

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
(Calculation of Final Compensation) Against:

LORRAINE A. HAWLEY, ELVENIA FAYE
CAREY, and ASPIRE PUBLIC SCHOOLS,

Respondents.

Case Nos. 2015-0657
2015-1156

OAH Nos. 2015110609
2016040329

PROPOSED DECISION

This matter was heard before Tiffany L. King, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on August 11, 2016, in Sacramento, California.

Preet Kaur, Senior Staff Counsel, represented the California Public Employees' Retirement System (CalPERS). Jennifer Sandness, Retired Program Specialist II, was present as CalPERS' representative.

Scott N. Kivel, Attorney at Law, represented respondents Elvenia Faye Carey (Carey) and Aspire Public Schools (Aspire). Respondent Carey was not present at the hearing. D'Lonra Ellis, general counsel for Aspire, was present.

There was no appearance by or on behalf of respondent Lorraine A. Hawley (Hawley). Her default was entered, and this matter proceeded as a default proceeding pursuant to Government Code section 11520 as to respondent Hawley.

Evidence was received and the record remained open for the parties to submit closing arguments. On September 26, 2016, OAH received Closing Briefs filed by CalPERS and respondents, which were marked as Exhibits 20¹ and DDD, respectively. On October 14,

¹ CalPERS' Closing Brief included Attachments A through D, which were not introduced or discussed at hearing. In their Reply Brief, respondents timely objected to Attachment B, which is entitled the "Rulemaking File for Title 2, Adoption of Section 569 and 573, Amendment of Section 571, Compensation Regulations, Noticed September 18, 1988." Respondents' objections to Attachment B are sustained and the document is hereby excluded.

2016, OAH received Reply Briefs filed by CalPERS and respondents, which were marked Exhibits 21 and EEE, respectively. The record was closed, and the matter was submitted for decision on October 14, 2016.

ISSUES

1. Did CalPERS correctly determine that the one-time compensation paid to respondents Carey and Hawley by Aspire in September 2012 did not meet the definition of “off-salary-schedule pay” under the “special compensation” definitions listed in California Code of Regulations section 571, and thus should be excluded from the calculation of respondents’ final compensation and retirement benefit under the Public Employees Retirement Law (PERL)?²
2. If the answer to 1 is “yes,” may the off-salary-schedule pay be divided over multiple years to avoid exceeding the six percent per fiscal year limit for off-salary-schedule pay?
3. If the answer to 2 is “no,” must CalPERSs allow six percent of the off-salary-schedule payment in the calculation of respondents’ final compensation and retirement benefits under PERL?

FACTUAL FINDINGS

1. On October 22, 2015, complainant Renee Ostrander (complainant) filed a Statement of Issues against respondents Hawley and Aspire solely in her official capacity as Chief, Employer Account Management Division, CalPERS. Respondents Hawley and Aspire timely filed an appeal. On April 4, 2016, complainant filed a Statement of Issues against respondents Carey and Aspire, who timely filed an appeal. As both cases involve a common set of facts and questions of law, the matters were consolidated for all purposes.
2. At all relevant times, Aspire was a nonprofit corporation which operated approximately 20 charter schools throughout California. Aspire is a public agency contracting with CalPERS for retirement benefits for its eligible employees. The provisions of Aspire’s contract with CalPERS are contained in the Public Employees’ Retirement Law (PERL). (Gov. Code, §§ 20000 et seq.)
3. Respondent Hawley was employed by Aspire as an Office Manager. By virtue of her employment, respondent Hawley is a school miscellaneous member of CalPERS. On

² The Statement of Issues identifies the sole issue as, “whether ‘Bonus’ can be included in the calculation of respondent [Hawley’s and Carey’s] final compensation.” At hearing, however, the parties identified the issues as stated herein.

June 18, 2014, respondent Hawley filed an application for service retirement. She retired, effective March 22, 2014, with 22.806 years of service credit, and has been receiving her retirement allowance from that date.

4. Respondent Carey was employed by Aspire as a Lead Safety Manager. By virtue of her employment, she is a school miscellaneous member of CalPERS. On December 29, 2014, respondent Carey filed an application for service retirement. She retired, effective December 20, 2014, with 11.170 years of service credit, and has been receiving her retirement allowance from that date.

Background

5. From 2008 to 2012, like most California public schools, Aspire was under severe financial constraints and routinely experienced mid-year and end of year cuts in its state funding. Due to this financial uncertainty, the Board of Directors for Aspire (Aspire Board) adopted a conservative approach regarding each year's budget and did not approve any salary increases for its teachers and staff during this four-year period.

6. At the end of its fiscal year for 2012, Aspire had a projected \$4.9 million surplus. The Aspire Board decided it was appropriate to distribute the surplus to its teachers and staff who had weathered the economic downturn with no increase in pay for the prior four years and who would return for the following school year.

JUNE 21, 2012 BOARD MEETING

7. At a public meeting held on June 21, 2012, the Aspire Board discussed the creation of a "bonus program" to distribute the surplus funds to its teachers and staff. At that time, the Aspire Board had not confirmed the specific amount of the surplus nor was it willing to do so until after the fiscal year (FY) ended on June 30, 2012, and it was certain there would be no end of year cuts in state funding. At the meeting, the Aspire Board adopted a resolution which approved "the creation of a bonus program for all employees who work for Aspire as of June 30, 2012." The resolution authorized its Chief Executive Officer (CEO), James Willcox, to develop a program that included the following elements:

- (a) The total amount of the bonus fund will be determined after the books are closed for the year and key balance sheet accounts are reconciled and prepared for audit. The calculation of the total proposed budget amount will be reviewed with the Finance Committee of the Board and will include a discussion of financial contingencies and the requirements of debt covenants.
- (b) The bonus formula and plan for disbursing the funds will recognize employees' years of service to Aspire and will include a limiting "Cap" so most of the bonus funds are

directed to teachers and not towards the more highly-compensated officers and administrators. The plan will also recognize employees who return to work for the 2012–13 school year.

- (c) The CFO will present appropriate comparable data to the Finance Committee to verify that the most highly paid employees are not being paid in excess of market rates after the proposed bonus.
- (d) After approval by the Finance Committee, the bonus fund will be paid to employees who return to work at Aspire in the 2012–13 school year. The total bonus amounts will be accrued as of June 30, 2012 and will be paid to employees no later than September 15, 2012.

8. In late August 2012, Aspire’s Finance Committee met in small groups to discuss the status of the audit for FY 2011-2012. On September 5, 2012, the Finance Committee met again to review the plan proposed by management for distribution of the FY 2012 surplus funds. At the latter meeting, the Finance Committee determined that allocation of \$4.9 million to the “bonus fund” was reasonable and was unlikely to create a future cash shortage. The Finance Committee also approved the “bonus plan” proposed by management which the Finance Committee would recommend to the Aspire Board. Said “bonus plan” included the following elements:

- (1) A bonus calculation of the employee’s current annual salary multiplied by a rate for their years of service (YOS), up to a maximum of four years, as follows:
 - 1 YOS – 3.68 percent
 - 2 YOS – 7.36 percent
 - 3 YOS – 11.04 percent
 - 4 YOS – 14.72 percent
- (2) A minimum bonus of \$250 and a maximum bonus cap of \$10,000;
- (3) Bonuses to be taxed using the Bonus Tax tables to avoid over-withholding, with CalPERS and CalSTRS³ deduction for both the employee and employer side.

³ CalSTRS stands for the California State Teachers’ Retirement System.

9. Bonuses were paid to the qualifying employees on September 14, 2012. Respondents Hawley and Carey received lump-sum payments of \$7,660.82 and \$6,690.21, respectively, equal to 14.72 percent of their current salaries at that time. Aspire reported these payments to CalPERS as compensation earnable.⁴

SEPTEMBER 19, 2012 BOARD MEETING

10. At a public meeting held on September 19, 2012, the Finance Committee presented to the Aspire Board its report recommending the “bonus plan” as proposed by management and including the calculations for the bonuses paid on September 14, 2012. The Aspire Board approved the Finance Committee’s recommendation.

DETERMINATION BY CALPERS

11. CalPERS analysts in the Compensation and Employer Review Unit examined the compensation earnable reported by Aspire on behalf of respondents Hawley and Carey. In its review, CalPERS identified the “bonus” payment on September 14, 2012 as not being in compliance with PERL. CalPERS requested additional information and supporting documentation from Aspire, such as position titles and salary schedules for the payrates, and the collective bargaining agreement or other labor policy or agreement which discloses the pay, conditions of pay, eligible employees, and covered time period. Aspire provided what information it had. As Aspire employees are not unionized, no collective bargaining agreement existed. Instead, Aspire provided the June 21, 2012 Aspire Board resolution as well as minutes from the June 21 and September 19, 2012 Aspire Board meetings at which the one-time payment was approved.

12. On November 14, 2014, CalPERS mailed letters to respondent Hawley and Aspire explaining that the “bonus” payment from September 14, 2012, did not fit the definition of Bonus Pay or Off-Salary-Schedule Pay. On July 28, 2015, CalPERS mailed letters to respondent Carey and Aspire regarding the same. In these letters, CalPERS explained that “special compensation” as defined in the PERL, “includes a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.” (Gov. Code, § 20636, subd. (c)(1).) Additionally, by regulation, items of special compensation must also meet additional criteria including that they are paid periodically as earned, historically consistent with prior payments for the job classification, not paid exclusively in the final compensation period, not final settlement pay, and not creating an unfunded liability over and above CalPERS’ actuarial assumptions. (Cal. Code Regs., tit. 2, § 571, subd. (b)(5) – (9).)

13. “Off-Salary-Schedule Pay” is defined as “Compensation in addition to base salary paid in similar lump-sum amounts to a group or class of employees. These payments

⁴ The record did not reflect what item of special compensation was reported by Aspire.

are routinely negotiated through collective bargaining in lieu of increases to the salary schedule. These payments are based on a similar percent of scheduled salary not to exceed six percent (6%) per fiscal year. The contracting agency or school employer may adopt similar action for non-represented groups or classes of employment as were negotiated through collective bargaining.” (Cal. Code Regs., tit.2, § 271, subd. (a)(1).)

14. In its November 14, 2014 and July 28, 2015 letters to respondents, CalPERS explained that the one-time payment made to respondents Hawley and Carey on September 14, 2012 did not constitute special Off-Salary-Schedule Pay because the one-time payment equaled 14.72 percent of respondents’ annual pay, exceeding the 6 percent per FY limit in the regulation. No other reason was provided. Accordingly, the payment was disallowed from the calculation of respondents Hawley’s and Carey’s final compensation and retirement benefit.

Parties’ Arguments

15. Complainant argues that the one-time payment made to respondents Hawley and Carey on September 14, 2012 does not meet the definition of special compensation as Off-Salary-Schedule Pay because: (1) the one-time payment was not negotiated through collective bargaining in lieu of a salary increase, but was intended to recognize the employees’ years of service; (2) the June 21, 2012 resolution adopted by the Aspire Board did not include the information required under California Code of Regulations, title 2, section 571, subdivision (b)(1); and (3) the payment exceeded six percent of respondents’ annual salaries. Alternatively, CalPERS contends it lacks authority to amend or alter these one-time payments to ensure they meet the definition of Off-Salary-Schedule Pay.

16. Respondents assert that the one-time payments made to respondents Hawley and Carey on September 14, 2012 meet the definition of special compensation as Off-Salary-Schedule Pay because it was duly approved by the Aspire Board, the governing body for Aspire, in the June 21, 2012 resolution. The June 21, 2012 resolution included requirements for the one-time payment, including: (1) a “bonus” formula based on an employee’s years of service; (2) a bonus minimum and cap; (3) an eligibility group defined as current employees who were returning to Aspire the following school year; and, (4) an accrual date of June 30, 2012 and a payment date not later than September 15, 2012. Respondents also argue that there is no requirement that Off-Salary-Schedule Pay be negotiated through collective bargaining, and that Aspire does not engage in collective bargaining as its employees are non-union.

17. Respondents further argue that the one-time payments did not exceed the regulation’s six percent per fiscal year limit because the payments were divided over a four-year period and did not exceed six percent in any given year. Alternatively, if the six percent limit applies to the entire period, respondents contend CalPERS should allow the one-time payment up to six percent of respondents’ annual salary and disallow the remaining 8.72 percent. Finally, respondents argue that CalPERS’ interpretation of the regulatory definition

of Off-Salary-Schedule Pay is not based on any legal authority and constitutes an unlawful underground regulation.

Discussion

18. Collective Bargaining: California Code of Regulations, title 2, section 571, subdivision (a), states that special compensation items for members “must be reported to CalPERS if they are contained in a written labor policy or agreement.” Subdivision (b)(1) of section 571 also requires that all items of special compensation must be “[c]ontained in a written labor policy or agreement as defined in Government Code section 20049 ...” Government Code section 20049 states:

“Labor policy or agreement” means any written policy, agreement, memorandum of understanding, legislative action of the elected or appointed body governing the employer, or any other document used by the employer to specify the payrate, special compensation, and benefits of represented and unrepresented employees.

Thus, the regulation specifically contemplates that an item of special compensation, which includes Off-Salary-Schedule Pay, may be contained in *any* document used by the employer “to specify the payrate, special compensation, and benefits of represented or unrepresented employees.”

CalPERS relies on the second sentence under the definition of Off-Salary-Schedule Pay which reads: “These payments are *routinely* negotiated through collective bargaining in lieu of increases to the salary schedule.” (Cal. Code Regs., tit.2, § 271, subd. (a)(1) (emphasis added).) However, a plain reading of this language finds no mandate that such compensation be negotiated through collective bargaining only, or that it can only be given in lieu of salary increases. Moreover, to interpret this language as including such a mandate would conflict with the “labor policy or agreement” language in California Code of Regulations, title 2, section 571, subdivisions (a) and (b)(1), and Government Code section 20049. Thus, there is no requirement that Off-Salary-Schedule Pay be negotiated through collective bargaining.

19. Six Percent Per Fiscal Year: Off-Salary-Schedule Pay is defined as “compensation in addition to base salary paid in similar lump-sum amounts to a group or class of employees ... [which] are based on a similar percent of scheduled salary not to exceed six percent (6%) per fiscal year.” Respondents contend nothing in this definition prevents the Aspire Board from approving a one-time payment equal to 14.72 percent of scheduled salary over a 4-year period (2008-2012), arguing that the percentage of additional compensation for each fiscal year is less than 6 percent.

Respondents' argument is not persuasive. The formula for the one-time payment approved by the Aspire Board for employees with more than four years of service was 14.72 percent of the employee's current salary (FY 2011-2012), and not 3.68 percent (14.72 divided by 4) of the salary for each fiscal year (FY 2008-2009, 2009-2010, 2010-2011, and 2011-2012). Additionally, in order to be eligible to receive the payment, an employee had to return to Aspire for the following school year (FY 2012-2013).

Alternatively, respondents argue that if the full 14.72 percent amount is not allowed, then CalPERS should allow the first 6 percent and disallow the remaining 8.72 percent. CalPERS contends it lacks authority to amend or alter the one-time payment to ensure they meet the definition of Off-Salary-Schedule Pay. However, CalPERS points to no authority for this position nor was anything found in the regulations which would prevent CalPERS from including in its calculation of final compensation the allowable portion of the one-payment (6%) while disregarding the excess amount (8.72%).

20. Requirements of section 571, subdivision (b)(1):

Effective August 10, 2011, California Code of Regulations, title 2, section 571, subdivision (b), was amended for the stated purpose of "clarifying existing law and making specific the requirements for ... written labor policy or agreements as used in the definition of special compensation." In a CalPERS Circular Letter dated August 19, 2011 sent to all CalPERS employers, CalPERS explained the amendment would "ensure consistency between CalPERS employers and enhance the *disclosure and transparency* of public employee compensation by requiring that the ... item of special compensation be listed on a pay schedule or in a document meeting the criteria set forth in the regulations." (Emphasis added.)

The criteria for a document listing the item of special compensation are set forth in California Code of Regulations, title 2, subdivision (b)(1), as follows:

- (1) Contained in a written labor policy or agreement as defined at Government Code section 20049, provided that the document:
 - (A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
 - (B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;
 - (C) Is posted at the office of the employer or immediately accessible and available for public review from the

employer during normal business hours or posted on the employer's internet website:

(D) Indicates an effective date and date of any revisions;

(E) Is retained by the employer and available for public inspection for not less than five years; and

(F) Does not reference another document in lieu of disclosing the item of special compensation.

Respondents contend that the June 21, 2012 resolution adopted by the Aspire Board meets all the above criteria. However, the resolution approves only "the creation of bonus program for all employees who work for Aspire as of June 30, 2012," and authorizes the CEO to develop a program with certain parameters. The resolution did not specify the conditions for the one-time payment, "including, but not limited to, eligibility for, and amount of, the special compensation." (Cal. Code Regs., tit. 2, § 571, subd. (b)(1)(B).) Although the Aspire Board required the program to have certain parameters, such parameters were not specific enough to satisfy the regulatory criteria. For instance, the resolution identified the eligibility requirements for receiving the one-time payment (years of service and return for following school year). However, it did not specify the amount of compensation to be paid, or a formula by which the amount of compensation could be calculated. Respondents argue that the Aspire Board specified and approved the necessary details (e.g., total amount of compensation and formula for determining each employee's payment) at its September 19, 2012 board meeting. However, that approval came after the payments had already been distributed to Aspire employees. The purpose of the criteria is to enhance the disclosure and transparency of compensation for public employees. That purpose would not be served if it was sufficient to disclose the details of a special compensation plan *after* the plan has already been put into effect and funds disbursed.

For these reasons, CalPERS correctly determined that the one-time payment of additional compensation by Aspire to its employees on September 14, 2012 does not constitute special compensation under California Code of Regulations, title 2, sections 571, subdivision (a), or 571, subdivision (b)(1).

LEGAL CONCLUSIONS

1. An applicant for retirement benefits has the burden of proving, by a preponderance of the evidence, her right to the entitlement absent a statutory provision to the contrary. (*Greatorex v Board of Administration* (1979) 91 Cal. App.3d 57.) Any ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner, but such construction must be consistent with the clear language and purpose of the statute. (*Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483; 490.)

Applicable Statutes and Regulations

2. CalPERS is a "prefunded, defined benefit" retirement plan. (*Oden v. Board of Administration* (1994) 23 Cal.App.4th 194, 198.) The formula for determining a member's retirement benefit takes into account: (1) years of service; (2) a percentage figure based on the age on the date of retirement; and (3) "final compensation." (Gov. Code, §§ 20037, 21350, 21352 and 21354; *City of Sacramento v. Public Employees Retirement System* (1991) 229 Cal.App.3d 1470, 1479.)

3. Government Code section 20630 defines "compensation" as the remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours or for time during which the member is excused from work because of holidays, sick leave, industrial disability leave, vacation, compensatory time off, and leave of absence. Compensation shall be reported in accordance with section 20636 and shall not exceed compensation earnable, as defined in section 20636. (Gov. Code, § 20630, subds. (a) & (b).)

4. "Compensation earnable" by a school member is composed of the school member's payrate and special compensation. (Gov. Code, § 20636.1, subd. (a).) Section 20636.1, subdivisions (b) and (c), define "pay rate" and "special compensation" as follows:

(b) (1) "Payrate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. For purposes of this part, for classified members, full-time employment is 40 hours per week, and payments for services rendered, not to exceed 40 hours per week, shall be reported as compensation earnable for all months of the year in which work is performed. "Payrate," for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).

[¶] ... [¶]

(c) (1) Special compensation of a school member includes any payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

(2) Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in

addition to payrate. If an individual is not part of a group or class, special compensation shall be limited to that which the board determines is received by similarly situated members in the closest related group or class that is in addition to payrate, subject to the limitations of paragraph (2) of subdivision (e).

(3) Special compensation shall be for services rendered during normal working hours and, when reported to the board, the employer shall identify the pay period in which the special compensation was earned.

5. "The board shall promulgate regulations that delineate more specifically and exclusively what constitutes 'special compensation' as used in this section. A uniform allowance, the monetary value of employer-provided uniforms, holiday pay, and premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee ... shall be included as 'special compensation' and appropriately defined in those regulations." (Gov. Code, § 20636.1, subd. (c)(6).)

6. Special compensation does not include final settlement pay, payments made for additional services rendered outside of normal working hours, or any other payments the board has not affirmatively determined to be special compensation. (Gov. Code, § 20636.1, subd. (c)(7).)

7. California Code of Regulations, title 2, section 571 exclusively identifies and defines special compensation items for members employed by a contracting agency that must be reported to CalPERS if they are contained in a written labor policy or agreement. (Cal. Code Regs., tit. 2, § 571, subd. (a).) Listed under subdivision (a)(1) are the various types of "Incentive Pay" which must be reported to CalPERS, including, in relevant part:

Bonus – Compensation to employees for superior performance such as "annual performance bonus" and "merit pay." If provided only during a member's final compensation period, it shall be excluded from final compensation as "final settlement" pay. A program or system must be in place to plan and identify performance goals and objectives.

[¶] ... [¶]

Off-Salary-Schedule Pay – Compensation in addition to base salary paid in similar lump-sum amounts to a group or class of employees. These payments are routinely negotiated through collective bargaining in lieu of increases to the salary schedule. These payments are based on similar percent of scheduled salary not to exceed six percent (6%) per fiscal year. The contracting

agency or school employer may adopt similar action for non-represented groups or classes of employment as were negotiated through collective bargaining.

8. Pursuant to California Code of Regulations, title 2, section 571, subdivision (b), all items of special compensation listed in subdivision (a) are as follows:

(1) Contained in a written labor policy or agreement as defined at Government Code section 20049, provided that the document:

(A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;

(B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;

(C) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;

(D) Indicates an effective date and date of any revisions;

(E) Is retained by the employer and available for public inspection for not less than five years; and

(F) Does not reference another document in lieu of disclosing the item of special compensation;

(2) Available to all members in the group or class;

(3) Part of normally required duties;

(4) Performed during normal hours of employment;

(5) Paid periodically as earned;

(6) Historically consistent with prior payments for the job classification;

(7) Not paid exclusively in the final compensation period;

(8) Not final settlement pay; and

(9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

9. Only those items listed in subdivision (a) are affirmatively determined to be special compensation, subject to review for continued conformity with the standards listed in subdivision (b). (Cal. Code Regs., § 571, subd. (c).) If an item of special compensation is not listed in subdivision (a), or is out of compliance with any of the standards listed in subdivision (b), then it shall not be used to calculate final compensation for that individual. (Cal. Code Regs., § 571, subd. (d).)

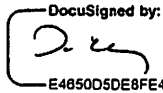
Cause to Affirm CalPERS' Determination

10. Respondents did not establish by a preponderance of the evidence that the one-time payment issued on September 14, 2012, constituted "compensation earnable" and should be used in the calculation of respondents Hawley's and Carey's final compensation and retirement benefit. As set forth in Factual Findings 5 through 10 and 20, a preponderance of the evidence did not establish that the payment satisfied the specific criteria for special compensation set forth in California Code of Regulations, title 2, section 571, subdivision (b)(1).

ORDER

CalPERS' determination that the one-time payment issued to respondents Hawley and Carey on September 14, 2012, is not compensation earnable is **AFFIRMED**. The appeal of respondents Lorraine Hawley, Elvenia Carey, and Aspire is **DENIED**.

DATED: November 16, 2016

DocuSigned by:

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TIFFANY L. KING
Administrative Law Judge
Office of Administrative Hearings