ATTACHMENT A

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

In the Matter of the Appeal for Full Reciprocity of:

JOE A. MARKUS,

Respondent,

and

ORANGE COUNTY SCHOOLS,

Respondent.

Case No. 2018-0511

OAH No. 2018090755

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), on April 8, 2019, in Los Angeles.

Austa Wakily, Senior Attorney, represented complainant, Renee Ostrander, Chief, Employer Account Management Division, Board of Administration, California Public Employees’ Retirement System (CalPERS).

Joseph A. Markus (respondent) represented himself.

No appearance was made by or on behalf Orange County Schools.

Oral and documentary evidence was received. The record was held open for the parties to simultaneously file closing briefs by June 3, 2019, and an optional reply brief by June 10, 2019. The parties timely filed their closing briefs; neither party filed a reply brief. CalPERS’s closing brief was marked as Exhibit 16. Respondent’s closing brief was marked as Exhibit W. Additionally, on June 17, 2019, CalPERS lodged an electronic copy of the hearing transcript with OAH. The record was closed and the matter was submitted for decision on June 10, 2019.

CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM

FILED 7/11/19
ISSUES

1. Whether respondent is entitled to the full reciprocity benefit of final compensation exchange with the Los Angeles County Employees’ Retirement Association (LACERA).

2. Whether respondent is entitled to a CalPERS retirement benefit based on his LACERA salary under the doctrine of equitable estoppel.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant filed the Statement of Issues in her official capacity.

2. Orange County Schools is a public agency contracting with CalPERS for retirement benefits for its eligible employees. The provisions of Orange County Schools’ contract with CalPERS are contained in the Public Employees’ Retirement Law (PERL), Government Code section 20000 et seq.

3. Respondent qualified for membership with CalPERS through his employment as a custodian with Orange County Schools from April 7, 1976, to May 23, 1977. After separating from employment with Orange County Schools, respondent withdrew his CalPERS contributions and his membership in CalPERS was terminated on May 26, 1978. (Exh. D.) CalPERS refunded the contributions to respondent and removed 0.690 years of service credit from his account.

4. On May 15, 1989, respondent began employment as an attorney with the Los Angeles County District Attorney’s Office (D.A.’s Office), which is a public agency contracting with LACERA for retirement benefits for its eligible employees. Respondent became a member of LACERA’s retirement system on June 1, 1989. He retired from the D.A.’s Office on February 28, 2018.

5. On June 8, 2017, respondent contacted CalPERS to obtain cost information about redepositing his previously withdrawn contributions related to his employment with Orange County Schools.

6. On June 20, 2017, respondent submitted to CalPERS a Request for Service Credit Cost Information – Redeposit of Withdrawn Contributions (Exhibit 7), and a Confirmation of Intent to Establish Reciprocity – When Changing Retirement Systems (Exhibit 8).

7. By letter dated October 27, 2017, CalPERS notified respondent that the cost to redeposit 0.690 years of service credit with CalPERS was $3,317.06. The letter explained
that CalPERS would compute his retirement benefit based solely on his service and salaries under CalPERS membership (i.e., his salary reported by Orange County Schools), but did not indicate what the amount of respondent’s CalPERS monthly benefit allowance would be. The letter stated, in part:

Reciprocity is an agreement between CalPERS and certain other public retirement systems that allows an employee to move from one retirement system to the other without losing retirement and related benefits. Unfortunately reciprocity will not apply should you elect to redeposit your withdrawn contributions. However, because you are a member of a reciprocal agency the provision of Vesting will apply.

Once you establish membership with a reciprocal system, you are considered vested with CalPERS and may retire with the service you have on deposit in our system. CalPERS would compute your retirement benefits based solely on service and salaries under CalPERS membership, and reciprocal provisions regarding your final compensation benefit will NOT apply.

Although we do not require concurrent retirement under the provisions of Vesting, please check with [LACERA] for their requirements or restrictions.

Your election to Redeposit, once it is received at CalPERS is irrevocable.

(Exh. 9, p. 2.)

8. November 3, 2017, respondent spoke by telephone with a CalPERS representative, Justin Andrade, who documented the telephone call as follows:

[Member] called to inquire if he is eligible for a monthly retirement benefit if he purchases the redeposit service credit. Per 10/26/17 note informed [member] they will be eligible for vesting. Informed [member] how their CalPERS retirement allowance is calculated and explained my explanation of their [service retirement] calculation is not official.

(Exh. 14, pp. 5-6.)

9. On November 15, 2017, CalPERS received respondent’s completed Election to Purchase Service Credit form, together with a check for $3,317.06 to pay for the cost of the redeposit of 0.690 years of service credit. (Exh. 10.) On November 21, 2017, CalPERS
processed respondent’s redeposit election and posted 0.690 years of service to his CalPERS retirement account.

10. On November 27, 2017, respondent spoke by telephone with a CalPERS representative and requested a service retirement application.

11. On January 8, 2018, CalPERS processed the reciprocity determination with LACERA. Respondent was denied full reciprocity due to a lapse in service but was approved for the benefit of vesting only, as detailed in CalPERS’s October 27, 2017 letter to respondent (see Finding 7, above).

12. On January 18, 2018, respondent signed a Service Retirement Election Application requesting a service retirement date of February 28, 2018. On or about January 23, 2018, CalPERS completed the processing of respondent’s Service Retirement Election Application. Respondent retired for service effective February 28, 2018, with 0.690 years of service credit with CalPERS.

13. By letter dated April 5, 2018, CalPERS notified respondent of the amount of his monthly retirement benefit, as follows:

Your monthly benefit is $30.85 based on your retirement date of February 28, 2018 and payroll reported through October 29, 1976. Any adjustments will be made after all final payroll information is received, usually four months after you begin receiving your monthly retirement payments. This amount does not include any deductions you may have authorized CalPERS to make.

Your retroactive check will be issued on April 16, 2018, and will cover the period of February 28, 2018 through March 31, 2018.

Your first regular benefit check will arrive on or shortly after May 1, 2018 and will cover the period of April 1, 2018 through April 30, 2018. Your future retirement checks will be direct deposited on or shortly after the first of each month.

(Exh. K.)

14. Subsequently, in early April 2018, communications ensued between CalPERS and respondent regarding his contention that the calculation of his monthly retirement benefit ($30.85) was not accurate. Respondent claimed he had been informed by CalPERS representatives on multiple occasions that his monthly benefit amount for CalPERS would be approximately $230 to $250 and calculated based on his LACERA salary. Respondent stated he made retirement planning decisions in reliance on information provided by CalPERS.
representatives. CalPERS advised respondent that he qualified for vesting but not for the full reciprocity benefit of final compensation exchange. Final compensation exchange refers to using the highest annual average compensation during any 12- or 36-month period of employment as member of a reciprocal retirement system.

15. On April 10, 2018, Heather Hurff, CalPERS Staff Services Manager, Member Elections Team, sent an email to respondent to follow up their telephone conversation earlier that day. The email explained the basis of CalPERS’s determination, in pertinent part, as follows:

This email is to follow up our phone conversation earlier today regarding your reciprocal determination that vesting only applies between [LACERA] and [CalPERS]. I understand from our conversation that you were under the impression that final compensation exchange would apply to your retirement and that CalPERS would use LACERA’s salaries to calculate your benefit. You stated that it wasn’t until April 3, 2018 that you were made aware that your retirement benefit would be calculated with CalPERS salaries and that your benefit would be $30.00 a month.

Our records indicate that your Reciprocal Redeposit Package sent October 27, 2017 [see Finding 7, above] did not give an estimated monthly pension increase amount and indicated that reciprocity would not apply should you redeposit, however vesting would apply.

We received your Election to Purchase Service Credit on November 15, 2017 with a lump sum payment. On January 19, 2018, we received a Service Retirement Election Application with a retirement date of February 28, 2018, which indicated you were a member of another public retirement system, LACERA.

CalPERS is governed by the provisions set forth in the Public Employees’ Retirement Law (PERL), there are specific requirements that a member must meet to be eligible for final compensation exchange with a county retirement system. [Pursuant to Government Code sections 20638 and 20355, compensation from a county retirement system may be used for purposes of computing final compensation for a CalPERS member if entry into employment in one system occurred within six months of discontinuance of employment as a member in another system.]
Our records indicate that you left CalPERS employment on May 23, 1977, and did not gain membership under LACERA until May 15, 1989, thus making your movement between systems greater than the required 6 months to establish final compensation exchange. I am very sorry if you may have been given misleading information in the past, however based on the law we cannot comply with your request to use LACERA's salaries.

(Exh. 4.)

16. On April 13, 2018, respondent filed a timely appeal regarding CalPERS's reciprocity determination set forth in Ms. Hurff's April 10, 2018 email. (Exh. 6.) The Statement of Issues was filed on September 18, 2018. This hearing ensued.

Testimony by CalPERS Witnesses

HEATHER PORTER

17. Heather Porter (formerly Heather Hurff) is currently employed by CalPERS as the Manager of the Member Elections Team, which processes reciprocity determinations and various other determinations. Ms. Porter is familiar with respondent's case. Ms. Porter testified credibly and consistent with her April 10, 2018 email to respondent (discussed in Finding 15, above).

18. Ms. Porter explained that respondent re-established membership in CalPERS when he re-deposited his previously withdrawn contributions. Respondent established approximately seven months of CalPERS service credit with the re-deposit of $3,317. As a member of a reciprocal system (i.e., LACERA), respondent was eligible to re-deposit the withdrawn contributions and receive benefits, even though he was not an active member of CalPERS. Ms. Porter explained that the types of benefits a person can gain when they establish reciprocity include vesting and final compensation exchange. Vesting is granted to a person who is a member of a reciprocal system and has funds on deposit with CalPERS; vesting allows the person to retire with less than five years of service credit in CalPERS.

19. Ms. Porter testified regarding the CalPERS letter dated October 27, 2017, sent to respondent. Page 2 of the letter (set forth in Finding 9, above) informed respondent of the benefits that will apply if he makes the re-deposit of $3,317. It informed respondent that once he established his membership in CalPERS by redepositing, vesting would apply and CalPERS would compute his retirement benefit based only on the service and salaries that were earned under CalPERS membership, and that reciprocal provisions regarding his final compensation benefit would not apply (i.e., respondent’s benefit would be computed using only his CalPERS salary, not his LACERA salary). Ms. Porter testified that respondent is not entitled to have his CalPERS benefit calculated based on his LACERA salary because of Government Code section 20352, which requires that a member has to separate from one
reciprocal system and enter another reciprocal system within six months. Here, there is a 12-year gap between respondent’s separation from CalPERS and his entry into LACERA. Ms. Porter testified CalPERS is required to follow section 20352 and there is no exception.

20. Ms. Porter testified that respondent could have requested a formal estimate of his CalPERS retirement benefit. CalPERS encourages members to request a formal estimate prior to retirement to understand what their benefits will be. Ms. Porter was not aware of respondent requesting a formal estimate of his benefit from CalPERS. Ms. Porter testified that the Estimates Group would rely on the reciprocity determination by Ms. Porter’s team that is reported in the CalPERS system to verify what benefits the member is entitled to so they can provide an accurate estimate. According to Ms. Porter’s testimony, because of the 12-year gap between respondent’s membership in CalPERS and LACERA, if respondent had requested a formal estimate, CalPERS would have already known to use only his CalPERS salary and not his LACERA salary in estimating the amount of his benefit.

21. On cross-examination, Ms. Porter testified that respondent’s multiple telephone calls to the CalPERS call center requesting an estimate of his monthly benefit, and the answers he received during the calls, were not a formal estimate. She explained a member must fill out a form to make a formal request for an estimate, and CalPERS, in response, would send a document to the member with an estimate of the retirement benefit, based on the retirement date requested by the member.

TARA HENCH

22. Tara Hench is currently employed by CalPERS as an Associate Governmental Program Analyst in the Benefits Department, which handles the calculation of retirement benefits. Ms. Hench is familiar with respondent’s case and testified credibly.

23. Ms. Hench testified that her department processed the Service Retirement Election Application that CalPERS received from respondent on January 19, 2018 (Exhibit 3), but she was not directly involved. On this application, since respondent indicated he was a member of a reciprocal retirement system (i.e., LACERA), CalPERS requested information from LACERA. Ms. Hench testified that any time reciprocity is indicated, CalPERS requests salary and membership information from the reciprocal agency as part of the normal procedures. CalPERS requested LACERA to provide the membership date that respondent entered the LACERA system, as well as his requested retirement date, and any service credit amount. CalPERS needs this information to confirm that the retirement dates in both systems are concurrent and to confirm that the membership date when the member entered the reciprocal system was within the six-month guideline. According to Ms. Hench, requesting information from LACERA was part of the procedure in processing respondent’s Service Retirement Election Application. Ms. Hench testified that the Benefits department does not make reciprocity determinations. Ms. Hench’s department relies on the reciprocity determinations made by the Member Elections Team, managed by Ms. Porter.
24. Ms. Hench testified that the Customer Touch Point notes (Exhibit 14) indicated that, on November 27, 2017, respondent was sent a CalPERS retirement publication, Publication 43, which explains reciprocity and also encourages the member to request a formal estimate. Ms. Hench explained that a formal estimate is not just something done verbally over the telephone. The member must complete the written form included in Publication 43 (i.e., the Retirement Allowance Estimate Request) and submit the form to CalPERS. Ms. Hench testified CalPERS did not receive that form from respondent.

25. Ms. Hench testified that if there is reciprocity in the normal retirement application, CalPERS will gather information from the reciprocal agency. Even though the CalPERS member is not granted final compensation reciprocity, CalPERS will still gather information from the reciprocal agency to verify that only vesting rights apply. Ms. Hench testified that requesting information from LACERA is just part of the information gathering process. CalPERS uses a request form that requests everything from the reciprocal agency.

26. Ms. Hench testified that respondent’s receipt of his first CalPERS retirement check in mid-April 2018, when his retirement was effective February 28, 2018, was “a little bit longer” than the normal processing time. According to Ms. Hench, CalPERS tries to issue payment within 45 days of the application received date or the retirement date, whichever date is later. Ms. Hench testified that, although respondent’s first check was delayed, he received interest for the delay.

Respondent’s Testimony and Contentions

27. Respondent contends he is entitled to a CalPERS monthly retirement benefit calculated based on his salary while a member of LACERA. Respondent relies on the doctrine of equitable estoppel and an alleged failure by CalPERS to provide adequate notice of his benefit amount prior to his February 28, 2018 retirement date. Respondent requests that CalPERS pay him a monthly benefit allowance of $236.11, retroactive to his February 28, 2018 retirement date. (Exh. W, p. 10.)

28. During his retirement planning, respondent contacted the CalPERS call center by telephone numerous times and made visits to the CalPERS regional offices in Glendale and San Diego. The telephone contacts and visits to the regional offices were documented by CalPERS representatives in the CalPERS Customer Touch Point system. (See Exh. 14.) Respondent contends that, on numerous occasions, CalPERS representatives indicated he would receive a monthly CalPERS benefit computed based on his LACERA salary, and his CalPERS monthly benefit would be approximately $230 to $250. (Exh. M, p. 105.)

29. Respondent contends that, during a visit to the CalPERS regional office in Glendale on June 20, 2017, he was told that he would receive a CalPERS monthly benefit based on his current monthly salary in LACERA, and his retirement from CalPERS and LACERA had to occur on the same date in order to receive that benefit. The CalPERS Customer Touch Point notes for the June 20, 2017 visit documented, among other things, that respondent asked about reciprocity and purchasing service credit, and was advised that
"he can potentially buy [service credit] through redeposit of withdrawn contribution, and once he re-establish [sic] his [CalPERS] membership, he can also potentially buy [service credit for service prior to membership], because he mentioned he was part time and worked for Orange County schools for 2.5 years while under [CalPERS]. (Exh. 14, p. 7.)

30. Respondent received the CalPERS letter dated October 27, 2017, indicating that the cost to redeposit his previously withdrawn contributions was $3,317. The letter, however, did not indicate the amount of the monthly benefit. Respondent testified he read the October 27, 2017 letter, including the second page which stated, in part: "CalPERS would compute your retirement benefits based solely on service and salaries under CalPERS membership, and reciprocal provisions regarding your final compensation benefit will NOT apply." (Exh. E, p. 25.) Respondent testified he did not understand this sentence to mean what it said and he was confused. On cross-examination, respondent further explained that when he read this sentence, he did not know how CalPERS would calculate the benefit based on a salary that occurred in 1977 as a custodian.

31. On November 3, 2017, respondent spoke by telephone with CalPERS representative Justin Andrade. According to respondent, the telephone call was approximately 20 minutes long. Respondent testified that, during the call, he asked Mr. Andrade several times what his CalPERS monthly benefit amount would be, and Mr. Andrade confirmed it would be calculated based on his LACERA salary. When respondent pressed Mr. Andrade for the amount of the CalPERS monthly benefit, Mr. Andrade again stated it would be based on the LACERA salary. According to respondent, Mr. Andrade indicated he could not give an "official estimate" of the benefit amount but he could do a "rough calculation" for respondent. Respondent told Mr. Andrade that his LACERA monthly salary was approximately $16,000. After putting respondent on hold for a few minutes, Mr. Andrade returned and told respondent his CalPERS monthly benefit would be somewhere between $230 and $250, based on his LACERA salary. According to respondent, Mr. Andrade indicated the monthly benefit amount of $230 to $250 was "unofficial" and that he did the "rough calculation" because respondent wanted to know the amount of the monthly benefit before sending in a check for the $3,317 re-deposit amount. Based on Mr. Andrade's representations that his CalPERS monthly benefit would be between $230 and $250, and would be computed based on his LACERA salary, respondent decided to pay the $3,317 cost for the re-deposit.

32. On December 5, 2017, respondent received a letter from LACERA containing an estimate of his LACERA retirement benefit and salary information. (See Exh. I, pp. 67-79.) During his retirement planning, respondent made insurance and benefit choices concerning his son. Respondent testified he chose to take his full monthly benefit from LACERA and planned to use his CalPERS monthly benefit (which he thought would be $230 to $250) to pay the premium for a life insurance policy for his son.

33. On January 18, 2018, respondent made a visit to the CalPERS regional office in San Diego. Respondent testified that, during the visit, he was again told by a CalPERS representative that his monthly benefit would be based on his LACERA salary. During the
visit, respondent provided CalPERS with salary information he received from LACERA. (Exh. I, p. 75.) Respondent was trying to move things along because he was told that CalPERS was still waiting for salary information from LACERA. Respondent testified that, based on the LACERA salary information he provided, the CalPERS representative did a "rough calculation" that his monthly CalPERS benefit would be $230 to $250. The Customer Touch Point note documenting the January 18, 2018 visit stated, in part, that respondent submitted a service retirement application for a retirement date of February 28, 2018, and options were discussed, but there is no specific mention of any rough calculation being done regarding the retirement benefit amount. (Exh. 14, p. 4.)

34. Respondent also contends that CalPERS failed to provide him with adequate notice of his actual benefit amount prior to his February 28, 2018 retirement date. He notes that CalPERS did not notify him of his monthly benefit amount until April 9, 2018, which was 40 days later. Respondent contends that the failure of CalPERS to notify him of his actual monthly benefit amount prior to his retirement date supports his claim of detrimental reliance. He also asserts that the late statement of the actual benefit amount "clearly indicates" CalPERS was waiting for the LACERA salary information for its calculation.

35. Respondent also notes that CalPERS made requests to LACERA for salary information on February 12, March 2, and March 5, 2018. Respondent questions why CalPERS, as late as April 2, 2018, was still waiting for salary information from LACERA, in light of CalPERS's letter dated October 27, 2017, indicating that vesting would apply but his CalPERS benefit would be based solely on his service and salary under CalPERS membership. Respondent contends CalPERS requested his LACERA salary information because CalPERS made representations that his LACERA salary would be used to calculate his CalPERS monthly benefit.

36. Respondent presented a letter from CalPERS dated March 25, 2019, in which CalPERS, at respondent's request, estimated his monthly benefit would be $236.11 if it were calculated based on his LACERA salary. The letter states in full: "Per your request, we are providing you an estimated benefit amount based on your LACERA final compensation amount. [¶] This estimate does not alter CalPERS determination that reciprocity was determined as "Vesting Only", due to movement was greater than 6 months and you are not entitled to retirement benefits based on your salary from LACERA. [¶] Your estimated Unmodified Allowance, using your LACERA Salaries, would be $236.11 per month." (Exh. S.) Respondent contends this March 25, 2019 letter confirms the "rough calculation" estimate given by Mr. Andrade on November 3, 2017, that his monthly benefit would be between $230 and $250.

LEGAL CONCLUSIONS

1. Under the PERL, respondent is not entitled to the full reciprocity benefit of final compensation exchange, because more than six months elapsed between the date respondent terminated his CalPERS membership in 1977-1978 and the date he entered
membership in the LACERA system in 1989. (Gov. Code, §§ 20638, subd. (a)(1), 20355.)

In his closing brief, respondent "concedes he is not entitled to full reciprocity as defined by CALPERS." (Exh. W, p. 1, emphasis omitted.)

2. Respondent nonetheless contends he is entitled to a CalPERS monthly benefit calculated based on his LACERA salary based on equitable estoppel and a failure by CalPERS to give adequate notice of his benefit amount prior to his retirement date.

3. The doctrine of equitable estoppel is available in certain circumstances to those who detrimentally rely on representations made by another. It is "based on the theory that a party who by his declarations or conduct misleads another to his prejudice should be estopped from obtaining the benefits of his misconduct." (Cotta v. City and County of San Francisco (2007) 157 Cal.App.4th 1550, 1567.) In order for equitable estoppel to apply, the following requirements must be met: "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true facts; and (4) he must rely upon the conduct to his injury." (Lentz v. McMahon (1989) 49 Cal.3d 393, 399, quoting City of Long Beach v. Mansell (1970) 3 Cal.3d 462, 489.)

4. Although the doctrine of equitable estoppel can be applied against the government "where justice and right require it," it cannot be applied against the government where to do so would effectively nullify a "strong rule of policy, adopted for the benefit of the public . . . ." (City of Long Beach v. Mansell, supra, 3 Cal.3d at p. 493.) Where the rule of policy is clearly embodied in statutory or constitutional limitations, courts have not invoked the principles of equitable estoppel. (Longshore v. County of Ventura (1979) 25 Cal.3d 14, 28; Chaidez v. Board of Administration (2014) 223 Cal.App.4th 1425, 1431-32; Medina v. Board of Retirement (2003) 112 Cal.App.4th 864, 869.) Nor can estoppel be applied where to do so would enlarge the power of a governmental agency or expand the authority of a public official. (Longshore v. County of Ventura (1979) 25 Cal.3d 14, 28.)

5. Grounds do not exist to apply equitable estoppel against CalPERS in this case. Applying equitable estoppel would provide respondent a benefit that he would not be entitled to under the PERL. CalPERS is a creation of statutes which grant it certain powers. CalPERS has the authority to pay benefits to a member only when the statutes authorize it and then only in the amount authorized. Here, respondent is not entitled to final compensation exchange because of the greater than six-month time gap between his exit from CalPERS and entry into LACERA. Government Code sections 20638 and 20355 embody a clear policy that final compensation exchange shall not apply where a member's movement between reciprocal systems occurs over a period greater than six months. Applying equitable estoppel in this case would effectively nullify that policy.

6. Moreover, respondent may not avail himself of the equitable estoppel doctrine to obtain relief. Some of the required elements for equitable estoppel were not established, as described below:
(A) The party to be estopped must be apprised of the facts. CalPERS was apprised of the facts at issue in this case.

(B) The party must intend or reasonably believe that its conduct will be acted upon or must so act that the party asserting the estoppel had a right to believe it was so intended. CalPERS persuasively argues that respondent cannot show that CalPERS intended or reasonably believed he would interpret the representation that he would not be entitled to final compensation reciprocity as meaning that he would be entitled to final compensation reciprocity. CalPERS provided respondent with official information regarding the reciprocity determination, and CalPERS reasonably believed that respondent would make his decisions based on the official information provided. Respondent was advised that the information provided during the telephone call with Mr. Andrade was not official.

(C) The party asserting the estoppel must be ignorant of the true state of facts. Respondent was not ignorant of the true state of facts. Respondent was notified of CalPERS’s reciprocity determination that his CalPERS benefit would be based solely on his CalPERS salary and not his LACERA salary. This official determination by CalPERS was communicated to respondent in the October 27, 2017 letter. While it is true that the October 27, 2017 letter did not indicate the amount of respondent’s CalPERS benefit if he were to re-deposit his previously withdrawn contributions, the letter clearly stated that final compensation reciprocity did not apply and respondent’s CalPERS benefit would be based solely on his CalPERS salary. The CalPERS reciprocity determination was in accordance with the applicable provisions of the PERL. Respondent chose to ignore the true state of facts established by CalPERS’s official determination. Respondent could have, but did not, request a formal estimate of his benefit amount. Respondent was advised that the information provided during the telephone call with Mr. Andrade was not official.

(D) The party asserting the estoppel must rely upon the other party’s conduct to his detriment. CalPERS provided respondent an official determination that final compensation reciprocity did not apply, meaning that his CalPERS benefit would be based on his CalPERS salary, and not on his LACERA salary. Respondent ignored that official determination and instead relied on unofficial estimates given over the telephone or in person at CalPERS regional offices, which he did at his own peril. Had respondent relied on CalPERS’s official determination, he would have known that his CalPERS benefit would be based on his CalPERS salary only and not his LACERA salary.

7. In his closing brief, respondent makes an additional argument based on promissory estoppel, in that CalPERS did not notify him of his actual benefit amount prior to his February 28, 2018 retirement date. CalPERS notified respondent of the benefit amount on April 9, 2019. Respondent argues: “When promissory estoppel and failure to give proper notice occurs ‘injustice can be avoided only by enforcement of [CALPERS]’s promise to perform’ by basing Respondent’s retirement benefits on his LACERA salary, as CALPERS had consistently represented.” (Exh. W, p. 8 (citing C&K Engineering Contractors v. Amber Steel Co. (1978) 23 Cal.3d 1).) This argument is without merit. Promissory estoppel is a doctrine which employs equitable principles to satisfy the requirement that consideration
must be given in exchange for the promise sought to be enforced. (Cotta v. City and County of San Francisco, supra, 157 Cal.App.4th at 1566.) Here, promissory estoppel does not apply because there was no "promise" by CalPERS that respondent's LACERA salary would be used to calculate his retirement benefit, and no consideration given in exchange for any such promise.

8. Based on the foregoing, respondent is not entitled to the full reciprocity benefit of final compensation exchange with LACERA, and he is not entitled to a CalPERS retirement benefit based on his LACERA salary under the doctrine of equitable estoppel. (Factual Findings 1-36; Legal Conclusions 1-7.) Therefore, the order below is warranted.

ORDER

Respondent's appeal is denied.

DATED: July 10, 2019

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings