

# TEACHERS' RETIREMENT SYSTEM



STEVE BULLOCK, GOVERNOR

www.trs.mt.gov

## STATE OF MONTANA

1500 EAST SIXTH AVENUE  
PO BOX 200139  
HELENA, MONTANA 59620-0139

1-866-600-4045  
406-444-3134

August 12, 2014

TO: Denise Juneau, *State Superintendent*, Montana Office of Public Instruction  
Montana Statewide CSPD Council  
Montana Regional CSPD Councils/Directors  
Montana Regional Educational Service Area Councils/Directors

FROM: *sb* Shawn Graham, *Executive Director*, Montana Teachers' Retirement System

RE: TRS status of CSPDs, RESAs, and their employees;  
Hiring of TRS retirees by CSPDs and RESAs

Over the past year or so, inquiries have been made to Montana Teachers' Retirement System (TRS) regarding whether Montana CSPDs and RESAs are employers who are required to report eligible employees to TRS. In addition, questions have been raised about which individuals employed by them – or engaged as independent contractors – are required to be reported to TRS and which should be reported to the Montana Public Employee Retirement System (PERS).

In the past, TRS has consistently indicated that CSPDs and RESAs are TRS employers. Based on some of the specific questions raised and information provided, as well as TRS's lack of complete information about CSPDs and RESAs, a comprehensive review of the status of CSPDs and RESAs is underway.

TRS is in the process of finalizing a memo detailing our findings and determinations, including time for your review and comments; this will take several more weeks. Pending our review and finalization of this memo, in the fall of 2013, TRS advised CSPDs and RESAs not to take action to transfer existing employees from PERS to TRS. In the meantime, we have received inquiries from some TRS members who have recently retired or are planning to retire in the near future and are considering or intending to return to or continue working for a CSPD or RESA. These inquiries have made us aware of the need for interim guidance regarding hiring of TRS retirees by CSPDs and RESAs.

### MONTHLY REPORTING FOR ACTIVE MEMBERS

TRS has determined that the statewide and regional CSPDs and RESAs are TRS employers. As TRS employers, all are required to monthly report to TRS the time worked by and compensation paid to individuals in positions reportable to TRS including:

- Employed directly by the CSPD or RESA,
- Engaged as independent contractors *or*
- Employees of third-parties.

In addition to reporting, employers must also remit employer and employee contributions to TRS as required by law.

### **POSTRETIREMENT EMPLOYMENT OF TRS MEMBERS**

A TRS member/retired member who goes to work for a CSPD or RESA is subject to

1. all of the requirements for termination of employment, including fulfillment of the 150 calendar day break in service period, *and*
2. the postretirement reporting requirements and earnings limitations provided for under TRS law.

If an individual is employed by a CSPD or RESA prior to retirement, they

1. must terminate that employment – as well as all other TRS-reportable employment – in order to be eligible for retirement benefits
2. may not have a pre-arranged agreement to return to work for the CSPD or RESA if they are not normal retirement age (age 60) at the time of retirement, *and*
3. must fulfill the 150 calendar day break in service period before they may again work for the CSPD or RESA (or go to work for any other TRS employer).

A retired TRS member who is not employed by a CSPD or RESA prior to retirement may not work for a CSPD or RESA until attaining retired member status, and fulfilling the 150 calendar day break in service period, if applicable.

### **MEMBER STATUS OF EMPLOYEES**

While TRS will provide details regarding the process to be applied related to *current* employees of CSPDs and RESAs who should be – but currently are not – reported to TRS, it is imperative that CSPDs and RESAs ascertain the TRS member/retiree status of *new* hires in positions reportable to TRS. Establishing the status of your employees will ensure proper reporting to TRS.

It is also imperative that CSPDs and RESAs advise potential new hires that the positions they will fill are TRS-reportable; this practice will help you to avoid hiring TRS retirees who are not eligible to work for the CSPD or RESA as working retirees. Failure to do so can result in substantial financial detriment to both the employer and the employee for overpaid benefits and/or unpaid contributions.

The statewide and regional CSPDs and RESAs must report anyone employed by them in a teaching or an educational services capacity to TRS. As a rule of thumb, anyone who performs duties or functions that would make them reportable to TRS if performing similar work as an employee of a school district, an educational cooperative, or as an employee of OPI must be reported to TRS by a CSPD or RESA. This would include, but may not necessarily be limited to:

- The primary administrator for a CSPD or RESA
- A teacher
- A paraprofessional

- A related service provider
- A curriculum coordinator or curriculum coach
- A person who provides instruction or coaching to educational professionals, related service providers, or other stakeholders, regarding the standards or practices to be implemented in the provision of special education services or other education services that are the concern of the CSPD or RESA (for example, other educational/instructional standards to be applied/achieved under state or federal law like No Child Left Behind, etc.)

Whether or not a position is reportable to TRS is *not* determined by the job/position title, but by the duties and functions performed in the position. A TRS retiree engaged by a CSPD or RESA as an independent contractor or as an employee of a third party is treated the same under TRS law as if they were hired as an employee of the CSPD or RESA.

For additional information regarding requirements for termination of employment and postretirement employment reporting and earnings limitations, please see TRS's Postretirement Employment Q&A at [www.trs.mt.gov](http://www.trs.mt.gov). If there is any question regarding whether a position is reportable to TRS, please contact TRS for a determination.

#### **ORGANIZATIONAL DIFFERENCES AND EMPLOYER STATUS OF CSPDs AND RESAs**

Finally, we have received questions regarding whether a CSPD or RESA that is organized as a corporation and/or as a not-for-profit (501(c)(3)) would be a TRS employer. The corporate organizational or tax-exempt status of an entity is *not* determinative of its status as a TRS employer – whether it is a "public" entity as discussed above. Therefore, a CSPD or RESA is a TRS employer regardless of its corporate or tax status.

---

Once the TRS review of CSPDs and RESAs is complete, we will provide a final determination. In the meantime, if you have any questions regarding these issues, please contact TRS staff at (406) 444-3134 / (866) 600-4045.