

CALSTRS LEGAL REC'D  
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**BEFORE THE  
TEACHERS' RETIREMENT BOARD  
STATE OF CALIFORNIA**

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

**JOHN BOYETT, Respondent.**

**Agency Case No. STRS20230005**

**OAH No. 2023080169**

**PROPOSED DECISION**

Administrative Law Judge Michelle Dylan, State of California, Office of Administrative Hearings, heard this matter on January 25 and 26, 2024, via videoconference.

Attorney Natalie P. Vance represented the California State Teachers' Retirement System (CalSTRS).

Attorney Barry J. Bennett represented respondent John Boyett, who was present.

The record was held open for receipt of closing briefs from CalSTRS and respondent Boyett, and receipt of copies of the parties' designated pages of the transcripts of the proceedings, which were timely submitted. CalSTRS's closing brief, and copies of its designated pages of Transcripts I and II, were marked for identification as Exhibits 33, 34, and 35. Respondent's closing brief and copies of his

designated pages of Transcripts I and II, were marked for identification as Exhibits A, B, and C.

On June 18, 2024, the record closed and the matter was submitted for decision.

## **ISSUE PRESENTED**

Did CalSTRS properly determine that a portion of respondent John Boyett's compensation earned while working for the St. Helena Unified School District as a District Teacher Liaison (teacher liaison) should be re-allocated from his Defined Benefit account to his Defined Benefit Supplement account?

## **FACTUAL FINDINGS**

### **Background and Jurisdictional Matters**

1. CalSTRS, administered by the Teachers' Retirement Board (Board), provides retirement benefits to members and their beneficiaries under the terms of the Teachers' Retirement Law (TRL) (Ed. Code, § 22000 et seq.). Under this statutory scheme, CalSTRS must carry out its fiduciary duties for the benefit of all members and beneficiaries. (Ed. Code, § 22250.)

2. School districts are required to report to CalSTRS the compensation that the districts pay to members. Compensation is reported either to the members' Defined Benefit (DB) accounts or Defined Benefit Supplement (DBS) accounts, depending on the type of compensation. The DB account is used upon retirement to calculate members' lifetime monthly retirement allowances, based on a formula using the member's age, service credit, and final compensation. (The formula applicable to

respondent provides that his final compensation is based on his highest 12 consecutive months of average annual compensation earnable.) Compensation creditable to the DBS account will not be used in calculating a member's final compensation for the DB monthly allowance. Instead, members receive a lump-sum payment or annuity based on the balance in their DBS accounts.

3. Education Code section 22703, subdivision (b), and section 22905, subdivision (b)(1), require that contributions on compensation paid for creditable service that exceeds 1.000 FTE (full-time equivalent) in a school year must be credited to the DBS program instead of the DB program. "Creditable service" includes certain enumerated activities requiring a credential or certificate including teaching, education or vocational counseling, administrative duties related to education, and activities related to and an outgrowth of the instructional or guidance program of a school. (Ed. Code, § 22119.5.) CalSTRS does not dispute that both the teacher liaison's teaching and administrative duties constituted creditable service.

4. Education Code section 22119.2 defines "creditable compensation" that can be included in the calculation of the DB monthly allowance. "Creditable compensation" is "remuneration that is paid in cash by an employer to all persons who are in the same class of employees and is paid to an employee for performing creditable service in that position." "Creditable compensation" includes salary or wages paid in accordance with a publicly available written contract or salary schedule, and "remuneration that is paid in addition to salary or wages, provided it is paid to all persons in the same class of employees in the same dollar amount" or percentage. (Ed. Code, § 22119.2, subds. (a)(1), (2).) "Creditable compensation" excludes "(r)emuneration that is not paid in cash or is not paid to all persons who are in the same class of employees." (Ed. Code, § 22119.2, subd. (d)(1).)

5. Subdivision (g) of Education Code section 22119.2 states that the statute's definition of creditable compensation reflects "sound principles that support the integrity of the retirement fund," including:

consistent treatment of compensation throughout a member's career, consistent treatment of compensation among an entire class of employees, consistent treatment of compensation for the position, preventing adverse selection, and excluding from compensation earnable remuneration that is paid to enhance a member's benefits. The system shall 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.

6. The Education Code defines "class of employees" as "a number of employees considered as a group because they are employed to perform similar duties, are employed in the same type of program, or share other similarities related to the nature of the work being performed." (Ed. Code, § 22112.5, subd. (a).) "'Full time' means the days or hours of creditable service the employer requires to be performed by a class of employees in a school term in order to earn the annualized pay rate as defined in Section 22104.8 and specified under the terms of a collective bargaining agreement." (Ed. Code, § 22138.5, subd. (a)(1).)

7. Education Code section 22905, subdivision (b)(1), provides that member and employer contributions on a member's "[c]ompensation for creditable service that exceeds one year in a school year" shall be credited to the member's DBS account.

Stated differently, in any given school year, a CalSTRS member may only receive a total of one year (1.000) of service credit that is credited to their DB account. While that member is entitled to earn money for performing duties in addition to one year (1.000) of service credit, contributions on such additional compensation must be credited to the member's DBS account. Furthermore, subdivision (b)(3) provides that member and employer contributions on a member's "[c]ompensation that is determined by the system to have been paid to enhance a member's benefits pursuant to subdivision (b) of Section 22119.2, or to not reflect sound principles that support the integrity of the retirement fund pursuant to subdivision (f) of Section 22119.2" shall also be credited to the member's DBS account.

8. The Board is authorized to conduct audits of the records of a public agency in order to ensure compliance with the TRL. (Ed. Code, § 22206.)

9. The Board may hold a hearing to determine any questions involving a right, benefit, or obligation of a CalSTRS member. (Ed. Code, § 22219, subd. (a).)

10. The Board "shall have the sole power and authority to hear and determine all facts pertaining to application for benefits under the plan or any matters pertaining to administration of the plan and the system." (Ed. Code, § 22201, subd. (a).)

11. St. Helena Unified School District (the District) is an employing agency for which creditable service is performed subject to coverage by CalSTRS.

12. Respondent John Boyett was employed by the District prior to his retirement in June 2016, and is a member of CalSTRS. Respondent served as a teacher liaison between 2012 and his retirement in 2016.

13. Complainant William Perez, acting solely in his official capacity as Chief Benefits Officer of CalSTRS, served the initial Statement of Issues on respondent on April 4, 2023, alleging that an audit of respondent's earnings between 2013 and 2016 determined that the District erroneously reported 20 days which respondent worked in excess of 1.000 as DB earnings, resulting in an overpayment of retirement benefits. Complainant signed the Amended Statement of Issues pursuant to the authority of Government Code sections 11504 and 11507, on January 19, 2024. The Amended Statement of Issues identifies an additional prior year of alleged misreported compensation (the 2012-2013 school year) and corrected allegations relating to the year in which respondent started serving as teacher liaison (2012 rather than 2013.) It also noted that no substantive or legal changes had been made with the sole issue as described by CalSTRS being whether the District misreported respondent's teacher liaison compensation to CalSTRS.

## **CalSTRS's Evidence**

### **TESTIMONY OF SUE XIONG, DRAFT AUDIT REPORT AND FINAL AUDIT REPORT**

14. The District uses the Napa County of Education's (NCOE) payroll system. The NCOE collects member and associated contribution data from the District, formats the employees' payroll information with applicable codes and members' codes, and submits the monthly contribution data to CalSTRS.

15. Sue Xiong, the Manager of the Audit Resolutions Team at CalSTRS, testified credibly at hearing. Xiong has been employed by CalSTRS for over eight years and works closely with the Audit Services Division throughout the employer audit process. CalSTRS typically reviews collective bargaining agreements, individual

contracts, salary schedules, personnel action forms, and/or personnel files related to compensation during the audit process.

16. Xiong explained that CalSTRS provides its members with two types of retirement programs through contributions made by members and their school employers. The DB Account is the primary benefit account which is used to calculate a member's retirement benefit and fund monthly lifetime retirement benefits at the member's retirement. If the member works in excess of a regular full-time teaching salary, excess earnings are accounted for in the DBS account which acts as a savings plan that can be cashed out as a lump sum or annuitized at the member's retirement. (The compensation in the DBS account is not used to calculate the member's monthly retirement allowance and therefore does not increase a member's monthly retirement allowance.)

17. 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 DB account or the DBS account.

18. To protect the integrity of the teacher's retirement fund, CalSTRS conducts audits of school district reporting. Pursuant to Education Code section 22206, the Audit Services Division conducted an audit of the District in 2018 and 2019 to ensure that the District properly reported creditable compensation and creditable service to CalSTRS in compliance with the TRL, and to determine whether payroll information reported to CalSTRS was supported by the District's payroll and personnel records. The audit period included the 2017-2018 school year.

19. The Audit Services Division reviewed and analyzed the District's documents, and evaluated records held by CalSTRS, including payroll and personnel

records, in determining whether the District had accurately reported compensation for a sample population of members, including the employee who held the teacher liaison position at the time of the audit. Although the conclusions reached were based on the finding associated with the sample population during the reviewed school years, the finding is applicable to all members for whom misreporting occurred and for the entire period for which the misreporting occurred.

20. When CalSTRS's audit team finds through an audit that a school district has not reported a member's compensation in compliance with the TRL, the audit service team creates a Draft Audit Report and provides it to the district that has been audited and any sampled members and asks the district to take corrective action by reporting the compensation correctly and identifying other affected members outside the CalSTRS sample. The district can either acknowledge the error and take corrective action, or it can dispute that an error was made and provide additional information that may change the audit finding. Districts typically provide their rationale for reporting the compensation in the way that they did, along with supporting documentation. If, after considering the district's information, CalSTRS confirms its finding that the compensation was misreported, it will issue a Final Audit Report. If the district agrees that it erred and takes corrective action by re-reporting the compensation, CalSTRS calculates the present value of any overpayment and establishes a receivable account for the overpayment.

21. On August 15, 2019, the CalSTRS Audit Services Division issued a Draft Audit Report to the District and provided it with an opportunity to respond to the report in writing. The 2019 CalSTRS Draft Audit Report found that the District incorrectly reported creditable compensation for Brandon Farrell, a CalSTRS member



who was employed as a teacher liaison during the 2017-2018<sup>1</sup> school year. The audit found that the reporting error caused the teacher liaison's reportable compensation to be higher than allowed under the TRL. Specifically, the audit found that the teacher liaison was originally working as a full-time certificated teacher who according to the District's board approved salary schedule for 2016-2017 (and testimony) was required to work 186 days in a school year. After the member was employed as a teacher liaison, the member took on the extra administrative duties of a liaison (which CalSTRS initially considered to be related to working as a union representative) in addition to the member's regular full-time teaching duties. The District reclassified the pay schedule for the member based on the additional teacher liaison duties, paying the member on a 206-day schedule, instead of the 186 days the member would have worked as a certificated teacher without the additional duties of a liaison. The District reported the entire 206 days of teacher liaison compensation as part of the member's base salary to the member's DB account.

22. CalSTRS noted that the work of other sampled members who were paid on a 206-day schedule, including agricultural teachers and high school counselors, is considered creditable service and those positions are separate classes of employees, and concluded the 206-day schedule for these employees is their required full-time assignment. However, CalSTRS determined that the extra duties of a teacher liaison are over and above the full-time teaching assignment of 186 days required for a certificated teacher and are considered additional duties. Thus, the audit determined that the extra compensation the teacher liaison earned for the 20 days' work over and

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<sup>1</sup>The Amended Statement of Issues refers to this as the 2016-2017 school year, however the 2019 Audit Report identifies it as the 2017-2018 school year.

above the full-time teaching schedule were extra-duty earnings that should have been reported as a part-time assignment, which would have required the contributions on that compensation to be credited to the member's DBS account (instead of the DB account) pursuant to Education Code section 25004. CalSTRS initially took the position that the teacher liaison duties were related to working as a union representative.

23. Xiong confirmed at hearing that CalSTRS found that the teacher liaison position should have been reported on a 186-day schedule because the teacher liaison is a full-time teacher on a 186-day schedule, and that the remaining 20 days of compensation were reported incorrectly.

24. On September 30, 2019, the District responded to the Draft Audit Report. The District stated that it would eliminate the teacher liaison position and that it would re-report Farrell's compensation. However, the District disagreed as it related to respondent, who had previously served in the role and retired in June 2016, and provided documentation to support its argument that the teacher liaison duties were not union duties but instead were for creditable service. The District provided a cover letter from Andrea (Andi) Stubbs, a copy of the teacher liaison job description, a salary schedule, a letter from respondent summarizing his duties and the meetings he attended when he held the position, and a letter from Cindy Toews, the former assistant superintendent. Toews's letter explained the rationale for creating the position which included the difficulties that the school was experiencing and the need for the position, and documenting that the hours respondent spent in committee meetings as part of his teacher liaison duties were in no way related to his union responsibilities and far exceeded the 20 additional days that were in his contract. The District also argued that the teacher liaison duties are proper outgrowth activities that may be combined with the liaison's 186 days of teaching duties for a 1.0 (one

full-time) position, and noted that the collective bargaining agreement was revised to reflect this new 1.0 position which was created and approved by the school board in 2012-2013.

25. The job description for the teacher liaison stated that the "District Teacher Liaison serves in a dual capacity as a fully qualified teacher and a resource to site and district-level administration and teachers, ultimately influencing students' learning outcomes, student engagement and organization effectiveness." The essential duties and responsibilities of the position included facilitating communications between administrators, the board and teaching staff; serving as a liaison and contributor for policy development and enactment, and facilitating collaborative partnership with and among staff; working with teachers and administrators to integrate new programs and initiatives; recommending instruction and student engagement techniques to teachers and coaching teachers; employing a range of instructional techniques and strategies to enhance teachers' ability to show student progress; consulting with outside experts and providing in-service education provided by outside experts and participating in the evaluation, modification, and implementation of existing and new programs; and making school or classroom visits and assisting with teaching techniques.

26. CalSTRS considered the information that the District provided and ultimately agreed that the teacher liaison duties were not specific to the duties of a union representative but were for outgrowth services which are creditable services that can be reported to CalSTRS. However, CalSTRS found that the services could not be part of one salary that is combined with a teacher's salary, rather it had to be reported as an additional assignment to the DBS account.

27. On October 24, 2019, CalSTRS issued its Final Audit Report to the District and further notified the member whose records were sampled as part of the audit of its finding and the right to appeal through an administrative hearing. The Final Audit Report upheld the findings of the Draft Audit Report that the District had incorrectly reported earnings for the teacher liaison during the 2017-2018 school year to the DB Account. The contributions to CalSTRS DB account should have been based only on the liaison's full-time work as a certificated teacher, which was based on a 186-day work schedule, and the additional 20 days' work as a teacher liaison should have been reported as a part-time assignment reportable to the DBS program. Although CalSTRS agreed that union duties were not part of the teacher liaison position, the findings remained the same. It determined that:

However, whether the position of Teacher Liaison is related to union representative activities or not doesn't change the fact that the position required the member to be a full-time teacher with duties of Teacher Liaison added. The position of Teacher/Liaison is not considered a class of employees and cannot be reported as 1.0 FTE for the 206 days.

Regardless of whether the Teacher Liaison is considered an outgrowth activity or creditable service on its own, it is considered extra-duty because the member is a full-time teacher and belongs to the class of teachers. Any work performed above and beyond the duties of a full-time teacher are considered extra-duties.

28. Xiong explained that it was improper for the District to report the teacher liaison position as a class of its own similar to agricultural teachers who are on a 206-

day schedule when it should have been reported as a full-time certificated teacher position on a 186-day full-time salary schedule. The creditable service for the teacher liaison duties could be reported to CalSTRS but not as part of one salary combined with a teacher's salary. Rather, the earnings for the 20 days of teacher liaison duties had been incorrectly reported and were required to be reported separately from base compensation as a different assignment so that CalPERS could transfer any service credit above one year as a full-time teacher to the DBS account.

29. Xiong reported that CalSTRS relied on the job description provided by the District that stated that the teacher liaison serves in dual capacity as a fully qualified teacher and resource to site and administration when determining that the teacher liaison duties were an additional assignment above and beyond the one-year service credit. He reported that it is important to treat all members of the same class in the same manner, and that if the extra 20 days were credited to the DB account, and not transferred to the DBS account, this would cause the member's compensation to be inflated during the years immediately preceding retirement (in respondent's case), which causes an unfunded liability to the Teacher's Retirement Fund and threatens the integrity of the fund.

30. Xiong reported that the agricultural teachers and high school counselors referenced in the 2019 audit are a separate class of employees and that their 206-day calendar is their required single full-time assignment. Xiong reported that if there are a number of employees performing a particular position, that could constitute a separate class. However, if there is only one employee in the position (like the athletic director referenced in the 2019 audit set forth in Factual Finding 53, and the teacher liaison position), the employer must demonstrate that two other employers also have employees in that position to constitute a class of one. Xiong explained that it is

common for a superintendent to be identified as a class of one, because often there is only one superintendent for each district and the position is in common use in more than one district.

31. The District was unable to demonstrate that two other employers had the same position as the teacher liaison, therefore the position did not qualify as a valid class of one. CalSTRS therefore determined respondent's class was that of a full-time teacher.

32. The final audit cover letter included a notice to the District of its right to appeal the audit finding and request a hearing. Neither the District nor the sampled member appealed the final audit results. As part of the audit finding, the District was required to correct the reporting for the sampled member (to re-report the teacher liaison compensation as an additional assignment and not part of a 206-day work schedule). CalSTRS then adjusted the member's retirement allowance to reflect the correct retirement benefit and deducted five percent per month to recover the overpayment pursuant to Education Code sections 24616, 24616.5 and 24616. The District was directed to review its records and notify CalSTRS of any other affected members outside the CalSTRS audit sample for whom it misreported compensation and to correct any errors in reporting those members' compensation.

33. The District sent an email dated December 18, 2019, to CalSTRS identifying respondent as a member affected by the audit finding. It identified the correction years as 2013-2014, 2014-2015, and 2015-2016. The District did not immediately re-report respondent's compensation because there was some discussion with CalSTRS regarding whether the District wished to reclassify the teacher liaison position as a class of one according to applicable law and regulations. Ultimately, the District determined that it was unable to locate two other districts with similar

positions to distinguish a class of one (as noted in Factual Finding 31) and agreed with CalSTRS's finding.

34. In 2020, the District re-reported respondent's compensation to the DB account based on the 188-day salary schedule that applied to his full-time teaching duties rather than the 208-day salary schedule that also included the additional duties of teacher liaison,<sup>2</sup> and CalSTRS issued a benefit adjustment letter dated August 15, 2020, to respondent. The District initially identified respondent as serving as the teacher liaison from 2013 through 2016, but later acknowledged that he began in the role of teacher liaison in 2012. The corrected reporting, which changed the reported compensation earnable reportable to the DB program for the years identified that respondent served as teacher liaison from 208 days to 188 days (the schedule for a full-time teacher at the time), as required by the final audit finding, resulted in a reduction to respondent's retirement benefits and an increase in his DBS annuity. Since respondent had retired in June 2016, he received more retirement benefits than the law allowed from June 2016 until the District corrected the reporting of his income in 2020.

35. As a result of the re-reporting, respondent received increased compensation into his DBS account, which increased his monthly annuity payment each month. Respondent also received a check for the prior underpayment on this DBS

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<sup>2</sup> The District's 208-day schedule was reduced to a 206-day schedule, and its 188-day schedule was reduced to a 186-day schedule commencing with the 2016-2017 school year. Thus, while respondent was a teacher liaison, he was paid on a 208-day schedule, while the teacher liaison in the 2019 audit was paid on a 206-day salary schedule, and certificated teachers were paid on a 186-day schedule.

annuity. Additionally, on August 15, 2020, respondent's DB account was reduced, and his new monthly DB payment was reduced from \$10,936.91 to \$9,822.49, retroactive to his benefit effective date. This adjustment was determined to create a receivable of \$56,776.46 in overpayments that respondent is currently repaying by way of a five percent reduction to his corrected monthly benefit, pursuant to Education Code sections 24616 and 24617.

36. Respondent disagreed with the audit corrections from the audit report, and there were further communications between CalSTRS and the District in January 2021, within which the District affirmed that it had not changed its position and did not wish to designate the teacher liaison position as a class of one.

37. Respondent sought to challenge the re-reporting of his compensation by the District and filed a writ petition demanding an appeal. CalSTRS agreed to provide respondent with an administrative hearing to appeal the District's re-reporting of his income.

38. In December 2023, CalSTRS learned that, while the District previously re-reported respondent's compensation for the 2013-14, 2014-15, and 2015-16 school years following the audit, the District failed to re-report respondent's compensation for the 2012-13 school year during which respondent also served as teacher liaison, and for which year respondent's income was reported on a 208-day schedule instead of a 188-day schedule.

39. In preparation for the hearing in this matter, Xiong reviewed the Draft Audit Report, the Final Audit Report, and the adjustments made to respondent's account that were reported to CalSTRS. Xiong noticed that documents referenced that respondent had started in the teacher liaison position in the 2012-2013 year. He also



noticed that respondent's salary appeared to have been overinflated in CalSTRS's system for that year. Xiong requested documentation from the District regarding respondent's compensation for the 2012-2013 school year, which was provided by Jamie Norton, the payroll/benefits technician at the District. Norton did not testify at hearing. Xiong relied upon the documentation provided by the District.<sup>3</sup> This documentation stated that during that school year, respondent was a certificated teacher, his primary job position was as a high school teacher, and he was to receive service credit of 1.000 as a certificated teacher. The documents identified a second position "liaison/drivers ed". The full-time equivalent of service credit for the second position was noted as .2000, for a total of 1.2 credits.

40. CalSTRS requested that the District also re-report respondent's compensation for the 2012-13 school year based on his full-time teaching assignment and part-time additional duties as a teacher liaison. The District notified CalSTRS it would correct the reported compensation for the February payroll. This re-reporting will result in a further reduction to respondent's monthly retirement benefit retroactive to his retirement because his current retirement benefit is based on the 2012-2013 school year whereas it should have been based on the 2015-2016 school year which will now be his highest 12 consecutive month salary, resulting in an additional overpayment to respondent.

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<sup>3</sup> This documentation was admitted as administrative hearsay pursuant to Government Code section 11513, subdivisions (c) and (d) at hearing, to supplement testimony that respondent was working as a full-time teacher at the time he held the teacher liaison position.

41. In CalSTRS's closing brief, counsel reported that in March 2024, the District re-reported respondent's compensation for the 2012-2013 school year that had been unintentionally omitted from the initial corrections.

## **Respondent's Evidence**

### **TESTIMONY OF CINDY TOEWS, FORMER DISTRICT ASSISTANT SUPERINTENDENT**

42. Toews testified credibly at hearing, consistent with one who is telling the truth. Toews was hired to work for the District in 2010 as the Director of Human Resources and Instructional Services, and subsequently held the position of Assistant Superintendent. Prior to working for the District, she was a director of categorical programs in several different school districts, and she consulted in approximately 80 different school districts. Toews described the circumstances under which she was hired by the District. She reported that the District is small but included a substantial wealth disparity between wealthy families who provided substantial donations for passion projects and programs and a sizable group of poor families whose children were eligible for free services.

43. Toews reported that there were three separate educational programs being operated, with wealthy students receiving greater educational and cultural advantages. She reported that some teachers had been hired without proper qualifications and had no curricula; and other teachers were unhappy with educational programs that were unable to be performed and unjust curriculum distribution and content. Toews reported that the members of the governing school board were unseated in a special election, and a new board was constituted. Shortly thereafter, the District Superintendent was fired as well.

44. The District was going bankrupt in part because of the cost of its international baccalaureate program, and had no superintendent until a new one, Bill McGuire, was appointed. Toews met with every employee of the District and questioned them about what programs needed to be retained and what needed to be changed. She compiled data to show to McGuire regarding the efficacy of the three programs and after numerous meetings with angry parents and teachers, it was decided to eliminate the three-tier system and replace it with a system that would benefit all the children. This restructuring required rewriting of all job descriptions within the District, which was ultimately done by a consultant, Vance Jacobson, whom the District hired. Jacobson did not testify at hearing.

45. This period of change in the District bred distrust and conflict among parents, community members and teachers, that prompted the District to create a new and unique position, the "teacher liaison," someone who had garnered trust with different factions of the District, to act as a liaison between the new administration and various interest groups, and to explain the changes that were about to occur in the District and to help ensure that the changes were effectuated. Toews reported that this type of approach had been used in other districts, using different titles for the position, often "teachers on special assignment" (TOSA). She testified that it was important to the school board that the job description for the teacher liaison be based on similar job descriptions.

46. Jacobson created the job description for the teacher liaison. He brought in samples of job descriptions from other districts, and the District melded them and personalized them to create the unique position of teacher liaison to meet the unique needs of the District. Unlike a TOSA, who typically does not teach, given the small size and unique needs of the District, the teacher liaison was expected to continue

teaching. The position required a full-time teacher to take on additional administrative duties including working with the school board, administrators, and teaching staff to develop policies and curriculum to benefit all students, as well as attendance at committee meetings, cabinet meetings, and other meetings that occurred during the instructional day or at night or on the weekend. Toews explained that the District was small and could not afford to remove the teacher liaison from his full-time teaching position.

47. Respondent was serving as one of two full-time Physical Education (P.E.) teachers when he was asked to take on the role of teacher liaison in 2012. Toews reported that respondent did not reduce his role as a full-time teacher other than obtaining a substitute teacher when needed to attend meetings in his role of teacher liaison. Respondent "was expected to teach his classes and also do the additional duties that were required to meet the other needs."

48. Toews testified that the District estimated that the duties of the teacher liaison would require 20 hours per month more than respondent had been working as a full-time teacher, although this was just a "ballpark figure" that was palatable to the board. In retrospect, Toews thought that was an underestimate. Toews testified that to her knowledge the District did not consider the job of teacher liaison as a means of increasing the holder's retirement benefits.

#### **TESTIMONY OF GREG MEDICI, FORMER DISTRICT CHIEF FINANCIAL OFFICER**

49. Greg Medici, the District Chief Financial Officer from Summer 2011 to December 2014, testified credibly at hearing, consistent with one who is telling the truth. Medici is currently employed as Deputy Superintendent of Business Services for the Sonoma County Office of Education. He has worked in financial roles at school

districts since 2010. When Medici arrived at the District, it was in financial distress and was in the process of going through financial recovery. Part of the process involved the reconfiguration of job descriptions for employees. Medici worked with Jacobson on the job descriptions, including the teacher liaison position, which was created to address the need that the District had at the time for someone to liaise between administration, teachers, parents and other various groups. Medici believes that they looked at job descriptions in other districts when creating the role.

50. Medici is familiar with the job description for the teacher liaison position. He believes that the position was significant to the reorganization of the District and noted that respondent was an ideal choice for the role due to his unique knowledge of St. Helena. Medici reported that the job was not created as a means of increasing respondent's retirement. Medici did not recall ever promising respondent that respondent's earnings for the position of teacher liaison would be reportable to CalSTRS for the purpose of calculating his retirement, nor that respondent ever stated that he would not take the position if that were not the case.

51. The teacher liaison position began on July 1, 2012. To Medici's knowledge, respondent continued to have a teaching assignment on the master high school calendar while he served in the position. At the same time, respondent attended a number of meetings related to his teacher liaison duties. Medici attended monthly budget advisory committee meetings and weekly committee and cabinet meetings with respondent. Some of these meetings took place during the instructional day. Medici reported that if a conflict arose between respondent's teaching schedule and his attendance at a budget committee meeting, the expectation was that respondent prioritize the meeting due to his knowledge of the topics discussed and the fact that others could cover his teaching assignments. Medici and respondent were

both on the same campus “within 200 feet of each other,” and met to discuss business related questions on almost a daily basis.

52. One of Medici’s responsibilities in his role with the District included reporting payroll to CalSTRS. His office worked with the District and NCOE to confirm payroll for CalSTRS remittance purposes. He communicated with CalSTRS regarding an earlier audit of the District and CalSTRS’s resulting 2014 audit report. He reported that he was not involved in the 2019 audit but was contacted about the audit by Andrea Stubbs, the Chief Business Officer of the District at the time and that they discussed the job descriptions developed by the District and written by Jacobson.

**TESTIMONY OF ANDREA STUBBS, FORMER DISTRICT CHIEF BUSINESS OFFICER**

53. Andrea Stubbs, the District's Chief Business Officer (CBO) at the time of the 2019 audit, testified credibly at hearing, consistent with one who is telling the truth. Stubbs worked for the District as the CBO from April 1, 2015, until June 30, 2023. Respondent was the teacher liaison when she started with the District, and Farrell held the position when she left. Stubbs was notified by CalSTRS in 2018 that an audit would be conducted at the District. CalSTRS had questions regarding employees that had longer workday calendars. These employees included agricultural teachers, counselors, the activities director, the athletic director, and the teacher liaison. The agricultural teachers, activities director, athletic director, and teacher liaison had classroom instruction as part of their responsibilities. Stubbs recalled that CalSTRS ultimately determined that the District could continue to report the activity director’s and the athletic director’s full earnings (both of whom taught classes) to the DB account because they were allowable classes of one, but that the District would have to re-report the earnings for the teacher liaison position such that the additional days beyond a full-time certificated teacher’s 188-day work schedule (which was

subsequently reduced to 186 days) would have to be reported to the DBS account. The agricultural teachers were also viewed differently from the teacher liaison because they were closer to a teacher role, but on a longer workday calendar.

54. Following the audit, CalSTRS informed Stubbs that the teacher liaison position was not an allowable class of one. However, CalSTRS gave the District the opportunity to create a "class of one" for the teacher liaison position pursuant to California statutory authority and regulations. Stubbs was advised that if the District could identify two additional districts that used a similar job description with a longer work calendar that had their full compensation credited to the DB account, they could potentially create a class of one which could be a basis for appeal.

55. However, the District was unable to locate two other districts with similar positions as required. Stubbs reached out to McGuire, Medici, Jacobson, and her local CBO email group, and did some online research. She recalls that McGuire and Medici were relatively unresponsive in the matter. She did not recall contacting Toews. Stubbs reported that Jacobson, the consultant who created the job description for the teacher liaison, told her that the teacher liaison position was unique to St. Helena, that he wrote the description based on the District's particular needs at the time, and that he did not use that particular job description in any other district. Thus, the District determined that there was not a basis for an appeal and complied with CalSTRS's determination that respondent's additional administrative duties for the teacher liaison position were required to be reportable to CalSTRS's DBS program, and only the compensation he earned as a teacher (the 188-day salary schedule) could be reportable to the DB Program. Specifically, Stubbs advised CalSTRS via email dated May 12, 2020, that: "The district does not intend to designate this position as a class of

one as we cannot demonstrate that job duties for that class are in common use by at least two other employers per California Code of Regulations Section 27300(a)(1)(E)."

56. Accordingly, the District did not request an administrative hearing to dispute this audit finding, and instead made the reporting corrections for the 2015-2016, 2014-2015, and 2013-2014 school years. Stubbs was under the impression that CalSTRS may have only requested reporting for those years, however she agreed that the written audit report instructed the District to create a list of other individuals who served in this position and whether their extra duty earnings were also misreported back to when the misreporting occurred.

#### **RESPONDENT'S TESTIMONY**

57. Respondent testified in a credible manner, consistent with one who is telling the truth. Respondent was initially employed by the District in 1993, as a football coach and P.E. teacher. He also taught driver's education and health education. Respondent worked continuously for the District until June 2016, when he retired. During the 2011-2012 school year, his primary teaching assignment was teaching P.E. He also taught a driver's education class before the workday and served as the St. Helena Teachers Association president, and separately as the Department Chair for Physical Education, which was an extra-duty paid position. He had previously resigned from the football position.

58. In the 2011-2012 school year, respondent worked as a certificated teacher "within the framework of teachers 186 or 187 days, depending on the work year." He reported that there was a little bit of outside work with the association assignment and the department chair assignment. He performed few if any duties related to adult education, vocational counseling, evaluation of District programs,



development of curriculum, and performance reviews of other employees, until he was asked to assume the duties of the teacher liaison. Prior to that, he had "a little bit" of involvement in the selection or assignment of teachers within the District and in the oversight of health programs.

59. Respondent confirmed that the 2011-2012 school year was a volatile and difficult time for community members, board members and administrators. Teachers were unhappy with the workplace, programs were not being performed that should have been performed for the students, all five members of the school board were recalled, the superintendent was terminated, and the school administration changed.

60. Respondent was approached by McGuire, the superintendent at the time, to accept the teacher liaison position. McGuire was new and did not know many of the community members or staff, and he asked respondent to help reunite the District into a focused direction. Due to respondent's experience working on fundraising and community events, and his relationships with the school staff and community individuals, McGuire believed that everyone would trust him. Respondent was told that it would be a year-round position that the District was creating, outside of his role as department chair and union president. After some hesitation due to personal considerations, he accepted the position in the Spring or Summer of 2012 and reportedly performed all functions as described in the job description prepared by Jacobson for the new position.

61. In a letter to the District dated September 10, 2019, which was ultimately provided to CalSTRS for its review, respondent noted that the school board approved the job description and pay scale for a 208-day year; and that he accepted the position based on the District's representation that the salary would be fully creditable to his DB account. At hearing, he testified that he accepted the position in part based on the

District's representation that compensation for the position would be reported in compliance with the Education Code requirements, which he understood to mean that the District would be reporting the 208 days that he worked to his DB account.

62. Respondent testified that his "structure of employment" changed dramatically after he accepted the teacher liaison position. It was a dual role, and his teaching responsibilities became part of the liaison position. According to respondent, McGuire made it clear that he would also have to participate in numerous meetings overseen by McGuire, Medici, or Toews, to whom he would be responsible. Some of the meetings were scheduled during or after the instructional day, and some were impromptu. Respondent represented the District at a NCOE meeting as a last-minute substitute for Medici on one occasion and frequently met with Medici to prepare for or attend meetings based on District funding issues.

63. At the same time, respondent had a classroom assignment as a P.E. teacher. At times, when respondent was in his classroom teaching, he was interrupted by the presence of McGuire or Medici needing to meet with him in connection with his liaison duties. Respondent reported that he was pulled out of his classroom for meetings or events, on a regular basis, from one to five times a week. Respondent reported that he was informed that his responsibility was to attend the meetings, and either the District or respondent arranged for a substitute to fill in for him in the classroom. Other teachers were not permitted to attend such meetings during instructional times. Respondent reported that there was never a week when he was not removed from his classroom to perform duties related to the teacher liaison role. He reported that when he took the position his workload increased immensely beyond his teacher duties.

64. Respondent reported that when Jacobson rewrote the job descriptions, he included the longer workday schedules and described the teacher liaison position as a 1.0 position in an effort to comply with the Education Code, and noted that the teacher liaison position job description was described as having a 208-day work schedule in the collective bargaining agreement.

65. Respondent reported that while attending conferences he met other individuals with similar positions in different districts.

66. Respondent reported that he met with a CalSTRS representative to discuss an estimate of his retirement benefits. He reported that she did some calculations based on his 208-day work schedule for the teacher liaison position being credited to his DB account and his extra duty earnings for teaching driver's education, coaching, and work as department chair being credited to his DBS account. Based on the estimate, he decided to retire at the end of the 2015-2016 school year, even though he was physically able to continue to work. He reported that his first benefit check was "on the mark" with her estimate.

67. When respondent received the letter in August 2020 notifying him that his retirement benefit would be reduced by approximately \$1,000 per month for the rest of his life he was devastated. He and his wife had to change their lifestyle. He reported that he became stressed and developed atrial fibrillation, and ultimately underwent open heart surgery.

## **LEGAL CONCLUSIONS**

1. CalSTRS is the party seeking to change the status quo, by seeking to establish that a portion of respondent's compensation was incorrectly reported and

should be re-allocated to the DBS account. Accordingly, CalSTRS bears the burden of proof in this matter, by a preponderance of the evidence, except that respondent has the burden of proof as to any affirmative defenses. (Evid. Code, § 500; *In the Matter of: Stanislaus County Office of Education*, (2019) Precedential Dec. No. 19 01, at p. 9; *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, at fn. 5.)

2. As set forth in Factual Findings 4 and 5, Education Code section 22119.2 defines "creditable compensation" that can be included in the calculation of a member's DB monthly allowance, following principles of consistent treatment of compensation among an entire class of employees, and excluding remuneration that is not paid to all persons who are in the same class of employees. (Ed. Code, § 22119.2, subds. (a), (d)(1), (g).) In other words, once a member is part of a particular class of employees, the reportable compensation for that member must be the same as all other members of that class; any additional money paid to a member over and above the wages for that class must be reportable to the member's DBS account.

3. Education Code section 22112.5, subdivision (a)(1), defines a class of employees, in pertinent part, as a "number of employees considered as a group because they are employed to perform similar duties, are employed in the same type of program, or share other similarities related to the nature of the work being performed." Pursuant to Education Code section 22138.5, subdivision (a)(1), full-time means the "days or hours of creditable service the employer requires to be performed by a class of employees in a school year in order to earn the compensation earnable as defined in Section 22104.8 and specified under the terms of a collective bargaining agreement or employment agreement."

4. School districts that employ CalSTRS members report and make contributions to the DB Program based on a member's creditable compensation for up

to 1.000 year of creditable service. Education Code section 22703, subdivision (b), provides that a "member's creditable service that exceeds 1.000 in a school year shall not be credited to the Defined Benefit Program." Instead, such service "shall be credited to the Defined Benefit Supplement Program." (Ed. Code, § 22703, subd. (b); see also Ed. Code, § 22905, subd. (b)(1).) Stated differently, in any given school year, a CalSTRS member may only receive a total of one year (1.000) of service credit that is credited to his DB account. While that member is entitled to earn money for performing duties in addition to 1.000 year of service credit, contributions on such additional compensation must be credited to the member's DBS account.

## **DISCUSSION**

5. Only compensation earned for a single full-time assignment may be reportable to the DB account. Respondent was already employed as a full-time teacher when the District created the teacher liaison position, which required him to continue to serve as a full-time teacher and take on additional administrative duties for which he received more compensation. The District never reclassified him from his full-time teaching position to a part-time teaching position to adjust for the hours he left his classroom to perform administrative duties. As such, he continued to remain part of the class of employees (full-time teachers) that were paid a salary and received 1.000 year of service credit based on a 188-day year for that class of employees. Therefore, only the salary he earned for the 188-day schedule could be reportable to his DB account. The additional 20 days of earnings paid to respondent for his duties as teacher liaison (based on the 208-day salary schedule) were not paid to the other full-time teachers in his class, and thus could not be reportable to the DB account.

6. Although respondent was often pulled from his classroom assignment to perform administrative tasks, the District could not afford to remove him from his

full-time teaching assignment, instead using substitutes when needed. Furthermore, the job description for the teacher liaison confirmed that the teacher liaison would remain a teacher, who was required to take on additional administrative duties. Therefore, his additional income for the teacher liaison duties was additional income not paid to other teachers in his class and was reportable to his DBS account.

7. CalSTRS provided the District with an opportunity to designate the teacher liaison position as a "class of one" with its own salary schedule so that respondent could obtain retirement benefits in the manner he is requesting, but the District declined to do so because it was unable to find other school districts that maintained similar positions as required by applicable statutes and regulations. Thus, respondent remained in the class of full-time teachers.

8. Case law also holds that compensation for additional work beyond the duties of a full-time teacher is required to be reportable to the member's DBS Account. In *O'Connor v. State Teachers' Retirement System* (1996) 43 Cal.App.4th 1610 (*O'Connor*), the Court of Appeal held that two members were not entitled to retirement allowances based on two full-time teaching positions with different employers that each held simultaneously. (*Id.* at p. 1614.) Instead, the members' retirement allowances had to be based on the salary for a single, full-time position because "the State Teachers' Retirement Law specifically limits the total amount of service credit a member may earn, doing so by utilizing one full-time position as the yardstick. A member may earn no more than one year of credited service in any one academic year, regardless of the amount of work that member actually performed and regardless of the number of jobs that member actually held." (*Id.* at p. 1622-1623.)

9. In *Blaser v. State Teachers' Retirement System* (2022) 86 Cal.App.5th 507, 534-535 (*Blaser*), the Court of Appeals held that a school district erroneously reported

extra income earned by a class of full-time teachers who taught sixth period classes to the members' DB accounts rather than the DBS accounts. In applying Education Code section 22119.2's definition of creditable compensation, the *Blaser* court found all teachers, whether they taught through a sixth period or not, belonged to the same class. Since only a subset of the class agreed to forego a preparation period and therefore received the additional pay, that additional pay was not "paid to all persons who are in the same class of employees" and therefore was not creditable compensation. (*Id.* at p. 534-535) The *Blaser* court also reasoned that the additional compensation for those teachers who elected to teach sixth period classes exceeded their full-time work assignment (which was considered by the district to be five teaching periods and a sixth preparation (nonteaching) period), and pursuant to code section 22703 was creditable solely to those members' DBS accounts, not the DB Program. (*Id.* at p. 535.) Finally, the court stated that whether the teacher-members taught five periods or six, it could not reasonably be argued that they were in a different class of employees as they performed similar teaching duties. (*Id.*, citing Education Code section 22112.5, subdivision (a).)

10. Here, respondent already belonged to the class of employees who were full-time teachers compensated on a 188-day salary schedule. As a teacher liaison, he was required to continue to work as a full-time teacher, and perform additional administrative duties related to the teacher liaison role. Therefore, his extra compensation (on a 208-day salary schedule) could not be reportable to his DB account because the additional compensation did not apply to everyone within the class of teacher employees, the additional work exceeded his full-time assignment as a teacher, and he continued to perform teaching duties like the rest of his class.

11. CalSTRS has two precedential decisions applying similar reasoning. In *In the Matter of the Retirement of Margaret Deetz* (Case No. APL20110816-0000296) (*Deetz*), the school district assigned Deetz, who was already the full-time superintendent, additional duties of an assistant superintendent for one year, for which she received additional compensation. Deetz argued that the additional compensation was creditable compensation that should be credited to her DB account for purposes of calculating retirement benefits. Relying on *O'Connor*, CalSTRS concluded that the salary increase for performing additional duties should not be credited to her DB account, because Deetz was already being compensated as a full-time superintendent before taking on the additional duties.

12. In *In the Matter of the Statement of Issues Against Barbara Pahre* (Case No. APL20130522-0000611) (*Pahre*), the district gave Pahre, who had been employed full-time as the Assistant Superintendent for Human Resources (Assistant Superintendent), the new title of "Associate Superintendent" which included all her duties as Assistant Superintendent for Human Resources, as well as some additional duties beyond the full-time duties of assistant superintendent and a salary increase to compensate her for taking on those additional duties. Pahre worked in the Associate Superintendent position for one year and then retired. CalSTRS held that under *O'Connor* and *Deetz*, the additional salary that Pahre received for the additional duties as an Associate Superintendent was paid for service that exceeded her full-time employment (1.000 for that school year) as the Assistant Superintendent, such that it could not be creditable to the DB account rather it was creditable to the DBS account.

13. Here, respondent's duties as teacher liaison were in addition to his work as a full-time teacher, and similar to *Blaser*, *O'Connor*, *Pahre*, and *Deetz*, the additional salary that he received for the additional duties were not reportable to the DB account.



14. Education Code section 22112.5, subdivision (b) provides: "A class of employees may be comprised of one person if no other person employed by the employer performs similar duties, is employed in the same type of program, or shares other similarities related to the nature of the work being performed and that same class is in common use among other employers." Although "an employer may establish a class that is comprised of employees whose assignment is a combination of two or more job duties" (Cal. Code Regs., tit. 5, § 27300, subd. (a)(1)(C)), "[i]f an employer established a class comprised of one employee, the employer must demonstrate that job duties for that class are in common use by at least two other employers" (*Id.* at subd. (a)(1)(E)). The classic example of a "class of one" employee is a district superintendent, whose duties are well defined, and the position is in common use among other employers (i.e., school districts).

15. Here, CalSTRS provided the District with an opportunity to designate the teacher liaison position as a "class of one" with its own salary schedule, but the District declined to do so because it was unable to find other school districts that maintained similar positions as required by applicable statutes and regulations. There is nothing in the record to suggest that the position combining a certificated teacher with additional teacher liaison duties is a class of employees "in common use among other employers." The record did not establish that such a position ever existed in two other districts, or that such was in common use. Since respondent remained a full-time teacher who was part of a class of employees that qualified for 1.000 year of service credit based on a 188-day teaching schedule, his additional remuneration for administrative duties as a teacher liaison was additional income that was not paid to other teachers in his class, and therefore was required to be reportable to his DBS account.

16. Respondent contends that the District was in a unique position which required a unique individual to work with parents, teachers and administrators to help restructure the District, and that because of the small size of the District, it also required that person to teach classes, however at the same time recognizing that much of his time would be spent not teaching. In other words, he seems to be contending that the teacher liaison position was a class of its own. He further contends that CalSTRS should have recognized this unique situation, but failed to do so; and because it did not have a member of the actual audit team testify, has failed to demonstrate why its conclusion should be upheld now that all the facts of respondent's role are known.

17. Respondent also contends that the "Rule of One" appears nowhere in the Education Code, but at the same time seems to suggest that this rule should have been met based on testimony that positions in other districts were reviewed when formulating the unique teacher liaison position. Although respondent did spend a substantial amount of time on the teacher liaison duties, the District did not and could not create of class of one for the position because it was unable to find two other school districts that employed someone in a similar position. Therefore, respondent has not established that the teacher liaison position is a separate class of one employee that is distinct from the class of certificated teachers.

18. Furthermore, it should be noted that Education Code section 22112.5, subdivision (c), provides that "The board shall have the right to override the determination by an employer as to whether or not a group or an individual constitutes a 'class of employees' within the meaning of this section."

19. The matters set forth in Factual Findings 1 through 67 have been considered. The record established that during the school years that respondent held

the teacher liaison position, respondent worked full-time as a teacher and was part of a class of employees that qualified for 1.000 year of service credit based on a 188-day teaching schedule. The evidence also demonstrated that over this period, in addition to his full-time duties as a teacher, he performed additional duties as a teacher liaison for which he earned compensation which was improperly credited to his DB account. Accordingly, this compensation must instead be credited to his DBS account.

20. Respondent contends that the doctrine of equitable estoppel precludes CalSTRS from recalculating his retirement allowance. *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, sets forth the elements of equitable estoppel: (1) the party to be estopped must be apprised of the true facts; (2) the party must intend that its conduct shall be acted upon, or must so act that the party asserting estoppel had a right to believe it was so intended; (3) the party asserting estoppel must have been ignorant of the true state of facts; and (4) that party must have relied upon the conduct to its injury. Where a party seeks to invoke equitable estoppel against a governmental entity, an additional element applies: "the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, 240, see also *McGlynn v. State of California* (2018) 21 Cal.App.5th 548, 561.) Furthermore, in cases involving public employee pensions, estoppel may not be invoked where to do so would "directly contravene statutory limitations." (*Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 870.) Equitable estoppel may not be invoked to require CalSTRS to pay an incorrect benefit amount based on compensation that was not DB-creditable under the Education Code. (*Blaser v. State Teachers' Retirement System, supra*, 86 Cal.App.5th at 539.) Respondent's equitable estoppel argument fails.

21. Any other arguments put forth by respondent that are not specifically addressed have been considered and are rejected as they lacked appropriate evidentiary and/or legal support.

## ORDER

Respondent John Boyett's appeal, from the determination by CalSTRS that a portion of his salary in the school years that he served in the teacher liaison position should be credited to the Defined Benefit Supplement program rather than the Defined Benefit program, is denied.

DATE: 07/16/2024

*Michelle Dylan*

MICHELLE DYLAN

Administrative Law Judge

Office of Administrative Hearings