

TEACHERS' RETIREMENT BOARD
OF THE STATE OF CALIFORNIA

In the Matter of the Retirement Benefits of:)
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)
 MARGARET DEETZ,)
)
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 Respondent.)
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PRECEDENTIAL DECISION
14-02

Effective: September 4, 2014

PRECEDENTIAL DECISION

On June 5, 2014, the California State Teachers' Retirement Board adopted as its Final Decision the Proposed Decision dated March 20, 2014 in *In the Matter of the Retirement Benefits of MARGARET DEETZ*.


I hereby certify that on September 4, 2014, the California State Teachers' Retirement Board, acting pursuant to The Teachers' Retirement Board Policy Manual section 800D, designated the following portions of this Final Decision as a Precedential Decision of the Board:

- (1) *Factual Findings* paragraphs 1 through ²³25;
- (2) *Legal Conclusions* paragraphs 4 through 11;
- (3) *Legal Conclusions* paragraphs 16 through 18; and
- (4) *Order* paragraph 1.

I hereby further certify that the attached copy of the Decision is a true copy thereof as adopted by the California State Teachers' Retirement Board.

CALIFORNIA STATE TEACHERS'
RETIREMENT SYSTEM

Dated: 10/6/14

By: 

JOHN R. WEECH,
ASSISTANT GENERAL COUNSEL

BEFORE THE
TEACHERS' RETIREMENT BOARD
OF THE STATE OF CALIFORNIA

In the Matter of the Retirement Benefits of:

MARGARET DEETZ,
Respondent.

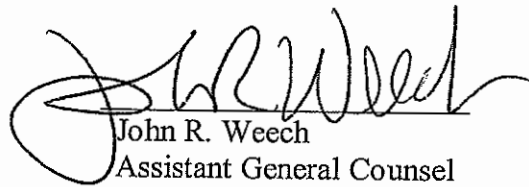
Case No.: APL20110816-0000296

OAH No.: 2013030489

DECISION AND ORDER

The attached proposed decision of the administrative law judge was adopted on June 5, 2014, by the Appeals Committee of the California State Teachers' Retirement System Board as its decision in the above-titled matter.

Dated: 6/6/14



John R. Weech

Assistant General Counsel

Office of the General Counsel

California State Teachers' Retirement System

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CALSTRS
LEGAL OFFICE

BEFORE THE
TEACHERS' RETIREMENT BOARD
STATE OF CALIFORNIA

In the Matter of the Retirement Benefits of:

MARGARET DEETZ,

Respondent.

OAH No. 2013030489

PROPOSED DECISION

On November 4 and 5, 2013, this matter was heard by Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California.

The California State Teachers' Retirement System (STRS) was represented by Carolyn J. Kubish, Senior Staff Counsel.

Respondent was represented by Lesley Beth Curtis, Langenkamp, Curtis & Price, LLP.

Evidence was received and the record left open for receipt of written argument. On December 20, 2013, STRS' post-hearing brief was received, marked exhibit 23, and made a part of the record. On December 20, 2013, respondent's closing brief was received, marked exhibit RR, and made a part of the record. On February 21, 2014, STRS' reply brief was received, marked exhibit 24, and made a part of the record. On February 21, 2014, respondent's post-hearing reply brief was received, marked exhibit SS, and made a part of the record. The matter was submitted on February 21, 2014.

ISSUES PRESENTED

1. Whether respondent's salary increase of \$35,000 for school year 2005-2006 was creditable to her Defined Benefit Plan.
2. Whether the increase of \$100 per month in respondent's car allowance for school year 2006-2007 was creditable to her Defined Benefit Plan.

FACTUAL FINDINGS

1. Complainant, Peggy A. Plett, acting solely in her official capacity as Deputy Chief Executive Officer of the California State Teachers' Retirement Board (STRS), filed the Statement of Issues pursuant to the authority of Government Code section 11504.

2. Respondent, Margaret Deetz (respondent), was an active member of STRS who retired on June 30, 2007. Respondent retired with 36.162 years of service credit.

3. Respondent was the Superintendent of the Nevada Joint Union High School District (District) from November 4, 2003, until her retirement on June 30, 2007. During this time, respondent received a full-time salary and service credit based on a 12 month work year.

4. For the period of time between July 25, 2005, and July 14, 2006, District reported additional compensation for respondent for the additional duties of the Assistant Superintendent of Personnel and Pupil Services. The additional compensation was \$35,000 above her normal annual salary for this extra duty assignment.

5. On June 14, 2006, respondent's annual car allowance was increased from \$3,000 to \$4,200, effective July 1, 2006. This amount was reported in the 2006-2007 fiscal year.

6. District reported the compensation for the additional duty assignment and car allowance as Special Compensation, which increased respondent's Annual Earnable Compensation for the 2005-06 and 2006-07 fiscal years.

7. Respondent retired with more than 25 years of service and thus qualified for her final compensation to be calculated using her highest one year, instead of her highest three years. (Ed. Code, §22134.5.) Respondent's reported highest one year of compensation was the 2005-06 fiscal year, in which she earned the additional \$35,000 Special Compensation.

8. Respondent's final compensation was used to determine her retirement benefits amount.

9. STRS determined that because respondent was already working full-time as the Superintended during the 2005-06 fiscal year, her additional duties of Assistant Superintendent of Personnel and Pupil Services was overtime, and thus could not be credited to the Defined Benefit Program. STRS also determined that the \$1,200 increase to respondent's car allowance reported during the 2006-07 fiscal year was inconsistent treatment of her compensation and remuneration for the principal purpose of enhancing her benefits under the plan.

10. As a result of these determinations, STRS concluded that respondent's reported compensation should have been lower in both the 2005-06 and 2006-07 fiscal years. If the contested amounts are excluded, respondent's highest one-year compensation would no longer be the 2005-06 fiscal year, but would be the 2006-2007 fiscal year. This would result in a new, lower benefit amount than respondent has been receiving.

11. Respondent appealed STRS' determination that the additional \$35,000 and \$1,200 are not creditable to the Defined Benefit Plan.

Background Facts Regarding Salary Increase for Fiscal Year 2005-2006

12. Respondent began her employment with District as a teacher in 1981 as a special education teacher. Thereafter, she served in several administrative positions including assistant principal, principal, Director of Special Education and Assistant Superintendent of Curriculum. As noted above, respondent was appointed Superintendent of District effective November 4, 2003. Respondent's employment as the Superintendent was memorialized in a written contract that she and the President of the Board of Trustees signed on November 13, 2003. The contract specified an annual base salary of \$118,000 with annual longevity increases and cost of living increases commensurate with those received by District's full-time certificated bargaining unit members. In paragraph 2 of the employment contract, the Governing Board reserved the right to further increase respondent's annual salary "for any and all years of Superintendent's contract." Paragraph 8 of the contract acknowledged that respondent, as Superintendent, was required to have a vehicle available at all times. In order to properly reimburse respondent for this vehicle requirement, District agreed to pay respondent the amount of \$250 per month (\$3,000 per year) in exchange for her waiver of all rights to seek mileage reimbursement for automobile travel.

13. Between 2003 and 2007, District never filled all three of the allocated Assistant Superintendent positions. From June of 2003, until her appointment as Superintendent, respondent, in addition to her duties as Assistant Superintendent of Curriculum, was part of what she described as a "triad" sharing the responsibilities of District's Superintendent with a District principal and the Assistant Superintendent of Personnel and Pupil Services. Respondent also took over the duties of the Director of Special Education when the person occupying that position retired. When respondent was initially appointed Superintendent, she continued to perform the duties of Assistant Superintendent of Curriculum, without the title. In the spring of 2005, District lost its Assistant Superintendent of Personnel and Pupil Services. Respondent took on those duties as well, while District posted the position and interviewed candidates. A May 10, 2005 job announcement for the position included a salary a range of \$86,400 to \$106,358. The application deadline was June 15, 2005. No suitable candidate was found.

14. In July of 2005, District Governing Board raised the idea of respondent taking on the duties normally assigned to the Assistant Superintendent of Personnel and Pupil Services. With respondent's agreement, her employment contract was amended on July 25, 2005. The amendment provided that effective July 1, 2005, respondent's annual salary, then

\$132,748, was increased by \$35,000, “in recognition that the Board has assigned Mrs. Deetz the additional duties and responsibilities of the Assistant Superintendent of Personnel and Pupil Services.” Testimony by then-Board members and the District’s Associate Superintendent of Business Services established that the Governing Board’s reasoning for the amendment was its acknowledgement of the difficulties encountered in trying to fill the vacant position, the hope that respondent could absorb the additional duties and the budget savings that would result from not filling the position for one year. District’s enrollment had decreased and District was facing budgetary difficulties. The Board members felt it appropriate to compensate respondent for undertaking the additional duties.

15. During fiscal year 2005-06, respondent did her best to perform all the duties of superintendent and the duties of Assistant Superintendent of Personnel and Pupil Services she had absorbed. She had been working from approximately 6:00 a.m. to 6:00 p.m. already to perform her Superintendent duties, in addition to which she attended many evening community events related to her job. Her approximately 12 hour working days did not change with the new responsibilities, and she likened her difficulties in juggling her many responsibilities as “robbing Peter to pay Paul.”

16. District was able to hire a new Assistant Superintendent of Personnel and Pupil Services for school year 2006-07. On June 14, 2006, respondent’s employment contract was again amended. The amendment provided that effective July 1, 2006, respondent’s annual salary would be decreased by \$35,000, “due to the fact that the additional duties and responsibilities of the Assistant Superintendent of Personnel and People Services assigned to Ms. Dietz during the 2005-2006 (sic) are no longer required of her.”

Factual Findings Relating to Increase in Automobile Allowance

17. The addendum to respondent’s employment contract on June 14, 2006, that decreased her annual salary by \$35,000, also included the following paragraph:

Automobile Expenses: The Superintendent is required to have a vehicle available at all times. In order to properly reimburse the Superintendent for this vehicle requirement, effective July 1, 2006, the District shall pay Superintendent the amount of \$350.00 per month (\$4200.00 per year) during the term of this Agreement. (bold, underlining and parenthetical annual calculation are original.)

18. The District is approximately 760 square miles. The Superintendent was not the only administrator who received an automobile allowance, but she was required to travel more miles on District business than others. The cost of gasoline was rising at the time of the increase. Respondent sought the \$100 per month increase from the Governing Board because of the significant rise in gasoline prices and her assumption that the price of fuel would keep rising. Respondent did not intend to increase her retirement benefits, and the then-Governing Board Vice President testified credibly that increasing respondent’s retirement benefits “would not have played in” the decision to increase her car allowance and

his vote in favor of the increase would have been because she deserved it. The evidence did not establish whether other administrators received an increase in their car allowances contemporaneously with respondent's increase, but District administrators continue to receive such allowances and the current Superintendent receives more than respondent was paid.

19. STRS offered no evidence to support its contention that the raise in respondent's automobile allowance was paid to enhance her retirement benefits. At the time that the allowance was raised, respondent was not contemplating retirement. Her plans changed in late 2006 when her husband became seriously ill (he died on May 24, 2007.) She did not notify the Governing Board of her plans to retire until January 17, 2007. STRS apparently inferred from the raise in the allowance in the last year of respondent's contract and within a year of her retirement, that the increase must have been for the purpose of enhancing respondent's retirement benefits. This reasoning ignores the fact that the \$35,000 increase for fiscal year 2005-2006 made that year the highest salaried year, so if both amounts were properly considered Defined Benefits, the \$1,200 increase in fiscal year 2006-07 would not have increased respondent's retirement benefits. At any rate, STRS apparent inference was adequately rebutted by the evidence presented that gasoline costs had risen, which prompted respondent to seek the increase, and the testimony of the Governing Board's Vice President that the increase was deserved and in no way connected to enhancing respondent's retirement benefits.

Factual Findings Relating to Affirmative Defenses of Time Limitations on Recoupment and Laches

20. District reported the \$35,000 paid to respondent in fiscal year 2005-06 as special compensation. The automobile allowance was also reported in the same category, and both forms of compensation were therefore included by STRS in respondent's Defined Benefits and the used in the calculation of respondent's final compensation for retirement purposes.

21. On or about July 1, 2007, STRS began paying respondent her retirement benefits based on calculations that assumed that the \$35,000 was part of her highest one-year salary (\$169,748.) From the start, respondent received letters from STRS that the amount of her retirement exceeded dollar limits established by the Internal Revenue Service (Internal Revenue Code, section 415(b)), and her benefits were regularly adjusted to comply with the limits.

22. STRS reviewed respondent's retirement benefits in or about June of 2012, based on her inclusion among 165 retirees receiving the "IRC 415" letters for excessive retirement payments. On June 11, 2012, STRS notified respondent by letter that the \$35,000 and \$4,200 amounts did not qualify for use in her retirement benefits calculations. STRS proposed reducing respondent's retirement benefits from \$12,616.47 to \$10,745.26 per month. Respondent, in a July 16, 2012 letter authored by respondent's legal counsel, challenged the STRS position and requested an Executive Review. On September 14, 2012,

STRS wrote respondent essentially reiterating its position communicated in the June 11, 2012 letter and informing respondent that her benefits would be reduced in the amounts recited in the earlier letter and STRS would recoup the \$109,766 "overpayment." STRS denied respondent's Executive Review. Respondent was advised that the next step available for her was an administrative hearing before an administrative law judge.

23. STRS directed the Nevada County of Education to change the reporting of respondent's compensation to reflect its determination that the \$35,000 should have been regarded as overtime (so that employer and employee contributions based on the increase would be directed to the Defined Benefits Supplemental Program), and the \$1,200 increase in automobile allowance excluded as creditable compensation. These changes made respondent's 2006-07 fiscal year compensation her highest and her retirement benefits were adjusted by STRS accordingly. Respondent's retirement payments have been reduced to recoup the excess payments.

LEGAL CONCLUSIONS

*Burden of Proof*¹

1. Evidence Code section 500 provides that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting. The parties, in closing arguments, appear to agree that the burden of proof is typically on the party asserting the affirmative of an issue, each citing *McCoy v. Board of Retirement* (1986) 183 Cal. App.3d 1044, 1051. They do not agree about which side is asserting the affirmative of the issues in this matter. The framing of the issues by the Administrative Law Judge suggests that it is respondent who is doing so, i.e., asserting that the two salary increases at issue *should* be creditable to respondent's Defined Benefit Program. However, it is STRS that is seeking to establish that the salary increases were inconsistent with historical compensation or motivated by the desire to increase respondent's retirement benefits. Another approach to the burden of proof question is asking who is trying to change the status quo (*In re Estate of Lensch* (2009) 177 Cal. App.4th 667, 680-681.) This approach would seem to place the burden of proof on STRS which has paid respondent her retirement benefits based on the inclusion of the \$35,000 in her Defined Benefits Program for approximately five years and now seeks to change the status quo by reducing her benefits and recouping overpayments.

2. All three approaches to determining the proper placement of the burden of proof reflect considerations of practicality and fairness. Based on these considerations, the burden of establishing the impropriety of including the \$35,000 in respondent's Defined Benefit Program is allocated to STRS.

¹ From the perspective of the Administrative Law Judge, the resolution of this issue is purely academic, as the allocation of burdens of proof on the two issues presented played no role in the resolution of such issues.

3. As respondent appears to concede in her post-hearing briefs, the administrative determination by STRS that an increase in creditable compensation was paid to enhance a member's benefits creates a presumption that must be rebutted by the member or employing District on the member's behalf. The rebuttable presumption is created by Education Code section 22119.2 subdivision (b), recited below. As STRS administratively determined that the \$1,200 automobile allowance increase in fiscal year 2006-07 was paid by District to enhance respondent's retirement benefits, respondent bears the burden of rebutting that presumption.

\$35,000 Salary Increase for Fiscal Year 2005-06

4. Education Code section 24202.5 describes the formula for annual retirement allowances for STRS members who retire after January 1, 1999. The three elements that determine the allowance are: final compensation, retirement age, and years of credited service. Final compensation for members with more than 25 years of creditable service is "the highest average compensation earnable by a member during any period of 12 consecutive months while an active member of the Defined Benefit Program....(Ed. Code, § 22134.5, subd. (a).)

5. Education Code section 22115, subdivision (a), defines "compensation earnable" as "the creditable compensation a person could earn in a school year for creditable service performed on a full-time basis, excluding service for which contributions are credited by the system to the Defined Benefit Supplement Program."

6. Education Code section 22119.2, subdivisions (a), (b) and (f) read:

(a) 'Creditable compensation' means remuneration that is paid in cash by an employer to all persons in the same class of employees for performing creditable service in that position. Creditable compensation shall include:

(1) Salary or wages paid in accordance with a publicly available written contractual agreement, including, but not limited to, a salary schedule or employment agreement.

(2) Remuneration that is paid in addition to salary or wages, provided it is paid to all persons who are in the same class of employees in the same dollar amount, the same percentage of salary or wages, or the same percentage of the amount being distributed.

(3) Remuneration that is paid for the use of sick leave, vacation, and other employer-approved leave, except as provided in paragraph (4) of subdivision (c).

(4) Member contributions that are picked up by an employer pursuant to Section 22903 or 22904.

(5) Amounts that are deducted from a member's remuneration, including, but not limited to, deductions for participation in a deferred compensation plan; deductions to purchase an annuity contract, tax-deferred retirement plan, or insurance program; and contributions to a plan that meets the requirements of Section 125, 401(a), 401(k), 403(b), 457(b), or 457(f) of Title 26 of the United States Code.

(6) Any other payments the board determines to be 'creditable compensation.'

(b) Any creditable compensation determined by the system to have been paid to enhance a member's benefits shall not be credited under the Defined Benefit Program. Contributions on that compensation shall be credited to the Defined Benefit Supplement Program. A presumption by the system that creditable compensation was paid to enhance a member's benefits may be rebutted by the member or by the employer on behalf of the member. Upon receipt of sufficient evidence to the contrary, a presumption by the system that creditable compensation was paid to enhance the member's benefits may be reversed.

(f) This definition of 'creditable compensation' reflects sound principles that support the integrity of the retirement fund. Those principles include, but are not limited to, consistent treatment of compensation throughout a member's career, consistent treatment of compensation among an entire class of employees, consistent treatment of compensation for the position, preventing adverse selection, and excluding from compensation earnable remuneration that is paid to enhance a member's benefits. The system shall determine the appropriate crediting of contributions between the Defined Benefit Program and the Defined Benefit Supplement Program according to these principles, to the extent not otherwise specified pursuant to this part.

7. STRS conceded that the \$35,000 salary increase respondent received for the 2005-06 school year pursuant to an amendment to respondent's employment contract as the District's superintendent meets the definition of "creditable compensation," but contends that the increase amount should have been credited to respondent's Defined Benefit Supplement Program and disbursed according to the separate statutory provisions dealing with that

program.² STRS relies, in part, on the language of subdivision (f) of Education Code section 22119.2 that describes the principles by which STRS determines whether contributions attributable to creditable compensation are credited to the Defined Benefit Program or the Defined Benefit Supplement Program for members.

8. Applying these principles, there was not consistent treatment of respondent's compensation "throughout her career" as Superintendent. She was employed full-time as the Superintendent at a specified salary with regular longevity raises in addition to cost-of-living increases commensurate with those provided credentialed employees of District. While District's Governing Board did not increase respondent's salary for fiscal year 2005-06 for the principal purpose of enhancing respondent's retirement benefits, the increase resulted in an inconsistency in the manner in which respondent was paid pursuant to her employment contract. As the facts reflect, she was given a \$35,000 increase that was rescinded after one fiscal year and respondent essentially returned to the compensation pattern contemplated by her four-year employment contract. The series of events also resulted in an inconsistent treatment of compensation for the *position* of Superintendent. The normal compensation progression established for the position of Superintendent by District Governing Board was significantly altered in fiscal year 2005-06 and returned to "normalcy" in the next fiscal year.

9. STRS also contends that respondent was employed full time as District's Superintendent in fiscal year 2005-06. Therefore, her assumption of the duties of the Assistant Superintendent of Personnel and Pupil Services amounted to taking on a second job and any remuneration attributable to the second position should not be credited to respondent's Defined Benefit Program. In support of its position, STRS cites *O'Connor v. State Teacher's Retirement System* (1996) 43 Cal. App.4th 1610. In that case, the Court rejected the arguments of two teachers that the full-time salaries paid by two different employers ought to be added together to calculate final compensation for retirement purposes. STRS based their respective retirement benefits on the maximum earnable salary for full time employment in one full time position. STRS reimbursed the teachers for non-credited overpayments. The Court of Appeal held that the pay used to calculate "earnable compensation" is limited to the amount paid in a single, full-time position. (*O'Connor, Supra*, at p. 1622.) In concluding remarks, the Court observed that the result prevented a "windfall" to the two teachers who had worked for many years in a single position and contributed to their retirement accounts on that basis. To grant them a retirement allowance based on the last four years during which they worked in two jobs, the court observed, would "give them a retirement allowance wholly out of proportion to the amounts they had contributed for the overwhelming majority of years of service, to the detriment of the Fund and of the other contributors." (*O'Connor, Supra*, at pp. 1626, 1627.)

10. The holding and reasoning of *O'Connor* are pertinent to this matter. Here, District attempted to fill the vacant Assistant Superintendent of Personnel and Pupil Services

² The contributions to this program are payable to the retiree as either a lump sum or annuity.

position in the spring of 2005 and, failing to do so, “assigned [respondent] the additional duties and responsibilities of the Assistant Superintendent of Personnel and Pupil Services.” The Assistant Superintendent position was not eliminated; in fact, it was filled by someone else in the next fiscal year. Superintendent acknowledged in her testimony that she was already working a full-time, 12 hour day as Superintendent when the additional job duties of the Assistant Superintendent of Personnel and Pupil Services were assigned to her. The Governing Board recited that the \$35,000 was remuneration for taking on what amounted to a second job (on what was expected to be a temporary basis). Applying the holding and reasoning of the *O’Connor* decision, the salary increase should not be credited to respondent’s Defined Benefit Account because she already was being paid for a full-time position as Superintendent. This disposition also prevents a windfall of the type condemned by the *O’Connor* decision.

11. The \$35,000 increase to respondent’s salary in fiscal year 2005-06 was inconsistent with the historical pattern relating to both respondent’s compensation and that of the Superintendent position. The increase was also paid for respondent’s assumption of a second position. For these reasons, the contributions attributable to the increase should be credited to respondent’s Defined Benefit Supplement Program.

\$1,200 Increase in Respondent’s Automobile Allowance in Fiscal Year 2006-07

12. STRS contends that the increase was both inconsistent with payments made in the previous three years of respondent’s employment contract and paid for the principal purpose of enhancing her retirement benefit. The factual findings make clear that the latter allegation was based on inference only, and any such inference was refuted by the credible testimony of respondent, the Assistant Superintendent of Business and Facilities, and the two Governing Board executives at the time. With regard to the first contention, it is true that respondent was paid \$100 less per month in each of the first three contract years, but the District Governing Board expressly reserved the right to increase the salary during the term of the contract. Gasoline prices had increased which prompted respondent to seek an increase to adequately reimburse her and the Governing Board acceded to her request. In this sense, the increase was “consistent” with the Governing Board’s intent to “properly reimburse” respondent for automobile expenses related to her required travel throughout the district. Nothing about the increase runs counter to the “sound principles that support the integrity of the fund,” the over-arching standard for determination of appropriate “creditable compensation” in Education Code section 22119.5, subdivision (f). Therefore, the automobile allowance increase for fiscal year 2006-07 was creditable to respondent’s Defined Benefit Plan.

Limitations on STRS Ability to Recoup Overpayments

13. Education Code section 22008 reads:

For the purposes of payments into or out of the retirement fund
for adjustments of errors or omissions with respect to the

Defined Benefit Program or the Defined Benefit Supplement Program, the period of limitation of actions shall be applied, except as provided in Sections 23302 and 24613, as follows:

(a) No action may be commenced by or against the board, the system, or the plan more than three years after all obligations to or on behalf of the member, former member, beneficiary, or annuity beneficiary have been discharged.

(b) If the system makes an error that results in incorrect payment to a member, former member, beneficiary, or annuity beneficiary, the system's right to commence recovery shall expire three years from the date the incorrect payment was made.

(c) If an incorrect payment is made due to lack of information or inaccurate information regarding the eligibility of a member, former member, beneficiary, or annuity beneficiary to receive benefits under the Defined Benefit Program or Defined Benefit Supplement Program, the period of limitation shall commence with the discovery of the incorrect payment.

(d) Notwithstanding any other provision of this section, if an incorrect payment has been made on the basis of fraud or intentional misrepresentation by a member, beneficiary, annuity beneficiary, or other party in relation to or on behalf of a member, beneficiary, or annuity beneficiary, the three-year period of limitation shall not be deemed to commence or to have commenced until the system discovers the incorrect payment.

(e) The collection of overpayments under subdivisions (b), (c), and (d) shall be made pursuant to Section 24617.

14. Respondent argues that if incorrect payments were paid in error, the error was that of STRS and, based on the language of subdivision (b) of Education Code section 22008, STRS' ability to recoup overpayments should be limited to those made within three years of STRS' commencement of this action on January 11, 2013. Respondent notes that respondent's employment contracts were accessible under the Public Records Act and STRS had been sending her IRC 415 letters since she retired in 2007.

15. Respondent's contention fails because the error that led to overpayments was attributable to the District, which reported the \$35,000 as special compensation salary.³ This

³ District reported the compensation to the Nevada County Office of Education which transmitted it in electronic form to STRS.

categorization led to STRS' crediting respondent's Defined Benefit Program with the increase, rather than her Defined Benefit Supplement Program. In accordance with subdivision (c) of Education Code section 22008, where the error was due to "inaccurate information regarding the eligibility of a member...to receive benefits under the Defined Benefit Program or Defined Benefit Supplement Program, the period of limitation shall commence with the discovery of the incorrect payment." In this matter, STRS discovered the inaccurate reporting by District of the \$35,000 in June of 2012, and began the process of recouping the funds by notifying respondent of the overpayment. The Statement of Issues was filed January 11, 2013, well within the three year period.

Laches

16. Laches is an equitable defense that may be asserted in administrative proceedings and is established by showing unreasonable delay in bringing an action resulting in prejudice, typically in the ability to defend against the action. (*Gates v. DMV* (1979) 94 Cal. App.3d 921, 925.)

17. Respondent points to respondent having been on the STRS' list of IRC 415 letter recipients and having had her benefits adjusted for five years before her retirement benefits were reviewed. Respondent contends she has been prejudiced by the delay in that she planned her retirement based on estimates provided by STRS and will now receive a smaller amount than expected and will be required to pay five percent of her retirement to STRS to cover the overpayments.

18. Respondent has not satisfied either of the required elements of laches. As noted above, STRS acted diligently once it learned of the overpayments. Respondent has not cited any provision of law or other mandate that required STRS to audit the benefits of members simply because their retirement amounts exceeded the IRC dollar limits. Thus, no inference may be properly drawn that STRS should have known by respondent's placement on the list that her retirement benefits were incorrect. Respondent demonstrated no prejudice in her ability to defend against the STRS action to remedy the overpayments. The Assistant Superintendent of Business and Facilities and two former Governing Board members called by respondent acknowledged incomplete recollection of the events surrounding the 2005-06 salary increase and the car allowance increase in the subsequent year, but all recalled the significant events and the motivations underlying the Board's revisions to respondent's employment contract. In other words, there was no apparent prejudice to respondent by reason of the lapse of time between her retirement and the administrative hearing.

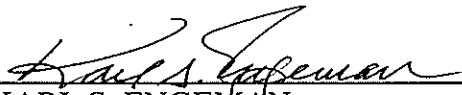
ORDER

1. Respondent's appeal of the STRS' determination that the 2005-06 fiscal year \$35,000 salary increase should be creditable to her Defined Benefit Supplement Plan, rather than her Defined Benefit Plan, is denied.

2. Respondent's appeal of the STRS' determination that the 2006-07 fiscal year \$1,200 salary increase should be disallowed as creditable compensation is granted.

3. STRS shall recalculate respondent's retirement benefit based on the exclusion of the \$35,000 to her Defined Benefit Plan for fiscal year 2005-06 and the inclusion of the \$1,200 to her Defined Benefit Plan for fiscal year 2006-07, and adjust her retirement benefit accordingly.

DATED: March 20, 2014


KARL S. ENGEMAN
Administrative Law Judge
Office of Administrative Hearings