

IN THE FAMILY COURT OF \_\_\_\_\_ COUNTY  
STATE OF \_\_\_\_\_

\_\_\_\_\_ ,

Petitioner,

v.

Civil Action No.: \_\_\_\_\_

\_\_\_\_\_ ,

Respondent.

**ORDER**

This Order is intended to be a Qualified Domestic Relations Order under applicable state and/or federal law, for entry on or after September 1, 2005. It is hereby ORDERED that:

(1) The plan to which this Order applies is the West Virginia **Teachers Defined Contribution Retirement System** (the "Plan"), as established and set forth in *W. Va. Code 18-7B-1 et. seq.*, as the same may be amended from time to time.

(2) The date of marriage of the parties was \_\_\_\_\_.  
The date of separation of the parties was \_\_\_\_\_. The date of divorce of the parties was \_\_\_\_\_.

(3) The Petitioner is referred to herein as the \_\_\_\_\_ [insert "Participant" or "Alternate Payee," as appropriate], and the Respondent is referred to herein as the \_\_\_\_\_ [insert "Participant" or "Alternate Payee," as appropriate].

(4) The name, last-known mailing address, birth date and Social Security number of the Participant is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Birth: \_\_\_\_\_; Social Security No.: \_\_\_\_\_

(5) The name, last-known mailing address, birth date and Social Security number of the Alternate Payee is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Birth: \_\_\_\_\_; Social Security No.: \_\_\_\_\_

(6) The Alternate Payee is awarded the interest in the Participant's vested Account Balance as hereinafter specified as his/her sole and separate property. For purposes of this Order, "Account Balance" refers to the balance in the Participant's account established (pursuant to W. Va. Code § 18-7B-2(13)) to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member.

(7) The interest awarded to the Alternate Payee pursuant to this Order shall be calculated as of \_\_\_\_\_ [enter date of separation or date of divorce, as agreed to by the parties or determined by the Court] (the "QDRO Determination Date").

(8) The Participant's vested Account Balance shall be divided between the Participant and Alternate Payee on the QDRO Determination Date as follows:

(a) The marital property portion of the Participant's vested Account Balance subject to division in this Order shall be determined as follows: The Participant's Vested Accrued Retirement Benefit ("VARB") shall be multiplied by a fraction, the numerator of which shall be the number of months of the Participant's contributing service from the parties' date of marriage through the QDRO Determination Date, and the denominator of which shall be the total number of months of the Participant's contributing service through the QDRO Determination Date (including contributing service, if any, prior to the marriage of the parties).

(b) The Participant's VARB is the Participant's vested Account Balance as of the QDRO Determination Date; provided, however, that if the QDRO Determination Date is prior to January 1, 2004, then the Participant's VARB shall be the Participant's vested Account Balance as of the last day of the calendar quarter immediately preceding the QDRO Determination Date.

(c) The Alternate Payee is hereby awarded \_\_\_\_\_ [insert ½ or such other fraction or percentage as the Court ordered or upon which the parties have agreed. If left blank, the Consolidated Public Retirement Board shall use the fraction ½ ] of the marital property portion of the Participant's VARB as determined in paragraph 8(a), above; provided, the Alternate Payee's award as specified herein shall also include investment gains and/or losses from the date used to determine the VARB under paragraph 8(b) above, until such date as segregation of the

Participant's vested Account Balance pursuant to paragraph 9 herein is accomplished.

(d) The vested Account Balance otherwise due to the Participant under the Plan shall be reduced by the award to the Alternate Payee as determined in paragraph 8(c), above.

(9) Upon acceptance of this QDRO, the Plan Administrator shall cause an individual Plan account in the name of the Alternate Payee to be established as soon as is administratively feasible, and the award to the Alternate Payee hereunder shall be moved to such account. After such segregation of the Alternate Payee's award is accomplished, the Plan Administrator shall furnish to the Alternate Payee an investment election form and any other forms necessary to enable the Alternate Payee to select the investment methodology for his/her segregated account. The Alternate Payee shall have the same rights and benefits regarding directing investments in his/her Plan account as the Plan extends to all Plan participants in their own respective Plan accounts.

(10) The Plan shall pay to the Alternate Payee his/her benefit in any optional form or manner elected by the Alternate Payee, other than a joint and survivor annuity with respect to the Alternate Payee and his/her subsequent spouse, to the extent that such form or option is consistent with and available under the provisions of the Plan. Such payment shall be made at such time or times as are permissible under the Plan and/or applicable federal or state law. If the Alternate Payee should die prior to receiving distribution of his/her total benefit under the Plan, the remaining unpaid benefit, if any, shall be payable as provided in the Plan as a death benefit to the beneficiary designated by the Alternate Payee on form(s) approved by the Plan Administrator.

(11) In the case of the Participant's death, the Alternate Payee shall not be treated as the Participant's spouse for any spousal benefits which may exist under the Plan.

(12) Prior to receipt of any distribution hereunder, the Alternate Payee shall complete and file with the Plan Administrator a federal and/or state income tax withholding form. Both the Participant and the Alternate Payee acknowledge that they may each be subject to tax on distributions they receive pursuant to this Order, regardless of any agreements or understandings between them, and further acknowledge that any investment in the contract related to the Participant's vested Account Balance shall be apportioned between them in accordance with applicable federal income tax laws in effect at the time payments commence. Both the Participant and the Alternate Payee agree to consult their own tax advisors with respect to this issue.

(13) Both the Participant and the Alternate Payee shall notify the QDRO Manager of the Consolidated Public Retirement Board of any change in address, as set forth in paragraphs (4) or (5) above.

(14) Nothing contained in this Order shall be construed to require the Plan or Plan Administrator:

(a) to provide to the Alternate Payee any type or form of benefit or any option not otherwise available to the Participant under the Plan;

(b) to provide to the Alternate Payee increased benefits (determined on the basis of actuarial value) not available to the Participant, except as a result of Plan investment experience; or

(c) to pay any benefits to the Alternate Payee that are required to be paid to another alternate payee under another order determined by the Plan Administrator to be a QDRO before this Order is determined by the Plan Administrator to be a QDRO.

(15) In the event that the Plan Administrator does not approve the form of this Order, or should it be subsequently determined that amendment of this Order is necessary to ensure its status as a QDRO, then each party shall cooperate and do all things reasonably necessary to devise a form of Order acceptable to the Plan Administrator consistent with applicable law.

(16) This Court retains jurisdiction to enforce, revise, modify, or amend this Order insofar as is necessary to establish or maintain its qualification as a QDRO, provided, however, that neither this Order nor any subsequent revision, modification, or amendment shall require the Plan to provide any form or amount of benefit not otherwise provided under the Plan.

(17) This Order is intended to constitute a QDRO under applicable state and federal law.

(18) Copies of this ORDER shall be furnished to the QDRO Manager of the Consolidated Public Retirement Board, and the QDRO Manager shall notify the Participant and the Alternate Payee of the qualification status (*i.e.*, acceptance or rejection) of this ORDER.

ENTER this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

\_\_\_\_\_  
Judge

Presented and Approved for Entry by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Insert name, address & phone no. of Participant's counsel]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Insert name, address & phone no. of Alternate Payee's counsel]