



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
P. O. Box 295

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*Governor*

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*Lt. Governor*

February 26, 2019

[REDACTED]  
Detzky Hunter & DeFillippo, LLC  
David J. DeFillippo, Esquire

[REDACTED]  
[REDACTED]

RE: Sally Mulvey  
[REDACTED]

Dear Mr. DeFillippo:

I am writing in reference to the decision of the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) regarding the appeal of your client, Sally Mulvey, challenging the Board's decision of October 17, 2018, in which it found that she was not eligible for PERS membership based upon her part-time position as adjunct faculty at Rutgers University (Rutgers). At its meeting on January 16, 2019, the Board determined that there are no material facts in dispute, denied Ms. Mulvey's request for an administrative hearing and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law, which were presented and approved by the PERS Board at its February 26, 2019 meeting.

The Board has reviewed your written submissions and all relevant documentation in the record, and finds that the statutes and regulations governing the PERS do not permit Ms. Mulvey's participation in the PERS on the basis of her part-time Rutgers employment.

## **FINDINGS OF FACT**

The facts in this matter are essentially undisputed. Ms. Mulvey enrolled in the PERS on October 1, 2007, as a result of her employment with Essex County College (Essex). On February 1, 2008, she became a "multiple" PERS member, having obtained employment with Rutgers while

continuing her previous employment with Essex. Ms. Mulvey terminated her Essex employment on or about June 30, 2008, and her Rutgers employment on or about May 31, 2009. On February 1, 2009, she became employed at Middlesex County College (Middlesex) and that employment ended on or about March 31, 2009.

In September 2009, Ms. Mulvey commenced employment with Brookdale Community College (Brookdale) and she continues to be so employed. Due to a change in law prior to accepting her Brookdale employment, specifically L. 2008, c. 89, adjunct faculty members and part-time instructors already enrolled in the PERS who entered into a new employment agreement after October 31, 2008, were required to either irrevocably waive participation under the Alternate Benefit Program (ABP) and continue their membership in the PERS, or irrevocably waive their benefits under the PERS and transfer their accumulated PERS deductions to the ABP. At that time, Ms. Mulvey exercised her option to remain in the PERS based on her Brookdale service and irrevocably waived ABP enrollment. It is undisputed that she would not have been able to accept the Brookdale position without having elected to remain in the PERS and irrevocably waive ABP enrollment.

Ms. Mulvey subsequently returned to a position with Rutgers as a part-time instructor in September 2010.<sup>1</sup> However, prior to her return to Rutgers employment, the State Legislature enacted L. 2010, c. 1, which precluded individuals with existing PERS accounts from including any salary or service credit earned from any additional position accepted after the effective date of May 22, 2010.<sup>2</sup> The statute states, in pertinent part that:

... after the effective date [May 21, 2010] of P.L.2010, c.1, a person who is or becomes a member of the Public Employees' Retirement System and becomes employed in more than one office, position, or employment covered by the retirement system or commences

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<sup>1</sup> Mr. Wade's original letter listed the date Ms. Mulvey returned to work as September 2011, rather than 2010.

<sup>2</sup> The statute authorizes the Division to use the highest salary among the multiple positions held to calculate pension contributions and benefits.

service in a covered office, position, or employment with more than one employer shall be eligible for membership in the retirement system based upon only one of the offices, positions, or employments held concurrently.

[N.J.S.A. 43:15A-25.2 (emphasis supplied).]

The law allowed any member with multiple enrollments held prior to May 21, 2010, to remain so enrolled “while the member continues to hold without a break in service more than one of those offices, positions, or employments.” Ibid.

### **CONCLUSIONS OF LAW**

This Board found that this matter is controlled by N.J.S.A. 43:15A-25.2, which states, in pertinent part:

... after the effective date [May 21, 2010] of P.L.2010, c.1, a person who is or becomes a member of the Public Employees’ Retirement System and becomes employed in more than one office, position, or employment covered by the retirement system or commences service in a covered office, position, or employment with more than one employer shall be eligible for membership in the retirement system based upon only one of the offices, positions, or employments held concurrently.

[Emphasis supplied.]

The Board noted that while Ms. Mulvey had previously been employed by Rutgers, she was not employed in that position as of the effective date of the L. 2010, c. 1. While the statute allowed members already employed in PERS-covered positions to remain eligible to maintain their multiple-membership, any position not held as of May 21, 2010, but added thereafter, is not eligible for PERS membership.

In your correspondence on behalf of Ms. Mulvey, you argued that she should be eligible for membership based on her Rutgers service because she left Rutgers less than two years prior to her return to employment there. While the two-year requirement concerns the expiration of a member’s PERS account, N.J.S.A. 43:15A-7(e), N.J.S.A. 43:15A-25.2 precludes PERS eligibility beyond one position. After the statute’s effective date, only those individuals who were already

“multiple” members could remain so enrolled, as long as they continued to hold their positions without a break in service. There is no question that Ms. Mulvey left Rutgers in 2009 and did not return prior to May 21, 2010, and therefore had a break in service and is not eligible for PERS membership based upon her Rutgers service.<sup>3</sup>

Finally, in your correspondence dated November 26, 2018, you argued that had Ms. Mulvey become re-employed by Rutgers just one semester prior, she would have been eligible to include her Rutgers service as part of her PERS membership. While the Board does not dispute this assertion, the Board finds the statutory language clear and unambiguous, and that it expressly precludes PERS membership for a multiple member adding an additional position after May 21, 2010.

As noted above, the Board has determined that this matter does not entail any disputed questions of fact, and the Board was able to reach its findings of fact and conclusions of law without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

You have the right, if you wish, to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter, in accordance with the Rules Governing the Courts of the State of New Jersey. All appeals should be directed to:

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<sup>3</sup> As noted in the Board's original decision, the Board does not have jurisdiction to consider Ms. Mulvey's request to include her Rutgers service and salary in the ABP, and therefore did not reach a determination on that issue. Ms. Mulvey was previously provided with instructions to appeal that determination within the Division.

David J. DeFillippo, Esq.  
Re: Sally Mulvey, PERS 2-1322448  
February 26, 2019  
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Superior Court of New Jersey  
Appellate Division  
Attn: Court Clerk  
PO Box 006  
Trenton, NJ 08625

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowicz". The signature is fluid and cursive, with a large loop at the end.

Jeff S. Ignatowicz, Secretary  
Board of Trustees  
Public Employees' Retirement System

G-11/JSI

c: L. Barnett (ET); E. Wade(ET)  
DAG Juliana DeAngelis (ET)  
Sally Mulvey