

**Questions in this document were posed by the NC School Boards Association. Responses are from the Retirement System in the NC State Treasurer's Office.**

1. Under S399, which schools are considered high-need schools?

A high-need school is any school that is classified as a Title I school **OR** received an overall school performance grade of D or F. If a school had this designation on or after July 1, 2017, they would be considered a high-need school regardless as to whether the school maintains one or both of those classifications.

2. Which teachers qualify under the bill to be hired as a high-need retired teacher at a high-need school?

The teacher must meet all of the following requirements:

- a. Retired on or before **February 1, 2019**
  - b. At the time of retirement was at least 65 with five years of creditable service, **OR** was at least 60 with 25 years of creditable service, **OR** had 30 years of creditable service
3. Can a teacher who meets the qualifications still be hired under the IRS earnings cap to teach at a high-need school?

No, if a teacher is to be hired to teach at a high-need school and the teacher meets the definition of high-need retired teacher (see question #2) then the teacher can only be employed under the provisions of S399.

4. Can a teacher who meets the definition of a high-need retired teacher be employed at a school that is not a high-need school?

A teacher who retired effective on or before February 1, 2019 and meets the age and service criteria described in question #2 can be employed at any school. Any such teacher employed at a high-need school is a "high-need retired teacher". Otherwise, the teacher is not a high-need retired teacher, and the current rules (before S399) apply. For example, the retired teacher could be employed at a school other than a high-need school under the IRS earnings cap.

Under Section 2(a) of S399, the N.C. Department of Public Instruction (DPI) will certify to the Retirement System which individuals have been employed as high-need retired teachers.

Under Section 5(d) of S399, an individual who is employed as a high-need retired teacher cannot later elect into a position (at any school or location) that allows the individual to accrue additional pension benefits. It is the responsibility of the local board of education to enforce this requirement.

5. If a teacher qualifies as a high-need retired teacher and has already been employed by the school system under the IRS earnings cap rules for the upcoming school year at a high-need school, can an LEA still employ that person under the earnings cap? Does it make a difference if there was a written contract?

Section 1 of S399, which is effective July 1, 2019, states that any individual meeting the criteria from question #2 above, who "is re-employed by a local board of education to teach at a high-need school," is a high-need retired teacher. The retirement benefits of high-need retired teachers will be administered under the provisions of S399, with no earnings cap. Under Section 2(a) of S399, DPI will certify to the Retirement System which individuals have been employed as high-need retired teachers. If it is determined by the school system and DPI that a teacher who had already been employed for the upcoming school year does not meet the definition of a high-need retired teacher, and DPI does not certify the teacher as such, then their retirement benefits will be administered under current (before S399) rules, including the earnings cap.

6. If a teacher is retired but does not meet the definition of high-need retired teacher, can that teacher be employed at a high-need school?

Yes, the teacher would be hired under the current (before S399) rules, including the application of the earnings cap.

7. Is there any exposure for school districts?

Yes.

First, see question #9 below regarding potential financial liability.

Second, school districts will be responsible for reporting all employees to the Retirement System, both high-need retired teachers and all other employees, in accordance with the law, and in accordance with the certification provided by DPI to TSERS. For example, an employee who meets the definition of “high-need retired teacher” must be reported as such to TSERS and must be certified as such by DPI; and employees who are not reported to TSERS as high-need retired teachers must not be listed on the DPI certification. School districts are responsible for the accuracy of their reports to TSERS.

Third, there is a risk that the IRS will find that S399 jeopardizes the tax status of TSERS. If that occurs, the provisions of S399 will automatically be repealed within 30 days. The State Treasurer’s office would notify school districts within three business days of such a finding by the IRS, and then the school districts would have three business days to notify all high-need retired teachers about the repeal. In such a situation, school districts would need to consider any implications related to high-need retired teachers’ past and future compensation, retirement benefits, health insurance, or other terms of employment.

The risks outlined above are those related to retirement benefits. School districts employing high-need retired teachers may also assume other risks that are not directly related to retirement benefits.

8. What is the timeline for the Treasurer’s Office to seek a private letter ruling from the IRS?

The State Treasurer’s office will begin working with tax counsel on a request for a private letter ruling upon the enactment of S399 or similar provisions. Once the request is submitted, the State Treasurer’s office does not have control over the time that it takes IRS to consider the request, to consider any additional information that may be requested in the course of the review, or to issue conclusions. The entire process may take six months to a year, or longer if unforeseen complications arise during the review.

9. What potential liability does the school system have because of this bill?

School systems who employ high-need retired teachers under the provisions of S399 are potentially liable for penalties that the IRS may assess if the IRS finds that S399 jeopardizes the tax status of TSERS.

School systems are also responsible for the cost of correcting any errors in classifying employees as high-need retired teachers (or other types of employees) in their reports to TSERS. Such corrections would arise if the reporting does not follow the definition set forth by S399 and/or is inconsistent with the DPI certification. The corrections may include corrections to the employee's pay-based contributions to TSERS, the school system's pay-based contributions to TSERS, or retirement benefits or health insurance costs that resulted from the incorrect report.

Finally, under Section 5(d) of S399, school systems are responsible for ensuring that high-need retired teachers are not eligible to elect into any position that allows for continued accrual of pension benefits under TSERS. The cost of correcting such errors is the responsibility of the local board of education, even if the compliance failure was attributable to the high-need retired teacher rather than the school system. These costs could include school systems assuming liability for pension overpayments, which in the past have been considered the retiree's responsibility.

The potential liabilities outlined above are those related to retirement benefits. School districts employing high-need retired teachers may also assume other risks that are not directly related to retirement benefits.

10. If the private letter ruling comes back that this is not allowed, what exposure do school districts have?

Please see questions #7 and #9. In particular, an adverse private letter ruling would increase the risk of IRS penalties, and would lead to the implications described in question #7 related to the automatic repeal of S399. Conceivably, the private letter ruling could be neither completely adverse, nor completely

favorable. Automatic repeal of S399 would occur if the IRS “determines that the provisions... jeopardize” the tax status of TSERS.

11. If the private letter ruling comes back and it is allowed, do school districts still have any exposure?

Please see questions #7 and #9. Even if the private letter ruling is favorable, school districts still have risks associated with accurate reporting, cost of corrections, and ensuring that high-need retired teachers cannot elect into positions that allow for continued pension accruals under TSERS.

12. If the TSERS is fined by the IRS, who pays the fine?

Under Section 5(d) of S399, LEAs employing high-need retired teachers are potentially responsible for any penalties that TSERS might incur.