

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS**

IN THE MATTER OF: )

R. S. T. )  
\_\_\_\_\_ )

OAH No. 06-0799-TRS  
Agency No. 2006-032

**DECISION AND ORDER**

**I. Introduction**

R. S. T. has appealed the denial by the Director of the Division of Retirement and Benefits ("Division") of his request to include the compensation he received as a part-time Educational Technology Advisor ("ETA") in the calculation of his retirement benefits from the Teacher's Retirement System ("TRS"). The hearing was held on February 14-15, 2007. Paul S. Wilcox represented Mr. T.; Joan M. Wilkerson, Assistant Attorney General, represented the State of Alaska, Department of Administration, Division of Retirement and Benefits (Division).

Based on the record as a whole, the administrative law judge affirms the Division's denial of Mr. T.'s request to include the compensation he received as an Educational Technology Advisor in the calculation of his retirement benefits from the Teacher's Retirement System.

**II. Findings of Fact**

Mr. T. bears the burden of proof by a preponderance of the evidence.<sup>1</sup> In order to prove a fact by a preponderance of evidence, he must show that the fact more likely than not is true.<sup>2</sup>

Mr. T. is a teacher and principal who retired from the North Slope Borough School District in 2006 after 19 years of combined teacher/principal service.<sup>3</sup> He began his career in the Matanuska/Susitna (Mat-Su) School District in 1986 as an elementary school music teacher. Mr. T. subsequently obtained a Master's Degree in Education (Administration) and worked as an elementary school principal for five years.<sup>4</sup> In the fall of 2002, Mr. T. accepted a position in No Name, Alaska, as the principal of the No Name School, a K-12 facility with approximately 150 students located in the North Star Borough School District ("NSBSD").

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<sup>1</sup> 2 AAC 64.290(e).

<sup>2</sup> *Id.*

<sup>3</sup> The facts are taken from Mr. T.'s hearing testimony, unless otherwise indicated.

<sup>4</sup> Mr. T. holds both a teaching certificate and an administrator's certificate.

Mr. T. was the principal of the No Name School for the 2002, 2003 and 2004 school years. One of his duties was to hire individuals to fill extra duty contracts for various non-teaching positions in the school. One of those positions was the part-time Educational Technology Advisor (“ETA”), also known informally as the “site tech advisor.”<sup>5</sup> In general, the ETA was the on-site person responsible for the upkeep and maintenance of the school’s computers. During the school years 2002 – 2006, the NSBSD had as many as twelve individuals serving as ETAs in the village schools throughout the district. Both certificated and non-certificated individuals held those positions, although the majority were certified.<sup>6</sup>

No one already on staff expressed an interest in the ETA position at the No Name School. Mr. T. approached one first-year teacher about it but later decided not to hire him because of concerns the man would be overwhelmed with learning his new job. Because Mr. T. possessed adequate computer skills, he ultimately appointed himself as the ETA, with the consent of D. B., the former NSBSD Technology Coordinator and ETA supervisor.

On October 5, 2002, Mr. T. entered into a contract with the school district to fill the ETA position for the 2002-2003 school year. The contract, entitled “Memorandum of Agreement” (“MOA”), stipulates that the total payment for his services would be \$4200, paid in two equal installments, the first in January 2003 and the second within 30 days of the completion of the contract.<sup>7</sup> The contract contains no mention of any additional compensation, including TRS, for the ETA position over and above the total payment for services. Mr. T. was paid for the 2002-2003 school year on December 11, 2002, and May 9, 2003.<sup>8</sup> Each warrant stub indicates the payment is for “Added duty – No TRS.”<sup>9</sup>

On September 24, 2003, Mr. T. and the NSBSD entered into a second MOA appointing him as the No Name School ETA for the 2003-2004 school year. Similar to the previous year, the total compensation was \$4167, payable in two equal installments.<sup>10</sup> As agreed in the contract, Mr. T. was paid for the 2003-2004 school year in two installments, the second on May

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<sup>5</sup> Mr. T. and various other witnesses occasionally referred to the ETA as the “site tech,” which is a reference to the position’s former title of “Site Technology Advisor.” See Exhibit J at pg. 2, number 9. At one point they may have been distinct positions, but for purposes of this appeal, the titles “ETA” and “site tech” are used interchangeably.

<sup>6</sup> Exh. 15 at 2.

<sup>7</sup> Exh. J at 1.

<sup>8</sup> Exhs. M & N.

<sup>9</sup> *Id.*

<sup>10</sup> Exh. K at 1.

21, 2004.<sup>11</sup> As with the previous contract, Mr. T.'s warrant stub indicates he was being paid for "Added duty – No TRS."<sup>12</sup>

The ETA's job description, attached to the MOA for both the 2002 and 2003 school years, was identical for each year.<sup>13</sup> The ETA was expected to carry out his or her duties within about 30-40 minutes per day in addition to the regular work day.<sup>14</sup> The job description contains a mission statement, which reads as follows:

Mission statement: through training, communication and collaboration with the NSBSD Information Technology Department, ETA's will be well-trained site-based instructional technologists, able to fix most technology-related problems. They will be the on-site source for hardware and software troubleshooting. They will also function as a site-based expert on the integration of technology into the classroom; referencing national, state and district technology standards. In summary, it is the ETA's job not only to repair hardware and software problems, but also to facilitate the attainment of district and state technology standards throughout their school. Future funding for these positions is dependant upon reoccurring grant awards.<sup>[15]</sup>

The job description goes on to list in particular the ETA's duties. The ETA had two major areas of responsibility – providing on-site software and hardware maintenance and troubleshooting, and acting as the on-site expert for incorporating technology into the classroom. The ETA's duties can be summarized as follows:

- Maintain all computers, printers, scanners and associated devices, including site technology infrastructure such as cables and routers.
- Account for, inventory and store all of the computer/technology software; train the entire staff in the setup and use of the Instructional Applications Network (IAN), as well as the projection equipment and other peripheral devices.
- Participate in district-wide videoconferences as necessary.

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<sup>11</sup> Exh. O.

<sup>12</sup> *Id.*

<sup>13</sup> See Exh. J at 2; Exh. K at 2. This job description is used for every ETA position in the NSBSD, but only those ETA's who have a teaching certificate may supervise student technology aides, as this requires a teaching certificate. Testimony of D. D., NSBSD Director of Human Resources.

<sup>14</sup> Testimony of D. B., NSBSD Technology Coordinator and ETA supervisor.

<sup>15</sup> Exh. J at 2.

- Supervise the student technology assistant, if one has signed up (certified teachers only).
- Perform server maintenance and backups; maintain workstation connectivity to all the applications on the network.
- Maintain familiarity with NSBSD applications and be able to train others on their use.
- Assure that all of the computer/internet users in the school have signed agreement forms and keep the forms in a secure location.
- Maintain the site's web page, including training others in web page development, filtering inappropriate content and making sure appropriate guidelines are followed before any material is published.
- Conduct in-service trainings or team-teach a lesson "with other teachers in the school that facilitates the integration of 'technology' in the regular curriculum." This could include the use of specific software programs, web page design and various search engines, and "assigning courses using the Instructional Applications Network (IAN), which address student non-proficiencies."<sup>16</sup>

Mr. T. fulfilled the duties of an ETA for the 2002-2003 and 2003-2004 school years. In addition to performing the usual duties of the position – maintaining the computer hardware and software, Mr. T. took an active role in facilitating the incorporation of technology into the No Name School. For example, he worked with the Instructional Applications Network (IAN) teacher, whose grant-funded position was designed to help low income and bilingual students with educational deficiencies. He also provided training to teachers on the use of hardware and software applications, helped students create user accounts for the Accelerated Reader program, and was involved with the effort to have the students learn keyboarding skills.

Before the beginning of the 2004-2005 school year, Mr. T. approached D. D., NSBSD Director of Human Resources, about receiving TRS benefits for the ETA position.<sup>17</sup> Neither Ms. D. nor Mr. T. described their actual communication, but apparently she indicated he could not because the position did not require a teaching certificate. As a result of Mr. T.'s inquiry about

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<sup>16</sup> Exh. J at 2.

<sup>17</sup> Testimony of D. D.

TRS benefits, Ms. D. changed the language of the ETA contract for the 2004-2005 school year specifically to disallow the payment of TRS benefits:

Contractor agrees to perform the duties as described by the Responsibilities Statement for a total gross amount of **\$4167.00**, payable in a payroll check within TEN days after satisfactory completion of the above described project. It is understood that that is supplemental work and **not** eligible for Teachers' or Public Employees' Retirements System (TRS/PERS) deductions . . . .<sup>[18]</sup>

In spite of this language, Mr. T. signed the contract with the NSBSD and completed the ETA duties for the 2004-2005 school year, his final year in No Name. In 2005, Mr. T. left the No Name School to become the principal of the Blank Middle School, his last administrator assignment. As he contemplated retirement at the end of the 2005-2006 school year, Mr. T. approached the NSBSD about receiving TRS for the three years he was an ETA at the No Name School in No Name. His request was denied and he was referred to the Division, with the same result. This appeal followed.

### **III. Discussion**

Mr. T. is seeking to have his service as an Educational Technology Advisor (ETA) counted in his total compensation for the purpose of calculating his retirement benefit under TRS. Mr. T. maintains that, as a teacher and a principal, he meets the statutory requirements for membership in the Teachers' Retirement System. He further asserts that his earnings as an ETA qualify as "compensation" for TRS and should therefore be included in the salary calculations used as the basis for the allocation of his retirement benefits.

The Division maintains that the TRS statute must be read *in pari materia*, or as a whole. Read in such a way, the statute would extend benefits only to those certificated individuals engaged in work requiring a teaching certificate and as a result, Mr. T.'s employment as an Educational Technology Advisor would be excluded from his retirement calculations.

The Division's interpretation of the statute gives the best effect to its purpose and meaning. For this and other reasons, Mr. T. is not entitled to have his ETA service counted in calculating his TRS benefit.

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<sup>18</sup> *Id.* See also Exh. L at 1 (emphasis in original).

**A. The ETA Duties Did Not Constitute “Membership Service” Under TRS**

**1. A TRS member must be both a certificated individual and working in a position that requires a teaching certificate**

The Teachers’ Retirement System first became effective in July of 1955. Its declared purpose is to encourage qualified teachers to enter into and continue in service with participating employers through the provision of retirement, disability and death benefits.<sup>19</sup> In part, the statute limits the ranks of those covered by TRS through its definition of member and membership service. A TRS member is a person who is eligible to participate in and is covered by the TRS retirement system.<sup>20</sup> With the exception of university teaching positions and state legislators who opt into the system, AS 14.25.220(42)(A) defines a member of TRS as:

a certificated full-time or part-time elementary or secondary teacher, a certificated school nurse, or a certificated person *in a position requiring a teaching certificate as a condition of employment* in a public school of the state, the Department of Education and Early Development, or the Department of Labor and Workforce Development . . . .<sup>[21]</sup>

A TRS member’s qualifying employment is called “membership service” which is defined in relevant part as “full or part-time service as a teacher in a public school . . . .”<sup>22</sup>

According to AS 14.25.220(42)(A), a TRS member must not only be a certificated individual, but must also be working in a position that requires a teaching certificate. By calling for employment in a position that requires a teaching certificate, the statute recognizes that it is conceivable that a certificated teacher might obtain work for a school district in a position that does not require a teaching certificate, such as on the school’s secretarial or maintenance staff. In order to prevent a teacher from obtaining TRS benefits for employment in which he or she is not engaged in teaching, AS 14.25.220(42)(A) clearly limits TRS membership to those individuals who work in a position that requires a teaching certificate as a condition of employment. Essentially, if the position does not require a teaching certificate, the person filling it does not qualify for TRS membership for that position, regardless of whether the person holds a teaching certificate.

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<sup>19</sup> AS 14.25.001.

<sup>20</sup> The terms “member” and “teacher” are used interchangeably in the statute. AS 14.25.220(42).

<sup>21</sup> Emphasis added.

<sup>22</sup> AS 14.25.220(23)(A).

Mr. T. maintains that, as a teacher and a principal, he meets the requirements for membership in TRS as set forth in AS 14.25.220(42)(A) because he is a certificated individual working as a school principal, a position that requires a certificate. The Division, while agreeing that Mr. T. meets the requirements for TRS participation in his capacity as a school principal, asserts that his interpretation of AS 14.25.220(42)(A) yields anomalous results when applied to the ETA position.

The Division argues that if Mr. T.'s interpretation of the statute is correct, teachers could earn TRS benefits for working as school custodians, for example, and that is obviously not the intent of the statute.

The Division's position is correct. The TRS statute has two basic eligibility criteria for membership: only individuals who have teaching certificates can participate, and they must be employed in *positions requiring a teaching certificate* in order to earn credit toward retirement compensation. As a school principal, Mr. T. met both statutory criteria, but the services Mr. T. provided as an Educational Technology Advisor were not part of his duties as a school principal. They were undertaken pursuant to a separate contract with the NSBSD which did not require a teaching certificate and these duties were far removed from Mr. T.'s responsibilities as a site administrator. Because his ETA duties did not require a teaching certificate, they did not meet both prongs of the TRS statute's eligibility requirement, and therefore he was not a TRS member for purposes of that position. The compensation Mr. T. earned from those services was properly excluded from his retirement calculation.

## **2. Mr. T.'s ETA pay did not qualify as part of his "base salary" for TRS purposes**

In calculating a TRS member's retirement benefit, the Division determines the member's "average base salary," which is essentially done by dividing the person's three highest years of base salary by the number three.<sup>23</sup> The member's "base salary" is defined as:

the total remuneration payable under contract for a full year of membership service, including addenda to the contract . . . .<sup>[24]</sup>

In his appeal, Mr. T. asserts that there is no requirement in AS 14.25.220(6)(A) that salary paid for addenda to a contract be solely for positions requiring certification. He uses this

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<sup>23</sup> AS 14.25.220(6).

<sup>24</sup> AS 14.25.220(6)(A).

interpretation of “base salary” to argue that his ETA pay should be added to his principal’s salary to equal his “total remuneration under contract for a full year of membership service.” Adding the value of his ETA compensation would increase his base salary for each of the 2003-2004 and 2004-2005 school years by just over \$4,000.<sup>25</sup>

Mr. T.’s compensation as an ETA does not qualify for inclusion in his “base salary” for the purpose of determining his TRS benefits. His three ETA memoranda of agreement with the NSBSD were not “addenda” to his contract as the principal of the No Name School.

L. S., former NSBSD Director Business Affairs, testified that an addendum to a contract is an agreement that extends the duration of a teacher’s or administrator’s existing contract, relates specifically to that contract, and is counted toward the employee’s TRS benefits. Thus, an agreement between the district and a teacher who, for example, would be working for an additional week past the end of the school year, would be an addendum to the teacher’s contract. She added that the district also enters into “added duty” contracts with teachers to perform duties outside their regular job description and work day. According to Ms. S., if the position requires a teaching certificate, the added duty contract qualifies for TRS. However, if the position does not require a teaching certificate as a condition of employment, it does not qualify for TRS and it is called a “memorandum of agreement,” and a non-certified person may be hired for the job, as with the ETA positions.

The NSBSD definition accords with the meaning of addendum in the statute. An addendum is something that is added to, and becomes part of, the original contract.<sup>26</sup> The memoranda of agreement, on the other hand, were all separate contracts for services so distinct from Mr. T.’s duties as the school principal that different, non-certificated employees were eligible to compete for them. Thus, contrary to his assertion, none of Mr. T.’s MOA’s with the NSBSD to be the ETA at the No Name School were addenda to his contract as the school principal.

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<sup>25</sup> During his opening statement, Mr. T.’s attorney indicated Mr. T. wished to waive his claim to TRS benefits for the 2002-2003 school year because he received his highest three years of salary in the 2003, 2004 and 2005 school years, so his 2002-2003 ETA compensation would not figure into the calculation of his “high three.” Since he was not an ETA during the 2005 school year at the Blank Middle School, Mr. T. is thus claiming TRS benefits for his ETA salary during only the 2003-2004 and 2004-2005 school years.

<sup>26</sup> See, e.g., *National Bank of Alaska v. J.B.L. & K. Alaska*, 546 P.2d 579, 591 (Alaska 1976) (Connor, J., dissenting). See also *Sullivan v. Brown*, WL 1735520 (Conn.Super. March 31, 2008).



**B. Mr. T. Cannot Change the Nature of His MOA with the NSBSD**

Mr. T. argues that his earnings from the ETA position should be included in TRS because even though the contracts he signed do not specify that a teaching certificate is required as a condition of employment, many of the ETA responsibilities are instructional in nature. He points to the ETA mission statement and its description of the ETA as the “site-based instructional technologist” who must “referenc[e] national, state and district technology standards” and facilitate the attainment of these standards in the school.<sup>27</sup> Mr. T. claims that certain duties listed in the ETA job description, such as supervising the student technology aide, conducting in-service trainings and team teaching lessons with other teachers, also require a teaching certificate.<sup>28</sup>

Mr. T.’s claim that the ETA position requires a teaching certificate is without merit. Of all the job duties listed in the eleven separate categories found in the position description, only one of the ETA’s responsibilities even refers to a teaching certificate. It states that the ETA is to:

Supervise the student technology assistant(s) (if a student(s) has signed up for the class). (Certified teachers only.)<sup>[29]</sup>

By limiting the performance of this discrete, optional duty to certificate holders only, the position description contemplates that all of the required ETA duties listed do not require a certificate. Mr. T. himself admitted during the hearing that a non-certificated member of the community could occupy the position without issue. Moreover, D. B., the NSBSD Technology Coordinator, testified that the primary duty of the ETA position is to keep the school’s hardware working and it is the responsibility of the IAN teacher to teach educational technology to the students.

It is apparent from the nature of his testimony that Mr. T. expanded his duties as the No Name School ETA over and above the primary responsibility of maintaining the school’s computers. Not only did he occasionally supervise and instruct students as permitted to him as a holder of a teaching certificate, but it would have been easy for him to assume an overseer type of role regarding the students’ technology issues. Indeed, Mr. T. referred to himself as the “educational leader” of the school in his role as the school principal. Even though Mr. T.’s

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<sup>27</sup> See, for example, Exh. J at 2.

<sup>28</sup> *Id.*

<sup>29</sup> Exh. J at 2.

teaching certificate allowed him to perform tasks that were more instructional in nature, this fact cannot transform the ETA job into a position that requires a teaching certificate.

**C. Mr. T.'s Claim is Not Compensable Under Contract Principles**

M. T. was on notice that his ETA compensation did not count toward TRS calculation, and he has received the full value of his employment contract with the NSBSD. Even though Mr. T. testified he was not aware that the ETA position was not subject to TRS, the evidence has shown that he was on notice it was not. On December 11, 2002, Mr. T. was issued his first paycheck stub for the 2002-2003 ETA position which clearly indicated the compensation was “Added Duty – No TRS.”<sup>30</sup> Subsequently, he received a paycheck stub for his ETA compensation in May of the years 2003, 2004, and 2005, all of which bore the same statement: “Added Duty – No TRS.”<sup>31</sup>

Further, NSBSD Human Resources Director D. D. testified that sometime in early 2004, after he had been the No Name School ETA for two years, Mr. T. inquired of her about whether the ETA position qualified for TRS after the 2003-2004 school year. Ms. D. apparently answered in the negative and as a result of his inquiry, she added language to the ETA memoranda of agreement for the 2004-2005 school year to make it clear that TRS does not apply to the position. The language added to the MOA reads:

It is understood that this is supplemental work and **not** eligible for Teachers’ or Public Employees’ Retirement System (TRS/PERS) deductions.<sup>32</sup>

Mr. T. signed this memorandum of agreement in 2004, indicating he knew this compensation would not be counted towards his TRS calculation and that he agreed to these terms. Mr. T. was therefore on notice that he was not receiving TRS benefits in exchange for his services as an ETA, at least for the 2004-2005 school year. Through this appeal to add retirement benefits, he is essentially attempting to increase his compensation for services already rendered.

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<sup>30</sup> Exh. M.

<sup>31</sup> Exhs. N, O, P.

<sup>32</sup> Exh. L at 1 (emphasis in the original).

#### **D. Mr. T.'s Claim is Barred by the Statute of Limitations**

In December 2002, Mr. T. was on notice that he would not be receiving TRS credit for his ETA compensation because he received his pay stub indicating “Added Duty – No TRS.”<sup>33</sup> If Mr. T. had entered into the memorandum of agreement believing his compensation would count toward TRS calculations, he could not have maintained that belief after he received that paystub. From December 11, 2002, he had only five days to file a grievance pursuant to his collective bargaining agreement.<sup>34</sup> He did not do so. In fact, it appears he never discussed the matter with any administrative staff until the spring of 2004. Even then, he entered into memoranda of agreement on the same terms for each of the next two years.

Similarly, from December 11, 2002, Mr. T. had three years in which to file a legal action against the NSBSD on a contract claim.<sup>35</sup> His failure to take any legal action to secure rights that he believed were being denied to him since 2002 bars his claim under the statute of limitations applicable to claims under contract. There is no factual or legal basis to toll the statute of limitation in this case.

#### **IV. Conclusion**

Mr. T. is recognizably a certificated individual and his duties as a principal do require a certificate as a condition of employment. This makes the majority of his employment eligible for TRS membership and benefits. However, Mr. T.'s memorandum of agreement for the ETA position was a separate contract that did not require a teaching certificate. That Mr. T. as a certificated individual expanded his ETA job duties to emphasize possible instructional pursuits requiring a teaching certificate could not serve to change the nature of his contract with the NSBSD. The Director correctly denied Mr. T.'s request to include his ETA compensation in his base salary for the purpose of calculating his retirement benefits.

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<sup>33</sup> Exh. M.

<sup>34</sup> During the period of Mr. T.'s employment when he was a member of the North Slope Educational Administrators' Association, his collective bargaining agreement provided a grievance procedure for disputes arising between an employee and employer. Exh. Q at pg. 12. This does not mean to suggest that TRS benefits are negotiable or subject to the grievance/contest provisions of collective bargaining agreements. However, to the extent Mr. T. may be asserting that the district failed to take action it should have taken as a matter of law – making the ETA a TRS position and making TRS contributions for him – he may have been required to grieve or contest that failure.

<sup>35</sup> AS 09.10.053.

**V. Order**

- The Division's denial of Mr. T.'s request to include his ETA compensation in the calculation of his retirement benefits from the Teacher's Retirement System is affirmed.

DATED this 14th day of May, 2008.

By: Signed \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

**Adoption**

This Order is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 26th day of June, 2008.

By: Signed \_\_\_\_\_  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to technical standards for publication.]