

**Commonwealth of Pennsylvania**  
**Public School Employees' Retirement System**  
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**To:** Bylaws/Policy Committee

**From:** Joseph E. Wasiak Jr., Assistant Executive Director

**RE:** Statement of Organization, Bylaws, and Other Procedures

**Date:** May 27, 2014

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At the May 1, 2014 Bylaws/Policy Committee meeting the committee was briefed on the efforts of staff to update and develop proposed changes to existing Board policies. As you may recall from the presentation, we recommended that 8 of the 16 existing policies required no changes and should be left as is, 2 required minor changes (the Education Policy and the Public Information Policy), 4 required major changes, and 2 should be deleted. On June 13, you will be asked to vote to approve some of the recommended revisions to the Statement of Organization, Bylaws, and Other Procedures (Bylaws).

Attached is a copy of the Bylaws with the proposed changes highlighted in red for your review. These changes are also listed below. The changes we are asking you to review prior to the meeting are in Articles I through III and V through X. Changes to Article IV will not be addressed at this Board/committee meeting. Article IV identifies the duties of the standing committees and changes in this section will be reviewed by an agency committee consisting of both staff and Board members before they are presented to the Bylaws/Policy Committee and eventually the Board for approval.

Please let me know if you have any questions.

**Article I**  
**Section 1.2.**

Correct the official mailing address of the headquarters to "Public School Employees' Retirement System, 5 North 5<sup>th</sup> Street, Harrisburg, Pennsylvania 17101".

**Article II**  
**Section 2.1 Composition.**

Add the following footnote to the end of the second sentence:

6 The Board has developed an Elections Policy that governs the process for electing Trustees from the members of the System and from the members of the School Boards Association.

**Section 2.2. Ex-officio and legislative Members; Designees.**

Footnote 7, Delete the words “(second sentence)”

Footnote 8, Delete the words “(fourth, fifth, and sixth sentences)”

Footnote 9, Delete the words “(last sentence).”

**Section 2.3 Appointive and Elective Members; Term of Office.**

Footnote 15, Delete the words “(third sentence)”

Footnote 17, Replace entire footnote with:

24 Pa. C.S. §8501(a) provides for a term of three years, but §8501(b) seeks to preserve a scheme of staggered terms by providing uniformly that elected members serve "until" January 1. The three-year term of §8501(a) thus holds for any newly elected member who is qualified to take his or her oath of office on the January 1 immediately after the predecessor's term expires. If the election results cannot be certified to the Board by January 1 or if, for any other reason, a successor is not in position to take the oath and occupy the office from the beginning of the nominal three-year term, then the predecessor in office will continue in office as a de facto public official until a successor is certifiably elected and has qualified. As to elective offices, if a valid holdover clause is applicable and no successor qualifies as such after the end of a term of years, the term of an incumbent is extended and there is no vacancy for the Governor or other appointing authority to fill.” Zemprelli v Thornburgh, 423 A.2d 1072, 1076 (Pa. Cmwlth. 1980).

Footnote 18, Delete the words “(third sentence)”

**Section 2.4 Vacancies.**

Footnote 19, Delete the words “(last sentence)”

Add the following Footnote 20 at the end of the paragraph:

20 This process is more fully covered in the Board Elections Policy.

**Section 2.5. Oath of Office.**

Add the following sentence to the end of the paragraph:

Ex-Officio and legislative members may appoint a designee prior to the designees' filing of a Statement of Financial Interests for the preceding calendar year and that designee may exercise their duties as a designee immediately upon their filing of Statement of Financial Interests for the preceding calendar and their taking of the oath of office.

**Article III**  
**Section 3.1. Chair.**

Footnote 27. Delete the words "(seventh sentence)".

**Section 3.3. Vacancies.**

Change the last sentence to reflect "Section 3.1 and 3.2 hereof."

**Section 3.4. Other Offices.**

Footnote 32. Replace with: "Id. Pursuant to 24 Pa. C.S. §8521(d) the Board will annually review and approve all payments that are reflected in the June 30 Financial Statements of that year."

**Article V**  
**Section 5.1. Scope and Intent of Article.**

Footnote 39. Add the following footnote to the end of the last sentence of this section:

<sup>39</sup> An exception to this is an Agency Committee as defined in Section 4.5 of these Bylaws which is not bound by the requirements of the Sunshine Act.

**Section 5.2. Quorum.**

Rewrite this section to read: " A majority of the Board or Committee as the case may be shall constitute a quorum."

Footnote 40. Rewrite this footnote to read:

"The Commonwealth Court enunciated the quorum majority rule in 2007 stating: "Unless there is contrary legislative intent to the common law rule requiring a vote of a full body to be valid, all that is needed is a majority of a quorum to take action; not that all the members of the Board must vote who are authorized but are not seated. Ronald H. Brown Charter Sch. V. Harrisburg City Sch. Dist., 928 A.2d 1145, 1147 (Pa. Cmwlth. 2007). The Ronald H. Brown court quoted the Pennsylvania Supreme Court's explanation in Di Giacinto v. City of Allentown: "Under the common law rule so long as a quorum is present at a meeting, all that is required is that the highest vote be equal to a majority of the quorum number, even though the highest vote constitutes only a plurality of all the legal votes cast. This is true even if more than the quorum number is present at the meeting."

### **Section 5.3. General Rule; Open Meetings.**

Add the following sentence to end of this paragraph. “ The Chair shall preside at all meetings of the Board and shall have such other powers and duties as are provided by these Bylaws or by resolution of the Board to the extent not inconsistent with the Public School Employees’ Retirement Code and other applicable law. The Vice Chair shall preside at all meetings of the Board in the absence or inability of the Chair to act and shall have such other powers and duties as may be provided by resolution of the Board to the extent not inconsistent with the Public School Employees’ Retirement Code and other applicable law. In the event that neither the Chair or Vice Chair are able to be present at a meeting of the Board, the Chair will designate a Board member to preside over the meeting in their absence.

### **Section 5.6. Emergency Meetings.**

Footnote 43. Attach this footnote to the first sentence:

“<sup>43</sup> As defined in the Sunshine Act, 65 Pa. C.S. §703.”

### **Section 5.8. Participation.**

Rewrite this section to read “Each member, including each designee acting in the stead of an ex-officio or legislative member, at any meeting, shall have equal rights to reasonable participation in the deliberations and other business of the meeting, provided that with respect to any one order of business not more than one designee of an ex-officio or legislative member shall have the right to participate. The Board or Committee Chair may grant recognition to more than one designee of an ex-officio or legislative member with respect to any one order of business. The Chair may also grant recognition to any employee of the System scheduled in advance to report, or resource person accompanying a Board member who requests his or her recognition for the purpose of reporting, on any order of business on the meeting agenda.”

### **Section 5.9. Public Participation.**

Rewrite this section to read: “At any open meeting, the Chair or Committee Chair as the case may be shall, before entertaining any motion to adjourn, grant recognition to any member of the general public in attendance for the purpose of addressing the Board on any matter concerning the business and operations of the Board and the System, subject, however, to such reasonable time limits as may be imposed on each speaker or on all such participation in the discretion of the Chair or Committee Chair as the case may be or by resolution of the Board. This Section 5.9 shall not apply to any proceeding governed by the Administrative Agency Act in relation to adjudications, nor to any proceeding for the adoption of rules and regulations or orders in the nature of rules and regulations.”

**Section 5.10. Voting.**

Add “or the Committee as the case may be.”

**Article VII**

**Section 7.1 Indemnification and Insurance.**

Move paragraph (a)(iv) to the beginning of the Section so that it becomes paragraph (a)(i) with the corresponding change to the numbering of the succeeding paragraphs.

Paragraph (g)(iv): change the reference from Section 7.1(g) to Section 7.1(g)(i).

Paragraph (g)(v): Change the last sentence to read “The System shall not subrogate against any other person who is an Indemnitee hereunder unless such other person is guilty of criminal conduct, willful misconduct, or self dealing under Subsection (a)(i) of Article 7.1.

**Article X**

**Section 10.4. Recording or Restatement.**

Rewrite this paragraph to read “The text of each amendment to or repeal of these Bylaws, together with a notation of the date of such amendment or repeal, shall be permanently maintained by the Board. Following the Board’s adoption of each amendment or repeal, an updated restatement of the Bylaws shall be prepared.”

Under the heading “Sections Amended June 21, 1996” add “Designees” to the entry for “Article II Section 2.2 Ex-officio and Legislative Members;”

Under the heading “Sections Amended April 29, 2005, Article X, Section 10.3” change “of” to “or”.