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**February 15, 2017**

**Item Name:** Proposed Decision – In the Matter of the Statement of Issues (Calculation of Final Compensation) Against: LORRAINE A. HAWLEY, ELVENIA FAYE CAREY, and ASPIRE PUBLIC SCHOOLS, Respondents.

**Program:** Employer Account Management Division

**Item Type:** Action

**Parties' Positions**

Staff argues that the Board of Administration should adopt the Proposed Decision.

Respondent Elvenia Faye Carey (Respondent Carey) argues that the Board of Administration should decline to adopt the Proposed Decision.

Respondent Lorraine A. Hawley (Respondent Hawley) argues that the Board of Administration should decline to adopt the Proposed Decision.

Respondent Aspire Public Schools Benefit Charter (Respondent Aspire) argues that the Board of Administration should decline to adopt the Proposed Decision.

**Strategic Plan**

This item is not a specific product of either the Strategic or Annual Plans. The determination of administrative appeals is a power reserved to the Board of Administration.

**Procedural Summary**

Respondents Carey and Hawley submitted applications for service retirement. Upon review of their respective final compensation, CalPERS determined the “bonus” provided by Respondent Aspire cannot be included in their final compensation for the purpose of calculating their retirement allowances. Respondents Carey, Hawley, and Aspire appealed this determination and the matter was heard by the Office of Administrative Hearings on August 11, 2016. Respondent Hawley did not appear and the hearing was conducted as a default proceeding under Government Code section 11520. A Proposed Decision was issued on November 16, 2016, upholding CalPERS determination as to both Respondents Carey and Hawley that the “bonus” is not special compensation includable in calculating final compensation.

**Alternatives**

A. For use if the Board decides to adopt the Proposed Decision as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own Decision the Proposed Decision dated November 16, 2016, concerning the appeals of Elvenia Faye Carey, Lorraine A. Hawley, & Aspire Public Schools; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- B. For use if the Board decides not to adopt the Proposed Decision, and to decide the case upon the record:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated November 16, 2016, concerning the appeals of Elvenia Faye Carey, Lorraine A. Hawley, & Aspire Public Schools, hereby rejects the Proposed Decision and determines to decide the matter itself, based upon the record produced before the Administrative Law Judge and such additional evidence and arguments that are presented by the parties and accepted by the Board; RESOLVED FURTHER that the Board's Decision shall be made after notice is given to all parties.

- C. For use if the Board decides to remand the matter back to the Office of Administrative Hearings for the taking of further evidence:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated November 16, 2016, concerning the appeals of Elvenia Faye Carey, Lorraine A. Hawley, & Aspire Public Schools, hereby rejects the Proposed Decision and refers the matter back to the Administrative Law Judge for the taking of additional evidence as specified by the Board at its meeting.

- D. Precedential Nature of Decision (two alternatives; either may be used):

1. For use if the Board wants further argument on the issue of whether to designate its Decision as precedential:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System requests the parties in the matter concerning the appeals of Elvenia Faye Carey, Lorraine A. Hawley, & Aspire Public Schools, as well as interested parties, to submit written argument regarding whether the Board's Decision in this matter should be designated as precedential, and that the Board will consider the issue whether to designate its Decision as precedential at a time to be determined.

2. For use if the Board decides to designate its Decision as precedential, without further argument from the parties.

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, hereby designates as precedential its Decision concerning the appeals of Elvenia Faye Carey, Lorraine A. Hawley, & Aspire Public Schools.

**Budget and Fiscal Impacts:** Not applicable

**Attachments**

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

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DONNA RAMEL LUM  
Deputy Executive Officer  
Customer Services and Support