



PSERB Resolution 2026-13
Re: Apfel G., Docket No. 2022-12
March 19, 2026

RESOLVED, that, in the matter of Gail I. Apfel, Docket No. 2022-12 the Public School Employees' Retirement Board accepts the recommendation of the Benefits and Appeals Committee and adopts the proposed Opinion and Order of the Board and grants Claimant's appeal.

Mail Date: _____

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF GAIL I. APFEL
DOCKET NO. 2022-12
CLAIM OF GAIL I. APFEL

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has carefully and independently reviewed the entire record of this proceeding, including the proposed Opinion and Recommendation of the Hearing Examiner, the Public School Employees' Retirement System's ("PSERS") Brief on Exceptions, and Claimant's Brief in Opposition to PSERS' Exceptions.

On May 26, 2021, West Chester University ("West Chester") reported to PSERS that annuitant Gail I. Apfel ("Claimant") had been working for West Chester since January 6, 2007, and that she was not working in an emergency, shortage of personnel, or extracurricular position. West Chester reenrolled Claimant in PSERS as an active member and reported her salary and service to PSERS. After confirming with Claimant that she was not enrolled in (or eligible for) any other retirement plan that would excuse her from participation in PSERS, PSERS stopped Claimant's annuity. After being notified that her annuity was stopping, Claimant terminated service with West Chester and retired again and PSERS calculated her monthly annuity using the additional service credit that she had earned while working for West Chester. PSERS also applied an actuarial debt to her account for the amount she had been overpaid in retirement benefits while working for West Chester, which reduced her new monthly annuity.

Claimant requests that the Board determine that her work for West Chester is exempt from the mandatory enrollment provisions of the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 et seq., because she alleges that she returned to school service with West Chester in an "extracurricular position" as contemplated by Section

8346(b.1) of the Retirement Code. Alternatively, she asks the Board to conclude that her active employment with West Chester and resulting overpayment is subject to a waiver of adjustment pursuant to Section 8303.1 of the Retirement Code.

On March 25, 2025, the Hearing Examiner issued his proposed Opinion and Recommendation (“HEO”). He recommends that Claimant’s appeal be sustained. After careful review of the entire record, the Board agrees that the appeal should be sustained, but not for the reasons set forth in the HEO. Accordingly, based on its independent review, the Board rejects the HEO and issues the following Findings of Fact, Conclusions of Law, Discussion, and Conclusion:¹

FINDINGS OF FACT

1. In 1973, Claimant was first enrolled in PSERS through her employment with the Upper Darby School District (“Upper Darby”). (Notes of Testimony (“N.T.”) 103).

2. Claimant worked as a teacher and reading specialist for Upper Darby before becoming an assistant principal and, later, an elementary school principal. (N.T. 12-13).

3. In January of 1996, Claimant left Upper Darby and began working for Lower Merion School District (“Lower Merion”) as an elementary principal while continuing to be enrolled in PSERS. (N.T. 13, 103).

4. On April 11, 2006, Claimant attended a group exit counseling session with a PSERS retirement representative during which the retirement process was reviewed, including an exit counseling checklist and retirement application. (N.T. 14-15, 103-105, 149; PSERS-1).

5. Claimant’s *Retirement Exit Counseling Checklist* advised her that there is “[n]o restriction on employment except for PSERS employers, including charter schools” and that

¹ The Board may adopt or reject, in whole or in part, the proposed opinion and recommendation of the Hearing Examiner or issue its own opinion and order. 22 Pa. Code § 201.11(c).

“[w]orking for a PSERS employer will cause pension to be frozen except under Act 2004-63: ✓Emergency or shortage ✓Extracurricular activity.” (N.T. 103-105; PSERS-1).

6. Claimant filed an *Application for Retirement* with PSERS on June 7, 2006, requesting a retirement benefit and certifying as follows: “I understand that as a retiree, I am not permitted to work in a PA public school except under the Emergency/Teacher Shortage provision.” (N.T. 105, 149; PSERS-2).

7. Lower Merion reported to PSERS that Claimant’s last day of service was June 21, 2006, and PSERS processed Claimant’s *Application for Retirement*. (N.T. 17-18, 106-107, 150-151; PSERS-3).

8. By letter dated July 18, 2006, PSERS notified Claimant of her initial retirement benefit, using a date of termination of service of June 21, 2006, and a date of retirement of June 22, 2006. The *Initial Retirement Benefit* letter provided Claimant with the preliminary details of her retirement benefit and included a section regarding the restrictions surrounding employment after retirement, including the requirements for an extracurricular position:

Passed on July 4, 2004, **Act 2004-63** permits a PSERS retiree to be employed by a Pennsylvania public school in emergency, shortage of personnel, and extracurricular situations without the loss of the retiree’s monthly annuity.

[The law] defines an **extracurricular position** as “performed primarily outside regular instructional hours and not part of mandated curriculum”

There is no time restriction on an extracurricular position; however, a separate written contract must exist between the employer and retiree. The contract must contain a waiver that waives any potential retirement benefits that could arise from the contract and releases the employer and the board from any liability for such benefit.

(N.T. 106-107, 151; PSERS-3 (emphasis in original)).

9. The *Initial Retirement Benefit* letter advised Claimant that, if she returned to service in a capacity that was not an extracurricular position, she “must advise [her] employer of the prior service and should also send a letter to PSERS that “should include [her] return to service date so that [her] pension may be stopped before an overpayment occurs.” (PSERS-3).

10. By second letter dated July 18, 2006, PSERS provided Claimant with additional information about being retired, which included another reminder regarding the restriction on returning to employment after retirement. (N.T. 141; PSERS-4).

11. By a *Recomputation of Your Retirement* letter dated September 21, 2006, PSERS notified Claimant that her retirement benefit was adjusted, because Lower Merion had reported to PSERS that her correct termination date was July 31, 2006, and included information regarding the restriction on returning to employment after retirement, including the requirements for an extracurricular position:

Passed on July 4, 2004, Act 2004-63 permits a PSERS retiree to be employed by a Pennsylvania public school in emergency, shortage of personnel, and extracurricular situations without the loss of the retiree’s monthly annuity.

[The law] defines an **extracurricular position** as “performed primarily outside regular instructional hours and not part of mandated curriculum”

There is no time restriction on an extracurricular position; however, a separate written contract must exist between the employer and retiree. The contract must contain a waiver that waives any potential retirement benefits that could arise from the contract and releases the employer and the board from any liability for such benefit.

(N.T. 17-18, 106, 150-152; PSERS-5 (emphasis in original)).

12. The *Recomputation of Your Retirement* letter advised Claimant that, if she returned to service in a capacity that was not an extracurricular position, she “must advise [her]

employer of the prior service and should also send a letter to PSERS” that “should include [her] return to service date so that [her] pension may be stopped before an overpayment occurs.” (PSERS-5).

13. Claimant retired effective August 1, 2006, with a gross monthly benefit of \$7,688.72. (N.T. 106, 150; PSERS-2; PSERS-5).

14. Prior to retirement, Claimant learned from a colleague at Upper Darby, who knew that Claimant was anticipating retirement, about an opportunity to work at West Chester. (N.T. 21-22).

15. In October 2006, Claimant applied to, and was subsequently hired by, West Chester, which is part of the State System of Higher Education. (N.T. 22-24, 110-112; Claimant-4).

16. Claimant completed the required paperwork, and she began working for West Chester in January 2007. (N.T. 110-111; Claimant-4).

17. Claimant informed West Chester that she was a retired school principal from a public school district, and she was comfortable working for West Chester after asking West Chester about whether she was able to return to employment. (N.T. 20-21, 74).

18. West Chester temporarily appointed Claimant to the “faculty” of its Department of Elementary Education as an “Instructor” whereby her salary was determined by “course load and other assignments” and her “duties and teaching responsibilities” were to be assigned by the Dean of Education’s office, which included the expectation that Claimant “participate, to a reasonable extent, in extracurricular activities of the University and in significant University ceremonial events such as commencement.” (Claimant-4; N.T. 24-47).

19. Claimant’s appointments were for individual semesters and dependent on sufficient student enrollment. (Claimant-4).

20. West Chester's letters of appointment reference a Collective Bargaining Agreement, which was available to Claimant either at the office of the faculty union or online, and that set forth West Chester's approved employment, tenure, dismissal, and promotion policies. (Claimant-4, N.T. 29).

21. Claimant is not sure when she became a member of the union at West Chester, but she received a notice "at some point midway" that she could agree to membership and she believes she did. (N.T. 24).

22. When Claimant began working for West Chester in January 2007, West Chester did not enroll her in PSERS, the State Employees' Retirement System ("SERS"), or any other retirement plan provided by West Chester. (N.T. 121, 139).

23. Claimant worked for West Chester from 2007 through 2012, working every spring semester and five fall semesters. (N.T. 111; Claimant-4).

24. Claimant's pay from West Chester was determined on a per-student basis and does not appear to have exceeded \$17,711.70 per year. (N.T. 23, 46-47, 182-183; Claimant-1).

25. Claimant continued to collect her annuity from PSERS while working for West Chester. (N.T. 144-145; PSERS-8; PSERS-9).

26. Claimant was knowledgeable about the requirements for teacher certification, and taught student teacher candidates seeking certification in general education for grades K through 8 and, in the later years, middle school at West Chester. (N.T. 23-24, 112-114).

27. Claimant observed student teacher candidates in the classrooms, and she graded student teacher candidates, wrote reports, met with the student teacher and their mentoring teacher, graded two large projects, wrote recommendations, and taught a two-hour seminar on Thursday afternoons each semester. (N.T. 24, 119-120).

28. Claimant assigned and reviewed homework as part of her seminar at West Chester, including requiring her seminar students to submit weekly summaries of their student

teaching activities, reading assignments, and reports on the reading assignments, which Claimant would review. (N.T. 119-120).

29. West Chester's student teacher candidates referred to Claimant as a "professor." (N.T. 112).

30. On May 26, 2021, West Chester first submitted a *PSERS Retirees Returning to Service* form to PSERS indicating that Claimant had returned to service as an "Instructor" with West Chester on January 6, 2007. (N.T. 141-142; PSERS-6).

31. West Chester, as part of the State System of Higher Education, is a PSERS employer. (N.T. 110, 138, 141, 144; PSERS-6); see 24 Pa.C.S. §§ 8102, 8301(a).

32. A *PSERS Retirees Returning to Service* form is used by PSERS employers to bring an annuitant out of retirement so that the employer can begin reporting the member to PSERS. (N.T. 142-144).

33. PSERS employers are trained on how to use the *PSERS Retirees Returning to Service* form. (N.T. 143).

34. The *PSERS Retirees Returning to Service* form is not to be used if an exception to the return to service rules apply, i.e., if the employee is working in a capacity that allows them to remain an annuitant while working. (N.T. 140-143; PSERS-6).

35. The *PSERS Retirees Returning to Service* form that West Chester completed and returned to PSERS to inform PSERS that Claimant had returned to service explained, in pertinent part:

If the PSERS retiree is NOT working under the emergency, shortage of personnel or extracurricular provisions, he or she is considered a "return to service" and must be re-enrolled in PSERS with established rules.

Employers must notify PSERS that a retiree is returning to service so that PSERS staff can create the *Employee Contract Record* and verify/update the *Employee Demographic Record*.

(PSERS-6 (emphasis in original)).

36. Neither Claimant nor West Chester informed PSERS that Claimant was working for West Chester prior to May 26, 2021, when West Chester submitted the *PSERS Retirees Returning to Service* form to PSERS. (N.T. 48-49, 137-145; PSERS-6).

37. Upon receiving the *PSERS Retirees Returning to Service* form from West Chester, given West Chester's delay in submitting the form, PSERS contacted Claimant to explain the consequences of the reporting and to inquire as to whether there were any return to service exceptions that would apply that would avoid the cessation of her annuity. (N.T. 155-156).

38. PSERS worked with Claimant to determine whether Claimant was eligible for other retirement plans that would avoid cessation of her annuity with PSERS. (N.T. 91-92, 139, 155-156, 171-172; Claimant-17); see 24 Pa.C.S. § 8301(a).

39. Claimant was not eligible for membership in SERS or West Chester's alternate plan with TIAA-CREF. (N.T. 139-140, 171-172).

40. PSERS processed Claimant's *PSERS Retirees Returning to Service* form, which included creating a contract record for Claimant, stopping her current pension benefit as of May 31, 2021, calculating any overpaid pension benefits, and notifying Claimant. (N.T. 143-147, 155-156; PSERS-8).

41. West Chester reenrolled Claimant in PSERS as an active member, and then it reported her salary and service going back to January 2007. (N.T. 160, 182-183; PSERS-6; PSERS-8; PSERS-10; Claimant-1).

42. PSERS communicated with Claimant by phone, email, and letter to explain that it was stopping her annuity because she returned to service with West Chester. (N.T. 48-49, 155-156, 165; PSERS-8; PSERS-10).

43. While working for West Chester, Claimant received \$1,305,531.92 in annuity payments from PSERS. (N.T. 144-145; PSERS-8; PSERS-10).

44. Claimant's PSERS account was adjusted to include the additional service reported by West Chester that increased the service credit that Claimant had accrued. (N.T. 153, 160-61; Claimant-9).

45. Because PSERS stopped Claimant's annuity and she was no longer retired, she was required to terminate her active employment and file a new *Application for Retirement* with PSERS before again receiving retirement benefits. (N.T. 50-51, 156).

46. Claimant stopped working for West Chester on June 4, 2021. (N.T. 49; PSERS-9).

47. On June 17, 2021, Claimant filed an *Application for Retirement* with PSERS. (N.T. 62-63; PSERS-7; PSERS-9; Claimant-8).

48. PSERS processed Claimant's second *Application for Retirement*, and Claimant began receiving an annuity from PSERS that factored in her additional service with West Chester. (N.T. 160; PSERS-9; PSERS-10).

49. Claimant did not pay the overpaid annuity to PSERS in a lump sum or through payroll deductions prior to termination and, thus, her recalculated retirement benefit was actuarially reduced to account for the annuity payments she received while working for West Chester, which eliminated her overpayment debt to PSERS. (N.T. 147, 162-163; PSERS-9; PSERS-10).

50. Claimant retired effective June 5, 2021, with a gross monthly benefit of \$3,176.83. (N.T. 147, 163; PSERS-9).

51. Claimant, acting on her own behalf, appealed PSERS' determination that she had returned to service to the Executive Staff Review Committee ("ESRC"), claiming that she would have been eligible for a retirement plan had West Chester advised her of the option, and

requesting that PSERS reduce the monthly amount she was paying toward her overpayment to \$1,000.00. (Claimant-14; N.T. 84-85).

52. By letter dated April 13, 2022, the ESRC denied Claimant's appeal, explaining that her membership in PSERS was mandated by law because she was not enrolled in another retirement plan, and that the law dictated that she return the overpaid annuity amounts to PSERS. (PSERS-11).

53. On May 12, 2022, through counsel, Claimant filed an Appeal and Request for Administrative Hearing with this Board. (Official Notice – Board Records).

54. On May 31, 2022, PSERS filed its Answer to Claimant's Appeal. (Official Notice – Board Records).

55. An administrative hearing was held on September 25, 2024, during which Claimant was present and represented by counsel and had the opportunity to be heard, cross-examine witnesses, make a closing statement for the record, and file a post-hearing brief in support of her appeal. (N.T. 1-203).

56. The Hearing Examiner issued the HEO on March 25, 2025, PSERS timely filed exceptions to the HEO, and Claimant, through counsel, timely filed her brief in opposition to PSERS' exceptions. (Official Notice – Board Records).

CONCLUSIONS OF LAW

1. Claimant was afforded notice and an opportunity to be heard in connection with her appeal. (N.T. 1–203).

2. To prevail on appeal, a claimant bears the burden of establishing the facts upon which she relies. *Wingert v. State Emps.' Ret. Bd*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991).²

² Cases interpreting the SERS Retirement Code provisions “are equally applicable in deciding issues arising under similar or identical provisions” of the Retirement Code. *Krill v. Pub. Sch. Emps.' Ret. Bd.*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).

3. The burden of proof that is applied in an administrative action is the preponderance of the evidence standard and is “such proof as leads the fact-finder . . . to find that the existence of a contested fact is more probable than its nonexistence.” *Hamilton v. State Emps.’ Ret. Bd.*, 194 A.3d 1147, 1155 (Pa. Cmwlth. 2018) (quoting *Sigafoos v. Pa. Bd. of Prob. and Parole*, 503 A.2d 1076, 1079 (Pa. Cmwlth. 1986)).

4. The Board is the creation of the Legislature, and PSERS members have only those rights created by the Retirement Code and none beyond. *See Forman v. Pub. Sch. Emps.’ Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001).

5. The Board is charged with the “uniform administration” of the retirement system and must construe the Retirement Code according to its plain meaning and in such a manner as to give effect to all provisions. 24 Pa.C.S. § 8502(h); 1 Pa.C.S. §§ 1903(a), 1921(a), (b).

6. Section 8346(a) of the Retirement Code mandates that “any annuity payable to [an annuitant] under [the Retirement Code] shall cease effective upon the date of [her] return to school service.” 24 Pa.C.S. § 8346(a); *Robertson v. Pub. Sch. Emps.’ Ret. Sys.*, 162 A.3d 569, 573 (Pa. Cmwlth. 2017).

7. The Retirement Code directs that, if an annuitant receives any payment, on or after the date of her return to school service, the annuitant “shall return to [PSERS] the amount so received plus statutory interest.” 24 Pa. C.S. § 8346(a.1).

8. “School service” is defined as “[s]ervice rendered as a school employee,” and “school employee” is defined, in pertinent part, as any “person engaged in work relating to a public school for any governmental entity and for which work [she] is receiving regular remuneration as an officer, administrator or employee....” 24 Pa.C.S. § 8102.

9. The statutory terms “public school” and “employer” include state-owned colleges and universities. 24 Pa.C.S. § 8102.

10. West Chester is a state-owned college or university and, therefore, is a PSERS employer. 24 Pa.C.S. § 8102; 24 P.S. § 20-2002-A.

11. Pursuant to Section 8346 of the Retirement Code, reenrollment in PSERS is statutorily required for any PSERS annuitant who goes back to work for a PSERS participating employer, unless: (1) they are rendering school service, in the judgment of their employer, due to an emergency increase in the workload or pursuant to a shortage of appropriate subject certified teachers or personnel; or (2) they are employed in an extracurricular position with a contracted waiver of retirement benefits. 24 Pa.C.S. § 8346(b), (b.1).

12. PSERS “would breach its fiduciary duty if it allowed a member to receive an annuity after returning to school services under circumstances that do not constitute” an exception outlined in Section 8346 of the Retirement Code. See *Baillie v. Pub. Sch. Emps.’ Ret. Bd.*, 993 A.2d 944, 950 (Pa. Cmwlth. 2010).

13. To begin receiving a retirement benefit after a return to service, a PSERS member must terminate school service and reapply for an annuity. See 24 Pa.C.S. §§ 8102, 8307, 8342(a); see also 24 Pa.C.S. § 8346(c), (d).

14. Pursuant to Section 8534(b) of the Retirement Code, upon discovery of a mistake in its records that results in a member receiving more or less from PSERS than she would have been entitled to receive had the records been correct, PSERS is required to correct the record and adjust payments accordingly. 24 Pa. C.S. § 8534(b).

15. Section 8303.1 provides the Board with the authority to waive an adjustment that was made under Section 8534(b), if all four conditions in Section 8303.1(a) are met. 24 Pa.C.S. § 8303.1(a); *White v. Pub. Sch. Emps.’ Ret. Bd.*, 11 A.3d 1, 13 (Pa. Cmwlth. 2010).

16. Claimant failed to demonstrate, by a preponderance of the evidence, that her return to school service for the period of January 2007 through June 2021 with West Chester was rendered for an emergency or shortage of personnel, as determined by West Chester, or pursuant to a contracted extracurricular position with West Chester.

17. The factual record supports Claimant’s assertion that she is eligible for a waiver of adjustment pursuant to Section 8303.1(a) of the Retirement Code.

DISCUSSION

A. EXTRACURRICULAR POSITION

On May 26, 2021, West Chester reported to PSERS that Claimant had been working for West Chester since January 6, 2007. (N.T. 141-142; PSERS-6). West Chester reenrolled Claimant in PSERS as an active member, and then it reported her salary and service going back to January 2007. (N.T. 160, 182-183; PSRS-6; PSERS-8; PSERS-10; Claimant-1). Claimant disputes West Chester's enrollment of her in PSERS. Claimant specifically argues that she was exempt from mandatory membership in PSERS because she was working for West Chester pursuant in an extracurricular position as permitted under Section 8346(b) of the Retirement Code. *Claimant's Post-Hearing Brief* ("Claimant's Br."), pp. 15-18. For the following reasons, the Board must disagree.

Preliminarily, PSERS membership is mandatory for Pennsylvania public school employees under Section 8301(a), unless they fit into one of four narrow, statutory exceptions:

(a) *Mandatory membership*. — Membership in the system shall be mandatory as of the effective date of employment for all school employees except the following:

(1) Any officer or employee of the Department of Education, State-owned educational institutions, community colleges, area vocational-technical schools, technical institutes, or The Pennsylvania State University and who is a member of the State Employees' Retirement System or a member of another retirement program approved by the employer.

(2) Any school employee who is not a member of the system and who is employed on a per diem or hourly basis for less than 80 full-day sessions or 500 hours in any fiscal year or annuitant who returns to school service under the provisions of section 8346(b) (relating to termination of annuities).

(3) Any officer or employee of a governmental entity who subsequent to December 22, 1965 and prior to July 1, 1975 administers, supervises, or teaches classes financed wholly or in part by the Federal Government so long as he continues in such service.

(4) Any part-time school employee who has an individual retirement account pursuant to the Federal act of September 2, 1974 (Public Law 93-406, 88 Stat. 829), known as the Employee Retirement Income Security Act of 1974.

24 Pa.C.S. § 8301(a) (emphasis added); 22 Pa. Code 213.1. Claimant does not argue, nor do the facts establish, that she was exempt from mandatory enrollment in PSERS under the first, third, or fourth exceptions of Section 8301(a).³ She argues that she is exempt under the second exception, asserting she worked for West Chester in an “extracurricular position.”⁴

Subsection 8346(a) of the Retirement Code directs that an annuitant’s annuity “shall cease” upon their return to service, supporting the general rule that retirement benefits are for individuals who are, in fact, retired from public school service and not working. 24 Pa.C.S. § 8346(a). Subsections 8346(b) and (b.1) provide a few narrow exceptions to the rule, including an exception for an annuitant who works in an “extracurricular position.” To return to service in an extracurricular position, the law requires that an employee have a “separate contract” with the employer and that the contract expressly “contain a waiver” of any potential retirement benefits:

An annuitant or participant receiving distributions may be employed under separate contract by a public school . . . in an extracurricular position performed primarily outside regular instructional hours and not part of mandated curriculum

³ Claimant was not enrolled in another retirement plan approved by West Chester; she was not continuing in federally financed service; and she was not a part-time school employee with an “individual retirement account pursuant to the Federal act of September 2, 1974 (Public Law 93-406, 88 Stat. 829), known as the Employee Retirement Income Security Act of 1974.” 24 Pa.C.S. § 8301; (N.T. 121, 139, 171-172, 181).

⁴ In her appeal before the ESRC -- contrary to the accusation made in Claimant’s brief that the ESRC “categorically denied that [Claimant’s] temporary appointment constituted an extracurricular position without any explanation” -- Claimant did not argue that she was working in an extracurricular position. See Claimant’s Br., p. 17; (Claimant-14). She also did not make that argument in her initial filing with this Board. (Official Notice, Board Record). She, through legal counsel, first raised the issue at the administrative hearing stage. Nonetheless, the Board’s review is de novo, and Claimant will be permitted to allege she was working in an extracurricular position for the first time before this Board given that PSERS did not request a continuance and had the opportunity to object to any evidence that Claimant presented, in support of her argument, and to cross-examine her. (N.T. 1-203).

without loss of annuity, provided that the annuitant meets the conditions set forth in subsection (b.2). *** Further, such contract shall contain a waiver whereby the annuitant waives any potential retirement benefits that could arise from the contract and releases the employer and the board from any liability for such benefits. Such service shall not be subject to member or participant contributions or be eligible for qualification as creditable school service or for participation in the plan, mandatory pickup participant contributions or employer defined contributions.

24 Pa.C.S. § 8346(b.1)(1); see 24 Pa.C.S. § 8346(b.1)(3) (defining the term “extracurricular position,” in pertinent part, as “a contract position”).

Although the Retirement Code does not require it to do so, PSERS advises retiring members of the contractual requirement in its communications. In the *Initial Retirement Benefit* letter dated July 18, 2006, and the *Recomputation of Your Retirement Benefit* letter dated September 21, 2006, PSERS advised Claimant as follows:

There is no time restriction on an extracurricular position; however, a separate written contract must exist between the employer and retiree. The contract must contain a waiver that waives any potential retirement benefits that could arise from the contract and releases the employer and the board from any liability for such benefit.

(PSERS-3; PSERS-5; N.T. 18, 106-107).

Here, Claimant has not produced an extracurricular contract with West Chester. Additionally, West Chester reported Claimant’s salary and service to PSERS as an active member and on a form that instructed West Chester to reenroll an annuitant in PSERS only if they were “NOT” working in an extracurricular position:

If the PSERS retiree is NOT working under the emergency, shortage of personnel or extracurricular provisions, he or she is considered a “return to service” and must be re-enrolled in PSERS with established rules.

Employers must notify PSERS that a retiree is returning to service so that PSERS staff can create the *Employee Contract Record* and verify/update the *Employee Demographic Record*.

(PSERS-6 (emphasis in original)).

Claimant, attempting to rebut West Chester's reporting, presented evidence that consisted of letters offering her temporary appointments to a faculty position with salary being determined by course load and other assignments. (See Claimant-4). The letters of appointment, however, do not contain the required waiver language. (See *id.*) Without this statutorily required language and given West Chester's representation to PSERS that Claimant was *not* working pursuant to an extracurricular contract and its reporting of salary, contributions, and service to PSERS, the return to service exception in Section 8346(b.1) does not apply. *Id.* Moreover, the only mention of extracurricular duties in the letters is with respect to duties such as participating in ceremonial events (e.g., commencement) that are *in addition* to Claimant's primary teaching responsibilities. (Claimant-4). For example, the letter dated July 27, 2007, provides, in pertinent part, as follows:

You are hereby offered a temporary appointment to the faculty of West Chester University in the Department of Elementary Education at the rank of **Instructor, Step 1**. Your salary, based on an effective payroll starting date of August 18, 2007, will be determined by course load and other assignments, and adjusted in accordance with the provisions in the Collective Bargaining Agreement, based on the current salary of **\$40,599.83**. Also, this employment is contingent upon sufficient enrollment.

It is understood that appointments are contingent upon the approved employment, tenure, dismissal, and promotion policies of the University. See the Collective Bargaining Agreement for details. Copies are available in the office of the faculty union (APSCUF) located at 811 Roslyn Avenue.

It is also understood that this appointment terminates on January 4, 2008. Your duties and teaching responsibilities will be assigned by my office after receiving a recommendation from the department chair. You will be expected to participate, to a reasonable extent, in any extracurricular activities of the University and in significant University ceremonial events such as commencement. In addition, you will be expected to comply with and promote the University's affirmative action plan and policies.

See *id.* (emphasis in original). Accordingly, Claimant has not met her burden of establishing that she was exempted from mandatory membership under Section 8301(a)(2) through an "extracurricular position" as defined in the law.

Claimant argues that, because the Retirement Code states that an annuitant “*may* be employed under separate contract,” a separate contract is optional. *Claimant’s Brief in Opposition to PSERS’s Exceptions*, pp. 11-12 (citing 24 Pa.C.S. § 8346(b.1) (emphasis added)). This argument reflects a misunderstanding of the law. The rule is that membership in PSERS is mandatory, and an annuitant cannot return to work and collect an annuity. 24 Pa.C.S. §§ 8301(a), 8346(a), (a.1). Section 8346(b.1), however, sets forth an *exception* to that rule, providing that an annuitant “*may be employed* under separate contract by a public school or charter school in an extracurricular position performed primarily outside regular instructional hours and not part of mandated curriculum *without loss of annuity*, provided that the annuitant meets the conditions set forth in subsection (b.2).” 24 Pa.C.S. § 8346(b.1) (emphasis added). “May,” in this context, is used to establish an exception to the rule regarding mandatory enrollment in PSERS. Moreover, Claimant’s argument regarding “may” ignores the later requirement that “such contract shall contain a waiver whereby the annuitant waives any potential retirement benefits that could arise from the contract and releases the employer and the board from any liability for such benefits.” *Id.* (emphasis added). It also overlooks the statutory definition of “extracurricular position” that defines the position to mean, in pertinent part, “a contract position.” 24 Pa.C.S. § 8346(b.1)(3); 22 Pa. Code § 213.46(d). If a separate contract is not required, employers and annuitants would be permitted to avoid the required waiver language dictated by the Legislature, which would render that language and the contract language surplusage. As the Pennsylvania Supreme Court explained in *Myers v. Commonwealth*, it is an “axiom of statutory construction that ‘whenever possible each word in a statutory provision is to be given meaning and not to be treated as surplusage.’” 289 A.3d 915, 927 (Pa. 2023) (citations omitted); see 1 Pa.C.S. §§ 1903(a), 1921(a), (b).

Both Claimant and the Hearing Examiner devote time to discussing the meaning of “extracurricular,” but that was premature. Without the necessary contract, PSERS does not have the authority to conclude that an employer’s reporting was wrong, and that an annuitant has met the requirements of Section 8346(b.1) -- even if the nature of their work could be considered “extracurricular.” For completeness, however, the Board also will address whether Claimant’s position at West Chester was “extracurricular.”

The term “extracurricular position” is defined in the Retirement Code as “a contract position filled by an annuitant that is separate from the established academic course structure, including the position of athletic director.” 24 Pa.C.S. § 8346(b.1)(3). Section 8346(b.1)(1) further specifies that, to be exempt, the extracurricular position must be “performed primarily outside regular instructional hours and not part of [the] mandated curriculum.” 24 Pa.C.S. § 8346(b.1)(1). The requirements, therefore, are that the “extracurricular position” be (1) “under separate contract” with the waiver language; (2) separate from the established academic course structure; (3) “performed primarily outside regular instructional hours”; and (4) “not part of [the] mandated curriculum.” The requirements reflect the Legislature’s desire to permit an annuitant to return to service after a bona fide termination and retirement as, for example, an athletic coach or an advisor to a club.

After a review of the record, the Board finds that Claimant’s work *was not* outside the academic course structure and it *was* part of the mandated curriculum for West Chester. (N.T. 23-47, 112-14, 119-20; PSERS-6; Claimant-4.) Preliminarily, Claimant’s *documentary* evidence demonstrates that she was an “instructor” and part of West Chester’s “faculty.” (Claimant-4; N.T. 24-47). Her letters of appointment explain that her “duties and teaching responsibilities” would be assigned by the Dean’s office. (*Id.*) Also, Claimant’s salary was based on her “course load and other assignments.” (*Id.*) The only extracurricular activities that she was expected to do were activities that were in addition to her normal teaching duties and were, specifically, participation in ceremonial events such as commencement. (*See id.*) Additionally, West Chester submitted a *PSERS Retirees Returning to Service* form to PSERS to report Claimant’s service to PSERS. (N.T. 141-142; PSERS-6). By submitting this form, West Chester represented to PSERS that it did not have an extracurricular contract with Claimant, that Claimant did not meet any of the exceptions for returning to service, and Claimant’s annuity should cease as of January 6, 2007. (*See id.*)

The *testimonial* evidence also does not support a conclusion that Claimant was working in an extracurricular position, as contemplated by the law. Claimant was knowledgeable about the requirements for teacher certification, and she taught student teacher candidates at West Chester who were seeking certification in general education for grades K through 8 and, in the

later years, middle school. (N.T. 23-24, 112-114). They referred to her as “professor.” (N.T. 112). As an instructor or student teacher supervisor, Claimant taught a two-hour seminar on Thursday afternoons. (N.T. 24, 119-120). As part of her seminar, Claimant assigned and reviewed homework, including requiring her seminar students to submit weekly summaries of their student teaching activities, reading assignments, and reports on the reading assignments. (N.T. 119-120). Claimant also graded student teacher candidates, wrote reports, met with the student teacher candidate and their mentoring teacher, graded two large projects, and wrote recommendations each semester. (N.T. 24, 119-120).

Student teaching, and consequently Claimant’s position as a student teacher candidate supervisor, is an integral part of the mandated curriculum and is not separate from the established academic course structure. See, e.g., 22 Pa. Code § 354.25 (discussing student teaching as a required part of teacher preparation programs). It is a required component of Pennsylvania’s teacher education program. See 22 Pa. Code §§ 354.1-354.41. Accordingly, Claimant fulfilled a required element of the established academic course structure, which is the antithesis of “extracurricular.” 24 Pa.C.S. § 8346(b.1)(3). Claimant’s position at a university, as a student teacher candidate supervisor, fulfilled part of the mandated student teaching curriculum by enabling student teacher candidates to student teach. *Id.*; (N.T. 112-13, 119-20).

Further, Claimant did not establish that her work was “outside regular instructional hours.” 24 Pa.C.S. § 8346(b.1)(1). Her weekly seminars on Thursday afternoons may have been outside the normal K through 12 instructional hours, because that was when the student teacher candidates were teaching and being observed in the classroom, but the seminars would have been during the “regular instructional hours” at West Chester for the student teacher candidates. Claimant also observed the student teacher candidates in their classrooms, which occurred during the “regular instructional hours” of the school where each student teacher is placed. (N.T. 112-114, 119-120).

Accordingly, Claimant failed to establish that her return to service was in an “extracurricular position” or any other capacity that would avoid mandatory enrollment in

PSERS. Because Claimant does not fall under any of the exceptions to mandatory enrollment, PSERS correctly stopped Claimant's annuity upon her employer reporting her return to service. 24 Pa.C.S. §§ 8301(a), 8346; 22 Pa. Code 213.1.

When a member returns to service but continues to receive an annuity, the Retirement Code directs that the member must "return to the board the amount so received from the system plus statutory interest" by lump sum or amortized with statutory interest through salary deductions. 24 Pa.C.S. § 8346(a.1). Consequently, when Claimant returned to service with West Chester, the law required that PSERS stop her annuity and that she return any annuity payments that she received while working for West Chester. *Id.* The Retirement Code further provides that the amount "shall be paid in a lump sum within 90 days," amortized with statutory interest through salary deductions if they are actively employed, or deferred until retirement with their subsequent annuity to be calculated to actuarially account for the outstanding overpayment. 24 Pa.C.S. §§ 8325, 8346(a.1). Because Claimant elected not to return the amounts she received from PSERS while working for West Chester in a lump sum and she terminated service, the present value of her subsequent retirement was reduced as required by law, resulting in a lower monthly annuity, but no out-of-pocket payment. 24 Pa.C.S. §§ 8534, 8325, 8346(a.1); (N.T. 147, 162-163; PSERS-9; PSERS-10).

For the reasons explained above, the Board finds that PSERS correctly followed the provisions of the Retirement Code, after West Chester reported Claimant's active employment.

B. WAIVER OF ADJUSTMENTS

Alternative to her extracurricular position argument, Claimant argues that she should be granted relief under the Retirement Code's "waiver of adjustments" provision, 24 Pa.C.S. § 8303.1. The Board's authority to grant waiver is limited to adjustments, or portions thereof, "made under section 8534(b) (relating to fraud and adjustment of errors)." 24 Pa.C.S. § 8303.1. Outside this narrow provision, this Board does not have the authority to grant equitable relief. See *White*, 11 A.3d at 12-13; see *Tyson v. Pub. Sch. Emps.' Ret. Sys.*, 737 A.2d 325, 328-29 (Pa. Cmwlth. 1999) ("[T]he Board cannot be estopped from applying the statutory provisions of the Retirement Code, even where a member had received inadequate, incorrect or even no

information from an employer or the board.”) (citing *Finnegan v. Pub. Sch. Emps.’ Ret. Bd.*, 560 A.2d 848, 848 (Pa. Cmwlth. 1989); *Cosgrove v. State Emps.’ Ret. Bd.*, 665 A.2d 870 (Pa. Cmwlth. 1995)).

For a waiver to be granted, an adjustment must meet the following requirements, in pertinent part:

- (1) the adjustment or portion of the adjustment will cause undue hardship to the member;
- (2) the adjustment was not the result of erroneous information supplied by the member;
- (3) the member had no knowledge or notice of the error before adjustment was made, and the member took action with respect to their benefits based on erroneous information provided by the system; and
- (4) the member had no reasonable grounds to believe the erroneous information was incorrect before the adjustment was made.

24 Pa.C.S. § 8303.1.

After a review of the evidence presented on appeal and at the administrative hearing -- the change in annuity amount, the communications between Claimant and West Chester upon hire, the communications between Claimant and PSERS at her initial retirement, and West Chester’s egregious delay in reporting Claimant’s service to PSERS -- the Board determines that Claimant meets the four requirements for a waiver and, therefore, is eligible for a waiver. See *Account of Louis V. Volpe*, Docket No. 2013-22 (PSERB Oct. 17, 2016), *vacated and remanded by*, *Volpe v. Pub. Sch. Emps.’ Ret. Bd.*, 178 A.3d 973 (Pa. Cmwlth. 2017) (unpublished). This Board, however, rejects the HEO’s analysis on waiver, and specifically any conclusion that PSERS was under an affirmative duty to provide notice to Claimant that West Chester was a PSERS employer or that PSERS had a duty to correct West Chester’s failure to report sooner.

Claimant argues, as stated in subheading b, that “PSERS failed to provide notice that [West Chester] is a Pennsylvania public school as defined under the Code.” Claimant’s Br., p. 18; see *also id.*, p. 19 (“PSERS failed in any way to provide notice to [Claimant] that employment at [West Chester] would, in its view, constitute “active public school employment”).

The Hearing Examiner rephrases the argument as “Claimant argued that someone should have told her that she was heading to the hardship asserted against her now.” HEO, p. 22. PSERS’ duty to notify members of certain statutory required notices, however, should not be confused with PSERS’ other duties. It is well settled that PSERS is not required to notify members of all Retirement Code provisions. See *Trakes v. Pub. Sch. Emps. Ret. Sys.*, 768 A.2d 357, 367 (Pa. Cmwlth. 2001); *Cardella v. Pub. Sch. Emps.’ Ret. Bd.*, 827 A.2d 1277, 1281 (Pa. Cmwlth. 2003) (quoting *Trakes*, 768 A.2d at 367). Rather, the Retirement Code directs PSERS as to what specific notices are mandatory. For example, PSERS must notify vestees, prior to their superannuation age, that they can apply for an annuity within 90 days of attaining superannuation age; PSERS must notify beneficiaries of the benefits to which they are entitled upon the death of a member; and PSERS must notify members of their ability to make class elections. 24 Pa.C.S. §§ 8305.2(b), 8305.3(b), 8305.4(b), 8305.5(b), 8505(f), (h). In fact, as recently as December of 2015, the Legislature codified that understanding when enacting Section 8103.1, which Claimant cites in her brief, that permits PSERS to provide notice through means other than only first class mail:

Notice by publication, including, but not limited to, newsletters, newspapers, forms, first class mail, letters, manuals and electronic notice, including, but not limited to, e-mail or publicly accessible Internet websites, distributed or made available to members in a manner reasonably calculated to give actual notice of the provisions of this part that require notice to members shall be deemed sufficient notice for all purposes.

24 Pa.C.S. § 8103.1 (emphasis added).

Claimant and the Hearing Examiner rely on the case captioned *Higgins v. PSERS*, but it is distinguishable. 736 A.2d 745 (Pa. Cmwlth. 1999). In *Higgins*, the specific notice requirement created by Section 8506(g) of the Retirement Code was at issue. Section 8506(g) requires PSERS employers to provide notice, upon employment of a former member of the State Employees’ Retirement System, to “such employee that he may elect multiple service membership within 365 days of entry into [PSERS].” 24 Pa.C.S. § 8506(g); see *Higgins*, 735 A.2d at 749-51. As explained by the Commonwealth Court, “[t]he Retirement Code is designed so that if School District fails to provide the statutorily required notice, it becomes mandatory

upon Board at some unspecified time thereafter to perform that function and to invoice School District, which is required to pay PSERS for the cost of providing that notice.” *Higgins*, 736 A.2d at 750 (citing 24 Pa.C.S. § 8502(g)). Accordingly, in *Higgins*, the Commonwealth Court granted the claimant relief only after finding that neither the employer nor PSERS provided the notice required by Section 8506(g). Here, there is no corollary to Section 8506(g). *Cardella* and *Trakes* are instructive.

In *Trakes*, the Commonwealth Court addressed the consolidated appeals of four claimants, who appealed PSERS’ denials of their applications for a disability retirement as untimely. 768 A.2d at 359-360. One of the claimants, citing *Higgins*, argued that she was entitled to relief because PSERS did not give her “proper notice of the requirement to apply for disability benefits while she was classified as an inactive member during the statutory two-year period.” *Id.* at 367. In rejecting that argument, and distinguishing *Higgins*, the Commonwealth Court explained that PSERS is not required to provide notice to members of every Retirement Code provision:

Higgins involved a specific provision of the Retirement Code. *** The Retirement Code does not contain an equivalent provision requiring that PSERS specifically notify its members of the two-year restriction on their inactive member status as set forth in 24 Pa.C.S. § 8102. If [claimant’s] approach were followed to its logical conclusion PSERS would be required to provide separate written notice regarding each provision in the Retirement Code that could have an impact on a member’s benefits. If the General Assembly had intended to require specific notice of all Retirement Code provisions impacting a member’s benefits it easily could have done so. See Section 1921 of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1921. It is not for the courts to add, by interpretation, to a statute, a requirement which the General Assembly did not see fit to include. *Hanna v. Public School Employes’ Retirement System/Board*, 701 A.2d 800 (Pa. Cmwlth. 1997).

Id.

In *Cardella*, the Court discussed the application of *Trakes* to a situation where PSERS *elected* to provide notice to members of their option to elect Class T-D membership. 827 A.2d at 1281-82. The claimant alleged that he did not receive the notice. *Id.* at 1279. PSERS argued, among other things, that it was not required to provide claimant with notice. *Id.* at

1280. The Court explained, preliminarily, that the section of the Retirement Code at issue, i.e., Section 8305.1, did not contain *a required notice* provision equivalent to the provision at issue in *Higgins*. *Id.* at 1281. Thus, based on the reasoning in *Trakes*, the Court determined that notice was not required. *Id.* Nonetheless, the Court held that the “basic principles of fairness dictate that if PSERS chooses to provide notice of retirement benefits despite not being statutorily mandated to do so, it must provide the same notice to all its members.” *Id.* at 1282 (emphasis in original).

Here, there is no statutory provision requiring PSERS to provide members with a list of PSERS participating employers. Accordingly, PSERS did not err. Moreover, the Board notes that Claimant’s appointment letters -- which she placed into evidence -- reference a Collective Bargaining Agreement that West Chester explained contained its employment, dismissal, and promotion policies, which Claimant failed to produce at the administrative hearing. (Claimant-4; N.T. 28, 29, 47, 111). Information regarding retirement system or plan participation may have been set forth in the agreement. The Board notes that Article XX-A of the Public School Code of 1949, regarding the State System of Higher Education, provides as follows:

Pursuant to the provisions of 24 Pa.C.S. § 8301 (relating to mandatory and optional membership), all professional and other employes of the system and its institutions shall be accorded the right to elect participation in the Pennsylvania Public School Employees’ Retirement System or the State Employees’ Retirement System. Alternatively, eligible employes shall have the right to elect participation in the Teachers’ Insurance and Annuity Association of America—College Retirement Equities Fund (TIAA-CREF) retirement plan or in an alternative retirement plan or plans offered by any insurance company authorized to issue annuity contracts in this Commonwealth or mutual fund company with investment options meeting the requirements of a qualified plan under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.). The alternative retirement plans shall be selected by the system pursuant to the request-for-proposal process.

24 P.S. § 20-2013-A; *compare* 24 Pa.C.S. § 8301(a)(1), (b) (membership in PSERS is *prohibited* for employees of a State-owned educational institution who are members of the State Employees’ Retirement System or another retirement program approved by the institution). With the Collective Bargaining Agreement referenced in the letters of appointment,

but without the agreement being produced at the administrative hearing, this Board cannot say whether West Chester's letters could have placed (or were intended to place) Claimant on notice that it was a PSERS participating employer or did not. Nor can this Board determine whether West Chester provided Claimant with notice of the retirement election options or not, which are set forth in Section 20-2013-A. The Board, therefore, cannot conclude with certainty, on the record, that Claimant was not given notice by West Chester.

The Hearing Examiner also took issue with PSERS not explaining the potential hardship that could result from a return to service under Claimant's particular circumstances, but the law explains the consequences in Section 8346 and does not *require* any specified notices. See 24 Pa.C.S. § 8346; see also 22 Pa. Code § 213.46 (a).⁵ PSERS, nonetheless, advised Claimant that her annuity would stop and an overpayment could occur if Claimant returned to work and PSERS was not notified:

If a retiree returns to service that does not qualify [as an emergency, shortage of personnel, or extracurricular position], he or she must advise their employer of the prior service and should also send a letter to PSERS. This letter should include the retiree's return to service date so that the member's pension may be stopped before an overpayment occurs.

(PSERS-3; PSERS-5; see PSERS-4).

⁵ Claimant also argues, generally, that this Board failed to adopt and promulgate regulations for the uniform administration of the system related to reemployment in an extracurricular position. Claimant's Br., 20-21. She alleges that, as a result, PSERS has violated her right to notice and due process. She fails, however, to explain how Section 8346 of the Retirement Code and Section 213.46 of the Board's rules and regulations are purportedly lacking. See *id.* The primary question on appeal is whether Claimant was employed in an "extracurricular position." The laws make it clear that a separate contract is required, and the evidence makes it apparent that Claimant did not meet the requirement. Further, by letters dated July 18, 2006, and September 21, 2006, PSERS notified Claimant of the contractual requirement for a return to service in an extracurricular position. (PSERS-3; PSERS-5; N.T. 18, 106-107). Claimant also speculates that PSERS has not created a manual to incorporate its rules and regulations, but there is no evidence of record regarding whether a manual does or does not exist and notably absent from Claimant's brief is any factual citation for that claim. (See Claimant's Br., p. 20-21; N.T. 1-203).

The *Higgins* case also does not support the finding in the HEO that, when Claimant's service was not reported to PSERS by West Chester, PSERS had a duty to fulfill West Chester's responsibilities pursuant to Section 8502(g), before PSERS was even aware of the employer's failure to report. See HEO, p. 23. First and foremost, the Hearing Examiner overlooks the fact that the relevant Retirement Code provisions recognize that PSERS will not have perfect knowledge of, and easy access to, every individual employee's salary and service and, as such, require only that PSERS cease an annuitant's payments *when* it learns of a return to service and collect any overpaid amounts and correct employer reporting errors *upon discovery* of the errors, and not before. See 24 Pa.C.S. §§ 8346(a) (contemplating that annuity payments may be issued after an annuitant's return to service that will need to be returned to PSERS with interest), 8502(g) (after an employer fails to comply with its duties, PSERS will perform such duties and bill the employer for the cost of undertaking those duties), 8534(b) (requiring the correction of records "upon discovery" of an intentional or unintentional error). As the Commonwealth Court has recognized, generally, PSERS does not have a duty to audit member accounts until they have terminated service and their final salary and service information has been reported by their employer. See *Hughes v. Pub. Sch. Employees' Ret. Bd.*, 662 A.2d 701, 706 n. 8 (Pa. Cmwlth. 1995) (citing 24 Pa.C.S. § 8505(g)). Second, the Hearing Examiner overlooks the *Higgins* court's recognition that PSERS' duties under Section 8502(g) are not triggered immediately upon an employer's failure, but "at some unspecified time thereafter." *Higgins*, 736 A.2d at 750. Third, any conclusion that PSERS' failure to learn of and fix an *unknown* employer reporting error in PSERS' records, or failure to discover and fix an *unknown* failure of an employer to report to PSERS in a timely manner, could override the other terms and conditions of the Retirement Code is unreasonable. The overpayment in this case was significant, and the employer reporting was egregiously late, but the blame for the late reporting does not lie with PSERS. The record is clear that PSERS trains employers on how to report, and that PSERS is required to correct its records "upon discovery" of any reporting errors. (N.T. 143).

CONCLUSION

For these reasons, the Board concludes that Claimant's work for West Chester was not rendered in an extracurricular position and, consequently, her annuity was correctly stopped by PSERS upon West Chester's reporting of her return to service based on the information that PSERS had at the time. The Board further concludes, however, that after a review of the competent evidence presented for the first time at the administrative hearing, the waiver of adjustment provision of the Retirement Code may be applied under the limited circumstances presented here.

IT IS HEREBY ORDERED that Claimant's appeal is GRANTED. Claimant's account shall be adjusted to remove the salary, contributions, and service she earned while at West Chester and her initial retirement of August 1, 2006 shall be reinstated.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: _____

By: _____
Richard Vague, Chairman