

CALSTRS LEGAL REC'D

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**BEFORE THE  
TEACHERS' RETIREMENT BOARD  
STATE OF CALIFORNIA**

**In the Matter of the Retirement Benefits of:**

**PATRICIA MCLAIN, Respondent.**

**Agency Case No. STRS202000021**

**OAH No. 2022030062**

**PROPOSED DECISION**

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on May 22, 2023, by videoconference.

Attorneys Dianne L. Sweeney and Ryan Selness represented complainant William Perez, Chief Benefits Officer of the California State Teachers' Retirement System (CalSTRS).

Attorney Denise Eaton-May represented respondent Patricia McLain, who was present.

The record was held open after hearing for the submission of briefs. Complainant's closing brief and reply brief were marked for identification as Exhibit 23 and Exhibit 24, respectively. Respondent's closing brief and reply brief were marked for identification as Exhibit S and Exhibit T, respectively. Complainant also submitted an objection to respondent's reply brief, which was marked for identification as Exhibit 25.

The record closed and the matter was submitted for decision on July 5, 2023.

## **ISSUE**

Did CalSTRS properly determine that portions of respondent Patricia McLain’s compensation in her final working years before retirement (the 2013-2014, 2014-2015, and 2015-2016 school years) should be re-allocated from her Defined Benefit account to her Defined Benefit Supplement account?

## **FACTUAL FINDINGS**

### **Background**

1. CalSTRS, administered by the Teachers’ Retirement Board (Board), provides retirement benefits to members and their beneficiaries under the terms of the Teachers’ Retirement Law (TRL) (Ed. Code, § 22000 et seq.). Under this statutory scheme, CalSTRS must carry out its fiduciary duties for the benefit of all members and beneficiaries. (Ed. Code, § 22250.)

2. School districts are required to report to CalSTRS the compensation that the districts pay to members. Compensation is reported either to the members’ Defined Benefit (DB) accounts or Defined Benefit Supplement (DBS) accounts, depending on the type of compensation. The DB account is used upon retirement to calculate members’ lifetime monthly retirement allowances, based on a formula using the member’s age, service credit, and final compensation. (The formula applicable to respondent provides that her final compensation is based on her highest 12-month salary.) Compensation creditable to the DBS account will not be used in calculating a

member's final compensation for the DB monthly allowance. Instead, members receive a lump-sum payment or annuity based on the balance in their DBS accounts.

3. Education Code section 22703, subdivision (b), and section 22905, subdivision (b)(1), require that contributions on compensation paid for creditable service that exceeds 1.000 in a school year must be credited to the DBS program instead of the DB program.

4. Education Code section 22119.2 defines "creditable compensation" that can be included in the calculation of the DB monthly allowance.

Subdivision (a) provides that creditable compensation means salary or wages paid in accordance with a publicly available written contract or salary schedule, and remuneration paid in addition to salary or wages, provided it is paid to all persons in the same class of employees in the same dollar amount or percentage.

Subdivision (b) specifies that creditable compensation includes remuneration paid for the use of leave time; member contributions that are picked up by an employer; amounts deducted for participation in programs such as deferred compensation plans, tax-deferred retirement plans, or insurance plans; and any other payments the Board determines to be creditable compensation.

Subdivision (c) provides that any creditable compensation determined by CalSTRS to have been paid to enhance a member's benefits shall not be credited under the DB program, and shall be credited to the DBS program instead. A presumption by CalSTRS in this regard may be rebutted by the member or employer.

Subdivision (g) states that the statute's definition of creditable compensation reflects "sound principles that support the integrity of the retirement fund," including:

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.

5. California Code of Regulations, title 5, section 27600, provides criteria for assessing the consistency of an increase in compensation during a member's final years before retirement, such that it should be creditable to the DB program. This regulation allows CalSTRS to treat a compensation increase as consistent "if the employer demonstrates that it is due to" one of the factual situations enumerated in subdivision (a). As relevant to this matter, those situations include a change in duties or an increase in responsibility that is incorporated into the first contract for the immediate successor to the position (*id.*, subd. (a)(4)-(5)); or an increase that establishes pay parity as demonstrated by commensurate compensation earnable for other employees performing similar duties for the same or other employers (*id.*, subd. (a)(7)(B)).

6. If CalSTRS determines that compensation was treated inconsistently, the member's DB account can only be increased to the higher of: 150 percent of the median increase of compensation earnable for active employees within the member's

employer; or 150 percent of the median percentage increase of the compensation earnable of active members statewide between the fiscal year in question and the previous fiscal year. (Cal. Code Regs., tit. 5, § 27601, subd. (a).)

## **Respondent's Employment**

7. Respondent Patricia McLain (also known as Patricia Purcell) became a member of CalSTRS on March 22, 1976. She worked for many years as a teacher and administrator.

8. Starting in July 2004, respondent was employed by the Reed Union School District (District) in Marin County as the Principal of Bel Aire Elementary School, an elementary school for grades 3 to 5. Respondent was paid according to the Management Salary Schedule. Her total annual salary for the 2012-2013 school year was \$139,119.15.

### **2013-2014 SCHOOL YEAR**

9. As of May 1, 2014, the Principal position at Reed Elementary School (an elementary school in the District for grades Pre-K to 2) became vacant. Respondent served as Reed's Interim Principal for the remainder of the 2013-2014 school year, in addition to her position as Principal of Bel Aire. The District added "Dual Elementary School Principal" to the 2013-2014 Management Salary Schedule and placed respondent in that salary category, to account for the extra duties and an additional 15 days of work that were added to her work year (increased from 210 to 225 days). This change increased her total annual salary for the 2013-2014 school year to \$151,981.65.

## **2014-2015 SCHOOL YEAR**

10. On May 20, 2014, the District’s Board of Trustees voted to establish a new “Leadership Team Model” for administering its two elementary schools (Reed and Bel Aire). Prior to this model, the two schools had two separate principals and did not have any assistant principals. Under the Leadership Team Model, a single lead administrator (also referred to as a “Dual Principal”) was in charge of both Reed and Bel Aire, with three assistant principals overseeing daily operations of the schools. The Leadership Team Model was implemented during the 2014-2015 school year.

11. The Dual Principal position created under the Leadership Team Model was a new position, and was different from the “Dual Elementary School Principal” position that had been added to the 2013-2014 Management Salary Schedule. As described further in Factual Finding 24, the new Dual Principal position included a variety of district-level duties as well as supervision of three new assistant principals.

12. Respondent served as the Dual Principal under the Leadership Team Model for the 2014-2015 school year.

13. As Dual Principal for the 2014-2015 school year, respondent received a pay increase of approximately 20 percent to compensate her for new and changed duties and increased responsibilities. Respondent’s total annual salary increased from \$151,981.65 to \$182,293.05. Her term of duty increased from 210 days to 225 days.

14. The District conducted surveys about the Leadership Team Model and collected stakeholder feedback. In February 2015, the District decided to continue with the model for the 2015-2016 school year. As a result, respondent did not receive a March 15 letter pursuant to Education Code section 44951 (providing that certificated

employees are continued in their positions for the upcoming school year, unless they are served with notices by March 15 that they may be released for the coming year).

### **2015-2016 SCHOOL YEAR**

15. In June 2015, the District's middle school (Del Mar) had an unexpected vacancy for vice principal. On June 29, 2015, outgoing superintendent Steven Herzog notified respondent that he was reassigning one of the assistant principals who participated in the Leadership Team Model to the Del Mar vice principal position. He also reassigned another of the assistant principals to be Principal at Reed. A new superintendent, Nancy Lynch, assumed her position with the District on July 1, 2015.

16. On July 22, 2015, respondent was notified by Lynch that she would be reassigned from Dual Principal to a position comprised of 0.5 full-time equivalent (FTE) as Principal of Bel Aire and 0.5 FTE as Administrator of K-8 Projects, effective during the 2015-2016 school year, pending Board approval at its August 2015 meeting.

17. However, respondent never worked as Administrator of K-8 Projects. Instead, respondent signed a contract for the 2015-2016 school year to serve again as 1.0 FTE Principal of Bel Aire (for a 225-day work year). Because the District did not notify respondent of this change prior to March 15, 2015, the District was legally prohibited from reducing respondent's compensation for the 2015-2016 school year. Accordingly, she continued to receive the increased compensation associated with the Leadership Team Model's Dual Principal for the 2015-2016 school year (\$191,566.60 after adjustments), despite returning to the duties she previously performed at a lower salary as site Principal of Bel Aire.

## **RETIREMENT IN JULY 2016**

18. Respondent retired on July 1, 2016, with 35.623 years of service credit. While she had formerly planned to continue working, respondent chose to retire at that time so she would be available to provide support and care for family members.

19. The District has not filled the Leadership Team Model's Dual Principal position, although it remains on the District's salary schedule.

## **Dispute Regarding Allocation of Respondent's Compensation**

20. On June 9, 2016, CalSTRS sent respondent a retirement award letter, informing her that her monthly retirement benefit would be \$12,352.68, based on a calculation of her years of service credit multiplied by an age factor multiplied by final compensation (derived from her highest one-year salary, for 2015-2016). Respondent began receiving monthly benefits from CalSTRS in August 2016 based on these calculations.

21. In March 2019, the CalSTRS Compensation Review Unit selected respondent's case for review as part of its sampling of accounts of retired members.

22. On November 13, 2019, CalSTRS sent respondent a Decision Letter informing her that it had identified errors in the District's reporting of her compensation and that her final compensation figure would be reduced. That reduction would in turn reduce respondent's monthly retirement benefit and result in underreporting to her DBS account. The Decision Letter was also sent to the District.

CalSTRS relied on four categories of documents in connection with the Decision Letter: (1) the compensation the District originally reported to CalSTRS for respondent for the 2012-2013 through 2015-2016 school years; (2) the District's Management



Salary Schedules for those four school years; (3) the District’s Notices of Employment to respondent for those four school years; and (4) email correspondence between CalSTRS and the District.

Based on the documents it reviewed, CalSTRS decided that respondent’s pay increases for the 2013-2014 through 2015-2016 school years were for service in excess of her full-time position and therefore creditable only to her DBS account, and not her DB account. CalSTRS also found that respondent’s pay increases for these years were inconsistent and not creditable under Education Code section 22119.2 because the District confirmed that no one else held the position of Dual Elementary School Principal, and thus there was no employment contract for her successor.

23. The District submitted information to CalSTRS on January 28, 2020, in response to the Decision Letter. The District agreed it had misreported respondent’s additional compensation for the end of the 2013-2014 school year.

24. The District provided additional information about its rationale for respondent’s 2014-2015 salary increase under the Leadership Team Model, including Management Salary Schedules, a summary of respondent’s responsibilities, and a letter from former Superintendent Herzog dated January 25, 2020. The District stated the salary increase was intended to be commensurate with the new responsibilities of the Leadership Team’s Dual Principal position, and provided a chart comparing the responsibilities of respondent’s former site Principal position with the new Leadership Team Model Dual Principal position. In addition to training and supervising the new assistant principals, the new Dual Principal had responsibility for accomplishing the District’s strategic goals such as articulation of curriculum and instruction, professional development for staff, and alignment of the elementary school assessment and student progress reporting systems. The District stated that in hindsight, it should have

created a new title or classification for the Leadership Team Model Dual Principal position, such as Director of Elementary Education or Coordinator of Curriculum, but instead it used the existing title of “Dual Elementary School Principal” and changed the salary to reflect the new, higher-level duties for the newly created position.

Herzog’s letter described the District’s reasons and process for creating the new Leadership Team Model in 2014, and the responsibilities that respondent assumed in the new Dual Principal position. Herzog stated that he and the Board expanded those responsibilities, and that the new Dual Principal position’s responsibilities were more in line with those of Assistant Superintendents or Curriculum Coordinators in similarly sized districts. Herzog also stated that in early 2015, he and the Board evaluated the Leadership Team Model and the Board agreed to continue it for the 2015-2016 school year under the leadership of the incoming new Superintendent.

25. Respondent requested that CalSTRS conduct an “Executive Review” of the Decision, pursuant to California Code of Regulations, title 5, section 27101. Respondent submitted additional information to CalSTRS on February 10, 2020, after receiving an extension of time to do so. She did not dispute CalSTRS’s Decision as to the 2013-2014 school year. Respondent provided detailed information about her job duties in the new Dual Principal position under the Leadership Team Model.

26. The responses from the District and respondent to the Decision Letter appear primarily focused on refuting any concern that respondent’s pay increase for the Dual Principal role was “spiking” of her compensation or an increase for the purpose of enhancing her retirement benefits.

27. On March 24, 2021, complainant William Perez, Chief Benefits Officer of CalSTRS, issued CalSTRS’s Determination Letter after conducting an Executive Review.

Complainant denied respondent's request to overturn CalSTRS's Decision. CalSTRS found that respondent's additional submission supported her contention that the compensation for 2014-2015 and 2015-2016 was due to the District's development of a new Leadership Team Model and creation of an entirely new position. However, CalSTRS found the compensation respondent received for this new position did not meet the definition of "creditable compensation," because the District did not fill the newly formed position after respondent's retirement. Having determined that respondent's pay increase was inconsistent, CalSTRS applied California Code of Regulations, title 5, section 27601, subdivision (a), which limits the amount of contributions that may be credited to the DB account (see Factual Finding 6).

The Determination Letter set forth corrected figures for respondent's compensation earnable that should have been creditable to the DB account. Based on the updated reporting figures, CalSTRS determined that:

- respondent's single highest compensation earnable was reduced to \$162,467.78;
- her DB monthly retirement benefit was reduced from \$13,843.61 to \$11,744.87;
- respondent had been overpaid approximately \$114,654.61 from her retirement date through March 31, 2021;
- this overpayment also resulted in an underpayment to her DBS account, which would be automatically applied to her DB overpayment; and

- CalSTRS would collect any remaining overpayment by reducing respondent's new monthly benefit by five percent each month until the overpayment is paid in full.

28. On June 14, 2021, respondent requested an administrative hearing. Complainant signed a statement of issues in this matter on October 21, 2021. Respondent submitted a notice of defense, and this hearing followed.

### **CalSTRS's Evidence**

29. Jody Cozad, Pension Program Manager II of the CalSTRS Compensation Review Unit, testified at hearing regarding the requirements for compensation to be creditable to the DB program, and the review of respondent's compensation.

30. Employers are required to report payroll data to CalSTRS for their employees. There are approximately 1,700 employers making such reports, with approximately one million lines of data reported to CalSTRS each month. CalSTRS does not verify the employer reporting as it comes in, or at the time of a member's retirement, relying on employers to report accurately the amount that should be creditable to the DB and DBS accounts. Each year, the Compensation Review Unit reviews a sampling of member accounts, requesting documentation from employers about the member's compensation to confirm whether it was correctly reported in compliance with the TRL. The Compensation Review Unit selected respondent's account for review due to the approximately 20 percent pay increase in the 2014-2015 school year.

31. The principles of consistency set forth in Education Code section 22119.2 serve to ensure integrity of the retirement fund and sufficient funding for members' benefits.

32. CalSTRS determined that respondent's pay increase was not "consistent" and thus not creditable to her DB account under California Code of Regulations, title 5, section 27600, subdivisions (a)(4) and (a)(5) (change in duties or increase in responsibilities), because those subdivisions require that the changed duties and/or responsibilities be incorporated into the first contract for the immediate successor to the position, and there was no successor to respondent in the Dual Principal position created under the Leadership Team Model. CalSTRS considered the other factual scenarios enumerated in subdivision (a) of this regulation to see if respondent's pay increase was creditable, but found that none of them applied.

33. CalSTRS determined that subdivision (a)(7) (increase establishing pay parity) did not apply to respondent. This subdivision requires the employer to demonstrate that the increase is due to commensurate compensation earnable for the same position in the past, or for other employees performing similar duties (for the same employer or other employers). Cozad stated that comparisons to other employers are based on districts with similar geography or similar demographics. Cozad explained further that CalSTRS construes subdivision (a)(7) to require contemporaneous evidence that pay parity is the employer's reason for the pay increase. CalSTRS did not receive such documentation from the District in this case.

34. CalSTRS does not contend that any increase in respondent's compensation was paid for the principal purpose of enhancing her retirement benefit. (See Ed. Code, § 22119.2, subd. (c).) CalSTRS is not accusing respondent of "spiking."

35. The most recent letter from CalSTRS to respondent, dated May 16, 2023, provides the following updated figures: respondent's former monthly benefit was \$14,356.33 and is revised to \$12,179.89 based on updated reporting of compensation; with a total overpayment amount of \$163,856.96 from respondent's retirement date

through February 2023. The letter states that CalSTRS will deduct five percent of respondent's revised monthly benefit until the overpayment is paid in full, pursuant to Education Code sections 24616 and 24617.

## **Respondent's Evidence**

36. Respondent testified credibly regarding her employment history, job duties, and retirement.

37. Respondent's Dual Principal position under the Leadership Team Model included supervising the new assistant principals and district-level responsibilities such as: working to align the District's elementary curriculum across schools and with the state's recently adopted Common Core Standards; procedures for the District's LCAP (Local Control and Accountability Plan); revision of the elementary student assessment process; professional development for certificated and classified staff; community outreach; and communicating with the Superintendent and Board.

38. Respondent gathered and compiled publicly available information about job descriptions and salary schedules for administrators performing similar duties in other districts. Respondent's duties as Dual Principal were similar to those in other districts for positions such as Director of Curriculum and Instruction, or Assistant Superintendent of Educational Services. She created a chart comparing her job duties to duties of similar administrators in eight other districts, and showing salary increases from site-level principal positions that ranged between 16 percent and 68 percent.

39. Respondent had no contemporaneous discussions with the District about how the Board set the salary for the Dual Principal position.

40. Respondent provided Board meeting agendas and minutes, including the minutes of the meeting on May 20, 2014, at which the Board adopted the Management Salary Schedules for 2014-2015 for the new Dual Elementary Principal and Assistant Elementary Principal positions. These generally discussed the Dual Principal position, but did not specifically address reasons for the salary that was set.

41. In addition to the January 2020 letter from Superintendent Herzog (see Factual Finding 24), respondent provided two other letters written in January 2020 as part of her Executive Review submission.

(a) Howard M. Block was a trustee for the District from 2008 to 2018. His letter discusses respondent's skills and the reasons she was chosen to assume the new Dual Principal position. Block confirmed that respondent's duties as Dual Principal were expanded beyond that of a typical site administrator, including responsibilities that were similar to an Assistant Superintendent in a comparably sized district. He stated that nothing untoward had been done to increase respondent's salary.

(b) John Frick was the District's Business Manager at the time the Dual Principal position and Leadership Team Model were created (he retired in March 2015). Frick's letter described the Board's reasons for adopting the Leadership Team Model and selecting respondent for the new Dual Principal position. He offered his opinion that a lack of legal review led to the District changing job duty details of the "Dual Elementary Principal" instead of creating an entirely new job description and title. Frick wrote that all changes were discussed in open Board meetings and approved by the Board.

42. Frick also testified at hearing. He was involved in setting the salary for the new Dual Principal position assumed by respondent in the 2014-2015 school year. He

considered this new position to be equivalent to a curriculum coordinator or assistant superintendent level position. During this process, Frick reviewed a database of administrator salary schedules for other districts in Marin County to see what similar administrator salaries were. He discussed this with the Board before it approved the new salary schedule for the Dual Principal position.<sup>1</sup>

43. Respondent retired after the 2015-2016 school year. She had not been planning to retire yet, and had been applying for district-level administrator positions in the District and elsewhere. Respondent chose to retire when she did due to her family responsibilities. Respondent's father died in August 2015 and her 90-year-old mother needed support, and in December 2015 respondent's grandchild was born with a serious medical condition.

44. Respondent attended an information session in early 2016 with a CalSTRS retirement counselor who reviewed her salary history. Respondent was not informed at that time that there were any potential problems with her compensation being creditable or pensionable. The November 2019 Decision Letter was the first time respondent learned of any issue with reporting of her compensation; it was a surprise.

45. Several months before hearing, respondent's monthly benefit was reduced without notification or warning. She understood from the March 2021 Determination Letter that no reduction would take effect until the administrative hearing process was completed. The May 2023 letter (see Factual Finding 35) stated a

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<sup>1</sup> Neither the District nor respondent produced any documentation of the salary survey Frick described in his testimony. However, he was not asked at hearing whether such documentation existed. Thus, no inference is drawn from its absence.



reduction to her benefits would begin in June, but her monthly payment had already been reduced as of the date of the hearing. The reduction in her monthly benefit has been a financial hardship for respondent and her family. She retired in good faith and feels as if she is being punished unfairly.

46. Two other witnesses testified in support of respondent.

(a) Alexis Cala was Principal at Bel Aire after respondent retired from that position. Cala had previously been one of the assistant principals during the Leadership Team Model. She corroborated respondent's descriptions of her duties as Dual Principal. Cala is now Superintendent at another elementary school district.

(b) Janice March is a retired teacher and administrator, and was formerly the Director of Curriculum and Assessment at Fremont Unified School District. March and respondent had worked together prior to respondent joining the District. At the time that respondent was serving as Dual Principal in 2014-2015, the two of them had discussed her job duties. March described respondent's Dual Principal role as comparable to Assistant Superintendent of Curriculum or one of several Director-level positions in Fremont Unified School District.

## **LEGAL CONCLUSIONS**

1. CalSTRS is the party seeking to change the status quo, by seeking to establish that portions of respondent's compensation were incorrectly reported and should be re-allocated. Accordingly, CalSTRS bears the burden of proof in this matter, by a preponderance of the evidence, except that respondent has the burden of proof as to any affirmative defenses. (Evid. Code, § 500; *In the Matter of: Stanislaus County*

*Office of Education*, (2019) Precedential Dec. No. 19-01, at p. 9; *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, at fn. 5.)

2. As set forth in Factual Findings 4 and 5, Education Code section 22119.2 defines “creditable compensation” that can be included in the calculation of a member’s DB monthly allowance, following principles of consistent treatment of compensation, and California Code of Regulations, title 5, section 27600 provides criteria for assessing the consistency of an increase in compensation during a member’s final years before retirement.

3. Respondent did not dispute CalSTRS’s Decision Letter as to the 2013-2014 school year, in which she received additional compensation for extra duties assumed above and beyond her full-time position. Only respondent’s pay increases for the 2014-2015 and 2015-2016 school years are at issue in this appeal.

### **CalSTRS’s Contentions**

4. CalSTRS contends that respondent’s pay increases cannot be considered consistent under any of the provisions of California Code of Regulations, title 5, section 27600. Subdivisions (a)(4) and (a)(5), pay increases due to changes in duties or increased responsibilities, do not apply because such changes must be incorporated in the first contract for the immediate successor to the position, and there has been no successor to respondent in the Dual Principal position, which was filled only for the year respondent occupied it.

5. CalSTRS relies on the precedential decision of *In the Matter of: Barbara Pahre* (“*Pahre*”) (2018), Precedential Dec. No. 18-01, which it contends controls the outcome in this matter.

Pahre worked for nine years as Assistant Superintendent of Napa Valley Unified School District (Napa Valley), which at that time was the highest paid position on the district's salary schedule. Pahre announced that she intended to retire at the end of the school year. During that year, she served briefly as Interim Superintendent until Napa Valley appointed a new Superintendent. The incoming Superintendent sought to retain Pahre for the next year to assist with his transition. Pahre refused to continue working without a salary increase. Napa Valley then created a new position of Associate Superintendent, and assigned Pahre to this position at a pay increase of nearly 13 percent. In the Associate Superintendent role, Pahre continued to perform her full-time Assistant Superintendent duties and also assumed additional duties and responsibilities. Pahre worked in the Associate Superintendent position for one year and then retired. Napa Valley never hired a successor Associate Superintendent, instead reclassifying the position back to Assistant Superintendent and filling it.

Applying Education Code 22119.2, the Board in *Pahre* determined that Pahre's pay increase was not consistent with her compensation throughout her career and there was not consistent treatment for the position of Associate Superintendent, which was used only for the year Pahre held it. Thus Pahre's pay increase was found to be creditable to her DBS account, and not her DB account.<sup>2</sup> The Board cited *O'Connor v. State Teachers' Retirement System* (1996) 43 Cal.App.4th 1610, 1626-1627, finding that granting Pahre a lifetime retirement allowance based on the year she worked as Associate Superintendent would "give [her] a retirement allowance wholly out of

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<sup>2</sup> The Board also found Pahre's pay increase was for additional duties beyond one FTE position, and thus could not be creditable to the DB program under Education Code 22703. That reasoning does not apply to respondent in this matter.

proportion to the [amount she] had contributed for the overwhelming majority of years of service, to the detriment of the Fund and of other contributors.”<sup>3</sup>

6. *Pahre* was designated as a precedential decision in 2018, but the matter was heard and submitted for decision in late 2014. Accordingly, the *Pahre* decision does not discuss any of the consistency criteria set forth in California Code of Regulations, title 5, section 27600, which was a newly enacted section not operative until January 1, 2015.

7. Neither party has pointed to legal authority discussing what showing is required to meet the “pay parity” test for consistency set forth in California Code of Regulations, title 5, section 27600, subdivision (a)(7). However, as the agency with the statutory power and authority under Education Code section 22201, subdivision (a), to determine matters pertaining to the administration of the TRL, CalSTRS’s construction of its governing statute is entitled to “great weight and deference.” (*Duarte v. State Teachers’ Retirement System* (2014) 232 Cal.App.4th 370, 384.)

8. CalSTRS construes California Code of Regulations, title 5, section 27600 to require contemporaneous evidence of the employer’s reason for the pay increase.

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<sup>3</sup> The facts in *O’Connor* are different from those presented here. However, the court’s discussion of the principles of consistency and the purpose of ensuring adequate funding for members’ retirement benefits is pertinent. The court in *O’Connor* rejected the arguments of two teachers who were each paid two full-time salaries by two different employers, holding that the two full-time salaries should not be added together to calculate final compensation for retirement purposes, and that final compensation should be measured based on the salary for a single full-time position.

CalSTRS notes that the language of subdivision (a) provides that in assessing consistency of a late career pay increase, “an increase is consistent if the *employer* demonstrates that it is *due to* any of the following [list of enumerated scenarios].” (Emphasis added.) CalSTRS argues the focus is on the employer’s contemporaneous rationale for approving the pay increase, because it is the employer who is statutorily responsible to report compensation accurately to CalSTRS. (See, e.g., Ed. Code § 22458 [employers shall provide information on compensation paid to employees subject to the DB program, which may include, but is not limited to, employment contracts, salary schedules, and local board minutes].) CalSTRS also argues that pay parity is not an equitable catch-all category for any type of pay increase, but rather that the establishment of pay parity can occur only after the employer identifies an existing disparity between two groups of employees who receive disparate pay for similar duties. CalSTRS contends that respondent’s salary-survey evidence should be disregarded as a post hoc justification insufficient to meet the pay parity consistency test of subdivision (a)(7).

## **Respondent’s Contentions**

9. Respondent contends that her increased compensation for the 2014-2015 and 2015-2016 school years is not “inconsistent” and that CalSTRS should not apply any new calculation of her compensation or adjust her retirement benefit.

10. Respondent argues that her compensation increase for changed duties and increased responsibilities was consistent and creditable under California Code of Regulations, title 5, section 27600, subdivisions (a)(4) and (a)(5). She contends that the regulatory language about incorporating the duties or responsibilities into the “first contract for the immediate successor to the position” does not require a successor for the increase to be found consistent.

11. Respondent also contends that her compensation increase was consistent and creditable under California Code of Regulations, title 5, section 27600, subdivision (a)(7), as an increase that establishes pay parity. She points to the testimony of Frick about reviewing salaries for comparable positions, as well as to her own research about salaries. Respondent argues that because the compensation for her new Dual Principal position was commensurate to that of administrators performing similar duties elsewhere, that the pay parity consistency test has been met.

12. Respondent argues her case is distinguishable from *Pahre*, noting that Pahre had already announced her intention to retire before the district created a new, higher-paid position to entice her to stay; and the district re-classified the position back to its previous level of Assistant Superintendent after Pahre worked for a year as Associate Superintendent. Respondent also correctly notes that the portion of *Pahre* concerning compensation for additional duties beyond one full-time position is inapposite to this matter.

13. Respondent also raises several affirmative defenses, which are discussed below in Legal Conclusions 17 through 20.

## **Discussion**

14. The position of CalSTRS is persuasive that respondent's pay increase is not consistent under California Code of Regulations, title 5, section 27600, subdivisions (a)(4) and (a)(5). Respondent's contentions are contrary to the plain language of the regulation, and are not persuasive.

15. The *Pahre* decision is not precisely on all fours with the current matter, although there are a number of similarities. Moreover, the parties' analysis in this matter focused heavily on the regulatory consistency criteria that were effective after

*Pahre* was heard. However, the reasoning in *Pahre* is pertinent and persuasive.

Respondent only worked in the Dual Principal position for one year, and while it was through no fault of her own that the District later did not fill the position, it cannot be found consistent and creditable under Education Code section 22119.2.

16. Regarding the pay parity test for consistency, the evidence established that the District increased respondent's salary in 2014-2015 to compensate her for the increased duties and responsibilities of this new district-level administrator position. While it appears from Frick's testimony that salaries for comparable positions in other districts were considered by the Board before approving the Management Salary Schedule for the Leadership Team Model, the evidence was insufficient to demonstrate that the reason for respondent's pay increase was to establish pay parity as contemplated by California Code of Regulations, title 5, section 27600, subdivision (a)(7).

17. Respondent contends that CalSTRS is time-barred from seeking to reverse the incorrectly reported payments. Education Code section 22008 sets forth a three-year period of limitations. Subdivision (c) provides that if an incorrect payment is made due to lack of information or inaccurate information regarding the eligibility of a member to receive benefits under the DB program or DBS program, the period of limitation shall commence with the discovery of the incorrect payment. Respondent retired in July 2016 and was not notified of any error until November 2019, more than three years later. She thus contends this action is time-barred.

Respondent's argument is unpersuasive. CalSTRS was entitled to rely upon the District's reporting of compensation when it was made and at the time of respondent's retirement. CalSTRS did not discover the incorrect reporting until it conducted a review in 2019. The statement of issues was filed in October 2021, less than three years later.

Education Code section 22008, subdivision (c), applies to this matter and provides that the limitations period runs from discovery of the reporting error. CalSTRS was not put on notice of incorrect reporting by respondent's pre-retirement meeting with a benefits counselor. This action is not time-barred. (See *Moreno v. California State Teachers' Retirement System* (2020) 52 Cal.App.5th 547, 552-553.)

18. Respondent contends that the doctrine of equitable estoppel precludes CalSTRS from recalculating her retirement allowance. *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, sets forth the elements of equitable estoppel: (1) the party to be estopped must be apprised of the true facts; (2) the party must intend that its conduct shall be acted upon, or must so act that the party asserting estoppel had a right to believe it was so intended; (3) the party asserting estoppel must have been ignorant of the true state of facts; and (4) that party must have relied upon the conduct to its injury. Where a party seeks to invoke equitable estoppel against a governmental entity, an additional element applies: "the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, 240.)

In cases involving public employee pensions, estoppel may not be invoked where to do so would "directly contravene statutory limitations." (*Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 870.) Equitable estoppel may not be invoked to require CalSTRS to pay an incorrect benefit amount based on compensation that was not DB-creditable under the Education Code. (*Blaser v. State Teachers' Retirement System* (2022) 86 Cal.App.5th 507, 539.)

Respondent argues that CalSTRS knew or should have known of the facts surrounding her pay increase. This argument is unpersuasive. Moreover, equitable



estoppel cannot be used to compel CalSTRS to pay incorrect benefits. Respondent's equitable estoppel argument fails.

19. In order to prove the affirmative defense of laches, respondent must establish that CalSTRS engaged in an unreasonable delay in bringing this action, resulting in prejudice. (*Miller v. Eisenhower Med. Center* (1980) 27 Cal.3d 614, 624.) CalSTRS did not unreasonably delay in this matter once it learned of the facts regarding the reporting of respondent's compensation. This proceeding is not barred by laches.

20. Last, respondent argues that the method used by CalSTRS to recoup its alleged overpayment is unfair. Respondent points to Assembly Bill (AB) 1667, which was enacted in September 2022 and amends various provisions of the Education Code. AB 1667 provides that when a benefit is overpaid, the party responsible for the error must repay CalSTRS (except in cases of CalSTRS error). In this case, the District's reporting error caused the alleged overpayment, and respondent argues that CalSTRS should seek recoupment from the District. CalSTRS contends that AB 1667 is irrelevant because it became effective January 1, 2023, and operates only prospectively. The position of CalSTRS on this point is persuasive.

21. Respondent's pay increase for the 2014-2015 and 2015-2016 school years cannot be considered consistent and thus creditable to the DB program under Education Code section 22119.2 and California Code of Regulations, title 5, section 27600. Accordingly, the determination of CalSTRS must be affirmed.

## ORDER

Respondent Patricia McLain's appeal from the determination by CalSTRS that portions of her salary increase in the 2014-2015 and 2015-2016 school years should be credited to the Defined Benefit Supplement program rather than the Defined Benefit program is denied.

DATE: 08/02/2023



HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings