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December 29, 2011

Employer Code: 1588  
Job Number: P10-011

California School Boards Association  
Vernon M. Billy, Executive Director  
P.O. Box 1660  
West Sacramento, CA 95691

Dear Mr. Billy:

Enclosed is our final report on the results of the public agency review completed for the California School Boards Association. Your agency's written response, included as an appendix to the report, indicates agreement with the issues noted in the report with the exceptions of Finding 1 and Finding 3. We reviewed your agency's response and, despite the information contained in your agency's response pertaining to those findings, our recommendations remain as stated in the report. In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your agency and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original Signed by Margaret Junker

MARGARET JUNKER, Chief  
Office of Audit Services

Enclosure

cc: Finance Committee Members, CalPERS  
Peter Mixon, General Counsel, CalPERS  
Karen DeFrank, Chief, CASD, CalPERS  
Mary Lynn Fisher, Chief, BNSD, CalPERS  
Honorable Board Members, CSBA  
Keith J. Bray, General Counsel, CSBA

# **Office of Audit Services**



## **Public Agency Review**

### **California School Boards Association**

**Employer Code: 1588  
Job Number: P10-011**

**December 2011**

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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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## RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the California School Boards Association's (Association) employee enrollment, compensation, retirement documentation and other documentation for individuals included in test samples. A detail of the findings is noted in the Results section beginning on page four of this report. Specifically, the following findings were noted during the review:

- Payrates reported to CalPERS failed to qualify as compensation earnable under the Public Employees' Retirement Law (PERL), (Government Code sections 20049, 20630, 20635, 20636 and California Code of Regulations sections 570.5, 571, and 572).
  - Reported payrates for the former Executive Director were not listed on a publicly available pay schedule or in a public document available for public scrutiny.
  - Reported payrates for the former Executive Director, who was not part of a group or class of employment, included excessive salary increases.
  - Compensation Classification Schedules did not identify the position titles applicable to pay ranges for certain employee positions.
- A retroactive salary increase was not reported (Government Code section 20636).
- Individuals may have been improperly enrolled and reported as employees of the Association (Government Code sections 20028, 20125, and 20300).
- The Association did not accurately monitor the membership eligibility of part-time employees.
  - Eligible part-time employees were not enrolled into membership (Government Code section 20305).
  - Documentation was not available to determine membership eligibility for certain temporary/part-time employees (Government Code section 20305).
- Documentation was not available to determine whether a retired annuitant was lawfully employed (Government Code sections 21220, 21220.5, 21221, and 21224).

The pertinent sections of the Government Code and California Code of Regulations for each finding are listed in Appendix C.

A confidential list identifying the individuals mentioned in this report has been sent to the Association and CalPERS' Customer Account Services Division (CASD) and Benefit Services Division (BNSD) as an appendix to the draft report.

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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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## ASSOCIATION BACKGROUND

The California School Boards Association is a California nonprofit public benefit corporation. According to the Bylaws of the Association, “The primary purposes of the Association are the promotion and advancement of public education through research and investigation and the cooperation with persons and associations whose interests and purposes are the betterment of the educational opportunities of the children of the state.”

Membership in the Association is limited to member boards which include, “A California public school governing board having jurisdiction over any or all of grades kindergarten through 12, or a California county board of education...upon payment in full of its annual membership dues.” The Association’s funding appears to come from membership dues and other fees paid by public school districts, county boards of education, and from outside vendors. The Association is governed by a Delegate Assembly. Within the limits of the policies adopted by and pursuant to the instructions of the Delegate Assembly, the Board of Directors has supervision and control of the affairs of the Association.

The Policy and Procedure Manual, Employee Handbook, Salary Schedules, and employment agreements outline the Association employees’ salaries and benefits and state the terms of employment agreed upon between the Association and its employees. The Association provided the employment agreements for the position of Executive Director, which was the only position with an employment agreement.

The Association contracted with the California Public Employees’ Retirement System (CalPERS) effective August 1, 1992. At the time, the Association contracted as a public agency with CalPERS pursuant to Government Code section 20057(d) as a state organization of governing boards of school districts, the primary purpose of which is the advancing of public education through research and investigation. The Association, in its contract, elected to provide retirement benefits to the Association’s miscellaneous employees. The Association’s current contract identifies the length of the final compensation period as twelve months. The Association does not contract with CalPERS to provide health benefits for its employees.

During the course of the review, it was discovered that the Association was closely associated with three other “affiliated” corporate entities. These entities include the California School Boards Association District Services Corporation, the California School Boards Association Finance Corporation and the California School Boards Foundation. Each of the entities is organized as a separate non-profit corporation according to the Articles of Incorporation and Bylaws presented. None of the three affiliated entities contract with CalPERS to provide retirement benefits for the entities’ employees.

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CalPERS OAS conducted a previous review of the Association and issued a report in November 2001. Two of the findings identified during that time existed again at the time of this review, including: Publicly available salary information was not available for those employees classified as “Off-schedule” and reported pay increases for the former Executive Director were not appropriate. In the formal response dated October 17, 2001, the Association stated in writing: “Since the audit, management has taken corrective action by creating a salary schedule to include the salary ranges for all staff positions.” See Appendix D for more detail.

## SCOPE

As part of the CalPERS’ Board approved plan for fiscal year 2010/2011, the OAS reviewed the Association’s payroll reporting and member enrollment processes as these processes relate to the Association’s retirement contract with CalPERS. In the course of reviewing these issues, additional questions arose that require further review. These additional areas include whether the Association improperly reported employees of the affiliated corporations to CalPERS as its own and if so, whether any of the three other affiliated corporations would be eligible to separately contract with CalPERS as a public entity under Government Code sections 20056 or 20057.

The review period was limited to the examination of sampled records and processes from July 1, 2006, through June 30, 2010, with the exception of the review of public salary information wherein the review period was expanded to include October 1, 2001, through June 30, 2010. The on-site fieldwork for this review was conducted on September 7, 2010, through September 9, 2010. The review objectives and a summary of the procedures performed, sample sizes, sample periods and findings are listed in Appendix B.

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## OFFICE OF AUDIT SERVICES REVIEW RESULTS

**Finding 1:** Compensation reported to CalPERS failed to qualify as compensation earnable.

### ***Recommendations:***

Only compensation earnable, as defined under Government Code section 20636 and the corresponding regulations, can be reported to CalPERS and considered in calculating retirement benefits. The Association should ensure that all employees' salaries are properly reviewed, authorized and approved by the Association's governing board. The Association should also ensure that the reported payrate is set forth in a publicly available pay schedule and meets the other definitional requirements of "payrate" under section 20636. Additionally, the Association should ensure that only compensation meeting the definition of compensation earnable under section 20636 and related regulations is reported.

The Association should work with the CalPERS CASD to determine the impact of incorrect reporting and to determine what adjustments are needed to correct the improperly reported compensation amounts. To the extent any amounts of pay were improperly included in the retirement allowance afforded individuals who have already retired, a correction to the retirement allowance should be made pursuant to Government Code section 20160. In addition, the Association should work with the CalPERS CASD to ensure that all pay schedules are public records and identify the position title for every employee position.

### ***Condition:***

OAS reviewed payrates reported to CalPERS for a sample that included, but was not limited to, the individuals who, during the time covered by this review (July 1, 2006, through June 30, 2010), were holding the positions of Executive Director, Chief Deputy Executive Director, Chief Operations Officer, Deputy Executive Director, Assistant Executive Director, General Counsel, Principal Legislative Advocate, Principal Director and Associate General Counsel, and other management and staff. Though hampered by the unavailability of necessary information, based on the information provided by the Association and obtained through other sources, OAS reconciled the payrates to the Association's salary information to determine whether payrates for the sampled employees were properly authorized, included on a publicly available pay schedule, public records available for public scrutiny and properly reported to CalPERS.

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## Payrate Improperly Reported: Former Executive Director – Base Pay

During the review period, the Association reported monthly base pay for the individual then holding the position of Executive Director as follows:

- ✓ July 1, 2006 - \$18,026.68
- ✓ January 1, 2007 - \$18,747.74
- ✓ October 1, 2007 - \$23,081.08
- ✓ October 1, 2008 - \$27,414.42.

The individual holding the position of Executive Director retired effective September 5, 2010.

Government Code section 20636(b)(1) defines “payrate” in pertinent part for a member who is not in a group or class to mean, “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....” Government Code section 20636(d) provides, “Notwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.”

The Association did not provide a pay schedule that included a salary for the position of Executive Director that was a public document available for public scrutiny for the period under review. The Association did not provide documents to show that the employment contracts for the former Executive Director that contained salary and benefit provisions had been reviewed and authorized by the governing board, in an open public meeting or were otherwise made publicly available for public scrutiny. Consequently, OAS was unable to substantiate that reported payrates were properly authorized by the governing board, were public records available for public scrutiny, and met the requirement under section 20636, subdivision (b)(1) as paid pursuant to publicly available pay schedules.

The Association provided CalPERS with copies of the former Executive Director's Employment Agreement and subsequent amendments thereto. However, these documents were marked “Confidential.” In addition, the Association could not provide open session meeting minutes or other public records showing the governing board's authorization for pay schedules for the Executive Director position applicable to the review period (October 1, 2001, through June 30, 2010). Moreover, with respect to the former Executive Director, the Association failed to provide any public record that was made publicly available, or was available for public scrutiny, showing that the governing board authorized the salary levels reported to CalPERS from the time the former Executive Director started in that position through the time he retired.



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The former Executive Director's initial employment agreement and employment agreement addenda executed during the review period were signed by the Board President and the former Executive Director. The Association provided closed session board minutes dated June 28, 2008, September 14, 2008, and December 2, 2008, wherein the board reviewed and approved certain changes to the former Executive Director's compensation package. However, the Association did not provide board minutes establishing and approving the initial employment agreement and the remaining employment agreement addenda during the review period for the former Executive Director. The Association reported that its governing board did not meet in open public session.

OAS noted in a September 15, 2010 newspaper article that the Sacramento Bee made a public records request for a copy of the former Executive Director's employment contract and was refused, further supporting that the employment contract was not a public record, publicly available or available for public scrutiny.

The initial Employment Agreement did not include language specifying that the amount paid to the former Executive Director had been approved by the Association's governing board. The Association did not provide a publicly available pay schedule that included the initial reported payrate for the position of the former Executive Director, nor did the Association provide a pay schedule that included any of the salary increases reported between 2002 and 2010. Because the Association did not provide governing board minutes or other evidence to demonstrate that the former Executive Director's employment agreements were properly authorized, OAS has been unable to verify that any of the agreements were properly and validly approved, signed by the governing board, and were public records available for public scrutiny.

Therefore, OAS determined that no records establishing and/or authorizing the former Executive Director's salary were publicly available pay schedules or public records available for public scrutiny. Therefore, it is recommended that CASD consider excluding compensation reported during this time period in the calculation of retirement benefits for the former Executive Director, relative to service with the Association, since OAS was unable to verify that the pay met the definitional requirements for payrate as required by section 20636. The Association should work with the CalPERS CASD and provide pertinent documentation as can be located and produced to support the determination of proper payrate, should any exist.

### *Payrate Improperly Reported: Former Executive Director – Pay Increases*

The Association reported pay increases for the former Executive Director that did not meet the definition of payrate or special compensation and may have constituted final settlement pay. As noted above, the salary paid to the former Executive Director does not appear to meet the definition of payrate under

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section 20636 during his tenure with the Association. Even if it had, OAS found that the former Executive Director received salary increases that exceeded the average increases received by employees in a similar group or class and by the Association's other miscellaneous employees and as such, those increases do not meet the definition of payrate and should not have been reported as required by section 20636(e)(2).

The former Executive Director received a 23.11 percent salary increase effective in October 2007 (approximately \$52,000) and an 18.77 percent salary increase (approximately \$52,000) effective in October 2008. Both salary increases exceeded the percentage increases given to the Association's other employees in the management group, which was the closest group or class of employment to the Executive Director position and also exceeded the percentage increases provided to the Association's other local miscellaneous employees. Specifically, the management group and the former Executive Director received a four percent annual salary increase effective January 2007. However, the former Executive Director received an additional 23.11 percent salary increase effective in October 2007, and no such increase was provided to the management group or other miscellaneous employees. In January 2008, the management group received another four percent salary increase. The former Executive Director received another 18.77 percent salary increase in October of 2008, when no such increase was provided to the management group or the other miscellaneous employees.

The former Executive Director retired effective September 5, 2010. Government Code section 20636 and related regulations limit increases in compensation earnable for employees not in a group or class during the final compensation period and the two years immediately preceding the final compensation period to the average increase in compensation earnable for employees in the same membership classification. As a result, OAS determined that the October 2007 and October 2008 increases that the former Executive Director received exceeded those given to members of the management group and to the other miscellaneous employees and therefore, were not reportable for retirement purposes, even if the former Executive Director's base compensation could be reported as payrate.

Based on the foregoing and the information that is available at the time of this review, OAS concludes that the former Executive Director was not in a group or class of employment and therefore, recommends that calculation of retirement benefits for the former Executive Director exclude any improperly reported payrates resulting from salary increases not available to the Association's other miscellaneous employees.

The Association should work with the CalPERS CASD and provide pertinent documentation of proper compensation earnable amounts for the period from

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July 1, 2006, to June 30, 2010, or prior, if necessary to establish the former Executive Director's reportable payrate.

*Compensation Classification Schedules Did Not Identify the Position Titles For Certain Employee Positions*

The Association provided Compensation Classification Schedules that listed positions and pay ranges for most Association employees. However, the schedules did not identify the position titles for certain executive and management positions that were classified as "Off the Schedule." OAS had to trace the schedules to a secondary document provided by the Association that identified each position title classified as "Off the Schedule." These positions included Chief Deputy Executive Director, Chief Operations Officer, Deputy Executive Director, Assistant Executive Director, General Counsel, Principal Legislative Advocate, Principal Director and Associate General Counsel. In summary, although pay ranges were listed on the schedules, with the exception of the former Executive Director position as discussed previously, the schedules failed to identify each position title that corresponded with each pay range listed for employees classified as "Off the Schedule." No employment agreements were produced for these positions nor was the Association able to produce any further salary information that was publicly available or available for public scrutiny during the time period of this review.

For each of the positions cited above, OAS determined the salaries for employees within these positions were classified as "Off the Schedule I, II or III" on the salary schedules. The salaries reported to CalPERS were not properly identified by positions and available in a publicly available pay schedule as required by Government Code section 20636 and related regulations. It is also noted that it was not shown that these salaries were duly approved and adopted by the Association's governing body in an open meeting.

The Association should ensure that each position title is specified for each range listed on the Association's Compensation Classification Schedule and such schedules are duly approved and adopted by the Association's governing body in an open meeting.

**Criteria:**

*Government Code § 20049, § 20630(b), § 20636(b)(1), § 20636(c)(1), § 20636(d), § 20636(e)(1), § 20636(e)(2), California Code of Regulations § 570, § 570.5, § 571, § 572 CalPERS Procedures Manual, Page 7*

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**Finding 2:** The Association did not report a retroactive salary adjustment.

***Recommendations:***

The Association should ensure that reportable retroactive salary increases are reported as outlined in the CalPERS Procedures Manual.

The Association should work with CalPERS CASD to assess the impact of and to correct this non-reporting issue.

***Condition:***

A retroactive salary increase was not reported for one sampled employee who received a retroactive salary increase during the August 2008 (8/08-2) service period. This employee was given a retroactive payment of \$1,484.88 for the period of January 1, 2008, through June 30, 2008. The retroactive payment was a 4 percent increase in pay authorized for Association employees effective January 2008. The Association should have reported the payment as a retroactive salary adjustment.

***Criteria:***

*Government Code § 20630(b), § 20636(a), § 20636(b)(1)  
CalPERS Procedures Manual, Page 110*

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**Finding 3:** The Association may have improperly enrolled individuals that were not common law employees of the Association.

***Recommendations:***

The Association should ensure that only its common law employees are enrolled and reported to CalPERS. The Association should not report the common law employees of other entities, including those employees that work for the three corporations affiliated with the Association.

The Association should work with CalPERS CASD to assess whether any individuals have been misreported as Association employees and assess the impact of this membership issue, and determine what adjustments, if any, are needed.

***Condition:***

CalPERS must ensure that its contracts with public agencies provide retirement benefits only to the agencies' common law employees in order to preserve its tax-qualified status under the Internal Revenue Code, section 401(a). The CalPERS Board of Administration (Board) determines who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system.

In the course of the review, it was discovered that the Association was reporting employees for the Association and its three affiliated corporations as though all of the individuals were employed by the Association. The three affiliated corporations, who are separate legal entities, are the California School Boards Foundation, California School Boards Association Finance Corporation, and California School Boards Association District Services Corporation.

OAS determined that approximately eight individuals may be working for the affiliated corporations but have been reported to CalPERS as if they were employed by the Association. Final findings could not be reached as OAS has not been provided sufficient information to finalize determinations on this issue prior to the issuance of this report. It is for that reason, that OAS recommends that the Association continue to work with CalPERS CASD to finalize these determinations for the individuals identified and for any other individuals that might be identified.

For the purposes of the PERL and for the programs administered by the Board, the standard used for determining whether an individual is the employee of

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another person or entity is the California common law employment test as set forth in the California Supreme Court case entitled *Tieberg v. Unemployment Ins. App. Bd.*, (1970) 2 Cal. 3d 943, which was cited with approval in *Metropolitan Water Dist., v. Superior Court (Cargill)* (2004) 32 Cal. 4<sup>th</sup> 491, and which was adopted by the Board in a precedential decision, *In the Matter of Lee Neidengard*, Precedential Dec. No. 05-01, effective March 22, 2005.

Applying the California common law, the most important factor in determining whether an individual performs services for another as an employee is the right of the principal to control the manner and means of job performance and the desired result, whether or not this right is exercised. Where there is no clear independent evidence that the principal has the right to control the manner and means of performing the service in question, CalPERS, applying the common law, will consider the following additional factors in determining whether an individual is an employee:

- (a) whether or not the one performing the services is engaged in a distinct occupation or business;
- (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal or by a specialist without supervision;
- (c) the skill required in the particular occupation;
- (d) whether the principal or the individual performing the services supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (e) the length of time for which the services are to be performed;
- (f) the method of payment, whether by the time or by the job;
- (g) whether or not the work is part of the regular business of the principal; and
- (h) whether or not the parties believe they are creating the relationship of employer-employee.

OAS identified the following facts which gave rise to questions as to whether the Association or the affiliated entities were the true common law employers of the individuals identified. The three affiliated corporations were included on the Association's organizational chart despite the fact that they are separate corporations. Further, the Association identified eight primary/key employees who regularly worked for the other affiliated corporations; however, the Association reported these eight individuals to CalPERS as employees of the Association.

The Association should work with CalPERS CASD to make formal determinations as to whether any individuals have been misreported as Association employees and assess the impact of this membership issue, and determine what adjustments, if any, are needed.

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***Criteria:***

*Government Code § 20028, § 20056, § 20057, § 20125, § 20300, § 20460*

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**Finding 4:** The Association did not accurately monitor the membership eligibility of part-time employees.

***Recommendations:***

The Association should monitor hours worked in a fiscal year for temporary/part-time employees to determine membership eligibility and enroll employees who meet membership eligibility requirements. Documentation should be available to CalPERS upon request to determine the eligibility for membership enrollment and ongoing membership eligibility.

The Association should review the membership status of all temporary/part-time employees and enroll those that are members of CalPERS, including those that are not working on a full-time basis at another CalPERS covered agency.

The Association should work with CalPERS CASD to assess the impact of these membership requirement issues and determine what adjustments, if any, are needed.

***Condition:***

***Documentation not available to determine membership eligibility***

The Association did not maintain documentation to monitor the total hours worked in a fiscal year by certain temporary/part-time employees and to determine whether membership eligibility requirements were met. Specifically, the Association identified 39 part-time individuals classified as "Casual Consultants" and three classified as "Staff Assistants" who were paid by the project and/or assignment during fiscal years 2008/2009 and 2009/2010. These individuals provided services related to superintendent search services, masters in governance training, and/or single district training for local school districts or county offices of education. Training assignments were made by the Association, services were reviewed and evaluated by the Association, and individuals were required to adhere to the methods, details, and means of performing the services and perform services at an assigned location, and could only use Association-approved materials.

OAS reviewed the part-time employment agreements and additional information provided for these individuals and determined that the Association controlled the manner and means of job performance and the desired result of the services and therefore correctly classified these individuals as employees.



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Part-time employees are excluded from membership unless 1,000 hours or 125 days are worked in a fiscal year, where a day means an eight hour period of employment. Therefore, OAS requested information to determine if these part-time employees met eligibility requirements. The Association did not maintain records monitoring hours worked by the part-time employees. However, employment agreements provided outlined the duties and responsibilities of employees. The Association's pay schedules listed flat rate compensation amounts, ranging from \$2,500 to \$8,400, for superintendent search services based on the average daily attendance (ADA) reported by a district; wherein the flat rate scale increased with each higher average daily attendance assignment. Employees assigned to governance training received flat rate compensation based on the level of responsibility. For example, Presenters received \$700 and Co-Presenters received \$200 per training presentation, etc.

OAS selected a sample of two part-time individuals who received the most pay during fiscal years 2008/2009. In fiscal year 2008/2009, one individual earned \$21,274.00 and the other individual earned \$23,519.50. OAS requested documentation from the Association specifying the periods, days and/or hours worked and a breakdown of compensation paid during fiscal year 2008/2009 for the two sampled part-time individuals. OAS found that the information provided specified certain dates training was presented, meeting dates, and periods the assignments were conducted; however, the Association did not have documentation of actual hours worked for these employees performing duties developing and/or presenting training or conducting superintendent search assignments as described in their employment agreements.

As a result, documentation deemed necessary to determine whether the employees met the membership eligibility requirements was not available. Specifically, OAS was unable to determine whether the sampled employees reached the 1,000 hour membership requirement because the Association could not provide documentation of hours worked and did not have a system in place to monitor or track hours worked for part-time employees who were paid by project and/or assignment. The Association must monitor hours worked in a fiscal year to ensure that eligible employees are enrolled timely into CalPERS membership. Documentation should be available to CalPERS upon request to determine the correctness of membership enrollment.

Government Code section 20966 outlines that, for the purpose of calculating retirement allowances, credit for service rendered on a part-time basis in each fiscal year shall be based upon the ratio that the service rendered bears to an academic year where service is rendered on an academic year basis, or to 10 months where service is rendered on a monthly basis, to 215 days where service is rendered on a daily basis or to 1,720 hours where service is rendered on an hourly basis. Therefore, the Association should keep records that more clearly identify the time base worked per project. Additionally, the Association should

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keep pay scales for these positions that comply with definitions of compensation earnable as detailed in the statutes and as required by associated regulations.

*Eligible temporary part-time employees not enrolled in CalPERS membership*

The Association did not enroll eligible temporary/part-time employees that had previously established membership with another CalPERS agency. Specifically, CalPERS' database was reviewed for each of the 47 temporary/part-time employees identified by the Association as working during the review period to determine membership status. The database revealed that all but two employees either did not have prior CalPERS membership, had prior CalPERS membership but elected to receive refunded contributions upon separation, or were not working full-time at another CalPERS covered agency during the fiscal years reviewed (2008/2009 and 2009/2010). Two employees had prior membership and were not enrolled by the Association:

- One employee was enrolled with another CalPERS covered agency effective December 1, 2004. The Association's payment information for fiscal year 2008/2009 indicated that this employee worked for the Association during the same months that the employee worked part-time at the other CalPERS covered agency (October 2008, February 2009, and March 2009). Therefore, the Association should have enrolled and reported all reportable earnings for this employee and should be able to verify the number of hours or days worked during the applicable fiscal years.
- A second employee established membership with another CalPERS covered agency effective July 1, 1995, and permanently separated from that agency effective June 30, 2000; however, the employee did not refund contributions and therefore remained a CalPERS member. The Association should have enrolled and reported all reportable earnings for this employee and should be able to verify the number of hours or days worked during the applicable fiscal years.

The Association should ensure that eligible temporary part-time employees, including those with membership established at another CalPERS covered agency, are enrolled into membership.

***Criteria:***

*Government Code § 20028, § 20125, § 20222.5, § 20300(b), 20305(a), § 20630(a), § 20630(b), § 20635, § 20636, § 20966, § 20967  
California Code of Regulations, § 570, § 570.5, §571  
CalPERS Procedures Manual, Page 26*

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**Finding 5:** The Association did not provide documentation to determine whether a retired annuitant was lawfully employed.

***Recommendation:***

The Association should monitor the hours worked by retired annuitants to ensure that the 960 hour threshold is not exceeded in a fiscal year without reinstating retired annuitants into membership. Documentation should be available to CalPERS upon request to determine whether the 960 hour threshold was exceeded and reinstatement required.

The Association should work with CalPERS BNSD to assess the impact of and to correct this employment after retirement compliance issue.

***Condition:***

One sampled retired annuitant worked in both fiscal years reviewed (2008/2009 and 2009/2010) providing Masters in Governance and Single District Training services. OAS reviewed the employment agreements and determined that an employee/employer relationship existed for the same reasons as described in Finding 4. The retired annuitant was paid by the project/assignment and earned \$12,100.00 in fiscal year 2008/2009 and \$11,425.00 in fiscal year 2009/2010. OAS requested documentation of hours worked during both fiscal years. The Association provided "Request for Payment for Part-time Employees" forms for fiscal years 2008/2009 and 2009/2010 indicating the various dates the presentations were conducted and amounts paid. The forms also specified the amounts paid for "governance writing" conducted over the fiscal years. However, the Association did not have documentation of actual hours worked in developing and/or presenting training as described in the employment agreement (Masters in Governance and Single District Training assignments) and did not track hours worked performing governance writing.

As previously discussed under Finding 4, the Association did not monitor hours worked for any employees paid by the project/assignment and was unable to provide documentation of actual hours worked. Without documented hours worked, we were unable to determine with certainty whether this retired annuitant worked under the 960 hour threshold requirement in either fiscal year. The Association should monitor hours worked by retired annuitants in a fiscal year to ensure that the 960 hour threshold is not exceeded without reinstatement from retirement. Documentation should be available to CalPERS upon request to determine whether retired annuitants exceed the 960 hour threshold and need to be reinstated into membership.

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***Criteria:***

*Government Code § 20222.5, § 21220, § 21220.5, § 21221, § 21224(a)*

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## OBSERVATION

### *Executive Director Bonus Pay:*

As related to Finding 1, during the payrate review performed, OAS noted that the former Executive Director was provided lump-sum merit payments for performance recognition. Specifically, during the review period, the former Executive Director's Employment Agreement Addenda and Change of Status forms authorized the following merit/bonus payments:

October 1, 2006	\$25,000.00
October 1, 2007	\$52,000.00
July 1, 2008	\$175,000.00
September 17, 2009	\$13,158.92

The performance merit pay did not meet the definition of special compensation as defined under section 571 of the California Code of Regulations and was not a reportable item of special compensation. OAS determined this was the case because the Association did not have a program or system in place to plan and identify performance goals and objectives for employees to receive performance/merit pay. In addition, the Association did not have a written policy or agreement outlining merit/bonus pay for employees. Therefore, the Association was correct in not reporting the merit pay to CalPERS.

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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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## CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as outlined in Appendix B. OAS limited the test of transactions to employee samples selected from the Association's payroll records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code except as noted.

The findings, observation and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared.

Respectfully submitted,

Original Signed By Margaret Junker  
MARGARET JUNKER, CPA, CIA, CIDA  
Chief, Office of Audit Services

Date: December 2011  
Staff: Michael Dutil, CIA, Senior Manager  
Diana Thomas, CIDA, Manager  
Terry Heffelfinger  
Karen Harlan

# APPENDIX A

## BACKGROUND

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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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## BACKGROUND

### California Public Employees' Retirement System

The California Public Employees' Retirement System (CalPERS) provides a variety of programs serving members employed by more than 2,500 local public agencies as well as state agencies and state universities. The agencies contract with CalPERS for retirement benefits, with CalPERS providing actuarial services necessary for the agencies to fund their benefit structure. In addition, CalPERS provides services which facilitate the retirement process.

CalPERS Customer Account Services Division manages contract coverage for public agencies and receives, processes, and posts payroll information. CalPERS Benefit Services provides services for eligible members who apply for service or disability retirement. Benefit Services sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits. Health Account Services provides eligibility and enrollment services to the members and employers that participate in the CalPERS Health Benefits Program, including state agencies, public agencies, and school districts.

Retirement allowances are computed using three factors: years of service, age at retirement and final compensation. Final compensation is defined as the highest average annual compensation earnable by a member during the last one or three consecutive years of employment, unless the member elects a different period with a higher average. State and school members use the one-year period. Local public agency members' final compensation period is three years unless the agency contracts with CalPERS for a one-year period.

The employers' knowledge of the laws relating to membership and payroll reporting facilitates the employer in providing CalPERS with appropriate employee information. Appropriately enrolling eligible employees and correctly reporting payroll information is necessary to accurately compute a member's retirement allowance.



# APPENDIX B

## OBJECTIVES

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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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## OBJECTIVES

The objectives of the review were to determine:

- Whether the Association complied with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the California Code of Regulations.
- Whether prescribed reporting and enrollment procedures as they relate to the Association's retirement contract with CalPERS were followed.

This review covers the period of July 1, 2006, through June 30, 2010; with the exception of the review of public salary information which was expanded to include October 1, 2001, through June 30, 2010. OAS completed a prior review covering the period of July 1, 1997, to June 30, 2000.

## SUMMARY

### **Procedures, Sample Sizes, Sample Periods, and Findings**

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the Association's personnel and payroll procedures and performed the following procedures. Related sample sizes, sample periods and findings are listed.

- ✓ Reviewed:
  - Contracts and contract amendments between the Association and CalPERS
  - Correspondence files maintained at CalPERS
  - Board minutes, Policy and Procedure Manual, Employee Handbook and those employment agreements provided between the Association and its employees
  - Association salary, wage and benefit agreements including salary schedules
  - Association personnel records including personnel action documents and employee hours worked records
  - Association payroll information including Summary Reports and PERS listings
  - Other documents used to specify payrate, special compensation and benefits for all employees
  - Various other documents as necessary
- ✓ Reviewed Association payroll records and compared the records to data reported to CalPERS to determine whether the Association correctly

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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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reported employees' compensation.

Sample Size and Period: Reviewed 22 employees covering two sampled service periods - the last service period in December 2009 (12/09-2) and the last service period in June 2010 (6/10-2).

**See Finding 2:** Retroactive salary adjustment was not reported.

- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to the Association's public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the Association's governing body in accordance with requirements of applicable public meeting laws.

Sample Size and Period: Reviewed 22 sampled employees in the last service period in June 2010 (6/10-2) and 16 sampled employees during the review period (July 1, 2006, through June 30, 2010) and one sampled employee from October 1, 2001, through June 30, 2010.

**See Finding 1:** Public salary information was not available for the former Executive Director.

**See Finding 1:** Payrates reported included excessive salary increases for the former Executive Director.

**See Finding 1:** Position titles for certain management employees were not available in public salary information.

- ✓ Reviewed CalPERS listing reports to determine whether payroll reporting elements were reported correctly. Review included accuracy of contribution code, pay code, work schedule code, service period, member contribution, payrate, member earnings, member name, social security number, and coverage group.

Sample Size and Period: Reviewed 22 sampled employees in the last service period in June 2010 (6/10-2).

## **No Finding**

- ✓ Reviewed the Association's enrollment practices pertaining to optional members, temporary part-time employees, retired annuitants, and independent contractors to determine whether individuals met CalPERS

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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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membership requirements.

Temporary/part-time employees Sample Size and Period: Reviewed 47 temporary/part-time employees in fiscal years 2008/2009 and 2009/2010.

**See Finding 3:** Individuals may have been incorrectly enrolled into membership by the Association.

**See Finding 4:** Documentation not available to determine membership eligibility for temporary part-time employees.

**See Finding 4:** Eligible temporary part-time employees were not enrolled into membership.

Retired annuitants Sample Size and Period: Reviewed two retired annuitants during fiscal years 2008/2009 and 2009/2010.

**See Finding 5:** Documentation was not available to determine whether a retired annuitant was lawfully employed.

# APPENDIX C

## CRITERIA

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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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## CRITERIA

Government Code § 20028(b), defines employee as:  
Any person in the employ of any contracting agency.

Government Code § 20049, defines labor policy or agreement as:  
Any written policy, agreement, memorandum of understanding, legislative action of the elected or appointed body governing the employer, or any other document used by the employer to specify the payrate, special compensation, and benefits of represented and unrepresented employees.

Government Code § 20056, defines public agency as:  
Any city, county, district, other local authority or public body of or within this state.

Government Code § 20057(d) and (e), also includes within the definition of public agency:  
(d) A state organization of governing boards of school districts, the primary purpose of which is the advancing of public education through research and investigation. (e) Any nonprofit corporation whose membership is confined to public agencies as defined in Section 20056.

Government Code § 20125, states:  
The board shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system.

Government Code § 20222.5, states:  
The board may, during the course of an audit, require each state agency...contracting agency, to provide information or make available for examination or copying at a specified time and place, or both, books, papers, any data, or records, including, but not limited to, personnel and payroll records, as deemed necessary by the board to determine the correctness of retirement benefits, reportable compensation, enrollment in, and reinstatement to this system.

Government Code § 20300(b), excludes the following persons from membership in this system:  
Independent contractors who are not employees.

Government Code § 20305(a), states, in part:  
An employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months is excluded from

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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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this system unless: (1) He or she is a member at the time he or she renders that service and is not otherwise excluded pursuant to this article or by a provision of a contract. (3)(B) The person completes 125 days, if employed on a per diem basis or, if employed on other than a per diem basis, completes 1,000 hours within the fiscal year, in which case, membership shall be effective not later than the first day of the first pay period of the month following the month in which 125 days or 1,000 hours of service were completed.

Government Code § 20460, states:

Any public agency may participate in and make all or part of its employees members of this system by contract entered into between its governing body and the board pursuant to this part....

Government Code § 20630(a), states, in part:

As used in this part, "compensation" means the remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours....

Government Code § 20630(b), states:

When compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when reported or paid. Compensation shall be reported in accordance with Section 20636 and shall not exceed compensation earnable, as defined in Section 20636.

Government Code § 20635, states:

When the compensation of a member is a factor in any computation to be made under this part, there shall be excluded from those computations any compensation based on overtime put in by a member whose service retirement allowance is a fixed percentage of final compensation for each year of credited service. For the purposes of this part, overtime is the aggregate serviced performed by an employee as a member for all employers and in all categories of employment in excess of the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid. If a member concurrently renders service in two or more positions, one or more of which is full time, service in the part-time position shall constitute overtime....

Government Code § 20636(a), states:

Compensation earnable by a member means the payrate and special compensation of the member.

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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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Government Code § 20636(b)(1), states:

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 normal 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).

Government Code § 20636(c)(1), states:

Special compensation of a member includes a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

Government Code § 20636(d), states:

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

Government Code § 20636(e)(1), states:

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. One employee may not be considered a group or class.

Government Code § 20636(e)(2), states, in part:

Increases in compensation earnable granted to an 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....

Government Code § 20966, states, in part:

For the purpose of calculating retirement allowances, credit for service rendered on a part-time basis in each fiscal year shall be based on the ratio that the service rendered bears... (a) To one academic year if rendered on an academic year basis, for members employed 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. (b) To 10 months if rendered on a monthly basis. (c) To 215 days if



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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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the service was rendered after June 30, 1951.... (d) To 1,720 hours if the service was rendered after June 30, 1951...for service rendered on an hourly basis.

Government Code § 20967, states:

For the purpose of calculating retirement benefits based on part-time service...compensation earnable shall be taken as the compensation that would have been earnable if the employment had been on a full-time basis and the member had worked full time, and shall conform to the definitions given in ...Section 20636....

Government Code § 21220, states:

- (a) A person who has been retired under this system, for service or for disability, may not be employed in any capacity thereafter by the state, the university, a school employer, or a contracting agency, unless the employment qualifies for service credit in the University of California Retirement Plan or the State Teachers' Retirement Plan, unless he or she has first been reinstated from retirement pursuant to this chapter, or unless the employment, without reinstatement, is authorized by this article. A retired person whose employment without reinstatement is authorized by this article shall acquire no service credit or retirement rights under this part with respect to the employment.
- (b) Any retired member employed in violation of this article shall:
  - (1) Reimburse this system for any retirement allowance received during the period or periods of employment that are in violation of law.
  - (2) Pay to this system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of unlawful employment, plus interest thereon.
  - (3) Contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the member is determined by the executive officer to be at fault.
- (c) Any public employer that employs a retired member in violation of this article shall:
  - (1) Pay to this system an amount of money equal to employer contributions that would otherwise have been paid for the period or periods of time that the member is employed in violation of this article, plus interest thereon.
  - (2) Contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the employer is determined by the executive officer of this system to be at fault.

Government Code § 21220.5, states:

A retired person who has not attained the normal retirement age shall have a bona fide separation in service to the extent required by the Internal

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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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Revenue Code, and the regulations promulgated thereunder, before working after retirement pursuant to this article. The Board shall establish, by regulation, the criteria under which a bona fide separation is satisfied.

Government Code § 21221(h), states, in part:

Upon appointment by the governing body of a contracting agency to a position deemed by the governing body to be of a limited duration and requiring specialized skills or during an emergency to prevent stoppage of public business....Appointments under this subdivision may not exceed a total of 12 months.

Government Code § 21224(a), states:

A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired employee has skills needed in performing work of limited duration. These appointments shall not exceed a total for all employers of 960 hours in any fiscal year, and the rate of pay for the employment shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

California Code of Regulations § 570, states, in part:

“Final settlement pay” means any pay or cash conversions of employee benefits in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment. Final settlement pay is excluded from payroll reporting to PERS, in either pay rate or compensation earnable.

California Code of Regulations § 570.5, states:

(a) For purposes of determining the amount of “compensation earnable” pursuant to Government Code Section 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

- (1) Has been duly approved and adopted by the employer’s governing body in accordance with requirements of 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;

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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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- (5) Is 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;
- (6) Indicates an effective date and date of any revisions;
- (7) Is retained by the employer and available for public inspection for not less than five years; and
- (8) Does not reference another document in lieu of disclosing the payrate.
  - (a) Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:
    - (1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;
    - (2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;
    - (3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;
    - (4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms with the requirements of subdivision (a) of a former CalPERS employer.

California Code of Regulations § 571(a) exclusively identifies and defines special compensation items that must be reported to CalPERS

California Code of Regulations § 571(b), states:

The Board has determined that all items of special compensation listed in subsection (a) are:

- (1) Contained in a written labor policy or agreement as defined at Government Code section 20049, provided that the document:
  - (A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
  - (B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;
  - (C) Is 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;
  - (D) Indicates an effective date and date of any revisions;
  - (E) Is retained by the employer and available for public inspection for not less than five years; and
  - (F) Does not reference another document in lieu of disclosing the item of special compensation;

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# CALIFORNIA SCHOOL BOARDS ASSOCIATION

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- (2) Available to all members in the group or class;
- (3) Part of normally required duties;
- (4) Performed during normal hours of employment;
- (5) Paid periodically as earned;
- (6) Historically consistent with prior payments for the job classification;
- (7) Not paid exclusively in the final compensation period;
- (8) Not final settlement pay; and
- (9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

California Code of Regulations § 572, provides that an employee who is not in a "group or class of employment" within the meaning of the Public Employees' Retirement Law, may request an exception from the "average increase" procedure set forth in Section 20636(e). The employer may request this exception on the employee's behalf.

CalPERS' Procedure Manual, page 26, outlines that qualification for membership is reached when the person works 1,000 hours in a fiscal year (if paid on other than daily or per diem basis) or more than 125 days in a fiscal year (if paid on a daily or per diem basis). Any overtime hours worked are counted towards the 1,000 hours. In each case, membership becomes effective no later than the first day of the first pay period of the month following the month in which 1,000 hours or 125 days were completed.

CalPERS Procedures Manual, Page 70, states, "Payrate and special compensation must be in written schedules, ordinances, or similar documents that are available for public scrutiny."

The CalPERS Procedure Manual, page 110, section entitled, "Retroactive Salary Adjustment" states, in part, "A single contribution code 05 or 15 may be used to report a retroactive salary adjustment covering previous service periods. The service period should reflect the earliest service period involved in the adjustment. The transaction should have the member's new pay rate and the total additional earnings and contributions for the period. When more than one payrate is involved in the retroactive adjustment, report a single entry for each new payrate."

# APPENDIX D

## PRIOR REVIEW

**FOLLOW UP ON PRIOR REVIEW FINDINGS  
CALIFORNIA SCHOOL BOARD ASSOCIATION EMPLOYER CODE 1588  
PRIOR REVIEW P00-044, DATED NOVEMBER 2001**

<i>Prior Review Finding</i>	<i>Prior Review Recommendation</i>	<i>Status of Prior Recommendation</i>
<p>1. Publicly available salary information not available for all positions, reported pay increases for the Executive Director were not appropriate, and reported compensation for two employees was greater than what was authorized in the salary schedule.</p>	<p>The Association should work with CalPERS Actuarial and Employer Services to assess the impact of this correct reporting and determine what adjustments are needed.</p>	<p>Similar finding noted in the current report.</p> <p>The Association did not have publicly available salary information for all positions and reported excessive pay increases for the Executive Director.</p>
<p>2. Unused sick leave information not reported for one retiring member.</p>	<p>The Association should work with CalPERS Actuarial and Employer Services to assess the impact of this correct reporting and determine what adjustments are needed.</p>	<p>Not included in the scope of this review.</p>

**Conclusion:** The Association had similar instances as noted in finding #1 of our prior review. Specifically, the District did not have publicly available salary information for all positions and reported excessive pay increases for the Executive Director. Unused sick leave reporting was not included in the scope of this review and therefore, no similar observations were noted for finding #2.

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**CALIFORNIA SCHOOL BOARDS ASSOCIATION**

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# **APPENDIX E**

## **ASSOCIATION'S WRITTEN RESPONSE**



December 16, 2011

Margaret Junker, Chief  
Office of Audit Services  
California Public Employees' Retirement System  
P.O. Box 942701  
Sacramento, CA 94229-2701

Dear Ms. Junker:

As requested in your letter of October 27, I am forwarding a Management Response to each finding contained in the draft Public Agency Review for the California School Boards Association (CSBA). We appreciate the level of professionalism demonstrated by CalPERS staff during this process, and look forward to working with CalPERS to resolve any remaining outstanding issues.

**Finding 1: Compensation reported to CalPERS failed to qualify as compensation earnable**

There are three components to Finding 1 and CSBA is providing a response to each of the three associated recommendations. CSBA is providing these responses with the understanding that Finding 1 does not require any adjustment to employees who are currently employed by CSBA.

At the outset, we would note that Finding 1 contains references to an asserted failure by CSBA to provide documents that showed that salary and benefit provisions "had been reviewed and authorized by the governing board, in an open public meeting" (Draft Review, pages 5, 8). While Government Code section 20636 (d) requires payrate schedules and documents to be "public records available for public scrutiny," the statute is silent on the questions of (1) governing board authorization; and (2) such authorization taking place in a public meeting. We are aware that CalPERS has recently adopted a new regulation (Cal Admin Code, title 2, §570.5) which, for the purposes of determining compensation earnable, requires that a payrate must be on a pay schedule that "Has been duly approved and adopted by the employer's governing body in accordance with the requirements of applicable public meeting laws." However, this regulation did not become operative until August 10, 2011, more than a year after the close of the period subject to CalPERS' review. As such, we do not believe there is a legal basis for applying the "reviewed and authorized by the governing board, in an open public meeting" criteria to CSBA for the period subject to this review.



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With respect to future compliance by CSBA with this regulation, we would note that CSBA's participation in CalPERS is provided for by Government Code section 20057 (d), which includes within the definition of "public agency" for purposes of participation in CalPERS:

"(d) A State organization of governing boards of school districts, the primary purpose of which is the advancing of public education through research and investigation."

There are no open meeting or public records laws "applicable" to CSBA. Nevertheless, CSBA recognizes the importance of transparency both to CalPERS and to CSBA stakeholders and will work with CalPERS CASD to ensure that its processes relating to the adoption of pay schedules are consistent with the spirit and intent of the new regulation.

As is recommended in this section, CSBA has taken steps to ensure that the reported payrate for all CSBA employees is set forth in a publicly available pay schedule. In November 2010, CSBA contracted with Koff & Associates, a Human Resources consulting firm with headquarters in Emeryville, to conduct a comprehensive classification and compensation study. It is anticipated that a classification and pay schedule for all CSBA employees will be adopted by the CSBA Board of Directors no later than its March 2012 meeting and published on its website thereafter.

*Component 1 – Payrate Improperly Reported: Former Executive Director – Base Pay*

CSBA does not concur with this component of Finding 1. Each of the reported payrates referenced in this component was authorized by the CSBA Board of Directors. As noted above, we do not believe that the requirements that payrates be on a pay schedule that has been duly approved by the employer's governing body in accordance with the requirements of applicable public meeting laws may be applied to CSBA during the audit period because the regulation setting them forth did not become operative until well after the conclusion of the audit period. For purposes of the requirement under Government Code section 20636(d) that payrate schedules and documents be "publicly available," the annual compensation paid to the former Executive Director was publicly available during his tenure, via CSBA's IRS Form 990s – which are public documents.

*Component 2 – Payrate Improperly Reported – Former Executive Director – Pay Increases*

CSBA neither concurs nor disagrees with this component of Finding 1.

CSBA concurs with the statement that the former Executive Director received salary increases that exceeded the average increases received by employees in a similar group or class and by CSBA's other miscellaneous employees. At the time the salary increases in question were approved by CSBA's Board of Directors, there was no knowledge on the part of the Board that

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the former Executive Director would be retiring in 2010 and the salary increases were not granted by the Board of Directors with the intent or for the purpose of increasing his retirement benefits.

*Component 3 – Compensation Classification Schedules Did Not Identify the Position Titles for Certain Employee Positions*

CSBA concurs with this component of Finding 1. As previously noted, CSBA is currently working with a Human Resources consulting firm on a classification and compensation study. The study is nearly completed, and it is anticipated that a classification and pay schedule for all CSBA employees that will specify a position title for each salary range will be adopted by the CSBA Board of Directors no later than its March 2012 meeting. We would respectfully point out that the requirement that a position title be identified for every employee position was not applicable to CSBA during the audit period, as it came into existence with the adoption of section 570.5 of CalPERS regulations, which did not become operative until August 10, 2011.

**Finding 2: The Association did not report a retroactive salary adjustment**

CSBA concurs with this finding and will work with CalPERS CASD to assess the impact of and to correct this non-reporting issue.

**Finding 3: The Association may have improperly enrolled individuals that were not common law employees of the Association**

CSBA does not concur with this finding, and believes strongly that the eight individuals in question are employees of CSBA under the common law standard that is outlined in the finding. CSBA devoted a significant amount of time responding to this issue during the summer months of 2011, and provided numerous documents to CalPERS staff in support of this position. The finding does not specify what additional information is needed in order to make a final determination and CSBA responded fully to each and every request for information from CalPERS on this issue. We stand ready to provide any additional information requested by CalPERS CASD that they deem necessary to resolve this issue in a manner that recognizes the continued rights of the eight CSBA employees identified in Confidential Appendix E-1, Finding 3 to participate in CalPERS.

While the affiliated corporations are separate entities for tax purposes, they are not separate entities for operational purposes or for other financial purposes. The affiliates exist to further CSBA's mission to provide essential services to its members and would not exist independently

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of CSBA. While they are separate entities for tax purposes they are not separate entities for operational purposes or for other financial purposes.

All CSBA personnel are employees of and are paid by the CSBA parent corporation, not by the affiliated corporations. The parent corporation also prepares the W-2 for each employee, and no W-2s are prepared for or on behalf of the affiliate corporations. All CSBA employees report functionally to higher levels of the CSBA organization, one that is ultimately headed by the Executive Director – who in turn reports to the CSBA Board of Directors. Each of the eight individuals referenced in this finding works under the direct supervision of their CSBA manager.

Further, the eight individuals referenced in this finding were hired by CSBA, work in buildings owned or leased by CSBA (with the exception of an employee who works from home under the direction of a CSBA manager), and do not operate under their own names or in their own places of business. Their scope of work and determinations with respect to number of hours spent on various tasks are all under the general supervision and control of CSBA managers. None of the eight are independent contractors in control of the manner and means of their work and/or entitled to subcontract that work to others. The eight employees, like all CSBA employees, are paid by CSBA based on flat salaries and they receive the same benefits.

**Finding 4: The Association did not accurately monitor the membership eligibility of part-time employees**

CSBA concurs with this finding and has improved its record keeping practices to ensure days and hours worked by part-time employees are properly documented and membership eligible employees are reported to CalPERS. The form used to support payment to part-time employees now includes a day/hour running total for a fiscal year. Once an employee reaches the membership threshold they will be reported to CalPERS as a member.

New employee orientation for part-time employees now includes a form for their signature stating whether or not they have ever been enrolled as a member of CalPERS or are currently working part-time for a CalPERS employer. Part-time employees will be asked on a semi-annual basis whether or not they are also working part-time for another CalPERS employer.

**Finding 5: The Association did not provide documentation to determine if a retired annuitant was lawfully employed**

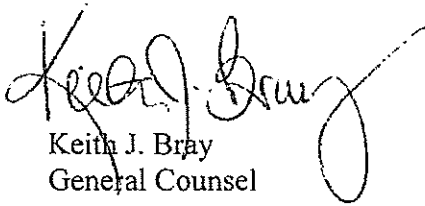
CSBA concurs with this finding, and has since verified that the annual hours worked by the retired annuitant in question did not exceed the 960 hour limit.

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CSBA has modified its record keeping practices to ensure that the hours worked by CalPERS retired annuitants do not exceed 960 hours in any given fiscal year. Commencing on January 1, 2012, the form used to support compliance includes a running total of hours worked for a fiscal year. Once an employee nears the 960 hour limit, they and their supervisor will be notified.

On behalf of CSBA, I again thank you and CalPERS staff for your cooperation and professionalism during this process. Please do not hesitate to contact me directly if you have any questions regarding the information contained in this response.

Sincerely yours,



Keith J. Bray  
General Counsel

cc: Vernon M. Billy, Executive Director