

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Respondent Maria Rosa Rivera (Respondent Rivera) applied for disability retirement on the basis of orthopedic and/or neurologic conditions. By virtue of her employment as a Special Education Assistant with Respondent Los Angeles Unified School District (LAUSD), Respondent Rivera was a state miscellaneous member of CalPERS.

Despite proper notice being given to LAUSD, Respondent Rivera and her counsel of record, no appearances were made at the hearing by respondents or their counsel. Due to the failure to appear at the hearing, Respondent Rivera and LAUSD's defaults were taken by the Administrative Law Judge (ALJ) pursuant to Government Code section 11520. CalPERS made arguments and introduced documentary evidence, including four medical reports, at the hearing on January 30, 2014.

As part of CalPERS' review of her medical condition, Respondent Rivera was examined by two Independent Medical Examinators (IMEs). Independent Medical Examiner H. Harlen Bleeker, M.D. (IME Bleeker), an Orthopedic Surgeon, examined Respondent Rivera. IME Bleeker interviewed Respondent Rivera and obtained a summary of her medical history, treatment, work history, recreational activities and present complaints. IME Bleeker also reviewed Respondent Rivera's prior medical records and performed a comprehensive physical exam. At the time of the examination, IME Bleeker noted that there was "not much in the way of abnormality as far as her x-rays or CAT scan is concerned. I feel that there is a significant amount of exaggeration in her complaints.... I feel the applicant is able to perform her work within the job requirements as specified."

Subsequent to the IME examination and report, CalPERS provided IME Bleeker with additional medical records (that were approximately two inches thick). IME Bleeker issued a supplemental IME report on December 5, 2012, and noted that he did not find anything in the subsequent records that changed his opinion that Respondent Rivera is able to continue her regular work without any restrictions.

Independent Medical Examiner Robert Moore, M.D. (IME Moore) performed a neurologic exam of Respondent Rivera and also issued an IME report. IME Moore reviewed Respondent Rivera's medical records, a written description of her medical history and injuries, and a job description. IME Moore noted no objective findings to support a disc herniation and believed that Respondent Rivera could perform her specific job duties.

Subsequent to IME Moore's initial examination and report, CalPERS provided him with additional medical records. IME Moore issued a supplemental IME report dated January 22, 2013. IME Moore noted that he did not find anything in the subsequent records that changed his opinion. IME Moore noted that Respondent Rivera does possess functional limitations, but the limitations are such that they would not preclude Respondent Rivera from performing her usual and customary job duties as a Special Education Assistant.

The ALJ found IME Bleeker and IME Moore qualified to render expert opinions as set forth in their respective reports, by virtue of their training and experience. The ALJ further determined that the weight of the evidence supported the conclusions of IME Bleeker and IME Moore that Respondent Rivera is not incapacitated for the performance of her duties as a Special Education Assistant and that Respondent Rivera did not meet her burden of establishing that she is substantially incapacitated for the performance of her regular duties as required under Government Code sections 21154 and 21156.

The ALJ concluded that Respondent Rivera's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

March 19, 2014

  
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CHRISTOPHER PHILLIPS  
Staff Attorney