



Interpretive Memorandum No. 2018-1

DATE: REVISED August 2, 2022 (Originally issued April 18, 2018)

TOPIC: Enrollment Issues Relating to Teacher Certification

PURPOSE:

The purpose of this Interpretive Memorandum is to clarify certain issues relating to the proper enrollment of school and SAU employees as either “Employees”¹ or “Teachers” as those terms are defined in RSA 100-A:1, V and VI, respectively; and, the role that teacher certification by the New Hampshire Department of Education (DOE) plays in that process. These issues include the following situations: (1) staff in teaching positions who have not yet obtained full certification; (2) staff that should be enrolled as Employees notwithstanding the fact that they are required to be certified by the DOE; (3) paraprofessionals; (4) staff in non-teaching administrative and professional positions that require certification; (5) staff in job-sharing positions; and, (6) the special circumstances relating to charter school teachers.

SUMMARY:

A. Teachers Not Fully Certified. If a Superintendent is permitted to hire someone who is not fully certified for a teaching position pursuant to an alternative certification protocol approved by the DOE, then the New Hampshire Retirement System (NHRS) considers that to be “appropriate certification” as required under RSA 100-A:1, VI and that person must be enrolled in the NHRS as a Teacher member.

B. Superintendents and Assistant Superintendents. Superintendents and Assistant Superintendents must always be enrolled as Employees for reasons more fully described below.

C. Paraprofessionals. Paraprofessional positions are distinct from teacher positions and are never enrolled as Teachers regardless of any certification requirements. Paraprofessionals must be enrolled as Employees.

D. Non-Teaching Administrators and Professional Positions. Staff employed in non-teaching administrative and professional positions, other than Superintendents and Assistant Superintendents, who are required to be certified pursuant to DOE administrative rules, or by the school district, must be enrolled as Teachers. In addition, staff required to hold a professional license (e.g., school nurses, speech language

¹ Capitalized terms shall have the meanings as provided in the Interpretive Memoranda Glossary of Terms.

pathologists, etc.) must also be enrolled as Teachers. However, staff in professional assistant positions should be enrolled as Employees.²

E. Job-Sharing Position. Staff employed in a job-sharing teacher position requiring certification must be enrolled as Teachers pursuant to RSA 100-A:4, III-b. This provision requires NHRS membership for “*any teacher . . . who equally shares a job-sharing fulltime position with another teacher.*” The position must be equally shared. If either job-sharing Teacher ceases to be employed and the school does not intend to replace him or her, the school should notify the staff member who remains employed that the job-sharing arrangement has been terminated and the staff member’s active membership in NHRS must be terminated and contributions must cease. However, if the vacancy in one half of the job-sharing position is temporary and the school intends to fill the vacancy, then the other Teacher must remain enrolled and contributing in NHRS.

F. Charter Schools. Pursuant to RSA 194:B-14, III, charter school teachers are permitted to be enrolled in NHRS only if the school has elected to be an NHRS participating employer. However, only fully certified teachers may be enrolled.

ANALYSIS:

A. Certification Required. RSA 100-A:1, VI, defines the term “Teacher” to mean

“any regular or special teacher, principal, supervisor or administrator, librarian or other member of the teaching or professional staff engaged in the service of the public elementary and secondary schools located within the state and supported by and under the control of the state, the local school district, or other employers of teachers eligible for membership in the system. For teachers who job share, teacher shall mean 2 individuals who share one position. For purposes of membership as a teacher under this chapter, proof of appropriate certification by the department of education or appropriate professional licensure shall be maintained by the employer and available to the retirement system.” [Emphasis added]

The last sentence regarding certification was added to RSA 100-A:1, VI, in House Bill 1128 (Chapter 51:1), effective 4/24/06. The amendment codified a policy adopted by the NHRS Board of Trustees at its September 2005 Board meeting. NHRS takes the position that, in order to be enrolled in NHRS as a Teacher, a staff member must have “appropriate certification” or “appropriate licensure”. Furthermore, the employer must maintain proof of certification and have it available to the NHRS upon request.

B. Teachers and Administrators Not Fully Certified. DOE administrative rules provide for several alternative certification protocols that allow a staff member to take a teaching position despite the fact the he or she is not fully certified. In addition, in certain circumstances the DOE may establish alternative certification criteria by less formal policies or procedures. In recognition of the sometimes extended time frames involved in the completion of the DOE certification process, NHRS takes the position

² See Interpretive Memorandum 2012-3.

that such a staff member has “appropriate certification” if he or she has made the necessary application and the superintendent has initiated the alternative certification process as provided under DOE administrative rules, or as otherwise provided under DOE policies and procedures. Examples of the alternative certification protocols include the following:

1. Staff members holding an intern license pursuant to Ed 504.03;
2. Staff members for whom the superintendent has requested permission to employ pursuant to Ed 504.04 and for whom an approved “in process of certification” (IPC) has been issued pursuant to Ed 504.041;
3. Staff members who have an Individualized Professional Development Plan pursuant to Ed 505.04; and
4. Staff members who have a Site-Based Certification Plan pursuant to Ed 505.05; and,
5. Staff approved for teaching positions under any program or plan established by the DOE but not expressly mentioned in the DOE Administrative Rules.

Any such staff member must be enrolled as a Teacher.

C. Superintendents and Assistant Superintendents. The definition of Teacher under RSA 100-A:1, VII specifically mentions principals, supervisors and administrators but does not include the term “superintendent” or “assistant superintendents”. Historically, superintendents were employed by the DOE and were enrolled as Employees. In addition, under the predecessor plan, the Teachers Retirement System (former revised laws chapter 138), superintendents were specifically excluded from the definition of “Teacher”. For these reasons, NHRS has taken the long-standing position that Superintendents are not Teachers and must be enrolled as Employees.

D. Paraprofessionals. NHRS takes the position that paraprofessional positions are distinct from teacher positions. Therefore, paraprofessionals are not “Teachers” within the meaning of RSA 100-A:1, VI, notwithstanding any certification requirements imposed by the DOE. Pursuant to NHRS administrative rules regarding participation standards, any paraprofessional who is regularly scheduled to work at least 35 hours per week must be enrolled as an Employee. However, pursuant to RSA 100-A:20, I-a

“[t]he governing body of any school district that has elected pursuant to paragraph I to have its employees participate in the retirement system may also elect to have employees participate in the New Hampshire Retirement System who are employed in paraprofessional or support positions requiring direct involvement with students, such as the positions of classroom, academic, teacher, special education, library or health aide/assistant, and who meet the minimum participation standards for fulltime teachers as provided in rules adopted by the board of trustees.”

This means that if a school district or SAU has made such an election, the minimum participation standard for full-time teachers under NHRS Administrative Rule Ret 302.05(b)(2) applies. However, the individual should still be enrolled as an Employee. In this situation, an individual in a paraprofessional or support position must be enrolled as an Employee if he or she is regularly scheduled to work at least 30 hours per week

or, if not regularly scheduled, works full-time for a cumulative total of 18 weeks during a school year at which point the staff member must be enrolled prospectively.

E. Non-Teaching Administrator and Professional Positions. Rules Ed 506 and Ed 507 contain the certification requirements for staff working in certain non-teaching positions as administrators and specialists. In addition, DOE Rules Ed 504.07-504.09 contains certification requirements for school nurses; and, licensed speech language pathologists are considered to be certified pursuant to Ret 507.23(d). Any such staff member who is required to be certified pursuant to those rules must be enrolled as a Teacher, except for Superintendents and Assistant Superintendents. For positions where the DOE certification is optional, the staff member should be enrolled as a Teacher only if the school district or SAU requires certification as a job requirement. In addition, Jr. Reserve Officer Training instructors and administrators that are required to take an instructor certification course administered by a branch of the United States military are considered to have “appropriate certification” and must also be enrolled as Teachers. In addition, staff required to hold a professional license (e.g., school nurses, speech pathologists, etc.) must also be enrolled as Teachers. However, staff in professional assistant positions should be enrolled as Employees.³

F. Job-Sharing Position. The definition of Teachers includes “*2 individuals who share one position*”. In addition, RSA 100-A:4, III-b provides that “*any teacher . . . who equally shares a job-sharing full-time position with another teacher shall be eligible for membership in the retirement system.*” [Emphasis added.] NHRS takes the position that the use of the term “equally” requires each teacher to perform the job in equal proportions over the course of the school year by alternating work days or work weeks in equal proportions. A teacher job-sharing in any unequal proportions will not qualify for enrollment unless he or she is regularly scheduled to work at least 30 hours per week. NHRS takes the position that a temporary vacancy in one-half of the job-sharing position should not result in the termination of the job-sharing arrangement while the school seeks to fill the vacancy. Therefore, if the vacancy in one half of the job-sharing position is temporary and the school intends to fill the vacancy, then the other Teacher must remain enrolled. However, if the school does not intend to fill the vacancy, the employer is deemed to have terminated the job sharing arrangement.

G. Charter Schools. Pursuant to RSA 194-B:14, charter school teachers are permitted to be enrolled in NHRS only if the school has elected to be a participating NHRS employer. However, only fully certified teachers may be enrolled. At least fifty percent of the teachers in a charter school are required to be certified. Charter school teachers who are not fully certified, and nonteaching staff members, are not eligible for membership. A certified teacher hired by a charter school enrolled in NHRS, who allows his or her certification to lapse is no longer eligible for NHRS membership. In this situation, the staff member’s active membership in NHRS must be terminated and contributions must cease. NHRS should be notified so that any necessary retroactive contribution and service credit adjustments may be made.

³ See Interpretive Memorandum 2012-3.

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8-2-2022

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Approval Date