. Election to participate in the variable annuity program. - a. A member, by written notice of his intention to participate in the variable annuity program duly filed with the retirement system, may elect to have fifty per cent or one hundred per cent of (i) the deductions from his compensation that would otherwise be credited to his accumulated deductions currently deposited and credited to his individual account in the variable annuity savings fund and (ii) the amount that would otherwise be credited to his reserve-for-increased-take-home-pay currently deposited and credited to his individual account in the variable pension accumulation fund. For the purpose of this subdivision, deductions from a member's compensation shall not include deductions made to provide the deposits and redeposits pursuant to subdivision (1) k of section 8 or the repayment of a loan pursuant to subdivision (5) of section 10.

b. A member who makes the election pursuant to subdivision a of this section at the one hundred per cent rate may, by the same written notice, elect to have fifty per cent or one hundred per cent of (i) his accumulated deductions transferred from the annuity savings fund and credited to his individual account in the variable annuity savings fund and (ii) his reserve-for-increased-take-home-pay transferred from the contingent reserve fund and credited to his individual account in the variable pension accumulation fund. Each such transfer shall be made in twenty-four monthly installments, as nearly equal as possible, except that the minimum installments, shall be eighty-three dollars and thirty-three cents or the residual amount, if less.

c. An election made pursuant to subdivision a or subdivision a and b of this section shall take effect on the first participation date which follows by at least sixty days the filing of the required written notice. The participation dates shall be July first, nineteen hundred seventy, and every January first thereafter. In the case, however of a person who becomes a member:

(i) In May or June, nineteen hundred seventy, the election shall take effect one July first, nineteen hundred and seventy, if the written notice is filed before that date;

(ii) After June, nineteen hundred seventy, the election shall take effect on the date he becomes a member, if the written notice is filled before the first deduction is made from his salary.

d. A participant in the variable annuity program who has not retired may change or revoke his previous election by written notice duly filed with the retirement system. Any revision in the election made pursuant to subdivisions a or b of this section or a request to discontinue further transfers pursuant to subdivision b of this section shall constitute a change, except that a request to discontinue all deposits shall constitute a revocation. Such change or revocation shall take effect on the first participation date which follows by at least sixty days the filing of the required written notice and by at least two years (i) the effective date of the previous change if there has been a change, or (ii) the effective date of election if there has been no change. If an election has been revoked, a new election may subsequently be made. Such new election shall take effect on the first participation date which follows by at least two years the effective date of revocation.

e. A participant in the variable annuity program who, pursuant to subdivision d, revokes his previous election may, in his notice of revocation elect to remain a participant with respect to amounts already credited to him or to terminate his participation. If he elects to terminate his participation, the amounts in his accounts in the variable annuity savings fund and variable pension accumulation fund shall be transferred to the annuity savings fund and contingent reserve fund, respectively, and credited to his accumulated deductions and reserve-for-increased-take-home-pay, respectively. Each such transfer shall be made in twenty-four monthly installments of equal size in terms of units, except that the

minimum installment shall be equivalent to ten units or to the residual number of units, if less.

f. If a participant who has revoked his election makes a new election before his accounts in the variable annuity savings fund and the variable pension accumulation fund have been fully transferred, further transfer from such funds shall be discontinued as of the effective date of the new election.

g. Upon the death or retirement of a participant in the variable annuity program, any transfer of funds in progress pursuant to subdivisions b or e of this section shall be discontinued, except as it may be resumed pursuant to section 42.

h. In the case of a participant in the variable annuity program:

1. Reference in paragraph (3) of subdivision e of section 30 to the annuity and the pension-providing-for-increased-take-home-pay shall mean such benefits as they would have been if the member had not elected to become a participant.

2. Reference in paragraph (1) (a) of subdivision g of section 30 to total accumulated deductions shall mean such deductions as they would have been if, after the completion of such twenty-five years, there had been no deposits to the variable annuity savings fund and no transfers between such fund and the annuity savings fund.

3. The second proviso of subdivision (2) of section 16 shall be disregarded. The retirement allowance payable under subdivisions (1) and (2) of such section shall be computed, without giving effect to such provisions, as if he had not elected to become such a participant. If the allowance so computed is less than the lesser of one-quarter of his final compensation and ninety per centum of the retirement allowance, similarly computed, were his service to continue until attainment by him of age sixty, then the

retirement allowance otherwise payable to him shall be increased by the difference.

i. The provisions of sections 24 and 26 shall apply to benefits payable under the variable annuity program.