



**Title III: Benefits
Eligibility**

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Proposed new Title, Chapter, and Section of Administrative Rule: **To be determined by Board Counsel**



The CTPF Administrative Rules and Regulations shall be amended to include the following Rules:

Title III: Benefits

Eligibility

Definition of “Employer.” “Employer” means the Board of Education, a charter school as defined under the provisions of Section 27A-5 of the School Code, and a contract school operating pursuant to an agreement with the Board of Education.

Definition of “Teacher” or “Member.” A “teacher” or “Member,” as defined in Section 17-106, includes any educational, administrative, professional, or other staff member employed in the public schools in District 299 in a position requiring certification or licensure under the School Code, including any educational staff employed in a contract school operating pursuant to an agreement with the Board of Education who is employed in a position requiring certification or licensure under the School Code (excluding all managerial, supervisory, and confidential employees), and who is required to or elects to participate in the Fund, and including any educational, administrative, professional, or other staff employed in a charter school operating in compliance with the Charter School Law, and employees of the Board, but excluding persons contributing concurrently to any other public employee pension system in Illinois for the same employment, persons receiving retirement pensions under another Article of this Code for that same employment, persons

employed on an hourly basis (as defined by the Illinois Pension Code and Fund Administrative Rule, below), and retirees who are employed on a temporary basis in accordance with the Fund's Return to Work Rules.

Individuals who are licensed or certified under the Illinois School Code ("School Code") (105 ILCS 5/21B-20) are eligible Members of the Fund. Appendix A contains a list of Illinois State Board of Education ("ISBE") licensed positions. This list is subject to revision. Appendix B is a list of position codes that are no longer active, but which nevertheless may be applicable to an employee's historical eligibility.

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Definition of "managerial, supervisory, and confidential." "Managerial," "supervisory," and "confidential employees" shall have the meaning set forth in the Illinois Educational Labor Relations Act (115 ILCS 5/2) as follows:

"Supervisor" means any individual having authority in the interests of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees within the appropriate bargaining unit and adjust their grievances, or to effectively recommend such action if the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment. The term "supervisor" includes only those individuals who devote a preponderance of their employment time to such exercising authority

“Confidential employee” means an employee, who (i) in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies with regard to labor relations or who (ii) in the regular course of his or her duties has access to information relating to the effectuation or review of the employer's collective bargaining policies.

“Managerial employee” means an individual who is engaged predominantly in executive and management functions and is charged with the responsibility of directing the effectuation of such management policies and practices.

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Employees of a contract school. Any educational staff of a contract school operating pursuant to an agreement with the Board of Education who is employed in a position requiring certification or licensure under the School Code *on or after August 27, 2021* (excluding all managerial, supervisory and confidential employees) shall participate as a member of the Fund beginning on January 1, 2022, unless the person began employment with the contract school before July 1, 2021. (40 ILCS 5/17-134.2.)

Any educational staff of a contract school operating pursuant to an agreement with the Board of Education who is employed in a position requiring certification or licensure under the School Code *before August 27, 2021* (excluding all managerial, supervisory and confidential employees) may irrevocably elect to participate as a member of the Fund for service accrued after January 1, 2022 with the contract school, another contract school, a charter school, or the Board of Education. (40 ILCS

5/17-134.2.) **Such election to participate must be made on or before December 31, 2021.** The election to participate shall be made via the employee's timely notification to the Employer.

Automatic Enrollment. Any employee who qualifies as a Member of CTPF automatically becomes a Member as a condition of employment and is deemed to consent to deductions from his or her salary for CTPF contributions.

Presumption of Membership. All of an Employer's licensed/certified teachers or staff regardless of their position shall presumptively be participants in the Fund, unless the Employer establishes to the satisfaction of the Board that an individual licensed/certified teacher or staff member is not working as a teacher or administrator directly or indirectly with the Employer. Appendix C is a list of positions that do not currently require ISBE licensure and therefore are not presumed participants of the Fund. This list is subject to revision.

Use of Third-Party Employment Agencies. In accordance with Section 17-106 and Rule #####, all licensed/certified educational, administrative, professional, or other staff members employed in the public schools of District 299 are Members of the Fund, regardless of their designation as an employee of a third-party contractor, of an employment agency, or of any other vendor ("Third Party Vendor"). An Employer that uses a Third Party Vendor to provide licensed/certified teachers or staff, including substitute teachers, is considered a joint employer with the Third Party Vendor and all such licensed/certified teachers are required to participate in CTPF. An Employer has the obligation to secure and to maintain records of each such Member's hours of service and compensation.

Consultants and Independent Contractors. An individual who contracts with an Employer to provide services in a position for which a license or certificate is required qualifies as a Member. Contributions are required even if the contract or agreement characterizes the individual as an “independent contractor.” Paying an individual who qualifies as a Member through accounts payable rather than through payroll does not exempt the Employer from being required to make contributions to CTPF for such an individual.

R.O.T.C. Instructors. Teachers who are certified or licensed by the U.S. Army under 10 U.S.C. § 2033 to teach in an R.O.T.C. program shall be considered certified or licensed for purposes of Section 17-106 (provided the instructor complies with any ISBE requirements).

Exchange and Foreign Teachers. A teacher from a foreign country who is admitted by the U.S. Citizenship and Immigration Services under a J-1 or J-2 visa does not qualify for membership in CTPF. A foreign teacher who is employed only under a work permit does not qualify for membership in CTPF. A teacher from a foreign country who is licensed/certified in Illinois, not admitted as an exchange alien or on a J-2 visa, and performs the duties of a classroom teacher qualifies for CTPF membership.

Professional Development Staff. Licensed/certified individuals providing professional development on a full-time or part-time basis for an Employer qualify for CTPF membership.

Exclusion of Hourly Employees. Every certified/licensed teacher is presumptively considered to be a participant in the Fund. As provided by Administrative Rule

III.A/302(b) and Article 17 of the Pension Code, “hourly employees” are excluded from Membership in the Fund, but the Employer has the burden of proving the “hourly” status is legitimate and warranted by specific facts. While hourly employees may be excluded as Members of the Fund in accordance with these Administrative Rules, an Employer may not reclassify a non-hourly employee as an hourly employee to avoid the Employer’s obligation to contribute.

For guidance on what makes a Teacher hourly, the Trustees will rely on U.S. Department of Labor regulations implementing the Fair Labor Standards Act (“FLSA”). A “salaried” employee is not an “hourly” employee. The definition of what constitutes “salary basis” under the FLSA is:

An employee who regularly receives a predetermined amount, which is not subject to reduction because of variations in the quality or quantity of the work performed, is paid on a salary basis.

“Salary” is sometimes also referred to as “fixed pay.” The language “not subject to reduction because of variations” means that a salaried employee’s pay cannot bear a direct causal relationship to the quality or quantity of the work performed. A Teacher compensated on a per diem basis or on a weekly/monthly/annual basis is receiving fixed pay. An Employer may submit evidence that a Teacher is legitimately an “hourly” employee. This evidence should include, *inter alia*, the Employer’s written compensation policy with regard to all categories of employees, as well as any contractual arrangement with the affected employee. An Employer or Third Party Vendor paying an individual who qualifies as a Member on an “hourly” or any other

basis does **not**, alone, establish that the Teacher is “employed” on an hourly basis.

A licensed or certified Teacher’s “hourly” status is fact-specific and the CTPF audit team or a CTPF-retained audit firm may, *inter alia*, require detailed Payroll Records and interviews in order to determine whether the licensed or certified Teacher is an eligible Member.

Sec. # Specific Considerations Regarding Salaried vs. Hourly Status. The

Trustees and their designees will consider credible evidence and will evaluate all of the facts and circumstances, including the following factors, in determining whether a licensed or certified Teacher is an “hourly” employee:

1. **Clocking In.** Clocking or signing in/out or otherwise recording time is not indicative of either salaried or hourly status. However, if payment each period varies in direct relation to the number of hours recorded, the Teacher may be considered hourly. A set hourly wage multiplied by the number of hours (or fractions thereof) actually worked could be evidence of employment on an hourly basis. The Trustees will also consider whether compensation is determined and paid in time increments such as 6 minutes (tenths of an hour) or 15 minutes (quarter of an hour). Rounding time worked “up to the nearest hour” may be evidence of fixed pay compensation.

2. **Intermittent and Unscheduled Work.** If a licensed/certified teacher works an ad hoc schedule, on an infrequent or intermittent basis for less than a day, or for one-time events such as proctoring an exam or covering a prep period, to assist with parent-teacher meetings, to monitor a class trip, or to supplement staff when there is an emergency and the teacher is actually paid on an hourly basis, the teacher will be

considered hourly. But if the teacher is paid a fixed fee for any portion of a day and performs these same duties, the teacher is a per diem employee and is covered by the Fund.

3. Substitute Teachers Are Presumptively Not Hourly. Substitute teachers are presumptively in the Fund. To borrow from classifications used by CPS, “cadre substitutes” and “day-to-day substitutes” require a license/certificate to teach, so they are presumptively participants in the Fund. Additionally, CPS pays substitutes a “flat rate per day,” meaning that such CPS Teachers are per diem employees, and not hourly.

4. Substitute Teaching as Second Job. If a teacher is employed outside of District 299 and occasionally works for a few hours as a substitute and is paid on less than a per diem basis for the actual time worked, then the Trustees may conclude that the work is not consistent with salaried or fixed pay status.

5. Part-Time Teachers.

a. “Part-time” or “temporary” employees are not automatically “hourly” employees. A licensed or certified Teacher who does not work full-time, but who is paid a fixed fee, per diem, or salary, prorated to correspond to the length of the employee’s assignment, is a covered Member. For example, an employment agreement with the following provisions would establish the right to be a Member in the Fund:

“[A] teacher assigned to half-time shall have his or her salary and benefits prorated by 0.5. Such part-time teachers shall maintain benefits and seniority accrued through their assignment to a part-time position.”

b. A reduction in pay due to a reduction of hours does not necessarily indicate hourly status. Although working fewer hours and earning less money, the Teacher receives a fixed

amount and so is still considered salaried. For example, a Teacher who teaches twice a week and is paid a flat rate for those days, regardless of variations in the “quality or quantity” of the employee’s work, is considered a per diem employee, and not hourly, even though the employee only works part of the school week. A fixed or “flat” fee for any portion of a day is indicative of a fixed pay or per diem employee.

6. **Earnings Similar to Full-Time Teachers.** When a purportedly “hourly” Teacher has earnings and total hours worked that are consistent with the compensation paid to, and hours worked by, non-hourly employees, the Fund may conclude that the Teacher is not an hourly employee. For example, if a purportedly “hourly” Teacher’s salaried counterpart has a similar salary and similar hours (e.g. a salary of \$35,000 and hours reflecting full-time employment) to the purportedly “hourly” Teacher, then the purported “hourly” Teacher is not an hourly employee.
7. **Member Working in Optional Service.** After-school, coaching, overtime, and other extracurricular work, whether on an hourly or salaried basis, is not covered pensionable work under the Code.
8. **Agreement or Employee Handbook as Evidence of Hourly Status.** The Board will consider factors such as: what does the Teacher’s contract of employment, the employee manual or handbook, the employer’s compensation policy, or any applicable labor agreement provide in terms of the Teacher’s status and pay and work schedule.

History of Participation in CTPF or TRS. A licensed or certified Teacher’s history of participation in CTPF or TRS as a salaried employee may be evidence of coverage. In other words, the Trustees will consider whether the Teacher has previously earned creditable service as a Teacher with CTPF or with TRS. For example, a Teacher who has reached the

maximum years of creditable service under the Pension Code might not want to contribute after that date; but a Teacher cannot convert his or her status to hourly in order to avoid contributing to the Fund. The Trustees will review the Teacher's previous work history in determining whether the designation is consistent with the facts.

10. Paid Benefits. The Board will not consider the presence or absence of other employment benefits, such as health insurance, sick leave pay, classroom allowances, holiday pay, vacation pay, vacation pay, etc., from a Teacher's outside employment or from the Employer to be dispositive in determining eligibility.

11. Per Diem and Hourly in Same Week. A Teacher is not considered hourly when the Teacher works, for example, in a classroom 3 days per week and then works "hourly" for a portion of 2 other days; such a Teacher is not an hourly employee for any portion of the week or the school year.

12. Employment Relationship as a Whole. A licensed or certified Teacher's status will be determined after due consideration is given to the employment relationship as a whole. Conclusory labels or classifications will not be given weight if the facts of the employment relationship point in the opposite direction. For Charter Schools, the Trustees will consider the information the Charter School provides to CPS. The Charter School must submit to CTPF any list of licensed personnel filed with CPS and the Charter School's written compensation policy with regard to all categories of employees, including any contractual written arrangement with any Teacher that the Charter School claims is an hourly employee.

Required Licensed or Certified Teachers in Instructional Positions. The Fund is a third-party beneficiary of provisions of the School Code that require a minimum number of licensed/certified Teachers in ISBE-licensed positions and job codes at a charter school. Thus,

the Rules set forth below (please refer to 105 ILCS 5/27A-10 (c-5) and (c-10) as amended)

apply:

At least 50% of the individuals employed in instructional positions by a charter school that is operating in a city having a population exceeding 500,000 [Chicago] and that is established on or after April 16, 2003 shall hold teaching certificates issued under Article 21 of this Code.

At least 75% of the individuals employed in instructional positions by a charter school that is operating in a city having a population exceeding 500,000 and that was established before April 16, 2003 shall hold teaching certificates issued under Article 21 of this Code.

(a) Notwithstanding any provision in subsection (c-5) to the contrary, in any charter school established before July 30, 2009, at least 75% of the individuals employed in instructional positions by the charter school shall hold teaching certificates issued under Article 21 of the School Code beginning with the 2012-2013 School Year. In any charter school established after July 30, 2009, at least 75% of the individuals employed in instructional positions by a charter school shall hold teaching certificates issued under Article 21 of the School Code by the beginning of the fourth school year during which a student is enrolled in the charter school. If a charter school fails to meet these statutory requirements, there is a significant possibility that the Fund will be deprived of both covered Members and pension contributions. Should the Fund become aware of such shortfalls, the Fund reserves the right to report the same to the Chicago Board of Education

and to take such further action to protect its membership and funding, as it deems appropriate.

Enrollment as a CTPF Member. Demographic information must be submitted by the Employer on behalf of each new CTPF Member. Each new Member must complete a Member Enrollment form. A Beneficiary Designation form is sent to Members annually with Member statements and must be submitted to CTPF as soon as possible.

Whenever a Member wishes to change a previously designated beneficiary, the Member must submit a new Beneficiary Designation form. Such a change may be necessary due to a change in the Member's family status (e.g., marriage, birth, divorce, or death).

Tier I and Tier II Membership. [Reserved]

Qualification to Participate in CTPF During School Year. [RESERVED]

Notification of Felony Conviction. Members who have been convicted of work-related felonies are not eligible for CTPF benefits. According to the Illinois Compiled Statutes (40 ILCS 5/17-149.1):

None of the benefits provided for in this Article shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with his or her service as a teacher.

This Section shall not operate to impair any contract or vested right acquired prior to January 1, 1988, nor to preclude the right to a refund. All teachers entering service after January 1, 1988 shall be deemed to have consented to the provisions of this Section as a condition of membership.

The School Code (105 ILCS 5/21-23b) requires the Employer to notify ISBE of ¹any felony conviction of a CTPF Member. The Employer is required to contact the CTPF Chief Legal Officer as soon as possible if a CTPF Member is charged with a work-related felony and must inform the Fund of any developments in the case.

Appendix A: Individuals who are licensed or certified under the Illinois School Code (“School Code”) (105 ILCS 5/21B-20) are eligible Members of the Fund. Below is a list of ISBE licensed positions. This list is subject to revision.

Position Code	Position	Amended/Added
Regular Education Administrative		
100	District Superintendent	
101	Assistant/Associate Direct Superintendent	
102	Chief Executive Officer	
103	Principal	
104	Assistant Principal	
105	Supervisory Dean	
107	General Administrator or General Supervisor	
111	Director of an Area Vocational Center or Supervisor of more than one field in Career and Technical Education	Renamed 9/6/2016
114	Chief School Business Official	
119	Head Teacher	
120	Supervisor of One Field in Career and Technical Education	Renamed 9/6/2016
121	Administrator in a Bilingual Education Program	Renamed 9/6/2016
122	Regional Superintendent (ROE ONLY)	Added on 10/26/2015
123	Assistant Regional Superintendent	Added on 10/26/2015
124	Dean of Students Admin (admin endorsement held)	Added on 9/6/2016
125	Head of Gen Ed (Depart chair admin endorsement held)	Added on 9/6/2016
126	Dean of Students Teacher (no administrative endorsement)	Added on 9/25/2017, replaced code 209
127	Head of Gen ED (Department Chair, no administrative endorsement)	Added on 9/25/2017, replaced code 210

¹ The appendices were revised on July 16, 2020 to conform to ISBE code changes.

Special Education Administrative		
151	Assistant Special Education Director	Renamed 9/6/2016
152	Special Education Director	Renamed 9/6/2016
153	Special Education Supervisor	Renamed 9/6/2016
154	Supervisor of More Than One School Support Personnel Area	Renamed 9/6/2016
155	Supervisor of One School Support Personnel Area	Renamed 9/6/2016
199	Citywide Administrator (CPS ONLY)	
Regular Education Instructional		
200	Teacher	
201	Reading Teacher	
202	Bilingual Education Teacher	
203	English as a Second Language Teacher	
204	Visiting International Teacher	
207	Speech Language Pathology Teacher	
208	Career and Technical Educator (CTE)	Added on 9/6/2016
Special Education Instructional		
250	Special Education Teacher	
251	Bilingual Special Education Teacher	
601	Resource Teacher Arts (Visual Art, Music, Drama, and Theatre)	
602	Resource Teacher History	
603	Resource Teacher Government/Civics/Political Science	
604	Resource Teacher English/Language Arts	
605	Resource Teacher Reading	
606	Resource Teacher Math	
607	Resource Teacher Science (all sciences)	
608	Resource Teacher Foreign Language	
609	Resource Teacher Economics	
610	Resource Teacher Elementary	
611	Resource Teacher Other	Added on 1/14/2015
699	Citywide Resource Teacher (CPS ONLY)*	
Regular Education Ancillary Staff		
306	Curriculum Specialist	Added 1/27/2015
308	Instructional Coach	
309	Library Information Specialist	Renamed 9/6/2016
310	Paraprofessional (Charter School and Contract Schools only)	
311	Reading Specialist	

312	Technology Specialist	
317	Professional Development Consultant (ROE only)	
318	Grant Coordinator (ROE only)	
Special Education Ancillary Staff		
354	Cued Speech Interpreter	Renamed 9/6/2016
358	In-Service Coordinator	
359	Sign Language Interpreter	Renamed 9/6/2016
372	School Counselor	As of ³ / ₄ /2015, 372 was School Guidance Counselor; on 9/6/2016 name was changed to School Counselor
373	School Counselor Intern	Renamed 9/6/2016
374	School Nurse	
375	School Nurse Intern (9 week)	
377	School Psychologist	
378	School Psychologist Intern	
379	School Social Worker	Added on ³ / ₄ /2015
380	School Social Worker Intern	Renamed 9/6/2016
381	Speech Language Pathologist – non-teaching	
382	Speech Language Pathologist Intern	
383	Speech/Language Assistant	
384	Speech/Language Paraprofessional (Charter School only)	
387	Vocational Coordinator	
399	Citywide Student Support Personnel (CPS ONLY)*	
Employed but not actively working		
902	Position description not available	9/25/2017 after removal of 900 and 901
999	Leave of Absence	

“*” Designates that, according to ISBE personnel, the code is active but is not among ISBE’s published position codes because it applies to the City of Chicago only.

Appendix B: Below is a list of position codes that are no longer active, but which nevertheless may be applicable to an employee’s historical eligibility.

Position Code	Position	Date De-Activated
106	Student Dean	9/16/16
110	Department Chair	9/6/16
205	Pre-Kindergarten Teacher	10/26/15
209	Dean of Student Teachers (no administrative	Replaced by 126 on
210	Head of GenEd (Depart. Chair)(administrative	Replaced by 126 on
900	---	9/25/17
901	---	9/25/17

Appendix C: The following position types do not currently require ISBE licensure and therefore are not presumed participants of the Fund. This list is subject to revision.

Accountant
Bookkeeper
Clerical Support Staff
Head/Executive Secretary
Other Office Staff
Information Technology Staff
Audio-Visual Staff
Advisor
Athletic Coach
Athletic Trainer
Attendance/Truant Officer
Other Athletic/Extracurricular Worker
Audiologist
Medical Service Personnel
Cook
Other Food Service Staff
Custodian
Maintenance, Craft, or Trade Worker
Grounds Staff
School Bus Driver
Transportation Mechanic
Other Transportation Staff