

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT PROPOSED DECISION

Respondent Elvenia Carey and Respondent Lorraine Hawley (Respondents) were employed by Respondent Aspire Public Schools Statewide Benefit Charter (Aspire). Respondent Carey was employed as a Lead Safety Manager. She filed her application for service retirement on December 29, 2014 and retired effective December 20, 2014. Respondent Hawley was employed as an Office Manager. She filed an application for service retirement on June 18, 2014, and retired effective March 22, 2014.

On June 21, 2012, the Aspire Board of Directors (Aspire Board) adopted a resolution authorizing the Chief Executive Officer (CEO) James Wilcox, to develop a "bonus" program for employees who returned to work for the 2012-13 school year. The purpose of the program was to recognize the employee's years of service. The "bonus" amount would be accrued as of June 30, 2012 and paid no later than September 15, 2012. In September 2012, the Finance Committee approved a "bonus plan" that provided up to 14.72% "bonus" for employees with four years of service. The "bonus" was paid on September 14, 2012. On September 19, 2012, the Finance Committee presented a report to the Aspire Board, outlining the "bonus plan."

Upon review of Respondents' final compensation, CalPERS determined that the "bonus" cannot be included in their final compensation for the purpose of calculating their retirement allowances under Government Code section 20636. CalPERS issued letters to Respondents, explaining that the "bonus" pay failed to meet the definition of "bonus pay" "off-salary schedule pay," or "longevity pay" under Title 2, California Code of Regulations section 571, subdivisions (a)(1) and (b). Respondents appealed CalPERS' determination and a hearing was held on August 11, 2016.

Respondent Carey and Respondent Aspire were represented by counsel at the hearing. Prior to the hearing, CalPERS explained the hearing process to the Respondents and the need to support their cases with witnesses and documents. CalPERS provided the Respondents with a copy of the administrative hearing process pamphlet. CalPERS answered Respondents' questions and clarified how to obtain further information on the process. Respondent Hawley failed to appear at the hearing and the hearing was conducted as a default proceeding under Government Code section 11520 as to Respondent Hawley. Additionally, the Administrative Law Judge (ALJ) issued a decision, on the merits, for the Respondents.

The sole issue for determination was whether the "bonus" reported by Aspire, and reflected as an increase in Respondents' reported compensation during their last years of employment, could be included in their final compensation for purposes of calculating their retirement allowances.

The "bonus" was reported to CalPERS by Aspire as "special compensation." California Code of Regulations, Title 2, section 571, delineates specifically and exclusively what

type of compensation can be reported to CalPERS as special compensation. "Off-salary-schedule-pay" is defined as compensation negotiated through collective bargaining in lieu of a salary increase. "Off-salary-schedule-pay" is limited to six percent (6%) per fiscal year. All items of special compensation, which are listed under section 571(a) must also meet all of the criteria set in section 571(b), including that the item of special compensation must be in a written labor policy or agreement that has been duly approved and adopted by the employer's governing body and indicates the amount of the special compensation.

At the hearing, counsel for Respondents Carey and Aspire argued that the "bonus" qualifies as "off-salary-schedule-pay" because it was a one-time payment, made in lieu of a salary increase. In response, CalPERS presented the testimony of CalPERS staff, explaining why the "bonus" did not meet the statutory definition of "special compensation."

The ALJ reviewed relevant California Government Code sections 20630, 20636 and 20636.1, as well as California Code of Regulations, Title 2, section 571. The ALJ found that Respondents did not establish by a preponderance of evidence that the "bonus" constituted special compensation. The ALJ also found that the "bonus" failed to meet the criteria for special compensation set forth in section 571, subdivision (b)(1). The ALJ held that the June 30, 2012 Aspire Board resolution failed to "specify the conditions for the one-time payment, including, but not limited to eligibility for, and amount of, the special compensation." The ALJ held that the purpose of section 571(b)(1) is to "enhance the disclosure and transparency of compensation for public employees..." and that such purpose was not met here because the details concerning the "bonus" were not made public until after the "bonus" was paid out.

Therefore, the ALJ held that CalPERS correctly determined that the "bonus" paid to the Respondents cannot legally be included in calculating their final compensation and retirement benefit.

The ALJ concluded that the Respondents' appeals should be denied. The ALJ's determination, that the "bonus" does not constitute special compensation and fails to meet the criteria set out in section 571(b), is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

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Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. Respondents Carey and Aspire may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board. Respondent Hawley may file a motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

February 15, 2017



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