

BEFORE THE  
TEACHERS' RETIREMENT BOARD  
OF THE STATE OF CALIFORNIA

In the Matter of Whether the Stanislaus  
County Office of Education Incorrectly  
Reported Compensation to CalSTRS:

Stanislaus County Office of Education,

Respondent.

**PRECEDENTIAL DECISION**

Precedential Decision No.19-01

**Effective:** March 29, 2019

Case No. STRS2016004

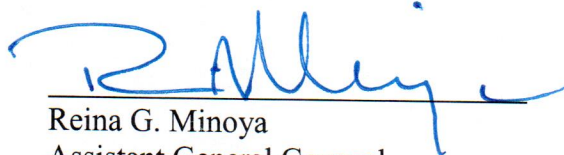
OAH No. 2018020933

On March 29, 2019, the Appeals Committee of the Teachers' Retirement Board, acting pursuant to Government Code section 11425.60 and Section 800 D of the Teachers' Retirement Board Policy Manual on Designating Precedential Decisions, designated the entirety of *In the Matter of Whether the Stanislaus County Office of Education Incorrectly Reported Compensation to CalSTRS: Stanislaus County Office of Education* as a Precedential Decision.

The attached copy of the Notice of Decision and Order is a true and correct copy thereof as adopted and designated as precedential by the Appeals Committee.

Once a decision or part of a decision has been designated as a Precedential Decision, it is binding in future administrative adjudications unless the Appeals Committee has rescinded the designation. The Precedential Decision shall be added to an index containing all of CalSTRS' Precedential Decisions and will be publicized annually in the California Regulatory Notice Registry. The designation of a decision or part of a decision, or failure to designate a decision or part of a decision, as a precedential decision is not subject to judicial review.

Dated: *April 2, 2019*



Reina G. Minoya  
Assistant General Counsel  
Office of the General Counsel  
California State Teachers' Retirement System

BEFORE THE  
TEACHERS' RETIREMENT BOARD  
OF THE STATE OF CALIFORNIA

In the Matter of Whether the Stanislaus County  
Office of Education Incorrectly Reported  
Compensation to CalSTRS:

STANISLAUS COUNTY OFFICE OF  
EDUCATION,

Respondent.

Case No. STRS20160004

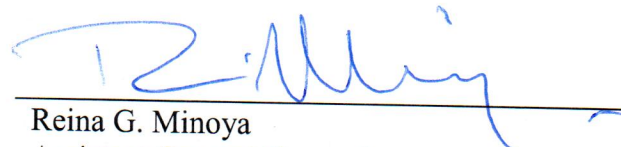
OAH No. 2018020933

**NOTICE OF DECISION AND ORDER**

Pursuant to Government Code section 11517, subdivision ( c )(2)(C), the attached proposed decision of the administrative law judge was adopted on December 21, 2018 by the Appeals Committee of the Teachers' Retirement Board of the State of California as its final decision in the above-entitled matter. The proposed decision was adopted with the following technical or other minor changes, which do not affect the factual or legal basis of the proposed decision:

1. On page 1, paragraph 4, line 1, change "August 31, 2018" to "August 13, 2018".
2. On page 2, paragraph 1, line 6, change "section 22200" to "section 22200 et seq.".
3. On page 2, paragraph 3, line 2, change "section" to "sections".
4. On page 6, paragraph 21, line 14, change "coded," to "coded". [remove comma]

Dated: December 21, 2018



Reina G. Minoya  
Assistant General Counsel  
Office of the General Counsel  
California State Teachers' Retirement System

BEFORE THE  
TEACHERS' RETIREMENT BOARD  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

STANISLAUS COUNTY OFFICE OF  
EDUCATION,

Respondent.

Case No. STRS20160004

8/31/24  
OCT 24 2018

OAH No. 2018020933

CALSTRS LEGAL

**PROPOSED DECISION**

Administrative Law Judge Dena Coggins, Office of Administrative Hearings, State of California, heard this matter on August 13, 2018, in Sacramento, California.

Attorney Natalie Vance represented complainant Larry Jensen, Chief Auditor, California State Teachers' Retirement System (CalSTRS).

Attorney Chesley Quaide represented respondent Stanislaus County Office of Education.

Evidence was received on August 31, 2018. The parties elected to submit written closing and reply briefs. The parties submitted timely closing briefs, marked as Exhibit 12, CalSTRS' closing brief; and Exhibit R16, respondent's closing brief. The parties submitted timely reply briefs, marked as Exhibit 13, CalSTRS' reply; and Exhibit R17, respondent's reply. The record was closed and the matter was submitted for decision on September 21, 2018.

**ISSUE**

The issue for determination is whether one and one-half (1.5) percent one-time off-salary schedule payments paid by respondent to CalSTRS members in November 2012 was misreported as compensation creditable to the members' Defined Benefit Account.

## FACTUAL FINDINGS

### *Parties and Jurisdiction*

1. CalSTRS was established to provide a financially sound plan for the retirement, with adequate retirement allowances, of teachers in the public schools of California, teachers in schools supported by California, and other persons employed in connection with the schools. (Ed. Code, § 22001.) CalSTRS and the State Teachers' Retirement Plan are administered by the Teachers' Retirement Board (Board) under Education Code section 22200. The Teachers' Retirement Law is set forth at Education Code section 22000 et seq. The Board is the state agency authorized to set policy for CalSTRS and has the "sole power and authority to hear and determine all facts pertaining to application for benefits under the plan or any matters pertaining to administration of the plan and the system." (Ed. Code, § 22201.)

2. A Statement of Issues was made and filed by complainant in his official capacity, on February 23, 2018. The Statement of Issues relates to an audit performed by CalSTRS that found respondent misreported 1.5 percent one-time off-salary schedule payments to members in November 2012.

3. Respondent filed a Notice of Defense to the Statement of Issues pursuant to Government Code section 11505 and 11506. The matter was then set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code sections 11505 and 11506.

### *The Audit*

#### DRAFT AUDIT REPORT

4. Respondent is an employing agency for which creditable service subject to coverage by the State Teachers' Retirement Plan is performed. (Ed. Code, § 22131.) Respondent is responsible for providing direct instructional programs and support services to 26 school districts in Stanislaus County, California. During the scope of the audit, respondent employed approximately 316 CalSTRS members and 22 nonmembers.

5. CalSTRS' Audit Services Division conducted an audit of membership, earnings, and other information reported by respondent to CalSTRS, and prepared a Draft Audit Report in December 2015.<sup>1</sup> The audit period was July 1, 2012, through June 30, 2014. The purpose of the audit was to determine if respondent complied with the Teachers' Retirement Law regarding eligible membership and creditable compensation reported to CalSTRS. The audit was performed in accordance with standardized county office of

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<sup>1</sup> The Board may audit or cause to be audited the records of any public agency as often as the Board determines necessary. (Ed. Code, § 22206.)

education and school district payroll audit procedures developed by CalSTRS. The conclusions contained in the Draft Audit Report were based on a comparison of respondent's membership and payroll reporting records and procedures and the Teachers' Retirement Law criteria as it existed during the audit period.

6. On or about December 18, 2015, CalSTRS sent the Draft Audit Report to respondent and impacted members. In the cover letter enclosing the Draft Audit Report, CalSTRS requested respondent prepare a written response to the findings contained in the Draft Audit Report by January 18, 2016. After evaluating the written response, CalSTRS would then determine whether to change the findings before finalizing the Draft Audit Report.

7. With the exception of three findings, CalSTRS found respondent reported membership and creditable compensation to CalSTRS in compliance with the Teachers' Retirement Law for the sampled members within the audit period. Only one of the three findings is at issue here.

8. During the audit, CalSTRS found that respondent authorized two, one-time off-salary schedule payments to certain members: one paid during the audit period in the 2012-2013 school year and another paid prior to the audit period in the previous school year. The payments at issue were paid in November 2012, during the 2012-2013 school year. Respondent authorized the one-time payment at 1.5 percent of the member's salary. The payment was made pursuant to a March 27, 2012 Memorandum of Understanding (MOU) between respondent and the Stanislaus Association of Certificated Personnel. The MOU stated the following, in relevant part:

The parties agree that a second one-time 1.5% off the salary schedule payment will be authorized in the fall, [*sic*] 2012 to all [Stanislaus Association of Certificated Personnel] Unit Members, including retirees on June 30, 2012, pending passage of the Governor's initiative and paid within two (2) months, if possible.

9. Identical payments were made by respondent to all confidential, charter instructors and classified/certificated personnel employed as of February 29, 2012, in November 2012, pursuant to an April 11, 2012 memorandum from respondent's Superintendent to Marlene Anderson, respondent's Financial Services manager in the Human Resources department (Superintendent memorandum). The Superintendent memorandum stated the following, in relevant part:

A second one-time 1.5% stipend will be authorized in the fall, pending passage of the Governor's initiative, to all confidential, charter instructors and classified/certificated management personnel employed as of February 29, 2012.

10. According to the Draft Audit Report, respondent incorrectly reported the November 2012 one-time off-salary schedule payments to the Defined Benefit Account instead of the Defined Benefit Supplement Account.<sup>2</sup> CalSTRS' stated position was that the payments should have been reported to the Defined Benefit Supplement Account in accordance with Education Code section 22905, subdivision (b)(3), and that the reporting error more than likely impacted all members who received the payment.

11. According to CalSTRS, the reporting error resulted in the incorrect crediting of the member and employer contributions totaling approximately \$1,073 to the Defined Benefit Account instead of the Defined Benefit Supplement Account, resulting in future benefit overpayments that could total approximately \$77,520. Additionally, CalSTRS opined that the reporting error will impact the current active members, who are near retirement, as well as the retirees within the scope of the audit.

#### RESPONDENT'S RESPONSE TO THE DRAFT AUDIT REPORT

12. Respondent provided a timely response to the Draft Audit Report, dated January 28, 2016 (Response). In its Response, respondent disputed CalSTRS' finding that respondent incorrectly reported the November 2012 payments. As will be discussed more fully below, respondent took the position that CalSTRS was fully aware of its reporting actions and CalSTRS issued general guidance to respondent through CalSTRS' publications and express direction from CalSTRS' staff advising respondent that the payments were considered a CC6 stipend special compensation (Special Comp) for reporting purposes and should be reported to the Defined Benefit Account.

#### FINAL AUDIT REPORT

13. In March 2016, CalSTRS sent respondent a cover letter enclosing the Final Audit Report, dated March 11, 2016. CalSTRS considered respondent's Response to the Draft Audit Report, but CalSTRS did not change its finding. The cover letter provided respondent with its appeal rights and an evaluation of its Response.

#### *Tom Gong's Testimony*

14. Tom Gong is a senior management auditor at CalSTRS, where he has been employed for 21 years. Mr. Gong has a certified public accountant's certificate. He is responsible for reviewing the work of CalSTRS' auditing staff and analyzing the accuracy of their audits. He explained that CalSTRS has a fiduciary responsibility to safeguard the assets of the system and protect the integrity of the fund by ensuring that employers are reporting members' information accurately and in compliance with the Teachers' Retirement Law.

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<sup>2</sup> "Defined Benefit Account" and "Defined Benefit Supplement Account" have been used interchangeably with "Defined Benefit Program" and "Defined Benefit Supplement Program," respectively, by the parties. The former two phrases will be used throughout this Decision.

This responsibility is critical so that all members are treated fairly and equally and every member receives the benefit to which the member is entitled. ~~Under the law~~

15. Mr. Gong reviewed the audit at issue and testified at the hearing. He explained that the Defined Benefit Account is an account administered by CalSTRS. When a member retires, the member receives a monthly pension from the Defined Benefit Account. The amount received is calculated based upon the member's age, his years of service credit, and his highest compensation. The Defined Benefit Supplement Account is similar to a savings account. A member's contributions in the account earn interest. When the member retires, the member can receive an annuity or lump sum payment as a supplement to the monthly pension he receives from the Defined Benefit Account. If a member's contributions are reported to the Defined Benefit Account, the member will generally receive a higher monthly pension amount than if the member's contributions are reported to the Defined Benefit Supplement Account.

16. Mr. Gong reviewed the Draft Audit Report, CalSTRS' finding that respondent incorrectly reported the November 2012 payments, and the Response submitted to CalSTRS by respondent. He determined that CalSTRS' finding was correct based upon the law in effect at the time. In Mr. Gong's opinion, CalSTRS was correct in finding that the November 2012 payments were incorrectly reported to the Defined Benefit Account. Mr. Gong testified that he did not rely on CalSTRS' publications in making his determination, as he relied exclusively on the law by applying Education Code section 22905, subdivision (b)(3).

#### *Respondent's Evidence and Testimony*

17. Barbara Tanner was respondent's Director of Human Resources from 2004 until she retired in 2017. Ms. Tanner testified at the hearing. She is familiar with the facts relating to the audit and was a member of the negotiating team for the November 2012 payments for the certificated bargaining unit (Stanislaus Association of Certificated Personnel). Ms. Tanner also prepared the Superintendent memorandum authorizing the November 2012 off-salary schedule payments to non-union employees and classified and certificated personnel.

18. Marlene Anderson was respondent's Director II of Fiscal Services in the Human Resources department, from July 1, 2014, until she retired in July 2016. Before holding that position, she was the Fiscal Services manager in the Human Resources department. Ms. Anderson's job duties included being in charge of the payroll department. She is familiar with the facts relating to the audit and she testified at the hearing.

19. As part of her duties in overseeing the payroll department, Ms. Anderson discussed with Ms. Tanner how to code payments and how payments should be reported and entered into the payroll. Ms. Anderson was responsible for determining how to report the November 2012 off-salary schedule payments as the head of the payroll department. She did not have experience reporting off-salary schedule payments, so she referred to the CalSTRS

Employer Directive 2003-04, dated December 22, 2003 (Employer Directive), to determine how to code the payments and to which account the payments should be reported. The Employer Directive is a publication provided to employers by CalSTRS. Ms. Anderson testified that the Employer Directive did not answer her question about whether to report the payments to the Defined Benefit Account or the Defined Benefit Supplement Account.<sup>3</sup>

20. Because the Employer Directive did not answer her question about how to report the November 2012 payments, on March 8, 2012, Ms. Anderson contacted Nancy Lentsch at CalSTRS, who was respondent's contact person at CalSTRS. Ms. Anderson testified that Ms. Lentsch advised her that the November 2012 payments should be coded as contribution code "CC6," which Ms. Anderson understood to mean that the payments should be coded to the Defined Benefit Account. Ms. Anderson testified that Ms. Lentsch used the words "defined benefit" in their conversation. Ms. Anderson took notes during the phone call. Ms. Anderson requested that Ms. Lentsch put her advice in writing, but Ms. Lentsch was hesitant to do so, according to Ms. Anderson. Ms. Lentsch did not put the details of their conversation in writing.

21. Ms. Anderson prepared a memorandum, dated March 8, 2012, which she testified accurately memorialized her conversation with Ms. Lentsch. The information contained in Ms. Anderson's notes was put into her March 8, 2012 memorandum. Ms. Anderson testified that she tried to get all of the important information from the call with Ms. Lentsch into her March 8, 2012 memorandum. Ms. Anderson provided her March 8, 2012 memorandum to Ms. Tanner. Ms. Anderson's memorandum stated that Ms. Lentsch told her that "it would be an off-salary-schedule pay [*sic*], considered a CC6 stipend (Special Comp) for reporting purposes." However, Ms. Anderson made no mention in her memorandum that Ms. Lentsch advised her to report the November 2012 payments to the Defined Benefit Account. Ms. Anderson testified that CC6 was a code for special compensation, and, at the time of reporting the November 2012 payments, Ms. Anderson understood the CC6 designation could be used for payments going to either the Defined Benefit Account or Defined Benefit Supplement Account. Ms. Anderson did not testify she, or any of respondent's other employees, relied on any other information when respondent coded, the November 2012 payments as CC6 for special comp and reported them to the Defined Benefit Account.

22. Ms. Tanner testified that she consulted with Ms. Anderson about the off-salary schedule payments before Ms. Anderson gave her the March 8, 2012 memorandum detailing Ms. Anderson's conversation with Ms. Lentsch. Ms. Anderson told Ms. Tanner she wanted to contact CalSTRS to clarify how the payments should be coded. Ms. Tanner

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<sup>3</sup> Ms. Anderson testified that she utilized the CalSTRS Employers' Creditable Compensation Guide, Version Four, dated January 1, 2006, as part of her job to help guide respondent on how to "pay things." However, she had been advised by respondent's external payroll department in about 2011 that the Compensation Guide should not be used any longer. Ms. Anderson did not testify that she relied on the Compensation Guide to answer her reporting questions relating to the November 2012 off-salary schedule payments.



acknowledged that the payments were coded as noted in the March 8, 2012 memorandum. Ms. Tanner understood that there would be no further payments besides the two one-time off-salary schedule payments pursuant to the MOU and the Superintendent memorandum.

23. Ms. Anderson was copied on a letter to CalSTRS, dated January 15, 2016, from Deborah Clipper, a retiree who was formerly respondent's employee. Ms. Clipper wrote to CalSTRS in response to the Draft Audit Report. Ms. Clipper expressed concern that she could be potentially penalized on her retirement allowance and have to repay money to CalSTRS through no fault of her own.

24. Robert Gausman was respondent's employee before he retired in December 2013. He testified that he decided to retire in December 2013, based on projections he received from CalSTRS that showed that his retirement benefits would be adequate for his financial needs. He later learned that his retirement benefits might be decreased based upon CalSTRS' determination that respondent misreported the November 2012 payments. If he had known that his retirement benefits would be lower than he expected, he would have waited for several years to retire.

#### *Discussion*

25. The statutory language of Education Code section 22905, subdivision (b)(3), of the 2012 Teacher's Retirement Law is clear. Member and employer contributions shall be credited to the member's Defined Benefit Supplement Account for compensation that is payable for a specified number of times as limited by law, a collective bargaining agreement, or an employment agreement. The November 2012 payments were for a specified number of payments — one-time — and limited by a collective bargaining agreement or employment agreement. By failing to report the payments to the Defined Benefit Supplement Account, respondent did not comply with Education Code section 22905, subdivision (b)(3).

26. Equitable Estoppel. Respondent contends that CalSTRS should be equitably estopped from claiming that the one-time off-salary schedule payments paid in November 2012 must be credited to the Defined Benefit Supplement Account. This contention is without merit.

27. Estoppel is an equitable doctrine seeking to prevent a person or entity from profiting from its own wrongdoing. The requisite elements for equitable estoppel are the same whether applied against a private party or the government:

- (1) The party to be estopped must be apprised of the facts;
- (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended;

(3) the other party must be ignorant of the true state of facts; and

(4) he must rely upon the conduct to his injury.

(*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.) The burden of establishing the elements of equitable estoppel is on the party asserting estoppel. (Evid Code, § 500.)

28. Here, respondent has not established the necessary elements for equitable estoppel to apply. Ms. Anderson testified that she did not rely on the Employer Directive in determining which account respondent should report the November 2012 one-time off-salary schedule payments. Although she spoke with Ms. Lentsch on March 8, 2012, the evidence only established that Ms. Lentsch advised Ms. Anderson how to code the payments. Ms. Anderson prepared a detailed memorandum on the same day she spoke to Ms. Lentsch, which was prepared from the notes Ms. Anderson took during the telephone conversation. Ms. Anderson testified that she tried to put all the important information she received from Ms. Lentsch into the memorandum. Importantly, Ms. Anderson made no mention of Ms. Lentsch advising her to report the November 2012 payments to the Defined Benefit Account, which would have been an important fact considering that Ms. Anderson understood that the payments could be reported to either the Defined Benefit Account or the Defined Benefit Supplement Account if coded as advised by Ms. Lentsch. Ms. Anderson's March 8, 2012 memorandum is given greater weight than her testimony, as it was prepared closer in time to the events at issue, over six years ago. The evidence was not sufficient to establish that Ms. Lentsch advised Ms. Anderson to report the payments to the Defined Benefit Account. Even assuming the evidence did establish that Ms. Lentsch told respondent to report the payments to the Defined Benefit Account, the evidence did not sufficiently show that Ms. Lentsch intended that her advice be acted upon by respondent, as Ms. Anderson testified Ms. Lentsch was reluctant to memorialize the discussion about the payments. The evidence did not show that anyone else in respondent's payroll department relied upon any other CalSTRS directive in reporting the November 2012 payments.

29. Even assuming respondent established the four elements of equitable estoppel, which it has not, estoppel should only be applied to a governmental agency in rare circumstances. Here, the question is whether "the injustice which would result from a failure to uphold an estoppel [against CalSTRS is] of sufficient dimension to justify any effect upon public interest or policy which will result from the raising of such an estoppel." (*City of Long Beach v. Mansell, supra*, 3 Cal.3d at pp. 496-497.) CalSTRS has a fiduciary duty to preserve the retirement fund. In this case, CalSTRS has a fiduciary duty to preserve the retirement fund and to reverse any overpayment of pension benefits to which members are not legally entitled. To find an estoppel in this case would be adverse to public interest and policy, and the evidence did not establish that such a result is justified.

30. Retroactive Application of 2015 Regulations. Respondent also argues CalSTRS is attempting to retroactively apply certain creditable compensation regulations, adopted in 2015, because prior to the adoption of the regulations, no law or statute prohibited one-time off-schedule salary payments from being credited to the Defined Benefit Program. Respondent points out that as of January 1, 2015, pursuant to California Code of Regulations, title 5, section 27400, it was clear that one-time off-schedule payments are not defined as “salary” and that compensation that is paid a limited number of times is creditable to the Defined Benefit Supplement Account under California Code of Regulations, title 5, section 27602. Thus, respondent asserts that, prior to 2015 and the adoption of these regulations, there was no law or statute prohibiting one-time off-schedule salary payments from being credited to the Defined Benefit Account. Consequently, respondent posits CalSTRS’ finding that the payments at issue were to be reported to the Defined Benefit Supplement Account in 2012 was a retroactive application of these regulations.

However, the evidence did not establish CalSTRS applied the 2015 regulations in making its determination that respondent misreported the one-time off-schedule payments to the Defined Benefit Account. Indeed, the evidence was clear that CalSTRS relied upon the language in Education Code section 22905, subdivision (b)(3), as that section existed in 2012, to find that the payments at issue should have been reported to the Defined Benefit Supplement Account. As regulations are designed to do, the 2015 regulations merely interpreted the law that existed at that time; they did not change the law set forth in Education Code section 22905, subdivision (b)(3).

#### LEGAL CONCLUSIONS

1. Evidence Code section 500 provides that “[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting. “As in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including . . . the burden of persuasion by a preponderance of the evidence. . . .” (*McCoy v. Bd. of Retirement* (1986) 183 Cal. App. 3d 1044; Evid. Code, § 500.) Here, CalSTRS is seeking to establish that the payments at issue were misreported to the Defined Benefit Account. Therefore, CalSTRS has the burden of proof in this matter, except that respondent has the burden of proof as to its affirmative defenses. The preponderance of the evidence established CalSTRS correctly determined respondent misreported the one-time off-schedule salary payments paid in November 2012.

2. Education Code section 22905 governs how member and employer contributions on a member’s compensation are to be credited. In 2012, Education Code section 22905, subdivision (b)(3) provided:

Member and employer contributions, exclusive of contributions pursuant to Section 22951,<sup>4</sup> on a member's compensation under the following circumstances shall be credited to the member's Defined Benefit Supplement Account:

(3) Compensation that is payable for a specified number of times by law, a collective bargaining agreement, or an employment agreement.

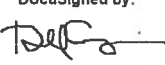
3. As set forth in the Factual Findings, respondent authorized 1.5 percent one-time off-salary schedule payments pursuant to the MOU and the April 11, 2012 Superintendent memorandum paid in November 2012. Those payments were made on a one-time basis, which required that they be reported to the Defined Benefit Supplement Account. Instead, respondent incorrectly reported the payments to the Defined Benefit Account, which did not comply with Education Code section 22905, subdivision (b)(3).

4. As set forth in Factual Findings 26 through 30, respondent did not meet its burden of establishing its affirmative defense of equitable estoppel and did not establish that CalSTRS retroactively applied 2015 regulations in its audit of respondent.

#### ORDER

The application of respondent Stanislaus County Office of Education is denied. CalSTRS' determination that the November 2012 1.5 percent one-time off-salary schedule payments were misreported as compensation creditable to the Defined Benefit Account is affirmed.

DATED: October 22, 2018

DocuSigned by:  
  
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DENA COGGINS  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>4</sup> Education Code section 22951, provides:

In addition to any other contributions required by this part, employers shall, on account of liability for benefits pursuant to Section 22717, contribute monthly to the Teachers' Retirement Fund 0.25 percent of the creditable compensation upon which members' contributions under this part are based.