

Office of Audit Services



CalPERS

Public Agency Review

Alliance of Schools for Cooperative Insurance Programs

**Employer Code: 1664
CalPERS ID: 1756428867
Job Number: P11-022**

August 2013



California Public Employees' Retirement System
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August 6, 2013

Employer Code: 1664
CalPERS ID: 1756428867
Job Number: P11-022

Alliance of Schools for Cooperative Insurance Programs
Fritz J. Heirich, Chief Executive Officer
18550 Bloomfield Avenue
Cerritos, CA 90703

Dear Mr. Heirich:

Enclosed is our final report on the results of the public agency review completed for the Alliance of Schools for Cooperative Insurance Programs. Your written response, included as an appendix to the report, indicates disagreement with Finding 1, and further states your agency has substantially complied with statutory requirements as related to publicly available pay schedules.

We reviewed information contained in your agency's response pertaining to Finding 1, and our recommendation remains as stated in the report; however, we have included language to Finding 1 pertaining to information your agency provided to CASD subsequent to the audit fieldwork. In accordance with our resolution policy, we have referred the finding identified in the report to the appropriate division at CalPERS, which will work with your agency on resolution of the issue. It was our pleasure to work with your agency and we appreciate the time and assistance provided during this review.

Sincerely,

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

Enclosure

cc: Risk and Audit Committee Members, CalPERS
Peter Mixon, General Counsel, CalPERS
Karen DeFrank, Chief, CASD, CalPERS
Anthony Suine, Chief, BNSD, CalPERS
Lynn Truong, Chief Financial Officer, ASCIP
Frances Meraz, Retirement Systems Coordinator, LACOE
Robert Feldhake, General Counsel, ASCIP

ALLIANCE OF SCHOOLS FOR COOPERATIVE INSURANCE PROGRAMS

TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
Results in Brief.....	1
Agency Background.....	1
Scope.....	2
Office of Audit Services Review Results	3
Finding 1: Payrate was not listed in a public pay schedule	3
Conclusion	4
CalPERS Background.....	Appendix A
Objectives	Appendix B
Agency's Response	Appendix C

ALLIANCE OF SCHOOLS FOR COOPERATIVE INSURANCE PROGRAMS

RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the Alliance of Schools for Cooperative Insurance Programs (Authority) enrolled individuals, member compensation, retirement information and other documentation for individuals included in test samples. The detail of the finding is noted in the Results section beginning on page three of this report. Specifically, the following finding was noted during the review:

- Payrate was not listed in a public pay schedule.

This review did not include the determination as to whether the Authority is a “public agency” (as that term is used in the California Employees’ Retirement Law), and OAS therefore expresses no opinion or finding with respect to whether the Authority is a public agency or whether its employees are employed by a public agency.

AUTHORITY BACKGROUND

The Authority is a public agency joint powers authority which provides property/liability, workers compensation, and health benefits insurance coverage to public educational institutions including school districts and community colleges in the State of California. The Authority also offers an extensive array of services in risk management, safety and loss control, health and wellness, and claims and litigation management, to support and mitigate losses.

Formed in 1980, as a joint purchase pool, the Authority became a self-funded risk sharing pool in 1985. The Authority’s Executive Committee consists of thirteen members and thirteen alternates who represent the risk category of Community College districts, K-12 districts, K-8 districts, Charter Schools, and subsidiary Joint Powers Authority school districts. The Executive Committee is responsible for providing over-all leadership, developing long-range goals and supporting policies to guide the direction of the organization and its staff.

The Authority contracted with CalPERS effective May 1, 1995, to provide retirement benefits, and effective August 1, 1995, to provide health benefits for local miscellaneous employees.

All contracting public agencies, including the Authority, are responsible for the following:

ALLIANCE OF SCHOOLS FOR COOPERATIVE INSURANCE PROGRAMS

- Determining CalPERS membership eligibility for its employees.
- Enrolling employees into CalPERS upon meeting membership eligibility criteria.
- Enrolling employees in the appropriate membership category.
- Establishing the payrates for its employees.
- Approving and adopting all compensation through its governing body in accordance with requirements of applicable public meeting laws.
- Publishing all employees' payrates in a publicly available pay schedule.
- Identifying and reporting compensation during the period it was earned.
- Ensuring special compensation is properly identified and reported.
- Reporting payroll accurately.
- Notifying CalPERS when employees meet Internal Revenue Code annual compensation limits.
- Ensuring the employment of a retired annuitant is lawful and reinstating retired annuitants that work more than 960 hours in a fiscal year.

SCOPE

As part of the Board approved plan for fiscal year 2012/2013, the OAS reviewed the Authority's payroll reporting and member enrollment processes as these processes relate to the Authority's retirement contract with CalPERS. The review period was limited to the examination of sampled records and processes from January 1, 2008, through December 31, 2011. The on-site fieldwork for this review was conducted on February 5, 2012, through February 9, 2012. The review objectives and a summary of the procedures performed are listed in Appendix B.

ALLIANCE OF SCHOOLS FOR COOPERATIVE INSURANCE PROGRAMS

OFFICE OF AUDIT SERVICES REVIEW RESULTS

Finding 1: Payrate was not listed in a public pay schedule.

Recommendation:

The Authority must ensure that reported payrates are set forth in a publicly available pay schedule and meet the definition of payrate under the Public Employees' Retirement Law. Only compensation earnable, as defined under Government Code Section 20636 and corresponding regulations, can be reported to the California Employees' Retirement System (CalPERS) and considered in calculating retirement benefits. Additionally, the Authority must ensure that all employees' salaries are properly reviewed, authorized and approved by the Authority's Executive Committee in accordance with public meeting laws.

The Authority should work with CalPERS Customer Account Services Division (CASD) to ensure all employee positions and corresponding payrates are listed on a publicly available pay schedule pursuant to California Code of Regulations Section 570.5.

Condition:

OAS reviewed reported payrates during fiscal years January 1, 2008, through December 31, 2011 and found the Chief Executive Officer's (CEO) position and payrate were not listed on a public pay schedule pursuant to Government Code Section 20636 and California Code of Regulations Section 570.5.

The Authority provided OAS with a copy of the Chief Executive Officer's (CEO) employment agreement during the review period. OAS found the employment agreement included the CEO's payrate and was approved and adopted by the Authority's Executive Committee in open session. Subsequent to the fieldwork, the Authority provided CASD with a copy of its pay schedule for fiscal year 2012/2013, effective November 1, 2012, which included the CEO's position and payrate.

Criteria:

Government Code: § 20049, § 20160, § 20636(d) § 20636(e)(1), § 20636(e)(2)
California Code of Regulations: § 570.5

ALLIANCE OF SCHOOLS FOR COOPERATIVE INSURANCE PROGRAMS

CONCLUSION

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

The findings 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 Authority 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, California Code of Regulations.

Respectfully submitted,

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

Date: August 2013

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Diana Thomas, CIA, CIDA, Audit Manager
Terry Heffelfinger, Auditor
Edward Fama, Auditor

**ALLIANCE OF SCHOOLS FOR COOPERATIVE
INSURANCE PROGRAMS**

APPENDIX A

BACKGROUND

ALLIANCE OF SCHOOLS FOR COOPERATIVE INSURANCE PROGRAMS

BACKGROUND

California Public Employees' Retirement System

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

CalPERS CASD manages contract coverage for public agencies and receives, processes, and posts payroll information. In addition, CASD provides eligibility and enrollment services to the members and employers that participate in the CalPERS Health Benefits Program, including state agencies, public agencies, and school districts. CalPERS Benefit Services Division (BNSD) sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits.

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

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

**ALLIANCE OF SCHOOLS FOR COOPERATIVE
INSURANCE PROGRAMS**

APPENDIX B

OBJECTIVES

ALLIANCE OF SCHOOLS FOR COOPERATIVE INSURANCE PROGRAMS

OBJECTIVES

The objectives of this review were limited to the determination of:

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

This review covers the period of January 1, 2008, through December 31, 2011. This review did not include the determination as to whether the Authority is a "public agency" (as that term is used in the California Employees' Retirement Law), and OAS therefore expresses no opinion or finding with respect to whether the Authority is a public agency or whether its employees are employed by a public agency.

SUMMARY

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

- ✓ Reviewed:
 - Provisions of the Contract and contract amendments between the Authority and CalPERS
 - Correspondence files maintained at CalPERS
 - Authority Executive Committee minutes and resolutions
 - Authority written labor policies and agreements
 - Authority salary, wage and benefit agreements including applicable resolutions
 - Authority personnel records and employee hours worked records
 - Authority payroll information including Summary Reports and CalPERS listings
 - Other documents used to specify payrate, special compensation, and benefits for all employees
 - Authority ordinances as necessary
 - Various other documents as necessary
- ✓ Reviewed Authority payroll records and compared the records to data reported to CalPERS to determine whether the Authority correctly reported compensation.

ALLIANCE OF SCHOOLS FOR COOPERATIVE INSURANCE PROGRAMS

- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Authority 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 Authority's governing body in accordance with requirements of applicable public meeting laws.
- ✓ Reviewed CalPERS listing reports to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the Authority's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Authority's enrollment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ Reviewed the Authority's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Authority's affiliated entities to determine if the Authority shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Authority or by the affiliated entity.
- ✓ Reviewed the Authority's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.
- ✓ Reviewed health records to determine whether the Authority properly enrolled eligible individuals into CalPERS Health Benefits Program.

**ALLIANCE OF SCHOOLS FOR COOPERATIVE
INSURANCE PROGRAMS**

APPENDIX C

AGENCY RESPONSE

Note: The Authority provided attachments to its response that were intentionally omitted from this appendix. The names of the individuals mentioned in the Authority's response were redacted from the response.

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June 28, 2013

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

Re: Alliance of Schools for Cooperative Insurance Programs
Employer Code No. 1664
CalPERS ID 1756428867
Job Number P11-022

Dear Ms. Junker:

By way of introduction, we serve as General Counsel to the Alliance of Schools for Cooperative Insurance Programs, a California joint powers authority ("ASCIP"). ASCIP has received and reviewed your correspondence of May 6, 2013, forwarding a draft report for the period from January 1, 2008 to December 31, 2011. The draft report reflects one proposed Finding as to a single employee, _____, the former Chief Executive Officer of ASCIP, and indicates that her pay rate was not listed on a "public pay schedule." The time period for a response was extended to June 30, 2013, as confirmed by _____ ASCIP's Chief Financial Officer, and thank you for that courtesy. On behalf of ASCIP, we wanted to respond to the draft report, and respectfully express disagreement with the proposed Finding. Per our discussion with _____ we have emailed him an electronic copy, and are mailing hard copies to everyone else today.

ASCIP is a joint powers authority formed under Government Code § 6500 *et seq.* It is comprised solely of public educational agencies throughout the State of California. ASCIP provides much needed services and facilities for liability, workers' compensation, health benefits, risk management, safety programs, loss control and ancillary and related services to meet the needs of its many public agency members. ASCIP is governed by a thirteen (13) person Executive Committee as elected by and from the members. The Executive Committee which conducts meetings and acts in compliance with the provisions of the Ralph M. Brown Act (the "Brown Act"), including posting of Agendas and the extension of opportunities to members of the public to attend, observe and offer remarks as to matters pertaining to ASCIP's activities. As a public agency, ASCIP is also properly responsive to all requests under the California Public Records Act ("CPRA").

At meetings of the Executive Committee, while an opportunity is always afforded for presentations or comments from the public, and the public invited to attend all meetings, the reality is ASCIP does not have public attendance except on the rarest of occasions. Instead, being effectively "owned by its members" consistent with the structure of a joint powers authority, the

members are the "relevant public" who attend and assure that the affairs of ASCIP are in good order. To the extent the general public seeks access to ASCIP records, it is provided through an opportunity to review documents at meetings of the Executive Committee or any other standing committee, through access to any member of the public visiting ASCIP, and through the CPRA on a 10-day compliance basis.

All compensation agreements and pay rates, just like the Amendments to contract provided with this letter, are freely available and subject to public inspection under Section 6254.8 of the CPRA. ASCIP has had no issues over its many years in existence, and no issues during the audit period, of failing to provide access by any member of the public to employment contracts or agreements so as to allow public inspection and awareness of payrates. The same is true as to ASCIP budgets, which, in Section 3, Operating Expenses, break out salaries by administrative/technical, clerical and total salaries, commenting that the aggregate salaries reflect a given number of administrative as opposed to clerical positions. All budgets are not only approved in Open Session, affording any member of the public an opportunity to ask questions or to obtain information as to the salaries paid by ASCIP, but are also public records available under CPRA.

For purposes of addressing the proposed Finding, and specifically as to the suggestion that a payrate for _____ is not listed in a "public pay schedule" for the period from January 1, 2008 through December 31, 2011, the key provisions are Government Code § 20636 ("Section 20636") and 2 California Code of Regulations § 570.5 ("Section 570.5"). While Section 20636 largely addresses; what constitutes and what does not qualify as compensation for purposes of determining the applicable payrate for the Public Employees' Retirement System, Section 20636(d) specifically states:

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

(Government Code §20636(d).) (Emphasis added.)

Section 570.5(a) provides that for purposes of determining the amount of "compensation earnable," an employee's payrate shall be limited to the amount listed on a pay schedule that meets all of the following:

- (1) Has been duly approved and adopted by the employer's governing body in accordance with applicable public meeting law requirements;
- (2) Identifies the position title for every employee position;
- (3) Shows the payrate for each identified position;
- (4) Indicates the time base (e.g. hourly, monthly, annually, etc.);

- (5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- (6) Indicates the effective date and date of any revisions;
- (7) Is retained by the employer and available for public inspection for not less than five years; and
- (8) Does not reference another document in lieu of disclosing the payrate.

(2 CCR §570.5(a).)

Moreover, where an employer has not met all of the requirements, Section 570.5(b) allows the Board of Administration for the Public Employees' Retirement System to determine an employee's correct payrate by taking into consideration all relevant information, including:

Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer.

(2 CCR §570.5(b).)

In reviewing the draft audit report, ASCIP is charged with assuring that payrates are set forth in a publicly available schedule "or similar documents," and satisfy operative definitions under the retirement statutes. In this case, there is no question ASCIP is in substantial compliance with the requirements of Section 20636 and Section 570.5. worked diligently for many years, and with great success, in building ASCIP and taking care of the needs of public agency members. Her compensation base was memorialized in a written Agreement for Chief Executive Officer (the "Agreement"), with all changes documented by later Amendments (the "Amendments"), every one of which was addressed in Open Session. All compensation schedules for were, either by reason of Open Session meetings of the Executive Committee or pursuant to the CPRA, always available for public access and review.

At Executive Committee meetings on May 24, 2007, June 26, 2008, May 28, 2009, and June 24, 2010, the evaluation of the in her position as Chief Executive Officer was agendized, with the reporting out of any evaluation and further discussion of adjustments to compensation occurring in Open Session. In the course of preparing this response to the proposed Finding, it was discovered for the first time that the Minutes for the referenced meetings do not accurately reflect a post-Closed Session discussion of the review and then a discussion-decision as to pay adjustments for in Open Session. We attended each of the meetings referenced, we know that occurred, and we have reaffirmed that with members of the Executive Committee in attendance. In each instance, in Open Session, compensation was discussed and amended, and we were directed by the Executive Committee to prepare an Amendment to the then existing Agreement, documenting changes to the payrate for . . . Acting on direction received in

Open Session, and for the time period covered by the proposed Finding, formal Amendments were created and duly signed by the then-President of the Executive Committee as well as by [redacted] and retained as public records as well.

With this response, we have appended copies of these Amendments, specifically Amendment Nos. 8, 9, 10 and 11 to the Agreement for Chief Executive Officer. These are and always have been public records of ASCIP, and "publicly available documents" setting forth payrate information in compliance with Section 26036(a) and Section 570.5(a). Each Amendment sets forth, among other things, the pay, time base and compensation benefits for [redacted]. For the June 1, 2007 through May 31, 2008 timeframe, Section 3 of Amendment No. 8 reflects [redacted] payrate. Referring to Amendment No. 9, for the June 1, 2008 through May 31, 2009 timeframe, Section 3 reflects an adjustment of that payrate by \$15,000.00. Subsequent Amendments for June 1, 2009 through May 31, 2010, and June 1, 2010 through the conclusion of [redacted] relationship with ASCIP, involved no increase in her pay. We have also attached copies of the Amended Minutes for the Executive Committee meetings on May 24, 2007, June 26, 2008, May 28, 2009, and June 24, 2010, as acted upon by the Executive Committee on June 27, 2013, also in Open Session, which now accurately reflect the discussion and action taken by the Executive Committee in Open Session on [redacted] payrate on May 24, 2007, June 26, 2008, May 28, 2009, and June 24, 2010. Similar to the notice-and-correction process available under the Brown Act, the Executive Committee, in Open Session on June 27, 2013, corrected the prior Minutes to reflect what occurred in the prior meetings.

As set forth in the publicly available Amendments approved in Open Session, pay at ASCIP was structured on the basis of earned compensation consistent with Section 20636 and Section 570.5, and properly reported to CalPERS. The Executive Committee, on an annual basis, not only did an evaluation of [redacted] but then in Open Session discussed and approved any adjustments to her compensation and benefits, directed that they be memorialized, which Amendments were then signed as authorized by the President and made available for public review. Respecting the efforts of CalPERS to assure only properly considered compensation is employed for retirement benefits, there is no question but that [redacted] was a valued employee, evaluated on an annual basis, compensation and benefit changes directed after consideration by the full Executive Committee, direction given to prepare Amendments, Amendments to her Chief Executive Officer Agreement prepared and then countersigned as authorized by the President of ASCIP, and all pay-based documents retained, along with budgets, in the public records of ASCIP which were publicly available to anyone, at any time, both in Open Session and later.

Accordingly, it is respectfully submitted that ASCIP has substantially complied with the statutory requirements as it relates to reporting [redacted] payrate on a public pay schedule. The requirements of review and appropriate action by the Executive Committee in Closed and Open Session have been confirmed. Equally true is that the compensation base was properly documented in Amendments to the Chief Executive Officer Agreement. All such Agreements and Amendments are public records which are publicly available. Further, at all meetings of the Executive Committee where the evaluation of the Chief Executive Officer and any discussion of benefits or compensation was present, members of the public were afforded the opportunity to not only comment in Open

Session, but to follow up with CPRA requests as to any later signed Amendments confirming direction received from the Executive Committee. There is also no question but that earned the compensation she received as a hard working, diligent and responsible Chief Executive Officer for a large and demanding organization. Given that she is presently retired from ASCIP, it is respectfully requested that her compensation continue to be based on the properly documented Amendments, all publicly accessible, for compensation she more than earned during her tenure, and that no further action be taken or required by reason of the proposed Finding.

Best regards.

Yours very truly,


Robert J. Feldhake

RJF:KEM:sd

Attachments: (i) Amendment No. 8 to Agreement (2007-2008);
(ii) ASCIP Executive Committee Meeting – Amended Minutes (May 24, 2007);
(iii) Amendment No. 9 to Agreement (2008-2009);
(iv) ASCIP Executive Committee Meeting – Amended Minutes (June 26, 2008);
(v) Amendment No. 10 to Agreement (2009-2010);
(vi) ASCIP Executive Committee Meeting – Amended Minutes (May 28, 2009);
(vii) Amendment No. 11 to Agreement (2010-2011);
(viii) ASCIP Executive Committee Meeting – Amended Minutes (June 24, 2010).

cc: Anthony Suine, Chief, BNS, CalPERS
(w/attachments)

Karen DeFrank, Chief, CASD, CalPERS
(w/attachments)

Edward Fama, Office of Audit Services, CalPERS
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