

BEFORE THE  
TEACHERS' RETIREMENT BOARD  
OF THE STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

Walnut Creek School District,  
  
Respondent.

PRECEDENTIAL DECISION  
Precedential Decision No.19-02

Effective: December 5, 2019

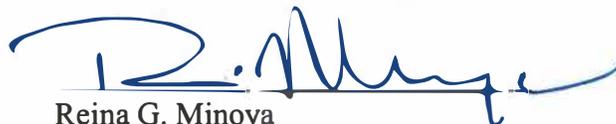
Case No. STRS20160011  
OAH No. 2018020144

On December 5, 2019, the Appeals Committee of the Teachers' Retirement Board, acting pursuant to Government Code section 11425.60 and Section 800 D of the Teachers' Retirement Board Policy Manual on Designating Precedential Decisions, designated the entirety of *In the Matter of the Statement of Issues Against: Walnut Creek School District* as a Precedential Decision.

The attached copy of the Notice of Decision and Order is a true and correct copy thereof as adopted and designated as precedential by the Appeals Committee.

Once a decision or part of a decision has been designated as a Precedential Decision, it is binding in future administrative adjudications unless the Appeals Committee has rescinded the designation. The Precedential Decision shall be added to an index containing all of CalSTRS' Precedential Decisions and will be publicized annually in the California Regulatory Notice Registry. The designation of a decision or part of a decision, or failure to designate a decision or part of a decision, as a precedential decision is not subject to judicial review.

Dated: December 12, 2019



Reina G. Minoya  
Assistant General Counsel  
Office of the General Counsel  
California State Teachers' Retirement System

BEFORE THE  
TEACHERS' RETIREMENT BOARD  
OF THE STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

Walnut Creek School District

Respondent.

Case No. STRS20160011

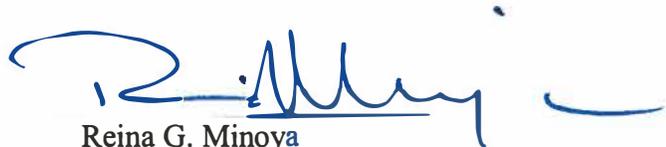
OAH No. 2018020144

**NOTICE OF DECISION AND ORDER**

Pursuant to Government Code section 11517, subdivision (c)(2)(C), the attached proposed decision of the administrative law judge was adopted on March 29, 2019 by the Appeals Committee of the Teachers' Retirement Board of the State of California as its decision in the above-entitled matter. The Appeals Committee adopted the proposed decision with the following technical or other minor change, which do not affect the factual or legal basis of the proposed decision:

1. On page 3, paragraph 10, line 4, change "systematic" to "systemic."

Dated: April 2, 2019



Reina G. Minoya  
Assistant General Counsel  
Office of the General Counsel  
California State Teachers' Retirement System

BEFORE THE  
TEACHERS' RETIREMENT BOARD  
STATE OF CALIFORNIA

CALSTRS LEGAL

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In the Matter of the Statement of Issues Against:

WALNUT CREEK SCHOOL DISTRICT,

Respondent.

Case No. STRS20160011

OAH No. 2018020144

**PROPOSED DECISION**

Administrative Law Judge Melissa G. Crowell, Office of Administrative Hearings, State of California, heard this matter on November 1, 2018, in Oakland, California.

Natalie P. Vance, Attorney at Law, Klinedinst PC, represented complainant Larry Jensen, Chief Auditor, California State Teachers' Retirement System.

Chesley D. Quaide, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented respondent Walnut Creek School District.

Evidence was received on November 1, 2018. The record was left open for the parties to submit written closing argument. Complainant's post-hearing brief was marked as Exhibit 8; respondent's post-hearing brief was marked as Exhibit R-29; complainant's post-hearing reply brief was marked as Exhibit 9; and, respondent's post-hearing reply brief was marked as Exhibit R-30. The record was closed and the matter was submitted for decision on December 20, 2018.

**FACTUAL FINDINGS**

1. This proceeding arises under the Teachers' Retirement Law. (Ed. Code, § 22000 et seq.) Respondent Walnut Creek School District (district) operates five elementary schools and one middle school. It is an employing agency for which creditable service is performed subject to coverage by the California State Teachers' Retirement Plan. (Ed. Code, § 22131.)

2. In March 2014, the Governing Board of the district approved a contract agreement for the 2013-2014 and 2014-2015 school years with the Walnut Creek Teachers'

Association. The contract agreement included a five percent, one-time off-salary schedule payment to certificated employees of the district based on their 2013-2014 salary. The district reports to CalSTRS through the Contra Costa County Office of Education (CCCOE). CCCOE reported the five-percent payment to CalSTRS in the employees' Defined Benefit (DB) accounts as special compensation.

3. In 2015, the Audit Division of the California State Teachers' Retirement System (CalSTRS) conducted an audit of the district for the period of July 1, 2013 through June 30, 2015.<sup>1</sup> The purpose of the audit was to determine if the district had complied with the Teachers' Retirement Law regarding creditable compensation reported to CalSTRS, and ultimately to protect the Teachers' Retirement Fund. In its draft and final audit reports, CalSTRS determined in Finding 2, the relevant finding to this proceeding, that the district should have reported the five-percent payment to the Defined Benefit Supplement (DBS) accounts of the sample employees.<sup>2</sup>

4. On January 25, 2018 complainant Larry Jensen issued a statement of issues in his capacity as Chief Auditor of the Audit Services Division of CalSTRS, asserting that the district had incorrectly reported the compensation to the DB program, and instead should have reported it to the DBS Program as required by Education Code section 22905, subdivision (b)(3). District filed a notice of defense, and this hearing followed.

#### *Audit Reports*

5. CalSTRS' Audit Services Division conducted an audit of membership, earnings, and other information reported by district to CalSTRS, and prepared a Draft Audit Report dated November 16, 2015. The audit was performed in accordance with standardized school district payroll audit procedures developed by CalSTRS. The conclusions contained in the Draft Audit Report were based on a comparison of district's membership and payroll reporting records and procedures, and the Teachers' Retirement Law criteria as they existed during the audit period.

6. CalSTRS sent the Draft Audit Report to the district and the impacted sample members. In the cover letter enclosing the Draft Audit Report, CalSTRS requested the district prepare a written response to the findings contained in the Draft Audit Report. After evaluating the written response, CalSTRS would then determine whether to revise or change the findings before finalizing the Draft Audit Report.

7. The District submitted its response to CalSTRS on December 15, 2015, in which it disagreed with Audit Finding 2. In reporting the one-time, off-salary schedule payment as creditable compensation toward the employees' DB accounts, the district relied

<sup>1</sup> The auditing authority is set forth in Education Code section 22206.

<sup>2</sup> The sample included both retired and active members. No member has appealed.

upon employer resources published by CalSTRS, as well as consultation with CCCOE and with CalSTRS, as further discussed below.

8. CalSTRS reviewed the materials submitted by district, and issued its Final Audit Report on January 12, 2016. CalSTRS maintained that the one-time off salary schedule payment should have been reported to the DBS Program pursuant to Education Code section 22905, subdivision (b)(3).

9. The audit determined that the erroneous reporting had the following impact on the Teachers' Retirement Fund:

The erroneously reported 2013-14 one-time off-schedule payments caused the annual compensation earnable for the five active members to be over reported to the DB Program, and caused each member's DBS account to be understated. Correct reporting will redirect approximately \$5,555 in contributions to the DBS accounts of the five active members.

This reporting error caused an overpayment of retirement benefits to the five sample retired members, and caused each member's DBS account to be understated. The five retired members monthly retirement allowance[s] are being overpaid by a total of approximately \$1,102. Future benefit overpayments could total approximately \$132,250 over 10 years. Correct reporting will redirect approximately \$3,801 in contributions to the DBS accounts of the five retired members.

10. CalSTRS directed the district to take corrective action regarding its reporting of the payments within 60 days. With respect to the sampled members, district was directed to "reverse out" the incorrectly reported earnings, and to work with the CCCOE to re-report these earnings directly to the DBS Program. As this was a "systematic issue," the district was directed to re-report "for all certificated employees who received this payment."

11. For the members who had retired, CalSTRS recalculated each member's monthly benefit using the correct final compensation amount, and reduced the monthly pension benefit that was being paid to the member in accordance with its audit finding. CalSTRS also began to deduct from the reduced benefit in order to collect the overpayment.

12. Staff Management Auditor Specialist Sharon Highsmith reviewed the draft audit to ensure it was accurate, and in compliance with the Teachers' Retirement Law. As explained by Highsmith, the DB account is where employers report salary, and is used to calculate a member's retirement benefit. The DBS account is where the employer reports additional income the employee has earned. At the time of retirement, the employee can take the money in the DBS account in either a lump sum or in the form of an annuity.

Because the off-salary schedule payment was made one time only, Highsmith concluded that Education Code section 22905, subdivision (b)(3), required it to be reported to the DBS program not the DB Program. Highsmith considered the materials and arguments submitted by district, but they did not alter her opinion that based on the Teachers' Retirement Law the off salary schedule payment was required to be reported to the DBS Program. The audit determination was based on Education Code section 22905, subdivision (b)(3). The audit determination was not based on regulations adopted by CalSTRS effective January 1, 2015,<sup>3</sup> or materials published by CalSTRS for employers.

#### *District's Evidence*

13. Kevin Collins was the district's Chief Business Official from August 2011 to June 2016. Collins was involved in negotiating and developing the contract with the Walnut Creek Teachers' Association, and in determining the correct way to report the one-time payment to CalSTRS. It was important to Collins that he accurately report to the union how the one-time payment would be reported to CalSTRS. Collins also wanted to ensure district retirees did not have their pension benefit later reduced by CalSTRS because their final compensation had been erroneously calculated.

Collins had the initial "gut sense" that the payment should be reported to the DBS account, but to be sure he sought guidance from a variety of sources. The head of personnel services at CCCOE, Felicia Hill, advised him that based on her experience it should be reported to the DB account. He requested that she seek confirmation from CalSTRS. Hill corresponded with Michael Charles Higgins of the Employer Services Division of CalSTRS. Higgins advised Hill that that the one-time payment should be reported to the DB Program. Collins also consulted with an attorney for district, who gave him the same advice based on a review of the CalSTRS Employers Creditable Compensation Guide (Jan. 2006) (Guide). All the sources Collins believed he could count on – the district's attorney, CCCOE and CalSTRS - "pointed to the same answer," the DB Program.

14. Higgins testified at hearing. Higgins has been a CalSTRS employee in the Employer Services Division for 18 years. He has been an Associate Pension Program Analyst for eight to ten years.<sup>4</sup>

15. Higgins explained that the Guide was published by the Employer Services Division of CalSTRS as a resource for its employees as well as school district employers.

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<sup>3</sup> Effective January 1, 2015, CalSTRS adopted a series of regulations defining salary (Cal. Code Regs., tit. 5, § 27400), remuneration that is paid in addition to salary (Cal. Code Regs., tit. 5, § 27401), and compensation that is paid a limited number of times (Cal. Code Regs., tit. 5, § 27602).

<sup>4</sup> Higgins is currently assigned to work on an information technology project in the division.

Section 3 of the Guide is a “Reporting Matrix Using Examples.” The Forward to the Guide contains a disclaimer with respect to the reporting examples: “The Reporting Matrix is intended to be a ready source of information but is not a legal document or substitute for the law. If differences appear between this document and the law, the law must take precedence.”

16. Higgins understood from Hill that the payment was a one-time bonus that was an off salary schedule payment. Higgins consulted the Guide, which defined an off schedule salary payment as a “one time payment made to a class of employees in lieu of increasing their base salary.” The Reporting Matrix section of the Guide contains a compensation scenario of an off salary schedule payment that is a bonus. The Guide provides that the compensation is reportable to the DB program. Based on this, Higgins advised Hill to report the compensation to the DB program.

17. Carol Lynn Hoy and Melody Lynne Wine were teachers who retired from the district in June 2015. Each of them engaged in substantial planning before making the decision to retire, including attending counseling sessions and obtaining benefit counseling estimates. In making the decision to retire, both of them relied on CalSTRS estimates, which included the five percent off salary schedule payment in the determination of their highest final compensation, and therefore the calculation of their pension benefit.

18. Hoy was “horrified” when she was notified of the audit determination that not only would her pension be reduced by \$244 per month, but she had been overpaid \$2,085.24, for which CalSTRS would deduct five percent of the monthly benefit until the overpayment was repaid in full. Wine had been overpaid approximately \$1,700, and her pension was reduced by \$213 per month. Had either of them known this would happen, they would not have retired when they did.

19. Wine and Hoy were advised on each retirement estimate they received that their monthly benefit was calculated “using assumptions and data provided by your employer, which are subject to change. It is your responsibility to ensure that the information is correct. This estimate is not binding upon you or CalSTRS and does not create any rights to benefits. If a conflict arises between the information provided by CalSTRS and the law, the law takes precedence.”

## LEGAL CONCLUSIONS

1. Evidence Code section 500 provides that “[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” “As in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including . . . the burden of persuasion by a preponderance of the evidence . . . .” (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044; Evid. Code, § 500.)

2. Education Code section 22905 governs how member and employer contributions on a member's compensation are to be credited. At all times relevant to this proceeding, Education Code section 22905 provided in relevant part:

(b) Except as provided in subdivision (f), member and employer contributions, exclusive of contributions pursuant to Section 22951, on a member's compensation under the following circumstances shall be credited to the member's Defined Benefit Supplement Account:

¶ . . . ¶

(3) Compensation that is paid for a limited number of times as specified by law, a collective bargaining agreement, or an employee agreement.

3. The District authorized a five percent one-time off-salary schedule payment for its teachers for the 2013-2014 school year pursuant to a collectively bargained employment contract. (Finding 2.) The payment was made on a one-time basis. Pursuant to the plain and unambiguous language of Education Code section 22905, subdivision (b)(3), the compensation was required to be reported to the DBS Program. Here, the district incorrectly reported the compensation to the DB Program, in contravention of the Teachers' Retirement Law. (Finding 8.) The reporting error impacts the Teachers' Retirement Fund. (Finding 9.) Cause therefore exists to require the district to "reverse out" the reporting and to re-report the compensation to the DBS Program.

4. District argues that the Teachers' Retirement Law was not clear in 2014 regarding how this type of compensation was to be reported. District asserts that the law did not become clear until the adoption of the 2015 regulations, in particular California Code of Regulations, title 5, section 27602, which addresses compensation that is paid a limited number of times. District argues that CalSTRS is applying this regulation to it retroactively, which is contrary to law.

The plain language of Education Code section 22905, subdivision (b)(3), provides that the one-time payment must be reported to the DBS Program. The evidence did not establish that CalSTRS applied the 2015 regulations in making its determination that district misreported the payment to the DB Program. To the contrary, the evidence establishes that in its audit, CalSTRS relied exclusively upon Education Code section 22905, subdivision (b)(3), as that section existed in 2014, to make the determination that the payment had been incorrectly reported.

5. District contends that CalSTRS should be barred by the doctrine of equitable estoppel from claiming that the 2014 one-time off-salary schedule payment must be credited to the DBS Program rather than the DB Program.

Pursuant to the doctrine of equitable estoppel, CalSTRS may be barred by its own errors from taking action against a member. In order for the doctrine to apply, the party asserting estoppel must establish the following elements: “(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estopped had a right to believe it was so intended; (3) the other party must be ignorant of the true facts; and (4) he must rely upon the conduct to his injury.” (*Driscoll v. City of Los Angeles* (1967) 678 Cal.2d 297, 305; accord *Crumpler v. Board of Administration* (1973) 32 Cal.App.3d 567, 581.) But even if all these elements are proven, equitable estoppel will not be applied against the government if to do so would effectively nullify a strong policy, adopted for the benefit of the public.” (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 493.) And in the public pension context, “no court has expressly invoked principles of equitable estoppel to contravene directly any statutory or constitutional limitations.” (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 28; accord *City of Oakland v. Oakland Police and Fire Retirement System* (2014) 224 Cal.App. 4th 210, 243; *Chaidez v. Board of Administration* (2014) 223 Cal.App.4th 1425; see also *Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 869.) Here, the Legislature has mandated in Education Code section 22905 that one-time off-salary schedule payments must be credited to the DBS account. The principles of equitable estoppel cannot be invoked in the manner requested by district as it would directly contravene a statutory limitation and provide for an unauthorized benefit. This is so notwithstanding the erroneous directives of CalSTRS and the harm caused to retired members by the mistaken reporting advice given to district. (*Chaidez v. Board of Administration, supra*, 223 Cal.App.4th at pp. 1431-1432 [pensioner misinformed and unaware of statute reducing his benefits because of time spent as a public official could not invoke equitable estoppel to obtain expected benefits].)

6. Citing *Welch v. California State Teachers' Retirement Bd.* (2012) 203 Cal.App.4th 1, 28, district argues that CalSTRS has the duty and obligation to correct its error in providing incorrect advice by crediting the one-time payments to the employees' DB account. Also citing *Welch*, district argues “it was an abuse of discretion for CalSTRS not to consider whether [Education Code] section 22308 applies to this case and how.” (*Welch, supra*, 203 Cal.App.3d at p. 28.) Each argument is without merit.

With respect to the latter contention, it is noted that it is in this administrative proceeding that the Board is giving consideration to whether there is cause to correct an error or omission pursuant to Education Code section 22308.

With respect to the former argument, the Board has discretion to correct certain errors or omissions made by a member or a beneficiary of the DB program. (Ed. Code, § 22308, subd. (a).) But, the Board cannot confer upon its members or beneficiary a benefit to which he or she is not entitled because of an error. (Ed. Code, § 22308, subd. (a)(2).) The Board also has the discretion to “correct all *actions* taken as a result of errors or omissions of the employer or this system,” meaning the Board can correct actions taken by CalSTRS. (Ed. Code, § 22308, subd. (c) [emphasis added].) In this case, CalSTRS awarded a higher pension benefit than allowed by law based on incorrect information provided to it by the district. CalSTRS discovered the district's reporting error during its audit, and directed that

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corrections be made as authorized by Education Code section 22308, subdivision (c). Education Code section 22308, subdivision (c), does not vest the Board with the authority to otherwise “correct” what happened here in order to confer a pension benefit to which a member is not entitled. The *Welch* case does not hold to the contrary.

*Conclusion*

7. In Audit Finding 2, complainant properly determined that the district incorrectly reported the five percent one-time off salary schedule payment to the DB Program in violation of Education Code section 22905, subdivision (b)(3). The correction of this reporting error has resulted in a reduced pension benefit to retired employees of the district. The retired members are reasonably and understandably upset by their pension reduction, as they had nothing to do with the reporting error. Equally understandable is the district’s consternation, as it exercised due diligence to get to the right answer for its employees, and relied on advice given to it by CalSTRS, both in their written materials and by their staff. Nevertheless, CalSTRS is required to take the steps necessary to ensure that pensions are calculated in accordance with the requirements of the Teachers’ Retirement Law. The Teachers’ Retirement Law was violated in the reporting of this one-time compensation. For that reason, Audit Finding 2 is sustained.

ORDER

The appeal of Walnut Creek School District from Audit Finding 2 is denied.

DATED: January 29, 2019

DocuSigned by:  
*Melissa G. Crowell*  
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MELISSA G. CROWELL  
Administrative Law Judge  
Office of Administrative Hearings