

**MARIN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (MCERA)  
DISABILITY RETIREMENT AND SURVIVOR BENEFITS APPLICATIONS POLICY**

**ADOPTED: November 5, 2014**

**AMENDED: May 6, 2015**

**AMENDED: May 9, 2018**

**REVIEWED: May 5, 2021**

**I. PURPOSE**

This policy sets forth the manner in which the MCERA Board of Retirement (“Board”) will consider and act on applications for disability retirement and, to the extent factual issues need to be determined, on applications for service-connected survivor benefits as well (collectively referred to hereinafter as “Applications”).

**II. SCOPE**

This policy supplements, and is intended to be read harmoniously with, the provisions of MCERA’s Bylaws entitled “Procedures for Applications for Disability Retirement” (Part X, sections 1001-1014) and the MCERA Guidelines for Discussion of Disability Retirement and Survivor Benefit Applications at Board Meetings (“Discussion Guidelines”).

**III. BACKGROUND**

Since the mid-2000s, the Board has taken a number of steps to improve Board processes involved in the consideration of Applications.

Those improvements include, beginning in the late 2000s, seeking and obtaining recommendations on Applications from a Board Medical Advisor. The Medical Advisor’s recommendation is provided to the Board, the applicant, through his or her counsel if any, and to MCERA’s counsel, the Marin County Counsel.

In addition, in March 2011, the Board requested, and since then has received, a staff recommendation on Applications, both before and after administrative hearings. The Board and the applicant, through his or her counsel if represented, are provided with the confidential meeting agenda backup, which includes a copy of the staff recommendation. The staff recommendation is based upon input from the Retirement Administrator, Assistant Administrator and Disability Retirement Coordinator (“Staff Disability Review Committee”).

Next, on December 11, 2013, the Board adopted the MCERA Discussion Guidelines, which describe and explain the manner in which the Board conducts its meetings during which it considers Applications.

Finally, on April 18, 2018, the Board directed staff to include an additional “possible motion” among those that are available to it after the Board initially considers an application, but before an administrative hearing, as set forth in the Policy below.

The Board seeks to continue to improve the efficiency and effectiveness of its processes regarding its consideration of Applications. The Board also seeks to provide additional information to its members, their advisors, and others, regarding its processes on these matters.

#### **IV. POLICY**

1. As provided in the MCERA Bylaws, section 1001, upon receipt of an Application and related materials as provided therein, and after the passage of time and the provision of notices as also set forth therein, but prior to any administrative hearing on that Application, the Retirement Administrator will present the Application to the Retirement Board for initial action.
2. If the Disability Review Committee and Board Medical Advisor agree that an applicant has sustained his or her burden of proof and the Application should be granted, in whole or in part, the Applications may be placed on the Board's Disability Retirement consent agenda. At least 72 hours before the Board meeting, MCERA will distribute to the Board and its counsel, the applicant and/or his or her counsel, and MCERA's counsel all confidential agenda back-up material on the Application, which will include the Disability Review Committee Summary and Recommendation, Medical Advisor Report and Recommendation (collectively, the "Recommendations"), and any other relevant background documentation (collectively, "Confidential Agenda Backup"). The Board may act on the consent agenda to adopt the Recommendations to grant, in whole or in part, the Application, or any voting Board member may pull the item from consent agenda for consideration in closed session ("Closed Session").
3. If the Disability Review Committee and Board Medical Advisor agree that the applicant has not sustained his or her burden of proof and the Application should be denied, in whole or in part, the Application may be placed on the Board's Disability Retirement consent agenda. At least 72 hours before the Board meeting, MCERA will distribute the Confidential Agenda Backup to the Board and its counsel, the applicant and/or his or her counsel and MCERA's counsel. The Board may act on the consent agenda to adopt the Recommendations and deny the Application, in whole or in part, and provide the applicant with the opportunity to request, within 60 sixty days of the mailing of the notice of denial, an administrative hearing on the denial or any voting Board member may pull the item from the consent agenda for consideration in Closed Session. Any such administrative hearing shall be held as provided in the MCERA Bylaws, and in compliance with applicable law.
4. If the Disability Review Committee and Board Medical Advisor do not agree on a recommendation, then the Application may be agendized for the Board's initial consideration in Closed Session. MCERA will distribute the Confidential Agenda Backup to the Board and its counsel, the applicant and/or his or her counsel and MCERA's counsel at least one (1) week before the Board meeting. The applicant's counsel or applicant if pro se, and MCERA's counsel, may, but are not obligated to

provide a written response to the Confidential Agenda Backup to the Board through MCERA at least 72 hours prior to the Board meeting.

- a. The confidential agenda backup for the Closed Session, which will be provided to the Board and its legal advisor, the applicant and his or her counsel if any, and MCERA's attorney, with the Staff Summary and Recommendations, and any supporting documentation, the Medical Advisor's Report and Recommendation, and any supporting documentation, and all briefing submitted as provided herein.
5. If, as a result of its pre-administrative hearing deliberations on the Application, the Board votes to deny any aspect of the application, the Board may, in lieu of requiring the applicant to proceed immediately to administrative hearing to challenge the denial, instead provide the applicant with the opportunity to request Board reconsideration of the Application within a designated period of time, with briefing to be provided by the Applicant and MCERA's counsel on one or more topics that the Board will identify.
  6. After an Application has been adjudicated at an administrative hearing as provided in the MCERA Bylaws, the hearing officer will provide the Board with proposed findings of fact and a recommended decision, which will be agendaized on the Board's Disability Consent Agenda, unless the Retirement Administrator in consultation with the Board Chair concludes that Closed Session is warranted (subject to the Applicant always having the right for the Application to be considered in Open Session). The Retirement Administrator will provide the Board with a recommendation to act in accordance with Gov. Code sec. 31534, and as set forth in the Discussion Guidelines, as follows:
    - a. The Board may approve and adopt the proposed findings and recommendations of the hearing officer.
    - b. The Board may require a transcript or summary of all the testimony, plus all other evidence received by the hearing officer. Upon receipt thereof the Board will take such action as in its opinion is indicated by such evidence.
    - c. The Board may refer the matter back with or without instructions to the hearing officer for further proceedings.
    - d. The Board may set the matter for hearing before itself. At such hearing, the Board will hear and decide the matter as if it had not been referred to the referee.
  7. As to any Board actions taken in Closed Session, immediately after adjournment of closed session, the Chair will announce the Board's decision in open session, as well as the total vote tallies, and the votes of each Board member (which may be summarized by, among other things, identifying by name only the dissenting voters or by reporting a unanimous vote). That announcement will also be reported in the minutes of the Board meeting.

**V. POLICY REVIEW**

This Policy will be reviewed by the Retirement Board at least every three years to ensure that it remains relevant and appropriate. The Policy may be amended from time to time by majority vote of the Board.

**VI. RETIREMENT ADMINISTRATOR'S CERTIFICATE**

I, Jeff Wickman, the duly appointed Retirement Administrator of the Marin County Employees' Retirement Association, hereby certify that this Policy was reviewed and made effective on May 5, 2021.



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Retirement Administrator