

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

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

Respondent Gus Frias (Respondent) appealed a determination made by CalPERS to remove erroneously credited service credit that was the result of an over-reporting by Respondent's former employer, Los Angeles County Office of Education (LACOE). A hearing on the Respondent's appeal was held on September 10, 2014, and after additional documentary evidence was received by the court, the matter was submitted for decision on October 17, 2014. Respondent represented himself at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

As a result of a CalPERS audit in and around 2003, LACOE supplemented payroll records for many employees, including Respondent. Relying on information provided by LACOE, CalPERS erroneously over-posted a net total of 3.16 years of service credit and \$10,543.01 in employee retirement contributions to Respondent's account. CalPERS discovered the erroneously credited service credit and employee contributions when preparing a Request for Service Credit Cost Information—Service Prior to Membership (SPM) that Respondent had filed.

CalPERS notified Respondent of the error in July 2013, and the statutory obligation to correct the error by removing the erroneous service credit and contributions and recouping the resulting overpayment in retirement benefits that had already been paid. At that time, staff also offered Respondent a one-time opportunity to purchase 0.847 years of service credit for the time that Respondent worked for LACOE in 1995-1996 when Respondent was not a member, as well as a one-time opportunity to purchase 3.565 years of service credit as a redeposit of previously withdrawn employee retirement contributions. Despite these offers constituting a net benefit to Respondent even after the removal of the over-credited amounts, Respondent refused to accept either offer to purchase service credit.

In August 2013, Respondent filed an appeal claiming his service retirement application was a contract that could not be changed without his consent, and that the error was the fault of CalPERS and he should not be penalized.

At the hearing, Respondent testified at length about his employment history and how a reduction in his benefits would cause a financial hardship. Respondent did not present any evidence to corroborate his claim that he actually earned the 3.16 years of service credit that staff had determined to be erroneously posted to his account.

A Retirement Program Specialist II (RPS II), Service Credit Section, Customer Account Services Division, testified on behalf of CalPERS. The RPS II competently and thoroughly explained the LACOE audit, how the error was made, how the error was discovered, the decision-making processes relating to correcting the error and the service credit purchases offered to Respondent to help mitigate any financial hardship.

The Administrative Law Judge (ALJ) found that CalPERS is required under section 20160 of the Government Code to correct the error and remove the net erroneous amounts of service credit and employee contributions from Respondent's account and that Respondent is entitled only to the benefits that he is allowed under law, and not to any excess above that to which he is statutorily entitled, due to error.

The ALJ concluded that Respondent'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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 19, 2015

A handwritten signature in black ink, appearing to read "C. Phillips", written over a horizontal line.

CHRISTOPHER PHILLIPS  
Staff Attorney