

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Janet Nichols (Respondent) worked for many years as a classified employee for Albany Unified School District (District). Respondent retired for service effective September 14, 2021. Her last employment classification with the District was as a School Secretary III. By virtue of her employment, Respondent is a school member of the California Public Employees' Retirement System (CalPERS).

After Respondent retired, CalPERS reviewed payroll reports regarding her compensation from the District between October 2018 and September 2021. A Memorandum of Understanding (MOU) between the California School Employees Association Albany Chapter 679 and the District governed the terms and conditions of Respondent's employment between July 1, 2019, and her retirement.

For the pay period ending June 30, 2021, the District reported to CalPERS that it had paid \$2,500 to Respondent in addition to her wages and longevity pay. CalPERS records show that the District reported this \$2,500 payment to CalPERS as "Off Salary Schedule Pay" (OSSP). The MOU does not describe any basis for the District's \$2,500 payment to Respondent.

A CalPERS school member's "special compensation" must be "received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment." (Gov. Code, § 20636.1, subd. (c)(2).) In addition, "special compensation" must meet criteria the CalPERS Board of Administration has established by regulation. (Gov. Code, § 20636.1, subd. (c)(7)(C); Cal. Code Regs., tit. 2, § 571.)

OSSP is a type of "special compensation." (Cal. Code Regs., tit. 2, § 571, subd. (a)(1).) To qualify as OSSP, the District's \$2,500 payment to Nichols must be paid "in addition to base salary paid in similar lump-sum amounts to a group or class of employees. These payments are routinely negotiated through collective bargaining in lieu of increases to the salary schedule." (*Ibid.*)

CalPERS' reviewed all relevant information and determined that the \$2,500 compensation the District reported on behalf of Respondent in June 2021 does not meet the definition of "special compensation" and could not be used in the calculation of Respondent's retirement allowance because the MOU did not include the payment and because Respondent had received a salary increase during the same time period.

Respondent appealed CalPERS' 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 May 30 and June 25, 2024. Respondent was represented by counsel at the hearing. The District did not appear at the hearing and a default was taken as to the District only.

Respondent did not testify at the hearing; however, in correspondence with CalPERS she admitted that she had received the \$2,500 payment reported by the District in June 2021. Respondent described the payment as a “Covid Stipend,” and stated that the District had withheld a contribution to CalPERS from this payment. Respondent offered no further explanation as to why the District paid her the \$2,500, whether she ever received a similar payment at any other time during her employment with the District, or whether any other employees in her classification also received similar payments in June 2021 or at any other time.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that the relevant MOU did not include the \$2,500 payment that Respondent received but did call for a wage increase for Respondent effective July 1, 2021. Based on this evidence, the District erred in reporting the June 2021 payment of \$2,500 to Respondent as OSSP. In addition, the ALJ found that the evidence failed to establish that similar payments were available to all School Secretary III employees or that similar payments occurred at regular intervals for Respondent or for other School Secretary IIIs; or that the \$2,500 payment to Respondent in June 2021 had any historical precedent.

In the Proposed Decision, the ALJ concludes that CalPERS correctly determined that the \$2,500 payment reported by the District on behalf of Respondent must be excluded from the calculation of Respondent’s retirement allowance.

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

September 18, 2024

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Austa Wakily  
Senior Attorney