



Return to Service Guidance

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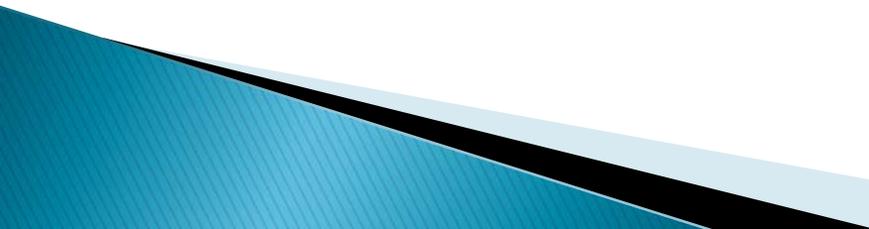
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- ▶ www.pasbo.org/webforums
- ▶ Recording will be available tomorrow

Agenda

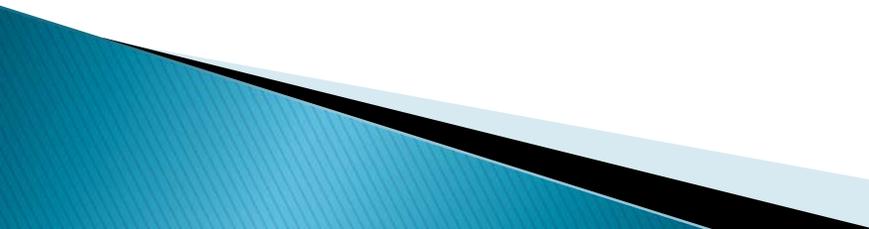
- ▶ Why do we care?
 - ▶ What is a Break in Service?
 - ▶ What is a Return to Service?
 - ▶ What are the Exceptions?
 - ▶ Examples
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Why do we care?

- ▶ IRS—General Rule of tax qualification
 - PSERS is a DB pension plan under §401(a) of the Internal Revenue Service Code.
 - Generally, a defined benefit plan cannot pay benefits before retirement – “in-service distributions”.
 - ▶ Public Perception
 - ▶ Retirement Code prohibits return to service
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What is a Break in Service?

- ▶ The Retirement Code – employment must be “formally discontinued” from all public school employers before a member can receive an annuity.

 - ▶ Statutory Factors:
 1. Whether the change in the employment relationship is more than a formal or technical change, requiring an intent to sever the employment before the retirement date;
 2. Whether there is a reasonable anticipation or prearranged agreement between the member and the employer to return to service;
 3. The amount of time that has elapsed from the date of retirement and the return to school service;
 4. Whether the services are a continuation of the member’s previous service with the same employer;
 5. Any other factors that PSERS deems appropriate.
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What is a Return to Service?

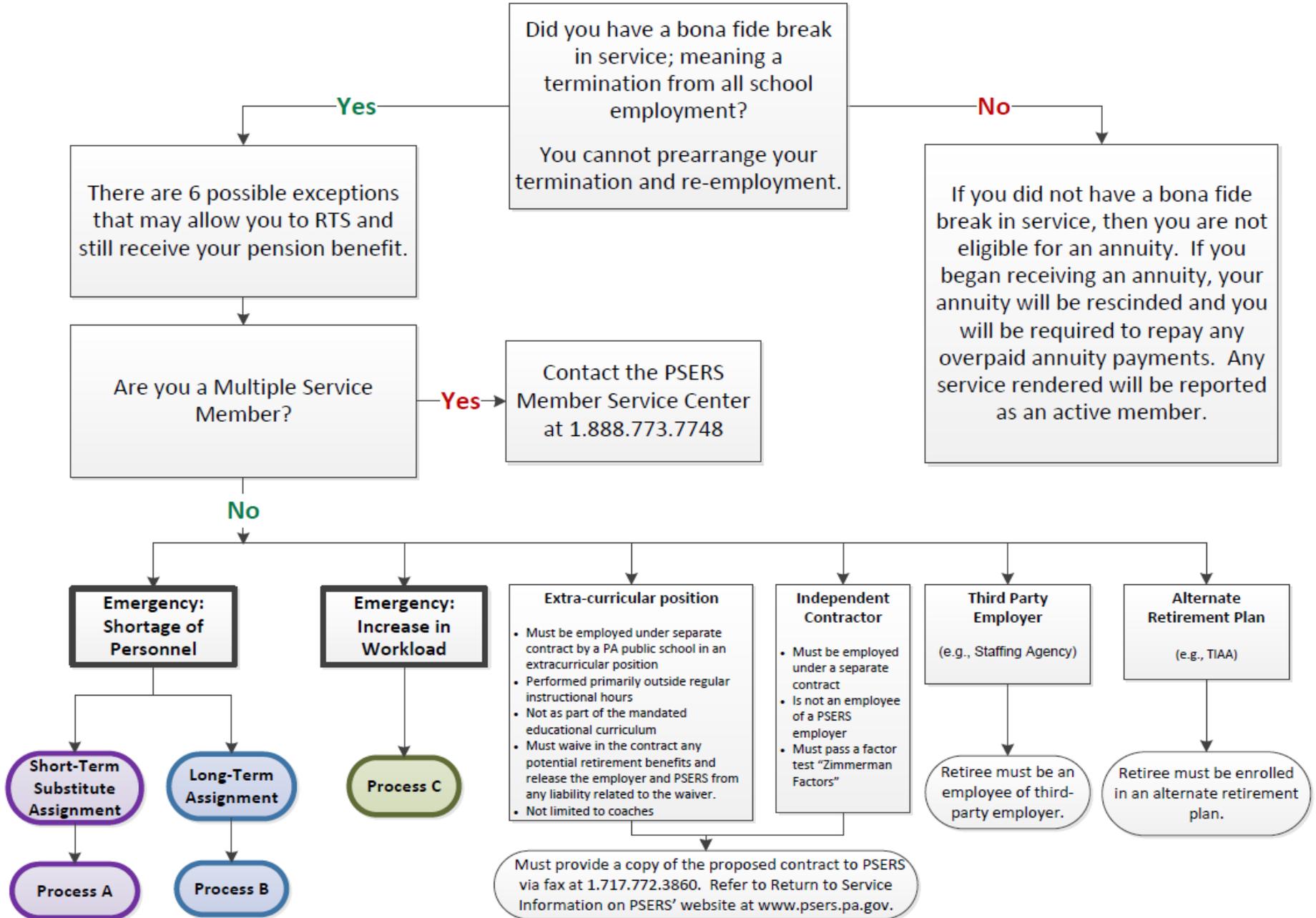
- ▶ A return to service occurs when a retiree renders school service to a school employer in any capacity, and is also receiving a retirement benefit.
 - ▶ Upon return, the retiree's benefit, by law, must be suspended, unless, the return satisfies one of the six exceptions.
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What are the Exceptions?

1. Shortage of Personnel
 2. Emergency Creating an Increase in Work Load
 3. Extracurricular Contract
 4. Independent Contractor
 5. Third Party Employer
 6. Alternate Retirement Plan
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Return to Service (RTS) Guidance

PASBO Conference March 2017



Exceptions

▶ Emergency Exceptions:

1. Shortage of Personnel

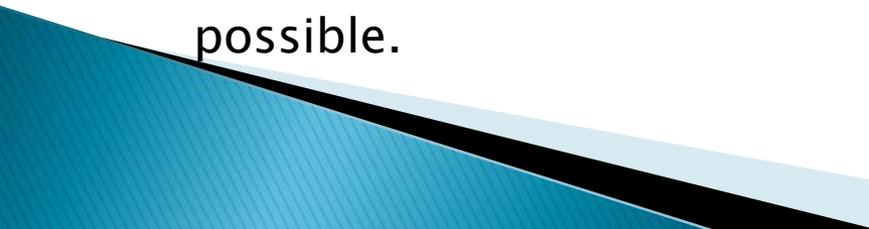
- A lack of a pool of candidates must be established.
- Employer must promptly begin a diligent, Good Faith Search to find a replacement after notification of a resignation.
- Short-Term Substitute Assignment v. Long-Term Substitute Assignment

2. Emergency Creating Increase in Work Load

- A workload increase must be unexpected, temporary, and beyond the normal responsibilities of any existing position.
- The termination, resignation, or retirement of an employee is not an “emergency.”
- The need to train a replacement is not an emergency that increases the workload.
- The workload remains the same; what changes is who is available to complete it.

▶ One School Year

Adequate and Good Faith Search:

- ▶ Should not be geared at hiring only retirees
 - ▶ Should not be so specific to the employer that only the retiree, who previously performed the work, would qualify.
 - ▶ Should be placed in a common and public location easily accessible to a pool of candidates beyond the employees of the employer.
 - ▶ Should not hire a PSERS retiree over a non-retiree candidate based on suitability.
 - ▶ Should hire a qualified replacement not a better replacement than the PSERS retiree.
 - ▶ If only a PSERS retiree replies to the advertisement, then the advertisement must remain open and the employer must continue to actively recruit for the position. The employer should also review the advertisement to determine whether it should be revised to attract the appropriate candidate.
 - ▶ Critical vacancies must be filled on a permanent basis as quickly as possible.
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**Emergency:
Shortage of Personnel –
Short-Term Substitute Assignment**

“Process A”

Definition – “Short-term substitute assignment” means an assignment that is not to extend longer than one week. If the short-term substitute assignment extends beyond one week, then you must use the long-term assignment-Process B.

To apply for a School Year Approval to use PSERS retirees - If a school employer has an ongoing need for short-term substitutes throughout the current school year, the school employer can submit a letter to PSERS to request a general approval that will apply to all PSERS retirees who will work as short-term substitutes throughout that school year.

The letter submitted to PSERS should:

1. Confirm that the school employer has a **substitute list** that distinguishes between PSERS retirees and those who are not.
2. Confirm the school employer has a **defined notification procedure** in place that first notifies those who are not PSERS retirees about the available position. Only after the list of those who are not PSERS retirees is exhausted, and someone who is not a PSERS retiree is not available, may a school employer use a PSERS retiree for the short-term substitute position.
3. PSERS will provide the school employer with a written approval that they may provide a copy to any PSERS retiree serving as a short-term substitute during the year noted in the school year approval.

**Emergency:
Shortage of Personnel –
Long-Term Assignment**

“Process B”

Definition – “Long-term assignment” means an assignment that is longer than one week. You may not use the “school year approval” for a long-term assignment.

To verify the use of a PSERS retiree in a long-term assignment: If a school employer has an immediate need for a long-term assignment, and someone who is not a PSERS retiree is not available, and the school employer would like to use a PSERS retiree, the school employer should provide a written detailed explanation of the situation to PSERS.

The written explanation should address the following:

1. How and when did the position become vacant?
2. What steps is the district taking to hire an employee who is not a PSERS retiree?

Once PSERS has the necessary information, we will make a determination on the request.

**Emergency:
Increase in Workload**

“Process C”

Definition - An emergency in workload is an emergency that increases the workload creating a serious impairment of service to the public. The emergency must be unexpected and unforeseen. The increase in workload must be temporary and above and beyond normal responsibilities of any existing position. A recent retirement of an employee will not generally qualify as an ‘emergency that creates an increase in the workload’ because the normal workload stays the same; what changes is who is available to perform the work.

To verify the use of a PSERS retiree due to an emergency increase in workload: The school employer should make a written request to PSERS.

The written request should address the following:

1. Describe the nature of the situation that created the increase in workload.
2. Explain in detail why the increase in duties cannot be performed by existing staff.
3. How long do you expect the workload to be at an increased level?

Once PSERS has the necessary information, we will make a determination on the request.

Exceptions continued. . .

- ▶ Extracurricular Contract:
 1. a written, separate contract with the public school employer that contains a waiver of PSERS; and
 2. perform the duties primarily outside regular instructional hours and not as part of the mandated educational curriculum.
 - *If being reported and contributing to PSERS for service that is primarily outside regular instructional hours and not part of the mandated educational curriculum, the member must experience a bona fide break in service before retiring and returning under the Extracurricular exception.*

- ▶ Third Party Employer
 - If the third party employer was established or is controlled by a retiree, PSERS will look through the third party employer to determine whether the company is a valid company or created to allow the retiree to return to service.
 - Factors include: (1) when the company was established; (2) whether other employees provide service on behalf of the company; and (3) whether the company provides service to other entities.

- ▶ Alternate Retirement Plan

Exceptions continued. . .

- ▶ Independent Contractor:
 - Separate Contract
 - Factor Test:
 1. control of manner of work that is to be done;
 2. responsibility for result only;
 3. terms of agreement between the parties;
 4. the nature of the work or occupation;
 5. skill required for performance;
 6. whether one is engaged in a distinct occupation or business;
 7. which party supplied the tools;
 8. whether payment is by the time or by the job;
 9. whether work is part of the regular business of the employer;
 10. the right to terminate employment at any time;
 11. presence at the school employer's site;
 12. whether wages, working conditions, and fringe benefits are comparative to other employees of the school employer.

Break in Service-- *The mere existence of a contract, the terms of the contract, and the intent of the parties are not determinative factors.*

Scenarios

Scenario 1.

- ▶ A school district's business manager retired on June 30 after working 20 years as business manager.
 - ▶ In mid-July, the school district's director of facilities resigns, leaving the district without a business manager or director of facilities while the district is engaged in a school construction project.
 - ▶ The district wants to hire the former business manager, who has extensive knowledge of the project, to serve temporarily as the director of facilities until a permanent replacement can be hired.
 - ▶ The former business manager, now annuitant, is hired on July 30.
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Scenario 1. Answer

ANSWER: The former business manager would be permitted under these circumstances to return to service under the shortage of personnel exception **IF**: (1) the former business manager experienced a break in service; and (2) the employer promptly began a good faith search for a new director of facilities upon notification of resignation.

If, however, the employer had advance notice of the director of facilities resigning, then the good faith search requires the employer to begin the hiring process and establish a shortage of personnel before hiring the former business manager.

❖ **Note:** the existence of the construction project is not relevant to the establishment of a shortage of personnel.

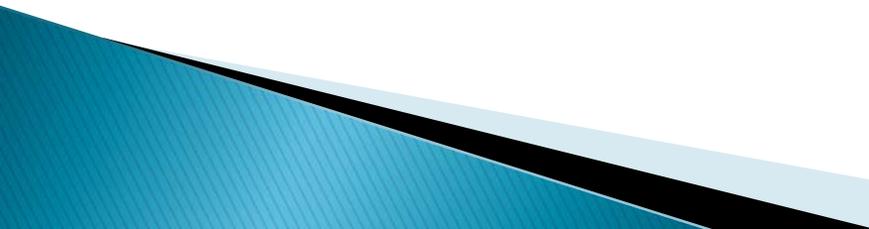
Scenario 2.

- ▶ A business manager notifies the district in September that he is retiring on December 1st after working in the district for 20 years.
- ▶ The business manager files a retirement application with PSERS on October 15th requesting a retirement date of December 1st.
- ▶ On November 2nd, the District asks the business manager to return as an independent contractor to perform the same services rather than filling the position.
- ▶ The business manager agrees to provide some of the same services but not all and only agrees to work part-time. The remaining services are performed by other employees.
- ▶ On November 15th, the Board approves the contract with the business manager and the contract is executed to be effective January 1st.

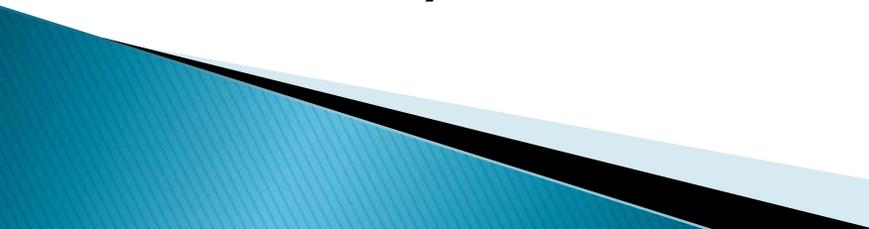
Scenario 2. Answer

- ▶ Answer: The business manager did not experience a break in service because: (1) the modified duties were a continuation of the duties performed as a business manager; (2) the parties entered into the contract before the effective date of retirement; (3) the business manager terminated in the middle of the school year; (4) the district did not advertise for the position; and (5) the short period of time that elapsed between the “termination” and the “return.” Thus, there was no intent to truly sever the employment relationship.
- ▶ Even assuming the business manager experienced a break in service, PSERS would need to investigate the outsourcing of the position. A position may be outsourced through either an independent contractor or a third party entity. A member’s position, however, cannot be reclassified or outsourced simply by signing an independent contractor contract or creating a third-party entity.

Scenario 3.

- ▶ A business manager retires on December 31st.
 - ▶ In March, the retiree is contacted by a different school district to return on a temporary basis as clerk of the works for the school district's construction project due to the retiree's extensive knowledge and experience with school construction.
 - ▶ The retiree enters into an independent contractor contract with the school district identifying the services to be rendered related to the construction project.
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Scenario 3. Answer

- ▶ Answer: The retiree experienced a break in service because she began service with another school district in a different position from the one she retired after she terminated and there does not appear to be any prearrangement.
 - ▶ Assuming the legal relationship of an independent contractor was properly created, the retiree would be permitted to return as an independent contractor without affecting her annuity.
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Scenario 4.

- ▶ A school district HR director resigns and retires.
 - ▶ The district initiated a good faith search prior to the effective date of the resignation, but none of the available candidates have any school experience.
 - ▶ A new HR director is hired but has no school experience. The district wants to temporarily bring back the former HR director to help with the transition.
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Scenario 4. Answer

- ▶ Answer: The former HR Director is not permitted to return. Because the candidate was hired, despite the lack of experience, there is no shortage of personnel because *the position has been filled*.
- ▶ If the candidate did not meet the minimum qualifications, then the candidate should not have been hired, in which case there would be a shortage of personnel.
- ▶ If a replacement is hired, then PSERS must assume that the employer accepted their qualifications.

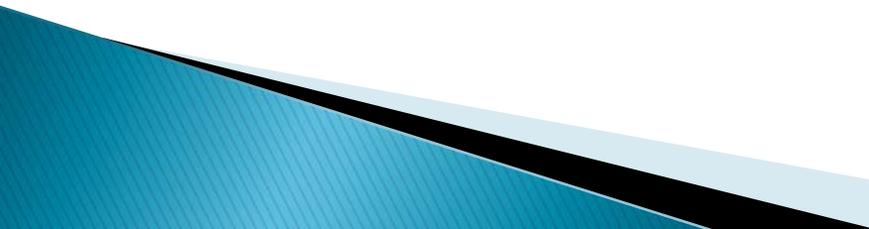
Scenario 5.

- ▶ A Spanish teacher retires on June 30th.
 - ▶ The district hires a new Spanish teacher for the next school year.
 - ▶ On December 15th, the new Spanish teacher schedules a medical leave for one month beginning in January.
 - ▶ The district wants to contact the recent retiree, who agreed to substitute teach during retirement, to teach the class for two weeks.
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Scenario 5. Answer

- ▶ Answer: The retiree may return on an emergency basis if there are no non-retirees available. The district may use a subject-certified retiree before employing someone who is not a retiree who is not certified in the particular subject. The district, however, should use Process B and notify PSERS of the individual retiree.
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Scenario 6.

- ▶ A teacher who worked for a school district for 15 years also coached the boys soccer team and was paid a stipend that was reported to PSERS.
 - ▶ The teacher now wants to retire at the end of the school year but continue in the coaching position after retirement.
 - ▶ The school board agrees in May to hire the teacher as the soccer coach for the fall season.
 - ▶ The teacher terminates and retires June 30th.
 - ▶ On July 1st, the former teacher enters into an extracurricular contract for coaching soccer in the fall.
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Scenario 6. Answer

- ▶ Answer: The former business manager experienced a break in service and can retire and render service under the Extracurricular exception.
- ▶ To ensure continual coverage, districts will routinely approve seasonal coaches ahead of the season. This is generally not viewed as a prearrangement because a seasonal coach has no contractual expectation of returning the next season.
- ▶ Thus, most coaches will experience a break in service at the end of the season.
- ▶ Before returning to that position under the extracurricular exception, however, a member must terminate from all public school positions, including the coaching position, retire, and *then* enter into the extracurricular contract.

Questions?

