

Interpretive Memorandum No. 2015-2

DATE: October 22, 2019 (Originally published August 17, 2015)

POLICY TOPIC: TEACHER STIPENDS; ADDITIONAL PAY FOR EXTRACURRICULAR AND INSTRUCTIONAL ACTIVITIES; AND, TEACHER DEVELOPMENT PAY

QUESTIONS/SCENARIO:

Several questions have arisen regarding the proper designation of certain stipends paid to teachers, paraprofessionals, and support staff as follows:

1. Whether stipends can be designated as either (a) part of a Member's "full base rate of compensation" ("Base Compensation") or (b) "additional pay for extracurricular or instructional activities";
2. Whether certain compensation can be designated as "additional pay for extracurricular and instructional activities" only if such activities involve the participation of elementary or secondary school students or whether it includes stipends paid for mentoring, curriculum development, and similar activities that do not directly involve students; and,
3. Whether certain compensation paid to paraprofessionals and support staff can qualify as "teacher development pay that is not part of the contracted annual salary" ("Teacher Development Pay"); and, if not, can such compensation be designated as "additional pay for extracurricular and instructional activities".

CONCLUSIONS:

Pursuant to RSA 100-A:1, XVII(a) and (b)(1), Base Compensation is, generally, determined by the employer. Thus, New Hampshire Retirement System ("NHRS") will accept an employer's designation of a stipend as being part of a Member's Base Compensation subject to NHRS' power to interpret RSA 100-A:1, XVII (as more fully described in Interpretive Memorandum 2015-1)¹. However, certain types of compensation are specifically listed in RSA 100-A:1, XVII(b)(4) as being Compensation Over Base and cannot be considered as part of Base Compensation. Most notably for

¹ As noted below, absent an opinion by the New Hampshire Supreme Court, NHRS has the authority and discretion to interpret the meaning of any provision of RSA 100-A.

school districts, this includes “additional pay for extracurricular and instructional activities. Most stipends paid by schools fall into this category.

Only Teachers, paraprofessionals, and support staff qualify for “additional pay for extracurricular and instructional activities”. Political Subdivision and State Employees do not qualify for “additional pay for extracurricular and instructional activities”.

NHRS will accept an employer’s designation that a stipend is “additional pay for extracurricular and instructional activities” subject to four exceptions noted below. The fact that a stipend is paid for an activity that does not directly involve students does not prohibit the employer from designating it as “additional pay for extracurricular and instructional activities” provided that the activities are related to the general educational mission of the school. “Additional pay for extracurricular and instructional activities” should be reported as “Compensation Over Base”.

Compensation can be designated as Teacher Development Pay only for teachers. Paraprofessionals and support staff cannot have Teacher Development Pay. Teacher Development Pay should be reported as Compensation Over Base.

If a stipend is not designated as either Base Compensation, “additional pay for extracurricular and instructional activities”, or Teacher Development Pay then it is “other compensation” which is not Earnable Compensation if paid on or after August 29, 2008 the date on which term “other compensation” was deleted from RSA 100-A:1, XVII.

ANALYSIS

Base Compensation

RSA 100-A:1, XVII(a) provides, in pertinent part, that Earnable Compensation shall mean “[f]or Members who have obtained vested status prior to January 1, 2012, the full base rate of compensation paid, as determined by the employer, plus . . . additional pay for extracurricular and instructional activities . . . and teacher development pay that is not part of the contracted annual salary.”

RSA 100-A:1, XVII(b)(1) provides, in pertinent part, that Earnable Compensation shall mean “[fo]r Members who have not obtained vested status prior to January 1, 2012, the full base rate of compensation paid, as determined by the employer, plus compensation over base. Compensation over base shall include as applicable, additional pay for extracurricular and instructional activities . . . and teacher development pay that is not part of the contracted annual salary”.

The clause “as determined by the employer” was added to the statute in 2011 in part to address the administrative burden on NHRS to determine what is Base Compensation and what is not. The employers are the entities that establish and define the various types of compensation that are paid and whether a particular type of compensation is considered Base Compensation is often controlled by factors unrelated to NHRS (e.g. the calculation of overtime or annual salary increases). Thus, it is the general policy of NHRS to allow an employer to determine what constitutes Base Compensation. However, NHRS is the administrative entity that is responsible for interpreting and applying RSA 100-A and assuring a relatively uniform application of the law.

Additional Pay for Extracurricular and Instructional Activities

In the course of routine audits, NHRS is aware of many different types of stipends that are paid primarily to teachers but sometimes also to paraprofessionals and support staff. These include stipends for the following activities:

- Mentoring Other Teachers
- Curriculum Development
- Workshop Planning and Presenting
- Team Leader Stipend
- CPI Instructor
- Bluff Planning
- Web Classroom Content Manager
- Facilitator
- School in Need of Improvement
- Common Core
- THI
- Data Team
- Turnaround
- Core Mapping
- Function Day
- Evaluation Committee

It is not the purpose of this memorandum to define the meaning of these terms nor is the use of terminology consistent between school districts. This is merely a list that is indicative of the myriad types of stipends that NHRS has encountered and which appear to have the similar characteristic that the activities do not typically involve direct student activity. This is in contrast to the more traditional extracurricular and instructional activities such as sports coaching; music and art activities; homework club and academic tutoring; and supervision of student clubs and activities.

RSA 100-A:1, XVII does not contain a definition of the term “additional pay for extracurricular and instructional activities”. Arguably, the term only includes activities that directly involve students². However, a broader interpretation of the term allows for the inclusion of activities that, although not directly involving students, are commonly engaged in by teachers and other staff and are supportive of the general educational mission of the school. NHRS has taken the position that an unduly restrictive interpretation of the term would be contrary to the general prescription of the statute that the employer should have the initial discretion to designate the nature of compensation.

Thus, it is the position of NHRS that it will accept an employer’s designation that a stipend is “additional pay for extracurricular and instructional activities” subject to four exceptions:

1. The compensation must be paid in exchange for some service or activity performed by the teacher, paraprofessional, or support staff and cannot be paid merely because of educational accomplishment, pay level, or seniority. Whether

² Dictionary definitions of the term “extracurricular” invariably refer to students and the definitions of the terms “instructional” typically refer to the action or process of teaching.

denominated as a “stipend” or otherwise, additional compensation such as seniority pay, “top step stipends” and education and certification pay cannot be “additional pay for extracurricular and instructional activities” because it is paid merely on account of the Member’s status and not in consideration of any activity or service. Thus, such compensation is Earnable Compensation only if the employer designates it as Base Compensation.

2. The compensation cannot be paid for services or activities that are normally performed by employees as opposed to teachers and paraprofessionals such as maintenance activities. Such work is more in the nature of additional part-time duties.³ Although this is unusual, this can occur in some smaller school districts.
3. Stipends is paid for activities involving adult education are “additional pay for extracurricular and instructional activities” only for GED courses.
4. Stipends paid for activities that are wholly unrelated to the teaching or educational process are “additional pay for extracurricular and instructional activities” (e.g., a stipend to conduct weight loss or conditioning classes for other teachers; extra pay for bus duty or lunch duty; compensation for services relating to labor/management and collective bargaining activities. These types of stipends are Earnable Compensation only if the employer considers them to be part of Base Compensation.

Teacher Development Pay

RSA 100-A:1, XVII specifically uses the term “teacher development pay” [Emphasis added]. In addition, the term is limited to “pay that is not part of the contracted annual salary”. Paraprofessional and support staff are typically paid hourly. Thus, by the unambiguous terms of RSA 100-A:1, XVII, only teachers can be paid Teacher Development Pay. Moreover, because the term Teacher Development Pay is clearly defined as a type of compensation separate and distinct from the other types of compensation listed in the statute, it cannot be designated as “additional pay for extracurricular and instructional activities”. Thus, employees who are not Teachers do not qualify for Teacher Development Pay. Teacher Development Pay may be either Base Compensation or Compensation Over Base, as determined by the employer.

STATUTORY REFERENCES: RSA 100-A:1, XVII

Approved by Mark F. Cavanaugh, Esq.
Associate Counsel and Compliance Officer

Approval Date

³ See Interpretive Memorandum 2013-4 for a discussion of whether compensation for additional part-time duties is Earnable Compensation.