

BEFORE THE  
TEACHERS' RETIREMENT BOARD  
OF THE STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

Barbara Pahre,

Respondent.

**PRECEDENTIAL DECISION  
18-01**

**Effective February 9, 2018**

Case No. APL20130522-0000611

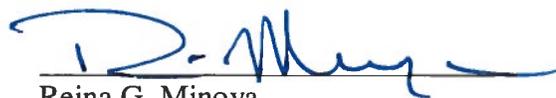
OAH No. 2014061082

On February 9, 2018, 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 following parts of *In the Matter of the Statement of Issues Against: Barbara Pahre* as a Precedential Decision: the entire decision except for the first paragraph (lines 1-9) in Paragraph 18 of "Legal Conclusions."

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as a Precedential Decision, it is binding in future administrative adjudications unless the Appeals Committee has rescinded the designation.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: February 12, 2018



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:

BARBARA PAHRE,

Respondent.

Case No.: APL20130522-0000611

OAH No.: 2014061082

**NOTICE OF DECISION AND ORDER**

The attached proposed decision of the administrative law judge was adopted on April 1, 2015, by the Appeals Committee of the Teachers' Retirement Board as its decision in the above-titled matter.

The Appeals Committee adopted the proposed decision pursuant to Government Code section 11517, subdivision (c)(2)(C), with the following minor technical change which do not affect the factual or legal basis of the proposed decision:

- (1) Under "Summary", Paragraph 1, line 2 should be revised to read "...an administrator for almost 34 years."
- (2) Under "Factual Findings", Paragraph 2, line 7 should be revised to read "...retired on August 3, 2004, with 33.881 years of service credit."

Dated: 4/3/2015

Gabor Morocz  
Assistant Chief Counsel  
Office of the General Counsel  
California State Teachers' Retirement System

**Pursuant to Government Code section 11425.60, the following parts of this decision are designated as a Precedential Decision: the entire decision except for the first paragraph (lines 1-9) in Paragraph 18 of "Legal Conclusions."**

BEFORE THE  
TEACHERS' RETIREMENT BOARD  
OF THE STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

BARBARA PAHRE,

Respondent.

Case No. APL20130522-0000611

OAH No. 2014061082

**PROPOSED DECISION**

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on November 17-19, 2014, in Oakland, California.<sup>1</sup>

Carolyn Kubish and Gwen E. Scott, Senior Counsel, represented complainant Peggy A. Plett, Deputy Chief Executive Officer, Benefits and Services Branch, California State Teachers' Retirement System (CalSTRS).

Gregory L. McCoy, Attorney at Law, Law Offices of Gagen, McCoy, McMahon, Koss, Markowitz & Raines, represented respondent Barbara Pahre, who was present.

The record was left open to allow complainant to respond to respondent's hearing brief, and to allow respondent to reply. The parties' briefs were timely filed. Complainant's brief was marked for identification as Exhibit 40, and respondent's reply was marked for identification as Exhibit AA. The record was closed and the matter was deemed submitted on December 29, 2014, the date respondent's reply brief was filed.

**SUMMARY**

Respondent worked for the Napa Valley Unified School District as a teacher and an administrator for almost 39 years. After serving as Assistant Superintendent for nine years and declaring her intent to retire, the district created the position of Associate Superintendent

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<sup>1</sup> This case was consolidated for hearing with Case No. APL20130409-0000532 (James A. Fleming, OAH No. 2014061078). A separate proposed decision will be issued in the other matter.

for respondent, with an annual salary increase of about \$16,000. She held the position for one year, and then retired. When respondent retired, her retirement allowance was calculated on her Associate Superintendent salary.

Eight years after respondent retired, CalSTRS audited the district and concluded that respondent's final-year salary increase represented additional compensation to perform duties beyond her full-time duties as Assistant Superintendent, and that the principal purpose of the salary increase was to enhance her retirement benefit. CalSTRS determined that respondent's retirement allowance should not have been based on her salary as Associate Superintendent; that her retirement allowance should be reduced; and that she must repay the retirement system for overpayments she received from the date she retired to the present. Respondent appeals from CalSTRS's determinations. She contends that her retirement allowance was calculated correctly when she retired. Respondent also moves to dismiss the statement of issues on the grounds that it is barred by the statute of limitations, by equitable estoppel, or by laches.

This decision concludes that, under the principles of the Teachers' Retirement Law, respondent's retirement allowance should not have been based on her salary as Associate Superintendent, and that this action is not barred by the statute of limitations, equitable estoppel or laches.

## FACTUAL FINDINGS

1. Complainant Peggy A. Plett, acting in her official capacity as CalSTRS's Deputy Chief Executive Officer, Benefits and Services Branch, signed the statement of issues on April 2, 2014.

2. Respondent Barbara Pahre spent her entire career with the Napa Valley Unified School District (NVUSD). She started working for the district in 1965 as a classroom teacher. She then worked as a reading specialist, a teacher in the gifted program, and in various management positions. On July 1, 1994, respondent became Assistant Superintendent/Human Resources, a full-time position.<sup>2</sup> She served in that position for nine years until July 1, 2003, when she was appointed Associate Superintendent. Respondent retired on August 3, 2004, with 38.876 years of service credit.

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<sup>2</sup> Documents submitted into evidence refer to this position by various titles, including Assistant Superintendent/Human Resources; Assistant Superintendent, Personnel and Employer-Employee Services; Assistant Superintendent, Personnel and EER Services; Assistant Superintendent of Personnel Services; and Assistant Superintendent of Personnel. For consistency, this decision refers to the position as Assistant Superintendent/Human Resources.

3. During the time she worked for NVUSD, respondent was an active member of CalSTRS.

4. CalSTRS provides retirement benefits under the terms of the Teachers' Retirement Law ("TRL"; Ed. Code, § 22000 et seq.<sup>3</sup>).

One of the retirement programs offered by CalSTRS is a Defined Benefit Program. This program provides members with a lifetime retirement allowance. A member's retirement allowance is determined by three factors: her "final compensation," her age at retirement, and her years of credited service. (§ 24202.5.) The final compensation of a member who, like respondent, retires with more than 25 years of credited service, is determined by her single highest year of compensation; in the precise language of the TRL, by "the highest average compensation earnable by a member during any period of 12 consecutive months while an active member of the Defined Benefit Program . . . ." (§ 22134.5, subd. (a).) The Defined Benefit Program is funded by mandatory employer and employee contributions.

CalSTRS also offers a Defined Benefit Supplement Program. This program does not provide a defined benefit to the member for her lifetime. A member's benefit under the Defined Benefit Supplement Program is limited to her contributions plus interest, which may be paid as a lump sum or an annuity. (§§ 25004, 25009.)

School districts are required to regularly report to CalSTRS the compensation paid to their employees, and to inform CalSTRS whether contributions should be credited to the Defined Benefit Program or the Defined Benefit Supplement Program.

The Teachers' Retirement Law does not regulate how much money school districts can pay their employees, or what employees can accept in terms of salary. The TRL, however, strictly regulates the compensation that can and cannot be included in the calculation of a member's retirement allowance under the Defined Benefit Program.

5. When she first started as a teacher, respondent did not pay that much attention to her retirement benefits. That changed when she became an administrator. Then respondent began to engage in retirement planning. She consulted with financial planners and checked her CalSTRS account periodically.

6. Respondent intended to retire at the end of the 2002-03 school year. At that point, she would have served as an Assistant Superintendent for nine years. The classification of Assistant Superintendent was the highest paid management classification on the district's salary schedule.<sup>4</sup> The salary schedule lists the base salary steps for all of the management classifications, and a "salary factor" for each classification. The salary for each

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<sup>3</sup> All further statutory references are to the Education Code, unless otherwise noted.

<sup>4</sup> The Superintendent position is not on the salary schedule.

management employee is determined by multiplying the employee's base salary step by the salary factor for the employee's position. In 2002-03, the management classification with the highest salary factor was Assistant Superintendent, at 1.3120. For the 2002-03 school year, the base salary for all the management classifications increased by about 2.55 percent, based on Step E. (At that time, Step E was the highest step; Step F was added in the next year.) The salary factors for all the management classifications stayed the same.

7. During the 2002-03 school year, respondent worked for a short time as the district's interim superintendent, until NVUSD appointed a new superintendent, John P. Glaser, Ed.D., in February 2003. Glaser had worked in the district before, from around 1980 to 1992, and he had worked with respondent. Glaser knew respondent intended to retire at the end of the school year, but he encouraged her to stay on. Glaser wanted respondent to continue working to help him "get [his] feet on the ground," and to implement organizational changes he was considering. He asked respondent if she would stay on and assume additional responsibilities for the 2003-04 school year. Respondent told him she would not, that she planned to retire. Glaser then asked respondent if she would stay on for additional compensation, and she agreed to do so. Respondent would not have worked another year without additional compensation. At hearing, respondent testified that she does not perform additional work without being compensated for it; that has been a principle she has believed in throughout her career.

8. On June 25, 2003, Glaser recommended to the governing board that respondent be reassigned from "Assistant Superintendent/Human Resources EER" to "Associate Superintendent/Human Resources/EER," effective with the 2003-04 school year. The board accepted the recommendation, and respondent became Associate Superintendent on July 1, 2003.

9. On August 20, 2003, Debbie Brenner, NVUSD's Assistant Superintendent of Business Services, wrote to the district's payroll division as follows:

During the 2003/04 school year Dr. Barbara Pahre has agreed to take on additional assignments to help with the restructuring of administrative duties. We have placed a new factor on the management salary schedule to accommodate her new responsibilities. Effective July 1, 2003, Dr. Pahre should be placed at a range 0002 Associate Superintendent with a factor of 1.483.

10. Before the 2003-04 school year, there was no Associate Superintendent classification on the management salary schedule. For 2003-04, Associate Superintendent became the highest classification on the management salary schedule, based on its salary factor. Applying the new salary factor of 1.483, rather than 1.3120, resulted in an annual increase in respondent's compensation of \$15,983.46, or about 12.8 percent, over her

compensation in 2002-03.<sup>5</sup> From 2001-02 through 2009-10, the average annual salary increase for respondent's former classification of Assistant Superintendent/Human Resources was about 3.5 percent.

11. On April 1, 2004, nine months after she was appointed to the Associate Superintendent position, respondent informed Glaser of her intent to retire on August 3, 2004.

12. On April 15, 2004, the school board reclassified respondent's position from Associate Superintendent/Human Resources, to Assistant Superintendent/Human Resources, effective August 3, 2004, and appointed Sharyn Lindsey to the position of Assistant Superintendent/Human Resources effective August 3, 2004.

13. Respondent retired on August 3, 2004. During the time respondent served as Associate Superintendent, NVUSD reported to CalSTRS that her salary and retirement contributions were creditable to the Defined Benefit Program. With over 1,600 school district-employers reporting hundreds of thousands of lines of data each month, CalSTRS must accept that data at face value, at least in the first instance. CalSTRS, therefore, calculated respondent's retirement benefit based on her single highest year of final compensation, which was the 2003-04 school year she served as Associate Superintendent. Her initial unmodified retirement allowance was approximately \$9,800 per month.

14. In the months after respondent retired, CalSTRS made adjustments in the amount of her monthly allowance as new information came in to CalSTRS from the district. CalSTRS, however, continued to inform respondent that her lifetime monthly allowance was at least \$9,800.

15. After respondent retired, Superintendent Glaser did not implement the organizational changes he was considering when he appointed respondent to Associate Superintendent.

16. After respondent retired, NVUSD never used the Associate Superintendent position again. Consistent with the school board's action on April 15, 2004, the Associate Superintendent position was reclassified to Assistant Superintendent/Human Resources effective August 3, 2004, the day respondent retired, and Lindsey was appointed to the position. The Assistant Superintendent/Human Resources position carried a salary factor of 1.3120. In 2005-06, the Associate Superintendent position was dropped from the management salary schedule, and the Assistant Superintendent once again became the position with the highest salary factor; the salary factor for that classification remains 1.3120.

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<sup>5</sup> According to the district's reporting, respondent's compensation increased by approximately \$18,000, or over 14 percent. The parties stipulated, however, that in the 2003-04 school year, respondent "was paid \$15,983.46 more than she was paid during the 2002-03 school year."

17. CalSTRS performed an audit of NVUSD in early 2012. Although the audit was done eight years after respondent's retirement, the district was able to provide CalSTRS with all of the documents the system requested.

Following the audit, CalSTRS concluded that the salary increase associated with respondent's appointment to Associate Superintendent was paid for the purpose of enhancing her retirement benefit. CalSTRS determined that, under section 22119.2, the increase of \$15,983.46 should not have been reported to the Defined Benefit Program and should not have been included in the calculation of her retirement allowance. CalSTRS informed respondent of its determination in a letter dated March 26, 2012. The letter went on to advise respondent that the system intended to reduce her monthly retirement allowance from \$11,487.66 to \$10,260.81, and that it would further reduce respondent's monthly allowance by 5 percent to collect an overpayment of \$128,600 for the period 2004 to 2012. CalSTRS informed respondent of her right to an "Executive Review" of its decision, which she requested.

18. The Executive Review was conducted over the course of a year, between April 2012 and May 2013. During that review, respondent informed CalSTRS that when she was appointed Associate Superintendent, she continued to perform the duties of Assistant Superintendent/Human Resources and took on additional duties as the Associate Superintendent. Respondent asserted that the salary increase compensated her for those additional duties.

In a declaration prepared in connection with the Executive Review, Glaser set forth the duties of the Assistant Superintendent/Human Resources, and then went on to state that as Associate Superintendent,

Barbara Pahre continued to perform the duties of [Assistant Superintendent/Human Resources] during the 2003-2004 school year. The following duties were added as she served as Associate Superintendent during the 2003-04 school year. This occurred during the time of trying to find an affordable way to provide district-wide oversight and institutional memory:

In the context of the retirement of the other senior executive team member who, due to budget cuts, was not replaced, serve as a senior advisor to the new Superintendent.

Provide general systems and operational oversight of the transition to a restructured district service system and implement restructuring elements.

Serve as credible and knowledgeable counsel and general orientation lead for 9 new administrators.

Advise on and evaluate the on-going implementation of the massive budget cuts from Spring 2003. Barbara led the Budget Action Team as they made their recommendation to the Board during her service as Interim Superintendent.

Establish new and credible interfaces between the Business Office, Labor Unions, and the HR Office to insure a smooth transition to a new HR Director and new labor leadership.

Serve as the Board's direct representative in orienting a new teacher's labor union leadership as well as implementing two newly adopted collective bargaining agreements . . . .

Serve as the Superintendent [*sic*] and Board's exclusive representative to selected community and educational agencies.

Provide the direct school support functions for Vintage High School and New Technology High Schools as defined by the "CLUSTER SUPPORT FUNCTION" chart. . . .

Organize and implement the pre-school management retreat around district restructuring goals . . . .

Respondent also provided CalSTRS with a list of the additional duties she assumed when she was appointed Associate Superintendent. Glaser and respondent believe that, despite the increase in respondent's salary, the district achieved a budget savings in 2003-04 by leaving the Assistant Superintendent/Human Resources position vacant, and having respondent assume those duties plus her additional duties.

19. After its Executive Review, CalSTRS reaffirmed the determination set forth in its March 26, 2012 letter, and added another reason for disregarding the salary increase in the calculation of respondent's pension: that the salary increase was for performing additional duties beyond her full-time position as Assistant Superintendent/Human Resources, and therefore could not be credited to the Defined Benefit Program under section 22703.

20. Respondent appealed CalSTRS's determinations.

21. Before the hearing on respondent's appeal, CalSTRS implemented its proposed reduction in respondent's retirement allowance without respondent's consent. In a writ proceeding in Superior Court, the Court ordered CalSTRS to reinstate respondent's monthly benefit pending the result of this administrative proceeding.

22. Complainant filed the statement of issues and this hearing followed.

23. The testimony of respondent and Glaser was consistent with the information they had provided previously to CalSTRS. Glaser testified that, when respondent retired in August 2004, he felt he could manage without a senior advisor and so he eliminated the Associate Superintendent position.

Lloyd Wamhof testified at respondent's request. Wamhof is a former California school administrator. He retired in 2000 and, since then, he has worked for the Association of California School Administrators as an advocate on the Association's legal support team. He has negotiated hundreds of contracts for school district administrators. Wamhof reviewed the additional duties assigned to the Associate Superintendent position in 2003-04, as described by Glaser and respondent. In his opinion, those duties were substantial and would always result in a pay increase. Wamhof is not an expert in the Teachers' Retirement Law, and expressed no opinion on whether respondent's pay increase should or should not have been included in the calculation of her retirement allowance.

## LEGAL CONCLUSIONS

### *Salary increase for the 2003-04 school year*

1. The statement of issues alleges two statutory bases for excluding respondent's salary increase of \$15,983.46 from the calculation of her retirement allowance. First, CalSTRS asserts that the increase represents additional compensation for services that exceed a full-time position, and therefore should be excluded under section 22703. Second, CalSTRS asserts that the increase was granted for the principal purpose of enhancing her retirement allowance, and that it does not represent consistent treatment of compensation, and therefore should be excluded under section 22119.2.

### ADDITIONAL COMPENSATION

2. At the time respondent retired, section 22703 stated, in relevant part, as follows:<sup>6</sup>

(a) Service shall be credited to the Defined Benefit Program, except as provided in subdivision (b).

(b) A member's creditable service that exceeds 1.000 in a school year shall not be credited to the Defined Benefit Program. Commencing July 1, 2002, contributions by the employer that are deposited in the Teachers' Retirement Fund and the member on creditable compensation paid to the member for that service, exclusive of contributions pursuant to Section

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<sup>6</sup> Section 22703 is essentially unchanged today.

22951, shall be credited to the Defined Benefit Supplement Program.

3. The court applied these principles in *O'Connor v. State Teachers' Retirement System* (1996) 43 Cal.App.4th 1610. That case involved two teachers who each held full-time jobs with two different employers. They contended that their salaries from both employers should be added together for the purpose of determining their final compensation for retirement purposes. The court rejected their argument, concluding that the pay used to calculate retirement benefits is limited to the amount paid in a single, full-time position. (*Id.* at p. 1622.) To do otherwise, the court reasoned, would result in a retirement windfall to the two teachers, who had only worked in two full-time positions for the last four years of their careers.

4. CalSTRS applied the reasoning of *O'Connor* in its precedential decision *In the Matter of the Retirement Benefits of Margaret Deetz* (Case No. APL20110816-0000296). Deetz worked full-time as the superintendent of a high school district. For one year, on what was expected to be a temporary basis, the district assigned Deetz the additional duties of the Assistant Superintendent of Personnel and Pupil services, for which it paid Deetz an additional \$35,000. Deetz argued that the additional pay was creditable compensation that should be included in the calculation of her retirement allowance. Relying upon *O'Connor*, CalSTRS concluded that a salary increase for performing additional duties should not be credited to Deetz's Defined Benefit Account, because she was already being paid for a full-time position as superintendent. To do otherwise would have given Deetz a windfall increase in her lifetime retirement benefits because of additional compensation she was paid for just one year.

5. On its face, this case appears to be distinguishable from *O'Connor* and *Deetz*. Unlike the CalSTRS members in those cases, during the year she served as Associate Superintendent respondent held one full-time position with one salary. But the reality is that respondent's position as Assistant Superintendent/Human Resources was a full-time job. As Associate Superintendent, respondent was expected to continue to perform the full-time duties of the Assistant Superintendent/ Human Resources, but was given a salary increase to compensate her for taking on additional duties, beyond the full-time duties of Assistant Superintendent/Human Resources. Under *O'Connor* and *Deetz*, that salary increase may not be credited to the Defined Benefit Program, because it was paid for service that exceeds 1.000 in the 2003-04 school year.

6. Under section 22703, the \$15,983.46 salary increase paid to respondent in her last year of employment is creditable to the Defined Benefit Supplement Program, not the Defined Benefit Program.

#### ENHANCEMENT OF RETIREMENT BENEFIT, CONSISTENCY OF COMPENSATION

7. As noted above in Finding 4, a member's retirement allowance is based on her "compensation earnable," which is defined as "the creditable compensation a person could

earn in a school year for creditable service performed on a full-time basis, excluding service for which contributions are credited by the system to the Defined Benefit Supplement Program.” (§ 22115, subd. (a).)

Section 22119.2 defines “creditable compensation.” At the time respondent retired, it provided, in relevant part, as follows:<sup>7</sup>

(a) “Creditable compensation” means remuneration that is paid in cash by an employer to all persons in the same class of employees and is paid to an employee for performing creditable service. Creditable compensation shall include:

(1) Salary paid in accordance with a salary schedule . . . .  
[¶] . . . [¶]

(b) Any salary or other remuneration determined by the board to have been paid for the principal purpose of enhancing a member’s benefits under the plan shall not be credited under the Defined Benefit Program. Contributions on that compensation shall be credited to the Defined Benefit Supplement Program. A presumption by the board that salary or other remuneration was paid for the principal purpose of enhancing the member’s benefits under the plan may be rebutted by the member or by the employer on behalf of the member. Upon receipt of sufficient evidence to the contrary, a presumption by the board that salary or other remuneration was paid for the principal purpose of enhancing the member’s benefits under the plan may be reversed.

[¶] . . . [¶]

(f) This definition of “creditable compensation” reflects sound principles that support the integrity of the retirement fund. Those principles include, but are not limited to, consistent treatment of compensation throughout a member’s career, . . . consistent treatment of compensation for the position, preventing adverse selection, and excluding from compensation earnable remuneration that is paid for the principal purpose of enhancing a member’s benefits under the plan. The board shall

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<sup>7</sup> Section 22119.2 provides to the same effect today, with the notable exception that remuneration paid “to enhance” a member’s retirement benefits, as opposed to remuneration paid for the “principal purpose” of enhancing those benefits, must be credited to the Defined Benefit Supplement Program.

determine the appropriate crediting of contributions between the Defined Benefit Program and the Defined Benefit Supplement Program according to these principles to the extent not otherwise specified pursuant to this part.

8. CalSTRS concedes that respondent's salary as Associate Superintendent – including the portion that represents an increase over her salary as Assistant Superintendent/Human Resources – is creditable compensation. The system asserts, however, that the increase should have been credited to the Defined Benefit Supplement Program because it was paid for the principal purpose of enhancing respondent's retirement benefits, and because it represents an inconsistent treatment of respondent's compensation throughout her career.

9. It is clear that one of the purposes of creating the Associate Superintendent position was to enhance respondent's retirement benefit: respondent, who had over 36 years of service, had already declared her intention to retire; she made it plain that she would not continue working without a salary increase; the position was created specifically for her; and then the position was abandoned after respondent had held it for one year, the exact period of time necessary to establish her single highest year for retirement purposes. But there were also business purposes for creating the position: respondent assisted in the transition to a new administration; she assumed substantial additional duties; and the district realized cost-savings by leaving the Assistant Superintendent/Human Resources position vacant. Under these circumstances, the evidence fails to establish that respondent was given a salary increase for the principal purpose of enhancing her retirement benefit.

10. Nevertheless, respondent's salary increase may not be credited to the Defined Benefit Program because there was not consistent treatment of compensation throughout respondent's career. Between 2002-03 and 2009-10, the salary for Assistant Superintendent/Human Resources increased an average of about 3.5 percent per year. Respondent's salary increase upon appointment to Associate Superintendent was just under 13 percent. Nor was there consistent treatment for the classification of Associate Superintendent: it was used only for the one year that respondent held it. Respondent's salary increase as Associate Superintendent resulted in an adverse selection against the retirement system. As the court noted in *O'Connor*, granting respondent a lifetime retirement allowance based on the year she worked as Associate Superintendent would "give [her] a retirement allowance wholly out of proportion to the [amount she] had contributed for the overwhelming majority of years of service, to the detriment of the Fund and of the other contributors." (*O'Connor v. State Teachers' Retirement System, supra*, 43 Cal.App.4th at pp. 1626-1627.)

11. Under section 22119.2, respondent's \$15,983.46 salary increase for the 2003-04 school year is creditable to the Defined Benefit Supplement Program, not the Defined Benefit Program.

*Respondent's motion to dismiss*

12. Respondent moves to dismiss the statement of issues on the grounds that it is barred by the statute of limitations, by equitable estoppel, or by laches.

STATUTE OF LIMITATIONS

13. Respondent contends that this case is barred by the statute of limitations set forth in section 22008. That section states, in relevant part, as follows:

For the purposes of payments into or out of the retirement fund for adjustments of errors or omissions with respect to the Defined Benefit Program or the Defined Benefit Supplement Program, the period of limitation of actions shall be applied . . . as follows:

(a) No action may be commenced by or against the board, the system, or the plan more than three years after all obligations to or on behalf of the member, former member, beneficiary, or annuity beneficiary have been discharged.

(b) If the system makes an error that results in incorrect payment to a member, . . . the system's right to commence recovery shall expire three years from the date the incorrect payment was made.

(c) If an incorrect payment is made due to lack of information or inaccurate information regarding the eligibility of a member, former member . . . or annuity beneficiary to receive benefits under the Defined Benefit Program or the Defined Benefit Supplement Program, the period of limitation shall commence with the discovery of the incorrect payment.

(d) Notwithstanding any other provision of this section, if an incorrect payment has been made on the basis of fraud or intentional misrepresentation by a member . . . or other party in relation to or on behalf of a member . . . , the three-year period of limitation shall not be deemed to commence or to have commenced until the system discovers the incorrect payment.

14. Respondent argues that this action is barred by the three-year statute set forth in subdivision (a). In respondent's view, the word "discharged" in that subdivision should be read to mean "determined." Respondent argues that CalSTRS "determined" her benefits when she retired in 2004, and cannot bring an action in 2014 to correct its determination.

Respondent's argument is contrary to the plain language of subdivision (a). The subdivision prohibits CalSTRS from commencing any action to adjust errors or omissions "more than three years after all obligations to or on behalf of the member, former member, beneficiary, or annuity beneficiary have been discharged." CalSTRS's obligation to respondent has not been discharged: she has earned a lifetime benefit, to say nothing of any benefits that may be payable to her beneficiaries. This action, therefore, was brought within the limitation period established by subdivision (a).

15. Respondent argues that this case is also barred by the limitations period in subdivision (b). Her argument on this point is not entirely clear. Respondent asserts that CalSTRS correctly calculated her retirement allowance in 2004, when she retired. If there was an error that resulted in an incorrect payment, respondent argues, it was due to CalSTRS's failure to investigate at that time the circumstances of her appointment to Associate Superintendent. Respondent appears to maintain that the three-year period for CalSTRS to commence recovery of payments made in error expired in 2007.

If that is respondent's argument, it is not persuasive. No authority supports respondent's contention that CalSTRS had a duty to investigate the facts of her employment at the time she retired. With tens of thousands of members, CalSTRS does not have the ability to investigate the employment history of every retiree; it must, at least initially, accept at face value the salary information reported by its school district-employers. Subdivision (c) recognizes this fact, by providing that if an incorrect payment is made due to a lack of information or inaccurate information, the limitations period begins with the discovery of the incorrect payment. Respondent argues that subdivision (c) applies only when the incorrect information relates to the member's eligibility to receive benefits from CalSTRS, not to the member's eligibility to receive the incorrect benefit she is being paid. Respondent provides no authority, and no rationale, for this narrow reading of subdivision (c), and it is not persuasive.

16. CalSTRS discovered that its calculation of respondent's retirement allowance was incorrect when it audited NVUSD in early 2012. The system then commenced recovery with a letter to respondent in March 2012, followed by a statement of issues in 2014, actions taken well within the three-year statute of limitations set forth in subdivisions (b) and (c) of section 22008.

17. This proceeding is not barred by the statute of limitations.

ESTOPPEL

18. Respondent asserts that this proceeding is barred by the doctrine of equitable estoppel. Four elements must be present to invoke equitable estoppel: "(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 estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of the facts; and (4) he must rely upon the conduct to his injury." (*Crumpler v. Board of Administration* (1973) 32

Cal.App.3d 567, 581.) All four elements must be present to establish estoppel. (*Johnson v. Johnson* (1960) 179 Cal.App.2d 326, 330.) If any element is missing, no estoppel exists. (*Ibid.*)

Respondent has not established all of the required elements of equitable estoppel. When CalSTRS calculated respondent's retirement allowance in 2004, it was not apprised of any of the facts concerning the creation of the Associate Superintendent position, or the duties of that position relative to respondent's duties as Assistant Superintendent/Human Resources. Respondent, on the other hand, was aware of all of those facts.

19. This proceeding is not barred by the doctrine of equitable estoppel.

LACHES

20. In *Gates v. Department of Motor Vehicles* (1979) 94 Cal.App.3d 921, the court held that an administrative proceeding to revoke a state-issued license may be dismissed "where there has been unreasonable delay between the discovery of the facts constituting the reason for the revocation and the commencement of revocation proceedings, and where the licensee has been prejudiced by the delay." (*Id.* at p. 925; see also *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810.) Administrative delay cannot be found unreasonable as a matter of law. (*Id.* at p. 817-818.) Put another way, "delay is not a bar unless it works to the disadvantage or prejudice of other parties." (*Brown v. State Personnel Bd.* (1985) 166 Cal.App.3d 1151, 1159.) Prejudice is never presumed: it must be affirmatively demonstrated by the party asserting the defense of laches. (*Green v. Board of Dental Examiners* (1996) 47 Cal.App.4th 786, 792.)

21. In *Gates* and *Fahmy*, the issue addressed by the court was the delay between the agency's discovery of the facts that ultimately formed the basis for the agency's action, and the agency's initiation of administrative proceedings. Respondent does not contend that there was unreasonable delay measured by that period: CalSTRS discovered the facts in the course of its audit in early 2012, informed respondent of its initial determination in March 2012, afforded her an Executive Review that was conducted between 2012 and 2013, and filed the statement of issues in April 2014.

Unlike *Gates* and *Fahmy*, respondent measures delay by the period of time between her retirement in 2004, and CalSTRS's discovery in 2012 of the facts on which the statement of issues is based. Respondent asserts that CalSTRS has advanced no reason for not initiating its audit of NVUSD sooner, and argues that CalSTRS was either "inept" or that the system intentionally delayed its audit "to try to make it more difficult for [respondent] to rebut later changes."

Respondent cites no authority for the proposition that laches can lie for the period of time before CalSTRS discovered the facts that form the basis for its action. Assuming that it can, however, respondent has not proved that she was prejudiced by the delay. Respondent asserts that there were members of the NVUSD staff and governing board who are no longer

available to testify, and that, although Glaser testified, a medical condition had “severely sapped his energy.” While it is true that there are individuals from NVUSD who are no longer available to testify, respondent does not state what their testimony would have been or how its absence affected her defense. Glaser testified at hearing without any apparent limitations and without any request for accommodation. During the course of CalSTRS’s audit, NVUSD was able to produce all of the records CalSTRS requested. Respondent and Glaser testified in detail regarding respondent’s job duties as Assistant and Associate Superintendent, and the reasons for her appointment to Associate Superintendent. In essence, the case was tried on contemporaneous documents, and the evidence presented by respondent and the witnesses she called. Respondent did not demonstrate that she was prejudiced in presenting her case by the passage of time between her retirement in 2004, and the date the statement of issues was signed in 2014.

22. This proceeding is not barred by laches.

#### ORDER

1. Respondent Barbara Pahre’s motion to dismiss the statement of issues is denied.

2. Respondent’s appeal from the determination by CalSTRS that her salary increase of \$15,983.46 as Associate Superintendent should be credited to the Defined Benefit Supplement Program, rather than the Defined Benefit Program, is denied.

DATED: February 10, 2015



DAVID L. BENJAMIN  
Administrative Law Judge  
Office of Administrative Hearings