ATTACHMENT B

STAFF’S ARGUMENT
STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Michael S. Donaldson (Respondent) was employed by the Peralta Community College District (Respondent District) and became a miscellaneous member of CalPERS in 1988. Respondent severed his employment with Respondent District on June 9, 2011. Respondent filed an Additional Retirement Service Credit (ARSC) application to request to purchase five years of service on June 20, 2011. On August 4, 2011, Respondent filed an application for service retirement requesting an effective date of June 10, 2011. CalPERS informed Respondent that he was not entitled to purchase ARSC because he filed his request to purchase ARSC after he was no longer in compensated state service.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on March 22, 2017. Respondent was represented at the hearing. The issue at the hearing was whether Respondent was entitled to purchase ARSC based on his claim of having made a correctable mistake. The ALJ was asked to decide whether CalPERS staff (Staff) provided erroneous information to Respondent, which led him to believe that there was no time limit to request ARSC due to CalPERS’ computer conversion in 2011, and whether Respondent should be allowed to purchase ARSC based on an equitable estoppel claim.

Respondent testified on his own behalf. Respondent claimed that he had contacted CalPERS more than once between January 2011 and August 2011, and informed Staff that he wanted the best pension outcome he could get and that he was considering making additional service credit purchases. Respondent testified that when he discussed ARSC with Staff at the Regional Center he was informed that due to the computer conversion, the amount of time CalPERS required to process the ARSC application was increased, but that he could make his payment after the calculations were completed. Respondent separated from his employment with the District on June 9, 2011, at least partly in order to take advantage of a District program which incentivized retirement by offering an approximately $7,000.00 bonus if he retired on or before June 10, 2011. Respondent did not file his ARSC purchase application until June 20, 2011. When he applied for service retirement with CalPERS on August 4, 2011, he requested a retirement effective date of June 10, 2011. Respondent was shocked when he was informed that he was not eligible to purchase ARSC, because he was not in compensated state service at the time he submitted his ARSC purchase application.

CalPERS presented documentary and testimonial evidence. CalPERS presented the contemporaneous notes of Respondent's telephone inquiries to CalPERS, which documented that Staff informed him that he might not be eligible to purchase ARSC, and that his application would have to be reviewed. Staff testified that Respondent was not eligible to purchase ARSC because he was no longer an employee at the time of his
application, and because he required a retirement date prior to his filing the application to purchase the ARSC. Either condition alone was sufficient to make him ineligible by statute to purchase ARSC pursuant to Government Code section 20909.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that Respondent’s mistake was not the result of a correctable error, and that Respondent’s mistake (applying for ARSC after separating from employment, and back dating his retirement) was nothing other than Respondent’s failure to coordinate his application before his retirement, which is not correctable under Government Code section 20160. The ALJ also found that Respondent was not entitled to invoke the principle of equitable estoppel, because he failed to meet the requisite elements.

In the Proposed Decision, the ALJ concludes that CalPERS correctly determined that Respondent is ineligible to elect to purchase ARSC.

The Proposed Decision is supported by the law and the facts. For all the foregoing reasons, staff argues that the Board adopt the Proposed Decision.

September 20, 2017

CYNTHIA RODRIGUEZ
Senior Staff Attorney