

**ATTACHMENT C**

**RESPONDENT'S ARGUMENT**

**FAX COVER SHEET**

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**TO**

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**COMPANY**

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**FAX NUMBER** 19167953972

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**FROM** Renaker Hasselman Scott LLP

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**DATE** 2022-02-25 00:59:46 GMT

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**RE** Respondent's Argument – No. 2020-1307

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**COVER MESSAGE**

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8 *Attorneys for Angela M. Aceves*

9 BOARD OF ADMINISTRATION  
 10 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

11 In the Matter of the Application for  
 12 Disability Retirement of

13 ANGELA M. ACEVES,

14 Respondent,

15 and

16 RIVERSIDE COUNTY SCHOOLS –  
 17 MOUNT SAN JACINTO COMMUNITY  
 18 COLLEGE DISTRICT,

19 Respondent.

) AGENCY CASE NO. 2020-1307  
 ) OAH NO. 20210200265

) **RESPONDENT ANGELA M. ACEVES'**  
 ) **ARGUMENT AGAINST PROPOSED**  
 ) **DECISION**

20 The Board should remand to the Administrative Law Judge in view of the intervening  
 21 decision of the Social Security Administration finding Ms. Aceves disabled under Social  
 22 Security's rules as of May 2020. On February 11, 2022 – one day after the Administrative Law  
 23 Judge signed his proposed decision in this case – an Administrative Law Judge of the Social  
 24 Security Administration issued her decision finding Ms. Aceves totally disabled under Social  
 25 Security's rules. Of course, Social Security's standard of disability is not the same as the PERL's  
 26 standard: it is far *stricter* than the standard for CalPERS disability retirement, requiring that Ms.  
 27 Aceves be unable to engage in any "substantial gainful work which exists in the national  
 28 economy." 42 U.S.C. § 423(d). The PERL's more lenient standard requires only that Ms. Aceves  
 be substantially limited from performing her usual job duties. *McCormick v. Pub. Employees'*  
*Ret. Sys.* (2019) 41 Cal. App. 5th 428, 437 ("[S]ection 21156 is concerned with members' ability  
 to perform their duties for their actual employers, not their ability to perform those duties in the

No. 2020-1307  
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1 abstract.”)

2 Applying the stricter standard, the Social Security Administrative Law Judge found that  
3 not only can Ms. Aceves not perform her past relevant work – that is, her usual job duties – but  
4 she is restricted to a *reduced* range of sedentary work. Under Social Security’s rules, even being  
5 restrict to the *full* range of sedentary work means that a claimant has “very serious functional  
6 limitations.” 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 200.00(h)(4). A finding that a claimant is  
7 further limited to less than the full range of sedentary work, as in Ms. Aceves’ case, must be  
8 “based on careful consideration of the evidence of the individual’s medical impairment(s) and the  
9 limitations and restrictions attributable to it.” *Id.* Because the Social Security Administrative Law  
10 Judge performed that careful consideration, and the Administrative Law Judge here did not, this  
11 matter should be remanded. The disturbing inconsistency in outcomes, with Social Security  
12 determining that Ms. Aceves is disabled from any job at all, while CalPERS concludes that she  
13 can return to her prior job, should be corrected by remand.

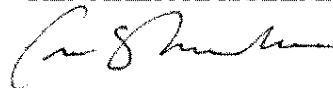
14 The Board should also remand because contrary to the proposed decision’s analysis,  
15 Government Code section 21156 does not establish threshold requirement that a member present  
16 expert testimony in order to demonstrate that she is substantially incapacitated from performing  
17 her job duties. A requirement that a member hire a professional disability evaluator to testify in  
18 support of her application, as CalPERS did to support its denial at a cost of thousands of dollars,  
19 penalizes members who lack the financial wherewithal to front that cost. Ms. Aceves presented  
20 competent medical evidence in the form of records from her treating neurologist of ten years,  
21 who retired after completing her CalPERS application materials but before the hearing. The  
22 proposed decision ignores that evidence in favor of the opinion of CalPERS’ paid disability  
23 evaluator, who testified that he met with Ms. Aceves for just thirty minutes, solely because Ms.  
24 Aceves did not hire her own paid expert. The Board should remand.

25 Respectfully submitted,

26 Dated: February 24, 2022

RENAKER HASSELMAN SCOTT LLP

27 By



28 Teresa S. Renaker

No. 2020-1307  
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Angela Marie Aceves (BNC# [REDACTED])

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### **Time Limit To File An Appeal**

You must file your written appeal **within 60 days** of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did not get it within the 5-day period.

The Appeals Council will dismiss a late request unless you show you had a good reason for not filing it on time.

### **What Else You May Send Us**

You or your representative may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence **with your appeal**. Sending your written statement and any new evidence **with your appeal** may help us review your case sooner.

### **How An Appeal Works**

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J).

The Appeals Council may:

- Deny your appeal,
- Return your case to me or another administrative law judge for a new decision,
- Issue its own decision, or
- Dismiss your case.

The Appeals Council will send you a notice telling you what it decides to do. If the Appeals Council denies your appeal, my decision will become the final decision.

### **The Appeals Council May Review My Decision On Its Own**

The Appeals Council may review my decision even if you do not appeal. They may decide to review my decision within 60 days after the date of the decision. The Appeals Council will mail you a notice of review if they decide to review my decision.

### **When There Is No Appeals Council Review**

If you do not appeal and the Appeals Council does not review my decision on its own, my decision will become final. A final decision can be changed **only under special circumstances**. You will not have the right to Federal court review.



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Form HA-L76 (03-2010)

