COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals**

**1 Congress Street, 11th Floor**

**Boston, MA 02114**

**www.mass.gov/dala**

**Sara Ferris**,

Petitioner

v. Docket No. CR-13-503

**Massachusetts Teachers’ Retirement System**,

Respondent

**Appearance for Petitioner**:

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Division of Legal Services

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**Appearance for Respondent**:

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**Administrative Magistrate**:

Kenneth Bresler

**SUMMARY OF DECISION**

Teacher took in-house educational courses in return for stipends. The stipends were wages under 840 CMR 15.03(3)(b). Decision of the Massachusetts Teachers’ Retirement System not to calculate the stipends in her pension is reversed.

**DECISION**

 The petitioner, Sara Ferris, appeals the decision of the Massachusetts Teachers’ Retirement System (MTRS) to exclude from her pension calculation the stipends she received for taking in-house courses about education.

 I held a hearing on November 1, 2017, which I recorded digitally. Mrs. Ferris testified, and called no other witness. I accepted into evidence 16 exhibits, 1 through 13, including Exhibits 3, 3A, 4, 4A, and 4B. Both parties submitted post-hearing briefs.

**Findings of Fact**

 1. Mrs. Ferris became a member of MTRS in 1973. (Testimony.)

2. In 1984, Mrs. Ferris began working for the Longmeadow Public Schools. In her last three years, she worked as a middle-school instructional technology teacher, teaching computers. (Testimony.)

3. The Longmeadow Public Schools created a way to give extra compensation to teachers who had reached the maximum salary scale: voluntarily taking courses in return for a stipend. (Testimony.)

4. Teachers who had master’s degrees could choose to receive an annual $1,250 stipend or to advance on the salary scale. Mrs. Ferris chose the stipend because she had reached the maximum salary scale. (Testimony.)

5. To earn the stipend, Mrs. Ferris had to take 15 hours of courses, such as learning styles, teaching techniques, peer coaching, and backward design (which is a method of setting educational goals and devising a curriculum to meet those goals). Each course was for three credits. One course of 15 hours of study qualified her to receive the annual stipend for five years. (Testimony.)

6. The collective bargaining agreements (CBAs) (2009-11, 2011-12, and 2012-15) read: [[1]](#footnote-1)

School Improvement Specialist

A 15 credit curriculum will be provided only to Teachers with a Masters degree or higher, with ongoing training in methods needed to improve instruction for students and foster a “learning organization” within the Longmeadow Public Schools. Teachers completing the curriculum will be titled “School Improvement Specialist” and will either use the credits earned toward advancement on the salary schedule or earn an additional annual payment of $1,250.00 during the five years following completion. The additional payment is renewable every five years by completion of the then current 15 credit curriculum in place, which will be developed through the District Professional Growth Committee. Credit will be allowed for Teachers who satisfactorily began and completed the following courses in the 1999-2000 school year: Mentoring, Peer Coaching, Learning And The Brain, Responsive Classroom, Standards Based Learning, Integrating Technology Into The Learning Process, and others as reviewed by the Professional Growth Committee and approved by the Superintendent.

The list of course offerings will be reviewed on an annual basis by the District Professional Growth Committee to assure that they meet changing environment and need, but a list of course offerings for the first round may include:

* + - Mentoring – prepare Teachers to serve as mentors to other Teachers entering the Longmeadow Public Schools.
		- Peer Coaching – learn the skills of observing in the classroom of other Teachers, gathering useful data, and providing constructive feedback.
		- The Responsive Classroom – learn the techniques now used in Longmeadow Public Schools for developing healthy social climates within the classroom and school.
		- The Learning Organization – learn the characteristics of the “Learning Organization,” the obstacles to achieving it, and the ways of developing it.
		- Standards Based Learning – learn the techniques used to organize learning for all students around state and local standards.
		- Using Technology for Continuous Improvement – learn how to integrate technology into the learning process.
		- Continuous Improvement – learn the underlying philosophy of continuous improvement, how to implement a Plan-Do-Study-Act (P.D.S.A.) cycle, and how to use the various tools of continuous improvement.
		- Group Facilitator Skills – learn the skills of group problem solving, conflict resolution, problem identification, and facilitation.
		- Use of Data for Improvement – learn how to use data to identify problems and solve them.
		- Continuous Improvement for the Student – learn techniques for teaching students the tools of continuous improvement in their own learning.
		- Curriculum Development – learn how to review and develop curriculum for the Longmeadow Public Schools, using a collaboratively designed curriculum format and a process that links with state initiatives like CLASP.
		- Grant Proposal Development – learn how to work with central staff and the instructional teams to develop grant proposals to support individual, school, or district improvement initiatives.
		- Portfolio Design and Review – learn how to design and review portfolios for personal and student assessment.

Ex. 3, pp. 23-25; Ex. 3A (extending previous CBA for two years); Ex. 4B, pp. 27-28; Ex. 5, pp. 27-28.

7. The course instructors included teachers who were working on doctorates and the superintendent. Courses were generally held at the instructors’ schools. The superintendent taught in the School Committee room. (Testimony.)

8. The courses were after school. Each three-credit course lasted from six to twelve weeks. (Testimony.)

9. The courses usually started at 3:15 p.m. and sometimes at 3:30 p.m. The courses generally went until 5:30 p.m. and sometimes until 6:00 p.m. (Testimony.)

10. The courses entailed about an hour of reading per week and sometimes written homework, but no examinations. (Testimony.)

11. Instructors took attendance. Between six and ten teachers usually attended a course. (Testimony.)

12. Teachers who completed the courses became School Improvement Specialists – but had no duties to accompany the title. (Testimony.)

 13. On May 5, 2013, Mrs. Ferris applied for retirement. On Part 2 of her application, the Longmeadow Public Schools included for each of the 2009-10, 2010-11, 2011-12, and 2012-13 school years, a stipend as a School Improvement Specialist, $1,250 for the first three years, and

$624.64 for the last year. (Ex. 6.) (I assume that the last payment represented a half-year.)

 14. On September 25, 2013, MTRS declined to calculate in Mrs. Ferris’s pension “[f]ive annual payments[[2]](#footnote-2) of $1,250 from Longmeadow Public Schools” because the payments were “temporary salary augmentation that are not considered part of…base pay each year.”

 15. On October 10, 2013, Mrs. Ferris appealed by writing a letter to the Division of Administrative Law Appeals, stating that she had been away and had just received the denial letter. (Ex. 2.)

**Discussion**

840 CMR 15.03(3)(b)

 The governing regulation in this appeal is 840 CMR 15.03(3)(b). It reads in part:

“wages” shall mean the base salary or other base compensation of an employee paid to that employee for employment by an employer including pre-determined, non-discretionary, guaranteed payments paid by the employer to similarly situated employees, provided, that “wages” shall include payments…because of educational incentives, and payments for holding the training, certification, licensing or other educational incentives approved by the employer for the performance of services related to the position the employee holds….

 Not only does this regulation need to be parsed, but the relationship between the two excerpted parts – before and after “provided” – needs to be explored too.

 “[S]alary” and “base compensation”

Mrs. Ferris’s stipends were not “salary.” They were “base compensation,” which is practically defined as “pre-determined, non-discretionary, guaranteed payments paid by the employer to similarly situated employees.” 840 CMR 15.03(3)(b). The stipends were pre-determined by the CBAs (unlike some performance bonuses), the Longmeadow Public Schools did not have the discretion whether to pay them, and they were guaranteed to Mrs. Ferris.

As for Mrs. Ferris’s fellow teachers who had not reached the maximum salary, their salaries were increased, and the increases became salary.

 It would be anomalous if some teachers received compensation that counted toward their pensions (teachers who had not reached the maximum salary and whose salaries increased) and other teachers received compensation that did *not* counttoward their pensions (teachers such as Mrs. Ferris who received stipends) *for participating in the same program*. It would not be impossible, but it would be anomalous. The would-be anomaly would not *prove* that Mrs. Ferris’s stipends should be used to calculate her pension, but the would-be anomaly would *indicate* that her stipends should be used.

Both Mrs. Ferris’s stipends and her fellow teachers’ salary increases for becoming School Improvement Specialists were wages as defined by the first part of the regulation. Her stipends should be used to calculate her pension.

“[P]rovided”

The first excerpted part of the excerpted regulation – before “provided” – generally defines “wages.” The second excerpted part adds to the general definition. That’s what the word “provided” means here.

Even if Mrs. Ferris’s stipends were *not* base compensation, the addition to the general definition – what follows “provided” – directs that Mrs. Ferris’s stipends were wages that should be used to calculate her pension.

“[P]ayments…because of educational incentives” and “payments for…other educational incentives”

Understanding the second excerpted part is hard because of its awkward drafting. For one thing, “payments…because of educational incentives” seems to duplicate the phrase that follows it: “payments for…other educational incentives.” (Ultimately, as I discuss below, the two phrases are different; the second one has more qualifications.) For another thing, “because of” and “for” seem imprecise, even incorrect. These are not payments *for* or *because* of incentives; they are payments that *are* incentives.

“[H]olding the training, certification, licensing or other educational incentives”

Another thing that makes the regulation hard to understand is that the verb “holding” seems imprecise, even incorrect. An employee may “hold[]” “certification” and “licensing,” but an employee does not *hold* “training.” Nor does an employee *hold* “other educational incentives.” What this excerpt of the regulations seems to be saying is that wages include payments to employees for *having* (not holding) certain “training, certification, [or] licensing,” which are *considered* “other educational incentives.” What sort of training? Probably training akin to that which leads to certification or licensing. That was not the kind of training –

in-house training – that led to Mrs. Ferris’s stipends. This provision does not direct that Mrs. Ferris’s stipends were wages that should be used to calculate her pension.

“[H]olding the training, certification, licensing or other educational incentives approved by the employer *for the performance of services related to the position the employee holds*”

 This provision does not direct that Mrs. Ferris’s stipends were wages for another reason.

When the phrase “other educational incentives approved by the employer for the performance of services related to the position the employee holds” is examined, it is not clear what it means. It is also not clear that it applies to Mrs. Ferris’s stipends. The in-house courses about education did relate to Ms. Ferris’s performing services as a *teacher*. However, the courses did not relate to her performing services as a *School Information Specialist*. She had no duties in her role as a School Information Specialist.

“[P]ayments…because of educational incentives, and payments for holding the training, certification, licensing or other educational incentives approved by the employer for the performance of services related to the position the employee holds”

 As discussed immediately above, Mrs. Ferris’s stipends were not

payments for holding the training, certification, licensing or other educational incentives approved by the employer for the performance of services related to the position the employee holds

 What remains is the provision “payments…because of educational incentives.” The provision does not have qualifications. It stands alone. Mrs. Ferris’s stipends were payments because of the extra training she took. Therefore, they were “payments…because of educational incentives.” Therefore, they were wages that should be used to calculate her pension.

 In sum, Mrs. Ferris’s stipends should be used to calculate her pension for two reasons under 840 CMR 15.03(3)(b). The stipends were “base compensation…including pre-determined, non-discretionary, guaranteed payments paid by the employer to similarly situated employees” and they were “payments…because of educational incentives.”

 840 CMR 15.03(3)(f)

Were Mrs. Ferris’s stipends “derived from salary enhancements or a salary augmentation plan[]which will occur for a limited or definite term” under 840 CMR 15.03(3)(f)? No. They were ongoing (or to use another word, recurrent), starting in school year 2009-10 and continuing through at least the school year 2014-15, a term of six years. Thus, the stipends were not for a limited term. They were for definite terms – the length of the CBAs – but the stipends were ongoing through at least three CBAs.

 The payments, once incorporated into the CBA, were ordinary, normal, recurring, and not extraordinary or ad hoc. *Bulger v. Contributory Retirement Appeal Board*, 447 Mass. 651, 658 (2006).

 Ms. Ferris cites *David Myette et al. v. Wakefield Retirement Board,* CR-09-394 (2010) in support of her position. The decision is favorable to her and includes favorable language, but is not dispositive.

MTRS cites *Ann Haley vs. Teachers’ Retirement Board*, CR-98-57 (DALA 1999) in support of its position. However, the decision does not discuss 840 CMR 15.03(3)(b), probably because the decision predated the regulation. The decision also turns on whether participating in an in-house educational program for teachers is voluntary, a distinction that I do not find significant.

**Conclusion and Order**

 The stipends that Ms. Ferris received for taking in-house courses about education were wages that should be calculated toward her pension. MTRS’s decision not to calculate them toward her pension is reversed.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

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 Kenneth Bresler

 Administrative Magistrate

Dated: April 13, 2018

1. I quote the collective bargaining agreements because they detail the training program and compensation. I do not quote them because 807 CMR 6.02(l)(b) is relevant; it is not. 840 CMR 15.03 (3)(c) is not directly relevant. [↑](#footnote-ref-1)
2. It was actually four payments and one payment of half that amount. See the previous paragraph. [↑](#footnote-ref-2)