



Administrative Hearing Policy

I. Purpose

This Policy provides a procedure for the Board to review ACERA Staff decisions, except for disability matters. Hearings on disability matters are governed by the Disability Retirement Procedures. The objective of this Policy is to ensure a fair and efficient consideration of member and beneficiary requests.

II. Definitions

- A. Applicant: A member or beneficiary of ACERA.
- B. Board: The ACERA Board of Retirement.
- C. Day: Calendar day.
- D. Hearing: The presentation of sworn testimony, other evidence, and legal argument before the Board or Hearing Officer.
- E. Hearing Officer: Person who conducts an administrative hearing on issues related to a matter referred to that person and who provides Findings of Law and Fact to the Board and a Proposed Recommendation. Government Code section 31533 provides who may be a Hearing Officer.
- F. CEO: Chief Executive Officer of ACERA.

III. Matters Regarding Policy and Board Discretion

- A. Nothing in this Policy requires staff to take a position on an applicant's request. Staff may elevate an applicant's request to the CEO without denying the request.
- B. Nothing in this Policy requires the CEO to take a position on an applicant's request. If the CEO determines that the applicant's request implicates matters of policy or falls within the Board's discretion to grant or deny, the CEO may bring the matter to the Board for resolution without proceeding through the procedures in Section IV below. In such cases:

1. The CEO will provide the applicant with at least 30-day notice that the matter will be brought to the Board for consideration at a public meeting.
2. The applicant will be permitted to submit written materials for the Board's consideration no later than 15 days before the Board meeting at which the matter will be considered. Ordinarily such materials will be included in the Board's public agenda backup but may be provided in the Board's confidential packet when authorized by law.
3. The matter will ordinarily be placed on the Board's agenda for open session at a regularly scheduled Board meeting. The CEO may place the matter on the Board's closed session agenda if the matters to be discussed are protected from public disclosure pursuant to the Brown Act.
4. The applicant will have the opportunity to address the Board at the meeting when the matter is considered, subject to the Board Chair's control of the meeting.
5. The Board may hold a closed session to consult with Chief Counsel or outside counsel when authorized and properly agendized under the Brown Act.
6. The Board may issue a final decision or may require further proceedings, which may (but need not) include the procedures outlined in Section IV below.

IV. Guidelines and Procedures for Appeals of Denied Requests

A. Filing a Timely Appeal from a Denied Request

1. An applicant may appeal ACERA staff's decision in writing to the CEO within 30 calendar days of the date of staff's notification to the applicant of the decision. The CEO may consider a late appeal if the CEO determines there was good cause for the late appeal or consideration of the late appeal is in the interests of ACERA and its membership. The CEO will respond in writing with a decision either supporting the position taken by ACERA staff or modifying or overturning that decision.
2. The Board delegates to the CEO full authority to make all initial determinations regarding claims by applicants and participating employers. The CEO will consult with appropriate advisers as the CEO deems necessary.

3. If the applicant does not agree with the decision of the CEO, the applicant may appeal the decision in writing to the Board within 30 calendar days of the date on the CEO's notification to the applicant of the decision.
 4. Appeals to the Board from administrative decisions will ordinarily be placed on the Board's agenda for open session at a regularly scheduled Board meeting. The CEO may place the matter on the Board's closed session agenda if the matters to be discussed are protected from public disclosure pursuant to the Brown Act.
 5. Failure to file a timely appeal will constitute a waiver of the right to have the appeal heard, although the CEO may allow an untimely appeal to proceed to the Board, if the CEO determines there was good cause for the late appeal or consideration of the late appeal is in the interests of ACERA and its membership.
- B. Date and Notice of Hearing:
1. The Board may hear the matter directly or refer it to a Hearing Officer for a recommendation to the Board for final decision. (Govt. C. 31533).
 2. If the Board hears the matter directly, the hearing shall be set by the office of the CEO at the earliest mutually agreeable date and the office of the CEO shall deliver by US mail and email (if available), a notice of hearing to the applicant and all other parties at least 30 days before the hearing, unless the parties agree to a shorter notice period. ACERA shall provide a copy of this Policy and any applicable regulations regarding the administrative hearings.
 3. When the Board hears a matter directly, the Board may alter or truncate the procedures described in this Policy when it determines that doing so is in the interests of justice and efficiency.
- C. Appointment of Hearing Officer
1. If the Board refers the matter to a Hearing Officer, the process will be as follows:
 - a. The Board will refer the matter to the Legal Department for assignment of a Hearing Officer from a rotating list of approved Hearing Officers.
 - b. The Legal Department will provide the first name on the rotating list to the parties.

- c. Either party may challenge a Hearing Officer for cause by filing a written objection with the Legal Department with 10 calendar days of the date of the notice of the list. A challenge for cause is an allegation that the Hearing Officer cannot be fair and impartial. The Legal Department shall review the challenge for cause and, if sustained, select another name from the list of Hearing Officers and advise the parties accordingly. If circumstances giving rise to a challenge for cause arise or are discovered after appointment of the Hearing Officer, and the Hearing Officer does not recuse him or herself, the party challenging the Hearing Officer may make a record of the circumstances and present them to the Board when the matter is before the Board pursuant to section F(1)(b) below.
 2. The Hearing Officer will set the date of the hearing in conjunction with the schedules of the parties.
- D. Conduct of Hearing
1. The Board Chair or Hearing Officer shall preside over the hearing.
 2. The Chair or Hearing Officer shall make all rulings necessary for fair and efficient proceedings, including the admissibility of evidence, conduct of witnesses and parties and scheduling.
 3. Parties (including ACERA Staff) and their counsel are prohibited from having communications with Board members or Hearing Officers regarding matters related to the hearing without the presence or knowledge of the other party.
- E. Hearing Process
1. All parties are entitled to representation by an attorney licensed to practice in the State of California at any hearing at the sole expense of that party. Once ACERA has notice that an attorney is representing an applicant, all notices and other papers shall be served on the attorney.
 2. The party seeking relief from ACERA has the burden of proof and shall present their case first, followed by ACERA staff. In all cases, the presentation may include:
 - a. Opening statement;

- b. Testimony of witnesses and presentation of documentary evidence;
 - c. Cross examination of witnesses;
 - d. Rebuttal evidence;
 - e. Closing statements
 3. Both ACERA staff and the applicant are entitled to submit written evidence or argument to the Board or Hearing Officer. Each side will provide copies of the materials proposed to be offered at the hearing to the other side at least 10 days before the hearing is held.
 4. Evidence
 - a. Witnesses must testify under oath or affirmation administered by the Hearing Officer or the Board Chair.
 - b. Each party is responsible for obtaining those subpoenas it deems necessary for the presentation of its evidence at hearing. All subpoenas are to be issued in accordance with Government Code section 31535.
 - c. The hearing need not be conducted accordingly to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.
 - d. The Hearing Officer or Board Chair has discretion to admit relevant and reliable evidence to or exclude irrelevant or repetitious evidence.
 - e. The record shall be closed to new evidence at the conclusion of the final day if hearing unless each party stipulates to leave the record open.
- F. Board Consideration and Action
 1. Hearing Officer Findings of Fact, Conclusion of Law and Recommended Decision

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- a. Following a hearing by a Hearing Officer, the Hearing Officer shall transmit to the Board written proposed findings of fact, conclusions of law, and recommendations.
 - b. Upon receiving proposed findings of fact and recommendations, the Board may do one of the following:
 - 1) Approve and adopt the proposed findings and recommendations; or
 - 2) Require a transcript or summary of all the testimony, plus all other evidence received by the referee. Upon receipt thereof the Board shall take such action in its opinion is indicated by such evidence; or
 - 3) Refer the matter back to the hearing office with instructions for further proceedings; or
 - 4) Set the matter for hearing before the Board. At such hearing, the Board shall hear and decide the matter as if it had not been referred to the Hearing Officer.
 - c. Staff will notify the applicant in writing of the Board's determination within 10 days of the hearing.
2. Board Hearing
 - a. Following the hearing, the Board will deliberate and vote on the matter and instruct staff to notify the applicant in writing of the Board's determination within 10 days. The determination may, but need not, include a statement of decision.
 - b. A Board member who did not attend all portions of a Board hearing may not participate in the Board's deliberations and vote, unless all the following conditions are met:
 - 1) A quorum of members who attended the full hearing is not available;
 - 2) The member has read the transcript (or listened to the audio recording) of that portion of the hearing during which he or she was not in attendance; and

- 3) The member has stated on the record that he or she has undertaken and completed such review.

G. Review of the Board's Decision: The Board has exercised its discretion to establish the procedures outlined in this Policy. The procedures outlined in this Policy are not required by law. Board decisions made pursuant to this Policy are reviewable by ordinary mandamus under Code of Civil Procedure section 1085.

V. Policy Review

The Operations Committee shall review this policy at least every three years to ensure that it remains relevant and appropriate.

VI. Policy History

The Board adopted this policy on July 19, 2018¹.

The Board reviewed and affirmed this policy, with revisions on April 20, 2023.

¹ The Board adopted the Administrative Hearing Policy on July 19, 2018. The Board adopted the Administrative Appeals Procedures on September 17, 2015. The Board reviewed and affirmed the Administrative Appeals, with revisions, May 19, 2016 and September 17, 2020.