

TITLE 2 PUBLIC FINANCE
CHAPTER 82 EDUCATIONAL RETIREMENT
PART 1 GENERAL PROVISIONS

2.82.1.1 ISSUING AGENCY: Educational Retirement Board, P. O. Box 26129, Santa Fe, New Mexico 87502-0129
[2.82.1.1 NMAC - Rp, 2.82.1.1 NMAC, 11/15/2012]

2.82.1.2 SCOPE: This rule addresses the organization and operations of the educational retirement board.
[2.82.1.2 NMAC - Rp, 2.82.1.2 NMAC, 11/15/2012]

2.82.1.3 STATUTORY AUTHORITY: The Educational Retirement Act, Section 22-11-1 to 22-11-55 NMSA 1978.
[2.82.1.3 NMAC - Rp, 2.82.1.3 NMAC, 11/15/2012]

2.82.1.4 DURATION: Permanent
[2.82.1.4 NMAC - Rp, 2.82.1.4 NMAC, 11/15/2012]

2.82.1.5 EFFECTIVE DATE: November 15, 2012, unless a later date is cited at the end of a section.
[2.82.1.5 NMAC - Rp, 2.82.1.5 NMAC, 11/15/2012]

2.82.1.6 OBJECTIVE: The purpose of this rule is to establish procedures and functions of the educational retirement board, its director, officers and committees.
[2.82.1.6 NMAC - Rp, 2.82.1.6 NMAC, 11/15/2012]

2.82.1.7 DEFINITIONS: [RESERVED]

2.82.1.8 BOARD MEMBERS AND OFFICERS: Ex-officio members of the board shall take office upon their qualifying for the offices enumerated in Section 22-11-3 NMSA 1978. The board member elected by the New Mexico educational association shall be elected in the manner prescribed by the constitution of that body and shall take office on January 1 following such election. The board member elected by the New Mexico members of the American association of university professors shall be elected in accordance with the constitution of that body and shall take office on July 1 following such election. The board member elected by the New Mexico association of educational retirees shall be elected in the manner prescribed by the constitution of that body and shall take office on July 1 following such election. The board member elected by the American federation of teachers New Mexico shall be elected in the manner prescribed by the constitution of that body and shall take office on July 1 following such election. The board members appointed by the governor shall take office upon their receipt of appointment. All board members shall hold office until their successors qualify regardless of the length of the term and office. At the regular August meeting of each year, the members of the board shall elect a chairman, a vice-chairman, and a secretary. The duties of the officers shall include the following.

- A. The chairman shall preside at all meetings of the board.
- B. The vice-chairman shall serve as the chairman in the absence of the chairman.
- C. The secretary shall attest to the official actions of the board when such is required. The vice-chairman may attest to the official actions of the board in the secretary's absence.

[2.82.1.8 NMAC - Rp, 2.82.1.8 NMAC, 11/15/2012; A, 05/24/2022]

2.82.1.9 MEETINGS:

A. The New Mexico educational retirement board shall hold regular meetings in the months of February, April, June, August, October and December; provided however, that the board may change the date of a meeting by board action, which action shall be noted in the minutes. Special board meetings may be held in accordance with state law at the call of the chairman or by any three board members. Committee meetings shall be scheduled as directed by the chairman of each committee.

B. Five members of the board shall constitute a quorum at any regular or special meeting.

C. Notice of all meetings of the board and its committees shall be made in accordance with the Open Meetings Act (Chapter 10, Article 15, NMSA 1978) and the Open Meetings Resolution adopted by the board and shall be posted on the board's website and distributed as otherwise directed by the board. Notice shall be given at

least eight days in advance of any regular meeting scheduled by the board at its last meeting. Notice shall be given at least three days in advance of any special meeting called by the chairman or any three members of the board.

D. The chairman shall set the agenda of board meetings; provided however, that if the chairman refuses to place an item on the agenda, three individual board members may petition in writing and place an item on the agenda without the chairman's consent. Committee chairmen shall set the agendas of their respective committees. Notice of agendas shall be made in accordance with the Open Meetings Act and the Open Meetings Resolution adopted by the board and the director shall distribute board and committee agendas to board members, post the agendas to the board's website, and distribute the agendas as otherwise directed by the board.

E. Board members and their designees may attend and participate in any regular or special board meeting by telephone or other electronic device if:

- (1) the member or designee cannot attend the meeting due to an emergency or unforeseen circumstance;
- (2) the member or designee can clearly be heard by everyone attending the meeting and the member or designee clearly identifies himself before speaking or participating in a vote;
- (3) the member or designee has not attended regular meetings electronically more than twice in a rolling 12 month period;
- (4) no more than two members or designees who otherwise qualify for participation under this section may do so at the same meeting; and
- (5) the member or designee otherwise complies with the Open Meetings Act.

F. Failure of any board member other than the state treasurer, secretary of public education or secretary of higher education to attend four consecutive regular meetings unless such absence is excused by the board at a board meeting will be considered resignation from the board by that board member. Failure of the designee of the state treasurer, the secretary of public education or the secretary of higher education, respectively, to attend four consecutive regular meetings when the state treasurer, the secretary of public education or the secretary of higher education is absent will be considered resignation from the board by that designee. An excused absence must be recorded in the board meeting minutes.

G. Board members not officially assigned to the committee which is meeting may be temporarily appointed to the committee by the committee chairperson when necessary to achieve a quorum.
[2.82.1.9 NMAC - Rp, 2.82.1.9 NMAC, 11/15/2012; A, 9/26/2017; A, 05/24/2022]

2.82.1.10 SANCTIONS AND ENFORCEMENT:

A. Any breach of a board member's fiduciary duty or violation of the rules or policies adopted by the board made known to the board or of which the board becomes aware shall be reviewed by the board. If a majority of the entire board so request, an alleged breach or violation may be investigated by an independent person or entity not otherwise associated or affiliated with any member of the board or the board's staff. Such person or entity shall be selected by at least five board members and designees, if such be sitting for board members.

B. Any hearing addressing an alleged breach of fiduciary duty or violation of the rules or the policies adopted by the board shall be conducted by the entire board, excepting the member accused of such a breach or violation, in accordance with the rule governing administrative appeals adopted by the board prior to the alleged breach or violation having occurred. If the rule governing administrative appeals is amended between the time that an alleged breach of fiduciary duty or violation of such rules or policies occurred and the time of the hearing, the board shall conduct the hearing in accordance with the rule that existed prior to its amendment.

C. Removal of a board member should occur only when necessary for the board to fulfill its fiduciary duty. A decision to remove a board member should be based on a determination that allowing the member to continue to serve on the board would be a violation of the other board members' fiduciary duty and would be detrimental to the educational retirement fund and the board. Removal should not be undertaken solely to inflict a penalty for a board member's past action(s) unrelated to the matter before the board.

(1) Removal is appropriate in instances of gross misconduct, violation of the board member's fiduciary duty, repeated violation of the rules and policies adopted by the board, or failure to fulfill the duties of a board member. "Gross misconduct" is defined as violation of a clearly established rule or policy, dereliction of duty, unlawful behavior involving matters of dishonesty or deception, gross negligence, but not negligence or carelessness.

(2) Removal of a board member other than the state treasurer, the secretary of public education or the secretary of higher education shall occur only after a full investigation, hearing, and an affirmative vote by not less than five board members and designees, if such are sitting for a board member.

(3) The state treasurer, the secretary of public education and the secretary of higher education may be removed from the board only by removal from their respective offices by an authority possessing such power. The board may nevertheless, in compliance with the procedures set forth herein, make a finding that the actions of a state treasurer, a secretary of public education or a secretary of higher education warrant removal from the board and report such finding to appropriate authorities. A designee of the state treasurer, the secretary of public education or the secretary of higher education, respectively, shall not participate in board discussions or votes related to the board's consideration of a matter pursuant to this subparagraph that involve the board member who named that person as a designee.

(4) The designees of the state treasurer, the secretary of public education and the secretary of higher education, respectively, may be removed from the board in accordance with the procedures set forth herein. A designee so removed may not be reappointed as a designee by either the state treasurer, the secretary of public education or the secretary of higher education.

D. Board members or designees found to be in violation of the rules and policies adopted by the board or who fail to fulfill their duties, or who otherwise conduct themselves in a manner that is not appropriate for a member of a board governing a public pension fund, may be subject to formal reprimand or admonishment by the board. Reprimand or admonishment shall be done upon a public vote of not less than five board members and designees, if such are sitting for board members, and shall be permanently recorded in the board minutes.

(1) The board may choose to reprimand a board member or designee upon determining that the member's or designee's violation of the rules and policies adopted by the board or conduct as a board member warrant censure or reproof but do not warrant removal from the board.

(2) The board may choose to admonish a board member or designee upon determining that member or designee should be advised or cautioned regarding actions such as a failure to fulfill the duties of a board member or conduct that is inappropriate for a member of a board governing a public pension fund.

E. The board may not impose a fine on a board member or designee; however, the board may order a board member or designee to repay expenses paid by the board on behalf of a board member or designee for education or travel where a board member or designee did not fulfill the purpose for which the education or travel expense was provided. In addition, a board member or designee may be required to repay the donor of a gift accepted in violation of Section 22-11-5.1 NMSA 1978 or the rules and policies adopted by the board.
[2.82.1.10 NMAC - N, 11/15/2012; A, 05/24/2022]

2.82.1.11 FUNCTION OF THE BOARD:

A. The board shall function primarily as a policy making body and except for such ministerial acts as may be required by law, administrative matters shall be the responsibility of the director. The board shall adopt administrative rules and regulations through which the director shall implement the policies of the board.

B. In the consideration of cases involving individual members of the educational retirement system, it shall be the stated policy of the board to consider all appeals on their merits, guided by the Educational Retirement Act and the rules or regulations adopted by this board.

C. Pursuant to the board's fiduciary duty to the fund, the board has sole discretion in determining whether there is adequate funding for any proposed change in benefits or the funding formula.
[2.82.1.11 NMAC - Rp, 2.82.1.10 NMAC, 11/15/2012]

2.82.1.12 ADMINISTRATIVE BUDGETS: The director shall prepare budgets and requests for appropriations, which shall be considered and approved by the board prior to submission to the department of finance and administration or legislature.
[2.82.1.12 NMAC - Rp, 2.82.1.11 NMAC, 11/15/2012]

2.82.1.13 EMPLOYMENT OF STAFF:

A. The board, at a regular meeting, shall employ a director who shall serve at the pleasure of the board and at a salary to be set by the board.

B. The board shall annually approve an organizational chart coincident with the adoption of the budget. This chart shall include a description of all positions required for the operation of the office, and the director shall be responsible for staffing these positions. This responsibility shall include the authority for the employment, promotion and dismissal of all employees.
[2.82.1.13 NMAC - Rp, 2.82.1.12 NMAC, 11/15/2012]

2.82.1.14 INVESTMENT COMMITTEE: The investments of the retirement fund shall be under the

direction of an investment committee composed of the chairman of the board, and two members of the board appointed by the chairman and approved by the board, for terms of one year. The chairman shall appoint two members to the investment committee at the board's regular October meeting each year. In the event of a vacancy on the committee, the chairman shall appoint a member of the board to serve for the remaining portion of the one year term. The appointment shall become effective immediately; provided, however, that it shall be subject to the approval by the board at its first meeting occurring after said appointment. The actions of the committee shall be subject to applicable statutes governing investment of the educational retirement fund, and the administrative rules and policies adopted by the board relating to investments of the fund.

[2.82.1.14 NMAC - Rp, 2.82.1.13 NMAC, 11/15/2012; A, 12/30/2013; A, 3/14/2017; A, 05/24/2022]

2.82.1.15 MEDICAL REVIEW AUTHORITY AND APPEAL OF RECOMMENDATIONS:

A. The board shall engage a medical review authority. The authority shall review all disability examination reports and advise the board of the nature and extent of disability for all applicants for disability benefits and the nature and extent of disability for those members already approved for benefits when it becomes necessary to determine their continued eligibility.

B. The director may engage physicians and other qualified persons throughout the state to perform independent medical examinations upon applicants for disability, if necessary. Results of such examinations shall be reported in detail to, and reviewed by, the medical review authority. The director is authorized to pay a reasonable fee for the examinations.

C. Applicants for disability benefits and recipients of disability benefits whose benefits are subject to re-examination shall be given written notice of those recommendations of the medical review authority which propose denial of the application for disability or termination of disability benefits. The written notice shall contain the following:

(1) the recommendation of the medical review authority, and a clear and concise statement of the reasons supporting the recommendation;

(2) a statement that the applicant or disability recipient may appeal the recommendation within thirty (30) days after receipt of the notice in accordance with 2.82.11 NMAC.

[2.82.1.15 NMAC - Rp, 2.82.1.14 NMAC, 11/15/2012; A, 6/16/2015; A, 9/26/2017]

2.82.1.16 ACTUARY: The director shall recommend an actuarial firm to be engaged for the purpose of performing routine actuarial services and actuarial investigations and evaluations to be provided for in a contract to be approved by the board.

[2.82.1.16 NMAC - Rp, 2.82.1.15 NMAC, 11/15/2012]

2.82.1.17 CONDUCT OF BUSINESS:

A. The business affairs of the board shall be conducted by the director within the authority outlined by the Educational Retirement Act and rules and procedures adopted by the board.

B. On behalf of the board, the director is authorized to execute vouchers, delegate others to execute vouchers, buy and sell, or assign, or otherwise acquire or dispose of stocks, bonds, notes, or other securities held by the board, and execute such other documents as may be necessary to the administration of the Educational Retirement Act.

C. The director shall obtain the board's approval before requesting a formal opinion interpreting the law from the attorney general. The director may, however, obtain advice, either oral or written, from the attorney general as the need may arise.

D. The director is authorized to decide whether the agency will seek lead plaintiff status in securities class action lawsuits in order to insure a timely decision is made in accordance with applicable deadlines set out by the court. The director shall promptly apprise the chair of such decisions. All such decisions shall be presented at the next board meeting and the board may ratify or reject the director's decision. If the board rejects the director's decision, the agency shall seek to remove itself from lead plaintiff status.

E. The rules and procedures of the board may be amended or expanded in the following manner:

(1) At any regular meeting, the board may request the director to prepare amendments or new rules for action at a subsequent meeting of the board.

(2) The director may, at any time, propose amendments or new rules for action at any meeting of the board.

(3) Any proposed amendment or new rule shall be drafted by the director and sent to each board member with the agenda for the meeting at which the proposal will be considered, and all proposed rule

changes will be sent to all local administrative units, within a reasonable time, prior to being considered by the board.

F. Interest rates that are to be set by the board under the Educational Retirement Act may be changed at any meeting of the board but shall at a minimum be set at a board meeting held in the final fiscal quarter of the year.

[2.82.1.17 NMAC - Rp, 2.82.1.16 NMAC, 11/15/2012; A, 6/16/2015; A, 9/26/2017]

HISTORY OF 2.82.1 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ERB 67-3, Rules and Procedures, filed 6/30/1967.

ERB 78-1, Rules and Procedures, filed 8/7/1978.

ERB Rule I, Organization and Operation of the Educational Retirement Board, filed 7/2/1982.

History of Repealed Material:

2.82.1 NMAC, General Provisions, filed 11/16/2001 - Repealed effective 11/15-2012 and replaced by 2.82.1 NMAC, General Provisions, effective 11/15/2012.