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Office of the Attorney General  
State of Connecticut

November 16, 2015

Darlene Perez  
Teachers' Retirement Board Administrator  
Connecticut Teachers' Retirement Board  
765 Asylum Avenue  
Hartford, CT 06105-2822

Dear Ms. Perez,

You have requested this office's opinion regarding whether the State Teachers' Retirement Board ("STRB") has the statutory authority to rescind credit for a member in the teachers' retirement system ("System") if it learns through a source other than the Department of Education ("Department") that the teacher is not properly certified for the position in which he or she is then employed.<sup>1</sup> We conclude that the STRB does not have statutory authority to *rescind* credit for a "teacher" who is not properly certified for the position in which he or she is employed: the controlling statute only permits the STRB to *suspend* credit until the teacher becomes properly certified, and then only when the Department has "notified" the teacher that he or she is not properly certified.

First, we note that upon receiving your request our office initially advised you to determine with the Department whether a procedure could be developed by which either the Department notifies the STRB of situations in which a teacher is improperly certified, or the STRB notifies the Department that it has learned of such improper certification. The STRB ultimately informed this office that no such procedure has been developed with the Department, but renewed its request for this opinion.

To answer your inquiry, we must examine §10-183r of the Connecticut General Statutes. If the meaning of the "text is plain and unambiguous and does not yield absurd or unworkable results, extra textual evidence of the meaning of the statute shall not be considered." Connecticut General Statutes § 1-2z; see also

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<sup>1</sup> "Teacher" is defined in relevant part as "any teacher, permanent substitute teacher, principal, assistant principal, supervisor, assistant superintendent or superintendent employed by the public schools in a professional capacity while possessing a certificate or permit issued by the State Board of Education, provided on and after July 1, 2075, such certificate shall be for the position in which the person is then employed . . . ." (Emphasis added.) C.G.S. §10-183b (26).

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Mattatuck Museum-Mattatuck Historical Society v. Administrator, Unemployment Compensation Act, 238 Conn. 273, 278 (1996) (finding that when statutory language is "plain and unambiguous," courts will look no further than the words themselves because it is assumed "that the language expresses the legislature's intent"). On the other hand, "[a] statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation."  
Hartford/Windsor Healthcare Properties, LLC v. City of Hartford, 298 Conn. 191, 197-98 (2010).

Connecticut General Statutes §10-183rr provides in relevant part that:

Notwithstanding the provisions of subdivision (26) of section 10-183b concerning the requirement that a teacher hold a certificate for the position in which the person is employed, any teacher who possesses a certificate or permit issued by the State Board of Education and is notified on or after December 1, 2003, by the Department of Education that such teacher is not properly certified for the position in which the teacher is employed or has been employed, such teacher *shall receive no further credit in the teachers' retirement system for employment in such position until the teacher becomes properly certified for such position.* The Teachers' Retirement board *shall not rescind any credited service to such teacher for such employment and shall restore any such credit to such teacher if rescinded prior to May 27, 2008.*

(Emphasis added.) In our view, the statute is unambiguous about the STRB's limited authority concerning the accrual of credit for teachers "not properly certified."

Your specific question is governed by the second sentence of § 10-183rr, which does not permit the STRB, to *rescind "any credited service to such teacher for such employment. . . ."* (Emphasis added.) The phrase "such employment" refers to the teacher's "employment in such position" in the previous sentence, which in turn refers to the position "such teacher is not properly certified for."

Thus, regardless of the source of the information, the second sentence of the statute specifically provides that the STRB cannot rescind credited service, but in fact must "restore any such credit" if it had been rescinded before the effective date of the statute (May 27, 2008). The plain language prohibiting such a rescission of credit reflects a policy designed to protect retirement credits of teachers who work outside of their area of accreditation as opposed to penalizing

them for such work.<sup>2</sup> Although the second sentence of the statute does not refer to the Department of Education, as the first sentence does, this policy of the statute would be defeated if the STRB were able to rescind credit based upon certification information it received from another source.

As to the prospective suspension of "further credit in the teachers' retirement system," the first sentence of § 10-183rr provides a necessary predicate to that suspension: that the teacher "is notified on or after December 1, 2003, by the Department of Education that such teacher is not properly certified . . . ." We construe this predicate as not only mandating that the improperly certified teacher receive no further credit "until the teacher becomes properly certified," but as limiting the circumstances of that suspension to instances in which *the Department* determines that the certification is improper and so notifies the teacher. We do not read this statute to authorize the STRB to suspend the earning of credit based upon its own information, from a source other than the Department. Felician Sisters of St. Frances of CT v. Historic District Commission, 284 Conn. 838, 851 (2008) (the expression of one thing is evidence of the legislature's intent to exclude another).

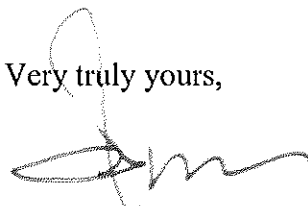
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<sup>2</sup> The statute's legislative history supports an interpretation that credit is to be halted and not rescinded if the teacher is employed in a position for which he or she is not properly certified. In 2008, the legislature passed the statute to address situations in which a teacher was working outside of their area of accreditation and not receiving credit. See 2008 Conn. Pub. Acts No. 08-112. Specifically, the legislative debates reveal that the enactment of the statute was designed to minimize the impact on individuals working outside of their accreditation. Representative Fleischmann, speaking in favor of the legislation, noted the rarity of the circumstance where an individual was working outside of their accreditation and losing retirement credit, but also noted the "major implications for the individuals affected." H. Proc., 2008 Sess. 4407-10 (May 1, 2008) (remarks of Rep. Fleischmann). The statute requires the STRB to restore credit to an affected teacher if such credit was rescinded prior to enactment of the statute. Connecticut General Statutes §10-183rr. Therefore, the statute plainly was designed to protect teachers from losing retirement credit due to teaching outside of their area of accreditation.

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Thus, we conclude that pursuant to Connecticut General Statutes §10-183rr the STRB is authorized *only* to suspend credit *after* the teacher has been notified by the Department of Education that he or she is working outside of his or her area of accreditation. The STRB cannot rescind any credit, and it must resume the accrual of credit after the teacher is properly certified for the position in which he or she is employed. In order for the STRB to fulfill its duty to properly administer the System, we recommend that the STRB develop, in conjunction with the Department of Education, a procedure of notification when either the Department or the STRB learns that a teacher is not properly certified for his or her position.

Very truly yours,

A handwritten signature in black ink, appearing to read "G. Jepsen", written over a vertical line.

GEORGE JEPSEN  
ATTORNEY GENERAL