



## New York State Teachers' Retirement System

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# DELEGATE NEWS

**SUBJECT:**     **Reportability of Earnings in  
Extended-Day Programs**  
**February 2004—Issue No. 2**

For your information, we are providing a copy of the most recent Administrative Bulletin sent in February to all Chief School Administrators, College and University Presidents and School Principals.

Under Education Law §501, only "regular compensation earned as a teacher" is reportable and includable in the calculation of the three-year final average salary. Obviously, contract salary earned for classroom teaching during regular school hours constitutes 'regular salary earned as a teacher.' However, there have been numerous recent inquiries regarding the possible includability of moneys earned in various extended-day programs. Some, but not all, of these programs derive from federal funding (e.g., Twenty First Century—No Child Left Behind). Inasmuch as the objectives and functions of these extra-curricular programs vary considerably, confusion has arisen on the part of employers as to the reportability, for pension purposes, of these earnings. The purpose of this bulletin is to provide clarification regarding the reportability of moneys earned by teachers in such programs.

In accordance with the System's enabling statutes, applicable rules and regulations, and NYSTRS' past practices, only earnings that meet all of the following conditions can be reported as regular salary in connection with extended-day programs:

- The extended-day services must constitute actual classroom teaching of academic subjects only. Subjects regarded as academic include Mathematics, English, Science, History, Literature, and other similar disciplines of a traditionally educational nature. Not regarded as academic are programs dealing with drug abuse, sexual behavior, or other socially oriented topics not requiring a certified teacher as instructor.
- The program must be fully carried out on school premises.
- Any fees charged to students for attendance must be nominal in nature. This requirement derives from the fact that only governmental service is creditable in a governmental plan such as the System. Government service, in turn, requires public funding.
- The member must have a career history of providing such services that extends well beyond the three-year period prior to retirement. Extended-day program services, when undertaken only during the final few years of employment, may not be included in a member's three-year final average salary. With the exception of the traditional functions identified in (1.) under "Items of Clarification," you are instructed not to report such compensation as regular earnings. As the System is a defined benefit plan, pensions for its members are necessarily calculated according to formulas that incorporate certain actuarial assumptions. Paramount among those assumptions is the expectation that compensation earned during the three-year final average salary period is reasonably representative of career earnings, after adjustment for normal and customary raises. Payments that are not representative of service rendered during the career are potentially harmful to the actuarial soundness of the plan, and cannot therefore be included in the three-year calculation.

- Earnings in connection with the administration of an extended-day program may be reported as regular compensation only if all of the following conditions are met:
  - As in the first bullet, no part of the extended day program being administered can be for other than classroom teaching of academic subjects. All such administration must be performed on school premises.
  - Only public funds (i.e., federal or state grants, or tax revenues) may be used in connection with such programs. As always, earnings must be paid from school district funds as part of the regular payroll.
  - As previously noted, the member must have a career history of providing such services that extends well beyond the three-year period prior to retirement.

In order to facilitate the requirements set forth herein, we are requiring that you maintain regular records in sufficient detail to reflect hours spent by teachers in any extended-day program that you believe meets the above criteria for reportability. Such records should be contemporaneous, and should also reflect the nature of the services provided by each teacher, as well as subjects and classes taught. These records will then be made available to the System on an as-required basis. We wish to emphasize that maintenance and retention of these records is being mandated under authority of § 520(1) of the Education Law, and prompt compliance will be regarded as vital.

#### *Items of Clarification*

1. The foregoing is not intended to address certain extra-curricular activities that the System has always included in the three-year final average salary. These items include (i) coaching, (ii) tutoring, (iii) summer school, (iv) chaperoning, and (v) supervision of traditional after-school student clubs. To the extent such items have been reportable in the past, these activities should continue to be reported as regular earnings.
2. Extended-day programs that, though primarily academic in nature, involve a non-academic component, may be reported as non-regular compensation and allowed in an eligible member's five-year final average salary. Such programs, to the extent conducted by certified teachers on school premises, may give rise to non-regular compensation includable in the five-year final average salary—so long as student instruction of academic subjects remains by far the major portion of such programs.
3. There are certain extra-curricular earnings that have not been—and continue not to be—reportable or useable in either the three or the five-year final average salary. The following list, which is by no means comprehensive, identifies various functions for which earnings must not be reported:
  - Bus driver
  - District printer/print shop duties
  - Building coordinator
  - Building reporter
  - Computer maintenance work
  - District clerk
  - Board clerk
  - Any other work in a position in the classified civil service
  - School attorney or legal services provided by an attorney
  - Consultant work (i.e., services performed as an independent contractor)
  - Teaching workshops, unless conducted through a Teacher Training Center under § 316 of the Education Law
  - Master Teacher Presenter and similar positions
  - Courses for which attendees are assessed a cost-covering fee
  - Payments made in exchange for resignation (other than those broadly available under a collective bargaining agreement)

As always, if you have any questions regarding this bulletin, we urge you to contact us for clarification.