

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

1. Intent

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

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

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 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 have the meanings set out in this section.

Administrative Hearing: 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 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 or a fact-finding body in an Administrative Hearing conducted pursuant to this Policy and includes any documents submitted by an Applicant or on behalf of an Applicant, documents prepared by OCERS or by independent sources that are received by OCERS, 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.

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

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

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

Board: The Board of Retirement of OCERS.

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

Days: All days are calendar days.

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

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

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

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

Hearing Rules, Rules: The "Orange County Employees Retirement System Administrative Hearing Rules," attached as an appendix to and made part of this 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/her regular practice in good standing.

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

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

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

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

Proposed Findings of Fact and Recommended Decision: The recommendation of the Hearing Officer to the Board, as set forth in Rule 13 of the Hearing Rules.

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

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

Rule: A hearing rule included in the Hearing Rules.

3. Disability Determination Process

For determinations on Applications for disability retirement:

- A. OCERS staff will investigate all disability retirement Applications to determine whether the Applicant is permanently incapacitated from the performance of his/her usual duties, whether the incapacity arose out of and in the course of employment, and the appropriate effective date of any disability retirement allowance. In undertaking this investigation, staff will have discretion, based on staff's review of the Application including the Applicant's treating physicians' medical reports, to determine whether or not to seek further medical examination of the Applicant, expert medical advice or expert review of Applicant's medical records. Upon completion of the investigation, OCERS staff will make a recommendation to the Committee regarding permanent incapacity, service connection, and effective date.
- B. The Committee will review the disability Application at a duly-noticed meeting of the Committee. OCERS staff will give Applicant (or his/her attorney) notice of the date of the Committee meeting, and the Applicant (or his/her attorney) will have the opportunity to be heard by the Committee.
- C. After the Committee makes a recommendation, OCERS staff will notify the Applicant (and his/her attorney) of the Committee's recommendation and provide the Applicant with instructions regarding how the Applicant can appeal the determination by filing a Request for Administrative Hearing.
- D. In the event that the Committee recommends that any part of the Application be denied, the Applicant will have 90 days from the date of the notice required by 3.C., above, to file a Request for Administrative Hearing with the Clerk, as set forth in the Hearing Rules. In the event that the Committee recommends the Application be granted in full, any person aggrieved by the recommendation, including the Plan Sponsor, will have 10 days from the date of the notice required by 3.C., above, to make a written Request for Administrative Hearing as set forth in the Hearing Rules.
- E. If no Request for Administrative Hearing is filed within the time limits set forth in 3.D., above, the matter shall be placed on the consent agenda at the next regularly scheduled meeting of the Board.

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4. Non-Disability Benefit Determination Process

For all other benefit determinations:

- A. 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) within 90 days of the benefit determination by OCERS. The CEO or his/her designee will provide a written review, which may include a synopsis of the member's request and shall include citation of any authority relied upon by OCERS in making its determination. In addition, the written review will include instructions regarding how the Applicant can appeal the determination by filing a Request for Administrative Hearing.
- B. The Applicant will have 90 days from the date of the notice provided in 4.A., above, to file a Request for Administrative Hearing. If no Request for Administrative Hearing is filed within 90 days, the determination made after the review in 4.A, above, shall be final.

5. Appeals of Disability and Non-Disability Benefit Determinations

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

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

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

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

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7. Board Determination of Disability and Non-Disability Benefits

- A. Consent Agenda.** When no appeal has been timely filed on an Application for a disability retirement, the Board shall consider the Committee’s recommendation on a consent agenda. Any member of the Board may object to an Application on the consent agenda except that the alternate seventh member (and not the seventh member) of the Board may object to any item relating to a member of the same service as the alternate seventh member. In addition, if the alternate seventh member is present, s/he shall be considered to have voted to approve any item adopted on the consent agenda relating to a member of the same service.
- B. Absence of Unanimous Consent for Disability Applications Recommended for Approval By the Committee; Administrative Hearing Before the Board.** If any Board member objects to the approval of an Application for disability retirement that has been placed on the consent agenda, and the matter has not been the subject of an Administrative Hearing, the Board shall either (i) adopt the recommendation of the Committee; or (ii) refer the matter to a Hearing Officer for an Administrative Hearing.
- C. Matters Referred to the Board After an Administrative Hearing.** Following an Administrative Hearing and the Board’s receipt of the Hearing Officer’s Proposed Findings of Fact and Recommended Decision, the Board shall hear the matter at a duly-noticed meeting of the Board as set forth in the Hearing Rules.

8. Policy Review

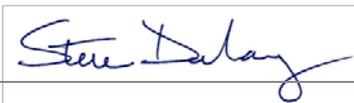
The Board will review this Policy at least every three (3) years to ensure that it remains relevant and appropriate.

9. Policy History

This Policy was adopted by the Board of Retirement on January 16, 2018, to replace the existing “OCERS Board Policy – Administrative Hearing Procedures” and the “OCERS Administrative Procedure (OAP) – Administrative Appeal Process.” This policy will take effect on June 1, 2018, except that all hearings requested before June 1, 2018 shall be governed by the Rules set forth in the old “OCERS Board Policy – Administrative Hearing Procedures,” unless there is a stipulation of the parties or directed by the Hearing Officer.

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

01/16/18

Date



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Appendix - Administrative Hearing Rules

Rule 1. Definitions

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

Rule 2. Filing of Documents

A. Administrative Hearing Filing Procedures

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

B. Filing of Documents

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

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C. Service of Documents

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

Rule 3. Administrative Hearing Request, Scope, and Settlement

- A. Request for Hearing.** A written Request for Administrative Hearing must be filed with the Clerk within the time frame set forth in Sections 3 and 4 of the OCERS Adjudication Policy and Administrative Hearing Rules (the "Policy"). The Request for Administrative Hearing shall include a short and plain statement of the grounds for the appeal of the recommendation of the Committee or the OCERS staff.
- B. Referral from the Board.** In the event that the Board refers a matter to a Hearing Officer for an Administrative Hearing, the Applicant shall be considered the Petitioner and the referral from the Board shall be considered the Request for Administrative Hearing.
- C. Burden of Proof.** The Applicant will have the burden of proof to establish his/her right to the benefit sought by a preponderance of the evidence.
- D. Scope of Hearing.**
 1. A disability retirement Administrative Hearing will address the issues of disability, service connection, timeliness of the application, and/or effective date.
 2. Except as set forth in these Rules, the Hearing Officer shall not make a finding or recommendation on any issue that was not raised in the Applicant's original application to OCERS (either for disability or non-disability benefits).
 3. If the Applicant seeks to raise new issues or add conditions, s/he will be required to file a new Application, provided however, that OCERS shall retain the discretion to stipulate that the Applicant may dismiss the original Application and file an amended Application, the date of which shall relate back to date of the original Application.
- E. Settlement.** If at any time during the Administrative Hearing it becomes apparent to OCERS staff that a different result is appropriate, OCERS staff and the Applicant may settle and dismiss the Administrative Hearing. For settlements related to non-disability benefits, the 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.

Rule 4. Assignment of Hearing Officers

- A. Assignment of Hearing Officer.** Hearing Officers are selected and placed on the panel pursuant to OCERS' Hearing Officer Selection and Retention Policy. As Administrative Hearings are requested,

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the Clerk shall randomly assign the Hearing Officer, subject to the procedures for challenge under Rule 4.C, below. The Clerk's random assignment process shall ensure that, to the extent possible, each Hearing Officer on the panel is assigned an equal number of cases.

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

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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.

Rule 5. Preparation of Administrative Record

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

Rule 6. Alternative Expedited Administrative Review

- A. **Provisions for Alternative Expedited Administrative Review.** Expedited Administrative Review is an irrevocable waiver of the Applicant's right to the process described in Rules 7 through 12. The goal of the Alternative Expedited Administrative Review process is to complete the Administrative Hearing in less than six months and based only on the Administrative Record and written arguments, without in-person testimony or argument.
- B. **Availability of Expedited Administrative Review.**
1. An Expedited Administrative Review shall only be available in those cases that OCERS determines are appropriate for an Expedited Administrative Review.
 2. OCERS will make the determination as to whether Expedited Administrative Review is appropriate in its sole discretion, on a case-by-case basis. In determining whether Expedited Administrative Review is appropriate, OCERS shall consider: whether there are any material facts in dispute, and whether the introduction of 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.
 3. If OCERS determines that the matter is appropriate for Expedited Administrative Review, the Applicant will have the choice of whether or not to opt for the Expedited Administrative Review.
- C. **Waiver and Election.** In the event that OCERS determines that a matter is appropriate for Administrative Review, OCERS shall file a Notice of Right to Expedited Administrative Review which provides the Applicant notice of his/her rights and provides a Waiver of Rights and Election for Expedited Administrative Review (the "Waiver and Election"). The Applicant may file its Waiver and Election any time prior to or at the Pre-Hearing Scheduling Conference.
- D. **Timeline.** The Expedited Administrative Review shall be conducted according to the following timeline.
1. Within 30 days from the date the Applicant files the Waiver and Election (or within 30 days after the Administrative Record is filed, whichever is later), each party shall file any written evidence that it seeks to rely on in addition to the Administrative Record.

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2. Within 30 days from the date the Applicant files the Waiver and Election (or within 30 days after the Administrative Record is filed, whichever is later), each Party shall file a Statement of Issues of not more than five (5) pages which shall set forth the Party's contentions.
3. Within 90 days from the date the Applicant files the Waiver and Election (or within 30 days after the Administrative Record is filed, whichever is later), the Hearing Officer shall file his/her Proposed Findings of Fact and Recommended Decision, which shall conform to Rule 13.

Rule 7. Pre-Hearing Scheduling Conference

- A. The Clerk shall schedule a Pre-Hearing Scheduling Conference to be held within 30 days of the filing of the Administrative Record. The Clerk shall undertake its best efforts to schedule the Pre-Hearing Scheduling Conference at a time convenient to all Parties.
- B. The Pre-Hearing Scheduling Conference may be held telephonically or electronically (e.g. Skype, Facetime). The Pre-Hearing Scheduling Conference will not be transcribed unless a Party files a request for a court reporter at least seven (7) days before the Pre-Hearing Scheduling Conference. If any Party requests a transcription, the Clerk shall arrange for a court reporter, but the requesting Party shall be liable for reimbursing OCERS for the costs. 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 shall not be considered a "confidential communication" under the California Invasion of Privacy Act, Cal. Penal Code § 632(c).
- C. At the Pre-Hearing Scheduling Conference, the Hearing Officer shall advise the Applicant (whether or not the Applicant is the Petitioner) of the following:
 1. The Applicant has the right to be represented by counsel;
 2. Any financial or personal interest that the Hearing Officer has in the case, other than the Hearing Officer's contract with OCERS;
 3. The Hearing will be a hearing *de novo*, conducted as if the original recommendation or determination had not taken place. This means the Hearing Officer or other fact finding body will consider anew all of the evidence submitted, without relying on the past findings of a court, the Committee, the Board, OCERS staff, or other fact finding body;
 4. The Hearing Officer's purpose in the process is to find the facts relevant to the Applicant's request and provide an impartial recommendation to the Board;
 5. The Applicant has the burden of proof in establishing by a preponderance of the evidence his/her right to the benefit s/he seeks;
 6. The Applicant must identify witnesses and other evidence when filing his/her Pre-Hearing Statement, and that failure to include in the Pre-Hearing Statement the witnesses and other evidence s/he intends to rely on could mean that evidence will be excluded unless the Applicant shows that s/he could not have discovered the information earlier through the exercise of reasonable diligence;

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7. The timelines required under these rules for filing documents and for the Administrative Hearing, and the result of a failure to meet those deadlines, including that the Applicant's case can be dismissed.
 8. That upon the completion of the Administrative Hearing, the matter will be referred to the Board pursuant to these Rules. Upon action by the Board, the decision will be final for all purposes. There shall be no requirement for a further written decision from the Board or opportunity for the Board to reconsider its decision. Any party aggrieved by the Board's decision may petition the Superior Court for judicial review as provided by law. The time for any party to seek judicial review shall be governed by the California Code of Civil Procedure Section 1094.6
- D. At the Pre-Hearing Scheduling Conference, each Party shall:
1. Make a good faith effort to identify the witnesses, both expert and non-expert, that it intends to call;
 2. Ensure that that the witnesses it intends to call either speak and understand English or that the Party calling the witness is responsible for requesting a translator for the witnesses in accordance with Rule 10. J.;
 3. Indicate whether it will require an opposing party's Medical Witness to appear in person to be cross-examined at the Hearing;
 4. If possible, set mutually convenient dates for any depositions.
- E. At the Pre-Hearing Scheduling Conference, the Hearing Officer shall set the date for the Hearing.
1. The Hearing Officer shall confer with the Parties to determine a mutually agreeable date for the hearing ("Hearing Date"), but in all cases the Hearing Date shall be set as soon as reasonably practicable, but for no later than six (6) months after the date of the Pre-Hearing Scheduling Conference. The hearing will be held within the time frame provided by Rule 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 schedule all dates to which s/he anticipates the Hearing will be continued until complete.
- F. Within five (5) days of the Pre-Hearing Scheduling Conference, the Clerk shall file a Notice of Administrative Hearing Dates, which shall include the Date(s) of the Hearing and the dates that each Party's Pre-Hearing Statements are due.
- G. After the Pre-Hearing Scheduling Conference, the Hearing Officer may continue the Hearing Date only upon a showing of good cause as set forth in Rule 15, below.

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Rule 8. Pre-Hearing Statements

- A. The Petitioner shall file a Pre-Hearing Statement no later than sixty (60) days prior to the Hearing Date.
- B. Respondent shall file a Pre-Hearing Statement no later than thirty (30) days prior to the Hearing Date.
- C. Any Party may file supplemental Pre-Hearing Statements no later than fourteen (14) days prior to the Hearing Date 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 Statements shall include the following:
 - 1. A statement of the issues and contentions of the Party, and a brief summary of the evidence to be presented;
 - 2. A list and copies of any expert's reports, depositions of any witnesses, and any other documentary evidence on which the Party will rely, if not already in the Administrative Record;
 - 3. The names, addresses and telephone numbers of any non-expert witnesses whose testimony the Party intends to present at the Hearing and a brief description of the content of that testimony.
 - 4. The names, addresses and phone numbers of any expert witnesses whom the Party intends to call for oral testimony at the Hearing and a synopsis of the expected testimony.
- E. If a Petitioner disputes the effective date of the disability retirement, the Petitioner shall raise the effective date as an issue and shall state Petitioner's contention in his/her Pre-Hearing Statement.
- F. If a Petitioner fails to timely file a Pre-Hearing Statement, the Clerk shall file an Order to Show Cause why the case should not be dismissed, and give the Petitioner five (5) days to respond. Unless the Petitioner shows good cause for the failure to timely file its Pre-Hearing Statement, the Hearing Officer shall dismiss the Administrative Hearing and the matter shall proceed as if no Request for Administrative Hearing had been filed. If the Petitioner shows good cause, the Hearing Officer may allow the Respondent additional time to file its Pre-Hearing Statement or may re-schedule the Hearing within the time requirements of Rule 16 and the Petitioner shall be liable to OCERS for any actual costs incurred as a result of the delay.

Rule 9. Depositions and Subpoenas

- A. **Depositions:** Witness depositions may be taken by either Party before a certified Court Reporter and shall be taken under oath or affirmation. The Party taking the deposition shall pay all associated costs. If any Party offers any portion of any deposition testimony into evidence at the Hearing, that Party shall provide a full copy of the deposition transcript to each adverse Party and the Hearing Officer free of charge.

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B. Subpoenas and Related Fees/Costs:

1. OCERS shall issue a subpoena for the personal appearance of a witness at the Hearing or at a deposition, or for the production of documents (*subpoena duces tecum*), in conformance with California Government Code Section 31535, upon the request of any Party filed at least seven (7) days before the date the subpoena is to be issued. The requesting Party shall be obligated to serve the subpoena and pay all associated witness fees and costs of service and production. The Party requesting oral testimony of an expert witness shall in all cases be responsible for any expert witness fees.
2. Any fee disputes between a witness and the requesting Party is independent from any proceeding between the Petitioner and OCERS. Those fee disputes shall be resolved by the requesting Party and the witness in the California courts, not in this forum. The Hearing Officer has no authority or jurisdiction to hear evidence about, or decide any such dispute.

Rule 10. Conduct of Hearings

- A. All Hearings shall be held at the OCERS office, 2223 East Wellington Avenue, Santa Ana, California.
- B. The Clerk shall arrange for a court reporter to be paid at OCERS's expense. Oral evidence shall be taken only on oath or affirmation administered by the Hearing Officer or the court reporter.
- C. A written medical report bearing the signature (including a digital signature) of the Medical Witness shall be admissible in evidence as the author's direct testimony, provided that the adverse Party has had the opportunity to cross-examine the witness, or to depose the witness and have the deposition transcript admitted into evidence.
- D. Each Party shall have the rights to call and examine witnesses; to introduce exhibits, including reports and depositions of medical witnesses; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut adverse evidence. If an Applicant does not testify by direct examination, OCERS may call and examine the Applicant under cross-examination.
- E. The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the Hearing. Irrelevant and unduly repetitious evidence shall be excluded.
- F. Hearsay evidence may be used for the express purpose of supplementing or explaining other evidence but shall not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions. This section shall not be applicable to written medical reports received into evidence pursuant to Rule 10.C. Every Hearing shall proceed as though each Party had made a standing objection to all inadmissible hearsay at the commencement of the Hearing.

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- G. The record shall be closed to new evidence at the conclusion of the final day of Hearing. However, if subsequent to the close of the Hearing, a Party discovers or obtains new evidence that is relevant and not repetitive, that Party may file that evidence and request that the Hearing Officer include it in the Administrative Record. The Hearing Officer may require the Parties to provide declarations and argument about inclusion of the new evidence. If, after showing of good cause as defined under Rule 10.I, the Hearing Officer allows inclusion of the new evidence, the opposing Party will be provided an opportunity to submit rebuttal evidence in accordance with Rule 10.I. No rebuttals of the rebuttal shall 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 may submit a medical report or other documentary evidence, nor shall any Party call a witness not listed in its Pre-Hearing Statement except for purposes of impeachment, unless it demonstrates good cause. For purposes of this Rule, “good cause” means relevant evidence that, in the exercise of reasonable diligence, could not have been previously produced. The Party requesting submission of such evidence shall file a written request prior to the Hearing, or if unable to do so in the exercise of reasonable diligence, shall make an oral request at the Hearing. The request shall state the reason the evidence was not timely produced. After providing a reasonable opportunity for each adverse Party to be heard, the Hearing Officer shall rule on such a request. If the evidence is allowed to be admitted into evidence, the Parties shall have the right to a continuance to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine the Medical Witness.
- J. **Use of Interpreter Services.**
1. If an Applicant or witness does not speak or understand English sufficiently to participate in the proceedings or provide testimony, an interpreter certified to provide interpretation services in administrative hearings shall be provided to that Applicant or witness at OCERS’s expense. Notice that an Applicant or witness requires interpreting services shall be given to OCERS at the Pre-Hearing Scheduling Conference or be included in the Party’s Pre-Hearing Statement. If a Party fails to provide such notice, then the witness may not be called unless good cause is shown, as set forth Rule 10.I.
 2. All interpreters must be certified to provide interpreting services in administrative hearings pursuant to Government Code Section 11435.30. The interpreter may not have had any involvement in the issues of the case prior to the Administrative Hearing.
 3. If an Applicant objects to the interpreter provided by OCERS, the Applicant may supply her/her own interpreter, provided that the interpreter is certified under Government Code Section 11435.30. However, time for an Applicant to find and hire an interpreter shall not be considered good cause to continue the Hearing. OCERS will pay the chosen interpreter the same amount OCERS would have paid an interpreter hired directly by OCERS. The Applicant shall be responsible for any amounts charged by the interpreter that are over the amount OCERS would have paid to an interpreter hired directly by OCERS. Fee disputes between the interpreter and the Applicant shall not be resolved in this forum, and the

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Hearing Officer shall not have authority to resolve any fee disputes between interpreters and the Parties.

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

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

Rule 12. Closing Arguments

- A. Each Party shall have the right to submit oral or written argument. A waiver of argument at the Administrative Hearing shall not constitute a waiver of argument before the Board.
- B. Unless the parties waive closing briefs, the parties shall adhere to the following schedule for filing written closing briefs:
 - 1. Petitioner's closing brief shall be filed within thirty days (30) of the date the transcript of the Hearing is filed.
 - 2. Respondents' closing briefs shall be filed within sixty (60) days of the date the transcript of the Hearing is filed.
 - 3. Petitioner's reply brief shall be filed within fifteen (15) days of the date that Respondents' closing briefs are filed.
- C. Each party's closing brief may be supported by facts in the record and citation to law. The Petitioner's and Respondents' closing brief shall not exceed fifteen (15) pages and the reply brief shall not exceed ten (10) pages, unless the Hearing Officer in the exercise of his/her discretion determines at the Hearing that a longer limit is appropriate under the circumstances.

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

- A. **Time for Filing.** The Hearing Officer shall file his/her Proposed Findings of Fact and Recommended Decision within sixty (60) days of the date that the Petitioner's reply brief is due or, if the Parties waived closing briefs, within sixty (60) days of the date the transcript of the Hearing is filed.
- B. **Content of Proposed Findings of Fact and Recommended Decision.** The Hearing Officer's Proposed Findings of Fact and Recommended Decision shall include a summary of the following: (1) issues raised by the parties; (2) the testimony; (3) 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. The summary of the testimony, plus all other evidence received, shall be sufficient to satisfy the requirements of Government Code Section 31534(b).

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- A. **Objections.** Any Party may file objections to the Hearing Officer's Proposed Findings of Fact and Recommended Decision within 20 days from the date that the Hearing Officer files his/her Proposed Findings of Fact and Recommended Decision.

Rule 14. Hearing and Action by the Board

- A. The Clerk shall refer to the Board for its consideration the Hearing Officer's Proposed Findings of Fact and Recommended Decision and any related objections.
- B. The Clerk shall provide written notice 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 and the recommendations of the Hearing Officer; or
 2. Require a transcript or summary of all testimony, plus all other evidence received by the Hearing Officer. On receipt thereof, the Board shall take such action as in its opinion is indicated by such evidence; or
 3. Refer the matter back with or without instructions to the Hearing Officer for further proceedings; or
 4. Set the matter for hearing before itself. At such hearing, the Board shall hear and decide the matter *de novo*.
- D. The Hearing Officer's Proposed Findings of Fact and Recommended Decision shall be sufficient to satisfy the requirements of Government Code Section 31534(b) and Rule 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.
- E. Upon action by the Board, the decision will be final for all purposes. There shall be no requirement for a further written decision from the Board or opportunity for the Board to reconsider its decision. Any party aggrieved by the Board's decision may petition the Superior Court for judicial review as provided by law. The time for any party to seek judicial review shall be governed by the California Code of Civil Procedure Section 1094.6.

Rule 15. Alteration of Time Requirements and Relief from Orders

- A. The Hearing Officer may amend or continue the time periods set forth in these rules only for good cause shown.
- B. Good cause for continuing a time period set forth in these Rules or established by the Hearing Officer shall be only:

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1. the discovery of relevant evidence that, in the exercise of reasonable diligence, could not have been previously produced;
 2. the need to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine a Medical Witness, as set forth under Rule 10.I; or
 3. the illness or disability of an Applicant, witness, attorney, or the Hearing Officer which was unknown to the person at the time of the Pre-Hearing Scheduling Conference (or other time at which the deadline was set) which makes it impossible for the person to participate in the Administrative Hearing process. Relief in these instances shall be granted only if the person raises the request as soon as practicable, and the Hearing Officer shall consider a failure to timely seek relief a waiver by the person.
- C. Any continuance granted under this Rule shall be for as short a period as necessary to allow the person to participate in the process.
1. If an illness or disability affects an attorney who will not be able to participate in the process within a reasonably short period of time, then the continuance shall only be for such time as is necessary to secure substitute counsel.
 2. If the illness or disability affects the Hearing Officer, and the Hearing Officer cannot proceed within the time period set forth in Rule 16, below, the Hearing Officer shall recuse him/herself and a new Hearing Officer shall be appointed.
- D. If good cause exists, the Hearing Officer may order that the Clerk schedule a Pre-Hearing Scheduling Conference in order to re-set the Hearing Date.
- E. Until such time as the matter has been referred to the Board, the Hearing Officer may, upon any terms as may be just, relieve a party or his/her legal representative from an order, or other action taken against him/her through his/her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be made within a reasonable time and once the matter has been placed on the Board agenda, the Hearing Officer shall no longer have jurisdiction.

Rule 16. Dismissal for Failure to Pursue the Administrative Hearing

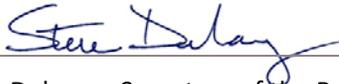
Except as otherwise provided, if as a result of an Applicant's failure to pursue his/her case or to comply with any of these Rules, the Applicant's Request for Administrative Hearing (or Board referral) is not heard within one year after the Applicant files a Request for Administrative Hearing (or the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



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Secretary's Certificate

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



Steve Delaney, Secretary of the Board

01/16/18

Date