ATTACHMENT B

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

Daniel L. Moyer (Respondent) first became employed by the Los Angeles Unified School District (LAUSD) as a Custodian on August 17, 1981. By virtue of this employment, Respondent became a member of CalPERS.

On November 29, 1990, Respondent applied for disability retirement which was approved by LAUSD on February 15, 1991. His disability retirement was effective as of December 19, 1990.

Respondent began working for the Saugus Unified School District (Saugus USD) as a substitute Custodian in March 2014.

In December 2014, Respondent contacted CalPERS to ask whether working for Saugus USD would affect his retirement benefits. CalPERS referred Respondent to the publication, Employment After Retirement.

Respondent contacted CalPERS on May 5, 2015, to inquire about immediate reinstatement and stated that he was close to exceeding the 960-hour limit for a retired annuitant; thereafter, on June 26, 2015, Respondent exceeded the 960-hour limit for a retired annuitant in fiscal year 2014-2015.

CalPERS sent letters to Respondent and Saugus USD dated June 27, 2016, inquiring about the circumstances of Respondent’s work over the 960-hour limit. After reviewing the information provided by Respondent and Saugus USD, CalPERS determined Respondent was aware of the 960-hour limit, and there had been no mistake requiring a correction.

On November 21, 2016, CalPERS sent a letter to Respondent reinstating him to active membership retroactive effective June 26, 2015, CalPERS sent a letter to Respondent on December 2, 2016, requesting reimbursement of overpayment in the amount of $8,806.71.

Respondent appealed CalPERS’ determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). In May 2018, Respondent notified CalPERS that he was no longer appealing his reinstatement to active membership; however, he was still appealing the issue of overpayment. A hearing was held on May 30, 2019. Respondent represented himself at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his 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.

Respondent testified on his own behalf. Respondent testified that he wanted to supplement his retirement allowance and started working part time for Saugus USD as a substitute Custodian. At that time, he believed he was limited to working no more than 20 hours per week. In May or June 2014, Respondent’s supervisor at Saugus USD informed him that he was close to the 960-hour limit. The supervisor did not provide an exact number of hours to Respondent. Respondent assumed that Saugus USD would monitor the hours and not give him assignments if he exceeded the limit. Respondent testified that, at that time, he did not seek further information from Saugus USD about the number of hours he had worked and did not monitor his additional work hours when he was given further assignments. Respondent did not monitor his hours as he worked at Saugus USD.

After he was contacted by CalPERS, Respondent obtained payroll information that included his hours, and he was able to determine when he reached 960 hours. Respondent calculated that he worked 1,011.5 hours; that is 51.5 hours over the limit. Respondent contends that he should be required to pay back the salary he earned for those extra hours and not the overpayment of his retirement allowance as claimed by CalPERS.

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 was aware he was approaching the 960-hour limit and made no effort to stop working before he exceeded that limit. Respondent’s contention that Saugus USD was responsible is not supported by the facts. The ALJ further found that there were no factual circumstances proven by Respondent that would justify a correction of his error by working in excess of 960 hours.

The ALJ further confirmed that to do as Respondent requests would enlarge the authority of CalPERS regarding the granting of a beneficiary’s allowance in excess of the amount authorized by statute.

In the Proposed Decision, the ALJ concludes that Respondent worked beyond the 960-hour limit and, as a result, he was properly reinstated to active membership with CalPERS. Respondent is required to repay the $8,806.71 overpayment of retirement benefits he received.
For all of the above reasons, staff argues that the Proposed Decision be adopted by the Board.

August 21, 2019

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Senior Attorney