

ATTACHMENT D

**PROCEDURES FOR FULL HEARING, NOTICE OF HEARING AND PROOF
OF SERVICE**



California Public Employees' Retirement System
Legal Office
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Sacramento, CA 94229-2707
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Ref No. 2014-1087

March 8, 2016

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 Christopher Phillips, Senior Staff Attorney, who is the attorney assigned to represent CalPERS in this matter. You should contact Mr. Phillips at your earliest possible convenience at (916) 795-1109.



LAURA AVINA
Secretary to Christopher Phillips

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. Parties¹ 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
CHRISTOPHER PHILLIPS, SENIOR STAFF ATTORNEY, SBN 257758
2 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
Facsimile: (916) 795-3659

4 Attorneys for California Public
5 Employees' Retirement System

6
7 BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

8	In the Matter of the Appeal Regarding)	CASE NO. 2014-1087
	Membership Exclusion of Foundation)	OAH NO. 2015030359
9	Employees by)	
)	NOTICE OF FULL BOARD
10	SANTA CLARA COUNTY HEALTH)	HEARING
	AUTHORITY,)	
11)	Date: April 20, 2016
	Respondent,)	Time: 9:00 a.m.
12)	Location: Robert F. Carlson
	and)	Auditorium, CalPERS Lincoln Plaza
13	KATHLEEN KING,)	North, Sacramento, CA
)	
14	Respondent.)	

15
16 To Respondents Santa Clara County Health Authority; and to its attorney of
17 record, Alison S. Hightower; and to Respondent Kathleen King:

18 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the Board of
19 Administration of the California Public Employees' Retirement System, at its meeting of
20 February 18, 2016, voted to decline to adopt the Administrative Law Judge's Proposed
21 Decision dated December 3, 2015, but to instead decide the matter itself on the
22 hearing record produced before the Administrative Law Judge without admission of
23 any further evidence. This matter has been placed on the agenda to be considered by
24 the Board of Administration at its regular meeting scheduled for April 20, 2016,
25 beginning at 9:00 a.m., or as soon thereafter as the matter can be heard on the

NOTICE OF FULL BOARD HEARING


1 calendar of agenda items, at CalPERS Headquarters, Robert F. Carlson Auditorium,
2 Lincoln Plaza North, 400 Q Street, Sacramento, CA 95811.

3 In accordance with section 11517(c) of the Government Code, arguments either
4 oral or written, or both, may be submitted to the Board. Written argument, if any,
5 must be received by CalPERS by April 8, 2016, and sent to: Board Secretary,
6 Post Office Box 942701, Sacramento, CA 94229-2701, in order to be mailed to the
7 Board members with the agenda item package. Please note that if you miss this
8 date, the Board may consider this matter without your argument. Any written
9 argument submitted to the Board Secretary should be titled as "Respondent's
10 Argument."

11 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
12 SYSTEM

13 Dated: 3/08/16

14 BY



15 CHRISTOPHER PHILLIPS,
16 Senior Staff Attorney

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 March 8, 2016, I served the foregoing document described as:

PROPOSED DECISION, PROCEDURES FOR FULL HEARINGS BEFORE THE BOARD and, NOTICE OF FULL BOARD HEARING - In the Matter of the Appeal Regarding Membership Exclusion of Foundation Employees by SANTA CLARA COUNTY HEALTH AUTHORITY, Respondent, and KATHLEEN KING, Respondent. Case No. 2014-1087; OAH No. 2015030359.

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:

Kathleen M. King

[REDACTED]

Courtesy Email to: [REDACTED]

Sharon Valdez
Santa Clara County Health Authority

[REDACTED]

Courtesy Email to: [REDACTED]

Christopher E. Platten
Wylie, McBride, Platten & Renner
2125 Canoas Garden Ave., Ste. 120
San Jose, CA 95125
Courtesy Email to: cplatten@wmpirlaw.com


Alison S. Hightower
Littler Mendelson, PC
333 Bush Street, 34th Floor
San Francisco, CA 94104
Courtesy Email to: ahightower@littler.com

BY OVERNIGHT DELIVERY: I caused such envelope(s) to be delivered to the above address(es) within 24 hours by overnight delivery service.

Executed on March 8, 2016, at Sacramento, California.

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

Laura Avina
NAME


SIGNATURE