

California Public Employees' Retirement System  
Legal Office  
P.O. Box 942707  
Sacramento, CA 94229-2707  
TTY: (877) 249-7442  
(916) 795-3675 phone • (916) 795-3659 fax  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

Ref No. 2012-0671

October 1, 2015

**TO:** ALL PARTIES AND THEIR ATTORNEY OF RECORD

**SUBJECT:** Procedures for Full Hearings before the Board of Administration,  
California Public Employees' Retirement System

**The attached document describes the procedures for the  
conduct of full hearings before the Board of Administration.**

**Please note that these procedures were revised by the  
Board in September 2005 and contain information regarding**

**allocation of time for oral argument. If you have any  
questions or concerns about these procedures please  
contact Outside Counsel, Jason Levin, who is the attorney  
assigned to represent CalPERS in this matter. You should  
contact Mr. Levin at your earliest possible convenience at:**

**(213) 439-9455 or [jlevin@step toe.com](mailto:jlevin@step toe.com).**

A handwritten signature in blue ink, appearing to read "Nancy Hao", written over a horizontal line.

NANCY HAO  
Associate Governmental Program Analyst

Enclosure: Procedures for Full Hearings

**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. 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. OBJECTIVE**

The objectives of this policy are to:

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

**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."
- B. **Procedure for Full Hearings Before the Board:**
  - 1. Board President announces agenda item for hearing.
  - 2. Parties<sup>1</sup> 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
  - c) states brief procedural history of the case:
    - 1) date of the administrative hearing,
    - 2) date Proposed Decision presented to Board, and
    - 3) Board's action on Proposed Decision.
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.
6. CalPERS counsel presents staff's position and supporting arguments. This presentation shall not normally exceed 15 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. Respondent, or respondent's counsel, presents respondent's position. This presentation shall not normally exceed 15 minutes. (See 8, below, regarding allocation of time among more than one party.) (See section III.C., below, regarding exceptions to this time limit.)
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.)

9. Upon conclusion of the last presentation of respondent's position, there will be a maximum of 5 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 5 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.
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 Board President will recess the hearing for the purpose of holding a closed session to consider 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 only. Following its deliberations in closed session, the Board shall re-convene in open session for the purpose of making a decision in the matter before it. The closed session will be recorded; the record will be kept confidential unless a court action is filed in which case 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.
15. CalPERS counsel announces that the Legal Office will prepare a formal decision based on the Board's vote, for its adoption at the next meeting of the Board.

16. Board President announces conclusion of agenda item.

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 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 no later than 5 days prior to the hearing, with:

Chief Executive Officer  
California Public Employees' Retirement System  
P.O. Box 942701  
Sacramento, CA 94229-2701
  - b. The request should specify the amount of time needed.
  - c. The request should be supported by a clear, written justification of the need for additional time.
  - d. A copy of the request should be served concurrently on each party or their attorney of record.

The party requesting additional time and all parties or their counsel will be notified prior to 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. 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.
- E. Requests for Introduction of Evidence Which is not Contained in the Administrative Record:

1. This policy applies only to documentary evidence. Under no circumstances will the Board accept new witness testimony at a full hearing.
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 the due date for written arguments. Such a request must be served on all parties and filed, by mail or facsimile, with:

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

Facsimile: (916) 795-3659

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) Show good cause why the evidence could not, with reasonable diligence, have been discovered and produced at the hearing;
  - b) Show the relevance of the evidence offered; and
  - c) Show that the evidence is otherwise admissible under the evidentiary rules of the Administrative Procedure Act.

4. After reviewing the written request and oral argument, if any, the Board may, in its discretion, decide to admit the evidence at the hearing.

#### **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.

1 MATTHEW G. JACOBS, GENERAL COUNSEL  
MARGUERITE D. SEABOURN, ASSISTANT CHIEF COUNSEL, SBN146475  
2 RENEE SALAZAR, SENIOR STAFF ATTORNEY, SBN214042  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811  
3 P. O. Box 942707, Sacramento, CA 94229-2707  
Telephone: (916) 795-3675  
4 Facsimile: (916) 795-3659

5 Attorneys for California Public  
Employees' Retirement System

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7

8 BOARD OF ADMINISTRATION  
9 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

10 In the Matter of the Calculation of Final ) CASE NO. 2012-0671  
11 Compensation of ) OAH NO. 2013080917  
)  
12 BRUCE MALKENHORST, SR., ) NOTICE OF FULL BOARD  
) HEARING  
13 Respondent, )  
) Date: November 18, 2015  
14 and ) Time: 9:00 a.m.  
) Location: Robert F. Carlson  
15 CITY OF VERNON, ) Auditorium, CalPERS Lincoln Plaza  
) North, Sacramento, CA  
16 Respondent. )

17 TO RESPONDENT Bruce Malkenhorst, Sr., and his attorney of record,  
18 John M. Jensen; and TO RESPONDENT City of Vernon, and its attorney of record,  
19 Joung H. Yim:

20 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the Board of  
21 Administration of the California Public Employees' Retirement System, at its meeting of  
22 September 17, 2015, voted to decline to adopt the administrative law judge's Proposed  
23 Decision dated July 14, 2015, but to instead decide the matter itself on the hearing  
24 record produced before the administrative law judge without admission of any further  
25




1 evidence. This matter has been placed on the agenda to be considered by the Board  
2 of Administration at its regular meeting scheduled for November 18, 2015, beginning at  
3 9:00 a.m., or as soon thereafter as the matter can be heard on the calendar of agenda  
4 items, at CalPERS Headquarters, Robert F. Carlson Auditorium, Lincoln Plaza North  
5 400 Q Street, Sacramento, CA 95811.

6 In accordance with section 11517(c) of the Government Code, arguments either  
7 oral or written, or both, may be submitted to the Board. **Written argument, if any,**  
8 **must be received by CalPERS by November 6, 2015, and sent to: Board**  
9 **Secretary, Post Office Box 942701, Sacramento, CA 94229-2701, in order to be**  
10 **mailed to the Board members with the agenda item package. Please note that if**  
11 **you miss this date, the Board may consider this matter without your argument.**  
12 **Any written argument submitted to the Board Secretary should be titled as**  
13 **Respondent's Argument.**

14 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT  
15 SYSTEM

16 Dated: 10/1/15

BY

  
MARGUERITE D. SEABOURN  
Assistant Chief Counsel

## PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: California Public Employees' Retirement System, Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811 (P.O. Box 942707, Sacramento, CA 94229-2707).

On October 1, 2015, I served the foregoing document described as:

NOTICE OF HEARING, In the Matter of the Calculation of Final Compensation of BRUCE MALKENHORST, SR., Respondent, and CITY OF VERNON, Respondent.; Case No. 2012-0671; OAH No. 2013080917.

on interested parties in this action by placing \_\_\_ the original XX a true copy thereof enclosed in sealed envelopes addressed and or e-filed as follows:

John M. Jensen  
Law Offices of John Michael Jensen  
11500 W. Olympic Blvd., Suite 550  
Los Angeles, CA 90064  
(Via Certified Mail  
#9414726699042036626624 - Return  
Receipt Requested)

Joung H. Yim  
Liebert Cassidy Whitmore  
6033 W. Century Blvd., Suite 500  
Los Angeles, CA 90045  
(Via Certified Mail  
#9414726699042036626617 - Return  
Receipt Requested)

Jason Levin/Ed Gregory  
Steptoe & Johnson LLP  
633 West Fifth Street, Suite 700  
Los Angeles, CA 90071  
(Via Certified Mail  
#9414726699042019696378 - Return  
Receipt Requested)

Bruce Malkenhorst, Sr.  
6651 Churchill Dr.  
Huntington Beach, CA 92648  
(Via Certified Mail  
#9414726699042036627508 - Return  
Receipt Requested)

Personnel Officer  
City of Vernon  
4305 S. Santa Fe Avenue  
Vernon, CA 90058  
(Via Certified Mail  
#9414726699042019696361 - Return  
Receipt Requested)

[ X ] BY CERTIFIED MAIL/RRR -- As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

Executed on October 1, 2015, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Nancy Hao  
\_\_\_\_\_  
NAME

  
\_\_\_\_\_  
SIGNATURE