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

IN RE: ACCOUNT OF MARY JANE SCHNEIDER
DOCKET NO. 2013-07
CLAIM OF MARY JANE SCHNEIDER

OPINION AND ORDER OF THE BOARD

INTRODUCTION

Mary Jane Schneider ("Claimant") seeks to purchase two years of service credit for out-of-state service performed with the Meigs Local School District ("MLSD") in Pomeroy, Ohio, from the summer of 1974 through the spring of 1976. Upon receipt of her undergraduate degree, Claimant enrolled in a graduate program for reading specialists through Ohio University. As part of her graduate studies, Claimant applied for and was selected to be one of twenty Ohio University graduate students to take part in the Teacher Corps program, a program created by federal statute. Claimant testified that the Teacher Corps program through Ohio University consisted of three non-optional requirements to be performed by "teacher-interns:" (1) taking courses in furtherance of a graduate degree with Ohio University, (2) performing in-classroom instruction at MLSD, and (3) performing community service.

The primary issue before the Public School Employees' Retirement Board ("Board") in this appeal is whether Claimant may purchase two years of out-of-state service credit for service performed "under the auspices of Teacher Corps." Despite her

participation in the Teacher Corps program, Claimant argues that she was a full-time teacher at MLSD during this time and, therefore, eligible to purchase service credit.

The Board has carefully and independently reviewed the entire record of this proceeding, including the pleadings, transcript, exhibits, briefs, the Public School Employee Retirement System's ("PSERS") Brief on Exceptions, Claimant's Brief Opposing Exceptions Filed by PSERS and the proposed Opinion and Recommendation of the Hearing Examiner. Claimant did not file exceptions to the proposed Opinion and Recommendation.

After the Board's review and deliberation, the Board disagrees with the Hearing Examiner's conclusion that Claimant is eligible to purchase the out-of-state service credit that she seeks.¹ Accordingly, based on its independent review, the Board finds as follows:

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).

FINDINGS OF FACT

1. Claimant attended Ohio University in furtherance of an undergraduate degree, earning a Bachelor of Science in English in 1974. (N.T. 47, 115)²

2. As a part of her English undergraduate degree, Claimant student taught at the Nelsonville-York School District in Nelsonville, Ohio, from January 1974 to March 1974. (N.T. 118-119, 209)

3. The requirements for Claimant to be certified as a teacher in Ohio included having an undergraduate degree, completing the student teaching experience, and passing courses. (N.T. 122-123)

4. On or about March or April 1974, Claimant received her teaching certification in Ohio. (N.T. 123)

5. Beginning in July 1974, Claimant attended graduate school at Ohio University, seeking a master's degree as a reading specialist. (N.T. 119-120)

6. Claimant graduated in May 1976 with a Master's Degree as a Reading Specialist. (N.T. 120, 151)

7. In conjunction with her enrollment in graduate school at Ohio University, Claimant became an intern with Teacher Corps from 1974 through 1976. (PSERS-1 at p. 4).

8. The Teacher Corps program was created by federal statute, namely the Higher Education Act of 1965 (the "Act"), for the purpose of "strengthen[ing] the educational opportunities available to children in areas having concentrations of low-income families and to encourage colleges and universities to broaden their programs

² N.T. refers to Notes of Testimony contained in the Transcript prepared for the complete hearing, encompassing the proceedings of both August 27, 2014, and November 13, 2014.

of teacher preparation by . . . (2) attracting and training inexperienced teacher-interns who will be made available for teaching and inservice training to local educational agencies in such areas in teams led by an experienced teacher.” (P.L. 89-329, 79 Stat. 1219, at § 511(a))³

9. The Act authorized arrangements between the local educational agencies and institutions of higher learning to provide, among other things, “teaching teams, each of which . . . consist[ed] of an experienced teacher and a number of teacher-interns who, in addition to teaching duties, shall be afforded time by the local educational agency for a teacher-intern training program . . .” and for “institutions of higher education to provide training for teacher-interns while teaching in schools for local educational agencies . . . leading to a graduate degree.” (P.L. 89-329, 79 Stat. 1219, at §§ 513(a) and (b))

10. The Act authorized a program to “recruit, select and enroll experienced teachers and inexperienced teacher-interns who have a bachelor’s degree or equivalent, in the Teacher Corps for periods of up to two years.” (P.L. 89-329, 79 Stat. 1219, at § 513(a)(1))

11. The Act authorized “an arrangement made with a local educational agency . . . [to] provide for compensation . . . [to] a teacher-intern . . . at a rate which is equal to the lowest rate paid by such agency for teaching full time in the school system and grade to which the intern is assigned.” (P.L. 89-329, 79 Stat. 1219, at § 514(a)(3))

³ The Higher Education Act of 1965 was reauthorized in 1968 (P.L. 90-575, 82 Stat. 1014) and 1972 (P.L. 92-318, 86 Stat. 235). In both instances, the reauthorization included the amendment and repeal of certain sections of the Act not relevant to this appeal.

12. The Teacher Corps program through which Claimant worked as an intern was operated by Ohio University. (N.T. 137).

13. Claimant first became aware of the Teacher Corps program through John Mangieri, a professor at Ohio University and the head of the Teacher Corps program at Ohio University. (N.T. 136-137)

14. The Teacher Corps program through Ohio University consisted of three requirements to be performed by "teacher-interns:" (1) taking courses in furtherance of a graduate degree with Ohio University, (2) performing in-classroom instruction at MLSD, and (3) performing community service. (PSERS-1 at p. 4, N.T. 135-136, 149-150)

15. Participation in the Teacher Corps program in which Claimant took part was only open to Ohio University graduate students. (N.T. 138, 139-140)

16. Claimant was one of the twenty graduate students at Ohio University who participated in the Teacher Corps program between the summer of 1974 and the spring of 1976. (N.T. 137, 139, 215-216)

17. MLSD encompassed all grades from kindergarten through twelfth grade. (N.T. 124)

18. When Claimant applied for the Teacher Corps program, she interviewed with Dr. Mangieri and a group of teachers from MLSD. (N.T. 137-138)

19. To take part in the Teacher Corps program, a student had to be at the top of his or her class and have an undergraduate degree with a teaching certification. (N.T. 137-138, 157, P.L. 89-329, 79 Stat. 1219, at § 513(a)(1))

20. While Claimant was a graduate student at Ohio University, she taught full-time at MLSD high school as a teacher-intern in the Teacher Corps program, from the fall of 1974 until the summer of 1976. (N.T. 16-17, 29-30, 150-151)

21. Claimant had no prior teaching experience or classroom instruction prior to graduate school other than her student teaching experience while an undergraduate student. (N.T. 47, 118-120, 123, 209)

22. While in the Teacher Corps, Claimant taught reading in grades 9-12 at MLSD. (N.T. 142)

23. Claimant's team leader was Jeanne Bowen, an MLSD employee, whose duties as team leader were for secondary education reading teachers of grades 9-12 at MLSD. (N.T. 142, 144)

24. Claimant's direct supervisor at MLSD was Jeanne Bowen with her next line of reporting to the principal of MLSD, James Diehl, who was in charge of the entire high school. (N.T. 124-143, 160, 214)

25. While most reading specialist students earned their degree in a single year, the twenty students selected to take part in the Teacher Corps program were placed into a two-year track where professors from Ohio University traveled to MLSD to hold graduate classes for the Teacher Corps students on-site at MLSD. (N.T. 146-147)

26. Ohio University professors would teach Claimant and the other teacher-interns the graduate reading courses at MLSD, with classes usually occurring in the evening during the school year, and in the summer. (N.T. 139-140, 146-147, 157-159, 216)

27. As part of the course work, these graduate classes specifically employed the students' teaching experiences at MLSD for case studies, and required regular meetings with Dr. Mangieri to discuss those teaching experiences as the students progressed through the graduate program. (N.T. 147-148)

28. The graduate courses Claimant took through Ohio University at MLSD after school hours and in the summer were for credit and to fulfill the requirements to earn a graduate degree as a reading specialist. (N.T. 48, 216)

29. Claimant would not have been paid if she failed to take graduate courses at Ohio University. (N.T. 149-150)

30. Claimant performed required community service as a part of the Teacher Corps program, where she visited families of students and did parent involvement programs such as "make-it, take-it" workshops. (N.T. 144)

31. Community service was a required part of Claimant's participation in the Teacher Corps program. (N.T. 144-145)

32. If Claimant did not perform the community service component, she would not have been a part of the Teacher Corps program. (N.T. 144-145)

33. Teachers at MLSD who were not a part of the Teacher Corps program were not required to do community service. (N.T. 145)

34. Claimant would not have been paid if she failed to perform the community service required for the Teacher Corps program. (N.T. 145)

35. Claimant's salary was not negotiated when she taught at MLSD. (N.T. 140)

36. The salary for all twenty graduate students who were teacher-interns at MLSD under the auspices of the Teacher Corps program was set by the Act, which required that “a teacher-intern shall be compensated at a rate which is equal to the lowest rate paid by such agency for teaching full time in the school system and grade to which the intern was assigned.” (N.T. 140, P.L. 89-329, 79 Stat. 1219, at § 514(a)(3))

37. Claimant’s salary was a similar salary to that of a first year teacher. (N.T. 37, 148)

38. Claimant’s salary at MLSD was paid by federal grant monies from the Teacher Corps program. (N.T. 149, 160-161, PSERS-3)

39. The federal grant monies from the Teacher Corps program were given to MLSD, then combined with MLSD funds, with checks issued by MLSD to the teacher-interns based on the federal grant monies and not MLSD’s own funds. (N.T. 25-26, 30-31, 109, 148-149, 160-162, PSERS-3)

40. Claimant’s salary at MLSD was not a part of a financial aid package, institution waiver or housing waiver. (N.T. 38-39)

41. Following her graduation from Ohio University with a master’s degree, Claimant did not obtain employment with MLSD. (N.T. 151)

42. If Claimant had not done all of the requirements of the Teacher Corps program she would not have been paid. (N.T. 149-150)

43. Claimant did not have a contract with MLSD. (N.T. 140)

44. Claimant did not have a contract with the Teacher Corps program. (N.T. 140)

45. Claimant's teaching service at MLSD through the Teacher Corps program was for two years. (N.T. 140-141, P.L. 89-329, 79 Stat. 1219, at § 513(a)(1))

46. Claimant was required to remain with the Teacher Corps program for two years. (N.T. 140-141, P.L. 89-329, 79 Stat. 1219, at § 513(a)(1))

47. Claimant did not receive health insurance from MLSD or Ohio University. (N.T. 141)

48. The only benefits received by Claimant while at MLSD were "vacation, holiday and sick days." (N.T. 219-222)

49. Claimant received no information from MLSD concerning contributing to the State Teachers' Retirement System of Ohio ("STRSO"). (N.T. 141).

50. Claimant was not part of a teachers' union while at MLSD. (N.T. 141)

51. Claimant's time in the Teacher Corps program ended with her earning a graduate degree from Ohio University as a reading specialist. (N.T. 151)

52. Upon the completion of her internship with the Teacher Corps program, Claimant does not recall being reimbursed for any unused sick time or vacation/personal time. (N.T. 220-221)

53. Claimant's plan after graduate school was to find a job. (N.T. 120)

54. Claimant was the head coach for girls' basketball and the assistant coach for girls' track at MLSD while she participated in the Teacher Corps program. (N.T. 107, 122, 155)

55. Claimant was not required to be a coach of any sport to be a part of the Teacher Corps program. (N.T. 156, 163)

56. Claimant received no scholarships, grants or financial aid to attend graduate school. (N.T. 122)

57. Claimant taught in Pennsylvania schools from the summer of 1976 through December of 1980. (N.T. 114, 150)

58. Claimant returned to teaching in 1993 at Seneca Valley School District ("SVSD") through her retirement in 2011. (N.T. 206-207)

59. Claimant applied directly to SVSD when seeking to obtain employment. (N.T. 207-208)

60. Claimant had an employment contract with SVSD. (N.T. 207)

61. Claimant was a member of the teachers' union while at SVSD. (N.T. 207)

62. Claimant contributed to PSERS while at SVSD. (N.T. 207)

63. Upon her retirement from SVSD, Claimant was reimbursed by SVSD for unused sick time and vacation/personal time. (N.T. 221)

64. "Purchase of service" means that a member, if he or she qualifies, may purchase service to fill in gaps of misreported service from employers; if the member qualifies, the member would be eligible to purchase that service to fill in those gaps in work history. (N.T. 251)

65. For a member to purchase service, he or she must be an active and contributing member to PSERS at the time the application for service is submitted, and the position must be a qualifying position. (N.T. 251)

66. For a position to be a qualifying position for the purchase of out-of-state service there are two requirements: the time requested must be a minimum of one year

of service and the position held must be eligible to be purchased in Pennsylvania. (N.T. 252-253)

67. Claimant met the one-year requirement to purchase out-of-state service. (N.T. 42, 97, 296, 317-320, 322, A-1, 24 Pa.C.S. § 8304(b)(3), (c))

68. There is no requirement that mandates PSERS to honor a decision of another state that permits service to be purchased in that state. (N.T. 253)

69. On May 4, 2011, Claimant filed her Application for Retirement with PSERS. (PSERS-7)

70. Claimant's retirement date was June 20, 2011. (N.T. 295, PSERS-8, A-4)

71. PSERS received Claimant's first Application to purchase out-of-state service (PSERS-1) on April 4, 2011, and Claimant's second Application (PSERS-2) on April 22, 2011 (these two will be referred to, collectively, as "Application"). (N.T. 203, 265, PSERS-1, PSERS-2)

72. By filing her Application, Claimant sought to purchase out-of-state service performed at MLSD from 1974 through 1976. (N.T. 254, PSERS-1, PSERS-2)

73. Claimant's Application included a February 24, 2011, letter from Claimant to Mark E. Rhonemus, Treasurer of MLSD. (N.T. 135, 254, PSERS-1 at p. 4, PSERS-2 at p. 5)

74. In Claimant's February 24, 2011, letter, Claimant sought Rhonemus' assistance in obtaining documentation needed to complete a form to purchase out-of-state service from PSERS. (N.T. 132, 135, 243, PSERS-1 at p. 4, PSERS-2 at p. 5, A-3)

75. In her February 24, 2011, letter, Claimant identified her service at MLSD from 1974 through 1976 as “under the auspices of Teacher Corps.” (N.T. 136, PSERS-1 at p. 4, PSERS-2 at p. 5)

76. In her February 24, 2011, letter, Claimant identified herself as an “intern” and stated that “interns taught full time, worked on a master’s degree full time, and did community service to provide enrichment to the children we taught and to enhance the local community.” (PSERS-1 at p. 4, PSERS-2 at p. 5)

77. In Claimant’s Application, Claimant completed Section A “Member Information” and signed in Section B, under the date of February 24, 2011. (PSERS-1 at p. 1, PSERS-2 at p. 2)

78. Section C “Employment Information” and Section D “Employer Certification” of Claimant’s Application were completed and signed by Mark E. Rhonemus, Treasurer of MLSD, on March 24, 2011. (PSERS-1 at p. 2, PSERS-2 at p. 2)

79. Claimant’s Application included a document from STRSO entitled “For Certification of Teaching Service in Ohio Public Schools for Which Member *Did Not* Contribute to STRS Ohio for STRS Ohio Defined Benefit Plan Participants” completed by Mark E. Rhonemus, from MLSD, on March 24, 2011, which indicated that Claimant did not contribute to the STRSO while teaching at MLSD. (N.T. 263-264, 342-343, PSERS-1 at p. 5, PSERS-2 at p. 6) (emphasis in original)

80. Section E “Retirement Information” and section F “Retirement System Certification” of Claimant’s Application were completed by Jeff Thompson of the STRSO on April 4, 2011. (PSERS-1, at p. 3, PSERS-2 at p. 3)

81. Thompson's response indicated that Claimant's service in Ohio was not reflected as service credit in Ohio. (N.T. 342-343)

82. Thompson response further indicated that Claimant had only 0.06 years of service registered with the STRSO. (N.T. 256-257, PSERS-1 at pp. 3, 6, PSERS-2 at pp. 3-4)

83. Claimant's Application does not identify, reference or delineate any coaching service. (PSERS-1, N.T. 264-265)

84. By letter dated April 15, 2011, PSERS advised Claimant that it received her request to purchase out-of-state service. (A-6)

85. On May 19, 2011, PSERS sent a fax to Rhonemus seeking further information as to whether Claimant was paid directly by MLSD or by the Ohio Teacher Corps program. (N.T. 272-273, PSERS-3)

86. On May 19, 2011, in response to the request of PSERS, Rhonemus sent a return fax, advising that Claimant was paid with Ohio Teacher Corps grant monies. (N.T. 273-274, PSERS-3)

87. By letter dated May 20, 2011, PSERS advised Claimant that it had denied her request to purchase service. (PSERS-4)

88. Based on the documentation submitted by Claimant and on her behalf, PSERS determined that Claimant did not meet the requirements to purchase out-of-state service. (N.T. 349-350, PSERS-3)

89. In administering the Retirement Code, PSERS follows the Retirement Code directives and PSERS' own Business Rules, which reflect PSERS' interpretation of the Retirement Code. (N.T. 253-254, 278, 360-363)

90. The business rule in place at the time PSERS processed Claimant's Application was PSERS Business Rule POS-2008-01, titled "Purchase of Service Eligibility: Student wage positions." (PSERS-A)

91. By letter dated June 13, 2011, Claimant appealed the denial of her request to purchase out-of-state service to the ESRC. (N.T. 284, PSERS-5, A-9)

92. By letter dated June 28, 2011, PSERS informed Claimant that it had received her letter of appeal. (A-10)

93. By letter dated October 6, 2011, PSERS advised Claimant of her finalized retirement benefit. (PSERS-8)

94. By letter dated March 5, 2013, the ESRC denied Claimant's request to purchase credit for out-of-state service she rendered at MLSD, based on the determination that Claimant was an intern at MLSD and service performed as an intern does not represent an employer-employee relationship. (N.T. 285, PSERS-6, A-11)

95. Claimant filed an Appeal and Request for Administrative Hearing dated March 26, 2013. (A-15).

96. Following the filing of her appeal, Claimant submitted a document to PSERS purporting to show that, as of May 2013, STRSO now permitted Claimant to purchase 1.94 years of service with MLSD. (A-1)

97. An administrative hearing on the above issue was held over two days, on August 27, 2014, and November 13, 2014, before Hearing Examiner Maria Battista. (Board Records, N.T., *passim*)

98. Claimant was present at the hearing, *pro se*, testified, presented evidence in support of her appeal, and cross-examined witnesses. (N.T., *passim*)

DISCUSSION

The central issue in this matter is whether Claimant's two-year teaching experience at MLSD through the Teacher Corps program is purchasable service under the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa. C.S. §8101 et seq. Claimant maintains that her graduate studies were incidental to her teaching position at MLSD, and therefore, she was at all relevant times an employee of MLSD. PSERS argues that Claimant did not enter the work force upon receipt of her undergraduate degree, but rather enrolled in graduate school, and through that graduate program applied for and was selected to be part of a teacher training program, which permitted her to take a two-year track to a degree while gaining hands-on experience in a local school district. While that track included in-classroom instruction at MLSD, PSERS contends that Claimant was not a school employee under the Retirement Code, and therefore was not eligible to purchase the service credit in question.

A Member Must Be Employed In A True Bargained-For Exchange Normally Associated With An Employer-Employee Relationship

The Retirement Code permits an active member of PSERS to purchase service credit "for creditable nonschool service" rendered "in any public school or public educational institution in any state other than this Commonwealth" . . . "for a period of at least one school year." 24 Pa.C.S. § 8304(a), (b)(3) and (c). To purchase out-of-state credit, however, the service at issue must be equally purchasable under the Retirement Code as if the service was performed within the Commonwealth. In *Kapilian v. State Employees' Retirement Board*, 600 A.2d 698 (Pa.Cmwlth. 1991), *alloc. denied*, 608 A.2d

31 (Pa. 1992),⁴ the Commonwealth Court held that out-of-state service credit should not be interpreted in such a way that out-of-state service would result in more credit than identical in-state service: “there is no rationale or specific statutory basis for concluding that creditable nonstate service is broader in scope than creditable instate service.” *Id.* at 700. Accordingly, PSERS must apply the same rules for the purchase of in-state service to the purchase of out-of-state service when determining whether the service is purchasable.

An active member of PSERS may purchase credit and receive eligibility points toward retirement for previous creditable or noncreditable “school service” under 24 Pa.C.S. § 8303(c) and (d). The Retirement Code defines “school service” as “[s]ervice rendered as a school employee.” 24 Pa.C.S. § 8102. It defines “school employee” as “[a]ny person engaged in work relating to a public school for any governmental entity and for which work he is receiving regular remuneration as an officer, administrator or employee. . .” *Id.* It is the Board’s duty to determine whether a person is a school employee within the meaning of the Retirement Code. 22 Pa.Code § 215.5(d)(3); see also *Perry v. State Employees’ Ret. Sys.*, 872 A.2d 273, 278 (Pa.Cmwlt. 2005) (it is up to the Board to determine who is eligible for membership in SERS pursuant to the State Employees’ Retirement Code and relevant regulations). See 24 Pa.C.S. §§ 8303(c) and (d), 8304(a), (b)(3) and (c).

The Board has developed Business Rules, reflecting PSERS’ interpretation of the Retirement Code and setting forth procedures for staff to follow in the daily

⁴ Cases interpreting provisions of the State Employees’ Retirement Code are equally applicable in deciding issues arising under similar or identical provisions of the Public School Employees’ Retirement Code. See, *Krill v. Pub. Sch. Employes’ Ret. Bd.*, 713 A.2d 132, 134 n. 3 (Pa.Cmwlt. 1998), citing *Estate of Rosenstein v. Pub. Sch. Employees’ Ret. Sys.*, 685 A.2d 624 (Pa.Cmwlt. 1996).

processing of an account. See PSERS-A. Consistent with the Pennsylvania Supreme Court's analysis in *Simmonds v. State Employees' Retirement System*, 696 A.2d 801 (Pa. 1997), PSERS employs the rule that if service is to fall within the definition of "school service," and therefore entitled to service credit under the Retirement Code, the person who provides it must be an employee in the bargained-for exchange that exists in typical employment relationships. In *Simmonds*, the Pennsylvania Supreme Court, in the context of a request by a graduate student for credit in the State Employees' Retirement System, analyzed the relationship between Penn State University and a graduate student, who was also a medical resident at the affiliated hospital, Penn State University Medical Center. The Court focused on the purpose of the clinical programs in which the medical residents were enrolled, and reasoned that the medical residents were not primarily seeking monetary gain, but rather, were attempting to fulfill education requirements, so the "bargained-for exchange that exists in typical employment relationships," therefore, did not exist. 696 A.2d at 803-804. Based on these factors, the Court determined that services rendered by Simmonds were not structured solely to meet the hospital's needs but also to ensure that Simmonds obtained required training and certification in the sub-specialty of oncology. *Id.* at 802-804. For that reason, the Court affirmed the decision of the State Employees' Retirement Board, which had determined that, "although medical residents were clothed with indicia of employee status, the purpose of residencies, internships and fellowships was to further [their] education." *Id.* at 802.

Several months later, in *Donovan v. State Employees' Retirement System*, 701 A.2d 310 (Pa.Cmwth. 1997), the Commonwealth Court expanded on the Supreme

Court's determination in *Simmonds*, ruling that *Simmonds* "sends a clear message that a court must examine the purpose of the program" in which a student is enrolled to determine if the student is an employee within the meaning of the Retirement Code. *Id.* at 313. In making such an examination, the Commonwealth Court determined that, where a claimant is primarily seeking to fulfill educational requirements, the work incidental to that goal is not work in the true bargained-for exchange that would evidence an employment relationship. *Id.*; see also *In re Account/Claim of Donald G. Bailey*, Docket No. 2012-49, (Opinion & Order of the Board, Jan. 21, 2015).

Both the Hearing Examiner and Claimant sought to distinguish the application of *Simmonds* and *Donovan* and their progeny by highlighting facts of each case that are not identical to those presented in the instant matter. We will not exhaust those differences here, but only acknowledge that such differences do not change the applicability of the rules enunciated in *Simmonds* and *Donovan*. In both cases, a member sought to purchase service credit directly tied to his or her studies. Claimant is seeking to purchase service credit directly tied to her time as a student at Ohio University. As such, *Simmonds* and *Donovan* both apply.

Moreover, both the Hearing Examiner and Claimant also sought to apply a different series of cases; specifically *Surowski v. Public School Employees' Retirement System*, 467 A.2d 1373 (Pa. Cmwlth 1983) and *Zimmerman v. Public School Employees' Retirement Board*, 522 A.2d 43 (Pa. 1987).⁵ The Board is well aware of this line of cases and its analysis, known typically as the *Zimmerman* factors, which solely concern

⁵ Claimant also cites additional cases for the same analysis, none of which concern the Retirement Code or a similar retirement statute, and are therefore wholly inapplicable. See Claimant's Brief to the Hearing Examiner at 3, 5, 7.

the consideration of whether a member is *either* an employee *or* an independent contractor and therefore in exclusive control of his or her performance. In the matter at hand, no one has made any claim that Claimant should be denied the ability to purchase service credit because she was an independent contractor during her time in the Teacher Corps program. Rather, when considering service performed while a student, such as Claimant's service, the Supreme Court in *Simmonds*, and its progeny, set forth the proper considerations, analyzing the circumstances and true purpose of the employment in question.⁶

Yet even if this Board were to take on such an analysis, most of Claimant's perceived qualifications under the *Zimmerman* factors are directly contradicted by the evidence. For example, Claimant stated that she was paid by MLSD, and not Teacher Corps, Claimant's Brief To the Hearing Examiner ("Claimant's Brief") at 4, ignoring Claimant's admission that she was actually paid by federal grants. See N.T. 149, 160-161, PSERS-3. With regard to "terms of the agreement of the parties," Claimant has consistently argued that she was treated no differently than other teachers at MLSD, which is refuted by the record. See *infra*. Other statements by Claimant are unsupported by the record. With regard to "control of the manner of work," Claimant stated that MLSD "determined hours and holidays, and provided the curriculum," Claimant's Brief at 4; yet no such facts are in the record. As to whether Claimant was paid by the time or by the job, Claimant alleged that she was paid on the same "schedule as all of the other full-time employees by time and not by the job." *Id.* at 5.

⁶ As all but one of the line of cases cited by Claimant pre-date *Simmonds*, it is assumed that the Supreme Court was aware of its own opinion in *Zimmerman* when considering *Simmonds*, yet chose not to engage in the analysis sought by the Claimant and Hearing Examiner. See also, e.g., *Donovan*, 701 A.2d at 313; *In re Account/Claim of Donald G. Bailey*, Opinion & Order of the Board; *In re Account/Claim of Dennis Denenberg*, Opinion & Order of the Board.

Again, there is no evidence of record concerning this. Claimant and the Hearing Examiner's efforts to shoehorn in other *Zimmerman* factors, most of which are fully unsupported by the evidence, highlight the fact that an analysis of these factors does not apply to the issue in this matter.

The Purpose of The Teacher Corps Program Was Teacher Training, Not Employment Placement

In light of the applicability of *Simmonds* and *Donovan*, an examination of the evidence to determine the true purpose of Claimant's work as an intern under the Teacher Corps program is warranted. Despite claims by both the Hearing Examiner and the Claimant that these cases can be distinguished, a review of the facts makes clear that, at least with regard to the teacher-interns, the Teacher Corps program was a teaching program with its core focus on educating inexperienced teachers – not in finding them employment.

The Teacher Corps program was created by federal statute, namely the Higher Education Act of 1965 (the "Act"), for the purpose of "strengthen[ing] the educational opportunities available to children in areas having concentrations of low-income families **and to encourage colleges and universities to broaden their programs of teacher preparation** by . . . (2) attracting and training inexperienced teacher-interns who will be made available for teaching and inservice training to local educational agencies in such areas in teams led by an experienced teacher." P.L. 89-329, 79 Stat. 1219, at § 511(a) (emphasis added). The Act authorized arrangements between the local educational agencies and institutions of higher learning to provide, among other things, "teaching teams, each of which . . . consist[ed] of an experienced teacher and a number of teacher-interns who, in addition to teaching duties, shall be afforded time by the local

educational agency for a teacher-intern training program . . .” and for “institutions of higher education to provide training for teacher-interns while teaching in schools for local educational agencies . . . **leading to a graduate degree.**” *Id.* at §§ 513(a) and (b) (emphasis added). The Act permitted enrollment in the program for up to two years, failing to mandate or discuss placement of its teacher-interns in full-time positions following the completion of the program. *Id.* at § 513(a)(1).

While citing to the same language of the Act, the Hearing Examiner found that the purpose of the Teacher Corps program was to “attract, recruit and retain highly qualified elementary and secondary school teachers, i.e., experienced and inexperienced teacher-interns, to go to school districts in poorer areas to improve the educational opportunities for children in low income families.” Opinion and Recommendation of the Hearing Examiner (“Recommendation”) at 27. Moreover, the Hearing Examiner further found that “it is apparent that the emphasis in the program was on teaching, not on educating the teachers.” *Id.* Yet, such an opinion can only result from the choice to consider the Act solely from the side of MLSD, as opposed to the side of the Claimant. The Act had *two* stated purposes. While the language of the Act did speak to helping meet the needs of underserved school districts, it equally discussed a desire to train inexperienced teachers. Undoubtedly school districts such as MLSD that took part in this program were understandably concerned more with their staffing than with the education of the teacher-interns. Claimant, however, was a teacher-intern – and the Act was clear that, at least regarding the “teacher-interns,” the focus of the program was on training inexperienced individuals to become better teachers. Despite the Hearing Examiner’s unsupported claim that Claimant did not

request service credit for “any periods of training,” Recommendation at 24, Claimant’s *entire participation in the program*, including her in-classroom instruction at MLSD, consisted of training – either through hands-on experience in the classroom or through coursework specifically tailored to the program.

Claimant testified that she first became aware of the Teacher Corps program through John Mangieri, a professor at Ohio University and the head of the Teacher Corps program at Ohio University. See N.T. 136-137. Claimant enrolled in graduate school at Ohio University and then applied to take part in the Teacher Corps program through Ohio University. See PSERS-1 at p. 4. Claimant did not apply for a position directly to MLSD, but rather was required to initially apply and interview for the Teacher Corps program through Ohio University. See N.T. 138. The Teacher Corps program was *not* open to the general public, but rather enrollment as a graduate student in Ohio University was a *requirement*. See N.T. 138-140. While most students earned their degree in a single year, the twenty students selected to take part in the Teacher Corps program were placed into a two-year track where professors from Ohio University traveled to MLSD to hold graduate classes for the Teacher Corps students on-site at MLSD. See N.T. 146-147. As part of the course work, these graduate classes specifically employed the students’ teaching experiences at MLSD for case studies, and required regular meetings with Dr. Mangieri to discuss those teaching experiences as the students progressed through the graduate program. See N.T. 147-148. While the Act permitted MLSD to supervise Claimant while teaching at MLSD (P.L. 89–329, 79 Stat. 1219, at § 516), Claimant’s entire participation in the program was mandated by her educational pursuits at Ohio University and monitored by Dr. Mangieri.

While Claimant has argued that she held a “full-time teaching job” at MLSD, see Claimant’s Brief Opposing Exceptions Filed by PSERS, she, along with nineteen other graduate students from Ohio University, were *placed* at MLSD through the Teacher Corps program. Claimant could not negotiate salary and did not have a contract with MLSD, but rather was paid the same as other interns in the Teacher Corps program, as required by the Act. See N.T. 140, P.L. 89-329, 79 Stat. 1219, at § 514(a)(3). While receiving checks from MLSD, her compensation was paid fully by federal grant money through the Teacher Corps program. See PSERS-3; N.T. 160. Claimant did not receive the employment benefits of an MLSD school employee, but was entitled to sick days and vacation days. See N.T. 141, 219-222. Most important, Claimant testified that the Teacher Corps program consisted of three non-optional requirements to be performed by “teacher-interns:” (1) taking courses in furtherance of a graduate degree with Ohio University, (2) performing in-classroom instruction at MLSD, and (3) performing community service. PSERS-1 at p. 4; N.T. 135-136, 149-150. Claimant made clear that if she had not done all of these requirements of the program, she would not have been paid. See N.T. 149-150. Despite record evidence (including the testimony of the Claimant) that the Teacher Corps program was a specific track of an Ohio University graduate program, the Hearing Examiner’s Recommendation specifically disclaimed all requirements of the service other than her in-classroom instruction. Rather, the Hearing Examiner concluded that requirements to enroll in graduate studies and perform community service (two requirements *not* shared by full-time teachers at MLSD), were no more than “ties” to Ohio University, and that such “ties” were irrelevant because “those additional requirements were after school hours or

in the summer.” Recommendation at 29. The Hearing Examiner further concluded that “there is no indication in the HEA or in the record that Claimant was paid compensation for her graduate work or her community service,” and that “Claimant was paid solely for her teaching time at MLSD.” Recommendation at 25. Yet, Claimant testified that graduate studies at Ohio University, in-classroom instruction and community service were not optional, and if she failed to perform any of the three activities, *she would not have been paid*. N.T. 149-150. Tying Claimant’s compensation to all three requirements of her participation in this Teacher Corps program, including two requirements that had nothing to do with MLSD, exemplify the fact that Claimant was not in the same position as any other full-time teacher at MLSD during that time, as she has argued, and therefore did not have a bargained-for exchange typically present in an employment relationship. Instead, Claimant was a student taking part in a program offered by her graduate school.

Claimant has argued that “it is the substance of the work that defines one’s employment, not the administrative details.” See Claimant’s Brief Opposing Exceptions Filed by PSERS. This statement highlights the fundamental error in Claimant’s argument. From the record it does not appear that anyone has disputed the fact that Claimant did teach classes at MLSD from 1974 through 1976. Performing in-classroom instruction, however, is not enough under the Retirement Code. The law and our precedent make clear that the relevant question when considering whether service performed while a student is “school service” is whether Claimant’s service was a bargained-for exchange that exists in a typical employment relationship. Such exchange is found only when examining those “administrative details” concerning the employment relationship. Looking

at the evidence as a whole, Claimant simply did not have that bargained-for exchange because the purpose of this program was training, not employment. While Claimant's prior education and experience may have qualified her to hold a full-time position with MLSD, that is not the reality of what she actually did. Instead, Claimant enrolled in graduate school, applied for and was selected to be part of a teacher training program, which permitted her to take a two-year track to a degree while gaining hands-on experience in a local school district. Without such a bargained-for exchange, this Board cannot find Claimant's time in the Teacher Corps program to be "school service."

CONCLUSIONS OF LAW

1. The Public School Employees' Retirement Board ("Board") has jurisdiction in this matter.

2. Claimant was afforded notice and an opportunity to be heard in connection with her appeal. (Findings of Fact 91-98)

3. PSERS is a creature of the legislature and its members have only those rights created by the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 *et seq.*, and none beyond. *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa.Cmwlt. 2001); *Burriss v. State Employees' Ret. Bd.*, 745 A.2d 704 (Pa.Cmwlt. 2000); *Bittenbender v. State Employees' Ret. Bd.*, 622 A.2d 403 (Pa.Cmwlt. 1992).

4. PSERS is bound to carry out the express provisions of the Retirement Code. Neither PSERS nor the Board may waive provisions of law, including minimum requirements imposed by the Retirement Code. *Finnegan v. Pub. Sch. Employees' Ret. Bd.*, 560 A.2d 848 (Pa.Cmwlt. 1989), *aff'd*, 591 A.2d 1053 (Pa. 1991).

5. "PSERB has no authority to grant rights [to members] beyond those specifically set forth in the [R]etirement [C]ode." *Forman*, 778 A.2d at 780.

6. A claimant bears the burden of establishing the facts necessary to sustain her claim. *See, e.g., Gierschick v. State Employees' Ret. Bd.*, 733 A.2d 29, 32 (Pa.Cmwlt. 1999); *Hughes v. Pub. Sch. Employees' Ret. Bd.*, 662 A.2d 701, 705 (Pa.Cmwlt. 1995); *Wingert v. State Employees' Ret. Bd.*, 589 A.2d 269, 271 (Pa.Cmwlt. 1991).

7. The preponderance of the evidence is the degree of proof required in an administrative action and is “such proof as leads the fact-finder. . . to find that the existence of a contested fact is more probable than its nonexistence” and “a litigant must satisfy its burden of proof with evidence that is substantial and legally credible, [and] not with mere ‘suspicion’ or by only a ‘scintilla’ of evidence.” *Sigafoos v. Pennsylvania Bd. of Probation and Parole*, 503 A.2d 1076, 1079 (Pa.Cmwlt. 1986); *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa.Cmwlt. 1990).

8. Section 8304 of the Retirement Code permits an active member of PSERS to purchase service credit “for creditable nonschool service” rendered “in any public school or public educational institution in any state other than this Commonwealth” . . . “for a period of at least one school year.” 24 Pa.C.S. § 8304(a), (b)(3) and (c).

9. PSERS must apply the same rules for the purchase of in-state service to the purchase of out-of-state service when determining whether the service is purchasable. *Kapilian v. State Employes’ Ret. Sys.*, 600 A.2d 698, 700 (Pa.Cmwlt. 1991), *alloc. denied*, 608 A.2d 31 (Pa. 1992).

10. An active member of PSERS may purchase credit and receive eligibility points toward retirement “for previous creditable school service or creditable nonschool service.” 24 Pa.C.S. § 8303(c) and (d).

11. The Retirement Code defines “school service” as “[s]ervice rendered as a school employee.” 24 Pa.C.S. § 8102.

12. The Retirement Code defines “school employee” as “[a]ny person engaged in work relating to a public school for any governmental entity and for which work he is receiving regular remuneration as an officer, administrator or employee excluding, however, any independent contractor or a person compensated on a fee basis.” 24 Pa.C.S. § 8102.

13. “In cases of doubt, the Board will determine whether any person is a school employee within the meaning of the Retirement Code.” 22 Pa.Code § 215.5(d)(3); *see generally Perry v. State Employees’ Ret. Sys.*, 872 A.2d 273, 278 (Pa.Cmwlt. 2005).

14. “The Board will also determine whether a person is an independent contractor or a person compensated on a fee basis upon review of all the circumstances surrounding the employment of the person seeking membership in the program.” 22 Pa.Code § 215.5(d)(3).

15. “The purpose of residencies, internships, and fellowships [is] to further one’s education.” *Simmonds v. State Employees’ Ret. Sys.*, 696 A.2d 801, 802 (Pa. 1997).

16. PSERS interprets “school service” to exclude service performed as a student, including service performed as an intern or graduate assistant. *See PSERS-A; Simmonds v. State Employees’ Ret. Sys.*, 696 A.2d 801 (Pa. 1997); *In re Account/Claim of Donald G. Bailey*, Docket No. 2012-49, (Opinion & Order of the Board, Jan. 21, 2015).

17. “[W]hen a statute is interpreted by an agency, such interpretation shall be accorded great weight and shall be overturned or disregarded only if such construction

is clearly erroneous.” *Hawkins v. Pennsylvania Hous. Finance Agency*, 595 A.2d 712, 714 (Pa.Cmwth. 1991); see *Laurito vs. Pub. Sch. Employes’ Ret. Bd.*, 606 A.2d 609, 611 (Pa.Cmwth. 1992).

18. Claimant’s service rendered as an intern and graduate student under the auspices of Teacher Corps is not “school service” under the Retirement Code.

19. Claimant is not entitled to purchase service credit with PSERS through her service rendered as an intern and graduate student under the auspices of Teacher Corps. See 24 Pa.C.S. §§ 8102 and 8303(c) and (d); PSERS-A.

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

IN RE: ACCOUNT OF MARY JANE SCHNEIDER
DOCKET NO. 2013-07
CLAIM OF MARY JANE SCHNEIDER

BOARD OPINION AND ORDER OF THE BOARD

AND NOW, upon consideration of the entire record in this matter, IT IS
HEREBY ORDERED THAT Claimant's request to purchase service and receive credit
for prior out-of-state school service in Ohio for the school years 1974 through 1976 is
DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: October 6, 2015

By: Melva S. Vogler
Melva S. Vogler, Chairman