



## Appeals Committee

### Item Number 3 – Open Session

**Subject:** Consideration of the Proposed Decision: In the Matter of the Appeal Regarding the Final Compensation Calculation of: Dorothy Cole

**Presenter(s):** Jaismin Kaur / Jody Cozad

**Item Type:** Action

**Date & Time:** May 3, 2023 – 15 minutes

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**Attachment(s):** Attachment 1 – Proposed Decision

Attachment 2 – Statement from Dorothy Cole

**PowerPoint(s):** None

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#### **Item Purpose**

The purpose of this item is to consider the proposed decision issued in the above-referenced matter.

#### **Executive Summary**

Administrative Law Judge (ALJ) Deena R. Ghaly received evidence at an administrative hearing on January 31, 2023, for the above-referenced matter. On March 3, 2023, ALJ Ghaly delivered a proposed decision denying Respondent Dorothy Cole’s appeal to have longevity pay be included in calculating her retirement benefit (Attachment 1). Dr. Cole submitted a written statement in response to the proposed decision (Attachment 2).

Dr. Cole’s statement does not change staff’s recommendation that the Appeals Committee adopt the proposed decision with the technical or other minor changes identified below, as the arguments raised in the written statement are the same as those considered by the ALJ during the hearing.

#### **Background**

CalSTRS member Dorothy Cole was a school psychologist at the Lynwood Unified School District. Dr. Cole’s salary was established in the “Administrative and Special Services Salary Schedule” (“Salary Schedule”). Through the 2006-2007 school year, the Salary Schedule

provided longevity pay, equal to ten percent of the employee's base pay, to employees who met the threshold years of service with the District. However, beginning in the 2007-2008 school year, the District discontinued the longevity pay, except for employees like Dr. Cole who were already receiving it.

Dr. Cole continued to receive the longevity pay until the 2017-2018 school year. Around that time, the District removed psychologists from the Salary Schedule, Dr. Cole became a member of the Lynwood Teachers' Association ("LTA"), and Dr. Cole stopped receiving the longevity pay. Dr. Cole then entered into a settlement agreement with the District and the LTA. Pursuant to the agreement, effective May 1, 2017, the District agreed to pay Dr. Cole the longevity pay until her retirement, plus missed longevity payments. The District reported to CalSTRS a salary amount that included Dr. Cole's longevity pay.

Dr. Cole applied for service retirement on June 4, 2020, and CalSTRS approved her with a benefit effective date of July 1, 2020. She retired with 35.719 years of service credit.

In August 2020, CalSTRS' Compensation Review Unit found that the longevity pay should not have been included in calculating Dr. Cole's retirement benefit because it was not creditable compensation pursuant to Education Code section 22119.2. Dr. Cole subsequently requested an administrative hearing.

The issue at the hearing was whether the longevity pay should be included in calculating Dr. Cole's retirement benefit. First, CalSTRS argued that because other District psychologists who reached the threshold level of service for the longevity pay did not receive it beginning in the 2007-2008 school year, the longevity pay was not creditable compensation under Education Code section 22119.2, subdivision (a)(2) since it was not paid to the entire class of psychologists. ALJ Ghaly held that Dr. Cole was the only psychologist to qualify for the longevity pay, and had others qualified, they would have received it too.

Second, CalSTRS argued the longevity pay was not creditable compensation under Education Code section 22119.2, subdivision (a)(1) because Dr. Cole did not receive it in accordance with a publicly available written contractual agreement. Dr. Cole claimed it was sufficient that some of her employment contracts reflected the longevity pay. However, ALJ Ghaly credited CalSTRS' argument that the employment contract in effect at the time Dr. Cole retired must have reflected the longevity pay for it to be creditable compensation.

Third, CalSTRS argued the longevity pay was not creditable compensation under Education Code section 22119.2, subdivision (d)(8) because Dr. Cole received the pay as part of a compromise settlement agreement. Dr. Cole stated the agreement was not a compromise because her grievance against the District was resolved entirely in her favor. ALJ Ghaly discredited this argument, stating there were no documents establishing that the agreement resolved all outstanding issues in the grievance in Dr. Cole's favor.

ALJ Ghaly also held that Dr. Cole’s equitable estoppel argument must fail because the required elements were not met. Even if the elements were met, estoppel could not be applied to compel CalSTRS to take an action beyond its statutory authority.

Accordingly, ALJ Ghaly denied Dr. Cole’s appeal to include longevity pay in calculating her retirement benefit, and ordered CalSTRS to adjust Dr. Cole’s monthly benefit, and collect overpaid benefits.

### **Recommendation**

Staff disagrees with the proposed decision that Dr. Cole was the only psychologist to qualify for the longevity pay, and had others qualified, they would have received it too because even if an employee, including psychologists, reached the requisite years of service with the District after the 2006-2007 school year, the employee would not receive longevity pay. It also disagrees with the ALJ’s analysis under *Blaser v. State Teachers’ Retirement System* in that she misinterpreted the definition of “class of employees” in stating that Dr. Cole being the only psychologist to qualify for the longevity pay did not distinguish her from the class of psychologists.

However, staff agrees with the ultimate conclusion of the proposed decision that the longevity pay should not be included in calculating Dr. Cole’s retirement benefit because it does not meet the definition of creditable compensation. Thus, pursuant to Government Code section 11517, subdivision (c)(2)(C), staff recommends that the Appeals Committee adopt the proposed decision with the following technical or other minor changes:

1. On page 2, in the “Issue” statement, change “Lynwood School District” to “Lynwood Unified School District.”
2. On page 2, paragraph 1, line 2, change “education” to “educators and.”
3. On page 2, paragraph 1, line 4, change “the inception of retirement” to “their benefit effective date.”
4. On page 2, paragraph 1, line 5, add “final compensation that must be” before “creditable.”
5. On page 3, paragraph 5, line 8, change “on” to “effective” and add “and the LTA” after “District.”
6. On page 4, indented paragraph 3, line 2, add “pay” after “monthly.”
7. On page 5, paragraph 9, line 3, change “they” to “CalSTRS.”
8. On page 5, paragraph 9, indented paragraph 2, lines 5-6, change “agreement and was not paid to the entire class of psychologists” to “agreement...and was not paid to the entire class of psychologists.”
9. On page 6, paragraph 10, line 1, change “CRU determination” to “Decision Letter.”

10. On page 6, paragraph 11, line 1, change “determination” to “Determination.”
11. On page 7, paragraph 1, line 2, change “Board of Administration” to “Teachers’ Retirement Board.”
12. On page 7, paragraph 2, line 5, change “22201, subd. (a)” to “22250, subd. (b).”
13. On page 9, paragraph 7, line 4, change “22919.2” to “22119.2.”
14. On page 9, paragraph 7, line 7, change “22919.2” to “22112.5.”
15. On page 9, paragraph 7, line 9, change “after” to “beginning in.”
16. On page 11, paragraph 12, line 3, change “6” to “5.”

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Strategic Plan Linkage: Goal 1 (trusted stewards) to ensure a well-governed, financially sound trust fund

Board Policy Linkage: Section 7.C. [Guidelines for Consideration of Proposed Decisions in Appeals](#)

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