

New York State Teachers' Retirement System

The following information was recently provided to NYSTRS' participating employers. As a Retirement System delegate, it is important you are aware of these issues. Please share this Delegate News with NYSTRS members in your district.

Delegate News

Issue No. 2023-12

November 2023

Reportability of Driver Education Programs

The proper reporting of a member's service credit and earnings impacts NYSTRS' ability to correctly calculate their benefits. This bulletin clarifies the reporting of compensation for Driver Education programs.

Many districts offering Driver Education programs require a fee from students in order to participate; fee structures vary by district. Regardless of fees associated with such programs, only certain earnings related to instruction are considered to be pensionable. Following NYSTRS' review of the New York State Education Department's *Driver and Traffic Safety Education Guidelines*, the Retirement System provides the following guidelines regarding the reportability of Driver Education programs.

1. Any employment paid by, or conducted through, a private commercial driving school contracted to provide a portion of the Driver Education program is NOT reportable for pension purposes. Additionally, a person paid through a private school is NOT eligible for membership with NYSTRS based on that employment. Furthermore,
 - a. Payments are NOT reportable if the services are for programs that are in substance programs of third parties, not those of the NYSTRS-participating employer ("the employer") – even if the program is conducted on the premises and/or under the auspices of the employer.
 - b. Payments for the Driver Education Coordinator role and the five-hour pre-licensing course do NOT meet the guidelines for pensionable earnings. Such payments should be reported in pay category M: MTD NON-STRS Pay on your district report.
2. Credit-bearing Driver Education programs, which are part of the regular school curriculum and for which students are not required to pay tuition or a fee, are reportable for pension purposes. These payments are considered instructional and should be reported as C – Instructional Pay on your district report.
3. Tuition-based Driver Education programs (i.e., the instructional portion) *generally* will be considered reportable to NYSTRS for pension purposes if the following criteria are met.
 - a. The program has been validly authorized by the employer's governing board.
 - b. The program is approved by the NYS Education Department and complies with their *Driver and Traffic Safety Education Guidelines*.

Visit the Delegates/Delegate News page at NYSTRS.org for archived issues.

- c. The program is administered and operated by the employer. Certified teachers are required to provide the course instruction to public school students.
- d. The employer has full control of, and full legal responsibility and liability for, the program.
 - i. The salaries are paid to NYSTRS members via regular district payroll.
 - ii. An employer/employee relationship exists between the district and the program's employees.

NYSTRS reserves the right to request additional information relating to any Driver Education program – in particular those that do not meet the criteria covered above or those that are not included in the employer's collective bargaining agreement. As a reminder, Education Law Section 520 states, "Each employer shall keep such records and from time to time shall furnish such information as the retirement board in the discharge of its duties may require." Insufficient records and information may result in incomplete and/or adverse findings. Please be further reminded that Education Law Section 525 provides criminal liability for "any person who shall knowingly make a false statement, or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system."

As always, the Retirement System may determine payments are not reportable in any or all of the following circumstances since such payments would artificially inflate the final average salary (FAS) and are inconsistent with the System's statutory responsibility to ensure the actuarial soundness of the pension fund.

- They are negotiated or made on the eve of retirement or FAS years.
- They are not reasonably representative of career earnings.
- They require resignation, retirement or other forms of separation from employment as a condition, and/or within a certain window of time.
- Their terms and conditions restrict coverage to only a select group of retirement-eligible employees.
- They are paid in other circumstances indicating an attempt to inflate a member's final average salary.

Any NYSTRS retiree conducting Driver Education duties deemed reportable (see items 2 and 3 above) are subject to the earnings limitations of Section 212 of the Retirement & Social Security Law. Typically, a NYSTRS retiree younger than age 65 can earn up to \$35,000 in a calendar year. However, current legislation suspends the Section 212 earnings cap through June 30, 2024 for those retirees working at a public school district or BOCES. Employment at a charter school, community college, SUNY or any other public employment is not covered by this legislation.

Visit the Delegates/Delegate News page at NYSTRS.org for archived issues.