

ATTACHMENT E

THE PROPOSED DECISION

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

**In the Matter of the Appeal to Purchase Community Property
Redeposit of Service Credit of:**

NANCY R. PRADO,

Respondent.

CalPERS No. 2024-0581

OAH No. 2025110334

PROPOSED DECISION

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 16, 2026.

Bryan Delgado, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Nancy R. Prado (Respondent) represented herself. Jeremy Crum, Respondent's son, observed the hearing.

Testimonial and documentary evidence was received. The record was closed and the matter was submitted for decision on April 16, 2026.

FACTUAL FINDINGS

1. Respondent has been employed with San Bernardino County Schools since April 1, 2018 and is therefore a local (school) miscellaneous member of CalPERS.

2. Paul D. Prado (Mr. Prado), now deceased, was Respondent's former spouse and a nonmember of CalPERS.

3. On July 11, 2023, CalPERS received a "Stipulated Order Dividing Retirement Benefits" [Stipulated Domestic Relations Order (QDRO)] *In re the Marriage of [Mr. Prado] and [Respondent], Superior Court of San Bernardino, Case No. FAMSS2008103*. Pursuant to 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 marriage, March 28, 2010, through the date of separation, November 19, 2020.

4. 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.

5. The July 12, 2023 letter to Respondent states, in pertinent part:

If the nonmember [Mr. Prado] elects to receive a refund or rollover, [Respondent] can Redeposit the contributions, plus interest, and restore the service credit to [Respondent's] account. This election must be made prior to retirement.

(Exhibit 7, p. A60.)

6. Mr. Prado died on July 12, 2023, the day CalPERS completed the separation of accounts pursuant to the QDRO. (Exhibits 8 and 13, p. A111.) At the time of Mr. Prado's death, there was no election to receive a refund of his nonmember account. Mr. Prado also did not set up a beneficiary of his non-member account prior to his death.

7. On a date not established by the evidence at the beginning of August 2023, Respondent contacted CalPERS to inquire about purchasing Community Property Redeposit of service credit. (Exhibit 10.)

8. On August 7, 2023, a CalPERS representative left a voice message to Respondent notifying Respondent that she can only elect Community Property Redeposit of service credit if the nonmember, Mr. Prado, has elected for a refund of contributions, which Mr. Prado had not elected as of August 7, 2023. Respondent was further notified she was "welcome to periodically check to see if [she] was eligible for redeposit." (Exhibit 10, p. A77.)

9. On August 9, 2023, Lauren Prado (Mr. Prado's daughter), notified CalPERS of the death of Mr. Prado. (Exhibit 13, p. A111.) As a result, CalPERS mailed Mr. Prado's daughter a "Death Claim" packet which included the following forms for her to complete: Application for Pre-Retirement Survivor Benefits, Tax Withholding Election for Survivor Benefits with Individual Retirement Account (IRA) Rollover, Federal Tax Withholding Election W-4P, and Certificate of Trust.

10. On August 25, 2023, CalPERS received, from Mr. Prado's daughter, the following completed forms: Application for Pre-Retirement Survivor Benefits, Tax Withholding Election for Survivor Benefits with IRA Rollover, and Mr. Prado's Death Certificate. (Exhibit 13, p. A111.)

11. 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 community property nonmember account (plus interest through July 12, 2023) that was awarded to Mr. Prado pursuant to the QDRO.

12. Thereafter, Respondent submitted a request to purchase Community Property Redeposit of service credit through myCalPERS Member Self-Service. (Exhibit 3.) In her request, Respondent responded "Yes" to the question "Did your former spouse or domestic partner refund their community property contributions?" (*Id.*, p. A41.) Respondent's response was inaccurate. At the time of Mr. Prado's death, there was no election to receive a refund of his nonmember account.

13. By letter dated December 7, 2023, CalPERS informed Respondent that she is ineligible to purchase Community Property Redeposit of service credit, as follows:

[I]n accordance with the PERL, Government Code (G.C.) section 20751.5, the member may elect to redeposit the community property share of contributions when the nonmember has permanently waived all rights by refunding the contributions pursuant to G.C. section 21292. The nonmember account has been closed through retirement or death. [¶] . . . [¶]

(Exhibit B.)

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14. By letter dated December 14, 2023, CalPERS informed Respondent that the nonmember, Mr. Prado, did not request a refund of their account in order for Respondent to redeposit the service credit.

15. By letter dated January 11, 2024, Respondent appealed CalPERS' denial to purchase Community Property and requested reconsideration. (Exhibit 10, pp. A72-A73.)

16. On or about January 23, 2024, CalPERS issued survivor death benefit payment to Mr. Prado's second beneficiary for the remaining 50 percent of the \$4,644.43 in community property nonmember account (plus interest through July 12, 2023) that was awarded to Mr. Prado pursuant to the QDRO. (Exhibit 13, p. A110.)

17. By letter dated February 7, 2024, CalPERS informed Respondent that CalPERS "cannot allow the purchase [of the community property redeposit service credit by Respondent] as the law specifically states the nonmember [i.e., Mr. Prado] must have filed an application with [CalPERS'] system for a refund of the contributions in order for a member [i.e., Respondent] to be eligible to purchase that service credit." (Exhibit 10, p. A73.)

18. The February 7, 2024 letter specifically explained the basis for CalPERS denial of Respondent's request to purchase the community property redeposit service credit, as follows:

The law is specific indicating the nonmember must file an application form to request for a refund of the contributions for a member to be eligible to purchase the [community property] Redeposit service credit. As stated, the nonmember [i.e., Mr. Prado] did not file a refund

application form and as a result you are not eligible to redeposit since the nonmember did not refund and meet the requirements within the law.

Additionally, please reference back to the filed [QDRO] and further the Government Code that outlines the rights of the nonmember, for this purpose 21290 specifically section (c)(5), the nonmember has the right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement. The [QDRO] goes on to address the default beneficiary if one is not designated.

(Exhibit A, p. B1.)

19. By letter dated April 12, 2024, CalPERS notified Respondent of its determination and advised Respondent of her right to appeal. (Exhibit 4.) The letter stated, in relevant part:

After a thorough review [of Respondent's account], [CalPERS] concluded that [Respondent is] not eligible to purchase the service credit you requested. Pursuant to California Government Code (CGC) Section 20751 of the Public Employees Retirement Law (PERL), a member may only redeposit the member contributions awarded to a nonmember if the nonmember has withdrawn the member contributions in accordance with CGC 21292 section (b) in the form of a refund application, which must be signed by

the nonmember and notarized. The contributions allocated to the nonmember, Paul Prado, from [Respondent's] personal account does not constitute a refund of contributions, as the service credit and nonmember contributions associated to the transfer remained within the nonmember CalPERS account. Pursuant to CGC 21530 (b), upon Paul Prado's passing, his contributions and interest are payable as death benefits, which likewise do not constitute a refund. As such, [Respondent is] not eligible to purchase the service credit [Respondent] requested.

(Exhibit 4, p. A42.)

20. By letter dated May 10, 2024, Respondent, through her counsel, filed a timely appeal and requested an administrative hearing. (Exhibit 5.) As part of her appeal, Respondent's counsel argued that Mr. Prado's death on July 12, 2023, rendered "'redeposit' of his nonmember allocation pursuant to CGC §21292 impossible." (*Id.*) The appeal further stated that Respondent had followed CalPERS' July 12, 2023 letter instruction by attempting to restore Mr. Prado's service credit to her account.

21. Based on Respondent's appeal of CalPERS' determination, the administrative hearing in this matter took place. The issue on appeal is limited to whether Respondent is eligible to purchase Community Property Redeposit of service credit.

22. Esther Chan, CalPERS' Analyst II, credibly testified at hearing regarding the basis of CalPERS' determination that Respondent is ineligible to purchase

Community Property Redeposit. After reviewing Respondent's account, CalPERS' determination of ineligibility was based on the fact Mr. Prado had not withdrawn or refunded contributions within his nonmember account. (Testimony of Ms. Chang; Exhibits 1-10, 11-12; Factual Findings 1-21.)

23. Respondent credibly testified at hearing. Respondent argued that she was entitled to purchase the Community Property Redeposit of service credit because Mr. Prado's service credit was distributed as a death benefit and no statute allowed the repurchase of a death benefit. Respondent argued that because the Government Code was silent as to how a refund request should be handled in case of a death like Mr. Prado's, which occurred on the same day his nonparticipant account was created and the service credit was credited pursuant to the QDRO, she should be allowed to purchase the Community Property of service credit.

24. Respondent essentially contends that the payment of the survivor benefits from Mr. Prado's nonmember account was the functional equivalent of a refund paid pursuant to Government Code section 21292. Due to Mr. Prado's death, he can not make any claims or take any action, like requesting a refund, cancel the payment of survivor benefits, and/or elect to redeposit or to purchase service credit after the survivor's benefits are paid, regarding his CalPERS nonmember account. (Gov. Code, § 21292, subds. (d) - (f).) As a result, Respondent argues she should be allowed to purchase the Community Property of service credit.

Analysis

25. CalPERS properly determined Respondent is ineligible to purchase Community Property Redeposit of service credit.

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26. Respondent's arguments are legally unpersuasive. A refund of a nonmember account, in this case Mr. Prado's nonmember account, is a condition precedent to the redeposit of community property taken from a member's account (i.e., Respondent's account). Respondent's argument therefore ignores the plain language of Government Code section 20751, which requires a withdrawal of accumulated contributions in accordance with Government Code section 21292 (i.e., a refund), prior to a member being able to redeposit contributions into the retirement fund. It is undisputed that Mr. Pardo did not request a refund in this case.

27. Respondent's argument also does not consider the fact that a refund, which pays contributions only, differs from survivor's benefits, which pay contributions and interest. Surviving rights also differ from refunds in that if a refund is paid, the nonmember permanently waives all rights in the CalPERS system and all rights to any future retirement benefits related to the service credit accumulated contributions, or both. However, when survivor's benefits are paid, the executor assumes the position held by the deceased nonmember; the executor can then make a claim against CalPERS at a future date on behalf of the deceased nonmember.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Respondent is an applicant for a benefit and has the burden of proof as the moving party to establish a right to the claimed entitlement or benefit, and that burden is unaffected by the general rule that pension statutes are to be liberally construed. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

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2. In an administrative hearing concerning retirement benefits, the party asserting the claim has the burden of proof, including both the initial burden of going forward and the burden of persuasion, by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.) To meet the burden of proof by a preponderance of the evidence, the party with the burden of proof "must produce substantial evidence, contradicted or uncontradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.)

Applicable Public Employees Retirement Law Statutes

3. CalPERS is governed by the Public Employees Retirement Law (PERL) and the statutes of the Government Code set forth below are relevant to the issues in this matter. (All further section references are to the Government Code unless otherwise noted.)

4. Section 20750 (Election to Redeposit) provides:

Subject to regulations adopted by the board, a member may file an election with the board to redeposit in the retirement fund, in a lump sum or by installment payments, (1) an amount equal to the accumulated contributions that he or she has withdrawn at one or more terminations of service, or for one withdrawal at a time, but in reverse

chronological order in which they occurred, and (2) and amount equal to the interest that would have been credited to his or her account to the date of completion of payments had the contributions not been withdrawn, and (3) if he or she elects to redeposit in other than one sum, interest on the unpaid balance of the amount payable to the retirement fund, beginning on the date of the election to redeposit, as if the member interest crediting rate in effect on the date of the election to redeposit had been continued to be in effect through the completion of the payments.

5. Section 20751 (Member Redeposit Upon Nonmember Refund) provides:

If a nonmember, as defined in Section 21291, **withdraws accumulated contributions in accordance with Section 21292, the member may redeposit those contributions pursuant to this article.** (Emphasis added.)

6. Section 21290 (Community Property – Division of Accumulated Contributions and Service Credit – Rights and Entitlement of Nonmember) provides:

(a) Upon the legal separation or dissolution of marriage of a member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the community property is divided in accordance with paragraph (3) of subdivision (a) of Section 2610 of the Family Code, the court shall order that the accumulated contributions and service credit attributable to periods of

service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember, respectively. Any service credit or accumulated contributions that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) The court shall address the rights of the nonmember to the following:

(1) The right to a retirement allowance, and the consequent right to elect an optional settlement and designate a beneficiary.

(2) The right to a refund of accumulated contributions.

(3) The right to redeposit accumulated contributions that are eligible for redeposit by the member under Sections 20750 and 20752.

(4) The right to purchase service credit that is eligible for purchase by the member under Article 4 (commencing with Section 20990) and Article 5 (commencing with Section 21020) of Chapter 11.

(5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.

(6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.

(7) The right to elect coverage in the Second Tier for that member service that is subject to the Second Tier, provided that the election is made within one year of the establishment of the nonmember account or prior to the nonmember's retirement, whichever occurs first.

Immediately upon establishment of a nonmember account, the board shall provide, by certified mail, the necessary form and information so that the election may be made.

(d) In the capacity of nonmember, he or she shall not be entitled to any disability or industrial disability retirement allowance, any basic death benefit, any special death benefit, any monthly allowance for survivors of a member or retired person, any insurance benefit, or retired member lump-sum death benefit. No survivor continuance allowance shall be payable to a survivor of a nonmember.

(e) (1) A nonmember whose account is credited with service subject to the Second Tier benefits provided in Section 21076 or 21077 may make an irrevocable election, to be filed with the board, to have his or her Second Tier service credited under Section 21354.1, if the following conditions are met:

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(A) The member is employed by the state on or after January 1, 2000.

(B) If eligible, the member has made the election provided in subdivision (a) of Section 21073.7 at the time of the nonmember's election.

(2) An election under this subdivision shall be effective the first of the month following the date the election is received by the system. An election under this subdivision may be made at any time prior to the retirement of the nonmember or prior to payment of a refund of the accumulated contributions in the separate account of the nonmember. A nonmember who makes the election under this subdivision shall make the contributions specified in Section 21073.1.

(3) The term "member" as used in this subdivision means the person from whose account the Second Tier service that is credited to the separate account of the nonmember was derived.

7. Section 21291 defines a "Nonmember" as "the spouse or former spouse of a member, who as a result of petitioning the court for the division of community property, has been awarded a distinct and separate account reflecting specific credited service and accumulated contributions."

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8. Section 21292 (Nonmember Right to Refund) provides:
- (a) The nonmember who is awarded a separate account shall have the right to a refund of the accumulated contributions in the separate account of the nonmember.
 - (b) The nonmember shall file an application on a form provided by this system to obtain the refund.
 - (c) The refund shall be effective when this system deposits in the United States mail an initial warrant drawn in favor of the nonmember and addressed to the latest address for the nonmember on file with this system.
 - (d) The nonmember is deemed to have permanently waived all rights in this system and all rights to any future retirement benefits pertaining to the service credit accumulated contributions, or both, when the refund becomes effective.
 - (e) The nonmember may not cancel a refund once it has become effective.
 - (f) The nonmember shall have no right to elect to redeposit the refunded accumulated contributions from the nonmember's account after the refund is effective, and shall have no right to redeposit under Section 20750 or 20752 , or to purchase service credit under Article 4 (commencing

with Section 20990) or Article 5 (commencing with Section 21020) of Chapter 11 after the refund becomes effective.

(g) If at the time of the marriage dissolution or legal separation, the member does not have the necessary minimum credited service to retire, the nonmember shall receive a refund of the accumulated contributions placed in the nonmember's account.

9. Section 21293 (Nonmember Right to Redeposit Contributions Previously Refunded to Member) provides:

(a) The nonmember who is awarded a separate account may redeposit accumulated contributions previously refunded to the member in accordance with the determination of the court required by Section 21290.

(b) The nonmember may redeposit only those accumulated contributions that were previously refunded to the member and that the court has determined to be the community property interest of the nonmember in the accumulated contributions.

(c) If the nonmember elects to redeposit, he or she shall repay the accumulated contributions pursuant to Section 20750 or Section 20752.

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(d) An election to redeposit shall be considered an election to repay all accumulated contributions previously refunded that the nonmember is entitled to redeposit.

(e) The right of the nonmember to redeposit is subject to the regulations of the board.

(f) The member has no right to redeposit the share of the nonmember in the previously refunded accumulated contributions unless the nonmember has permanently waived all rights in the system by effecting a refund of accumulated contributions pursuant to Section 21292. However, any right to redeposit previously refunded accumulated contributions not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(g) If the nonmember elected to redeposit upon retirement and has subsequently died, prior to completing the redeposit, the board shall file a claim against the estate of the decedent to recover benefit payments that exceeded those for which payment was made.

10. Respondent did not establish through a preponderance of the evidence that Respondent is eligible to purchase Community Property Redeposit of service credit because Mr. Prado, the nonmember, did not withdraw the member contributions in accordance with Section 21292, subdivision (b), in the form of a

refund application which was signed and notarized by the nonmember. (Factual Findings 1-27; Legal Conclusions 1-9.)

ORDER

The appeal of respondent Nancy R. Pardo is DENIED. CalPERS properly denied Respondent's request to purchase Community Property Redeposit of service credit.

DATE: **05/07/2026**

Irina Tentser

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings