



**JOINT LEGISLATIVE EDUCATION OVERSIGHT  
SUBCOMMITTEE ON RETIREES' RETURN TO WORK**

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**AGENDA**

April 10, 2006  
Room 1124, Legislative Building  
4:00 PM

**WELCOME**

Senator Charlie Dannelly and Representative Rick Glazier, Co-Chairs

**Data Regarding Length of Break-in-Service for Retirees and Length of Break Between School Terms**

- Philip Price, Associate Superintendent, Financial & Business Services, Department of Public Instruction

**Proposed Revisions to the Law Governing Return to Work Following Retirement**

- Leslie Winner, UNC Vice President for Legal Affairs/General Counsel

**Response from the Retirement System**

- Michael Williamson, Deputy State Treasurer & Director of the Retirement Systems Division
- Brett Joyal, Policy Director

**Committee Discussion**



**MINUTES**  
**JOINT LEGISLATIVE EDUCATION OVERSIGHT SUBCOMMITTEE**  
**ON RETIREMENT BREAK-IN**

March 7, 2006

The Joint Legislative Education Oversight Subcommittee on Retirement Break-in met on, Tuesday, March 7, 2006, in Room 421 of the Legislative Office Building at 1:00 AM. The following members were present: Co-Chairs Senator Charlie Dannelly and Representative Rick Glazier, and Members: Rep. Marvin Lucas, Rep. Becky Carney, Rep. Louis Pate, Sen. Katie Dorsett, and Sen. Richard Stevens. Shirley Iorio, Adam Levinson, Drupti Chauhan and Robin Johnson, Committee Staff, were in attendance. A Visitor Registration list is attached and made part of these minutes.

Chairman Dannelly called the meeting to order and introduced the Sergeant-At-Arms. Chairmen Dannelly and Glazier welcomed the committee members.

Concerns about law governing return to work following retirement were presented by:

Dr. Gordon Burns, President, NC Association of Community Colleges, and President Wilkes Community College and Dr. Ed Wilson, President, Wayne Community College presented their concerns. A copy of the presentation is attached and made part of these minutes. Highlights included:

- Six-month separation is troublesome to community colleges
- Teacher shortage is defines as impending crisis
- Cannot bring back substitutes, part-time, mentors after retirement
- Many teachers do not want to quit; they want to retire
- Recommendation is a break of 30 days or one pay period

Katherine Joyce, Assistant Executive Director, Association of School Administrators presented 'Retiree Return to Work' Changes. A copy of the presentation is attached and made part of these minutes. Highlights included:

- Six-month break causes schools to lose the most qualified teachers and administrators
- New law prohibit working in any capacity--- even tutoring
- New law prevents employment in the private sector, i.e. private schools.
- Recommendation is shorten six-month break and establish less restrictive requirements for part time workers.

Cecil Banks, Government Relations Manager, NCAE, presented break-in service issues. A copy of the presentation is attached and made part of these minutes. Highlights included:

- How complete does a break in service need to be?
- Extend the same restrictions for exempt and working employees under the cap



- Recommendation is a shorter break, extend the sunset, and extend the ability to be re-employed.

Leanne Winner, UNC Vice-President for Legal Affairs/General Counsel presented information on the State Retirement System. A copy of the presentation is attached and made part of these minutes. Recommendations included:

- Tighten the earning cap.
- Establish a normal age of 60 years old for retirement; allow employees who retire before or after 60 years old to be treated differently
- Remove the sunset from the phased retirement program
- Limit program to faculty at, or older, than 60.
- Authorize Community Colleges to establish same guidelines for faculty.
- Reward teachers for not retiring.

In response to presentations committee members raised the following issues:

- Can teachers be hired from state to state without restrictions?
  - Yes
- How many days does the Federal retirement system require?
  - Zero
- Did teachers have input into these recommendations?
  - No
- Were all interest groups consulted for input?
  - No
- Can a SREB of all states and breaks in retirement be supplied?
  - Yes

#### Response for the Retirement System

Michael Williamson, Deputy State Treasurer & Director of the Retirement Systems Division sent regrets from the State Treasurer, who could not attend the meeting. He presented his Report to the General Assembly, February 2005. A copy of the presentation is attached and made part of these minutes. Findings included:

- IRS refused to define a period of time for a break in service. There are no pre-existing agreements; only that there must be a break in service.
- Cannot jeopardize tax statutes of the plan
- Must be in compliance with the system
- They can administer anything the GA can pass
- Work load increases with variation of retirement age

Committee questions and issues to Mr. Williamson:

- Would 3-month period be sufficient?
  - Not qualified to speculate, but the IRS said they would never accept a 2-month break, as that would constitute a normal summer break.



- If DPI data supports a 95-day break that does not constitute a summer break, would this be approved?
  - IRS will not quantify time past 2 months.
- What is the opinion of Mr. Williamson?
  - There is a legitimate ground for a 96-days break.
- Why is the IRS accepting breaks of less than 2 months in other states?
  - A wide range of proposals have been adopted the General Assembly must decide what level of exemption they are willing to go to jeopardize tax exempt status.
- Is there any across the board policy that applies to all states?
  - No
- Does a break in service mean in any capacity of teaching?
  - A distinction of employment will be supplied.
- In any case in the USA, has the IRS ever taken away tax exempt status on this issue?
  - No.
- What are the ramifications of telling an employee he can retire early?
  - Some provisions to limit the number of retirements must be put in place to ensure the system is not abused.

Brett Joyal, Policy Director, presented an analysis on the service break-in. A copy of the presentation is attached and made part of these minutes.

Committee discussion and recommendations:

No rational sense for a six-month break in service

Need data to support establishing a 95-97 day break in service

Staff will produce necessary data

Want the Attorney General's opinion as well

Want more details and data about other states via SREB

Want to address teacher shortage problems; talk to Hawaii for comparison

Want opinion of Classroom Teachers Association

Chairman Dannelly thanked all of the speakers. The next meeting was not scheduled.

There being no further business, Chairman Dannelly adjourned the meeting at 3:13 p.m.

Respectfully submitted,

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Senator Charlie Dannelly  
Chair

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Carin Savel  
Committee Assistant





# Teacher Summer Break Days

LEA	LEA NAME	1998/97	1999/98	2000/99	2001/0	2002/1	2003/2	2004/3	2005/4	2006/5	Min	Max	Max_Without2006	Note
010	Alamance-Burlington Schools													N/A**
020	Alexander County Schools	53	60	58	58	55	51	50	51	77	50	77		60
030	Alleghany County Schools	56	65	58	61	60	58	58	59	59	56	65		65
040	Anson County Schools	53	56	56	56	60	58	58		82	53	82		60
050	Ashe County Schools	53	60	58	62	59	55	59	65	58	53	65		65
060	Avery County Schools	72	61	62	56	51	65	61	61	58	51	72		72
070	Beaufort County Schools	57	59	55	67	57	55	57	56	76	55	76		67
080	Bertie County Schools													N/A**
090	Bladen County Schools	61	56	60	60	60	58	59	62	75	56	75		62
100	Brunswick County Schools	59	52	59	56	70	46	61	67	68	46	70		70
110	Buncombe County Schools	58	58	54	55	56	56				54	58		58
111	Asheville City Schools	58	58	65	55	63	62	66	61	71	55	71		66
120	Burke County Schools	65		60	60	61	58	57	59	77	57	77		65
130	Cabarrus County Schools	60	54	58	59	57	56	58	58	75	54	75		60
132	Kannapolis City Schools													N/A**
140	Caldwell County Schools													N/A**
150	Camden County Schools	60	58	55	48	55	53	67	46	70	46	70		67
160	Carteret County Public Schools	62	58	58	52	58	54	58	57	77	52	77		62
170	Caswell County Schools													N/A**
180	Catawba County Schools	62	59	57	61	58	59	55	59	75	55	75		62
181	Hickory City Schools	60	47	57	63	56	56	56	56	77	47	77		63
182	Newton Conover City Schools		47	58	61	56	60	53	51	75	47	75		61
190	Chatham County Schools	61	60	56	53	58	44	54	50	75	44	75		61
200	Cherokee County Schools	67	54	45	60	55	60	59	55	70	45	70		67
210	Edenton/Chowan Schools	62	58	48	43	53	44	47	42	73	42	73		62
220	Clay County Schools					57	57	57	61	75	57	75		61
230	Cleveland County Schools													N/A**
240	Columbus County Schools													N/A**
241	Whiteville City Schools	60	53	51	59	64	58	57	55	78	51	78		64
250	Craven County Schools	57	59	65	54	61	57	54	61	77	54	77		65
260	Cumberland County Schools	60	61	53	58	66	57	47	51	73	47	73		66
270	Currituck County Schools	60	60	58	54	53	55	54	58	68	53	68		60
280	Dare County Schools													N/A**
290	Davidson County Schools	60	58	58	44	58	59	49	54	78	44	78		60
291	Lexington City Schools	66	70	60	54	58	59	58	58	83	54	83		70
292	Thomasville City Schools	62	63	62	51	55	58	58	50	78	50	78		63
300	Davie County Schools	67	46	55	57	61	58	59	62	73	46	73		67
310	Duplin County Schools													N/A**
320	Durham Public Schools	61	61	47	56	62	57	54	56	77	47	77		62
330	Edgecombe County Schools	57	66	51	59	56	57	56	56	68	51	68		66
340	Forsyth County Schools		56	56	56	60	61	57	55	62	55	62		61
350	Franklin County Schools	60	61	60		56	57	47	58	75	47	75		61
360	Gaston County Schools	50	59	59	62	60	61	60	61	84	50	84		62
370	Gates County Schools	60	62	42	60	55	58	58	58	82	42	82		62

## Teacher Summer Break Days

LEA	LEA NAME	1998/97	1999/98	2000/99	2001/0	2002/1	2003/2	2004/3	2005/4	2006/5	Min	Max	Max_Without2006	Note
380	Graham County Schools	60	58	62	55	61	51	56	59	71	51	71		62
390	Granville County Schools	60	48	59	47	58	61	60	58	65	47	65		61
400	Greene County Schools													N/A**
410	Guilford County Schools													N/A**
420	Halifax County Schools													N/A**
421	Roanoke Rapids City Schools	55	63	58	58	59	56	55	61	72	55	72		63
422	Weldon City Schools	58						57	61	71	57	71		61
430	Harnett County Schools													N/A**
440	Haywood County Schools	56	61	60	58	58	58	58	58	79	56	79		61
450	Henderson County Schools	64	53	59	59	60	57	60	56	75	53	75		64
460	Hertford County Schools	60	60	58	54	46	51	55	53	71	46	71		60
470	Hoke County Schools													N/A**
480	Hyde County Schools													N/A**
490	Iredell-Statesville Schools				61	64	63	63	60	74	60	74		64
491	Mooreville City Schools	67	67	62	63	67	68	72	65	89	62	89		72
500	Jackson County Schools	60	60	58	61	56	56	60	60	76	56	76		61
510	Johnston County Schools	61	61	49	53	61		56	56	76	49	76		61
520	Jones County Schools	62	58	65	58	56	59	58	55	77	55	77		65
530	Lee County Schools	60	61	48	61	57	60	59	54	78	48	78		61
540	Lenoir County Public Schools	60	52	54	69	46	55	56	65	75	46	75		69
550	Lincoln County Schools	57	67	58	58	59	57	57	60	74	57	74		67
560	Macon County Schools													N/A**
570	Madison County Schools	60	60	58	56	50	56	51	57	53	50	60		60
580	Martin County Schools	50	60	53	60	59	55	58	60	79	50	79		60
590	McDowell County Schools	60	60	58	60	57	57	56	60	79	56	79		60
600	Charlotte-Mecklenburg Schools	60	56	56	60	58	65	55	58	68	55	68		65
610	Mitchell County Schools	60	60	60	55	57	57	58	58	61	55	61		60
620	Montgomery County Schools	62	61	56	60	58	55	58	55	78	55	78		62
630	Moore County Schools													N/A**
640	Nash-Rocky Mount Schools	54	62	58	59	57	57	57	59	71	54	71		62
650	New Hanover County Schools	43	58	58	55	56	57	56	60	71	43	71		60
660	Northampton County Schools	59		53	50	61	58	60	57	78	50	78		61
670	Onslow County Schools													N/A**
680	Orange County Schools													N/A**
681	Chapel Hill-Carrboro Schools													N/A**
690	Pamlico County Schools	60	59	47	57	59	58	58	60	79	47	79		60
700	Pasquotank County Schools	60	60	58	66	54	56	56	59	68	54	68		66
710	Pender County Schools													N/A**
720	Perquimans County Schools	60	58	58	48	53	55	56	49	77	48	77		60
730	Person County Schools	60	58	58	60	46	58	58	54	78	46	78		60
740	Pitt County Schools													N/A**
750	Polk County Schools	56	55	58	59	57	57	60	58	78	55	78		60
760	Randolph County Schools	60	60	59	55	58	63	56	56	74	55	74		63
761	Asheboro City Schools	60	60	58	58	58	58	65	58	68	58	68		65

## Teacher Summer Break Days

LEA	LEA NAME	1998/97	1999/98	2000/99	2001/0	2002/1	2003/2	2004/3	2005/4	2006/5	Min	Max	Max_Without2006	Note
770	Richmond County Schools	60	58	46	51	57	58	59	60	78	46	78	60	
780	Robeson County Schools													N/A**
790	Rockingham County Schools	60	58	58	58	53	57	56	58	69	53	69	60	
800	Rowan-Salisbury Schools	48	58	59	61	57	56	59	59	78	48	78	61	
810	Rutherford County Schools	77	76	76	73	75	75	71	74	91	71	91	77	
820	Sampson County Schools													N/A**
821	Clinton City Schools	53	55	57	61	61	58	58	58	82	53	82	61	
830	Scotland County Schools	60	58	44	53	53	60	60	61	84	44	84	61	
840	Stanly County Schools													N/A**
850	Stokes County Schools	51	60	58	59	57	57	57	54	65	51	65	60	
860	Surry County Schools													N/A**
861	Elkin City Schools													N/A**
862	Mount Airy City Schools	60	51	60	55	60	56	56	56	69	51	69	60	
870	Swain County Schools				66	61	57	56	59	73	56	73	66	
880	Transylvania County Schools							71	71	90	71	90	71	
890	Tyrrell County Schools													N/A**
900	Union County Public Schools													N/A**
910	Vance County Schools													N/A**
920	Wake County Schools													N/A**
930	Warren County Schools													N/A**
940	Washington County Schools	73	73	61	72	67	67	67	70	91	61	91	73	
950	Watauga County Schools	62	56	55	55	55	61	52	58	61	52	62	62	
960	Wayne County Public Schools	52	55	56	48	58	58	58	59	82	48	82	59	
970	Wilkes County Schools													FY06 only
980	Wilson County Schools	46	55	56	56	60	59	60	53	76	46	76	60	
990	Yadkin County Schools	51	60	54	61	57	56	58	59	75	51	75	61	
995	Yancey County Schools	60	60	55	61	58	58	58	58	61	55	61	61	
<b>Min</b>		<b>43</b>	<b>46</b>	<b>42</b>	<b>43</b>	<b>46</b>	<b>44</b>	<b>47</b>	<b>42</b>	<b>53</b>	<b>42</b>	<b>91</b>		
<b>Max</b>		<b>77</b>	<b>76</b>	<b>76</b>	<b>73</b>	<b>75</b>	<b>75</b>	<b>72</b>	<b>74</b>	<b>91</b>		<b>91</b>	<b>77</b>	

	1998/97	1999/98	2000/99	2001/0	2002/1	2003/2	2004/3	2005/4	2006/5
Count	76	75	77	78	80	79	81	80	81
Days	4496	4404	4365	4493	4635	4544	4674	4635	6007
Avg	59	59	57	58	58	58	58	58	74

**Note:**

- 1/ Based on survey data collected from LEA (deadline 3/31/2006)
- 2/ Response rate 72.2%; (32 LEA's missing, 83 responded)
- 3/ Comment "N/A\*\*" in field Note means we didn't receive survey from LEA by given deadline
- 4/ Assuming that 2006/2007 year starts on 8/14/2006 and previous year ended on 6/14/2006, there is 61 break days
- 5/ Where data was not available or was incorrect, DPI made either a correction or didn't include the date
- 6/ Survey from LEA 970 included only data for FY2006



## **Return to Work Options**

~~16 March~~ 5 April 2006

### **Group One:**

#### **All employees subject to the earnings cap**

- a) The earnings cap
  - 1. Continue to prohibit earning more than the greater of 50% of pay or \$20,000, as indexed, in the first 12 consecutive months or in any calendar year thereafter; and
  - 2. In addition, require
    - i. earnings to be less than 60% of pay in any given month; or
    - ii. temporary or interim employment that results in more than 60% pay in a month to be for a fixed term of no more than six months, with at least a six month complete break in service since retirement.
- b) Establish a normal retirement age of 60 with 25 years of service. This would not effect the calculation of age and years of service necessary to receive an unreduced, or a reduced, retirement benefit under TSERS. Anyone who reached 65 or older with 5 or more years of service will be deemed to be at normal retirement age.
- c) For employees who retire younger than normal retirement age:
  - 1. Prohibit pre-termination re-employment agreements; and
  - 2. Require a break in service of 25 working days (calculated based on the actual annual work calendar for that employee for the twelve months prior to retirement).
- d) For employees who retire at or older than the normal retirement age, allow pre-termination agreements, and do not require a break in service.

### **Group Two:**

#### **University and Community College Faculty**

- a) Remove sunset from the UNC Phased Retirement Program.
  - a. UNC will establish a normal retirement age (59 ½ or 60), and will limit program to faculty at or older than that age.
- b) Authorize the Community Colleges to establish a similar phased retirement program for its faculty.

### **Group Three:**

#### **Public school classroom teachers who are exempt from the earnings cap**

- a) Keep six month break requirement if that is fiscally necessary and the requirement for the employing school system to contribute 11.7% of salary to TSERS.
- b) Clarify that the teacher must have a one-time six month break in service after retiring and before returning to work full time, but that it does not have to be immediately preceding the effective date of re-employment
- c) During the break in service, allow them to substitute up to x [2-3] days per week
- d) Develop a meaningful incentive to induce teachers not to retire after 30 years (e.g. a significant bonus that counts toward final average compensation, or an employer pre-tax contribution to a 401(k) or other deferred comp plan). Continue to work on this point.



ROY COOPER  
ATTORNEY GENERAL

State of North Carolina  
Department of Justice  
P.O. Box 629  
RALEIGH, NORTH CAROLINA  
27602-0629

REPLY TO:  
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7 April 2006

Mr. Michael Williamson  
Director, Retirement Systems Division  
State of North Carolina  
Department of State Treasurer  
325 N. Salisbury Street  
Raleigh, North Carolina 27603

Dear Michael:

I write to you, in my capacity as AG counsel for the North Carolina State Retirement Systems Division, with comments on the "Return to Work Options" outlined in a document dated 16 March 2006, which you recently provided to me. It is my understanding that these options are to be discussed at a meeting of a legislative subcommittee on 10 April.

Based on my own research, I believe it far more likely than not that the IRS would determine that there was not the required "break in service" for employees retiring below normal retirement age, if the General Assembly were to adopt, without alteration, two features in the 16 March 2006 Options outline.

As you know, a pension plan will be deemed **not** to meet the requirements for qualification, under section 401(a) of the Internal Revenue Code, when it permits employees, prior to normal retirement age, to withdraw any part of their retirement accumulations when a "bona fide termination of employment" has **not** occurred. See, e.g., Rev. Rul. 56-693, 1956-2 C.B. 282, as modified by Rev. Rul. 60-323, 1960-2 C.B. 148; see also Rev. Rul. 74-254, 1974-1 C.B. 91 (employer did not satisfy section 1.401-1(b)(1)(I) of the Income Tax Regulations, where employee ceased participation in retirement plan as active member prior to normal retirement age, but continued in employment with same employer while receiving distributions from retirement plan).

Federal law uses a facts-and-circumstances test to determine whether the employment relationship between an employee and his employer has been severed for purposes of a "bona fide termination of employment" upon retirement. It will, for example, be deemed significant – in a way adverse to the tax-qualification status of a pension plan -- that an employee "retires" with some type of pre-arrangement for re-employment with the employer (in our case, the State and its subdivisions). Therefore, I would

counsel against the proposed item in the Options outline at **Group Three**, which would "allow" public school teachers to substitute-teach several days a week during the break in service. Substitute teachers are drawn from substitute lists. The presence of a "retired" teacher's name on such a list, during the six-month break in service, would in my view constitute a disqualifying pre-arrangement for re-employment, even though such re-employment is not for a guaranteed number of days per week during the break in service. I reach that conclusion because a retired teacher placing his name on a substitute list has **not** made the required independent personal decision to permanently **sever** the employment relationship.

I also have reservations about a similar item at **Group One(c)** in the Options outline. In my opinion, a break in service of only 25 business days, no matter how calculated, would most probably not pass the IRS test for a "bona fide termination" of employment prior to normal retirement age. Such a break in service does not, on its face at least, signal an employee's intention -- as required by the Code and its regulations -- not to return to work. I would think that it would be difficult, if not impossible, for TSERS to demonstrate, to the satisfaction of the IRS, such intention under a 25-day scenario, were that change to be made in the current statutes. The Retirement System would risk losing its tax-qualified status if this item were to be enacted, in this form, by the General Assembly.

As you already know, the consequences of the failure by any defined benefit plan to enforce the requirement that there be a "bona fide termination" for those retirees below normal retirement age in receipt of retirement distributions can be extremely serious. Disqualification of TSERS by the IRS would result in adverse tax consequences to all TSERS participants. That is a grave risk, in my opinion, under the new proposal being considered by the Education Subcommittee on Retirees' Return to Work.

I hope that this letter is of assistance to you. This is an advisory letter only; it is not an official opinion of the Attorney General's Office, as it has not been reviewed and approved in accordance with the procedures for issuing Attorney General opinions. Please feel free to contact me, if you desire any additional information.

Sincerely,

  
Joyce S. Rutledge  
Special Deputy Attorney General

cc: Brett Joyal, State Retirement Systems Division