

# MASSACHUSETTS TEACHERS ASSOCIATION

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### PARALEGAL

KATHY NAGLE  
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TO: All K-12 Local Affiliates  
FROM: Ira Fader, MTA General Counsel   
DATE: June 26, 2017  
RE: MTRS Removal of Teachers from RetirementPlus Program

It is very disappointing that the Massachusetts Teachers' Retirement System (MTRS) took the step, without notice or discussion with the MTA, of "auditing" the RetirementPlus eligibility of perhaps hundreds of our members and has now moved to remove many of them from the RetirementPlus program.

The MTA Legal Services Division strongly disagrees with the step that the MTRS has taken. In fact, we are already challenging MTRS's authority to take this step and we will now expand the scope of current litigation to include every member who is ousted from RetirementPlus under MTRS's new directive. We have already worked with MTA field representatives to provide you with a letter of appeal for your members to use, and you should then make a request for legal services for each affected member in accordance with our legal services policy.

I want to explain the legal issue, but let me first make it clear that this should only involve members who transferred from a local retirement system into the MTRS. A member who began public service as a teacher in the MTRS should not be affected.

I know the retirement system is complex, but I ask you to follow what unfolded here very carefully:

All new teachers are required to be in the RetirementPlus program and are automatically enrolled upon hire. However, when a new teacher transfers from another Massachusetts retirement system into the MTRS, he or she is supposed to be given an opportunity to choose whether or not to be in the RetirementPlus program. (This would apply, for example, to any paraprofessional or higher education professor who becomes a teacher.) Under the law, this choice must occur "within 180 days of establishing membership" in the MTRS.

Last year, Legal Division began representing four MTA members who had been expelled from RetirementPlus for allegedly failing to choose the RetirementPlus program on a timely basis. Each member had been employed as an educational paraprofessional in the school system and had been in a local retirement system before becoming a teacher. None had received any notice whatsoever from either the district or the MTRS that a RetirementPlus election had to be made.

Upon hire as a teacher, each school district began deducting 11% of the member's salary – that is, the deduction for RetirementPlus – and sent the money to the MTRS. The members were each informed that all new teachers are automatically in the RetirementPlus program, a fact that was confirmed by the 11% salary deduction.

It gets worse. The deduction of 11% from the teacher's salary persisted for years before the MTRS notified the school district that the member was not in the RetirementPlus program. What caused the MTRS to expel the individual from the program? The MTRS claims that it sent notices to these teachers that an election decision had to be made in order for them to be in RetirementPlus. However, these notices – assuming they were sent and assuming they were received – were all sent months or even years (in one instance four years) after the teacher had started teaching. For that entire period, the member gave 11% of salary to the MTRS, and the MTRS accepted these payments. Each member believed he or she was a part of RetirementPlus, notwithstanding unexpected and confusing notices years after establishing MTRS membership.

Why did the MTRS suddenly send these notices years after the member had established MTRS membership? Because that is how long it took the previous retirement systems to transfer monies on account to the MTRS. The MTRS does not send notice of election when a transferee begins teaching, but relies instead on the date the other retirement system transfers the funds.

And *still* it gets worse. The MTRS will return “overpayments” to the teachers *without interest*. The MTRS, of course, invested these overpayments and received interest from its investments for years.

The MTRS points to a regulation it adopted years ago stating that the “election opportunity” for transferees begins “when the MTRS receives the transfer of the member's account from the other retirement system.” In January 2017, when the MTRS was revising several of its regulations, the MTA Legal Division asked the MTRS to revise this regulation. We expressed our concern that the regulation was “confusing and contrary to the plain language of the statute.” The statute, as I mentioned above, states that the election period begins upon “establishing membership in the [MTRS],” not at some later time when a local retirement system sends over the money on account. Our purpose in bringing this to MTRS's attention was to resolve the four cases mentioned above.

The MTRS did not adopt the regulatory correction we proposed and it did not resolve the cases. Instead, it conducted an audit and has now moved to remove some unknown number of transferees out of the RetirementPlus program.

Please assist each affected member in filing an appeal with the Division of Administrative Law Appeals. The field representatives are prepared to assist.