**ATTACHMENT E**

**THE PROPOSED DECISION**

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

**In the Matter of the Appeal Regarding Final Compensation Calculation of:**

**CAMERON K. HANDLEY and COUNTY OF YOLO, Respondents**

**Agency Case No. 2023-0238**

**OAH No. 2024010543**

# PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 29, 2025, from Sacramento, California.

Preet Kaur, Senior Attorney, represented complainant Brad Hanson, Chief of the Employer Account Management Division of the California Public Employees' Retirement System (CalPERS).

David Henderson, Attorney at Law, represented respondent Cameron K. Handley (respondent), who was present throughout the hearing.

April Rocke, Attorney at Law, represented the County of Yolo (the County).

Evidence was received, the record closed, and the parties submitted the matter for decision on April 29, 2025.

## ISSUE

Whether Management Incentive Pay reported by the County on behalf of respondent Handley from July 1, 2017, through December 30, 2021, can be included in the calculation of respondent Handley's final compensation.

## FACTUAL FINDINGS

### Jurisdictional Matters

1. The County contracts with CalPERS to provide retirement benefits to its eligible employees. Pursuant to the contract, the County must comply with the Public Employees' Retirement Law (PERL) and its associated regulations.

2. Respondent established membership with CalPERS in 1995 through her employment with the County. In September 2021, she applied for service retirement with a requested retirement date of December 19, 2021. At the time of her retirement, she was a local miscellaneous member of CalPERS through her employment with the County.

### Calculating Respondent's Retirement Benefit Amount

3. Under the PERL, CalPERS calculates a member's retirement allowance based on a formula that includes three components: (1) the member's age at retirement; (2) the member's length of service; and (3) the member's final

compensation. Here, respondent's age and length of service are not in dispute. The issue to be determined relates to her final compensation. Specifically, CalPERS contends respondent's special compensation, reported as Management Incentive Pay (MIP), from July 1, 2017, through December 30, 2021, did not meet certain legal requirements and is therefore not a valid component of her final compensation for purposes of calculating her retirement benefit. Respondent and the County disagree.

4. Until 2015, respondent worked for the County as the Multi-Disciplinary Interview Center (MDIC) Director. The MDIC is a children's advocacy center. Organizationally, the position was within the County District Attorney's Office.

5. In 2015, a consortium of agencies, including the County, created the Yolo County Family Justice Center (FJC) to provide comprehensive services for families affected by domestic violence. Under Yolo County District Attorney Jeff Reisig, the County initiated a Family Violence Coordination Pilot Project (FVCPP) to create and manage the FJC. Mr. Reisig chose respondent to act as the FVCPP Coordinator because he saw her as uniquely suited to run the FJC.

6. As a result, respondent continued directing the MDIC, but the County reclassified her position as the Children's Advocacy Center Director. The County generated a Personnel Action Form (PAF) showing that effective October 4, 2015, respondent's job classification was "Family Justice Center Director." The PAF also includes a box labeled "Action." In that box, the words "Out of class 10% FJC Director differential" are typed, but "Out of class" is crossed out and "FJC Director" is crossed out with the letters "CAO" written above it, presumably for "County Administrative Officer." As interlineated, the Action box reads "10% CAO differential."

7. Near the bottom of the PAF, there is a "Comments" section that reads: "Out-of-class 10% FJC Director differential – 2 years." Below that is the sentence: "100% of all compensation will be reported to CalPERS with all Special Project pay reported as 'Supplemental Income.'"

8. Beginning in October 2015, the County paid respondent her regular salary plus a 10 percent increase characterized as special compensation for her work as the FVCPP Coordinator. The County paid respondent that way from October 2015 until she retired in December 2021. The County reported her special compensation to CalPERS as MIP.

9. On April 4, 2022, CalPERS sent respondent a letter informing her that, after reviewing her compensation as reported by the County, CalPERS had determined her special compensation did not satisfy certain legal requirements to qualify as MIP. Specifically, CalPERS wrote, in relevant part:

> Only special compensation exclusively identified and defined under CCR section 571(a) and meeting all requirements under subsection (b) may be used in the calculation of retirement benefits. The 10% compensation increase that you received is not for normally required duties during normal work schedules, is not available to the group or class, and is not due to the unique nature of your job. Instead, it is provided to maintain a salary range differential between you and your closest subordinate when needed. This compensation does not meet the definition of Management Incentive Pay or meet the requirements under

> CCR section 571(b). Accordingly, we excluded [it] from your retirement benefit calculation at the time of retirement.

10. Also on April 4, 2022, CalPERS sent the County a letter informing it, in relevant part: "[Respondent] was provided a Formal Determination Letter informing them that the reported compensation does not qualify as compensation earnable and has therefore been excluded from the calculation of their final retirement benefit."

11. On April 21, 2022, Mr. Reisig wrote a letter to CalPERS explaining the history of respondent's job duties and the reason for her reclassification and special compensation. Mr. Reisig also opined that CalPERS's determination, and its underlying reasons, were wrong. Specifically, he wrote, in relevant part:

> Having cited [the definition of Incentive Pay in California Code of Regulations, title 2, section 571, subdivision (a)(1)], the analyst then stated, contrary to the evidence that "The 10% compensation that you received is not for normally required duties during normal work schedules, is not available to the group or class, and is not due to the unique nature of your job." Contrary to his assertion, the 10% compensation was paid for the assigned duties of creating a Family Justice Center during normal work hours and was due to the unique nature of her job and her talents. There was no one else in her group or class.

12. At hearing, Mr. Reisig conceded respondent was a member of the Yolo County Management Association (YCMA), a collective bargaining unit. He clarified that when he opined "there was no one else in her group or class" in his letter to CalPERS,

he was referring to respondent's unique personal skill set and qualifications. He did not mean to express a legal opinion about whether respondent was part of a group or class as those terms are defined in the statues governing CalPERS's retirement benefits.

13. Mr. Reisig also confirmed that after respondent retired in December 2021, her duties were "scattered" to others. A different County employee became the MDIC Director. That individual did not run the FJC and did not receive the additional 10 percent special compensation. Empower Yolo, an independent non-profit organization, now runs the FJC. Mr. Reisig has never agreed to pay any other employee in his office the 10 percent special compensation paid to respondent.

14. Nikki Abaurrea, the Chief Fiscal Administrative Officer in the County's District Attorney's Office, testified at hearing about the nature of respondent's special compensation. Specifically, Ms. Abaurrea clarified that respondent's special compensation was not designed to ensure she made at least 10 percent more than her closest subordinate. She supported her testimony with charts she generated that compared respondent's annual gross pay with that of her most highly compensated subordinate. The charts show that from 2016 through 2020, respondent annually earned between approximately 178 and 250 percent more than her most highly compensated subordinate.

15. Respondent testified at hearing that when Mr. Reisig approached her in 2015 about running the FJC, she had reservations given the amount of work involved. In additional to receiving the 10 percent special compensation, respondent wanted to ensure her full salary, including the special compensation, would be included in her final pension calculation. She called CalPERS, described the "special project pay," and confirmed it would be included in her final pension calculation. The CalPERS

representative with whom she spoke also advised her to confirm the details of her compensation in writing. She would not have taken the job if she knew the 10 percent special compensation would not be included in her final pension calculation.

16. Respondent further testified that running FJC was part of her regular job duties from October 2015 through her retirement in December 2021. She submitted into evidence her annual performance evaluations from 2016 and 2021, both of which listed her "Key Job Duties/Responsibilities" as including "Oversee program coordination of FVCPP" and "Oversight of CAC (MDIC – Multi-Disciplinary Interview Center)."

17. Respondent's work hours did not increase after she became the FVCPP Coordinator. She typically worked 60 or more hours per week both before and after taking on the FJC work. She had an office at the MDIC facility and another at the FVCPP facility and she worked in each. To manage the additional demands on her time created by her FVCPP work, she delegated some of her day-to-day responsibilities to other MDIC personnel.

18. Angel Gutierrez, an Associate Governmental Program Analyst for CalPERS, testified at hearing. He has worked for CalPERS for more than 20 years and currently works in the Compensation Review Unit. He reviewed respondent's CalPERS information and history to prepare for this hearing.

19. Mr. Gutierrez confirmed that during respondent's retirement application process, the County reported her special compensation as MIP. CalPERS reviewed the Memorandum of Understanding (MOU) between the County and respondent's bargaining unit, the YCMA, for the time period of July 1, 2017, through June 30, 2020

(2017-2020 MOU), which CalPERS submitted into evidence. The 2017-2020 MOU did not define MIP.

20. CalPERS subsequently reviewed the MOU between the County and the YCMA for the time period of July 1, 2024, through June 30, 2028 (2024-2028 MOU), which CalPERS also submitted into evidence. The 2024-2028 MOU provides, in section 1.11, titled Management Incentive Pay, the following:

> Effective January 1, 2015, in order to address unique circumstances in which managers are asked to take on additional duties outside of their essential duties, the County Administrative Officer, at their sole discretion, may adjust the salary of any employee up to a maximum of ten percent (10%) of base salary. The County Administrative Officer's decision regarding management incentive pay, including eligibility or cessation, shall be final and not subject to the grievance procedure.

21. After reviewing the 2024-2028 MOU, CalPERS again considered whether respondent's special compensation should be included in her final pension calculation. CalPERS sent the County a letter on October 4, 2024, in which it wrote, in relevant part:

> The 10% MIP does not qualify as special compensation because it does not meet the exclusive definition of "Management Incentive Pay" in CCR section 571(a) and does not meet the specified requirements for special compensation in CCR section 571(b). Section 1.11 of the Amended MOU states that managers are "asked to take on

additional duties outside of their essential duties." For the MIP to be reportable to CalPERS, duties must be part of normally required duties and performed during normal hours of employment, as required by CCR 571(b)(3),(4).

Furthermore, Section 1.11 of the Amended MOU states "the County Administrative Office, at their sole discretion, may adjust the salary of any employee up to a maximum of ten percent (10%) of base salary." For the MIP to be reportable to CalPERS, MIP must be available to all members in the group or class. [Respondent] is in the County's Management group or class; therefore, the MIP must have been available to the entire Management group or class.

Section 1.11 of the Amended MOU does not meet the definition of MIP under CCR section 571(a) and it does not meet the requirements under subsection (b), and is therefore not reportable to CalPERS for pension purposes.

22. At hearing, Mr. Gutierrez explained that CalPERS determined respondent's 10 percent special compensation was not available to all members of her group or class. He testified that a "group or class," as that phrase is used in the laws governing CalPERS, includes those members in the same collective bargaining unit. Appendix B to the 2024-2028 MOU listed 48 YCMA positions, including respondent's. CalPERS "spot checked" other members of the YCMA and verified they were not receiving the MIP respondent received. This was consistent with the language of the 2024-2028 MOU, which provided that the County's Administrative Officer has "sole discretion" to adjust employees' salaries. In CalPERS's view, giving the County's

Administrative Officer sole discretion to decide whether an employee would receive special compensation meant it was not available to all members of the YCMA.

23. Mr. Gutierrez further testified that CalPERS also considered the language of the 2024-2028 MOU when determining that respondent's special compensation did not meet the definition of MIP. Specifically, CalPERS noted that the 2024-2028 MOU provides for MIP in "unique circumstances in which managers are asked to take on additional duties outside of their essential duties." CalPERS interpreted that sentence to mean that employees receive extra pay not for their normally required job duties, but rather for additional duties outside their normal duties. This was consistent with the PAF the County issued effective October 4, 2015, which characterized respondent's 10 percent pay increase as an "out-of-class" differential.

24. In a written pretrial brief, respondent argued CalPERS has misconstrued the definition of MIP. Specifically, respondent argued CalPERS's interpretation is oxymoronic because "if the extra pay is due to the unique nature of her job, it cannot be available to all members of a group or class." In support of this argument, respondent contended:

> Accepting the duties associated with creating the Family Violence Coordination Pilot Project would have required [respondent] to take on new duties in excess of those already assigned to her as the Director of the Children's Advocacy Center. While this would have required a great deal of extra work for [respondent], there was no one else in Yolo County with [respondent's] experience or skills who could accomplish this task. To provide compensation for these extra responsibilities, Mr. Reisig offered [respondent]

a 10% increase in her pay to undertake and manage the Family Violence Coordination Pilot Project, while maintaining her role as the Director of the Children's Advocacy Center.

25. Respondent contends she was uniquely qualified to run the FJC, the County modified her job duties to include her FJC and MDIC duties, and she performed those required duties as part of her regular employment. In return, she received a 10 percent pay increase that CalPERS's personnel assured her would be included in her final retirement calculation.

26. Respondent further contends the 10 percent special compensation was available to other members of her group or class, but distinguishes between the pay increase being available and being awarded. In respondent's view, the fact that other County employees did not possess the unique blend of skills, institutional knowledge, and personal qualifications to justify earning special compensation does not mean such special compensation was not "available" to them. Rather, it was available, but they did not receive it because there were no circumstances justifying paying it to them.

## LEGAL CONCLUSIONS

1. CalPERS is governed by the PERL. The purpose of the PERL is "to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship or prejudice, be replaced by more capable employees, and to that end provide a

retirement system consisting of retirement compensation and death benefits." (Gov. Code, § 20001.)

2. CalPERS's interpretation of the PERL is entitled to deference because "as the agency charged with administering the PERL, [Cal]PERS has expertise and technical knowledge as well as an intimate knowledge of the problems dealt with in the statute and various administrative consequences arising from particular interpretations." (*City of Pleasanton v. Bd. of Administration of the California Public Employees' Retirement System* (2012) 211 Cal.App.4th 522, 539.)

## Burden of Proof and Applicable Law

3. The party asserting the affirmative in an administrative action has the burden of going forward and the burden of persuasion by a preponderance of the evidence. (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) CalPERS has the burden of proving a prima facie case in support of its final determination concerning respondent's retirement allowance. Once that has occurred, the burden shifts to respondent to establish that she is entitled to the retirement allowance she seeks. (*Id.* at p. 1047; *Harmon v. Bd. of Retirement* (1976) 62 Cal.App.3d 689, 691.)

4. Each party must meet its burden by a preponderance of the evidence. (Evid. Code, § 115.) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Bd. of Retirement* (1984) 152 Cal.App.3d 775, 783.) To be "substantial," evidence must be reasonable in nature, credible, and of solid value. (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.)

5. CalPERS is a prefunded defined benefit retirement plan. (*Oden v. Bd. of Admin.* (1994) 23 Cal.App.4th 194, 198.) The formula for determining a member's retirement benefit considers: (1) the member's age at retirement; (2) the member's

length of service; and (3) the member's final compensation. "Compensation" means, "the remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours." (Gov. Code, § 20630, subd. (a).) It also includes time during which the member is excused from work because of holidays, sick leave, industrial disability leave, vacation, compensatory time off, or leave of absence. (*Ibid.*)

6. Employers must report member compensation to CalPERS. When they do so, compensation "shall not exceed compensation earnable, as defined in Sections 20636 and 20636.1, respectively." (Gov. Code, § 20630, subd. (b).)

7. For a CalPERS local miscellaneous member, "compensation earnable" includes the payrate and any special compensation. (Gov. Code, § 20636, subd. (a).) "Special compensation" includes, as relevant to this matter, Management Incentive Pay, which is defined as:

> Compensation granted to management employees in the form of additional time off or extra pay due to the unique nature of their job. Employees within the group cannot have the option to take time off or receive extra pay. This compensation must be reported periodically as earned and must be for duties performed during normal work hours. This compensation cannot be for overtime, nor in lieu of other benefits excluded under the statutes, nor for special compensation not otherwise listed in this Section 571.

(Cal. Code Regs., tit. 2, § 571, subd. (a)(1).)

8. CalPERS's Board of Administration has determined that to qualify as special compensation, an item of pay must meet certain requirements, including that it is:

> Contained in a written labor policy or agreement as defined at Government Code section 20049, provided that the document:
>
> (A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws; [and]
>
> (B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation.
>
> [¶ . . . ¶]

(Cal. Code Regs., tit. 2, § 571, subd. (b)(1)(A), (B).)

9. Additionally, to qualify as special compensation, the item of pay must be available to all members in the group or class, part of normally required duties, and performed during normal hours of employment. (Cal. Code Regs., tit. 2, § 571, subd. (b)(2)-(4).) "If an items [*sic*] of special compensation is not listed in subsection (a), or is out of compliance with any of the standards in subsection (b) as reported for an individual, then it shall not be used to calculate final compensation for that individual." (*Id.* at subd. (d).)

10. The term "group or class of employment" means "a number of employees considered together because they share similarities in job duties, work

location, collective bargaining unit, or other logical work-related grouping." (Gov. Code, § 20636, subd. (e)(1).) A single employee is not a group or class. (*Ibid.*)

## Causes to Deny Respondent's Appeal

11. CalPERS established, by a preponderance of the evidence, that when calculating respondent's final compensation, her special compensation cannot be included because it does not meet the legal requirements. Specifically, respondent's work for the FJC was not part of her normally required duties and her special compensation was not available to all members in her group or class.

### WHETHER RESPONDENT'S FJC WORK WAS PART OF HER NORMALLY REQUIRED DUTIES

12. Respondent credibly testified that running the FJC was part of her assigned duties between 2015 and 2021. However, the fact that those duties were assigned does not mean they were part of her normally required duties as that term is used in California Code of Regulations, title 2, section 571, subdivision (b)(3). Indeed, a preponderance of evidence showed respondent's FJC work was not part of her normally required duties for three reasons.

13. First, the County's PAF characterized the pay increase accompanying respondent's FJC-related duties as "out-of-class" pay. Paying respondent extra compensation to work out of class is inconsistent with the claim that her work was part of her normally required duties.

14. Second, the 2024-2028 MOU characterized MIP as applicable in "unique circumstances in which managers are asked to take on additional duties outside of their essential duties." The County reported respondent's special compensation to

CalPERS as MIP. In doing so, the County therefore recognized respondent's special compensation was for additional duties outside of her essential duties. Respondent's own prehearing brief seems to agree. Respondent argued her work creating the FVCPP "required [respondent] to take on new duties in excess of those already assigned to her as the Director of the Children's Advocacy Center," and acknowledged the accompanying pay increase was designed to compensate her for "these extra responsibilities." Adopting that reasoning, "extra responsibilities," which justify increased compensation, are not part of normally required duties.

15. Finally, after respondent retired, her job duties were "scattered," and her successor did not take on FJC work. Rather, a separate non-profit entity now manages the FJC. This supports the conclusion that respondent's FJC work was not part of the normally required duties of the position.

16. Respondent's best argument that her FJC work was part of her normally required job duties relies on her performance evaluations. In 2016 and again in 2021, her performance evaluations identified two of her "Key Job Duties/Responsibilities" as overseeing the FVCPP and the MDIC. That is strong evidence that her FJC work was in fact one of her essential duties. However, if her FJC work was one of her essential duties, and she received special compensation for her FJC work, then her special compensation was for completing her essential duties, not for work outside those essential duties.

17. This is a problem for respondent because, as described in the 2024-2028 MOU, MIP is only for "unique circumstances in which managers are asked to take on additional duties outside of their essential duties." Applying respondent's reasoning based on her performance evaluations leads to the conclusion that the County improperly reported her special compensation as MIP. If respondent's special

compensation was not MIP, it cannot be used to calculate her final compensation because it was not included in the exclusive list identifying items of special compensation. (Cal. Code Regs., tit. 2, § 571, subds. (a)(1), (d).)

### WHETHER RESPONDENT'S SPECIAL COMPENSATION WAS AVAILABLE TO ALL MEMBERS IN HER GROUP OR CLASS

18. Respondent was a member of the YCMA bargaining unit. She was the only County employee to receive MIP. Mr. Reisig credibly explained he had never agreed to pay any other employee in his office the 10 percent special compensation paid to respondent. CalPERS spot checked other members of the YCMA bargaining unit and found they were not receiving the special compensation respondent received.

19. Respondent's argument that MIP was available to other members of respondent's group or class, but that they simply did not earn it, is unpersuasive. To qualify as special compensation, the document in which the item of pay is included must, among other things, "[i]ndicate[] the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation." (Cal. Code Regs., tit. 2, § 571, subd. (b)(1)(B).) The 2024-2028 MOU, which is operative here because it is retroactive to 2015 by its own terms, does not indicate the eligibility criteria of the special compensation. Rather, it says simply that "the County Administrative Officer, at their sole discretion, may adjust the salary of any employee up to a maximum of ten percent (10%) of base salary." Vesting such discretion in the County Administrative Officer violated California Code of Regulations, title 2, section 571, subdivision (b)(1)(B). The practical effect of that violation was that respondent was the only employee to receive MIP. Consequently, the special compensation was not available to all members of her group or class.

## WHETHER RESPONDENT'S SPECIAL COMPENSATION WAS FOR WORK DONE DURING HER NORMAL HOURS OF EMPLOYMENT OR DUE TO THE UNIQUE NATURE OF HER JOB

20. In the Statement of Issues, complainant also contended that respondent's special compensation cannot be used in calculating her final compensation because it was not for work done during her normal hours of employment or due to the unique nature of her job. Both of those claims are rejected.

21. First, respondent established, by a preponderance of the evidence, that her work hours did not change after she took on FJC work. Rather, she delegated some MDIC work to other County personnel and continued to work 60 or more hours per week. As a salaried employee, she was not limited to a set schedule each day. Consequently, her FJC work was done during her normal hours of employment.

22. Secondly, respondent established, by a preponderance of the evidence, that her special compensation was due to the unique nature of her job. However, this does not mean, as respondent argued at hearing and in her briefing, that the County was justified in not paying the special compensation to all members of her group or class.

23. To the contrary, the relevant regulatory language refers to employees in the plural form, defining MIP as: "Compensation granted to management employees in the form of additional time off or extra pay due to the unique nature of their job." (Cal Code Regs., tit. 2, § 571, subd. (a)(1).) Using a plural noun and plural pronoun suggests multiple employees can have jobs with a unique nature.

## Conclusion

24. For the reasons stated above—namely, (1) that respondent's special compensation was for work that was not part of her normally required duties; and (2) that respondent's special compensation was not available to all members of her group or class—her special compensation from July 1, 2017 through December 30, 2021, reported to CalPERS by the County as Management Incentive Pay, cannot be included in the calculation of respondent's final compensation.

## ORDER

Respondent Cameron K. Handley's appeal of CalPERS's April 4, 2022, Retirement Allowance Formal Determination and October 4, 2024 Formal Determination of Reported Compensation is DENIED.

DATE: May 29, 2025

SEAN GAVIN
Administrative Law Judge
Office of Administrative Hearings