

• **PATRICIA PURCELL MCLAIN** •

TO: California State Teachers Retirement System
Office of the General Counsel – Legal Services
Attention: Rose Bocci, RBocci@CalSTRS.com

FROM: Patricia McLain

DATE: August 15, 2023

RE: Statement in Support of Position
Agency Case No: STRS202000021, OAH No. 2022030062

Esteemed Board Members,

In 2014 I accepted a promotion to a new position. The review of my case is unfolding nearly a decade after that event and is influenced by new legislation that was not in effect in 2014. I respectfully request that you reject the Proposed Decision (OAH:2022030062) according to the stipulations of Government Code section 11517. I do not believe mine is the situation contemplated under the statutes and rules that were created to protect creditable compensation.

My case revolves around two key pivotal questions that STRS has not answered and there is a lack of transparency in their handling of these matters: (1) the definition of "SUCCESSOR", and (2) What is the requisite number of years of contributions to the fund, aligned with the highest salary used in the retirement calculation formula, to render the compensation "creditable" to the defined benefit plan in the absence of a successor? While STRS has acted upon their "interpretations" of the law surrounding these issues, those interpretations lack full transparency and appear inconsistently applied. While STRS has authority to apply law, STRS does not have authority to write it, let alone apply it unequally.

This Board's decision will significantly affect both my family and me. Furthermore, as I will detail in this statement, the outcomes of your policy could reach far beyond my situation. Your decision could potentially compromise the selection of qualified California educators of "retirement age" for the crucial roles that contribute to the advancement of education for the students of this state. No doubt, your complete legal team – including STRS' internal experts and the private counsel contracted by STRS through member contributions- will present a range of arguments as to why my statements should not be given due consideration. Nevertheless, it's imperative to recognize that my statements are reflective of my own experiences, perspective and opinions, and hold validity in that context.

A. HISTORICAL CONTEXT: *In 2014, in alignment with my professional growth, I enthusiastically accepted a promotion that transitioned me into a higher paid school administrative position and is the focus of this case*

A1. EQUITY: *In 2013, a community voiced concerns about the inequitable offerings and opportunities for elementary students and staff, including limited opportunities for teachers to advance to administrative positions in the district*

A2. NEW LEADERSHIP MODEL: *To address the issue, The Board of Education publicly adopted a new Leadership Team model, consisting of FOUR new administrative positions, not just one position for me.*

A3. INCREASE IN COMPENSATION: All four new administrators received an increase in compensation. Mine was 20%, the average of the other three was 32%.

A4. CONTRACT: The language in my contract for the new position mirrored that of ten prior contracts provided by the district. The district did not specify in the contract that any part of the compensation would not be creditable to the Defined Benefit plan

A5. TWO YEARS OF CONTRIBUTIONS: I made contributions to the STRS Defined Benefit on this higher compensation for TWO years (not ONE year, as reported by STRS).

A6. RETIREMENT: In 2016 I retired after seeking counsel from STRS Benefit Specialist who shared with me a prep sheet with TWELVE years of my salary history. I retired due to (1) family issues AND (2) I felt I had achieved my retirement goal needed to support my family based the information provided to me by the STRS counselor and my District

B. AUDIT AND REMEDY PROCESS:

B1. DECISION LETTER: Unexpectedly, In November 2019 I received a STRS Decision letter that stated my final salary increase represented “added compensation for services that exceed a full-time position, excluded under EC 22703.” and my retirement benefit would be modified.

B2. TREATMENT. ASSIGNMENT: I was denied the opportunity to engage in discussions or review my case with STRS. The approach taken towards the “subgroup of members” whose accounts undergo audits is “guilty until proven innocent”. I was tasked with providing historical evidence to support my assertion that the audit was inaccurate or incomplete, a significant challenge that arose years after retirement.

B3. AUDIT METHODOLOGY USED BY STRS: A concerning revelation was STRS's disproportionate reliance on “misinformation” provided by a payroll clerk (the clerk had no first-hand knowledge of the position in question). The information provided by the clerk led to the decision of “additional duties/assignments” This decision was devoid of verification checks with any current or past administrators.

B4. EXECUTIVE REVIEW: In February 2020, I submitted an Executive Review with evidence to refute the allegation of “additional assignment” beyond a full-time position

B5. DETERMINATION: WRONG ASSUMPTION In the Determination Letter of March 2021, STRS shared “The evidence you provided supports your argument that the compensation you received for the 2014-2015 and the 2015-2016 school years was NOT for performing an additional assignment but was due to the (District) development of a new Leadership Team model, that changed your duties and increased your responsibilities...an entirely new position was created.”

B6. “REQUIRED”? SUCCESSOR: As STRS could no longer apply EC 22703 (additional duties to an existing position) to substantiate their assumption that the position was created “for the principal purpose” of enhancing the benefit, STRS reported, “5 CCR 27600 (a) (4) (5) REQUIRE that changes in duties and increases in responsibilities MUST BE incorporated in the first contract of the immediate successor in order to qualify as consistent treatment of compensation”. The law does not use the words “REQUIRE” or “MUST BE.”

C. FIRST QUESTION: SUCCESSOR? Effects of Using Ambiguous Terminology

C1. LANGUAGE OF THE LAW In both the Determination Letter of March 2021 and subsequent November 2021 Statement of Issues, STRS referenced the statute and stated that successor is a “REQUIRED”, “Mandated” condition for a position to be creditable to the Defined Benefit Plan. However, the statute that STRS relies upon does not say anything about “required.” Unless regulations have changed, STRS does not have authority to write law. STRS responsibility lies in accurately presenting the Teacher Retirement Law to its members.

C2. IMPACTS OF LANGUAGE USAGE: STRS policy assertion of a “mandated” successor for any position used as a basis for a defined benefit compensation upon retirement, bears significant outcomes. Should this Board validate this interpretation, each Board member should recognize the inherent relationship between affirming the “mandated successor” concept and the resulting chilling effects of such action:

C2.A. NEW POSITIONS CREATED TO RESPOND TO CRITICAL NEED

Local school district Boards of Education respond to local needs of a community. New positions are adopted to address legitimate issues such as pandemic (Covid), fires/floods, school closure, school shootings, public health concerns, homeless students, parents' claims of racism/bias/bullying/inequity, etc. In 2014, my district reorganized its administrative model to address an issue of equity. Districts continue to create new positions such as Covid 19 Response Coordinator, Pandemic Support Dean, Dean of Culture and Climate, Coordinator: Institutional Equity, etc. Many of these positions may not have a successor as they serve a specific purpose in time.

C2.B. MOST QUALIFIED MAY BE COMPROMISED

Applying STRS interpretation of the law (“must be a/required/mandated successor”) raises legitimate concerns If (1) a “veteran/older” educator accepts a new position to address a need , (2) receives an increase in compensation for the new responsibility , (3) subsequently retires from the position and (4) there is no “required/mandated” successor (per STRS Language), then the position would not be creditable to the Defined Benefit Program. Consequently, the salary corresponding to the position could not be used in the formula to calculate a defined retirement benefit. It is NOT THE INTENT of the US Department of Education nor the California School Board of Education that the most experienced, qualified administrators be compromised at the end of their career by their own retirement system. It is their intent that equal treatment and promotion opportunities are accessible to all educators.

C2.C. CALIFORNIA STATE BOARD OF EDUCATION: TRANSFORMING SCHOOLS INITIATIVE

The California School Board of Education recently adopted the “Transforming Schools Initiative.”, outlining NEW priority areas and NEW programs. State funds were appropriated for districts to align with the Board’s new objectives. However, adhering to STRS limited view of consistency law (Must be/required /successor), could render a significant number of positions ineligible for inclusion in the Defined Benefit program. The situation would arise if a “retirement age educator” receives an increase in compensation for accepting one of the new positions, subsequently retires, and no successor is in place.

Undoubtedly, the California School Board of Education expects that the MOST QUALIFIED, MOST EXPERIENCED educators contribute their expertise to advance the State’s mission. STRS misrepresentation of the statute and insistence upon a “required” successor could deter highly qualified educators from accepting these leadership roles. If prioritizing educational equity and

enhancing student achievement remains paramount in our state, then the selection of the most qualified candidate (regardless of age) is pivotal. Equitable treatment must be extended to all organization members, and those approaching retirement should not be subjected to compromise. Applying STRS manufactured interpretation of the law, could empower the Teacher Retirement System to restrict and essentially dictate who can be promoted to lead our schools and receive full retirement benefits

C2.D. AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)

*“The Age Discrimination in Employment Act of 1967 (ADEA)” safeguards employees aged 40 years and above from age-related discrimination in such areas as hiring, **promotion**, discharge, compensation, or terms, conditions or privileges of employment”. It should not be presumed by STRS that the establishment of a new position to directly address local, state or national need (with no SUCCESSOR) is exclusively intended to enhance a member’s benefit. If STRS does entertain such an assumption, STRS is legally required to provide “evidence” substantiating how the position was indeed created to “enhance a member’s benefit”. As per CCR 27600, the absence of a successor does not serve as proof of benefit enhancement for a member. It should NOT be the practice of STRS to hinder “older/veteran” educators who may be nearing retirement, from pursuing promotions late in their career. In my case, there is absolutely NO EVIDENCE that the position was formed to enhance my benefit; rather a preponderance of evidence demonstrates that the position was established for a legitimate purpose. STRS interpretation of the regulations has a disparate impact on older educators.*

C2.E. WHAT IS A SUCCESSOR?

I contributed to the fund for TWO YEARS (not one year, as reported by STRS) based on the salary associated with my promotion, and 34 other years of full-time work. After I retired, the district approved new positions on the salary schedule. The duties of my Leadership Team role were dispersed across these new positions. Although my successors held different titles, my successors assumed many of my duties. Over time the district hired two Teachers on Special Assignment, one Director of Special Projects, and one Director of Pupil Services. These NEW employees collectively made higher contributions to the fund compared to my contributions. Do they qualify as successors? Or does the term successor exclusively pertain to those inheriting the identical title? School Districts have the right to establish new positions and allocate compensation. However, within STRS interpretation of the law, does a school district maintain the right to alter critical roles serving students, or is it compelled to maintain consistent titles? The criteria applied in my situation was that the position had to maintain its exact title to meet STRS’s “required successor” stipulation.

D. SECOND QUESTION: TERM OF CONTRIBUTION? *What is the requisite number of years of contributions to the fund, aligned with the highest salary used in the retirement calculation formula, to render the compensation “creditable” to the defined benefit plan in the absence of a successor?*

D.01. EQUITABLE TREATMENT – FUNDING THE TRUST

During the hearing, Mr. Cozad affirmed that STRS holds a fiduciary duty to all members, ensuring no member has advantage over others. STRS enables educators who predominantly work part time throughout their careers, accrue 25 years of service and then work ONE YEAR at a full-time salary (which can amount to a 30-40% raise relative to their usual work). That educator can secure a lifelong defined benefit under (Education Code 22134.5.). That highest one year salary is used as the factor to determine the pension benefit. There is no assurance that the educator’s position will have a successor with the same title. Enrollments decline, programs are cancelled, and golden handshakes are offered. In many of these cases, the district may have to reduce staff and vacant positions are

not filled. Is this lifetime retirement allowance based on only ONE YEAR of full-time salary a detriment to the Fund? STRS appears to apply the law disparately for distinct groups. This practice lacks clear definition for members and exposes inherent inequity.

D.02. TRANSPARENCY OF YEARS OF CONTRIBUTION

The lack of transparency causes angst among members and STRS' practices appear targeted at specific individuals rather than being consistently applied. Clearly the district is the conduit between STRS and member for reporting earnings. Yet, a review of all CalSTRS member handbooks and retirement guides from 2014 to the present (nearly TEN YEARS) reveals that STRS does not communicate to members the necessity of a mandated successor for any retiring position. On its website, STRS states, "With five years of service credit, you're eligible for a guaranteed lifetime retirement benefit based on a formula set by law". Is a five-year tenure enough of a contribution if there is no "successor"?

D.03. The district misreported my income and never told me that my compensation that it would not be credited to my Defined Supplemental plan.

D. CONCLUSION *Equity was a concern in 2014 when the district adopted a new position to address community issues, and I accepted a promotion. Equity is the issue today with this case. Almost a decade later, STRS is interpreting legislation with new parameters and imposing regulations (such as a MANDATED successor) on its members. An April 16, 2020, article in the Mercury News titled, "They spent their lives teaching California children, now they say they are spending their retirement defending it!". Educators quoted in the article shared that the experience of working with CalSTRS "feels like fighting a dragon with a fork."*

In 2014 when I accepted a promotion, then CEO of CalSTRS, Mr. Jack Ehnes, clarified the INTENT of the legislation around creditable compensation. In a video posted on CalSTRS website he stated, "By itself, getting a salary raise even if it might be larger than everyone else gets is not spiking. People change jobs, they get higher duties, they complete a long career..., and sometimes those are accompanied by salary raises.... A raise is not spiking, unless it was done for the sole purpose of enhancing a pension."

My promotion at the end of my career, my contribution to the fund and my retirement is not the situation contemplated under the statute, nor the one described by Mr. Ehnes. I urge this Board to consider the ramifications of imposing an undefined term of "required successor" on all positions from which educators may retire. Your decision could have far-reaching effects on educators' work in the State of California, and it certainly will greatly impact my family. It is essential that educators, particularly "older ones" can be promoted to critical positions late in their careers, with "full privileges" of a defined benefit retirement. Qualified "older educators" should be encouraged to assume vital roles without differential treatment due to STRS proclamation of a "mandated successor" requirement. Their contributions to California students' education should not be dictated by their own retirement organization.

I respectfully request that you reject the Proposed Decision (OAH:2022030062) pursuant to Government Code section 1157. In the words heard every day on a Kindergarten playground, "It is just not FAIR! "