COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals**
**14 Summer Street, 4th Floor**
**Malden, MA 02148**
**www.mass.gov/dala**

**David Ketchum**,
Petitioner

v. Docket No. CR-19-0614

**Massachusetts Teachers' Retirement System**,
Respondent

**Appearance for Petitioner**:

David Ketchum
76 Breckwood Blvd.
Springfield, MA 01109

**Appearance for Respondent**:

Lori Curtis Krusell, Esq.
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Massachusetts Teachers' Retirement System
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**Administrative Magistrate**:

Kenneth Bresler

## SUMMARY OF DECISION

Teacher received stipend based on number of hours worked. Hourly compensation is not regular compensation.

## DECISION

The petitioner, David Ketchum, appeals the decision by the Massachusetts Teachers' Retirement System (MTRS) to exclude a stipend from his regular compensation.

I held a hearing on January 23, 2024 by Webex, which I recorded. Mr. Ketchum represented himself and testified. No other witnesses testified. I admitted seven exhibits. Both

parties opted to argue orally at the close of the hearing instead of filing post-hearing briefs. As I wrote this decision, I emailed some factual and legal questions to the parties. I closed the record with the last response on July 30, 2024.

**Findings of Fact**

1. Mr. Ketchum was a Springfield Public School teacher in a Level 4 school. (Testimony; Ex. 1)

2. A Level 4 school is an underperforming public school under An Act Relative to the Achievement Gap. (Ex. 7)

3. Because Springfield Public School teachers in Level 4 schools worked longer hours, they received a stipend. (Ex. 5 (email from Springfield's Payroll Director to MTRS))

4. In January 2014, Springfield Public Schools and the Springfield Education Association signed two documents about Level 4 schools: an amended agreement and a memorandum of agreement. (Ex. 4)

5. The agreement that was the subject of the amended agreement is not in evidence. It apparently was the collective bargaining agreement (CBA). (See Ex. 4 (reference in Art. 34.2 to "changes to the collective bargaining agreement established herein"))

6. The amended agreement read in part:

> Employees at Level 4…schools…may receive an annual stipend (not added to base salary) based on 165 hours of additional time for hours actually worked (not to exceed 165 hours of additional time).[1]

(Ex. 4) (unbolded; asterisk and asterisked material omitted)

7. The amended agreement provided that in 2015-16 (the relevant school year), for Steps 1-5, the stipend would be $3,561; for Steps 6-11, the stipend would be $4,4165; and for Steps 12

[1] That is, it was not regular compensation. It was for hours actually worked. That is, sick leave could not be substituted for it.

and above, the stipend would be $4,816. (Ex. 4) (The evidence did not explain what steps were, or what step was Mr. Ketchum's.)

8. The provisions in the amended agreement discussed above also appeared in the memorandum of agreement with this added language:

> Schools that choose to fund any part of this compensation package would use a pro-rata formula of n/165 in accordance with the following schedule, where n = the number of hours worked:

(Ex. 4) (The schedule following the colon was the same one summarized in the previous factual finding.)

9. If a teacher in a Level 4 school did not complete the school year, the teacher received a stipend based on the number of days worked. (Ex. 5 (email from Springfield's Payroll Director to MTRS))

10. The Springfield Public Schools paid Level 4 stipends in two lump sums, one in the fall and one in the spring. (Testimony) However, the stipends were hourly compensation. (Ex. 4)

11. After the school year ended, teachers in Level 4 schools had to complete 30 hours of professional development. (Ex. 4 (email from Springfield's Payroll Director to MTRS))

12. In 2016, Mr. Ketchum was sick and could not attend the 30 hours of professional development after the school year ended. (Testimony) (The exact nature of Mr. Ketchum's sickness in the week before and the week of the 30 hours of professional development was a major topic in Mr. Ketchum's prehearing submissions, testimony, and argument but it is not relevant.)

13. The Springfield Public Schools reduced Mr. Ketchum's stipend because he did not complete the 30 hours. (Ex. 5)

14. Sometime before April 6, 2018, Mr. Ketchum applied for superannuation retirement

benefits. (Ex. 1) (Exhibit 1, dated April 6, 2018, is Part 2 of Mr. Ketchum's application, which his employer filled out. Part 1, which Mr. Ketchum filled out, is not in evidence.)

15. Part 2 of Mr. Ketchum's application included this compensation: $4,465.74 for Level 4 Extended Day, from July 1, 2015 to June 30, 2016. (Ex. 1) (The evidence did not explain this figure. It may have been the stipend for Steps 12 and above, $4,816 (Ex. 4), minus the 30 hours of professional development that Mr. Ketchum missed.)

16. On December 10, 2019, MTRS wrote a letter to Mr. Ketchum, stating that his "Level 4 stipend Springfield Public Schools for 2015/2016)" was not regular compensation. The reason was that "it was an hourly payment and not an annual stipend pursuant to the Collective Bargaining Agreement." (Ex. 3)

17. On December 16, 2019, Mr. Ketchum timely appealed. (Appeal letter)

**Discussion**

At the beginning of the hearing, I told Mr. Ketchum to draw on his teaching experience, as if he were teaching about a situation about which his students knew no facts, to start at A and go to Z, and to present all the facts that would allow me to rule in his favor. He did not do so. This appeal has been challenging because of the factual gaps in the record that remained even after my post-hearing questions to the parties.

Amended CBA's declaration about base salary

The amended CBA's declaration that the "annual stipend" was "not [to be] added to base salary" (Ex. 4) does not control the outcome of this case.

> It…does not matter that the parties agreed to exclude the stipend from regular compensation. Chapter 32 retirement benefits are not a permissible subject of collective bargaining. *See Nat'l Ass'n of Gov't Employees, Local R1-162 v. Labor Relations Comm'n*, 17 Mass. App. Ct. 542, 544 (1984).

*Jeffrey Dudley v. Leominster Retirement Board*, CR-18-0627, CR-19-0039 (DALA 2022).

(The declaration is not controlling, but it is relevant, as I will discuss later.)

Stipend was not for additional services

The stipend was not for "additional services" under G.L. c. 32, § 1, 840 CMR 15.03, and 807 CMR 6.02(1). Regular compensation includes

> salary payable under the terms of an annual contract for additional services so long as:
> (a) The additional services are set forth in the annual contract;
> (b) The additional services are educational in nature;
> (c) The remuneration for these services is provided in the annual contract;
> (d) The additional services are performed during the school year.

807 CMR 6.02(1).

The annual contract means the CBA. 807 CMR 6.01. In this case, the CBA itself was not in evidence, but an amendment to it counts as the CBA. However, Mr. Ketchum failed to prove by preponderance of the evidence that the stipend met the requirements of 807 CMR 6.02(1)(a), (b), and partially of (d).

If the stipend was for additional services, they were not set forth in the amendment to the CBA. The amendment stated only that the stipend was for "additional time." (Ex. 4)

> These extra payments were not for "services ... set forth in the annual contract," as the actual services were not specified in the contract.

*Thomas Caruso v. Massachusetts Teachers' Retirement System*, CR-09-367, 2015 (CRAB 2015) (footnote omitted).

Mr. Ketchum did not prove by a preponderance of the evidence what the "additional time" was for. Was it for classroom teaching, tutoring, classroom preparation, professional development? That is not in the record. And because that is not in the record, whether any additional services were "educational in nature" is also not in the record. Even if Mr. Ketchum had provided evidence about what the "additional time" was for, that would not have met the

requirements of additional services. The CBA, not the evidentiary record, had to identify what the "additional time" was for.

As I have written:

> A CBA need not "set forth" an "additional service[]" in exhaustive detail. However, 807 CMR 6.02(1) "require[s] that the additional service…be explicitly set forth in the collective bargaining agreement." *Kozloski v. Contributory Retirement Appeal Board*, 61 Mass. App. Ct. 783, 786 (2004). The additional services here were not explicitly set forth in the CBAs.
>
> *Kozlowski* and 807 CMR 6.02(1) bar a placeholder approach to CBAs, an approach of "additional services to be explained later at the hearing on appeal if requested."
>
> ….
>
> …Not every activity that happens in or related to a school is educational in nature.

*Sharon Wood and Janet A. Peitavino v. Massachusetts Teachers' Retirement System*, CR-15-439, CR-15-491(DALA 2022).

Furthermore, any additional services had to be performed during the school year. Thus, the extra 30 hours of professional development after the school year ended could not constitute additional services and therefore could not constitute regular compensation.

Stipend was hourly compensation

The amended agreement and memorandum of agreement revealed that the stipend was hourly compensation. Both documents discussed the stipend in the context of "hours actually worked." (Ex. 4) The memorandum of agreement also discussed the stipend in the context of "number of hours worked." (Ex. 4) Hourly compensation is not regular compensation that is counted toward a teacher's pension. *Hallett v. Contributory Retirement Appeal Board*, 431 Mass. 66, 68 (2000); *Charles Pentedemos v. Massachusetts Teachers' Retirement System*, CR-08-704, (DALA 2013).

Mr. Ketchum's two arguments

Mr. Ketchum has two major arguments. His first major argument, in prehearing submissions and his closing argument, is that he has been punished and penalized for being sick, and that he had had a contractual right to sick leave. Neither is the case.

Mr. Ketchum did not have a contractual right to take sick leave instead of completing 30 hours of Level 4 professional development. Both the amended agreement and agreement of understanding specified that the stipend would compensate him "for hours actually worked." (Ex. 4) Rather than having a contractual right to take paid sick leave during the 30 hours of Level 4 professional development, he was contractually *barred* from doing so.

Mr. Ketchum's sickness during the 30 hours of professional development is a red herring. The true issue is that Mr. Ketchum's stipend was not regular compensation. If Mr. Ketchum had not been sick, had completed the 30 hours of professional development, and had received the full stipend, it would not have been regular compensation. In fact, Mr. Ketchum was sick, did not complete his 30 hours of professional development, and received a reduced stipend – which was still not regular compensation. The same result would have occurred no matter what the state of Mr. Ketchum's health was. No one punished or penalized Mr. Ketchum for being sick. He received the reduced stipend as the amended agreement and agreement of understanding provided. And the stipend, whether full or reduced, was not regular compensation.

What's more, the 30 hours of professional development, which Mr. Ketchum missed, came after the regular school year. It could not have been additional services and thus regular compensation under 807 CMR 6.02(1)

Mr. Ketchum's second major argument is that he would not have retired when he did if he had known and if anyone had told him – if he had known what exactly and had been told what exactly? That his stipend was not regular compensation? That his stipend would be reduced if he got sick? His argument is unclear.

Both the amended agreement and agreement of understanding informed Mr. Ketchum that his stipend was not base salary. That does not control my decision, but it does undercut Mr. Ketchum's argument that no one told him. And both documents informed him that his stipend would be reduced if he did not work the full number of hours.

Mr. Ketchum's repeated and detailed emphasis of how sick he was during the week when professional development took place leads me to suspect that he feels aggrieved at the Springfield Public Schools for not getting paid for those 30 hours, or more aggrieved at the Springfield Public Schools than aggrieved at MTRS for deciding that the stipend was not regular compensation.

If Mr. Ketchum feels aggrieved for not getting paid for professional development because he was sick, that issue is not one that he can appeal to the Division of Administrative Law Appeals (DALA). As for the issue that is before DALA, MTRS's decision was correct.

**Conclusion and Order**

MTRS's decision that Mr. Ketchum's stipend in 2015-16 was not regular compensation is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

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Kenneth Bresler
Administrative Magistrate

Dated: August 30, 2024