ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Lucille McGowan (Respondent) applied for disability retirement on the basis of Rheumatoid Arthritis, Hypertension, Type II Diabetes and Interstitial Lung Disease. By virtue of her employment as a Custodian for Respondent Cerritos Community College District (District), Respondent was a miscellaneous member of CalPERS.

CalPERS cancelled Respondent's application based on the controlling case law of *Haywood v. American River Fire Protection District*. Respondent appealed and a hearing was held on November 17, 2014. The issue at hearing was whether CalPERS properly cancelled the application, not whether Respondent medically qualifies for disability retirement.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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 part of the review of Respondent's application, CalPERS asked District for information relating to Respondent's employment. The District provided the information suggesting that Respondent resigned from her employment in order to avoid being rejected on probation, despite a letter of resignation indicating the reason was "due to illness."

At the hearing, evidence was submitted from the District demonstrating Respondent would have been rejected on probation had she not resigned. Over objection, that evidence was admitted as administrative hearsay.

Respondent and her husband testified to Respondent's various hospitalizations prior to her resignation. Respondent's testimony also directly countered many of the District's contentions regarding poor performance and an altercation with campus security.

The Administrative Law Judge (ALJ) determined that Respondent and her husband were credible witnesses and because the evidence that established an inevitable rejection on probation was admitted as administrative hearsay only, the ALJ concluded that *Haywood* was not controlling in this circumstance and that CalPERS should consider Respondent's application on its merits.

The ALJ concluded that Respondent's appeal should be granted. The Proposed Decision is supported by the law and the admissible 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

CHRISTOPHER PHILLIPS
Staff Attorney