

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Martha Quintana (Respondent Quintana) applied for disability retirement on the basis of orthopedic (cervical, back, left upper extremity) conditions. By virtue of her employment as a Preschool Teacher of special needs children with Respondent Hawthorne Unified School District (District), Respondent Quintana was a local miscellaneous member of CalPERS.

As part of CalPERS review of her medical condition, Respondent Quintana was sent for an Independent Medical Examination (IME) to Clive M. Segil, M.D., F.A.C.S., F.R.C.S., Diplomate American Board of Orthopedic Surgery. Dr. Segil interviewed Respondent Quintana and obtained a summary of her medical history, treatment, work history and present complaints. Dr. Segil issued an IME report containing his findings and testified at the hearing.

In the IME report and by testimony at the hearing, Dr. Segil opined that Respondent Quintana was not substantially incapacitated from the performance of her usual job duties and that she should be able to continue her employment as a preschool teacher. Dr. Segil found that there were no objective findings of disability and that all diagnoses, his own and those of other physicians, are based on Respondent Quintana's subjective complaints only.

Respondent Quintana offered medical reports, over timely objection as hearsay, to substantiate her injuries. Respondent Quintana also testified about her actual job duties, which differed from the duty statement she submitted to CalPERS with her disability retirement application. Respondent Quintana's testimony regarding her duties was corroborated by a witness, a teaching assistant who has worked with Respondent Quintana and other teachers of special needs children at the District over the past several years.

The Administrative Law Judge (ALJ) found that Dr. Segil did not take into account Respondent Quintana's actual job duties when determining that Respondent Quintana was not incapacitated for the performance of duty. The ALJ found that Dr. Segil relied on the duty statement provided by Respondent Quintana and that the key duties, such as lifting children up that can weigh as much as 65 pounds and being able to restrain children or modify their behavior by physical intervention, were not considered. The ALJ found that in Respondent Quintana's injured condition, she could not fulfill these critical duties.

The ALJ concluded that Respondent's appeal should be granted. 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.

November 18, 2015



CHRISTOPHER PHILLIPS
Senior Staff Attorney