



## Appeals Committee

### Item Number 3a – Open Session

**Subject:** Consideration of the Proposed Decision: In the Matter of the Retirement Benefits of: Teresa Sordello

**Presenter(s):** James Lindsay / Ashley Lopez-Trotter

**Item Type:** Action

**Date & Time:** August 31, 2021 – 15 minutes

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

**PowerPoint(s):** None

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#### **PURPOSE**

Administrative Law Judge (ALJ) Danette C. Brown received evidence at an administrative hearing on June 8, 2021, for the above-referenced matter. The matter was submitted for decision on June 9, 2021. On July 8, 2021, ALJ Brown issued a Proposed Decision denying and dismissing Respondent Teresa Sordello’s appeal to cancel her 100% beneficiary option and instead elect a member-only benefit more than 30 days after the date of her initial benefit payment (Attachment 1).

#### **POSITIONS OF THE PARTIES**

Other than requesting the Appeals Committee meeting be held in person, Mrs. Sordello did not submit a written statement in response to the Proposed Decision. At the hearing, her position was that CalSTRS should grant her request to cancel her 100% beneficiary option and instead elect a member-only benefit more than 30 days after the date of her initial benefit payment.

Staff recommends that the Appeals Committee adopt the Proposed Decision with the technical or other minor changes identified below.

#### **DISCUSSION**

Mrs. Sordello became a member of CalSTRS on September 1, 1989. She first retired for service on February 23, 2009, selecting the “member-only benefit” in her retirement application, which provided her with the highest monthly lifetime retirement benefit possible, and no benefits to any

person upon her death. In July 2016, Mrs. Sordello reinstated to active member status and returned to work for another few years.

Before applying to retire for service a second time, Mrs. Sordello attended an individual counseling session, participated in a telephone benefit planning session, received several multiple retirement estimates, and reviewed various CalSTRS retirement publications and handouts that discussed option beneficiaries. In a “Multiple Retirement Estimate” dated June 20, 2016, Mrs. Sordello was informed that her member-only benefit would be \$2,084 per month, to be reduced by varying amounts if she were to elect any one of three different beneficiary options.

On March 2, 2019, CalSTRS received Mrs. Sordello’s second Service Retirement Application, wherein she selected the “Modified Benefit” box, naming her husband Ronald Sordello as her option beneficiary under the “100% Beneficiary Option.” Both she and her husband electronically signed the application, certifying they had read the Service Retirement Application Instructions and the booklet, “Your Retirement Guide 2019.”

On March 15, 2019, CalSTRS sent Mrs. Sordello a letter acknowledging receipt of her Service Retirement Application and informing her that any changes to her retirement must be made by “submitting the Service Retirement Application Change Request form...no later than 30 days from the date [her] first benefit payment is issued.” On April 20, 2019, CalSTRS sent Mrs. Sordello a Service Retirement Award letter confirming her election of the 100% beneficiary option and informing her that her first retirement payment would be issued on June 1, 2019.

Approximately five months later on September 16, 2019, CalSTRS received a letter from Mrs. Sordello requesting to change her service retirement election from the 100% beneficiary option to an unmodified, member-only benefit. Since the change request was made more than 30 days after the date her initial benefit payment was issued and not on the requisite form as required by Education Code section 24204, subdivision (b), CalSTRS issued a Decision letter denying Mrs. Sordello’s request. Mrs. Sordello timely requested an Executive Review citing various mistakes and reasons. The request was denied as it did not contain any additional information or legal basis for review as required by law, and she timely requested an administrative hearing.

At the hearing, CalSTRS staff member Ashley Lopez-Trotter testified as to the various option beneficiary elections available to members in 2019, and how Mrs. Sordello made several affirmative selections in her Service Retirement Application in support of electing her husband as an option beneficiary. Ms. Lopez-Trotter also testified that the publications Mrs. Sordello had certified she read explained the member-only versus modified benefits and that the 30-day window to change her benefit was triggered on the initial benefit payment date. Mrs. Sordello was reminded of this deadline in the March 15, 2019 letter from CalSTRS, and the April 20, 2019, Service Retirement Award letter also explained how her monthly benefit was calculated. Not only did CalSTRS never receive an application change request form from Mrs. Sordello, she did not make her first inquiry about changing her option election until September 2019, more than two months after the 30-day statutory deadline.

Mr. and Mrs. Sordello testified at hearing that Mrs. Sordello accidentally selected the modified benefit box on her Service Retirement Application, and thought she would receive an unmodified, member-only benefit. Mrs. Sordello asserted that there is no time frame to make an election change, that 30 days is “so limiting” to question “what is happening,” and no one at CalSTRS explained the election to her. Mr. Sordello testified that they missed the 30-day deadline because of the delay by Mrs. Sordello’s employer in reporting her final earnings to CalSTRS. However, Ms. Lopez-Trotter testified that employer reporting does not impact option selection and any benefit adjustments Mrs. Sordello had as a result of reporting were nominal. Although Mr. Sordello argued that they made numerous calls to CalSTRS and CalSTRS failed to properly inform Mrs. Sordello and confirm her election options, ALJ Brown noted that he did not acknowledge CalSTRS’ written communications, repeated reminders, and multiple service retirement award letters, and that the last time Mr. Sordello called CalSTRS was in April 2018 regarding the multiple retirement estimates, and not regarding option elections.

Mrs. Sordello contended that CalSTRS should grant her change request because she made a mistake in choosing the modified benefit; CalSTRS failed to properly advise her of the various option elections and the 30-day deadline to make changes; and there were vague communications from CalSTRS. However, ALJ Brown found that the evidence established that Mrs. Sordello failed to submit the change request in accordance with Education Code section 24204, subdivision (b) in that Mrs. Sordello neither submitted the requisite form to CalSTRS nor within 30 days from the date of her initial benefit payment. ALJ Brown considered whether Mrs. Sordello’s mistake constituted a correctable error or omission under Education Code section 22308 and determined that it did not. The evidence established that Mrs. Sordello had multiple opportunities to correct her benefit selection within the 30-day deadline; she and Mr. Sordello were properly advised of the various benefit options and the change request deadline; and the communications with CalSTRS were not vague. Since Mrs. Sordello missed the 30-day deadline by more than two months, allowing her to freely change her option election now would ignore CalSTRS’ fiduciary duty to the fund as a whole. Accordingly, ALJ Brown found that Mrs. Sordello failed to meet her burden of proof, and denied and dismissed her request in its entirety.

### **RECOMMENDATIONS**

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 5, paragraph 7, line 9, change “receive” to “recent.”
2. On page 9, paragraph 16, line 4, change “June 30, 2019” to “March 15, 2019.”
3. On page 11, paragraph 22, line 6, change “Rasinger” to “Riesinger.”
4. On page 12, paragraph 25, line 4, change “Service Award Letter” to “Service Retirement Award Letter.”
5. On page 12, paragraph 25, line 6, change “service award adjustment letters” to “service retirement award adjustment letters.”
6. On page 12, paragraph 24, line 6, change “use” to “us.”

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

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

**TERESA SORDELLO, Respondent**

**Agency Case No. STRS20200013**

**OAH No. 2021030041**

**PROPOSED DECISION**

Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 8, 2021, from Sacramento, California.

Malcolm Brudigam, Attorney at Law, Pillsbury Winthrop Shaw Pittman LLP, represented complainant William Perez, Chief Benefits Officer, California State Teachers' Retirement System (CalSTRS).

Teresa Sordello (respondent) represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on June 9, 2021.

## **FACTUAL FINDINGS**

### **Jurisdiction and Background**

1. Respondent became a member of CalSTRS on September 1, 1989, as a teacher for the Tracy Joint Unified School District. Respondent retired for service for the first time on February 23, 2009, selecting the "Member-Only Benefit," which provided respondent with a monthly lifetime retirement benefit. According to CalSTRS's "Your Retirement Guide 2019," the Member-Only Benefit is the highest monthly benefit possible and continues throughout the member's lifetime. In July 2016, after seven years of retirement, respondent reinstated to active member status and returned to work.

2. On June 28, 2016, respondent signed and dated an Individual Counseling Session Summary, acknowledging she had met with a CalSTRS benefits counselor and discussed various topics such as defined benefit formulas, one-time death benefit, disability and survivor benefits, beneficiary options, and service retirement estimates. She also acknowledged receiving the following handouts: "My Next Steps;" "My Review Topics;" "Member Handbook;" and "Reinstatement After Retirement." Before filing for retirement a second time in 2019, respondent attended an individual counseling session and telephone benefit planning session, received multiple retirement estimates from CalSTRS, and reviewed CalSTRS retirement publications, including CalSTRS's "Your Retirement Guide 2019."

3. In a written "Multiple Retirement Estimate" dated June 20, 2016, CalSTRS informed respondent that her total unmodified allowance would be \$2,084 per month, based on various assumptions. Respondent had the option of choosing three different beneficiary options, as follows:

100% Beneficiary Option: This provides your option beneficiary with 100 percent of the amount you were receiving. If your option beneficiary dies before you, your benefit will rise to the Member-Only benefit.

75% Beneficiary Option: This provides your option beneficiary with 75 percent of the amount you were receiving. If your option beneficiary dies before you, your benefit will rise to the Member-Only benefit.

50% Beneficiary Option: This provides your option beneficiary with 50 percent of the amount you were receiving. If your option beneficiary dies before you, your benefit will rise to the Member-Only benefit.

If respondent selected the Member-Only benefit, her estimated monthly allowance would be \$2,084. If she elected a beneficiary option, she was estimated to receive a monthly allowance of: \$1,825 under the 100% Beneficiary Option; \$1,912 under the 75% Beneficiary Option; or, \$1,973 under the 50% Beneficiary Option. Under each of the beneficiary plans, her beneficiary would receive the same amount upon respondent's death.

### **Respondent's Retirement Benefit Election**

4. On March 2, 2019, CalSTRS received respondent's Service Retirement Application, wherein she provided May 25, 2019 as her retirement date. Respondent selected the "Modified Benefit" box, naming her husband as her option beneficiary under the "100% Beneficiary Option." On page eight of the application, respondent checked the box "I am married or registered as a domestic partner and both our

signatures are below." Respondent and her husband provided their electronic signatures on the application, certifying that they had read the Service Retirement Application Instructions and the booklet, "Your Retirement Guide 2019."

5. CalSTRS sent respondent a letter dated March 15, 2019, acknowledging receipt of her Service Retirement Application and informing her that she was going to receive a Service Retirement Award Letter four weeks before her benefit effective date explaining how her monthly benefit was calculated. The letter also informed respondent that the award letter "may not reflect your final benefit amount," as CalSTRS "often receive[s] additional earnings information from employers up to six months after a member's retirement date." In that case, CalSTRS adjusts payments retroactively to a member's retirement date. The letter further stated:

If you need to make changes to your retirement, you can do so by submitting the Service Retirement Application Change Request form available at CalSTRS.com. CalSTRS must receive the form no later than 30 days from the date your first benefit payment is issued.

6. CalSTRS sent respondent a Service Retirement Award Letter dated April 20, 2019, informing her that her first retirement payment of \$428.58 for the period May 25 to May 31, 2019, would be issued on June 1, 2019. CalSTRS also confirmed her election of the 100% Beneficiary Option, which calculated to a monthly benefit of \$1,896.36.

7. On September 16, 2019, CalSTRS received respondent's letter requesting to change her service retirement election to an Unmodified Benefit, also known as the Member-Only Benefit, and to remove her 100% Beneficiary Option. The request was

made more than 30 days after the date her initial benefit payment was issued. At the time of her letter, respondent had already received three monthly benefit payments. On October 9, 2019, CalSTRS issued its Decision letter denying respondent's request pursuant to Education Code section 24204, subdivision (b), which allows a member to change her retirement application:

[A]s long as the form provided by the system is received in the system's headquarters office no later than 30 days from the date the member's initial benefit payment for the member's most receive retirement under the Defined Benefit Program is paid by the system.

As respondent's initial benefit payment of \$443.41 was issued on May 31, 2019, the last day CalSTRS could receive her change request was June 30, 2019. Respondent did not submit a change request form by the deadline, or anytime thereafter.

CalSTRS further advised respondent that if she disagreed with the Decision, she could request an Executive Review within 45 calendar days from the date of the Decision letter. On November 19, 2019, respondent timely requested an Executive Review of CalSTRS's Decision, citing the following reasons: (1) she missed the time frame to correct her mistake because she was awaiting the final numbers to her "complex multi-retirement to be entered into the system;" (2) her husband received an explanation from CalSTRS regarding the final calculation "past the 30 day allowance;" (3) she was told to wait until August 2019 "to receive final numbers from the district;" (4) both estimates she requested and received from CalSTRS "were done as **unmodified**" (bold and underlined in original), and "I had inadvertently checked my 100% beneficiary box; and (5) when she saw the beneficiary option on the application,



she thought she would be getting a 100 percent benefit “and not dividing it with my husband,” and “I made a mistake.”

8. By letter dated January 27, 2020, CalSTRS informed respondent that it was denying her request for an Executive Review because the request did not satisfy California Code of Regulations, title 5, section 27101, subdivision (c), which states:

If the applicant’s request for review by a Program Executive (“Executive Review”) does not contain additional information or legal basis for review beyond the facts and/or documentary evidence previously provided to or obtained by the program area and merely repeats information previously provided, the applicant’s request for Executive Review by the Program Executive shall be denied and the applicant may request an administrative hearing.

CalSTRS upheld its Decision and informed respondent that she had a right to an administrative hearing, which she requested.

9. On February 9, 2021, complainant filed the Statement of Issues against respondent in his official capacity. The Statement of Issues alleged the following causes for denial of respondent’s appeal of CalSTRS’s determination: (1) respondent failed to timely request a change to her retirement application on a form prescribed by CalSTRS; and (2) there are no correctable errors or omissions under Education Code section 22308. Respondent timely filed a Notice of Defense. The matter was set for an evidentiary hearing before an administrative law judge of OAH, pursuant to Government Code section 11500 et seq.

## **Testimony of CalSTRS's Service Retirement Appeals Specialist**

10. Ashley Lopez-Trotter, a CalSTRS Service Retirement Appeals Specialist, summarized CalSTRS's internal appeals process, respondent's service retirement applications, her correspondence with respondent, and respondent's executive review request. CalSTRS has a traditional pension program, known as a defined benefit program, where members receive monthly benefits based on a three-factor formula established by law. The monthly benefit is based upon the member's number of years of service credit, multiplied by an age factor, multiplied by the member's final compensation, which is their highest salary attained during employment. When a member retires, she must submit via online or through the mail, a service retirement application on a CalSTRS form.

11. Respondent submitted two service retirement applications in 2009 and 2019, respectively. Respondent's second service retirement application is the only one at issue in this case. The law governing CalSTRS retirement allows for members to reinstate and return back to work. Such members are known as "multiple retirees." Ms. Lopez-Trotter stated that "it is fairly common" for retired members to return to work, and that CalSTRS has "a dedicated team that specifically handles that workload because of the volume."

12. Ms. Lopez-Trotter explained the various option elections available to members in 2019, as set forth above. The Member-Only benefit is the highest benefit a member can receive. Members can choose to receive a lesser benefit amount by choosing a modified beneficiary option. Respondent chose the 100% Beneficiary Option on her 2019 service retirement application. It provides the lowest benefit to respondent during her lifetime, but provides the largest benefit to her husband, whom she elected as her beneficiary. While members may change their option election

during "a 30-day window," there are "certain life events" that would allow a member to change her option election outside of that 30-day window, such as the death of a beneficiary or divorce. Here, respondent did not identify a life event that would have allowed her to change her option election outside of the 30-day window.

13. Ms. Lopez-Trotter confirmed that CalSTRS received respondent's second service retirement application on March 2, 2019. In Section 3.1, page two, under the heading "Defined Benefit Election," respondent made the following elections, indicated by the darkened boxes:

I have read the instructions that describe the **Defined Benefit** options available, and I elect the (choose only one):

Member-Only Benefit (Skip to section 632)

Modified Benefit. If you check this box, choose the one below:

[1] ... [1]

**I am electing an option at retirement.** (Your option beneficiary must be a living person or persons, or a special needs trust, and cannot be another type of trust, estate, charity or other entity. This option is not the one-time death benefit. Choose one and complete the beneficiary information section below:

100% Beneficiary Option

75% Beneficiary Option

50% Beneficiary Option

Compound Option

(Bold in original.)

14. Ms. Lopez-Trotter pointed out that there are additional areas in the service retirement application, specifically on pages one and eight, where respondent certified that she read the service retirement application instructions and the booklet, "Your Retirement Guide," and that she was applying for service retirement. Respondent and her husband electronically signed respondent's service retirement application, certifying under penalty of perjury that the information in the application was true and correct.

15. CalSTRS's "Your Retirement Guide 2019" explains the Member-Only versus Modified Benefit. Ms. Lopez-Trotter noted the guide addresses the benefits options "in a variety of places," including on pages 6, 15, 16, and 30.

16. Ms. Lopez-Trotter explained that "the 30-day window had not begun counting down yet," until it was "triggered on May 31, 2019 on initial payment." The "ultimate deadline was June 30, 2019." Respondent was reminded of this deadline in CalSTRS June 30, 2019 letter. However, CalSTRS did not receive an application change request from respondent at any time.

17. Ms. Lopez-Trotter also noted that CalSTRS's Service Retirement Award Letter, dated April 20, 2019, set forth respondent's monthly retirement benefit, and how it was calculated. Thus, respondent had two months from the date of the service retirement award letter to make a change request.

18. CalSTRS's records indicated that respondent attended an in-person benefits planning session in 2016, and also received multiple retirement estimates based on multiple retirement and "normal" retirement. One of the estimates was based on respondent's service accrued prior to her first retirement, and the second estimate was based on respondent's reinstatement to service retirement. The estimates were then added to "come up with a monthly total."

19. As noted previously, CalSTRS never received an application change request form from respondent. Respondent did not make her first inquiry about cancelling her option election until September 2019, missing the deadline by more than two months. Ms. Lopez-Trotter explained that "it is important that members cannot freely change their options even after they made a mistake." The election is "locked in because CalSTRS needs certainty so that it can pay all members their benefits." If members were permitted to change their option election at-will, "CalSTRS will be the one liable for paying those benefits." Ms. Lopez-Trotter emphasized that CalSTRS has a fiduciary duty to the retirement fund and all retirees.

20. Ms. Lopez-Trotter drafted CalSTRS's January 27, 2020 Determination Letter, denying respondent's request for an Executive Review. Ms. Lopez-Trotter explained that respondent's request was denied because "a valid executive review must contain new information or legal basis for [the member's] request." (Cal. Code Regs., tit. 5, § 27101, subd. (c).) Respondent presented no new information or legal basis. Moreover, CalSTRS determined there was no error or omission for CalSTRS to correct under Education Code section 22308.

## **Testimony of Respondent and Husband Ronald Sordello**

21. Respondent admitted that she “accidentally selected the Modified Benefit box” on her service retirement application. By checking that box, respondent mistakenly understood that she would be receiving “100% of her modified benefit,” meaning that she thought she would be receiving an unmodified benefit amount. She asserted that “multiple employees calculated different benefit [amounts],” and that the benefits counselor was “unfamiliar with multiple retirement calculations.” Nevertheless, she stated, “we calculated I would receive about \$300 per month more.” After receiving her monthly benefits, she realized that she had marked the wrong box. Despite the statutory 30-day deadline and CalSTRS’s multiple reminders, respondent asserted “there is no time frame” to make an election change, arguing it is “so limiting” to have “30 days from the date of the first payment to question what is happening.” Furthermore, “[I] pick up the phone and no one can tell you what is happening ... the vagueness there is just incredible.” Ronald Sordello, respondent’s husband, also made “numerous calls to CalSTRS.”

22. In rebuttal, Ms. Lopez-Trotter explained that “our policy requires that every time a staff member interacts with a member, that information is captured via notes on the member’s account.” She confirmed that Mr. Sordello last called CalSTRS in mid-April 2018 regarding the multiple retirement estimates provided to respondent in June 2016 and April 2018. Mr. Sordello conceded he spoke with CalSTRS employee, Scott Rasinger, who provided “a lot of answers calculating the different retirement scenarios” and “was the one person I spoke to that was able to explain the difference of multiple retirees.” Mr. Sordello was not confident that other CalSTRS employees were familiar with calculating these numbers, and so he calculated the numbers to his

satisfaction. Based on Mr. Sordello's estimate of what monthly amount she would receive, respondent filed her second service retirement application in March 2019.

23. Mr. Sordello asserted that he is "well aware" of the "[Member] Handbook," and is "pretty aware of the retirement system and how things work." Despite such awareness, like respondent, he admitted that they "made a mistake in checking the box." He asserted that the 30-day deadline passed because "of the limitations in the system," namely the delay by respondent's employer to report her final earnings information to CalSTRS. However, Ms. Lopez-Trotter rebutted that "none of the updated reporting would affect [respondent's] option selection," and that CalSTRS provided respondent with adjusted service retirement award letters in July, August, and September 2019, indicating that the adjustments were "so nominal."

24. Mr. Sordello further asserted that respondent's retirement calculations were "pretty complicated." He blamed CalSTRS for failing to inform respondent of her multiple retirement calculation, stating that "if we had been informed correctly in a shorter time frame, we could have picked [up the mistake]." He further blamed CalSTRS for failing to confirm with respondent her election options. If they had "communicated this to use, we could have figured it out."

25. Mr. Sordello did not acknowledge CalSTRS's many communications providing multiple retirement estimates to respondent in June 2016 and April 2018, the repeated reminders in CalSTRS's letters about the 30-day window to submit a change request, CalSTRS's April 20, 2019 Service Award Letter laying out respondent's first retirement payment, confirmation of her 100% Beneficiary Option, and her resulting monthly benefit, nor CalSTRS's service award adjustment letters sent to respondent in July, August, and September 2019.

## **Parties' Contentions and Analysis**

26. Respondent contends that CalSTRS should grant her request to change her option election in her service retirement application because: (1) she made a mistake in choosing the Modified Benefit; (2) CalSTRS failed to properly advise her about the various option elections and the 30-day deadline within which to change or cancel her application; and (3) there were "vague communications" between CalSTRS and respondent and her husband. CalSTRS contends that it properly denied respondent's request to change her option election in her service retirement application, and that respondent failed to meet her burden.

27. The evidence established that respondent failed to submit a change to her option election in her service retirement application in accordance with Education Code section 24204, subdivision (b). That section allows a member to change or cancel her retirement application on "a form provided by the system" and is received by CalSTRS "no later than 30 days from the date of the member's initial benefit payment." The deadline for respondent to submit the form was June 30, 2019. CalSTRS gave respondent three-months' advance notice to make the change to her option election. Respondent never submitted the required form requesting a change or cancellation to her service retirement application.

28. After receiving three monthly benefit payments, respondent realized that she made a mistake in selecting the Modified Benefit Option and sought to make the change to a Member-Only Benefit to receive the maximum retirement benefit allowed. The issue is whether respondent's mistake in choosing the wrong election option is an error or omission which is correctable under Education Code section 22308.



29. Respondent had multiple opportunities to correct her benefit selection prior to the 30-day deadline. Furthermore, the evidence established that respondent and Mr. Sordello were properly advised of the various benefit options through CalSTRS's multiple retirement estimates, a telephone benefit planning session, and their receipt of communications and publications from CalSTRS describing the differences between Member-Only and Modified Benefits, and retirement change requests needing to be made within 30 days of the initial benefit payment. There was no evidence that these communications between respondent, Mr. Sordello, and CalSTRS were vague. Respondent's assertions in this regard are unpersuasive.

30. Ms. Lopez-Trotter persuasively testified that respondent missed the 30-day deadline by more than two months. If CalSTRS allowed respondent to freely change her option election, CalSTRS would be ignoring its fiduciary duty to the retirement fund and all retirees. The evidence did not establish that respondent made a correctable error or omission pursuant to Education Code section 22308.

31. Considering all the evidence presented, respondent failed to meet her burden of proving that she is entitled to cancel her 100% Beneficiary Option and elect a Member-Only Benefit more than 30 days after the date of her initial benefit payment pursuant to Education Code section 24204, subdivision (b), CalSTRS's Member Handbook, and the 2019 version of "Your Retirement Guide." For all of the above reasons, CalSTRS's October 9, 2019 Decision, and January 27, 2020 Determination should be sustained, and respondent's appeal dismissed.

## LEGAL CONCLUSIONS

### Burden of Proof and Applicable Law

1. This matter arises under the California Teachers' Retirement Law, Education Code section 22000 et seq., which governs the State Teachers' Retirement Plan (Plan) and CalSTRS. The Teachers' Retirement Board (Board) is responsible for administering CalSTRS and the Plan. (Ed. Code § 22201).

2. Pursuant to Education Code section 22219, the Board may hold a hearing "for the purpose of determining any question presented to it involving any right, benefit, or obligation of a person under this part [the Teachers' Retirement Law]." The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, relating to administrative adjudication.

3. The party asserting the affirmative in an administrative action has the burden of going forward and the burden of persuasion by the preponderance of the evidence. (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) An applicant for retirement benefits has the burden of proof to establish a right to the entitlement, absent a statutory provision to the contrary. (*Greatorex v. Bd. of Administration* (1979) 91 Cal.App.3d 54, 57.) Thus, respondent has the burden of proof to establish that she is entitled to change her service retirement election from a Modified Benefit to a Member Only Benefit beyond the statutory 30 days after the date her initial benefit payment was issued.

4. Education Code section 22308 provides, in pertinent part:

(a) Subject to subdivision (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any member or beneficiary of the Defined Benefit Program ... if all of the following facts exist:

(1) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(2) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

(b) Failure by a member, participant or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

5. Education Code section 24204, subdivision (b), states in pertinent part:

A member who files an application for service retirement may change or cancel his or her retirement application, as long as the form provided by the system is received in the system's headquarters office no later than 30 days from the date the member's initial benefit payment for the member's most recent retirement under the Defined Benefit Program is paid by the system.

6. As set forth in the Factual Findings 26 through 31, respondent failed to meet her burden of proving that CalSTRS should correct errors or omissions of respondent and/or CalSTRS. Additionally, respondent failed to demonstrate that any error made was the result of mistake, inadvertence, surprise, or excusable neglect correctable under Education Code section 22308.

## **ORDER**

1. The request of respondent Teresa Sordello to cancel her 100% Beneficiary Option and elect a Member-Only Benefit more than 30 days after the date of her initial benefit payment is DENIED.

2. The appeal by respondent Teresa Sordello is DISMISSED.

DATE: July 8, 2021

*Danette C. Brown*  
Danette C. Brown (Jul 8, 2021 10:24 PDT)

DANETTE C. BROWN

Administrative Law Judge

Office of Administrative Hearings