

RESOLUTION NO. 18-06

RESOLUTION OF REPRIMAND AND CENSURE

WHEREAS, the members of the New Mexico Public Employees Retirement Board (Board) serve as the trustees of the Public Employees Retirement Association (PERA); and,

WHEREAS, the legislature created the Board pursuant to the Public Employees Retirement Act and provided powers to the Board at Section 10-11-130 (A) which states:...The Board has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the state retirement system acts...”; and,

WHEREAS, under its statutory authority, in March 2001, the Board adopted Policies and Procedures “Board Policies”. The Board Policies, as amended, are in effect now and were in effect at all times pertinent to the provisions of this Resolution; and,

WHEREAS, the Board Policies at Section I (A) provide, in pertinent part:

As Trustees, Board Members are fiduciaries to the various PERA funds and must prudently administer these retirement systems for the sole and exclusive benefit of PERA members, retirees and beneficiaries. ... In order to maintain the respect, trust and confidence of its members and retirees, all Board Members ... must use the powers and resources of their office only to advance the interests of PERA members, retirees and beneficiaries and not to obtain personal benefits or pursue private advantage incompatible with these interests. Board Members ... shall conduct themselves in a manner that justifies the confidence placed in them by PERA members and retirees, at all times maintaining their integrity and discharging their responsibilities ethically in the course of their association with the PERA; and

WHEREAS, the Board Policies at Section I (E) (5) further provide, in pertinent part:

The Board shall establish and communicate Board policies and priorities and then monitor performance. The Board recognizes that the achievement of its goals requires self-discipline by the Board as a whole and by individual Board members to abide by the policies articulated herein and to govern in a manner consistent with the Board’s value statement. The Board is responsible for creating and maintaining an atmosphere that encourages frank and collegial discussions both at the Board and Committee levels and between the Board and PERA management; and,

WHEREAS, pursuant to statute at NMSA Section 10-16-11, the Board adopted a Code of Conduct prescribing standards of conduct for Board Members, and which, if violated, constitutes cause for sanctions or discipline, including suspension or dismissal of an offending Board Member; and

WHEREAS, Board Policies at Section VI. (A) creates a duty for the Board to act as follows;

Any breach of fiduciary duty, violation of this policy or other conduct that falls below the high ethical standard this Board expects of itself, shall be looked into by the Board; and,

WHEREAS, the Board Policies at Section VI (C) (2) further mandate that:

... [V]iolation of the Governmental Conduct Act or this policy is grounds for discipline...; and,

WHEREAS, the Board Policies in Section VI provide for “Sanctions and Enforcement” of those policies and include the Board’s authority to impose disciplinary measures ranging from removal of a Board member to the following:

1. Formal reprimand and public censure by the Board, which shall be permanently recorded in the Board minutes.
2. Suspension from participation on the Board or a particular Board activity for a specified period of time not to exceed one year; and,

WHEREAS, the Board Policies at Sections I (D) (5) and VI (A) provide that, among their duties:

...b. Board Members and the Executive Director have a duty to use reasonable care to prevent co-trustees from committing a breach. c. Board Members and the Executive Director have a duty to compel performance or redress a breach; and,

WHEREAS, Board Member Loretta Naranjo Lopez (“Member Naranjo Lopez”) is currently serving on the Board for a second consecutive four-year term that commenced January, 2016; and ,

WHEREAS, upon information and belief the Board has determined that during the course of her terms Member Naranjo Lopez has repeatedly violated Board Policies and Code of Conduct by engaging in conduct that is detrimental to the Board and PERA and falls below the high ethical standards the Board expects of its members, including:

A. Knowingly submitting improper requests for reimbursement from the trust funds for which she is a fiduciary for travel expenses incurred not for Board business but for her personal interests and, despite knowing such expenses were not eligible for reimbursement, demanding that PERA staff take actions in violation of state statutes and regulations to facilitate her reimbursement for those ineligible expenses. Such ineligible expense requests include:

1. Reimbursement for mileage expenses incurred by Member Naranjo Lopez’ spouse in July, 2014; and,
2. Reimbursement for a parking violation she received in Taos, NM, in August, 2017; and,
3. In furtherance of her requests for reimbursement for ineligible expenses she behaved in a manner that violates the Board Policies requirement to maintain

a collegial atmosphere in discussions in committees or with staff. Member Naranjo Lopez subjected PERA staff to undue pressure and criticism by expressing dissatisfaction with their refusal to improperly process the ineligible reimbursement requests.

B. Repeatedly disrupting Board business, jeopardizing the Board's ability to fulfill its duties and thereby exposing the Board to potential liability by making unfounded and inaccurate grievances against PERA's Executive Director, General Counsel, PERA staff, and fellow Board members, including:

1. Recklessly and repeatedly alleging publicly that fellow Board members have undisclosed conflicts of interests which preclude them from exercising their voting rights in representation of PERA members or retirees, yet failing to provide any evidence to support the allegations; and,
2. In or about September 2013, violating the Board Policies requiring that the Board speak in a unified voice, by identifying herself as a Board member in correspondence in which she unilaterally and without knowledge of the full Board sent to the Retired Public Employees of New Mexico (RPENM) Board containing criticism of PERA's administration and personnel matters, and providing no evidentiary support; such correspondence presenting the appearance that the correspondence could reflect the opinion and voice of the Board; and,
3. Harassing PERA staff by repeatedly submitting public records requests and then falsely and publicly claiming that the records requests were not properly handled or were ignored; and,
4. In or about June, 2015, violating the Board Policies at Section I (A) and (C), by failing to act with integrity by submitting a frivolous and false complaint to the Office of the Attorney General, alleging that PERA failed to timely respond to her public records requests in violation of the Inspection of Public Records Act, thereby causing PERA to expend valuable staff hours and resources to vigorously defend against the false complaint so as to avoid exposing the association to a fine of up to \$100 a day; which complaint was summarily dismissed in February, 2016, when the Attorney General's Office determined that there was "no evidence to support finding that PERA failed to comply with IPRA as alleged"; and,
5. In or about September, 2014, violating the Board Policies at Section II (C) (6) by engaging in inappropriate *ex parte* communications regarding an administrative appeal; and,
6. In or about March, 2017, violating the Board Policies by again harassing PERA staff by falsely accusing a PERA staff member of criminal battery over Board seating arrangements and filing a complaint with the Human Rights Commission for harassment, which complaint was summarily dismissed for lack of jurisdiction; and,

7. In or about September, 2017, violating the Board Policies at Section I (A) and (C) by commencing a lawsuit against the Executive Director and the former Board Chair, without good cause, which lawsuit was summarily dismissed by the Court at an unwarranted cost of time and expense to the trust fund; and,
8. On or about October 5, 2017, violating the Board Policies by further harassing PERA staff by filing a Disciplinary Complaint with the State of New Mexico Disciplinary Board against the PERA General Counsel, without good cause, which complaint the Disciplinary Board found was unsubstantiated and was summarily dismissed; and,
9. In or about February, 2018, violating the Board Policies at Section I and Section II (D) by failing to accept new Board seating arrangements established by, and within the power of, the Board Chair, and then instead of engaging the Chair in a collegial discussion regarding seating, harassing the Chair by filing a complaint against him with the City of Santa Fe Police Department in which she accused him of felony assault and battery, which complaint was closed without action by the City of Santa Fe Police Department.

WHEREAS, the then-Board Chair, then-Vice-Chair and then-State Treasurer counseled Member Naranjo Lopez regarding her inappropriate 2013 letter to RPENM and the Board officially sanctioned Member Naranjo Lopez regarding her 2014 inappropriate *ex parte* conduct; and,

WHEREAS, the Board now determines that the foregoing actions illustrate a pattern of violations of Board Policies and Code of Conduct, and those violations are escalating rather than diminishing and the violations establish a pattern and practice of behavior that falls below the highest ethical standards required of a fiduciary, that the violations have adversely affected the mission and duties of the Board, the administration of PERA and consequently the interests of the members, retirees and beneficiaries of the retirement systems for which the Board members are trustees and in light of the fact that the Board has counseled and sanctioned Member Naranjo Lopez with no apparent positive impact to her understanding and willingness to act in a manner consistent with the Board Policies and Code of Conduct, as illustrated by her continued and escalated inappropriate conduct, it is incumbent upon this Board to publicly reprimand and sanction Member Naranjo Lopez for these violations; and,

WHEREAS, the Board Policies authorize the Board to sanction a Board member under the circumstances presented in this Resolution by suspending the Board members' participation in certain Board activities for a specified period of time not to exceed one year.

NOW THEREFORE, BE IT RESOLVED that pursuant to the Board's authority under applicable law and policy, the Board takes the following actions:

- A. Member Loretta Naranjo Lopez is hereby publicly reprimanded and censured for her conduct in violation of the Board Policies and Code of Conduct.
- B. Member Naranjo Lopez is hereby suspended and removed from serving in any capacity on the Board's Smart Save Committee, Investment Committee, Legislative

Committee, and all other committees of the Board, for a period of one year, commencing on the effective date of this Resolution. Member Naranjo Lopez shall not receive statutory per diem or be reimbursed for any expenses if she attends committee meetings during the one-year suspension period.

C. Member Naranjo Lopez is hereby suspended from any Board authorized out-of-state education and travel activities, and shall not be reimbursed for any Board-related expenses, for a period of one year, commencing on the effective date of this Resolution. This suspension does not relate to entitlement to statutory per diem and approved expenses directly connected with attendance at official Board meetings and in-state Board education sessions and retreats in compliance with Board member educational requirements under NMSA 1978, §10-11-133 (F) and 2.80.200.21 NMAC.

D. Further violations of the law, Board Policies, Code of Conduct or fiduciary duty may lead to further sanctions and dismissal of Member Naranjo Lopez from the Board.

ADOPTED AND APPROVED this 17 day of April, 2018, by the following vote:

AYES: 7

NOES: 4

ABSTENTIONS: none

ABSENT: 1

**RETIREMENT BOARD OF THE
PUBLIC EMPLOYEES RETIREMENT
ASSOCIATION OF NEW MEXICO**

BY: 
JAMES MAXON, PERA BOARD CHAIR

ATTEST:


WAYNE PROBST
EXECUTIVE DIRECTOR