

Office of Audit Services



Public Agency Review

Humboldt State University Center Board of Directors

**CalPERS ID: 1020904753
Job Number: P13-085**

January 2016



California Public Employees' Retirement System
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January 29, 2016

CalPERS ID: 1020904753
Job Number: P13-085

Dave Nakamura, Executive Director
Humboldt State University Center Board of Directors
1 Harpst Street
Arcata, CA 95521-8222

Dear Mr. Nakamura:

Enclosed is our final report on the results of the public agency review completed for the Humboldt State University Center Board of Directors (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Finding 6. We appreciate the additional information regarding Finding 6 that you provided in your response. After consideration of this information, we added clarifying language and modified Finding 6; however, 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. We appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Beliz Chappuie

BELIZ CHAPPUIE, Chief
Office of Audit Services

Enclosure

cc: Board of Directors, Humboldt State University Center Board of Directors
Risk and Audit Committee Members, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Anthony Suine, Chief, BNSD, CalPERS
Renee Ostrander, Chief, EAMD, CalPERS
Carene Carolan, Chief, MAMD, CalPERS

HUMBOLDT STATE UNIVERSITY CENTER BOARD OF DIRECTORS

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HUMBOLDT STATE UNIVERSITY CENTER BOARD OF DIRECTORS

RESULTS IN BRIEF

The objective of our review was to determine whether the Humboldt State University Center Board of Directors (Agency) complied with applicable sections of the California Government Code (Government Code), California Public Employees' Pension Reform Act of 2013 (PEPRA), California Code of Regulations (CCR) and its contract with the California Public Employees' Retirement System (CalPERS).

The Office of Audit Services (OAS) noted the following findings during the review. Details are noted in the Results section beginning on page two of this report.

- Pay schedule did not meet all of the Government Code and CCR requirements.
- Special compensation was not reported as required.
- Member contributions were incorrectly reported.
- Eligible part-time employees were not enrolled as required.
- Unused sick leave balance was not reported.
- Employees were enrolled into membership and reported by an affiliated entity.

OAS recommends the Agency comply with applicable sections of the Government Code, PEPRA, CCR and its contract with CalPERS. We also recommend the Agency work with the appropriate CalPERS divisions to resolve issues identified in this report.

SCOPE

The Agency contracted with CalPERS effective August 1, 1973 to provide retirement benefits for local miscellaneous employees. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and by the Public Employees' Retirement Law (PERL). The Agency also agreed to make its employees members of CalPERS subject to all provisions of the PERL.

As part of the CalPERS Board of Administration (Board) approved plan, OAS reviewed the Agency's payroll reporting and member enrollment processes related to the Agency's retirement contract with CalPERS. The review was limited to the examination of sampled employees, records, and pay periods from January 1, 2011 through December 31, 2013. The review objectives and methodology are listed in Appendix A.

HUMBOLDT STATE UNIVERSITY CENTER BOARD OF DIRECTORS

OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The Agency's pay schedule did not meet all requirements of the Government Code and CCR.

Condition:

The Agency's pay schedule did not fully comply with the Government Code and CCR. Specifically, the pay schedule was not approved by the Agency's governing body and did not contain an effective date or date of revision.

Only compensation earnable as defined under Government Code Section 20636 and corresponding regulations can be reported to CalPERS and considered in calculating retirement benefits. For purposes of determining the amount of compensation earnable, a member's pay rate is limited to the amount identified on 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.

Pay amounts reported for positions that do not comply with the pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636(b)(1). There are no exceptions included in Government Code Section 20636(b)(1). When an employer does not meet the requirements for a publicly available pay schedule, CalPERS, in its sole discretion, may determine an amount that will be considered to be payrate as detailed in CCR 570.5

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Recommendation:

The Agency should ensure its pay schedule meets all Government Code and CCR requirements.

The Agency should work with CalPERS Employer Account Management Division (EAMD) to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636

CCR: § 570.5

HUMBOLDT STATE UNIVERSITY CENTER BOARD OF DIRECTORS

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| 2: The Agency did not report special compensation as required. |
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Condition:

The Agency did not report Holiday Pay as special compensation. Specifically, the Agency did not report Holiday Pay earned by an employee who worked on a holiday. The employee worked in a position that required scheduled staffing without regard to holidays. The Agency compensated the employee at two times the rate of pay for working on September 9, 2013. However, the Agency did not report the Holiday Pay as special compensation.

Recommendation:

The Agency should report Holiday Pay as special compensation.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636
CCR: § 571

HUMBOLDT STATE UNIVERSITY CENTER BOARD OF DIRECTORS

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| 3: The Agency incorrectly reported member contributions. |
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Condition:

The Agency incorrectly reported member contributions. The Agency elected to pay 2.85 percent of employees' normal contributions as Employer Paid Member Contributions (EPMC). The Agency paid the EPMC, but reported it to CalPERS as member paid contributions.

Recommendation:

The Agency should ensure EPMC is accurately reported.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

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

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4: The Agency did not enroll eligible part-time employees as required.

Condition:

- A. The Agency did not enroll eligible part-time employees into membership when eligibility requirements were met. Specifically, the Agency did not enroll eight part-time employees who worked more than 1,000 hours in Fiscal Year 2011-12. Government Code Section 20305 requires employees who complete 1,000 hours of service within a fiscal year to be enrolled into membership effective no later than the first day of the first pay period of the month following the month in which 1,000 hours of service were completed.

- B. The Agency did not enroll a part-time employee into membership when eligibility requirements were met. Specifically, the part-time employee worked for the Agency and was subsequently hired by another employer that contracts with CalPERS for retirement benefits. Once the employee was hired and enrolled by another contracting employer, the Agency was required to immediately enroll the employee into membership through my|CalPERS. Pursuant to Government Code Section 20305, employees with active CalPERS membership are required to be enrolled.

Recommendation:

The Agency should monitor the hours worked by part-time employees to ensure the employees are enrolled into membership when they reach 1,000 hours worked in a fiscal year.

The Agency should ensure part-time employees are enrolled into membership when eligibility requirements are met.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20305

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5: The Agency did not report unused sick leave balance for an employee.

Condition:

The Agency did not certify the unused sick leave balance for an employee. The employee retired with 861.02 hours, or 107.628 days, of unused sick leave at the time of retirement. OAS verified the employee separated from employment with the Agency during the pay period ended May 2, 2012, and retired with an effective date of May 3, 2012. The Agency was unaware the employee retired after separation. A member whose effective date of retirement is within four months of separation from employment with the employer which granted the sick leave credit shall be credited with 0.004 years of service credit for each unused day of sick leave certified to the board. Retiring members are eligible for additional service credit for unused sick leave accrued by the member during the normal course of employment. The total number of unused sick leave hours at retirement is converted to days to determine the additional service credit.

Recommendation:

The Agency should ensure unused sick leave is reported to CalPERS for an employee who retires within four months of separation from employment.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20965

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6: The Agency did not enroll eligible employees into membership.

Condition:

The Agency did not enroll or report compensation earnable for three employees holding the positions of the Agency Executive Director, Agency Associate Executive Director, and Agency Center Arts Director (Agency Directors). Instead, the employees were enrolled and reported by an affiliated entity, Humboldt State University (HSU).

Government Code Section 20460 provides in relevant part that any public agency may participate in and make all or part of its employees members of this system by contract. Government Code Section 20022 defines a contracting agency as any public agency that has elected to have all or any part of its employees become members of this system and that has contracted with the Board for that purpose. Government Code 20028 defines an employee as any person in the employ of any contracting agency. Management and control of CalPERS is vested in the CalPERS Board of Administration (Board) as provided in Government Code Section 20120. Each member and each person retired is subject to the PERL and the rules adopted by the Board pursuant to Government Code Section 20122. Government Code Section 20125 provides that 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.

For the purposes of the Government Code and for programs administered by the Board, the standard used for determining whether an individual is the employee of a contracting agency is the California common-law employment test as set forth in the California Supreme Court case titled *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. 4th 491, and which was adopted by the Board in two precedential decisions, *In the Matter of Lee Neidengard*, Precedential Decision No. 05-01, effective April 22, 2005, and *In the Matter of Galt Services Authority*, Precedential Decision No. 08-01, effective October 22, 2008.

Applying the California common-law employment test, the most important factor in determining whether an individual performs services for a contracting agency 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 independent evidence that the principal has the right to control the manner and means of performing the service in question, CalPERS will determine that an employer-employee relationship exists between the employee and the principal.

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Other factors to be taken into consideration under the common-law employment test are as follows:

- Whether or not the one performing services is engaged in a distinct occupation or business.
- 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.
- The skill required in the particular occupation.
- Whether the principal or the individual performing the services supplies the instrumentalities, tools, and the place of work for the person doing the work.
- The length of time for which the services are to be performed.
- The method of payment, whether by the time or by the job.
- Whether or not the work is a part of the regular business of the principal.
- Whether or not the parties believe they are creating the relationship of employer-employee.

According to the Agency, the Agency Directors were not enrolled or reported by the Agency because they were employees of HSU. The Agency provided information that showed the Agency is an auxiliary organization of HSU and stated that it is a common practice under the California State University (CSU) system to have the leadership of the auxiliary employed directly by the CSU. The Agency indicated this enables the CSU to have significant administrative control over the auxiliary organization, and allows the auxiliary organization's Board of Directors to provide governance functions as required for its non-profit status. As a result, according to the Agency, the Agency Directors serve at the pleasure of the HSU President and directly report to the HSU, specifically the HSU Vice President of Administrative Affairs. In addition, the Agency stated the employees have additional position titles that coincide with their respective statuses under the HSU Management Personnel Plan; the Executive Director is considered an Administrator III and the other two Agency Directors are Administrator II's. Furthermore, the Agency stated HSU conducts the Agency Directors' performance evaluations.

OAS reviewed Agency records to determine whether the Agency Directors were common-law employees of the Agency or HSU and discovered information that contradicts the Agency's claims. Using this information, OAS applied the common-law employment test discussed above and identified the following common facts which support a finding of control and indicate that the Agency Directors were common-law employees of the Agency, rather than HSU:

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- The Agency's organizational chart lists the Agency Directors' positions as management positions of the Agency, with the Executive Director being the supervisor for all Agency employees.
- The Agency's website indicates that all three identified employees are Agency Directors.
- The Agency bylaws, which were last adopted in February 2014, state that the Executive Director shall be employed by the Agency, act as the General Manager and Chief Executive Officer of the Agency, and supervise, direct, and carry out the programs of the Agency. In addition, the bylaws provide that the Executive Director shall have such other powers and perform such other duties as the Agency's Board of Directors (Agency Board) shall determine from time to time and that the Agency Board shall determine the compensation and other working conditions of the Executive Director.
- The immediate supervisor of the Executive Director position is the Agency's Board. The immediate supervisor for the other two Agency Directors is the Executive Director. The ultimate direction and control of these positions lies with the Agency Board since the Executive Director supervises all other Agency employees. The organization chart also demonstrates that the other Agency managerial positions are supervised by the Executive Director.
- While the HSU Vice President of Administrative Affairs has historically signed off on personnel documents for the Agency Executive Director, it is not clear whether the action was taken in the capacity of an HSU employee or in the capacity of a member of the Agency's Business Enterprise Board of Directors.
- A standing committee of the Agency Board, specifically an Executive Committee, is responsible for the performance review of the Executive Director. 2010 Agency Board minutes reviewed by OAS demonstrate that the Agency Executive Director's compensation and performance were reviewed by the Agency's Board.
- Agency Board minutes identified the three Agency Directors as members of the Agency's management staff.
- The Executive Director is required to provide regular reports to the Agency Board.
- A Memorandum of Understanding between the Agency and the HSU was signed by the Executive Director as an official of the Agency.
- The services provided by the Agency Directors are part of the Agency's normal operations.
- The services provided by the Agency Directors are integral, essential, and required for the Agency's continuation of business.
- The services provided by the Agency Directors are ongoing.

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OAS also reviewed position descriptions for the Agency Directors. The position descriptions identified, among other information, the following information to further support the determination that the individuals were common-law employees of the Agency:

Executive Director

- Is responsible for the overall management and administration of the Agency and supervised by the Agency Board.
- Provides Agency supervisory responsibilities such as interviewing applicants, hiring applicants, assigning tasks and directing work, establishing work schedules, approving overtime, approving leave schedules, evaluating performance, taking corrective action, terminating an employee, and resolving complaints.
- Is responsible to the Agency Board to plan, organize, manage, direct, and supervise the corporate functions of the Agency.
- Holds the top executive position responsible for overall management and administration of the Agency.
- Interfaces among Agency Board, Sub-Boards and Staff to implement goals and objectives, and carries out Agency Board decisions and direction for the Agency.
- Formulates and recommends policies for the Agency Board to operate the Agency within good business practices and in compliance with Federal and State laws and Chancellor's Office directives.
- Collaborates with the Agency management team to develop and deliver programs and services.
- Manages Agency resources within budget guidelines.
- Is responsible to the Agency Board for the planning and development of Agency facilities and equipment.
- Oversees the Agency Risk Management committee.
- Manages Agency financial and human resource functions.
- Performs other Agency duties as assigned.

Associate Executive Director

- Is supervised by the Agency Executive Director.
- Serves as the Agency Chief Fiscal Officer and Human Resource Director.
- Serves as the designee during the absence of the Executive Director.
- Supervises the following Agency positions: Director of HSU Dining, Director of HSU Bookstore, and the Director of Center Arts. Also responsible for the staffing and supervision of the Agency Accounting and IT Departments.

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- Provides Agency supervisory responsibilities such as interviewing applicants, hiring staff, assigning tasks and directing work, establishing work schedules, approving overtime, approving leave schedules, evaluating performance, taking corrective action, terminating an employee, and resolving complaints.
- Has direct oversight of the Agency's operation of HSU Dining, HSU Bookstore, and Center Arts.
- Has a general management responsibility for the financial and business functions of the Agency and its contracting agencies.
- Reviews and approves Agency check/invoice requests.
- Keeps the Agency Board and Executive Director abreast of the Agency's overall fiscal status of operations.
- Invests Agency's cash per Agency Board directives.
- Serves as the Agency Health Benefits Officer and approves documents submitted to CalPERS.
- Is responsible for staffing, supervision, and training of the Agency's Accounting and Business Services Department.
- Performs other duties as assigned.

Center Arts Director

- Immediate supervisor is the Agency Executive Director.
- Responsible for executive management and supervision of a campus-wide student activities office and multi-disciplinary professional performing arts presenting organization, including personnel management, marketing, publicity, supervision of events, fundraising, development activities and grant writing.
- Supervises the campus Ticket Office.
- Leads strategic planning and goal setting.
- Provides operational and budgetary management.
- Oversees, curates, and directs programming of the season.
- Manages contract administration.
- Supervises information systems

In addition to the above, OAS reviewed other information, including the Agency's Internal Revenue Service Return of Organization Exempt from Income Tax (Form 990). On Form 990, Part VII. A., the Agency indicated that the Executive Director and the Associate Executive Director are Agency officers or employees working an average of 40 hours per week for the Agency. Also, the documents reviewed included a 2011 MOU between Agency and HSU, under which HSU agreed to provide state employees to Agency to perform various duties, and Agency agreed to reimburse HSU for "all salary and benefit costs for the state employees" that HSU provided to Agency. Under the terms of this MOU, HSU reported the Agency

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Directors as if they were state employees covered by the HSU contract with CalPERS. This employee sharing and reimbursement arrangement does not change the employment status of the Agency Directors under the control of the Agency Board. That the purported change in employer from Agency to HSU was not a substantive change, but merely a paper transaction, is supported by the facts that the Agency Directors remain under the control of the Agency Board, and that prior to holding the positions of Agency Director, the individuals had been enrolled and reported as Agency employees under the Agency's contract with CalPERS. It appears from the available documentation that the Agency may have separated two individuals from membership and ceased reporting their compensation to CalPERS because they were selected to fill Agency Director positions. It also appears that one individual who had been reported to CalPERS as an employee of Humboldt State University continued to be reported as an employee of Humboldt State University after the individual was selected to fill an Agency Director position.

OAS has determined that the Agency Directors are common law employees of the Agency who were not enrolled into CalPERS membership, but were erroneously reported to CalPERS as if they were employees of HSU. Though the Agency provided some information to support its contention that the Executive Director, Associate Executive Director, and Center Arts Director are employees under the control and direction of HSU, OAS reviewed all relevant factors and determined the weight of the documentation indicated that direction and control of the Agency Directors remains with the Agency Board. As such, these individuals should be enrolled and reported to CalPERS by the Agency instead of HSU.

Recommendation:

The Agency should ensure that common-law employees that meet membership eligibility requirements are enrolled and reported to CalPERS.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20022, § 20028, § 20056, § 20122, § 20125, § 20160, § 20283, § 20460, § 20502

HUMBOLDT STATE UNIVERSITY CENTER BOARD OF DIRECTORS

CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives outlined in Appendix A. The procedures performed provide reasonable, but not absolute, assurance that these transactions complied with the specific provisions of the PERL and CalPERS contract except as noted.

The findings and conclusions 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 in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the Agency of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 days of the date of the mailing of the determination letter, in accordance with Government Code section 20134 and sections 555-555.4, Title 2, of California Code of Regulations.

Respectfully submitted,

Original signed by Beliz Chappuie

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

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Alan Feblowitz, CFE, Senior Manager
Jose Martinez, Lead Auditor
Mike Obad, Lead Auditor
Zachary Barlow, Auditor

**HUMBOLDT STATE UNIVERSITY CENTER
BOARD OF DIRECTORS**

APPENDIX A

OBJECTIVES

HUMBOLDT STATE UNIVERSITY CENTER BOARD OF DIRECTORS

OBJECTIVES

The objectives of this review were limited to determine whether the Agency complied with:

- Applicable sections of the Government Code (Sections 20000 et seq.), California Public Employees' Pension Reform Act of 2013 (PEPRA) and Title 2 of the CCR.
- Reporting and enrollment procedures prescribed in the Agency's retirement contract with CalPERS.

Effective January 1, 2013, new enrollments are checked against the PEPRA definition of "new member", regardless of whether the enrollment is for a first-time CalPERS member or an existing member. All members that do not fit within the definition of a new member are referred to as "classic members".

This review did not include an assessment as to whether the Agency is a "public agency," and expresses no opinion or finding with respect to whether the Agency is a public agency or whether its employees are employed by a public agency.

METHODOLOGY

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the Agency's personnel and payroll procedures, reviewed documents, and performed the following procedures.

- ✓ Reviewed:
 - Provisions of the contract and contract amendments between the Agency and CalPERS
 - Correspondence files maintained at CalPERS
 - Agency Board minutes and Agency Board resolutions
 - Agency written labor policies and agreements
 - Agency salary, wage and benefit agreements including applicable resolutions
 - Agency personnel records and employee time records
 - Agency payroll information including Contribution Detail Transaction History reports
 - Other documents used to specify payrate, special compensation, and benefits for all employees
 - Various other relevant documents
- ✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.

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- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Agency 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 Agency's governing body in accordance with requirements of applicable public meetings laws.
- ✓ Reviewed CalPERS listing reports to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ Reviewed the Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency's affiliated entity organizational structure to determine whether employees of the affiliated entity qualified for CalPERS membership and were enrolled as required.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

**HUMBOLDT STATE UNIVERSITY CENTER
BOARD OF DIRECTORS**

APPENDIX B

AGENCY'S WRITTEN RESPONSE

Note: The Agency provided an attachment to the response that was intentionally omitted from this appendix.



June 19, 2015

Via Email and U.S. Mail

Young Hamilton
California Public Employees Retirement System
Office of Audit Services
P.O. Box 942701
Sacramento, CA 94229-2701

Re: Response by Humboldt State University Center to May 2014 Draft Audit Report
Employer Code: 0954
CalPERS ID: 1020904753
Job Number: P13-085

Dear Ms. Hamilton:

The Humboldt State University Center (“UC”) is in receipt of the draft audit report¹ prepared by the California Public Employees System (“CalPERS”). UC intends to work with CalPERS’ staff to implement the recommendations. However, the UC does dispute one of the Findings and Recommendations. UC’s rationale is set forth below.

FINDINGS, RECOMMENDATIONS, AND UNIVERSITY CENTER RESPONSE

CalPERS made the following proposed findings and recommendations, which are set forth below and followed by the UC’s response to each finding and recommendation.

Finding 1: The Agency’s pay schedule did not meet all requirements of the Government Code and CCR.

Recommendation:

The Agency should ensure its pay schedule meets all government Code and CCR requirements.

¹ The University believes that it is premature to file a formal appeal at this time as no final decisions has been made on any of the findings. However, in the event that CalPERS is of the belief that its draft audit report triggers any timeline to file a formal appeal, CalPERS may consider this response the University Center’s formal appeal of its decision and request for an administrative appeal pursuant to Title 2, California Code of Regulations, section 555.1

The Agency should work with CalPERS Employer Account Management Division (EAMD) to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

University Center's Response to Finding and Recommendation 1:

The UC agrees with CalPERS' Finding and Recommendation. The UC has taken additional steps to comply with CCR section 570.5. Specifically, the University Center Board of Directors adopted pay schedules as a part of the 2015-2016 Budget. The schedule contains all job titles and pay ranges (see copy attached). The UC will work with CalPERS' staff to make any additional necessary corrections.

Finding 2: The Agency did not report special compensation as required.

Recommendation:

The Agency should report Holiday Pay as special compensation.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

University Center's Response to Finding and Recommendation 2:

The UC agrees with CalPERS' Finding and Recommendation. The UC will report Holiday Pay as special compensation instead of regular compensation in the future. The UC will also work with CalPERS' staff to make any necessary corrections.

Finding 3: The Agency incorrectly reported member contributions.

Recommendation:

The Agency should ensure EPMC is accurately reported.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

University Center's Response to Finding and Recommendation 3:

The UC agrees with CalPERS' Finding and Recommendation. The UC will make adjustments to correctly report member paid contributions. The UC will also work with CalPERS staff to make any necessary corrections.

Finding 4: The Agency did not enroll eligible part-time employees as required.

Recommendation:

The Agency should monitor the hours worked by part-time employees to ensure the employees are enrolled when membership eligibility requirements are met.

The Agency should ensure part-time employees with active membership are enrolled.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

University Center's Response to Finding and Recommendation 4:

The UC agrees with CalPERS' Finding and Recommendation. The UC will monitor hours worked by part-time employees to ensure proper enrollment when eligibility requirements are met. The UC will also work with CalPERS' staff to make any necessary corrections.

Finding 5: The Agency did not report an unused sick leave balance.

Recommendation:

The Agency should ensure unused sick leave is reported to CalPERS for an employee who retires within four months of separation from employment.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

University Center's Response to Finding and Recommendation 5:

The UC agrees with CalPERS' Finding and Recommendation. The condition the CalPERS' auditor encounter was a one-time oversight and it has been corrected. The UC will refine communication procedures with CalPERS to ensure unused sick leave is reported. The UC will also work with CalPERS' staff to make any necessary corrections.

Finding 6: The Agency did not enroll eligible employees into membership.

Recommendation:

The Agency should ensure that common law employment that meet membership eligibility requirements are enrolled and reported to CalPERS.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

University Center's Response to Finding and Recommendation 6:

The UC disagrees with CalPERS' Finding and Recommendation. The three employees are common law employees of Humboldt State University instead of the Humboldt State University Center using the definition provided by the CalPERS draft audit report factors listed below:

"Applying the California common law employment test, the most important factor in determining whether an individual performs services for another employer 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 independent evidence that the principal has the right to control the manner and means of performing the service in question, CalPERS will determine that an employer-employee relationship exists between the employee and the principal."

- The employees report to the Humboldt State University (HSU) Vice President of Administrative Affairs.

- The Executive Director was recruited by HSU Human Resources following HSU hiring guidelines. The job skills, knowledge and abilities are set forth by the HSU hiring committee and the hiring process was managed by the HSU Human Resources department.
- The Executive Director supervises employees of HSU (e.g., Student Affairs division staff in the Recreational Sports Department). This includes approving pay documents and performance appraisals.
- The Executive Director must obtain travel authorization and expenditure reimbursement approvals from the HSU VP of Administrative Affairs to attend professional meetings and/or training that requires travel.
- The employees' performance is evaluated by the HSU administrator and approved by the HSU VP of Administrative Affairs.
- The employees attend all meetings and serves on committees assigned by the HSU VP of Administrative Affairs.
- The employees' salaries and classification are set under a California State University (CSU) salary pay range and all salary adjustments are made within CSU guidelines and approved by the HSU Vice presidents.
- Under the Management Pay Plan of HSU, the employees serve at the pleasure of the HSU President and can be dismissed with or without cause.
- The employees are required to collaborate, pursue and implement the University's strategic plan.
- The employees are listed in Humboldt State University's organization charts.

In addition to the common law employment relationship, it is also important to consider the following organization structure and relationship:

The California Education Code, Section 89900, provides the structure for auxiliaries to exist within the CSU system. It's important to note that this government code clearly indicates that the President of each campus and by extension the CSU Board of Trustees are ultimately responsible for its auxiliaries.

It is a common practice within the CSU system to have the leadership of its auxiliaries employed by the University on a reimbursement basis. This administrative staff ensures the auxiliaries are professionally managed and fulfills the mission of the auxiliary while the organization's Board of Directors provides governance functions for the auxiliary as required by its nonprofit status.

OAS determined the direction and control of these employees is with the Agency's Board and should be enrolled and reported by the Agency instead of HSU. Although OAS also stated the agency provided information to support that these employees are under the direction and control of HSU.

OAS should not make this determination based solely on broad principles set forth in the UC bylaws. The referenced sections have not been revised in a number of years and do not reflect that in practice, the three employees are clearly employed by the University. The UC bylaws are NOT dispositive on the issue of employment.

Therefore, the UC disagrees with the CalPERS finding and the employees under common law employment that meet membership eligibility requirement are presently correctly enrolled and reported to CalPERS as HSU employees.

CONCLUSION

The University Center objects to one of the Findings and Recommendation set forth above. However, the University Center will assist CalPERS by providing additional documentation required by CalPERS to assess the Finding and Recommendation disputed above. As to the Findings and Recommendations not disputed by the UC, the UC will work with CalPERS' staff to make the necessary corrections.

Respectfully submitted,

A black rectangular redaction box covers the signature area. A blue ink scribble is visible to the left of the box.

Original signed by Dave Nakamura

Dave Nakamura
Executive Director
Humboldt State University Center