

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CALIFORNIA 92701

GOVERNANCE COMMITTEE MEETING
November 29, 2017

1:00 p.m. or Upon Adjournment of the Investment Committee Meeting, whichever is later

AGENDA

Committee: Roger Hilton, Chair; Shawn Dewane, Vice Chair; David Ball; Chris Prevatt

This agenda contains a brief general description of each item to be considered. The Committee may take action on any item listed on this agenda; however, except as otherwise provided by law, no action shall be taken on any item not appearing on the agenda.

OPEN SESSION

A. PROPOSED REVISIONS TO THE ADJUDICATION POLICY AND ADMINISTRATIVE HEARING RULES (DISABILITY AND NON-DISABILITY BENEFITS)

Presented by Gina M. Ratto, General Counsel and Lee K. Fink, Deputy General Counsel

Recommendation: Approve, and recommend that the Board of Retirement approve, the Adjudication Policy and Administrative Hearing Rules for Disability and Non-Disability Benefits, which will superseded the existing Administrative Hearing Procedure Policy and OCERS Administrative Procedure (OAP) on Appeals.

B. REGULAR REVIEW OF POLICIES – RESERVES AND INTEREST-CREDITING POLICY (FORMERLY KNOWN AS THE UNDISTRIBUTED EARNINGS POLICY)

Presented by Brenda Shott, Assistant CEO, Internal Operations

Recommendation: Approve, and recommend that the Board of Retirement approve, the proposed revisions to the Reserves and Interest-Crediting Policy (formerly known as the Undistributed Earnings Policy).

PUBLIC COMMENTS: At this time the members of the public may address the Committee regarding an item within the subject matter jurisdiction of the Committee, provided that no action may be taken on any item not appearing on this agenda unless authorized by law.

COMMITTEE MEMBER COMMENTS

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

COUNSEL COMMENTS

NOTICE OF NEXT MEETINGS

**INVESTMENT COMMITTEE MEETING
December 13, 2017
9:00 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701**

**AUDIT COMMITTEE MEETING
December 14, 2017
1:30 P.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701**

**REGULAR BOARD MEETING
December 18, 2017
9:00 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701**

All supporting documentation is available for public review in the retirement office during regular business hours, 8:00 a.m. – 5:00 p.m., Monday through Thursday and 8:00 a.m. – 4:30 p.m. on Friday.

It is OCERS' intention to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or participant at this meeting, you will need any special assistance beyond that normally provided, OCERS will attempt to accommodate your needs in a reasonable manner. Please contact OCERS via email at adminsupport@ocers.org or call 714-558-6200 as soon as possible prior to the meeting to tell us about your needs and to determine if accommodation is feasible. We would appreciate at least 48 hours' notice, if possible. Please also advise us if you plan to attend meetings on a regular basis.

A

Memorandum

DATE: November 29, 2017
TO: Members of the Governance Committee
FROM: Gina M. Ratto, General Counsel; Lee K. Fink, Deputy General Counsel
SUBJECT: PROPOSED REVISIONS TO THE ADJUDICATION POLICY AND ADMINISTRATIVE HEARING RULES (DISABILITY AND NON-DISABILITY BENEFITS)

Recommendation

Approve, and recommend that the Board of Retirement (Board) approve the Adjudication Policy and Administrative Hearing Rules for Disability and Non-Disability Benefits (Policy), which will supersede the existing Administrative Hearing Procedure Policy and OCERS Administrative Procedure (OAP) on Appeals.

Background/Discussion

At the September 5, 2017 Governance Committee meeting, staff presented recommendations to reform the OCERS administrative hearing procedures and the adjudication process for both disability and non-disability benefits. After a thorough discussion, the Committee sought additional information and gave further direction to staff. At the Governance Committee meeting on October 24, the staff presented additional data, changes to the previous proposal based on the Committee's direction and additional staff research, and several draft documents. Staff's memoranda to the Committee from both the September and October meetings are attached.

At the October meeting, the Committee approved:

- (1) The recommendation to create a Disability Committee comprised of three Board members and one alternate member that will review Disability Applications and provide oversight of the Disability process;
- (2) The Disability Committee Charter, with the change to reflect the addition of an alternate committee member;
- (3) Revisions to the Hearing Officer Selection Policy; and
- (4) Most of the proposed changes to the disability and non-disability adjudication processes, including the use of a Consent Agenda for actions approved by the Disability Committee and the right to an Administrative Hearing attaching before a denial is referred to the Board.

The Committee also directed that a number of discrete parts of the adjudication process be brought back for further review by the Committee, including:

- Board options for disability applications recommended for approval by the Disability Committee;
- Standards for OCERS to offer applicants an Expedited Administrative Review; and
- Additional information regarding the process for staff review/appeals of the non-disability benefit applications.

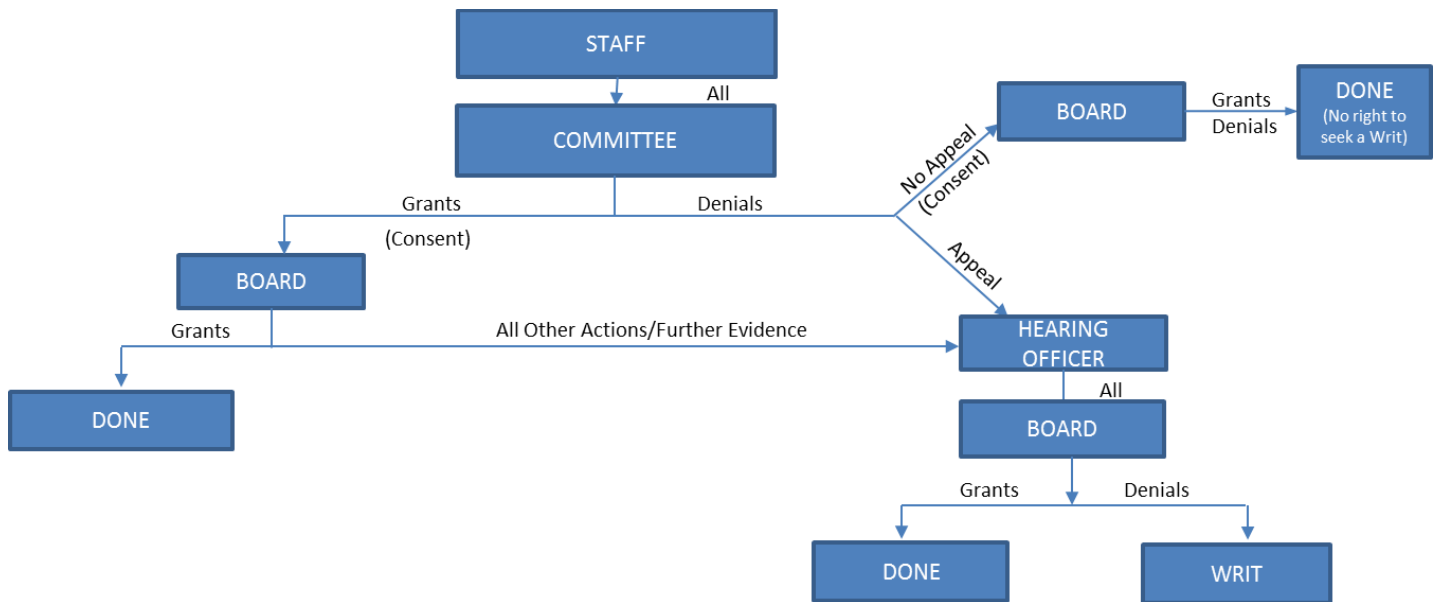
Staff has also reviewed the Policy and recommends a number of non-substantive changes.

The issues that the Committee directed staff to address, as well as the additional changes initiated by staff, are addressed below. Attached to this memorandum is a redline of the Disability Committee Charter (changes are marked against the version presented at the October Meeting) and a redline of the Policy (changes are marked against the version presented at the October meeting).

With these changes, staff recommends that the Committee approve the updated documents and the change in the processes, and forward the entire package of items (including the Hearing Officer Selection Policy, the Disability Committee Charter, and the Policy) to the Board for approval.

A. BOARD OPTIONS FOR DISABILITY APPLICATIONS RECOMMENDED FOR APPROVAL BY THE DISABILITY COMMITTEE

The version of the Policy presented to the Committee in October provided that when the Board was presented a recommendation from the Disability Committee to grant/approve an application, the Board would have the option of either agreeing with the recommendation or holding a hearing before itself. This process was designed to ensure that an applicant, who expected his or her application to be approved, would have the matter heard fairly and expeditiously, and ensured that the Board would make its decision based on a complete record. The Committee instead directed that the hearing be conducted before a Hearing Officer. This change is now reflected in Section 7.B of the Policy, as illustrated in the flowchart below.



B. STANDARDS FOR OCERS TO OFFER APPLICANTS AN EXPEDITED ADMINISTRATIVE REVIEW

The Committee agreed with implementing a pilot project to offer certain applicants who appeal a determination the option to have an Expedited Administrative Review. This would essentially be a ruling “on the papers” and designed to be quicker than a full Administrative Hearing. In order to control this process and ensure that applicants do not automatically opt for a quick and cheap appeal, the option for an Expedited Administrative Review would be offered only when OCERS determines it is appropriate. The Committee directed that there be standards for when an Expedited Administrative Review will be offered.

Staff believes that an expedited review is proper where there are relatively simple questions at issue, where there are no significant factual disputes, or where the applicant may disagree with a determination but there is controlling law. For example, recent matters that OCERS has dealt with that would have been appropriate for an expedited review include an applicant who believed that OCERS had incorrectly calculated his service credit because OCERS did not count the 27th pay period (in those years that have one) in calculating his years of service; and an applicant who believed that catastrophic leave should not count a “regular compensation” for purposes of computing the effective date of his retirement.

Staff proposes adding the following standard to Rule 6.B.2 of the Hearing Rules in the Policy:

OCERS will make the determination as to whether Expedited Administrative Review is appropriate in its sole discretion, on a case-by-case basis. In determining whether Expedited Administrative Review is appropriate, OCERS shall consider: whether there are any material facts in dispute, and whether the introduction of testamentary evidence is likely to clarify the issues; whether there is controlling legal authority; and whether the Applicant’s condition is such that time is of the essence in seeking review of the staff recommendation or ultimately judicial review.

C. PROCESS FOR STAFF REVIEW/APPEALS OF THE NON-DISABILITY BENEFIT APPLICATIONS

At the October meeting, the Committee had several questions regarding the proposed process for staff level review/appeal of non-disability benefit appeals, including questions about how many appeals are made to the Member Services Director and to the CEO under the current process.

Staff estimates that OCERS receives between 20 and 25 benefit appeals to the Member Services Director each year. Approximately two or three of those appeals are further appealed to the CEO. Typically, the Member Services Director and the Assistant CEO for External Operations consult with the Legal Department if an appeal presents legal issues for which there is no clear controlling authority. In addition, the Member Services Director and the Assistant CEO for External Operations will confer with the CEO where the appeal involves an issue of high importance or that has potential implications to OCERS’ established policy.

In light of the existing collaborative approach to resolving member benefit issues, staff believes a second level of review is not necessary. Nor is the review actually independent, since the Member Services Director and Assistant CEO ultimately report to the CEO and already frequently consult him on benefit determinations. The staff recommendation therefore removes this step. However, to clarify that it is not simply “line staff” making the decisions that are then subject to an appeal to an Administrative Hearing, staff has revised the language in Section 4 of the Policy to make it clear that the member is entitled to a written review/explanation from the CEO or his or her designee. If the Policy is adopted, the CEO will designate the Member Services Director to provide a review of all benefit determinations rather than retain two layers of appeals that delay resolution of the member’s case and take up additional staff time without creating any demonstrated value. As is the case now, we expect that there will often be an informal interaction between the member and the staff that resolves many issues before a written review is requested. If there is a written review requested, then as has been the case, the Member Services Director will rely on her experience to ensure that the correct policies were followed. She will continue to consult with the Legal Department if there has been a recent change in the law or where there is no clear precedent. The Member Services Director will also consult with the Assistant CEO for External Operations where the case presents a close question, unusual or new issues, or complex legal matters. As is the case now, the Member Services Director and the Assistant CEO will always consult with the CEO where the case

presents a systematic concern, the Legal Department finds that there is a legal risk to the system, OCERS' approach to an issue is different than other CERL systems, or the issue is likely to become a high profile matter. And of course the Member Services Director and the Assistant CEO will continue to use their judgment to consult with the Legal Department or the CEO whenever they believe it is appropriate. While these current practices will continue, staff recommends against committing them to Board policy so that the CEO can appropriately adjust the approach to account for best practices or changing workloads. Additionally, the Hearing Rules now include a specific reference that OCERS can settle a case should new information come to light during the Administrative Hearing.

D. ADDITIONAL CHANGES TO THE ADJUDICATION POLICY IDENTIFIED BY STAFF

Finally, staff proposes a number of minor revisions to the Policy, which are explained below.

- Changed the name of the Policy to “Adjudication Policy and Administrative Hearing Rules (Disability and Non-Disability Benefits)” to more accurately reflect the focus on adjudications.
- Reversed order of Sections 6 and 7 of the Policy, to make the sections flow more logically.
- Amended Rule 3.D regarding the scope of Administrative Hearings so that OCERS may allow an Applicant to file an amended application that relates back to the original filing date if the Applicant has new conditions. OCERS will retain discretion to avoid dilatory tactics.
- Included in Rule 3.E a specific reference that OCERS can “settle” an Administrative Hearing. While the authority is implicit, there is internal confusion over whether OCERS should, as a practice, be doing this. Including this in the Policy makes it clear that this is a proper practice, under the right circumstances.
- Added provision in Rule 14.E that the statute of limitations under California Code of Civil Procedure Section 1094.6 applies to judicial review of the Board’s decisions after an Administrative Hearing. The Code of Civil Procedure requires that OCERS give applicants notice that this section governs the statute of limitations for filing a Writ of Mandate. This change, and an advisement of this during the Pre-Hearing Scheduling Conference, simply builds the notice into the Policy.
- Added to Hearing Rule 7.B that a party may make an audio recording of the Pre-Hearing Scheduling Conference, and added a Rule 7.F that the Clerk will file a Notice of Administrative Hearing Dates, to address situations when there may be a dispute or conflict over the dates set for the Administrative Hearing.
- Added Rule 12 with time limits and page limits for Closing Briefs. This is not included in the current rules, but instead is the subject of negotiation and stipulation. As with the overall approach to the Policy, this will set very clear standards and expectations going into the Administrative Hearing process.
- Added a Rule 15.E to allow the Hearing Officer to give relief from an order as long as the Hearing Officer still has jurisdiction over the case. This is similar to the provision found in Section 473 of the California Code of Civil Procedure, and allows the Hearing Officer to excuse certain mistakes or errors on the part of a litigant. Staff expects this to be very rare.

- Clarified in Rule 16 that an Administrative Hearing may be dismissed after a year for an Applicant's failure to pursue a case, in addition to failure to follow the rules. This is a common standard that creates a little more flexibility and discretion for the Hearing Officer to act.

Submitted by:



Gina M. Ratto
General Counsel

Submitted by:



Lee K. Fink
Deputy General Counsel

Attachments:

1. September 5, 2017 Memorandum to the Governance Committee
2. October 24, 2017 Memorandum to the Governance Committee
3. Proposed Disability Committee Charter (marked against the October Proposal)
4. Proposed Adjudication Policy and Administrative Hearing Rules for Disability and Non-Disability Benefits (marked against the October Proposal) which will superseded the existing Administrative Hearing Procedure Policy and OCERS Administrative Procedure (OAP) on Appeals

Memorandum

DATE: September 5, 2017
TO: Members of the Governance Committee
FROM: Gina M. Ratto, General Counsel; Lee K. Fink, Deputy General Counsel
SUBJECT: PROPOSED REVISIONS TO THE ADMINISTRATIVE HEARING PROCEDURES

Recommendation

Approve, and recommend that the Board of Retirement (Board) approve, changes to OCERS' processes and procedures relating to appeals of disability retirement and other benefit determinations.

Background/Discussion

The current OCERS Benefits and Disability Adjudication process is governed by a Board policy on Administrative Hearing Procedures (Procedures), most recently amended in December 2015 and an OCERS Administrative Procedure on the Administrative Appeal Process (OAP), adopted in January 2016. The current OCERS process for the Board to adjudicate disability and benefit applications presents numerous process inefficiencies, customer service shortcomings, and does not live up to the OCERS values. In addition, we have surveyed 13 other CERL systems on a number of issues, and OCERS is out of step with most systems in how it handles applications. We are therefore recommending a number of reforms to the process that address these shortcomings and put OCERS in line with most CERL systems.

PROBLEMS WITH THE CURRENT OCERS PROCESS

A. Privacy Protections for Members

Under the current process, Board members and staff often discuss a member's medical condition in full view of the audience and on recorded video that may be obtained by the public. Although the disability application includes a statement that a member's documents may become part of the public record, it is a generic statement that the member generally signs months before the matter comes before the Board. Although the Board agenda and the notice sent to members states that a member may request that his or her application be discussed in public, members may nonetheless be unaware of their rights to have the matter discussed in closed session, and in many cases the member is not present at the Board meeting to assert his or her rights.

OCERS takes great pains to protect its members' privacy. None of the supporting documents for the disability calendar is publicly available. Board members are typically cautious in discussing a member's condition during the open session, but that caution can create an incomplete or cryptic record, and does not lead to a full and complete discussion of the issues.

While the CERL does not require that disability hearings be held in closed session, the Attorney General has opined that the Board may meet in closed session to consider a member's application for a disability retirement consistent with the personnel exemption under the Brown Act. In addition, the Attorney General has opined that a Board may hear the matter in a closed hearing that includes the member, the member's counsel, and witnesses, all of whom would be attending in the role of an "advocate," "interested party," or someone with an "essential role to play in the closed session."

B. Unnecessary Delays for Members in the Determination and Appellate Process

The current process for the Board's decision on disability retirements and benefits decisions creates unnecessary delays. Members whose applications for disability retirement are denied have to wait for Board action just to have the right to pursue an appeal. Meanwhile, they may attend the Board meeting at which their case is on the agenda—including traveling and arranging for medical care—even though the Board adopts an alternative contrary to staff's recommendation in less than 4% of cases. Worse yet, in seeking to accommodate a member, by re-scheduling his or her matter before the Board or sending the case back for further staff review, the member's opportunity for a hearing is only further delayed.

The process for appealing benefit determinations unrelated to disability retirement is even more convoluted and time consuming. A member must first appeal the initial staff determination to the Director of Member Services and then to the CEO. If still unsatisfied after these two appeals, the member may only then appeal the matter to the Board. And it is not until the Board makes its determination—usually affirming the decision of its own Administrator—that the member can then seek a hearing.

The Administrative Hearing Process itself also creates significant potential delays. There are no firm deadlines by which members, OCERS, or the Hearing Officers must abide. The current system leaves it to the members and the OCERS attorneys to set the timelines in individual cases. The rules do not set timelines to which the parties have to adhere or for which the Hearing Officers are accountable. In a judicial proceeding, the court would be responsible for moving the case along towards conclusion, but the OCERS rules are silent on who bears this responsibility. Additionally, if new medical claims arise (as they often do) the hearing process is interrupted and the matter is referred back to the Board to make another determination before it can proceed.

C. Lack of Metrics for Timely Review and Accountability for Staff and Service Providers

The lack of firm timelines results in limited metrics by which the Board can ensure members' applications are being dealt with in a timely fashion. There are few clear standards for OCERS to hold its panel physicians and Hearing Officers accountable for timely performing their contractual duties. Additionally, there is a lack of transparency for members into how long the process will take for OCERS to complete.

D. Inefficient Use of the Board Members' Time and OCERS Staff Resources

The current system makes an inefficient use of Board members' valuable time. From 2012-2017, 360 disability applications came before the Board of Retirement, yet in only 13 cases (3.6%) did the Board adopt an alternative different than the staff's recommendation. In another 6% of the cases, the Board delayed the final adjudication by seeking more staff work or a second medical opinion, but in most instances the Board ultimately adopted the staff recommendation. Notwithstanding this, the Board has had to review a lengthy record with each application. In 2017, 70% of the Board agenda material (6,005 of 8,572 pages) was supporting material for the disability cases. And although 70% of the Board's reading material is dedicated to disability retirement applications, there are fewer than 100 disability applications each year—or just one-quarter of one percent of the 43,485 OCERS members.

In addition, for each case that goes to an Administrative Hearing, the Board must review the matter at least twice—once for the initial determination and once after receiving the recommendation from the Hearing Officer. These matters receive a third (and sometimes fourth and more) Board review if the member adds a new condition, about which the Board must make a determination before a hearing is held. Yet the time the Board spends on cases prior to an Administrative Hearing is the least effective because it occurs before a complete record has been developed for the Board to review.

The number of disability applications has gone up by 50% since 2009, increasing from 56 disability applications in 2009 to 84 in 2016. As OCERS grows, the number of disability applications will grow, leaving even less time for the Board to fulfil its other duties. Meanwhile, the Board's other duties will also grow as OCERS' membership increases and its investment fund, which has tripled from \$4.7 billion in 2003, grows to an expected \$30 billion by 2030.

In addition, the increase in disability applications will tax the staff's time. Preparing and participating in Board meetings for contested matters and undertaking Administrative Hearings in contested matters tax the time of the Legal Department and the Disability Staff. This will become more challenging as the number of applications (and the number of related hearings and petitions for Writs of Mandate) increase.

E. OCERS is Out of Step With Other CERL Systems

OCERS staff and consultants have surveyed 13 other CERL systems to see how they handle their disability processes. Five CERL Systems (including ACERA and Contra Costa County) afford members the right to an administrative hearing after the staff has made a recommendation and before the system's board takes action on the application. Eight CERL systems (including LACERA, SDCERA, and ACERA) make use of a consent calendar for granting disability applications. 12 of the 13 CERL systems surveyed regularly use closed session to hear member applications or appeals, and the 13th (SDCERA) will close the hearing at the request of the member.

RECOMMENDED PROCESS IMPROVEMENTS

A. Guiding Principles

Staff recommends several revisions to OCERS' processes and procedures relating to the administrative appeal of disability retirement and other benefit determinations, including implementation of a consent calendar for uncontested disability applications; direct referral of contested staff determinations to hearing officers; implementation of closed sessions/hearings for consideration of disability retirement applications; and other revisions to the Board's policy on Administrative Hearing Procedures. In developing these recommendations, staff was guided by OCERS' Values:

- Open and Transparent
- Commitment to Superior Service
- Engaged and Dedicated Workforce
- Reliable and Accurate
- Secure and Sustainable

Staff believes the recommended revisions to OCERS' processes and procedures for administrative appeals reflect these values by improving service to OCERS members, reducing efficiencies, and improving the use of OCERS resources.

B. Staff Review and Determination

The first step in the process is staff's review of disability retirement applications and benefit determinations. The processes for members to appeal these determinations are set forth in the OAP, and staff recommends several new metrics to be included in the OAP. For disability retirement applications, OCERS will commit to rendering a decision within one year of the date the application was accepted by OCERS, provided that the member complied with the OCERS' investigation. For all other benefit determinations, OCERS will commit to rendering a decision within 90 days of the date the benefit determination request was received.

For disability retirement applications, staff recommends the following additional metrics to be included in the OAP and in OCERS' contracts with Panel Physicians:

- Notice of Accepted Application. OCERS will issue either a Notice of Accepted Application or Notice of Incomplete Application within 30 days of the filing of the first application.
- Referral to a Panel Physician. The Disability Staff will refer the member to an OCERS Panel Physician within 180 days of the Notice of Acceptance of Application.
- Examination with an OCERS Panel Physician. The Panel Physician will examine the member within 90 days of the referral.
- Physician Report. The Panel Physician will issue his or her report within 45 days of the examination.
- Notification of Preliminary Determination. The member will be notified of the staff determination within 60 days of Panel Physician report (or referred for a second opinion).

C. Member Appeal of Determination

A member will have the right to file an appeal of staff's determination within 90 days of the Notice of Preliminary Determination, for both disability retirement and benefit determinations.¹ The member will no longer be required to appeal benefit determinations to the Member Services Director and then to the CEO. Instead, staff will be expected to issue reliable and accurate decisions, and to consult with management and the Legal Department on any benefit requests that raise unique questions. For benefits determinations, if no appeal is filed, the staff determination becomes final. For disability determinations, if no objection or appeal is filed, the matter will be placed on the Board's consent calendar at its next regular meeting.

If the member files an appeal, staff will have 30 days to either modify or reverse its determination or "docket" it for an Administrative Hearing. The member will be given the option to elect a full Administrative Hearing or an Expedited Administrative Review.²

D. Proceedings Before a Hearing Officer

Once a member appeals a determination by staff, the management of the hearing process will be transferred to the Legal Department, and administrative staff in the Legal Department will serve as the clerk to the hearing officers (Clerk). The Hearing Officer will be responsible for setting and enforcing dates including the dates briefs are due, resolving disputes, conducting the hearing, and completing his/her recommendation to the Board, all within one year of the appeal being docketed.

1. Administrative Hearing

Timelines will be instituted for Administrative Hearings. Staff recommends the following:

- Upon docketing the case, the Clerk will randomly assign a Hearing Officer to the case.
- OCERS will prepare and serve the Administrative Record within 45 days of the matter being docketed.
- The Clerk will schedule a telephonic scheduling conference for the parties and the Hearing Officer within 30 days of the Administrative Record being served.
- At the telephonic scheduling conference, the Hearing Officer will set a date for the Administrative Hearing that is within six months of the scheduling conference.
- A transcript of the hearing must be prepared and filed within 30 days of the last day of the hearing.
- The member's closing brief must be served within 30 days after the transcript is filed.
- OCERS' closing brief must be served within 30 days after the member's closing brief is served.
- The Hearing Officer will issue a Proposed Findings of Fact and Conclusions of Law within 60 days of OCERS' closing brief.

¹ In instances where the staff recommendation is to grant the member's application or request in full, the notice period will be only 10 days.

² If the staff believes that there are no factual disputes, staff will suggest the option of an Expedited Administrative review. This would be most common in benefits determinations.

- The Hearing Officer may, upon either a stipulation of the parties or for good cause shown, continue the dates set forth in the original scheduling order, provided that the hearing shall not be delayed beyond a date one year from the date that the matter was docketed without the member's consent.

If as a result of a member's failure to comply with any of the rules or requests from OCERS staff, the matter is not heard within a year, the Hearing Officer shall dismiss the case with prejudice.

2. Expedited Administrative Review

A member may waive his or her right to a full hearing and elect to have an Expedited Administrative Review. This process would be modeled on the process employed by the San Bernardino County Employees' Retirement Association (SBCERA). The Expedited Administrative Review would allow for speedier resolution of the issues by having the Hearing Officer issue his or her decision after a thorough review of the administrative record and short briefing, with no administrative hearing.

A member may elect the Expedited Administrative Review up until the date of the Scheduling Conference. Each party would have 30 days from the date of the election (or the date the Administrative Record was completed, whichever is later) to submit any evidence and a short, five-page Statement of Issues. The Hearing Officer would have 60 days from the date of the election (or from the date the Administrative Record is complete, whichever is later) to issue Proposed Findings of Fact and Conclusions of Law.

E. Board of Retirement Action

Following receipt of the Hearing Officer's Proposed Findings of Fact and Conclusions of Law, the matter will be placed on the Board's agenda, with notice to the member. The OCERS Legal Department will submit its written argument to the Board not later than ten days before the Board meeting at which the matter is to be heard. The member may, but is not required to, submit his or her written argument to the Board not later than ten days before the Board meeting.

At the Board meeting, the Board will adjourn to a closed hearing to decide the matter. All the parties and their counsel will be permitted to attend and have the opportunity to be heard. The Board could also adjourn to a closed session excluding the parties to consult with the General Counsel before rendering a decision.

ADVANTAGES OF THE PROPOSED PROCESS

The new process outlined above presents several advantages to OCERS, resolves the problems in the current system, and lives up to OCERS' values.

First, referring member appeals directly to a Hearing Officer, without first presenting staff's denial to the Board, streamlines decision making, promotes a speedy hearing, and provides an opportunity for the member to challenge the decision quickly. Including the metrics and timelines in the Procedures and OAP will significantly reduce potential delays by instituting clear and firm deadlines by which the members, OCERS, physicians, court reports, and Hearing Officers must abide.

Second, instituting these metrics will increase transparency for members to estimate how long it will take for OCERS to act on their applications and appeals; provide management with the ability to evaluate staff and hold them accountable for timely processing matters; and allow OCERS to hold its panel physicians and hearing officers accountable for timely performing their contractual duties.

Third, placing the Board's determinations in closed session allows for a more robust discussion of the member's medical condition while affording the member greater protection to his or her privacy.

Finally, these changes will align OCERS with many of the other CERL systems.

Submitted by:



Gina M. Ratto
General Counsel

Submitted by:



Lee K. Fink
Deputy General Counsel

Memorandum

DATE: October 24, 2017
TO: Members of the Governance Committee
FROM: Gina M. Ratto, General Counsel; Lee K. Fink, Deputy General Counsel
SUBJECT: PROPOSED REVISIONS TO THE DISABILITY AND NON-DISABILITY BENEFITS ADJUDICATION POLICY AND ADMINISTRATIVE HEARING RULES AND PROCEDURES

Recommendation

Approve, and recommend that the Board of Retirement (Board) approve changes to OCERS' processes and procedures relating to appeals of disability retirement and other benefit determinations, including specifically:

1. Create a Disability Committee;
2. Approve the Disability Committee Charter;
3. Approve the Disability and Benefit Adjudication Policy and Administrative Hearing Rules to replace the existing Administrative Hearing Procedure Policy and OCERS Administrative Procedure (OAP) on Appeals;
4. Approve amendments to the Hearing Officer Selection Policy; and
5. Direct staff to implement the new process by promulgating the necessary OAPs, forms, contract amendments, forms, communications materials, and internal processes documents.

Background/Discussion

At the September 5, 2017 Governance Committee meeting, staff presented recommendations to reform the OCERS administrative hearing procedures and the adjudication process for both disability and non-disability benefits. At the meeting, staff presented, and the Committee discussed, numerous opportunities for improving OCERS' current processes, including enhancing the privacy protection for members, reducing delays in the process, and reducing the burden on staff and board member time and resources.

Staff presented an outline of process improvements that would make the system simpler and create more accountability for outside contractors and OCERS staff and management. Key points of the recommendations were:

- **Streamline Appeals for Non-Disability Issues.** Currently, a member who disagrees with the staff determination of a non-disability benefit must appeal that determination to the Member Services Director and then to the CEO before the matter is presented to the Board, despite the fact that staff, the Member Services Director and the CEO should all be aligned, and the Member Services Director and CEO should be providing clear guidance to the staff when making benefit determinations. Then, after the Board makes its initial determination, the member can request an administrative hearing. Staff proposes a streamlined process whereby staff determinations on non-disability benefit matters can be directly appealed to a hearing officer at an administrative hearing.
- **Provide for Administrative Hearing Prior to Board Action.** Currently, a member's right to a hearing on disability and non-disability matters attaches only after the Board has made an initial determination.

Staff proposes a process consistent with how many other CERL systems operate by affording the hearing *before* the Board makes its determination.

- **Use Consent Agendas.** Currently, all disability matters are heard individually, whereas many other CERL systems use a consent calendar. Staff proposes implementing a consent agenda for uncontested disability matters.
- **Use Closed Sessions.** Currently, all disability and benefit applications are discussed in open session. Most CERL systems use closed sessions to afford greater protection of members' privacy. Staff proposes implementing closed session/closed hearings for these matters.
- **Amend and Update the Administrative Hearing Rules.** The current rules need updating in order to create a process that is quicker and more efficient. The proposal also includes adding an Expedited Administrative Review Process for a review and decision "on the papers."
- **Create Timelines, Metrics, and Accountability.** Current processes do not have publicly available timelines or metrics, and many of the Administrative Hearing Rules do not set deadlines for actions. Staff proposes the implementation of timelines and metrics in order to ensure cases are proceeding in a timely fashion and to create more accountability for OCERS staff (including the Disability and Legal departments) and OCERS contractors (including panel physicians, hearing officers, and court reporters).

During the meeting, the Committee asked for additional information on how many disability applications and denials are currently appealed, the ultimate result of those appeals, and whether other CERL systems that give members an administrative hearing before the matter goes before the full Board experienced an uptick in the number of appeals.

In addition, the Committee raised a number of questions, including:

- Whether to create a Disability Committee to review disability applications before they are placed on the Board's consent agenda;
- How the Board should handle matters that are pulled from the consent agenda;
- How to ensure that there is transparency in the hiring and assignment of hearing officers to ensure that OCERS members have confidence that hearing officers are unbiased;
- Whether the use of an Expedited Administrative Review Process would encourage more cases to be filed because it would be seen as a "cheap" method of appealing; and
- The value of using a medical advisor in disability matters.

This memorandum responds to the Committee's questions and forms the basis, in conjunction with the September 5, 2017 memorandum to the Committee (a copy of which is attached), for the recommended actions.

A. Data on Disability Adjudications and Hearing Results

Between 2012 and 2016, 299 disability retirement applications were presented to the Board as follows:

- The Board made the initial decision to deny 109 of those applications (36%).
- 57 of those denials were appealed and an administrative hearing was held (51%).
- Of those appeals, 28 matters (49%) were still pending as of September 18, 2017.¹

Of the 29 cases for which the administrative hearing process has been completed:

- One case was dismissed by the member;
- In nine cases (32%), the hearing officer recommended affirming the Board's initial denial; and

¹ There are an additional five cases that were filed in 2017 that are currently pending, for a total of 31 matters now pending in the Administrative Hearing process.

- In 19 cases (68%), the hearing officer recommended reversing the Board’s initial determination denying the disability application.

The chart below shows the results of the applications by year.

Year	Denials/Total Applications (%)	Appeals (% of Denials)	Overtured by HO	Affirmed by HO	Pending Hearing ²	Affirm Percentage
2012	27/65 (42%)	16 ³ (59%)	9	3	3	25%
2013	25/64 (39%)	9 (36%)	3	3	3	50%
2014	22/79 (28%)	14 (64%)	6	2	6	25%
2015	18/91 (20%)	8 (44%)	0	1	7	100%
2016	17/90 (19%)	10 (59%)	1	0	9	0%
Total	109/299 (36%)	57 (52%)	19	9	28	32%

B. Disability Committee

Staff recommends the Board create a Disability Committee. The Disability Committee would review applications for disability retirement after OCERS staff has completed the investigation and made a recommendation. The Disability Committee would provide a forum for members who disagree with the staff determination before having to “litigate” the case in administrative hearing setting. Recommendations from the committee, if not appealed by the member to an administrative hearing, would be presented to the Board as a consent agenda item with a short recommendation.

In addition, the Disability Committee would be responsible for the oversight of the disability process, from the initial handling of matters through administrative hearing.

Staff recommends that the Disability Committee be comprised of three members, two of whom would be elected members (which may include the alternate) and one of whom is either the ex-officio member or an appointed member, based on the following considerations:

- The membership should be three people so as to prevent a tie vote;
- The membership of the committee should be as small as possible so that when the matter is later presented to the full Board, there are the fewest number of Board members who have previously considered the case, thereby reducing concerns that Board members have already formed an opinion;
- The elected Board members should predominate because they work or have worked for the County, and therefore have the most familiarity with the types of jobs and disabilities that OCERS members face;
- There should be an appointed or ex-officio Board member on the committee to ensure that the membership of the committee is fully representative of the Board. This ensures that the committee is approaching its decisions in a well-rounded fashion with the outlook and approach to disability matters of all of the Board members represented on the committee. With sufficient “buy-in” to the process, the Board would be expected to adopt the majority of the committee’s recommendations on consent.

² Pending includes matters waiting for Final Board action and matters where the Member’s right to seek a Writ may not have expired.

³ Includes one voluntary dismissal.

- It is important to include both elected and appointed Board members on the committee so that as membership on committees rotates annually, the burden of the workload is not shifted disproportionately on to any one group of Board members.

Staff surveyed other CERL systems regarding use of a disability committee and found that both the Los Angeles County (LACERA) and the Sonoma County (SCERA) systems employ a disability committee. However each system uses its committee differently than this proposal. LACERA’s disability committee is a committee of the whole, much like the OCERS Investment Committee. While this focuses the work of the committee, it does not preserve Board member resources. SCERA’s disability committee reviews disability applications prior to the Board of Retirement reviewing them, and SCERA is one of the few systems that does not use a consent calendar for disability applications. Thus, while the review by SCERA’s disability committee might serve as a screening process, it creates the potential for even more delays in the process and results in the member having to make his/her case before the disability committee and again before the full board.

While neither LACERA nor SCERA provides an ideal model for the OCERS Disability Committee, they do inform the staff recommendation. A Disability Committee can be a useful tool for the Board to screen and review applications, providing the appropriate level of review without consuming all of the time and resources of the full Board and staff (70% of the Board’s regular materials during 2017 have been dedicated to disability applications). Use of a committee would remove the burden of reviewing voluminous disability applications and supporting records from most of the Board members in most cases. It would also give OCERS members an opportunity to appear before a subset of the Board before making the choice of “litigating” their claims before an “administrative judge” or dropping their claims. Finally, a disability committee creates a key oversight function for the Board. A small group of Board members will be dedicated to looking closely at the systemic issues within the disability application and hearing process, much like the Audit and Governance Committees do. Given the critical nature of these functions, it will enable the Board to better undertake its oversight role in the process.

C. Right to Administrative Hearing Prior to Board Action on Disability and Non-Disability Applications

The proposed new process provides the member with the right to an administrative hearing *prior to* the Board taking action on the member’s application. This process has several advantages. It enables the member to have his or her appeal heard more expeditiously than waiting for Board action (which is then followed by an administrative hearing). It relieves the Board of the need to hear the same matter twice or more⁴ and ensures that contested matters come to the Board only after a record has been fully developed. The process would also serve to reassure members that the hearing officer is not influenced by the Board’s initial decision against them; and for a member who “loses” before the hearing officer, reassures the member that the Board is hearing the issue anew rather than relying on opinions developed during the Board’s initial determination.

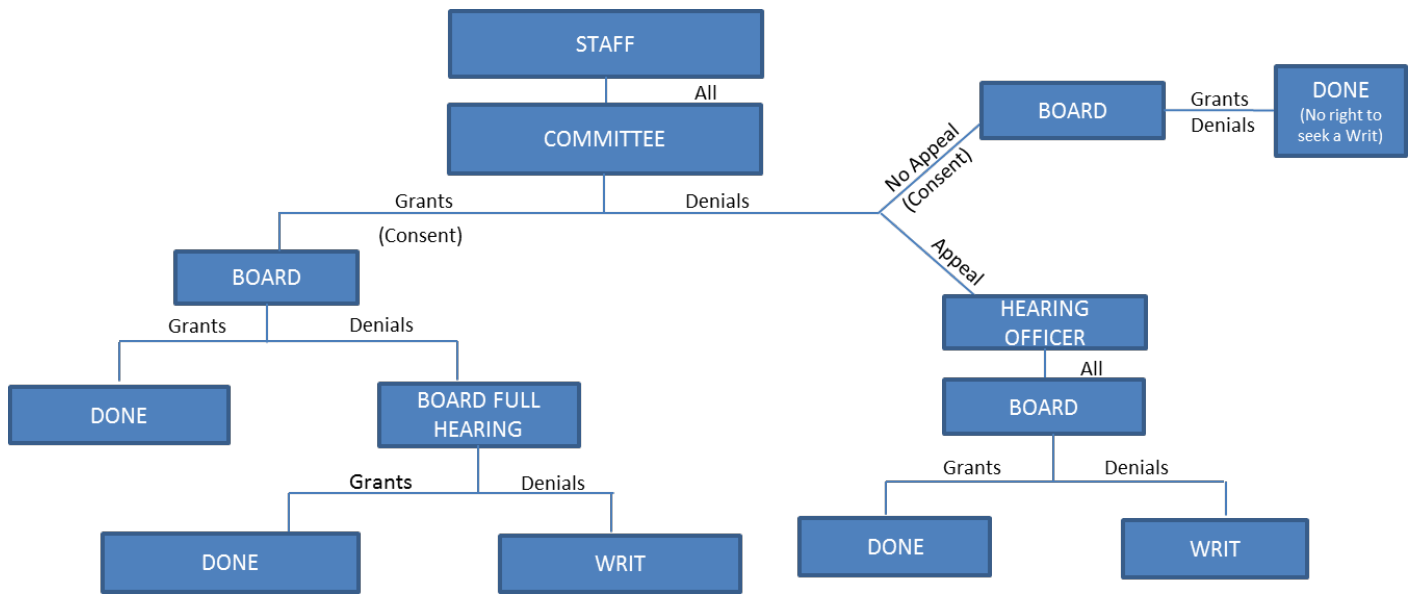
D. Use of Consent Agenda

Unless a member exercises his/her right to appeal the proposed determination to an administrative hearing, all recommendations of the Disability Committee would be presented to the Board on its consent agenda for final action. The Board members would retain the right to pull any case from the consent agenda and to reject the committee’s recommendation. However, when the committee’s recommendation is to grant the application, staff recommends that the Board itself hold a full hearing before overturning the committee’s recommendation and denying the application. While staff anticipates this would be a very rare occurrence, it would protect the

⁴ Currently, the Board has to make both initial denial and the final decision after the Hearing Officer’s recommendation, but it also may have the matter come back after directing the Disability Staff to undertake more investigation, or to make determinations on new conditions that are raised during the course of the hearing process.

member’s rights, since the member would not have had reason to appeal the committee’s recommendation to grant the application. This would also ensure the Board is making a decision based on a fully developed record. A full hearing before the Board would be more expeditious for the member than a hearing before a hearing officer, which would have to return to the Board at a later stage in any event. It would also militate against any argument that the hearing officer is biased to deny the application.

The flow chart below displays the disability adjudication process as proposed:



E. Transparency and Fairness in the Selection of Hearing Officers

Committee members also expressed a desire for transparency in the process of the selecting hearing officers and assurances that hearing officers are fair, impartial, and not biased in favor of OCERS.

The OCERS Hearing Officer Selection and Retention Policy establishes the process for OCERS’ hiring of hearing officers. The policy requires the solicitation of hearing officers through a Request for Proposal process; review and interviews of candidates by a selection committee consisting of the CEO, an Assistant CEO, and the General Counsel; an opportunity for input from OCERS member organizations (such as the OCEA and REAOC); and ultimate selection of hearing officers by the Board. To expand the Board’s visibility into the process, staff recommends that the Disability Committee Chair or Vice Chair also sit on the hearing officer selection panel.

In individual cases, the OCERS Administrative Hearing Rules allow any party one peremptory challenge to a hearing officer, similar to the right of litigants in Superior Court. If the member exercises this right, the case is automatically reassigned to a different hearing officer. Staff proposes to revise the OCERS Administrative Hearing Rules so that only the member, and not OCERS or the employer, has this right. This would further ensure OCERS is acting impartially.

F. Expedited Administrative Review Process

Staff also recommends the addition of an Expedited Administrative Review process. This would be an expedited process, completed within six months, where the appeal would be decided by a hearing officer “on the papers” without a formal hearing with witnesses and oral arguments. This type of review would be most appropriate for

matters where no facts are in dispute, such as benefit appeals or disputes regarding the effective date of a disability retirement.

Members of the Governance Committee expressed concern that the addition of an Expedited Administrative Review process might result in a greater number of member appeals because members might view this as a “free” appeal. In order to assuage this concern, staff recommends including the Expedited Administrative Review process in the Administrative Hearing Rules as a pilot project. In addition, under the staff proposal, the right to an Expedited Administrative Review would attach only in cases where OCERS offered the option to a member, and only after the member filed a request for administrative hearing. In addition, OCERS staff would review all cases and offer the Expedited Administrative Review option on only cases that appear well suited to an expedited process (for example, benefit appeals cases where there are no questions of fact). Staff and the Disability Committee could review and revisit the use of the pilot procedure in the future to see if it has resulted in an increase in the number of member appeals. However, given that approximately half of the Board’s denials are already appealed to an administrative hearing, staff believes it is unlikely that the availability of an expedited procedure will substantially increase the percentage of appeals.

G. Use of Medical Advisor

Staff has also considered the role of medical professionals advising and assisting OCERS in evaluating disability applications. OCERS currently retains a panel of physicians to whom all disability applicants are referred for professional evaluation. The assigned panel physician does both a review of the records submitted with the disability application and a physical examination of the member. The panel physician then submits a written report to OCERS Disability Staff that is used to make a recommendation to grant or deny the application. Included in the physician's report are recommended findings on the questions of incapacity and service-connection.

Staff has surveyed the other CERL agencies to determine what other methods are utilized to make the medical determinations on a disability application. Among the 17 other CERL agencies responding, there are two "schools of practice." One practice is to retain one or more physicians who serve as medical advisors and whose duty is to conduct a review of the medical records and reports submitted by the member in support of the application. The medical advisor makes no independent diagnosis of the member, but rather evaluates the adequacy of the medical evidence submitted. In most of these cases, the medical advisor has the discretion to send the member for an independent medical examination if the records are ambiguous or conflicting. The report of the medical advisor is then utilized by the system’s disability staff to develop a recommendation on the adequacy of the disability application. Some of the systems employ disability staff that is trained to do the initial review of the applicant's medical records and only refer the more complex or questionable cases to the medical advisor.

The other practice, followed by OCERS, is to send all applicants to a retained physician to conduct an independent medical examination (IME). The IME physician reviews the applicant's records/reports and also develops an independent diagnosis of disability. As with the medical advisor, the IME physician submits a written report that is utilized by disability staff.

Below is a table of the 18 systems surveyed. The systems are almost evenly divided between use of a medical advisor and IME. In addition, Fresno County is currently conducting an RFP to switch from the IME model to the medical advisor model for the express purpose of reducing the time it takes to process disability applications.

Rank	County System	Medical Advisor	Panel Physician/IME
1	Los Angeles		X
2	Orange		X
3	San Diego		X
4	Alameda	X	
5	San Bernardino		X
6	Sacramento	X #	
7	Contra Costa	X	
8	San Mateo	X	
9	Fresno		X*
10	Ventura		X
11	Kern	X	
12	San Joaquin		X
13	Santa Barbara		X
14	Marin	X	
15	Sonoma	X (county health officer)	
16	Stanislaus		X
17	Imperial		X
18	Mendocino	X	

Sacramento recently outsourced medical advisor role to National Disability Evaluations (www.ndeval.com)

* Fresno currently conducting an RFP to shift to a medical advisor model.

Staff does not recommend changing OCERS' current practice of using panel physicians and IMEs. Staff believes there is value in the current system because it allows OCERS to rely on specialists in the appropriate fields (psychiatry, orthopedics, etc.) rather than a general practitioner who then often refers the matter to a specialist for an IME. However, there are several aspects of the other school of practice that can inform how OCERS approaches reviewing applications.

Currently, OCERS sends every applicant to a panel physician for a IME, regardless of the fact that, in most cases, the applicant has presented medical evidence from his/her treating physician.⁵ In many cases, the treating physician's report clearly demonstrates whether or not the member is permanently incapacitated and whether or not the disability (if present) is service connected. Staff should therefore be empowered by the Board to forego an IME and make a recommendation based on staff's own review of the medical records. Additionally, there are instances where staff might determine that there is a need for expert medical advice but that an examination of the member is not necessary, and staff should be empowered to forego an IME and seek a review of the medical records by an OCERS panel physician. If the Board were to empower the staff to make these decisions, there could be considerable savings of staff and Board time and resources and lower costs for medical examinations. In addition the time members wait for examinations would be reduced.

⁵ If a member has not presented medical evidence from the treating physician, staff should of course be empowered to recommend a denial because the member has simply not at all met his/her burden to demonstrate that s/he is entitled to the benefit.

Submitted by:



Gina M. Ratto
General Counsel

Submitted by:



Lee K. Fink
Deputy General Counsel

Attachments:

1. September 5, 2017 Memorandum to the Governance Committee
2. Proposed Disability Committee Charter
3. Proposed Disability and Benefit Adjudication Policy and Administrative Hearing Rules (which will supersede the existing Administrative Hearing Procedure Policy and OCERS Administrative Procedure (OAP) on Appeals) (marked and clean)
4. Proposed Amendments to the Hearing Officer Selection Policy (marked and clean)

Introduction

1. The Board of Retirement (Board) has established the Disability Committee to assist the Board in overseeing the review of disability retirement applications. The Disability Committee is an advisory committee to the Board, and its recommendations are subject to final approval by the Board.

Purpose

2. Under applicable law, the Board must act upon all applications for disability retirement filed by OCERS members. The purpose of the Disability Committee is to ensure diligent analysis of specialized medical records, careful evaluation of all applications for disability retirement, and an efficient process for applicants for disability retirement. The Disability Committee will review the administrative record relating to all applications for disability retirement, the recommendations of OCERS staff, and the findings and conclusions of the administrative hearing officer, where applicable and will thereafter make recommendations to the Board on approval or denial of applications. In most circumstances, recommendations from the Disability Committee will be placed on the Board's consent agenda for final action in accordance with the Board Policy on Disability and Non-Disability Adjudication.-

Duties and Responsibilities

3. The Disability Committee shall:
 - a. Review applications for disability retirement and make recommendations to the Board to grant or deny said applications;
 - b. Periodically review the disability application and review process with OCERS staff and recommend any changes as necessary or advisable;
 - c. Provide oversight for searches for outside consultants and advisors including hearing officers and medical experts, and recommend the appointment of such parties to the Board;
 - d. With OCERS staff, coordinate continuing education for the members of the Board on disability-related topics as required; and
 - e. Perform any other duties that may be assigned to it by the Board or that are necessary to discharge the Committee's responsibilities with respect to the disability application process.

Membership

4. The Disability Committee shall be composed of three members ~~of the Board.~~ One member shall be chosen from amongst the first, fourth, fifth, sixth and ninth members of the Board, and two shall be chosen from amongst the second, third, seventh, alternate seventh, and eighth members of the Board. The Board Chair shall appoint members of the Disability Committee as provided in the OCERS By-Laws and designate one member to serve as the Committee Chair.

Disability Committee Charter

5. The Board Chair shall appoint an alternate member of the Disability Committee, who may be any member of the Board, including the alternate seventh member. The alternate member of the Disability Committee shall attend meetings of the Disability Committee only in the event that a regular member of the Disability Committee is unable to attend.

Meetings

- ~~5.6.~~ The Disability Committee shall meet at least monthly and otherwise on an as needed basis as determined by the Committee Chair in consultation with the Board Chair. ~~All Disability Committee members are expected to attend all meetings of the committee, but a quorum to conduct business shall consist of two members of the Disability Committee.~~
7. All regular Disability Committee members are expected to attend all meetings of the committee, but the alternate member is expected to attend only when a regular member of the Disability Committee cannot attend a meeting.
8. A quorum to conduct business shall consist of two members of the Disability Committee, including the alternate member.
- ~~6.9.~~ The Assistant CEO for External ~~Relations~~Operations (or his/her designee), the General Counsel (or his/her designee), and whatever staff deemed necessary shall attend all Disability Committee meetings. Meeting notices will be provided to interested parties in conformance with applicable laws, regulations, customs, and practices.
10. All meetings shall be conducted in accordance with the Brown Act. Meeting agendas will be prepared and provided in advance to members of the committee, along with appropriate briefing materials. Minutes of meetings will be prepared and will contain a record of persons present, decisions taken, and a high-level summary of the discussion.
11. The Disability Committee shall adjourn to a closed session, Cal. Gov't Code § 54957(b), to discuss the application of any member for disability benefit.
- a. Closed Session With the Parties Present. The Disability Committee shall conduct any discussion of an application as a closed session. Attendance at the closed session will be limited to 1) the parties; 2) counsel for the parties; 3) any OCERS disability staff members and/or attorneys acting as advocates for the staff initial determination; 4) any witnesses called to present testimony before the Disability Committee; 5) OCERS staff necessary to facilitate the hearing (including the clerk of the Board and IT Staff); 6) the CEO or Assistant CEO or their designee; and 7) the OCERS General Counsel (or his/her designee) to provide legal advice to the Disability Committee.
- a.b. Closed Session Without Parties. Following the Disability Committee's hearing of a matter in a closed session with the parties present, the Disability Committee may adjourn to a closed session including only the CEO or the Assistant CEO or their designee and the OCERS General Counsel (or his/her designee) to provide legal advice to the Board in order to consider the merits of the case and the Board's legal obligations.

OCERS Board Charter
Disability Committee Charter

Monitoring and Reporting

- 7.12. The Disability Committee shall:
- a. Make its minutes available to all Members of the Board;
 - b. Periodically report to the Board on its activities;
 - c. Monitor compliance with and the effectiveness of the disability application process, and report to the Board on the committee’s findings, as appropriate; and
 - d. Periodically review and, when necessary, amend standardized materials used in the disability application process, as recommended by OCERS staff.

Charter Review

- 8.13. The Disability Committee shall review this charter at least once every three (3) years and recommend any amendments to the Board for approval as necessary to ensure that the charter remains relevant and appropriate.

Charter History

- 9.14. This charter was adopted by the Board of Retirement on MONTH, DATE, YEAR.

Secretary’s Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

Steve Delaney, Secretary of the Board

Date



OCERS Board Charter
Disability Committee Charter

CHANGE LOG EDITOR	CHANGES FROM PREVIOUS VERSION	DATE

REVIEWED BY	SIGNATURE	DATE



OCERS Board Policy ~~Disability and Non-Disability Benefits~~ -Adjudication Policy and Administrative Hearing Rules (~~Disability and Non-Disability Benefits~~)

1. Intent

The Board of Retirement (“Board”) of the Orange County Employees Retirement System (“OCERS”) intends that this ~~Disability and Non-Disability Benefits~~ Adjudication Policy and Administrative Hearing Rules (“~~policy~~Policy”) shall apply to and govern the process by which the Board:

- a. Makes determinations on disability retirement applications (including, but not limited to determinations of permanent incapacity, whether the incapacity arose out of and in the course of employment, and the effective date);
- b. Resolves disputes over retirement benefits (including but not limited to disputes regarding final compensation); and
- c. Makes any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given. See Cal. Civ Proc. Code § 1094.5. Any person who is entitled to an administrative hearing who does not request one under this policy shall be deemed to have waived his/her right to a hearing. See Cal. Civ Proc. Code § 1094.5.

2. Definitions

The following terms shall have the meanings set out in this section.

Administrative Hearing: The process described in this ~~policy~~Policy (including an Expedited Administrative Review), which is the exclusive means by which a Party may seek an administrative review of a determination on a disability retirement application, a resolution of a dispute over retirement benefits, or any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given. An Administrative Hearing shall be a hearing de novo, conducted as if the original recommendation or determination had not taken place. This means the Hearing Officer or other fact finding body will consider anew all of the evidence submitted without relying on the past findings of a court, the Committee, the Board or other fact finding body. A Party is entitled to request an Administrative Hearing within the time periods set forth in this ~~policy~~Policy, and failure to make a timely request shall result in a waiver of the Party’s rights to contest the final determination by OCERS. See Cal. Civ. Proc. Code § 1094.5.

Administrative Record: ~~For purposes of~~The documents and other records relied upon by OCERS staff or a fact-finding body in an Administrative Hearing, ~~the Administrative Record conducted pursuant to this Policy and~~ includes any documents submitted by an Applicant or on behalf of an Applicant, documents prepared by OCERS or by independent sources that are received by OCERS, or any other documents that are relevant to deciding the issue of an Applicant’s request to receive or modify a benefit. A Party may object to the admission of items into evidence or seek to admit additional information into evidence as set forth in these Rules, and the Hearing Officer ~~or other fact-finding body~~ shall decide the admissibility of all evidence.

For purposes of any proceeding following an Administrative Hearing, the Administrative Record also includes written correspondence, Party Pre-Hearing Statements, the Hearing Officer’s Proposed Findings of

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Fact and Recommended Decision, Party objections, hearing transcripts, and other documents that are relevant to deciding the issue of an Applicant's request to receive or modify a benefit.

Applicant: Any member of OCERS, or a person or other entity on behalf of a member of OCERS (including but not limited to the member's surviving spouse), or any person who claims an interest in the pension or allowance of an OCERS member, who files an application with OCERS to request or modify a benefit that OCERS may grant pursuant to the CERL.

Application: The paper(s) initially filed with OCERS by or on behalf of an Applicant, and/or any amended paper(s) filed with OCERS by or on behalf of an Applicant after the initial filing, to request or modify a benefit provided by OCERS.

Board: The Board of Retirement of OCERS.

Clerk, Clerk to the Hearing Officers. A person or persons designated by the OCERS General Counsel or his/her designee to fulfill the duties of providing administrative assistance to the Hearing Officers appointed by OCERS under this [policyPolicy](#).

Days: All days are calendar days.

Disability Committee, Committee: A committee of the Board, chartered by the Board to review Applications for disability retirement.

Expedited Administrative Review: An alternative administrative review process, set forth in Rule 6 of the Hearing Rules, under which an Applicant may obtain a more speedy resolution of his/her Administrative Hearing.

Hearing: Presentation of sworn testimony, other evidence, and legal argument before a Hearing Officer [or other fact-finding body](#) on the merits of an Application or benefit determination.

Hearing Officer: A referee appointed pursuant to Government Code §31533, that is either (i) a current member of the California State Bar on the approved OCERS' Hearing Officer panel, as selected under the OCERS Hearing Officer Selection and Retention Policy, or (ii) a member of the Board.

Hearing Rules, Rules: The "Orange County Employees Retirement System Administrative Hearing Rules," attached as an appendix to and made part of this [policyPolicy](#).

Medical Witness: A person who by profession is a physician, surgeon, psychologist, optometrist, dentist, podiatrist, or chiropractic practitioner licensed by the State of California or by such other jurisdiction of the United States in which such person maintains his or her regular practice in good standing.

Party or Parties: OCERS, any Applicant who seeks an Administrative Hearing under this [policyPolicy](#), the member's employer/plan sponsor, and any other person who may be affected by the Board's decision and participates in the Administrative Hearing.

Petitioner: The Party filing a Request for Administrative Hearing. (In most instances, the Applicant is also the Petitioner.)



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Plan Sponsor: The employer who employed the member whose benefits are at issue in any given matter. The Plan Sponsor is a Party to an Administrative Hearing but does not need to participate in an Administrative Hearing.

Pre-Hearing Statements: Statements filed by the Parties pursuant to Rule 8 of the Hearing Rules.

Proposed Findings of Fact and Recommended Decision: The recommendation of the Hearing Officer to the Board, as set forth in Rule 1213 of the Hearing Rules.

Request for Administrative Hearing: The document filed by the Petitioner to appeal a decision of the Committee or OCERS Staff and initiate the Administrative Hearing.

Respondent: OCERS, provided that the Plan Sponsor or the Applicant may join as the Respondent, as appropriate.

Rule: A hearing rule included in the Hearing Rules.

3. Disability Determination Process

For determinations on Applications for disability retirement:

- A. OCERS staff will investigate all disability retirement Applications to determine whether the Applicant is permanently incapacitated from the performance of his or her usual duties, whether the incapacity arose out of and in the course of employment, and the appropriate effective date of any disability retirement allowance. In undertaking this investigation, staff will have discretion, based on staff’s review of the Application including the Applicant’s treating physicians’ medical reports, to determine whether or not to seek further medical examination of the Applicant, expert medical advice or expert review of Applicant’s medical records. Upon completion of the investigation, OCERS staff will make a recommendation to the Committee regarding permanent incapacity, service connection, and effective date.
- B. The Committee will review the disability Application at a duly-noticed meeting of the Committee. OCERS staff will give Applicant (or his or her attorney) notice of the date of the Committee meeting and the Applicant (or his or her attorney) will have the opportunity to be heard by the Committee.
- C. After the Committee makes a recommendation, OCERS staff will notify the Applicant (and his or her attorney) of the Committee’s recommendation and provide the Applicant with instructions regarding how the Applicant can appeal the determination by filing a Request for Administrative Hearing.
- D. In the event that the Committee recommends that any part of the Application be denied, the Applicant will have 90 days from the date of the notice required by 3.C., above, to file a Request for Administrative Hearing with the Clerk, as set forth in the Hearing Rules. In the event that the Committee recommends the Application be granted in full, any person aggrieved by the recommendation, including the Plan Sponsor, will have 10 days from the date of the notice

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required by 3.C., above, to make a written Request for Administrative Hearing as set forth in the Hearing Rules.

- E. If no Request for Administrative Hearing is filed within the time limits set forth in 3.D., above, the matter shall be placed on the consent agenda at the next regularly scheduled meeting of the Board.

4. Non-Disability Benefit Determination Process

For all other benefit determinations:

- A. ~~OCERS' staff will provide an initial~~An Applicant may request a written review of any OCERS staff level benefit determination (e.g., non-disability determinations regarding amount of the benefit, effective date, reciprocity determinations) in writing at within 90 days of the request of the Applicant. The initial benefit determination by OCERS. The CEO or his/her designee will provide a written review, which may include a synopsis of the member's request and shall include citation of any authority relied upon by ~~staff~~OCERS in making its determination. ~~At~~In addition, the ~~time~~OCERS issues its initial determination, OCERS staffwritten review will ~~also provide the Applicant~~withinclude instructions regarding how the Applicant can appeal the determination by filing a Request for Administrative Hearing.
- B. The Applicant will have 90 days from the date of the notice provided in 4.A., above, to file a Request for Administrative Hearing. If no Request for Administrative Hearing is filed within 90 days, ~~OCERS staff's initial~~the determination made after the review in 4.A, above, shall be final ~~and deemed the decision of the Board.~~

5. Appeals of Disability and Non-Disability Benefit Determinations

A Party has a right to an Administrative Hearing only if the Party files a request for Administrative Hearing within the time frames set forth in Sections 3 or 4, above. An Administrative Hearing shall proceed according to the Hearing Rules.

6. Closed Sessions for Board Determination of Disability and Non-Disability Benefits

Except for matters on the Board's consent agenda, the Board shall adjourn to a closed session, pursuant to Cal. Gov't Code § 54957(b), to discuss the Application of any member for disability or other benefit.

- A. Closed Session With the Parties Present. The Board shall conduct any discussion of an Application, including instances where the Board convenes an Administrative Hearing before itself, as a closed session. Attendance at the closed session will be limited to 1) the Parties; 2) counsel for the Parties; 3) any OCERS disability staff members and/or attorneys acting as advocates for the staff initial determination or Committee recommendation; 4) any witnesses called to present testimony

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before the Board; 5) OCERS staff necessary to facilitate the hearing (including the Clerk of the Board and IT Staff); 6) the CEO; and 7) the OCERS General Counsel (or his/her designee) to provide legal advice to the Board.

- B. **Closed Session Without Parties.** Following the Board's hearing of a matter in a closed session with the Parties present, the Board may adjourn to a closed session including only the CEO and the OCERS General Counsel (or his/her designee) to provide legal advice to the Board in order to consider the merits of the case and the Board's legal obligations.

7. Board Determination of Disability and Non-Disability Benefits

- A. Consent Agenda.** When no appeal has been timely filed on an Application for a disability retirement, the Board shall consider the Committee's recommendation on a consent agenda. Any member of the Board may object to an Application on the consent agenda except that the alternate seventh member (and not the seventh member) of the Board may object to any item relating to a member of the same service as the alternate seventh member. In addition, if the alternate seventh member is present, s/he or she shall be considered to have voted to approve any item adopted on the consent agenda relating to a member of the same service.
- B. Absence of Unanimous Consent for Disability Applications Recommended for Approval By the Committee; Administrative Hearing Before the Board.** If any Board member objects to the approval of an Application for disability retirement that has been placed on the consent agenda, and the matter has not been the subject of an Administrative Hearing, the Board shall either (i) adopt the recommendation of the Committee; or (ii) conduct its own Administrative Hearing or refer the matter to a Hearing Officer for an Administrative Hearing shall follow the Hearing Rules, as closely as practicable, with the Board itself acting as the Hearing Officer.
- C. Matters Referred to the Board After an Administrative Hearing.** Following an Administrative Hearing and the Board's receipt of the Hearing Officer's Proposed Findings of Fact and Recommended Decision, the Board shall hear the matter at a duly-noticed meeting of the Board as set forth in the Hearing Rules. The Parties and their attorneys will be given notice of the date the Board will consider the Hearing Officer's recommendation and will be given the opportunity to be heard by the Board. Upon action by the Board, the Administrative Hearing process will be final for all purposes, and any party aggrieved by the Board's decision may petition the Superior Court for review as provided by law.

~~7. Closed Sessions for Board Determination of Disability and Non-Disability Benefits~~

~~Except for matters on the Board's consent agenda, the Board shall adjourn to a closed session, Cal. Gov't Code § 54957(b), to discuss the Application of any member for disability or other benefit.~~

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~~A. **Closed Session With the Parties Present.** The Board shall conduct any discussion of an Application, including instances where the Board convenes an Administrative Hearing before itself, as a closed session. Attendance at the closed session will be limited to 1) the Parties; 2) counsel for the Parties; 3) any OCERS disability staff members and/or attorneys acting as advocates for the staff initial determination or Committee recommendation; 4) any witnesses called to present testimony before the Board; 5) OCERS staff necessary to facilitate the hearing (including the Clerk of the Board and IT Staff); 6) the CEO; and 7) the OCERS General Counsel (or his/her designee) to provide legal advice to the Board.~~

~~B. **A Closed Session Without Parties.** Following the Board's hearing of a matter in a closed session with the Parties present, the Board may adjourn to a closed session including only the CEO and the OCERS General Counsel (or his/her designee) to provide legal advice to the Board in order to consider the merits of the case and the Board's legal obligations.~~

8. Policy Review

The Board will review this ~~policy~~Policy at least every three (3) years to ensure that it remains relevant and appropriate.

9. Policy History

This ~~policy~~Policy was adopted by the Board of Retirement on February 19, 2002. It was amended most recently on _____.

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

Steve Delaney
Secretary of the Board

Date

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Appendix - Administrative Hearing Rules

Rule 1. Definitions

All capitalized terms contained within these Hearing Rules shall have the meaning set forth in Section 2 of the OCERS Disability and Non-Disability Benefits Adjudication Policy and Administrative Hearing Rules.

Rule 2. Filing of Documents

A. Administrative Hearing Filing Procedures

1. OCERS staff shall promulgate, and may from time to time amend, the “Administrative Hearing Filing Procedures” to set forth the procedures by which the Clerk to the Hearing Officers shall accept filing of documents in Administrative Hearings and service of documents on Parties.
2. The Administrative Hearing Filing Procedures may include forms that parties may be permitted or required to use during the course of an Administrative Hearing.
3. The Clerk shall provide the Petitioner with a copy of the Administrative Hearing Filing Procedures upon Petitioner’s filing of a Request for Administrative Hearing.

B. Filing of Documents

1. All documents required or permitted to be filed by any Party during the course of the Administrative Hearing shall be filed with the Clerk.
2. An Applicant may file documents in person, by US Mail, or electronically, in conformance with the Administrative Hearing Filing Procedures. Any other Party and the Hearing Officer, shall file all documents electronically, in conformance with the Administrative Hearing Filing Procedures.
3. Documents filed by US Mail shall be considered filed on the following dates:
 - i. If mailed from within Orange County, on the date post-marked on the envelope containing the documents;
 - ii. If mailed within the State of California, five (5) days ~~prior to~~ following the date post-marked on the envelope containing the documents;
 - iii. If mailed outside of the State of California, ten (10) days ~~prior to~~ following the date post-marked on the envelope containing the documents.
4. Documents filed in person shall be considered filed on the day received by OCERS.
5. Documents filed electronically shall be considered filed on the date electronically sent.

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C. Service of Documents

1. Within one (1) business day of any document being filed, the Clerk shall serve all documents that have been filed in any Administrative Hearing on all Parties and the Hearing Officer.
2. The Clerk shall serve an Applicant by US Mail, unless the Applicant consents to be served electronically, in conformance with the Administrative Filing Procedures. The Clerk shall serve any other Party and the Hearing Officer electronically, in conformance with the Administrative Hearing Filing Procedures.

Rule 3. Request for a Administrative Hearing Request, Scope, and Settlement

- A. Request for Hearing.** A written Request for Administrative Hearing must be filed with the Clerk within the time frame set forth in Sections 3 and 4 of the OCERS ~~Disability and Non-Disability Benefits-Adjudication Policy-~~ and Administrative Hearing Rules (the "Policy"). The Request for Administrative Hearing shall include a short and plain statement of the grounds for the appeal of the recommendation of the Committee or the OCERS staff.
- B. Referral from the Board.** In the event that the Board refers a matter to a Hearing Officer for an Administrative Hearing, the Applicant shall be considered the Petitioner and the referral from the Board shall be considered the Request for Administrative Hearing.
- C. Burden of Proof.** The Applicant will have the burden of proof to establish his/her right to the benefit sought by a preponderance of the evidence.

D. Scope of Hearing.-

1. A disability retirement Administrative Hearing will address the issues of disability, service connection, and effective date.-
- ~~1-2.~~ Except as set forth in these Rules, the Hearing Officer shall not make a finding or recommendation on any issue that was not raised in the Applicant's original application to OCERS (either for disability or non-disability benefits). ~~If the Applicant seeks to raise new issues, s/he will be required to file a new application-~~
3. If the Applicant seeks to raise new issues or add conditions, s/he will be required to file a new Application, provided however, that OCERS shall retain the discretion to stipulate that the Applicant may dismiss the original Application and file an amended Application, the date of which shall relate back to date of the original Application.

- E. Settlement.** If at any time during the Administrative Hearing it becomes apparent to OCERS staff that a different result is appropriate, OCERS staff and the Applicant may settle and dismiss the Administrative Hearing. For settlements related to non-disability benefits, the Administrative

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Hearing shall be the settlement deemed final. For settlements related to disability benefits, the settlement shall be referred to the Board to be heard on a consent agenda.

Rule 4. Assignment of Hearing Officers

- A. **Assignment of Hearing Officer.** Hearing Officers are selected and placed on the panel pursuant to OCERS' Hearing Officer Selection and Retention Policy. As Administrative Hearings are requested, the Clerk shall randomly assign the Hearing Officer, subject to the procedures for challenge under Rule 4.C, below.
- B. **Notice to Parties of Hearing Officer Assignment.** Within fourteen (14) days after the Petitioner files a Request for Administrative Hearing, the Clerk will file a notice indicating the name and address of the Hearing Officer to whom the matter has been assigned.
- C. **Removal of Hearing Officer.** A Party shall be entitled to have a Hearing Officer replaced by another Hearing Officer in accordance with the provisions of this Rule following procedures.
1. An Applicant is entitled to one automatic challenge to the assignment of the Hearing Officer in accordance with the provisions of this section. The challenge must be filed with the Clerk within fourteen (14) days after the date of the notice assigning the Hearing Officer. The Clerk shall then re-assign the case to another Hearing Officer in the same fashion as selection of the first hearing officer.
 2. **Removal for Cause:** Any Party may challenge a Hearing Officer for cause by filing a request, with supporting declarations made under penalty of perjury under the laws of the State of California and any other evidence the Party is relying on. Any opposing Party will have fourteen (14) days to file a response. The Clerk shall then randomly assign the request to another Hearing Officer, who must decide the issue within thirty (30) days. If the Hearing Officer grants the request, the Clerk shall re-assign the case to a Hearing Officer other than the Hearing Officer who heard the request for re-assignment. Cause for removal shall be limited to bias against a Party or counsel based on a personal or financial relationship (other than the Hearing Officer's contract with OCERS) that would make a reasonable person doubt the Hearing Officer's ability to render an impartial decision.
 3. **Removal Due to Unforeseen Circumstances:** If the service of a Hearing Officer is discontinued due to unforeseen circumstances, including but not limited to death or illness, or termination with or without cause, the Applicant is entitled to a peremptory challenge to the new Hearing Officer in accordance with subsection (1) of this Rule.
- D. **Notice of Assignment to Hearing Officer.** After the expiration of the time period in Rule 4.C, above, the Clerk shall file a Notice to the Hearing Officer of his/her assignment, providing the name, address and phone number of the Applicant, Applicant's counsel if any, and counsel representing OCERS.

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- E. **Recusal of Hearing Officer.** If at any time the Hearing Officer determines that there is cause to remove him/her, s/he shall immediately file with the Clerk a statement of recusal, and the Clerk shall reassign the case pursuant to Rule 4.A.

Rule 5. Preparation of Administrative Record

Within 45 days of the filing of a Request for Administrative Hearing, OCERS shall assemble and file the initial Administrative Record. A Party may object to the admission of items into evidence or seek to admit additional information into evidence as set forth in these Rules, and the Hearing Officer shall decide the admissibility of all evidence.

Rule 6. Alternative Expedited Administrative Review

- A. **Provisions for Alternative Expedited Administrative Review.** Expedited Administrative Review is an irrevocable waiver of the Applicant's right to the process described in Rules 7 through ~~11~~12. The goal of the Alternative Expedited Administrative Review process is to complete the Administrative Hearing in less than six months and based only on the Administrative Record and written arguments, without in-person testimony or argument.

B. Availability of Expedited Administrative Review.

1. An Expedited Administrative Review shall only be available in those cases that OCERS determines are appropriate for an Expedited Administrative Review.
2. OCERS will make the determination as to whether Expedited Administrative Review is appropriate in its sole discretion, on a case-by-case basis. In determining whether Expedited Administrative Review is appropriate, OCERS shall consider: whether there are any material facts in dispute, and whether the introduction of testamentary evidence is likely to clarify the issues; whether there is controlling legal authority; and whether the Applicant's condition is such that time is of the essence in seeking review of the staff recommendation or ultimately judicial review.
- ~~1.3.~~ If OCERS determines that the matter is appropriate for Expedited Administrative Review, the Applicant will have the choice of whether or not to opt for the Expedited Administrative Review.

- B.C. Waiver and Election.** In the event that OCERS determines that a matter is appropriate for Administrative Review, OCERS shall file a Notice of Right to Expedited Administrative Review which provides the Applicant notice of his or her rights and provides a Waiver of Rights and Election for Expedited Administrative Review (the "Waiver and Election"). The Applicant may file its Waiver and Election any time prior to or at the Pre-Hearing Scheduling Conference.

- C.D. Timeline.** The Expedited Administrative Review shall be conducted according to the following timeline.

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1. Within 30 days from the date the Applicant files the Waiver and Election (or within 30 days after the Administrative Record is filed, whichever is later), each party shall file any written evidence that it seeks to rely on in addition to the Administrative Record.
2. Within 30 days from the date the Applicant files the Waiver and Election (or within 30 days after the Administrative Record is filed, whichever is later), each Party shall file a Statement of Issues of not more than five- (5) pages which shall set forth the Party's contentions.
3. Within 90 days from the date the Applicant files the Waiver and Election (or within 30 days after the Administrative Record is filed, whichever is later), the Hearing Officer shall file its Proposed Findings of Fact and Recommended Decision, which shall conform to Rule 4213.

Rule 7. Pre-Hearing Scheduling Conference

- A. The Clerk shall schedule a Pre-Hearing Scheduling Conference to be held within 30 days of the filing of the Administrative Record. The Clerk shall undertake its best efforts to schedule the Pre-Hearing Scheduling Conference at a time convenient to all Parties.
- B. The Pre-Hearing Scheduling Conference may be held telephonically- or electronically (e.g. Skype, Facetime). The Pre-Hearing Scheduling Conference will not be transcribed unless a Party files a request for a court reporter at least seven (7) days before the Pre-Hearing Scheduling Conference- but any party may make an audio recording of the conference. If any Party requests a transcription, the Clerk shall arrange for a court reporter, but the requesting Party shall be liable for reimbursing OCERS for the costs.
- C. At the Pre-Hearing Scheduling Conference, the Hearing Officer shall advise the Applicant (whether or not the Applicant is the Petitioner) of the following:
 1. The Applicant has the right to be represented by counsel;
 2. Any financial or personal interest that the Hearing Officer has in the case, other than the Hearing Officer's contract with OCERS;
 3. The Hearing will be a hearing *de novo*, conducted as if the original recommendation or determination had not taken place. This means the Hearing Officer or other fact finding body will consider anew all of the evidence submitted, without relying on the past findings of a court, the Committee, the Board, OCERS staff, or other fact finding body;
 4. The Hearing Officer's purpose in the process is to find the facts relevant to the Applicant's request and provide an impartial recommendation to the Board;
 5. The Applicant has the burden of proof in establishing by a preponderance of the evidence his or her right to the benefit s/he seeks;
 6. The Applicant must identify witnesses and other evidence when filing his/her Pre-Hearing Statement, and that failure to include in the Pre-Hearing Statement the witnesses and other evidence s/he intends to rely on could mean that evidence will be excluded unless

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the Applicant shows that s/he could not have discovered the information earlier through the exercise of reasonable diligence;

7. The timelines required under these rules for filing documents and for the Administrative Hearing, and the result of a failure to meet those deadlines, including that the Applicant's case can be dismissed.

8. That upon the completion of the Administrative Hearing, the matter will be referred to the Board pursuant to these Rules. Upon action by the Board, the decision will be final for all purposes. There shall be no requirement for a further written decision from the Board or opportunity for the Board to reconsider its decision. Any party aggrieved by the Board's decision may petition the Superior Court for judicial review as provided by law. The time for any party to seek judicial review shall be governed by the California Code of Civil Procedure Section 1094.6

D. At the Pre-Hearing Scheduling Conference, each Party shall:

1. Make a good faith effort to identify the witnesses, both expert and non-expert, that it intends to call;
2. Ensure that that the witnesses it intends to call either speak and understand English or that the Party calling the witness is responsible for obtaining requesting a translator for the witnesses; in accordance with Rule 10. J.;
3. Indicate whether it will require an opposing party's Medical Witness to appear in person to be cross-examined at the Hearing;
4. If possible, set mutually convenient dates for any depositions.

E. At the Pre-Hearing Scheduling Conference, the Hearing Officer shall set the date for the Hearing.

1. The Hearing Officer shall confer with the Parties to determine a mutually agreeable date for the hearing ("Hearing Date"), but in all cases the Hearing Date shall be set as soon as reasonably practicable, but for no later than six (6) months after the date of the Pre-Hearing Scheduling Conference. The hearing will be held within the time frame provided by Rule 4516. OCERS, at its expense, shall arrange for a court reporter and a room for the Hearing.
2. Each Party shall provide a good faith estimate of the amount of time it anticipates the Hearing will last. As much as practicable, the Hearing shall continue from day-to-day until complete, and the Hearing Officer shall schedule all dates to which s/he anticipates the Hearing will be continued until complete.

F. Within five (5) days of the Pre-Hearing Scheduling Conference, the Clerk shall file a Notice of Administrative Hearing Dates, which shall include the Date(s) of the Hearing and the dates that each Party's Pre-Hearing Statements are due.

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F.G. After the Pre-Hearing Scheduling Conference, the Hearing Officer may continue the Hearing Date only upon a showing of good cause as set forth in Rule **1415**, below.

Rule 8. Pre-Hearing Statements

- A. The Petitioner shall file a Pre-Hearing Statement no later than sixty (60) days prior to the Hearing Date.
- B. Respondent shall file a Pre-Hearing Statement no later than thirty (30) days prior to the Hearing Date.
- C. Any Party may file supplemental Pre-Hearing Statements no later than fourteen (14) days prior to the Hearing Date.
- D. The Pre-hearing Statements shall include the following:
 - 1. A statement of the issues and contentions of the Party, and a brief summary of the evidence to be presented;
 - 2. A list and copies of any expert's reports, depositions of any witnesses, and any other documentary evidence on which the Party will rely, if not already in the Administrative Record;
 - 3. The names, addresses and telephone numbers of any non-expert witnesses whose testimony the Party intends to present at the Hearing and a brief description of the content of that testimony.
 - 4. The names, addresses and phone numbers of any expert witnesses whom the Party intends to call for oral testimony at the Hearing and a synopsis of the expected testimony.
- E. If a Petitioner disputes the effective date of the disability retirement, the Petitioner shall raise the effective date as an issue and shall state Petitioner's contention in his/her Pre-Hearing Statement.
- F. If a Petitioner fails to timely file a Pre-Hearing Statement, the Clerk shall file an Order to Show Cause why the case should not be dismissed, and give the Petitioner five (5) days to respond. Unless the Petitioner shows good cause for the failure to timely file its Pre-Hearing Statement, the Hearing Officer shall dismiss the Administrative Hearing and the initial determination or Committee recommendation shall proceed as if no Request for Administrative Hearing had been filed. If the Petitioner shows good cause, the Hearing Officer may allow the Respondent additional time to file its Pre-Hearing Statement or may re-schedule the Hearing within the time requirements of Rule **1516** and the Petitioner shall be liable to OCERS for any actual costs incurred as a result of the delay.

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Rule 9. Depositions and Subpoenas

- A. **Depositions:** Witness depositions may be taken by either Party before a certified Court Reporter and shall be taken under oath or affirmation. The Party taking the deposition shall pay all associated costs. If any Party offers any portion of any deposition testimony into evidence at the Hearing, that Party shall provide a full copy of the deposition transcript to each adverse Party and the Hearing Officer free of charge.
- B. **Subpoenas and Related Fees/Costs:**
1. OCERS shall issue a subpoena for the personal appearance of a witness at the Hearing or at a deposition, or for the production of documents (subpoena *duces tecum*), in conformance with California Government Code Section 31535, upon the request of any Party filed at least seven (7) days before the date the subpoena is to be issued. The requesting Party shall be obligated to serve the subpoena and pay all associated witness fees and costs of service and production. The Party requesting oral testimony of an expert witness shall in all cases be responsible for any expert witness fees.
 2. Any fee disputes between a witness and the requesting Party is independent from any proceeding between the Petitioner and OCERS. Those fee disputes shall be resolved by the requesting Party and the witness in the California courts, not in this forum. The Hearing Officer has no authority or jurisdiction to hear evidence about, or decide any such dispute.

Rule 10. Conduct of Hearings

- A. All Hearings shall be held at the OCERS office, 2223 East Wellington Avenue, Santa Ana, California.
- B. The Clerk shall arrange for a court reporter to be paid at OCERS's expense. Oral evidence shall be taken only on oath or affirmation administered by the Hearing Officer or the court reporter.
- C. A written medical report bearing the signature of the Medical Witness shall be admissible in evidence as the author's direct testimony, provided that the adverse Party has had the opportunity to cross-examine the witness, or to depose the witness and have the deposition transcript admitted into evidence.
- D. Each Party shall have the rights to call and examine witnesses; to introduce exhibits, including reports and depositions of medical witnesses; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut adverse evidence. If an Applicant does not testify by direct examination, OCERS may call and examine the Applicant under cross-examination.
- E. The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons

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are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the Hearing. Irrelevant and unduly repetitious evidence shall be excluded.

- F. Hearsay evidence may be used for the express purpose of supplementing or explaining other evidence but shall not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions. This section shall not be applicable to written medical reports received into evidence pursuant to Rule 10.C. Every Hearing shall proceed as though each Party had made a standing objection to all inadmissible hearsay at the commencement of the Hearing.
- G. The record shall be closed to new evidence at the conclusion of the final day of Hearing. However, if subsequent to the close of the Hearing, a Party discovers or obtains new evidence that is relevant and not repetitive, that Party may file that evidence and request that the Hearing Officer include it in the Administrative Record. The Hearing Officer may require the Parties to provide declarations and argument about inclusion of the new evidence. If, after showing of good cause as defined under Rule 10.I, the Hearing Officer allows inclusion of the new evidence, the opposing Party will be provided an opportunity to submit rebuttal evidence in accordance with Rule 10.I.
- H. The court reporter shall file the transcript of the Hearing within 30 days of the final day of the Hearing.
- I. **Late Submission of Evidence.** No party may submit a medical report or other documentary evidence, nor shall any Party call a witness not listed in its Pre-Hearing Statement except for purposes of impeachment, unless it demonstrates good cause. For purposes of this Rule, “good cause” means relevant evidence that, in the exercise of reasonable diligence, could not have been previously produced. The Party requesting submission of such evidence shall file a written request prior to the Hearing, or if unable to do so in the exercise of reasonable diligence, shall make an oral request at the Hearing. The request shall state the reason the evidence was not timely produced. After providing a reasonable opportunity for each adverse Party to be heard, the Hearing Officer shall rule on such a request. If the evidence is allowed to be admitted into evidence, the Parties shall have the right to a continuance to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine the Medical Witness.
- J. **Use of Interpreter Services.**
 - 1. If an Applicant or witness does not speak or understand English sufficiently to participate in the proceedings or provide testimony, an interpreter certified to provide interpretation services in administrative hearings shall be provided to that Applicant or witness at OCERS’s expense. Notice that an Applicant or witness requires interpreting services shall be given to OCERS at the Pre-Hearing Scheduling Conference or be included in the Party’s Pre-Hearing Statement. If a Party fails to provide such notice, then the witness may not be called unless good cause is shown, as set forth Rule 10.I.

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2. All interpreters must be certified to provide interpreting services in administrative hearings pursuant to Government Code Section 11435.30. The interpreter may not have had any involvement in the issues of the case prior to the Administrative Hearing.
3. If an Applicant objects to the interpreter provided by OCERS, the Applicant may supply her/his own interpreter, provided that the interpreter is certified under Government Code Section 11435.30. However, time for an Applicant to find and hire an interpreter shall not be considered good cause to continue the Hearing. OCERS will pay the chosen interpreter the same amount OCERS would have paid an interpreter hired directly by OCERS. The Applicant shall be responsible for any amounts charged by the interpreter that are over the amount OCERS would have paid to an interpreter hired directly by OCERS. Fee disputes between the interpreter and the Applicant shall not be resolved in this forum, and the Hearing Officer shall not have authority to resolve any fee disputes between interpreters and the Parties.

Rule 11. Resolution of Disputes about Depositions and Conduct of Hearings

The Hearing Officer shall resolve disputes about depositions and conduct of the Hearing. A request for resolution of a dispute shall be made in person at a Pre-Hearing Scheduling Conference, at the Hearing, or may be filed and may be supported by declarations, a memorandum of points and authorities and a proposed resolution. The adverse Party shall file its response within (10) days. Declarations, a copy of the deposition or Hearing transcript, a memorandum of points and authorities and a proposed resolution may also accompany the response. The Hearing Officer may convene a conference (in person or by telephone) to hear the dispute and shall file its resolution of the dispute within thirty (30) days.

Rule 12. ~~Closing Arguments~~Hearing Officer's Findings of Fact and Recommended Decision

- A. ~~Time~~Each Party shall have the right to submit oral or written argument. A waiver of argument at the Administrative Hearing shall not constitute a waiver of argument before the Board.
- B. Unless the parties waive closing briefs, the parties shall adhere to the following schedule for filing written closing briefs:
 1. Petitioner's closing brief shall be filed within thirty days (30) of the date the transcript of the Hearing is filed.
 2. Respondents' closing briefs shall be filed within sixty (60) days of the date the transcript of the Hearing is filed.
 3. Petitioner's reply brief shall be filed within fifteen (15) days of the date that Respondents' closing briefs are filed.
- C. Each party's closing brief may be supported by facts in the record and citation to law. The Petitioner's and Respondents' closing brief shall not exceed fifteen (15) pages and the reply brief

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shall not exceed ten (10) pages, unless the Hearing Officer in the exercise of his/her discretion determines that a longer limit is appropriate under the circumstances.

Rule 13. Hearing Officer's Findings of Fact and Recommended Decision

- A. **Time for Filing.** The Hearing Officer shall file his/her Proposed Findings of Fact and Recommended Decision within sixty (60) days of the date that the Petitioner's reply brief is due or, if the Parties waived closing briefs, within sixty (60) days of the date the transcript of the Hearing is filed.
- B. **Content of Proposed Findings of Fact and Recommended Decision.** The Hearing Officer's Proposed Findings of Fact and Recommended Decision shall include a summary of the following: (1) issues raised by the parties; (2) the testimony; (3) the exhibits offered by the parties, both those received into evidence and those not received; (4) a factual discussion of matters on which the Hearing Officer relied; (5) conclusions of law with citations to legal authority; and (6) recommended action. The summary of the testimony, plus all other evidence received, shall be sufficient to satisfy the requirements of Government Code Section 31534(b).
- C. **Objections.** Any Party may file objections to the Hearing Officer's Proposed Findings of Fact and Recommended Decision within 20 days from the date that the Hearing Officer files his/her Proposed Findings of Fact and Recommended Decision.

Rule ~~13~~14. Hearing and Action by the Board

- A. The Clerk shall refer to the Board for its consideration the Hearing Officer's Proposed Findings of Fact and Recommended Decision and any related objections.
- B. The Clerk shall provide written notice of the time and date of the regular meeting where the matter will be placed on the Board's agenda for action. The Parties will have the opportunity to be heard at the Board meeting subject to appropriate time limitations.
- C. After reviewing the foregoing documents, pursuant to Government Code Section 31534, the Board may:
 - 1. Approve and adopt the proposed findings and the recommendations of the Hearing Officer; or
 - 2. Require a transcript or summary of all testimony, plus all other evidence received by the Hearing Officer. On receipt thereof, the Board shall take such action as in its opinion is indicated by such evidence; or

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3. Refer the matter back with or without instructions to the Hearing Officer for further proceedings; or
 4. Set the matter for hearing before itself. At such hearing, the Board shall hear and decide the matter *de novo*.
- D. The Hearing Officer's Proposed Findings of Fact and Recommended Decision shall be sufficient to satisfy the requirements of Government Code Section 31534(b) and Rule ~~1314~~.C.2. In any case where the Board makes a decision based on a transcript or summary of all testimony, plus other evidence received by the Hearing Officer, or where the Board sets the matter for Hearing before itself, the Board may approve and adopt the Proposed Findings of Fact and Recommended Decision of the Hearing Officer; otherwise, the Board shall prepare its Findings of Fact and Decision, either itself or through direction to staff with its approval.
- E. Upon action by the Board, the decision will be final for all purposes. There shall be no requirement for a further written decision from the Board or opportunity for the Board to reconsider its decision. Any party aggrieved by the Board's decision may petition the Superior Court for judicial review as provided by law. The time for any party to seek judicial review shall be governed by the California Code of Civil Procedure Section 1094.6.

Rule ~~1415~~. Alteration of Time Requirements and Relief from Orders

- A. The Hearing Officer may amend or continue the time periods set forth in these rules only for good cause shown.
- B. Good cause for continuing a time period set forth in these Rules or established by the Hearing Officer shall be only:
 1. the discovery of relevant evidence that, in the exercise of reasonable diligence, could not have been previously produced ~~and;~~
 - ~~1.2.~~ the need to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine ~~the~~ Medical Witness, as set forth under Rule 10.I; or
 - ~~2.3.~~ the illness or disability of an Applicant, witness, attorney, or the Hearing Officer which was unknown to the person at the time of the Pre-Hearing Scheduling Conference (or other time at which the deadline was set) which makes it impossible for the person to participate in the Administrative Hearing process. Relief in this instances shall be granted only if the person raises the request as soon as practicable, and the Hearing Officer shall consider a failure to timely seek relief a waiver by the person.
- C. Any continuance granted under this Rule shall be for as short a period as necessary to allow the person to participate in the process.

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Rules (Disability and Non-Disability Benefits)

1. If an illness or disability affects an attorney who will not be able to participate in the process within a reasonably short period of time, then the continuance shall only be for such time as is necessary to secure substitute counsel.
 2. If the illness or disability affects the Hearing Officer, and the Hearing Officer cannot proceed within the time period set forth in Rule [1516](#), below, the Hearing Officer shall recuse him/herself and a new Hearing Officer shall be appointed.
- D. If good cause exists, the Hearing Officer may order a [Pre-Hearing](#) Scheduling Conference in order to re-set the Hearing Date.
- E. Until such time as the matter has been referred to the Board, the Hearing Officer may, upon any terms as may be just, relieve a party or his or her legal representative from an order, or other action taken against him/her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be made within a reasonable time and once the matter has been placed on the Board agenda, the Hearing Officer shall no longer have jurisdiction.

Rule [1516](#). Dismissal for Failure to Pursue the Administrative Hearing

Except as otherwise provided, if as a result of an Applicant's failure to [pursue his/her case or to](#) comply with any of these Rules, the Applicant's Request for Administrative Hearing (or Board referral) is not heard within one year after the Applicant files a Request for Administrative Hearing (or the Board's referral of a case to a Hearing Officer), the Hearing Officer shall dismiss the Administrative Hearing and the initial determination or Committee recommendation shall become final as if no Request for Administrative Hearing had been filed.

B

Memorandum

DATE: November 21, 2017
TO: Members of the Governance Committee
FROM: Brenda Shott, Assistant CEO Finance and Internal Operations
SUBJECT: RESERVES AND INTEREST-CREDITING POLICY

Recommendation

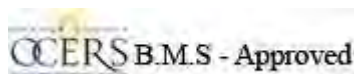
Approve, and recommend that the Board of Retirement approve, the proposed revisions to the Reserves and Interest-Crediting Policy (formerly known as the Undistributed Earnings Policy).

Background/Discussion

In November 2009, the Board adopted the Undistributed Earnings Policy to document how to apply available undistributed earnings (based on the actuarial value of assets) to OCERS' reserves. This policy was last reviewed on January 21, 2014. During the review of the Undistributed Earnings Policy, staff noted that the policy did not include documentation of OCERS reserve structure. The proposed revised document includes significant changes to include a description of the existing reserve structure created and maintained by OCERS and flow charts to illustrate both the distribution of available earnings and interest-crediting to the reserve accounts, and the allocation of undistributed earnings and available earnings. The attached Reserves and Interest-Crediting policy replaces the former Undistributed Earnings Policy which was not redlined due to the significant amount of changes that were added to the policy (a copy of the Undistributed Earnings Policy has been included for your reference).

Staff is requesting that the Governance Committee recommend adoption of the revised policy, including a change in the title of the policy, to the full Board of Retirement.

Submitted by:



Brenda Shott
Assistant CEO, Finance and Internal Operations

Purpose and Background

1. The purpose of this policy is to document the existing reserve structure created and maintained by OCERS and the distribution of available earnings and interest-crediting to the reserve accounts consistent with Government Code §§31592 and 31592.2.

Policy Objectives

2. The objectives of this policy are to:
 - a. Identify all the reserves maintained by OCERS, and how funds are distributed to and from the relevant reserve.
 - b. In the event of excess earnings in any fiscal year, provide guidance to OCERS' staff to ensure appropriate application of excess earnings (Undistributed Earnings) to reserve accounts.

Definitions

The System's reserves are book-keeping accounts and do not represent an actual separation of funds; the sum of all reserves equals the net position restricted for pension and other post-employment benefits and fall into these categories: Valuation, Non-Valuation and Health Care.

3. **Valuation Reserves** consist of the reserves used by the actuary in calculating the valuation value of assets, including the Employer Contribution Reserve, Employee Contribution Reserve, Pension Reserve, , Annuity Reserve, UAAL Contribution Reserve, STAR COLA Reserve, ERI Contribution Reserve, Contra Account and the Contingency Reserve. The total of the Valuation Reserves equals the market value of the system's assets used by the actuary in determining current funding levels.
 - a. **Employer Contribution Reserve**—represents the cumulative employer contributions for active and deferred members plus interest for future retirement benefits. Additions include employer contributions for active members, and interest credited semi-annually. Deductions include transfers to the Pension Reserve to fund retirement benefits, disability benefits and death benefits.
 - b. **Employee Contribution Reserve**—represents the cumulative employee contributions for active and deferred members plus interest for future retirement benefits. Additions include member contributions and interest credited semi-annually. Deductions include member refunds and transfer of funds to the Annuity Reserve for retirement benefits of newly retired members.
 - c. **Pension Reserve**—represents funding set aside from employer contributions for retirement and disability benefit payments. Additions include transfers from the Employer Contribution Reserve as current active members retire and interest credited. Deductions include benefit payments to retired and disabled members, and their beneficiaries.
 - d. **Annuity Reserve**—represents funding set aside from employee contributions for retirement and disability benefit payments. Additions include transfers from the Employee Contribution Reserve as current active members retire and interest credited. Deductions include benefit payments to retired and disabled members, and their beneficiaries.

OCERS Board Policy Reserves and Interest-Crediting Policy

- e. **UAAL Contribution Reserve**—represents the cumulative additional employer contributions made for their unfunded actuarial accrued liability in excess of the required contribution. This reserve is included as part of the Employer Contribution Reserve in the financial statements of the System. Additions include employer contributions to their UAAL, and interest credited semi-annually.
 - f. **STAR COLA Reserve (Supplemental Targeted Adjustment for Retirees Cost-of-living Adjustment)**—represents employer contributions for retirees whose retirement benefit has lost more than 20 percent of its purchasing power since retirement. Additions to this reserve include bi-weekly contributions from the employer. Deductions include monthly benefit payments made to eligible retired members and transfers to the Pension Reserve for any differences between amounts contributed and benefits paid.
 - g. **ERI Contribution Reserve**—represents the cumulative employer contributions for future retirement payments to active employees who were offered an incentive for early retirement by their employer. This reserve is included as part of the Employer Contribution Reserve in the financial statements of the System. Additions include annual employer contributions to be paid over a 15 year period through 2017 and interest credited semi-annually. Deductions include transfers to the Pension Reserve to fund the early retirement benefits for eligible members.
 - h. **Contra Account**—represents the accumulation of the interest crediting to the valuation reserves accounts which cannot be funded from available earnings.
 - i. **Contingency Reserve**—provides a buffer against deficiencies for payment of retirement benefits due to interest and earnings fluctuations, changes in assumptions or some other unforeseen contingency. The County Employees Retirement Law provides that when the Contingency Reserve exceeds one percent of total assets, the retirement board may transfer all or any part of the surplus as specified in Government Code § 31592.2. Additions to this reserve are transfers from the Undistributed Earnings. Deductions are transfers to other reserve funds as required by this policy. If no Undistributed Earnings are available, this reserve may be unfunded.
4. **Non-Valuation Reserves** include the County Investment Reserve, Medicare/Medical Insurance Reserve, EPA Reserve, the OCSD UAAL Deferred Reserve, as well as the Actuarial Deferred Returns. These reserves are special purpose reserves for specific employers and retirees and are not used by the actuary in determining current funding levels.
- a. **County Investment Reserve**—represents the remaining proceeds from the County of Orange’s 1994 Pension Obligation Bond issuance. The remaining proceeds are utilized, in accordance with a long standing agreement between OCERS and the County of Orange, to offset a portion of the annual actuarially-determined contribution rates for the County of Orange. Additions to this reserve include interest credited as stated in the agreement. Deductions represent transfers to the Employer Contribution Reserve as provided in the aforementioned agreement.
 - b. **Medicare/Medical Insurance Reserve**—represents funds received from the County to subsidize Medicare benefits for a small group of retirees in settlement of a retiree healthcare lawsuit back in the 1970’s. There are no additions to this reserve. Deductions to this reserve represent payments to the few remaining retirees who are entitled to this benefit. Once there are no

OCERS Board Policy Reserves and Interest-Crediting Policy

longer any retirees entitled to this benefit, any remaining funds will be transferred to the Pension Reserve. For financial statement reporting purposes only, this reserve is currently included with the Pension Reserve.

- c. **EPA (Employee Purchased Annuity) Reserve**—represents additional after-tax contributions made by employees pursuant to Government Code §31627 for the purpose of providing additional benefits. Under this plan, active employees were given the choice of receiving a lump sum benefit upon retirement, or a monthly distribution for 60 to 120 months, then a lifetime additional retirement benefit. The plan was closed as of December 31, 2002 and only a few retirees are receiving this additional benefit. Interest had been credited at the assumed rate of return minus 0.5%, but the balance in this reserve has been exhausted. Activity in this reserve is limited to deductions for the monthly additional benefit for the remaining retirees. For financial reporting purposes, the negative balance in this reserve is offset against the Pension Reserve.
 - d. **OCSD UAAL Deferred Reserve**—represents the payment by the Orange County Sanitation District (OCSD) of its deferred unfunded actuarial accrued liability (UAAL). This non-valuation reserve was established by a memorandum of understanding (MOU) adopted on January 17, 2017 to track the deferred losses of OCSD's UAAL. Commencing December 31, 2016 and annually thereafter until there is no remaining balance of funds in this reserve, OCERS will transfer the amount necessary to satisfy the actual UAAL attributed to OCSD into OCERS' Employer Reserve Account. Additions to this reserve include interest credited annually at the actual rate of return per the terms of the MOU.
 - e. **Actuarial Deferred Returns**—represents the amount of deferred earnings created by a five-year smoothing of actual gains and losses compared to the assumed investment rate of return. A positive balance represents accumulated earnings above the assumed investment rate of return. A negative balance represents accumulated earnings below the assumed investment rate of return. Changes to this amount are determined based on the actuarial valuation completed at the end of the year. This amount may also be referred to as "Net Unrecognized Gains/ (Losses)" or "Reserve for Market Stabilization."
5. **Health Care Reserves** include funds held for the special purpose to pay medical benefits for eligible recipients.
- a. **Health Care Reserve—County**—represents assets held to pay medical benefits for eligible retirees of the County 401(h) health care plans. Additions include employer contributions and investment earnings. Deductions include medical payments and administrative expenses.
 - b. **Health Care Reserve—OCFA**—represents assets held to pay medical benefits for eligible retirees of the OCFA 401(h) health care plans. Additions include employer contributions and investment earnings. Deductions include medical payments and administrative expenses.
6. **Other Related Terms**
- a. **Undistributed Earnings** are the most recent annual earnings of the fund.
 - b. **Available Earnings** are Undistributed Earnings, as defined above, plus any balance in the Unallocated Fund Balance and Contingency Reserves.

OCERS Board Policy Reserves and Interest-Crediting Policy

- c. **Unallocated Fund Balance** is the amount remaining after all the required reserves have been funded and interest has been credited to those reserves. An Unallocated Fund Balance will only occur when earnings have more than exceeded expectations and the required Contingency Reserve has been funded.

Policy Guidelines

7. Available Earnings of OCERS will be allocated in the following order:
 - a. Payment of administrative and investment expenses
 - b. Credit of regular interest compounded semi-annually on June 30 and December 31 to all contributions in the retirement fund which have been on deposit for six months prior to that date as specified in Government Code § 31591:
 1. Employee (EE) Contribution Reserve at an annual rate of 5%
 2. Employer (ER) Contribution Reserve at the annual assumed rate of return plus the excess between the annual assumed rate of return and 5% credited for employee interest
 3. Annuity Reserve at the annual assumed rate of return
 4. Pension Reserve at the annual assumed rate of return
 5. Early Retirement Incentive (ERI) Reserve at the annual assumed rate of return
 6. UAAL Contribution Reserve at the annual assumed rate of return
 - c. Credit of interest per terms of applicable agreement to the following non-valuation reserves:
 - a. County Investment Reserve
 - b. OCSD UAAL Deferred Reserve
 - d. Credit the balance to Undistributed Earnings
8. The Board adopts the allocation of Undistributed Earnings in the following order:
 - a. Replenish the Contra Account
 - b. Replenishing the Contingency Reserves to 1% of assets
 - c. Credit to Employer (ER) Contribution and Pension Reserves so as to reduce the unfunded accrued actuarial liability (UAAL) of the System
 - d. Credit the balance to the Unallocated Fund Balance

Policy Review

9. This Policy is subject to change in the exercise of the Board's judgment. The Board will review this policy at least every three years to ensure that it remains relevant and appropriate. In the event of legislative changes to the pertinent sections addressed in this policy, the Board will review the policy as appropriate.

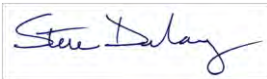
OCERS Board Policy
Reserves and Interest-Crediting Policy

Policy History

- 10. The Board adopted the Undistributed Earnings policy on November 23, 2009.
- 11. The Undistributed Earnings Policy was last reviewed on January 21, 2014.
- 12. This Reserves and Interest-Crediting Policy supersedes the prior Undistributed Earnings Policy.

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

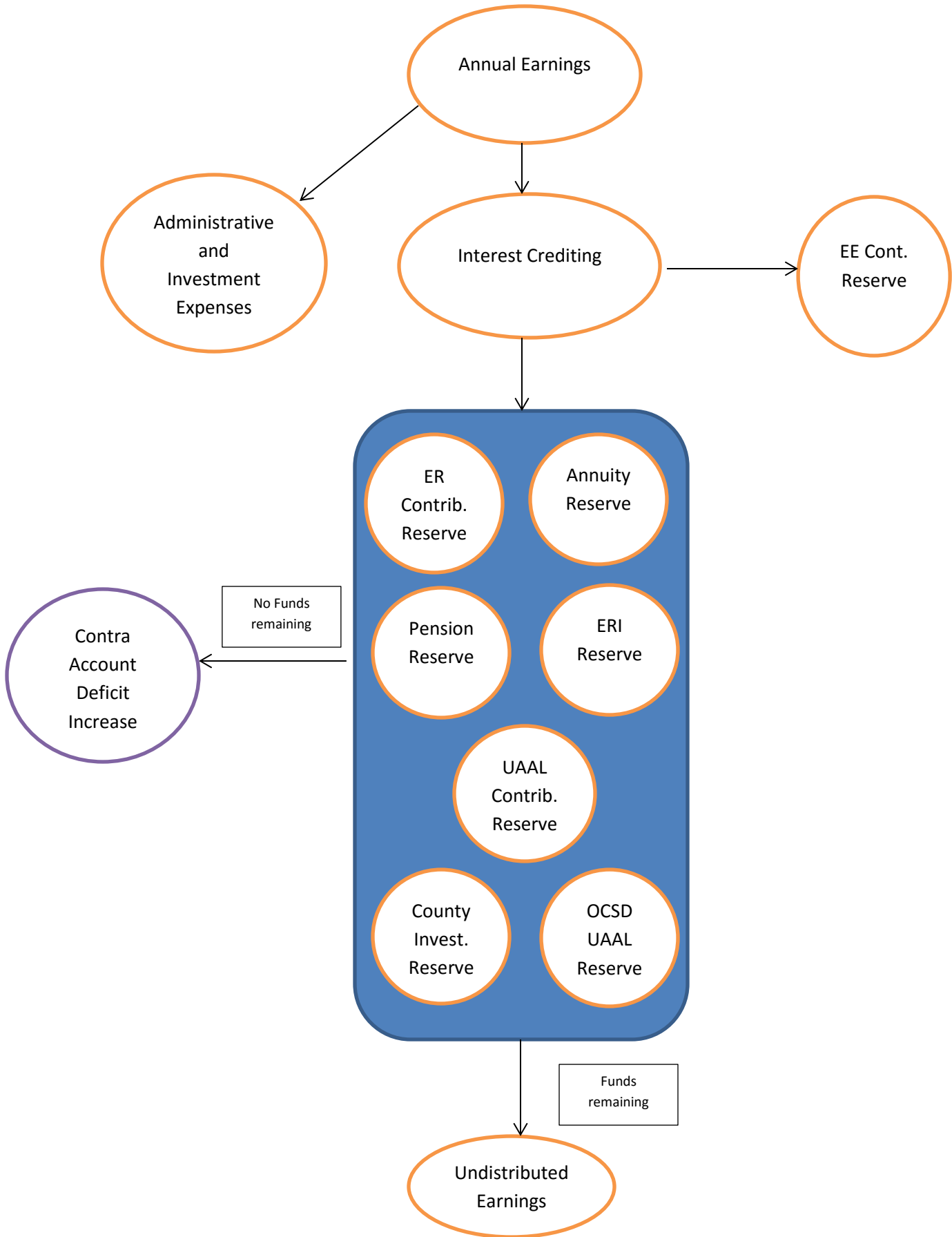


Steve Delaney
Secretary of the Board

_____ Date

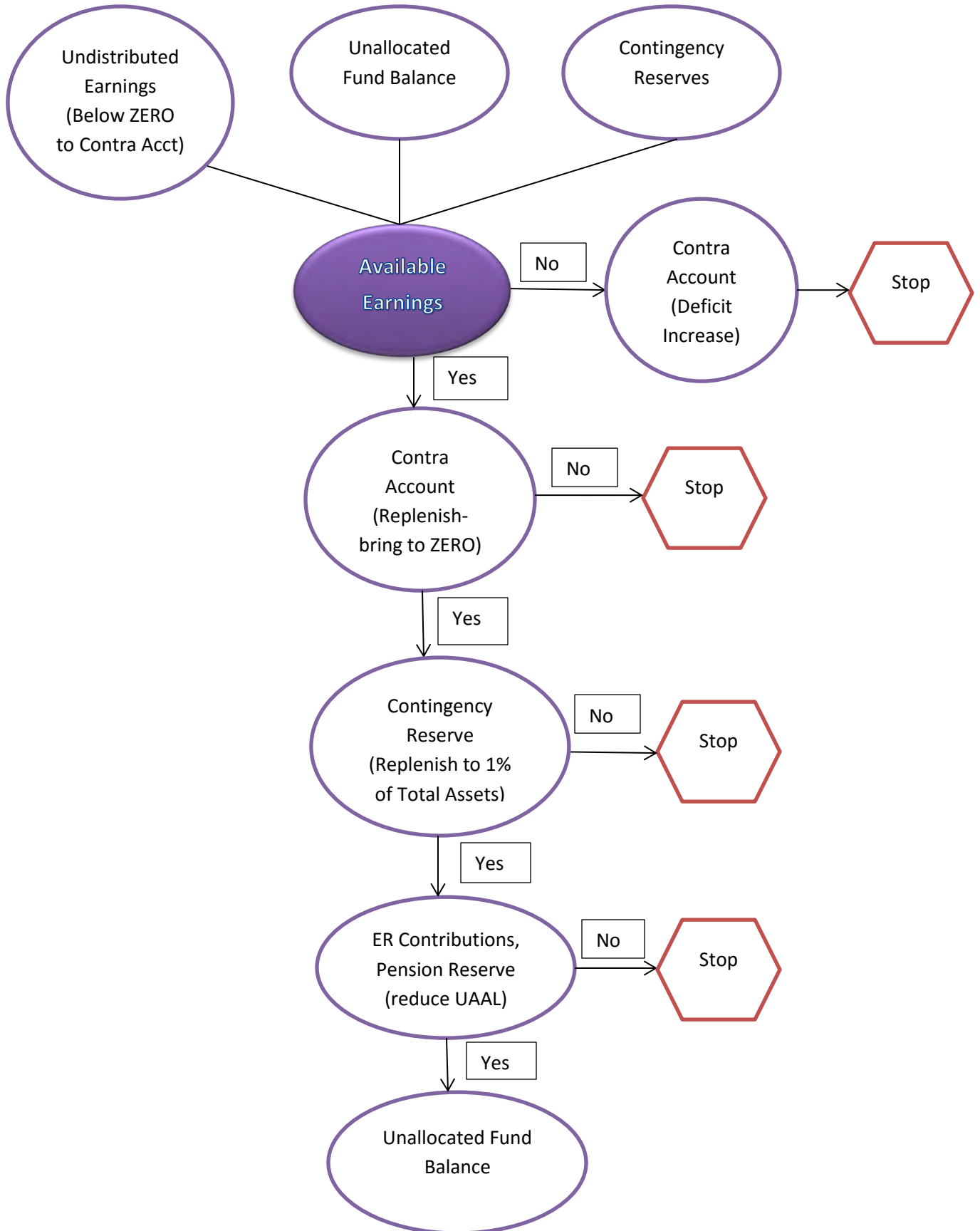
OCERS

Distribution of Annual Earnings to Expenses and Interest-Crediting



OCERS

Allocation of Undistributed Earnings and Available Earnings



Purpose and Background

1. The purpose of this policy is to apply available Undistributed Earnings based on the actuarial value of assets to the reserves of the Orange County Employees' Retirement System ('OCERS'), as determined by the OCERS Board of Retirement ('Board'). The authority of the Board in such matters is governed by the provisions of Art. XVI, § 17 of the state Constitution, the County Employees' Retirement Law of 1937 ('CERL'), Government Code sections 31591 and 31592, and other provisions of state and federal law applicable to OCERS.

Policy Objectives

2. The objectives of this policy are to:
 - a. Provide for long term, stable funding of the retirement system through the reasonable and prudent application of available Undistributed Earnings;
 - b. Provide guidance to OCERS' staff to ensure appropriate application of Undistributed Earnings to reserve accounts.

Definitions

3. "Available Earnings" are the most recent annual earnings of the fund calculated on the Actuarial Value of Assets methodology as determined under the Board's funding policy, plus any balance in the Unallocated Fund Balance and Contingency Reserves.
4. "Undistributed Earnings" are the most recent annual earnings of the fund calculated on the Actuarial Value of Assets methodology as determined under the Board's funding policy after crediting regular interest, as determined by the Board, to the appropriate valuation reserves as identified in paragraph 5 below and payment of administrative expenses.

Policy Guidelines

5. Available Earnings of OCERS will be allocated in the following order:
 - a. Payment of Administrative expenses, then
 - b. Credit of Regular interest to the following valuation reserves:
 1. Employee (EE) Active Reserve,
 2. Employer (ER) Active Reserve,
 3. Retired Reserve,
 4. Early Retirement Incentive (ERI) Reserve, then
 - c. Credit the balance to Undistributed Earnings.
6. The Board adopts the allocation of Undistributed Earnings in the following order:
 - a. Replenish the Contra Tracking Account, then

Undistributed Earnings Policy

- b. Replenishing the Contingency Reserves to 1% of assets, then
- c. Credit to Employer (ER) Active and Retired Reserves so as to reduce the unfunded accrued actuarial liability ('UAAL') of the system, then
- d. Credit the balance to the Unallocated Fund Balance.

Policy Review

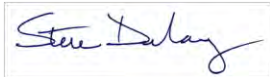
- 7. This Policy is subject to change in the exercise of the Board's judgment. The Board will review this policy at least every three years to ensure that it remains relevant and appropriate. In the event of legislative changes to the pertinent sections addressed in this policy, the Board will review the policy as appropriate.

Policy History

- 8. The Board adopted this policy on November 23, 2009.
- 9. This Policy was last reviewed on January 21, 2014.

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.



1/21/14

Steve Delaney
Secretary of the Board

Date