

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

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

Luz Lopez (Respondent) was an employee of the Los Angeles Unified School District (District) and is a miscellaneous member of CalPERS.

In 2003, Respondent sustained an injury at work. Her last day on payroll with the District was on February 11, 2006.

Respondent first contacted CalPERS on November 9, 2004, by telephone, to request an estimate for disability retirement and service retirement. CalPERS mailed Respondent disability retirement and service retirement estimates.

On January 10, 2008, Respondent was sent a disability retirement application. On October 28, 2008, Respondent was sent another estimate and a disability retirement application package.

On February 2, 2012, Respondent applied for disability retirement. Respondent was granted disability retirement as of February 1, 2012.

Respondent requested an earlier effective date of her disability retirement of February 11, 2006. CalPERS denied the request and Respondent timely appealed the determination based on excusable mistake (Government Code section 20160).

CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. Prior to the hearing, CalPERS attempted to contact Respondent but was unable to reach her.

A hearing was held on October 25, 2015, on the issue of the effective date of Respondent's disability retirement. The Administrative Law Judge (ALJ) was asked to determine the appropriate date for Respondent's disability retirement to commence. Witnesses were heard and documentary evidence was presented.

CalPERS presented evidence that Respondent was aware of her right to file for disability retirement in 2006 and had many opportunities to avail herself of the assistance of CalPERS.

Respondent testified at the hearing that she inferred from statements made by her attorney that she could not file for disability retirement with CalPERS until her workers' compensation case had been resolved. She testified that her workers' compensation case resolved in January 2012 and she filed for disability retirement after the workers' compensation case was closed in her favor.

The ALJ concluded that Respondent's appeal should be granted because the preponderance of evidence supports that Respondent made a mistake as the result of inadvertence, mistake, surprise, or excusable neglect, that was correctable under Government Code section 20160. The ALJ held that Respondent reasonably relied on

the information provided by her attorney and did not file for disability retirement until her workers' compensation case had been resolved in 2012.

The Proposed Decision is supported by the law and the facts. CalPERS 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 is unlikely to file a writ petition in superior court seeking to overturn the decision of the Board, which is in her favor.

February 18, 2016



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PREET KAUR  
Senior Staff Attorney