



School Administrators Association of New York State

**SAANYS**  
LEGAL DEPARTMENT

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## Leaves of Absence *January 2022 News & Notes*

Leaves of absence are a common occurrence in the education system. Often, SAANYS members have questions regarding a leave of absence. Many times, those questions are regarding issues as to whether a leave of absence is considered as regular salary, is considered as pensionable, and whether or not the member will receive service credit for the period of the leave. While the answer may be obvious in some instances, it may not be quite as clear cut in others. In fact, for those members who are under the Teachers' Retirement System (TRS), there are some instances where TRS makes that determination on a case by case basis.

Leaves of absence can be requested and or given for a variety of reasons. There are medical leaves, maternity/paternity leaves, administrative leaves or sabbaticals to name just a few. Many times, a Collective Bargaining Agreement, (CBA), or employment contract may designate some of the times a leave of absence may be granted by a school district.

### **Paid leaves of absence that are reportable to TRS as regular salary or considered as pensionable**

Generally, for a paid leave to be considered as regular salary or pensionable, it must meet the following criteria:

1. The paid leave of absence must be provided for in the governing employment contract, CBA or Memorandum of Agreement (MOA); the paid leave of absence must not be tied to retirement or resignation.
2. The employee is expected to return to his or her position after the leave of absence.
3. The paid leave of absence is available to all members of the bargaining unit or administrative staff, regardless of age or proximity of retirement.
4. In disciplinary cases, the paid leave must be in the process of an active dispute and not part of a settlement agreement.

Under the above conditions listed, the earnings during the leave would be considered as pensionable and the employee would be entitled to service credit for the period of paid leave of absence. In the case of an involuntary leave of absence during the pendency of a proceeding, the leave is generally considered to be pensionable, although these are decided on a case by case basis. We highly recommend providing TRS documentation of this leave as soon as possible.

It is important to note that unpaid leaves of absence are not reported to TRS and the employees do not receive service credit for pension purposes, even if those employees are eligible for health insurance or other employment benefits. This can include unauthorized medical leaves of absence or could include unpaid leave under the federal Family Medical Leave Act, or FMLA.

### **Paid leaves of absence not reportable to TRS as regular salary or not considered as pensionable**

A paid leave of absence is not reportable to TRS as regular salary or considered as pensionable if it is tied to the employee's retirement or resignation. The reasoning behind this is that the pay for this would be considered as termination pay, which is not pensionable unless the member is in Tier 1 with a date of membership prior to

a June 17, 1971. It would not be considered in calculation for final pay with Tier 1 members with a membership date after June 17, 1971 or Tier 2 through Tier 6 members.

Such a leave of absence is also not reportable to TRS as regular salary or considered as pensionable under the following circumstances:

1. The paid leave of absence is selectively negotiated outside the terms of the governing employment contract, CBA or MOA.
2. The leave of absence requires employee's resignation or immediately followed by the employee's retirement. Eligibility for the leave is dependent on employee's age or proximity to retirement;
3. The leave is not available to all members of the bargaining unit or administrative staff;
4. The leave provides for payment for time not worked following the execution of a Settlement or Separation Agreement.

It is important to remember that these criteria give us a general overview of determinations used when members are under the Teachers Retirement System and is not exhaustive. As stated above, there are cases that TRS makes a determination on a case by case basis. Depending on your retirement system or your bargaining unit, the criteria may change. If you have questions, you should contact us at SAANYS to help you determine whether or not a leave of absence will be considered as regular salary, will be considered as pensionable and also whether or not you will receive service credit for your leave.

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