



# Administrative Hearing Policy

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## I. Purpose

This policy provides a procedure to be used in administrative review of decisions made by the Board of Retirement pursuant to the County Employees Retirement Law of 1937, (“CERL”) 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, survivor and beneficiary matters.

## II. Definitions

- A. Applicant: A member, survivor, 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. Guidelines and Procedures

- A. Filing a Timely Appeal
  - i. 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 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.
- 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 hearing policy and any applicable regulations regarding the administrative hearings.
- 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 list of approved hearing officers.
    - b. The Legal Department will provide the first name on the 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 as part of a hearing before the Board pursuant to section F(1) (B)(4) 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 and their counsel are prohibited from having communication with Board members or hearing officers regarding matters related to the hearing without the presence or knowledge of the other side.
- 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. a. Opening statement;

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- b. b. Testimony of witnesses and presentation of documentary evidence;
  - c. c. Cross examination of witnesses;
  - d. d. Rebuttal evidence;
  - e. 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

- a. Following a hearing by a hearing officer, 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 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) (i) A quorum of members who attended the full hearing is not available;
      - 2) (ii) 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) (iii) The member has stated on the record that he or she has undertaken and completed such review.

#### IV. Policy Review

The Operations Committee shall review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

#### V. Policy History

The Board adopted this policy on July 19, 2018<sup>1</sup>.

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<sup>1</sup> 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.