

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

GOVERNANCE COMMITTEE MEETING  
September 25, 2019  
9:00 a.m.

**Members of the Committee**

Shawn Dewane, Chair  
Roger Hilton, Vice Chair  
Chris Prevatt  
David Ball

**AGENDA**

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

**PUBLIC COMMENT**

At this time, members of the public may comment on (1) matters not included on the agenda, provided that the matter is within the subject matter jurisdiction of the Committee; and (2) any matter appearing on the Consent Agenda. **Persons wishing to provide public comment at this time should fill out a speaker card located on the counter at the back of the room and deposit it in the Recording Secretary's inbox on the wall near the middle of the room.** When addressing the Committee, please state your name for the record prior to providing your comments. Speakers will be limited to three (3) minutes.

In addition, public comment on matters listed on this agenda will be taken at the time the item is addressed.

**CONSENT AGENDA**

**C-1 APPROVE GOVERNANCE COMMITTEE MEETING MINUTES**

Governance Committee Meeting Minutes

May 21, 2019

**ACTION ITEMS**

**NOTE:** Public comment on matters listed in this agenda will be taken at the time the item is addressed, prior to the Committee's discussion of the item. **Persons wishing to provide public comment at this time should fill out a speaker card located on the counter at the back of the room and deposit it in the Recording Secretary's inbox on the wall near the middle of the room.**

**A-1 INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA**

**A-2 NEW OCERS ADMINISTRATIVE PROCEDURE FOR EVALUATING POTENTIAL NEW EMPLOYERS ENTERING THE OCERS PLAN**

*Presentation by Gina M. Ratto, General Counsel*

**Recommendation:** Approve, and recommend that the Board adopt, a new OCERS Administrative Procedure for Evaluating Potential New Employers who apply to participate in the OCERS pension plan.

**A-3 NEW BOARD POLICY: PROTOCOLS FOR HANDLING WORKPLACE COMPLAINTS AGAINST MEMBERS OF THE BOARD AND EXECUTIVE STAFF**

*Presentation by Gina M. Ratto, General Counsel*

**Recommendation:** Approve, and recommend that the Board adopt, a new Board policy to set forth the protocols for handling workplace complaints against members of the Board and Executive Staff.

**A-4 REVISIONS TO THE TRAVEL POLICY**

*Presentation by Gina M. Ratto, General Counsel*

**Recommendation:** Approve, and recommend that the Board approve, revisions to the Travel Policy as presented.

**A-5 TRIENNIAL REVIEW OF THE OVERPAID AND UNDERPAID BENEFITS POLICY**

*Presentation by Suzanne Jenike, Assistant CEO, External Operations*

**Recommendation:** Approve, and recommend that the Board approve, revisions to the Overpaid and Underpaid Benefits Policy.

**A-6 TRIENNIAL REVIEW OF THE TRUSTEE EDUCATION POLICY**

*Presentation by Cynthia Hockless, Director of Administrative Services*

**Recommendation:** Approve, and recommend that the Board approve, revisions to the Trustee Education Policy.

**COMMITTEE MEMBER COMMENTS**

**CHIEF EXECUTIVE OFFICER/STAFF COMMENTS**

**COUNSEL COMMENTS**

**ADJOURNMENT**

**NOTICE OF NEXT MEETINGS**

**DISABILITY COMMITTEE MEETING**

**October 3, 2019**

**10:00 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

**2223 E. WELLINGTON AVENUE, SUITE 100**

**SANTA ANA, CA 92701**

**OCERS BUDGET WORKSHOP**

**October 17, 2019**

**9:00 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

**2223 E. WELLINGTON AVENUE, SUITE 100**

**SANTA ANA, CA 92701**

**REGULAR BOARD MEETING**

**October 21, 2019**

**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](mailto: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.

C-1

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

**GOVERNANCE COMMITTEE MEETING  
May 21, 2019  
9:00 a.m.**

**MINUTES**

The Chair called the meeting to order at 9:13 a.m. Attendance was as follows:

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

Staff: Steve Delaney, Chief Executive Officer; Gina Ratto, General Counsel; Suzanne Jenike, Assistant CEO, External Operations; Sonal Sharma, Recording Secretary; Anthony Beltran, Audio Visual Technician

**CONSENT AGENDA**

**C-1 APPROVE GOVERNANCE COMMITTEE MEETING MINUTES**

Governance Committee Meeting Minutes

March 1, 2019

A **motion** was made by Mr. Ball, **seconded** by Mr. Prevatt to approve the Minutes. The motion passed **unanimously**.

**ACTION ITEMS**

**A-1 INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA**

**A-2 MASTER FINAL AVERAGE SALARY PROJECT UPDATE AND MASTER PAY ITEM LIST**

*Presented by Suzanne Jenike, Assistant Chief Executive Officer, External Operations*

**Recommendation:** Approve, and recommend that the Board approve the Master Final Average list of pay items, including pensionable attribute determinations for Legacy and PEPRA members.

Suzanne Jenike, Assistant CEO of External Operations, presented a comprehensive master list applicable to all OCERS employers and members by bargaining group. Member Services and legal staff determined the correct pension attributes for each pay item based on Legacy and PEPRA member status. Staff updated the master list after discovering some inconsistencies with the pay items.

The Committee Members had questions and comments regarding this item and suggested a few changes for the purposes of clarity.

Following discussion, a **motion** was made by Mr. Hilton, **seconded** by Mr. Ball to approve, and recommend that the Board approve, the Master Final Average list of pay items, including pensionable attribute determinations for Legacy and PEPRA members.

The motion passed **unanimously**.

**A-3 TRIENNIAL REVIEW OF THE COMMITTEE CHAIR CHARTER**

*Presented by Steve Delaney, Chief Executive Officer*

**Recommendation:** Approve, and recommend that the Board approve, revisions to the Committee Chair Charter as presented.

A **motion** was made by Mr. Prevatt, **seconded** by Mr. Hilton to approve, and recommend that the Board approve, revisions to the Committee Chair Charter as presented.

The motion passed **unanimously**.

**A-4 TRIENNIAL REVIEW OF THE INDEMNITY AND DEFENSE POLICY**

*Presented by Gina M. Ratto, General Counsel*

**Recommendation:** Approve, and recommend that the Board approve, revisions to the Indemnity and Defense Policy as presented.

A **motion** was made by Mr. Ball, **seconded** by Mr. Prevatt to approve, and recommend that the Board approve, revisions to the Indemnity and Defense Policy as presented.

The motion passed **unanimously**.

**COMMITTEE MEMBER COMMENTS**

None.

**CHIEF EXECUTIVE OFFICER/STAFF COMMENTS**

None.

**COUNSEL COMMENTS**

None.

**ADJOURNMENT**

The meeting adjourned at 9:41a.m.

**Submitted by:**

**Approved by:**

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Steve Delaney  
Secretary to the Board

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Shawn Dewane, Chair

A-2



## Memorandum

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**DATE:** September 25, 2019  
**TO:** Members of the Governance Committee  
**FROM:** Gina M. Ratto, General Counsel  
**SUBJECT: NEW OCERS ADMINISTRATIVE PROCEDURE (OAP) FOR EVALUATING POTENTIAL NEW EMPLOYERS ENTERING THE OCERS PLAN**

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### Recommendation

Approve, and recommend that the Board adopt, a new OCERS Administrative Procedure for Evaluating Potential New Employers who apply to participate in the OCERS pension plan.

### Background/Discussion

OCERS is a governmental pension plan under the Internal Revenue Code (IRC) – specifically, under IRC section 414(d). Section 414(d) generally defines the term “governmental plan” as a plan established and maintained for its employees by the government of the United States, the government of any state or political subdivision thereof, or by any of their agencies or instrumentalities. A pension plan that qualifies as a “governmental plan” under IRC section 414(d) is generally treated differently than a private sector pension plan under federal tax laws. To retain the significant benefits afforded governmental plans, such plans must comply with certain requirements of federal tax law, including the requirements of section 414(d), and any interpretive regulations or guidance issued by the Internal Revenue Service (IRS). This generally means that OCERS must prohibit the participation in the OCERS plan of any entity that is not “an agency or instrumentality of the state or a political subdivision of a state” as those terms are interpreted by the IRS.

In 2012, the IRS issued an advance notice of proposed rulemaking on determining governmental plan status (Notice). The Notice stated that the Treasury Department and IRS anticipated issuing regulations under section 414(d) to define the term “governmental plan.” The Notice included a comprehensive “facts and circumstances” test for a governmental plan to determine whether an entity (employer) qualifies as “an agency or instrumentality of a State or political subdivision of a State” for purposes of section 414(d).

Seven years later, the IRS has yet to propose the regulations previewed in the Notice. Notwithstanding this, governmental plans are well-advised to ensure adherence to the guidance set forth in the Notice. Although OCERS has not received a formal request to participate in the OCERS plan from an employer years, staff recommends OCERS adopt an Administrative Procedure (OAP) so that we are prepared in the event we receive such a request. The recommended OAP is intended to ensure that only qualified entities participate in the OCERS plan in order to preserve OCERS’ governmental plan status under federal law. Staff has prepared the attached OAP, which staff believes reflects the IRS interpretation of the requirements of IRC section 414(d) and the facts and circumstances test set forth in the Notice. The OAP has been reviewed by external tax counsel and the Board’s fiduciary counsel, both of whom concur with the provisions of the OAP and agree that it should be adopted and implemented.



Attached to the OAP is a worksheet for staff to use in evaluating applications received from employers who wish to participate in the plan. The OAP provides that staff will evaluate the criteria, and together with the General Counsel, will make a recommendation to the CEO as to whether the entity's request to participate in the plan should be approved or denied. The CEO will then make an independent determination of whether to recommend to the Board approving or denying the request. The approval or denial is ultimately the Board's decision.

Staff recommends that the Governance Committee approve the OAP and forward it to the Board with a recommendation that the Board adopt the OAP.

**Submitted by:**



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Gina M. Ratto  
General Counsel

## OCERS Administrative Procedure (OAP) Evaluating Potential New Employers

### Authority

Internal Revenue Code (IRC) section 414(d) generally defines the term “governmental plan” as a plan established and maintained for its employees by the government of the United States, the government of any state or political subdivision thereof, or by any of their agencies or instrumentalities. A pension plan that qualifies as a “governmental plan” under IRC section 414(d) is generally treated differently than a private sector pension plan under federal tax laws. To retain the significant benefits afforded governmental plans, such plans must comply with certain requirements of federal tax law, including the requirements of section 414(d).

The Orange County Employees Retirement System (OCERS) is a governmental pension plan within the meaning of IRC section 414(d), and therefore is subject to any regulation or guidance issued by the Internal Revenue Service (IRS) interpreting the requirements of section 414(d). This generally means that OCERS must prohibit the participation in the OCERS plan of any entity that is not “an agency or instrumentality of the state or a political subdivision of a state” as those terms are interpreted by the IRS.

OCERS adopts this Administrative Procedure in order to ensure that only entities that qualify as agencies or instrumentalities of the state or a political subdivision of the state participate in the OCERS plan and to protect and preserve OCERS’ governmental plan status under federal law. OCERS believes the requirements of this Administrative Procedure are consistent with the interpretation by the IRS of the requirements of IRC section 414(d).

### Process

1. When OCERS receives a request from an entity that wishes to contract with OCERS to provide pension benefits for the entity’s employees, OCERS staff will collect all of the information required by the Eligibility Determination Worksheet and Determination Analysis, Appendix A to this Administrative Procedure. The information will be collected from the entity directly and from other reliable sources. Until OCERS receives adequate information, it shall be under no obligation to evaluate the entity as described below.
2. After collecting the required information, OCERS staff will evaluate the entity against the following criteria to determine whether to recommend approval of the entity’s request to contract with OCERS for pension benefits:
  - a. **Main Factors**  
The main factors for determining whether, and indicating that, an entity is an agency or instrumentality of the State or political subdivision of the State include whether:

- i. **Control:**
    - The entity's governing board or body is controlled by the State or political subdivision of the State;
    - The members of the governing board or body are publicly nominated and elected;
  - ii. **Fiscal Responsibility:**
    - The State or a political subdivision of the State has fiscal responsibility for the general debts and other liabilities of the entity, including funding responsibility for the employee benefits under the entity's plan;
  - iii. **Employee Status:**
    - The entity's employees are treated in the same manner as employees of the State or political subdivision of the State for purposes other than providing employee benefits (for example, the entity's employees are granted civil service protection);
  - iv. **Sovereign Powers:**
    - In the case of an entity that is not a political subdivision, the entity is delegated, pursuant to a statute of the State or political subdivision of the State, the authority to exercise sovereign powers of the State or a political subdivision of the State (such as the power of taxation, power of eminent domain, police power).
- b. **Other Factors**
- Other factors for determining whether, and indicating that, an entity is an agency or instrumentality of the State or political subdivision of the State include whether:
- i. **Governmental Purpose:** The entity serves a governmental purpose.
  - ii. **Operational Control:** The entity's operations are controlled by the State or a political subdivision of the State.
  - iii. **Funding Sources:** The entity is directly funded through tax revenues or other public sources; however, this factor is not satisfied if an entity that is not otherwise an agency or instrumentality is paid from public funds under a contract to provide a governmental service or is funded through grants by the state or federal government.
  - iv. **Statutory Creation:** The entity is created by the State government or a political subdivision of the State pursuant to a specific enabling statute that prescribes the purposes, powers, and manners in which the entity is to be established and operated. However, a nonprofit corporation that is incorporated under the State's general corporation law is not created under a specific enabling statute.

- v. **Tax Status:** The entity is treated as a governmental entity for federal employment tax or income tax purposes (such as the authority to issue tax-exempt bonds under section 103(a)) or under other federal laws.
  - vi. **Public Access:** The entity is determined to be an agency or instrumentality of the State or political subdivision of the State for purpose of state laws, for example, the entity is subject to open meetings laws or the requirement to maintain public records that apply only to governmental entities.
  - vii. **Ownership Interests.** The State or a political subdivision of the State has the ownership interest in the entity and no private interests are involved.
3. In evaluating the aforementioned criteria, it is understood that OCERS staff will apply judgment and exercise discretion in weighing the factors. The “Other Factors” will be taken into consideration but will not be given as much weight as the “Major Factors.” In addition, within the “Major Factors” more weight will generally be given to the “Control” and “Fiscal Responsibility” factors than to the other “Major Factors.”
  4. After conducting the evaluation above, and with the concurrence of OCERS’ General Counsel, OCERS staff will make a recommendation to the CEO as to whether the entity’s request to contract with OCERS for pension benefits should be approved or denied.
  5. The CEO shall consider OCERS staff’s recommendation and make an independent determination of whether to recommend to the Board of Retirement approving or denying the request. The CEO’s recommendation will be presented to the Board of Retirement for approval at a regular public meeting of the Board. The requesting entity may address the Board at this meeting. The Board’s decision will be final and not appealable.
  6. If the requesting entity’s participation in OCERS is approved by the Board, the entity will be required to enter into an Employer Participation Agreement with OCERS, on terms satisfactory to OCERS, before the entity’s participation will be effective.

# Evaluating Potential New Participating Employers

## Eligibility Determination Worksheet and Determination Analysis

**Applicant Contact Information**

Official Entity Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 County: \_\_\_\_\_  
 Fed. Tax ID #: \_\_\_\_\_

**Authorized Entity Representative:**

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 E-Mail: \_\_\_\_\_

**Alternative Entity Representative:**

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 E-Mail: \_\_\_\_\_

**Entity/Employer Demographics**

1. Has the Entity/Employer had any name changes? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please list the previous name(s):

Previous Entity Name	Begin Date	End Date

2. Has the Entity/Employer reorganized, merged with, or assumed the functions of another Entity? Yes \_\_\_\_\_ No \_\_\_\_\_

\_\_\_\_\_

If yes, please provide copies of the relevant documents.

Entity Name (list reorganized/merged with, assumed functions)	Begin Date	End Date

3. Has the Entity/Employer previously participated in the OCERS plan? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please indicate date ranges and all related Entity names participating in the plan.

Entity/Employer Name	Begin Date	End Date

**Entity/Employer Analysis - Public Agency Statutory Qualifications**

4. Entity Type. What type of entity is the Employer? If the entity is a County, City, or Town, then no further review is needed, as the entity is generally considered to be a public Entity.

\_\_\_\_City/Town \_\_\_\_County \_\_\_\_Joint Powers Authority (JPA) \_\_\_\_Non-profit Corporation

\_\_\_\_District \_\_\_\_Agency

\_\_\_\_ Other Type (describe) : \_\_\_\_\_

5. District under CERL. Does the Entity/Employer qualify as a “district” under Government Code section 31468; and if so, under what subdivision of section 31468?

Yes/No/NA	Explanation

6. Public Entity. Is the Entity/Employer a Joint Powers Authority (JPA) as defined in Government Code 6500 *et. seq.*?

Yes/No/NA	Explanation

7. Supporting Documentation. Did the Entity/Employer provide copies of documents of creation?

Yes/No/NA	Explanation

For example, did the entity include:	Yes/No/NA
<ul style="list-style-type: none"> <li>Enabling Legislation</li> </ul>	

• Local Ordinance creating entity	
• Joint Powers Authority Agreement, with signature(s)	
• Articles of Incorporation, w/each named director's signature	
• Secretary of State filing, Resolutions with signature(s)	
• Charters	
• By-laws, Amendments to By-laws with signature(s)	
• Amendments to Agreements, Articles or By-laws, with signature(s)	
• Memorandums of Understanding	
• Service Agreement with signature(s)	
• Certificates of Corrections or Certificates of Amendments, with signature(s)	
• If the entity is a JPA, any and all agreements or arrangements between the JPA members and/or other related entity related to employees or employee benefits, including funding of such benefits.	
• Other Supporting Documentation: Basic Financial Statements and Independent Auditors Report	

### Entity/Employer Analysis – IRS Factors Determination

8. Control. Is the Entity/Employer's governing board or body controlled by the State or a political subdivision of the State or by their respective laws? [Note: Control is demonstrated by the ability to appoint and to remove incumbents; consider the impact of multiple layers of control, if applicable.]

Yes/No/NA	Explanation

9. Control. Are the members of the Entity/Employer's governing board or body publicly nominated and elected? (Consider who can remove and elect directors or officials).

Yes/No/NA	Explanation

10. **Control:** What factors indicate the Joint Powers Authority (JPA) is independent from its creating bodies? What powers do the forming public agencies have over the JPA?

Yes/No/NA	Explanation

For example, does the JPA have	Yes/No/NA
• Fiscal independence from its creating member public agencies?	
• The authority to hire and fire employees?	
• The authority to contract?	
• The authority to sue and be sued?	
• The power to incur debt?	
• The power to borrow money?	
• The power to acquire property?	

11. **Fiscal Responsibility/Control.** Does the State (or political subdivision thereof) have fiscal responsibility for the general debts and other liabilities of the entity (including funding responsibility for the employee benefits under the entity's plan)?

Yes/No/NA	Explanation

12. **Employee Status.** Are the entity's employees treated in the same manner as employees of the State (or political subdivision thereof) for purposes other than providing employee benefits? For example, are the entity's employees granted civil service protection; or, are the entity's employees subject to public employee collective bargaining laws (Meyers-Milias-Brown Act, 1968)?

Yes/No/NA	Explanation



13. Sovereign Powers. In the case of an entity that is not a political subdivision, is the entity delegated, pursuant to a statute of the State or political subdivision of the State, the authority to exercise sovereign powers of the State or political subdivision of the State (such as the power of taxation, the power of eminent domain, and the police power)?

Yes/No/NA	Explanation

- If yes, list the entity, cite the authorizing government codes and associated code sections.

Entity Name	Relevant California Code	Code Section

14. Governmental Purpose. Does the entity/employer serve a governmental purpose? Describe.

Yes/No/NA	Explanation

15. Operational Control. Are the entity's operations controlled by the State (or political subdivision of the State)?

Yes/No/NA	Explanation

16. Public Funding. Is the entity directly funded through tax revenues or other public sources? (This factor is not satisfied if an entity that is not otherwise an Entity or instrumentality is paid from public funds under a contract to provide a governmental service or is funded through grants by the State or federal government.)

Yes/No/NA	Explanation

17. Statutory Creation. Is the entity is created by the State or a political subdivision of the State pursuant to a specific enabling statute that prescribes the purposes, powers, and manners in which the entity is to be established and operated? (However, a nonprofit corporation that is incorporated under a State's general corporation law is not created under a specific enabling statute.) If yes, cite the authorizing government codes and associated code sections.

Yes/No/NA	Explanation

18. Tax Status. Is the entity is treated as a governmental entity for Federal employment tax or income tax purposes (such as the authority to issue tax-exempt bonds under section 103(a) or under other Federal laws)?

Yes/No/NA	Explanation

19. Public Access. Is the entity determined to be an agency or instrumentality of the State (or a political subdivision of the State) for purposes of State laws? For example, is the entity subject to open meetings laws (*Ralph M. Brown Act, GC 54950, et seq.*) the California Public Records Act (GC 6250, et seq.), the California Political Reform Act (GC 87100, et seq.) and FPPC regulations thereunder?

Yes/No/NA	Explanation

20. Court Representation. Has the entity been determined to be an instrumentality of a State (or political subdivision thereof) by a State or Federal court?

Yes/No/NA	Explanation

21. Ownership Interests. Does the State (or political subdivision thereof) have the sole ownership interest in the entity and no private interests are involved? (If a JPA, consider if there are any private members or if agreement allows for private members?).

Yes/No/NA	Explanation

**Entity Analysis - Financial Risk Determination**

22. Fiscal Status. Did the entity's Independent Auditors Report demonstrate the entity follows the General Accounting Standards Board (GASB) accounting practices (AQ, Q19)?

Yes/No/NA	Explanation

23. Fiscal Status. Does the entity's Independent Auditors Report demonstrate a positive Balance Sheet cash flow (AQ, Q19)?

Yes/No/NA	Explanation

**Entity Analysis – Common Law Employer Determination**

24. Employees. Information regarding the entities employees.

	#Active	# Retired	# Deferred
a. How many employees does the Employer have currently?			
b. How many employees when fully operational?			
c. How many employees are currently reported to OCERS through another entity?			

If needed, explain responses related to question 24, a through c.

Explanation

25. **Employees.** Are the employees currently considered to be employees of the applying entity? If No, then list the name of the other entity that is the employer.

Yes/No/NA	Explanation

For example, is any other entity:	Yes/No/NA (if yes, include name of the entity)
• Is another entity identified as the employer on employees' IRS Form W-2 statements?	
• Is another entity responsible for costs related to the employees, such as payroll costs, employee benefit costs or the like?	
• Is another entity considered a co-employer with the applying entity or a "worksite" employer?	
• Does another entity have responsibility for day-to-day oversight of the employees?	
• Are the employees leased to or from another entity?	

### Other Required Documentation

26. The Entity/Employer is required to submit all of the following:

- Enabling Legislation
- Local Ordinance creating Entity/Employer
- Demographic information of employees entering Plan
- Reciprocity status of all employees entering Plan
- Last two years' of audited financial statements. **If the Entity/Employer is a JPA, the last two years' of audited financial statements will be required of each and every member of the JPA.**
- Personnel Transition Plan
- Most recent Memorandum of Understanding (MOU) with union(s) for all classifications of employees entering Plan

- Private Letter Ruling regarding Tax Status
- Authorized Signatory List
- Primary Contacts information

A-3

## Memorandum

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**DATE:** September 25, 2019  
**TO:** Members of the Governance Committee  
**FROM:** Gina M. Ratto, General Counsel  
**SUBJECT: NEW BOARD POLICY: PROTOCOL FOR HANDLING WORKPLACE COMPLAINTS AGAINST MEMBERS OF THE BOARD AND EXECUTIVE STAFF**

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### Recommendation

Approve, and recommend that the Board adopt, a new Board policy to set forth the protocols for handling workplace complaints against a member of the Board or OCERS Executive Staff.

### Background/Discussion

At its March 1, 2019 meeting, the Governance Committee approved revisions to the Board of Retirement Chair Charter and the Board of Retirement Vice-Chair Charter to partially address how complaints or reports regarding a Board member's failure to comply with law or Board charters or policies will be handled. Those changes were approved by the Board at its March 18, 2019 meeting.

Staff is now recommending for the Governance Committee's consideration a new Board policy to set forth the protocols that will be followed when OCERS receives a workplace complaint against a member of the Board or a member of OCERS' Executive Staff. The new policy is intended to provide clear guidance to the Director of Human Resources when such a workplace complaint is received, and includes protocols regarding:

- Documenting the complaint (Paragraph 3);
- Consulting with the Board Chair, CEO, General Counsel and Fiduciary Counsel (Paragraph 4);
- Notifying the subject of the complaint of the receipt of the complaint (Paragraph 5);
- Retaining an investigator to investigate the complaint (Paragraph 6);
- Informing the subject of the complaint of the substance of the complaint, the identity of the complainant, and the opportunity to respond to the complaint (Paragraph 7);
- Advising the Board of complaints against members of the Board (Paragraph 8);
- Authorizing the subject of the complaint to engage independent legal counsel at OCERS' expense (Paragraph 9);
- Determining actions or measures to be taken in response to the complaint after the investigation is concluded (Paragraph 10); and

- Informing the subject of the complaint and the complainant when the complaint has been fully investigated, addressed and closed (Paragraph 11).

A copy of the proposed policy is attached.

**Submitted by:**



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Gina M. Ratto  
General Counsel



**OCERS Board Policy**

# **Protocol for Handling Workplace Complaints Against Board Members and Executives**

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## **Background and Objectives**

1. The Board of Retirement takes very seriously workplace complaints against members of the Board or OCERS executive staff. Formal procedures and practices are required to ensure complaints are timely, fairly and appropriately investigated and addressed.
2. The objectives of this policy are to:
  - a. Establish protocols for the OCERS Human Resources department to respond to workplace complaints against members of the Board or OCERS executive staff; and
  - b. Clarify the roles and responsibilities of the OCERS Human Resources department, the Board, and OCERS staff in the process of handling the complaints covered by this protocol.

## **Policy Guidelines**

In the event the OCERS Human Resources department receives a workplace complaint against a member of the Board of Retirement or member of the OCERS executive staff (“subject of the complaint”), the following protocols will be observed in addition to the procedures normally followed in response to a workplace complaint:

3. The Director of Human Resources (“Director”) will provide a form to the complainant for the purpose of accurately documenting the complaint in a signed writing. If the Director does not receive the signed form back from the complainant in a timely manner, the Director will prepare a writing based on the information provided orally by the complainant, and request that the complainant confirm the accuracy of the writing. If the complainant declines or fails to confirm the accuracy of the writing, the Director will so indicate in the record of the matter.
4. Before following the procedures normally followed in response to a workplace complaint, the Director will consult with the Board Chair (or Vice Chair if the subject of the complaint is the Board Chair), the CEO (unless the subject of the complaint is the CEO), the General Counsel, and outside Fiduciary Counsel. The group may decide to alter the normal procedures based on the facts and circumstances of the complaint.
5. Upon commencing any procedures in response to a complaint against a member of the Board or the CEO, the Board Chair (or Vice Chair if the subject of the complaint is the Board Chair) will notify the subject of the complaint that a complaint has been made, the general nature of the complaint, and that an investigation of the complaint will proceed. If the subject of the complaint is a member of OCERS executive staff, such notification will be delivered to the subject of the complaint by the CEO. In all cases, the subject of the complaint will be cautioned that it is against the law and OCERS’ policies to retaliate against the complainant.
6. The Board Chair (or Vice Chair if the subject of the complaint is the Board Chair), the CEO (unless the subject of the complaint is the CEO), the General Counsel, and outside Fiduciary Counsel will

## Protocol for Handling Workplace Complaints Against Board Members and Executives

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together select and retain an investigator to investigate the complaint. During the investigation, Fiduciary Counsel will serve as liaison to the investigator. The investigator's report will be delivered to Fiduciary Counsel and shared only with the individuals identified in Paragraph 4 above. The investigator's report will be confidential and will not be shared with the subject of the complaint or the complainant.

7. During the course of any such investigation, the subject of the complaint will be advised in writing of the substance of the complaint and the identity of the complainant, and will be provided a timely opportunity to respond both orally and in writing. Where the subject of the complaint is a member of the Board or the CEO, such notice will be delivered by the Board Chair (or Vice Chair if the subject of the complaint is the Board Chair); and where the subject of the complaint is an OCERS executive staff member, such notice will be delivered by the CEO. Any written response by the Board member or CEO shall be delivered to the Board Chair (or Vice Chair if the subject of the complaint is the Board Chair) and any written response by the OCERS executive staff member shall be delivered to the CEO. The complainant will be advised in writing of the substance of any written response by the subject of the complaint.
8. Upon the advice of the individuals identified in Paragraph 4 above, the Board Chair (or Vice Chair if the subject of the complaint is the Board Chair), on a confidential basis, may advise the Board of the existence and nature of the complaint, the status of the process in response to the complaint, and any findings and recommendations resulting from that process.
9. The Board Chair (or Vice Chair if the subject of the complaint is the Board Chair) may authorize the Board member or the CEO who is the subject of the complaint, and the CEO may authorize the OCERS executive staff member who is the subject of the complaint, to engage independent counsel of his or her choice to advise him or her during the process, at OCERS' expense, with an appropriate reservation of rights. The authority to authorize engagement of counsel at OCERS' expense will not exceed \$10,000 in actual fees and costs reasonably incurred, without further action by the Board.
10. Upon conclusion of the investigation and receipt of the investigator's report, where the subject of the complaint is a member of the Board or the CEO, the Board Chair (or Vice Chair if the subject of the complaint is the Board Chair), upon the advice of the individuals identified in Paragraph 4 above, will determine what actions or measures, if any, will be taken in response to the complaint. Where the subject of the complaint is a member of OCERS executive staff, the CEO, upon the advice of the individuals identified in Paragraph 4 above, will determine what actions or measures, if any, will be taken in response to the complaint, including any recommended action to be taken by the Board.
11. Once the actions or measures determined in Paragraph 10 have been taken, the subject of the complaint and the complainant will be informed that the complaint has been fully investigated, addressed, and closed. Where the subject of the complaint is a member of the Board or the CEO, such notice will be delivered by the Board Chair (or Vice Chair if the subject of the complaint is the



## OCERS Board Policy

# Protocol for Handling Workplace Complaints Against Board Members and Executives

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Board Chair); and where the subject of the complaint is an OCERS executive staff member, such notice will be delivered by the CEO.

12. The identities of the complainant and the subject of the complaint will remain confidential to the fullest extent possible, consistent with the law and customary practice.

### Policy Review

13. The Board will review this policy at least every three years to ensure that it remains relevant and appropriate.

### Policy History

14. This policy was adopted on October 21, 2019.

### Secretary's Certificate

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

A handwritten signature in blue ink that reads "Steve Delaney" is enclosed in a rectangular box.

10/21/19

Steve Delaney  
Secretary of the Board

Date

**A-4**

## Memorandum

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**DATE:** September 25, 2019  
**TO:** Members of the Governance Committee  
**FROM:** Gina M. Ratto, General Counsel  
**SUBJECT:** REVISIONS TO THE TRAVEL POLICY

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### Recommendation

Approve, and recommend that the Board approve, revisions to the Travel Policy as presented.

### Background/Discussion

The Board adopted the Travel Policy (Policy) on December 16, 2002. Since then, the Policy has been revised and enhanced several times, most recently on August 20, 2018.

Staff now recommends the following revisions to the Policy:

- Add conferences sponsored by the National Association of Police Organizations (NAPO) to the list of pre-approved conferences in Paragraph 10 of the Policy;
- Allow Board members to attend approved full curriculum pension management programs and courses once during each Board member's term on the Board instead of only one time (Paragraph 12); and
- Clarify the amount that will be reimbursed to a traveler who elects to use his/her personal automobile for travel (Paragraph 36).

The Policy, with proposed revisions in redlined text, is attached.

### Submitted by:



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Gina M. Ratto  
General Counsel

## **Purpose**

1. Prudent oversight of a public sector pension plan requires that trustees and staff occasionally travel to business meetings and educational conferences or seminars, held in or outside of the state of California. Travel and related costs incurred in doing so not only represent legitimate expenses of the plan, but are a sound investment in the ongoing success of the organization in meeting the needs of the membership.
2. The purpose of the Travel Policy is to encourage and facilitate the pursuit of relevant educational and business related initiatives by trustees and staff. The policy is designed to assist them in meeting their fiduciary duties to administer the pension plan, ensure that expenditures incurred in the education and travel process are prudent and cost-effective, and to mitigate the risk of improprieties arising from travel or business related activities. Exceptions to any provision of this policy for a Board member or the Chief Executive Officer require the pre-approval of the Board Chair or Vice Chair; and require the pre-approval of the Chief Executive Officer in the case of an exception for a staff member.

## **Content Requirements**

3. As a general rule, and with the exception of public retirement system meetings discussed below, unless a conference/seminar agenda contains an average of five (5) hours of substantive educational content per day, attendance at the particular conference/seminar will not be approved and related travel expenses will not be reimbursed. Educational forums, conferences and seminars that routinely and consistently satisfy this requirement will automatically qualify for Board approval for attendance. The Chief Executive Officer will screen and determine those conferences or seminars that meet the five (5) hour requirement and provide a list thereof to the Board members and appropriate staff members. Authorization to attend and receive travel expense reimbursement for a client conference organized or sponsored by a single company or firm shall be restricted to those conferences sponsored by firms who have a contractual relationship with OCERS. Board members or staff members who have independent relationships with a conference sponsor are not automatically entitled to attend such conferences at OCERS' expense. The Board of Retirement shall consider each request individually regardless of any Board or staff affiliation.

## **Board Member**

4. The term "Board Member" shall include a designee of the Treasurer, provided such person is designated in writing to act as the designee, has taken the oath of office and has filed the written designation with the County Clerk, County Auditor and OCERS.

## **Travel Authorization**

5. Except as otherwise provided herein, reimbursement of travel expenses for a Board member to attend an educational conference or seminar (or other type of meeting or event) requires the prior approval of the Board of Retirement.

6. All reimbursement of travel expenses for an employee of OCERS to attend an educational conference or seminar (or other type of meeting or event) or for administrative purposes requires the prior approval of the Chief Executive Officer or his or her designee.
7. Travel on OCERS' business within the Southern California region by Board members or staff need not be approved in advance provided that overnight accommodations are not required. The Southern California region shall include the counties of Orange, Los Angeles, San Bernardino, Riverside, San Diego, Imperial, Ventura, Santa Barbara and Kern.

### **Limitation on Meeting for Business Purpose**

8. No more than four members of the Board are authorized to meet together for business purposes within the State of California unless there is appropriate public notice of the meeting. Attendance at educational conferences, seminars and social activities by more than four members of the Board is not a violation of this provision.

### **Cost of Administration**

9. Approved education and travel expenses for Board and staff members shall be direct costs of administration of OCERS (or directly charged to Investments in the case of education and travel expenses for Investments staff) shall be paid by OCERS and shall not be paid through third party contracts or otherwise without express written authorization of the Board of Retirement. All approved travel and education expenses shall be included in the OCERS annual budget approved by the Board of Retirement. Due Diligence expenses, as authorized by the Board, shall not be treated as costs of administration.

### **Pre-Approved Conferences and Meetings**

10. Board members and the OCERS staff members designated by the Chief Executive Officer are automatically authorized and encouraged to attend the following:
  - a. Regular meetings of the State Association of County Retirement Systems (SACRS);
  - b. Conferences of the National Conference on Public Employee Retirement Systems (NCPERS);
  - c. CALAPRS annual General Assembly and Round Table meetings;
  - d. Conferences of the National Association of State Retirement Administrators (NASRA);
  - e. Conferences of the National Institute on Retirement Security (NIRS);
  - f. Conferences sponsored by the Board of Retirement's retained consultants and/or investment managers;
  - g. Conferences sponsored by the California Retired County Employees Association (CRCEA);
  - g-h. Conferences sponsored by the National Association of Police Organizations (NAPO); and
  - h-i. Conferences sponsored by a firm that has a contractual relationship with OCERS.

In addition, the OCERS staff members designated by the Chief Executive Officer are automatically authorized and encouraged to attend the following:

- ~~h.~~ Annual Conference of the Public Pension Financial Forum (P2F2);
  - ~~j.~~ Conferences of the National Association of Public Pension Attorneys (NAPPA);
  - ~~k.~~ Conferences sponsored by the Government Finance Officers Association (GFOA); and
  - ~~m.~~ Conferences sponsored by CEM Benchmarking.
11. Staff members designated by the Chief Executive Officer and Board members who are appointed to serve on committees and/or the Board of Directors of the organizations named in paragraph 10 are automatically authorized to attend meetings of the committee(s) to which they have been appointed.
  12. Board members and the OCERS staff members designated by the Chief Executive Officer are automatically authorized to attend each of the following full curriculum pension management programs and courses ~~on a one-time basis~~:
    - a. Basic and advance educational programs sponsored by CALAPRS – once during each Board member’s term, and one time only for OCERS staff member;
    - b. Basic and advanced educational programs sponsored by SACRS – once during each Board member’s term, and one time only for OCERS staff member;
    - c. Basic and advanced investment programs sponsored by the Wharton School; ~~-- one time only for Board members and staff~~; provided, however, if the Wharton School does not offer an advanced investment program, the basic program may be taken a second time after three years of initially completing the program; and
    - d. Global Financial Markets Institute, Inc. ~~--(various programs are available; Board members and staff may attend each program only once.~~
  13. New Board members, other than those with prior experience administering a public retirement system or pension fund, are encouraged to attend one of the courses listed in paragraph 12 within the first year after their election or appointment.
  14. The Chief Executive Officer has identified the following conferences/seminars that Board members and designated staff members are automatically authorized to attend, subject to the limits set forth in paragraph 16, at OCERS expense:
    - a. Conferences and Programs (CAPP) sponsored by the International Foundation of Employee Benefit Plans (IFEBP);
    - b. Conferences sponsored by the Pension Real Estate Association (PREA);
    - c. Conferences sponsored by Pension and Investments;
    - d. Conferences sponsored by the Pacific Pension Institute (PPI);
    - e. Forums sponsored by Institutional Investor;
    - f. Conferences sponsored by the Council of Institutional Investors (CII);
    - g. Conferences sponsored by Institutional Real Estate, Inc. (IREI);
    - h. Conferences sponsored by the Opal Financial Group;



- i. Conferences sponsored by The Pension Bridge;
  - j. Conferences sponsored by the Investment Management Consultants Association (IMCA);
  - k. Conferences sponsored by SuperReturn;
  - l. Conferences sponsored by Global ARC;
  - m. Conferences sponsored by CIO Magazine;
  - n. Conferences sponsored by the Institutional Limited Partners Association;
  - o. Conferences sponsored by the Falk Marques Group; and
  - p. Conferences sponsored by Public Retirement Information Systems Management (PRISM).
15. The Chief Executive Officer shall provide newly elected or appointed Board members with a list of approved conferences scheduled to take place within the current calendar year.

### **Limitation on Attendance at Conferences and Seminars**

16. A Board member is authorized to attend up to three events (i.e., conferences, seminars, meetings, or courses) that require overnight lodging at OCERS' expense each calendar year. Attendance at the pre-approved events listed in paragraphs 10, 11 and 12 are not subject to the three-event limit imposed by this paragraph even if they require overnight travel.
17. Board members who want to attend events (i.e., conferences, seminars, meetings or courses) that require overnight lodging and that are not automatically authorized under paragraphs 10, 11, 12 or 14 require advance approval by the Board. Staff members who want to attend events (i.e., conferences, seminars, meetings or courses) that require overnight lodging and that are not automatically authorized under paragraphs 10, 11, 12 or 14 require advance approval by the Chief Executive Officer or his or her designee.
18. OCERS will not reimburse overnight lodging for travel within Orange County, regardless of whether the event is pre-approved under any of the provisions of this policy. An exception to this provision may be granted by the Board Chair or Vice Chair upon the request of, and showing of good cause by, a Board member or the Chief Executive Officer; and by the Chief Executive Officer upon the request of, and showing of good cause by, a staff member.
19. In cases where attendance at a particular conference, seminar or other event is limited, the CEO will identify those trustees who will be authorized to attend as follows:
- a. first, by giving priority to those trustees who have not previously attended the specific conference, seminar or other event and, if needed, make selections by lottery of the interested trustees in this group;
  - b. second, if additional opportunities to attend remain available, make selections by lottery of other interested trustees, and
  - c. third, designate the remaining interested trustees as alternate attendees, who may attend in the event the trustees originally selected are unable to attend.

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## **International Travel and Travel Outside the Continental United States**

20. Travel by Board members to a destination outside the continental United States requires pre-approval by the Board. Travel by staff to a destination outside the continental United States requires pre-approval by the Chief Executive Officer and notification to the Board Chair. Travel to attend a conference, seminar or meeting held outside the continental United States shall not be reimbursed by OCERS unless it can be demonstrated to the satisfaction of the Board (for travel by a Board member or the Chief Executive Officer) or the Chief Executive Officer (for travel by a staff member) that there is significant value to OCERS in attending, and comparable value cannot be obtained within the continental United States within a reasonable period of time.

## **Travel Reports**

21. The Chief Executive Officer shall submit a quarterly report on conference, seminar and educational course attendance by Board members and staff and OCERS' costs related to such events. Such reports shall identify the individual (Board Member or staff), location, purpose and cost of travel. The Board of Retirement will review these reports in January, April, July and October of each calendar year. The report also shall include scheduled travel for the ensuing quarter.

## **Report on Conference or Seminar**

22. Board Members and staff who travel to conferences or seminars that are not automatically authorized in paragraphs 10, 11, 12 or 14 shall file with the Chief Executive Officer a report that briefly summarizes the information and knowledge gained that may be relevant to other Board Members or staff, provides an evaluation of the conference or seminar, and provides a recommendation concerning future participation. Reports by a Board Member or staff will be made on the Conference/Seminar Report form shown in the appendix. The Chief Executive Officer shall cause a copy of the report to be distributed to each Board Member and to the Chief Investment Officer.

## **Claims for Reimbursement**

23. Reimbursement for travel by a Board member or staff shall be submitted on OCERS Expense Reimbursement Forms accompanied by all supporting original receipts or documentation of the expense incurred. All expense claim forms will be reviewed and approved (or disapproved) in accordance with the provisions of this policy. The Board Chair shall approve expense claims for Board members and the Chief Executive Officer. The Vice Chair will approve expense claims for the Chair. The Chief Executive Officer or his or her designee will approve all expense claims for staff. All approvals are subject to ultimate review and concurrence by the Board of Retirement as part of the quarterly report process required in paragraph 21.

## **Cash Advances**

24. Cash advances will be provided upon request only for those conferences, seminars, meetings, and courses identified in paragraphs 10, 11, 12 or 14 of this policy as pre-approved by the Board and Chief Executive Officer. Any and all cash advances for travel and training shall be requested through the Chief Executive Officer. Cash advances are subject to approval by the Chair of the

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Board of Retirement and the Chief Executive Officer. Notice of all cash advances for travel and training shall be placed on the Consent Agenda for the next Regular Meeting of the Board of Retirement as an informational item.

### **Time Limit for Expense Claims**

25. Claims for reimbursement pursuant to this policy must be submitted within 30 days following return to Orange County. In no event will a claim for reimbursement be approved if submitted 90 days after the end of the calendar year in which the expense was incurred.

### **Expenses for Traveling Companions**

26. Expenses of family members and/or traveling companions are not reimbursable by OCERS.

### **Limitation on Time and Expense Allowance**

27. Board and staff members will be reimbursed daily travel expenses, such as meals as outlined in paragraph 29, and gratuities as outlined in paragraph 42, for each day of travel when such travel is outside Orange County. Allowance for time and expense shall not exceed that which is reasonable and necessary as claimed by others to that precise destination whether by private automobile or common carrier. Expense reimbursements are limited to those items and amounts considered to be non-taxable income to the recipient by the Internal Revenue Service (IRS). Whenever feasible, Board and staff members are encouraged to travel on the same day of a one-day event and on the first and last days of a multiple-day event, rather than the day before or after, in order to save the System lodging and meal costs. Expense costs for extra days prior to or after a conference will be reimbursed only if such extension results in lower overall trip costs. For staff, cost comparisons for trip extensions shall include the cost of salary for any work days lost by the extension.

### **Travel and Lodging Cancellations**

28. Board members and staff are responsible for the timely cancellation of registration fees, travel and lodging reservations made on his/her behalf that will not be used, so that no unnecessary expense will be incurred by OCERS.

### **Meals**

29. **Meals While Attending Events that Require Overnight Travel.** Meals purchased by a Board or staff member while attending an event (i.e., conference, seminar, meeting or course) that requires overnight travel will be reimbursed at the actual and reasonable cost of the meals, including non-alcoholic beverages, tax and tip, (a) provided that both an itemized receipt and a charge receipt (when a payment card is used) are submitted, and (b) provided further that any meals included and already paid for by OCERS (such as through the conference registration fee) and meals paid for by a third party and subject to reporting requirements under the Political Reform Act will not be reimbursed. If an itemized receipt is not submitted, OCERS will reimburse the Board or staff member up to the GSA rate for that meal, upon request.

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30. **Reimbursement for Meals Consumed and Purchased During a Business-Purpose Meeting Where Travel is Not Involved.** Board and staff members will be reimbursed for the actual and reasonable expense of meals, including non-alcoholic beverages, tax and a reasonable tip, consumed and purchased during meetings where business is conducted during the course of the meal, and no overnight travel is required to attend the meeting. (See paragraph 29 for meal reimbursement during trips with overnight travel.) The Board or staff member must provide both an itemized receipt and a charge receipt (when a payment card is used) for all such meals. The names of the people who attended the business-purpose meeting and a brief description of the business discussed or conducted shall be submitted with the reimbursement request. In the event an itemized receipt is lost or is not available, a Missing Receipt Form must be completed and submitted with the expense reimbursement claim. The Missing Receipt Form includes a certification that only allowable items are included in the request for reimbursement.

## Hotels

31. Actual expenses for economical and practical lodging will be reimbursed. Reimbursement will be limited to a room considered to be in a standard class. Whenever possible, a request for a government or conference rate will be made.
32. If, at the conclusion of a business-related trip, it would be impractical for a Board member or staff member to return home the same day, the Board member or staff member will be entitled to be reimbursed for one additional night of lodging.

## Airline Travel

33. OCERS' Board members and staff will use good judgment to obtain airline tickets at competitive prices. OCERS will not reimburse a Board or staff member to fly business or first class except in extraordinary circumstances, and then only with the approval of the Board Chair or Vice Chair where the traveler is a Board member or the Chief Executive Officer, or the approval of the Chief Executive Officer where the traveler is a staff member. In addition, for travel that exceeds four hours in length, additional legroom seats or premium economy fees will be reimbursed. An individual may, at his or her own expense, pay to upgrade travel to business or first class.
34. If a significant savings can be realized on the airline fare by having a Board member or staff member extend their stay to include a Saturday night, the Board or staff member, at his or her option, may extend his or her stay in order to realize such savings. OCERS will reimburse the additional lodging and meal costs resulting from an extended itinerary, not to exceed the savings in airline fare.

## Automobile Mileage

35. A Board member or staff member who uses his/her personal automobile for transportation on OCERS business will keep records of the actual mileage driven on business, and will report such mileage on an OCERS Expense Report Form and will provide documentation of the miles driven (e.g., copy of map and route). Reimbursement will be made at the per-mile rate allowed by the IRS. Mileage will be reimbursed for only those miles incurred beyond the staff member's normal commute to his or her regular worksite (i.e., if an employee departs from or returns to his or her

## OCERS Board Policy Travel Policy

home instead of the regular worksite, only the mileage in excess of the normal daily commute will be reimbursed).

35. Board members who use their personal automobiles for transportation to OCERS (or to OCERS' offsite meeting locations) to attend meetings of the Board or committees of the Board or for the purpose of conducting other OCERS business will be reimbursed for actual mileage driven at the per-mile rate allowed by the IRS. The Board member will report such mileage on an OCERS Expense Report Form and provide documentation of the miles driven (e.g., copy of map and route).
36. A Board member or staff member who elects to use his/her personal automobile for travel will be reimbursed for mileage and parking fees up to an amount~~the point~~ that does not exceed the cost of traveling by air, which will be calculated to include the most economical (least expensive) round-trip ticket between Orange County and the destination city, airline baggage fees, transportation to/from and parking fees at the local airport, and transportation between the destination airport and hotel/conference site.

### Parking and Tolls

37. Parking and tolls will be reimbursed at current rates. A receipt is required for amounts over \$25.00.

### Public Transportation

38. Use of taxis, hired cars, shared ride services (e.g., Uber, Lyft, Sidecar) and public transportation for OCERS business (including attendance by a Board member at meetings of the Board or committees of the Board) will be reimbursed at current rates. The most economical mode of transportation should be used whenever practicable; however, use of a transportation provider with multiple stops (e.g., shuttle) is not required. A receipt is required for amounts over \$25.00.

### Car Rentals

39. The use of a rental car by a Board member or staff will be reimbursed when it is economically reasonable to rent a vehicle rather than use taxis, hired cars, shared ride services or public transportation. Board members and staff are required to obtain and purchase (and OCERS will reimburse) Loss Damage Waiver and Supplemental Liability Insurance when renting vehicles on OCERS' business. Rental car discounts must be used whenever possible and appropriate. If available, a compact vehicle will be requested, unless several Board members and/or staff will be using the vehicle together.

### Incidental Business Expenses

40. Incidental business expenses reasonably incurred in connection with OCERS business, such as telephone, fax, Internet access, and similar business expenses, will be reimbursed. Receipts are required for all amounts.

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## Porterage/Housekeeping/Other

41. OCERS will reimburse a maximum of \$15 per day of travel for porterage, housekeeping and non-meal related gratuities. Receipts are not required for these expenses.

## Excluded Expenses

42. The following expenses will not be reimbursed: Alcoholic beverages, tobacco, in-room movies, barber shop, beauty shop, gifts, magazines, personal telephone calls and mini-bar charges. In the case of a trip longer than five business days or an emergency situation, laundry and dry cleaning expenses will be reimbursed.
43. OCERS will not reimburse or pay for charges for attendance at or participation in networking, social or entertainment type events (e.g., golf, cocktail parties, excursions, outings, etc.) that are in addition to or not included in the general conference registration fee, except that OCERS will pay for NASRA-sponsored networking events that take place during, and are included in the agenda for, NASRA-sponsored conferences.

## Staff Travel

44. In furtherance of this policy, the Chief Executive Officer shall have discretionary authority to approve staff travel as necessary to carry out the administrative responsibilities of OCERS, such as attendance at legislative meetings or hearings, conducting on-site visits as part of due diligence evaluation of existing and proposed service providers, participating in continuing education programs, and other duties as directed.

## Policy Review

45. This policy shall be reviewed every three years by the Governance Committee and may be amended by the Board of Retirement at any time.

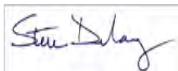
## Policy History

46. The Retirement Board adopted this policy on December 16, 2002, and last revised on August 20, 2018~~October 21, 2019~~.

47. ~~This policy was revised on June 18, 2007, March 24, 2008, March 22, 2010, June 21, 2010, June 18, 2012, February 19, 2013, January 21, 2014, February 17, 2015, November 16, 2015, April 18, 2018, and August 20, 2018.~~

## 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

10/21/19

Date



# Report of Attendance at Conference or Seminar

Name of Member Attending: \_\_\_\_\_

Name of Conference/Seminar: \_\_\_\_\_

Location of Conference/Seminar: \_\_\_\_\_

Conference/Seminar Sponsor: \_\_\_\_\_

Dates of Attendance: \_\_\_\_\_

Total Cost of Attendance: \_\_\_\_\_

Brief Summary of Information and Knowledge Gained:

\_\_\_\_\_  
\_\_\_\_\_

Evaluation of the Conference or Seminar:

\_\_\_\_\_  
\_\_\_\_\_

Recommendation Concerning Future Attendance:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

Return to: Executive Assistant

Copies to: Board Members  
Chief Executive Officer  
Assistant Chief Executive Officers

A-5





## Memorandum

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**DATE:** September 25, 2019  
**TO:** Members of the Governance Committee  
**FROM:** Suzanne Jenike, Assistant CEO, External Operations  
**SUBJECT:** TRIENNIAL REVIEW OF THE OVERPAID AND UNDERPAID PLAN BENEFITS POLICY

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### Recommendation

1. Review and discuss the redline revisions to the OCERS Overpaid and Underpaid Plan Benefits Policy.
2. Recommend that the full Board approve the recommended changes.

### Background/Discussion

The Board adopted the Overpaid and Underpaid Plan Benefits Policy (Policy) on May 16, 2016.

Staff recommends the following revisions to the Policy:

- Add a section in the Appropriate Interest section (6.d.) to reflect the process of charging interest when the overpayment is the result of a member/payee death; and
- Remove the detailed appeal rights outline, instead referring to the Adjudication Policy and Administrative Hearing Rules.

The Policy, with proposed revisions in redlined text, is attached.

### Submitted by:



SJ-Approved

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Suzanne Jenike  
Assistant CEO, External Operations

# OCERS Board Policy Overpaid and Underpaid Plan Benefits Policy

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## Purpose and Background

1. The purpose of the Orange County Employees Retirement System (“OCERS,” “System,” or “Plan”) *Overpaid and Underpaid Plan Benefits Policy* (“policy”) is to provide a framework that the System can use as a basis for resolving erroneous payments of Plan benefits to members and their beneficiaries. In the event that an overpayment is the result of a felony conviction OCERS Administrative Procedure (OAP) *Felony Forfeitures* shall be used as a basis for resolution. The OCERS Board of Retirement (“Board”) is charged with the responsibility of administering the System in a manner that assures appropriate and prompt delivery of benefits and related services to members and their beneficiaries and of managing the assets in a prudent manner. The Internal Revenue Service requires that operational failures be corrected in a prompt, reasonable, and consistent manner that attempts to place the retirement system in the position it would have been in had the erroneous payment not occurred.

## Policy Objectives

2. Members and their beneficiaries (herein referred to as “members”) have a right to accurate pension benefit payments. No member has the right to receive or retain retirement benefit payments that exceed the amounts to which a member is entitled, and no member may be deprived of any benefit payments that he or she is entitled to receive. Subject to all applicable laws and consistent with this policy and the procedures established by the Board, it shall be OCERS’ policy to make every reasonable effort to recover from a member the amount of any overpaid Plan benefits, and remit to a member the amount of any underpaid Plan benefits.

## Policy Guidelines

3. After discovery of overpaid or underpaid benefits, and within a reasonable period of time after written notification to the affected member, OCERS will correct the benefit payment amount prospectively and/or pay to the member, or collect from the member, through lump sum or installment payments the amounts to which the member or the Plan is entitled in accordance with this policy and applicable law.
4. These policies and procedures are designed for use when calculation and other errors affect an individual member’s retirement benefits. In the event of a system-wide error that affects multiple members’ benefits, the Board may implement a system-wide correction process that it determines is appropriate under the circumstances.
5. In the event of any inconsistency between applicable law (including IRS rules) and these policies and procedures, the law shall govern.

## OCERS Board Policy Overpaid and Underpaid Plan Benefits Policy

### Policy Procedures for Overpaid Benefits

6. *Appropriate Interest.* When an overpayment of Plan benefits is discovered more than ninety (90) days after the member/payee's initial benefit payment, OCERS will make a prospective adjustment to the member's benefit and take all reasonable steps to recover the full amount of all overpayments, going back to the inception of the error, and charging "appropriate interest," as defined below, compounded annually during the period in which the benefit overpayments were made and also during any repayment period (*i.e.*, applied to the outstanding amount due until fully repaid).
  - a. In cases where there is evidence that the benefit overpayment resulted from fraud or dishonest conduct by the member/payee or because the member/payee provided, or caused to be provided, inaccurate information to OCERS or the member's employer, then "appropriate interest" shall be determined using the System's actuarially assumed rate of return as of the date OCERS sets for commencing repayment, and charged to the member/payee.
  - b. If the benefit overpayment is due to the death of a member or other situation controlled by the member, the member's estate or a reciprocal system, then "appropriate interest" will be the same rate of interest that is credited to active member accounts, i.e. 5% per year compounded every six (6) months. The overpayment will be charged to the member in accordance with section 9 below.
  - b.c. If the benefit overpayment was solely the result of an error by OCERS and/or the member's employer, then "appropriate interest" shall be equal to the Systems actuarial assumed rate of return as of the date OCERS sets for commencing repayment, and charged to the member's employer as an administrative expense, without amortization.
  - e.d. Notwithstanding the above, any reduction in the member/payee's ongoing monthly benefit will be limited to a maximum of 15% of the gross monthly benefit. The balance due will be paid over time, subject to this limitation.
7. The Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of overpaid benefits only where the cumulative total amount of overpaid benefits is \$100 or more. Accordingly, OCERS is authorized to not seek recovery of any such overpaid benefits where the total amount overpaid to the member less than \$100.
8. When recovering benefit overpayments, the following apply:
  - a. *Director of Member Services:* When the total amount of such overpaid benefits, not including interest, is \$10,000 or less, the Director of Member Services shall have authority to agree to extend the time period for the member's installment payments to a period not exceeding the expected lifetime of the member as determined by the actuary.
  - b. CEO:
    - i. Regardless of the amount of the Plan's claim against the member, the CEO shall have the authority to agree to extend the time period for the member's installment payments to a period not exceeding the expected lifetime of the member as determined by the actuary.

## OCERS Board Policy Overpaid and Underpaid Plan Benefits Policy

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- ii. In addition, when the total amount of the Plan's claim against the member, not including interest, is \$1,000 or less, the CEO, on the advice of legal counsel, shall have the authority to compromise the claim.
  - c. *Board*: Only the Board may compromise claims in which the total amount of such overpaid benefits, not including interest, is greater than \$1,000.
  - d. *Compromising claims*: The amount of the Plan's claim for overpaid benefits is the difference between the amounts actually paid to the member for the recovery period and the amounts that should have been paid, together with "appropriate interest" from the dates of the actual payments to the date(s) the correction is effective. The likelihood of collection, the cost of collection, the amount of possible recovery and extreme hardship to the member will be considered by the CEO and/or the Board when determining whether to compromise a claim. Compromising a claim may include a different method of repayment than is otherwise provided by this Policy and/or forgiveness or partial forgiveness of principal and/or interest.
  - e. *Reporting*: Every year, for cases involving benefit overpayments the Director of Member Services shall provide a report to the Board.
9. The Board adopts the following procedures for accomplishing the recovery of overpaid Plan benefits:
- a. Upon discovery of the benefit overpayment, OCERS will send a letter by certified mail, return receipt requested, or by express delivery service, to the member. Subject to the provisions of this Policy, the letter will provide the following information to the member regarding the overpaid benefits:
    - i. Provide notice of the prospective adjustment to the member's benefit payment (to reflect the correct amount);
    - ii. Request payment to OCERS of the amount of overpaid benefits with appropriate interest; and
    - iii. Unless otherwise determined by the Board, the CEO, or the Director of Member Services (see sections 8.a. and 8.b., above) or, if a repayment plan for a longer period is needed due to the limitation described section 6.d.b.ii., above, the letter will set a repayment plan with two options:
      - *Option 1* – equal installments deducted from the member's monthly benefit over the same length of time that the overpaid benefits occurred, with "appropriate interest" (as that phrase is defined in section 6 above) applied during the overpayment period and during the repayment period; and
      - *Option 2* – lump sum payment to the Plan for the full amount overpaid, with "appropriate interest" (as that phrase is defined in section 6 above) applied during the overpayment period.
  - b. OCERS may pursue all legal remedies to collect such overpaid Plan benefits, including making a claim on an estate or trust. In addition, if the member dies before the full amount of principal and interest is paid, OCERS may recover the remaining principal and interest from any lump

## OCERS Board Policy Overpaid and Underpaid Plan Benefits Policy

sum amount OCERS is obligated to pay to the member's estate or named beneficiaries of the member; provided, however, OCERS shall not seek to recover any such remaining amounts from any continuation payments made to a surviving spouse or an optional beneficiary of the member, unless an erroneous payment is made to the surviving spouse or optional beneficiary.

- c. OCERS will maintain a permanent record of all amounts of such overpaid Plan benefits and the repayment to OCERS of those overpaid benefits.

### Policy Procedures for Underpaid Benefits

10. When the Plan has underpaid benefits to the member, and the underpayment is discovered more than 90 days after the member/payee's initial benefit payment, the member shall be entitled to a prospective adjustment to his or her retirement benefits necessary to correct the error, as well as a lump sum payment for all past amounts owed as a result of the error, with interest compounded annually at the rate of 3%. Interest shall accrue on the amounts owed from the date of each underpaid benefit to the date of the lump sum corrective payment. The payment shall be made within forty-five (45) days of discovery and receipt of all information needed to correct the account.
11. If a member who was underpaid benefits has died prior to payment of the lump sum amount due, the payment will be made according to OCERS' standard procedures for paying residual amounts following the death of the member (*e.g.*, to the designated beneficiary, estate, personal representative, trustee of the member trust, etc.).
  - a. If, after following its standard procedures, Plan staff has not been able locate a person entitled to payment, the Plan shall hold the funds on behalf of that person for five years. If the funds are not claimed within five years, the funds may be transferred into the System's pension reserve fund. If someone later appears to claim the funds, the Board or the CEO will consider such claims on a case-by-case basis.
  - b. The Plan will maintain a permanent record of all amounts of outstanding refunds of underpaid benefits and any amounts that have been transferred into the pension reserve fund.
12. If the total amount that the Plan owes to the member is \$75 or less, the Plan is not required to make the corrective distribution if the reasonable direct costs of processing and delivering the distribution to the member would exceed the amount of the distribution.

### Member Appeal Rights

13. A member shall have the right to appeal any decision regarding corrective actions that the plan takes with respect to recovering and/or returning over and underpayments of Plan benefits.
14. The appeal process will generally follow the same ~~pattern as process as other non-disability~~ benefit appeals ~~pursuant to the Adjudication Policy and Administrative Hearing Rules.-~~
  - a. ~~The member will first appeal a staff decision regarding an erroneous payment to the Director of Member Services. The Director of Member Services shall respond to the member in writing.-~~

## OCERS Board Policy

# Overpaid and Underpaid Plan Benefits Policy

- ~~b. If the member does not agree with the decision of the Director of Member Services, the member may appeal that decision, in writing and within forty five (45) days of mailing of the decision by the Director of Member Services, to the CEO. The CEO shall respond to the member in writing.~~
- ~~c. If the member does not agree with the decision of the CEO, the member may appeal the matter, in writing and within forty five (45) days of mailing of the decision by the CEO, to the Board.~~
- ~~d. The Board will hear the matter at a regularly scheduled meeting giving reasonable notice to the member so the member may appear at the meeting. Staff will provide background information and documentation to the Board to assist it in making its decision. After due consideration, the Board shall vote on the matter and instruct Member Services staff to notify the member in writing of the Board's determination.~~
- ~~e. If the member disagrees with the determination of the Board, the member may request, in writing and within forty five (45) days of the date of mailing of the Board's decision, an administrative hearing of the matter.~~
- ~~f. The matter will then be scheduled for administrative hearing pursuant to OCERS' Board of Retirement Policy for Administrative Hearings.~~
- ~~g. The findings and recommendations of the hearing officer shall be reviewed by staff, and staff shall make a recommendation to the Board to take action pursuant to Government Code Section 31534. If the Board adopts the recommendation of the hearing officer, that decision of the Board shall be final, and Member Services staff will inform the member of the Board's decision in writing with a proof of service attached. Notice to the member of the Board's final decision shall signify exhaustion of the member's administrative remedies.~~
- ~~h. This process may be adjusted in cases where the initial determination is made by the CEO.~~
- i.a. Offsets and other collection efforts will be stayed during the pendency of the ~~above outlined~~ appeals process; provided, however, that the Board shall have the discretion to suspend implementing its recovery from the member in whole or in part during any ensuing court action. Interest will continue to accrue on all amounts owed to OCERS during the appeals process and litigation.

## Policy Review

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

## Policy History

16. This policy was adopted by the Board of Retirement on May 16, 2016, and amended on October 21, 2019.

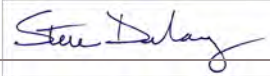


**OCERS Board Policy**  
**Overpaid and Underpaid Plan**  
**Benefits Policy**

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**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

[5/16/1610/21/19](#)

Date

# OCERS Board Policy Overpaid and Underpaid Plan Benefits Policy

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## Purpose and Background

1. The purpose of the Orange County Employees Retirement System (“OCERS,” “System,” or “Plan”) *Overpaid and Underpaid Plan Benefits Policy* (“policy”) is to provide a framework that the System can use as a basis for resolving erroneous payments of Plan benefits to members and their beneficiaries. In the event that an overpayment is the result of a felony conviction OCERS Administrative Procedure (OAP) *Felony Forfeitures* shall be used as a basis for resolution. The OCERS Board of Retirement (“Board”) is charged with the responsibility of administering the System in a manner that assures appropriate and prompt delivery of benefits and related services to members and their beneficiaries and of managing the assets in a prudent manner. The Internal Revenue Service requires that operational failures be corrected in a prompt, reasonable, and consistent manner that attempts to place the retirement system in the position it would have been in had the erroneous payment not occurred.

## Policy Objectives

2. Members and their beneficiaries (herein referred to as “members”) have a right to accurate pension benefit payments. No member has the right to receive or retain retirement benefit payments that exceed the amounts to which a member is entitled, and no member may be deprived of any benefit payments that he or she is entitled to receive. Subject to all applicable laws and consistent with this policy and the procedures established by the Board, it shall be OCERS’ policy to make every reasonable effort to recover from a member the amount of any overpaid Plan benefits, and remit to a member the amount of any underpaid Plan benefits.

## Policy Guidelines

3. After discovery of overpaid or underpaid benefits, and within a reasonable period of time after written notification to the affected member, OCERS will correct the benefit payment amount prospectively and/or pay to the member, or collect from the member, through lump sum or installment payments the amounts to which the member or the Plan is entitled in accordance with this policy and applicable law.
4. These policies and procedures are designed for use when calculation and other errors affect an individual member’s retirement benefits. In the event of a system-wide error that affects multiple members’ benefits, the Board may implement a system-wide correction process that it determines is appropriate under the circumstances.
5. In the event of any inconsistency between applicable law (including IRS rules) and these policies and procedures, the law shall govern.



## OCERS Board Policy **Overpaid and Underpaid Plan Benefits Policy**

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### **Policy Procedures for Overpaid Benefits**

6. *Appropriate Interest.* When an overpayment of Plan benefits is discovered more than ninety (90) days after the member/payee's initial benefit payment, OCERS will make a prospective adjustment to the member's benefit and take all reasonable steps to recover the full amount of all overpayments, going back to the inception of the error, and charging "appropriate interest," as defined below, compounded annually during the period in which the benefit overpayments were made and also during any repayment period (*i.e.*, applied to the outstanding amount due until fully repaid).
  - a. In cases where there is evidence that the benefit overpayment resulted from fraud or dishonest conduct by the member/payee or because the member/payee provided, or caused to be provided, inaccurate information to OCERS or the member's employer, then "appropriate interest" shall be determined using the System's actuarially assumed rate of return as of the date OCERS sets for commencing repayment, and charged to the member/payee.
  - b. If the benefit overpayment was solely the result of an error by OCERS and/or the member's employer, then "appropriate interest" shall be equal to the Systems actuarial assumed rate of return as of the date OCERS sets for commencing repayment, and charged to the member's employer as an administrative expense, without amortization.
  - c. Notwithstanding the above, any reduction in the member/payee's ongoing monthly benefit will be limited to a maximum of 15% of the gross monthly benefit. The balance due will be paid over time, subject to this limitation.
7. The Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of overpaid benefits only where the cumulative total amount of overpaid benefits is \$100 or more. Accordingly, OCERS is authorized to not seek recovery of any such overpaid benefits where the total amount overpaid to the member less than \$100.
8. When recovering benefit overpayments, the following apply:
  - a. *Director of Member Services:* When the total amount of such overpaid benefits, not including interest, is \$10,000 or less, the Director of Member Services shall have authority to agree to extend the time period for the member's installment payments to a period not exceeding the expected lifetime of the member as determined by the actuary.
  - b. CEO:
    - i. Regardless of the amount of the Plan's claim against the member, the CEO shall have the authority to agree to extend the time period for the member's installment payments to a period not exceeding the expected lifetime of the member as determined by the actuary.
    - ii. In addition, when the total amount of the Plan's claim against the member, not including interest, is \$1,000 or less, the CEO, on the advice of legal counsel, shall have the authority to compromise the claim.

## OCERS Board Policy Overpaid and Underpaid Plan Benefits Policy

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- c. *Board*: Only the Board may compromise claims in which the total amount of such overpaid benefits, not including interest, is greater than \$1,000.
  - d. *Compromising claims*: The amount of the Plan's claim for overpaid benefits is the difference between the amounts actually paid to the member for the recovery period and the amounts that should have been paid, together with "appropriate interest" from the dates of the actual payments to the date(s) the correction is effective. The likelihood of collection, the cost of collection, the amount of possible recovery and extreme hardship to the member will be considered by the CEO and/or the Board when determining whether to compromise a claim. Compromising a claim may include a different method of repayment than is otherwise provided by this Policy and/or forgiveness or partial forgiveness of principal and/or interest.
  - e. *Reporting*: Every year, for cases involving benefit overpayments the Director of Member Services shall provide a report to the Board.
9. The Board adopts the following procedures for accomplishing the recovery of overpaid Plan benefits:
- a. Upon discovery of the benefit overpayment, OCERS will send a letter by certified mail, return receipt requested, or by express delivery service, to the member. Subject to the provisions of this Policy, the letter will provide the following information to the member regarding the overpaid benefits:
    - i. Provide notice of the prospective adjustment to the member's benefit payment (to reflect the correct amount);
    - ii. Request payment to OCERS of the amount of overpaid benefits with appropriate interest; and
    - iii. Unless otherwise determined by the Board, the CEO, or the Director of Member Services (see sections 8.a. and 8.b., above) or, if a repayment plan for a longer period is needed due to the limitation described section 6.b.ii., above, the letter will set a repayment plan with two options:
      - *Option 1* – equal installments deducted from the member's monthly benefit over the same length of time that the overpaid benefits occurred, with "appropriate interest" (as that phrase is defined in section 6 above) applied during the overpayment period and during the repayment period; and
      - *Option 2* – lump sum payment to the Plan for the full amount overpaid, with "appropriate interest" (as that phrase is defined in section 6 above) applied during the overpayment period.
  - b. OCERS may pursue all legal remedies to collect such overpaid Plan benefits, including making a claim on an estate or trust. In addition, if the member dies before the full amount of principal and interest is paid, OCERS may recover the remaining principal and interest from any lump sum amount OCERS is obligated to pay to the member's estate or named beneficiaries of the member; provided, however, OCERS shall not seek to recover any such remaining amounts

## OCERS Board Policy

# Overpaid and Underpaid Plan Benefits Policy

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from any continuation payments made to a surviving spouse or an optional beneficiary of the member, unless an erroneous payment is made to the surviving spouse or optional beneficiary.

- c. OCERS will maintain a permanent record of all amounts of such overpaid Plan benefits and the repayment to OCERS of those overpaid benefits.

### Policy Procedures for Underpaid Benefits

10. When the Plan has underpaid benefits to the member, and the underpayment is discovered more than 90 days after the member/payee's initial benefit payment, the member shall be entitled to a prospective adjustment to his or her retirement benefits necessary to correct the error, as well as a lump sum payment for all past amounts owed as a result of the error, with interest compounded annually at the rate of 3%. Interest shall accrue on the amounts owed from the date of each underpaid benefit to the date of the lump sum corrective payment. The payment shall be made within forty-five (45) days of discovery and receipt of all information needed to correct the account.
11. If a member who was underpaid benefits has died prior to payment of the lump sum amount due, the payment will be made according to OCERS' standard procedures for paying residual amounts following the death of the member (*e.g.*, to the designated beneficiary, estate, personal representative, trustee of the member trust, etc.).
  - a. If, after following its standard procedures, Plan staff has not been able locate a person entitled to payment, the Plan shall hold the funds on behalf of that person for five years. If the funds are not claimed within five years, the funds may be transferred into the System's pension reserve fund. If someone later appears to claim the funds, the Board or the CEO will consider such claims on a case-by-case basis.
  - b. The Plan will maintain a permanent record of all amounts of outstanding refunds of underpaid benefits and any amounts that have been transferred into the pension reserve fund.
12. If the total amount that the Plan owes to the member is \$75 or less, the Plan is not required to make the corrective distribution if the reasonable direct costs of processing and delivering the distribution to the member would exceed the amount of the distribution.

### Member Appeal Rights

13. A member shall have the right to appeal any decision regarding corrective actions that the plan takes with respect to recovering and/or returning over and underpayments of Plan benefits.
14. The appeal process will generally follow the same pattern as benefit appeals.
  - a. The member will first appeal a staff decision regarding an erroneous payment to the Director of Member Services. The Director of Member Services shall respond to the member in writing.
  - b. If the member does not agree with the decision of the Director of Member Services, the member may appeal that decision, in writing and within forty-five (45) days of mailing of the decision by the Director of Member Services, to the CEO. The CEO shall respond to the member in writing.

## OCERS Board Policy **Overpaid and Underpaid Plan Benefits Policy**

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- c. If the member does not agree with the decision of the CEO, the member may appeal the matter, in writing and within forty-five (45) days of mailing of the decision by the CEO, to the Board.
- d. The Board will hear the matter at a regularly scheduled meeting giving reasonable notice to the member so the member may appear at the meeting. Staff will provide background information and documentation to the Board to assist it in making its decision. After due consideration, the Board shall vote on the matter and instruct Member Services staff to notify the member in writing of the Board's determination.
- e. If the member disagrees with the determination of the Board, the member may request, in writing and within forty-five (45) days of the date of mailing of the Board's decision, an administrative hearing of the matter.
- f. The matter will then be scheduled for administrative hearing pursuant to OCERS' Board of Retirement Policy for Administrative Hearings.
- g. The findings and recommendations of the hearing officer shall be reviewed by staff, and staff shall make a recommendation to the Board to take action pursuant to Government Code Section 31534. If the Board adopts the recommendation of the hearing officer, that decision of the Board shall be final, and Member Services staff will inform the member of the Board's decision in writing with a proof of service attached. Notice to the member of the Board's final decision shall signify exhaustion of the member's administrative remedies.
- h. This process may be adjusted in cases where the initial determination is made by the CEO.
- i. Offsets and other collection efforts will be stayed during the pendency of the above-outlined appeals process; provided, however, that the Board shall have the discretion to suspend implementing its recovery from the member in whole or in part during any ensuing court action. Interest will continue to accrue on all amounts owed to OCERS during the appeals process and litigation.

### **Policy Review**

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

### **Policy History**

- 16. This policy was adopted by the Board of Retirement on May 16, 2016 and amended on October 21, 2019.

### **Secretary's Certificate**

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



**OCERS Board Policy**  
**Overpaid and Underpaid Plan**  
**Benefits Policy**

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A handwritten signature in blue ink that reads "Steve Delaney".

Steve Delaney  
Secretary of the Board

10/21/19

Date

A-6

## Memorandum

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**DATE:** September 25, 2019  
**TO:** Members of the Governance Committee  
**FROM:** Cynthia Hockless, Director of Administrative Services  
**SUBJECT: TRIENNIAL REVIEW OF THE TRUSTEE EDUCATION POLICY**

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### Recommendation

Recommend that the full Board adopt revisions to the OCERS Trustee Education Policy.

### Background/Discussion

Staff have reviewed the sections of the government code listed below that governs the policy but have noted no significant changes with a small exception to the Harassment training.

Trustee Training            §31522.8            passed in 2012 – no new changes

Ethics Training            §53235            passed in 2006 – no new changes

The attached policy notes a change to Senate Bill 1343, Sexual Harassment (2018) and SB778 (2019) that Harassment Training required by §12950.1 is extended to California employers with (5) five or more employees (previously 50). The policy reflects this change to the code.

The Trustees will continue to need (2) two hours of Sexual Harassment training every two years. The changes to the Senate Bill is effective January 01, 2021.

### Submitted by:



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Cynthia Hockless  
Director of Administrative Services

## **Purpose**

1. It is the policy of the Board of Retirement to ensure that individual Trustees have sufficient knowledge of the issues and challenges facing OCERS so as to craft policies to guide the administration of the plan and effectively monitor their implementation based on ongoing exposure to up-to-date benefit, financial, investment and policy information and together with staff are properly trained to perform their respective duties.
2. Effective January 1, 2013, Trustees are required to complete a minimum of 24 hours of Trustee education within the first two (2) years of assuming office and for every subsequent 2-year period in which the Trustee serves on the Board (Gov. Code § 31522.8).
3. Trustees are also required to complete two hours of ethics training every two years. (Gov. Code § 53235) Ethics training received as part of the 24 hours of Trustee education will satisfy this requirement.
4. Trustees are also required to complete two hours of harassment prevention training every two years. (Gov. Code § 12950.1) Harassment prevention training is in addition to the 24 hour education requirement set forth in Gov. Code § 31522.8.
5. To that end, each Trustee is encouraged to regularly participate in those educational opportunities that will enable competent discharge of the obligations of that position and meet the statutory requirements for continuing education.

## **Policy Objectives**

6. The objective of this policy is to ensure that all Trustees have adequate opportunity to acquire the knowledge they need to carry out their fiduciary duties.

## **Policy Guidelines**

7. Trustees agree to develop and maintain knowledge of relevant issues pertaining to the administration of OCERS throughout their terms.
8. Trustees agree to pursue appropriate education across a range of pension-related areas, rather than limiting their education to specific areas. General pension-related areas to be pursued include:
  - a. Pension funding;
  - b. Institutional investments and investment program management;
  - c. Investment performance measurement;
  - d. Actuarial science;
  - e. Benefits structure and administration;
  - f. Disability retirements;
  - g. Due process in benefit determinations;



## OCERS Board Policy

# Trustee Education Policy

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- h. Pension law;
  - i. Organizational structure, methods, and practices;
  - j. Budgeting;
  - k. Governance and fiduciary duty; and
  - l. Ethics.
9. Trustees agree that at least two hours of education they receive will qualify as ethics training relevant to the Trustees' public service. Subject matter that qualifies for ethics training includes, but is not limited to:
- a. Laws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws.
  - b. Laws relating to claiming prerequisites of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.
  - c. Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.
  - d. Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members.
10. Educational tools for trustees include, but are not limited to:
- a. External conferences, seminars, workshops, roundtables, courses or similar sessions (henceforth referred to collectively as "conferences");
  - b. Industry association meetings or events;
  - c. In-house educational seminars or briefings;
  - d. Periodicals, journals, textbooks and similar materials; and
  - e. Electronic media including CD ROM-based education, Internet-based education and video-based education.
11. On an ongoing basis, the Chief Executive Officer and the Chief Investment Officer will identify appropriate educational opportunities, based on the needs of individual Trustees or the Board as a whole, and include details of such in Board meeting information packages for Trustee consideration. Trustees are encouraged to suggest educational opportunities that may provide value to the Board of Retirement.
12. Standards for determining the appropriateness of a potential educational opportunity shall include:
- a. The extent to which the opportunity is expected to provide Trustees with the knowledge they need to carry out their roles and responsibilities;

## OCERS Board Policy

# Trustee Education Policy

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- b. The extent to which the opportunity meets the requirements of this policy; and
  - c. The cost-effectiveness of the program in light of travel, lodging and related expenses.
13. Beginning January 1, 2013, Trustees will acquire a minimum of 24 hours of Trustee education within the first two (2) years of assuming office and for every subsequent 2-year period for which the Trustee serves on the Board.
- a. Trustees will endeavor to complete 24 hours of education in the remainder of the first and second calendar year after appointment. For trustees who are appointed later in November or December, the first education year will commence on January 1 of the subsequent calendar year.
  - b. After the initial two years after assuming office, education hours will be tracked on a calendar year basis with each trustee required to complete 24 hours of education within each two year period.
  - c. OCERS staff will track hours on an odd and even year basis with trustees grouped according to the year of term commencement.
  - d. For example, if a trustee assumes office on April 1, 2016, he or she will be expected to complete 24 hours of education by December 31, 2017. Subsequent to January 1, 2018, his or her education will be tracked on a rolling basis with completion of the 24 hour requirement on December 31, 2019, 2021, 2023, etc.
14. Trustees will attempt to meet the following minimum goals:
- a. To secure, over time, a useful level of understanding in each of the topic areas listed in paragraph 8 above;
  - b. To attend at least one conference annually. In accordance with a. above, Trustees are encouraged to attend conferences, on occasion, that address pension topics other than investments; and
  - c. Participate in any in-house educational seminars or briefings that are organized by the Chief Executive Officer and Chief Investment Officer including:
    - i. The educational component of the annual Strategic Planning Session;
    - ii. The Education Forum;
    - iii. Individual sessions at regular Board meetings; and
    - iv. Workshops available to Board and staff members.
15. The Board shall maintain a record of Trustee compliance with this policy, and the Chief Executive Officer or his designee will ensure that the policy and annual compliance report are placed on the OCERS website.

### **Attendance at Conferences & Industry Association Meetings**

16. Approval for attendance and reimbursement of travel expenses in connection with educational conferences and industry association meetings will be in accordance with the Travel Policy.

## OCERS Board Policy

# Trustee Education Policy

17. In furtherance of this policy, the Chief Executive Officer shall have discretionary authority to approve staff travel as necessary to carry out the administrative responsibilities of the OCERS, such as attendance at legislative meetings or hearings, conducting on-site visits as part of due diligence evaluation of existing and proposed service providers, participating in continuing education programs, and other duties as directed.
18. The Board will periodically review the programs, training or educational sessions that qualify for Trustee education.

### Harassment Prevention Training

19. As an employer of over 50 employees, OCERS is required to provide [two hours of harassment and abusive conduct prevention training](#) to all “supervisory employees” every two years, [and \(effective calendar year 2020\) one hour of prevention training to all nonsupervisory employees.](#)
20. Trustees are considered “supervisory employees” for the purposes of the statute since Trustees may influence the terms and conditions of employment for OCERS employees.
21. The Chief Executive Officer working with the Legal Department and outside vendors will schedule appropriate training for Trustees every two years.

### Orientation Program

22. Working with the Chief Investment Officer and OCERS’ professional advisors, the Chief Executive Officer will hold an orientation program, covering the general topic areas outlined in paragraph 8 above, and designed to introduce new Trustees to all pertinent operations of the System and highlight the knowledge bases required of a Trustee. The aim of the orientation program will be to ensure that new Trustees are in a position to contribute fully to Board of Retirement and committee deliberations, and effectively carry out their fiduciary duties as soon as possible after joining the Board.
23. Prior to a Trustee’s first official meeting with the Board of Retirement, he or she will endeavor to attend a Board meeting or a standing committee meeting in the role of an observer.
24. Within 30 days of a trustee’s election or appointment to the Board, the Chair will designate an incumbent member of the Board to provide the new Trustee an orientation to current Board governance practices.
25. As part of the orientation process, new Trustees will, within 30 days of their election or appointment to the Board of Retirement:
  - a. Be briefed by the Chief Executive Officer on the history and background of OCERS;
  - b. Be oriented by the Chair on current issues before the Board;
  - c. Be introduced to members of senior management;
  - d. Be provided a tour of OCERS offices by the Chief Executive Officer;
  - e. Be briefed by the Board’s fiduciary counsel on their fiduciary duties, conflict of interest guidelines, the County Employees Retirement Law of 1937, Proposition 162, The Brown Act,

## OCERS Board Policy Trustee Education Policy

and other pertinent legislation; and

f. Be provided with an iPad (or other electronic device) with access to a document repository containing the following:

- i. A Trustee Reference Manual (the contents of which are listed in the Appendix);
- ii. A listing of upcoming recommended educational opportunities; and
- iii. Other relevant information and documentation deemed appropriate by the Chief Executive Officer.

26. During the course of their first 12 months on the Board of Retirement, new Trustees will endeavor to attend a seminar on the principles of pension management or a comparable program.

27. The Chief Executive Officer will review, and if necessary, update all orientation material. It is the responsibility of Trustees to maintain their Trustee Reference Manuals, by ensuring that they contain the most up to date materials. A master copy of the Trustee Reference Manual will be available for use by Trustees at the OCERS office.

### Policy Review

28. The Board of Retirement will review this policy at least every three years to ensure that it remains relevant and appropriate.

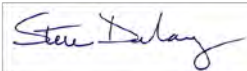
### Policy History

29. This policy was adopted by the Board of Retirement on February 19, 2002.

30. The policy was revised on May 16, 2005, March 24, 2008, June 18, 2012, November 19, 2012, July 20, 2015, and December 19, 2016, and [October 21, 2019](#).

### 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

10/21/19 ~~12/19/16~~

Date

## **Trustee Reference Manual**

A Trustee Reference Manual will include the following materials:

- a. OCERS Board Handbook;
- b. Relevant sections of the *County Employees Retirement Law of 1937*;
- c. The Brown Act and Proposition 162;
- d. Most recent plan description and member handbook;
- e. Copies of Board policies;
- f. Most recent Annual Report;
- g. Most recent actuarial valuation and financial statements;
- h. Most recent actuarial experience study;
- i. Most recent asset/liability study;
- j. Most recent investment performance report;
- k. Most recent Business Plan and budget;
- l. Organizational chart;
  
- m. Names and phone numbers of the trustees and the Chief Executive Officer;
- n. Listing of current committee assignments;
- o. Listing of current service providers; and
- p. Glossary of key pension administration terms and definitions.

## **Purpose**

1. It is the policy of the Board of Retirement to ensure that individual Trustees have sufficient knowledge of the issues and challenges facing OCERS so as to craft policies to guide the administration of the plan and effectively monitor their implementation based on ongoing exposure to up-to-date benefit, financial, investment and policy information and together with staff are properly trained to perform their respective duties.
2. Effective January 1, 2013, Trustees are required to complete a minimum of 24 hours of Trustee education within the first two (2) years of assuming office and for every subsequent 2-year period in which the Trustee serves on the Board (Gov. Code § 31522.8).
3. Trustees are also required to complete two hours of ethics training every two years. (Gov. Code § 53235) Ethics training received as part of the 24 hours of Trustee education will satisfy this requirement.
4. Trustees are also required to complete two hours of harassment prevention training every two years. (Gov. Code § 12950.1) Harassment prevention training is in addition to the 24 hour education requirement set forth in Gov. Code § 31522.8.
5. To that end, each Trustee is encouraged to regularly participate in those educational opportunities that will enable competent discharge of the obligations of that position and meet the statutory requirements for continuing education.

## **Policy Objectives**

6. The objective of this policy is to ensure that all Trustees have adequate opportunity to acquire the knowledge they need to carry out their fiduciary duties.

## **Policy Guidelines**

7. Trustees agree to develop and maintain knowledge of relevant issues pertaining to the administration of OCERS throughout their terms.
8. Trustees agree to pursue appropriate education across a range of pension-related areas, rather than limiting their education to specific areas. General pension-related areas to be pursued include:
  - a. Pension funding;
  - b. Institutional investments and investment program management;
  - c. Investment performance measurement;
  - d. Actuarial science;
  - e. Benefits structure and administration;
  - f. Disability retirements;
  - g. Due process in benefit determinations;

## OCERS Board Policy

# Trustee Education Policy

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- h. Pension law;
  - i. Organizational structure, methods, and practices;
  - j. Budgeting;
  - k. Governance and fiduciary duty; and
  - l. Ethics.
9. Trustees agree that at least two hours of education they receive will qualify as ethics training relevant to the Trustees' public service. Subject matter that qualifies for ethics training includes, but is not limited to:
- a. Laws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws.
  - b. Laws relating to claiming prerequisites of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.
  - c. Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.
  - d. Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members.
10. Educational tools for trustees include, but are not limited to:
- a. External conferences, seminars, workshops, roundtables, courses or similar sessions (henceforth referred to collectively as "conferences");
  - b. Industry association meetings or events;
  - c. In-house educational seminars or briefings;
  - d. Periodicals, journals, textbooks and similar materials; and
  - e. Electronic media including CD ROM-based education, Internet-based education and video-based education.
11. On an ongoing basis, the Chief Executive Officer and the Chief Investment Officer will identify appropriate educational opportunities, based on the needs of individual Trustees or the Board as a whole, and include details of such in Board meeting information packages for Trustee consideration. Trustees are encouraged to suggest educational opportunities that may provide value to the Board of Retirement.
12. Standards for determining the appropriateness of a potential educational opportunity shall include:
- a. The extent to which the opportunity is expected to provide Trustees with the knowledge they need to carry out their roles and responsibilities;
  - b. The extent to which the opportunity meets the requirements of this policy; and

## OCERS Board Policy

# Trustee Education Policy

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- c. The cost-effectiveness of the program in light of travel, lodging and related expenses.
13. Beginning January 1, 2013, Trustees will acquire a minimum of 24 hours of Trustee education within the first two (2) years of assuming office and for every subsequent 2-year period for which the Trustee serves on the Board.
    - a. Trustees will endeavor to complete 24 hours of education in the remainder of the first and second calendar year after appointment. For trustees who are appointed later in November or December, the first education year will commence on January 1 of the subsequent calendar year.
    - b. After the initial two years after assuming office, education hours will be tracked on a calendar year basis with each trustee required to complete 24 hours of education within each two year period.
    - c. OCERS staff will track hours on an odd and even year basis with trustees grouped according to the year of term commencement.
    - d. For example, if a trustee assumes office on April 1, 2016, he or she will be expected to complete 24 hours of education by December 31, 2017. Subsequent to January 1, 2018, his or her education will be tracked on a rolling basis with completion of the 24 hour requirement on December 31, 2019, 2021, 2023, etc.
  14. Trustees will attempt to meet the following minimum goals:
    - a. To secure, over time, a useful level of understanding in each of the topic areas listed in paragraph 8 above;
    - b. To attend at least one conference annually. In accordance with a. above, Trustees are encouraged to attend conferences, on occasion, that address pension topics other than investments; and
    - c. Participate in any in-house educational seminars or briefings that are organized by the Chief Executive Officer and Chief Investment Officer including:
      - i. The educational component of the annual Strategic Planning Session;
      - ii. The Education Forum;
      - iii. Individual sessions at regular Board meetings; and
      - iv. Workshops available to Board and staff members.
  15. The Board shall maintain a record of Trustee compliance with this policy, and the Chief Executive Officer or his designee will ensure that the policy and annual compliance report are placed on the OCERS website.

### **Attendance at Conferences & Industry Association Meetings**

16. Approval for attendance and reimbursement of travel expenses in connection with educational conferences and industry association meetings will be in accordance with the Travel Policy.
17. In furtherance of this policy, the Chief Executive Officer shall have discretionary authority to approve staff travel as necessary to carry out the administrative responsibilities of the OCERS,



## OCERS Board Policy

# Trustee Education Policy

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such as attendance at legislative meetings or hearings, conducting on-site visits as part of due diligence evaluation of existing and proposed service providers, participating in continuing education programs, and other duties as directed.

18. The Board will periodically review the programs, training or educational sessions that qualify for Trustee education.

### Harassment Prevention Training

19. As an employer of over 5 employees, OCERS is required to provide two hours of harassment and abusive conduct prevention training to all “supervisory employees” every two years, and (effective calendar year 2020) one hour of prevention training to all nonsupervisory employees.
20. Trustees are considered “supervisory employees” for the purposes of the statute since Trustees may influence the terms and conditions of employment for OCERS employees.
21. The Chief Executive Officer working with the Legal Department and outside vendors will schedule appropriate training for Trustees every two years.

### Orientation Program

22. Working with the Chief Investment Officer and OCERS’ professional advisors, the Chief Executive Officer will hold an orientation program, covering the general topic areas outlined in paragraph 8 above, and designed to introduce new Trustees to all pertinent operations of the System and highlight the knowledge bases required of a Trustee. The aim of the orientation program will be to ensure that new Trustees are in a position to contribute fully to Board of Retirement and committee deliberations, and effectively carry out their fiduciary duties as soon as possible after joining the Board.
23. Prior to a Trustee’s first official meeting with the Board of Retirement, he or she will endeavor to attend a Board meeting or a standing committee meeting in the role of an observer.
24. Within 30 days of a trustee’s election or appointment to the Board, the Chair will designate an incumbent member of the Board to provide the new Trustee an orientation to current Board governance practices.
25. As part of the orientation process, new Trustees will, within 30 days of their election or appointment to the Board of Retirement:
  - a. Be briefed by the Chief Executive Officer on the history and background of OCERS;
  - b. Be oriented by the Chair on current issues before the Board;
  - c. Be introduced to members of senior management;
  - d. Be provided a tour of OCERS offices by the Chief Executive Officer;
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**OCERS Board Policy**  
**Trustee Education Policy**

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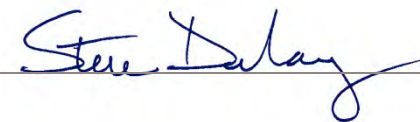
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### **Policy History**

- 29. This policy was adopted by the Board of Retirement on February 19, 2002.
- 30. The policy was revised on May 16, 2005, March 24, 2008, June 18, 2012, November 19, 2012, July 20, 2015, and December 19, 2016, September 25, 2019

### **Secretary's Certificate**

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



10/21/19

Date

Steve Delaney  
Secretary of the Board

## **APPENDIX 1**

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### **Trustee Reference Manual**

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