



TEACHERS' RETIREMENT SYSTEM  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

STEVE BULLOCK, GOVERNOR

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STATE OF MONTANA

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DATE: January 15, 2014  
TO: Public Education Employers of Paraprofessionals  
FROM: Shawn Graham, Executive Director, Montana Teachers' Retirement System (TRS)  
Roxanne Minnehan, Executive Director, Montana Public Employees' Retirement System (PERS)  
RE: Proper Retirement System Reporting of Paraprofessionals Employed in Public Education - **Request for Information**

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It has come to the attention of TRS and PERS that at least two public school districts have been routinely reporting individuals employed as paraprofessionals in error to PERS rather than TRS. Based on recent inquiries of members and/or school districts as well as conversations with MEA-MFT, we realize that there may be additional employers who are incorrectly reporting paraprofessionals to PERS.

The purpose of this memo is to inform employers of proper reporting for paraprofessionals, to provide background on paraprofessionals in the retirement system, and to request information from employers.

### Proper Retirement System Reporting

As described below, if someone is *performing* the job duties and functions of a paraprofessional, they are employed in an instructional or educational services capacity and must participate in TRS, not PERS. Consequently,

- **New employees:** Any individual first employed by you as a paraprofessional on or after the date of your receipt of this letter must be reported to TRS.
- **Current employees:** Every individual currently employed by you as a paraprofessional and reported to PERS must be identified to TRS. Except as provided below, the membership, creditable service, and contributions of each paraprofessional reported to PERS must be transferred from PERS to TRS.
  - Participation in TRS will be *retroactive* to the individual's first date of employment in a TRS-reportable position.

**Exception:** An individual currently working under the job title "paraprofessional" must continue to participate in PERS (but must be identified to TRS) if the individual:

- was first hired by an employer as a "teacher's aide" prior to September 1, 1989, *and*
- has continued to be employed (to present) by the same employer as a teacher's aide and/or paraprofessional.

**Please Note:** Applicable law does not authorize collective bargaining of retirement system participation in TRS or PERS. Prior or current collectively bargained designation of retirement system participation *does not* supersede the legal requirement for retirement system participation as specified in this memorandum.

## History of Teacher's Aides and Paraprofessionals in TRS

TRS law has always required participation in TRS by an individual employed by a TRS employer in an instructional or educational services capacity. An individual is employed in an instructional or educational services capacity if the individual is performing duties and functions directly related to the instruction, education, or supervision of students, or the administration of such services.

In 1989, TRS addressed the issue of retirement system reportability of individuals employed as teacher's aides. Review of the issue at that time resulted in adoption of Rule 2.44.307, Administrative Rules of Montana (ARM), which required that "teacher's aides employed in an instructional services capacity after September 1, 1989" participate in TRS. The rule also stated that teacher's aides employed prior to September 1, 1989, who were then reported to PERS, would remain in PERS and were not eligible to participate in TRS while employed as a teacher's aide with the same employer. TRS recognizes those individuals as grandfathered participants in PERS, but, in conformity with application of TRS law as stated in the ARM, all other teacher's aides employed in an instructional services capacity were required to be reported to TRS.

Over time, the predominant job title typically applied to public education positions that provide instructional and/or educational support has shifted from "teacher's aide" to "paraprofessional." In recognition of the shift in use of these job titles, TRS law was amended in 2007 to clarify the required participation in TRS by "a person employed as a...*paraprofessional who provides instructional support.*"

TRS's administrative rules were also amended to further clarify the definition of a "paraprofessional" as "someone who provides instructional support," which includes:

- (a) one-on-one tutoring;
- (b) classroom management, such as organizing instructional materials;
- (c) instructional assistance in a computer laboratory;
- (d) conducting parental involvement activities;
- (e) a translator; or
- (f) instructional support services under the direct supervision of a highly qualified teacher.

Current guidelines issued by the Montana Office of Public Instruction (OPI) indicate the predominant duties and functions of a paraprofessional position include:

assisting in the provision of services related to instruction and supervision of students; carrying out instructional programs and lessons in various learning environments, assisting individual students in performing activities initiated by the professional; assisting the professional in observing, recording, and charting behavior; assisting the professional with student behavior management; assisting with student evaluation procedures; assisting in preparation of instructional materials, etc.

As described by OPI, the predominant duties of a paraprofessional are clearly duties and functions directly related to the *education, instruction, and supervision* of students. Therefore, an individual performing the predominant duties of a paraprofessional is employed in an educational or instructional services capacity and is reportable to TRS. TRS must assume an individual working under the job title "paraprofessional" is required to participate in TRS unless and until the employer establishes that the position does not perform any duties or functions in an instructional or educational services capacity.

## Transfer to Correct Retirement System Required

The incorrect retirement reporting of some paraprofessional positions may go back more than 20 years. As part of the review of the issue related to the recent inquiries, the school districts and MEA-MFT asked TRS whether the paraprofessionals currently reported to PERS could be grandfathered to remain in PERS or be allowed to elect which retirement system to participate in.

While leaving each individual in the retirement system to which she/he is currently reported may be preferable to the individual and would be easier administratively, both for TRS and the employers, there is no authorization under TRS law or the qualification standards applicable to TRS under the Internal Revenue Code for TRS or PERS to allow teacher's aides/paraprofessionals hired after September 1, 1989, to continue to be reported in error to PERS.

## Employer to Provide Information by March 31, 2014

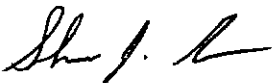
In order to ensure proper retirement system reporting, please review the retirement system reporting status of *all individuals* currently employed to *perform the duties and functions of a paraprofessional*. If you identify employees who are currently being reported to PERS, please provide TRS with the information shown below for each employee by March 31, 2014. The list should include the following information for each employee:

1. Full Name
2. Last Four Digits of Social Security Number
3. Job Title
4. Date of Hire
5. A breakdown of the hours worked and compensation received on a monthly basis in each fiscal year of employment

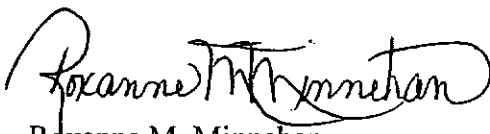
TRS and PERS will work with you as the employer and any individuals identified as reported in error to transfer their creditable service and contributions to the appropriate retirement system. As the employer and employee contribution rates are slightly higher in TRS, this will result in additional contributions, and interest, due to TRS.

If you have any questions regarding the information in this memo or if you are unsure of whether you are reporting your employees correctly, please contact TRS toll free at 866-600-4045 or PERS toll free at 877-275-7372.

Sincerely,



Shawn J. Graham  
TRS Executive Director



Roxanne M. Minnehan  
MPERA Executive Director