

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Redwood City School District (Respondent District) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated December 17, 2024. For reasons discussed below, staff argues the Board should deny the Petition for Reconsideration and uphold its decision.

Priscilla Dichoso (Respondent) was employed by Respondent District as the Chief Business Official (CBO) from July 2018 until she retired on June 30, 2022.

Respondent was first hired pursuant to a two-year contract that covered July 1, 2018, through June 30, 2020. Respondent's salary of \$181,125 a year was based on comparable positions in the region and Respondent's experience. The contract provided that Respondent would receive a salary increase equal to the same percentage increase offered to administrative employees in the Redwood City Administrative Association (RCAA). From July 1, 2019 through June 30, 2020, Respondent received the RCAA raise of 3.5%, which raised her salary to \$187,464. Respondent's compensation was never listed on a publicly available pay schedule from July 2018 through June 2020.

Respondent and Respondent District entered into a second employment agreement that covered July 1, 2020, to June 30, 2022, increasing Respondent's compensation to \$200,000 a year. The contract again provided that Respondent would receive a salary increase equal to the increase offered to RCAA employees. From July 1, 2020, through June 20, 2021, and again from July 1, 2021, through June 30, 2022, Respondent received the RCAA raise of 4% bringing her final annual salary for fiscal year 2021-2022 to \$216,320. Respondent's compensation was never listed on a publicly available pay schedule from July 2020 through June 2022.

Respondent District reported compensation paid to Respondent pursuant to the Employment Agreements. In March of 2022, Respondent submitted her service retirement application to CalPERS, with an effective date of retirement on June 30, 2022.

Final compensation is defined as the highest average consecutive twelve months of "compensation earnable." (Public Employees' Retirement Law "PERL" § 20042.) Compensation earnable is the compensation paid by the employer as "payrate" and "special compensation." (PERL § 20636.1, subd. (a).) Payrate is defined as the 1) 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, 2) for services rendered during normal working hours, and 3) pursuant to a publicly available pay schedule. (PERL § 20636.1, subd. (b)(1).)

To qualify as payrate, the rate of pay must be paid pursuant to a publicly available pay schedule. (PERL § 20636.1, subd. (b)(1).) The Board has defined in regulation what may be considered a publicly available pay schedule. (Cal. Code Regs., tit. 2, § 570.5; see also, CalPERS Precedential Decision *In re Randy Adams*, OAH case No. 10122030095 (*Adams* Precedential Decision).) Individual settlement agreements do not constitute publicly available pay schedules. (*Molina v. Board of Admin.* (2011) 200 Cal.App.4th 61, 66-67; *Adams* Precedential Decision.) What qualifies as payrate is not a subject of agreement by or between the employer and employee. (*Oden v. Board of Administration* (1994) 23 Cal.App.4th 194, 201.)

A publicly available pay schedule is a “written or printed list, catalog, or inventory of the rate of pay or base pay of one or more employees who are members of CalPERS,” and not an individual’s employment agreement. (*Tanner v. CalPERS*.(2016) 248 Cal.App.4th 743, 755.) The *Tanner* court held that an increase in an employee’s payrate in his final contract with the City did not qualify as compensation earnable, because it was not a part of a publicly available pay schedule.

On December 29, 2022, CalPERS informed Respondents that the compensation reported by Respondent District did not meet the definition of “payrate” under PERL section 20636.1, because Respondent’s rate of pay was not provided pursuant to a publicly available pay schedule and the negotiated increases provided to her were not available to other employees in Respondent District’s management group or class. CalPERS concluded that a reasonable payrate to calculate Respondent’s retirement should be based on Respondent’s initial contracted base pay rate and the salary increases provided to other management employees in the RCAA group.

Respondent appealed this determination and exercised her right to a hearing before an ALJ with the Office of Administrative Hearings (OAH). A hearing was held on November 14, 2024. Both Respondents appeared at the hearing. Respondent District was represented by counsel at the hearing.

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

At the hearing, CalPERS presented testimony from staff to explain that Respondent’s reported salary did not comply with the PERL because it did not include a payrate that was included and consistent with Respondent District’s publicly available pay schedules. CalPERS exercised its statutory authority to determine Respondent’s payrate by considering Respondent’s contracts and RCAA pay schedules. Because Respondent’s initial salary in July 2018 fell within the Executive Director salary range, CalPERS accepted her 2018 salary as a starting point for her payrate and then CalPERS increased her payrate over the next four years by applying the RCAA annual pay raises.

Respondent testified that she believed CalPERS inappropriately limited her salary to the RCAA increases. Because Respondent District's Board approved both her contracts in public meetings, her salary was not hidden from public view. Respondent District presented the testimony of Superintendent John Baker, Ed.D. who explained that Respondent District did not maintain publicly available pay schedules for contracted positions. Respondent's salary was instead negotiated and determined based on comparable positions in the region and her experience. Respondent District also presented the testimony of the current Chief Business Officer, Rick Edson who testified that he created salary schedules for the CBO position from 2018 through 2023, but the effective date for all these salary schedules was July 1, 2022. CalPERS did not consider the pay schedules when determining Respondent's payrate because they did not exist during her employment with Respondent District.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that CalPERS had proved that the salary information Respondent District reported for Respondent did not qualify as compensation earnable for purposes of calculating her retirement benefit because it was not paid pursuant to a publicly available pay schedule. Respondent's 2018 and 2020 employment contracts did not qualify as publicly available pay schedules. CalPERS further proved it validly exercised its discretion in determining Respondent's payrate by considering other relevant information, including the pay schedules for other administrative staff and Respondent's 2018 and 2020 employment contracts.

No new evidence has been presented by Respondent District that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the January 13, 2025, meeting was well reasoned and based on the credible evidence presented at hearing.

For all the foregoing reasons, staff argues that the Board should deny the Petition for Reconsideration.

March 19, 2025

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