New York State Teachers' Retirement System

**Delegate News**

Issue No. 2025-11
August 2025

*The following information was recently provided to NYSTRS' participating employers. As a Retirement System delegate, it is important you are aware of these issues. Please share this Delegate News with NYSTRS members in your district.*

# Court Decisions Upholding the Retirement System's Three-Year Final Average Salary Determinations

The purpose of this Administrative Bulletin is to reiterate the System's position and to provide additional clarity on the eligibility of certain earnings for inclusion in the calculation of a member's three-year Final Average Salary (FAS).

The three-year FAS is limited to "regular compensation" and may not include any form of termination payment (lump sum or otherwise), bonuses and one-time-only increments, payment for unused leave, fringe benefits, payment on the eve and/or in anticipation of retirement or to induce retirement, and generally payments that are not part of a bona fide salary base (among others).[1]

The System is vested with the authority and discretion to guard against and exclude any compensation that artificially inflates (intentional or otherwise) the three-year FAS and a member's pension benefits. Per Education Law §509(9), the System's final administrative determination is subject to judicial review only, pursuant to Article 78 of the New York Civil Practice Law and Rules.

The following is a summary of a recent key court decision on this topic. The ruling and principles affirmed and upheld in this decision have broad continuing impact.

The Appellate Division of the New York State Supreme Court in *Bellarosa v. New York State Teachers' Ret. Sys.*, 229 A.D.3d 995, 995, 217 N.Y.S.3d 256, 258 (2024), leave to appeal denied, 42 N.Y.3d 912 (2025) unanimously upheld the System's final determination to exclude certain eve-of-retirement payments that had the effect of artificially inflating the member's pension benefit. The Appellate Court affirmed the Supreme Court's ruling that the System was not arbitrary and capricious in rejecting the employer's reclassification of these payments as part of the member's base salary for purposes of calculating their pension benefits.

Such eve-of-retirement reclassification and payments had the unavoidable effect of artificially inflating the member's FAS and pension benefits, and NYSTRS is vested with the authority and mandate to safeguard the actuarial integrity and financial soundness of the Retirement System. The Court further reaffirmed that the System is under no obligation to accept an employer's categorization of a payment and is free to look at the substance of the matter and make its own determination with respect to pension eligibility.

[1] As provided in sections 443(a), 512(a) and 608(a) of the Retirement and Social Security Law and Sections 5003.1 and 5003.4 of the System's Rules and Regulations, as applicable. Tier 1 five-year final average salary calculations are governed by Education Law §501(11)(a), subject, in the case of Tier 1 members with a date of membership on or after June 17, 1971, to the limitations of section 431 of the Retirement and Social Security Law. A discussion of what may or may not be included in the five-year calculation is beyond the scope of this Bulletin.

NYSTRS

# Legal Principles Upheld in the Decision

## *1. The System's Right to Exclude Elements of Non-Regular Compensation*

Historically, the courts have upheld System determinations that foil attempts to convert items of non-regular compensation into regular compensation, particularly in close proximity to a member's retirement. See *Moraghan v. New York State Teachers' Retirement System*, 237 A.D.2d 703 (3d Dep't 1997); *Adler v. New York State Teachers' Retirement System*, 188 A.D.2d 732 (3d Dep't 1992).

In *Bellarosa*, the Court ruled that the System's exclusion of a converted travel stipend and a reduced vacation time exchange/sale is supported by rational basis. In *Holbert v. New York State Teachers' Ret. Sys.*, 43 AD3d 530 [2007], the Court affirmed that the System's determination as to what constitutes regular salary for purposes of calculating a retiree's Final Average Salary will be upheld upon judicial review so long as it is not arbitrary and capricious and is supported by a rational basis. In *Cooper v. New York State Teachers' Ret. Sys.*, 19 AD3D at 726 [2005], the Court held that the mere fact that a different determination may have also been reasonable does not render the determination reached by the System irrational or subject to judicial interference.

## *2. The System's Right to Determine the Substance of a Transaction*

While members and employers are free to negotiate their employment agreements and compensation therein as they deem appropriate, the System, from a pension calculation perspective, is not bound by and not obligated to honor the provisions of such agreements and certainly not any conversion or reclassification of compensation (particularly on the eve of retirement).

The courts of New York have repeatedly upheld the power of the System to look through to the substance of employer agreements. See *Davies v. New York State & Local Police and Fire Retirement System*, 259 A.D.3d 912 (3d Dep't), leave to appeal denied, 93 N.Y.2d 810 (1999); *Cooper v. New York State Teachers' Retirement System*, 19 A.D.3d 734 (3d Dep't 2005); *Moraghan v. New York State Teachers' Retirement System*, 237 A.D.2d 703 (3d Dep't 1997).

## *3. The System's Right to Exclude Eve-of-Retirement Payments*

The inclusion of payments that are not representative of a teacher's compensation for actual teaching service performed throughout the teacher's career is harmful to the actuarial integrity and financial soundness of the System and may be excluded from pension consideration.

As such, the System will continue to exclude increases in compensation outside of the ordinary course, particularly those that are paid on the eve of retirement, that have the effect of artificially inflating the FAS pension benefits. The courts have repeatedly, and most recently in *Bellarosa*, affirmed and upheld the System's authority and discretion to do so. See *Miller v. New York State Teachers' Retirement System*, 157 A.D.2d 890 (3d Dep't 1990); *Martone v. New York State Teachers' Retirement System*, 105 A.D.2d 511 (3d Dep't 1984); *Simonds v. New York State Teachers' Retirement System*, 42 A.D.2d 470 (3d Dep't 1973); *Holly v. New York State Teachers' Retirement System*, 122 Misc.2d 871 (Sup. Ct., Albany Co. 1984); *Nencetti v. Vrooman*, [unreported decision] (Supreme Court, Albany Co. May 13, 1977).