NOTE: The information contained in this document is not intended as legal advice and is not to be used in place of legal counsel. The information is intended to provide general information to PSERS’ Members regarding their retirement benefits and divorce actions. PSERS strongly recommends that Members involved in a divorce contact a family law attorney.
Public School Employees' Retirement System - Who are we?

The Public School Employees' Retirement System (PSERS) is an agency of the Commonwealth of Pennsylvania that manages a governmental pension plan for Pennsylvania public school employees. PSERS is defined under the Internal Revenue Code (IRC) as a 401(a), Defined Benefit Plan.

Because of PSERS’ status as a governmental pension plan, PSERS is exempt from pension plan requirements outlined in the Employee Retirement Income Security Act (ERISA), the Retirement Equity Act of 1984, and the IRC regarding a Qualified Domestic Relations Order (QDRO) and Spousal Consent. This means that in the absence of a divorce action, a Member may take any action with regard to his or her retirement benefit without notice or consent from anyone, including the Member’s spouse.

How is a PSERS retirement benefit affected by a divorce?

As the retirement benefit may be one of the largest financial assets a Member may have, the division of the benefit may become an important issue in a divorce agreement.

The retirement benefits payable to a Member of PSERS are sometimes classified as Marital Property that can be divided in a divorce. The division of Marital Property in a divorce is known as Equitable Distribution.

Any attachment of a Member’s retirement benefit for the purpose of Equitable Distribution must be accomplished through the terms of an Approved Domestic Relations Order (ADRO) as set forth in the Public School Employees’ Retirement Code (Retirement Code), 24 Pa.C.S. § 8101 et seq.

Note: Although a Property Settlement Agreement (PSA) may be incorporated into the Divorce Decree and may form part of the language used in the ADRO, the PSA, in itself, is not sufficient to constitute an ADRO.

What portion of the PSERS' account is Marital Property?

Pennsylvania law identifies the Marital Property Component in terms of a Coverture Fraction, which is defined by law as follows: The denominator is the number of months the Member worked to earn the total benefit and the numerator is the number of such months during which the parties were married and not finally separated. 23 Pa.C.S. §3501(c).

Note: The Divorce Code defines the Coverture Fraction in terms of months. The Retirement Code, however, defines the benefit based on eligibility points earned over a period of time. Accordingly, PSERS calculates the benefit, for purposes of the Coverture Fraction, based on the percentage of service credit earned during the months of marriage, divided by the service credit earned during the entire period of employment. See example in the definition of Coverture Fraction.
PSERS, however, will allow the ADRO to define the Marital Property Component using a different numerator and denominator or a pre-defined amount. See the section entitled, “Do you have any examples of an ADRO?” for further information.

The benefit to which the Coverture Fraction is applied will include any lump sum withdrawals and/or scheduled or ad hoc increases, but will exclude, unless otherwise stated in the ADRO, the disability supplement of any disability annuity paid to the Member by PSERS and any enhancements to the Member’s retirement benefit arising from post-separation monetary contributions made by the Member. 23 Pa.C.S. § 3501(a.1).

If the Member is a Multiple Service Member, the Member’s credited state service with the State Employees’ Retirement System (SERS) will be included in the value of the Member’s account and the calculation of the Coverture Fraction unless otherwise stated in the Domestic Relations Order (“DRO”).

PSERS’ role in interpreting DROs is to determine compliance with the Retirement Code and not whether the terms are beneficial to either party or are in compliance with other agreements (e.g. PSA) established between the parties.

Note: A separate interest approach is not authorized under the Retirement Code. The Retirement Code provides, in pertinent part, that PSERS shall approve a DRO only if: (i) the benefit provided is of the same type or form already provided by the Retirement Code; (ii) the DRO specifies the retirement option to be elected by the Member upon retirement (or states the Member can elect any option provided under the Retirement Code); and (iii) the DRO does not grant an Alternate Payee any of the rights, options or privileges of a Member under the Retirement Code. 24 Pa.C.S § 8533.1(a).

How is the value of a Member’s account obtained?

PSERS can provide the valuation of the Marital Property Component of the Member’s account. The valuation is different from a retirement estimate. The value of the Marital Property Component is based on the value of the Member’s account as of the date the valuation is calculated, not as of the estimated date of retirement.

Note: Any valuation of a Member’s account is an estimate and does not guarantee that the benefit stated on the valuation will actually be the benefit at the time of retirement.

To request a valuation of the Member’s account, PSERS must receive a written request. The written request must include the date of marriage and the date of legal separation. The valuation should be requested at least four weeks in advance of when the information is needed. If the request cannot be submitted at least four weeks in advance, please provide the date the information is needed and PSERS will try to accommodate the request, if possible.

Note: If the Member is a Multiple Service Member, the valuation of the Member’s account with SERS will not be included. A separate valuation should be obtained from SERS.
If someone other than the Member is requesting a valuation, an authorization for release of information signed by the Member must be submitted with the request.

How is PSERS informed of the results of Equitable Distribution of the Member’s account with PSERS?

PSERS requires the submission of a DRO for review and approval. The proposed DRO should be submitted to PSERS for review and approval prior to obtaining the court signature.

To submit the DRO for review, mail it to:

Specialized Service Section
PSERS
5 North 5th Street
Harrisburg PA
17101-1905

In the event that there is no Equitable Distribution of the PSERS account, the former spouse must submit a Waiver of Pension Benefits (PSRS-1286) form to PSERS. This waiver form is available by calling PSERS or by accessing PSERS’ website, www.psers.state.pa.us.

Are there any rules regarding a DRO?

1. In no case can the DRO alter the PSERS’ benefit structure. The benefit structure is limited to the retirement options established by the General Assembly under the Retirement Code. 24 Pa.C.S. §§ 8341-8349. The DRO cannot require PSERS to pay benefits other than those described in the Retirement Code. The total benefits payable to the Member and the Alternate Payee, therefore, cannot exceed the benefit which would have been payable in the absence of a divorce. Any substantive changes to the benefit structure are outside the jurisdiction of the Courts of Common Pleas. Millick v. Millick, 592 A.2d 788 (Pa.Cmwlth. 1991). Additionally, the DRO cannot allow the Alternate Payee to exercise any of the rights, options or privileges of a Member. See the section entitled, “Do you have any examples of an ADRO?” for further information on the benefit structure available.

2. The Alternate Payee may not receive disbursements (of a monthly annuity or lump sum) before the Member terminates service and submits either (1) an Application for Retirement (PSRS-8), (2) an Application for Disability Retirement (PSRS-49) or (3) an Application for Refund (PSRS-59).

Note: To have a retirement date effective the first day after termination of service or the day a Vestee reaches superannuation retirement age, PSERS must receive the Member’s Application for Retirement (PSRS-8) within 90 days of the Member's termination date or attainment of superannuation retirement age for Vestees. See the sections entitled, “When are the benefits paid under an ADRO?” and “Can a Member retire before the divorce is finalized?” for further information.
3. If the Member chooses an option other than the Maximum Single Life Annuity (MSLA), the monthly annuity is reduced by the cost of the option. The DRO must state whether the Alternate Payee is required to share the cost of the retirement option.

   Note: If not mentioned, PSERS will not accept the DRO. See the section entitled, “Do you have any examples of an ADRO?” for more information.

4. Although the parties can provide for an interim distribution or assignment of Marital Property prior to the issuance of a Divorce Decree, there is no such thing as an “interim retirement application.” Once a Member files an application, the option elected on the Member’s portion can be changed only: (1) under the option change regulation or (2) if the Member had chosen a joint and survivor annuity and the Member later divorces or marries.

   Note: If the Member chooses a MSLA or Option 1 on the Alternate Payee’s portion under an Interim Domestic Relations Order (IDRO), an amended DRO cannot override the Retirement Code to allow the Member to change this option election. In this case, the amended DRO can only divide the existing payments (or Member can name the Alternate Payee as Beneficiary for all or part of the death benefit, if any). To preserve the right to change the option on the Alternate Payee’s portion, the Member must elect a joint and survivor annuity option prior to the issuance of a Divorce Decree (or re-marriage). See the section entitled, “Do you have any examples of an ADRO?” for more information on options.

5. A DRO is not required for support orders or orders for enforcement of arrearages under the Divorce Code. These orders will be approved separately provided they do not exceed the Pennsylvania or federal law limits on attachment.

6. If a divorce court amends an ADRO for any reason, the amended order must be submitted to PSERS for approval as an ADRO.

7. If the Member retires under a disability, the Member’s disability supplement is excluded from the calculation of the Martial Property Component unless the DRO specifically states it is to be included.

   Note: Option elections are limited for disability annuitants, e.g., cannot withdraw Accumulated Deductions. Payments made under a disability MSLA provide a death benefit that depletes over the life of the annuity.

8. An Alternate Payee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan by way of a Direct Rollover.

   Note: The IRS requires that PSERS withhold 20% federal withholding tax from the taxable portion not rolled over to an eligible retirement plan.

9. The DRO should state whether the Member is required to name a specific Beneficiary and/or Survivor Annuitant for all or part of the benefit.

   Note: If not mentioned, PSERS will allow the Member to name any Beneficiary or Survivor Annuitant for the entire benefit.
How does a DRO become an ADRO?

A DRO is not effective unless it is approved by PSERS. Upon PSERS’ acceptance of the proposed DRO, signatures of both parties and the court, or, at a minimum, the court, are required.

Once PSERS receives the court-signed ADRO, a final approval letter will be provided. If either party does not agree with the PSERS’ interpretation of the ADRO, they must contact PSERS immediately. If they do not, PSERS will administer the ADRO as stated in the approval letter.

Do you have any examples of an ADRO?

The following guidelines correspond with the numbered paragraphs on the sample ADRO attached as Appendix A. This is NOT an exhaustive list of what should/could appear in the DRO; however, failure to include the below information may result in the DRO being rejected by PSERS.

1. Plan Information – The name of the plan to which the Order applies and a statutory reference to the Retirement Code.
2. Member Information – Name, date of birth, social security number, and mailing address.
3. Alternate Payee Information – Name, date of birth, social security number, and mailing address.
4. Address Notification – A statement indicating that it is the responsibility of the Member and Alternate Payee to maintain current address information on file with PSERS.
5. Definition of Retirement Benefits – A statement defining the Member’s retirement benefit as all monies payable to or on behalf of Member by PSERS. The DRO must state whether the following is included or excluded: lump sum withdrawals, scheduled or ad hoc increases, the disability supplement of any disability annuity paid to Member by PSERS, and enhancements to the Member’s retirement benefit arising from post-separation monetary contributions made by Member. If the Member is a Multiple Service Member, then the Present Value of the Member’s credited state service with the SERS will be included unless otherwise stated in the DRO.

   Note: Deferred Compensation is not part of the PSERS benefit; therefore, if the DRO states that Deferred Compensation is to be included, the DRO will be rejected by PSERS.
6. Defining the Alternate Payee’s Equitable Distribution – The paragraph must clearly set forth the Marital Property Component of the Member’s retirement benefit by describing the method by which to calculate, or the pre-defined amount of, the Alternate Payee’s Equitable Distribution portion of the Member’s retirement benefit, i.e. Alternate Payee’s portion. Because the PSERS retirement benefit is comprised of both Accumulated Deductions and monthly annuity, the DRO must
state what portion of the Member’s benefit (lump sum, monthly annuity, or both) the Alternate Payee is to receive.

Note: If the Alternate Payee is not entitled to a portion of the Member’s lump sum withdrawal, or the lump sum is to be determined in a different way (other than the method used to calculate the monthly annuity), this must be specified in the DRO; otherwise, the lump sum distribution to the Alternate Payee will be calculated by applying the same method used for the monthly annuity. The monthly annuity is actuarially reduced by the lump sum withdrawn.

There are two recommended methods:

- **Marital Property Component** – If the Alternate Payee’s portion is to be determined using a Marital Property Component methodology, observe the following:
  
  a) The components to be used in determining the Marital Property
  The date of retirement, final average salary, service, and Accumulated Deductions determine the Member’s retirement benefit, and subsequently, the Alternate Payee’s portion. The parties must specify the dates to be used to calculate the Marital Property [e.g. actual retirement date or date of separation].

  Note: If the parties choose to limit the final average salary, service, and/or Accumulated Deductions to a different date [e.g. date of separation], this must also be stated in the DRO.

  b) The Coverture Fraction
  A Coverture Fraction can be used to isolate the Marital Property. The Coverture Fraction is a fraction with a value less than or equal to one. Although the Divorce Code defines the Coverture Fraction in terms of months, the Retirement Code defines the benefit based on eligibility points earned over a period of time because public school employees do not always work 12 months to receive a full year of service credit. Accordingly, PSERS calculates the benefit, for purposes of the Coverture Fraction, based on the percentage of service credit earned during the months of marriage, divided by the service credit earned during the entire period of employment. PSERS will allow the DRO to utilize a different numerator and denominator if the parties are in agreement. If the Member is a Multiple Service Member, then the Member’s credited state service with the SERS will be included in the Coverture Fraction unless otherwise stated in the DRO.

  Note: Include the actual dates (month, day, year) of the measuring period.

  c) The Alternate Payee’s share of the Marital Property Component
  This figure should be expressed in a percentage.

- OR -

- **Pre-defined amount** – If the Alternate Payee’s portion is a sum certain, observe the following:
  
  a) The DRO must specify whether the amount is to be paid as a lump sum, monthly annuity, or both.
b) If the Alternate Payee’s portion is to be paid as a lump sum (from the Member’s lump sum withdrawal), this amount cannot be more than the Member’s Accumulated Deductions.

Note: If the Member retires under a disability retirement, the Member is prohibited from withdrawing any Accumulated Deductions.

c) If the Alternate Payee’s portion is to be paid over a period of time from the Member’s monthly annuity, the DRO must specify the amount or percentage that the Alternate Payee will receive each month.

Note: The retirement option elected by the Member must be sufficient to protect the Alternate Payee’s specific monthly amount.

7. Death of Member (naming Alternate Payee as Irrevocable Beneficiary) – A statement indicating that the Member is nominating the Alternate Payee as an Irrevocable Beneficiary for all or part of the death benefit paid by PSERS.

If the DRO requires the Alternate Payee to be named as Irrevocable Beneficiary, then, regardless of whether the Member is required to elect a specific option on the Alternate Payee’s portion at the time of retirement, the Alternate Payee’s portion of any pre-retirement death benefit will be calculated based on an Option 1 death benefit, unless stated otherwise in the DRO. See 24 Pa.C.S. § 8347.

Note: If the Alternate Payee is entitled to a portion of the Member’s pre-retirement death benefit and the Alternate Payee’s portion of the Member’s retirement benefit is to be a specific amount or percentage, the DRO must specify the Alternate Payee’s portion of the death benefit as a specific amount or percentage of the Member’s death benefit.

8. Authorization for Release of Information – A statement indicating that the Member is authorizing PSERS to release information to the Alternate Payee.

Note: If not specifically authorized, PSERS will not release information to the Alternate Payee.

9. Death of Alternate Payee Prior to and After the Member’s Retirement – A statement indicating what happens if the Alternate Payee dies before the Member’s retirement and a statement indicating what happens if Alternate Payee dies after the Member’s retirement. If the Alternate Payee dies before the Member, the Alternate Payee’s right to a share of the benefit (regardless of whether the Alternate Payee is named as Irrevocable Beneficiary) is presumed to end and the interest of the Alternate Payee reverts to the Member. If the Alternate Payee’s share of the benefit is not to revert to the Member, the DRO must specifically state that any payments payable to the Alternate Payee shall be payable to the estate of the Alternate Payee, or to a Contingent Alternate Payee(s).

- If the Alternate Payee’s portion is to be paid to the Alternate Payee’s estate, the Alternate Payee’s estate must remain open and unsettled so that payments can be made – this could force the estate to remain open for many years.

- If the Alternate Payee’s portion is to be paid to a Contingent Alternate Payee(s), include the name(s), address(es), date(s) of birth, social security number(s) and percentage(s) (totaling 100%) payable to each Contingent
Alternate Payee, including the relationship of each Contingent Alternate Payee to the Member. If a Contingent Alternate Payee is under the age of 18, guardian information must be provided. It is the responsibility of the Contingent Alternate Payee(s) to maintain a current address on file with PSERS.

Note: If the Alternate Payee dies prior to the retirement of the Member, then the DRO must state how the Alternate Payee’s interest in the martial portion is to be paid.

10. Retirement Option Election – A statement indicating whether the Member is required to elect a specific option. When choosing an option, the Member has several choices in the way the benefit may be received. As a result of divorce, the Member’s benefit is considered to have a non-marital and marital portion.

- **Non-marital** – Typically, the Member may choose any option offered by PSERS.
- **Marital** – Typically, the Member is required to elect a specific option on the Alternate Payee’s share of the marital portion. The actual retirement option should be identified as it is described in the Retirement Code 24 Pa.C.S. § 8345 (e.g. Maximum Single Life Annuity, Option 1, Option 2, Option 3, or Option 4 (Customized Option)).

The following information is provided to give a better understanding of how each option is applied to the Alternate Payee’s portion upon the Member’s death. (Option 4 (Customized Option) is frequently used in divorce proceedings).

- **Maximum Single Life Annuity** – If the Member retires under the Maximum Single Life Annuity and the Alternate Payee is named as the Irrevocable Beneficiary, the Alternate Payee is entitled to receive the remaining Equitable Distribution interest in any Accumulated Deductions that have not been paid out.
- **Option 1** – If the Member retires under Option 1, and the Alternate Payee is named as the Irrevocable Beneficiary, the Alternate Payee is entitled to the remaining Equitable Distribution interest of the Member’s remaining Present Value, if any.
- **Options 2 or 3** – If the Member retires under Option 2 or 3 and the Alternate Payee is named as a Survivor Annuitant, the Alternate Payee as Survivor Annuitant will begin to receive a monthly lifetime benefit. An Option 2 lifetime benefit would be equal to the combined monthly payments that the Member and the Alternate Payee had been receiving prior to the Member’s death. An Option 3 lifetime benefit would be equal to one-half of the combined monthly payment amounts that the Member and the Alternate Payee had been receiving prior to the Member’s death.
- **Option 4 (Customized Option)** – If the Member retires under this option, the benefit can be customized in the event that none of the other options meet the needs of the parties; provided the benefit continues to be actuarially equivalent to the Maximum Single Life Annuity. This benefit, in most cases, provides a survivor benefit to the Alternate Payee as a levelized benefit based on the Alternate Payee’s portion from the Member’s date of retirement until the
Member’s death, and thereafter for the life of the Alternate Payee. See Appendix A for sample language of a levelized benefit.

Note: DROs with more complicated directions as to the form of the option to be elected by the Member or the way in which the parties’ benefits are to be computed may require review by PSERS’ actuary to determine the impact of such provisions, which may delay the approval process.

- **Lump Sum Benefit** – (For Class T-C and T-D Members) A paragraph should define the amount of withdrawal of Accumulated Deductions the Member must elect at retirement, if any. Unless otherwise specified in the DRO, the Member may elect to withdraw all or a portion of the Accumulated Deductions.

11. Tax Liabilities – A statement indicating tax liability. Liability for taxable payments will be the responsibility of the individual receiving the payment. A Form 1099-R will be issued annually to each individual receiving payments.

   Note: If not mentioned, the Member will receive the benefit of any nontaxable payments.

12. Limitations on the Alternate Payee – See Appendix A for standard language on the limitations of the Alternate Payee in relation to the rights of the Member.


**Can a Member file an Application for Retirement before the divorce is finalized?**

Yes. A pending divorce proceeding does NOT prevent a Member from filing an application with PSERS. Once PSERS is notified of a pending divorce, however, PSERS will flag the Member’s account and will not process any payments until the appropriate divorce documents are submitted and approved. Failure to submit the required documents will result in substantial delays in payment of the retirement benefit.

Note: If the Member’s application is received more than 90 days after the Member’s termination date or the date the Member reaches superannuation retirement age if the Member is a Vestee, the effective date of retirement will be the date the application is received by PSERS and the Member’s annuity will begin as of that date, rather than the day after the termination or superannuation retirement date. See the section entitled “When are the benefits paid under an ADRO?” for further information.

If the parties agree in writing that the Member’s benefit is not affected by the divorce proceeding, PSERS can process the application before the divorce is finalized. See the section entitled, “How is PSERS informed of the results of Equitable Distribution of the Member’s account with PSERS?” for further information.
When are the benefits paid under an ADRO?

**PSERS** can pay benefits under an ADRO only after the **Member** terminates employment and completes and submits to **PSERS** one of the following:

- **Application for Refund** (PSRS-59)
- **Application for Disability Retirement** (PSRS-49)
- **Application for Retirement** (PSRS-8)

We highly recommend that the submission of a DRO to **PSERS** for review takes place before the **Member** terminates employment, if possible. Otherwise, the processing and payment of the benefit to the **Member** and the **Alternate Payee** may be delayed.

If the **Member** is considering retirement, **PSERS** must receive the **Member**’s application within 90 days of his or her termination date to have a retirement date effective the first day after termination of service or within 90 days of the date the **Member** reaches superannuation retirement age if the **Member** is a **Vestee**. If an application is received beyond 90 days of the termination or superannuation retirement date, the retirement date will be the date the application is received by **PSERS**. The annuity will begin as of that date, rather than the day after the termination date or the date the **Vestee** reaches superannuation retirement age.

*Note: A pending divorce proceeding does NOT prohibit a **Member** from filing a retirement application with **PSERS**. **PSERS**, however, will not process any payments until the appropriate divorce documents are submitted and approved. If the **Member** is unable to fully complete the application because of a pending divorce action, the **Member** should complete as much as possible and submit the application with a letter stating the reason for the incomplete application. After a court-signed ADRO is received, **PSERS** will work with the **Member** to complete the application. See section entitled, “Can a **Member** retire before the divorce is finalized?” for further information.*

After an application for a refund or retirement is received, **PSERS** will review the requirements of the ADRO and process the retirement benefit payments as stated. **PSERS** will pay the **Alternate Payee**’s portion of the retirement benefit separately.

A refund application can be filed after all Pennsylvania public school employment is terminated. Interest does not accrue once the **Member** terminates all public school employment.

Any **Member** of **PSERS** who is leaving employment and eligible for a monthly retirement benefit should attend a **PSERS Foundations for Your Future** program. A schedule of these meetings is available on the **PSERS’** website, [www.PSERS.state.pa.us](http://www.PSERS.state.pa.us), and in the **Active Member Newsletter**.

Also, a **PSERS’** counselor can assist the **Member** at a **Retirement Exit Counseling** meeting with the completion of the Application for Retirement or the Application for Disability Retirement in compliance with a court-signed ADRO.
If the ADRO states that the Member and the Alternate Payee both receive a portion of the Accumulated Deductions, and both elect to roll over these funds, both must complete a PSERS Direct Rollover form at the time of retirement.

**What is an Interim Domestic Relations Order (IDRO)?**

Under prior Pennsylvania law, the entire PSERS pension had to be distributed in one agreement under the ADRO and after the issuance of a Divorce Decree. Now, however, Pennsylvania courts have explicit authority to enter an order, at any stage of the divorce proceedings, providing for an interim partial distribution or assignment of Marital Property. 23 Pa.C.S. § 3502(f).

This change means that PSERS now allows the Member to retire and take a lump sum distribution and/or receive an annuity (monthly benefit paid over a lifetime) before the divorce becomes final. PSERS must ensure, however, that the order is specific enough to administer its provisions without violating the Retirement Code. Any modification of the terms of the IDRO after a Divorce Decree is issued will be prospective only, based on the value of the account at the time of the change. PSERS will continue to implement the terms of the IDRO until a subsequent order of court is received, if any.

If the IDRO is issued before the Divorce Decree has been issued, the Retirement Code allows the Member to re-elect an option after the Divorce Decree is issued only if the Member chooses a survivor annuity option at the time of retirement. See the section entitled, “Are there any rules regarding a DRO?” for further information.

**How will taxes on the benefit be handled?**

Any tax liabilities will be the responsibility of the person receiving the payment. A Form 1099-R will be mailed to the person who received the payment.

The parties should independently determine that all allocations are in compliance with federal and state law, including the IRC.

PSERS will pay any nontaxable benefits to the Member unless otherwise directed in the ADRO.

**What happens if the Alternate Payee or the Member dies before a Divorce Decree is entered?**

The death of a party before a Divorce Decree has been entered will not prevent the court from completing the Equitable Distribution of Marital Property, provided certain statutory grounds have been established. 23 Pa.C.S § 3323(d.1). If one of the grounds in the Divorce Code applies and the court proceeds with the divorce action, PSERS will review and process the DRO as if the death had not occurred. If not, then the death abates the divorce action and any death benefits will be payable as if the Member did not divorce.
Are there circumstances other than death in which an Alternate Payee’s share of the Member’s retirement benefit would stop?

If a Member retires then returns to active school service in Pennsylvania, the Retirement Code requires that the payment of the Member’s retirement benefit be suspended during the return to service. 24 Pa.C.S. § 8346. If the payment of a Member’s retirement benefit is suspended due to a return to service, the payment of the Alternate Payee’s share of that benefit will cease as well. Note, however, that a suspension is only required if the Member returns to school service in Pennsylvania. A suspension is not required if the Member goes to work in the private sector, in public service in another state or in federal government service. The Retirement Code does allow, however, retirees to return to school service in Pennsylvania without a suspension of pension benefits under certain circumstances, which is reviewed by PSERS on a case-by-case basis.

Additionally, all benefits paid by PSERS are subject to the Public Employee Pension Forfeiture Act, 43 P.S. § 1311 et seq. Under certain circumstances, a Member’s conviction for one of the crimes enumerated in the Public Employee Pension Forfeiture Act may cause the forfeiture of all benefits payable to the Member. Because the Alternate Payee’s portion is wholly derived from the Member’s right to the benefit, the Alternate Payee’s portion of the Member’s benefit is also forfeited.

Glossary of Terms

401(a) – The section of the IRC under which PSERS qualifies for certain tax treatment.

ADRO – See Approved Domestic Relations Order.

Accumulated Deductions – The total contributions paid by a Member and the statutory interest credited on all such contributions.

Alternate Payee – The spouse, former spouse, child or dependent of a Member who is recognized by an ADRO as having the right to receive money payable to a Member under the Retirement Code.

Approved Domestic Relations Order (ADRO) – A Domestic Relations Order that meets the requirements of the Retirement Code (24 Pa.C.S. §§ 8533.1–8533.4) and that has been approved by PSERS. Note: An ADRO is not required for support orders or orders for the enforcement of arrearages issued under the Divorce Code. PSERS will enforce these orders provided they do not exceed the limits under Pennsylvania or federal law regarding attachments.

Beneficiary – The person or persons, institution, trustee or estate receiving or eligible to receive Accumulated Deductions or a lump sum benefit upon the death of a Member.

Contingent Alternate Payee – The spouse, former spouse, child, or dependent of a Member who is recognized by an ADRO as having the right to receive the Alternate Payee’s portion of the Member’s retirement benefit in the event the Alternate Payee predeceases the Member.
Coverture Fraction – The Coverture Fraction is expressed as a fraction. The denominator is the number of months the Member worked to earn the total benefit and the numerator is the number of such months during which the parties were married and not finally separated. Although the Divorce Code defines the Coverture Fraction using the actual dates (month, day, year) of the retirement benefit attributed to a marriage, PSERS must calculate the Coverture Fraction using the service credit earned during the months of marriage, divided by the service credit earned during the entire period of employment. Example: Member starts work September 1980. He gets married September 1984. The Divorce Decree is entered September 2002. Member intends to retire September 2004. Member’s Present Value is $600,000. The Coverture Fraction is 18 (years of credited service during marriage)/24 (total years of credited service), or .75. The marital portion of Member’s benefit is $450,000 ($600,000 * .75).

Defendant – A person charged in a lawsuit (i.e., the person being sued).

Defined Benefit Plan – A retirement plan, such as PSERS, offering fixed and definable retirement benefits. The benefit calculation is fixed and not dependent on the amount of the employee contributions.

Direct Rollover – At retirement or termination, an election to have PSERS directly transfer a portion of contributions and interest to an eligible retirement plan, such as an Individual Retirement Account (IRA). This would defer taxation of any taxable portion of the money.


Divorce Decree – A court order approving the termination of a marriage.

Domestic Relations Order (DRO) – The general term for a court order made pursuant to a state domestic relations law that provides for the Equitable Distribution of Marital Property to an Alternate Payee (i.e., spouse, former spouse, child or other dependent of a Member). Includes an Interim Domestic Relations Order.

DRO – See Domestic Relations Order.

Employee Retirement Income Security Act (ERISA) – A 1974 federal law establishing legal guidelines for private pension plans. Government plans are exempt from ERISA pursuant to section 1004(b)(1) of ERISA, 29 U.S.C. § 1004(b)(1). This exemption means that, in the absence of an appropriate court order, the Member may elect any option with regard to the Member’s retirement benefits without notice to, or consent from, anyone, including the Member’s spouse.

Equitable Distribution – The division of Marital Property in a divorce.


IDRO – See Interim Domestic Relations Order.
Interim Domestic Relations Order (IDRO) – A Domestic Relations Order providing for an interim partial distribution or assignment of Marital Property typically issued prior to a Divorce Decree.

Internal Revenue Code (IRC) – A 1986 federal law establishing tax law in the United States.

IRC – See Internal Revenue Code.

Irrevocable Beneficiary – The person or persons permanently designated in an ADRO to receive all, or a portion of, the Accumulated Deductions or lump sum benefit payable upon the death of a Member.

Marital Property – Assets (cash, property, pension, stocks, etc.) that can be divided between spouses in a divorce.

Marital Property Component – The portion of a Member’s retirement benefit with PSERS that constitutes Marital Property.

Member – A person with qualifying employment in a Pennsylvania public school or other qualified entity resulting in an account with PSERS. The term includes active Members, inactive Members, Vestees and annuitants.

Multiple Service Member – A Member who has elected to combine his school service in PSERS and his state service in SERS.

Plaintiff – The party initiating a lawsuit (i.e., the person suing).

Present Value (PV) – The total value of a Member’s retirement account used to fund the annuity payments over the Member’s lifetime or the amount paid to a Beneficiary when a vested Member dies in service. Note: the PV is a statutorily defined term, which accurately describes the amount of the Option 1 death benefit, using factors identified by our actuaries. Other actuaries, however, may come up with a different valuation. PSERS will use its valuation not that of another actuary.

Property Settlement Agreement (PSA) (also known as Marital Settlement Agreement or Separation Agreement) – An agreement between the Member and the Alternate Payee, establishing the terms of the Equitable Distribution of the parties’ Marital Property.

PSERS – See Public School Employees’ Retirement System.

Public Employee Pension Forfeiture Act – A 1978 state law providing that, under certain circumstances, a Member’s conviction for one of the crimes enumerated in the Act may cause the forfeiture of all benefits payable to the Member. Note: Because the Alternate Payee’s right to receive a benefit is entirely derivative of the rights of the Member; the forfeiture of the Member’s benefit will also result in the forfeiture of the Alternate Payee’s benefit.

Public School Employees’ Retirement Code (Retirement Code) (Act 96 of October 1975) – Pennsylvania law governing the administration of PSERS.
Public School Employees' Retirement System (PSERS) – An agency of the Commonwealth of Pennsylvania that manages a governmental pension plan for Pennsylvania public school employees. PSERS is a Defined Benefit Plan under section 401(a) of the IRC. PSERS is exempt from pension plan requirements outlined in ERISA, the Retirement Equity Act of 1984, and the IRC regarding QDROs and Spousal Consent. Any attachment of a Member's retirement benefit for the purpose of an Equitable Distribution must be accomplished through an ADRO under terms set forth in the Retirement Code.

QDRO – See Qualified Domestic Relations Order.

Qualified Domestic Relations Order (QDRO) – A Domestic Relations Order that meets the requirements of the IRC, section 401(a)(13) and the Retirement Equity Act of 1984 (IRC § 414(p); ERISA §§ 206, 514(b)(7)). Note: PSERS is not subject to these laws.

Retirement Code – See Public School Employees' Retirement Code.

Retirement Equity Act of 1984 – A 1984 amendment to ERISA that provided more benefits for surviving spouses, lowered the age for participation, and addressed gender equity concerns.

SERS – See State Employees’ Retirement System.

Spousal Consent – A requirement under ERISA requiring the plan administration to pay a benefit as a joint and survivor annuity with the Member's spouse named as the Survivor Annuitant unless the spouse consents otherwise. Note: This provision does not apply to PSERS, although PSERS does require a certification from the Member that the benefit is not subject to a pending or existing Divorce Decree.

State Employees' Retirement System (SERS) – An agency of the Commonwealth of Pennsylvania that manages a governmental pension plan for Pennsylvania state employees and employees of certain independent agencies.

Survivor Annuitant – The person or persons designated by a Member under a joint and survivor annuity option to receive a lifetime monthly benefit upon the Member's death.

Vestee – A Member with five or more eligibility points who has terminated school service, has left his accumulated deductions in the fund and is deferring filing of an application for receipt of an annuity. For Class T-E and Class T-F members, a Member with ten or more eligibility points who has terminated school service, has left his accumulated deductions in the fund and is deferring filing of an application for receipt of an annuity.
Contacting PSERS

PSERS can be contacted toll-free at 1-888-773-7748 from 8:30 a.m. to 5:00 p.m., Monday through Friday, except on major holidays. PSERS also has regional offices located throughout the state. Their core operating hours are 8:30 a.m. to 5:00 p.m. A complete list of all PSERS regional offices is on PSERS’ website under Regional Offices.

PSERS is located at:
5 North 5th Street
Harrisburg PA 17101-1905
Toll-Free: 1-888-773-7748
Local Telephone: (717) 787-8540

E-mail address: ra-ps-contact@state.pa.us

Website: www.psers.state.pa.us
DOMESTIC RELATIONS ORDER

AND NOW, this ___________ day of _______________________, 20___, the attached Stipulation and Agreement entered into by the parties in the above captioned case and dated _________________________ is hereby incorporated, but not merged, into this Order of Court.

J.

ATTEST:
STIPULATION AND AGREEMENT

AND NOW, this ______ day of ________, 20___, the parties, _________________, Plaintiff, and ________________, Defendant, do hereby Stipulate and Agree as follows:

1. Plan Information. This Order relates to the Commonwealth of Pennsylvania, Public School Employees’ Retirement System (hereinafter “Plan” or “PSERS”), as provided by the Public School Employees’ Retirement Code, 24 Pa.C.S. § 8101 et seq. (“Retirement Code”).

2. Member Information. ________________ (hereinafter "Member"), is a Member of the PSERS. The Member's date of birth is ___________, and social security number is ___________. The Member’s mailing address is ____________________________________.

3. Alternate Payee Information. ________________ (hereinafter "Alternate Payee") is the former spouse of Member. Alternate Payee's date of birth is ___________ and social security number is ____________. The Alternate Payee’s mailing address is ____________________.

4. Address Notification. The parties shall promptly notify PSERS of any change in their address from those set forth in this Order.

5. Retirement Benefits. Member's retirement benefit is defined as all monies paid to or on behalf of Member by PSERS, including any lump sum withdrawals and/or scheduled or ad hoc increases, but excluding the disability supplement of any disability annuity paid to Member by PSERS. Member’s retirement benefit does not include any enhancements to the Member’s retirement benefit arising from post-separation monetary contributions made by Member. Equitable distribution of the marital property component of Member's retirement benefit, as set forth in Paragraph Six (6) shall commence as soon as administratively feasible after Member's effective date of retirement or the approval by PSERS of a Domestic Relations Order incorporating this Stipulation and Agreement, whichever is later.

Note: If the Member is a multiple service member, then the Present Value of the Member’s credited state service with the State Employees’ Retirement System will be included unless otherwise stated in the DRO.
[Using a Marital Property Component]:

(a) The marital property component of Member's retirement benefit equals (1) the Coverture Fraction multiplied by (2) the Member's retirement benefit as of __________________[the Member's actual date of retirement or other agreed upon date] .

(b) The Coverture Fraction is a fraction with a value less than or equal to one (1.00). The numerator shall equal the amount of Member's service, as defined by PSERS, for the period from ________ to ________. The denominator shall equal the amount of Member's [total service] OR [service, for the period from ________ to __________].

(c) _____________ percent (____%) of the marital property component of Member's retirement benefit is to be allocated to Alternate Payee for the purpose of equitable distribution of this marital asset.

Note: If the Member is a multiple service member, then the Member’s credited state service with the State Employees’ Retirement System will be included in the Coverture Fraction unless otherwise stated in the DRO.

OR

[Using a pre-defined amount.]:
Alternate Payee’s share of Member’s retirement benefit shall be $(specific amount) or (___)% of Member’s monthly annuity. [The DRO must specify how a lump sum amount is to be paid – Please contact PSERS for sample language.]

7. Death of Member. Member hereby nominates Alternate Payee as an irrevocable beneficiary to the extent of the Alternate Payee's equitable distribution interest in Member's retirement benefit for any death benefits payable by PSERS. The balance of any death benefit remaining after the allocation of the equitable distribution portion payable to Alternate Payee and any other Alternate Payees named under other PSERS-approved Domestic Relations Orders (“Balance”) shall be paid to the beneficiaries named by Member on the last Nomination of Beneficiaries form filed with PSERS prior to Member’s death. If the last Nomination of Beneficiaries form filed by Member prior to Member’s death (a) predates any approved Domestic Relations Order incorporating this Stipulation and Agreement, and (b) names Alternate Payee as a beneficiary, then: (1) the terms of the Domestic Relations Order shall alone govern Alternate Payee's share of any death benefit, and (2) for purposes of paying the Balance via the last Nomination of Beneficiaries form filed with PSERS prior to Member's death, Alternate Payee shall be treated as if Alternate Payee predeceased Member.

8. Authorization. Member hereby authorizes PSERS to release to Alternate Payee all information concerning Member's retirement account as it relates to the terms of this Order.

9. Death of Alternate Payee. If Alternate Payee dies prior to the receipt of all payments potentially payable to the Alternate Payee from PSERS under this Order, then any payment payable to the Alternate Payee by PSERS shall:

Revert to Member.

OR
Be paid to Alternate Payee's estate to the extent of the Alternate Payee's equitable distribution portion of the Member's retirement benefit as set forth in Paragraphs Five (5) through Eight (8).

OR

Be paid to a/each "Contingent Alternate Payee" [include the name(s), address(es), date(s) of birth, social security number(s) and percentage(s) (totaling 100%) payable to each Contingent Alternate Payee, and the relationship of each Contingent Alternate Payee to the Member].

Note: If the Alternate Payee is entitled to a portion of the Member’s pre-retirement death benefit and the Alternate Payee’s equitable distribution portion of the Member’s retirement benefit is to be a monthly “sum certain” amount, the DRO must specify the Alternate Payee’s equitable distribution portion as a percentage of the Member’s death benefit or a specific lump sum up to the amount of the available death benefit.

10. Retirement Option Election. The term and amount of Member's retirement benefit payable to Alternate Payee under the terms of this Stipulation and Agreement after its entry as a Domestic Relations Order acceptable to PSERS are dependent upon which option is elected by Member upon retirement. Member and Alternate Payee expressly agree that

Member shall elect [Maximum Single Life Annuity] OR [Option 1] OR [Option 2] OR [Option 3] OR [Option 4 - Customized Option] for the Alternate Payee’s portion at the time Member files an Application for Retirement with PSERS. Member may elect any option on the remaining portion as long as it does not negatively affect the Alternate Payee’s portion. The Alternate Payee shall share equally in the cost of such option election on the Alternate Payee’s portion.

Note: If the parties want to provide a levelized benefit under the Option 4 - Customized Option, please utilize the following language:
The Alternate Payee shall receive his or her portion of the annuity which is payable to Member during his/her lifetime, so that the Alternate Payee shall receive a portion of the Member’s benefit during his/her lifetime and the same amount as a survivor annuity if the Member predeceases the Alternate Payee after the Member’s retirement. The Alternate Payee acknowledges that if he/she predeceases the Member after the Member’s retirement, then under this levelized survivor annuity option, no survivor annuity is payable to the Alternate Payee’s estate or contingent alternate payee. Member may elect any option for the remaining portion as long as it does not negatively affect the Alternate Payee’s portion. The Alternate Payee shall share equally in the cost of such option election.

OR
Member may elect any retirement option offered by PSERS under the Retirement Code at the time Member files an application to retire with PSERS with the Alternate Payee bearing [a proportionate share] OR [no share] OR [specific percentage] in the cost of such option elected.

Note: The DRO must specifically state how the cost of an option election is to be allocated among the Member and the Alternate Payee. If the Alternate Payee is to share in the cost, then the Alternate Payee’s portion of the Member’s retirement benefit will not be based on the Maximum Single Life Annuity but will be reduced by such cost.

For T-C and T-D Members only:

LUMP SUM BENEFIT. Upon retirement, Member [shall] OR [may] OR [may not] elect to receive a lump sum payment pursuant to 24 Pa.C.S. § 8345(a)(4)(iii) as part of their retirement benefit. Member shall elect to receive a lump sum in an amount equal to [the total accumulated deductions], OR [$ (specific amount)] of which the Alternate Payee:

is entitled to receive the equitable distribution portion as outlined in Paragraph Six (6).

Note: If the allocation of the lump sum benefit to the Alternate Payee is not specifically stated, it is assumed that the Alternate Payee will receive his/her equitable distribution portion of the lump sum benefit.

OR

is not entitled to receive any portion of the Member’s lump sum.

OR

State your own method.

Note: If the Alternate Payee’s equitable distribution portion of the Member’s retirement benefit is to be a monthly “sum certain” amount, the DRO must specify the Alternate Payee’s equitable distribution portion of the lump sum benefit in a percentage or a specific lump sum up to the amount available to be withdrawn.

11. Tax Liabilities. PSERS shall issue individual tax forms to Member and Alternate Payee for the amounts paid to each.

12. Limitations on the Alternate Payee. Alternate Payee may not exercise any right, privilege or option offered by the Retirement Code. In no event shall the Alternate Payee or his/her estate have greater benefits or rights than those that are available to the Member. The Alternate Payee or his/her estate is not entitled to any benefit not otherwise provided by the Retirement Code. The Alternate Payee or his/her estate is only entitled to the specific benefits offered by the Retirement Code as provided in this Order. All other rights, privileges, and options offered by the Retirement Code not granted to the Alternate Payee or his/ her estate by this Order are preserved for the Member. Member and Alternate Payee acknowledge that benefits paid
pursuant to this Stipulation and Agreement are and shall remain subject to the Public Employee Pension Forfeiture Act, 43 P.S. § 1311, et seq.

13. **Intent of the Parties.** The parties intend and agree that the terms of this Stipulation and Agreement shall be approved, adopted, and entered as a Domestic Relations Order.

14. **Amendments.** The Court of Common Pleas of _________________ County, Commonwealth of Pennsylvania, shall retain jurisdiction to amend any Domestic Relations Order based on this Stipulation and Agreement, but only for the purpose of establishing it or maintaining it as a Domestic Relations Order; provided, however, that no such amendment shall require PSERS to provide any type or form of benefit, or any option not otherwise provided by PSERS, and further provided that no such amendment or right of the Court to so amend will invalidate any existing Order.

15. **Effective Date.** Upon its entry as a Domestic Relations Order, a certified copy of this Stipulation and Agreement and any attendant documents shall be served upon PSERS immediately. The Domestic Relations Order shall take effect immediately upon its approval and the approval of any attendant documents by PSERS, and shall remain in effect until further Order of Court.

WHEREFORE, the parties, intending to be legally bound by the terms of this Stipulation and Agreement, do hereunto place their hands and seals.

Dated: _______ ____________________________(Member)

Dated: _______ ____________________________(Alternate Payee)

Dated: _______ ____________________________(Attorney for Member)

________________________________________
Street

________________________________________
City, State, Zip

Dated: _______ ____________________________(Attorney for Alternate Payee)

________________________________________
Street

________________________________________
City, State, Zip