

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Stacie Thompson (Respondent) became a member of CalPERS through her employment with Grant Joint Union High School District from March 6, 2002, through October 16, 2004. Her membership continued through her employment with Sacramento County Schools- County School Service from February 16, 2005, through July 13, 2005. By virtue of her employment, Respondent was a local miscellaneous member of CalPERS.

On August 11, 2008, Respondent was hired by the Twin Rivers Unified School District (District). The District's classified school employees are eligible to be enrolled as CalPERS members. However, Respondent's position with the District was a certificated position, meaning she performed creditable service which should have been reported to the California State Teacher's Retirement System (CalSTRS). The District misreported Respondent's service to CalPERS, instead of CalSTRS.

In 2017, the Legislature enacted California Government Code section 20309.7 to allow school employers, such as the District, to remedy situations in which they misreported a certificated position to CalPERS. Government Code section 20309.7 provides the employee with the option of transferring past and future service credit to CalSTRS, or to keep the past and future service credit with CalPERS.

On January 16, 2018, CalPERS sent Circular Letter 200-007-18 (Circular Letter) to school employers notifying each of them of the new law and the process through which misreported employees could make this election. The Circular Letter contained an Election for Misreported Service Form and informed the school employers that all forms should be returned to CalPERS no later than June 30, 2018, which is the specified deadline contained in Government Code section 20309.7.

In July 2019, Respondent received a Social Security statement. Because she has been in a certificated position since April 11, 2008, and certificated positions do not contribute to Social Security, Respondent contacted the District to inquire about whether she was being misreported to CalPERS.

On August 27, 2019, the District contacted CalPERS indicating that Respondent may have been misreported to CalPERS since April 2008. On September 13, 2019, CalPERS again provided the District with the Circular Letter and its attachments. On September 23, 2019, the District provided CalPERS with Respondent's Retirement System Election for Misreported Service Form indicating that she wanted to have her past and future service performed since April 11, 2008 reported to CalSTRS. CalPERS informed Respondent on October 2, 2019 that her election to have her service credit reported to CalSTRS had been approved. CalPERS' approval letter was also sent to the District. However, the District failed to correct Respondent's misreported service.

In 2020, the District informed CalPERS that it did not want to report Respondent's service to CalSTRS because CalSTRS would assess the District a penalty for failure to properly enroll her. The District informed CalPERS that Respondent's Election for Misreported Service Form was not valid because it was submitted to CalPERS after the mandated deadline of June 30, 2018.

By letter dated November 16, 2020, CalPERS informed the District that because it did not identify Respondent as a misreported employee and did not notify Respondent of her rights under Government Code section 20309.7, she retained her rights to elect to have her service credit reported to the appropriate retirement system. The District was informed that CalPERS is mandated to correct mistakes, and CalPERS had determined Respondent was eligible to submit the Election for Misreported Service Form after Government Code section 20309.7's deadline due to the District's failure to adequately inform her of her rights. CalPERS provided the District with appeal rights.

Respondent District appealed this determination and exercised its right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on October 7, 2021. Respondent District was represented by counsel at the hearing. Respondent was present and represented herself at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

CalPERS presented evidence at the hearing supporting its determination. CalPERS presented uncontroverted evidence that Respondent's service starting August 11, 2008, should have been reported to CalSTRS. Through documentary evidence and witness testimony, CalPERS demonstrated that the District knew, or should have known, about the requirements of Government Code section 20309.7, and that the District was uniquely positioned to identify employees who had been misreported to CalPERS. CalPERS also presented evidence that Respondent did not know about her rights under Government Code section 20309.7 until July/August 2019 and that she submitted the Election for Misreported Service Form within a couple of months of being informed of her rights.

CalPERS argued that the District made two mistakes with respect to Respondent's misreported service. First, the District did not properly enroll Respondent in CalSTRS at the time her employment commenced. Second, the District did not notify Respondent of the fact she had been misreported or that she had a right to correct the error under Government Code section 20309.7 until long after the June 30, 2018 deadline.

CalPERS presented evidence that under Government Code section 20160(a), it “may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member” so long as certain criteria are met. Namely, the request must be made “within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.” (Gov. Code section 20160(a)(1).) The error or omission must have been “the result of mistake, inadvertence, surprise, or excusable neglect.” (Gov. Code section 20160(a)(2).) The correction must not provide the member “with a status, right, or obligation not otherwise available under this part.” (Gov. Code section 20160(a)(3).) And, the board shall correct all actions taken as a result of errors or omissions of any contracting agency or CalPERS (Gov. Code section 20160(b).) For these reasons, CalPERS argued Respondent was eligible to correct her mistake and submit her Election for Misreported Service Form.

Respondent testified on her own behalf. Respondent testified that she did not become aware of her service with the District being misreported to CalPERS until the summer of 2019, at which point she immediately contacted the District’s Human Resources office. Respondent testified that it was not until August 2019 that the District informed her of the right to elect to have her misreported service credit reported to CalSTRS. She testified that she submitted the Election for Misreported Service Form to the District; but the District tried to convince her not to follow through with her request because CalSTRS would assess a penalty against the District for failure to enroll. Respondent testified that it was her desire to have her misreported service transferred to CalSTRS.

The District did not call any witnesses at the hearing. The District submitted written argument, arguing that Respondent’s election to have misreported service reported to CalSTRS was not timely, so she was not eligible to transfer her misreported service. The District argued that Respondent’s failure to comply with Government Code section 20309.7’s statutory deadline invalidates her election. The District also argued that Government Code section 20160 does not apply to the District because it had no duty to notify employees of the passage and requirements associated with Government Code section 20309.7. For this reason, the District argued there is no error or omission to be remedied under Government Code section 20160.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied the District’s appeal. The ALJ found that Respondent’s certificated position with the District required membership in CalSTRS. Thus, Respondent’s misreported position with the District is subject to the requirements of Government Code section 20309.7, and the District must correct Respondent’s misreported service.

The ALJ further found that the District was instructed to inform affected employees of their right to elect to move misreported service to CalSTRS under Government Code section 20309.7. The District failed to inform Respondent of her rights to have her service correctly reported to CalSTRS. The ALJ rejected the District’s contention that it had no obligation to inform Respondent of her rights.

The ALJ also found that Respondent was not made aware of her rights under Government Code section 20309.7 until September 23, 2019, which was over one year after the June 30, 2018 deadline specified in Government Code section 20309.7. Once Respondent became aware, she took the necessary steps to correct by filing her Election for Misreported Service Form.

The ALJ concluded that CalPERS correctly applied Government Code section 20160 in accepting Respondent's Election for Misreported Service Form, and in determining that Respondent's misreported service should be reported to CalSTRS pursuant to Respondent's Election for Misreported Service Form.

For these reasons, the ALJ found that CalPERS and Respondent established that pursuant to Government Code section 20160, Respondent is entitled to submit her Election for Misreported Service Form after the deadline, and that she may request to have her service correctly reported to CalSTRS. The ALJ denied the District's appeal.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

February 15, 2022

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