

**BEFORE THE BOARD OF TRUSTEES  
TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS**

**In the Matter of:** )  
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 )  
**MICHAEL T. MCGUE,** )  
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 )  
**Petitioner.** )

**DECISION RECOMMENDED BY THE CLAIMS HEARING COMMITTEE IN  
THE ADMINISTRATIVE REVIEW OF MICHAEL T. MCGUE**

**I. Introduction.**

Pursuant to 80 Ill. Admin. Code § 1650.610 *et seq.*, an administrative review hearing was held on December 9, 2015, in Springfield, Illinois, to consider the appeal of Michael T. McGue ("McGue"), challenging the staff determination that McGue is not eligible for service credit pursuant to 40 ILCS 5/16-106(8) for the time he was employed by Lake County Federation of Teachers Local 504 ("Local 504"). It is from this determination that McGue appeals.

The TRS Board of Trustees ("Board"), the trier of fact in this matter as provided in TRS Rule 1650.620 (80 Ill. Admin. Code § 1650.620), was represented at the hearing by its Claims Hearing Committee comprised of the following Board members: Sonia Walwyn, Chairperson, Daniel Winter, and Mark Bailey. The Committee was advised in its deliberations by Ralph Loewenstein, Presiding Hearing Officer. The parties were each represented by their respective legal counsel at the hearing: Mr. Ronald J. Broida for McGue and Ms. Trisha M. Rich for TRS.

In this matter, McGue seeks administrative review of the staff determination that McGue's employment as Local 504's Coordinator did not qualify him to earn service credit as a TRS member. After reviewing the briefs and exhibits submitted by the Parties, and considering oral arguments from their respective legal counsel, it is the determination of the Claims Hearing Committee that McGue is not entitled to service credit for his employment as Coordinator with Local 504. Further, the Claims Hearing Committee does not find McGue's additional and alternative arguments persuasive. 40 ILCS 5/16-106(8) is not unconstitutionally vague, and the statutory definitions of "stipend" and "salary" are sufficiently unambiguous. The evidence in the record also establishes that McGue worked for Local 504 and not Illinois Federation of Teachers ("IFT"), that Local 504 is not "the same" as either IFT or the American Federation of Teachers ("AFT"), and that Local 504 is not a "statewide teacher organization" pursuant to 40 ILCS 5/16-106(8). Finally,

the Claims Hearing Committee determines that the doctrine of estoppel does not preclude TRS from denying McGue's claim.

## **II. Relevant Rules and Statutes.**

In the instant case, the Claims Hearing Committee and the Board must apply the following rules and statutes:

40 ILCS 5/16-106(8):

“Teacher”: The following individuals, provided that, for employment prior to July 1, 1990, they are employed on a full-time basis, or if not full-time, on a permanent and continuous basis in a position in which services are expected to be rendered for at least one school term:

(8) Any officer or employee of a statewide teacher organization or officer of a national teacher organization who is certified under the law governing certification of teachers, provided: (i) the individual had previously established creditable service under this Article, (ii) the individual files with the system an irrevocable election to become a member before the effective date of this amendatory Act of the 97th General Assembly, (iii) the individual does not receive credit for such service under any other Article of this Code, and (iv) the individual first became an officer or employee of the teacher organization and becomes a member before the effective date of this amendatory Act of the 97th General Assembly;

Section 1650.450 Compensation Recognized As "Salary":

a) "Salary" means any form of creditable compensation received by a member in consideration of services rendered as a teacher, subject to all applicable limits and restrictions imposed on qualified plans under the Internal Revenue Code. "Salary" directly related to specific work performed during a school year is recognized on an accrual basis. Other creditable compensation is recognized on a cash basis. The System reserves the right to determine the year of salary recognition. The following common examples are for illustration only and do not limit the System's right to evaluate and determine other forms of creditable and non-creditable compensation.

b) Examples of creditable compensation recognized as "salary":

1) The gross amount of compensation earned or accruing to the member during the school year in a function requiring certification as a teacher.

2) Additional compensation earned during the school year for the performance of extra duties, not requiring teacher certification, but which involve the supervision of students or are related to the academic program, provided the member is employed as a full-time or part-time contractual teacher and establishes active service credit in that position during the school year.

3) The amount of back salary awarded to a member as a result of a settlement or judgment obtained due to a disputed dismissal, suspension or demotion. Court costs, attorney's fees, other compensatory damages and punitive damages shall not be reportable as salary. The back salary amount reported to the System under this Section shall be equal to the amount the member would have earned had the dispute not occurred, regardless of the actual amount paid.

4) Lump-sum payments (e.g., retirement incentives, bonuses, payments for unused vacation and sick days) received by the member or becoming due and payable to the member prior to or concurrent with receipt of final paycheck for regular earnings.

5) Contributions made by or on behalf of the member to qualified deferred compensation plans (sections 401(a) and 457(b) of the Internal Revenue Code), salary reduction plans or tax sheltered annuities under section 403(b) of the Internal Revenue Code.

6) Amounts that would otherwise qualify as salary under subsections (b)(1) through (b)(5) but are not received directly by the member because they are used to finance benefit options in a flexible benefit plan; provided, however, that to be reportable, a flexible benefit plan cannot include non-qualifying deferred compensation. For the System's purposes, a flexible benefit plan is an option offered by an employer to its employees covered under the System to receive an alternative form of creditable compensation in lieu of employer-provided insurance.

c) Examples of non-creditable compensation not recognized as "salary":

1) Lump-sum payments (e.g., retirement incentives, bonuses, payments for unused vacation and sick days) becoming due and payable to the member subsequent to receipt of final paycheck for regular earnings.

2) Any lump sum payment made after the death of the member.

3) Expense reimbursements, expense allowances, or fringe benefits unless included in a reportable flexible benefit plan.

4) Any monies received by the member under the Workers' Compensation Act or the Workers' Occupational Diseases Act.

5) Compensation for extra duties not requiring teacher certification performed by substitute and part-time non-contractual teachers.

6) Any amount paid in lieu of discontinued or decreased non-reportable benefits, or reported in lieu of previously non-reported compensation, where the conversion occurs in the member's final seven years of service. If any form of non-creditable or non-reported compensation in any of the member's last seven creditable school years of employment exceeds that of any other subsequent year, the System will presume the difference to have been converted into salary in the subsequent year. To overcome the presumption, the member must submit documentary evidence to the System that clearly and convincingly proves that the change in compensation structure was due to a change in a collectively bargained agreement applicable to all individuals covered by the agreement, a change in employer policies affecting a group of similarly situated members some of whom are not within seven years of retirement eligibility, or a change in family status, and not to increase final average salary.

7) Any amount paid by an employer as the employer's one time contribution (or on behalf of the employee as the employee's one-time contribution) required by the System as part of the statutory early retirement option in Section 16-133.2 of the Act.

8) Options to take salary in lieu of employment-related expense allowances or reimbursements.

9) Employer payment of the member's Teachers Health Insurance Security Fund contribution.

10) Commissions (i.e., payments to a member based upon a percentage formula).

11) Contributions to and distributions from nonqualified deferred compensation arrangements.

12) Employer contributions to and distributions from medical spending accounts.

### III. Issues to be Decided.

The Claims Hearing Committee is asked to decide the following issues:

- Whether McGue’s employment as Coordinator at Local 504 rendered him eligible to earn service credit under 40 ILCS 5/16-106(8);
- Whether Local 504 is “the same” organization as either or both the IFT or AFT;
- Whether McGue was an employee of Local 504 or of IFT;
- Whether Local 504 is a “statewide teacher organization” under the Pension Code;
- Whether 40 ILCS 5/16-106(8) is unconstitutionally vague;
- Whether the statutory definitions of “stipend” and “salary” are ambiguous, and whether any ambiguity requires TRS to count certain stipends as salary for the purposes of calculating benefits; and
- Whether TRS is estopped from denying retirement benefits to McGue because TRS sent him certain documents related to those benefits.

We determine each of these seven issues herein.

### IV. Facts.

McGue has held a number of professional positions, some of which he held simultaneously. From 1980 until 1999, McGue was an industrial arts teacher at Zion-Benton Township High School.<sup>1</sup> In 1987, McGue became involved in union activities, and in 1992, McGue was elected council president of the Zion-Benton Federation of Teachers, an uncompensated position. In January 1995, while still president of the Zion-Benton federation, McGue was elected President of Local 504. While that role did not include a salary, McGue was provided with a stipend.

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<sup>1</sup> Beginning in 1999, McGue applied annually for leave from Zion-Benton, which was granted. Any reported earnings or service credit that McGue earned in conjunction with his teaching position at Zion-Benton were not at issue in this proceeding. This administrative proceeding is limited only to those service credit and earnings that were reported by IFT. McGue formally retired from Zion-Benton in 2013.

McGue continued to serve as President of Local 504 until July 2013, when he resigned.<sup>2</sup>

Also in 1995, McGue was elected Vice President of IFT and became part of IFT's Executive Board. McGue did not receive a salary for his position as Vice President of IFT, but he did receive a stipend of \$300 per meeting. McGue resigned as Vice President of IFT on June 24, 2013 (to be effective on March 15, 2013).

In or around February 1999, Local 504 considered hiring an individual for the Coordinator position. In a memorandum dated February 9, 1999, Glenn Smith, then IFT's Director of Field Operations, wrote to the Local 504 Steering Committee about the position. In that memo, Smith described that IFT would "act as the administrative agent in charge of the program" and that IFT "would actually issue the paychecks and other benefit disbursements" and "handle the other paperwork related to any full-time employee." Smith also stated that it was "essential the program be structured this way," because Local 504 would have to be able to offer "comprehensive medical/dental insurance and pension benefits." Further, Smith stated, "[a]dministration of the program through the IFT will also guarantee the continuation of the employee in their current state pension plan. The avenue to this type of benefit cannot be duplicated by the [Local 504]." In the memo, Smith concluded, "[i]n reality, the program offerings in insurance and pension benefits are probably the most attractive part of the overall plan. There is simply no other way to achieve them." Local 504 ultimately hired McGue to fill this position.

On May 4, 1999, McGue signed an Employment Contract for the Coordinator position at Local 504. While McGue's officer positions with Local 504 and IFT positions were not salaried, he received a salary for the Coordinator position. For the first three years of his employment as the Coordinator, McGue worked for Local 504, but his salary was funded jointly by Local 504, IFT, and AFT. Beginning in the fourth year, the funding responsibility for the Coordinator position shifted entirely to Local 504. IFT continued to act as the administrative agent, which required IFT to issue checks for McGue's salary and other compensation. IFT recouped those expenses in their entirety by billing Local 504 for the exact same amounts.

On March 11, 2013, McGue resigned from his Coordinator position at Local 504. On March 21, 2013, McGue retired from Zion-Benton Township High School. McGue then submitted his resignation of his position as IFT Vice President on June 24, 2013 (which was to be effective on March 15, 2013), and then of his position as Local 504 President on July 15, 2013.

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<sup>2</sup> McGue has since been reinstated to this position, and currently serves as President of Local 504.

On April 3, 2013, McGue submitted his retirement application to TRS, and that same week, IFT's Bookkeeper submitted McGue's supplementary report. Thereafter, TRS received information from McGue, IFT, and Local 504 that made it clear to the TRS staff that McGue did not earn service credit or compensation for any eligible position with IFT. Accordingly, TRS issued a final staff decision denying service credit that had been previously reported by IFT. Following that denial, McGue filed his Request for Administrative Review.

## **V. Positions of the Parties.**

McGue argues that TRS incorrectly determined that he did not earn service credit or creditable earnings during the time he was employed as Coordinator by Local 504. McGue argues that because his Coordinator related-activities benefited Local 504, IFT, and AFT, who each share similar goals, he is entitled to service credit for his work for a statewide teacher organization. McGue further argues that Local 504, IFT, and AFT are so intermingled, they are ostensibly the same organization. McGue has also argued that he is actually an employee of IFT, rather than an employee of Local 504. McGue has challenged the phrase “statewide teacher organization” as unconstitutionally vague, and has argued that the stipends he received for his role of IFT Vice President should be included as credible earnings. Finally, McGue argues that TRS should be estopped from denying McGue service credit and thus retirement benefits, based on certain “assurances” that McGue alleges TRS made to him throughout the years, primarily in the form of documents generated by TRS and sent to McGue.

TRS disagrees with McGue’s contentions. TRS first posits that AFT, IFT, and Local 504 are each separate, distinct legal entities, which are not “the same.” TRS argues that the evidence establishes that McGue was an employee of Local 504, and not an employee of either IFT or AFT. TRS contends that “statewide teacher organization” is not an unconstitutionally vague phrase, and that Local 504 should not be considered a statewide teacher organization. TRS maintains that any stipends McGue earned as Vice President of IFT were compensation excluded as salary, and thus not creditable salary. Finally, TRS argues that estoppel cannot be applied against TRS, because McGue cannot meet the elements of estoppel, including reasonable reliance, where many of the documents sent to McGue contained specific disclaimer language.

## **VI. Discussion and Analysis.**

For the reasons explained herein, the Committee agrees with TRS staff that McGue is not entitled to service credit for the time he was employed as Coordinator for Local 504.

**A. 40 ILCS 5/16-106(8) is not unconstitutionally vague.**

McGue argues that 40 ILCS 5/16-106(8) is unconstitutionally vague simply because neither it nor the regulations contain a definition of “statewide teacher organization.” However, the absence of a definition does not render a statute void for vagueness. *Moran Transp. Corp. v. Stroger*, 303 Ill. App. 3d 459, 473 (1st Dist. 1999). The Claims Review Committee can apply the commonly understood definition of what is considered to be a statewide teacher organization. That definition would certainly include an organization that operates throughout the state of Illinois, rather than a small, defined geographic area. While there is no specific definition and the term may not be so limited, TRS has commonly and historically considered the IFT and the Illinois Education Association to be statewide teacher organizations. As TRS noted in its briefing, adopting McGue’s argument that either Local 504 or AFT could qualify as a “statewide teacher organization” under the statute would have the practical implication that any teacher that belonged to any local or national union could be a TRS member. This is clearly not the case.

**B. Local 504, AFT, and IFT are not “the same” organization.**

Contrary to McGue’s assertions, Local 504, AFT, and IFT are not the same organization. The fact that these organizations have similar goals and a great deal of interaction does not make them the same organization.

IFT’s constitution and by-laws provide that it elects its own officers and has a separate executive board. That executive board is given the power to conduct IFT’s affairs, which includes the right to sue and be sued, employ people, sell and purchase property, make contracts, incur liabilities, and do anything it deems necessary and appropriate in the exercise of those powers. Under its by-laws, IFT has a budget that is approved by its members at the IFT convention, and has policies for employing its own personnel.

Likewise, Local 504 has its own, separate constitution. Under Local 504’s constitution, Local 504 is composed of affiliated councils, and it has the power to determine its own business affairs. Local 504 has separate officers and an executive board, and it collects dues. Local 504 also has its own by-laws, which provide that Local 504 “shall maintain **affiliation**” with AFT and IFT (emphasis added). Local 504’s own website provides:

The LCFT has one primary governing body. Elected delegates from each of our twenty-two councils attend bi-monthly meetings to set policy and direct the actions of the Union. The executive board is comprised of LCFT officers, chairpersons and council leaders from throughout the county. President Mike McGue,



a veteran teacher formerly of Zion-Benton Township High School, currently heads the LCFT.<sup>3</sup>

AFT also has its own, separate constitution and bylaws. AFT's constitution provides for the election of its own officers and executive council, each with their own powers. Pursuant to AFT's constitution, its executive council is empowered to carrying on AFT's business duties.

While Local 504, IFT, and AFT are affiliated with each other, they are independent legal entities, and are separately managed. Other than McGue's unsupported argument, nothing in the record before us suggests otherwise.

**C. Local 504 is not a “statewide teacher organization.”**

McGue has argued that Local 504 is a “statewide teacher organization” because both Local 504 and McGue assist in functions outside of Lake County, Illinois.

The Claims Hearing Committee suspects that McGue does, at times, perform activities outside of Lake County, Illinois. However, that does not make Local 504 a “statewide teacher organization” under the relevant statutes, and it certainly does not make McGue an employee of an eligible employer. As we explained *supra*, TRS has commonly and historically considered solely the IFT and the Illinois Education Association to be statewide teacher organizations.

Further, there was no indication from Local 504's constitution that it was a statewide teacher organization; rather, Local 504 appears to operate entirely within the confines of Lake County, Illinois. On its website, Local 504 states that it:

represents approximately 5,500 men and women in Lake County. [Local 504] members include elementary and secondary teachers, school-related personnel and support staff – teaching assistants, clerks, secretaries and bus drivers – higher education faculty and staff. Our federated local consists of twenty-two councils located throughout Lake County.<sup>4</sup>

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<sup>3</sup> Local 504 website, [http://lcft.org/index.cfm?zone=/unionactive/view\\_page.cfm&page=MissionStatement](http://lcft.org/index.cfm?zone=/unionactive/view_page.cfm&page=MissionStatement), last accessed February 8, 2016.

<sup>4</sup> Local 504 website, [http://lcft.org/index.cfm?zone=/unionactive/view\\_page.cfm&page=MissionStatement](http://lcft.org/index.cfm?zone=/unionactive/view_page.cfm&page=MissionStatement), last accessed February 8, 2016.

Nothing in the record supports McGue's contention that Local 504 is a "statewide teacher organization" under 40 ILCS 5/16-106(8). All indications are in fact to the contrary. For this reason, the Claims Hearing Committee finds that Local 504 is not a statewide teacher organization.

**D. McGue was employed by Local 504.**

McGue argues alternatively that (a) AFT, IFT, and Local 504 are the same organization, (b) that Local 504 is a statewide organization, and finally that (c) McGue was employed not by Local 504, but rather by IFT, which is a statewide teacher organization. However, the record in this case makes it very clear that McGue was employed by Local 504, a local – not statewide – organization, which is its own independent entity.

The parties stipulated to many relevant facts, including:

- That Local 504's executive board advertised the Coordinator position, and also ultimately hired McGue for that job;<sup>5</sup>
- That Local 504's steering committee set McGue's salary, which was not altered or set by anyone at IFT;
- That IFT paid McGue's salary;
- That IFT billed Local 504 for all amounts paid to McGue as compensation, benefits, and reimbursements;
- That the original posting notice for the position indicated that applicants should apply to Local 504;
- That the coordinator proposal stated that the successful candidate "will be a full time employee of the [Local 504] Executive Board and their constituents";
- That McGue's own employment contract identifies Local 504 as his employer, and;
- That McGue's employment contract gives Local 504 the power to terminate McGue's employment.

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<sup>5</sup> McGue argues that, for the first three years of the Coordinator position, AFT and IFT were required to approve Local 504's candidate selection. While this is true, Glenn Smith, former IFT Director of Field Operations, wrote that he could envision exercising his discretionary veto "[o]nly in [his] wildest imagination."

To support his claim, McGue points to a number of factors. McGue argues that he worked with the IFT staff who were assigned to IFT's Gurney office. However, that building is owned by a separate legal entity, from which both IFT and Local 504 rented space. Further, working with IFT staff at that building is not inconsistent with McGue's being employed by Local 504. McGue argues that he was required to report his activities and expenses to IFT; however, this seems to have been done entirely for accounting purposes. Although McGue argues that he supervised IFT employees, it is unclear who he actually supervised. McGue argues that he received his Form W-2s from AFT-Illinois State, which used IFT's federal employer identification numbers. While this is true, that was done pursuant to the administrative agency agreement, and is not dispositive of the identity of McGue's employer.

Based on the overwhelming evidence, the Claims Hearing Committee finds that McGue was an employee of Local 504, and that Local 504 is not a statewide teacher organization. Courts have ruled that where a person is not actually employed by a TRS member employer, he is not a "teacher" under the Illinois Pension Code. *Falato v. Teachers' Retirement System*, 209 Ill. App. 3d 419, 420-21 (1st Dist. 1991). Additionally, as this Committee has previously found, funding sources are "irrelevant" in making determinations about where a person is actually employed. *In re the Matter of Signe Oakley*, at 1.

For these reasons, we find that McGue was an employee of Local 504.

**E. The stipends McGue received as IFT Vice President are not credible salary.**

McGue argues that he is entitled to service credit for his service in the IFT Vice President officer position. 40 ILCS 5/16-106(8) provides in part that a "teacher" is "any officer or employee of a statewide teachers' organization . . . ." McGue did not receive a salary for his role as IFT Vice President. McGue did, from time to time, receive certain stipends.<sup>6</sup>

Salary is defined broadly in 80 Ill. Admin. Code 1650.450, but is subject to the limitations included therein. Non-credible compensation, which is not recognized as salary, includes expense reimbursements or salary taken in lieu of employment related expense allowances. It appears from the record that McGue received these stipends to cover travel expenses related to attending meeting and other travel-related matters.

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<sup>6</sup> In their submissions, the Parties stipulated that McGue did not receive a salary for his role as IFT Vice President.

The TRS Employer Guide specifically enumerates the types of allowances that are excluded from “salary. Travel allowances are included in those exclusions. Employer Guide, Chapter 3, pg. 3. IFT did not report these stipends to TRS as creditable earnings, and thus presumably, did not believe they were creditable earnings. Nothing in the record reflects that the stipends were creditable earnings. Accordingly, we must conclude that they are not.

**F. Estoppel Cannot Be Applied Under These Facts.**

McGue argues that, over the last several decades, TRS documents regarding retirement benefits that it has, from time to time, sent to him. McGue argues that the mere fact that TRS generated such documents constitutes “representations” by TRS, and that McGue relied on those representations to his detriment. Based on these allegations, and the fact that TRS accepted contributions made on McGue’s behalf, McGue argues that TRS is estopped from now denying him service credit. McGue also argues that if McGue had not been eligible for service credit, TRS should have notified him earlier of that fact. We do not find these arguments persuasive.

It is well settled that estoppel is particularly disfavored when public revenues are at stake. *Patrick Engineering*, 2012 IL 113148, ¶ 40. “Anyone dealing with a governmental body takes the risk of having accurately ascertained that he who purports to act for it stays within the bounds of his authority, and this is so even though the agent himself may have been unaware of the limitations on his authority.” *Patrick Engineering*, 2012 IL 113148, ¶ 36 (citation omitted).

The *Patrick Engineering* Court held that

a plaintiff seeking to invoke equitable estoppel against a municipality must plead specific facts that show (1) an affirmative act by either the municipality itself or an official with express authority to bind the municipality; and (2) reasonable reliance upon that act by the plaintiff that induces the plaintiff to detrimentally change its position.

*Patrick Engineering*, 2012 IL 113148, ¶ 40.

As a matter of law, none of the documents or representations cited by McGue can form the basis of an estoppel claim against TRS. Equitable estoppel is “the effect of the voluntary conduct of a party whereby [the party] is absolutely precluded . . . from asserting rights which might otherwise have existed as against another person who has, in good faith, relied upon such conduct and has been led thereby to change his position for the worse and who on his part acquires some corresponding right.” *In re Strande*, pg. 7 (citation omitted). As we have noted in

earlier opinions, courts have held that equitable estoppel could not be applied to the state unless (1) doing so would be necessary to prevent fraud *and* injustice, and (2) the state itself induced a private actor's reliance. *McDonald v. Illinois Department of Human Services*, 406 Ill. App. 3d 793, 803 (4th Dist. 2010).

As TRS noted in its briefs, McGue's estoppel claims rest largely on the routine forms and letters sent by TRS. McGue argues that these forms and letters provided assurance to him that he was entitled to pension benefits. However, routine forms and letters cannot form the basis for estoppel claims. *In the Matter of Julia Hansen*, pg. 4. As the Board noted in that case, TRS does not, through routine forms, verify the veracity of the information provided to TRS. *Id.* at 4-5. Further, the Benefit Estimates provided to McGue contained very specific disclaimer language:

**This is an estimate.** Every effort has been made to provide you accurate information regarding your benefits. The estimate is based upon a number of assumptions; including your eligibility to receive an annuity, outstanding balances, your age, etc. However, revisions due to error, omissions, change in assumptions, or future laws governing your benefits administered by TRS may affect your final benefit amount.

Other documents on which McGue claims to rely on include similar disclaimers. A January 25, 2013 letter to McGue states: "TRS does not endorse or accept any benefit estimates produced by your employer, or any other organization, business or government entity." Each of the TRS Benefits Reports McGue received included this disclaimer:

**Important Reminder.** In preparing this Benefits Report, every effort has been made to provide accurate information. However, any projected information is approximate. All information is subject to revision due to errors, omissions, or future changes in the rules and laws governing the Teachers' Retirement System. In addition, salaries reported to TRS are subject to audit to determine compliance with reporting rules and procedures.

Under its procedures, TRS would not identify such an issue until a member (or alleged member, as the case may be) submitted retirement papers. While TRS makes an attempt to verify the reportable salary on an annual basis, there is no process for determining whether any particular position falls within the statutory definition of "teacher" until an audit is completed during the member's retirement process. TRS relies on employers to accurately identify the positions of their

employees. An employee improperly making contributions based on positions that are non-reportable does not convert an otherwise ineligible position into a reportable position.

Under these facts, estoppel cannot stand. Estoppel is generally disfavored against the state, and McGue failed to meet his burden here. Any reliance asserted by McGue would be unreasonable, due to the disclaimer language included on the TRS documents and McGue's own testimony regarding which documents he relied on.

## **VII. Conclusion.**

The Claims Hearing Committee finds in favor of the staff in this matter. While employed in the Local 504 Coordinator position, McGue was not employed by an eligible employer and was not eligible to earn service credit as a member of TRS. McGue was an employee of Local 504, and not of IFT. It is clear to the Committee that the staff correctly applied the applicable law to reach the proper conclusion. The Committee recommends that the Board adopt this proposed decision.

## **VIII. Notice of Right to File Exceptions.**

Exceptions to the Claim Hearing Committee's Proposed Decision must be filed within fifteen (15) days of receipt by the Petitioner. A Final Decision will be issued by the Board of Trustees after it has considered the Claims Hearing Committee's Proposed Decision and any exceptions filed by the Petitioner.