

FINAL STATEMENT OF REASONS

Update of Initial Statement of Reasons

Section 20511. Public Comment

Former Subdivision (a)

The proposed regulations, as originally noticed, included language that stated the Teachers' Retirement Board's principles and intent, as follows:

“The Teachers' Retirement Board operates with transparency in conducting the people's business and welcomes and embraces public participation on the matters before it in recognition of the importance and value such participation brings. The board also recognizes that unrestricted participation may at times delay or hinder completion of the public's business, and it therefore adopted this section in the interest of providing fair and equal access to as many members of the public to participate while adhering to its publicly noticed agenda.”

However, this language is non-regulatory, and it is not necessary to include this language. Therefore, the proposed regulations were amended to remove this language, and the remaining text was re-lettered.

Subdivision (g)

The proposed regulations, as originally noticed, required that members of the public submit a public comment request form with specified information in order to provide public comment before the board or one of its committees. The comments stated a concern that requiring the form to be submitted prior to the start of the public comment would prohibit a member of the public from responding to statements or questions made during the public comment period by board members, CalSTRS staff or other members of the public. CalSTRS recognizes that there may be instances when a member of the public may wish to provide remarks in response to questions or comments that arise during the public comment period but under the proposed regulations, as originally noticed, might not be able to do so. The proposed regulations were amended to provide greater discretion to the presiding chair to recognize additional speakers. In addition, the proposed regulations were amended to specify that submitting a request to provide public comment is encouraged, rather than required, to secure time to speak.

Subdivision (h)

The proposed regulations, as originally noticed, also included a reference to webcasting and audio and video recording of board and committee meetings being in compliance with CalSTRS' privacy policy. However, CalSTRS determined that including a reference to the system's privacy policy in relation to the webcasting and recording of meetings would be unnecessary since CalSTRS would adhere to any policy adopted by the board regardless of whether it is specified in the regulations. The proposed regulations were amended to remove a reference to CalSTRS' privacy policy.

The proposed regulations were also amended to make several non-substantive grammatical changes, including removing unnecessary phrases that could be confusing.

Summary and Response to Comments Received in the Initial Comment Period

CalSTRS received one public comment letter co-signed by four organization during the public comment period and comments from two speakers at the public hearing.

Comment 1: The requirement of the comment request form is restrictive

The comments received, both in writing and at the hearing, noted that the requirement to submit a public comment request form prior to the start of the public comment period does not provide sufficient discretion to the presiding chair to ensure an open dialogue between the board and the public. The stated concern is that in requiring the form to be submitted prior to the start of the public comment, the proposed regulation would prohibit a member of the public from responding to statements or questions made during the public comment period by board members, CalSTRS staff or other members of the public.

Response

The proposed regulations include requirements for the use of the comment request form to establish a reasonable method for CalSTRS staff and the presiding chair to identify members of the public who are present at the meeting and who wish to address the board or committee. The information allows CalSTRS staff to organize speakers by topic or organization and the presiding chair to know the order in which to call speakers. In addition, receiving the comment request forms ahead of time allows for the presiding chair to allocate the time available among all speakers. This promotes efficiency of board and committee meetings by avoiding a significant increase in the length of proceedings and the risk of delay and non-completion of the public's business.

CalSTRS recognizes that there may be instances when a member of the public may wish to provide remarks in response to questions or comments that arise during the public comment period. As the proposed regulations were worded when originally noticed, if that member of the public had not completed and submitted a comment request form ahead of the public comment period, they would not be able to address the board.

Giving CalSTRS staff and the presiding chair the ability to organize comments and promote efficiency of board and committee meetings, while also providing discretion to the presiding chair to allow for additional speakers, balances the need for orderly conduct of business and allows the board or committee to hear additional comments that pertain to the matter under discussion.

As noted above, the proposed regulations were amended to provide greater discretion to the presiding chair to recognize additional speakers. In addition, the proposed regulations were amended to specify that submitting a request to provide public comment is encouraged, rather than required, to secure time to speak.

Comment 2: The inconsistent treatment and exclusion of minors

The comments received, both in writing and at the hearing, raised a concern that the proposed regulations provide for inconsistent treatment and exclusion of minors. This comment notes that the proposed regulation would prevent the public from seeing and hearing what is being discussed from an individual based upon the speaker's age, which is not a practice seen at the State Board of Education or the Legislature.

Response

The requirement for members of the public who want to provide public comment to indicate whether they are 18 years of age or older allows CalSTRS to make efforts to maintain the privacy of those speakers who are minors and not transmit their images or personally identifiable information on the internet. CalSTRS notes that webcasts and recordings of these meetings are provided by CalSTRS for greater transparency. The board moved forward with this provision in the regulations to balance the desire for transparency with the privacy interests of minors whose images and personally identifiable information would be publicly available. The comment alludes to minors being able to speak at hearings held by the Legislature. Similarly, minors are fully able to speak at CalSTRS public meetings. It is the appropriateness of voluntary webcasting and recording the images of minors that is being addressed, and board and committee meetings are different in that they are a limited public forum in which the governmental entity may adopt reasonable limitations on who may use the forum.

CalSTRS left the requirement for members of the public who want to provide public comment to indicate whether they are 18 years of age or older. However, in reviewing the proposed language, CalSTRS determined that including a reference to the system's privacy policy in relation to the webcasting and recording of meetings would be unnecessary since CalSTRS would adhere to any policy adopted by the board regardless of whether it is specified in the regulations. Therefore, as noted above, the reference to the privacy policy was removed.

Hearing and Second Comment Period

Comments received at the hearing held on July 16, 2020, were substantially similar to those received during the initial comment period and are summarized and addressed above.

No substantive comments were received during the second comment period, held from November 16 through December 1, 2020. CalSTRS received one letter co-signed by four organizations that expressed continued concern with any limitations on speakers younger than 18 years old. However, the proposed regulations do not limit speakers' ability to address the board by age. As a result, CalSTRS did not make any changes to address this concern.

Alternatives Determination

Bagley-Keene requires a state body to provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. Bagley-Keene also allows the state body to adopt reasonable limitations on public comment. The only alternative to the proposed public comment regulations is to not have any reasonable limitations and allow unfettered and limitless public comment. However, this alternative would perpetuate the deficiencies that exist with how public comments are administered at board meetings, rendering inefficiencies in how board meetings are conducted. Therefore, implementing the proposed regulations was deemed by the board to be the only viable alternative.

No alternative has been proposed that would be less burdensome and equally effective in achieving the purposes of the regulation in a manner that accomplishes the intent of the statute being implemented.

Local Mandate Determination

Pursuant to California state law and related authority, CalSTRS has determined that the proposed regulations do not constitute a reimbursable state mandate on school districts, community college districts, their respective county offices of education or other local agencies as provided for under article XIII B, section 6, of the California Constitution. These proposed regulations are not expected to result in any significant monetary savings or costs to school districts, community college districts, their respective county offices of education or other local agencies.