

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

**GOVERNANCE COMMITTEE MEETING
June 9, 2020
9:00 a.m.**

Members of the Committee

Shawn Dewane, Chair
Frank Eley, Vice Chair
Charles Packard
Roger Hilton

Pursuant to Executive Order N-29-20, certain provisions of the Brown Act are suspended due to a State of Emergency in response to the COVID-19 pandemic. Consistent with the Executive Order, this meeting will be conducted by video/teleconference only. None of the locations from which the Board members will participate will be open to the public.

Members of the public who wish to observe and/or participate in the meeting may do so via the Zoom app or via telephone. Members of the public who wish to provide comment during the meeting may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing * 9 on your telephone keypad.

OCERS Zoom Video/Teleconference information	
Join Using the Zoom App (Video & Audio) https://ocers.zoom.us/j/92597299465 Meeting ID: 925 9729 9465 Password: 766680 Go to https://www.zoom.us/download to download Zoom app before meeting Go to https://zoom.us to connect online using any browser.	Join by Telephone (Audio Only) Dial by your location +1 669 900 6833 US (San Jose) +1 346 248 7799 US (Houston) +1 253 215 8782 US +1 301 715 8592 US +1 312 626 6799 US (Chicago) +1 929 436 2866 US (New York) Meeting ID: 925 9729 9465 Password: 766680

AGENDA

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

OPEN SESSION

CALL MEETING TO ORDER AND ROLL CALL

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 Board; and (2) any matter appearing on the Consent Agenda. Members of the public who wish to provide comment at this time may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing * 9 on your telephone keypad. When addressing the Board, 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

March 13, 2020

ACTION ITEMS

NOTE: Public comment on matters listed in this agenda will be taken at the time the item is addressed, prior to the Board’s discussion of the item. **Members of the public who wish to provide comment in connection with any matter listed in this agenda may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing *9, at the time the item is called.**

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

A-2 REVIEW OF PROPOSED REVISIONS TO THE ADJUDICATON POLICY AND ADMINISTRATIVE HEARING RULES

Presentation by Gina M. Ratto, General Counsel

Recommendation: That the Governance Committee:

- (1) Consider on a first reading the proposed revisions to the Adjudication Policy and Administrative Hearing Rules (including renaming the policy as the Administrative Review and Hearing Policy); and
- (2) Direct staff to engage with stakeholders on the proposed revisions to the Policy and then return to the Committee with the results of that engagement for a second reading of the Policy.

A-3 TRIENNIAL REVIEW OF THE MEMBERSHIP ELIGIBILITY REQUIREMENTS POLICY

Presentation by Suzanne Jenike, Assistant Chief Executive Officer, External Operations

Recommendation: Approve the Membership Eligibility Requirements Policy as presented.

COMMITTEE MEMBER COMMENTS

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

COUNSEL COMMENTS

ADJOURNMENT

NOTICE OF NEXT MEETINGS

DISABILITY COMMITTEE MEETING

June 15, 2020

8:30 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

REGULAR BOARD MEETING

June 15, 2020

9:30 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

INVESTMENT COMMITTEE MEETING

June 24, 2020

9:30 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

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

It is OCERS' intention to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or participant at this meeting, you will need any special assistance beyond that normally provided, OCERS will attempt to accommodate your needs in a reasonable manner. Please contact OCERS via email at adminsupport@ocers.org or call 714-558-6200 as soon as possible prior to the meeting to tell us about your needs and to determine if accommodations are 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.

Governance Committee Meeting
March 13, 2020

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

**GOVERNANCE COMMITTEE MEETING
March 13, 2020
10:00 a.m.**

MINUTES

The Chair called the meeting to order at 10:12 a.m. Attendance was as follows:

Present: Shawn Dewane, Chair; Frank Eley, Vice Chair; Charles Packard, Roger Hilton

Staff: Steve Delaney, Chief Executive Officer; Gina Ratto, General Counsel; Suzanne Jenike, Assistant CEO, External Operations; Brenda Shott, Assistant CEO, Internal Operations; Tracy Bowman, Director of Finance; Sonal Sharma, Recording Secretary; Anthony Beltran, Audio Visual Technician

CONSENT AGENDA

C-1 APPROVE GOVERNANCE COMMITTEE MEETING MINUTES

Governance Committee Meeting Minutes November 7, 2019

MOTION by Hilton, **seconded** by Eley, to approve the Minutes.

The motion passed **unanimously**.

ACTION ITEMS

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

No items were trailed from the Consent Agenda.

A-2 TRIENNIAL REVIEW OF THE GOVERNANCE COMMITTEE CHARTER

Presentation by Gina M. Ratto, General Counsel

Recommendation: Approve, and recommend that the Board adopt, revisions to the Governance Committee Charter.

MOTION by Packard, **seconded** by Eley, to approve, and recommend that the Board adopt, revisions to the Governance Committee Charter, as presented, with the following additional revision to Paragraph 3 of the Governance Committee Charter (revision redlined).

“The Governance Committee will be comprised ~~of~~ of four (4) members of the Board. As provided in OCERS’ By-Laws, two members of the Governance Committee constitute a quorum.”

Governance Committee Meeting
March 13, 2020

The motion passed **unanimously**.

A-3 TRIENNIAL REVIEW OF THE PLANNING POLICY

Presentation by Steve Delaney, Chief Executive Officer

Recommendation: Approve, and recommend that the Board adopt, revisions to the Planning Policy.

MOTION by Hilton, **seconded** by Packard, to approve, and recommend that the Board adopt, revisions to the Planning Policy, as presented.

The motion passed **unanimously**.

A-4 TRIENNIAL REVIEW OF THE SACRS VOTING DELEGATE POLICY

Presentation by Steve Delaney, Chief Executive Officer

Recommendation: Approve, and recommend that the Board adopt, revisions to the SACRS Voting Delegate Policy.

MOTION by Packard, **seconded** by Hilton, to approve, and recommend that the Board adopt, revisions to the SACRS Voting Delegate Policy, as presented.

The motion passed **unanimously**.

A-5 TRIENNIAL REVIEW OF THE QUIET PERIOD POLICY

Presentation by Brenda Shott, Asst. Chief Executive Officer, Internal Operations

Recommendation: Approve, and recommend that the Board adopt, revisions to the Quiet Period Policy.

MOTION by Packard, **seconded** by Hilton, to approve, and recommend that the Board adopt, revisions to the Quiet Period Policy, as presented.

The motion passed **unanimously**.

A-6 TRIENNIAL REVIEW OF THE BUDGET APPROVAL POLICY

Presentation by Tracy Bowman, Director of Finance

Recommendation: Approve, and recommend that the Board adopt, revisions to the Budget Approval Policy.

MOTION by Dewane, **seconded** by Eley, to approve, and recommend that the Board adopt, revisions to the Budget Approval Policy, as presented.

The motion passed **unanimously**.

MOTION by Dewane, **seconded** by Eley, to recommend that the Board approve discontinuing the practice of the “18 basis points test” and eliminate the need for staff to produce the “18 basis points test” as part of its annual and quarterly budget.

The motion passed **unanimously**.

Governance Committee Meeting
March 13, 2020

A-7 TRIENNIAL REVIEW OF THE COMMUNICATIONS POLICY

Presentation by Suzanne Jenike, Asst. Chief Executive Officer, External Operations

Recommendation: Approve, and recommend that the Board adopt, revisions to the Communications Policy.

MOTION by Packard, **seconded** by Eley, to approve, and recommend that the Board adopt, revisions to the Communications Policy, as presented.

The motion passed **unanimously**.

A-8 TRIENNIAL REVIEW OF THE PUBLIC RECORDS REQUEST POLICY AND RESCISSION OF THE DATA REQUEST POLICY

Presentation by Gina M. Ratto, General Counsel

Recommendation:

- (1) Approve, and recommend that the Board adopt, revisions to the Public Record Request Policy, including incorporating into the Public Records Request Policy provisions of the Data Request Policy; and
- (2) Recommend that the Board rescind the Data Request Policy.

MOTION by Eley, **seconded** by Dewane, to approve, and recommend that the Board adopt, revisions to the Public Record Request Policy, including incorporating into the Public Records Request Policy provisions of the Data Request Policy, as presented.

Mr. Eley requested that staff make available, on the OCERS website, a list of the types of member information that is generally subject to disclosure, upon request, pursuant to the California Public Records Act.

MOTION by Eley, **seconded** by Hilton, to recommend that the Board rescind the Data Request Policy.

The motion passed **unanimously**.

INFORMATION ITEMS

I-1 REVIEW OF NEW PAY ITEMS PURSUANT TO THE PAY ITEM REVIEW POLICY

There was a presentation by Suzanne Jenike, Asst. Chief Executive Officer, External Operations

I-2 GOVERNANCE COMMITTEE 2020 WORK PLAN AND MEETING SCHEDULE

There was a presentation by Gina M. Ratto, General Counsel

COMMITTEE MEMBER COMMENTS

Future Governance Committee meetings were scheduled to take place on June 9, 2020, August 4, 2020, and October 6, 2020.

Governance Committee Meeting
March 13, 2020

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

None.

COUNSEL COMMENTS

None.

ADJOURNMENT

The meeting adjourned at 11:08a.m.

Submitted by:

Approved by:

Steve Delaney
Secretary to the Board

Shawn Dewane, Chair



Memorandum

DATE: June 9, 2020
TO: Members of the Governance Committee
FROM: Gina M. Ratto, General Counsel
SUBJECT: **REVIEW OF PROPOSED REVISIONS TO THE ADJUDICATION POLICY AND ADMINISTRATIVE HEARING RULES**

Recommendation

That the Governance Committee:

- (1) Consider on a first reading the proposed revisions to the Adjudication Policy and Administrative Hearing Rules (including renaming the policy as the Administrative Review and Hearing Policy); and
- (2) Direct staff to engage with stakeholders on the proposed revisions to the Policy and then return to the Committee with the results of that engagement for a second reading of the Policy.

Background/Discussion

At its January 2018 meeting, the Board adopted the current Adjudication Policy and Administrative Hearing Rules (Policy), created the Disability Committee, and approved the Disability Committee Charter. The approval of the Policy came after a first reading by the Board in December 2017, and after meetings of the Governance Committee in September, October and November of 2017 during which the Committee and staff engaged in robust discussions regarding the proposed revisions to the Policy. Between the Board's two readings of the Policy, staff engaged with stakeholders including OCERS employers, labor representatives and the attorneys who regularly represent OCERS members about the proposed changes to the Policy.

The Policy became effective for requests for administrative hearings filed by members on and after June 1, 2018. From staff's perspective, the Policy adopted by the Board in early 2018 represented a vast improvement over the 2015 version of the Policy. However, over the course of the past two years, staff has identified additional opportunities to improve the Policy and processes even further, and also identified a couple of processes that were better under the 2015 version of the Policy and that should be restored.

Accordingly, staff is proposing numerous revisions to the Policy. The proposed revisions that are substantive in nature are summarized below. Both the substantive and non-substantive revisions are reflected in the attached redline of the Policy. Staff requests the Governance Committee approve the revisions (as presented or with additional revisions by the Committee) on a first reading for release to and discussion with OCERS' employers, labor representatives and the attorneys who regularly represent OCERS members.

Proposed Substantive Revisions

Narrowing Scope of Issues Reviewed by a Hearing Officer

Under Government Code (CERL) section 31533, the Board is empowered to determine whether a hearing is necessary in order for the Board to make a determination. Section 31533 states in full as follows:

Whenever, in order to make a determination, it is necessary to hold a hearing the board may appoint either one of its members or a member of the State Bar of California to serve as a referee. The referee shall hold such a hearing and shall transmit, in writing, to the board his proposed findings of fact and recommended decision.

Under the current Policy, if the member disagrees with the Disability Committee's recommendations, all aspects of the disability application are processed together and subject to review by a hearing officer. As a result, tangential issues, such as timeliness of an application, ineligibility due to termination, application of the disability offset, etc., that are beyond the fundamental issues relating to a disability determination as set forth in CERL Section 31724, i.e, (1) permanent incapacity, (2) service connection, and (3) the effective date, end up being litigated before the hearing officer.

In addition, the Policy as currently drafted gives members the right to request a hearing on all benefit determinations, and does not provide the Board with the opportunity to exercise its authority under section 31533 (set forth above) to determine whether a hearing is necessary, or to define the issues to be presented to the hearing officer. As a result, the hearing officer hears and issues recommendations on a variety of questions that involve interpretations of the CERL and/or policy decisions by the Board. Examples include whether a particular pay item is pensionable for Legacy members; whether Board Resolution 98-001 should be revised; whether the disability offset should be applied where reciprocity has not been established; how to calculate a year of service credit; etc. These are issues for which the Board, and not a hearing officer, is the appropriate arbiter, unless and until challenged in state court in a writ proceeding.

The proposed revisions to the Policy would limit the issues to be reviewed by a hearing officer in connection with a disability application to the three issues outlined in section 31724 (permanent incapacity; service connection and effective date). All other tangential issues related to an application for disability retirement would be treated as benefit determinations; and for these, and for all other questions regarding benefit determinations, staff recommends restoring to the Board the power under section 31533 to determine what issues require a hearing. Under the proposed revision, members can request CEO review of staff level determinations of a member's benefit (e.g., calculation of the amount of the benefit, effective date, reciprocity determinations), and if the member is dissatisfied with the CEO determination, the member may request review by the Board. The Board would then have the choice of deciding the issue itself (and the Board's decision at that point would be final and subject to a writ proceeding filed with state court) or sending the matter to a hearing with the issues to be considered by the hearing officer as defined and limited by the Board's order.

Additionally, the Policy as currently drafted does not expressly address the situation where the member wants to appeal limited aspects of a Disability Committee recommendation such as the effective date of the benefit or

whether the disability is service connected. Currently, staff moves forward to the Board the committee's recommended grant of a non-service connected disability retirement, and allows the member to simultaneously appeal the issues of effective date or service connection. The proposed revisions would memorialize the process currently followed by staff and allow a hearing limited to the contested issues with the non-contested issues sent directly to the Board for action.

Consolidation of Requests for Administrative Review or Hearing

Staff proposes revising the Policy to include the ability of the Board and the hearing officer to consolidate review or hearing of individual member cases that involve related issues after considering 1) the complexity of the issues involved; 2) the potential prejudice to any party; 3) the avoidance of duplicate or inconsistent orders; and 4) the efficient utilization of OCERS' resources. This is the process that was followed earlier this year in connection with the five cases that involved the issue of the application of the disability offset. Because the Policy didn't contemplate consolidation of the cases, staff was required to formally request the Board to order the consolidation at a meeting of the Board.

Procedural Issues Raised at the Pre-Hearing Conference

Staff proposes adding a provision to Rule 8 in the Hearing Rules (appendix to the Policy) to permit OCERS to raise procedural issues not previously raised by OCERS staff that could moot an appeal such as timeliness of the Application or ineligibility due to the member having been terminated for cause. This issue has arisen in a few cases where an eligibility or timeliness issue was not addressed by staff at the determination level. The purpose of the proposed revision is to avoid having a matter that could or should be resolved by the Board going all the way through the hearing process. As proposed, the hearing officer would give the other parties an opportunity to respond, and could continue the Pre-Hearing Conference to do so. If the hearing officer found in favor of OCERS on the issue of eligibility or timeliness, the hearing would be suspended and the matter would be referred to the Board and handled as if it were a CEO Determination.

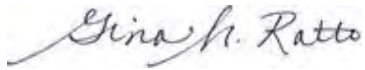
Party Objections to Hearing Officer Recommendations

As currently drafted, the Policy permits all parties to file objections to the hearing officer's recommendations, but does not include a process for the hearing officer to review and respond to those objections – either by affirming the original recommendations or by issuing revised recommendations in light of the objections. This puts the Board in the position of having to review and consider the parties' objections without the benefit of knowing whether the objections would persuade the hearing officer to alter his or her original recommendation. The only alternative currently is for the Board to send the matter back to the hearing officer with instructions to consider the objections.

The above process represented a change that was made in 2018; and after two years of living with the new Policy, staff believes the process regarding objections to hearing officer recommendations under the 2015 version of the Policy is superior to the current language. Staff therefore recommends reverting to the previous process and revising the Policy to provide that any objections will be filed with the hearing officer, who will consider the objections and either affirm or revise the original recommendations, before the matter is presented to the Board. This will eliminate any "guesswork" regarding whether the hearing officer would have found any of the objections to be persuasive.

There are numerous non-substantive revisions to the Policy that are recommended by the staff and that are not outlined or summarized here. The attached redline of the Policy reflects all of the revisions proposed. Staff welcomes the Committee's questions, comments and suggestions for improvements to the Policy.

Submitted by:



Gina M. Ratto
General Counsel



OCERS Board Policy
Adjudication Policy and Proposed Revisions to Administrative Review and Hearing Rules Policy
(Disability and Non-Disability Benefits)

1. Intent

The Board of Retirement (“Board”) of the Orange County Employees Retirement System (“OCERS”) intends that this ~~Adjudication Policy and~~ Administrative Review and Hearing Rules Policy (“Policy”) ~~shall~~will apply to and govern ~~the process by which OCERS’ Administrative Review and Administrative Hearing processes for Disability Determinations, Benefit Determinations and other final administrative orders or decisions of the Board.~~ Any person who is entitled to a hearing and who does not request one under this Policy will be deemed to have waived the right to a hearing.

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

~~Although the Board intends to follow this policy for the internal management of OCERS, nothing in this policy shall be deemed an admission or waiver.~~ Nothing in this Policy will be deemed an acknowledgement by OCERS that any procedure set forth herein, including an administrative hearing, is required by law. The Board retains the right to amend this Policy or, in extraordinary cases, vary the process set forth in this Policy in any manner consistent with the law.

2. Definitions

The following terms ~~shall~~will have the meanings set ~~out in this section~~forth below.

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



OCERS Board Policy **Adjudication Policy and Proposed Revisions to Administrative** **Review and Hearing** **Rules Policy** **(Disability and Non-Disability Benefits)**

~~request shall result in a waiver of the Party's rights to contest the final determination by OCERS. See Cal. Civ. Proc. Code § 1094.5.~~

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

For purposes of any proceeding following an Administrative Review or Hearing, the Administrative Record also includes written correspondence, Party Pre-Hearing Statements, the Hearing Officer's Proposed Findings of Fact and Recommended Decision, Party objections, hearing transcripts, and other documents ~~that are relevant to deciding the issue of an Applicant's request to receive or modify a benefit~~Application.

Administrative Review: The process described in this Policy (including the Rules) by which a Party may seek an administrative review of a Benefit Determination, CEO Determination or Disability Determination or any other final administrative order or decision of the Board.

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

Application: The ~~paper(s) initial~~submittal, including any amendments thereto, filed with OCERS by or on behalf of an Applicant, ~~and/ for either: (i) a disability retirement; or any amended paper(s) filed (ii) a service retirement.~~

Benefit Determination: A determination made by Staff in connection with OCERS by or on behalf (i) a service retirement Application; (ii) a disability retirement Application with the exception of a Disability Determination; or (iii) an Applicant after the initial filing, to request or modify a Applicant's benefit provided by OCERS (e.g., calculation of the amount of the benefit, benefit effective date, reciprocity determinations).

Board: The Board of Retirement of OCERS.

CEO Determination: A Benefit Determination made by the CEO or the CEO's designee.

Clerk, Clerk to the Hearing Officers. A person or persons designated by the OCERS General Counsel or ~~his/her~~their designee to fulfill the duties of providing administrative assistance to the Hearing Officers appointed by OCERS, ~~under this Policy.~~



OCERS Board Policy

Adjudication Policy and Proposed Revisions to Administrative Review and Hearing Rules- Policy
(Disability and Non-Disability Benefits)

Consolidation/Consolidated Review or Hearings. Where two or more Requests for Administrative Review or Hearing that have common issues of fact or law are consolidated for Administrative Review or Hearing pursuant to Section 8 of this Policy or Rule 7 of the Rules.

Days: All days are calendar days, unless otherwise provided herein.

Disability Committee, Committee: A committee of the Board, chartered by the Board to review Applications for disability retirement and make recommendations to the Board with respect to Disability Determinations.

Disability Determination: The action taken by the Board in response to a disability retirement Application pursuant to Government Code Section 31724, limited to the following findings: (1) whether the Applicant is permanently incapacitated for performance of their duties in the service; (2) whether the disability was service-connected; and (3) the effective date of the disability retirement. Any other determinations affecting a disability retirement Application, including, but not limited to, timeliness of the Application, ineligibility due to termination for cause, and applicability of a disability offset, are Benefit Determinations pursuant to this Policy and subject to a CEO Determination.

Employer: The public agency who employed the OCERS member whose benefits are at issue in any given matter. The Employer is a Party to an Administrative Review but does not need to participate in an Administrative Review or Hearing. If the Employer initiates an Administrative Review or Hearing, it will act in the role of the Applicant with the corresponding burden of proof.

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

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

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

Hearing Rules, Rules: The ~~"Orange County Employees Retirement System Administrative Hearing Rules,"~~ attached as an appendix to and made part of this Policy.

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

Party or Parties: OCERS, ~~any~~ Applicant who seeks an Administrative ~~Review or~~ Hearing under this Policy, the ~~member's employer/plan sponsor~~ Employer, and any other person who may be affected by the Board's decision and who participates in the Administrative ~~Review or~~ Hearing.



OCERS Board Policy ~~Adjudication Policy and~~ Proposed Revisions to Administrative Review and Hearing Rules Policy **(Disability and Non-Disability Benefits)**

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

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

Pre-Hearing Statements: Statements filed by the Parties pursuant to Rule ~~89~~ of the ~~Hearing~~ Rules.

Proposed Findings of Fact and Recommended Decision: The recommendation of the Hearing Officer to the Board, as set forth in Rule ~~1314~~ of the ~~Hearing~~ Rules.

Request for Administrative Review or Request for Administrative Hearing: The document filed by the ~~Petitioner~~ Applicant (or in limited cases, the Employer) to ~~appeal~~ seek a review of a decision of the Committee or ~~OCERS~~ Staff and initiate the Administrative Review or Administrative Hearing process. Where the Applicant requests a Hearing or the Board refers the matter to a Hearing, the document will be referred to as a Request for Administrative Hearing. Where the Applicant seeks review of a Benefit Determination or CEO Determination, the document will be referred to as a Request for Administrative Review.

Respondent: ~~OCERS, provided that the Plan Sponsor or~~ will always be the primary Respondent. The Employer may, but is not required to respond to the request for Administrative Review or Hearing. Where the Employer initiates a review or hearing, the Applicant may join as the Respondent, as appropriate.

~~**Rule:** A hearing rule included in the Hearing Rules.~~

Rules: The "Orange County Employees Retirement System Administrative Rules," attached as an appendix to and made part of this Policy.

Staff: OCERS staff members other than the CEO and the CEO's designee.

3. Disability Determination Process

~~For Disability Determinations: or determinations on Applications for disability retirement:OCERS staff~~

- A. Staff will investigate all disability retirement Applications to determine (i) whether the Applicant is permanently incapacitated from the performance of ~~his/her~~ their usual duties; (ii) whether the incapacity arose out of and in the course of employment, and (iii) the appropriate effective date of any disability retirement allowance. In undertaking this investigation, ~~staff~~ Staff will have the discretion, based on ~~s~~ Staff's review of the Application (including the Applicant's treating physicians' medical reports,) to determine whether or not to seek further medical examination of the Applicant, expert medical advice, or expert review of Applicant's medical records. Upon completion of the investigation, ~~OCERS-s~~ Staff will make a recommendation to the Committee regarding permanent incapacity, service connection, and effective date.



OCERS Board Policy
Adjudication Policy and Proposed Revisions to Administrative Review and Hearing Rules- Policy
(Disability and Non-Disability Benefits)

- B. The Committee will review the disability retirement Application and the Staff recommendation under subsection A, above, at a duly-noticed meeting of the Committee. ~~OCERS's~~ Staff will give Applicant (~~or his/her and the Applicant's attorney, if any~~) and the Employer notice of the date and time of the Committee meeting, ~~and the Applicant (or his/her attorney) at which they~~ will have the opportunity to be heard by the Committee.
- C. After the Committee ~~makes a recommendation,~~ OCERS staff reviews the disability retirement Application, the Committee will determine whether to recommend that the Board grant or deny the Application, in full or in part. Staff will notify the Applicant (and his/her attorney) Applicant's attorney, and the Employer via First Class Mail to the address set out in the Application (in the case of the Applicant), of the Committee's recommendation, and provide the Applicant. They will also be provided with instructions regarding on how the Applicant can appeal the determination by filing a Request for to request an Administrative Hearing to challenge any part of the Committee's recommendation. Notice will be effective upon deposit in the US Mail.
- D. In the event ~~that~~ the Committee recommends that ~~any part of~~ the Application be denied in full or in part, the Applicant will have 90 days from the date of the notice required by 3.C., above, to file a Request for Administrative Hearing with the Clerk, as set forth in the Hearing Rules. In the event ~~that~~ the Committee recommends the Application be granted in full, any ~~person other Party including the Employer~~ aggrieved by the recommendation, ~~including the Plan Sponsor,~~ will have 10ten days from the date of the notice required by 3.C., above, to make file a written Request for Administrative Hearing as set forth in the Hearing Rules.
- E. Where the Committee recommends (i) a grant of a non-service connected disability retirement, but denial of a service-connected disability retirement; or (ii) a grant of a either a service-connected or non-service connected disability retirement and the Applicant disputes the Committee's recommendation regarding the effective date of disability, the Applicant may request a Hearing on the denial of a service-connected disability or the effective date of disability. In such cases, the issues not disputed will not be at issue in the Hearing. Staff will forward those non-disputed issues to the Board for final action.
- E.F. If no Request for Administrative Hearing is filed within the time limits set forth in 3.D., above, the matter shall Committee's recommendation will be placed on the consent agenda at the next regularly scheduled meeting of the Board for action in accordance with Section 5, below.

4. ~~Non-Disability~~ Benefit Determination Review Process

~~For all other benefit determinations:~~

~~An Applicant may request a written review of any OCERS staff level benefit determination (e.g., non-disability determinations regarding amount of the benefit, effective date, reciprocity determinations) For~~
Benefit Determinations:



**OCERS Board Policy
Adjudication Policy and Proposed Revisions to Administrative
Review and Hearing
Rules Policy**

(Disability and Non-Disability Benefits)

- A. Staff will notify the Member of the Benefit Determination, and the Member may request a CEO Determination within 90 days of the benefit determination by OCERS date of the notice of the Benefit Determination. The CEO or his/her designee Determination will provide be in the form of a written review, which may completed and returned to the Member within 90 days of receipt of the request for a CEO Determination, and will include a synopsis of the member's Member's request and shall include citation of to any authority relied upon by OCERS the CEO in making its determination. the CEO Determination. In addition, the written review will include instructions regarding how the Applicant can appeal the determination by filing a Request for Administrative Hearing Member may request review of the CEO Determination by the Board.

- B. The Applicant Member will have 90 days from the date of the notice of the CEO Determination provided in 4.A., above, to file a Request for Administrative Review. If no timely Request for Administrative Review is filed, the CEO Determination will be final.

5. Board Action on Disability Determination Upon Recommendation from the Disability Committee Appeals of Disability and Non-Disability Benefit Determinations

- A. **Consent Agenda.** When there has been no timely Request for an Administrative Hearing of the Disability Committee's recommendation under Section 3, above, the Board will consider the Committee's recommendation on the Board's consent agenda.

- B. **Removing Items from Consent Agenda/Action.** Any member of the Board may remove an item from the consent agenda to be discussed and voted on separately. If any Board member removes a Disability Determination from the consent agenda, the item will be considered by the Board in closed session as set forth in Section 7, below.

- ~~B.C.~~ **Action on Recommendations from the Disability Committee.** After consideration by the Board, the Board will either (i) adopt the recommendation of the Disability Committee; or (ii) refer the matter to a Hearing Officer for a Hearing (unless a Hearing is waived by the Applicant, in which case the Committee recommendation will be adopted).

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



**OCERS Board Policy
Adjudication Policy and Proposed Revisions to Administrative
Review and Hearing
Rules- Policy**

(Disability and Non-Disability Benefits)

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

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

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

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

7. Board Determination of Disability and Non-Disability Benefits

~~C.~~ will When no appeal has been timely filed on an Application for a disability retirement, the Board shall consider the Committee's recommendation on a consent agenda. Any member of the Board may object to an Application on the consent agenda except that the alternate seventh member (and not the seventh member) of the Board may object to any item relating to a member of the same service as the alternate seventh member. In addition, if the alternate seventh member is present, s/he shall be considered to have voted to approve any item adopted on the consent agenda relating to a member of the same service.

~~D. Absence of Unanimous Consent for Disability Applications Recommended for Approval By the Committee; Administrative Hearing Before the Board.~~ If any Board member objects to the approval of an Application for disability retirement that has been placed on the consent agenda, and the matter has not been the subject of an Administrative Hearing, the Board shall either (i) adopt the recommendation of the Committee; or (ii) refer the matter to a Hearing Officer for an Administrative Hearing.

6. Board Action on Disability Determinations After Hearing.

Following an Administrative Hearing and the Board's receipt of the Hearing Officer's Proposed Findings of Fact and Recommended Decision, the Board ~~shall hear~~ will consider the matter at a duly-



OCERS Board Policy
Adjudication Policy and Proposed Revisions to Administrative
Review and Hearing
Rules Policy
(Disability and Non-Disability Benefits)

noticed meeting of the Board ~~as set forth~~ and take action in accordance with Rule 16 of the Hearing Rules.

7. Closed Sessions for Disability Determinations

Except for matters on the Disability Committee’s or Board’s consent agenda, the Disability Committee or Board will adjourn to a closed session, pursuant to Cal. Gov’t Code § 54957(b), to discuss a recommended Disability Determination in connection with an Application for disability retirement, or a Hearing Officer’s Proposed Findings of Fact and Recommended Decision in connection with a Disability Determination, unless the Applicant requests the matter be heard in open session.

A. Closed Session With the Parties Present. The Committee or the Board will conduct any discussion of an Application, including instances where the Board convenes and conducts its own Hearing, in closed session. Attendance at the closed session will be limited to 1) the Applicant; 2) counsel for the Applicant as well as any individual deemed by the Board Chair to be essential to the Applicant in the matter; 3) any OCERS disability Staff members and/or attorneys acting as advocates for the Staff recommendation or Committee recommendation; 4) Staff necessary to facilitate the Hearing (including the Clerk of the Board and IT Staff to provide technical support); 5) the CEO; 6) the OCERS General Counsel (or their designee); and 7) outside counsel to the Board. Additionally, in the event the Board conducts its own hearing, witnesses called to present testimony may be permitted to attend the closed session to do so.

B. Closed Session Without Parties. 8-Before or after the Committee’s or Board’s consideration of a matter in a closed session under A, above, the Committee or the Board may adjourn to a closed session with only the CEO and the OCERS General Counsel (or their designee) to provide legal advice to the Committee or the Board in connection with the merits of the case and the Board’s legal obligations.

8. Board Action on CEO Determination.

A. Board Review of CEO Determinations. In the case of a timely Request for Administrative Review of a CEO Determination, the Board will consider the matter at a duly noticed regular meeting of the Board. Staff will make a recommendation to the Board regarding the issues raised in the CEO Determination and the Applicant (or the Applicant’s attorney) will have the opportunity to be heard.

B. Board’s Options. At the meeting, the Board may choose to hear and conduct the review at that meeting, continue it to a later meeting, or refer the matter to a Hearing Officer for a Hearing to be conducted pursuant to the Rules. If the Board chooses to hear and determine the matter, the Board’s decision will be final. If the Board chooses to refer the matter to a Hearing, the Board will identify the factual and legal issues to be considered by the Hearing Officer.



OCERS Board Policy
Adjudication Policy and Proposed Revisions to Administrative Review and Hearing Rules- Policy

(Disability and Non-Disability Benefits)

C. Consolidation of Reviews. When review by the Board of two or more CEO Determinations involves common questions of law or fact, the Board may order a Consolidated Review or Consolidated Hearing of the matters. Consolidation may be ordered for limited purposes or for all purposes.

In determining whether to order a Consolidation of the CEO Determinations, the Board will consider all relevant factors, including, but not limited to, the following:

- i. the complexity of the issues involved;
- ii. the potential prejudice to any party, including whether a Consolidation would result in undue delay;
- iii. the avoidance of duplicate or inconsistent orders; and
- iv. the efficient utilization of OCERS resources.

9. Board Action on CEO Determination After a Hearing.

In the case of a CEO Determination referred by the Board to a Hearing, the Board will consider the Hearing Officer’s Proposed Findings of Fact and Recommended Decision at a duly-noticed meeting of the Board in accordance with Rule 16 of the Rules. The Board may adopt the Hearing Officer’s recommendations or make its own determination based on the Administrative Record and the Board’s decision will be final.

10. Policy Review

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

911. Policy History

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

Secretary’s Certificate

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

Steve Delaney
Secretary of the Board

Date



OCERS Board Policy
Adjudication Policy and Proposed Revisions to Administrative
Review and Hearing
Rules Policy
(Disability and Non-Disability Benefits)

Appendix - Administrative ~~Hearing~~ Rules

Rule 1. Definitions

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

Rule 2. Filing of Documents

A. Administrative Review and Hearing Filing Procedures

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

B. Filing of Documents

1. All documents required or permitted to be filed by any Party ~~during the course of the Administrative~~in connection with a Hearing shall will be filed with the Clerk.
2. ~~A~~Filing of documents will be done electronically in conformance with the Administrative Hearing Filing Procedures, except that an Applicant (and only the Applicant) may opt to file documents in person, by US Mail, or electronically, ~~in conformance the Administrative Hearing Filing Procedures. Any~~ Applicants that opt for filing documents by US Mail, must inform the Clerk of this in writing. The Clerk will then inform all other ~~Party~~Parties and the Hearing Officer, ~~shall that the Applicant has opted to file all documents electronically, in conformance with the Administrative Hearing Filing Procedures~~documents by US Mail.
 - 3.i. Documents filed in person shall will be ~~considered~~deemed filed on the day received by OCERS.
 - 4.—Documents filed by US Mail shall will be ~~considered~~deemed filed on the following dates:



OCERS Board Policy
Adjudication Policy and Proposed Revisions to Administrative
Review and Hearing
Rules- Policy

(Disability and Non-Disability Benefits)

- ~~i.~~ If mailed from within Orange County, on the date post-marked on the envelope containing the documents;
- ~~ii.~~ If mailed within the State of California, five (5) days following the date post-marked on the envelope containing the documents;
- ~~iii.~~ii. If mailed outside of the State of California, ten (10) days following the date post-marked on the envelope containing the documents.
- ~~5.~~iii. Documents filed electronically ~~shall~~will be ~~considered~~deemed filed on the date electronically ~~sent~~received by the Clerk.

C. Service of Documents

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

C. Service of Documents

- 1. The Clerk will serve on all Parties and the Hearing Officer any documents filed by a Party or the Hearing Officer within one (1) business day of receipt of the documents by the Clerk.
- 2. Service by the Clerk will be electronic, in conformance with the Administrative Hearing Filing Procedures, except where the Applicant has opted to file by US Mail pursuant to B.2., above, in which case the Clerk will serve documents on the Applicant by US Mail. In that case, the Applicant will be deemed to have received service three (3) days after the date the Clerk deposits the document in the US Mail. Electronic service will be deemed served upon electronic transmission by the Clerk.

Rule 3. Administrative Hearing Request, Scope, and Settlement

- A. Request for Administrative Hearing.** A written Request for Administrative Hearing must be filed with the Clerk within the time frame set forth in Sections 3 and 4 of the ~~OCERS Adjudication Policy and Administrative Hearing Rules (the "Policy")~~. The Request ~~for Administrative Hearing shall~~should include a short and plain statement of the grounds for the ~~appeal of the recommendation of the Committee or the OCERS staff~~request.
- B. Referral from the Board.** In the event ~~that~~ the Board refers a matter to a Hearing Officer for an ~~Administrative~~e Hearing, pursuant to Sections 5.C. or 8 of the Applicant shall be considered the



OCERS Board Policy

Adjudication Policy and Proposed Revisions to Administrative
Review and Hearing
Rules Policy
(Disability and Non-Disability Benefits)

~~Petitioner and Policy~~, the referral from the Board ~~shall~~will be considered the Request for Administrative Hearing, but for all procedural purposes under these Rules, the request will be deemed to have been filed by the Applicant.

C. Permitted Representatives, Attorneys. Any Party is entitled, at the Party's expense, to be represented by an attorney at any stage of the proceedings. Such attorney must be a current, active member of the California State Bar in good standing. A Party must file with the Clerk a written notice of the hiring, changing, or dismissal of an attorney. Absent such written designation, OCERS is not obligated to recognize any attorney or other individual claiming to represent a Party.

C.D. Burden of Proof. The Applicant will have the burden of proof by a preponderance of the evidence to establish ~~his/her~~the right to the benefit sought ~~by a preponderance of the evidence.~~ Where the Employer filed the Request for Administrative Hearing under Section 3.D. of the Policy, the Employer will have the burden of proof by a preponderance of the evidence to demonstrate that the Committee's recommendation should be overturned, and the Employer will be bound by all of the procedural rules applicable to the Applicant under these Rules.

D.E. Scope of Hearing.

1. ~~A disability retirement Administrative~~The Hearing on a Disability Determination will only address the issues of disability permanent incapacity, service connection, timeliness of the application, and/or effective date. All other issues related to a disability retirement Application are subject to the Benefit Determination process under Sections 4 or 8 of the Policy.
2. In accordance with Section 8 of the Policy, the Hearing on a CEO Determination will only address the factual and legal issues that are identified by the Board for consideration by the Hearing Officer.
 - 2.—Except as set forth in these Rules, the Hearing Officer shall will not make a finding or recommendation on any issue that was not raised in the Applicant's original application to OCERS (either for disability Request for Administrative Hearing or non-disability benefits).
3. ~~If the Applicant seeks to raise new issues or add conditions, s/he will be required to file a new Application, provided however, that OCERS shall retain the discretion to stipulate that the Applicant may dismiss the original Application and file an amended Application, the date of which shall relate back to date included in the Board's referral of the original Application matter to a Hearing. Likewise, the Hearing Officer will not consider any evidence or make a finding or recommendation on any medical condition not included in the disability retirement Application or that was not previously evaluated by Staff, except as provided in subsection 4, below.~~
4. **Settlement**—If at any time during the Hearing process the Applicant either (i) alleges an injury or disease not listed in the disability retirement Application or (ii) raises an issue that was not previously presented to the Committee, the Hearing process will be suspended by the Hearing



OCERS Board Policy

**~~Adjudication Policy and Proposed Revisions to Administrative~~
Review and Hearing
Rules Policy
(Disability and Non-Disability Benefits)**

Officer and the Application will be treated as an amended Application. The amended Application will be referred back to Staff to be processed. If the Committee subsequently recommends a denial of the amended Application, the matter will be returned to the Hearing Officer who will consider all the medical conditions (those raised in the Application and the amended Application). A new Hearing Date, Pre-Hearing Conference and deadlines for Pre-Hearing Statements will be set in accordance with Rule 8.

~~E.F. Settlement. Administrative Hearing~~ If at any time during the Hearing process it becomes apparent to ~~OCERS staff~~ Staff that a different result is appropriate, ~~OCERS staff and the Applicant~~ Staff may settle and dismiss the Administrative Hearing. ~~For settlements related to non-disability benefits, the suspend the Hearing and refer a settlement shall be deemed final. For settlements related to disability benefits, the settlement shall be referred to the Board to be heard on a consent agenda.~~ If the Board approves a settlement with the Applicant, the Hearing will be dismissed.

Rule 4. Assignment of Hearing Officers

- A. Assignment of Hearing Officer.** Hearing Officers are selected and placed on the panel pursuant to OCERS' Hearing Officer Selection and Retention Policy. As ~~Administrative Hearings~~ matters are requested referred to a Hearing, the Clerk ~~shall randomly~~ will assign the Hearing Officer, ~~subject to the procedures for challenge under Rule 4.C, below. The Clerk's random assignment process shall ensure on a rotational basis, while ensuring~~ that, to the extent possible, each Hearing Officer on the panel is assigned an equal number of cases. Within fourteen (14) days after the Applicant files a Request for Administrative Hearing, the Clerk will serve notice to all Parties, including the Hearing Officer, indicating the name and address of the Hearing Officer to whom the matter is assigned, which notice will include information regarding the ability to challenge a Hearing Officer as set forth below.
- ~~**B. Notice to Parties of Hearing Officer Assignment.** Within fourteen (14) days after the Petitioner files a Request for Administrative Hearing, the Clerk will file a notice indicating the name and address of the Hearing Officer to whom the matter has been assigned.~~
- ~~**C.B. Challenge/Removal of Hearing Officer.** A Party shall be entitled to have a Hearing Officer replaced by another~~ may object to a Hearing Officer in accordance with the following procedures.
1. An Applicant Peremptory Challenge: Any Party other than OCERS is entitled to one automatic peremptory (without cause) challenge to the assignment of the Hearing Officer in accordance with the provisions of this section. The challenge must be filed with the Clerk within fourteen (14) days ~~after~~ of the date of the notice assigning the Hearing Officer. ~~The Clerk shall then~~ If the Applicant opts for service by US Mail, the time period for filing a challenge will be extended by three (3) days. In the event of a peremptory challenge, the Clerk will re-assign the case to another Hearing Officer in the same fashion as selection of the first hearing officer selected in the same manner as the first Hearing Officer. In the event no challenge is



OCERS Board Policy

**~~Adjudication Policy and~~ Proposed Revisions to Administrative
Review and Hearing
Rules Policy
(Disability and Non-Disability Benefits)**

made to a proposed Hearing Officer, or after the exhaustion of all challenges, the Clerk will notify the Parties that the matter will proceed with the assigned Hearing Officer.

2. Removal for Cause: Any Party, including OCERS, may challenge a Hearing Officer for cause by filing a request at any time, with supporting declarations made under penalty of perjury ~~under the laws of the State of California and~~ and any other evidence upon which the Party is relying ~~on~~. Any opposing Party will have fourteen (14) days from the Clerk's service of the challenge for cause on all Parties to file a response ~~to the request to remove for cause~~. The Clerk ~~shall~~ will then randomly assign the removal request to another Hearing Officer, who ~~must decide the issue within thirty (30) days. If the~~ will consider all evidence and arguments for and against removal of the Hearing Officer grants the request, and file a ruling with the Clerk ~~shall re-assign the case to a Hearing Officer other than the Hearing Officer who heard the request for re-~~ within thirty (30) days from assignment. Cause for removal ~~shall~~ will be limited to demonstrated bias against a Party or counsel based on a personal or financial relationship (other than the Hearing Officer's contract with OCERS) that would ~~make~~ cause a reasonable person to doubt the Hearing Officer's ability to render an impartial decision. If the request for removal is granted, the Clerk will re-assign the case to another Hearing Officer (other than the Hearing Officer who heard the challenge) in the same fashion as selection of the first Hearing Officer.
3. Removal Due to Unforeseen Circumstances: If the service of a Hearing Officer is discontinued due to unforeseen circumstances, ~~including but not limited to such as~~ death or, illness, or termination with or without cause, the ~~Applicant is~~ Parties other than OCERS are entitled to a peremptory challenge to the new Hearing Officer in accordance with subsection ~~(B.1)~~ of this Rule.

~~D. **Notice of Assignment to Hearing Officer.** After the expiration of the time period in Rule 4.C, above, the Clerk shall file a Notice to the Hearing Officer of his/her assignment, providing the name, address and phone number of the Applicant, Applicant's counsel if any, and counsel representing OCERS.~~

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

~~F.4. **Assignment After Removal Due to Unforeseen Circumstances.** If the service of a Hearing Officer is discontinued due to unforeseen circumstances, including but not limited to such as death or, illness, or termination with or without cause, before the Hearing Date is set, or after the Hearing has commenced, any hearing date will be vacated and the Clerk shall~~ will assign a new Hearing Officer ~~randomly~~ pursuant to Rule 4.A above and schedule a new Pre-Hearing-Scheduling Conference pursuant to Rule 7, below. ~~If the service of a Hearing Officer is discontinued due to unforeseen circumstances after the Hearing Date has been set, the Clerk shall assign a Hearing Officer who agrees to the Hearing Date. If no such Hearing Officer is-~~



OCERS Board Policy

Adjudication Policy and Proposed Revisions to Administrative Review and Hearing Rules- Policy

(Disability and Non-Disability Benefits)

~~available, the Clerk shall assign a Hearing Officer randomly pursuant to Rule 4.A above and schedule a Pre-Hearing Scheduling Conference pursuant to Rule 7, below.~~

- C. Recusal of Hearing Officer. ~~If at any time the Hearing Officer determines that there is cause for their recusal, the Hearing Officer will immediately file with the Clerk a statement of recusal, and the Clerk will reassign the case pursuant to Rule 4.A.~~

Rule 5. Preparation and Service of Administrative Record

Within ~~45~~sixty (60) days of the filing of a Request for Administrative Hearing, ~~OCERS shall~~the Clerk will assemble and ~~file~~serve on the Hearing Officer and each Party the initial Administrative Record. ~~Except as provided in Rule 6, a~~ Party may object to the admission of items into evidence or seek to admit additional information into evidence as set forth in these Rules, and the Hearing Officer ~~shall~~will decide the admissibility of all evidence.

Rule 6. Alternative Expedited Administrative ReviewHearing

- A. **Provisions for ~~Alternative-Expedited Administrative ReviewHearing.~~** Expedited Administrative ~~ReviewHearing~~ is an irrevocable waiver of the Applicant's right to the process described in Rules 7 through 12. The goal of the ~~Alternative-Expedited Administrative ReviewHearing~~ process is to complete the ~~Administrative-Hearing~~ in less than six months ~~and~~. The Hearing Officer's Proposed Findings of Fact and Recommended Decision will be based only on the Administrative Record and written arguments, without in-person testimony or argument.
- B. **Availability of Expedited Administrative ~~ReviewHearing.~~**
1. An Expedited Administrative ~~Review shall~~Hearing is only ~~be~~ available ~~infor~~ those cases that OCERS General Counsel determines ~~are~~the process is appropriate ~~for an Expedited-Administrative Review.~~
 2. ~~OCERS will make the~~The determination as to whether Expedited Administrative ~~ReviewHearing~~ is appropriate will be made in its~~the~~ sole discretion of the OCERS General Counsel, on a case-by-case basis. ~~In determining whether Expedited Administrative Review is appropriate, OCERS shall~~doing so, the General Counsel will consider: whether; there are any material facts in dispute, ~~and~~; whether the introduction of testimonial evidence is likely to clarify the issues; whether there is controlling legal authority; and whether the Applicant's condition is such that time is of the essence in ~~seeking review of the staff recommendation or ultimately judicial-review~~completing the Hearing process.
 3. ~~If OCERS~~In the event the General Counsel determines that ~~the~~a matter is appropriate for Expedited Administrative ~~Review;Hearing,~~ the Clerk will notify the Applicant ~~will have the choice of whether this determination and the Applicant's right to accept or not to opt for reject~~ the Expedited Administrative ~~Review.~~



OCERS Board Policy

Adjudication Policy and Proposed Revisions to Administrative Review and Hearing Rules Policy
(Disability and Non-Disability Benefits)

~~C.3. Waiver and Election.~~ In the event that OCERS determines that a matter is appropriate for Administrative Review, OCERS shall file Hearing along with a Notice of Right to Expedited Administrative Review form in which provides the Applicant notice of his/her rights and provides a Waiver of Rights and Election for Expedited Administrative Review (the "Waiver and Election") to do so. The Applicant may file its Waiver and Election the acceptance or rejection any time prior to or at the Pre-Hearing Scheduling Conference Clerk's service of the Administrative Record on the Parties.

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

1. Within ~~30~~ fourteen (14) days ~~from of~~ the date the Applicant files the Waiver and Election (or ~~within 30 days after~~ Clerk serves the Administrative Record is filed, whichever is later), in accordance with Rule 5, each party shall ~~file any~~ may lodge with the Clerk any additional written evidence that it seeks to rely on in addition to the Administrative Record.
2. Within thirty (30) days ~~from of~~ the date the Clerk serves the Administrative Record, the Applicant ~~files the Waiver and Election (or within 30~~ will file a Statement of Issues of not more than five (5) pages setting forth the Applicant's contentions.
- ~~2.3.~~ Within fourteen (14) days after the Administrative Record is filed, whichever is later), each Party shall Clerk serves Appellant's Statement of Issues on Respondent, Respondent will file a Statement of Issues of not more than five (5) pages which shall set setting forth the Party's contentions.
- ~~3.4.~~ Within 90 sixty (60) days from the date the Applicant files the Waiver and Election (or ~~within 30 days after the Administrative Record is filed, whichever is later),~~ Respondent files its Statement of Issues, the Hearing Officer shall will file his/her the Proposed Findings of Fact and Recommended Decision, ~~which shall conform to Rule 13 in conformance with Rule 14.~~ Notwithstanding the timeframes for objections set out in Rule 14C, objections will be filed within 10 days rather than 20 days, and responses thereto likewise will be filed within 10 days rather than 20 days.

Rule 7. Consolidation of Hearings

In addition to Consolidation by the Board of two or more cases pursuant to Section 8.C. of the Policy, cases may be Consolidated in accordance with this Rule 7, and this Rule 7 will apply to all such Consolidations.

- A. When two or more pending Requests for an Administrative Hearing involve common questions of law or fact, a Hearing Officer, upon request by OCERS or the Applicant, may order the Hearings Consolidated. Consolidation may be ordered for limited purposes or for all purposes.

In determining whether to order Consolidated Hearings, the Hearing Officer will consider all relevant factors, including but not limited to the following:



OCERS Board Policy
Adjudication Policy and Proposed Revisions to Administrative
Review and Hearing
Rules- Policy
(Disability and Non-Disability Benefits)

1. the complexity of the issues involved;
 2. the potential prejudice to any Party, including whether granting Consolidation would unduly delay the resolution of any of the matters involved;
 3. the avoidance of duplicate or inconsistent orders; and
 4. the efficient utilization of OCERS' resources.
- B. Any Party may file a request with the Clerk to Consolidate two or more pending Hearings irrespective of the procedural stages of the affected Hearings, which request will be served by the Clerk on all Parties and the Hearing Officers.
- C. In all cases, the request for Consolidation will be referred to the Hearing Officer first assigned to any of the Hearings. The Hearing Officer may decide the matter on written submittals, or may convene the Parties, either in-person or electronically, to hear further argument on the request for Consolidation. Failure to timely oppose Consolidation will constitute a waiver of objection to an order of Consolidation.
- D. If the Hearing Officer orders the Consolidation, all affected Hearings will be transferred to that Hearing Officer.
- E. Upon Consolidation, all hearing dates will be vacated and the Clerk will schedule a new Pre-Hearing Conference for the Consolidated Hearings. Following the Hearing, the Hearing Officer will have the option of preparing separate Proposed Findings of Fact and Recommended Decisions for each matter that was Consolidated or a single Proposed Findings of Fact and Recommended Decision.
- F. Nothing contained herein will prohibit the Parties from stipulating to Consolidated Hearings. In the event a stipulation is reached, the Parties will file a written stipulation with Clerk, signed by all Parties. The Clerk will then assign the Consolidated Hearings to the first assigned Hearing Officer.

Rule 8. ~~Rule 7~~-Pre-Hearing Scheduling Conference

- A. The Clerk ~~shall~~will schedule a Pre-Hearing ~~Scheduling~~Scheduling-Conference to be held within thirty (30) days of the ~~filingservice~~of the Administrative Record ~~on the Parties~~. The Clerk ~~shall undertake its~~will ~~use~~ best efforts to schedule the Pre-Hearing ~~Scheduling~~Scheduling-Conference at a time convenient to all Parties.
- B. The Pre-Hearing Scheduling Conference ~~may~~will be held telephonically or electronically ~~(e.g. Skype, Facetime)~~. ~~The Pre-Hearing Scheduling Conference will not be transcribed unless a Party files a request for a court reporter at least seven (7) days before the Pre-Hearing Scheduling Conference. If any Party requests a transcription, the~~ The Clerk shall arrange for a court reporter to transcribe the conference at OCERS' expense, but the requesting Party shall be liable for reimbursing OCERS for the costs. ~~Any party may make an audio recording of the Pre-Hearing Scheduling Conference, and a copy of the recording must be filed with the Clerk. The Pre-Hearing Scheduling Conference~~



OCERS Board Policy

Adjudication Policy and Proposed Revisions to Administrative Review and Hearing Rules Policy
(Disability and Non-Disability Benefits)

~~shall not be considered a “confidential communication” under the California Invasion of Privacy Act, Cal. Penal Code § 632(e).~~

- C. At the Pre-Hearing ~~Scheduling~~ Conference, the Hearing Officer ~~shall~~will advise the Applicant (whether or not the Applicant ~~is~~has initiated the ~~Petitioner~~matter) of the following:
1. The Applicant has the right to be represented by ~~counsel~~an attorney;
 2. Any financial or personal interest that the Hearing Officer has in the case, other than the Hearing Officer’s contract with OCERS;
 3. The scope of the Hearing and the issues to be decided consistent with the constraints of Rule 3.E., above;
 - 3.4. The Hearing will be ~~a hearing de novo,~~ conducted as if the ~~original recommendation~~Disability Determination or ~~determination~~CEO Determination had not taken place. This means the Hearing Officer ~~or other fact finding body~~ will consider anew all of the evidence submitted ~~and defenses asserted~~, without relying on the past findings of ~~a court,~~ the Committee, the Board, ~~OCERS staff, or other fact finding body or the CEO;~~
 - 4.5. The Hearing Officer’s purpose in the process is to find the facts relevant to the Applicant’s request and provide an impartial recommendation to the Board;
 - 5.6. The Applicant has the burden of proof in establishing by a preponderance of the evidence ~~his/her~~the right to the benefit ~~s/he seeks~~sought;
 - 6.7. The Applicant must identify witnesses and other evidence when ~~fil~~ing ~~his/her~~the Pre-Hearing Statement, and that failure to include in the Pre-Hearing Statement the witnesses and other evidence ~~s/he intends~~they intend to rely on could mean that evidence will be excluded unless the Applicant shows that ~~s/he~~they could not have discovered the information earlier through the exercise of reasonable diligence;
 - 7.8. The timelines required under these ~~rules~~Rules for filing documents and for the ~~Administrative~~ Hearing, and the ~~result~~consequences of a failure to meet those deadlines, including that the Applicant’s case can be dismissed; ~~and~~
 - 8.—9. ~~That upon~~Upon the completion of the ~~Administrative~~ Hearing, the matter will be referred to the Board pursuant to these Rules. Upon action by the Board, the decision will be final for all purposes. There ~~shall~~will be no requirement for a further written decision from the Board or opportunity for the Board to reconsider its decision. Any ~~party~~Party aggrieved by the Board’s decision may petition the Superior Court for judicial review as provided by law. The time for any ~~party~~Party to seek judicial review ~~shall~~will be governed by the California Code of Civil Procedure Section 1094.6.



OCERS Board Policy
Adjudication Policy and Proposed Revisions to Administrative
Review and Hearing
Rules- Policy
(Disability and Non-Disability Benefits)

- D. At the Pre-Hearing Scheduling Conference, each Party shall:
1. Make a good faith effort to identify the witnesses, both expert and non-expert, that it intends to call;
 2. ~~Ensure that that the~~ Identify any witnesses it intends to call ~~either who cannot either speak and/or understand English to permit OCERS to arrange a translator for the witnesses in accordance with Rule 10.K.; or that the Party calling the witness is responsible for requesting a translator for the witnesses in accordance with Rule 10. J.;~~
 3. Indicate whether it will require an opposing party's Medical Witness to appear in person ~~to be cross-examined~~ at the Hearing;
 4. ~~If possible, set mutually convenient dates for any depositions.~~ Identify any witnesses the Party seeks to depose and, if possible, set mutually convenient dates for any depositions.
- E. ~~No later than the Pre-Hearing Conference, OCERS, through its counsel, will identify any issues related to eligibility of the Applicant such as timeliness of the Application or ineligibility due to termination for cause, which, if correct would moot the Hearing. The Hearing Officer will give the other Parties an opportunity to respond, and may continue the Pre-Hearing Conference to do so. If the Hearing Officer finds in favor of OCERS on the issue of eligibility, the Hearing process will be suspended and the issue of eligibility will be referred to the Board in accordance with Section 8 of the Policy and handled as if it were a CEO Determination.~~
- F. At the Pre-Hearing Scheduling Conference, the Hearing Officer shall set the date for the Hearing.
1. The Hearing Officer ~~shall will~~ confer with the Parties to determine a mutually agreeable date for the hearing ("Hearing Date"), ~~but in all cases the Hearing Date shall be set~~ as soon as reasonably practicable, but ~~in all cases the first Hearing Date will be set for~~ no later than six (6) months after the date of the Pre-Hearing Scheduling Conference. ~~The hearing will be held within the time frame provided by Rule 16. OCERS, at its expense, shall arrange for a court reporter and a room for the Hearing.~~
 2. Each Party shall provide a good faith estimate of the amount of time it anticipates the Hearing will last. As much as practicable, the Hearing shall continue from day-to-day until complete, and the Hearing Officer ~~shall will~~ schedule all Hearing Dates to which the Hearing Officer to which s/he anticipates the Hearing will be continued until complete.



OCERS Board Policy
Adjudication Policy and Proposed Revisions to Administrative
Review and Hearing
Rules Policy
(Disability and Non-Disability Benefits)

- G. Within five (5) days of the Pre-Hearing ~~Scheduling~~ Conference, the Clerk ~~shall file~~ will issue a ~~Notice of Administrative Hearing Dates~~ Scheduling Order, which ~~shall~~ will include the Hearing Date(s) ~~of the Hearing~~ and the dates that each Party's Pre-Hearing Statements are due.
- H. After the Pre-Hearing ~~Scheduling~~ Conference, the Hearing Officer may continue the Hearing Date only upon a showing of good cause, ~~as set forth in Rule 15,~~ below.
- I. If an Applicant fails to participate in the Pre-Hearing Conference, the Clerk will file and serve on all Parties and the Hearing Officer an Order to Show Cause why the matter should not be dismissed, and give the Applicant five (5) days to respond to the Hearing Officer. Other Parties are permitted, but not required to submit responses. Unless the Applicant shows good cause for the failure to participate in the Pre-Hearing Conference, the Hearing Officer will dismiss the Hearing, and the matter will proceed as if no Request for Administrative Hearing had been filed in accordance with Section 5 of the Policy.

If the Hearing Officer determines the Applicant has shown good cause, the Hearing Officer will direct the Clerk to reschedule the Pre-Hearing Conference and the Applicant will be liable to OCERS for any actual costs incurred by OCERS as a result of the delay.

Rule ~~89~~ 89. Pre-Hearing Statements

- A. The ~~Petitioner shall~~ Applicant will file a Pre-Hearing Statement of up to ten (10) pages no later than sixty (60) days prior to the first Hearing Date.
- B. Respondent ~~shall~~ will file a Pre-Hearing Statement of up to ten (10) pages no later than thirty (30) days prior to the first Hearing Date.
- C. Any Party may file supplemental Pre-Hearing Statements of up to five (5) pages no later than fourteen (14) days prior to the first Hearing Date ~~solely for the purpose of providing rebuttal information or reports to information or evidence included in another party's Pre-Hearing Statement.~~
- D. The Pre-~~hearing~~ Hearing Statements ~~shall~~ will include the following:
 - 1. A statement of the issues and contentions of the Party, and a brief summary of the evidence to be presented;
 - 2. A list and copies of any expert's reports, transcripts of depositions of any witnesses, and any other documentary evidence on which the Party will rely, if not already in the Administrative Record;



OCERS Board Policy

Adjudication Policy and Proposed Revisions to Administrative Review and Hearing Rules- Policy

(Disability and Non-Disability Benefits)

- 3. The names, addresses, and telephone numbers of any non-expert witnesses whose testimony the Party intends to ~~present~~call for oral testimony at the Hearing and a brief description of the content of that testimony;~~;~~ and
- 4. The names, addresses, and phone numbers of any expert witnesses whom the Party intends to call for oral testimony at the Hearing and a ~~synopsis~~brief description of the ~~expected~~content of that testimony.
- E. If ~~a Petitioner~~the Applicant disputes the effective date of the disability retirement, the ~~Petitioner~~Applicant will raise the effective date as an issue and ~~shall~~will state ~~Petitioner's~~Applicant's contention in ~~his/her~~the Pre-Hearing Statement.
- F. ~~If a Petitioner~~the Applicant fails to timely file a Pre-Hearing Statement, the Clerk ~~shall~~will file and serve on all Parties and the Hearing Officer an Order to Show Cause why the case should not be dismissed, and give the ~~Petitioner~~Applicant five (5) days to respond ~~to the Hearing Officer. Other Parties are permitted, but not required to submit responses.~~ Unless the ~~Petitioner~~Applicant shows good cause for the failure to timely file its Pre-Hearing Statement, the Hearing Officer ~~shall~~will dismiss ~~the Administrative~~ Hearing, and the matter ~~shall~~will proceed as if no Request for Administrative Hearing had been filed ~~in accordance with Section 5 of the Policy.~~
- F. If the ~~Petitioner shows~~Hearing Officer determines that the Applicant has shown good cause, the Hearing Officer may allow the Respondent additional time to file its Pre-Hearing Statement or may re-schedule the Hearing within the time requirements of Rule ~~16 and the Petitioner shall~~15. The Applicant will be liable to OCERS for any actual costs incurred by OCERS as a result of the delay.

Rule 910. Depositions and Subpoenas

- A. **Depositions:** Witness depositions may be taken by either Party ~~before~~in the presence of a certified ~~Court Reporter~~court reporter and ~~shall~~will be taken under oath or affirmation. The Party taking the deposition ~~shall~~will pay all associated costs. If any Party offers any portion of any deposition testimony into evidence at the Hearing, that Party ~~shall~~will provide a full copy of the deposition transcript to each adverse Party and the Hearing Officer free of charge.
- B. **Subpoenas and Related Fees/Costs:**
 - 1. OCERS ~~shall~~will issue a subpoena for the personal appearance of a witness at the Hearing or at a deposition, or for the production of documents (subpoena *duces tecum*), in conformance with California Government Code Section 31535, upon the request of any Party filed at least seven (7) days before the date the subpoena is to be issued. ~~The requesting Party shall~~Each request will state the witness's full name and the complete address of the witness's place of employment or residence. OCERS will issue the subpoena; however, the requesting Party will be obligated to serve the subpoena and pay all associated witness fees and costs of service and



OCERS Board Policy

Adjudication Policy and Proposed Revisions to Administrative Review and Hearing Rules Policy

(Disability and Non-Disability Benefits)

production. The Party requesting oral testimony of an expert witness ~~shall~~will in all cases be responsible for any expert witness fees.

2. Any fee disputes between a witness and the requesting Party is independent ~~from~~of any proceeding between the ~~Petitioner~~Applicant and OCERS. Those fee disputes ~~shall~~will be resolved by the requesting Party and the witness in the California courts, not in this forum. The Hearing Officer has no authority ~~or jurisdiction to hear evidence about, or to~~ decide any such dispute.

Rule 1011. Conduct of Hearings

- A. All Hearings ~~shall~~will be held at the ~~OCERS~~OCERS' office, ~~located at~~ 2223 East Wellington Avenue, Santa Ana, California 92701.
- B. The Clerk ~~shall~~will arrange for a court reporter to be ~~paid at OCERS's expense, present~~. Oral evidence ~~shall~~will be taken only on oath or affirmation administered by the Hearing Officer or the court reporter.
- C. A written medical report bearing the signature (including a digital signature) of the Medical Witness ~~shall~~will be admissible in evidence as the author's direct testimony, ~~provided on the express condition~~ that the adverse Party has had the opportunity to require the Medical Witness to be present and to cross-examine the witness at the Hearing, or to depose the witness and have the deposition transcript admitted into evidence.
- D. Each Party ~~shall~~will have the ~~rights~~right to call and examine witnesses; to introduce exhibits, including reports and depositions of medical witnesses; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut adverse evidence. If an Applicant does not testify by direct examination, OCERS may call and examine the Applicant ~~under cross-examination.~~
- E. The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence ~~shall~~will be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege ~~shall~~will be effective to the extent that they are otherwise required by statute to be recognized at the Hearing. Irrelevant and unduly repetitious evidence ~~shall~~will be excluded.
- F. Hearsay evidence may be used for the express purpose of supplementing or explaining other evidence but ~~shall~~will not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions. ~~This section shall~~will not be applicable to written medical reports



OCERS Board Policy

Adjudication Policy and Proposed Revisions to Administrative Review and Hearing Rules- Policy

(Disability and Non-Disability Benefits)

received into evidence pursuant to Rule 10.C. Every Hearing ~~shall~~will proceed as though each Party had made a standing objection to all inadmissible hearsay at the commencement of the Hearing.

~~G.~~ The court reporter will lodge with the Clerk the transcript of the Hearing within thirty (30) days of the final Hearing Date.

~~G.H.~~ The record shall~~will~~ be closed to new evidence at the conclusion of the final ~~day of~~Hearing Date. However, if subsequent to the ~~close of the final~~Hearing Date, a Party discovers or obtains new evidence that is relevant and not repetitive of other evidence already admitted, that Party may ~~file that~~lodge the new evidence with the Clerk and request that the Hearing Officer include it in the Administrative Record. The Hearing Officer may require the Parties to provide declarations and argument about inclusion of the new evidence. If, after showing of good cause as defined under Rule 10.I, the Hearing Officer allows inclusion of the new evidence, the opposing Party will be provided an opportunity to submit rebuttal evidence in accordance with Rule 10.I. No rebuttals of the rebuttal ~~shall~~will be permitted.

~~H.~~ The court reporter shall file the transcript of the Hearing within 30 days of the final day of the Hearing.

I. ~~Late Submission of Evidence.~~ No party~~Party~~ may submit a medical report or other documentary evidence, ~~nor shall any Party call a witness~~ not included in the Administrative Record or listed in its Pre-Hearing Statement except for purposes of impeachment, unless ~~it~~the Party demonstrates good cause. Likewise, no Party will be permitted to call a witness not listed in its Pre-Hearing Statement, except for purposes of impeachment, unless the Party demonstrates good cause. For purposes of this Rule, "good cause" means that the relevant evidence ~~that, in the exercise of reasonable diligence, or witness~~ could not have been previously produced ~~or identified even with the exercise of reasonable diligence.~~ The Party requesting submission of such evidence ~~shall~~or witness will file a written request prior to the Hearing, or if unable to do so in the exercise of reasonable diligence, ~~shall~~will make an oral request at the ~~Haring~~Hearing. The request ~~shall~~will state the reason the evidence ~~or witness~~ was not timely produced ~~or identified.~~ After providing a reasonable opportunity for each adverse Party to be heard, the Hearing Officer ~~shall~~will rule on such a request. If the evidence is allowed to be admitted into evidence, or the witness is allowed to testify, the Parties ~~shall~~will have the right to a continuance to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine the Medical Witness in order to comply with Rule 10.C. In no event, will good cause permit admission of medical reports or other documentary evidence relating to a new medical condition covered by Rule 3.E.

~~J.~~ Each Party will have the right to submit a closing oral argument at the conclusion of the Hearing.

~~J.K.~~ Use of Interpreter Services.

1. If an Applicant or a witness does not speak or understand English sufficiently to participate in the proceedings or provide testimony, an interpreter certified to provide interpretation



OCERS Board Policy

**~~Adjudication Policy and~~ Proposed Revisions to Administrative
Review and Hearing
Rules- Policy
(Disability and Non-Disability Benefits)**

services in administrative hearings ~~shall~~will be provided to that Applicant or witness at OCERS's expense. Notice that an Applicant or witness requires interpreting services ~~shall~~will be given to OCERS at the Pre-Hearing ~~Scheduling~~ Conference or be included in the Party's Pre-Hearing Statement. If a Party fails to provide such notice, then the witness may not be called unless good cause is shown, as set forth Rule 10.I.

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

~~Rule 11. Rule 12. Resolution of Disputes about Depositions and Conduct of Hearings~~

The Hearing Officer ~~shall~~will resolve disputes about depositions and ~~the~~ conduct of the Hearing. A request for resolution of a dispute ~~shall~~may be made ~~in person verbally~~ at a Pre-Hearing ~~Scheduling~~ Conference, at the Hearing, or ~~may be by written motion filed and may be supported by declarations, a memorandum of points and authorities and a proposed resolution. The adverse Party shall file its response within (10) days. Declarations, a copy of the deposition or with the Clerk at any time prior to the Hearing transcript, a memorandum of points and authorities and a proposed resolution may also accompany the response.~~ The Hearing Officer ~~may convene a conference (in person or by telephone) to hear the dispute and shall file its resolution of the dispute within thirty (30) days.~~, in the exercise of sound discretion, may permit written argument or briefs.

~~Rule 13. Rule 12. Closing Arguments Briefs~~

- A. Each Party ~~shall~~will have the right to submit a written closing brief. ~~oral or written argument. A waiver of argument at the Administrative Hearing shall not constitute a waiver of argument before the Board.~~ Unless the ~~parties~~Parties waive closing briefs, the ~~parties shall~~Parties will adhere to the following schedule for filing ~~written~~ closing briefs:
 1. ~~Petitioner's~~The Applicant's closing brief ~~shall~~will be filed within thirty days (30) of the date the transcript of the Hearing is ~~filed~~lodged with the Clerk.



OCERS Board Policy

Adjudication Policy and Proposed Revisions to Administrative Review and Hearing Rules- Policy

(Disability and Non-Disability Benefits)

2. Respondents' closing briefs ~~shall~~will be filed within ~~sixty (60)~~thirty days (30) days of the date the ~~transcript of Clerk serves the Applicant's closing brief on the Hearing is filed~~other Parties.
 3. ~~Petitioner's~~Applicant's reply brief ~~shall~~will be filed within fifteen (15) days of the date that ~~the Clerk serves~~ Respondents' closing briefs are filed on the Applicant.
- B. Each ~~party's~~Party's closing brief may be supported by facts in the record and citation to law. The ~~Petitioner's~~Applicant's and Respondents' closing ~~brief shall~~briefs may not exceed fifteen (15) pages and the reply brief ~~shall~~may not exceed ten (10) pages, unless the Hearing Officer, in the proper exercise of ~~his/her~~ discretion, determines at the Hearing that a longer limit is appropriate under the circumstances. The Hearing Officer may reject briefs exceeding the foregoing limits.

Rule 14. ~~Rule 13.~~ Hearing Officer's Findings of Fact and Recommended Decision

- A. **Time for Filing.** The Hearing Officer ~~shall~~will file ~~his/her~~the Proposed Findings of Fact and Recommended Decision with the Clerk within sixty (60) days of the date that the ~~Petitioner's~~Applicant's reply brief is due or, if the Parties waived closing briefs, within sixty (60) days of the date the transcript of the Hearing is ~~filed due (i.e., within 30 days of the final Hearing Date) or actually lodged (if earlier than 30 days after the final Hearing Date)~~.
- B. **Content of Proposed Findings of Fact and Recommended Decision.** The Hearing Officer's Proposed Findings of Fact and Recommended Decision ~~shall~~will include a summary of the following: (1) issues raised by the parties; (2) the testimony; (3) all other evidence received by the Hearing Officer; (4) a factual discussion of matters on which the Hearing Officer relied; (5) conclusions of law with citations to legal authority; and (6) recommended ~~action~~decision. The summary of the testimony, plus all other evidence received, ~~shall~~will be sufficient to satisfy the requirements of Government Code Section 31534(b).
- A. **Objections/Requests for Clarification.** Within twenty (20) days from the date that the Hearing Officer files the Proposed Findings of Fact and Recommended Decision with the Clerk, any Party may file with the Clerk objections or written requests for clarification to the Hearing Officer's Proposed Findings of Fact and Recommended Decision. The Clerk ~~shall refer~~will serve such objections or written requests for clarification on the Hearing Officer as well as the other Parties. The other Parties will then have twenty (20) days after service to the Board for its consideration the Hearing Officer's file a response with the Clerk. Within thirty (30) days after the later of: (a) the date that Hearing Officer receives the objections or requests for clarification or (b) an adverse party's response to such objections or requests for clarification, the Hearing Officer will:
- A. ~~Affirm the~~ Proposed Findings of Fact and Recommended Decision ~~and any related objections.~~



OCERS Board Policy
Adjudication Policy and Proposed Revisions to Administrative
Review and Hearing
Rules Policy
(Disability and Non-Disability Benefits)

- ~~B. The Clerk shall provide written notice to the Parties and the Hearing Officer of the time and date of the regular meeting where the matter will be placed on the Board's agenda for action. The Parties will have the opportunity to be heard at the Board meeting subject to appropriate time limitations.~~
- ~~C. After reviewing the foregoing documents, pursuant to Government Code Section 31534, the Board may:-~~
- ~~1. Approve and adopt the proposed findings, conclusions, and the recommendations of the Hearing Officer; as originally submitted without change, or~~
 - ~~2. Require a transcript or summary of all testimony, plus all other evidence received by the Hearing Officer. On receipt thereof, the Board shall take such action as in its opinion is indicated by such evidence; or~~
 - ~~3.1. Refer the matter back with or without instructions to the Hearing Officer for further proceedings; or~~
 - ~~4. Set the matter for hearing before itself. At Make such hearing, the Board shall hear and decide the matter de novo.~~
- ~~D.2. The Hearing Officer's changes to the Proposed Findings of Fact and Recommended Decision shall be sufficient to satisfy the requirements of Government Code Section 31534(b) and Rule 14.C.2. In any case where the Board makes a decision based on a transcript or summary of all testimony, plus other evidence received by the Hearing Officer, or where the Board sets the matter for Hearing before itself, the Board may approve and adopt the Proposed Findings of Fact and Recommended Decision of the Hearing Officer; otherwise, the Board shall prepare its Findings of Fact and Decision, either itself or through direction to staff with its approval as the Hearing Officer deems appropriate in light of the evidence, the objections or requests for clarification submitted by the Parties, and the responses thereto.~~
- ~~E. Upon action by the Board, the decision will be final for all purposes. There shall be no requirement for a further written decision from the Board or opportunity for the Board to reconsider its decision. Any party aggrieved by the Board's decision may petition the Superior Court for judicial review as provided by law. The time for any party to seek judicial review shall be governed by the California Code of Civil Procedure Section 1094.6.~~

The objections and/or requests for clarification and the response thereto and the Hearing Officer's final Proposed Findings of Fact and Recommended Decision following any objections, will be added to the Administrative Record and submitted for consideration by the Board.



OCERS Board Policy
Adjudication Policy and Proposed Revisions to Administrative
Review and Hearing
Rules- Policy
(Disability and Non-Disability Benefits)

Rule 15. Alteration of Time Requirements Continuances and Relief from Orders

- ~~A.~~ The Hearing Officer The deadlines and timelines established in these Rules are for the purpose of expediting the Hearing process as quickly as reasonably possible in order to give certainty to the Applicant in the retirement process. Therefore, delays, continuances, or relief should be granted for documented good cause (as defined hereafter) and any delay should be the absolute shortest necessary under the circumstances. If the Hearing Officer believes the request is primarily for the purpose of delay or caused by inattention or lack of preparation of a Party, the request should be denied.
- ~~A.B.~~ Upon the request of a Party, the Hearing Officer may amend or continue the time periods set forth in these rules, but only for good cause shown by the Party seeking the delay.
- ~~B.C.~~ Good cause for continuing a time period set forth in these Rules or established by the Hearing Officer shall purposes of this Rule will be only for the following reasons:
1. ~~the~~ The discovery of relevant evidence that, in the exercise of reasonable diligence, could not have been previously produced; (in which case there will only be one continuance permitted for each request);
 2. ~~the~~ The need to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine a Medical Witness; (in which case there will only be one continuance permitted for each request), as set forth under Rule 10.I; or
 3. ~~the~~ The illness or disability of ~~an~~ the Applicant, witness, attorney, or the Hearing Officer which was unknown to the person at the time of the Pre-Hearing ~~Scheduling~~ Scheduling-Conference (or other time at which the deadline was set) which makes it impossible for the person to participate in the Administrative Hearing process. Relief in these instances ~~shall~~ will be granted only if the person raises the request as soon as practicable, ~~and the~~ The Hearing Officer ~~shall~~ will consider a failure to timely seek relief a waiver by the person.
- ~~C.~~ Any ~~if a~~ continuance granted under this Rule shall be for as short a period as necessary is sought due to allow the person to participate in the process.
- ~~1.D.~~ If ~~an illness or disability affects~~ affecting an attorney who will not be able to participate in the process within a reasonably short period of time, then the continuance ~~shall only~~ will be for ~~such time as is necessary~~ a maximum of sixty (60) days to secure substitute counsel, and the Clerk will schedule a Pre-Hearing Conference pursuant to Rule 7.
- ~~2.E.~~ If ~~the a~~ continuance is sought due to an illness or disability ~~affects~~ affecting the Hearing Officer, and the Hearing Officer cannot proceed within the time period set forth in Rule ~~16~~ 17, below, the Hearing Officer ~~shall recuse him/herself~~ will be recused and the Clerk will appoint a new Hearing



OCERS Board Policy

Adjudication Policy and Proposed Revisions to Administrative Review and Hearing Rules Policy

(Disability and Non-Disability Benefits)

Officer ~~shall be appointed~~ pursuant to Rule 4 and schedule a new Pre-Hearing Conference pursuant to Rule 7.

~~D.F.~~ If good cause ~~exists~~ is found to exist to reschedule a Hearing, the Hearing Officer ~~may~~ will order that the Clerk schedule a Pre-Hearing ~~Scheduling~~ Conference ~~in no more than seven (7) days from the date of the Hearing Officer's order to re-set~~ and the Hearing Date ~~will be reset no more than ninety (90) days from the date of the Pre-Hearing Conference.~~

~~E.G.~~ Until such time as the matter has been referred to the Board, the Hearing Officer may, upon any terms as may be just, relieve a party ~~or his/her legal representative~~ from an order, or other action taken against ~~him/her~~ that Party through ~~his/her~~ mistake, inadvertence, surprise, or excusable neglect: on the part of the Party. Application for this relief ~~shall~~ will be made within a reasonable time ~~and once~~. Once the matter has been placed on the Board agenda, the Hearing Officer ~~shall~~ will no longer have jurisdiction.

Rule 16. Hearing and Action by the Board

- A. The Clerk will refer to the Board for its consideration the Hearing Officer's Proposed Findings of Fact and Recommended Decision as well as any related objections/requests for clarification, responses thereto, and the Hearing Officer's final Proposed Findings of Fact and Recommended Decision following any objections.
- B. The Clerk will place the matter on the agenda of a regular meeting of the Board which will be no later than two (2) calendar months after the later of the date the Clerk receives the Hearing Officer's Proposed Findings of Fact and Recommended Decision; or the date the Clerk receives the Hearing Officer's final Proposed Findings of Fact and Recommended Decision following any objections or requests for clarification from the Parties.
- C. The Clerk will provide written notice to the Parties and the Hearing Officer of the time and date of the regular meeting where the matter will be placed on the Board's agenda for action. The Parties will have the opportunity to be heard at the Board meeting subject to appropriate time limitations as set out in the OCERS By-laws.
- D. Pursuant to Government Code Section 31534, after reviewing the Hearing Officer's Proposed Findings of Fact and Recommended Decision and any related objections/requests for clarification, the Board may:
 1. Approve and adopt the Proposed Findings of Fact and Recommended Decision of the Hearing Officer; or
 2. Require a transcript or summary of all testimony, plus all other evidence received by the Hearing Officer; and upon receipt thereof, take such action as the Board in its opinion is indicated by such evidence; or



OCERS Board Policy
Adjudication Policy and Proposed Revisions to Administrative
Review and Hearing
Rules- Policy
(Disability and Non-Disability Benefits)

- 3. Refer the matter back with or without instructions to the Hearing Officer for further proceedings; or
- 4. Set the matter for hearing before itself. At such hearing, the Board will hear and decide the matter.
- E. The Hearing Officer's Proposed Findings of Fact and Recommended Decision (and responses to objections/requests for clarification) will be sufficient to satisfy the requirements of Government Code Section 31534(b) and Rule 15.D.2, above.
- F. In any case where the Board makes a decision under Rule 15.D.2 or 15.D.3, above, the Board may approve and adopt the Proposed Findings of Fact and Recommended Decision of the Hearing Officer or prepare its own Findings of Fact and Decision, either itself or through direction to Staff with its approval.
- G. Upon action by the Board, the decision will be final for all purposes. There will be no requirement for a further written decision from the Board or opportunity for the Board to reconsider its decision. Any Party aggrieved by the Board's decision may petition the Superior Court for judicial review as provided by law. The time for any party to seek judicial review will be governed by the California Code of Civil Procedure Section 1094.6. The Clerk will notify the Applicant (and attorney), and the Employer via First Class Mail to the address set out in the Application, of the Board's final action. Notice will be effective upon deposit in the US Mail.

Rule 17. Dismissal for Failure to Pursue the Administrative Review and Hearing

Except as otherwise provided, if as a result of an Applicant's failure to pursue ~~his/her~~the case or to comply with any of these Rules, ~~the Applicant's Request for Administrative Hearing (or Board referral)~~a Hearing is not ~~heard~~conducted within one year after the ~~Applicant files~~filing of a Request for Administrative Hearing (or the Board's referral of a case to a Hearing Officer), the Hearing Officer ~~shall~~will dismiss the ~~Administrative~~ Hearing and the matter ~~shall~~will proceed as if no Request for Administrative Review or Hearing had been filed in accordance with Section 5 of the Policy.



OCERS Board Policy
~~Adjudication Policy and~~ Proposed Revisions to Administrative
Review and Hearing
Rules Policy
(Disability and Non-Disability Benefits)

Secretary's Certificate

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

Steve Delaney, Secretary of the Board

Date



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

1. Intent

The Board of Retirement (“Board”) of the Orange County Employees Retirement System (“OCERS”) intends that this Administrative Review and Hearing Policy (“Policy”) will apply to and govern OCERS’ Administrative Review and Administrative Hearing processes for Disability Determinations, Benefit Determinations and other final administrative orders or decisions of the Board. Any person who is entitled to a hearing and who does not request one under this Policy will be deemed to have waived the right to a hearing.

Nothing in this Policy will be deemed an acknowledgement by OCERS that any procedure set forth herein, including an administrative hearing, is required by law. The Board retains the right to amend this Policy or vary the process set forth in this Policy in any manner consistent with the law.

2. Definitions

The following terms will have the meanings set forth below.

Administrative Hearing; Hearing: The proceedings before a Hearing Officer or the Board on the merits of a particular Request for Administrative Hearing and related Application.

Administrative Record: The documents and other records relied upon by Staff or a fact-finding body in an Administrative Review or Hearing conducted pursuant to this Policy, including any documents submitted on behalf of an Applicant, documents prepared by OCERS or by independent sources that are received by OCERS, any transcripts or recordings of testimony, or any other documents relevant to an Application.

For purposes of any proceeding following an Administrative Review or Hearing, the Administrative Record also includes written correspondence, Party Pre-Hearing Statements, the Hearing Officer’s Proposed Findings of Fact and Recommended Decision, Party objections, hearing transcripts, and other documents relevant to an Application.

Administrative Review: The process described in this Policy (including the Rules) by which a Party may seek an administrative review of a Benefit Determination, CEO Determination or Disability Determination or any other final administrative order or decision of the Board.

Applicant; Member: A member of OCERS, or a person or other entity on behalf of a member of OCERS (including but not limited to the member’s surviving spouse), or any person who claims an interest in the pension or allowance of an OCERS member who files an Application or who seeks Administrative Review of a Benefit Determination.

Application: The submittal, including any amendments thereto, filed with OCERS by or on behalf of an Applicant for either: (i) a disability retirement; or (ii) a service retirement.

Benefit Determination: A determination made by Staff in connection with (i) a service retirement Application; (ii) a disability retirement Application with the exception of a Disability Determination; or (iii) an Applicant’s benefit (e.g., calculation of the amount of the benefit, benefit effective date, reciprocity determinations).



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

CEO Determination: A Benefit Determination made by the CEO or the CEO's designee.

Clerk, Clerk to the Hearing Officers. A person or persons designated by the OCERS General Counsel or their designee to fulfill the duties of providing administrative assistance to the Hearing Officers appointed by OCERS.

Consolidation/Consolidated Review or Hearings. Where two or more Requests for Administrative Review or Hearing that have common issues of fact or law are consolidated for Administrative Review or Hearing pursuant to Section 8 of this Policy or Rule 7 of the Rules.

Days: All days are calendar days, unless otherwise provided herein.

Disability Committee, Committee: A committee of the Board, chartered by the Board to review Applications for disability retirement and make recommendations to the Board with respect to Disability Determinations.

Disability Determination: The action taken by the Board in response to a disability retirement Application pursuant to Government Code Section 31724, limited to the following findings: (1) whether the Applicant is permanently incapacitated for performance of their duties in the service; (2) whether the disability was service-connected; and (3) the effective date of the disability retirement. Any other determinations affecting a disability retirement Application, including, but not limited to, timeliness of the Application, ineligibility due to termination for cause, and applicability of a disability offset, are Benefit Determinations pursuant to this Policy and subject to a CEO Determination.

Employer: The public agency who employed the OCERS member whose benefits are at issue in any given matter. The Employer is a Party to an Administrative Review but does not need to participate in an Administrative Review or Hearing. If the Employer initiates an Administrative Review or Hearing, it will act in the role of the Applicant with the corresponding burden of proof.

Expedited Administrative Hearing: An alternative administrative Hearing process, set forth in Rule 6 of the Rules.

Hearing Officer: A referee appointed pursuant to Government Code section 31533 who is either a member of the State Bar selected under the OCERS Hearing Officer Selection and Retention Policy, or a member of the Board.

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

Party or Parties: OCERS, an Applicant who seeks an Administrative Review or Hearing under this Policy, the Employer, and any other person who may be affected by the Board's decision and who participates in the Administrative Review or Hearing.

Pre-Hearing Statements: Statements filed by the Parties pursuant to Rule 9 of the Rules.

Proposed Findings of Fact and Recommended Decision: The recommendation of the Hearing Officer to the Board, as set forth in Rule 14 of the Rules.



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

Request for Administrative Review or Request for Administrative Hearing: The document filed by the Applicant (or in limited cases, the Employer) to seek a review of a decision of the Committee or Staff and initiate the Administrative Review or Administrative Hearing process. Where the Applicant requests a Hearing or the Board refers the matter to a Hearing, the document will be referred to as a Request for Administrative Hearing. Where the Applicant seeks review of a Benefit Determination or CEO Determination, the document will be referred to as a Request for Administrative Review.

Respondent: OCERS will always be the primary Respondent. The Employer may, but is not required to respond to the request for Administrative Review or Hearing. Where the Employer initiates a review or hearing, the Applicant may join as a Respondent.

Rules: The "Orange County Employees Retirement System Administrative Rules," attached as an appendix to and made part of this Policy.

Staff: OCERS staff members other than the CEO and the CEO's designee.

3. Disability Determination Process

For Disability Determinations:

- A. Staff will investigate all disability retirement Applications to determine (i) whether the Applicant is permanently incapacitated from the performance of their usual duties; (ii) whether the incapacity arose out of and in the course of employment, and (iii) the appropriate effective date of any disability retirement allowance. In undertaking this investigation, Staff will have the discretion, based on Staff's review of the Application (including the Applicant's treating physicians' medical reports) to determine whether or not to seek further medical examination of the Applicant, expert medical advice, or expert review of Applicant's medical records. Upon completion of the investigation, Staff will make a recommendation to the Committee regarding permanent incapacity, service connection, and effective date.
- B. The Committee will review the disability retirement Application and the Staff recommendation under subsection A, above, at a duly-noticed meeting of the Committee. Staff will give Applicant (and the Applicant's attorney, if any) and the Employer notice of the date and time of the Committee meeting at which they will have the opportunity to be heard by the Committee.
- C. After the Committee reviews the disability retirement Application, the Committee will determine whether to recommend that the Board grant or deny the Application, in full or in part. Staff will notify the Applicant (and Applicant's attorney), and the Employer via First Class Mail to the address set out in the Application (in the case of the Applicant), of the Committee's recommendation. They will also be provided with instructions on how to request an Administrative Hearing to challenge any part of the Committee's recommendation. Notice will be effective upon deposit in the US Mail.
- D. In the event the Committee recommends that the Application be denied in full or in part, the Applicant will have 90 days from the date of the notice required by 3.C., above, to file a Request for Administrative Hearing with the Clerk, as set forth in the Rules. In the event the Committee recommends the Application be granted in full, any other Party including the Employer aggrieved



OCERS Board Policy

Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

by the recommendation will have ten days from the date of the notice required by 3.C., above, to file a written Request for Administrative Hearing as set forth in the Rules.

- E. Where the Committee recommends (i) a grant of a non-service connected disability retirement, but denial of a service-connected disability retirement; or (ii) a grant of either a service-connected or non-service connected disability retirement and the Applicant disputes the Committee's recommendation regarding the effective date of disability, the Applicant may request a Hearing on the denial of a service-connected disability or the effective date of disability. In such cases, the issues not disputed will not be at issue in the Hearing. Staff will forward those non-disputed issues to the Board for final action.
- F. If no Request for Administrative Hearing is filed within the time limit set forth in 3.D., above, the Committee's recommendation will be placed on the consent agenda at the next regularly scheduled meeting of the Board for action in accordance with Section 5, below.

4. Benefit Determination Review Process

For Benefit Determinations:

- A. Staff will notify the Member of the Benefit Determination, and the Member may request a CEO Determination within 90 days of the date of the notice of the Benefit Determination. The CEO Determination will be in the form of a written review completed and returned to the Member within 90 days of receipt of the request for a CEO Determination, and will include a synopsis of the Member's request and citation to any authority relied upon by the CEO in making the CEO Determination. In addition, the written review will include instructions regarding how the Member may request review of the CEO Determination by the Board.
- B. The Member will have 90 days from the date of the notice of the CEO Determination provided in 4.A., above, to file a Request for Administrative Review. If no timely Request for Administrative Review is filed, the CEO Determination will be final.

5. Board Action on Disability Determination Upon Recommendation from the Disability Committee

- A. Consent Agenda.** When there has been no timely Request for an Administrative Hearing of the Disability Committee's recommendation under Section 3, above, the Board will consider the Committee's recommendation on the Board's consent agenda.
- B. Removing Items from Consent Agenda/Action.** Any member of the Board may remove an item from the consent agenda to be discussed and voted on separately. If any Board member removes a Disability Determination from the consent agenda, the item will be considered by the Board in closed session as set forth in Section 7, below.
- C. Action on Recommendations from the Disability Committee.** After consideration by the Board, the Board will either (i) adopt the recommendation of the Disability Committee; or (ii) refer the



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

matter to a Hearing Officer for a Hearing (unless a Hearing is waived by the Applicant, in which case the Committee recommendation will be adopted).

6. Board Action on Disability Determinations After Hearing.

Following an administrative Hearing and the Board's receipt of the Hearing Officer's Proposed Findings of Fact and Recommended Decision, the Board will consider the matter at a duly-noticed meeting of the Board and take action in accordance with Rule 16 of the Rules.

7. Closed Sessions for Disability Determinations

Except for matters on the Disability Committee's or Board's consent agenda, the Disability Committee or Board will adjourn to a closed session, pursuant to Cal. Gov't Code § 54957(b), to discuss a recommended Disability Determination in connection with an Application for disability retirement, or a Hearing Officer's Proposed Findings of Fact and Recommended Decision in connection with a Disability Determination, unless the Applicant requests the matter be heard in open session.

- A. Closed Session With the Parties Present.** The Committee or the Board will conduct any discussion of an Application, including instances where the Board convenes and conducts its own Hearing, in closed session. Attendance at the closed session will be limited to 1) the Applicant; 2) counsel for the Applicant as well as any individual deemed by the Board Chair to be essential to the Applicant in the matter; 3) any OCERS disability Staff members and/or attorneys acting as advocates for the Staff recommendation or Committee recommendation; 4) Staff necessary to facilitate the Hearing (including the Clerk of the Board and IT Staff to provide technical support); 5) the CEO; 6) the OCERS General Counsel (or their designee); and 7) outside counsel to the Board. Additionally, in the event the Board conducts its own hearing, witnesses called to present testimony may be permitted to attend the closed session to do so.

- B. Closed Session Without Parties.** Before or after the Committee's or Board's consideration of a matter in a closed session under A, above, the Committee or the Board may adjourn to a closed session with only the CEO and the OCERS General Counsel (or their designee) to provide legal advice to the Committee or the Board in connection with the merits of the case and the Board's legal obligations.

8. Board Action on CEO Determination.

- A. Board Review of CEO Determinations.** In the case of a timely Request for Administrative Review of a CEO Determination, the Board will consider the matter at a duly noticed regular meeting of the Board. Staff will make a recommendation to the Board regarding the issues raised in the CEO Determination and the Applicant (or the Applicant's attorney) will have the opportunity to be heard.

- B. Board's Options.** At the meeting, the Board may choose to hear and conduct the review at that meeting, continue it to a later meeting, or refer the matter to a Hearing Officer for a Hearing to be conducted pursuant to the Rules. If the Board chooses to hear and determine the matter, the



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

Board’s decision will be final. If the Board chooses to refer the matter to a Hearing, the Board will identify the factual and legal issues to be considered by the Hearing Officer.

- C. **Consolidation of Reviews.** When review by the Board of two or more CEO Determinations involves common questions of law or fact, the Board may order a Consolidated Review or Consolidated Hearing of the matters. Consolidation may be ordered for limited purposes or for all purposes.

In determining whether to order a Consolidation of the CEO Determinations, the Board will consider all relevant factors, including, but not limited to, the following:

- i. the complexity of the issues involved;
- ii. the potential prejudice to any party, including whether a Consolidation would result in undue delay;
- iii. the avoidance of duplicate or inconsistent orders; and
- iv. the efficient utilization of OCERS resources.

9. Board Action on CEO Determination After a Hearing.

In the case of a CEO Determination referred by the Board to a Hearing, the Board will consider the Hearing Officer’s Proposed Findings of Fact and Recommended Decision at a duly-noticed meeting of the Board in accordance with Rule 16 of the Rules. The Board may adopt the Hearing Officer’s recommendations or make its own determination based on the Administrative Record and the Board’s decision will be final.

10. Policy Review

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

11. Policy History

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

Secretary’s Certificate

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

Steve Delaney
Secretary of the Board

Date



OCERS Board Policy
Administrative Review and Hearing Policy
(Disability and Non-Disability Benefits)

Appendix - Administrative Rules

Rule 1. Definitions

All capitalized terms contained within these Rules will have the meaning set forth in Section 2 of the OCERS Administrative Review and Hearing Policy.

Rule 2. Filing of Documents

A. Administrative Review and Hearing Filing Procedures

1. The "Administrative Hearing Filing Procedures" sets forth the procedures by which the Parties and Hearing Officer will file documents, the Clerk will accept filing of documents, and the Clerk will serve documents on the Parties and the Hearing Officer.
2. The Administrative Hearing Filing Procedures may include forms that the Parties are permitted or required to use in connection with a Hearing.
3. The Clerk will provide the Applicant with a copy of the Administrative Hearing Filing Procedures upon the filing of a Request for Administrative Hearing.

B. Filing of Documents

1. All documents required or permitted to be filed by any Party in connection with a Hearing will be filed with the Clerk.
2. Filing of documents will be done electronically in conformance with the Administrative Hearing Filing Procedures, except that an Applicant (and only the Applicant) may opt to file documents in person, by US Mail or electronically. Applicants that opt for filing documents by US Mail, must inform the Clerk of this in writing. The Clerk will then inform all other Parties and the Hearing Officer that the Applicant has opted to file documents by US Mail.
 - i. Documents filed in person will be deemed filed on the day received by OCERS.
 - ii. Documents filed by US Mail will be deemed filed on the date post-marked on the envelope containing the documents.
 - iii. Documents filed electronically will be deemed filed on the date electronically received by the Clerk.

C. Service of Documents

1. The Clerk will serve on all Parties and the Hearing Officer any documents filed by a Party or the Hearing Officer within one (1) business day of receipt of the documents by the Clerk.
2. Service by the Clerk will be electronic, in conformance with the Administrative Hearing Filing Procedures, except where the Applicant has opted to file by US Mail pursuant to B.2., above, in which case the Clerk will serve documents on the Applicant by US Mail. In that case, the Applicant will be deemed to have received service three (3) days after the date the Clerk



OCERS Board Policy

Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

deposits the document in the US Mail. Electronic service will be deemed served upon electronic transmission by the Clerk.

Rule 3. Administrative Hearing Request, Scope, and Settlement

- A. Request for Administrative Hearing.** A written Request for Administrative Hearing must be filed with the Clerk within the time frame set forth in Sections 3 and 4 of the Policy. The Request should include a short and plain statement of the grounds for the request.
- B. Referral from the Board.** In the event the Board refers a matter to a Hearing Officer for a Hearing (pursuant to Sections 5.C. or 8 of the Policy), the referral from the Board will be considered the Request for Administrative Hearing, but for all procedural purposes under these Rules, the request will be deemed to have been filed by the Applicant.
- C. Permitted Representatives, Attorneys.** Any Party is entitled, at the Party's expense, to be represented by an attorney at any stage of the proceedings. Such attorney must be a current, active member of the California State Bar in good standing. A Party must file with the Clerk a written notice of the hiring, changing, or dismissal of an attorney. Absent such written designation, OCERS is not obligated to recognize any attorney or other individual claiming to represent a Party.
- D. Burden of Proof.** The Applicant will have the burden of proof by a preponderance of the evidence to establish the right to the benefit sought. Where the Employer filed the Request for Administrative Hearing under Section 3.D. of the Policy, the Employer will have the burden of proof by a preponderance of the evidence to demonstrate that the Committee's recommendation should be overturned, and the Employer will be bound by all of the procedural rules applicable to the Applicant under these Rules.
- E. Scope of Hearing.**
 - 1. The Hearing on a Disability Determination will only address the issues of permanent incapacity, service connection, and effective date. All other issues related to a disability retirement Application are subject to the Benefit Determination process under Sections 4 or 8 of the Policy.
 - 2. In accordance with Section 8 of the Policy, the Hearing on a CEO Determination will only address the factual and legal issues that are identified by the Board for consideration by the Hearing Officer.
 - 3. Except as set forth in these Rules, the Hearing Officer will not make a finding or recommendation on any issue that was not raised in the Applicant's Request for Administrative Hearing or included in the Board's referral of the matter to a Hearing. Likewise, the Hearing Officer will not consider any evidence or make a finding or recommendation on any medical condition not included in the disability retirement Application or that was not previously evaluated by Staff, except as provided in subsection 4, below.



OCERS Board Policy

Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

4. If at any time during the Hearing process the Applicant either (i) alleges an injury or disease not listed in the disability retirement Application or (ii) raises an issue that was not previously presented to the Committee, the Hearing process will be suspended by the Hearing Officer and the Application will be treated as an amended Application. The amended Application will be referred back to Staff to be processed. If the Committee subsequently recommends a denial of the amended Application, the matter will be returned to the Hearing Officer who will consider all the medical conditions (those raised in the Application and the amended Application). A new Hearing Date, Pre-Hearing Conference and deadlines for Pre-Hearing Statements will be set in accordance with Rule 8.
- F. **Settlement.** If at any time during the Hearing process it becomes apparent to Staff that a different result is appropriate, Staff may suspend the Hearing and refer a settlement to the Board. If the Board approves a settlement with the Applicant, the Hearing will be dismissed.

Rule 4. Assignment of Hearing Officers

- A. **Assignment of Hearing Officer.** Hearing Officers are selected and placed on the panel pursuant to OCERS' Hearing Officer Selection and Retention Policy. As matters are referred to a Hearing, the Clerk will assign the Hearing Officer on a rotational basis, while ensuring that, to the extent possible, each Hearing Officer on the panel is assigned an equal number of cases. Within fourteen (14) days after the Applicant files a Request for Administrative Hearing, the Clerk will serve notice to all Parties, including the Hearing Officer, indicating the name and address of the Hearing Officer to whom the matter is assigned, which notice will include information regarding the ability to challenge a Hearing Officer as set forth below.
- B. **Challenge/Removal of Hearing Officer.** A Party may object to a Hearing Officer in accordance with the following procedures.
 1. **Peremptory Challenge:** Any Party other than OCERS is entitled to one peremptory (without cause) challenge to the assignment of the Hearing Officer. The challenge must be filed with the Clerk within fourteen (14) days of the date of the notice assigning the Hearing Officer. If the Applicant opts for service by US Mail, the time period for filing a challenge will be extended by three (3) days. In the event of a peremptory challenge, the Clerk will re-assign the case to another Hearing Officer selected in the same manner as the first Hearing Officer. In the event no challenge is made to a proposed Hearing Officer, or after the exhaustion of all challenges, the Clerk will notify the Parties that the matter will proceed with the assigned Hearing Officer.
 2. **Removal for Cause:** Any Party, including OCERS, may challenge a Hearing Officer for cause by filing a request at any time, with supporting declarations made under penalty of perjury and any other evidence upon which the Party is relying. Any opposing Party will have fourteen (14) days from the Clerk's service of the challenge for cause on all Parties to file a response to the request to remove for cause. The Clerk will then randomly assign the removal request to another Hearing Officer, who will consider all evidence and arguments for and against removal of the Hearing Officer and file a ruling with the Clerk within thirty (30) days from assignment. Cause for removal will be limited to demonstrated bias against a Party or counsel based on a



OCERS Board Policy

Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

personal or financial relationship (other than the Hearing Officer's contract with OCERS) that would cause a reasonable person to doubt the Hearing Officer's ability to render an impartial decision. If the request for removal is granted, the Clerk will re-assign the case to another Hearing Officer (other than the Hearing Officer who heard the challenge) in the same fashion as selection of the first Hearing Officer.

3. **Removal Due to Unforeseen Circumstances:** If the service of a Hearing Officer is discontinued due to unforeseen circumstances, such as death, illness, or termination with or without cause, the Parties other than OCERS are entitled to a peremptory challenge to the new Hearing Officer in accordance with subsection B.1 of this Rule.
 4. **Assignment After Removal Due to Unforeseen Circumstances.** If the service of a Hearing Officer is discontinued due to unforeseen circumstances, such as death, illness, or termination with or without cause, any hearing date will be vacated and the Clerk will assign a new Hearing Officer pursuant to Rule 4.A above and schedule a new Pre-Hearing Conference pursuant to Rule 7, below.
- C. **Recusal of Hearing Officer.** If at any time the Hearing Officer determines that there is cause for their recusal, the Hearing Officer will immediately file with the Clerk a statement of recusal, and the Clerk will reassign the case pursuant to Rule 4.A.

Rule 5. Preparation and Service of Administrative Record

Within sixty (60) days of the filing of a Request for Administrative Hearing, the Clerk will assemble and serve on the Hearing Officer and each Party the initial Administrative Record. Except as provided in Rule 6, a Party may object to the admission of items into evidence or seek to admit additional information into evidence as set forth in these Rules, and the Hearing Officer will decide the admissibility of all evidence.

Rule 6. Expedited Administrative Hearing

- A. **Provisions for Expedited Administrative Hearing.** Expedited Administrative Hearing is an irrevocable waiver of the Applicant's right to the process described in Rules 7 through 12. The goal of the Expedited Administrative Hearing process is to complete the Hearing in less than six months. The Hearing Officer's Proposed Findings of Fact and Recommended Decision will be based only on the Administrative Record and written arguments without in-person testimony or argument.
- B. **Availability of Expedited Administrative Hearing.**
 1. An Expedited Administrative Hearing is only available for those cases that OCERS General Counsel determines the process is appropriate.
 2. The determination as to whether Expedited Administrative Hearing is appropriate will be made in the sole discretion of the OCERS General Counsel, on a case-by-case basis. In doing so, the General Counsel will consider whether: there are any material facts in dispute; whether the introduction of testamentary evidence is likely to clarify the issues; whether there is controlling



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

legal authority; and whether the Applicant's condition is such that time is of the essence in completing the Hearing process.

3. In the event the General Counsel determines that a matter is appropriate for Expedited Administrative Hearing, the Clerk will notify the Applicant of this determination and the Applicant's right to accept or reject the Expedited Administrative Hearing along with a form in which to do so. The Applicant may file the acceptance or rejection any time prior to the Clerk's service of the Administrative Record on the Parties.

C. **Timeline.** The Expedited Administrative Hearing will be conducted according to the following timeline.

1. Within fourteen (14) days of the date the Clerk serves the Administrative Record in accordance with Rule 5, each party may lodge with the Clerk any additional written evidence that it seeks to rely on in addition to the Administrative Record.
2. Within thirty (30) days of the date the Clerk serves the Administrative Record, the Applicant will file a Statement of Issues of not more than five (5) pages setting forth the Applicant's contentions.
3. Within fourteen (14) days after the Clerk serves Appellant's Statement of Issues on Respondent, Respondent will file a Statement of Issues of not more than five (5) pages setting forth its contentions.
4. Within sixty (60) days from the date Respondent files its Statement of Issues, the Hearing Officer will file the Proposed Findings of Fact and Recommended Decision in conformance with Rule 14. Notwithstanding the timeframes for objections set out in Rule 14C, objections will be filed within 10 days rather than 20 days, and responses thereto likewise will be filed within 10 days rather than 20 days.

Rule 7. Consolidation of Hearings

In addition to Consolidation by the Board of two or more cases pursuant to Section 8.C. of the Policy, cases may be Consolidated in accordance with this Rule 7, and this Rule 7 will apply to all such Consolidations.

- A. When two or more pending Requests for an Administrative Hearing involve common questions of law or fact, a Hearing Officer, upon request by OCERS or the Applicant, may order the Hearings Consolidated. Consolidation may be ordered for limited purposes or for all purposes.

In determining whether to order Consolidated Hearings, the Hearing Officer will consider all relevant factors, including but not limited to the following:

1. the complexity of the issues involved;
2. the potential prejudice to any Party, including whether granting Consolidation would unduly delay the resolution of any of the matters involved;
3. the avoidance of duplicate or inconsistent orders; and



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

4. the efficient utilization of OCERS' resources.
- B. Any Party may file a request with the Clerk to Consolidate two or more pending Hearings irrespective of the procedural stages of the affected Hearings, which request will be served by the Clerk on all Parties and the Hearing Officers.
- C. In all cases, the request for Consolidation will be referred to the Hearing Officer first assigned to any of the Hearings. The Hearing Officer may decide the matter on written submittals, or may convene the Parties, either in-person or electronically, to hear further argument on the request for Consolidation. Failure to timely oppose Consolidation will constitute a waiver of objection to an order of Consolidation.
- D. If the Hearing Officer orders the Consolidation, all affected Hearings will be transferred to that Hearing Officer.
- E. Upon Consolidation, all hearing dates will be vacated and the Clerk will schedule a new Pre-Hearing Conference for the Consolidated Hearings. Following the Hearing, the Hearing Officer will have the option of preparing separate Proposed Findings of Fact and Recommended Decisions for each matter that was Consolidated or a single Proposed Findings of Fact and Recommended Decision.
- F. Nothing contained herein will prohibit the Parties from stipulating to Consolidated Hearings. In the event a stipulation is reached, the Parties will file a written stipulation with Clerk, signed by all Parties. The Clerk will then assign the Consolidated Hearings to the first assigned Hearing Officer.

Rule 8. Pre-Hearing Conference

- A. The Clerk will schedule a Pre-Hearing Conference to be held within thirty (30) days of the service of the Administrative Record on the Parties. The Clerk will use best efforts to schedule the Pre-Hearing Conference at a time convenient to all Parties.
- B. The Pre-Hearing Conference will be held telephonically or electronically. The Clerk will arrange for a court reporter to transcribe the conference at OCERS' expense.
- C. At the Pre-Hearing Conference, the Hearing Officer will advise the Applicant (whether or not the Applicant has initiated the matter) of the following:
 1. The Applicant has the right to be represented by an attorney;
 2. Any financial or personal interest that the Hearing Officer has in the case, other than the Hearing Officer's contract with OCERS;
 3. The scope of the Hearing and the issues to be decided consistent with the constraints of Rule 3.E., above;
 4. The Hearing will be conducted as if the Disability Determination or CEO Determination had not taken place. This means the Hearing Officer will consider anew all of the evidence submitted and defenses asserted, without relying on the past findings of the Committee, the Board or the CEO;



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

5. The Hearing Officer's purpose in the process is to find the facts relevant to the Applicant's request and provide an impartial recommendation to the Board;
 6. The Applicant has the burden of proof in establishing by a preponderance of the evidence the right to the benefit sought;
 7. The Applicant must identify witnesses and other evidence when filing the Pre-Hearing Statement, and that failure to include in the Pre-Hearing Statement the witnesses and other evidence they intend to rely on could mean that evidence will be excluded unless the Applicant shows that they could not have discovered the information earlier through the exercise of reasonable diligence;
 8. The timelines required under these Rules for filing documents and for the Hearing, and the consequences of a failure to meet those deadlines, including that the Applicant's case can be dismissed; and
 9. Upon the completion of the Hearing, the matter will be referred to the Board pursuant to these Rules. Upon action by the Board, the decision will be final for all purposes. There will be no requirement for a further written decision from the Board or opportunity for the Board to reconsider its decision. Any Party aggrieved by the Board's decision may petition the Superior Court for judicial review as provided by law. The time for any Party to seek judicial review will be governed by the California Code of Civil Procedure Section 1094.6.
- D. At the Pre-Hearing Conference, each Party will:
1. Make a good faith effort to identify the witnesses, both expert and non-expert, that it intends to call;
 2. Identify any witnesses it intends to call who cannot either speak or understand English to permit OCERS to arrange a translator for the witnesses in accordance with Rule 10.K.;
 3. Indicate whether it will require an opposing Party's Medical Witness to appear in person at the Hearing;
 4. Identify any witnesses the Party seeks to depose and, if possible, set mutually convenient dates for any depositions.
- E. No later than the Pre-Hearing Conference, OCERS, through its counsel, will identify any issues related to eligibility of the Applicant such as timeliness of the Application or ineligibility due to termination for cause, which, if correct would moot the Hearing. The Hearing Officer will give the other Parties an opportunity to respond, and may continue the Pre-Hearing Conference to do so. If the Hearing Officer finds in favor of OCERS on the issue of eligibility, the Hearing process will be



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

suspended and the issue of eligibility will be referred to the Board in accordance with Section 8 of the Policy and handled as if it were a CEO Determination.

- F. At the Pre-Hearing Conference, the Hearing Officer will set the date for the Hearing.
 - 1. The Hearing Officer will confer with the Parties to determine a mutually agreeable date for the Hearing ("Hearing Date"), as soon as reasonably practicable, but in all cases the first Hearing Date will be set no later than six (6) months after the date of the Pre-Hearing Conference.
 - 2. Each Party will provide a good faith estimate of the amount of time it anticipates the Hearing will last. As much as practicable, the Hearing will continue from day-to-day until complete, and the Hearing Officer will schedule all Hearing Dates to which the Hearing Officer anticipates the Hearing will be continued until complete.
- G. Within five (5) days of the Pre-Hearing Conference, the Clerk will issue a Scheduling Order, which will include the Hearing Date(s) and the dates that each Party's Pre-Hearing Statements are due.
- H. After the Pre-Hearing Conference, the Hearing Officer may continue the Hearing Date only upon a showing of good cause, as set forth in Rule 15 below.
- I. If an Applicant fails to participate in the Pre-Hearing Conference, the Clerk will file and serve on all Parties and the Hearing Officer an Order to Show Cause why the matter should not be dismissed, and give the Applicant five (5) days to respond to the Hearing Officer. Other Parties are permitted, but not required to submit responses. Unless the Applicant shows good cause for the failure to participate in the Pre-Hearing Conference, the Hearing Officer will dismiss the Hearing, and the matter will proceed as if no Request for Administrative Hearing had been filed in accordance with Section 5 of the Policy.

If the Hearing Officer determines the Applicant has shown good cause, the Hearing Officer will direct the Clerk to reschedule the Pre-Hearing Conference and the Applicant will be liable to OCERS for any actual costs incurred by OCERS as a result of the delay.

Rule 9. Pre-Hearing Statements

- A. The Applicant will file a Pre-Hearing Statement of up to ten (10) pages no later than sixty (60) days prior to the first Hearing Date.
- B. Respondent will file a Pre-Hearing Statement of up to ten (10) pages no later than thirty (30) days prior to the first Hearing Date.
- C. Any Party may file supplemental Pre-Hearing Statements of up to five (5) pages no later than fourteen (14) days prior to the first Hearing Date.
- D. The Pre-Hearing Statements will include the following:
 - 1. A statement of the issues and contentions of the Party and a brief summary of the evidence to be presented;



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

2. A list and copies of any expert's reports, transcripts of depositions of any witnesses, and any other documentary evidence on which the Party will rely, if not already in the Administrative Record;
 3. The names, addresses, and telephone numbers of any non-expert witnesses whose testimony the Party intends to call for oral testimony at the Hearing and a brief description of the content of that testimony; and
 4. The names, addresses, and phone numbers of any expert witnesses whom the Party intends to call for oral testimony at the Hearing and a brief description of the content of that testimony.
- E. If the Applicant disputes the effective date of the disability retirement, the Applicant will raise the effective date as an issue and will state Applicant's contention in the Pre-Hearing Statement.
- F. If the Applicant fails to timely file a Pre-Hearing Statement, the Clerk will file and serve on all Parties and the Hearing Officer an Order to Show Cause why the case should not be dismissed, and give the Applicant five (5) days to respond to the Hearing Officer. Other Parties are permitted, but not required to submit responses. Unless the Applicant shows good cause for the failure to timely file its Pre-Hearing Statement, the Hearing Officer will dismiss Hearing, and the matter will proceed as if no Request for Administrative Hearing had been filed in accordance with Section 5 of the Policy.

If the Hearing Officer determines that the Applicant has shown good cause, the Hearing Officer may allow the Respondent additional time to file its Pre-Hearing Statement or may re-schedule the Hearing within the time requirements of Rule 15. The Applicant will be liable to OCERS for any actual costs incurred by OCERS as a result of the delay.

Rule 10. Depositions and Subpoenas

- A. **Depositions:** Witness depositions may be taken by either Party in the presence of a certified court reporter and will be taken under oath or affirmation. The Party taking the deposition will pay all associated costs. If any Party offers any portion of any deposition testimony into evidence at the Hearing, that Party will provide a full copy of the deposition transcript to each adverse Party and the Hearing Officer free of charge.
- B. **Subpoenas and Related Fees/Costs:**
1. OCERS will issue a subpoena for the personal appearance of a witness at the Hearing or at a deposition, or for the production of documents (subpoena *duces tecum*), in conformance with California Government Code Section 31535, upon the request of any Party filed at least seven (7) days before the date the subpoena is to be issued. Each request will state the witness's full name and the complete address of the witness's place of employment or residence. OCERS will issue the subpoena; however, the requesting Party will be obligated to serve the subpoena and pay all associated witness fees and costs of service and production. The Party requesting oral testimony of an expert witness will in all cases be responsible for any expert witness fees.
 2. Any fee disputes between a witness and the requesting Party is independent of any proceeding between the Applicant and OCERS. Those fee disputes will be resolved by the requesting Party



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

and the witness in the California courts, not in this forum. The Hearing Officer has no authority to decide any such dispute.

Rule 11. Conduct of Hearings

- A. All Hearings will be held at the OCERS' office located at 2223 East Wellington Avenue, Santa Ana, California 92701.
- B. The Clerk will arrange for a court reporter to be present. Oral evidence will be taken only on oath or affirmation administered by the Hearing Officer or the court reporter.
- C. A written medical report bearing the signature (including a digital signature) of the Medical Witness will be admissible in evidence as the author's direct testimony, on the express condition that the adverse Party has had the opportunity to require the Medical Witness to be present and to cross-examine the witness at the Hearing, or to depose the witness and have the deposition transcript admitted into evidence.
- D. Each Party will have the right to call and examine witnesses; to introduce exhibits, including reports and depositions of medical witnesses; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut adverse evidence. If an Applicant does not testify by direct examination, OCERS may call and examine the Applicant.
- E. The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence will be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege will be effective to the extent that they are otherwise required by statute to be recognized at the Hearing. Irrelevant and unduly repetitious evidence will be excluded.
- F. Hearsay evidence may be used for the express purpose of supplementing or explaining other evidence but will not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions. This section will not be applicable to written medical reports received into evidence pursuant to Rule 10.C. Every Hearing will proceed as though each Party had made a standing objection to all inadmissible hearsay at the commencement of the Hearing.
- G. The court reporter will lodge with the Clerk the transcript of the Hearing within thirty (30) days of the final Hearing Date.
- H. The record will be closed to new evidence at the conclusion of the final Hearing Date. However, if subsequent to the final Hearing Date, a Party discovers or obtains new evidence that is relevant and not repetitive of other evidence already admitted, that Party may lodge the new evidence with the Clerk and request that the Hearing Officer include it in the Administrative Record. The Hearing Officer may require the Parties to provide declarations and argument about inclusion of the new evidence. If, after showing of good cause as defined under Rule 10.I, the Hearing Officer allows



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

inclusion of the new evidence, the opposing Party will be provided an opportunity to submit rebuttal evidence in accordance with Rule 10.I. No rebuttals of the rebuttal will be permitted.

- I. No Party may submit a medical report or other documentary evidence not included in the Administrative Record or listed in its Pre-Hearing Statement except for purposes of impeachment, unless the Party demonstrates good cause. Likewise, no Party will be permitted to call a witness not listed in its Pre-Hearing Statement, except for purposes of impeachment, unless the Party demonstrates good cause. For purposes of this Rule, "good cause" means that the relevant evidence or witness could not have been previously produced or identified even with the exercise of reasonable diligence. The Party requesting submission of such evidence or witness will file a written request prior to the Hearing, or if unable to do so in the exercise of reasonable diligence, will make an oral request at the Hearing. The request will state the reason the evidence or witness was not timely produced or identified. After providing a reasonable opportunity for each adverse Party to be heard, the Hearing Officer will rule on such a request. If the evidence is allowed to be admitted into evidence, or the witness is allowed to testify, the Parties will have the right to a continuance to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine the Medical Witness in order to comply with Rule 10.C. In no event, will good cause permit admission of medical reports or other documentary evidence relating to a new medical condition covered by Rule 3.E.
- J. Each Party will have the right to submit a closing oral argument at the conclusion of the Hearing.
- K. Use of Interpreter Services.
 1. If an Applicant or a witness does not speak or understand English sufficiently to participate in the proceedings or provide testimony, an interpreter certified to provide interpretation services in administrative hearings will be provided to that Applicant or witness at OCERS's expense. Notice that an Applicant or witness requires interpreting services will be given to OCERS at the Pre-Hearing Conference or be included in the Party's Pre-Hearing Statement. If a Party fails to provide such notice, then the witness may not be called unless good cause is shown, as set forth Rule 10.I.
 2. All interpreters must be certified to provide interpreting services in administrative hearings pursuant to Government Code Section 11435.30. The interpreter must not have had any involvement in the issues of the case prior to the Administrative Hearing.
 3. If an Applicant objects to the interpreter provided by OCERS, the Applicant may supply their own interpreter, provided that the interpreter is certified under Government Code Section 11435.30. However, time for an Applicant to find and hire an interpreter will not be considered good cause to continue the Hearing. OCERS will pay the chosen interpreter the same amount OCERS would have paid an interpreter hired directly by OCERS. The Applicant will be responsible for any amounts charged by the interpreter that are over the amount OCERS would have paid to an interpreter hired directly by OCERS. Fee disputes between the interpreter and the Applicant will not be resolved in this forum, and the Hearing Officer will not have authority to resolve any fee disputes between interpreters and the Parties.



OCERS Board Policy

Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

Rule 12. Resolution of Disputes about Depositions and Conduct of Hearings

The Hearing Officer will resolve disputes about depositions and the conduct of the Hearing. A request for resolution of a dispute may be made verbally at a Pre-Hearing Conference, at the Hearing, or by written motion filed with the Clerk at any time prior to the Hearing. The Hearing Officer, in the exercise of sound discretion, may permit written argument or briefs.

Rule 13. Closing Briefs

- A. Each Party will have the right to submit a written closing brief. Unless the Parties waive closing briefs, the Parties will adhere to the following schedule for filing closing briefs:
 1. The Applicant's closing brief will be filed within thirty days (30) of the date the transcript of the Hearing is lodged with the Clerk.
 2. Respondents' closing briefs will be filed within thirty days (30) days of the date the Clerk serves the Applicant's closing brief on the other Parties.
 3. Applicant's reply brief will be filed within fifteen (15) days of the date that the Clerk serves Respondents' closing briefs on the Applicant.
- B. Each Party's closing brief may be supported by facts in the record and citation to law. The Applicant's and Respondents' closing briefs may not exceed fifteen (15) pages and the reply brief may not exceed ten (10) pages unless the Hearing Officer, in the proper exercise of discretion, determines that a longer limit is appropriate under the circumstances. The Hearing Officer may reject briefs exceeding the foregoing limits.

Rule 14. Hearing Officer's Findings of Fact and Recommended Decision

- A. **Time for Filing.** The Hearing Officer will file the Proposed Findings of Fact and Recommended Decision with the Clerk within sixty (60) days of the date that the Applicant's reply brief is due or, if the Parties waived closing briefs, within sixty (60) days of the date the transcript of the Hearing is due (i.e., within 30 days of the final Hearing Date) or actually lodged (if earlier than 30 days after the final Hearing Date).
- B. **Content of Proposed Findings of Fact and Recommended Decision.** The Hearing Officer's Proposed Findings of Fact and Recommended Decision will include a summary of the following: (1) issues raised by the parties; (2) the testimony; (3) all other evidence received by the Hearing Officer; (4) a factual discussion of matters on which the Hearing Officer relied; (5) conclusions of law with citations to legal authority; and (6) recommended decision. The summary of the testimony, plus all other evidence received, will be sufficient to satisfy the requirements of Government Code Section 31534(b).
- C. **Objections/Requests for Clarification.** Within twenty (20) days from the date that the Hearing Officer files the Proposed Findings of Fact and Recommended Decision with the Clerk, any Party may file with the Clerk objections or written requests for clarification to the Hearing Officer's Proposed Findings of Fact and Recommended Decision. The Clerk will serve such objections or



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

written requests for clarification on the Hearing Officer as well as the other Parties. The other Parties will then have twenty (20) days after service to file a response with the Clerk. Within thirty (30) days after the later of: (a) the date that Hearing Officer receives the objections or requests for clarification or (b) an adverse party's response to such objections or requests for clarification, the Hearing Officer will:

1. Affirm the Proposed Findings of Fact and Recommended Decision findings, conclusions, and recommendations as originally submitted without change, or
2. Make such changes to the Proposed Findings of Fact and Recommended Decision as the Hearing Officer deems appropriate in light of the evidence, the objections or requests for clarification submitted by the Parties, and the responses thereto.

The objections and/or requests for clarification and the response thereto and the Hearing Officer's final Proposed Findings of Fact and Recommended Decision following any objections, will be added to the Administrative Record and submitted for consideration by the Board.

Rule 15. Continuances and Relief from Orders

- A. The deadlines and timelines established in these Rules are for the purpose of expediting the Hearing process as quickly as reasonably possible in order to give certainty to the Applicant in the retirement process. Therefore, delays, continuances, or relief should be granted for documented good cause (as defined hereafter) and any delay should be the absolute shortest necessary under the circumstances. If the Hearing Officer believes the request is primarily for the purpose of delay or caused by inattention or lack of preparation of a Party, the request should be denied.
- B. Upon the request of a Party, the Hearing Officer may amend or continue the time periods set forth in these rules, but only for good cause shown by the Party seeking the delay.
- C. Good cause for purposes of this Rule will be only for the following reasons:
 1. The discovery of relevant evidence that, in the exercise of reasonable diligence, could not have been previously produced (in which case there will only be one continuance permitted for each request);
 2. The need to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine a Medical Witness (in which case there will only be one continuance permitted for each request), as set forth under Rule 10.I; or
 3. The illness or disability of the Applicant, witness, attorney, or the Hearing Officer which was unknown to the person at the time of the Pre-Hearing Conference (or other time at which the deadline was set) which makes it impossible for the person to participate in the Administrative Hearing process. Relief in these instances will be granted only if the person raises the request as soon as practicable. The Hearing Officer will consider a failure to timely seek relief a waiver by the person.



OCERS Board Policy

Administrative Review and Hearing Policy

(Disability and Non-Disability Benefits)

- D. If a continuance is sought due to an illness or disability affecting an attorney who will not be able to participate in the process within a reasonably short period of time, then the continuance will be for a maximum of sixty (60) days to secure substitute counsel, and the Clerk will schedule a Pre-Hearing Conference pursuant to Rule 7.
- E. If a continuance is sought due to an illness or disability affecting the Hearing Officer, and the Hearing Officer cannot proceed within the time period set forth in Rule 17, below, the Hearing Officer will be recused and the Clerk will appoint a new Hearing Officer pursuant to Rule 4 and schedule a new Pre-Hearing Conference pursuant to Rule 7.
- F. If good cause is found to exist to reschedule a Hearing, the Hearing Officer will order that the Clerk schedule a Pre-Hearing Conference no more than seven (7) days from the date of the Hearing Officer's order and the Hearing Date will be reset no more than ninety (90) days from the date of the Pre-Hearing Conference.
- G. Until such time as the matter has been referred to the Board, the Hearing Officer may, upon any terms as may be just, relieve a party from an order, or other action taken against that Party through mistake, inadvertence, surprise, or excusable neglect on the part of the Party. Application for this relief will be made within a reasonable time. Once the matter has been placed on the Board agenda, the Hearing Officer will no longer have jurisdiction.

Rule 16. Hearing and Action by the Board

- A. The Clerk will refer to the Board for its consideration the Hearing Officer's Proposed Findings of Fact and Recommended Decision as well as any related objections/requests for clarification, responses thereto, and the Hearing Officer's final Proposed Findings of Fact and Recommended Decision following any objections.
- B. The Clerk will place the matter on the agenda of a regular meeting of the Board which will be no later than two (2) calendar months after the later of the date the Clerk receives the Hearing Officer's Proposed Findings of Fact and Recommended Decision; or the date the Clerk receives the Hearing Officer's final Proposed Findings of Fact and Recommended Decision following any objections or requests for clarification from the Parties.
- C. The Clerk will provide written notice to the Parties and the Hearing Officer of the time and date of the regular meeting where the matter will be placed on the Board's agenda for action. The Parties will have the opportunity to be heard at the Board meeting subject to appropriate time limitations as set out in the OCERS By-laws.
- D. Pursuant to Government Code Section 31534, after reviewing the Hearing Officer's Proposed Findings of Fact and Recommended Decision and any related objections/requests for clarification, the Board may:
 - 1. Approve and adopt the Proposed Findings of Fact and Recommended Decision of the Hearing Officer; or



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

2. Require a transcript or summary of all testimony, plus all other evidence received by the Hearing Officer; and upon receipt thereof, take such action as the Board in its opinion is indicated by such evidence; or
 3. Refer the matter back with or without instructions to the Hearing Officer for further proceedings; or
 4. Set the matter for hearing before itself. At such hearing, the Board will hear and decide the matter.
- E. The Hearing Officer's Proposed Findings of Fact and Recommended Decision (and responses to objections/requests for clarification) will be sufficient to satisfy the requirements of Government Code Section 31534(b) and Rule 15.D.2, above.
- F. In any case where the Board makes a decision under Rule 15.D.2 or 15.D.3, above, the Board may approve and adopt the Proposed Findings of Fact and Recommended Decision of the Hearing Officer or prepare its own Findings of Fact and Decision, either itself or through direction to Staff with its approval.
- G. Upon action by the Board, the decision will be final for all purposes. There will be no requirement for a further written decision from the Board or opportunity for the Board to reconsider its decision. Any Party aggrieved by the Board's decision may petition the Superior Court for judicial review as provided by law. The time for any party to seek judicial review will be governed by the California Code of Civil Procedure Section 1094.6. The Clerk will notify the Applicant (and attorney), and the Employer via First Class Mail to the address set out in the Application, of the Board's final action. Notice will be effective upon deposit in the US Mail.

Rule 17. Dismissal for Failure to Pursue the Administrative Review and Hearing

Except as otherwise provided, if as a result of an Applicant's failure to pursue the case or to comply with any of these Rules, a Hearing is not conducted within one year after the filing of a Request for Administrative Hearing (or the Board's referral of a case to a Hearing Officer), the Hearing Officer will dismiss the Hearing and the matter will proceed as if no Request for Administrative Review or Hearing had been filed in accordance with Section 5 of the Policy.



Memorandum

DATE: June 9, 2020
TO: Members of the Governance Committee
FROM: Suzanne Jenike, Assistant CEO, External Operations
SUBJECT: **TRIENNIAL REVIEW OF THE MEMBERSHIP ELIGIBILITY REQUIREMENTS POLICY**

Recommendation

Approve the Membership Eligibility Requirements Policy as presented.

Background

Staff reviewed the Membership Eligibility Requirements Policy and recommends no changes.

Submitted by:



SJ-Approved

Suzanne Jenike
Assistant Chief Executive Officer, External
Operations



OCERS Board Policy

Membership Eligibility Requirements

Purpose and Background

1. The Orange County Employees Retirement System (OCERS, System or Plan) is charged with administering a defined benefit pension plan for eligible employees of the County and Districts who participate in the Plan (each a Participating Employer). The purpose of this Policy regarding Membership Eligibility Requirements (Policy) is to clarify the rules that the System will use as a basis for determining the eligibility of persons to be members of the System.

Policy Objectives

2. All persons eligible to be members of the System who have not executed a lawful waiver of membership (e.g., elected officials and members entering employment after age 60) must be enrolled in the System. Conversely, persons ineligible for membership in the System must be excluded from membership. The objective of this Policy is to clarify existing law (Government Code sections 31550, et. seq.) and OCERS' regulations with respect to the persons who are eligible for membership in OCERS.

Roles and Responsibilities

3. Each Participating Employer is responsible for determining, in accordance with this Policy, which of the Participating Employer's employees are eligible for membership in OCERS and is responsible for enrolling those eligible employees into OCERS membership.

Policy Guidelines

4. The following employees of a Participating Employer are eligible to participate and shall be enrolled in the Plan:

Any employee of the Participating Employer who is:

- a. Hired with the expectation of employment for more than one year and at least 1,040 hours per year, or who is actually employed for more than one year and at least 1,040 hours per year for at least one of those years; and
- b. Not expressly excluded from membership under Paragraph 5 below.

5. The following employees of a Participating Employer are ineligible to participate and shall not be enrolled in the Plan:

Any employee of the Participating Employer who:

- a. Is a retired member who satisfies the requirements of Government Code section 7522.56 to serve a Participating Employer without reinstatement from retirement; or
- b. Has executed a lawful waiver of membership (e.g., elected officials and members entering employment after age 60); or
- c. Is hired with the expectation of employment for less than 1,600 hours per year, is actually employed for less than 1,600 hours in every year, and is classified as "extra help" by the Participating Employer because he or she works in a position that:



OCERS Board Policy

Membership Eligibility Requirements

- i. Requires professional or highly technical skills for more than one year;
- ii. Is designated "intern" for more than one year (entry level and consistent with the Participating Employer's salary resolution or comparable classification scheme);
- iii. Is designated "seasonal" for more than one year (works in less than seven calendar months per year); or
- iv. Is designated "intermittent" for more than one year (works on an irregular, as-needed basis).

Note: Per section 4(a), all employees hired with the expectation that they will work less than one year are properly excluded from OCERS membership for that year, regardless of how their position may be designated. If such employees ultimately work more than one year, they should be enrolled in OCERS membership if they work more than 1,040 hours per year (if not "extra help") or more than 1,600 hours per year (if "extra help").

6. The Board may grant exceptions to the requirements of Paragraphs 4 and 5 if the Board determines that doing so is consistent with the intent of this Policy and is fair to all parties. For example:
 - a. The Board may consider an employee's preference not to be enrolled as a member of OCERS, even though that preference alone does not justify exclusion from OCERS membership; and
 - b. The Board may consider whether an employee's work hours exceeded the relevant maximum due to administrative oversight.
7. When a Participating Employer fails to comply with the requirements of Paragraphs 4 and 5, and the Board does not grant an exception under Paragraph 6, the Board will exercise its discretion to determine an appropriate correction procedure based on the facts of each case.
8. For purposes of Paragraphs 4 and 5, the term "year" refers to a fiscal year or a calendar year, whichever is used by the Participating Employer for employment purposes.
9. A Participating Employer that temporarily employs an individual who (i) previously was the employee of a labor supplier with which the Participating Employer contracted, and (ii) would otherwise be excluded from OCERS membership under this Policy, will be permitted to exclude the individual from OCERS membership for a period of up to one year. The Board will consider requests for exceptions from the requirements of this paragraph based on the facts of each case, but will not extend the one-year period for excluding the employee from OCERS membership by more than one additional year.
10. The Board shall periodically audit, pursuant to Government Code section 31543, each Participating Employer's payroll practices to assure compliance with this Policy.



OCERS Board Policy

Membership Eligibility Requirements

Policy Review

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

Policy History

- 12. This Policy was adopted by the Board of Retirement on March 20, 2017, with an effective date of January 1, 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.

Handwritten signature of Steve Delaney in blue ink.

Steve Delaney
Secretary of the Board

3/20/17

Date