

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: The Binding Effect of PERAC's Memoranda on All Retirement Boards

DATE: January 5, 2017

On November 18, 2016, the Contributory Retirement Appeal Board ("CRAB") issued a decision, *Grimes v. Malden Ret. Bd. & PERAC*, CR-15-5 (CRAB 2016) in which CRAB determined that "memoranda issued by PERAC to the retirement boards are binding on the boards." *Id.* CRAB further explains:

...[R]etirement boards must follow PERAC's directives because of the statutory grant of power to PERAC to issue such directives in order to ensure that the more than one hundred retirement systems in the Commonwealth operate efficiently and apply uniform rules and policies.

Id. CRAB goes on to explain that if a retirement board disagrees with the interpretation of law adopted in a PERAC memorandum it may appeal to CRAB pursuant to G.L. c. 32, § 16(4). However, a retirement board cannot simply choose to ignore the directives set forth in PERAC memoranda.

Similarly, in the matter entitled *O'Leary v. Lexington Ret. Bd., and PERAC*, (CR-15-30) (DALA 2016), the Lexington Retirement Board argued that it was not bound by PERAC's memoranda. In his decision, the Division of Administrative Law Appeals ("DALA") rejected that argument and declared: "While the Board is free to challenge PERAC's interpretation of Chapter 32 that it memorializes in a memorandum, it cannot simply ignore PERAC's memoranda." *Id.*

PERAC memoranda, authorized by Chapter 7, s. 49 and Chapter 32, are issued to set interest rates, medical fees, provide uniform worksheets, and implement legal decisions, among other purposes. In issuing memoranda, the Commission strives to implement statutory and judicial decisions in a uniform, understandable, and legally proper manner. To the extent possible, PERAC considers the positions of all affected parties, and encourages boards to provide input relative to prospective and issued memoranda.

Given that both CRAB and DALA recognize the statutory authority of PERAC to issue memoranda and that such memoranda have a binding effect on retirement boards, we thought it was important to provide this information to you. As stated in both decisions, PERAC directives set forth in its memoranda must be followed and cannot be ignored by retirement boards.

