

ATTACHMENT G
CALPERS' EXHIBITS

Index

A: CalPERS Evidence

Page	Document	Date	Admitted	Marked for ID	Excluded
A1 - A2	CalPERS' Request for Official Notice update.pdf	September 01, 2021			
A3	Exhibits List (ID 562913)	August 31, 2021			
A4 - A15	Signed Agenda Item 4-B May 16 2000 (002).pdf	September 01, 2021			
A16 - A28	Exhibit 1 Original Statement of Issues Admitted	August 31, 2021	1 12/09/2021		
A29 - A34	Exhibit 2 Notice of Hearing Admitted	August 31, 2021	2 12/09/2021		
A35 - A50	Exhibit 3 Letter 7-18-18 Chappuie to Nguyen Admitted	August 31, 2021	3 12/09/2021		
A51 - A60	Exhibit 4 Letter 8-6-18 Nguyen to Chappuie Admitted	August 31, 2021	4 12/09/2021		
A61 - A65	Exhibit 5 Letter 12-18-18 Lau to Nguyen Admitted	August 31, 2021	5 12/09/2021		
A66 - A71	Exhibit 6 email 12-27-18 Camacho to Nguyen Admitted	August 31, 2021	6 12/09/2021		
A72 - A76	Exhibit 7 Letter 12-18-19 Hanson to Morrison Admitted	August 31, 2021	7 12/09/2021		
A77 - A116	Exhibit 8 Letter 2-19-20 Hanson to Ostrander Admitted	August 31, 2021	8 12/09/2021		

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Page 3 of 7 A117 - A118	Exhibit 9 Letter 2-21-20 Hanson to Morrison Admitted	August 31, 2021	9 12/09/2021		
A119 - A356	Exhibit 10 Memo 12-6-18 Chappuie to Contracting Agencies Admitted	September 01, 2021	10 12/09/2021		
A357 - A366	Exhibit 11 District's Hourly Salary Schedule 2012-2013 Admitted	August 31, 2021	11 12/09/2021		
A367 - A374	Exhibit 12 District's Hourly Salary Schedule 2013-2014 Admitted	August 31, 2021	12 12/09/2021		
A375 - A382	Exhibit 13 District's Hourly Salary Schedule 2014-2015 Admitted	August 31, 2021	13 12/09/2021		
A383 - A387	Exhibit 14 Pay - Assignment Information Pelleriti 8-24-12 Admitted	August 31, 2021	14 12/09/2021		
A388 - A390	Exhibit 15 Circular Letter 3-22-05 McGartland to School Districts Admitted	August 31, 2021	15 12/09/2021		
A391 - A392	Exhibit 16 Circular Letter 6-14-11 Watson to School Districts Admitted	August 31, 2021	16 12/09/2021		
A393 - A396	Exhibit 17 Circular Letter 1-8-20 Ostrander to Contract Agencies Admitted	August 31, 2021	17 12/09/2021		

Page 4 of 7 A397 - A415	Exhibit 18 Agency and Schools Reference Guide June 2021 Admitted	August 31, 2021	18 12/09/2021		
A416 - A477	Exhibit 19 Education Forum 2018 Velazquez: Prevent Misreporting Pay Admitted	August 31, 2021	19 12/09/2021		
A478 - A479	Exhibit 20 Service History Member's name redacted Admitted	September 01, 2021	20 12/09/2021		
A480 - A500	Exhibit 21 Request for Official Notice 9-1-21 Admitted	September 03, 2021	21 12/09/2021		
A501 - A513	Exhibit 22 Amended Statement of Issues Admitted	September 03, 2021	22 12/09/2021		

B: Respondent Evidence

Page	Document	Date	Admitted	Marked for ID	Excluded
B1 - B13	Exhibit 1 R1 Memo 12-6-18 Chappuie to Contracting Agencies Admitted	September 03, 2021	R1 12/09/2021		
B14 - B23	Exhibit 2 Excluded	September 03, 2021			2 12/09/2021
B24 - B26	Exhibit 3 Excluded	September 03, 2021			
B27 - B40	Exhibit 4 Excluded	September 03, 2021			
B41 - B45	Exhibit 5 Excluded	September 03, 2021			5 12/09/2021
B46 - B85	Exhibit 6 Excluded	September 03, 2021			6 12/09/2021

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Page 5 of 7 B86 - B108	Exhibit 7 Excluded	September 03, 2021			7 12/09/2021
B109 - B113	Exhibit 8 R8 Pay Assignment Info. for Pelleriti 8-24-12 Admitted	September 03, 2021	R8 12/09/2021		
B114 - B116	Exhibit 9 R9 CASBO "Payroll Concepts" Admitted	September 03, 2021	R9 12/09/2021		
B117 - B262	Exhibit 10 R10 "Welcome to 2006 Payroll Concepts" Admitted	September 03, 2021	R10 12/09/2021		
B263 - B265	Exhibit 11 R11 Memo 12-8-20 Stine to Morenz Admitted	September 03, 2021	R11 12/09/2021		
B266 - B267	Exhibit 12 R12 Letter 8-8-07 Dougherty to Wagner Admitted	September 03, 2021	R12 12/09/2021		
B268 - B304	Exhibit 13 Excluded	September 03, 2021			13 12/09/2021
B305 - B309	Exhibit 14 Excluded	September 03, 2021			14 12/09/2021
B310 - B320	Exhibit 15 R15 Gov. Code 20636.1 1-20 Admitted	September 03, 2021	R15 12/09/2021		
B321 - B332	Exhibit 16 R16 Gov. Code 20636.1 1-12 Admitted	September 03, 2021	R16 12/09/2021		
B333 - B345	Exhibit 17 R17 Gov. Code 20636.1 1-01 Admitted	September 03, 2021	R17 12/09/2021		
B346 - B351	Exhibit 18 R18 Title 2 CCR 559.670 Admitted	September 03, 2021	R18 12/09/2021		

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Page 6 of 7 B352 - B355	Exhibit 19 R19 Title 2 CCR 171.1 (prior version) Admitted	September 03, 2021	R19 12/09/2021		
B356 - B361	Exhibit 20 R20 Title 2 CCR 171.1 (prior version) Admitted	September 03, 2021	R20 12/09/2021		
B362 - B366	Exhibit 21 Excluded	September 03, 2021			21 12/09/2021
B367 - B369	Exhibit 22 Excluded	September 03, 2021			22 12/09/2021
B370 - B373	Exhibit 23 Excluded	September 03, 2021			23 12/09/2021
B374 - B376	Exhibit 24 Excluded	September 03, 2021			24 12/09/2021
B377 - B386	Exhibit 25 Excluded	September 03, 2021			25 12/09/2021
B387 - B392	Exhibit 26 Excluded	September 03, 2021			26 12/09/2021
B393 - B397	Exhibit 27 R27 Retirement Board 9- 11-13 Item 9 Admitted	September 03, 2021	R27 12/09/2021		
B398 - B425	Exhibit 28 R28 Official Notice
Statement of Issues - Walnut Creek Precedential Decision Admitted	September 03, 2021	R28 12/09/2021		
B426 - B427	Tustin - CalPERS Audit Appeal - Final Exhibit List	September 03, 2021			29 12/09/2021
B428 - B461	Request for official notice R30 Request for Officia; Notice by Tustin USD
Admitted 	September 03, 2021	R30 12/09/2021		

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Page 7 of 7 B462 - B477	9-30-20 Notice of Defense R31 Notice of Defense
Admitted	September 03, 2021	R31 12/09/2021		
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Z: Additional Documents

1 MATTHEW G. JACOBS, GENERAL COUNSEL
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2 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
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3 P. O. Box 942707, Sacramento, CA 94229-2707
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4 Facsimile: (916) 795-3659

5 Attorneys for California Public
Employees' Retirement System
6
7

8 BOARD OF ADMINISTRATION

9 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

10	In the Matter of the Appeal of the Full Time)	AGENCY CASE NO. 2020-0436
	Payrate Reporting of)	
11	)	OAH NO. 2020090431
	TUSTIN UNIFIED SCHOOL DISTRICT,)	
12	)	CalPERS' REQUEST FOR
	Respondent.)	OFFICIAL NOTICE
13)	
	)	Hearing Location: San Diego/Virtual
14)	
)	
15)	

16 TO THE COURT, ALL COUNSEL AND PARTIES OF RECORD:

17 Petitioner California Public Employees' Retirement System (CalPERS) hereby
18 requests Official Notice pursuant to California Government Code ("Government Code")
19 section 11515 and California Evidence Code ("Evidence Code") section 452 be taken
20 of the following documents.

21 ///

22 ///

23 ///

24 ///

25

- 1 A. CalPERS Agenda Item 4-B in Support of Assembly Bill 2177, dated May 16,
- 2 2000.
- 3 B. Assembly analysis for AB 2177 from August 25, 2000.
- 4 C. Senate analysis for AB 2177 from August 25, 2000.
- 5 D. Government Code section 20636.1 from 2001 (AB 2177 as passed).
- 6 E. Assembly analysis for AB 966 from June 8, 2009.
- 7 F. Government Code section 20636.1 from 2009 (AB 966 as passed).

8
9 Respectfully submitted,

10 BOARD OF ADMINISTRATION, CALIFORNIA
11 PUBLIC EMPLOYEES' RETIREMENT SYSTEM

12 Dated: September 1, 2021

13 *Charles Glauberman*
14 _____
15 CHARLES GLAUBERMAN, SENIOR ATTORNEY

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EXHIBITS

Tustin Unified School District
 Agency Case No. 2020-0436
 OAH Case No. 2020090431

EXHIBIT		I.D.	EVID.
	JURISDICTIONAL DOCUMENTS	PERS	
1	Statement of Issues dated 8/28/20	001-013	
2	Notice of Hearing and Proof of Service dated 9/22/20	014-019	
3	Draft Audit Report With Attachments dated July 18, 2018	020-035	
4	Tustin's Response to Draft Audit Report dated August 6, 2018	036-045	
5	CalPERS' Compliance and Review Notifications dated December 18, 2018	046-050	
6	Email Correspondence from December 2018 and April 2019	051-056	
7	CalPERS' Determination Letter to Tustin dated December 18, 2019	057-061	
8	Tustin Appeal Letter with Exhibits dated February 19, 2020	062-101	
9	CalPERS' Confirmation of Appeal dated February 21, 2020	102-103	
10	Complete Audit Report dated December 6, 2018	104-341	
11	2012-2013 Classified Pay Schedules	342-351	
12	2013-2014 Classified Pay Schedules	352-359	
13	2014-2015 Classified Pay Schedules	360-367	
14	Pay Sample from CalPERS' Audit	368-372	
15	March 22, 2005 Circular Letter	373-375	
16	June 14, 2011 Circular Letter	376-377	
17	January 8, 2020 Circular Letter	378-382	
18	Selections from CalPERS' June 2021 Public Agency and Schools Reference Guide	383-401	
19	Training Exhibit	402-463	
20			
21			



Office of Governmental Affairs
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May 16, 2000

AGENDA ITEM 4-B

**TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION
COMMITTEE**

I. SUBJECT: Assembly Bill 2177 (Assembly P.E.R. & S. S.
Committee) – As Introduced 2/23/00
Compensation and service credit for school members

Sponsored by the California School Employees
Association

II. PROGRAM: Legislation

III. RECOMMENDATION: Support, with amendments

IV. ANALYSIS:

This bill proposes to clarify and standardize reporting of compensation and service of school employees, and to hold school districts accountable for failure to report as required.

A member's service retirement is calculated based on the member's age, service credit, and final compensation. Service credit and final compensation are both derived from compensation reported by the employer. Generally, each employee's "payrate" – the amount per hour, day, or month the employee is paid – is compared to actual reported earnings to determine the amount of service credit the employee has earned. However, a full year of service is credited for (a) ten months of service for persons paid monthly, (b) 215 days of service for persons paid on a daily basis, (c) 1720 hours of service for employees paid on an hourly basis, and (d) an academic year for those employed on an academic year basis. Reported earnings for the highest one or three years is used to determine an employee's final compensation.

Existing law provides that "overtime" is not to be reported as compensation. Compensated work in excess of the hours considered normal for employees on a full-time basis is considered overtime work (Government Code section 20635). CalPERS Board has established a policy that states full-time employment for school members shall be no less than 34 hours per week and shall not exceed 60

Members of the Benefits and Program Administration Committee
May 16, 2000

hours per week. Some employers consider work to be overtime only if over 40 hours in a week, while others consider work in excess of regularly scheduled part-time work (i.e., over a regularly scheduled 4 hours per day or during summer school) to be overtime for the purpose of reporting compensation. In Service Employees International Union vs. Sacramento City Unified School District (1984) 151 Cal. App.3rd 705, the court upheld a school district's position that compensation earned for part-time employees beyond their normal work schedule is overtime and not subject to retirement contributions. This decision appears to support the variation in practices from district to district in reporting compensation to CalPERS.

The sponsor of this bill suggests that part-time school employees are treated inequitably because of the discretion in reporting. Employees who work the same number of hours in different school districts can receive different amounts of service credit depending on how payroll information is submitted to CalPERS. Consequently, part-time school members who work the same number of hours at the same pay scale for different school districts can receive different retirement allowances.

This bill proposes to standardize the reporting of compensation of school employees by providing that non-reportable "overtime" for these employees is only work in excess of 40 hours per week. This will effectively ensure that school employees receive service credit for work up to 40 hours per week, and that the compensation for this work is included in the calculation of their final compensation.

The bill will also require a school district that fails to timely pay the required employer contributions to pay all arrears costs, plus administrative costs of \$500 per member.

Finally, the bill will restrict the provision giving a full year of service credit for an academic year for those employed on an academic year basis to employees of the University of California or California State University system. As a result, the statutes would not specify what constitutes one year of service credit for school members working on an academic year basis.

Staff recommends that the Board support AB 2177 which will clarify and standardize reporting of compensation and service of school employees. The bill will require some technical, clarifying amendments to accomplish the objectives of the sponsor. Staff is working with the sponsor to craft appropriate amendments.

V. STRATEGIC PLAN:

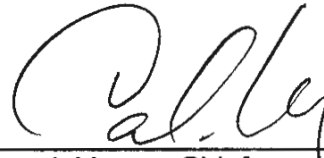
This item is not a specific product of the Strategic Plan, but is part of the regular and ongoing workload of the Office of Governmental Affairs.

Members of the Benefits and Program Administration Committee
May 16, 2000

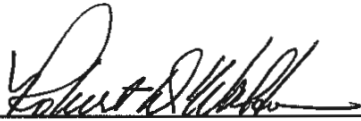
VI. RESULTS/COSTS:

Program Costs - No data currently exists on the amount of service currently excluded from reporting because it is considered overtime that would now be reportable under this bill. However, staff has estimated that for each one percent increase in reported compensation, the present value of benefits would increase by \$177.3 million, the accrued liability to the School Fund would increase by \$107.2 million, and the school employer contribution rate would increase by 0.1%. The school pool currently has excess assets sufficient to pay employer costs for 18 years. An increase in school employer liability resulting from this bill would reduce the number of years that the surplus will pay employer costs.

Administrative Costs - Minor and absorbable. Costs will be limited to revision of the procedure manual provided to employers and additional training that may be requested by school employers.



Casey L Young, Chief
Office of Governmental Affairs



Robert D. Walton
Assistant Executive Officer
Governmental Affairs, Planning & Research

CA B. An., A.B. 2177 Assem., 8/25/2000

California Bill Analysis, Assembly Floor, 1999-2000 Regular Session, Assembly Bill 2177

August 25, 2000
California Assembly
1999-2000 Regular Session

CONCURRENCE IN SENATE AMENDMENTS

AB 2177 (Public Employees)

As Amended August 25, 2000

Majority vote

ASSEMBLY: 49-27 (May 30, 2000) SENATE: 24-12 (August 28, 2000)

Original Committee Reference: P.E.R. & S.S.

SUMMARY: Clarifies and standardizes reporting of compensation and service for school employee members of the Public Employees' Retirement System (CalPERS) and requires school employers to pay employer contributions in a timely manner. Specifically, this bill:

- 1) Specifies that for school members of CalPERS, overtime is the service performed by the employee in excess of 40 hours or work per week for which compensation is received.
- 2) Specifies that school members of CalPERS shall receive one year of service credit for 1,720 hours of service performed in a fiscal year.
- 3) Specifies that any school employer that fails or refuses to the required employer contributions in a timely manner will be required to pay all arrears costs for those contributions plus an administrative costs of \$500 per member.
- 4) Clarifies that the current provision giving a full year of service credit for an academic year for persons employed on an academic year basis only applies to employees of the University of California or California State University (CSU) system.

The Senate amendments:

- 1) Eliminate, prospectively, the Social Security offset for classified school employees who participate in the federal Social Security system.
- 2) Include within the scope of representation for CSU employees any retirement benefits currently available to state members of CalPERS.
- 3) Provide that, if not in conflict with a memorandum of understanding between CSU and specified CSU police department employees, those members will be subject to a contribution rate of 8% of compensation in excess of \$863 per month which is the same as the contribution rate for state peace officer/firefighter members.
- 4) Add provisions to avoid "chapering out" problems with AB 2642 (Calderon) and SB 1396 (Burton).

EXISTING LAW provides that CalPERS members receive a full year of service credit for a) ten months of service for persons paid monthly; b) 215 days of service for persons paid on a daily basis; c) 1,720 hours of service for employees paid on an hourly basis; and, (d) an academic year for those employed on an academic year basis.

Existing law also provides that "overtime" is not to be reported as compensation. Overtime is defined as work in excess of the hours considered normal for employees on a full time basis.

California Bill Analysis, A.B. 2177 Assem., 8/25/2000, California Bill Analysis, A.B. 2177...

AS PASSED BY THE ASSEMBLY, this bill clarified and standardized reporting of compensation and service for school employee members of CalPERS and requires school employers to pay employer contributions in a timely manner.

FISCAL EFFECT: CalPERS estimates that each one percent increase in reported employee compensation will increase liability to the School Fund by \$107.2 million. The exact amount of classified school employee overtime that the bill would make eligible for retirement service credit is unknown.

COMMENTS: According to CalPERS, overtime work is considered to be hours in excess of what the employer considers to be full time for the position. This interpretation has resulted in inconsistent reporting among employers.

This bill's sponsors, the California School Employees' Association, contend that part-time school employees are being treated inequitably because of the discretion in reporting. Employees who work the same number of hours in different school districts can receive different amounts of service credit depending on how payroll information is submitted to CalPERS. This can then result in part-time school members who worked the same number of hours at the same pay scale for different school districts receiving different retirement allowances.

By standardizing the reporting of compensation for school employees, this bill will ensure that school employees receive service credit for work up to 40 hours per week, and that the compensation received for this work is included in calculating their retirement allowance.

Analysis Prepared by: Karon Green / P.E., R. & S.S. / (916)319-3957

FN: 0006699

CA B. An., A.B. 2177 Assem., 8/25/2000

End of Document

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CA B. An., A.B. 2177 Sen., 8/25/2000

California Bill Analysis, Senate Floor, 1999-2000 Regular Session, Assembly Bill 2177

August 25, 2000
California Senate
1999-2000 Regular Session

SENATE RULES COMMITTEE

Office of Senate Floor Analyses

THIRD READING

Bill No: AB 2177

Author: Assembly Pub. Employ., Retire. & Social Security Comm.

Amended: 8/25/00 in Senate

Vote: 21

SENATE PUBLIC EMP. & RET. COMMITTEE: 3-1, 6/26/00

AYES: Ortiz, Karnette, Soto

NOES: Haynes

SENATE APPROPRIATIONS COMMITTEE: 8-4, 8/23/00

AYES: Johnston, Alpert, Bowen, Burton, Escutia, Karnette, Perata, Vasconcellos

NOES: Johnson, Kelley, Leslie, Mountjoy

ASSEMBLY FLOOR: 49-27, 5/30/00 - See last page for vote (APPLIES TO SECTIONS 1 AND 2 OF THE BILL)

SUBJECT: School employees' retirement: contributions

SOURCE: California School Employees Association

DIGEST: This bill adds retirement benefits to the scope of bargainable benefits for California State University Police. Any benefit bargained to will subsequently require legislation.

This bill also eliminates the Social Security offset for classified school employees who participate in the federal Social Security system prospectively, and standardizes the reporting of compensation of school employees with regards to the definition of "overtime."

ANALYSIS:

School Employees: Compensation Earnable

Existing Public Employee's Retirement System (PERS) law provides that:

Members receive a full year of service credit for (1) ten months of service for persons paid monthly, (2) 215 days of service for persons paid on a daily basis, (3) 1,720 hours of service for employees paid on an hourly basis, and (4) an academic year, for those employed on an academic year basis.

“Overtime” is not to be reported as compensation. Overtime is defined as work in excess of the hours considered normal for employees on a full time basis.

This bill:

- 1.Specifies that for school members of PERS, overtime is the service performed by the employee in excess of 40 hours of work per week for which compensation is received.
- 2.Specifies that any school employer that fails or refuses to pay the required employer contributions in a timely manner will be required to pay all arrears costs for those contributions plus an administrative cost of \$500 per member.
- 3.Clarifies that the current provision giving a full year of service credit for an academic year for persons employed on an academic year basis only applies to employees of the University of California (UC) or California State University (CSU) system.

School Employees: Social Security Offset

Existing PERS law provides that classified school employee members, who are members of the federal Social Security, pay a monthly PERS contribution of 7% not on their full salary, but on the amount above \$133.33. When the member's retirement allowance is computed, the payrate on which the retirement allowance is based is reduced by \$133.33. This results in a smaller PERS retirement allowance than for those members not subject to Social Security.

This reduction in contributions and benefits is a remnant of the attempt to “coordinate” Social Security and PERS pension benefits in 1959. At that time, the reduction was a full one-third of employees' earnings subject to the Social Security wage base of \$4,800 per year (i.e., \$4,800/12 months/3 = \$133.33). The level, however, has not been adjusted over time, and now has become more of an administrative burden than a meaningful coordination with Social Security. (In 1980, PERS local contracting agencies were given the option of eliminating this “Social Security offset” in their plans, and 21 agencies have contracted to do so.)

This bill eliminates the Social Security offset for school employees, resulting in an increase in school member contributions by up to \$9.33 per month and an increase in the service retirement allowance (e.g. \$2.67 per month more for each year of service at age 60).

CSU Safety Employees: Coverage Under the PERS “POFF” 3% at Age 50 Formula

Existing PERS law provides that:

- 1.CSU safety employee members of PERS are covered by the old “POFF” 2% at age 50 formula.
- 2.Chapter 555 of 1999 increased the “POFF” formula for certain eligible state safety members from 2% at age 50 to 3% at age 50.

This bill provides the PERS state “POFF” 8% of compensation in excess of \$863 per month to CSU police officers, if agreed to in a Memoranda of Understanding collectively bargained between CSU management and safety employees.

Creditable Service

According to PERS, overtime work is considered to be hours in excess of what the employer considers to be full time for the position. This interpretation has resulted in inconsistent reporting among employers.

The Senate Revenue and Taxation Committee was advised that this bill would reverse an Appellate Court decision. In Service Employees International Union vs. Sacramento City Unified School District (1984), the court upheld the school district's

position that compensation earned for part-time employees beyond their normal work schedules is overtime and not subject to retirement contributions. This bill would reverse this decision.

Social Security offset

The Senate Public Employment and Retirement Committee was advised that school employers have expressed a desire to eliminate this Social Security offset as a means of reducing their administrative costs.

Currently, when a member works part time for more than one school employer, the \$133.33 monthly earnings reduction is applied against their earnings with each employer. This results in a contribution shortage that must be corrected by one or more of the employers, as the employers are frequently unaware that the employee is employed by another agency.

This bill is double-joined with SB 1396 (Burton) and AB 2642 (Calderon) and will take effect if all three are enacted and become effective on or before January 1, 2002, and this bill is enacted last.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: No

PERS estimates that each one percent increase in reported employee compensation will increase liability to the School Fund by \$107.2 million. The exact amount of classified school employee overtime that this bill would make eligible for retirement service credit is unknown.

SUPPORT: (Verified 8/24/00)

California School Employees Association (source)

California Federation of Teachers

California Independent Public Employees Legislative Council

California Teachers Association

Retired Public Employees' Association

California Public Employees' Retirement System

OPPOSITION: (Verified 8/24/00)

Department of Finance

ARGUMENTS IN SUPPORT: The sponsors contend that part-time school employees are being treated inequitably because of the discretion in reporting. Employees who work the same number of hours in different school districts can receive different amounts of service credit depending on how payroll information is submitted to PERS. This can then result in part-time school members who worked the same number of hours at the same pay scale for different school districts receiving different retirement allowances.

By standardizing the reporting of compensation for school employees, this bill will ensure that school employees receive service credit for work up to 40 hours per week, and that the compensation received for this work is included in calculating their retirement allowance.

ARGUMENTS IN OPPOSITION: The Department of Finance contends that:

1. This bill could result in a present value cost of \$799.8 million to the school retirement category and would result in additional costs to school employers through higher employer contribution rates in the future.
- 2 This bill circumvents the collective bargaining process and, thereby, reduces school employers' flexibility to administer their employee compensation programs to meet individual circumstances.

California Bill Analysis, A.B. 2177 Sen., 8/25/2000, California Bill Analysis, A.B. 2177...

ASSEMBLY FLOOR:

AYES: Alquist, Aroner, Bock, Calderon, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cunneen, Davis, Ducheny, Dutra, Firebaugh, Florez, Gallegos, Havice, Honda, Jackson, Keeley, Knox, Kuehl, Lempert, Longville, Lowenthal, Machado, Maldonado, Mazzoni, Migden, Nakano, Papan, Pescetti, Reyes, Romero, Scott, Shelley, Steinberg, Strom-Martin, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Hertzberg

NOES: Aanestad, Ackerman, Ashburn, Baldwin, Bates, Battin, Baugh, Brewer, Briggs, Campbell, Cox, Frusetta, House, Kaloogian, Leach, Leonard, Maddox, Margett, McClintock, Olberg, Oller, Robert Pacheco, Rod Pacheco, Runner, Strickland, Thompson, Zettel

TSM:cm 8/26/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

CA B. An., A.B. 2177 Sen., 8/25/2000

End of Document

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West's Annotated California Codes
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 5. Personnel (Refs & Annos)
Part 3. Public Employees' Retirement System (Refs & Annos)
Chapter 7. Compensation (Refs & Annos)

This section has been updated. [Click here for the updated version.](#)

West's Ann.Cal.Gov.Code § 20636.1

§ 20636.1. Definitions; compensation earnable, payrate, certificated and noncertificated members, special compensation, group or class of employment, and final settlement pay; payrate and other compensation documents as public records

Effective: January 1, 2001 to December 31, 2009

(a) Notwithstanding Section 20636, and Section 45102 of the Education Code, “compensation earnable” by a school member means the payrate and special compensation of the member, as defined by subdivisions (b) and (c), and as limited by Section 21752.5.

(b)(1) “Payrate” means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. For noncertificated members, where the normal work schedule is less than 40 hours per week, payments for additional services rendered, not to exceed 40 hours per week, shall be reported as compensation earnable for all months of the year in which work is performed. “Payrate,” for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).

(A) For the purposes of this section, “noncertificated members” shall mean members who retain membership under this system while employed with a school employer in positions not subject to coverage under the Defined Benefit Program under the State Teacher's Retirement System.

(B) For the purposes of this section, and Sections 20962 and 20966, “certificated members” shall mean members who retain membership under this system while employed in positions subject to coverage under the Defined Benefit Program under the State Teacher's Retirement System.

(2) The computation for any leave without pay of a member shall be based on the compensation earnable by him or her at the beginning of the absence.

(3) The computation for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in state service.

(c)(1) Special compensation of a school member includes any payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

(2) Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group or class, special compensation shall be limited to that which the board determines is received by similarly situated members in the closest related group or class that is in addition to payrate, subject to the limitations of paragraph (2) of subdivision (e).

(3) Special compensation shall be for services rendered during normal working hours and, when reported to the board, the employer shall identify the pay period in which the special compensation was earned.

(4) Special compensation may include the full monetary value of normal contributions paid to the board by the employer, on behalf of the member and pursuant to Section 20691, provided that the employer's labor policy or agreement specifically provides for the inclusion of the normal contribution payment in compensation earnable.

(5) The monetary value of any service or noncash advantage furnished by the employer to the member, except as expressly and specifically provided in this part, shall not be special compensation unless regulations promulgated by the board specifically determine that value to be "special compensation."

(6) The board shall promulgate regulations that delineate more specifically and exclusively what constitutes "special compensation" as used in this section. A uniform allowance, the monetary value of employer-provided uniforms, holiday pay, and premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under Section 201 et seq. of Title 29 of the United States Code shall be included as special compensation and appropriately defined in those regulations.

(7) Special compensation does not include any of the following:

(A) Final settlement pay.

(B) Payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise.

(C) Any other payments the board has not affirmatively determined to be special compensation.

(d) Notwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.

(e)(1) As used in this part, "group or class of employment" means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work related grouping. Under no circumstances shall one employee be considered a group or class.

(2) Increases in compensation earnable granted to any employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, except as may otherwise be determined pursuant to regulations adopted by the board that establish reasonable standards for granting exceptions.

(f) As used in this part, “final settlement pay” means any pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment. The board shall promulgate regulations that delineate more specifically what constitutes final settlement pay.

Credits

(Added by Stats.2000, c. 1030 (A.B.2177), § 3.)

West's Ann. Cal. Gov. Code § 20636.1, CA GOVT § 20636.1
Current with urgency legislation through Ch. 145 of 2021 Reg.Sess

EXHIBIT 1

1 MATTHEW G. JACOBS, GENERAL COUNSEL
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2 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
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5 Attorneys for California Public
Employees' Retirement System
6

7 BOARD OF ADMINISTRATION

8 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

9 In the Matter of the Appeal Regarding) AGENCY CASE NO. 2020-0436
Full-Time Payrate Reporting of)
10) OAH NO.
TUSTIN UNIFIED SCHOOL)
11 DISTRICT,) STATEMENT OF ISSUES
)
12 Respondent.)
) Hearing Date:
13) Hearing Location: Orange, CA
) Prehearing Conf.: None Scheduled
14) Settlement Conf.: None Scheduled

15
16 California Public Employees' Retirement System (CalPERS) states:

17 I

18 CalPERS makes and files this Statement of Issues in its official capacity as such
19 and not otherwise.

20 II

21 Respondent Tustin Unified School District (respondent District) is a public
22 agency contracting with CalPERS for retirement benefits for its eligible employees. The
23 provisions of respondent District's contract with CalPERS are contained in the Public
24 Employees' Retirement Law (PERL.) (Gov. Code, § 20000 et seq.)

25 III

1 CalPERS is a defined benefit plan. Benefits for its members are funded by
2 member and employer contributions and by interest and other earnings on those
3 contributions. The amount of a member's contributions is determined by applying a
4 fixed percentage to the member's compensation. A public agency's contribution is
5 determined by applying a rate to the payroll of the agency. Using certain actuarial
6 assumptions specified by law, the CalPERS Board of Administration sets the employer
7 contribution rate on an annual basis.

8 IV

9 The amount of a member's service retirement allowance is calculated by
10 applying a percentage figure based upon the member's age on the date of retirement
11 to the member's years of service and the member's "final compensation." In computing
12 a member's retirement allowance, CalPERS' staff may review the salary reported by
13 the employer for the member to ensure that only those items allowed under the PERL
14 will be included in the member's "final compensation" for purposes of calculating the
15 retirement allowance.

16 V

17 On or about July 2018, CalPERS' Office of Audit Services (OFAS) completed a
18 Public Agency Review (PAR) to determine whether increases to member pay rates
19 were reported to CalPERS in compliance with PERL. The review was limited to the
20 examination of a sample of active and/or retired employee records for the period
21 July 1, 2012 to June 30, 2017.

22 VI

23 On July 18, 2018, CalPERS provided respondent District with its' preliminary
24 findings based on the review. CalPERS requested that respondent District provide its
25 written response to the preliminary findings by August 1, 2018.

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VII

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Respondent District provided additional information to CalPERS by letter dated

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August 6, 2018.

4

VIII

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On or about December 6, 2018, CalPERS sent a memorandum to all CalPERS

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Contracting Agencies and Governing bodies regarding its final report on the results of

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the pay rate increases review. Observation 4 states:

8

The Agency did not correctly report full-time payrates for a

9

sampled classified employee who retired in January 2015.

10

Specifically, the reported payrates were not based on a 40-

11

hour workweek for all months of a year as required by

12

Government Code section 20636.1. For example, the

13

Agency reported a monthly payrate of \$4,122 for the

14

employee in the pay period ended August 31, 2012; however,

15

the reported monthly payrate should have been \$3,915.60.

16

The payrates reported for the retired sampled employee

17

reflected a workweek of less than 40 hours and the payrates

18

were not based on all 12 months of the year. The incorrect

19

reporting resulted in decreases to the employees reported

20

payrates that were not in compliance with Government Code

21

sections 20636.1 and 7522.34(a).

22

IX

23

On December 27, 2018, CalPERS sent an e-mail regarding the formal

24

determination to respondent District outlining CalPERS' legal basis and methodology.

25

CalPERS provided respondent District until April 30, 2019 to work with CalPERS'

designated liaisons to address the audit findings.

XI

The following provisions of the PERL were in effect and are relevant to this

appeal:

///

///

1 Section 20120 provides:

2 The management and control of this system is vested in the
3 board.

4 Section 20121 provides:

5 The board may make such rules as it deems proper.

6 Section 20122 provides:

7 Each member and each person retired is subject to this part
8 and the rules adopted by the board.

9 Section 20160 provides:

10 (a) Subject to subdivisions (c) and (d), the board may, in its
11 discretion and upon any terms it deems just, correct the
12 errors or omissions of any active or retired member, or any
13 beneficiary of an active or retired member, provided that all
14 of the following facts exist:

15 (1) The request, claim, or demand to correct the error or
16 omission is made by the party seeking correction within a
17 reasonable time after discovery of the right to make the
18 correction, which in no case shall exceed six months after
19 discovery of this right.

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

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

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

(b) Subject to subdivisions (c) and (d), the board shall correct
all actions taken as a result of errors or omissions of the
university, any contracting agency, any state agency or
department, or this system.

(c) The duty and power of the board to correct mistakes, as
provided in this section, shall terminate upon the expiration

1 of obligations of this system to the party seeking correction
2 of the error or omission, as those obligations are defined by
Section 20164.

3 (d) The party seeking correction of an error or omission
4 pursuant to this section has the burden of presenting
5 documentation or other evidence to the board establishing
6 the right to correction pursuant to subdivisions (a) and (b).

7 (e) Corrections of errors or omissions pursuant to this section
8 shall be such that the status, rights, and obligations of all
9 parties described in subdivisions (a) and (b) are adjusted to
10 be the same that they would have been if the act that would
11 have been taken, but for the error or omission, was taken at
12 the proper time. However, notwithstanding any of the other
13 provisions of this section, corrections made pursuant to this
14 section shall adjust the status, rights, and obligations of all
15 parties described in subdivisions (a) and (b) as of the time
16 that the correction actually takes place if the board finds any
17 of the following:

18 (1) That the correction cannot be performed in a retroactive
19 manner.

20 (2) That even if the correction can be performed in a
21 retroactive manner, the status, rights, and obligations of all of
22 the parties described in subdivisions (a) and (b) cannot be
23 adjusted to be the same that they would have been if the
24 error or omission had not occurred.

25 (3) That the purposes of this part will not be effectuated if the
correction is performed in a retroactive manner.

Section 20163 provides:

(a) If more or less than the correct amount of contribution
required of members, the state, or any contracting agency, is
paid, proper adjustment shall be made in connection with
subsequent payments, or the adjustments may be made by
direct cash payments between the member, state, or
contracting agency concerned and the board or by
adjustment of the employer's rate of contribution.
Adjustments to correct any other errors in payments to or by
the board, including adjustments of contributions, with
interest, that are found to be erroneous as the result of
corrections of dates of birth, may be made in the same
manner. Adjustments to correct overpayment of a retirement
allowance may also be made by adjusting the allowance so
that the retired person or the retired person and his or her

1 beneficiary, as the case may be, will receive the actuarial
2 equivalent of the allowance to which the member is entitled.
3 Losses or gains resulting from error in amounts within the
4 limits set by the Department of General Services for
5 automatic writeoff, and losses or gains in greater amounts
6 specifically approved for writeoff by the Department of
7 General Services, shall be debited or credited, as the case
8 may be, to the reserve against deficiencies in interest earned
9 in other years, losses under investments, and other
10 contingencies.

11 (b) No adjustment shall be made because less than the
12 correct amount of normal contributions was paid by a
13 member if the board finds that the error was not known to the
14 member and was not the result of erroneous information
15 provided by him or her to this system or to his or her
16 employer. The failure to adjust shall not preclude action
17 under Section 20160 correcting the date upon which the
18 person became a member.

19 (c) The actuarial equivalent under this section shall be
20 computed on the basis of the mortality tables and actuarial
21 interest rate in effect under this system on December 1,
22 1970, for retirements effective through December 31, 1979.
23 Commencing with retirements effective January 1, 1980, and
24 at corresponding 10-year intervals thereafter, or more
25 frequently at the board's discretion, the board shall change
the basis for calculating actuarial equivalents under this
article to agree with the interest rate and mortality tables in
effect at the commencement of each 10-year or succeeding
interval.

Section 20630 provides:

18 (a) As used in this part, "compensation" means the
19 remuneration paid out of funds controlled by the employer in
20 payment for the member's services performed during normal
21 working hours or for time during which the member is
22 excused from work because of any of the following:

23 (1) Holidays.

24 (2) Sick leave.

25 (3) Industrial disability leave, during which, benefits are
payable pursuant to Sections 4800 and 4850 of the Labor
Code, Article 4 (commencing with Section 19869) of Chapter
2.5 of Part 2.6, or Section 44043 or 87042 of the Education
Code.

1 (4) Vacation.

2 (5) Compensatory time off.

3 (6) Leave of absence.

4 (b) When compensation is reported to the board, the
5 employer shall identify the pay period in which the
6 compensation was earned regardless of when reported or
7 paid. Compensation shall be reported in accordance with
8 Section 20636, or in accordance with Section 20636.1 for
9 school members, and shall not exceed compensation
10 earnable, as defined in Sections 20636 and 20636.1,
11 respectively.

12 Section 20631 provides:

13 A contracting agency may report an amount for each member
14 that is equal to a uniformly applied percentage of salary in
15 lieu of computing and reporting the actual compensation
16 attributable to each individual member if the contracting
17 agency has agreed in a memorandum of understanding
18 reached pursuant to Chapter 10 (commencing with Section
19 3500) of Division 4 of Title 1 that the aggregate amount to be
20 reported by the contracting agency for all members within a
21 membership classification bears a reasonable relation to the
22 aggregate amount that would otherwise be required to be
23 reported pursuant to Section 20636.

24 Section 20636.1, (b)(1) provides:

25 "Payrate" means the normal monthly rate of pay or base pay
of the member paid in cash to similarly situated members of
the same group or class of employment for services rendered
on a full-time basis during normal working hours, pursuant to
publicly available pay schedules. "Payrate," for a member
who is not in a group or class, means the monthly rate of pay
or base pay of the member, paid in cash and pursuant to
publicly available pay schedules, for services rendered on a
full-time basis during normal working hours, subject to the
limitations of paragraph (2) of subdivision (e).

Section 20962 provides:

(a) One year of service credit shall be granted for service
rendered and compensated in a fiscal year in full-time
employment for any of the following:

(1) One academic year of service for persons employed on

1 an academic year basis by the University of California, the
2 California State University system, or school employees who
3 are certificated members, under terms and conditions
4 prescribed by the board.

5 (2) Ten months of service for persons employed on a monthly
6 basis.

7 (3) Two hundred fifteen days of service after June 30, 1951,
8 and 250 days prior to July 1, 1951, for persons employed on
9 a daily basis.

10 (4) One thousand seven hundred twenty hours of service
11 after June 30, 1951, and 2,000 hours prior to July 1, 1951,
12 for persons employed on an hourly basis.

13 (5) Nine months of service for state employees represented
14 by State Bargaining Unit 3 and subject to the 9–12 pay plan
15 or leave plan, provided a memorandum of understanding has
16 been agreed to by the state employer and the recognized
17 employee organization to become subject to this subdivision.

18 (b) A fractional year of credit shall be given for service
19 rendered in a fiscal year in full-time employment for less than
20 the time prescribed in this section.

21 Section 7522.34 provides:

22 (a) "Pensionable compensation" of a new member of any
23 public retirement system means the normal monthly rate of
24 pay or base pay of the member paid in cash to similarly
25 situated members of the same group or class of employment
26 for services rendered on a full-time basis during normal
27 working hours, pursuant to publicly available pay schedules,
28 subject to the limitations of subdivision (c).

29 (b) Compensation that has been deferred shall be deemed
30 pensionable compensation when earned rather than when
31 paid.

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35 (c) Notwithstanding any other law, "pensionable
36 compensation" of a new member does not include the
37 following:

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(1) Any compensation determined by the board to have been paid to increase a member's retirement benefit under that system.

(2) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member and which was converted to and received by the member in the form of a cash payment.

(3) Any one-time or ad hoc payments made to a member.

(4) Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.

(5) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid.

(6) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(7) Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms.

(8) Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code.

(9) Employer contributions to deferred compensation or defined contribution plans.

(10) Any bonus paid in addition to the compensation described in subdivision (a).

(11) Any other form of compensation a public retirement board determines is inconsistent with the requirements of subdivision (a).

(12) Any other form of compensation a public retirement board determines should not be pensionable compensation.

(13) (A) Any form of compensation identified that has been agreed to be nonpensionable pursuant to a memorandum of understanding for state employees bound by the

1 memorandum of understanding. The state employer subject
2 to the memorandum of understanding shall inform the
3 retirement system of the excluded compensation and provide
4 a copy of the memorandum of understanding.

5 (B) The state employer may determine if excluded
6 compensation identified in subparagraph (A) shall apply to
7 nonrepresented state employees who are aligned with state
8 employees subject to the memorandum of understanding
9 described in subparagraph (A). The state employer shall
10 inform the retirement system of the exclusion of this
11 compensation and provide a copy of the public pay schedule
12 detailing the exclusion.

13 XIV

14 The following regulations promulgated by the Board of Administration, through
15 California Code of Regulations, Title 2, Division 1, Chapter 2, Subchapter 1, Article 4,
16 are relevant to this appeal:

17 Section 570.5 provides:

18 (a) For purposes of determining the amount of
19 "compensation earnable" pursuant to Government Code
20 Sections 20630, 20636, and 20636.1, payrate shall be limited
21 to the amount listed on a pay schedule that meets all of the
22 following requirements:

23 (1) Has been duly approved and adopted by the employer's
24 governing body in accordance with requirements of
25 applicable public meetings laws;

(2) Identifies the position title for every employee position;

(3) Shows the payrate for each identified position, which may
be stated as a single amount or as multiple amounts within a
range;

(4) Indicates the time base, including, but not limited to,
whether the time base is hourly, daily, bi-weekly, monthly,
bi-monthly, or annually;

///

(5) Is posted at the office of the employer or immediately
accessible and available for public review from the employer

1 during normal business hours or posted on the employer's
2 internet website;

3 (6) Indicates an effective date and date of any revisions;

4 (7) Is retained by the employer and available for public
5 inspection for not less than five years; and (8) Does not
6 reference another document in lieu of disclosing the payrate.

7 (b) Whenever an employer fails to meet the requirements of
8 subdivision (a) above, the Board, in its sole discretion, may
9 determine an amount that will be considered to be payrate,
10 taking into consideration all information it deems relevant
11 including, but not limited to, the following:

12 (1) Documents approved by the employer's governing body
13 in accordance with requirements of public meetings laws and
14 maintained by the employer;

15 (2) Last payrate listed on a pay schedule that conforms to the
16 requirements of subdivision (a) with the same employer for
17 the position at issue;

18 (3) Last payrate for the member that is listed on a pay
19 schedule that conforms with the requirements of subdivision
20 (a) with the same employer for a different position;

21 (4) Last payrate for the member in a position that was held
22 by the member and that is listed on a pay schedule that
23 conforms with the requirements of subdivision (a) of a former
24 CalPERS employer.

25 XII

After review of the audit finding and information provided by respondent District, CalPERS determined that full-time pay rates were not reported based on a 40-hour workweek pursuant to Government Code section 20636.1 and therefore reported incorrectly to CalPERS.

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XIII

1 CalPERS notified respondent District of its determination and its right to appeal,
2 by letter dated December 18, 2019.

3 XIV

4 Respondent District filed a timely appeal and has requested an administrative
5 hearing.

6 XV

7
8 The appeal is limited to the issue of whether respondent District incorrectly
9 reported full-time pay rates to CalPERS.

10
11
12 BOARD OF ADMINISTRATION, CALIFORNIA
13 PUBLIC EMPLOYEES' RETIREMENT SYSTEM

14 *Renee Ostrander*

15 Dated: 8/28/20 BY
16 RENE E OSTRANDER, Chief
17 Employer Account Management Division

18
19
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21
22
23
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25

-12-

Exhibit A28

EXHIBIT 2

1 MATTHEW G. JACOBS, GENERAL COUNSEL
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 4 Facsimile: (916) 795-3659

5 Attorneys for California Public
 Employees' Retirement System
 6

7 BOARD OF ADMINISTRATION

8 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

9	In the Matter of the Appeal Regarding Full-)	AGENCY CASE NO. 2020-0436
	Time Payrate Reporting of)	
10	)	OAH NO. 2020090431
	TUSTIN UNIFIED SCHOOL DISTRICT,)	
11	)	NOTICE OF HEARING
	Respondent,)	
12	)	(Pursuant to Gov. Code, § 11509)
)	
13	)	Hearing Date: January 28, 2021
	)	Time: 10:00 a.m.
14	)	Hearing Location: Orange
	)	Prehearing Conf.: None Scheduled
15	)	Settlement Conf.: None Scheduled

16 TO THE RESPONDENT above named: Tustin Unified School District, by
 17 service on Joshua E. Morrison, Atkinson, Andelson, Loya, Ruud & Romo, its attorney
 18 of record.

19 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the hearing of the
 20 Statement of Issues in the above-entitled matter has been set and will be held before
 21 an Administrative Law Judge of the Office of Administrative Hearings of the State of
 22 California at California Public Employees' Retirement System Orange Regional Office,
 23 500 North State College Boulevard, Suite 750, Orange, California, for one day on
 24 January 28, 2021, commencing at 10:00 a.m., upon the charges made in the
 25 Statement of Issues served upon the respondent.

1 If you object to the place of hearing, you must notify the presiding officer within
2 10 days after this notice is served on you. Failure to notify the presiding officer within
3 10 days will deprive you of a change in the place of the hearing. You may contact
4 Susan Formaker or Nancy Beezy Micons, Presiding Administrative Law Judge of the
5 Office of Administrative Hearings Los Angeles at (213) 576-7200.


6 You may be present at the hearing. You have a right to be represented by an
7 attorney at your own expense. You are not entitled to the appointment of an attorney
8 to represent you at public expense. You are entitled to represent yourself without legal
9 counsel. You may present any relevant evidence and will be given full opportunity to
10 cross examine all witnesses testifying against you. You are expected to be ready to
11 proceed with your case at the time of hearing. Failure to appear at the hearing, either
12 through an attorney or personally, if you do not have an attorney, may result in a
13 default. This means that CalPERS' decision will be upheld irrespective of any evidence
14 that may or may not be introduced in your absence.

15 You have a right to an interpreter if you do not proficiently speak or understand
16 English. If you need an interpreter, you must notify CalPERS immediately so that
17 appropriate arrangements can be made.

18 You are entitled to the issuance of subpoenas to compel the attendance of
19 witnesses and the production of books, documents or other things by applying to said
20 agency at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630,
21 Los Angeles, CA 90013.

22 BOARD OF ADMINISTRATION, CALIFORNIA
23 PUBLIC EMPLOYEES' RETIREMENT SYSTEM

24 Dated: September 22, 2020

25 
AUSTA WARKILY, SENIOR ATTORNEY

**COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6, 11507.7
PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505****Section 11507.5: Exclusivity of Discovery Provisions.**

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

(Added by Stats. 1968, ch. 808.)

Section 11507.6: Discovery, Procedures, Scope, and Methods.

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of the following in the possession or custody or control or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including but not limited to reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person, signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

(Added by Stats. 1968, ch. 808; Amended by Stats. 1985, ch. 1328, Stats. 1995, ch. 938, § 31, operative July 1, 1997.)

Section 11507.7: Motion to Compel Discovery; Contents, Service Time Limit.

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it¹ matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

(Added by Stats.1968, ch. 808; Amended by Stats.1971, ch. 1303, Stats. 1980, ch. 548; Stats. 1995, ch. 938, § 31, operative July 1, 1997.)

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: California Public Employees' Retirement System, Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811 (P.O. Box 942707, Sacramento, CA 94229-2707).

On September 22, 2020, I served the foregoing document described as:

STATEMENT OF ISSUES, NOTICE OF HEARING, and Government Code sections 11507.5, 11507.6 and 11507.7 (relating to discovery under the Administrative Procedure Act) – In the Matter of the Appeal Regarding Full-Time Payrate Reporting of TUSTIN UNIFIED SCHOOL DISTRICT, Respondent. Case No. 2020-0436; OAH No. 2020090431.

on interested parties in this action by placing ___ the original XX a true copy thereof enclosed in sealed envelopes addressed and or e-filed as follows:

Joshua E. Morrison
Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Dr. South, Ste. 300
Cerritos, CA 90703-9364

Office of Administrative Hearings Los Angeles
320 West Fourth Street, Suite 630
Los Angeles, CA 90013

**ATTORNEY FOR EMPLOYER TUSTIN
UNIFIED SCHOOL DISTRICT**

(Via OAH Secure e-File)

COURT

Personnel Officer
Orange County Schools
P.O. Box 9050
Costa Mesa, CA 92628-9050

EMPLOYER

[XX] BY CERTIFIED MAIL RETURN RECEIPT REQUESTED AND FIRST-CLASS MAIL -- As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

[XX] BY ELECTRONIC FILING: I caused such documents to be e-Filed via OAH SECURE e-FILE.

Executed on September 22, 2020, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Deb Jo Wooten
NAME

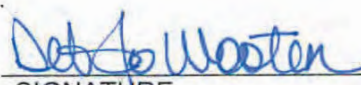

SIGNATURE

EXHIBIT 3



California Public Employees' Retirement System
Office of Audit Services
P.O. Box 842701
Sacramento, CA 94229-2701
TTY: (877) 249-7442
(916) 795-0422 phone, (916) 795-7836 fax
www.calpers.ca.gov

July 18, 2018

CalPERS ID: [REDACTED]
Job Number: 3P17-008

Nam Nguyen, Senior Director of Business Services
Tustin Unified School District
300 South C Street
Tustin, CA 92680

Dear Ms. Nguyen:

Attached is the draft report on the results of our review on increases to member payrates reported to CalPERS by the Tustin Unified School District (Agency). Please review the draft report and provide your written response stating whether you agree or disagree with the observations by August 1, 2018. The report should be kept confidential and not be reproduced.

The Office of Audit Services will issue one final report that summarizes the results of 64 agencies reviewed to determine whether reported increases to payrates were in compliance with the Public Employees' Retirement Law. We will include each agency's results and summarized response as an attachment to the final report.

We appreciate the Agency's cooperation during the review. If you have any questions, please contact Aileen Wong at (916) 795-0887.

Sincerely,

Original signed by Beliz Chappuie

BELIZ CHAPPUIE, CPA, MBA, CISA
Chief Office of Audit Services

Enclosure

cc: Praveen Chaudri, Retirement Coordinator,
Orange County Department of Education
Anthony Suine, Chief, BNSD, CalPERS
Renee Ostrander, Chief, EAMD, CalPERS
Don Martinez, Chief, MAMD, CalPERS

TUSTIN UNIFIED SCHOOL DISTRICT

Objective and Scope			
CalPERS ID	Job Number	Contract Date	Classification
	3P17-008	March 1, 1949	Miscellaneous

The objective of our review was to determine whether increases to member payrates were granted to members and reported to CalPERS in compliance with the Public Employees' Retirement Law (PERL). Reporting active member payrates correctly is a necessary precursor to correctly calculating member benefits at retirement. Specifically, incorrect reporting could cause the following: miscalculation of a member's service credit, miscalculation of a member's retirement allowance, delays in processing a member's retirement benefits, inaccurate retirement estimates, incorrect payment of benefits, and hardship to retired members due to a reduction in benefits.

Payrates must be reported to CalPERS in accordance with Government Code sections 20636, 20636.1, 7522.34(a) and corresponding sections of the California Code of Regulations (CCR) section 570.5. Specifically, payrate is defined as the normal monthly rate of pay or base pay of the member paid pursuant to a publicly available pay schedule for services rendered on a full-time basis during normal working hours. The publicly available pay schedules must meet criteria listed in CCR section 570.5. Payrates cannot include additional compensation such as special compensation; must be correctly calculated, must be accurately reported for the period earned, and cannot be granted or awarded to a member in connection with or anticipation of separation from employment.

The review was limited to the examination of a sample of active and/or retired employee records for the period July 1, 2012 to June 30, 2017. Unless otherwise specified, the Office of Audit Services (OFAS) did not review the Agency's compliance with the PERL with regard to any areas outside the scope described herein, including, but not limited to, reported earnings, special compensation, payroll information, member contributions, membership enrollment, or employment after retirement.

Results in Brief

	Area	Exception	Observation
1	Pay Schedule	Approval / Time Base	The Agency did not maintain pay schedules in compliance with the Government Code and CCR. Specifically, the pay schedule in effect July 1, 2016 for Certificated Represented Employees did not include the time base for annual payrates. In addition, the pay schedule entitled "Classified Non-Bargaining Salary Schedule" in effect for Fiscal Years 2012-13, 2013-14 and 2015-16 did not include the time base for hourly payrates and were not duly approved and adopted by the Agency's governing body as defined in Government Code sections 20636.1, 7522.34(a) and CCR section 570.5.

TUSTIN UNIFIED SCHOOL DISTRICT

	Area	Exception	Observation
2	Payrates	Additional Compensation	The Agency reported payrates that included additional compensation for three sampled employees, two active and one who retired in January 2015. Specifically, one of the active employees and the retired employee had longevity pay added to their base payrate. The amounts ranged from \$.43 to \$.60 per hour for the active employee and \$207.00 to \$274.00 per month for the retired employee. The other active employee had a Masters Stipend added to their base payrate. The amounts ranged from \$222.20 to \$228.90 per month. The incorrect reporting resulted in an increase to the employees reported payrates that were not in compliance with Government Code sections 20636.1 and 7522.34(a).
3	Payrates	Excessive Payrate	The Agency reported excessive monthly payrates for a sampled active certificated employee. Specifically, the Agency added additional compensation for a Master's Stipend and also divided the annual salary by 10 months instead of 11 months. The base annual salary for the employee's position during the 2015-16 school year was \$85,948 and the employee worked 11 months during the year. The Agency reported a monthly base salary of \$8,594.80; however, the correct monthly payrate to report was \$7,813.45. The incorrect reported resulted in an increase to payrates reported that were not in compliance with Government Code sections 20636.1 and 7522.34(a). Government Code section 20630 states when compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when it is reported or paid.
4	Payrates	Full-Time Payrates	The Agency did not correctly report full-time payrates for a sampled classified employee who retired in January 2015. Specifically, the reported payrates were not based on a 40-hour workweek for all months of a year as required by Government Code section 20636.1. For example, the Agency reported a monthly payrate of \$4,122 for the employee in the pay period ended August 31, 2012; however, the reported monthly payrate should have been \$3,915.60. The payrates reported for the retired sampled employee reflected a workweek of less than 40 hours and the payrates were not based on all 12 months of the year. The incorrect reporting resulted in decreases to the employees reported payrates that were not in compliance with Government Code sections 20636.1 and 7522.34(a).

TUSTIN UNIFIED SCHOOL DISTRICT

	Area	Exception	Observation
5	Payrates	Non-Reportable Payrate	The Agency reported a payrate that was not reportable for the active certificated employee noted in Observation 3. Specifically, the Agency reported an hourly payrate of \$25.40 for time the employee spent attending a three day planning and personal development workshop in July 2015. The payrate reported was not the normal rate of pay or base pay of the member and the payrate was not listed in the Agency's publicly available pay schedule as defined in Government Code sections 20636.1 and 7522.34(a).
6	Payrates	Payrate Adjustments	The Agency did not report a retroactive salary adjustment covering all months worked by an active employee. Specifically, the employee received a three percent salary increase in March 2017 retroactive to July 1, 2016. The Agency reported a retroactive salary adjustment back to September 1, 2016; however, the employee began working during the school year in August 2016. The incorrect reporting resulted in payrates reported that were not in compliance with Government Code sections 20636.1 and 7522.34(a). Government Code section 20630 states when compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when it is reported or paid.

Criteria

Under Government Code sections 20636, 20636.1 and 7522.34(a), payrate is defined as the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal work hours, pursuant to a publicly available pay schedule.

Per CCR Section 570.5, a pay schedule, among other things, must:

- Be duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- Identify the position title for every employee position;
- Show the payrate as a single amount or multiple amounts within a range for each identified position;
- Indicate the time base such as hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- Be posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicate an effective date and date of any revisions;
- Be retained by the employer and available for public inspection for not less than five years; and
- Not reference another document in lieu of disclosing the payrate.


TUSTIN UNIFIED SCHOOL DISTRICT**Recommendation**

The Agency should ensure reported payrates are granted and reported to CalPERS in compliance with the PERL. The Agency should work with the CalPERS Employer Account Management Division to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Government Codes: § 20120, § 20121, § 20122, § 20160

Conclusion

OFAS limited this review to the areas specified in the objective and scope section of this report. Sample testing procedures provide reasonable, but not absolute, assurance that the Agency complied with the specific provisions of the PERL and CalPERS contract that were subject to this review. The results outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination with regard to the results noted within the report. The appropriate CalPERS divisions will notify the Agency of the final determinations and provide appeal rights, if applicable, at that time.

TUSTIN UNIFIED SCHOOL DISTRICT

Confidential List

Sampled Employee	CalPERS ID	Earned Period End Date	Reportable Payrate	Observation/Description
Laura Epstein (Active Employee)		July 31, 2015	See Comments	The Agency reported an hourly payrate of \$25.40 as noted in Observation 5. However, the position and payrate were not listed in a pay schedule.
		September 30, 2015	\$7,813.45	The Agency reported a monthly payrate of \$8,817.06 that included Masters Stipend pay of \$222.90 as noted in Observation 2. In addition, the Agency reported excessive payrates as noted in Observation 3. The Agency should have reported a monthly payrate of \$7,813.45
		September 30, 2016	\$8,047.82	The Agency reported a monthly payrate of \$9,081.50 that included Masters Stipend pay of \$228.90 as noted in Observation 2. In addition, the Agency reported excessive payrates as noted in Observation 3. The Agency should have reported a monthly payrate of \$8,047.82.
Alane Pelleriti (Retired – January 2015)		August 31, 2012	\$3,915.60	The Agency reported a monthly payrate of \$4,002 that included longevity pay of \$207 as noted in Observation 2. In addition, the Agency should have reported a monthly payrate of \$3,915.60 as noted in Observation 4.
		August 31, 2013	\$4,033.10	The Agency reported a monthly payrate of \$4,122 that included longevity pay of \$213 as noted in Observation 2. In addition, the Agency should have reported a monthly payrate of \$4,033.10 as noted in Observation 4.
		February 28, 2014	\$4,033.10	The Agency reported a monthly payrate of \$4,183 that included longevity pay of \$274 as noted in Observation 2. In addition, the Agency should have reported a monthly payrate of \$4,033.10 as noted in Observation 4.

TUSTIN UNIFIED SCHOOL DISTRICT

Sampled Employee	CalPERS ID	Earned Period End Date	Reportable Payrate	Observation/Description
Jesse Lomeli (Active Employee)		November 30, 2015	\$19.32	The Agency reported an incorrect hourly payrate of \$19.75 as a result of adding longevity pay to the base payrate as noted in Observation 2. The Agency should have reported an hourly payrate of \$19.32.
		September 30, 2016	\$19.89	The Agency reported an incorrect hourly payrate of \$20.33 as a result of adding longevity pay to the base payrate as noted in Observation 2. The Agency should have reported an hourly payrate of \$19.89.
		November 30, 2016	\$19.89	The Agency reported an incorrect hourly payrate of \$20.49 as a result of adding longevity pay to the base payrate as noted in Observation 2. The Agency should have reported an hourly payrate of \$19.89.



TEACHER SALARY SCHEDULE - Annual

2016-17

(1995 URS)

1a

Step	A	B	C	D	E	F	Step
	BA	BA+15	BA+30	BA+45	BA+60	BA+80	
1	51,636	52,854	54,514	57,132	59,748	63,235	1
2	51,636	52,854	56,694	59,443	62,361	65,853	2
3	51,636	55,036	58,875	61,753	64,979	68,470	3
4	53,816	57,215	61,055	64,065	67,598	71,084	4
5	55,989	59,397	63,235	66,375	70,214	73,703	5
6	58,177	61,579	65,414	68,688	72,830	76,320	6
7	60,358	63,758	67,598	70,998	75,445	78,936	7
8		65,939	69,777	73,310	78,063	81,553	8
9			71,957	75,622	80,680	84,171	9
10			74,138	77,934	83,297	86,786	10
11				80,242	85,914	89,402	11
12					88,526	92,020	12
13							13
14							14
15				83,558	91,844	95,335	15
16							16
17							17
18							18
19					95,158	98,648	19
20							20
21							21
22							22
23					*102,737	*106,296	23
24							24
25							25
26						*110,872	26
27							27
28							28
29							29
30							30

*MA Stipend Included (required)

MA = \$2,289

Doctorate = \$3,123

Super Max = \$113,995 (Step 26 +PhD)

Board Approval 11/14/2016

Effective Date: 07/01/2016

Salary Schedule: CERT

16(1)

Tustin Unified School District
CLASSIFIED NON-BARGAINING SALARY SCHEDULE 2012-2013

ACADEMIC TUTOR		6.63
AVID TUTOR 1		8.00
AVID TUTOR 2		9.00
AVID TUTOR 3		10.00
STUDENT HELPER 1		8.00
STUDENT HELPER 2		9.00
WORK EXPERIENCE STUDENT		8.00
NOON DUTY SUPERVISOR		8.75
SUM REC ASST COACH 1		10.00
SUMMER REC ASST COACH 2		17.00
SUM REC HEAD COACH/PROD MGR		30.00
SUMMER REC-AQUATICS 1		14.00
SUMMER REC-AQUATICS 2		13.00
SUMMER REC-AQUATICS 3		12.00
SUMMER REC-AQUATICS 4		11.00
SUMMER REC-AQUATICS 5		10.00
WALK ON COACH		10.00
SWIM COACH		14.00
ASST COACH		18.00
HEAD COACH		32.00
FEE BASED		40.00
CL HOURLY		10.00
SPECIAL ASSIGNMENT		12.00
INTERPRETER (HEARING IMPAIRED)		13.25
SPECIAL ASSIGNMENT BRAILLE		17.89

SUB PARAEDUCATOR, TEACHER ASSISTANTS (no SpEd)		9.861
SUB PARAEDUCATOR, SPECIAL EDUCATION	21	10.491
SUB NUTRITION SVCS ASSIST II		10.172
SUB CLERICAL		10.494
SUB CAMPUS SUPERVISOR	15	9.742
SUB INSTR AIDE II (Special Ed & Bilingual)	21	10.491
SUB LIBRARY MEDIA TECH II	24	10.888
SUB DUPLICATING PROD OPER	26	11.173
SEASONAL WORKER M&O		11.425
SUB CUSTODIAN	33	12.182
SUB GROUNDSPERSON	35	12.493
SUB ACCOUNT CLERK II	37	12.805
SUB WAREHOUSE DELIVERYPERSON	38	12.964
SUB PAYROLL CLERK	39	13.123
SUB PLANT PATROL / SCH SEC II	42	13.621
SUB SCHOOL SECRETARY I	44	13.959

Board Approved: 1/14/2008
Effective: 2/1/2009

Exhibit 3

PERS029

A44

16(a)

Tustin Unified School District
CLASSIFIED NON-BARGAINING SALARY SCHEDULE 2013-2014

POSITION	RANGE	SALARY
ACADEMIC TUTOR		6.63
AVID TUTOR 1		8.00
AVID TUTOR 2		9.00
AVID TUTOR 3		10.00
STUDENT HELPER 1		8.00
STUDENT HELPER 2		9.00
WORK EXPERIENCE STUDENT		8.00
NOON DUTY SUPERVISOR		8.75
SUM REC ASST COACH 1		10.00
SUMMER REC ASST COACH 2		17.00
SUM REC HEAD COACH/PROD MGR		30.00
SUMMER REC-AQUATICS 1		14.00
SUMMER REC-AQUATICS 2		13.00
SUMMER REC-AQUATICS 3		12.00
SUMMER REC-AQUATICS 4		11.00
SUMMER REC-AQUATICS 5		10.00
WALK ON COACH		10.00
SWIM COACH		14.00
ASST COACH		18.00
HEAD COACH		32.00
FEE BASED		40.00
CL HOURLY		10.00
SPECIAL ASSIGNMENT		12.00
INTERPRETER(HEARING IMPAIRED)		13.25
SPECIAL ASSIGNMENT BRAILLE		17.69

POSITION	RANGE	SALARY
SUB PARAEDUCATOR, TEACHER ASSISTANTS (no SpEd)		9.861
SUB PARAEDUCATOR, SPECIAL EDUCATION	21	10.491
SUB NUTRITION SVCS ASSIST II		10.172
SUB CLERICAL		10.494
SUB CAMPUS SUPERVISOR	15	9.742
SUB INSTR AIDE II (Special Ed & Bilingual)	21	10.491
SUB LIBRARY MEDIA TECH II	24	10.888
SUB DUPLICATING PROD OPER	26	11.173
SEASONAL WORKER M&O		11.425
SUB CUSTODIAN	33	12.182
SUB GROUNDSPERSON	35	12.493
SUB ACCOUNT CLERK II	37	12.805
SUB WAREHOUSE DELIVERYPERSON	38	12.964
SUB PAYROLL CLERK	39	13.123
SUB PLANT PATROL / SCH SEC II	42	13.621
SUB SCHOOL SECRETARY I	44	13.959

1 b(3)

Eff 7-7



Tustin Unified School District

2014-15 CLASSIFIED NON-BARGAINING UNIT SALARY SCHEDULE

CLASSIFIED POSITIONS	
SUB ACCOUNT CLERK	16.04
SUB CAMPUS SUPERVISOR	12.06
SUB CLERICAL/OFFICE ASSISTANT	13.49
SUB CUSTODIAN	15.66
SUB GROUNDSPERSON	15.66
SUB HEALTH CLERK	13.49
SUB LIBRARY MEDIA TECH	13.49
SUB NUTRITION SVCS ASSIST	12.08
SUB PARAEDUCATOR TEACHER ASSISTANTS	13.49
SUB PARAEDUCATOR, (BILINGUAL)	13.49
SUB PARAEDUCATOR, PRESCHOOL	13.49
SUB PARAEDUCATOR, SPECIAL EDUCATION	13.49
SUB PAYROLL CLERK	16.04
SUB PLANT PATROL	15.66
SUB SECRETARY	16.04
SUB WAREHOUSE DELIVERYPERSON	15.66
Substitute positions not specifically represented on this schedule will be compensated at a rate as recommended by the Superintendent or designee and approved by the Board of Education.	

NON-BARGAINING UNIT POSITIONS	
ACADEMIC TUTOR	9.00
ACCOMPANIST	15.00
AVID TUTOR 2	10.00
AVID TUTOR 3	11.00
AVID TUTOR I	9.00
CL HOURLY	10.00
NOON DUTY SUPERVISOR	9.75
SHORT TERM - GENERAL SUPPORT	12.06
STUDENT HELPER I	9.00
SUM REC ASST COACH 1	10.00
SUM REC HEAD COACH/PROD MGR	30.00
SUMMER REC ASST COACH 2	17.00
SUMMER REC-AQUATICS 1	14.00
SUMMER REC-AQUATICS 2	13.00
SUMMER REC-AQUATICS 3	12.00
SUMMER REC-AQUATICS 4	11.00
SUMMER REC-AQUATICS 5	10.00
WALK ON COACH	20.00
WORK EXPERIENCE STUDENT	9.00

Effective Date: 7/1/14
 Board Approval: 6/9/14

31A * Short-Term Interpreter @ 17.0429
 See attached

Pay Assignment : Pay Assignment information including positi... Page 1 of 1

1/4(1)

Detailed information displayed below

7. User: 08796GUYEN Version: 2.6.5 - Printed: 08/07/2018 03:31 PELLERIN, ALANER 8700001820

Status: View related information...

Employee Information
 *Dist No: 02/ *ID: *Name: PELLERIN, ALANER Empl Stat: 001 HR: 07 Rec Count: 28

Notes:

Position
 *Rec Type: PM - PRIMARY ASSIGNMENT
 *Effective: 08/23/2013 to 01/31/2014 = 2013/14 Fiscal Yr
 Reason: 20 - NEW FY PAYASGN
 *Position: 8720782802 PE EQUIP PER
 *Pos Eqp: 8720782802 - PE EQUIP PER
 *Calc Ac: 15 - CL SALARY
 *Paydcat: 200 - CL *Payrol: CL - CLASSIFIED
 *Barg Unit: CSEA - CSEA *Calendar: 87CL196
 Dept: 328 - TUSTIN HIGH SCHOOL
 Division: ED - EDUCATIONAL SERVICES
 Pos Ann Dt: 01/05/2004 *Grade: SELECT

Assignment Status: 01 - PERMANENT
 Position Effective: 07/01/2008 - 12/31/2030
 Job Classification: 872078 - PE EQUIPMENTPERSON
 Location: 28 - TUSTIN HIGH SCHOOL

Calendar Desc:

	HRSPAY	RATPRN	NSBWK	RAYSTP	MONTHS
*Base	8,000.00	5.00	40.00	209.00	10.00
*Actual	8,000.00	5.00	40.00	209.00	10.00

Salary Calculation
 *Pos FTE: 1.00000 FTE Trunc: 1.00000 FTE Usage: 1.00000
 *Brg Bch: CLMD *Calendar Range: 36 *Bsp: F

	ANNUAL	MONTHLY	DAILY	HOURLY
BASE	8,000.00	666.67	166.67	22.22
*ACTL	8,000.00	666.67	166.67	22.22
Extra Comp	2,000.00	166.67	41.67	5.56
TOTAL	10,000.00	833.34	208.34	27.78

Pay Period Type: M - MONTHLY
 Override: N - NO

Pay Lines
 *Pay Pref: *Use No: *Pay Type: SELECT

TD10M

PRIORITY	DESC (RSTB)	ANNUAL	MONTHLY	DAILY	HOURLY
1	CLMD LOWDUTY STEP 8(8/23/2013 - 1/31/2014)	2138.88	178.24	44.56	5.94

Withholding Indicators
 STRS PERS ARS Medicare CASDI UIC SDI

Distribution
 *LookID:

Log Information
 Created On: 8/2/2013 4:25:17 PM Created By: PELLERIN, ALANER Updated On: 8/7/2018 3:31 PM Updated By: 08796GUYEN

Time And Attendance
 Hours / Day
 Su M Tu W Th Fr Sa

Miscellaneous Information
 Miscellaneous Fields
 *RF Code: 0 *Vac Days: 0

4a. n1

PROCESSED ON: 02/17/2012

SALARY SCHEDULE REPORT

HR_SLAYBLE_TU

AS OF: 07/01/2011

PAGE 10

ENTITY: 87 TUSTIN UNIFIED

(No increase to 2011/12 or 12/13 so

Method: CLMO CLASSIFIED MONTHLY

2011/12 salary schedule apply to 2012/13)

Range/Step	A	B	C	D	E	F
01 RANGE01	1,916.00	2,016.00	2,114.00	2,228.00	2,339.00	2,477.00
02 RANGE 02	1,940.00	2,040.00	2,145.00	2,252.00	2,368.00	2,487.00
03 RANGE 03	1,967.00	2,066.00	2,170.00	2,284.00	2,400.00	2,521.00
04 RANGE 04	1,992.00	2,092.00	2,199.00	2,311.00	2,431.00	2,549.00
05 RANGE 05	2,016.00	2,114.00	2,228.00	2,339.00	2,457.00	2,583.00
06 RANGE 06	2,040.00	2,145.00	2,252.00	2,368.00	2,487.00	2,618.00
07 RANGE 07	2,066.00	2,170.00	2,284.00	2,400.00	2,521.00	2,648.00
08 RANGE 08	2,092.00	2,199.00	2,311.00	2,431.00	2,549.00	2,682.00
09 RANGE 09	2,114.00	2,228.00	2,339.00	2,457.00	2,583.00	2,715.00
10 RANGE 10	2,145.00	2,252.00	2,368.00	2,487.00	2,618.00	2,747.00
11 RANGE 11	2,170.00	2,284.00	2,400.00	2,521.00	2,648.00	2,781.00
12 RANGE 12	2,199.00	2,311.00	2,431.00	2,549.00	2,682.00	2,819.00
13 RANGE 13	2,228.00	2,339.00	2,457.00	2,583.00	2,715.00	2,855.00
14 RANGE 14	2,252.00	2,368.00	2,487.00	2,618.00	2,747.00	2,889.00
15 RANGE 15	2,284.00	2,400.00	2,521.00	2,648.00	2,781.00	2,926.00
16 RANGE 16	2,311.00	2,431.00	2,549.00	2,682.00	2,819.00	2,964.00
17 RANGE 17	2,339.00	2,457.00	2,583.00	2,715.00	2,855.00	3,002.00
18 RANGE 18	2,368.00	2,487.00	2,618.00	2,747.00	2,889.00	3,036.00
19 RANGE 19	2,400.00	2,521.00	2,648.00	2,781.00	2,926.00	3,073.00
20 RANGE 20	2,431.00	2,549.00	2,682.00	2,819.00	2,964.00	3,114.00
21 RANGE 21	2,457.00	2,583.00	2,715.00	2,855.00	3,002.00	3,154.00
22 RANGE 22	2,487.00	2,618.00	2,747.00	2,889.00	3,036.00	3,191.00
23 RANGE 23	2,521.00	2,648.00	2,781.00	2,926.00	3,073.00	3,233.00
24 RANGE 24	2,549.00	2,682.00	2,819.00	2,964.00	3,114.00	3,269.00
25 RANGE 25	2,583.00	2,715.00	2,855.00	3,002.00	3,154.00	3,312.00
26 RANGE 26	2,618.00	2,747.00	2,889.00	3,036.00	3,191.00	3,352.00
27 RANGE 27	2,648.00	2,781.00	2,926.00	3,073.00	3,233.00	3,393.00
28 RANGE 28	2,682.00	2,819.00	2,964.00	3,114.00	3,269.00	3,440.00
29 RANGE 29	2,715.00	2,855.00	3,002.00	3,154.00	3,312.00	3,483.00
30 RANGE 30	2,747.00	2,889.00	3,036.00	3,191.00	3,352.00	3,526.00
31 RANGE 31	2,781.00	2,926.00	3,073.00	3,233.00	3,393.00	3,569.00
32 RANGE 32	2,819.00	2,964.00	3,114.00	3,269.00	3,440.00	3,611.00
33 RANGE 33	2,855.00	3,002.00	3,154.00	3,312.00	3,483.00	3,656.00
34 RANGE 34	2,889.00	3,036.00	3,191.00	3,352.00	3,526.00	3,699.00
35 RANGE 35	2,926.00	3,073.00	3,233.00	3,393.00	3,569.00	3,746.00
36 RANGE 36	2,964.00	3,114.00	3,269.00	3,440.00	3,611.00	3,795.00
37 RANGE 37	3,002.00	3,154.00	3,312.00	3,483.00	3,656.00	3,845.00
38 RANGE 38	3,036.00	3,191.00	3,352.00	3,526.00	3,699.00	3,893.00
39 RANGE 39	3,073.00	3,233.00	3,393.00	3,569.00	3,746.00	3,941.00
40 RANGE 40	3,114.00	3,269.00	3,440.00	3,611.00	3,795.00	3,992.00
41 RANGE 41	3,154.00	3,312.00	3,483.00	3,656.00	3,845.00	4,043.00
42 RANGE 42	3,191.00	3,352.00	3,526.00	3,699.00	3,893.00	4,089.00
43 RANGE 43	3,233.00	3,393.00	3,569.00	3,746.00	3,941.00	4,143.00
44 RANGE 44	3,269.00	3,440.00	3,611.00	3,795.00	3,992.00	4,192.00
45 RANGE 45	3,312.00	3,483.00	3,656.00	3,845.00	4,043.00	4,248.00
46 RANGE 46	3,352.00	3,526.00	3,699.00	3,893.00	4,089.00	4,301.00
47 RANGE 47	3,393.00	3,569.00	3,746.00	3,941.00	4,143.00	4,355.00
48 RANGE 48	3,440.00	3,611.00	3,795.00	3,992.00	4,192.00	4,405.00



4:23

PROCESSED ON: 02/17/2012

SALARY SCHEDULE REPORT
 AS OF: 07/01/2011

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 PAGE 7


ENTITY: 87 TUSTIN UNIFIED

*(NO increase to 2011/12 or 2012/13 so
 2011/12 salary schedule applies to 2011/13)*

...chedule: CLHR CLASSIFIED HOURLY

Range/Step	A	B	C	D	E	F
01 RANGE 01	11.4063	12.0000	12.5812	13.2626	13.9250	14.6250
02 RANGE02	11.5500	12.1438	12.7687	13.4063	14.0937	14.8063
03 RANGE03	11.7062	12.3000	12.9188	13.5937	14.2875	15.0063
04 RANGE04	11.8563	12.4500	13.0875	13.7563	14.4688	15.1750
05 RANGE 05	12.0000	12.5812	13.2626	13.9250	14.6250	15.3751
06 RANGE 06	12.1438	12.7687	13.4063	14.0937	14.8063	15.5813
07 RANGE07	12.3000	12.9188	13.5937	14.2875	15.0063	15.7625
08 RANGE08	12.4500	13.0875	13.7563	14.4688	15.1750	15.9625
09 RANGE 09	12.5812	13.2626	13.9250	14.6250	15.3751	16.1626
10 RANGE 10	12.7687	13.4063	14.0937	14.8063	15.5813	16.3500
11 RANGE 11	12.9188	13.5937	14.2875	15.0063	15.7625	16.5563
12 RANGE 12	13.0875	13.7563	14.4688	15.1750	15.9625	16.7812
13 RANGE 13	13.2626	13.9250	14.6250	15.3751	16.1626	16.9937
14 RANGE 14	13.4063	14.0937	14.8063	15.5813	16.3500	17.1938
15 RANGE 15	13.5937	14.2875	15.0063	15.7625	16.5563	17.4188
16 RANGE 16	13.7563	14.4688	15.1750	15.9625	16.7812	17.6438
17 RANGE 17	13.9250	14.6250	15.3751	16.1626	16.9937	17.8688
18 RANGE 18	14.0937	14.8063	15.5813	16.3500	17.1938	18.0687
19 RANGE19	14.2875	15.0063	15.7625	16.5563	17.4188	18.2937
20 RANGE20	14.4688	15.1750	15.9625	16.7812	17.6438	18.5375
21 RANGE21	14.6250	15.3751	16.1626	16.9937	17.8688	18.7751
22 RANGE 22	14.8063	15.5813	16.3500	17.1938	18.0687	18.9938
RANGE 23	15.0063	15.7625	16.5563	17.4188	18.2937	19.2438
RANGE 24	15.1750	15.9625	16.7812	17.6438	18.5375	19.4563
25 RANGE 25	15.3751	16.1626	16.9937	17.8688	18.7751	19.7125
26 RANGE 26	15.5813	16.3500	17.1938	18.0687	18.9938	19.9500
27 RANGE 27	15.7625	16.5563	17.4188	18.2937	19.2438	20.1937
28 RANGE 28	15.9625	16.7812	17.6438	18.5375	19.4500	20.4750
29 RANGE 29	16.1626	16.9937	17.8688	18.7751	19.7125	20.7312
30 RANGE 30	16.3500	17.1938	18.0687	18.9938	19.9500	20.9875
31 RANGE31	16.5563	17.4188	18.2937	19.2438	20.1937	21.2437
32 RANGE32	16.7812	17.6438	18.5375	19.4563	20.4750	21.4937
33 RANGE 33	16.9937	17.8688	18.7751	19.7125	20.7312	21.7625
34 RANGE 34	17.1938	18.0687	18.9938	19.9500	20.9875	22.0187
35 RANGE 35	17.4188	18.2937	19.2438	20.1937	21.2437	22.3000
36 RANGE36	17.6438	18.5375	19.4563	20.4750	21.4937	22.5875
37 RANGE 37	17.8688	18.7751	19.7125	20.7312	21.7625	22.8875
38 RANGE38	18.0687	18.9938	19.9500	20.9875	22.0187	23.1750
39 RANGE 39	18.2937	19.2438	20.1937	21.2437	22.3000	23.4563
40 RANGE40	18.5375	19.4563	20.4750	21.4937	22.5875	23.7626
41 RANGE41	18.7751	19.7125	20.7312	21.7625	22.8875	24.0625
42 RANGE42	18.9938	19.9500	20.9875	22.0187	23.1750	24.3375
43 RANGE43	19.2438	20.1937	21.2437	22.3000	23.4563	24.6625
44 RANGE 44	19.4563	20.4750	21.4937	22.5875	23.7626	24.9500
45 RANGE 4 5	19.7125	20.7312	21.7625	22.8875	24.0625	25.2875
46 RANGE 46	19.9500	20.9875	22.0187	23.1750	24.3375	25.6001
47 RANGE47	20.1937	21.2437	22.3000	23.4563	24.6001	25.9250
48 RANGE48	20.4750	21.4937	22.5875	23.7626	24.9500	26.2187
49 RANGE 49	20.7312	21.7625	22.8875	24.0625	25.2875	26.5500
RANGE 50	20.9875	22.0187	23.1750	24.3375	25.6001	26.8875
RANGE 51	21.2437	22.3000	23.4563	24.6625	25.9250	27.2375
52 RANGE52	21.4937	22.5875	23.7626	24.9500	26.2187	27.5813
53 RANGE53	21.7625	22.8875	24.0625	25.2875	26.5500	27.9125
54 RANGE 54	22.0187	23.1750	24.3375	25.6001	26.8875	28.2085

5a(1)

 Tustin Unified School District
 2015-16 CERTIFICATED NON-BARGAINING UNIT ASSIGNMENTS

Position	Hourly Rate
Adult Education	\$32.50
Independent Study	\$32.50
Home Teaching	\$25.40
Saturday School	\$25.40
Tenth Grade Counseling	\$25.40
Substitute Teachers	Daily Rate
Short Term - 10 days or less	\$121.00 / \$131.00*
Long Term - 11 days or more in same assignment	\$136.00 / \$146.00*
Extra Class Period at Middle or High School	\$15.00/\$18.00
Position	Daily Rate
Counselors	\$196.00
Psychologists	\$277.00
Speech/Language Specialists	\$277.00
Nurses	\$252.00
Summer School	Hourly Rate
General Education	\$41.00
ESY (M/M, M/S, APE, Vision, O/M), Nurse	\$41.00
SLP, Psych, Lead Teacher	\$45.00

← Add in "Miscellaneous assignments" hourly rate of \$25.40

Effective Date: July 1, 2015
 Board Approved: June 22, 2015

* Substitute teachers are eligible for the higher daily rate if they performed 50 or more days

EXHIBIT 4



A Legacy of Excellence in Education

300 South C Street, Tustin, CA 92780-3695 . (714) 730-7301 . FAX (714) 731-5399 . www.tustin.k12.ca.us

August 6, 2018

CALPERS
 Attention: Beliz Chappule-Chief Office of Audit Services
 P.O. Box 942701
 Sacramento, CA 94229-2701

Subject: Tustin Unified School District: February 2018 Audit-Pay Rates
 Job Number: 3P17-008
Draft Audit Response

Dear Ms. Chappule:

This letter is in response to July 18, 2018 CALPERS Draft Report (See attached) for the audit performed at Tustin Unified School District (TUSD). We have reviewed the report and below are responses to the areas and exceptions outlined in the "Results in Brief" and "Confidential List".

1) Pay Schedule –Approval/Time Base

The Agency did not maintain pay schedules in compliance with the Government Code and CCR. Specifically, the pay schedule in effect July 1, 2016 for Certificated Represented Employees did not include the time base for annual payrates. In addition, the pay schedule entitled "Classified Non-Bargaining Salary Schedule" in effect for Fiscal Years 2012-13, 2013-14 and 2015-16 did not include the time base for hourly payrates and were not duly approved and adopted by the Agency's governing body as defined in Government Code sections 20636.1, 7522.34(a) and CCR section 570.5.

- (a) For purposes of determining the amount of "compensation earnable" pursuant to Government Code Sections 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:
- (4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;

Tustin Unified School District: February 2018 Audit-Pay Rates
Draft Audit Response**1a) TUSD Response to "July 1, 2016 for Certificated Represented Employees"**

In reviewing this particular pay schedule and based on the definition of "time base" defined above in the Government Code and CCR, the only thing missing is "ANNUAL". To correct this exception and thereby complying with the law, TUSD will update pay/salary schedules (also see sample attachment "1a") to show "TEACHER SALARY SCHEDULE -ANNUAL". *Please verify attached sample if TUSD needs to make additional changes.*

1b) TUSD Response - "Classified Non-Bargaining Salary Schedule"

Not certain what "Did not include the time base for hourly payrates" actually represents since the schedules do identify the time base as hourly rates and for the specific fiscal year (see attachments 1b(1), 1b(2), and 1b(3)). To clearly identify the effective dates, TUSD will add in specific from and to effective dates. Other than this, TUSD is not certain of other non-compliance. *Please advise TUSD of any other specific item(s) from "time base" that are missing per CALPERS' interpretation of the law.*

1c) TUSD Response - "Were not duly approved and adopted"

TUSD will review its current procedures and revise procedures to ensure compliance with Government Code and CCR.

2) Payrates – Additional Compensation

The Agency reported payrates that included additional compensation for three sampled employees, two active and one who retired in January 2015. Specifically, one of the active employees and the retired employee had longevity pay added to their base payrate. The amounts ranged from \$.43 to \$.60 per hour for the active employee and \$207.00 to \$274.00 per month for the retired employee. The other active employee had a Masters Stipend added to their base payrate. The amounts ranged from \$222.20 to \$228.90 per month. The incorrect reporting resulted in an increase to the employees reported payrates that were not in compliance with Government Code sections 20636.1 and 7522.34(a).

Tustin Unified School District: February 2018 Audit-Pay Rates
Draft Audit Response

TUSD Response – Like many school districts, TUSD currently uses Orange County Department of Education (OCDE) HR system. OCDE is aware of this requirement to report additional compensation separate from employee base pay rate and has been in communication with CALPERS since 2015. OCDE is currently working to update their future reporting files to CALPERS which would exclude additional compensations from base pay for all school districts. TUSD will follow up with OCDE on the status and make necessary corrections to ensure accuracy to employee benefits.

3) Payrates – Excessive Payrate

The Agency reported excessive monthly payrates for a sampled active certificated employee. Specifically, the Agency added additional compensation for a Master's Stipend and also divided the annual salary by 10 months instead of 11 months. The base annual salary for the employee's position during the 2015-16 school year was \$85,948 and the employee worked 11 months during the year. The Agency reported a monthly base salary of \$8,594.80; however, the correct monthly payrate to report was \$7,813.45. The incorrect reported resulted in an increase to payrates reported that were not in compliance with Government Code sections 20636.1 and 7522.34(a). Government Code section 20630 states when compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when it is reported or paid.

3a) **TUSD Response** – Refer to TUSD response for audit exception #2 in reference to the Master Stipend that is currently included in the employee base pay for sample audit Laura Epstein.

3b) **TUSD Response** - This method of calculation for monthly payment applies mainly to Certificated employees who elect to remain in CALPERS as their retirement system. The monthly pay is calculated consistent to how other Certificated employees are paid and reported under CALSTRS retirement system and to their bargaining unit. Most districts have about 5-10 Certificated employees electing to remain in CALPERS system so will experience similar issue.

Tustin Unified School District: February 2018 Audit-Pay Rates
Draft Audit Response

TUSD will work with employees and their bargaining unit to inform them of CALPERS law requirements to ensure future compliance. In order to accomplish this change correctly going forward, TUSD is requesting CALPERS's guidance on how to apply the law requirements to TUSD's specific pay to make sure accurate Interpretation of the law.

Based on CALPERS audit exception which is for Laura Epstein (Certificated employee who is paid on CALPERS retirement system), below are two calculation methods to come up with a full time monthly rate of \$7,813.45. Please review and let us know which method will accurately comply with the law based on CALPERS' interpretation so that TUSD can make corrections to comply with 11 month reporting going forward.

Laura Epstein (Active Employee) → 60%, Part time teacher
Annual salary \$85,948 per salary schedule
Employee is on 185-Day contract
Employee contract starts August 27 and ends June 16, 2016

Method #1: (Calculation based on full time position)
\$85,948/11 months = \$7,813.45 per month
Employee is paid from August – June, \$7,813.45 per month

Method #2: (Calculation based on full time position)
\$85,948/11 months = \$7,813.45 per month

August pay – Employee works 4 days in August

Monthly Rate	Actual Pay
\$7,813.45	\$85,948/185day = \$464.58 per day \$464.58 x 4 days = \$1,858.32 pay for August

June pay – Employee works 10 days in June

Monthly Rate	Actual Pay
\$7,813.45	\$85,948/185day = \$464.58 per day \$464.58 x 10 days = \$4,645.80 pay for June

September – May pays

Monthly Rate	Actual Pay
\$7,813.45	\$8,827.10 each month Sept - May

\$85,948.00
-1,858.32 Pay for August
-4,645.80 Pay for June
\$79,443.88 divide by 9 months = \$8,827.10

Tustin Unified School District: February 2018 Audit-Pay Rates
Draft Audit Response

4) Payrates – Full Time Payrates

The Agency did not correctly report full-time payrates for a sampled classified employee who retired in January 2015. Specifically, the reported payrates were not based on a 40-hour workweek for all months of a year as required by Government Code section 20636.1. For example, the Agency reported a monthly payrate of \$4,122 for the employee in the pay period ended August 31, 2012; however, the reported monthly payrate should have been \$3,915.60. The payrates reported for the retired sampled employee reflected a workweek of less than 40 hours and the payrates were not based on all 12 months of the year. The incorrect reporting resulted in decreases to the employees reported payrates that were not in compliance with Government Code sections 20636.1 and 7522.34(a).

TUSD Response – TUSD recognizes there is a difference in the calculation method that TUSD currently uses and CALPERS' method. However, we do want to point out that the audit exception sample amounts above are not comparable for several reasons.

- o Audit exception above applies to audit sample Alane Pellerl.
 - \$4,122 rate shown in the exception is for 2013-14 and not for August 31, 2012 pay period which is for fiscal year 2012-13 (See attachments 4a(1), 4a(2), and 4a(3)). In addition, this rate includes longevity pay.
 - \$3,915.60 calculation shown in the audit exception is calculated based on fiscal year 2012-13 pay rates (See attachments 4a(2), and 4a(3)). This amount does not include employee longevity pay.

If CALPERS standard calculation is based on 2,080 hours per year, then either TUSD hourly rate is too high or the monthly rate is too low (See calculations below). TUSD would like to point out that currently many school districts' calculations are based on 21, 22, or 23 days each month. Districts do not always use the 173.33 hours/month to calculate the employee pay. This has been in practice for many years. According to the Government Code sections 20636.1 and 7522.34(a), the law does not specify requirement of using specific hours such as 2,080 hours per year or 173.33 hours per

Tustin Unified School District: February 2018 Audit-Pay Rates
Draft Audit Response

month. The law only specifies that the "payrate shall be limited to the amount listed on a pay schedule" so base on this, TUSD and other districts are in compliance. In the meantime, TUSD management will review the District's current calculation method. *To help TUSD how to proceed going forward, please confirm that CALPERS calculation is based on 2,080 hours per year and why CALPERS wants school districts to use this in the calculations when it is not in the law.*

- o From 2012-13 Salary Schedule (see attachment 4a(3)) - Converting TUSD current hourly rates \$22.589 per hour to monthly.

$$\begin{array}{r} \$22.589 \\ \times 2080 \text{ hours per year} \\ \hline = \$46,985.12 \text{ annual} / 12 \text{ months} = \$3,915.42 \text{ per month} \end{array}$$

- o From 2012-13 Salary Schedule (see attachment 4a(2)) - Converting TUSD current monthly rate \$3,795 per month to hourly rate.

$$\begin{array}{r} \$3,795 \\ \times 12 \text{ months} \\ \hline = \$45,540 \text{ annual} / 2080 \text{ hours per year} = \$21.894 \text{ per hour} \end{array}$$

5) Payrates – Full Time Payrates

The Agency reported a payrate that was not reportable for the active certificated employee noted in Observation 3. Specifically, the Agency reported an hourly payrate of \$25.40 for time the employee spent attending a three day planning and personal development workshop in July 2015. The payrate reported was not the normal rate of pay or base pay of the member and the payrate was not listed in the Agency's publicly available pay schedule as defined in Government Code sections 20636.1 and 7522.34(a).

5a) TUSD Response – Employee sample in this audit relates to Laura Epstein. Employee is a Certificated employee who is a part time employee but was paid for performing an extra assignment. TUSD, similar to numerous other districts have other miscellaneous assignments but paid at different rates than employee regular pay rate. For TUSD, rate \$25.40 applies to many of our miscellaneous assignments such as this workshop payment to Laura Epstein.

Tustin Unified School District: February 2018 Audit-Pay Rates
Draft Audit Response

- o To meet TUSD's needs and to comply with the Government Code requirement, TUSD will add to the "Certificated Non-Bargaining Unit Assignments" Salary Schedule a position such as "Miscellaneous Assignments" with \$25.40 hourly rate (see attachment 5a(1)). This will ensure future payments are identified on TUSD salary schedule. *Please confirm that this is suffice to meet the law requirement.*

5b) TUSD Response - In reference to the reporting pay rate in this particular sample, Laura Epstein, here is TUSD's understanding of the reporting requirements to CALPERS for full time and part time employees. *Please review and let TUSD know if they accurate or inaccurate.*

- o Reporting of full time eligible employee to CALPERS – Employee full time regular pay position is reportable to CALPERS. Any additional/extra compensations, unless they are part of the position, are considered as overtime and are not reportable to CALPERS.
- o Reporting of part time eligible employee such as Laura Epstein to CALPERS – Employee part time regular pay position is reportable to CALPERS. Any additional/extra compensations for extra assignments are reportable to CALPERS only up to full-year service.

Depending on whether the assignment is a classified assignment or certificated assignment, a designated rate is approved for certain extra assignment and employees are paid the same rate regardless of whether they are on CALSTRS or CALPERS retirement system. In this audit sample for Laura Epstein who is a part time employee, her extra assignment is paid at \$25.40 per hour, consistent to how all other Certificated employees are paid for this particular assignment. This is not part of her regular position; therefore, her normal rate cannot be used to pay her for this assignment. If we use a different rate than what is on the salary schedule than we're not in compliance with the law and if the rate is different than what Certificated employees are paid then we lose the integrity/consistency of the data and what was approved for the particular assignment.

In this case, I don't think compliance is the issue to make sure accurate calculation for member's retirement benefits but it is how CALPERS perform the calculation for the member. If the employee is part time, CALPERS should use their regular/primary position as the basis when calculating their years of service.

Tustin Unified School District: February 2018 Audit-Pay Rates
Draft Audit Response

Using Laura Epstein's pays (a part time employee with monthly pay \$5,156.68 per month) as example, here is how TUSD recommends CALPERS should calculate to increase their service years.

	Monthly rate (Reports to CALPERS)	Actual Payment to Employee w/o (Reports to CALPERS)	
Primary assignment->	\$5,156.68/mo	\$ 5,156.68	.6 yrs of svc
Extra assignment->	\$25.40/hour	\$457.20	<u>.09 yrs of svc</u>
Total			.69 yrs of svc

CALPERS should use her primary monthly rate as the basis for the calculation of all her extra assignments to increase her years of service ($\$457.20/\$5,156.68 = .09$) for one month.

Please review because, again, TUSD believes this is more of CALPERS internal calculation and not the law and provide more detail of CALPERS reasoning for requiring districts to report a different than what is on the salary schedule for that extra assignment. This requirement is creating a lot of hardship for both districts and counties so TUSD is requesting CALPERS to review.

6) Payrates – Payrate Adjustments

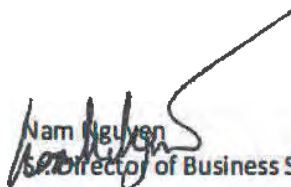
The Agency did not report a retroactive salary adjustment covering all months worked by an active employee. Specifically, the employee received a three percent salary increase in March 2017 retroactive to July 1, 2016. The Agency reported a retroactive salary adjustment back to September 1, 2016; however, the employee began working during the school year in August 2016. The incorrect reporting resulted in payrates reported that were not in compliance with Government Code sections 20636.1 and 7522.34(a). Government Code section 20630 states when compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when it is reported or paid.

**Tustin Unified School District: February 2018 Audit-Pay Rates
Draft Audit Response**

TUSD Response – TUSD will clearly identify accurate pay period for future retroactive pay for employees on CALPERS retirement system.

Quite often the laws tend to be vague and can be interpreted in different ways. Since CALPERS is auditing school districts which is based on its interpretations, please assist districts to understand the laws according CALPERS' interpretations by applying to the district's exiting practices. This will make CALPERS audits more valuable because they will help districts to understand where the errors are specifically and understand how to fix the errors which will prevent districts from continue misinterpreting the application of the laws.

Sincerely,


Nam Nguyen
Senior Director of Business Services

Enc.

Cc: Praveen Chaudri, Retirement Coordinator
Orange County Department of Education
Anthony Suine, Chief, BNSD, CalPERS
Renee Ostrander, Chief, EAMD, CalPERS
Don Martinez, Chief, MAMD, CalPERS

BOARD OF EDUCATION

Jonathan Ablove . Tammie Bullard . Lynn Davis . James Laird . Francine Scinto

EXHIBIT 5



California Public Employees' Retirement System
Employer Account Management Division
400 Q Street, Sacramento, CA 95811 | Fax: (916) 795-9372
888 CalPERS (or 888-225-7377) | TTY: (877) 249-7442 | www.calpers.ca.gov

Nam Nguyen, Senior Director of Business Services
Tustin Unified School District
300 South C Street
Tustin, CA 92680

CalPERS ID: [REDACTED]
Job Number: 3P17-008

December 18, 2018

Subject: INITIAL NOTIFICATION OF COMPLIANCE & RESOLUTION FOR PUBLIC AGENCY REVIEW

Dear Nam Nguyen,

The CalPERS' Office of Audit Services (OAS) conducted and provided a Public Agency Review (PAR) to the Tustin Unified School District (Agency) on December 6, 2018. The PAR should be reviewed in its entirety, as it affects the Agency's ability to contract with CalPERS to provide retirement benefits to members. As a contracting agency with CalPERS, the Agency agreed to comply with the California Code of Regulations and Government (Gov.) Code contained within the Public Employees' Retirement Law (PERL).

The PAR identified areas where the Agency is not in compliance with the PERL and is therefore in violation of their Contract with CalPERS. It is the Agency's responsibility to comply with all terms and conditions set forth therein. The Agency is hereby directed to work with CalPERS' designated program liaisons to obtain full resolution of PAR by **April 30, 2019**.

Unresolved issues pose significant financial, contractual, and operational risks for the Agency and its members.

Timely resolution of these matters is a priority to CalPERS. To assist the Agency during the compliance and resolution process, the Agency's PAR case has been assigned to the following program liaisons:

Audit Compliance & Resolution Unit

Primary Contact:
Samuel Camacho
samuel.camachojr@calpers.ca.gov
916.795.3026

Secondary Contact:
Serena Southards
serena.southards@calpers.ca.gov
916.795.3956

Pursuant to Gov. Code sections 20221 and 20465, employers must furnish CalPERS with any member information that is required for the administration of the System; therefore, within thirty (30) days of this dated letter, Agency shall schedule a conference call and establish a proposed action plan to resolve these deficiencies with the assigned liaisons. Prior to the Agency's scheduled conference call with CalPERS, the following information and/or documentation shall be provided to your assigned liaisons:

- Impacted Members List per each Observation, if applicable
- Pay Schedule and/or Labor Policy and Agreement for review, if applicable

It is the Agency's responsibility to comply with all terms and conditions of resolution and compliance set forth in the Agency's Contract with CalPERS.

Failure to comply and obtain timely resolution and compliance with CalPERS may result in any, or all, of the following actions:

- Enforce an Agency wide administrative hold on member accounts which may result in loss of benefits and/or delay a member's retirement date
- Notify the Agency's impacted members to inform them of the agency's deficiency and how the deficiency may impact their retirement and/or disability benefits
- Enforce an Agency wide reoccurring monthly administrative fee for delinquent resolution until compliance is obtained
- Escalate the Agency's PAR to the CalPERS Board of Administration's Risk & Audit Committee for further action
- Revoke the Agency's Contract and/or pursuing all available remedies to enforce the PERL

If you have questions, contact the Agency's assigned CalPERS' Audit Compliance & Resolution liaison listed herein within ten (10) calendar days from the date of this notification letter. The Agency may also contact CalPERS at 888.225.7377 or via email at ERReview@calpers.ca.gov.

Sincerely,



KEVIN LAU

Staff Services Manager I
Employer Account Management Division

cc: Veena Chaudhri, CPP, Retirement Services Coordinator, Orange County Schools



California Public Employees' Retirement System
Employer Account Management Division
400 Q Street, Sacramento, CA 95811 | Fax: (916) 795-9372
888 CalPERS (or 888-225-7377) | TTY: (877) 249-7442 | www.calpers.ca.gov

Veena Chaudhri, CPP, Retirement Services Coordinator
Orange County Schools – Tustin Unified School District
200 Kalmus Drive
Costa Mesa, CA 92626

CalPERS ID [REDACTED]
Job Number: 3P17-008

December 18, 2018

Subject: INITIAL NOTIFICATION OF COMPLIANCE & RESOLUTION FOR PUBLIC AGENCY REVIEW

Dear Veena Chaudhri, CPP,

The CalPERS' Office of Audit Services (OAS) conducted and provided a Public Agency Review (PAR) to the Tustin Unified School District (Agency) on December 6, 2018. The PAR should be reviewed in its entirety, as it affects the Agency's ability to contract with CalPERS to provide retirement benefits to members. As a contracting agency with CalPERS, the Agency agreed to comply with the California Code of Regulations and Government (Gov.) Code contained within the Public Employees' Retirement Law (PERL).

The PAR identified areas where the Agency is not in compliance with the PERL and is therefore in violation of their Contract with CalPERS. It is the Agency's responsibility to comply with all terms and conditions set forth therein. The Agency is hereby directed to work with CalPERS' designated program liaisons to obtain full resolution of PAR by April 30, 2019.

Unresolved issues pose significant financial, contractual, and operational risks for the Agency and its members.

Timely resolution of these matters is a priority to CalPERS. To assist the Agency during the compliance and resolution process, the Agency's PAR case has been assigned to the following program liaisons:

Audit Compliance & Resolution Unit

Primary Contact:
Samuel Camacho
samuel.camachojr@calpers.ca.gov
916.795.3026

Secondary Contact:
Serena Southards
serena.southards@calpers.ca.gov
916.795.3956

Pursuant to Gov. Code sections 20221 and 20465, employers must furnish CalPERS with any member information that is required for the administration of the System; therefore, within thirty (30) days of this dated letter, Agency shall schedule a conference call and establish a proposed action plan to resolve these deficiencies with the assigned liaisons. Prior to the Agency's scheduled conference call with CalPERS, the following information and/or documentation shall be provided to your assigned liaisons:

- Impacted Members List per each Observation, if applicable
- Pay Schedule and/or Labor Policy and Agreement for review, if applicable

It is the Agency's responsibility to comply with all terms and conditions of resolution and compliance set forth in the Agency's Contract with CalPERS.

Failure to comply and obtain timely resolution and compliance with CalPERS may result in any, or all, of the following actions:

- Enforce an Agency wide administrative hold on member accounts which may result in loss of benefits and/or delay a member's retirement date
- Notify the Agency's impacted members to inform them of the agency's deficiency and how the deficiency may impact their retirement and/or disability benefits
- Enforce an Agency wide reoccurring monthly administrative fee for delinquent resolution until compliance is obtained
- Escalate the Agency's PAR to the CalPERS Board of Administration's Risk & Audit Committee for further action
- Revoke the Agency's Contract and/or pursuing all available remedies to enforce the PERL

If you have questions, contact the Agency's assigned CalPERS' Audit Compliance & Resolution liaison listed herein within ten (10) calendar days from the date of this notification letter. The Agency may also contact CalPERS at 888.225.7377 or via email at ERReview@calpers.ca.gov.

Sincerely,



KEVIN LAU
Staff Services Manager I
Employer Account Management Division

cc: Nam Nguyen, Senior Director of Business Services, Tustin Unified School District

EXHIBIT 6

Camacho Jr., Samuel

From: Camacho Jr., Samuel
Sent: Thursday, December 27, 2018 1:42 PM
To: nnguyen@tustin.k12.ca.us
Cc: vchaudhri@ocde.us; Bender, Linda Lou; Lau, Kevin (Kevin.Lau@calpers.ca.gov); Worden, Frances
Subject: Tustin Unified School District, Initial Notification of Compliance & Resolution for Public Agency Review, Job 3P17-008
Attachments: Final Report.pdf

Greetings Ms. Nguyen and Ms. Chaudhri,

The Tustin Unified School District (Agency) was provided with the attached Public Agency Review (PAR) audit conducted by CalPERS' Office of Audit Services on December 6, 2018. The PAR should be reviewed in its entirety, as it affects the Agency's ability to contract with CalPERS to provide retirement benefits to employees. As a contracting agency with CalPERS, the Agency agreed to comply with the California Code of Regulations and Government (Gov.) Code contained within the Public Employees' Retirement Law (PERL).

The PAR identified areas where the Agency is not in compliance with the PERL and is therefore in violation of their Contract with CalPERS. It is the Agency's responsibility to comply with all terms and conditions set forth therein. The Agency is hereby directed to work with CalPERS' designated program liaisons to obtain full resolution of PAR by April 30, 2019.

Timely resolution of these matters is a priority to CalPERS as unresolved observations may pose significant financial, contractual, and operational risks for the Agency and its members such as:

- Delay in retirement benefits for members
- Improper payment of benefit allowance which may result in overpayment incurred by the Agency and its members

Pursuant to Gov. Codes sections 20221, 20222.5 and 20465, employers must furnish CalPERS with any member information that is required for the administration of the System; therefore, upon the receipt of this email, the Agency shall establish communication with CalPERS and propose an action plan to resolve the observations within the PAR.

For this PAR, I will be your liaison along with my colleague, Serena Southards at 916-795 3956, and my manager, Lou Bender at 916-795-0959. We represent the Audit Compliance & Resolution Unit at CalPERS' Employer Account Management Division.

Prior to our communication, the following information and/or documentation shall be provided pertaining to each observation:

- *Pay Schedules, if applicable*
- *Labor Policies or Agreements, if applicable*
- *Impacted Members List and CalPERS ID per Each Observations, if applicable*

It is the Agency's responsibility to comply with all terms and conditions of resolution and compliance set forth in the Agency's Contract with CalPERS.

We appreciate your prompt attention to this matter and we hope to hear from you and the Agency soon.

Below is a guideline to our initial plan of action to resolve each observation:

Observation 1: Pay Schedule out of compliance

1. Please provide a copy of all Pay Schedules from FY 12/13–Current, for all groups, for review of compliance
2. Once CalPERS review is complete, we can recommend the appropriate edits or changes for compliance
3. Once CalPERS recommendations are complete, please take the edited and updated Pay Schedules to you governing body for approval

Observations 2: Longevity and Educational Incentive Included in Payrate

1. Please provide an impacted list of Active and Retired members in which Longevity Pay and an Educational Incentive was included in the reported payrates to CalPERS, going back to July of 2012
2. Once impacted list is reviewed and analyzed, CalPERS will determine the appropriate resolution for corrections

Observation 3: Over-Reported Monthly Payrate

1. Please provide an impacted list of Active and Retired members in which the Payrate was over reported , going back to July of 2012
2. Once impacted list is reviewed and analyzed, CalPERS will determine the appropriate resolution for corrections

Observation 4: Under-Reported Payrates

1. Please provide an impacted list of Active and Retired members in which the Payrate was under-reported , going back to July of 2012
2. Once impacted list is reviewed and analyzed, CalPERS will determine the appropriate resolution for corrections

Observation 5: Additional/Over-Reported Payrate

1. Please provide an impacted list of Active and Retired members in which the Payrate was over reported or in addition to normal Payrate , going back to July of 2012
2. Once impacted list is reviewed and analyzed, CalPERS will determine the appropriate resolution for corrections

Observation 6: Retro-Active Salary Adjustment not reported appropriately

1. Please provide an impacted list of Active and Retired members in which the Retro-Active Salary increase was not reported appropriately back to the correct effective date, going back to July of 2012
2. Once impacted list is reviewed and analyzed, CalPERS will determine the appropriate resolution for corrections

Thank you,

Samuel Camacho Jr. | Associate Governmental Program Analyst | Audit Compliance & Resolution | Employer Account Management Division | California Public Employees' Retirement System (CalPERS) | Office: 916.795.3026 | Fax: 916.795.9372



CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is strictly prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient(s), please contact the sender and destroy all copies of the communication.

Camacho Jr., Samuel

From: Camacho Jr., Samuel
Sent: Monday, April 22, 2019 9:16 AM
To: Nguyen, Hoai-Nam; Praveen Chaudhri
Cc: Lau, Kevin (Kevin.Lau@calpers.ca.gov)
Subject: RE: Observation 4, Reporting Full Time (40 Hours a week) Equivalent Payrates

Hi, after discussion with our EAMD Management, here is the analysis and proposed resolution to resolve this Observation 4, along with your options as an Agency:

Observation 4:

“The Agency did not correctly report full-time payrates for a sampled classified employee who retired in January 2015. Specifically, the reported payrates were not based on a 40- hour workweek for all months of a year as required by Government Code section 20636.1. For example, the Agency reported a monthly payrate of \$4,022 for the employee in the pay period ended August 31, 2012; however, the reported monthly payrate should have been \$3,915.60. The payrates reported for the retired sampled employee reflected a workweek of less than 40 hours and the payrates were not based on all 12 months of the year. The incorrect reporting resulted in decreases to the employees reported payrates that were not in compliance with Government Code section 20636.1.”

Government (Gov.) Code 20636.1 states in relevant part:

(b) (1) “Payrate” means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. For purposes of this part, for classified members, full-time employment is 40 hours per week, and payments for services rendered, not to exceed 40 hours per week, shall be reported as compensation earnable for all months of the year in which work is performed. “Payrate,” for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).

CalPERS recommended resolution options:

1. For all classified members that work less than 40 hours a week and the hourly payrate and monthly equivalent of the members earnings is less than 40 hours per week and has been reported as such, CalPERS recommends that the Agency correctly report the 40 hour a week monthly equivalent along with the appropriate less than 40 hour earnings each week, for all impacted classified members, going back to at least July 2012, along with any impacted retired members in which their Final Compensation has a less than 40 hour a week monthly equivalent payrate.
2. The Agency can amend their classified Pay Schedules with CalPERS recommended changes, so that the currently reported payrate and earnings are in compliance with Gov. Code 20636.1.

An Agency decision for Non-Compliance:

1. The Agency can decline either resolution option and notify CalPERS formally through email CalPERS will then formally notify the agency of non-compliance, and the Agency will be able to appeal this decision, and this specific issue will then become part of the administrative appeal process in which CalPERS will look to a third part administrative law judge and the CalPERS Board for enforcement of compliance.

Please let us know if you would like to discuss this matter further, and we will be more than happy to make some time.

Samuel Camacho Jr. | Associate Governmental Program Analyst | Audit Compliance & Resolution | Employer Account Management Division | California Public Employees' Retirement System (CalPERS) | Office: 916.795.3026 | Fax: 916.795.9372

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EXHIBIT 7



California Public Employees' Retirement System
Employer Account Management Division
400 Q Street, Sacramento, CA 95811 | Fax: (916) 795-9372
888 CalPERS (or 888-225-7377) | TTY: (877) 249-7442 | www.calpers.ca.gov

Joshua Morrison
Atkinson, Andelson, Loya, Rudd & Romo
12800 Center Court Drive South, Suite 300
Cerritos, CA 90703-9364

CalPERS ID: [REDACTED]
Job Number: 3P17-008

December 18, 2019

Dear Mr. Morrison,

We appreciate your recent inquiry on behalf of the Tustin Unified School District (District) seeking clarification on the computation of payrate and service credit for the District's classified school employees. As the Assistant Division Chief of the Employer Account Management Division responsible for inquiries related to compensation earnable and the accrual of service credit, I have been asked to respond.

Background:

The California Public Employees' Retirement System's (CalPERS) Office of Audit Services (OFAS) conducted a Public Agency Review¹ (PAR) of payrates reported by the District on December 6, 2018.

Specific to the inquiry under Observation #4 within the PAR, Alane Pelleriti (Pelleriti) was sampled, and it was deemed that full-time payrates were not reported based on a 40-hour workweek pursuant to Government (Gov.) Code section 20636.1. The below examples provide further information to clarify the calculation of payrate for the purposes of determining service credit of a classified school member.

Payrate

Pursuant to Gov. Code subsection 20636.1(b):

"(b) (1) "Payrate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. For purposes of this part, for classified members, full-time employment is 40 hours per week, and payments for services rendered, not to exceed 40 hours per week, shall be reported as compensation earnable for all months of the year in which work is performed. "Payrate," for a member who is not in a group or

¹ Attachment A: An excerpt of the Public Agency Review: Payrate Increases Review

class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e)." (Emphasis added.)

The relevant pay assignment information² of Pelleriti will provide the details of "earnings." Payrate and earnings are two separate items:

- Payrate is used to calculate a member's final compensation, which is one of the three factors in calculating a retirement allowance.
- Earnings are used to calculate service credit.

For classified school members of the same group or class of employment, payrate is the normal monthly rate of pay or base pay for services rendered on a full-time basis of 40 hours per week. Earnings, however, are the compensation paid to a member based on the number of hours worked in relation to the payrate.

For example, in fiscal year 2012 - 2013, Pelleriti was a Physical Education Equipment Person, an 8-hour per day position over 10 months for 210 days. This is the salary or "earnings:"

- Annual: \$37,950.00
- Monthly (10 months): \$3,795.00 (\$37,950.00 divided by 10 months)
- Daily (210 days): \$180.71 (\$37,950.00 divided by 210 days)
- Hourly (8 hours): \$22.59 (\$180.71 divided by 8 hours)

Pursuant to Gov. Code section 20636.1(b), the earnings are not considered the same as payrate because the earnings are not equivalent to the normal rate of pay or base pay based on full-time employment of 40 hours per week. Further, for classified school members, CalPERS does not deem employment of less than 40-hours per week as full-time employment for purposes of service credit accrual; therefore, employment of less than 40-hours per week should not yield full service credit per month worked.

In the example above, the hourly payrate equals the monthly earnings of \$3,795.00 divided by the number of hours worked per day, 8 hours, which equals \$22.59 hourly. For purposes of calculating compensation earnable under Gov. Code section 20636.1, the base rate of pay is \$22.59 per hour.

Therefore, to calculate the monthly payrate for full-time employment, defined as 40-hours per week for classified school members under Gov. Code section 20636.1, the hourly base payrate of \$22.59 is multiplied by 40 hours per week, by 52 weeks per year, and the resulting product is divided by 12 months³, which equals a monthly payrate of \$3,915.60, as cited in the PAR. Please note, Longevity Pay⁴ was also included in the payrate of \$207.00 per month.

Service Credit

Pursuant to Gov. Code section 20962, full-time service shall be granted as:

² Attachment B: Pay Assignment Information for Alane Pelleriti

³ 40 hours per week multiply by 52 weeks, then dividing the product by 12 months equates to the 173.333 factor

⁴ This is cited under Observations #2 of the PAR

- “(a) One year of service credit shall be granted for service rendered and compensated in a fiscal year in full-time employment for any of the following:
- (1) One academic year of service for persons employed on an academic year basis by the University of California, the California State University system, or school employees who are certificated members, under terms and conditions prescribed by the board.
 - (2) Ten months of service for persons employed on a monthly basis.
 - (3) Two hundred fifteen days of service after June 30, 1951, and 250 days prior to July 1, 1951, for persons employed on a daily basis.
 - (4) One thousand seven hundred twenty hours of service after June 30, 1951, and 2,000 hours prior to July 1, 1951, for persons employed on an hourly basis.
 - (5) Nine months of service for state employees represented by State Bargaining Unit 3 and subject to the 9-12 pay plan or leave plan, provided a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this subdivision.
- (b) A fractional year of credit shall be given for service rendered in a fiscal year in full-time employment for less than the time prescribed in this section.” (Emphasis added.)

The periods of time described under Gov. Code section 20962 *apply only to full-time employment*. For classified school members, full-time employment is 40 hours per week pursuant to Gov. Code section 20636.1, which defines full-time employment of classified school members “[f]or purposes of this part.” As such, and as an example, under Gov. Code section 20962(a)(2), a classified school member employed on a monthly-basis must complete ten (10) months of service on a full-time basis of 40 hours per week to receive one (1) year of service credit. Even if Pelleriti’s position of 8 hours per day at 210 days per fiscal year, that standard would not be met. Rather, that position equates to 1,680 hours per fiscal year.

From another perspective, under Gov. Code section 20962(a)(4), a classified school member working on an hourly-basis shall receive one year of service credit if the member works 1,720 hours per fiscal year. Again, Pelleriti is in an 8-hour per day position at 210 days per fiscal year; therefore, he would work 1,680 hours per fiscal year. Pelleriti could not earn one (1) year of service credit as he would never reach 1,720 hours in a fiscal year, as required under Gov. Code section 20962(a)(4).

For classified school members who are not employed full-time as defined under Gov. Code section 20636.1, service credit is calculated pursuant to Gov. Code section 20962.

In the example above, CalPERS calculated Pelleriti’s service credit by determining the number of months of full-time employment, as defined under Gov. Code section 20636.1, that Pelleriti completed in one (1) fiscal year. Assuming Pelleriti worked the full “salary,” CalPERS divided his monthly earnings of \$3,795.00, by the monthly payrate based upon full-time employment of 40 hours per week of \$3,915.60 and divided by ten, under Gov. Code section 20962(a)(2), to calculate the service credit for each month at 0.09692. Then, it is multiplied by the ten (10) months he received those monthly earnings per fiscal year; which equates to 0.9692 per fiscal year.

Currently, the Pelleriti’s payrate is understated and the service credit is overstated. In addition, longevity pay was inaccurately reported into payrate whereas it should be reported as special compensation. This confirms that the member’s benefit warrant is inaccurate. Until corrections are

made to accurately reflect Pelleriti's payrate and service credit, a resulting overpayment or underpayment may impact the member.

CalPERS determines final compensation and service credit for classified school members based on the definition of full-time employment under Gov. Code section 20636.1 in the Public Employees' Retirement Law. There is not a suggestion nor indication that CalPERS is dictating the compensation of the District's employees.

In accordance with Gov. Code section 20134 and California Code of Regulations sections 555-555.4, the Agency has the right to appeal the action to the Board by filing a written notice of appeal within thirty days of the date of this letter. An appeal must be addressed to one and/or both of the below stated address(es) and postmarked no later than January 20, 2020.

Renee Ostrander, Chief
Employer Account Management Division
Attention: Audit Compliance & Resolution
P.O. Box 942709
Sacramento, CA 94229-2709
Compensation_Appeals@calpers.ca.gov

Upon submission of an appeal, the matter will be set for hearing with the Office of Administrative Hearings where an assigned CalPERS attorney will contact the Agency to coordinate a hearing date. Additional information can be found in the enclosed General Procedures for Administrative Hearings brochure.

If the Agency chooses not to be represented by an attorney, the assigned CalPERS attorney will be in direct communication with the Agency during the appeal process. If the Agency does hire an attorney or retains the firm, please notify us immediately so our attorney can work directly with them or you.

We are here to assist you. We would be glad to schedule a conference call with you and your client as well. If either of you have any further questions or concerns regarding this matter, you may contact Brad Hanson, Assistant Division Chief of the Compensation & Contribution Services Section in the CalPERS Employer Account Management Division at 916.795.2724 or via email at Brad.Hanson@CalPERS.ca.gov.

Sincerely,



Brad Hanson
Assistant Division Chief
Employer Account Management Division

cc: Matthew Jacobs, General Counsel
Beliz Chappuie, Office of Audit Services Chief
Renee Ostrander, Employer Account Management Division Chief

EXHIBIT 8

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A PROFESSIONAL LAW CORPORATION
ATTORNEYS AT LAW12800 CENTER COURT DRIVE SOUTH, SUITE 300
CERRITOS, CALIFORNIA 90703-9364
(562) 653-3200 • (714) 826-5480FAX (562) 653-3333
WWW.AALRR.COMJ.Morrison@aalrr.com
(562) 653-3333
(559) 225-6700IRVINE
(949) 453-4260MARIN
(628) 234-6200PASADENA
(626) 583-8600PLEASANTON
(925) 227-9200RIVERSIDE
(951) 683-1122SACRAMENTO
(916) 923-1200SAN DIEGO
(619) 485-9526OUR FILE NUMBER:
003718.00088
26412737.1

February 19, 2020

VIA EMAIL - COMPENSATION APPEALS@CALPERS.CA.GOV
AND FIRST CLASS MAILRenee Ostrander, Chief
Employer Account Management Division
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
Attention: Audit Compliance & Resolution
P.O. Box 942709
Sacramento, CA 94229-2709**Re: Notice of Appeal (CalPERS ID: [REDACTED])**
CalPERS Job Numbers 3P17-008 and P17-003

Dear Ms. Ostrander:

Please be advised this firm represents the Tustin Unified School District ("District") in the above matters.

I. NOTICE OF APPEALThe District hereby appeals¹ from CalPERS' actions/determinations in the matter of CalPERS ID No. [REDACTED] and CalPERS Job Numbers 3P17-008 and P17-003, including, but not limited to, the following actions/determinations:

1. December 6, 2018 Payrate Increases Review of the District — specifically Exception 4.²
2. CalPERS December 18, 2019 Correspondence (from Brad Hanson to Joshua Morrison).³

A description of the matters being appealed, and a detailed statement of the facts and the law forming the basis for appeal, is set forth below.

¹ See Title 2, Cal.Code.Regs. § 555.1.² This document is identified as CalPERS Job Number P17-003; subsequent correspondence pertaining to this matter is identified as CalPERS Job Number 3P17-008.³ This correspondence bears the following identification: CalPERS ID: [REDACTED] CalPERS Job Number 3P17-008.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Renee Ostrander, Chief, Employer Acct. Mgmt. Div./CalPERS
February 19, 2020
Page 2

II. BACKGROUND

On or about December 6, 2018, the CalPERS Office of Audit Services issued a Payrate Increases Review (identified as Job Number P17-003) ("the Audit") which included various findings applicable to the District, of which Exception 4 pertains to calculation of payrates. Relevant portions of the Audit are attached hereto and incorporated herein as Exhibit "A."

On or about December 13, 2019, CalPERS issued correspondence (identified as CalPERS ID: [REDACTED] and CalPERS Job Number 3P17-008) extending the time for the District to respond to the Audit to February 29, 2020. That correspondence is attached hereto and incorporated herein as Exhibit "B."

On or about December 10, 2019, the undersigned transmitted correspondence addressed to Mathew Jacobs, CalPERS' General Counsel, requesting that his office review -- and reconsider -- the legal basis underlying Exception 4 of the Audit. That correspondence is attached hereto and incorporated herein as Exhibit "C."

On or about December 18, 2019, CalPERS issued a responsive letter (identified as CalPERS ID: [REDACTED] and CalPERS Job Number 3P17-008), which, in part, endorsed the determination set forth in Exception 4 of the Audit, and, in part, authorized the District to appeal that determination. That correspondence is attached hereto and incorporated herein as Exhibit "D."

On or about January 10, 2019, CalPERS issued further correspondence (identified as CalPERS ID: [REDACTED] and CalPERS Job Number 3P17-008) extending the District's deadline to file an appeal to and including February 20, 2020. That correspondence is attached hereto and incorporated herein as Exhibit "E."

III. STATEMENT OF FACTS AND LAW

A statement of the facts and law forming the basis for this appeal are as follows:

The Audit, Exception 4 states, in part:

The Agency did not correctly report full-time payrates for a sampled classified employee who retired in January 2015. Specifically, the reported payrates were not based on a 40-hour workweek for all months of a year as required by Government Code section 20636.1. For example, the Agency reported a monthly payrate of \$4,022 for the employee in the pay period ended August 31, 2012; however, the reported monthly payrate should have been \$3,915.60. The payrates reported for the retired sampled employee reflected a workweek of less than 40 hours and the payrates were not based on all 12 months of the year. The incorrect reporting resulted in decreases to the employees reported payrates that were not in compliance with Government Code section 20636.1.

[See Exhibit "A."]

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Renec Ostrander, Chief, Employer Acct. Mgmt. Div./CalPERS
February 19, 2020
Page 3

The District is not entirely clear where the \$4,022 figure comes from. During the 2012-2013 school year, the employee in question was compensated at Range 36, Step F of the District's Classified Monthly Salary Schedule — at the rate of \$3,795 monthly. That employee also received a \$207 monthly longevity stipend, which, in combination with the \$3,795 amount, equated to \$4,002 monthly.⁴ The District suspects that CalPERS may have misrecorded this amount as \$4,022.

CalPERS now maintains that this employee's monthly compensation should have been determined by multiplying the hourly salary specified in Range 36, Step F of the District's Classified Hourly Salary Schedule (i.e. \$22.59) by a factor of 173.333, which equates to a monthly payrate of \$3,915.60. [See Exhibit "D," (December 18, 2019 correspondence) at Page 2 and Footnote 3.] CalPERS maintains this position, moreover, despite the fact the \$3,915.60 amount is not contained in any District pay schedule, let alone the monthly pay schedule which is applicable to all monthly employees in the subject group or class of employment, including the employee in question.

CalPERS' insistence that the District utilize the 173.333 factor when calculating payrate is not grounded in any statute or regulation. In fact, CalPERS auditors have identified no basis in law to compel the District to maintain monthly payrates which equate to the hourly payrate multiplied by 173.333.

Furthermore, the Audit's conclusion runs afoul of CalPERS's own governing statutes and regulations. The definition of "payrate" includes "the normal monthly rate of pay or base pay of the member *paid in cash* to similarly situated members of the same group or class for services rendered on a full-time basis during normal working hours." (Gov. Code § 20636.1.) Likewise, "compensation earnable" is defined as the "payrate" amount listed on a publicly available pay schedule. (Cal. Code Regs., tit. 2, § 570.5.) Neither the PERL nor CalPERS's regulations authorize the District to identify as "payrate" an amount that is neither paid to employees nor reflected on any District salary schedule. Thus, the auditors' insistence that the District adopt an erroneous salary schedule and report erroneous amounts to CalPERS is inconsistent with the law.

The legal basis for this appeal, including the basis for the District's objection to use of the 173.333 factor, is discussed at greater length in the above-referenced December 10, 2019 correspondence. The full contents of that discussion are incorporated herein. [See Exhibit "C."]

IV. CONCLUSION

This appeal is based, in part, on the facts and analysis set forth above and the attachments hereto, including, without limitation, the above-referenced December 10, 2019 correspondence (see Exhibit "C.")

Please note, however, that the December 6, 2018 Payrate Increases Review and the December 18, 2019 correspondence, both of which were issued by CalPERS, include only a brief and conclusory recitation of the relevant facts. As a result, the District is not able to fully ascertain the factual or legal basis for CalPERS' determination at this time, and thus cannot fully set forth, as part of this

⁴ Issues specific to the Longevity Stipend were addressed in Exception 2 of the Audit, and are not at issue here.

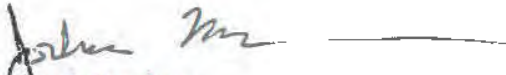
ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Renee Ostrander, Chief, Employer Acct. Mgmt. Div./CalPERS
February 19, 2020
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appeal, all relevant facts and/or pertinent legal arguments. The District thus reserves the right to supplement and expand upon these matters at a later date, up to and including the time of any evidentiary hearing on this matter.

Respectfully submitted,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO


Joshua E. Morrison
JEM:jkc
Enclosures - Exhibits A-E

DESIGNATION OF COUNSEL

The Tustin Unified School District hereby authorizes the filing of this Notice of Appeal and appoints Atkinson, Andelson, Loya, Ruud & Romo as its legal counsel in the above matter.

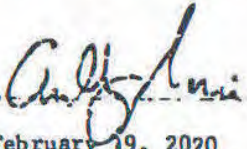
Signed:  Title: Chief Financial Officer
Dated: February 19, 2020

EXHIBIT "A"

Payrate Increases Review

CalPERS Office of Audit Services
Public Agency Review

Job Number: P17-003

December 2018

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Table 1
 List of Individual Agency Exceptions - Listed in Order by OFAS Job Number

Agency	Pay Schedule / Job Title / Type	Payrate Exceptions / Pay	Agency Page Number
1 Oakland Unified School District	Time Base Approval Effective Date Revision Date Position Title	Additional Compensation Payrate Increase Excessive Payrate Payrate Adjustments Non-Reportable Payrate Pay Schedule	A-1
2 Alameda City Unified School District	Time Base	Additional Compensation Excessive Payrate Payrate Adjustments Full-Time Payrate	A-7
3 County School Service-Contra Costa County Schools	Approval	Payrate Increase Payrate Adjustments Full-Time Payrate	A-11
4 Fresno Unified School District	Time Base	Additional Compensation Excessive Payrate Full-Time Payrate	A-15
5 Panama-Buena Vista Union Elementary School District	Time Base Approval Document	Additional Compensation Payrate Adjustments Full-Time Payrate Incorrect Payrate Non Reportable Payrate	A-19
6 Montebello Unified School District	None	None	A-23
7 Monterey County Schools	Time Base Approval Incorrect Payrate	Additional Compensation Full-Time Payrate	A-25
8 Tustin Unified School District	Time Base Approval	Additional Compensation Excessive Payrate Payrate Adjustments Full-Time Payrate Non Reportable Payrate	A-29
9 Santee Elementary School District	None	Additional Compensation Excessive Payrate Payrate Adjustments	A-33
10 Lompoc Unified School District	Time Base Approval Revision Date	Additional Compensation Excessive Payrate Payrate Adjustments Full-Time Payrate Reduced Payrate Non Reportable Payrate	A-37
11 Rincon Valley Union Elementary School District	Time Base Approval Revision Date	Additional Compensation Pay Schedule	A-43
12 Oak Park Unified School District	Time Base	Payrate Increase Excessive Payrate Full-Time Payrate Pay Schedule	A-47

TUSTIN UNIFIED SCHOOL DISTRICT

Objective and Scope			
CalPERS ID	Job Number	Contract Date	Classification
	3P17-008	March 1, 1949	Miscellaneous

The objective of our review was to determine whether increases to member payrates were granted to members and reported to CalPERS in compliance with the Public Employees' Retirement Law (PERL). Reporting active member payrates correctly is a necessary precursor to correctly calculating member benefits at retirement. Specifically, incorrect reporting could cause the following: miscalculation of a member's service credit, miscalculation of a member's retirement allowance, delays in processing a member's retirement benefits, inaccurate retirement estimates, incorrect payment of benefits, and hardship to retired members due to a reduction in benefits.

Payrates must be reported to CalPERS in accordance with Government Code sections 20636, 20636.1, 7522.34(a) and corresponding sections of the California Code of Regulations (CCR) section 570.5. Specifically, payrate is deemed as the normal monthly rate of pay or base pay of the member paid pursuant to a publicly available pay schedule for services rendered on a full-time basis during normal working hours. The publicly available pay schedules must meet criteria listed in CCR section 570.5. Payrates cannot include additional compensation such as special compensation, must be correctly calculated, must be accurately reported for the period earned, and cannot be granted or awarded to a member in connection with or anticipation of separation from employment.

The review was limited to the examination of a sample of active and/or retired employee records for the period July 1, 2012 to June 30, 2017. Unless otherwise specified, the Office of Audit Services (OFAS) did not review the Agency's compliance with the PERL with regard to any areas outside the scope described herein, including, but not limited to, reported earnings, special compensation, payroll information, member contributions, membership enrollment, or employment after retirement.

Results in Brief

	Area of Concern	Description of Issue
1	Pay Schedule	Approval / Time Base
		The Agency did not maintain pay schedules in compliance with the Government Code and CCR. Specifically, the pay schedule in effect July 1, 2016 for Certificated Represented Employees did not include the time base for annual payrates. In addition, the pay schedule entitled "Classified Non-Bargaining Salary Schedule" in effect for Fiscal Years 2012-13, 2013-14 and 2015-16 did not include the time base for hourly payrates and were not duly approved and adopted by the Agency's governing body as required by CCR section 570.5.

TUSTIN UNIFIED SCHOOL DISTRICT

	Payrates	Additional Compensation	Observation
2	Payrates	Additional Compensation	<p>The Agency reported payrates that included additional compensation for three sampled employees, two active and one who retired in January 2015. Specifically, one of the active employees and the retired employee had longevity pay added to their base payrate. The amounts ranged from \$.43 to \$.60 per hour for the active employee and \$207.00 to \$274.00 per month for the retired employee. The other active employee had a Masters Stipend added to their base payrate. The amounts ranged from \$222.20 to \$228.90 per month. The incorrect reporting resulted in an increase to the employees reported payrates that were not in compliance with Government Code section 20636.1.</p>
3	Payrates	Excessive Payrate	<p>The Agency reported excessive monthly payrates for a sampled active certificated employee. Specifically, the Agency added additional compensation for a Master's Stipend and also divided the annual salary by 10 months instead of 11 months. The base annual salary for the employee's position during the 2015-16 school year was \$85,948 and the employee worked 11 months during the year. The Agency reported a monthly base salary of \$8,594.80; however, the correct monthly payrate to report was \$7,813.45. The incorrect reporting resulted in an increase to payrates reported that were not in compliance with Government Code section 20638.1. Government Code section 20630 states when compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when it is reported or paid.</p>
4	Payrates	Full-Time Payrates	<p>The Agency did not correctly report full-time payrates for a sampled classified employee who retired in January 2015. Specifically, the reported payrates were not based on a 40-hour workweek for all months of a year as required by Government Code section 20636.1. For example, the Agency reported a monthly payrate of \$4,022 for the employee in the pay period ended August 31, 2012; however, the reported monthly payrate should have been \$3,915.60. The payrates reported for the retired sampled employee reflected a workweek of less than 40 hours and the payrates were not based on all 12 months of the year. The incorrect reporting resulted in decreases to the employees reported payrates that were not in compliance with Government Code section 20636.1.</p>

TUSTIN UNIFIED SCHOOL DISTRICT

	Type	Exception	Criteria
5	Payrates	Non-Reportable Payrate	The Agency reported a payrate that was not reportable for the active certificated employee noted in Observation 3. Specifically, the Agency reported an hourly payrate of \$25.40 for time the employee spent attending a three-day planning and personal development workshop in July 2015. The payrate reported was not the normal rate of pay or base pay of the member and the payrate was not listed in the Agency's publicly available pay schedule as defined in Government Code section 20636.1.
6	Payrates	Payrate Adjustments	The Agency did not report a retroactive salary adjustment covering all months worked by an active employee. Specifically, the employee received a three percent salary increase in March 2017 retroactive to July 1, 2016. The Agency reported a retroactive salary adjustment back to September 1, 2016; however, the employee began working during the school year in August 2016. The incorrect reporting resulted in payrates reported that were not in compliance with Government Code section 20636.1. Government Code section 20630 states when compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when it is reported or paid.

Criteria

Under Government Code sections 20636, 20636.1 and 7522.34(a), payrate is deemed as the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal work hours, pursuant to a publicly available pay schedule.

Per CCR Section 570.5, a pay schedule, among other things, must:

- Be duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- Identify the position title for every employee position;
- Show the payrate as a single amount or multiple amounts within a range for each identified position;
- Indicate the time base such as hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- Be posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicate an effective date and date of any revisions;
- Be retained by the employer and available for public inspection for not less than five years; and
- Not reference another document in lieu of disclosing the payrate.

TUSTIN UNIFIED SCHOOL DISTRICT**Recommendation**

The Agency should ensure reported payrates are granted and reported to CalPERS in compliance with the PERL. The Agency should work with the CalPERS Employer Account Management Division to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Government Codes: § 20120, § 20121, § 20122, § 20160

Conclusion

OFAS limited this review to the areas specified in the objective and scope section of this report. Sample testing procedures provide reasonable, but not absolute, assurance that the Agency complied with the specific provisions of the PERL and CalPERS contract that were subject to this review. The results outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination with regard to the results noted within the report. The appropriate CalPERS divisions will notify the Agency of the final determinations and provide appeal rights, if applicable, at that time.

Summarized Response

The Agency partially disagreed with Observation 1, disagreed with Observation 4, and provided additional information. OFAS reviewed the information and revised Observation 4.

EXHIBIT "B"



California Public Employees' Retirement System
Employer Account Management Division
400 Q Street, Sacramento, CA 95811 | Fax: (916) 795-9372
888 CalPERS (or 888-225-7377) | TTY: (877) 249-7442 | www.calpers.ca.gov

Veena Chaudhri, CPP, Retirement Services Coordinator
Tustin Unified School District
300 South C Street
Tustin, CA 92680

CalPERS ID: [REDACTED]
Job Number: 3P17-008

December 13, 2019

Subject: Acknowledgement of Request for Extension

Dear Veena Chaudhri, CPP,

The Employer Accounts Management Division's (EAMD) Compensation Compliance & Audit Resolution (CCAR) Unit is in receipt of the Tustin Unified School District (Agency) written request for an extension dated February 29, 2020 regarding their Public Agency Review (PAR) received on December 6, 2018.

After careful consideration of the Agency's request, the Agency's request for an extension is:

APPROVED

Due to the Agency's consistent and good faith efforts to actively resolve the Audit, the PAR resolution due date has been extended and full resolution and compliance must be secured no later than February 29, 2020 or CalPERS will resume efforts to enforce pursuing any/all available remedies to in accordance with the Public Employees' Retirement Law (PERL), California Code of Regulation and Government (Gov.) Code to comply with the law.

DENIED

To date, despite several attempts to secure compliance and resolution with the Agency's PAR, the Agency has failed to comply by not resolving the issues in good faith and continues to operate in a negligent manner. The Agency's PAR resolution due date remains November 30, 2019 and failure to do so may result in further action to pursue any/all available remedies to enforce the PERL, California Code of Regulation and Gov. Code which may include, but not be limited to revoke the Agency's Contract with CalPERS.

To assist the Agency during the compliance and resolution process, the Agency's PAR case has been assigned to the following program liaison(s):

Primary Contact:
Samuel Camacho
samuel.camachojr@calpers.ca.gov
916.795.3026

Secondary Contact:
Jennifer Sandness
jennifer.sandness@calpers.ca.gov
916.795.9542

CalPERS is here to assist you. If you have any questions, please contact the Agency's assigned CCAR liaison or CalPERS at 888-225-7377 or via email at ERReview@calpers.ca.gov.

Sincerely,



Brad Hanson
Assistant Division Chief
Compensation & Contribution Services
Employer Account Management Division

BH:kl

cc: Nam Nguyen, Senior Director of Business Services, Tustin Unified School District

EXHIBIT "C"

ATKINSON, ANDELSON, LOYA, RUUD & ROMOA PROFESSIONAL LAW CORPORATION
ATTORNEYS AT LAW12 800 CENTER COURT DRIVE SOUTH, SUITE 300
CERRITOS, CALIFORNIA 90703-9364
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WWW.AALRR.COM**FRESNO**
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(949) 453-4260**MARIN**
(626) 234-6200**PASADENA**
(626) 583-8600**PLEASANTON**
(925) 227-9200**RIVERSIDE**
(951) 683-1122**SACRAMENTO**
(916) 923-1200**SAN DIEGO**
(619) 485-9526OUR FILE NUMBER:
005718.0000
2574433.1

December 10, 2019

*VIA EMAIL AND FIRST CLASS MAIL*Matthew Jacobs, General Counsel
California Public Employees' Retirement System
Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707Re: Tustin Unified School District – 2018 Payrate Increases Review
CalPERS ID: [REDACTED] / Job Number: 3P17-068

Dear Mr. Jacobs:

Our firm is legal counsel to the Tustin Unified School District ("District"). The purpose of this correspondence is to request that your office review — and reconsider — the legal basis underlying Exception 4 in CalPERS's 2018 Payrate Increases Review of the District ("the Audit"), which pertains to calculation of hourly payrates.

As explained below, Exception 4 reflects the determination of CalPERS auditors that the District is bound to use a particular formula (monthly payrate divided by 173.33) when calculating hourly payrates for District employees in the CalPERS system, despite the fact this formula is not grounded in any statute or regulation.

The District is interested in resolving this matter without the need for a formal appeal, and believes your office may be able to assist in clarifying the legal issues presented by this matter in a way that may save all parties significant time and expense. We thank you in advance for your consideration of this letter and your anticipated response.

BACKGROUND

The District was among 64 public employers subject to the Audit. The CalPERS Office of Audit Services issued its Final Audit Report on December 6, 2018. (Relevant excerpts of the Final Audit Report are enclosed for your reference.) The Final Audit Report identifies six "exceptions" which apply to the District. Only Exception 4 remains unresolved. The District has obtained an extension of time, through December 31, 2019, to respond to Exception 4.

The District has a longstanding practice of adopting hourly and monthly salary schedules for classified employees. At all times relevant to this matter, the District's publicly available salary

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Matthew Jacobs, General Counsel
December 10, 2019
Page 2

schedules have clearly identified the applicable monthly and hourly payrates, and the District has paid its employees (and submitted contributions to CalPERS) on the basis of those payrates.

At issue in the Audit is the District's method of calculating hourly payrates. At all times relevant to this matter, the District's hourly payrates have been converted from the monthly payrates using a 21-day/month average (i.e. the monthly payrate is divided by 168, which represents the number of work hours in 21 days).

In Exception 4, CalPERS auditors determined that the District must instead calculate hourly payrates using 173.333 as a divisor, using the following formula:

$$52 \text{ weeks} * 40 \text{ hours/week} = 260 \text{ days/year}$$

$$260 \text{ days}/12 \text{ months per year} = 21.667 \text{ average days/month}$$

$$260 * 8 \text{ hours/day} = 2,080 \text{ hours/year}$$

$$2,080 \text{ hours}/12 \text{ months} = 173.33 \text{ average hours/month}$$

Because the District did not apply this precise formula when calculating the applicable hourly rate, CalPERS determined the District's monthly payrates were too low. As a result, CalPERS is presently insisting — in Exception 4 — that the District must adjust its monthly payrates upward (retroactive to 2012) to reflect an amount higher than was ever stated in the applicable monthly salary schedule.¹

In the alternative, CalPERS auditors have informally advised District personnel that they may resolve Exception 4 by reporting to CalPERS the amounts calculated using CalPERS's formula, even if those amounts are different from the amounts actually paid to employees. The auditors have suggested that in order to meet the requirements of Title 2, section 570.5 of the California Code of Regulations, the District could retroactively amend its salary schedules to contain two different payrates per classification: (1) the actual rate paid to employees based on the District's 21-day/month calculation, and (2) a higher rate reflecting the amount the employees would have

¹ Exception 4 states, in part: "The Agency did not correctly report full-time payrates for a sampled classified employee who retired in January 2015. Specifically, the reported payrates were not based on a 40-hour workweek for all months of a year as required by Government Code section 20636.1. For example, the Agency reported a monthly payrate of \$4,022 for the employee in the pay period ended August 31, 2012; however, the reported monthly payrate should have been \$3,915.60. The payrates reported for the retired sampled employee reflected a workweek of less than 40 hours and the payrates were not based on all 12 months of the year. The incorrect reporting resulted in decreases to the employees reported payrates that were not in compliance with Government Code section 20636.1." The \$4,022 monthly payrate includes \$213 of longevity pay, as identified in Exception 2 of the Final Audit Report. After subtracting the longevity pay, the District reported a monthly payrate of \$3,809.00 for the sampled retiree, which is consistent with the amount published on the salary schedule.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Matthew Jacobs, General Counsel
December 10, 2019
Page 3

earned had the District applied CalPERS's preferred calculation method (which would then be reported to CalPERS).

LEGAL ARGUMENT

For the reasons explained below, the position taken by CalPERS auditors in this matter is not supported by any legal authority, as CalPERS lacks any basis in law to dictate a precise relationship between monthly and hourly payrates. Moreover, none of the options proposed by CalPERS auditors to resolve Exception 4 are viable, as they are neither compelled by logic nor consistent with existing law.

1. There Is No Legal Authority Requiring the District to Use CalPERS's Proprietary Calculation Method.

CalPERS auditors' insistence on the use of a particular method when calculating the hourly rate of pay is not codified in any statute or required by any regulation. In fact, the only reference to the 173.333-hour average in the Public Employees' Retirement Law ("PERL") is in a section that applies to retirees who return to service and are placed in interim appointments, which is not the case here. (Gov. Code, § 21221(h).) There is no other provision in the PERL or its implementing regulations that requires agencies who have contracted with CalPERS to calculate an hourly payrate using the calculation method identified by CalPERS auditors.

Nor is CalPERS's preferred calculation method the only reasonable means of calculating hourly payrates. Indeed, it is less precise than other alternatives. CalPERS's calculation method is not based on the actual number of days in a given year, but, instead, is based on an assumed 364-day year, which is plainly at odds with the actual calendar. Specifically, the CalPERS calculation method arrives at a 21.667-day average by assuming there are exactly 52 weeks (i.e. 364 days) in each year. However, this number is plainly imprecise, as there are actually 52.1429 weeks in a non-leap year, and 52.2857 weeks in a leap year.

In fact, there are numerous alternative methods of calculating an hourly payrate, including the following:

21.00-day average:

Work days in each month vary between 20-23 days. The average is 21.5 days, which rounds down to 21.

21.75-day average:

365 days/year – 104 weekend days/year = 261 work days/year.
261 work days/12 months = 21.75 days/month

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Matthew Jacobs, General Counsel
December 10, 2019
Page 4

22.00-day average:

Work days in each month vary between 20-23 days. The average is 21.5 days, which rounds up to 22.

Actual day-average:

Hourly employees could be paid by dividing the monthly rate by the actual number of days in each month. However, this would result in an inconsistent rate of pay for each month.

There is nothing in statute or regulation, moreover, which enshrines the 364-day year as a basis — let alone the sole permissible basis — for calculating hourly payrates. Presumably for this reason, we are advised by the Orange County Department of Education that they do not agree with CalPERS's position in this matter. We are further informed and believe that numerous other public employers calculating hourly payrates using divisors other than 173.333.

2. CalPERS Does Not Have Authority to Dictate the Amount the District Compensates Its Employees.

Through the Audit, CalPERS is insisting the District retroactively increase monthly payrates. While CalPERS may require that the District correctly report the compensation amounts actually paid to its employees in accordance with the PERL and its implementing regulations, CalPERS has no legal authority to dictate the amount the District pays its employees, let alone to mandate a retroactive increase in monthly payrates.

Rather, the amount employees are paid is governed by the publicly available salary schedule, which, with respect to represented employees (e.g. members of the CSEA bargaining unit) reflects the outcome of a collective bargaining process. (see Gov. Code, § 3543.2(a)(1).) In this case, the District paid its employees — and reported compensation to CalPERS — based on the exact payrates specified in its monthly and hourly pay schedules.

The informal proposal by CalPERS auditors that the District retroactively amend its salary schedules to reflect two different payrates per classification, including a rate that is different than the amount actually paid to employees, is not a viable option. The District is required to negotiate with the exclusive representative of its employees— pursuant to the Educational Employment Relations Act (“EERA”) — prior to adoption of a salary schedule. (Gov. Code, § 3543.2(a)(1).) The proposal by auditors that the District unilaterally amend salary schedules in this manner would violate the District's obligations under the EERA.

Furthermore, the auditors' proposal runs afoul CalPERS's own regulations, which define “compensation earnable” as the “payrate” amount listed on a publicly available pay schedule. (Cal. Code Regs., tit. 2, § 570.5.) Neither the PERL nor CalPERS's regulations authorize the District to adopt a salary schedule that reflects amounts other than what is actually paid to its

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Matthew Jacobs, General Counsel
December 10, 2019
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employees. The definition of "payrate" includes "the normal monthly rate of pay or base pay of the member *paid in cash* to similarly situated members of the same group or class...." Thus, the auditors' proposal that the District adopt an erroneous salary schedule and report erroneous amounts to CalPERS is inconsistent with the law.

REQUEST FOR CLARIFICATION

Despite multiple requests from the District, CalPERS auditors have identified no basis — aside from mere preference — to compel the District to maintain monthly payrates which are divisible by 173.33 to obtain an hourly payrate. Because there is no basis in law to compel the District to use this particular calculation method, we request your assistance in resolving this matter (i.e. by removing Exception 4 from the Audit) without need for a formal appeal.

Thank you for your consideration of this request. As a reminder, the District's current deadline to respond to CalPERS auditors regarding Exception 4 is December 31, 2019, though we have requested a brief additional extension. In the event the extension request is not approved, we would very much appreciate a response by December 18, 2019.

Sincerely,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO


Joshua E. Morrison

JEM/jlt:jkc

Enclosure: Excerpts from December 2018 Payrate Increase Review

Payrate Increases Review

CalPERS Office of Audit Services
Public Agency Review

Job Number: P17-003

December 2018

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Summary of Individual Agency Exceptions - Listed in Order by OFAS Job Number

	Agency	Pay Adjustment Description Type	Additional Compensation Description (per OFAS)	Record File Number
1	Oakland Unified School District	Time Base Approval Effective Date Revision Date Position Title	Additional Compensation Payrate Increase Excessive Payrate Payrate Adjustments Non-Reportable Payrate Pay Schedule	A-1
2	Alameda City Unified School District	Time Base	Additional Compensation Excessive Payrate Payrate Adjustments Full-Time Payrate	A-7
3	County School Service-Contra Costa County Schools	Approval	Payrate Increase Payrate Adjustments Full-Time Payrate	A-11
4	Fresno Unified School District	Time Base	Additional Compensation Excessive Payrate Full-Time Payrate	A-15
5	Panama-Buena Vista Union Elementary School District	Time Base Approval Document	Additional Compensation Payrate Adjustments Full-Time Payrate Incorrect Payrate Non Reportable Payrate	A-19
6	Montebello Unified School District	None	None	A-23
7	Monterey County Schools	Time Base Approval Incorrect Payrate	Additional Compensation Full-Time Payrate	A-26
8	Tustin Unified School District	Time Base Approval	Additional Compensation Excessive Payrate Payrate Adjustments Full-Time Payrate Non Reportable Payrate	A-29
9	Santee Elementary School District	None	Additional Compensation Excessive Payrate Payrate Adjustments	A-33
10	Lompoc Unified School District	Time Base Approval Revision Date	Additional Compensation Excessive Payrate Payrate Adjustments Full-Time Payrate Reduced Payrate Non Reportable Payrate	A-37
11	Rincon Valley Union Elementary School District	Time Base Approval Revision Date	Additional Compensation Pay Schedule	A-43
12	Oak Park Unified School District	Time Base	Payrate Increase Excessive Payrate Full-Time Payrate Pay Schedule	A-47

TUSTIN UNIFIED SCHOOL DISTRICT

Objective and Scope			
CalPERS ID	Job Number	Contract Date	Classification
██████████	3P17-008	March 1, 1949	Miscellaneous

The objective of our review was to determine whether increases to member payrates were granted to members and reported to CalPERS in compliance with the Public Employees' Retirement Law (PERL). Reporting active member payrates correctly is a necessary precursor to correctly calculating member benefits at retirement. Specifically, incorrect reporting could cause the following: miscalculation of a member's service credit, miscalculation of a member's retirement allowance, delays in processing a member's retirement benefits, inaccurate retirement estimates, incorrect payment of benefits, and hardship to retired members due to a reduction in benefits.

Payrates must be reported to CalPERS in accordance with Government Code sections 20636, 20636.1, 7522.34(a) and corresponding sections of the California Code of Regulations (CCR) section 570.5. Specifically, payrate is deemed as the normal monthly rate of pay or base pay of the member paid pursuant to a publicly available pay schedule for services rendered on a full-time basis during normal working hours. The publicly available pay schedules must meet criteria listed in CCR section 570.5. Payrates cannot include additional compensation such as special compensation, must be correctly calculated, must be accurately reported for the period earned, and cannot be granted or awarded to a member in connection with or anticipation of separation from employment.

The review was limited to the examination of a sample of active and/or retired employee records for the period July 1, 2012 to June 30, 2017. Unless otherwise specified, the Office of Audit Services (OFAS) did not review the Agency's compliance with the PERL with regard to any areas outside the scope described herein, including, but not limited to, reported earnings, special compensation, payroll information, member contributions, membership enrollment, or employment after retirement.

Results in Brief

	Condition	Observation
1	Pay Schedule Approval / Time Base	The Agency did not maintain pay schedules in compliance with the Government Code and CCR. Specifically, the pay schedule in effect July 1, 2016 for Certificated Represented Employees did not include the time base for annual payrates. In addition, the pay schedule entitled "Classified Non-Bargaining Salary Schedule" in effect for Fiscal Years 2012-13, 2013-14 and 2015-16 did not include the time base for hourly payrates and were not duly approved and adopted by the Agency's governing body as required by CCR section 570.5.

TUSTIN UNIFIED SCHOOL DISTRICT

		Violation	Observation
2	Payrates	Additional Compensation	The Agency reported payrates that included additional compensation for three sampled employees, two active and one who retired in January 2015. Specifically, one of the active employees and the retired employee had longevity pay added to their base payrate. The amounts ranged from \$.43 to \$.80 per hour for the active employee and \$207.00 to \$274.00 per month for the retired employee. The other active employee had a Masters Stipend added to their base payrate. The amounts ranged from \$222.20 to \$228.90 per month. The incorrect reporting resulted in an increase to the employees reported payrates that were not in compliance with Government Code section 20636.1.
3	Payrates	Excessive Payrate	The Agency reported excessive monthly payrates for a sampled active certificated employee. Specifically, the Agency added additional compensation for a Master's Stipend and also divided the annual salary by 10 months instead of 11 months. The base annual salary for the employee's position during the 2015-16 school year was \$85,948 and the employee worked 11 months during the year. The Agency reported a monthly base salary of \$6,594.80; however, the correct monthly payrate to report was \$7,813.45. The incorrect reporting resulted in an increase to payrates reported that were not in compliance with Government Code section 20636.1. Government Code section 20630 states when compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when it is reported or paid.
4	Payrates	Full-Time Payrates	The Agency did not correctly report full-time payrates for a sampled classified employee who retired in January 2015. Specifically, the reported payrates were not based on a 40-hour workweek for all months of a year as required by Government Code section 20636.1. For example, the Agency reported a monthly payrate of \$4,022 for the employee in the pay period ended August 31, 2012; however, the reported monthly payrate should have been \$3,915.80. The payrates reported for the retired sampled employee reflected a workweek of less than 40 hours and the payrates were not based on all 12 months of the year. The incorrect reporting resulted in decreases to the employees reported payrates that were not in compliance with Government Code section 20636.1.

TUSTIN UNIFIED SCHOOL DISTRICT

	Criteria	Exception	Observation
5	Payrates	Non-Reportable Payrate	The Agency reported a payrate that was not reportable for the active certificated employee noted in Observation 3. Specifically, the Agency reported an hourly payrate of \$25.40 for time the employee spent attending a three-day planning and personal development workshop in July 2015. The payrate reported was not the normal rate of pay or base pay of the member and the payrate was not listed in the Agency's publicly available pay schedule as defined in Government Code section 20636.1.
6	Payrates	Payrate Adjustments	The Agency did not report a retroactive salary adjustment covering all months worked by an active employee. Specifically, the employee received a three percent salary increase in March 2017 retroactive to July 1, 2016. The Agency reported a retroactive salary adjustment back to September 1, 2016; however, the employee began working during the school year in August 2016. The incorrect reporting resulted in payrates reported that were not in compliance with Government Code section 20636.1. Government Code section 20630 states when compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when it is reported or paid.

Criteria

Under Government Code sections 20636, 20636.1 and 7522.34(a), payrate is deemed as the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal work hours, pursuant to a publicly available pay schedule.

Per CCR Section 570.5, a pay schedule, among other things, must:

- Be duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- Identify the position title for every employee position;
- Show the payrate as a single amount or multiple amounts within a range for each identified position;
- Indicate the time base such as hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- Be posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's Internet website;
- Indicate an effective date and date of any revisions;
- Be retained by the employer and available for public inspection for not less than five years; and
- Not reference another document in lieu of disclosing the payrate.

TUSTIN UNIFIED SCHOOL DISTRICT

Recommendation

The Agency should ensure reported payrates are granted and reported to CalPERS in compliance with the PERL. The Agency should work with the CalPERS Employer Account Management Division to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20180.

Government Codes: § 20120, § 20121, § 20122, § 20160

Conclusion

OFAS limited this review to the areas specified in the objective and scope section of this report. Sample testing procedures provide reasonable, but not absolute, assurance that the Agency complied with the specific provisions of the PERL and CalPERS contract that were subject to this review. The results outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination with regard to the results noted within the report. The appropriate CalPERS divisions will notify the Agency of the final determinations and provide appeal rights, if applicable, at that time.

Summarized Response

The Agency partially disagreed with Observation 1, disagreed with Observation 4, and provided additional information. OFAS reviewed the information and revised Observation 4.



EXHIBIT "D"



California Public Employees' Retirement System
Employer Account Management Division
400 Q Street, Sacramento, CA 95811 | Fax: (916) 795-9372
888 CALPERS (or 888-225-7377) | TTY: (877) 249-7442 | www.calpers.ca.gov

Joshua Morrison
Atkinson, Andelson, Loya, Rudd & Romo
12800 Center Court Drive South, Suite 300
Cerritos, CA 90703-9364

CalPERS ID: [REDACTED]
Job Number: 3P17-008

December 18, 2019

Dear Mr. Morrison,

We appreciate your recent inquiry on behalf of the Tustin Unified School District (District) seeking clarification on the computation of payrate and service credit for the District's classified school employees. As the Assistant Division Chief of the Employer Account Management Division responsible for inquiries related to compensation earnable and the accrual of service credit, I have been asked to respond.

Background:

The California Public Employees' Retirement System's (CalPERS) Office of Audit Services (OFAS) conducted a Public Agency Review¹ (PAR) of payrates reported by the District on December 6, 2018.

Specific to the inquiry under Observation #4 within the PAR, Alane Pelleriti (Pelleriti) was sampled, and it was deemed that full-time payrates were not reported based on a 40-hour workweek pursuant to Government (Gov.) Code section 20636.1. The below examples provide further information to clarify the calculation of payrate for the purposes of determining service credit of a classified school member.

Payrate

Pursuant to Gov. Code subsection 20636.1(b):

"(b) (1) "Payrate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. For purposes of this part, for classified members, full-time employment is 40 hours per week, and payments for services rendered, not to exceed 40 hours per week, shall be reported as compensation earnable for all months of the year in which work is performed. "Payrate," for a member who is not in a group or

¹ Attachment A: An excerpt of the Public Agency Review: Payrate Increases Review

class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).” (Emphasis added.)

The relevant pay assignment information² of Pelleriti will provide the details of “earnings.” Payrate and earnings are two separate items:

- Payrate is used to calculate a member’s final compensation, which is one of the three factors in calculating a retirement allowance.
- Earnings are used to calculate service credit.

For classified school members of the same group or class of employment, payrate is the normal monthly rate of pay or base pay for services rendered on a full-time basis of 40 hours per week. Earnings, however, are the compensation paid to a member based on the number of hours worked in relation to the payrate.

For example, in fiscal year 2012 - 2013, Pelleriti was a Physical Education Equipment Person, an 8-hour per day position over 10 months for 210 days. This is the salary or “earnings:”

- Annual: \$37,950.00
- Monthly (10 months): \$3,795.00 (\$37,950.00 divided by 10 months)
- Daily (210 days): \$180.71 (\$37,950.00 divided by 210 days)
- Hourly (8 hours): \$22.59 (\$180.71 divided by 8 hours)

Pursuant to Gov. Code section 20636.1(b), the earnings are not considered the same as payrate because the earnings are not equivalent to the normal rate of pay or base pay based on full-time employment of 40 hours per week. Further, for classified school members, CalPERS does not deem employment of less than 40-hours per week as full-time employment for purposes of service credit accrual; therefore, employment of less than 40-hours per week should not yield full service credit per month worked.

In the example above, the hourly payrate equals the monthly earnings of \$3,795.00 divided by the number of hours worked per day, 8 hours, which equals \$22.59 hourly. For purposes of calculating compensation payable under Gov. Code section 20636.1, the base rate of pay is \$22.59 per hour.

Therefore, to calculate the monthly payrate for full-time employment, defined as 40-hours per week for classified school members under Gov. Code section 20636.1, the hourly base payrate of \$22.59 is multiplied by 40 hours per week, by 52 weeks per year, and the resulting product is divided by 12 months³, which equals a monthly payrate of \$3,915.60, as cited in the PAR. Please note, Longevity Pay⁴ was also included in the payrate of \$207.00 per month.

Service Credit

Pursuant to Gov. Code section 20962, full-time service shall be granted as:

² Attachment B: Pay Assignment Information for Alane Pelleriti

³ 40 hours per week multiply by 52 weeks, then dividing the product by 12 months equates to the 173.333 factor

⁴ This is cited under Observations #2 of the PAR

“(a) One year of service credit shall be granted for service rendered and compensated in a fiscal year in full-time employment for any of the following:

- (1) One academic year of service for persons employed on an academic year basis by the University of California, the California State University system, or school employees who are certificated members, under terms and conditions prescribed by the board.**
- (2) Ten months of service for persons employed on a monthly basis.**
- (3) Two hundred fifteen days of service after June 30, 1951, and 250 days prior to July 1, 1951, for persons employed on a daily basis.**
- (4) One thousand seven hundred twenty hours of service after June 30, 1951, and 2,000 hours prior to July 1, 1951, for persons employed on an hourly basis.**
- (5) Nine months of service for state employees represented by State Bargaining Unit 3 and subject to the 9-12 pay plan or leave plan, provided a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this subdivision.**

(b) A fractional year of credit shall be given for service rendered in a fiscal year in full-time employment for less than the time prescribed in this section.” (Emphasis added.)

The periods of time described under Gov. Code section 20962 *apply only to full-time employment*. For classified school members, full-time employment is 40 hours per week pursuant to Gov. Code section 20636.1, which defines full-time employment of classified school members “[f]or purposes of this part.” As such, and as an example, under Gov. Code section 20962(a)(2), a classified school member employed on a monthly-basis must complete ten (10) months of service on a full-time basis of 40 hours per week to receive one (1) year of service credit. Even if Pelleriti’s position of 8 hours per day at 210 days per fiscal year, that standard would not be met. Rather, that position equates to 1,680 hours per fiscal year.

From another perspective, under Gov. Code section 20962(a)(4), a classified school member working on an hourly-basis shall receive one year of service credit if the member works 1,720 hours per fiscal year. Again, Pelleriti is in an 8-hour per day position at 210 days per fiscal year; therefore, he would work 1,680 hours per fiscal year. Pelleriti could not earn one (1) year of service credit as he would never reach 1,720 hours in a fiscal year, as required under Gov. Code section 20962(a)(4).

For classified school members who are not employed full-time as defined under Gov. Code section 20636.1, service credit is calculated pursuant to Gov. Code section 20962.

In the example above, CalPERS calculated Pelleriti’s service credit by determining the number of months of full-time employment, as defined under Gov. Code section 20636.1, that Pelleriti completed in one (1) fiscal year. Assuming Pelleriti worked the full “salary,” CalPERS divided his monthly earnings of \$3,795.00, by the monthly payrate based upon full-time employment of 40 hours per week of \$3,915.60 and divided by ten, under Gov. Code section 20962(a)(2), to calculate the service credit for each month at 0.09692. Then, it is multiplied by the ten (10) months he received those monthly earnings per fiscal year; which equates to 0.9692 per fiscal year.

Currently, the Pelleriti’s payrate is understated and the service credit is overstated. In addition, longevity pay was inaccurately reported into payrate whereas it should be reported as special compensation. This confirms that the member’s benefit warrant is inaccurate. Until corrections are



made to accurately reflect Pelleriti's payrate and service credit, a resulting overpayment or underpayment may impact the member.

CalPERS determines final compensation and service credit for classified school members based on the definition of full-time employment under Gov. Code section 20636.1 in the Public Employees' Retirement Law. There is not a suggestion nor indication that CalPERS is dictating the compensation of the District's employees.

In accordance with Gov. Code section 20134 and California Code of Regulations sections 555-555.4, the Agency has the right to appeal the action to the Board by filing a written notice of appeal within thirty days of the date of this letter. An appeal must be addressed to one and/or both of the below stated address(es) and postmarked no later than January 20, 2020.

Renee Ostrander, Chief
Employer Account Management Division
Attention: Audit Compliance & Resolution
P.O. Box 942709
Sacramento, CA 94229-2709
Compensation_Appeals@calpers.ca.gov

Upon submission of an appeal, the matter will be set for hearing with the Office of Administrative Hearings where an assigned CalPERS attorney will contact the Agency to coordinate a hearing date. Additional information can be found in the enclosed General Procedures for Administrative Hearings brochure.

If the Agency chooses not to be represented by an attorney, the assigned CalPERS attorney will be in direct communication with the Agency during the appeal process. If the Agency does hire an attorney or retains the firm, please notify us immediately so our attorney can work directly with them or you.

We are here to assist you. We would be glad to schedule a conference call with you and your client as well. If either of you have any further questions or concerns regarding this matter, you may contact Brad Hanson, Assistant Division Chief of the Compensation & Contribution Services Section in the CalPERS Employer Account Management Division at 916.795.2724 or via email at Brad.Hanson@CalPERS.ca.gov.

Sincerely,



Brad Hanson
Assistant Division Chief
Employer Account Management Division

cc: Matthew Jacobs, General Counsel
Bellz Chappuie, Office of Audit Services Chief
Renee Ostrander, Employer Account Management Division Chief

EXHIBIT "E"



California Public Employees' Retirement System
Employer Account Management Division
400 Q Street, Sacramento, CA 95811 | Fax: (916) 795-9372
888 CalPERS (or 888-225-7377) | TTY: (877) 249-7442 | www.calpers.ca.gov

Joshua E. Morrison
Atkinson, Andelson, Loya, Rudd & Romo
12800 Center Court Drive South, Suite 300
Cerritos, CA 90703

CalPERS ID: [REDACTED]
Job Number: 3P17-008

January 10, 2020

Subject: APPEAL EXTENSION

Dear Joshua Morrison,

The California Public Employees' Retirement System (CalPERS) is in receipt of your email dated January 7, 2020, requesting an extension to submit an appeal to CalPERS' final determination provided in CalPERS' letter of December 18, 2019.

Your request for an extension is approved.

Your response date has been extended to February 20, 2020.

We are here to assist you. If you have any questions, please visit our website at www.calpers.ca.gov, or you may call us toll free at 888 CalPERS (or 888-225-7377).

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Hanson".

Brad Hanson
Assistant Division Chief
Compensation & Contribution Services
Employer Account Management Division

BH:vm

PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 12800 Center Court Drive South, Suite 300, Cerritos, California 90703-9364.

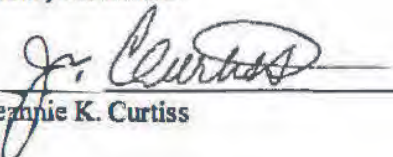
On February 19, 2020, I served the following document(s) described as **February 19, 2020 NOTICE OF APPEAL on behalf of Tustin Unified School District re (CalPERS ID: [REDACTED]; CalPERS Job Nos. 3P17-008 and P17-003)** on the interested parties in this action as follows:

Renee Ostrander, Chief
Employer Account Management Division
California Public Employees' Retirement System
Attention: Audit Compliance & Resolution
P.O. Box 942709
Sacramento, CA 94229-2709
Email: COMPENSATION_APEALS@CalPERS.CA.GOV

- BY MAIL:** I placed a true and correct copy of the document(s) in a sealed envelope for collection and mailing following the firm's ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
- BY EMAIL:** My electronic service address is JCurtiss@aalrr.com. I sent such document(s) to the email address(es) listed above or on the attached Service List. Such document(s) was scanned and emailed to such recipient(s) and email confirmation(s) will be maintained with the original document in this office indicating the recipients' email address(es).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 19, 2020, at Cerritos, California.



Jennie K. Curtiss

EXHIBIT 9



California Public Employees' Retirement System
Employer Account Management Division
400 Q Street, Sacramento, CA 95811
888 CalPERS (or 888-225-7377) | TTY: (877) 249-7442

Joshua Morrison
Atkinson, Andelson, Loya, Rudd & Romo
12800 Center Court Drive South, Suite 300
Cerritos, CA 90703-9364

CalPERS ID: [REDACTED]
Job Number: 3P17-008

February 21, 2020

Subject: Appeal Acknowledgement

Dear Joshua Morrison:

We received your recent letter appealing our determination regarding Tustin Unified School District and CalPERS Job Numbers 3P17-008 and P17-003. We will proceed with the Administrative Remedy Process as outlined in the California Code of Regulations.

Please know this process can take several months to complete. You will be contacted by the CalPERS Legal Office regarding this matter.

We are here to assist you. If you have any questions, please visit our website at www.calpers.ca.gov, or you may call us toll free at 888 CalPERS (or 888-225-7377).

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Hanson".

Brad Hanson
Assistant Division Chief
Compensation & Contribution Services
Employer Account Management Division

BH:vm

cc: Renee Ostrander, Chief