ATTACHMENT B

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

Respondent Carolyn Tafoya (Respondent) is a member of CalPERS who also holds a nonmember account, containing service credit accrued by Respondent’s former spouse and awarded to Respondent pursuant to a court-ordered community property distribution.

On June 27, 2017, Respondent filed a Nonmember Service Retirement Election Application. Shortly thereafter, Respondent contacted CalPERS, advised she did not know she could have retired from her nonmember account 10 years earlier, and requested CalPERS backdate the retirement from her nonmember account to October 12, 2006, the date she reached 50 years of age. CalPERS reviewed the information Respondent provided and determined that it could not backdate Respondent’s retirement from her nonmember account.

Respondent appealed CalPERS’ determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on July 16, 2018. Respondent represented herself at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent’s questions and clarified how to obtain further information on the process.

The California Public Employees’ Retirement Law (PERL) governs the administration and payment of retirement and related benefits established through court-ordered community property distributions. (Cal. Gov. Code §§ 21290-98.) These benefits are designated as “nonmember” accounts. The holder of a nonmember account may “retire” from that account if (1) the nonmember has attained the minimum age for retirement applicable to the member who previously held the account, (2) the member holding the account had vested at the time of marriage dissolution or separation leading to the creation of the nonmember account and (3) the member has also reached the minimum retirement age. The application for retirement from a nonmember account must be received within nine months of the requested retirement effective date. (Gov. Code § 21296.) Otherwise, the law requires the effective date be the first day of the month in which CalPERS receives the nonmember retirement application.

Pursuant to the PERL, the effective date of a nonmember application for retirement received more than nine months after the requested effective date shall be determined in accordance with Government Code section 20160. Known as the “mistake” statute, section 20160 allows CalPERS to correct a member’s retirement date. However, such
discretion arises only where the member makes the request within six months of learning of the error and proves to CalPERS that the error was the result of “mistake, inadvertence, surprise, or excusable neglect.” (Gov. Code § 20160.) Failure by a member to make an inquiry that would be made by a reasonable person in similar circumstances is not an error or omission under section 20160, and bars relief under the statute. (Id.)

At the hearing, the evidence established that on March 14, 2003, before Respondent’s nonmember account was established, CalPERS advised her of the amount of contributions plus interest in her former spouse’s member account. CalPERS further advised that “employer contributions are not separated into individual member accounts and are not payable upon termination of employment. They are payable at retirement only and comprise the pension portion of the member’s monthly retirement allowance.”

On May 21, 2004, CalPERS advised Respondent in writing that her nonmember account had been established with one-half of the contributions and service credit earned by her former spouse. As a result of the community property order, CalPERS advised Respondent that her nonmember account was credited with 2.3 years of service credit and $20,430.94 in contributions. The letter further explained that Respondent may receive payment from the nonmember account by either retiring from the account or refunding the contributions with interest. If Respondent did not refund or roll over the contributions, the letter explained Respondent would be eligible to receive a monthly allowance when she and her former spouse reached the minimum retirement age of 50, and she completed a nonmember retirement application.

On June 27, 2017, Respondent applied to retire from her nonmember account, and requested a retirement date of June 2, 2017. After a conversation she had with a CalPERS employee at the Fresno Regional Office, Respondent claims she learned for the first time that she could have retired from her nonmember account when she turned 50 on October 12, 2006. Respondent, in a letter dated July 17, 2017, advised CalPERS that she believed that she had to retire from her member account to retire from her nonmember account. The basis for this belief was the March 14, 2003 letter from CalPERS.

At the hearing, CalPERS called an analyst in the Administrative Remedy Unit of the Benefits and Services Division (BNSD), to explain CalPERS’ determination and present the documents CalPERS relied upon to deny Respondent’s request for an earlier effective retirement date.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that the May 21, 2004 letter “clearly informed [Respondent] that [she] was eligible to receive [her] nonmember monthly allowance when both [Respondent] and her former spouse reached age 50.” The ALJ found the May 21, 2004 letter to be unambiguous and ruled that if Respondent still thought she had to retire from her member account even after receiving this letter,
she should have contacted CalPERS. Failure to make such an inquiry, the ALJ held, precluded Respondent from receiving the requested earlier effective retirement date.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

September 26, 2018

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