Office of Audit Services

Public Agency Review

Poway Unified School District

CalPERS ID: 4481656996
Job Number: SP15-028

June 2016

California Public Employees' Retirement System
Office of Audit Services
P.O. Box 942701
Sacramento, CA 94229-2701
TTY: (877) 249-7442
(916) 795-0802 phone, (916) 795-7836 fax
www.calpers.ca.gov

June 23, 2016

CalPERS ID: 4481656996
Job Number: SP15-028

Tracy Hogarth, Associate Superintendent
Poway Unified School District
15250 Avenue of Science
San Diego, CA 92128

Dear Ms. Hogarth:

Enclosed is our final report on the results of the public agency review completed for the Poway Unified School District (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Finding 3. We appreciate the additional information you provided in your response. After consideration of this information, we revised the language in Finding 3. However, the recommendation remains as stated.

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: Poway Unified School District Board of Education
San Diego County Board of Education
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

POWAY UNIFIED SCHOOL DISTRICT

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POWAY UNIFIED SCHOOL DISTRICT

RESULTS IN BRIEF

The objective of our review was to determine whether the Poway Unified School District (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 and observation during the review. Details are noted in the Results section beginning on page three of this report.

- Pay schedule did not meet all of the Government Code and CCR requirements.
- Special compensation was not reported in accordance with the Government Code and CCR requirements.
- Compensation was not reported in accordance with the Government Code.
- A retroactive salary adjustment was incorrectly reported.
- Contributions were incorrectly reported.
- Observation: Agency records did not agree with my|CalPERS information.

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 San Diego County Schools, which includes the Agency, contracted with CalPERS effective July 1, 1949 to provide retirement benefits for miscellaneous members. Individual school districts, such as the Agency, input members' payroll into the San Diego County Schools payroll system. The San Diego County Schools reports the monthly payroll for the school districts through my|CalPERS. By way of the San Diego County Schools' contract with CalPERS, the Agency agreed to be bound by the terms of the contract and 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 compliance with the PERL and its contract related to compensation and payroll reporting. Additionally, OAS reviewed active member census data used to calculate pension liability for financial reporting purpose pursuant to the Governmental Accounting Standards Board (GASB) Statement No. 67: Financial Reporting for Pension Plans. The review was limited to the examination of the sampled employees, records, and pay periods from July 1, 2013 through June 30, 2014. OAS did not review the Agency's compliance with membership enrollment or employment after retirement. The review objectives and methodology are listed in Appendix A.

OFFICE OF AUDIT SERVICES REVIEW RESULTS

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

Condition:

The Agency's pay schedule effective for Fiscal Year 2013-14 did not meet all the requirements of the Government Code and CCR. Specifically, the Agency did not have a pay schedule that included all positions, indicated the time base for all positions, and was duly approved and adopted by the Agency's governing body in accordance with the requirements of applicable meeting laws.

Only compensation earnable as defined under Government Code Section 20636.1 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 payrate 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 payrate definition and pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636.1(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 Section 570.5.

Recommendation:

The Agency should ensure its pay schedule meets all of the 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, § 20636.1
CCR: § 570.5

2: The Agency did not report special compensation in accordance with the Government Code and CCR.

Condition:

A. The Agency did not report the monetary value for the purchase and maintenance of uniforms for its bus mechanic and bus driver employees. Specifically, the Agency provided uniforms to these employees, but did not report the monetary value for the uniform purchase and maintenance. Government Code and CCR require the monetary value for the purchase, rental and/or maintenance of required clothing be reported as special compensation for classic employees.

B. The Agency's written labor policy did not meet all of the requirements of CCR 571(b)(1)(B). Specifically, the policy did not contain the provision for uniforms for bus mechanics and the monetary value of uniforms for school bus drivers. CCR 571(b) requires that the written labor policy or agreement contain the conditions for payment of, including, but not limited to, the eligibility for, and amount of, the special compensation.

Reportable special compensation is defined in CCR Section 571(a) and must be reported if it conforms with all of the requirements listed in CCR Section 571(b). Specifically, special compensation is required to be contained in a written labor policy or agreement indicating the eligibility and amount of special compensation. Also, special compensation must be available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, and historically consistent with prior payments for the job classification.

Recommendation:

The Agency should ensure monetary value for the purchase, rental and/or maintenance of required clothing is reported as special compensation for classic employees.

The Agency should ensure its written labor policy or agreements contain uniform provisions and the conditions for payment.

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, § 20630, § 20636.1
CCR: § 571

3: The Agency did not report compensation in accordance with the Government Code.

Condition:

The Agency did not report compensation in accordance with Government Code Section 20636.1 for employees hired after January 1, 2013. Specifically, the Agency increased the base payrates and earnings for employees represented under the Poway School Employee Association (PSEA) by five percent in lieu of paying Employer Paid Member Contributions (EPMC). The Agency maintains two salary schedules. One salary schedule lists the payrates for “EPMC Members” and the other lists the payrates for “non-EPMC members”. Payrates listed on the non-EPMC pay schedule are five percent higher than the payrates for the EPMC members. The PSEA labor agreement states that the Agency will pay the CalPERS member contributions for all eligible unit members who are hired prior to January 1, 2013 and the members will be paid per the EPMC pay schedule. The labor agreement also states that members who are hired or become eligible for CalPERS membership after January 1, 2013 will be placed on a pay schedule that is five percent higher.

Government Code Section 20636.1(b)(1) defines payrate as the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class. By identifying that payrates were increased five percent in lieu of paying EPMC for all unit members who were hired or become eligible for CalPERS membership after January 1, 2013, the Agency increased the members’ base payrates reported to CalPERS and therefore is out of compliance with Government Code Section 20636.1. It is also important to note that EPMC is not a reportable item of compensation earnable, unless the EPMC is reported in accordance with Government Code Section 20636.1(c)(4) and CCR Section 571. Adding EPMC to payrate is not in compliance with the Government Code and CCR.

Recommendation:

The Agency should report only compensation earnable as defined in the Government Code and CCR.

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, § 20160, § 20636.1,
CCR: § 571

4: The Agency incorrectly reported a retroactive salary adjustment.

Condition:

The Agency reported an incorrect monthly payrate on a retroactive salary adjustment for an Associate Superintendent. Specifically, the monthly payrate increased to $12,655.00 on November 12, 2013 retroactive to July 1, 2013. However, the Agency reported an incorrect monthly payrate of $12,971.37 from July 2013 through November 2013. The payrate was over reported because the Agency incorrectly included 2.5 percent Longevity Pay in its calculation of the employee’s payrate. As a result, the employee’s payrate was overstated.

Recommendation:

The Agency should ensure that retroactive salary adjustments are correctly 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: § 20120, § 20121, § 20160 § 20636.1

5: The Agency incorrectly reported member contributions.

Condition:

The Agency incorrectly reported EPMC as member contributions for its classic employees in the pay period ended January 31, 2014. The Poway School Employee Association's written labor policy, effective July 1, 2013, stated that the Agency will pay the entire employee contributions. However, the Agency incorrectly remitted the contributions as member paid contributions rather than EPMC.

Recommendation:

The Agency should ensure it correctly reports member contributions.

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, § 20160, § 20691
CCR: § 569

Observation: The Agency's records did not agree with my|CalPERS information.

Condition:

OAS reviewed active member census data used to calculate pension liability for financial reporting purpose pursuant to the Governmental Accounting Standards Board (GASB) Statement No. 67: *Financial Reporting for Pension Plans* requirements. The significant census data elements include, but are not limited to, date of birth, date of hire or years of service, marital status, gender, employment status (active, inactive, or retired), class of employee, and eligible compensation.

OAS identified 14 employees who had hire dates that were different from the hire dates in my|CalPERS. The hire dates in my|CalPERS were based on the contract effective date instead of the actual date of hire. OAS also identified 52 employees whose employment statuses were different from the employment statuses in my|CalPERS. The Agency's records showed that the employees separated; however, the employees were not separated through my|CalPERS. OAS recommends the Agency work with the appropriate CalPERS division to make any corrections, if necessary.

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 the Agency 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
Chris Wall, Senior Manager
Antonio Madrigal, Lead Auditor
Rebecca Honeywell, Auditor

APPENDIX A

OBJECTIVES

POWAY UNIFIED SCHOOL DISTRICT

OBJECTIVES

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

- Applicable sections of the Government Code (Sections 20000 et seq.), PEPRA, and Title 2 of the CCR.
- Reporting procedures prescribed in the Agency's retirement contract with CalPERS.

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
  - Documents related to employee payrate, special compensation, and benefits
  - 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.

✓ 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 reports to determine whether the payroll reporting elements were reported correctly.

✓ Reviewed the Agency's records to determine whether member census data agreed with my|CalPERS information.

APPENDIX B

AGENCY’S WRITTEN RESPONSE

NOTE: An attachment to the Agency's response was intentionally omitted from this appendix.

SUPERINTENDENT
John P. Collins, Ed.D.

POWAY UNIFIED SCHOOL DISTRICT

PERSONNEL SUPPORT SERVICES

Tracy Hogarth
Associate Superintendent

thogarth@powayusd.com

858-521-2761
FAX 858-485-1355

VIA FACSIMILE (916.795.7836) AND FIRST CLASS MAIL

April 29, 2016

Antonio Madrigal, Jr.
Auditor
CalPERS, Office of Audit Services
P.O. Box 942701
Sacramento, CA 94229-2701

Re: Response of the Poway Unified School District to draft Audit Report

Dear Mr. Madrigal:

The Poway Unified School District ("District") responds as follows to the California Public Employees' Retirement System's ("CalPERS") draft audit report dated April 5, 2016. This response is provided on or prior to the extended response date of April 29, 2016.

* * *

Response to Finding No. 3:

The draft Audit Report errs in its factual finding that, "The Agency *created* a separate pay schedule for employees hired after January 1, 2013 to reflect the five percent pay increase above the payrates for the same positions hired prior to January 1, 2013."

The District, like other public school districts in California, has a mandatory duty to meet and negotiate with its employee unions regarding salary, benefits, and other terms and conditions of employment. One subject of bargaining for public school districts with classified employee units is employer paid member contributions (EPMC), which result in an increase in actual net compensation for qualifying employees. The District and its Poway School Employees Association ("PSEA") unit (formerly, California School Employees Association Chapter 313) have maintained a second salary schedule for over a decade designed to achieve parity for classified employees in that unit that do not receive the benefit of EPMC. That second salary schedule has always reflected a salary five percent higher than the historic "PERS MEMBERS" salary schedule, because the CalPERS members in that bargaining unit had foregone (and continue to forego) a five percent base salary increase in exchange for the District's agreement to pay EPMC. (True and correct copies of the July 2012 salary schedules are enclosed herewith.) The District highlights this fact as the salary schedules were not adopted in response to the Public Employees' Pension Reform Act of 2013 ("PEPRA"), effective January 2013. Rather, the current salary schedules were adapted during the District and PSEA's 2013 negotiations to include "new" CalPERS members on the second (previously, the "Non-PERS Members") salary schedule. This was because Government Code section 7522.30, effective January 1, 2013, prohibited new CalPERS members from receiving EPMC. The 2013 bargaining agreement reflected the District and PSEA's desire to restore employees now statutorily-barred from receiving the 5% EPMC benefit to the *status quo ante* given PSEA unit members who were defined as "new" CalPERS members under PEPRA would not be receiving *any* benefit in exchange for foregoing the 5% salary increase.

The draft Audit Report's basis for finding that the additional 5% base pay on the salary schedule for employees unable to receive EPMC is not "pensionable compensation" is a claim that the increases have been paid to increase a new member's retirement benefit. As illustrated by the bargaining history above, the placement of new CalPERS members in the PSEA unit on what was traditionally a separate salary schedule for PSEA unit members who were not CalPERS members was undertaken in an effort to achieve parity and inherent fairness in *actual net compensation* for employees performing the same work, and *not* for the purpose of increasing any new member's retirement benefit.[1] Thus, there is an insufficient basis for a finding that such is not "pensionable compensation."

The draft Audit Report also takes the position that having "two pay schedules for the same position" is a violation of the statutes and regulations, yet fails to explain the basis for this conclusory finding. The District's analysis of the applicable statutes and regulations revealed that they do not clearly require employer agencies to maintain only one pay schedule.

Subdivision (a) of section 570.5 of Title 2 of the California Code of Regulations does not explicitly limit any position to a single pay schedule. Indeed, the relevant statutory language, which was adopted by the Legislature, frequently references pay schedules in the plural sense. For instance, Government Code section 20636 provides, at subdivision (b)(1), that:

> "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*. [Emphasis added.]

(See also Gov. Code § 20636.1(b)(1).) Significantly, Government Code section 7522.34, at subdivision (a), which expressly relates to new CalPERS members, as defined in PEPRA, recognizes pay schedules in the plural sense as follows:

> "Pensionable compensation" of a new member of any public retirement system 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*[.] [Emphasis added.]

CalPERS Circular Letter No. 200-055-12 (December 3, 2012) explains that CalPERS interprets "similarly situated members" to mean those employees that are in the same benefit group (meaning those employees with the same benefit formula)." Thus, new CalPERS members' salaries are only to be compared with other new CalPERS members, and not with classic

[1] The District recognizes there may have been different income tax consequences for each group, and thus exact parity may not be achieved.

PSEA unit has only one salary schedule applicable to new CalPERS member and non-CalPERS members, and only one salary schedule applicable to classic CalPERS members.

For the foregoing reasons, the District disagrees with Finding No. 3.

Should CalPERS not modify its preliminary finding that the additional five percent in base salary cannot be counted as pensionable compensation, the District notes that new CalPERS members in its PSEA unit have overpaid (via salary deduction) their member contributions to CalPERS. Member contributions are based on a set percentage of the employee's payrate, and affected employees would therefore be eligible for a refund of contributions.

* * *

In conclusion, it is important to the District to ensure its compliance with laws and regulations. As stated above, the District is prepared to work with CalPERS staff to make any necessary corrections and bring this matter to a close.

Should CalPERS have any further questions or desire additional information based on the foregoing, you may contact me at 858-521-2761.

Sincerely,

[redacted] Original signed by Tracy Hogarth

Tracy Hogarth
Associate Superintendent

Encl.: July 2012 Salary Schedules ("PERS MEMBERS" and "NON-PERS MEMBERS")