

**TEACHERS' RETIREMENT BOARD MEETING  
SEPTEMBER 18, 2009**

**CALL TO ORDER:**

Vice-Chair Kari Peiffer called the meeting to order at 8:31 AM in the Teachers' Retirement System Conference Room, 1500 East 6th Avenue, Helena, Montana.

**BOARD MEMBERS PRESENT:**

Scott Dubbs – Board Member  
Jeff Greenfield – Board Member  
Darrell Layman – Board Member  
Robert Pancich – Board Member  
Kari Peiffer – Board Member  
James Turcotte – Board Member

**STAFF PRESENT:**

Natalie Chamberlain – Retired Benefits Specialist  
Jhonnelle Sedlock – Benefits Officer  
Bill Hallinan – Information Technology Manager  
Denise Pizzini – Chief Legal Counsel  
Tammy Rau – Deputy Executive Director  
David Senn – Executive Director

**OTHERS PRESENT:**

Tom Bilodeau – MEA-MFT  
Elizabeth Kaleva – Wes Young Legal Counsel  
Ashley Lalum – Kari Peiffer's Student Teacher  
Madalyn Quinlan – OPI Director  
Cliff Sheets – CFA, CIO Board of Investments  
Charlene Suckow – MREA

**ADOPT AGENDA** – Vice-Chair Peiffer asked for additions or changes to the Agenda for September 18, 2009. Finding none, Vice-Chair Peiffer requested a motion to adopt the Agenda.

**MOTION/VOTE:** Member Layman moved to adopt agenda. Seconded by Member Greenfield, the motion passed unanimously.

**APPROVAL OF MAY 7<sup>TH</sup> & 8<sup>TH</sup>, AND JUNE 11, 2009 MINUTES** –

Vice-Chair Peiffer called for changes of the May 7<sup>th</sup> & 8<sup>th</sup> and June 11, 2009 Board Meeting Minutes. Finding none, Vice-Chair Peiffer requested a motion for approval of May 7 & 8, and June 11 board minutes.

**MOTION/VOTE:** Member Greenfield moved to approve the May 7 & 8 and June 11, 2009 Minutes. Seconded by Member Layman, the motion passed unanimously. Member Pancich abstained he was not present during those board meetings.

**PUBLIC COMMENT** –Vice-Chair Peiffer called for Public Comment on Board-Related items. No Public Comment made.

### **EXECUTIVE DIRECTOR'S REPORT**

#### **OPI Membership Proposal**

Mr. Senn reviewed the proposal submitted by the Office of Public Instruction (OPI) and House Bill 59, passed by the 2009 Legislature which included language changes clarifying membership eligibility for employees of OPI. The OPI proposal would include all instructional coordinator positions and the supervisors of these positions, i.e., the managers within the Department of Education Services, as positions required to participate in TRS. The proposal would grandfather all current employees in the retirement system, PERS or TRS, assigned by OPI at the time they were hired.

Madalyn Quinlan, Chief of Staff of The Office of Public Instruction, commented she was optimistic that this would resolve a ten year discussion regarding the assignment of positions of OPI staff to the two retirement systems. The advantage is the standard classification guide will help determine who will be assigned to what Retirement System.

**MOTION/VOTE:** Member Turcotte moved the Board ratify the OPI proposal that any person hired by OPI on or after July 1, 2009, to fill a position in which the person will be employed in an educational services capacity, will be reported to the Teachers' Retirement System in conformity with House Bill 59 as passed by the 2009 Montana Legislature; and that any person hired by OPI prior to July 1, 2009, though the person may be employed in an educational services capacity, will continue to be reported to the retirement system the person was assigned to as of June 30, 2009, for as long as the person remains employed in the same position.

As part and parcel of this motion, I move that the Board recognize that a person hired by OPI in an educational services capacity will generally be employed in a position that is classified under the State's broadband classification system in Group 25 – Education, Training, and Library. In addition, positions classified in Group 11 – Management and Administration will be a position that supervises subordinate positions that are classified in Group 25. However, I further move that the Board direct the TRS staff that state classification of an OPI position in Group 25, or in Group 11 and supervising subordinates in Group 25 may not be

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solely determinative of those OPI positions that are reportable to the Teachers' Retirement System as persons employed in an educational services capacity.

Ms. Rau asked if the proposal excluded the two Librarian positions. Ms. Quinlan replied that the two librarian positions would not be covered under the TRS.

Vice-Chair Peiffer asked for a second in the motion, Seconded by Member Dubbs,

Member Dubbs thanked Madalyn for all the work that it took for this proposal to happen. It has been 10 years, it was a confusing process, and asked if she would continue to be vigilant in that some of the positions seem to overlap. For example Health enhancement - this is typically a curriculum title, in the office of public instruction it goes both ways.

Vice-Chair Peiffer asked all in Favor of Motion: the motion passed unanimously

#### Administrative Rules

The scheduled hearing on the proposed rules to establish criteria to determine when incentives and bonuses would be deemed to be part of a series of annual payments and included in earned compensation was held on September 11, 2009. TRS received public comment on four specific points at the hearing. The proposed responses to the public comment were provided and discussed as part of the proposed adoption notice. Mr. Tom Bilodeau, MEA-MFT, provided additional public comment regarding two issues he raised at the public hearing: First, Mr. Bilodeau restated his request that subsection 4 of the proposed rule be modified to reference the exception to application of the 110% cap for bonuses or incentives paid subject to a collective bargaining agreement, which exception is provided for in an existing administrative rule. Following discussion, it was determined that the proposed rule would be modified to reference § 19-20-715, MCA, and any administrative rules clarifying that statute. Second, Mr. Bilodeau requested clarification that subsection 5 of the proposed administrative rule does not exclude extra duty pay or other pay types currently recognized as elements of earned compensation. Ms. Pizzini clarified that proposed subsection 5 establishes that bonuses or incentives determined as a percentage of annual salary may be determined based only upon the scheduled salary or the base annual contract salary if included in earned compensation, but that the proposed language of subsection 5 has no effect in determining what are appropriate elements of earned compensation outside of consideration of bonuses and incentives paid as part of a series of annual payments. Member Greenfield identified an additional instance in the adoption notice where "annual base contract salary" should have been changed to "annual salary." Member Layman suggested that proposed subsections 4 and 5 be transposed to enhance clarity.

**MOTION/VOTE:** Member Layman moved to approve the proposed notice of adoption with amendments as determined in discussion. Motion was seconded by Member Greenfield; motion passed unanimously.

Mr. Senn announced that Ms. Kaleva, Mr. Wesley Young's attorney was ill and asked if she could reschedule to 2 pm. The Vice-Chair directed the discussion on Mr. Young's proposed settlement offer be postponed until 2:00 pm.

#### SAVA Committee Meeting

Mr. Senn reported the SAVA committee met on June 26 and elected Senator Joe Tropila chairman. The committee discussed hiring their own actuary and other consultants to assist in developing a new pension plan for TRS members hired after July 1, 2011. A tentative meeting schedule was adopted, with a September meeting already cancelled, and a two day meeting scheduled for October 29 and 30. It is anticipated the actuaries for the retirement boards will present a basic summary on what actuaries do and how they do it, "Actuarial 101", and an overview of the 2009 valuation reports. The Committee also has a conference call scheduled for October 1, to determine if they want to hire their own consultant/actuary or use the retirement board's actuaries. Mr. Senn stated, while he felt it was important for the actuaries to be here for the SAVA committee meeting; however, he was concerned that the additional expense was outside the budget approved by the Board in May, and might require a budget amendment.

An email will be sent to the Committee prior to the October 1 conference call advising the SAVA committee that the TRS board is still willing to share actuarial services and the cost with them to study options for a new plan design for the TRS.

#### Executive Summary

Mr. Senn reviewed the Market Value of Liabilities (MVL) accounting issue and discussed the current review/study by the Governmental Accounting Standards Board (GASB). Mr. Senn also advised the Board that he had received a letter from the Budget Director cautioning the Board about taking a position on the subject in the RFP issued for actuarial services, although he understood the reasons for not applying the MVL approach to public pension plans. Mr. Senn also advised the Board that TRS had recently assisted in responding to separate surveys from the Governmental Account Standards Board, the Government Accountability Office, and the Security Exchange Commission.

National Councils on Teacher Quality (NCTQ) – This organization puts out "State Teacher Quality Yearbook" each year. Last year, without giving public plans an opportunity to comment, the report stated current plans "continue to provide teachers with expensive and inflexible pension plans that do not reflect the realities of the modern workforce". This year they did give us a chance to reply to the draft report.

Mr. Senn commented on a report to the Board of Investments in which several inaccurate statements were made regarding the calculation of normal cost and total liabilities. A reply will be prepared by the Executive Directors for the retirement boards.

Mr. Senn reported, TRS experienced 200 fewer retiree's this year than in the previous fiscal year. This allowed the staff time to rewrite the member's handbook, develop a retiree handbook, and produce tutorials for the members and clerks to view on our website. Ms. Cooper had taken the lead on these projects, and Mr. Senn encourages the Board members to look at these documents on the TRS website. He also reported Jenny Stark had developed a Newsletter, and looks forward to its distribution.

### LEGAL COUNSEL REPORT

FBAR Reporting. Ms. Pizzini advised the Board of recent developments related to potential reporting requirements for the retirement system and the individual Board members under federal law requiring reporting of funds held in foreign accounts. Ms. Pizzini has determined, based on information provided by the BOI that the TRS funds held in foreign accounts are held as commingled funds. Therefore, TRS and the individual Board members are subject to a report filing extension to June 30, 2010. Ms. Pizzini will continue to follow this issue and will report to the Board again regarding reporting requirements prior to the June 30, 2010, extension deadline.

### Case Updates

Bowman – Ms. Pizzini reported to the Board that she and Mr. Senn participated in a mediated settlement negotiation, per Court order, related to TRS' petition for declaratory judgment to determine the appropriate beneficiary of deceased member, Lawrence Bowman. In mediation, agreement was achieved on all substantive points. The beneficiary designation will be amended; benefits will be actuarially adjusted going forward to recover the TRS benefits that were overpaid based on the original beneficiary designation; the settlement agreement will be filed with the court for entry as a final determination regarding designation of a legal beneficiary; all other terms and conditions of the settlement agreement between the two defendants will be given effect in a manner that has no effect on TRS. TRS agreed and has paid the mediator fee of \$1,460.

Ronald Fuller. Ms. Pizzini reported that there has been no further contact from Mr. Fuller or the Department of Corrections regarding settlement of any portion of the amount of overpaid benefits owed by Mr. Fuller to TRS. In the absence of any settlement agreement, TRS has fully informed Mr. Fuller that it will recover the overpaid benefits by actuarially adjusting his benefit at the time he retires to recover the overpaid benefits plus interest.

Merrill Farrier. Ms. Pizzini advised the Board that following his last appearance before this Board in May, Mr. Farrier requested that his benefits be recalculated to include credit for his years of service with the U of M during which he was not able to receive TRS benefit. Although the matter was not before the Board as an action item, Mr. Farrier has referenced a final estimate of benefits from TRS provided in conjunction with Mr. Farrier's termination with U of M and application for retirement benefit as a final determination of the Board and has filed a petition for judicial review in District Court in Helena (Judge Seeley). Ms. Pizzini has responded on behalf of TRS. Oral arguments are scheduled for December 1, 2009.

Lynn Mavencamp. Ms. Pizzini advised the Board that Mr. Mavencamp has filed a request for a contested case hearing. A hearing examiner was requested through the agency legal services division of the AG's office; a scheduling order has been issued. Discovery will continue through December 31, 2009, with a hearing scheduled for March 25, 2010. Ms. Pizzini further advised the Board that, as the Board is the ultimate decision-maker in the contested case proceeding, statutes prohibiting ex-parte communications are in effect, and it is inappropriate for any Board member to communicate with TRS staff or any other person regarding the case. If the Board has procedural questions about the case, they should direct such questions to Ms. Pizzini.

NAPPA Conference Report. Ms. Pizzini reported to the Board that the main topic of the conference was the market down turn and efforts being made by plans to effectuate financial recovery. While there were no suggestions on how to recover the loss of assets there were presentations and conversations about the efforts of pension plans across the country to address the financial concerns through plan design revision. Such efforts raise issues of the constitutional and contractual rights of retirement plan participants, and the fiduciary duties of retirement boards and employees in participating in and responding to legislative proposals for plan benefit modifications. Ms. Pizzini thanked the Board for letting her attend the conference.

#### Break 10:21 AM

#### Fiduciary Training

Ms. Pizzini provided two handouts to the Board: the first detailing the general fiduciary obligations of TRS Board members; the second specifically detailing the responsibility of TRS Board members in dealing with actual and apparent conflicts of interest.

Ms. Pizzini identified appropriate steps to be taken by Board members to identify potential conflicts of interest, receive a determination from Ms. Pizzini regarding appropriate management of the identified actual or apparent conflict of interest,

and make an appropriate record of identified conflicts of interest and result with respect to participation in board consideration/action on the issue.

### OTHER BUSINESS

#### FY 2010 Actuarial Services & Information Technology(IT) Budget Amendments

Mr. Senn reviewed the FY 2010 budget for Actuarial Services and the reasons for the proposal to the Board to increase the budget \$18,000 to cover additional cost for completing multiple experiences studies in May 2010.

At the May meeting the Board postponed completion of the IT budget until staff could complete further research on replacing the servers. Mr. Hallinan reported he had completed the research to replace the aging servers and recommended the TRS to have two redundant virtual systems; one system would be housed here in Helena and the other in Miles City when that data center is up and running. The equipment and software upgrades would be \$160,000.

**MOTION/VOTE:** Member Dubbs moved to approve the IT budget recommendation of the \$160,000, and the Actuarial Services budget amendment of \$18,000. Member Turcotte seconded the motion. The motion passed unanimously.

#### Out of State Travel – 2009 NCTR Annual Conferences

**MOTION/VOTE:** Member Layman moved to approve the out-of-state request for Mr. Senn to attend the NCTR Conference. Seconded by Member Dubbs, the motion passed unanimously.

#### Board of Investments Report

Member Turcotte gave a brief summary and encouraged the Board to ask questions of Mr. Sheets when he attended the meeting later in the day.

#### PRISM Conference Report

Mr. Hallinan reported that over 60 system managers attended the Public Retirement Information System Managers (PRISM) conference this year. The keynotes of the conference covered how we as individuals are moving toward technology that is simplistic, more digital. He gave the example of Twitter becoming the new communication way, no more paper.

Member Pancich asked about the security of member's accounts, and the possibility of a social security number being intercepted within the virtual world. Mr. Hallinan explained that security has improved over the past few years. He commented that the Board did not need to worry about the security breaching within TRS, all system data is encrypted, and the new system has a better system than what we have now.

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GFOA Conference Report

Ms. Rau reported on the classes she attended regarding internal control, Performance Management, and Management Policy on Emergency Management Preplanning bases. Ms. Rau commended the 'hot' topic was MVL and was it appropriate for Public Pension Plans.

Next Meeting Date

The next meeting date is scheduled for November 13, 2009.

Financial Statements, Budgets, & Travel Reports

Ms. Rau reviews the budget reports on behalf of Mr. Gaughan. Ms. Rau advised the Board the TRS received the GFOA award certificate for achievement for excellent for financial reporting again this year and recognized Mr. Gaughan for his work in preparing the financial statements. Ms. Rau reported there are no delinquent agencies to report for this past quarter.

Member Layman asked approximately how many benefits are processed through electronic transfer. Ms. Rau responded roughly around 90-95%.

LUNCH

PRESENTATION BY THE BOARD OF INVESTMENTS –CLIFF SHEETS, CIO

FY 2009 Performance Report and Outlook for FY 2010 and Beyond

Mr. Cliff Sheets, CIO, Board of Investments (BOI), presented the official report for the fiscal year 2009. Mr. Sheets explained that this a good time to go over the report, and if the Board has additional questions or wants to meet up in the future he would be available. There have been some notable improvements since the end of the Fiscal year. Mr. Senn asked how close the allocation matches the asset liabilities studies and recommendations that came out. Mr. Sheets commented that we are probably high on private equity than what is showed, and at that time we had zero on real estate exposure targeted a 4-8% band. The allocation highlights there has been a dramatic fall in dollars, notable changes in the decline in public stock prices, and overall our total equity weight has fallen about 4%, it was offset by an increase in the private equity pool. Note; the real estate and private equity lag behind about 3 months. As of September 17 the Teachers allocation was 66.2% for all equities, 55.2% in public equities, 11% private equities. Two months into the current fiscal year we are at 7%, which is good compared to what the past has been through. Overall the market is going to have a slow rebound.

LEGAL COUNSEL REPORT - Continued

Wesley Young – Legal Counsel Ms. Kaleva

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Ms. Pizzini reports to the Board that Mr. Young, through his legal counsel has requested that the Board reconsider his prior offer of settlement. Ms. Pizzini reviewed the relevant facts of the Young matter.

Mrs. Kaleva thanked the Board for rescheduling and being able to come before the Board to represent Mr. Young. Ms. Kaleva reiterated Mr. Young's legal arguments in this matter and requested that the Board approve the settlement agreement previously offered by Mr. Young whereby Mr. Young would terminate his employment in the Director of Maintenance and Director of Transportation positions with the Frontier School District, and work within the 1/3 earnings limitation going forward. In exchange, TRS would agree not to pursue recovery of retirement benefits paid to Mr. Young during the time that he was employed by the school district under the three position descriptions. Ms. Kaleva specifically brought to the Board's attention that TRS statute limits the compensation that may be earned by a retired member after retirement while working a position "that would normally be covered under the TRS." She asserts the Director of Maintenance and Director of Transportation positions are not normally covered under TRS.

Ms. Kaleva explained, Mr. Young has two avenues to approach this: First, an Age Discrimination claim - all he has to do is show he is in a protected class and younger members are being treated differently.

Second, there are several individuals who are retired TRS members, work outside of the school system, and hold positions identical to Mr. Young's. Those wages are not counted as TRS reportable wages.

When you look at your statutory duty to treat all your members equally, and combined with the issues Mr. Young is at a certain age and there are individuals younger than Mr. Young who are not being treated that way, Mr. Young has a compelling claim. He is being singled out because of his age. Mr. Young is willing to resign from his two current positions that is claimed to be reportable to TRS. Frontier School District will advertise those positions and hire other individuals and Mr. Young will not apply. He is asking that the Board consider that as a settlement to this issue. The other issue coming up is if you find that it was reportable wages you will have to go after the School District as well.

Ms. Pizzini asked Ms Kaleva: It was indicated that Mr. Young would terminate his 2 positions. What would his status be at the school after that? Ms. Kaleva commented that he would be a Part-Time Dean of Students and not earning more than the reportable amount. Member Dubbs asked how many students and staff are currently at Frontier School District. Ms. Kaleva responded last year they had 24 Staff members, 75 students, a lot of the staff are part-time aides, so there are approximately 15 full-time staff.

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Member Dubbs asked Mr. Senn and Ms. Pizzini: are they comfortable that we don't believe we have other members doing this same thing? Mr. Senn asked Ms. Kaleva if she knows other members who are receiving a TRS benefit and working in Maintenance and Transportation jobs. Ms. Kaleva responded yes, she does. Mr. Senn questioned whether those same individuals also working in a 1/3 TRS reportable position? Ms. Kaleva indicated, yes, they are.

Vice-Chair Peiffer commented that this issue needs to be taken care of, if we have a lot of individuals out there now who are doing this same thing. Vice-Chair Peiffer asked for motion regarding whether the Board is going to accept their offer for settlement, or decline.

**MOTION/VOTE:** Member Turcotte moved to decline Mr. Young's settlement offer; seconded by Member Greenfield. The motion passed unanimously.

### **DISABILITY APPLICATIONS**

Vice-Chair Peiffer noted she had a conflict of interest with Randall Miller; she has worked with his wife for 13 years, and knows Mr. Miller personally. Ms. Pizzini recommended that Vice-Chair Peiffer abstain from participating in Board consideration/action in this disability case.

Member Greenfield indicated he has a conflict of interest with respect to the disability application of Janet Young in that she is a member of his collective bargaining unit, and as a union rep he has advised her with respect to her disability application. Ms. Pizzini indicated that Mr. Greenfield should not be present during the Board's consideration of Ms. Young's application and should abstain from voting in the matter.

### **CLOSED MEETING**

Vice-Chair Peiffer directed the meeting be closed at 3:06 pm to discuss and review disability applications since the individual's right to privacy of information pertaining to benefits clearly exceeds the merits of public disclosure.

### **OPEN MEETING**

Ms. Pizzini noted for the record that Member Greenfield has a conflict of interest with respect to participating in Board actions related to consideration of the Disability application of Janet Young, Member Greenfield indicated that he is a Union Representative for Janet Young and has been personally involved with preparation of Janet Young's disability application. Due the conflict of interest Member Greenfield has excused himself during consideration of Janet Young's disability application and abstains from voting.

Applications for Disability Benefits

**MOTION/VOTE:** Member Dubbs moved to approve Janet L. Young disability. Seconded by Member Pancich, the motion passed unanimously.

**MOTION/VOTE:** Member Turcotte moved to approve Billie Askam disability. Seconded by Member Pancich, the motion passed unanimously.

**MOTION/VOTE:** Member Greenfield moved to approve Linda K. Borntreger disability. Seconded by Member Layman, the motion passed unanimously.

**MOTION/VOTE:** Member Dubbs moved to approve Joan A. Cote disability. Seconded by Member Pancich, the motion passed unanimously.

**MOTION/VOTE:** Member Turcotte moved to approve Grayce A. Holzheimer disability. Seconded by Member Pancich, the motion passed unanimously.

Ms. Pizzini noted for the record that Member Peiffer has a conflict of interest related to the Board's consideration of the disability application of Randall B. Miller in that she works in the same school district, is a member of the same bargaining unit, and has substantial knowledge of underlying facts and circumstances. She will therefore abstain from voting in the matter of Mr. Miller's disability application.

**MOTION/VOTE:** Member Dubbs moved to table Randall B. Miller disability. Seconded by Member Turcotte, the motion passed unanimously.

**MOTION/VOTE:** Member Greenfield moved to approve Samuel S. Petryszak disability. Seconded by Member Layman, the motion passed unanimously.

PERSONNEL COMMITTEE REPORT

Staff Performance Appraisal Process

Mr. Senn reported the Personal Committee, Member Layman and Member Dubbs, will meet on Thursday, November 12, 2009, to complete the performance appraisal for David Senn. Jim Kerins, Personnel Specialist, Communication Management Services, will assist the Board in the appraisal process.

ELECTIONS OF OFFICERS

**MOTION/VOTE:** Member Dubbs nominated Member Kari Peiffer as the Chair of the Teachers' Retirement Board; seconded by Member Turcotte. Member Dubbs

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asked Member Peiffer if she can serve as Chair. Ms. Peiffer responded that she could. The motion passed unanimously

Chair Peiffer asked for a motion for Vice Chair

**MOTION/VOTE:** Member Dubbs nominated Member Darrell Layman as the Vice Chair.; seconded by Member Turcotte. The motion passed unanimously.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 4:06 p.m.

Chair \_\_\_\_\_

Executive Director \_\_\_\_\_