



The following information was recently provided to NYSTRS' participating employers. As a Retirement System delegate, it is important you are aware of these issues.

Delegate News

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Driver Education Reportability

Many districts offering Driver Education (DE) programs now require a fee from students to participate, and fee structures vary by district. In an effort to obtain the necessary information to determine whether instruction of Driver Education will be reportable for pension purposes given this changing environment, NYSTRS issued a questionnaire to school districts and BOCES in August and September of 2019 to ascertain details about the administration of their DE programs.

Based on the information made available through this outreach and our review of the New York State Education Department's *Driver and Traffic Safety Education Guidelines*, we are providing the following determination.

A) Any employment paid by, or conducted through, a private commercial driving school contracted to provide a portion of the Driver Education program continues to be NOT reportable for pension purposes. In addition, a person paid through a private school is NOT eligible for membership with NYSTRS based on that employment.

Furthermore, **payments are also considered NOT reportable if the services are for programs that (though operated on the premises and/or under the auspices of a Participating Employer) are in substance programs of third parties, not those of the Participating Employer.**

B) Credit-Bearing Driver Education programs, which are part of the regular school curriculum for which students are not required to pay tuition or a fee, continue to be reportable for pension purposes. These payments are considered "Instructional" and should be reported as "C – Instructional Pay" on your district reports.

C) Tuition-based Driver Education programs WILL GENERALLY BE considered reportable to NYSTRS for pension purposes if the following criteria are met:

- The program has been validly authorized by the Participating Employer's governing board.
- The program is approved by the NYS Education Department and complies with their "*Driver and Traffic Safety Education Guidelines*."

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- The program is administered and operated by the Participating Employer.
 - Certified teachers are required to provide the course instruction to public school students.
 - The administrator must hold a NYS education administrative certification (SBL, SDL, SAS, or SDA).
- The Participating Employer has full control of, and full legal responsibility and liability for, the program.
 - The salaries are paid to System members via regular district payroll.
 - An employer/employee relationship exists between the district and the program's employees.

NOTE: Any NYSTRS retirees conducting Driver Education duties deemed reportable (B and C above) are subject to the earnings limitations of Section 212 of the Retirement & Social Security Law. This limit is currently set at \$30,000 within a calendar year for those retirees under age 65.

The System reserves the right to request additional information relating to any such program, in particular those that do not meet the criteria covered above as of July 1, 2020 or those that are not included in the Participating Employer's collective bargaining agreement. Employer response to our questionnaire was limited. As a reminder, as Education Law Section 520 states, "Each employer shall keep such records and from time to time shall furnish such information as the retirement board in the discharge of its duties may require." Insufficient records and information may result in incomplete and/or adverse findings. Please be further reminded that Education Law Section 525 provides criminal liability for "any person who shall knowingly make a false statement, or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system."

As always, the System may determine payments are not reportable in any or all of the following circumstances, since such payments would artificially inflate the final average salary (FAS) and are inconsistent with the System's statutory responsibility to ensure the actuarial soundness of the pension fund:

- ◆ When they are negotiated or made on the eve of retirement or FAS years;
- ◆ When they are not reasonably representative of career earnings;
- ◆ When they require resignation, retirement, or other forms of separation from employment as a condition, and/or within a certain window of time;
- ◆ When their terms and conditions restrict coverage to only a select group of retirement-eligible employees; and/or
- ◆ When they are paid in other circumstances indicating an attempt to inflate a member's final average salary.