

**BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**STATEMENT OF POLICY & PROCEDURES
~~PROCEDURE FOR-~~
FULL HEARINGS BEFORE THE BOARD**

This document is effective immediately upon adoption, and is adopted pursuant to California Government Code sections 11517 and 20120, and California Constitution, article XVI, section 17.-

I. ~~I.~~ PURPOSE

—This policy establishes procedures for conducting full hearings before the Board of Administration (Board) where the Board has elected to suspend action on a proposed decision of an Administrative Law Judge (ALJ) so that it can evaluate the entire record itself and hear the parties argue the merits of the case on the record.

II. ~~II.~~ OBJECTIVE

—The objectives of this policy are to:

- A. ~~A.~~ Establish consistent procedures for conducting full hearings before the Board; and
- B. ~~B.~~ To provide advance notice of those procedures to the parties involved;.

III. ~~III.~~ POLICY & PROCEDURES

A. Applicability:—

This policy applies to full hearings before the Board where the Board has declined to adopt the Proposed Decision of an Administrative Law Judge (ALJ) but rather has determined to evaluate the entire Administrative Record itself, and hear the parties argue the merits of the case on the record. Pursuant to Government Code section 11517, subsection (c)(2)(E), the Board has the authority to decide such cases upon the record, “with or without taking additional evidence.” (See Section III.E below.)

A.B. ~~B.~~ Procedure for Full Hearings Before the Board:

1. ~~1.~~ Board President announces agenda item for hearing.
2. ~~2.~~ Parties⁴ seat themselves at presentation table.
- ~~3.~~ ~~CalPERS counsel introduces parties.~~
- ~~4.~~ ~~CalPERS counsel:~~
 - ~~a)~~ ~~states the nature of the proceeding,~~
 - ~~b)~~ ~~notes compliance with notice requirements, and~~
 - ~~3. c)~~ ~~states brief procedural history of Parties introduce themselves.~~
 - ~~4.~~ ~~Board President continues with opening remarks/procedures.~~
 - ~~3-5.~~ ~~Independent Board Counsel briefly summarizes the case:~~
 - ~~1)~~ ~~date of the administrative hearing,~~
 - ~~2)~~ ~~date Proposed Decision presented to Board, and~~
 - ~~4-6.~~ ~~3)~~ ~~Board's action, President rules on Proposed Decision, any claim of newly discovered evidence.~~
 - ~~5.~~ ~~CalPERS counsel reminds Board and parties of procedural requirements, and announces that the parties have received a copy of this document, entitled *Procedures for Full Hearings Before the Board of Administration*, and, in the case of an unrepresented member, that the member has been offered assistance in understanding the procedural requirements for a full hearing.~~
 - ~~5-7.~~ ~~6.~~ ~~CalPERS counsel presents CalPERS staff's position and supporting arguments. -This presentation shall not normally exceed 1510 minutes. (See 8, below, regarding allocation of time among more than one party.) (See section III.C., below, regarding exceptions to this time limit.)~~
 - ~~6-8.~~ ~~7.~~ ~~Respondent, or respondent's counsel, presents respondent's position. -This presentation shall not normally exceed 1510 minutes. (See 8, below, regarding allocation of time among more than one party.) (See section III.C., below, regarding exceptions to this time limit.)~~
 - ~~7-9.~~ ~~8.~~ ~~If more than one party shares the position of CalPERS staff or the respondent, these parties shall split the time allocated to CalPERS staff or the respondent. -The total time for each position shall be allocated on a pro rata basis among all the parties presenting argument for that position, unless those parties agree among themselves to allocate their time differently. (See section III.C., below, regarding exceptions to this time~~

~~limit.)~~

~~8-10.~~ 9. Upon conclusion of the last presentation of respondent's position, there will be a maximum of 5three minutes to offer rebuttal argument for the staff and the respondent, in the same order as the original presentations. -If there is more than one party who shares the same position, the 5three minutes will be allocated on a pro rata basis among them, unless those parties agree among themselves to allocate their time differently.

~~10. The Board Secretary shall keep track of time allotted to all presenters, and shall notify each speaker when he or she has two minutes remaining, and when time has expired.~~

~~9-11.~~ 11. Upon conclusion of arguments, Board Members may question the parties or their counsel.

~~12. CalPERS counsel states the alternatives which are available to the Board for action and the consequences of each alternative.~~

~~13. Upon a majority vote, the~~The Board President ~~will~~may, in her or his discretion, recess the hearing for the purpose of holding a closed session to consider the facts and legal arguments presented, and to deliberate. ~~The Board shall provide appropriate notice in advance of a full hearing that a closed session may take place.~~ The closed session will be attended by Board members and, if requested by the Board President, the Board's Independent Counsel, only. -Following its deliberations in closed session, the Board shall ~~re-convene~~reconvene in open session ~~for the purpose of making a decision in to decide~~ the matter before it. ~~The closed session will be recorded;~~ Depending on the Board's decision, the Board President may direct the record will be kept confidential unless a court action is filed in which case Board's Independent Counsel and/or one or more of the record will be transcribed and released upon request by a party to the action.

~~14. Board makes its decision by voting to adopt one of the resolutions formulated by staff, or another alternative of its choice.~~

~~10-12.~~ 15. CalPERS counsel announces that the Legal Office will parties to prepare a formal decision ~~based on the Board's vote, for its adoption~~for consideration at the next Board meeting ~~of the Board.~~

~~16. Board President announces conclusion of agenda item.~~

B.C. C. Requests for Exceptions to Time Limitations

~~It is the Board's intent to provide scheduling flexibility while maintaining a measure of oversight of these proceedings. In accordance with the goals of the~~

~~Board, the following will be the Board's policy with respect to exceptions of~~ Upon written request made at least five days before the hearing, the Board President may, in her or his discretion, increase the time limitations.

- ~~1. Some flexibility is possible in the relatively simple case in regard to the 15-minute time limitation in that it is subject to extension by the presiding officer of the Board at any time. However, in the interest of efficiency, parties should inform the Board and other parties of any need for additional time at the earliest opportunity.~~
- ~~2. In addition to the above exception, if a matter is unusually complex, a party may request a greater allotment of time in advance. The Board requests that in this type of case, requests for additional time should be handled as follows:~~
 - ~~a. The request should be filed on the parties' presentations. Any such request must be filed via email or fax no later than five days prior to the hearing, with:~~

~~Chief Executive Officer~~
Board Secretary, California Public Employees' Retirement System, Email:
board@calpers.ca.gov; Fax: (916) 795-3972.

~~P.O. Box 942701
Sacramento, CA 94229-2701~~

- ~~b. The request should~~ must specify the amount of time ~~needed.~~
- ~~c. The request should~~ requested; be supported by a clear, written justification of the need for additional time.
- ~~d. A copy of the request should; and~~ be served concurrently on ~~each~~ the other party ~~or their attorney of record.~~

~~The party requesting additional time and all(ies). All parties or their counsel~~ will be notified ~~prior to~~ no later than the commencement of the hearing whether the request has been granted ~~or denied.~~ If granted, the total time designated for the parties who share the opposing position will also automatically be extended so that each position has the same total amount of time for oral presentation, allocated among the parties as provided in these policies and procedures.

D. D. ~~Scope of Review:-~~

The scope of the Board's review in full hearings will normally be limited to the Administrative Record of the hearing before the ALJ as it stands. ~~In rare~~ circumstances, however, the interest of achieving a just result may require the consideration of newly discovered documentary evidence which could not, with

reasonable diligence, have been discovered and produced at the hearing, and which is therefore not part of the Administrative Record.

~~C.E.~~ ~~E.~~—Requests for Introduction of Evidence Which is not Contained in the Administrative Record:

1. ~~1.~~—This policy applies only to documentary evidence. -Under no circumstances will the Board accept new witness testimony or demonstrative evidence of any kind at a full hearing.
2. ~~2.~~—A party who wishes to introduce evidence before the Board which is not contained in the Administrative Record must submit a written request to that effect on or before no later than the due date for written arguments. - Such a request must be served on all parties and filed, by mail and email or facsimilefax, with:-

Board Secretary
California Public Employees' Retirement System
Post Office Box 942701
Sacramento, CA -94229-2701

FacsimileEmail: board@calpers.ca.gov
Fax: (916) 795-36593972

3. ~~3.~~—All requests for introduction of evidence not included in the Administrative Record must be accompanied by a complete and legible copy of any documentary evidence to be offered. In addition, the request must:
 - a) ~~a)~~—Show good cause why the evidence could not, with reasonable diligence, have been discovered and produced at the hearing;
 - b) ~~b)~~—Show the relevance of the evidence offered; and
 - c) ~~c)~~—Show that the evidence is otherwise admissible under the evidentiary rules of the Administrative Procedure Act.
4. ~~4.~~—After reviewing the written request and oral argument, if any, the Board President may, in itsher or his discretion, decide to admit the evidence at the hearing.

IV. ~~IV.~~ RESPONSIBILITIES

~~A.~~ Except as otherwise specified within this document, CalPERS' Chief Executive Officer is responsible for implementing these policies and procedures. -The Chief Executive Officer may delegate responsibilities to subordinate staff as may be necessary.