

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

**DISABILITY COMMITTEE MEETING  
Monday, August 19, 2024  
8:30 A.M.**

**Members of the Committee**

Richard Oates, Chair  
Chuck Packard, Vice Chair  
Roger Hilton  
Jeremy Vallone

**Members of the public who wish to observe and/or participate in the meeting may do so (1) from the OCERS Boardroom or (2) via the Zoom app or telephone (information below) from any location.**

**NOTICE OF APPEARANCE VIA TELECONFERENCE**

Pursuant to Gov. Code, § 54953, Trustee Mr. Roger Hilton and CEO Mr. Steve Delaney will be participating in the Disability Committee Meeting of August 19, 2024, via teleconference from the following location, which is open to the public:

Business Center within Fairmont Copley Plaza  
138 St. James Avenue, Boston, Massachusetts 02116

Members of the public will have the opportunity to address the Committee at this teleconference location.

<b>OCERS Zoom Video/Teleconference information</b>	
<p><b>Join Zoom Meeting</b></p> <p><a href="https://ocers.zoom.us/j/89210936572">https://ocers.zoom.us/j/89210936572</a></p> <p><b>Meeting ID: 892 1093 6572</b></p> <p><b>Passcode: 843111</b></p> <p>Go to <a href="https://www.zoom.us/download">https://www.zoom.us/download</a> to download Zoom app before meeting</p> <p>Go to <a href="https://zoom.us">https://zoom.us</a> to connect online using any browser.</p>	<p><b>Join by Telephone (Audio Only)</b></p> <p>Dial by your location</p> <ul style="list-style-type: none"> <li>+1 669 900 6833 US (San Jose)</li> <li>+1 346 248 7799 US (Houston)</li> <li>+1 253 215 8782 US</li> <li>+1 301 715 8592 US</li> <li>+1 312 626 6799 US (Chicago)</li> <li>+1 929 436 2866 US (New York)</li> </ul> <p><b>Meeting ID: 892 1093 6572</b></p> <p><b>Passcode: 843111</b></p>
<p>A <a href="#">Zoom Meeting Participant Guide</a> is available on OCERS website <a href="#">Board &amp; Committee meetings page</a></p>	

**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**

1. **CALL MEETING TO ORDER AND ROLL CALL**
2. **BOARD MEMBER STATEMENT REGARDING PARTICIPATION VIA ZOOM (IF NECESSARY)  
(Government Code section 54953(f))**
3. **PUBLIC COMMENTS**

**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. Members of the public who participate in the meeting from the OCERS Boardroom and who wish to provide comment during the meeting may do so from the podium located in the OCERS Boardroom. When addressing the Committee, please state your name for the record prior to providing your comments. Speakers will be limited to three (3) minutes.**

At this time, members of the public may comment on (1) matters not included on the agenda, provided that the matter is within the subject matter jurisdiction of the Committee; and (2) any matter appearing on the Consent Agenda.

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

**CLOSED SESSION**

**Government Code section 54957**

Adjourn to Closed Session under Government Code section 54957 to consider disability applications and to discuss member medical records submitted in connection therewith. The member may waive confidentiality and request his or her disability application to be considered in Open Session. As per the OCERS Bylaws, for disability matters before the Board, the applicant or their attorney is allowed to present for a maximum of ten (10) minutes. The opposing counsel is allowed a time limit of seven (7) minutes for argument, followed by a three (3) minute rebuttal from the applicant or their attorney.

**DA-1: PEGGY BRANDON**

Data Entry Technician, Orange County Social Services Agency (General Member)

**Recommendation:** Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Deny service-connected and non-service connected disability retirement due to the employer being able to accommodate the member’s permanent work restrictions.

**OPEN SESSION**

**REPORT OF ACTIONS TAKEN IN CLOSED SESSION**

**CONSENT ITEMS**

All matters on the Consent Agenda are to be approved by one action unless a Committee Member requests separate action on a specific item.

**C-1 MINUTES FROM THE MAY 20, 2024, DISABILITY COMMITTEE MEETING**

**Recommendation:** Approve the Minutes.

**ACTION ITEMS**

**NOTE:** Public comment on matters listed in this agenda will be taken at the time the item is addressed, prior to the Committee’s discussion of the item. **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. Persons attending the meeting in person and wishing to provide comment on a matter listed on the agenda should fill out a speaker card located at the back of the Boardroom and deposit it in the Recording Secretary’s box located near the back counter.**

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

**A-2 OFF-CYCLE REVIEW OF OCERS ADMINISTRATIVE REVIEW AND HEARING POLICY**

*Presented by Suzanne Jenike, Assistant CEO, External Operations; Manuel D. Serpa, General Counsel*

**Recommendation:** Review and recommend that the Board approve the Administrative Review and Hearing Policy revisions.

**A-3 REVIEW OF THE OAP REGARDING EFFECTIVE DATE OF DISABILITY RETIREMENT ALLOWANCE**

*Presented by Manuel D. Serpa, General Counsel; Joon Kim, Staff Attorney*

**Recommendation:** Review, approve, and recommend that the Board of Retirement adopt the revised OCERS Administrative Procedure (OAP) regarding Effective Date of Disability Retirement Allowance, as presented

**COMMITTEE MEMBER COMMENTS**

**CHIEF EXECUTIVE OFFICER/STAFF/COUNSEL COMMENTS**

**ADJOURNMENT**

**NOTICE OF NEXT MEETINGS**

**REGULAR BOARD MEETING**

**August 19, 2024  
9:30 A.M.**

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

**PERSONNEL COMMITTEE MEETING**

**August 27, 2024  
9:30 A.M.**

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

**INVESTMENT COMMITTEE MEETING**

**August 28, 2024  
9:00 A.M.**

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

**BUILDING COMMITTEE MEETING**

**August 30, 2024  
9:30 A.M.**

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

*AVAILABILITY OF AGENDA MATERIALS - Documents and other materials that are non-exempt public records distributed to all or a majority of the members of the OCERS Board or Committee of the Board in connection with a matter subject to discussion or consideration at an open meeting of the Board or Committee of the Board are available at the OCERS' website: <https://www.ocers.org/board-committee-meetings>. If such materials are distributed to members of the Board or Committee of the Board less than 72 hours prior to the meeting, they will be made available on the OCERS' website at the same time as they are distributed to the Board or Committee members. Non-exempt materials distributed during an open meeting of the Board or Committee of the Board will be made available on the OCERS' website as soon as practicable and will be available promptly upon request.*

Orange County Employees Retirement System  
August 19, 2024  
Disability Committee Meeting– Agenda

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

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

**DISABILITY COMMITTEE MEETING  
Monday, May 20, 2024  
8:30 A.M.  
MINUTES**

**OPEN SESSION**

Chair Oates called the meeting to order at 8:43 a.m.

Recording Secretary administered roll call.

Attendance was as follows: Richard Oates, Chair; Charles Packard, Vice Chair; Roger Hilton, Board Member; Jeremy Vallone, Board Member

Also in Attendance: Steve Delaney, CEO, Suzanne Jenike, Assistant CEO, External Operations; Manuel Serpa, General Counsel; Nicole McIntosh, Director of Disability; Joon Kim, Staff Attorney; Brittany Brayboy, Disability Retirement Investigator; Vanessa Lopez, Disability Investigator; Cesar Rodriguez, Disability Retirement Investigator; Anthony Beltran, Audio Visual Technician; Marielle Horst, Recording Secretary

**PUBLIC COMMENT**

None.

*The Committee did not adjourn to closed session.*

**DISABILITY CONSENT ITEMS**

**DA-1: THERESA WHITNEY**  
Eligibility Technician, Orange County Social Services Agency (General)

**Recommendation:** Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Deny service-connected disability retirement due to insufficient evidence of permanent incapacity.

**MOTION** by Mr. Packard, **seconded** by Mr. Vallone to approve staff recommendation. The motion

Orange County Employees Retirement System  
May 20, 2024  
Disability Committee Meeting Minutes

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passed **unanimously**.

### **CONSENT ITEMS**

#### **C-1 MINUTES FROM THE MAY 20, 2024, DISABILITY COMMITTEE MEETING**

**Recommendation:** Approve the Minutes.

**MOTION** by Mr. Packard, **seconded** by Mr. Hilton to approve the Disability Committee meeting minutes. The motion passed **unanimously**.

### **ACTION ITEMS**

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

#### **A-2 TRIENNIAL REVIEW OF THE DISABILITY RETIREMENT REASSIGNMENT POLICY**

*Presented by Nicole McIntosh, Director of Disabilities*

**Recommendation:** Review, approve, and recommend that the Board approve the non-substantive revisions to the Disability Retirement Reassignment Policy, as presented. Staff also recommends that the Committee review, approve and recommend that the Board approve the modified title of the policy. "Supplemental Disability Retirement Policy (Reassignment)".

**MOTION** by Mr. Packard, **seconded** by Mr. Vallone to approve staff recommendations. The motion passed **unanimously**.

#### **A-3 TRIENNIAL REVIEW OF THE HEARING OFFICER SELECTION AND RETENTION POLICY**

*Presented by Nicole McIntosh, Director of Disabilities*

**Recommendation:** Review, approve, and recommend that the Board approve the Hearing Officer Selection and Retention Policy, as presented.

After discussion, a **MOTION** by Mr. Packard, **seconded** by Mr. Hilton to approve staff recommendations, with suggested revisions. The motion passed **unanimously**.

#### **A-4 REVISIONS TO THE DISABILITY PRESUMPTIONS OAP**

*Presented by Nicole McIntosh, Director of Disabilities*

**Recommendation:** Review, and recommend that the Board approve the Disability Retirement Presumptions OAP, as presented.

**MOTION** by Mr. Oates, **seconded** by Mr. Packard to approve staff recommendations. The motion passed

Orange County Employees Retirement System  
May 20, 2024  
Disability Committee Meeting Minutes

**unanimously.**

**STAFF COMMENTS**

Ms. McIntosh informed the Committee of the process changes made throughout the Disability Department. She noted that the integration of program software, *Foundation AI*, has shortened the processing time for Medical Case Reviews, thus providing a quicker processing time.

Ms. McIntosh reported to the committee the Disability Seminar “Beyond the Badge, Breaking the Silence: Mental Health Challenges in Safety Professions and Disability Retirement”, presented by OCERS and LACERA at the May 2024 SACRS conference, was very successful. The presentation was informative, moving, and well-received. Ms. Jenike will seek approval to hold an education session for the Board on the same topic.

**COMMITTEE MEMBER COMMENTS**

Mr. Hilton thanked Ms. McIntosh for her presentation at SACRS.

**CHIEF EXECUTIVE OFFICER/ /COUNSEL COMMENTS**

None.

**ADJOURNMENT**

The meeting adjourned at 9:05 a.m.

Submitted by:

Submitted by:

Approved by:

\_\_\_\_\_  
Suzanne Jenike  
Staff Liaison

\_\_\_\_\_  
Steve Delaney  
Secretary to the Board

\_\_\_\_\_  
Richard Oates  
Chair





## Memorandum

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**DATE:** August 19, 2024  
**TO:** Members of the Disability Committee  
**FROM:** Suzanne Jenike, Assistant CEO, External Operations, Manuel D. Serpa, General Counsel  
**SUBJECT:** **OFF-CYCLE REVIEW OF OCERS ADMINISTRATIVE REVIEW AND HEARING POLICY**

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### Recommendation

Review and recommend that the Board approve the Administrative Review and Hearing Policy revisions.

### Background

The Administrative Review and Hearing Policy was adopted by the Board of Retirement on February 19, 2002. The Board generally reviews and revises it every three years, though the last review was on May 17, 2023. Staff presents the Policy to the Disability Committee for the off-cycle review. Details of the proposed reviews are below.

### Revisions

The Administrative Review and Hearing Policy has been revised to enhance clarity while ensuring the fair, accurate, and expeditious handling of appeals. In addition, edits were made to remove unnecessary verbiage, correct typos, reduce legalese and re-organize the material to improve readability. The changes have reduced the document length from 23 pages to 20 while maintaining the substance of the provisions. The changes are as follows:

**Sections 1 through 9:** Redundant language was removed.

#### **Rule 3: Formerly Administrative Hearing Request, Scope, and Settlement, now Request for Hearing or Review**

- Additional language was added for clarity.

The added language is *indicated in italics* as follows:

- A. ***Request for Administrative Hearing or Request for Administrative Review.*** A written Request for Administrative Hearing *or a Request for Administrative Review* must be filed with the Clerk within the time frame set forth in Sections 3 and 4 of the Policy. The Request must include a short and plain statement *no more than one (1) page in length* of the grounds for the request and a signed Authorization for Use and Disclosure of Protected Health Information *if filing a disability benefit appeal. An Applicant's Request for Administrative Hearing that includes new conditions will be treated as an amended Application and will be returned to Staff for reconsideration.* (Additional language indicated in *italics*.)

#### **Rule 4: Assignment of Hearing Officers**

- Redundant language was removed.

#### **Rule 5: Formerly Preparation and Service of Administrative Record, now Supplemental IME Report Requests, Preparation and Service of Administrative Record.**

Language was added to address the following:

- Establish a timeframe for the Applicant to provide additional records to be added to the Administrative Record before final assembly and service of the record on the Hearing Officer and Parties.

The added language is as follows:

*The Applicant will have thirty (30) days from the date of filing their Request for Administrative Hearing to submit additional records to be included in the initial Administrative Record.*

- Applicant's request for a hardcopy of the Administrative Record.

The added language is as follows:

*The Clerk will serve the Administrative Record pursuant to Rule 2.B.2. If a Party requests a hardcopy of the record, one (1) will be provided to them at no cost.*

- Clarify the timeline for the Parties to submit additional evidence after the Administrative Record has been serviced.

The added language is as follows:

*Pursuant to Rule 10.H., after the Administrative Record has been served, parties are no longer permitted to submit additional medical reports or other documentary evidence except for purposes of impeachment, unless the Party demonstrates good cause to the satisfaction of the Hearing Officer pursuant to Rule 11.I.*

- Requesting a Supplemental IME Report.

The added language is as follows:

*Should OCERS staff determine that a supplemental IME report from OCERS' Panel Physician is necessary, the Clerk will notify the Applicant and Hearing Officer of OCERS staff's Request for a Supplemental IME Report by serving it upon them. The Hearing Officer may reschedule the hearing date or amend the time periods set for by the Rules upon the showing of good cause, pursuant to Rule 14.*

#### **(Formerly) Rule 6: Expedited Administrative Hearing**

This Rule has been removed for inapplicability. The Rule was established in 2018 and was designed to expedite appeals specifically filed on benefit determinations, allowing the hearing process to be completed in six (6) months or less. This process has now been delegated to the Board.

#### **Rule 6: Consolidation of Hearings**

- Redundant language was removed.

#### **Rule 7: Pre-Hearing Conference**

- Redundant language was removed, and additional language was added for clarity.

The added language is *indicated in italics* as follows:

- B. The Pre-Hearing Conference will be held telephonically. The Clerk will arrange for a court reporter to transcribe the conference at OCERS' expense. *The court reporter will lodge the*

*transcript with the Clerk and serve a copy of the transcript on the Hearing Officer and Parties, no later than thirty (30) day from the date of the conference.*

- J. If neither the Applicant nor the Employer, where the Employer has filed an Application on behalf of the Member, participates 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 (or Employer) 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 why the matter should not be dismissed, 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. The Application will be referred to the Board at its next regular meeting.

If the Hearing Officer determines that an Applicant has shown good cause, the Hearing Officer will direct the Clerk to reschedule the Pre-Hearing Conference. *Applicant's failure to participate in the rescheduled Pre-Hearing Conference will result in immediate dismissal of their case.*

#### **Rule 8: Pre-Hearing Statements**

- At the request of Stakeholders, paragraph F was removed, which allowed the Clerk to file an Order to Show Cause for dismissal based on the Applicant's failure to timely file a Pre-Hearing Statement.

#### **Rule 9: Depositions and Subpoenas**

- Language was added for clarity and to establish that the Applicant is responsible for all witness fees. Including those associated with calling an OCERS Panel Physician as a witness.

The added language is as follows:

*If an employer witness is being subpoenaed, it is the responsibility of the subpoenaing party to coordinate service with that employer.*

#### **Rule 10: Conduct of Hearings**

- Redundant language was removed.

#### **Rule 13: Hearing Officer's Findings of Fact and Recommended Decision**

- Redundant language was removed, and additional language was added for clarity.

#### **Rule 15: Formerly Hearing and Action by the Board, now Action by the Board**

- Staff has included time limits pursuant to OCERS By-laws for Applicants' (or their Attorneys') and Respondents' presentations, subject to the Board's discretion to extend any Parties' time.

The added language is *indicated in italics* as follows:

- C. The Clerk will provide written notice to the Parties, Hearing Officer, and Employer 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. *On matters which are on the Board agenda, the Applicant (or their Attorney) is limited to a ten (10) minute presentation; Respondent is limited to a seven (7) minute response; and the Applicant (or their Attorney) is*

*then limited to a three (3) minute rebuttal. The Board Chair has the discretion to extend any Parties' time.*

- The Rule has also been revised to establish timelines and procedures for cases in which the Board refers disability retirement matters back to the Hearing Officer for further proceedings or sets the matter for hearing before itself to decide the matter.

The added language is *indicated in italics* as follows:

*H. In any case where the Board decides to act under Rule 15.F.3. the Clerk will notify the Hearing Officer of the Board's action no more than five (5) days from the Board meeting. The Applicant will have thirty (30) days to submit additional evidence. The Hearing Officer will then have sixty (60) days to review the additional evidence and issue their Findings. Any Party will have ten (10) days to file objections, with any opposition due ten (10) days later. The Clerk will place the matter on the Board agenda in accordance with Rule 15.B.*

*I. In any case where the Board decides to act under Rule 15.F.4. the Board Chair will act as the Hearing Officer and will establish a hearing date and briefing schedule. Applicant's opening brief will be filed with the Clerk no more than sixty (60) days before the date of the Board hearing. Respondent(s) opening brief will be due no more than thirty (30) before the date of the Board hearing. The Applicant will then have until twenty (20) days before the date of the Board hearing to file a reply brief. Each brief will be no more than five (5) pages in length excluding exhibits. Once the Board hearing date has been set, no continuances will be granted.*

*At the conclusion of the Board hearing the record will be closed.*

*A court reporter will be provided at OCERS' expense to transcribe the Hearing. The court reporter will lodge the transcript with the Clerk within twenty (20) days from the Hearing.*

*The Applicant will have thirty (30) days from the date the hearing transcript is lodged to file their closing brief. Respondent will then have thirty (30) days to file its closing brief. Applicant will then have twenty (20) days to file a reply brief. Each brief will be no more than five (5) pages in length.*

*Following the Hearing before the Board, a Statement of Decision will be issued and the Clerk will notify the Applicant (or their Attorney), Hearing Officer, and the Employer by email of the Board's final action. 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*

**Rule 16: Formerly Dismissal for Failure to Pursue the Administrative Review and Hearing, now Dismissal for Non-Compliance**

- Staff has revised this Rule at the request of Stakeholders to eliminate the requirement that a hearing be pursued within one year from the date of the Request for Administrative Hearing (or the Board's referral to a Hearing Officer).

**Submitted by:**



SJ-Approved

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Suzanne Jenike  
Assistant Chief Executive Officer  
External Operations



MDS-Approved

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Manuel D. Serpa  
General Counsel



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

### 1. ~~Intent~~Introduction

The Board of Retirement (“Board”) of the Orange County Employees Retirement System (“OCERS”) intends that this Administrative Review and Hearing Policy (“Policy”) and the attached appendix 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 e.g.,~~ 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.

**Authorization for Disclosure and Use of Protected Health Information:** The OCERS form that is filed with the Request for Administrative Hearing authorizing Staff to obtain and use Member medical records.

**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)~~



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

or an Applicant's benefit (e.g., calculation of the amount of the benefit, non-disability benefit effective date, reciprocity determinations).

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

**Clerk, Clerk of the Hearing Officers:** ~~A person or persons; Staff member(s)~~ designated by OCERS General Counsel or their designee to fulfill the ~~duties of providing administrative assistance to the Hearing Officers appointed duties required~~ by OCERS this Policy.

**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 Business Calendar Days unless otherwise noted. Any deadline falling on a weekend or holiday will be due the next business day. Business Days are Monday through Friday, ~~excluding~~ Holidays are federal and State of California Holidays.

**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 following determinations: (1) whether the Applicant is permanently incapacitated for performance of their duties; (2) whether the disability was service-connected; ~~and~~ (3) the effective date of the disability retirement; ~~(4) timeliness of the Application; and (5) ineligibility due to termination for cause.~~ 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~~ Employer of a member whose benefits are at issue in any given matter. The Employer is a Party to an Administrative Review or Hearing but ~~does~~ is not ~~needed~~ required 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, or podiatrist 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 with their licensing board.

**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 joins in the Administrative Review or Hearing.

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

**Pre-Hearing Statements:** Statements filed with the Clerk by the Parties pursuant to Rule 98 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 13~~ of the Rules.

**Request for Administrative Review or Request for Administrative Hearing:** The document filed with the Clerk by the Applicant (or in limited cases, the Employer) to ~~seek a review of a decision of the Committee of 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~~must join as a Respondent. Failure to join may result in a denial without prejudice.

**Rules:** The ~~"Orange County Employees Retirement System~~ Administrative Hearing 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 is service-connected;~~ (iii) the appropriate effective date of any disability retirement ~~allowance. In undertaking this investigation;~~ (iv) whether the Application is timely; and (v) whether the Applicant is not eligible due to termination for cause. 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~~require medical examination(s) of the Applicant, and obtain expert medical advice, ~~or expert review of Applicant's medical records. Upon completion of the to aid its investigation, if~~ If the Staff's recommendation is to grant the disability retirement Application in full or deny without prejudice because the member has opted not to join an employer-filed application, Staff will forward the recommendation to the CEO. ~~If the Staff's recommendation is to deny (or grant only in part) the disability retirement Application, Staff's~~the recommendation will be presented to the Committee. ~~Staff's recommendations will include recommendations regarding permanent incapacity, service connection, and effective date.~~
- B. When the Staff recommendation is to grant the disability retirement Application in full, the recommendation will be reviewed by the CEO. ~~If, after the CEO reviews the disability retirement Application, the CEO concurs with the Staff recommendation to grant the disability retirement Application in full,~~ the CEO will recommend that the Board grant the Application in full. ~~The CEO's~~

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

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~~. Staff will notify the Applicant (and Applicant's attorney, if any) and the Employer of the date and time of the meeting at which the matter will be presented. If the CEO disagrees with the Staff's recommendation, the Application will be forwarded to the Committee for review and determination in accordance with Section 3.D, ~~below~~.

- C. When the Staff recommendation is to deny the disability retirement Application without prejudice because the member has opted not to join in an employer-filed application, the recommendation will be reviewed by the CEO. If ~~after the CEO reviews the disability retirement Application~~, the CEO concurs with the Staff recommendation ~~to deny the disability retirement Application~~, the CEO will recommend that the Board deny the ~~disability~~ Application without prejudice. The CEO'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~~. Staff will notify the Employer of the date and time of the meeting at which the matter will be presented. If the CEO disagrees with the Staff's recommendation, the Application will be forwarded to the Committee for review and determination in accordance with Section 3. D. ~~below~~.
- D. When the Staff recommendation is to deny (or grant only in part) the disability retirement Application or when the CEO disagrees with Staff's recommendation to grant the disability retirement Application in full, the ~~disability retirement~~ Application and the Staff recommendation under Section 3.A., ~~above~~, will be reviewed by the Committee at a duly ~~noticed meeting of the Committee~~. Staff will give Applicant (and ~~the Applicant's their~~ 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.
- E. After the Committee reviews the disability retirement Application under Section 3.D., ~~above~~, 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 their~~ attorney) and the Employer 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 when the message is sent. Alternatively, the Committee may direct Staff to further develop the record and return the matter for consideration at a future meeting.~~
- F. In the event the Committee recommends that the Application be denied in full or in part, the Applicant will have ninety (90) days from the date of the ~~notice required by 3.D., above, Committee action~~ to file a Request for Administrative Hearing with the Clerk ~~(and only 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 by the recommendation will have ten (10) days from the date of the ~~notice required by 3.D., above, Committee Action~~ to file a written Request for Administrative Hearing as set forth in the Rules.
- G. A Request for Administrative Review or Hearing ~~may only must~~ be filed using the form approved by OCERS. That form must be signed and dated by the Applicant (or ~~the Applicant's their~~ Attorney) to



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

be valid. Forms that are not dated and signed will be rejected by the Clerk. ~~A request submitted in any other form (i.e., email, letter) will be rejected by the Clerk.~~

- H. ~~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 Applicant may request a Hearing if they dispute the Committee's recommendation regarding (i) permanent incapacity, (ii) service-connection, (iii) 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; (iv) timeliness of the Application; or (v) ineligibility due to termination for cause. Undisputed issues not disputed will not be at issue/considered in the Hearing. ~~Staff will forward those non-disputed/undisputed~~ issues to the Board for final action.
- I. If no Request for Administrative Hearing is filed within the time limit set forth in Section 3.E., 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/Board meeting.

### 4. Benefit Determination Review Process

For Benefit Determinations:

~~A. Staff will notify the~~The Member may request a CEO review of the Benefit Determination, ~~and the Member may request a CEO Determination~~ within ninety (90) days of the date of the notice of the Benefit Determination. ~~made by Staff.~~ The CEO Determination will be ~~in the form of a written review completed and returned to the Member within ninety (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. A. and served on the Member.~~ The Member will have ninety (90) days from the date of the notice of the CEO Determination provided in 4.A., above, to file a Request for Administrative Review with the Clerk ~~(and only the Clerk).~~ matter will proceed as set forth in Section 8. If no timelythe Request for Administrative Review is filed/untimely, the CEO Determination will be final.

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

- A. **Consent Agenda.** ~~Recommendations from the CEO~~The Board will consider on its consent agenda CEO recommendations to grant an Application for disability retirement in full or to deny without prejudice because the ~~member~~Member has opted not to join in an employer-filed application, and Committee recommendations for which there has been no timely Request for an Administrative Hearing under Section 3, ~~above, will be considered by the Board on its consent agenda.~~



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- 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. Such items will be considered by the Board in closed session as set forth in Section 7, ~~below~~.
- C. **Action on Recommendations from the CEO.** After consideration by the Board, the Board will either ~~(i)~~ adopt the recommendation of the CEO; ~~or (ii)~~ or refer the matter to the Disability Committee for consideration.
- D. **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).

### 6. Board Action on Disability Determinations After Hearing

Following an ~~administrative~~ 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 Board meeting ~~of the Board~~ and ~~take action~~ act in accordance with Rule ~~16 of the Rules~~ 15.

### 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~~ consider 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,~~ in closed session, pursuant to Cal. Gov't Code § 54957(b), unless the Applicant requests the matter be heard in open session.

~~A. Closed Session With Parties Present. Before or after such closed session, 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 Recording Secretary, Clerk of the Hearing Officers, 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.~~

~~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 meet in 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.~~

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

### 8. Board Action on CEO Determinations (i.e., CEO Benefit Determinations).

- A. **Board Review of CEO Determinations.** ~~In the case of~~ Upon a timely Request for Administrative Review of a CEO Determination, the Board will consider the matter at a duly noticed regular Board 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~~ their attorney) will have the opportunity to be heard.
- B. **Board's Options.** ~~At the meeting, the~~ 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~~ sits decision will be final. ~~If the Board chooses to refer the matter to a Hearing, the Board~~ it will identify the factual and legal issues to be considered by the Hearing Officer.

In determining whether to hear and determine the matter or refer the matter to a Hearing Officer, the Board will consider all relevant factors, including, ~~but not limited to,~~ the following:

- ~~1.~~ i. whether the disputed issues are legal, not factual, in nature;
- ~~2.~~ ii. relevant judicial authority on the disputed legal issue(s);
- ~~3.~~ iii. whether the Board and/or a Hearing Officer has previously ruled on substantively similar issue(s);
- ~~4.~~ iv. whether the Applicant is represented by an attorney;
- ~~5.~~ v. the efficient use of OCERS resources; and
- ~~6.~~ vi. the interests of the Applicant in receiving a timely decision.

- C. **Consolidation of Reviews.** When ~~review by~~ the Board ~~of~~ reviews two or more CEO Determinations ~~involves~~ involving common questions of law or fact, ~~the Board~~ it 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.~~ 1. the complexity of the issues involved;
- ~~ii.~~ 2. the potential prejudice to any party, including whether a Consolidation would result in undue delay;
- ~~iii.~~ 3. the avoidance of duplicate or inconsistent orders; and
- ~~iv.~~ 4. the efficient utilization of OCERS resources.

### 9. Board Action on CEO Determinations After a Hearing.

~~If~~ the ~~case of~~ Board refers 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 Board meeting ~~of the Board~~ in accordance with Rule ~~16 of the Rules~~ 15. The Board may adopt the Hearing Officer's

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

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, amended on August 17, 2020, May 17, 2023, and most recently on-

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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

\_\_\_\_\_  
Date

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

**Appendix - Administrative Hearing 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. Filing of Documents.**

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

**B. Service of Documents.**

1. The Clerk ~~(and only 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. Service by anyone other than the Clerk will be considered defective.
2. Service by the Clerk will be electronic and the Clerk's file stamp will constitute proof of service, except where the Applicant has opted to file by US Mail pursuant to Section A.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.



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

### Rule 3. Administrative Hearing Request, Scope, and Settlement

#### Request for Hearing or Review

- A. **Request for Administrative Hearing or Request for Administrative Review.** A written Request for Administrative Hearing or a Request for Administrative Review must be filed with the Clerk within the time frame set forth in Sections 3 and 4 of the Policy. -The Request must include a ~~short and plain~~ statement no more than one (1) page in length of the grounds for the request and a signed Authorization for Use and Disclosure of Protected Health Information- if filing a disability benefit appeal. An Applicant's Request for Administrative Hearing that includes new conditions will be treated as an amended Application and will be returned to Staff for reconsideration.
- B. **Referral from the Board.**- In the event the Board refers a matter to a Hearing Officer for a Hearing (pursuant to Sections 5.D. or 8.B. 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~~their expense, to be represented by an attorney at any stage of the proceedings. -Such attorney must be ~~a current, an~~ active member of the California State Bar in good standing.- A Party must immediately file with the Clerk a written notice of the hiring, changing, or dismissal of an attorney. -Absent such written designation, OCERS will not recognize any attorney or other individual claiming to represent a Party, including ~~but not limited to,~~ an attorney in fact (under a power of attorney) or the Applicant's spouse.
- 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 files the Request for Administrative Hearing, 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, timeliness of the Application are subject to the Benefit Determination process under Sections 4 or 8 of the Policy, and ineligibility due to termination for cause.
  - 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



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condition not included in the disability retirement Application or that was not previously evaluated by Staff, except as provided in subsection 4, ~~below~~.

- 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 87.~~
- F. **Settlement.** - If at any time during the Hearing process it becomes apparent to Staff that a different result is appropriate, Staff ~~may request that the Hearing Officer will~~ 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. -The Clerk will assign the Hearing Officer on a rotational basis, to ensure to the extent possible ~~that each Hearing Officer on the panel is assigned an equal number of cases.~~ -When 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, and that notice will include information regarding the opportunity 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 (1) peremptory (without cause) challenge to the ~~assignment of the~~ Hearing Officer ~~assigned~~. The challenge must be filed with the Clerk within ten (10) 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 ten (10) 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

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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 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.

**D.** This Rule 4 does not apply to cases where the Board refers the matter back to the Hearing Officer under Section 8.B. ~~of the Policy~~ or cases that are consolidated under Rule ~~7~~ 6.

#### **Rule 5. Supplemental IME Report Requests, Preparation and Service of Administrative Record**

The Applicant will have thirty (30) days from the date of filing their Request for Administrative Hearing to submit additional records to be included in the initial Administrative Record.

Within sixty (60) days of the filing of a Request for Administrative Hearing, Staff will assemble, and the Clerk will serve on the Hearing Officer and ~~each Party~~ the Parties 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.~~

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### ~~Availability of Expedited Administrative Hearing.~~

~~An Expedited Administrative Hearing is only available for those cases. The Clerk will serve the Administrative Record pursuant to Rule 2.B.2. If a Party requests a hardcopy of the record, one (1) will be provided to them at no cost.~~

~~Pursuant to Rule 10.H., after the Administrative Record has been served, parties are no longer permitted to submit additional medical reports or other documentary evidence except for purposes of impeachment, unless the Party demonstrates good cause to the satisfaction of the Hearing Officer pursuant to Rule 11.I.~~

- ~~1. Should OCERS staff determine that OCERS General Counsel determines the process is appropriate.~~

~~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 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 completing the Hearing process.~~

- ~~3. In the event the General Counsel determines that a matter is appropriate for Expedited Administrative Hearing, a supplemental IME report from OCERS' Panel Physician is necessary, 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.~~

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

- ~~5. Within ten (10) 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.~~
- ~~6. 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.~~
- ~~7. Within ten (10) 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.~~

~~8. Within sixty (60) days from the date Respondent files its Statement of Issues, the and 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 ten (10) days, and responses thereto likewise will be filed within ten (10) days of OCERS staff's Request for a~~

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Supplemental IME Report by serving it upon them. The Hearing Officer may reschedule the hearing date or amend the time periods set for by the Rules upon the showing of good cause, pursuant to Rule 14.

### ~~Rule 7~~ **Rule 6. Consolidation of Hearings**

In addition to Consolidation by the Board of two or more CEO Determinations pursuant to Section 8.C. of the Policy, cases may be Consolidated in accordance with this Rule ~~7~~**6**, and this Rule ~~7~~**6** 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
4. the efficient utilization of OCERS' resources.

- B. Any Party may file a request with the Clerk ~~(and only the Clerk)~~ to Consolidate two or more pending Hearings irrespective of the procedural stages of the affected Hearings, ~~which~~ **and the** 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 by phone, 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 prepare~~ 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.~~

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

### Rule 87. Pre-Hearing Conference

- A. The Clerk will schedule a Pre-Hearing Conference to be held within ten (10) days of the service of the Administrative Record. ~~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. ~~The court reporter will lodge the transcript with the Clerk and serve a copy of the transcript on the Hearing Officer and Parties, no later than thirty (30) day from the date of the conference.~~
- C. The Hearing Officer will not permit the Parties to argue the merits of their positions at the Pre-Hearing Conference, and the Hearing Officer is authorized to suspend the Pre-Hearing Conference if any Party violates this rule. Suspended Pre-Hearing Conferences will be rescheduled to a date that is no more than five (5) days after the originally scheduled Pre-Hearing Conference. Further attempts by a Party to argue the merits of their position will result in the Clerk immediately filing an Order to Show Cause why the case should not be dismissed.
- D. 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<sub>;</sub>
  - 2. Any financial or personal interest that the Hearing Officer ~~may have has~~ in the case, other than the Hearing Officer's contract with OCERS<sub>;</sub>
  - 3. The scope of the Hearing and the issues to be decided consistent with the constraints of Rule 3.E., above<sub>;</sub>
  - 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 the issues in dispute anew all of the evidence submitted and defenses asserted,~~ without relying on the past findings of the Committee, the Board, or the CEO<sub>;</sub>
  - 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<sub>;</sub>
  - 6. The Applicant has the burden of proof in establishing by a preponderance of the evidence the right to the benefit sought<sub>;</sub>
  - 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<sub>;</sub>
  - 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 will~~ be dismissed ~~and~~<sub>;</sub>



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

Upon the ~~completion~~issuance of the ~~Hearing~~Proposed Findings of Fact and Recommended Decision, 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.

E. 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~~an interpreter for the witnesses in accordance with Rule ~~109.K~~7.
3. Indicate whether it will require an opposing Party's Medical Witness to appear in person at the Hearing; and
4. Identify any witnesses the Party seeks to depose and, if possible, set mutually convenient dates for any depositions.

F. 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, if they were not previously raised and considered by the Committee. These issues will then be presented at the Hearing.~~

G. At the Pre-Hearing Conference, the Clerk will set the date for the Hearing.

1. The Clerk will confer with the Hearing Officer and 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~~The Hearing will continue from day-to-day until complete, and the Clerk will schedule all Hearing Dates to which the Hearing Officer and Parties anticipate the Hearing will be continued until complete.
3. The Clerk will confer with the Parties to establish a Pre-Hearing Statement filing schedule in accordance with Rule ~~98~~9.

H. Immediately following 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.



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- I. After the Pre-Hearing Conference, the Hearing Officer may continue the Hearing Date only ~~one (1) time~~ upon a showing of good cause, as set forth in Rule ~~15 below~~ 14.
- J. If neither the Applicant nor the Employer, where the Employer has filed an Application on behalf of the Member ~~(and is therefore also treated as an Applicant under these Rules)~~, participates 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 ~~at the~~ Applicant ~~(including the or Employer where the Employer has filed an Application on behalf of the Member)~~ 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 why the matter should not be dismissed, 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 ~~and the~~ The Application will be referred to the Board at its next regular meeting ~~immediately following the granting of the Clerk's Order to Show Cause~~.

If the Hearing Officer determines that an 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. Applicant's failure to participate in the rescheduled Pre-Hearing Conference will result in immediate dismissal of their case.~~

**Rule ~~98~~ Pre-Hearing Statements**

- A. The Applicant will file a Pre-Hearing Statement of up to ten (10) pages, not including exhibits, 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, not including exhibits, no later than thirty (30) days prior to the first Hearing Date.
- C. Any Party may file ~~supplemental a Supplemental~~ Pre-Hearing ~~Statements~~ Statement of up to five (5) pages, not including exhibits, 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~~;~~
  - 2. A list and redacted copies of any expert's reports, transcripts of depositions of any witnesses, and other documentary evidence on which the Party will rely, if not already in the Administrative Record. All documents will be Bates Stamped by the Applicant (or ~~the Applicant's~~ their Attorney) in sequence with the initial Administrative Record. Duplicate documents will be rejected~~;~~
  - 3. The names, addresses, email addresses (if known) and telephone numbers of any non-expert witnesses whose testimony the Party intends to call as a witness at the Hearing and a brief description of the content of their testimony~~;~~ ~~and~~.



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- 4. The names, addresses, email addresses (if known) and phone numbers of any expert witnesses whom the Party intends to call as a witness at the Hearing and a brief description of the content of their 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 and the Application will be referred to the Board at its regular meeting immediately following the granting of the Clerk’s Order to Show Cause.~~
- ~~F. If the Hearing Officer determines that the Applicant has shown good cause, the The Hearing Officer may allow the Respondent Parties additional time to file its/their 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. 14, if good cause is shown.~~

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### Rule 109. 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 Any Party offers any portion of any introducing deposition testimony into evidence at the Hearing, that Party will provide a full copy of the full 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 thirty (30) days before the Hearing Date. Any request for a subpoena submitted less than thirty (30) days of the Hearing Date will not be honored and it will be the responsibility of the Party to subpoena their witness.
  - 2. Each subpoena request must state the witness’s full name, email address (if known), phone number and the complete address of the witness’s place of employment, service address, or residence. ~~OCERS will issue the subpoena; however, the The~~ requesting Party will be responsible for serving the subpoena, scheduling the witness, and ~~pay~~paying all associated witness fees and costs of service and production. ~~The Party requesting oral testimony of an expert witness (including an OCERS Panel Physician) will in all cases be responsible for any expert witness fees.~~ If an employer witness is being subpoenaed, it is the responsibility of the subpoenaing party to coordinate service with that employer.



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3. Any fee disputes between a witness and the requesting Party are independent of any proceeding between the Applicant and OCERS. Those fee disputes will be resolved by the requesting Party and the witness in the California courts, not in this forum. The Hearing Officer has no authority to decide any such dispute.

### **Rule ~~11~~10. 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 ~~conduct of the~~ Hearing ~~need will~~ not be ~~conducted according to technical~~ ~~restricted by the~~ 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~~ ~~may~~ ~~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 ~~11~~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 ~~and serve a copy on the Hearing Officer and Parties~~, 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~~





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~~evidence. If, after showing of good cause as defined under Rule 11.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 11.I. No rebuttals of the rebuttal will be permitted.~~

~~11.H.~~ 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. ~~11.H.~~ 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. ~~11.H.~~ 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. ~~11.H.~~ 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. ~~11.H.~~ The request will state the reason the evidence or witness was not timely produced or identified. ~~11.H.~~ After providing a reasonable opportunity for each adverse Party to be heard, the Hearing Officer will rule on such a request. ~~11.H.~~ 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 ~~11.10.C.~~ ~~11.H.~~ 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.F.

~~11.I.~~ Each Party will have the right to submit a closing oral argument at the conclusion of the Hearing.

~~11.J.~~ 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. ~~11.J.~~ 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. ~~11.J.~~ If a Party fails to provide such notice, then the witness may not be called unless good cause is shown, as set forth Rule ~~11.10.I.~~
2. All interpreters must be certified to provide interpreting services in administrative hearings pursuant to Government Code Section 11435.30. ~~11.J.~~ 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. ~~11.J.~~ 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. ~~11.J.~~ 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. ~~11.J.~~ 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.



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### **Rule ~~12~~11. 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~~12. 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 with specific filing dates being proposed by the Clerk:~~
  - 1. The Applicant's closing brief will be filed no more than thirty days (30) ~~off~~from the date the transcript of the Hearing is lodged with the Clerk.
  - 2. Respondents' closing briefs will be filed ~~within~~ no more than thirty days (30) days ~~off~~from the date the Clerk serves the Applicant's closing brief on the ~~other~~ Parties.
  - 3. Applicant may file a reply brief no later than fifteen (15) days ~~off~~from the date ~~that~~ the Clerk serves Respondents' closing briefs on the Applicant.
- B. The Applicant may waive their right to file a reply brief. They must notify the Hearing Officer, Clerk, and Parties no more than five (5) days after Respondent's closing brief is filed.
- C. Each Party's closing brief may be supported by facts in the record, the hearing transcript, and citation to law. ~~The submission of additional evidence will not be permitted. The Applicant's and Respondents' closing briefs will be limited to fifteen (15) pages and the reply brief will be limited to ten (10) pages. The Clerk may reject briefs exceeding the foregoing limits. A Party may submit a request in writing to the Hearing Officer to be relieved of these page limitations.~~

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

- A. **Time for Filing.** The Hearing Officer will file their Proposed Findings of Fact and Recommended Decision with the Clerk no later than sixty (60) days ~~of the date that~~after the Applicant's reply brief is filed 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).~~



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**C. Objections/Requests for Clarification.** Within ten (10) 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 written requests for clarification on the Hearing Officer ~~as well as and the other Parties. The other Party(ies), who will then~~ have ten (10) -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~~ considering 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 response to any objections or requests for clarification, will be added to the Administrative Record and submitted for consideration by the Board.

~~Any Party may waive their right to file objections. If they choose to waive that right, they must notify the Hearing Officer, Clerk, and Parties no more than two (2) days after the Hearing Officer's Proposed Findings of Fact and Recommended Decision is filed.~~

### **Rule ~~15~~14. 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 will be denied.
- B. Upon the request of a Party, and until the matter is referred to the Board, the Hearing Officer ~~may~~ has authority to amend or continue the time periods set forth in these rules ~~one (1) time~~, 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 ~~11~~10.; or



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- 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.
- 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 no more than~~ sixty (60) days to secure substitute counsel, and the Clerk will schedule a Pre-Hearing Conference pursuant to Rule ~~7~~6.
- 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 16~~, 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 ~~8~~7.
- F. If good cause is found to exist to reschedule a Hearing, the Hearing Officer will order the Clerk to propose new hearing dates no more than sixty (60) days from the date of the previously scheduled hearing. The Hearing Officer will order the Clerk to schedule a Pre-Hearing Conference only if it is determined that the Parties are unable to agree upon a new hearing date proposed by the Clerk.
- G. Until such time as the matter has been referred to the Board, the Hearing Officer will maintain jurisdiction over the matter and, upon any terms as may be just, may 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 15. 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 response to any objections~~ to the Board for its consideration.
- B. The Clerk will place the matter on the agenda of a regular meeting of the Board ~~which will be no later than~~ within one (1) calendar month 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 Response to Objections following any objections ~~or requests for clarification~~ from the Parties.
- C. The Clerk will provide written notice to the Parties, Hearing Officer, and Employer 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.~~ On matters which are on the Board agenda, the Applicant (or their Attorney) is limited to a ten (10) minute presentation; Respondent is limited to a



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~~seven (7) minute response; and the Applicant (or their Attorney) is then limited to a three (3) minute rebuttal. The Board Chair (or their designee) has the discretion to extend any Parties' time.~~

- D. The Applicant (or their Attorney) may request that their matter be removed from the Board agenda. The Clerk will grant one (1) continuance of the matter to the next regular meeting of the Board. No additional continuances will be granted. If Applicant wishes to delay the referral of their matter to the Board beyond the one-month extension, they will be required to appear before the Board and show cause as to why an additional extension should be granted. If granted, the matter will be referred to the to the next regular meeting of the Board. No additional continuances will be granted.
- E. Good cause for this the purposes of this Rule will be granted for the following:
  - 1. The illness of the Applicant or their Attorney.
  - 2. The illness of an Applicant's immediate family member (i.e., Spouse, child, mother, father-.)

~~A continuance will not be granted based upon the lack of preparation by the Applicant or their Attorney.~~

~~G.F.~~ 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
- 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.

~~H. 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 16.F.2, above.~~

~~G.~~ In any case where the Board decides to act under Rule ~~1615.F.2~~ or ~~1615.F.4, 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.

~~H.~~ 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. In any case where the Board decides to act under Rule 15.F.3. the Clerk will notify the Hearing Officer of the Board's action no more than five (5) days from the Board meeting. The

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Applicant will have thirty (30) days to submit additional evidence. The Hearing Officer will then have sixty (60) days to review the additional evidence and issue their Findings. Any Party will have ten (10) days to file objections, with any opposition due ten (10) days later. The Clerk will place the matter on the Board agenda in accordance with Rule 15.B.

- I. In any case where the Board decides to act under Rule 15.F.4. the Board Chair (or their designee) will act as the Hearing Officer and will establish a hearing date and briefing schedule. Applicant's opening brief will be filed with the Clerk no more than sixty (60) days before the date of the Board hearing. Respondent(s) opening brief will be due no more than thirty (30) before the date of the Board hearing. The Applicant will then have until twenty (20) days before the date of the Board hearing to file a reply brief. Each brief will be no more than five (5) pages in length excluding exhibits. Once the Board hearing date has been set, no continuances will be granted.

At the conclusion of the Board hearing the record will be closed.

A court reporter will be provided at OCERS' expense to transcribe the Hearing. The court reporter will lodge the transcript with the Clerk and serve a copy on the Party(ies), within twenty (20) days from the Hearing.

The Applicant will have thirty (30) days from the date the hearing transcript is lodged to file their closing brief. Respondent will then have thirty (30) days to file its closing brief. Applicant will then have twenty (20) days to file a reply brief. Each brief will be no more than five (5) pages in length.

Following the Hearing before the Board, or consideration of the Hearing Officer's Proposed Findings of Fact and Recommended Decision, a Statement of Decision will be issued and the Clerk will notify the Applicant (or their Attorney), Hearing Officer, and the Employer by email of the Board's final action. 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. Immediately following the Board meeting, the Clerk will notify the Applicant (and attorney), Hearing Officer and the Employer by email of the Board's final action. Notice will be effective the date of the Board meeting-

#### ***Rule 1716. Dismissal for Failure to Pursue the Administrative Review and Hearing Non-Compliance.***

Except as otherwise provided, if as a result of the Applicant's failure (or that of their Attorney) to pursue the case within one year after the filing of a Request for Administrative Hearing (or the Board's referral of a case to a Hearing Officer), or the Applicant fails to comply with any of these Rules after two (2) written warnings from the Clerk, 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, and the~~. The Application will be referred to the Board at its next regular meeting ~~immediately~~ following dismissal by the Hearing Officer. The Board's decision will be final.



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

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### 1. Introduction

The Board of Retirement (“Board”) of the Orange County Employees Retirement System (“OCERS”) intends that this Administrative Review and Hearing Policy (“Policy”) and the attached appendix 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.

### 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.

**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 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 (e.g., 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 a disability retirement or a service retirement.

**Authorization for Disclosure and Use of Protected Health Information:** The OCERS form that is filed with the Request for Administrative Hearing authorizing Staff to obtain and use Member medical records.

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

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

**Clerk, Clerk of the Hearing Officers:** Staff member(s) designated by OCERS General Counsel or their designee to fulfill the administrative duties required by this Policy.

**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 6 of the Rules.



## OCERS Board Policy

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

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**Days:** All days are Calendar Days unless otherwise noted. Any deadline falling on a weekend or holiday will be due the next business day. Business Days are Monday through Friday. Holidays are federal and State of California Holidays.

**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 following determinations: (1) whether the Applicant is permanently incapacitated for performance of their duties; (2) whether the disability was service connected; (3) the effective date of the disability retirement; (4) timeliness of the Application; and (5) ineligibility due to termination for cause. Any other determinations affecting a disability retirement Application, including applicability of a disability offset, are Benefit Determinations pursuant to this Policy and subject to a CEO Determination.

**Employer:** The Employer of a member whose benefits are at issue in any given matter. The Employer is a Party to an Administrative Review or Hearing but is not required to participate. If the Employer initiates an Administrative Review or Hearing, it will act in the role of the Applicant.

**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, or podiatrist 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 with their licensing board.

**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 joins in the Administrative Review or Hearing.

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

**Request for Administrative Review or Request for Administrative Hearing:** The document filed with the Clerk by the Applicant (or in limited cases, the Employer) to initiate the Administrative Review or Administrative Hearing process.

**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 must join as a Respondent. Failure to join may result in a denial without prejudice.

**Rules:** The "Administrative Hearing Rules," attached as an appendix to and made part of this Policy.

### 3. Disability Determination Process

For Disability Determinations:





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

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- 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 is service-connected; (iii) the effective date of any disability retirement; (iv) whether the Application is timely; and (v) whether the Applicant is not eligible due to termination for cause. Staff will have discretion to require medical examination(s) of the Applicant and obtain expert medical advice to aid its investigation. If the Staff's recommendation is to grant the disability retirement Application in full or deny without prejudice because the member has opted not to join an employer-filed application, Staff will forward the recommendation to the CEO. If the Staff's recommendation is to deny (or grant only in part) the disability retirement Application, the recommendation will be presented to the Committee.
- B. When the Staff recommendation is to grant the disability retirement Application in full, the recommendation will be reviewed by the CEO. If the CEO concurs with the Staff recommendation, the CEO will recommend that the Board grant the Application in full. The CEO'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. Staff will notify the Applicant (and Applicant's attorney, if any) and the Employer of the date and time of the meeting at which the matter will be presented. If the CEO disagrees with the Staff's recommendation, the Application will be forwarded to the Committee for review and determination in accordance with Section 3.D.
- C. When the Staff recommendation is to deny the disability retirement Application without prejudice because the member has opted not to join in an employer-filed application, the recommendation will be reviewed by the CEO. If the CEO concurs with the Staff recommendation, the CEO will recommend that the Board deny the Application without prejudice. The CEO'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. Staff will notify the Employer of the date and time of the meeting at which the matter will be presented. If the CEO disagrees with the Staff's recommendation, the Application will be forwarded to the Committee for review and determination in accordance with Section 3. D.
- D. When the Staff recommendation is to deny (or grant only in part) the disability retirement Application or when the CEO disagrees with Staff's recommendation to grant the disability retirement Application in full, the Application and the Staff recommendation under Section 3.A., will be reviewed by the Committee at a duly noticed meeting. Staff will give Applicant (and their attorney) 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.
- E. After the Committee reviews the disability retirement Application under Section 3.D., 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 their attorney) and the Employer 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. Alternatively, the Committee may direct Staff to further develop the record and return the matter for consideration at a future meeting.



## OCERS Board Policy

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

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- F. In the event the Committee recommends that the Application be denied in full or in part, the Applicant will have ninety (90) days from the date of the Committee action 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 by the recommendation will have ten (10) days from the date of the Committee Action to file a written Request for Administrative Hearing as set forth in the Rules.
- G. A Request for Administrative Review or Hearing must be filed using the form approved by OCERS. That form must be signed and dated by the Applicant (or their Attorney) to be valid. Forms that are not dated and signed will be rejected by the Clerk.
- H. The Applicant may request a Hearing if they dispute the Committee's recommendation regarding (i) permanent incapacity, (ii) service-connection, (iii) the effective date of disability; (iv) timeliness of the Application; or (v) ineligibility due to termination for cause. Undisputed issues will not be considered in the Hearing. Staff will forward those undisputed issues to the Board for final action.
- I. If no Request for Administrative Hearing is filed within the time limit set forth in Section 3.E., the Committee's recommendation will be placed on the consent agenda at the next regularly scheduled Board meeting.

## 4. Benefit Determination Review Process

For Benefit Determinations:

- A. The Member may request a CEO review of a Benefit Determination within ninety (90) days of the date of the notice of the Benefit Determination made by Staff. The CEO Determination will be completed within ninety (90) days of receipt of the request and served on the Member. The Member will have ninety (90) days from the date of the notice of the CEO Determination to file a Request for Administrative Review with the Clerk and the matter will proceed as set forth in Section 8. If the Request for Administrative Review is untimely, the CEO Determination will be final.

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

- A. **Consent Agenda.** The Board will consider on its consent agenda CEO recommendations to grant an Application for disability retirement in full or to deny without prejudice because the Member has opted not to join in an employer-filed application and Committee recommendations for which there has been no timely Request for an Administrative Hearing under Section 3.
- 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. Such items will be considered by the Board in closed session as set forth in Section 7.
- C. **Action on Recommendations from the CEO.** After consideration by the Board, the Board will either adopt the recommendation of the CEO or refer the matter to the Disability Committee for consideration.



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

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- D. **Action on Recommendations from the Disability Committee.** After consideration by the Board, the Board will either adopt the recommendation of the Disability Committee or 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).

### 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 Board meeting and act in accordance with Rule 15.

### 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 consider a recommended Disability Determination or a Hearing Officer's Proposed Findings of Fact and Recommended Decision in connection with a Disability Determination in closed session, pursuant to Cal. Gov't Code § 54957(b), unless the Applicant requests the matter be heard in open session. Before or after such closed session, the Committee or the Board may meet in 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 Board's legal obligations.

### 8. Board Action on CEO Determinations (i.e., CEO Benefit Determinations).

- A. **Board Review of CEO Determinations.** Upon a timely Request for Administrative Review of a CEO Determination, the Board will consider the matter at a duly noticed regular Board meeting. Staff will make a recommendation to the Board regarding the issues raised in the CEO Determination and the Applicant (or their attorney) will have the opportunity to be heard.
- B. **Board's Options.** 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. If the Board chooses to hear and determine the matter, its decision will be final. If the Board chooses to refer the matter to a Hearing, it will identify the factual and legal issues to be considered by the Hearing Officer.

In determining whether to hear and determine the matter or refer the matter to a Hearing Officer, the Board will consider all relevant factors, including the following:

1. whether the disputed issues are legal, not factual, in nature;
2. relevant judicial authority on the disputed legal issue(s);
3. whether the Board and/or a Hearing Officer has previously ruled on substantively similar issue(s);
4. whether the Applicant is represented by an attorney;
5. the efficient use of OCERS resources; and
6. the interests of the Applicant in receiving a timely decision.



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

C. **Consolidation of Reviews.** When the Board reviews two or more CEO Determinations involving common questions of law or fact, it 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 the following:

1. the complexity of the issues involved;
2. the potential prejudice to any party, including whether a Consolidation would result in undue delay;
3. the avoidance of duplicate or inconsistent orders; and
4. the efficient utilization of OCERS resources.

### 9. Board Action on CEO Determinations After a Hearing.

If the Board refers a CEO Determination to a Hearing, the Board will consider the Hearing Officer’s Proposed Findings of Fact and Recommended Decision at a duly noticed Board meeting in accordance with Rule 15. 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, amended on August 17, 2020, May 17, 2023, and 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)

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### Appendix - Administrative Hearing 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. Filing of Documents.**

1. All documents required or permitted to be filed by any Party in connection with a Hearing must be filed with the Clerk.
2. Documents will be filed electronically, except that an unrepresented Applicant may opt to file documents in person or by US Mail. Applicants that opt for filing documents in person or by US Mail, must inform the Clerk of this in writing at the time they file their Request for Administrative Hearing. The Clerk will then inform all other Parties and the Hearing Officer that the Applicant has opted to file documents in person or by US Mail.
  - a. Documents filed in person will be deemed filed on the day received by OCERS.
  - b. Documents filed by US Mail will be deemed filed on the date post-marked on the envelope containing the documents.
  - c. Documents filed electronically will be deemed filed on the date electronically received by the Clerk.

##### **B. 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. Service by anyone other than the Clerk will be considered defective.
2. Service by the Clerk will be electronic and the Clerk's file stamp will constitute proof of service, except where the Applicant has opted to file by US Mail pursuant to Section A.2., 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. Request for Hearing or Review*

- ##### **A. Request for Administrative Hearing or Request for Administrative Review.**
- A written Request for Administrative Hearing or a Request for Administrative Review must be filed with the Clerk within the time frame set forth in Sections 3 and 4 of the Policy. The Request must include a statement no more than one (1) page in length of the grounds for the request and a signed Authorization for Use and Disclosure of Protected Health Information if filing a disability benefit appeal. An Applicant's



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Request for Administrative Hearing that includes new conditions will be treated as an amended Application and will be returned to Staff for reconsideration.

- B. **Referral from the Board.** In the event the Board refers a matter to a Hearing Officer for a Hearing (pursuant to Sections 5.D. or 8.B. 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 their expense, to be represented by an attorney at any stage of the proceedings. Such attorney must be an active member of the California State Bar in good standing. A Party must immediately file with the Clerk a written notice of the hiring, changing, or dismissal of an attorney. Absent such written designation, OCERS will not recognize any attorney or other individual claiming to represent a Party, including an attorney in fact (under a power of attorney) or the Applicant's spouse.
- 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 files the Request for Administrative Hearing, 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 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, effective date, timeliness of the Application, and ineligibility due to termination for cause.
  - 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.
  - 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 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 7.



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- F. **Settlement.** If at any time during the Hearing process it becomes apparent to Staff that a different result is appropriate, Staff will 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. The Clerk will assign the Hearing Officer on a rotational basis, to ensure to the extent possible that each Hearing Officer on the panel is assigned an equal number of cases. When 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, and that notice will include information regarding the opportunity 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 (1) peremptory (without cause) challenge to the Hearing Officer assigned. The challenge must be filed with the Clerk within ten (10) 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.
  2. **Removal for Cause:** Any Party 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 ten (10) days from the Clerk's service of the challenge for cause on all Parties to file a response. 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 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 and schedule a new Pre-Hearing Conference pursuant to Rule 6.



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- 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.
- D. This Rule 4 does not apply to cases where the Board refers the matter back to the Hearing Officer under Section 8.B. or cases that are consolidated under Rule 6.

#### ***Rule 5. Supplemental IME Report Requests, Preparation and Service of Administrative Record***

The Applicant will have thirty (30) days from the date of filing their Request for Administrative Hearing to submit additional records to be included in the initial Administrative Record.

Within sixty (60) days of the filing of a Request for Administrative Hearing, Staff will assemble, and the Clerk will serve on the Hearing Officer and the Parties 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 will decide the admissibility of all evidence.

The Clerk will serve the Administrative Record pursuant to Rule 2.B.2. If a Party requests a hardcopy of the record, one (1) will be provided to them at no cost.

**Pursuant to Rule 10.H., after the Administrative Record has been served, parties are no longer permitted to submit additional medical reports or other documentary evidence except for purposes of impeachment, unless the Party demonstrates good cause to the satisfaction of the Hearing Officer pursuant to Rule 11.I.**

Should OCERS staff determine that a supplemental IME report from OCERS' Panel Physician is necessary, the Clerk will notify the Applicant and Hearing Officer of OCERS staff's Request for a Supplemental IME Report by serving it upon them. The Hearing Officer may reschedule the hearing date or amend the time periods set for by the Rules upon the showing of good cause, pursuant to Rule 14.

#### ***Rule 6. Consolidation of Hearings***

In addition to Consolidation by the Board of two or more CEO Determinations pursuant to Section 8.C. of the Policy, cases may be Consolidated in accordance with this Rule 6, and this Rule 6 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:

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;





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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, and the 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 by phone, 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 prepare 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 7. Pre-Hearing Conference***

- A. The Clerk will schedule a Pre-Hearing Conference to be held within ten (10) days of the service of the Administrative Record.
- B. The Pre-Hearing Conference will be held telephonically. The Clerk will arrange for a court reporter to transcribe the conference at OCERS' expense. The court reporter will lodge the transcript with the Clerk and serve a copy of the transcript on the Hearing Officer and Parties, no later than thirty (30) day from the date of the conference.
- C. The Hearing Officer will not permit the Parties to argue the merits of their positions at the Pre-Hearing Conference, and the Hearing Officer is authorized to suspend the Pre-Hearing Conference if any Party violates this rule. Suspended Pre-Hearing Conferences will be rescheduled to a date that is no more than five (5) days after the originally scheduled Pre-Hearing Conference. Further attempts by a Party to argue the merits of their position will result in the Clerk immediately filing an Order to Show Cause why the case should not be dismissed.
- D. At the Pre-Hearing Conference, the Hearing Officer will advise the Applicant 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 may have in the case, other than the Hearing Officer's contract with OCERS.



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3. The scope of the Hearing and the issues to be decided consistent with the constraints of Rule 3.E., above.
4. The Hearing Officer will consider the issues in dispute anew, without relying on the past findings of the Committee, the Board, or the CEO.
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 will be dismissed.

Upon the issuance of the Proposed Findings of Fact and Recommended Decision, 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.

- E. 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 an interpreter for the witnesses in accordance with Rule 9.K.
  3. Indicate whether it will require an opposing Party's Medical Witness to appear in person at the Hearing; and
  4. Identify any witnesses the Party seeks to depose and, if possible, set mutually convenient dates for any depositions.
- F. 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



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termination for cause, if they were not previously raised and considered by the Committee. These issues will then be presented at the Hearing.

- G. At the Pre-Hearing Conference, the Clerk will set the date for the Hearing.
  - 1. The Clerk will confer with the Hearing Officer and 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. The Hearing will continue from day-to-day until complete, and the Clerk will schedule all Hearing Dates to which the Hearing Officer and Parties anticipate the Hearing will be continued until complete.
  - 3. The Clerk will confer with the Parties to establish a Pre-Hearing Statement filing schedule in accordance with Rule 8.
- H. Immediately following 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.
- I. 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 14.
- J. If neither the Applicant nor the Employer, where the Employer has filed an Application on behalf of the Member, participates 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 (or Employer) 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 why the matter should not be dismissed, 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. The Application will be referred to the Board at its next regular meeting.

If the Hearing Officer determines that an Applicant has shown good cause, the Hearing Officer will direct the Clerk to reschedule the Pre-Hearing Conference. Applicant's failure to participate in the rescheduled Pre-Hearing Conference will result in immediate dismissal of their case.

#### ***Rule 8. Pre-Hearing Statements***

- A. The Applicant will file a Pre-Hearing Statement of up to ten (10) pages, not including exhibits, 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, not including exhibits, no later than thirty (30) days prior to the first Hearing Date.
- C. Any Party may file a Supplemental Pre-Hearing Statement of up to five (5) pages, not including exhibits, no later than fourteen (14) days prior to the first Hearing Date.
- D. The Pre-Hearing Statements will include the following:



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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 redacted copies of any expert's reports, transcripts of depositions of any witnesses, and other documentary evidence on which the Party will rely, if not already in the Administrative Record. All documents will be Bates Stamped by the Applicant (or their Attorney) in sequence with the initial Administrative Record. Duplicate documents will be rejected.
  3. The names, addresses, email addresses (if known) and telephone numbers of any non-expert witnesses whose testimony the Party intends to call as a witness at the Hearing and a brief description of the content of their testimony.
  4. The names, addresses, email addresses (if known) and phone numbers of any expert witnesses whom the Party intends to call as a witness at the Hearing and a brief description of the content of their 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. The Hearing Officer may allow the Parties additional time to file their Pre-Hearing Statement or may re-schedule the Hearing within the time requirements of Rule 14, if good cause is shown. .

### **Rule 9. 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. Any Party introducing deposition testimony into evidence will provide a copy of the full deposition transcript to each Party and the Hearing Officer.
- 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 thirty (30) days before the Hearing Date. Any request for a subpoena submitted less than thirty (30) days of the Hearing Date will not be honored and it will be the responsibility of the Party to subpoena their witness.
  2. Each subpoena request must state the witness's full name, email address (if known), phone number and the complete address of the witness's place of employment, service address, or residence. The requesting Party will be responsible for serving the subpoena, scheduling the witness, and paying all associated witness fees and costs of service and production. The Party requesting oral testimony of an expert witness (including an OCERS Panel Physician) will in all cases be responsible for any expert witness fees. If an employer witness is being subpoenaed, it is the responsibility of the subpoenaing party to coordinate service with that employer.



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

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3. Any fee disputes between a witness and the requesting Party are independent of any proceeding between the Applicant and OCERS. Those fee disputes will be resolved by the requesting Party and the witness in the California courts, not in this forum. The Hearing Officer has no authority to decide any such dispute.

### ***Rule 10. 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 conduct of the Hearing will not be restricted by the rules of evidence. Any relevant evidence will be admitted if it is the sort of evidence on which reasonable persons may rely. The rules of privilege will be effective to the extent that they are otherwise required by statute. 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.
- G. The court reporter will lodge with the Clerk the transcript of the Hearing and serve a copy on the Hearing Officer and Parties, 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. 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



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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 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.F.

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

#### ***Rule 11. 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 12. 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 with specific filing dates being proposed by the Clerk:



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

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1. The Applicant's closing brief will be filed no more than thirty days (30) from the date the transcript of the Hearing is lodged with the Clerk.
  2. Respondents' closing briefs will be filed no more than thirty days (30) days from the date the Clerk serves the Applicant's closing brief on the Parties.
  3. Applicant may file a reply brief no later than fifteen (15) days from the date the Clerk serves Respondents' closing briefs on the Applicant.
- B. The Applicant may waive their right to file a reply brief. They must notify the Hearing Officer, Clerk, and Parties no more than five (5) days after Respondent's closing brief is filed.
- C. Each Party's closing brief may be supported by facts in the record, the hearing transcript, and citation to law. The submission of additional evidence will not be permitted. The Applicant's and Respondent's closing briefs will be limited to fifteen (15) pages and the reply brief will be limited to ten (10) pages. The Clerk may reject briefs exceeding the foregoing limits. A Party may submit a request in writing to the Hearing Officer to be relieved of the page limitations.

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

- A. **Time for Filing.** The Hearing Officer will file their Proposed Findings of Fact and Recommended Decision with the Clerk no later than sixty (60) days after the Applicant's reply brief is filed 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.
- C. **Objections/Requests for Clarification.** Within ten (10) 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 written requests for clarification on the Hearing Officer and the Parties who will then have ten (10) 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



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2. Make changes to the Proposed Findings of Fact and Recommended Decision as the Hearing Officer deems appropriate considering 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 response to any objections or requests for clarification, will be added to the Administrative Record and submitted for consideration by the Board.

#### ***Rule 14. Continuances and Relief from Orders***

- A. The deadlines and timelines established in these Rules are for the purpose of expediting the Hearing process. Therefore, delays, continuances, or relief should be granted for documented good cause (as defined hereafter) and any delay should be the 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 will be denied.
- B. Upon the request of a Party, and until the matter is referred to the Board, the Hearing Officer has authority to 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.
- 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 no more than sixty (60) days to secure substitute counsel, and the Clerk will schedule a Pre-Hearing Conference pursuant to Rule 6.
- 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 16, 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.





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

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- F. If good cause is found to exist to reschedule a Hearing, the Hearing Officer will order the Clerk to propose new hearing dates no more than sixty (60) days from the date of the previously scheduled hearing. The Hearing Officer will order the Clerk to schedule a Pre-Hearing Conference only if it is determined that the Parties are unable to agree upon a new hearing date proposed by the Clerk.
- G. Until such time as the matter has been referred to the Board, the Hearing Officer will maintain jurisdiction over the matter and, upon any terms as may be just, may 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 15. Action by the Board***

- A. The Clerk will refer the Hearing Officer's Proposed Findings of Fact and Recommended Decision as well as any related objections to the Board for its consideration.
- B. The Clerk will place the matter on the agenda of a regular meeting of the Board within one (1) calendar month 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 Response to Objections following any objections from the Parties.
- C. The Clerk will provide written notice to the Parties, Hearing Officer, and Employer 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. On matters which are on the Board agenda, the Applicant (or their Attorney) is limited to a ten (10) minute presentation; Respondent is limited to a seven (7) minute response; and the Applicant (or their Attorney) is then limited to a three (3) minute rebuttal. The Board Chair (or their designee) has the discretion to extend any Parties' time.
- D. The Applicant (or their Attorney) may request that their matter be removed from the Board agenda. The Clerk will grant one (1) continuance of the matter to the next regular meeting of the Board. No additional continuances will be granted. If Applicant wishes to delay the referral of their matter to the Board beyond the one-month extension, they will be required to appear before the Board and show cause as to why an additional extension should be granted. If granted, the matter will be referred to the to the next regular meeting of the Board. No additional continuances will be granted.
- E. Good cause for this the purposes of this Rule will be granted for the following:
  - 1. The illness of the Applicant or their Attorney.
  - 2. The illness of an Applicant's immediate family member (i.e., Spouse, child, mother, father.)
- F. 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:



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

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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
  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.
- G. In any case where the Board decides to act under Rule 15.F.2. or 15.F.4., 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.
- H. In any case where the Board decides to act under Rule 15.F.3. the Clerk will notify the Hearing Officer of the Board's action no more than five (5) days from the Board meeting. The Applicant will have thirty (30) days to submit additional evidence. The Hearing Officer will then have sixty (60) days to review the additional evidence and issue their Findings. Any Party will have ten (10) days to file objections, with any opposition due ten (10) days later. The Clerk will place the matter on the Board agenda in accordance with Rule 15.B.
- I. In any case where the Board decides to act under Rule 15.F.4. the Board Chair (or their designee) will act as the Hearing Officer and will establish a hearing date and briefing schedule. Applicant's opening brief will be filed with the Clerk no more than sixty (60) days before the date of the Board hearing. Respondent(s) opening brief will be due no more than thirty (30) before the date of the Board hearing. The Applicant will then have until twenty (20) days before the date of the Board hearing to file a reply brief. Each brief will be no more than five (5) pages in length excluding exhibits. Once the Board hearing date has been set, no continuances will be granted.

At the conclusion of the Board hearing the record will be closed.

A court reporter will be provided at OCERS' expense to transcribe the Hearing. The court reporter will lodge the transcript with the Clerk and serve a copy on the Party(ies), within twenty (20) days from the Hearing.

The Applicant will have thirty (30) days from the date the hearing transcript is lodged to file their closing brief. Respondent will then have thirty (30) days to file its closing brief. Applicant will then have twenty (20) days to file a reply brief. Each brief will be no more than five (5) pages in length.

Following the Hearing before the Board, or consideration of the Hearing Officer's Proposed Findings of Fact and Recommended Decision, a Statement of Decision will be issued and the Clerk will notify the Applicant (or their Attorney), Hearing Officer, and the Employer by email of the Board's final action. Any Party aggrieved by the Board's decision may petition the Superior Court for judicial



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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.

***Rule 16. Dismissal for Non-Compliance.***

Except as otherwise provided, if as a result of the Applicant's failure (or that of their Attorney) to pursue the case within one year after the filing of a Request for Administrative Hearing (or the Board's referral of a case to a Hearing Officer), or the Applicant fails to comply with any of these Rules after two (2) written warnings from the Clerk, the Hearing Officer will dismiss the Hearing and the matter will proceed as if no Request for Administrative Review or Hearing had been filed. The Application will be referred to the Board at its next regular meeting following dismissal by the Hearing Officer. The Board's decision will be final.



## Memorandum

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**DATE:** August 19, 2024  
**TO:** Members of the Disability Committee  
**FROM:** Manuel D. Serpa, General Counsel; Joon Kim, Staff Attorney  
**SUBJECT:** REVIEW OF THE OAP REGARDING EFFECTIVE DATE OF DISABILITY RETIREMENT ALLOWANCE

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### Recommendation

- (1) Review, approve, and recommend that the Board of Retirement adopt the revised OCERS Administrative Procedure (OAP) regarding Effective Date of Disability Retirement Allowance, as presented.

### Summary

The OAP regarding Effective Date of Disability Retirement Allowance describes the legal standard and process for determining the effective date of a member's disability retirement. The OAP has been revised to reflect the most current legal precedent regarding a member's receipt of "regular compensation," and its impact on the effective date of disability retirement.

The governing statute, Government Code section 31724, states that the effective date shall not be earlier than the day following the last day for which the member received regular compensation. The statute does not specifically address situations in which a member receives only sporadic or intermittent regular compensation *after* filing for disability retirement. In such instances, there may be gap periods (e.g., the period between the date an application was filed and a subsequent date on which the member received sick leave pay) during which the member received no compensation. The question presented by these situations was whether, in the interest of fairness, the member's disability retirement allowance should cover the gap periods.

OCERS previously employed a compression analysis in these situations in order to deter economic hardship and unfairness to the member, while simultaneously protecting against "double dipping." The court of appeal, however, held that the Legislature intended *strict* application of Section 31724. As such, in these situations, the effective date must be the day following the last day that the member received regular compensation. (*Astorga v. Retirement Bd. of Santa Barbara County Employees Retirement System* (2016) 245 Cal.App.4th 386.) OCERS will no longer employ a compression analysis, and the OAP has been updated to reflect this change.

Additional, minor edits were made to improve overall clarity.

### Attachments

### Submitted by:



MDS-Approved

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Manuel D. Serpa  
General Counsel

**Submitted by:**



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Joon Kim  
Staff Attorney



## OCERS Administrative Procedure (OAP) Effective Date of Disability Retirement Allowance

### I. Purpose

This OCERS Administrative Procedure ("OAP") describes the applicable legal standards and processes for determining the effective date of a member's disability retirement.

### II. Authority

This OAP is established by OCERS' Chief Executive Officer ("CEO") pursuant to the CEO Charter, in conformance with applicable Board policies and in compliance with the provisions of the County Employees Retirement Law (Title 3, Division 4, Part 3, Chapter 3 & 3.9 of the California Government Code, sections 31450, et seq.) ("CERL") and the Public Employees' Pension Reform Act (Government Code sections 31450, et seq.) ("PEPRA"). The primary legal authority governing the effective date of a disability retirement is Government Code Section 31724 ("Section 31724"), which provides that if the Board approves a disability retirement application, the Effective Date of disability retirement will generally be **the later of**:

- a) The Application Date (as defined in Section III below); or
- b) The day following the last day for which the member received Regular Compensation (as defined by the CERL and Sections III and IV below).

### III. Definitions

The terms used in this OAP are defined below.

- **4850 Pay** means any compensation paid to a member for a leave of absence pursuant to California Labor Code section 4850. 4850 Pay is usually paid only to safety members.
- **Application Date** means the date a completed application for disability retirement is filed with OCERS.
- **Earlier Effective Date** means the date an application for disability retirement is "deemed filed" under the second paragraph of Section 31724 due to delay in when the actual filing of the application was delayed by reason of administrative oversight on the part of OCERS or the inability of the member to ascertain the permanency of their incapacity until after the date following the day for which the member last received Regular Compensation.
- **Effective Date** means the date on which a disability retirement becomes effective and the date from which a disability retirement allowance is first payable.
- **Regular Compensation -- Types of Pay Considered to be Regular Compensation**  
In addition to the member's Regular Pay, Regular Compensation also includes the following types of pay received while the member is on leave:
  - a) 4850 Pay;
  - b) annual leave/sick leave/vacation pay when received for time taken off;



## OCERS Administrative Procedure (OAP) Effective Date of Disability Retirement Allowance

- c) holiday pay, comp time, or other paid time off;
  - d) catastrophic leave pay donated by co-workers, provided contributions are withheld; and
  - e) supplemental Workers' Compensation pay in excess of Temporary Total Disability payable pursuant to Workers' Compensation (TTD), provided contributions are withheld.
- **Regular Compensation -- Types of Pay Not Considered to be Regular Compensation**  
The types of pay that are NOT considered Regular Compensation include:
    - a) TTD payments;
    - b) accrued time paid in a lump sum (e.g., terminal pay, OCTA hardship pay); and
    - c) any other pay for which no contributions are withheld and/or work for which service credit is not earned.
  - **Regular Pay** is a type of Regular Compensation and means compensation of any kind or amount that the employer pays to the member:
    - a) at the member's regular rate of pay;
    - b) for employment in the member's regular position;
    - c) for actually working or for an absence from work; and
    - d) for which contributions are withheld and service credit is earned.

### IV. Determining Disability Effective Date

#### **General Rule -- Application Date is the Effective Date**

In most cases, the Effective Date will be the Application Date.

##### **EXAMPLE 1**

- a) Member receives Regular Compensation for regular pay periods through December 1, 2017.
- b) Member submits application for disability retirement on February 1, 2018.
- c) Member ~~was will be~~ granted a disability retirement ~~(and the allowance will be payable)~~ with an Effective Date of February 1, 2018, ~~(unless they are~~ granted an earlier effective date as detailed below).

#### **Exception -- Day After Final Date of Regular Compensation is the Effective Date**

If, after the Application Date, the member ~~continues to receive~~ Regular Compensation (as defined in Section III above), then the Effective Date will be the day after the last day of Regular Compensation.

##### **EXAMPLE 2**

- ~~a. Member submits application for disability retirement on February 1, 2018.~~
- ~~Member continues to receive Regular Compensation through June 1, 2018.~~

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## OCERS Administrative Procedure (OAP) Effective Date of Disability Retirement Allowance

- ~~c. Member will be granted a disability retirement with an Effective Date of June 2, 2018.~~
- b) Member continues to receive Regular Compensation through June 1, 2018.
- c) Member will be granted a disability retirement with an Effective Date of June 2, 2018.

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## OCERS Administrative Procedure (OAP) Effective Date of Disability Retirement Allowance

### Compression of Hours—Delay in Final Date of Regular Compensation

When a member is away from work due to illness or injury for an extended period of time and receives Regular Compensation intermittently or in amounts less than the full amount of the member's Regular Pay for a single pay period (usually 80 hours), the intermittent nature of the Regular Compensation may unreasonably extend the Effective Date of the disability retirement allowance under a strict interpretation of the language of Section 31724.

OCERS has determined that such intermittent Regular Compensation should be "compressed" by aggregating the hours for which intermittent Regular Compensation was received into full Regular Pay periods, typically 80 hours a pay period. This form of aggregation or compression provides a fair and accurate Effective Date without resulting in an unfair advantage or overstating a member's disability allowance.

#### EXAMPLE 3 — Effective Date as the day after the last day of Regular Compensation ~~without compression:~~

- a) Member submits application for disability retirement on February 1, 2020.
- ~~b) Member received last full Regular Pay for the 80-hour pay period ending on February 13, 2020.~~
- ~~c) Member continues to subsequently receive Regular Compensation in the form of intermittent sporadic or intermittent payments of annual leave and catastrophic leave payments equal to 160 hours through the paid leave, last occurring pay period ending on June 4, 2020.~~
- ~~d) Member will be granted a disability retirement with an Effective Date would be of June 5, 2020.~~
- ~~c) \_\_\_\_\_~~

#### EXAMPLE 4 — Effective Date the day after last day of Regular Compensation ~~with compression:~~

- ~~a) Member submits application for disability retirement on February 1, 2020.~~
- ~~b) Member received last full Regular Pay for the 80-hour pay period ending on February 13, 2020.~~
- ~~c) Member continues to receive Regular Compensation in the form of intermittent payments of annual leave and catastrophic leave totaling 160 hours through the pay period ending on June 4, 2020.~~
- ~~d) The 160 hours of intermittent payments are compressed into two full 80-hour pay periods and added to the period ending March 12, 2020.~~
- ~~e) The Effective Date becomes March 13, 2020, eighty-three days earlier than without compression.~~

Compressing the hours associated with intermittent payments of Regular Compensation into full 80-hour pay periods results in an earlier last Regular Compensation date and thus an earlier Effective Date, and disability benefits start sooner. This compression process protects a member from the adverse impact intermittent Regular Compensation would otherwise have on their Effective Date.

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**OCERS Administrative Procedure (OAP)**  
**Effective Date of Disability Retirement Allowance**

**Request for an Earlier Effective Date**



## OCERS Administrative Procedure (OAP) Effective Date of Disability Retirement Allowance

### Request for an Earlier Effective Date

Pursuant to Section 31724<sup>3</sup>, a member may request the Board approve an earlier Effective Date if the member can establish that the delay in filing the member's application was due to 1) an administrative oversight ~~on the part of OCERS~~; or 2) an inability on the part of the member to ascertain the permanency of their incapacity until after the date following the day for which the member last received Regular Compensation.

**Delay due to administrative oversight.** If a member ~~is able to demonstrate~~s that the timely filing of their disability retirement application was delayed ~~or not recognized~~ due to administrative oversight (e.g., an error on the part of OCERS or the member's employer), an earlier Effective Date will be granted, and the Effective Date will be the day after the last day of Regular Compensation.

**Inability to ascertain permanent incapacity.** If a member ~~is able to demonstrate~~s that they ~~member was/were~~ not able to ascertain the permanency of their incapacity until **after** the date the member last received Regular Compensation, an earlier Effective Date will be granted; and the Effective Date will be the day after the last day of Regular Compensation. ~~However, if the Board determines that the member unreasonably delayed in filing the disability retirement application until after the member knew or should have known of the permanency of their incapacity, the Board may conclude that entitlement to an earlier Effective Date has not been established.~~

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<sup>1</sup> The second paragraph of Section 31724 states:

When it has been demonstrated to the satisfaction of the board that the filing of the member's application was delayed by administrative oversight or by inability to ascertain the permanency of the member's incapacity until after the date following the day for which the member last received regular compensation, such date will be deemed to be the date the application was filed.

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**OCERS Administrative Procedure (OAP)**  
**Effective Date of Disability Retirement Allowance**



## OCERS Administrative Procedure (OAP) Effective Date of Disability Retirement Allowance

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### I. Purpose

This OCERS Administrative Procedure ("OAP") describes the applicable legal standards and processes for determining the effective date of a member's disability retirement.

### II. Authority

This OAP is established by OCERS' Chief Executive Officer ("CEO") pursuant to the CEO Charter, in conformance with applicable Board policies and in compliance with the provisions of the County Employees Retirement Law (Title 3, Division 4, Part 3, Chapter 3 & 3.9 of the California Government Code, sections 31450, et seq.) ("CERL") and the Public Employees' Pension Reform Act (Government Code sections 31450, et seq.) ("PEPRA"). The primary legal authority governing the effective date of a disability retirement is Government Code Section 31724 ("Section 31724"), which provides that if the Board approves a disability retirement application, the Effective Date of disability retirement will generally be **the later of**:

- a) The Application Date (as defined in Section III below); or
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- **4850 Pay** means any compensation paid to a member for a leave of absence pursuant to California Labor Code section 4850. 4850 Pay is usually paid only to safety members.
- **Application Date** means the date a completed application for disability retirement is filed with OCERS.
- **Earlier Effective Date** means the date an application for disability retirement is "deemed filed" when the actual filing of the application was delayed by reason of administrative oversight or the inability of the member to ascertain the permanency of their incapacity until after the date following the day for which the member last received Regular Compensation.
- **Effective Date** means the date on which a disability retirement becomes effective and the date from which a disability retirement allowance is first payable.
- **Regular Compensation -- Types of Pay Considered to be Regular Compensation**  
In addition to the member's Regular Pay, Regular Compensation also includes the following types of pay received while the member is on leave:
  - a) 4850 Pay;
  - b) annual leave/sick leave/vacation pay when received for time taken off;



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- c) holiday pay, comp time, or other paid time off;
- d) catastrophic leave pay donated by co-workers, provided contributions are withheld; and
- e) supplemental Workers' Compensation pay in excess of Temporary Total Disability payable pursuant to Workers' Compensation (TTD), provided contributions are withheld.

- **Regular Compensation -- Types of Pay Not Considered to be Regular Compensation**

The types of pay that are NOT considered Regular Compensation include:

- a) TTD payments;
- b) accrued time paid in a lump sum (e.g., terminal pay, OCTA hardship pay); and
- c) any other pay for which no contributions are withheld and/or work for which service credit is not earned.

- **Regular Pay** is a type of Regular Compensation and means compensation of any kind or amount that the employer pays to the member:

- a) at the member's regular rate of pay;
- b) for employment in the member's regular position;
- c) for actually working or for an absence from work; and
- d) for which contributions are withheld and service credit is earned.

## **IV. Determining Disability Effective Date**

### **General Rule -- Application Date is the Effective Date**

In most cases, the Effective Date will be the Application Date.

#### **EXAMPLE 1**

- a) Member receives Regular Compensation for regular pay periods through December 1, 2017.
- b) Member submits application for disability retirement on February 1, 2018.
- c) Member will be granted a disability retirement with an Effective Date of February 1, 2018, unless they are granted an earlier effective date as detailed below.

### **Exception – Day After Final Date of Regular Compensation is the Effective Date**

If, after the Application Date, the member receives Regular Compensation (as defined in Section III above), then the Effective Date will be the day after the last day of Regular Compensation.

#### **EXAMPLE 2**

- a) Member submits application for disability retirement on February 1, 2018.
- b) Member continues to receive Regular Compensation through June 1, 2018.
- c) Member will be granted a disability retirement with an Effective Date of June 2, 2018.



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### **EXAMPLE 3**

- a) Member submits application for disability retirement on February 1, 2020.
- b) Member subsequently receives Regular Compensation in the form of sporadic or intermittent paid leave, last occurring on June 4, 2020.
- c) Member will be granted a disability retirement with an Effective Date of June 5, 2020.

### **Request for an Earlier Effective Date**

Pursuant to Section 31724<sup>1</sup>, a member may request the Board approve an earlier Effective Date if the member can establish that the delay in filing the member's application was due to 1) an administrative oversight; or 2) an inability on the part of the member to ascertain the permanency of their incapacity until after the date following the day for which the member last received Regular Compensation.

**Delay due to administrative oversight.** If a member demonstrates that the timely filing of their disability retirement application was delayed due to administrative oversight (e.g., an error on the part of OCERS or the member's employer), an earlier Effective Date will be granted, and the Effective Date will be the day after the last day of Regular Compensation.

**Inability to ascertain permanent incapacity.** If a member demonstrates that they were not able to ascertain the permanency of their incapacity until **after** the date the member last received Regular Compensation, an earlier Effective Date will be granted; and the Effective Date will be the day after the last day of Regular Compensation.

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<sup>1</sup> The second paragraph of Section 31724 states:

When it has been demonstrated to the satisfaction of the board that the filing of the member's application was delayed by administrative oversight or by inability to ascertain the permanency of the member's incapacity until after the date following the day for which the member last received regular compensation, such date will be deemed to be the date the application was filed.