

**ATTACHMENT A**

**THE PROPOSED DECISION**

**BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA**

**In the Matter of the Appeal of Retirement System Election  
for Misreported Service of:**

**STACIE THOMPSON and TWIN RIVERS UNIFIED SCHOOL**

**DISTRICT, Respondents**

**Case No. 2021-0235**

**OAH No. 2021060275**

**PROPOSED DECISION**

Marcie Larson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video conference and telephone on October 7, 2021, in Sacramento, California.

John Shipley, Senior Attorney, appeared on behalf of the California Public Employees' Retirement System (CalPERS).

William B. Tunick, Attorney at Law, represented respondent Twin Rivers School District (District).

Respondent Stacie Thompson (respondent Thompson) appeared at the hearing and represented herself.

Evidence was received, the record remained open for the parties to file closing briefs. On November 12, 2021, CalPERS and District submitted closing briefs. Reply briefs were filed on November 22, 2021.<sup>1</sup> The matter was submitted for decision on November 22, 2021.

## **ISSUES**

On August 11, 2008, respondent Thompson started her employment with the District as a certificated teacher. The District misreported respondent Thompson's employment with CalPERS. Her position should have been reported to California State Teachers' Retirement System (CalSTRS). The issue for Board determination is whether:

1. Whether respondent Thompson's misreported position with the District, effective August 11, 2008, is subject to Government Code section 20309.7;
2. Whether, pursuant to Government Code section 20160, respondent Thompson should be entitled to submit the Retirement System Elections for Misreported Service form (Misreported Service form) after the deadline contained in Government Code section 20309.7; and

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<sup>1</sup> Respondent Thompson did not file a closing or reply brief. CalPERS's closing brief, Exhibit 18 and reply brief, Exhibit 19 and Twin Rivers' closing briefs, Exhibit B and the reply brief, Exhibit C, were admitted as argument.

3. Whether all service and subsequent service of respondent Thompson for the misreported position with the District, effective August 11, 2008, should be reported to CalSTRS pursuant to the Misreported Service form submitted by respondent Thompson to CalPERS on September 23, 2019.

## **FACTUAL FINDINGS**

1. Respondent Thompson was a member of CalPERS through her employment as a classified employee with Grant Joint Union High School District, March 6, 2002, through October 16, 2004; and with Sacramento County School Service from February 16, 2005, through July 13, 2005.

2. On August 11, 2008, respondent Thompson started her employment with the District as a certificated teacher. At hearing, Ms. Thompson explained the District provided her an employee withholding form and a check list with items listed for both classified employees who were eligible to enroll in CalPERS and certificated employees who were eligible to enroll in CalSTRS.

As a certificated employee, respondent Thompson completed the questions on the form including whether she was a member of CalSTRS. Respondent Thompson wrote "no" in response, as she had not been a member of CalSTRS. The next portion of the form asked respondent Thompson to indicate if she elected to join CalSTRS. The form also states "If so, have them fill out an election form. If not Social Security will be withheld." Respondent Thompson left the question blank as to whether she wanted to join CalSTRS. The District did not provide respondent Thompson a CalSTRS election form.

3. Effective August 11, 2008, the District reported to CalPERS that respondent Thompson as an employee covered under CalPERS. However, this was incorrect. As a certificated employee, respondent Thompson should have been enrolled in and her employment reported to CalSTRS. Respondent Thompson did not elect to be placed in CalPERS.

### **January 16, 2018 Circular Letter Regarding Misreported Service**

4. Alexander Vazquez is a Staff Services Analyst who works on the Members Election Team for CalPERS. Mr. Vazquez testified at hearing that the Member Elections Team handles complex cases and inquiries from members and employers regarding reciprocity, as well as CalPERS and CalSTRS determinations.

5. Effective on January 1, 2018, through Senate Bill 525 (SB 525) Government Code section 20309.7 was created to address misreported service to CalPERS. Mr. Vazquez explained that in January 2018, CalPERS sent the circular letter to school employers concerning the new law. The January 16, 2018 Circular Letter provides, in relevant part:

**To: County Superintendent of Schools, Individual School Districts**

**Subject: Misreported Service: Senate Bill 525, Chapter 241, Statutes of 2017**

#### **Purpose**

The purpose of this Circular Letter is to inform you of the addition of Government Code section 20309.7 (Chapter 241, Statutes of 2017).

## **Scope**

This circular letter contains information for county superintendents of schools, school districts, charter schools, community college districts and any agency that employs persons who performed creditable service under the California State Teacher's Retirement System (CalSTRS) that was misreported to the California Public Employees' Retirement System (CalPERS).

## **Discussion**

Chapter 241, Statutes of 2017, added Government Code section 20309.7, which allows a person who was employed by a school employer on or before December 31, 2017, in a position that meets the definition of creditable service as defined under Section 22119.5 of the Education Code, and whose service in that position was misreported to CalPERS, to continue to retain membership in CalPERS and have his or her past and future service in that position to remain in CalPERS, if the person was not enrolled into CalSTRS for that same service and is not otherwise excluded from CalPERS membership.

## **Election**

A school member who was misreported to CalPERS and who has not yet retired from CalPERS may make an irrevocable election to have all their service, and

subsequent service, in that position reported to CalSTRS. In order for a member to have their service reported to CalSTRS, the member must complete the **Retirement System Election for Misreported Service** form.

This form can be downloaded from the CalPERS website, **[www.calpers.ca.gov](http://www.calpers.ca.gov)** under **Forms & Publications**. The **Retirement System Election for Misreported Service** form must be filed with CalPERS, with a copy to the school district and CalSTRS, on or before June 30, 2018. Any **Retirement System Election for Misreported Service** forms filed after June 30, 2018, will not be approved.

If your employee elects to have their misreported service reported to CalSTRS, it will be the employer's responsibility to make the necessary adjustments to the member's CalPERS account and report the service and contributions to CalSTRS.

No election or action is necessary if an employee who was misreported to CalPERS wishes to continue to have that service in that position remain in CalPERS.

CalPERS is not obligated to identify, locate, or notify persons who are eligible to make an election. Employers who are aware of employees who have been misreported to CalPERS for their creditable service under CalSTRS should inform those employees of their right to elect to have that service covered in CalSTRS.

[Bolding in original.]

## **Events in 2019**

6. In the summer of 2019, respondent Thompson received a Social Security statement. She began to question why Social Security was being withheld from her paycheck. She became aware that teachers did not typically pay into Social Security. Respondent Thompson began conducting her own research and learned that she could be enrolled in CalSTRS. Respondent Thompson decided to inquire with the District about whether her employment had been misreported to CalPERS. Respondent Thompson spoke with Ellie L Winter with the District's Human Resources Department and questioned whether she should be a member of CalSTRS.

7. On August 27, 2019, an employee from the District contacted Matthew Yee, an Analyst with CalPERS. The employee informed Mr. Yee that a certificated employee, later identified by CalPERS as respondent Thompson, who became employed with the District on August 11, 2008, may have had her employment misreported to CalPERS. Mr. Yee advised the District employee about SB 525, concerning misreported service. He explained that service prior to December 31, 2017, could remain reported to CalPERS. However, respondent Thompson would also have the option to elect to have her position reported to CalSTRS. He also explained that if respondent Thompson wished to have her position remain at CalPERS, no action was required.

8. On September 13, 2019, Ms. Winter contacted CalPERS "requesting correspondence for misreported service." Ms. Winter was provided the January 18, 2018 circular regarding SB 525. Mr. Yee also advised Ms. Winter that respondent



Thompson's Social Security may be impacted and that she should contact Social Security for more information.

9. On September 23, 2019, the District provided respondent Thompson with a Misreported Service form to complete. This was the first time the District had informed respondent Thompson that her service had been misreported to CalPERS and that her service should have been reported to CalSTRS. The Misreported Service form states:

Chapter 241, Statutes of 2017, (Senate Bill 525) added Government Code section 20309.7, allowing a person who was employed by a school employer on or before December 31, 2017, in a position that includes activities that meet the definition of creditable service under Section 22119.5 of the Education Code, and whose service in that position is misreported to CalPERS, to continue to retain membership in CalPERS and have his or her past and future service in that position credited under CalPERS, if the person was not enrolled into CalSTRS for that same service and is not otherwise excluded from membership in CalPERS.

A school member who performs service as described above and who has not yet retired from CalPERS may make an irrevocable election to have all of their service, and subsequent service, in that position subject to coverage by CalSTRS and excluded from coverage by CalPERS, if the member is not otherwise excluded from coverage by CalSTRS.

This election must be filed with CalPERS on or before June 30, 2018.

The box where respondent Thompson signed her name had the following information that she marked as applicable:

I have performed creditable service under section 22119.5 of the Education Code, on or before December 31, 2017, and have been notified that this service should have been reported to CalSTRS. I elect to have my creditable service under Section 22119.5 of the Education Code, that is currently being reported to CalPERS, reported to CalSTRS. I have read and understand the instructions in their entirety and I also understand this is an irrevocable election.

Respondent Thompson signed the Misreported Service form on September 23, 2019, and returned it to the District the same day to submit to CalPERS.

10. By letter dated October 2, 2019, CalPERS informed respondent Thompson that it approved her election to have all service and subsequent service for her misreported position with the District reported to CalSTRS. CalPERS also informed respondent Thompson that the District was “responsible for making the necessary adjustments to [her] CalPERS account and report the service and contributions to CalSTRS.”

11. Respondent Thompson was informed by the District that the cost to correct her misreported service would exceed \$100,000 and that she would be required to pay those costs. On October 15, 2019, respondent Thompson contacted CalPERS and stated that after review of cost to report her position to CalSTRS, she

decided to revoke her Misreported Service form and have her position remain reported to CalPERS. On October 16, 2019, Mr. Yee sent Ms. Winter an email concerning respondent Thompson's request to revoke her Misreported Service form. He informed Ms. Winter that CalPERS needed correspondence stating that respondent Thompson requests to revoke her Misreported Service form. She also needed to sign and date the correspondence, which the District could then submit to CalPERS.

12. By email dated October 18, 2019, and phone call on October 22, 2019, Ms. Winter informed Mr. Yee that respondent Thompson was still undecided about whether she wanted her service for her misreported position with the District to be reported to CalSTRS or remain reported at CalPERS. Ultimately, respondent Thompson decided not to revoke her Misreported Service form and to proceed with having her position reported to CalSTRS.

13. On October 31, 2019, Ms. Winter called Mr. Yee and asked if CalPERS could "redact [the] determination that SB 525 applies to" respondent Thompson's position. Ms. Winter explained that if the position is moved to CalSTRS, it will cost the District over \$100,000." Mr. Yee advised Ms. Winter that "any cost of moving position is between member, employer, and CalSTRS to determine." He also advised Ms. Winter that "positions that are subject to SB 525 Misreported service are reviewed on a case by case basis." Ms. Winter requested CalPERS conduct a "manager review."

14. Mr. Yee conducted a review of respondent Thompson's case with his manager. Mr. Yee contacted Ms. Winter and explained that based on the review, the determination was made that respondent Thompson's position with the District remained subject to SB 525. Respondent Thompson retained the option to keep her position reported to CalPERS or have the position reported CalSTRS. He again advised

that "any cost associated to moving position is between member, employer, and CalSTRS."

15. On February 28, 2020, Mr. Yee spoke to Ms. Winter and advised her that respondent Thompson had mailed correspondence to the District requesting a reason why her misreported position had not been rereported to CalSTRS. Ms. Winter explained that the District had "held off" on reporting the misreported position to CalSTRS "as they have been advised, by CalSTRS, fees of over \$100,000 would be assessed." Mr. Yee also spoke to the District's attorney who stated that misreported elections should only be valid if received on or before June 30, 2018.

16. On October 16, 2020, Mr. Yee spoke to respondent Thompson, who confirmed that she still wanted to have her misreported position with the District reported to CalSTRS. CalPERS also received correspondence from CalSTRS, which verified respondent Thompson's position is creditable to CalSTRS and requires mandatory membership. The District still had not reported respondent Thompson's position to CalSTRS pursuant to the Misreported Service form she signed on September 23, 2019.

17. Jennifer Rocco, Assistant Division Chief, Membership Services, Employer Account Management Division of CalPERS, sent a letter dated November 16, 2020, to the District. Ms. Rocco outlined the process in which CalPERS determined that the District misreported respondent Thompson's service to CalPERS. Ms. Rocco explained:

As directed in CalPERS Circular Letter #200-007-18, employers were obligated to inform employees who have been misreported to CalPERS for their creditable service under CalSTRS, of their right to elect to have that service

covered in CalSTRS. As stated in Gov. Code section 20309.7, CalPERS "shall be under no obligation to identify, locate, or notify persons who are eligible to make an election." An employee who was properly identified and informed of being misreported, must have the Retirement System Election for Misreported Service form, filed with CalPERS with a copy to the school district and CalSTRS, on or before June 30, 2018. No election or action is necessary if an employee who was misreported to CalPERS wishes to continue to have that service in that position remain in CalPERS.

On September 23, 2019, Stacie Thompson elected to have all service, and subsequent service for this misreported position with Twin Rivers Unified School District, effective August 11, 2008, to be reported to CalSTRS. Retirement System Elections for Misreported Service received after the deadline will be reviewed on a case by case basis. Gov. Code section 20160 of the PERL, states in part: ". . . the board (Cal PERS) shall correct all actions taken as a result of errors or omissions of . . . any contracting agency . . ." The law further clarifies that the "corrections of error or omissions . . . shall be such that the status, rights, and obligations . . . are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time."

Twin Rivers Unified School District did not identify and notify the employee that she had misreported service to CalPERS and was eligible for the Retirement System Elections for Misreported Service within the allowable timeframe. Therefore, the misreported position with the Twin Rivers Unified School District, effective August 11, 2008, remains subject to Gov. Code section 20309.7, since the employee would have been eligible to complete the election if she would have been notified properly. The employee retains the right to elect to have the position reported to the appropriate retirement system, CalSTRS. Any cost associated to rereporting the position will be resolved between the employee, employer, and CalSTRS.

Due to this determination:

- All service, and subsequent service for the misreported position with Twin Rivers Unified School District, effective August 11, 2008, shall be reported to CalSTRS.

The District was given until December 16, 2020 to file an appeal of CalPERS's determination.

18. By letter dated November 20, 2020, the District requested an extension until January 15, 2021, to file an appeal. CalPERS granted the request. By letter dated December 14, 2020, the District requested reconsideration of CalPERS's determination. The District contended that respondent Thompson failed to elect membership in CalSTRS at the start of her employment, that the District was not obligated to inform

employees of Government Code section 20309.7, and that respondent Thompson failed to meet the June 30, 2018 deadline to have her misreported service corrected. As a result, her request should have been denied.

19. By letter dated December 20, 2020, CalPERS denied the District's request for reconsideration. On January 13, 2021, the District filed an appeal. By letter dated January 15, 2021, CalPERS confirmed receipt of the appeal.

20. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

## **Arguments**

21. CalPERS contends that the "Legislature enacted California Government Code section 20309.7 to allow school employers, such as [the District], to remedy situations in which they misreported a certificated position to CalPERS. Section 20309.7 provides the employee with the option of transferring his/her past and future service credit to CalSTRS, or in the alternative, keeping the past and future service credit with CalPERS."

22. CalPERS contends that the District did not notify respondent Thompson of her rights under Government Code section 20309.7 until late August 2019, and that respondent Thompson "quickly submitted an election on September 23, 2019, to have the erroneously reported service credit transferred to CalSTRS."

23. CalPERS also argued that Government Code section 20160 "specifically allows CalPERS to correct errors or omissions of any active or retired member." CalPERS contends that three errors were made: "First, [the District] did not correctly

report Thompson to CalSTRS. Second, [the District] did not inform her of her opportunity to make an election under Section 20309.7 until August 2019. Third, Thompson made the mistake of not submitting her request to transfer her service credit under Section 20309.7 prior to the deadline of June 30, 2018." CalPERS contends that Government Code section 20160 "not only provides CalPERS the right to correct Thompson's mistake, it mandates that it correct [the District's] mistakes."

24. The District contends that the issue of whether respondent Thompson's misreported position is subject to Government Code section 20309.7, "misses the point." The District contends that [w]hether or not an employee's service made them eligible to make an election under Section 20309.7 is only relevant if they sought to make a timely election." Respondent Thompson's election was untimely and so she is not eligible under Government Code section 20309.7. The District also contends that "even assuming her service made respondent [Thompson] eligible to make an election under Section 20309.7, the failure to comply with the statutory deadline invalidates any such election."

25. The District also contends that Government Code section 20160 does not apply because the District has no duty to notify employees of Government Code section 20309.7 so there is no error or omission to remedy pursuant to Government Code section 20160. The District contends that respondent Thompson's "service and subsequent service for her position with the District, effective August 11, 2008, should not be reported to CalSTRS." The District further argues that if respondent Thompson's "position with the District made her eligible to make a timely election under Section 20309.7, her untimely filing of the election form after the statutory deadline precluded the transfer of service to CalSTRS."



## **Analysis**

26. The evidence established that respondent Thompson's misreported position with the District, effective August 11, 2008, is subject to Government Code section 20309.7. When respondent Thompson started her employment with the District, her certificated position required membership in CalSTRS. The District failed to provide respondent Thompson with the form to complete her membership in CalSTRS. Without respondent Thompson's authorization, the District reported her employment to CalPERS, which was a mistake.

The Legislature recognized and addressed a problem with school districts misreporting certificated employees to CalPERS rather than CalSTRS as required. In response, Government Code section 20309.7 was enacted to allow effected employees to choose whether to stay in CalPERS or transfer their service to CalSTRS. In January 2018, CalPERS informed the District of Government Code section 20309.7, which allows a person who was employed by a school employer on or before December 31, 2017, in a position that meets the definition of creditable service as defined under Section 22119.5 of the Education Code, and whose service in that position was misreported to CalPERS, to either keep their service with CalPERS or have their services credited to CalSTRS.

The District was instructed to inform effected employees of their right to elect to have that service covered in CalSTRS. Despite this information, the District failed to inform respondent Thompson of her rights to have her misreported position reported to CalSTRS prior to the June 30, 2018 deadline for submitting the Misreported Service form.

27. The District's contention that it had no obligation to inform respondent Thompson of her rights is without merit. The District had an obligation on August 11, 2008, to enroll her in CalSTRS. It failed to do so. The District was in the best position to discover the initial mistake and to correct the mistake in a timely manner. It failed to do so. The District was put on notice by CalPERS regarding Government Code section 20309.7, and again had an opportunity to identify employees whom the District had erroneously placed in CalPERS. Again, the District failed to do so.

As a result of the District's repeated failures, respondent Thompson was not made aware of her rights under Government Code section 20309.7 until September 23, 2019, when she was provided the Misreported Service form from the District. Over one year after the June 30, 2018 deadline. As a result, CalPERS and respondent Thompson established that pursuant to Government Code section 20160, respondent Thompson should be entitled to submit the Misreported Service form after the deadline contained in Government Code section 20309.7, and to have her request approved.

28. Additionally, CalPERS and respondent Thompson established that all service and subsequent service of respondent Thompson for the misreported position with the District, effective August 11, 2008, should be reported to CalSTRS pursuant to the Misreported Service form submitted by respondent Thompson to CalPERS on September 23, 2019.

## **LEGAL CONCLUSIONS**

1. CalPERS is governed by the provisions of the Public Employees' Retirement Law (PERL), Government Code section 20000, et seq. In accordance with

Government Code section 20134 of the PERL, the hearing in this matter was conducted under the Administrative Procedure Act (APA), Government Code section 11500 et seq.

2. As in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of going forward and the burden of persuasion by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) CalPERS and respondent Thompson bear the burden of proof in this matter, as it is CalPERS and respondent Thompson who assert that an error was made by the District and respondent Thompson is entitled to relief under Government Code section 20160. (Evid. Code, § 500.)

3. Pursuant to the Election to Retain Coverage provision in Government Code section 20309, provides:

(a) A member of the system described in subdivision (b) who subsequently is employed to perform service subject to coverage by the Defined Benefit Program of the State Teachers' Retirement Plan, may elect to retain coverage by this system for that subsequent service. An election to retain coverage under this system shall be submitted in writing by the member to the system on a form prescribed by the system, and a copy of the election shall be submitted to the State Teachers' Retirement System, within 60 days after the member's date of hire to perform service that requires membership in the Defined Benefit Program of the State Teachers' Retirement Plan. A member who elects to retain coverage under this system pursuant to this section

shall be deemed to be a school member while employed by a school employer.

(b) This section shall apply to a member of the system who either (1) was employed by a school employer, the Board of Governors of the California Community Colleges, or the State Department of Education within 120 days before the member's date of hire to perform service that requires membership in the Defined Benefit Program of the State Teachers' Retirement Plan or (2) has at least five years of credited service under this system.

(c) Any election made pursuant to this section shall become effective as of the first day of employment in the position that qualified the member to make an election.

4. Government Code section 20309.7 provides:

(a) A person who was employed by a school employer before January 1, 2018, in a position that includes activities that meet the definition of creditable service under Section 22119.5 of the Education Code, and whose service in that position was reported to this system, shall continue to retain membership in this system and have his or her past and future service in that position credited to this system, if the person was not enrolled into the State Teachers' Retirement Plan for that same service and is not otherwise excluded from membership in this system.

(b)(1) A school member who performs service as described in subdivision (a), and who has not yet retired from this system, may elect to have all of their service, and subsequent service, in that position subject to coverage by the State Teachers' Retirement System and excluded from coverage by this system, if the member is not excluded from coverage by that system.

(2) If an election is made pursuant to this subdivision, all of the following shall apply:

(A) The election shall be made in writing on a form prescribed by this system and filed with this system on or before June 30, 2018, and copies of the election form shall be filed with the school employer and the State Teachers' Retirement System.

(B) A school member not subject to the California Public Employees' Pension Reform Act of 2013 shall not be subject to that act in the State Teachers' Retirement System.

(C) A school member subject to the California Public Employees' Pension Reform Act of 2013 shall be subject to that act in the State Teachers' Retirement System.

(3) The board shall be under no obligation to identify, locate, or notify persons who are eligible to make an election pursuant to this subdivision.

(4) An election made pursuant to this subdivision shall be irrevocable.

(c) A member described in subdivision (a) who becomes employed by the same or a different employer in a new position performing creditable service under Section 22119.5 on or after January 1, 2018, shall not have his or her service in that new position reported to this system unless that service is otherwise eligible for coverage by this system.

(d) This section shall not apply to a person who has made a valid election pursuant to either Section 20309 or 20309.5.

5. Education Code section 22119.5 provides in relevant part:

(a) "Creditable service" means any of the following activities performed for an employer in a position requiring a credential, certificate, or permit pursuant to this code or under the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges or under the provisions of an approved charter for the operation of a charter school for which the employer is eligible to receive state apportionment or pursuant to a contract between a community college district and the United States Department of Defense to provide vocational training:

(1) The work of teachers, instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupation programs, child care centers, and prekindergarten programs pursuant to Section 22161.

[¶...¶]

(b) "Creditable service" also means the work of superintendents of California public schools.

(c) The board shall have final authority for determining creditable service to cover any activities not already specified.

6. Government Code section 20160 provides for the correction of errors and omissions made by members, employers, and CalPERS. Government Code section 20160 provides:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the

correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164.



(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

7. As set forth in the Factual Findings as a whole, respondent Thompson's misreported position with the District, effective August 11, 2008, is subject to Government Code section 20309.7.

8. Government Code section 20160 requires CalPERS to correct the errors and omissions made by members, employers, and CalPERS. As set forth in the Factual Findings as a whole, the District erroneously placed respondent Thompson in CalPERS and failed to notify her of her right to make an election under Government Code section 20309.7 until September 2019. Thereafter she sought correction of the District's mistakes within a reasonable time after discovery of her right to make the correction.

CalPERS correctly applied Government Code section 20160 in accepting respondent Thompson's Misreported Service form and determining that all service and subsequent service of respondent Thompson for the misreported position with the District, effective August 11, 2008, should be reported to CalSTRS pursuant to the Misreported Service form submitted by respondent Thompson to CalPERS on September 23, 2019.

## **ORDER**

The appeal of respondent Twin Rivers School District is DENIED.

DATE: December 14, 2021

  
Marcie Larson (Dec 14, 2021 14:03 PST)

MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings

