

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Nancy Prado (Respondent) has been employed with San Bernardino County Schools since April 1, 2018, and is therefore a local miscellaneous member of CalPERS. Paul D. Prado (Mr. Prado), now deceased, was Respondent's former spouse and a nonmember of CalPERS.

On July 11, 2023, CalPERS received a "Stipulated Order Dividing Retirement Benefits" related to a marriage dissolution involving Respondent and Mr. Prado, which constituted a valid qualified domestic relations order (QDRO). Under the QDRO, Mr. Prado was awarded 50 percent of the accumulated retirement contributions and service credit in Respondent's CalPERS retirement account from the date of their marriage, March 28, 2010, through the date of their separation on November 19, 2020.

By letter dated July 12, 2023, CalPERS notified Respondent that it had completed the separation of Respondent's account pursuant to the QDRO, creating Mr. Prado's nonmember account and crediting the account with 1.246 years of service credit and \$4,644.43 in contributions and interest as of July 12, 2023. On that very same day, Mr. Prado passed away.

On or about October 24, 2023, CalPERS issued a survivor death benefit payment to Mr. Prado's first beneficiary for 50 percent of the \$4,644.43 in contributions that were awarded to Mr. Prado under the QDRO.

On July 17, 2024, Respondent submitted a request to purchase a Community Property Redeposit of Withdrawn Contributions through myCalPERS Member Self-Service. Mr. Prado has never filed an application for a refund of the contributions awarded to him through the QDRO.

CalPERS reviewed Respondent's request to purchase a Community Property Redeposit of Withdrawn Contributions and determined that she was ineligible. Under Government Code sections 20751 and 21292, a member may redeposit contributions awarded to a nonmember only if the nonmember has previously withdrawn those contributions by filing a refund application. By letter dated April 12, 2024, CalPERS notified Respondent of its determination and advised Respondent of her right to appeal.

Respondent appealed this 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 April 16, 2026. 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, answered Respondent's questions, and clarified how to obtain further information on the process.

Respondent testified on her own behalf that she was entitled to purchase the Community Property Redeposit of Withdrawn Contributions because Mr. Prado's service credit was distributed as a death benefit and functioned as the equivalent of a refund. Respondent also argued that Mr. Prado passed away on the same day his nonmember account was created, and therefore never had the opportunity to submit a refund application—and would have done so had he lived. Respondent sought to admit into evidence various letters from CalPERS that denied her request to purchase a Community Property Redeposit of Withdrawn Contributions. The letters were admitted into evidence.

A CalPERS employee credibly testified at hearing regarding the basis of CalPERS' determination that Respondent is ineligible to purchase the withdrawn contributions. Mr. Prado never withdrew the contributions held in his nonmember account. CalPERS' records confirm that no refund application was ever submitted.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that CalPERS properly determined Respondent is ineligible to purchase the Community Property Redeposit of Withdrawn Contributions. A refund of a nonmember account, in this case Mr. Prado's nonmember account, is a condition precedent to the purchase sought by Respondent. The evidence established that there was no refund of the nonmember account. Respondent's argument that the paid death benefits were equivalent to a refund was unsupported under the Government Code.

Furthermore, survivor death benefits and a refund are not equivalent. A refund pays only the member's contributions without any interest, and the nonmember permanently waives all future rights in the CalPERS system upon receiving it.

Accordingly, the ALJ concluded that Respondent failed to establish her eligibility to purchase Community Property Redeposit of Withdrawn Contributions by a preponderance of the evidence and denied her appeal.

Pursuant to Government Code section 11517, subdivision (c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." To avoid ambiguity, staff recommends that "Mr. Pardo" be replaced with "Mr. Prado" at page 9, in the last line of paragraph 26, and "Nancy R. Pardo" be changed to "Nancy R. Prado" within the Order section on page 18.

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

June 17, 2026

Bryan Delgado
Senior Attorney