



# Board of Retirement Regular Meeting

## Sacramento County Employees' Retirement System

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### Agenda Item 15

**MEETING DATE:** September 15, 2021

**SUBJECT:** Delegation of Authority to Board President Policy

**SUBMITTED FOR:** \_\_\_ Consent       X  Deliberation and Action      \_\_\_ Receive and File

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### RECOMMENDATION

Staff recommends the Board approve the Delegation of Authority to Board President Policy, which delegates certain powers to the President of the Board of Retirement in the event that SCERS' Chief Executive Officer is recused from certain personnel-related activities and decisions.

### PURPOSE

This item supports the Strategic Management Plan to promote transparency, fairness, and compliance with laws, regulations, and policies.

### DISCUSSION

Government Code section 31522.1 states: "The board of retirement . . . may appoint such administrative, technical, and clerical staff personnel as are required to accomplish the necessary work of the boards. . . . The personnel shall be county employees and shall be subject to the county civil service or merit system rules and shall be included in the salary ordinance or resolution adopted by the board of supervisors for the compensation of county officers and employees." Historically, the SCERS Board of Retirement has delegated the authority to appoint and manage staff personnel to the Chief Executive Officer. Thus, the CEO sits at apex of all staff management processes within SCERS, such as the resolution of personnel complaints and staff discipline.

Generally, this delegation of authority to the CEO functions effectively for the organization. In unusual circumstances, however, issues can arise:

- SCERS is subject to laws and policies that give SCERS staff the right to submit a personnel complaint about a supervisor, and to have that complaint promptly reviewed and (potentially) acted upon by the next-level authority. But when that personnel complaint is about the CEO, the Board of Retirement is the only next-level authority that can act. Because the Board meets only once a month, and cannot provide the kind of

timely review and action required by law, there arises a need for a Board delegate who can.

- In unusual circumstances, there may be a legal or ethical need for the CEO to recuse him/herself from an employee management decision, such as a decision to discipline an employee. Upon such recusal by the CEO, there would be a need for a secondary Board delegate to perform the function that the CEO otherwise would have performed.

To address these scenarios, Staff recommends the Board give the Board President delegated authority to act. In both situations, it makes legal and practical sense for the secondary delegate to be someone who holds a high-ranking leadership position at SCERS, who does not report to the CEO, and who is familiar with SCERS' operations. The Board President has all of these traits. And although the Board President cannot be expected to be familiar with the minutiae of personnel rules and issues at SCERS, the proposed policy makes clear that he/she would receive robust support from senior staff and/or outside counsel in making any necessary decisions.

With respect to personnel complaints against the CEO, the proposed Policy specifies that the Board President would be authorized to take only "interim actions" – that is, actions necessary to defuse, bring SCERS into compliance with law, and protect the parties until the Board can act collectively at the next meeting. Thus, the proposed Policy does not permit the Board President to take any formal, long-term adverse employment actions unilaterally.

### **ATTACHMENTS**

- Board Order
- Delegation of Authority to Board President Policy

Prepared by:

/S/

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Stephen Lau  
General Counsel

Reviewed by:

/S/

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Eric Stern  
Chief Executive Officer



# Retirement Board Order

## Sacramento County Employees' Retirement System

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**Before the Board of Retirement  
September 15, 2021**

MOTION:

### **Approving Delegation of Authority to Board President Policy**

THE BOARD OF RETIREMENT hereby accepts the recommendation of staff to approve the Delegation of Authority to Board President Policy.

I HEREBY CERTIFY that the above order was passed and adopted on September 15, 2021 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ALTERNATES (Present but not voting):

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Richard B. Fowler II  
Board President

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Eric Stern  
Chief Executive Officer and  
Board Secretary



# DELEGATION OF AUTHORITY TO BOARD PRESIDENT POLICY

## PURPOSE

The purpose of this Policy is to delegate certain authority to the President of the Board of Retirement in the event that SCERS' Chief Executive Officer has, for ethical or legal reasons, recused him/herself from certain personnel-related activities and decisions.

## POLICY

### Delegation of Authority in the Event of CEO Disqualification or Recusal from Handling Personnel Complaints

SCERS is subject to various laws and policies that confer rights and protections on SCERS employees. Among those is the right to submit a personnel complaint about a supervisor, and to have that complaint promptly reviewed and (potentially) acted upon by the next-level authority.

This Policy creates a mechanism for effectuating that employee right when SCERS' Chief Executive Officer is the subject of a personnel complaint. Under Government Code section 31522.2, the CEO is appointed by, and reports only to, the Board of Retirement. The Board of Retirement, however, can only take action at monthly meetings within the strictures of the Brown Act. Thus, if a complaint is submitted about the CEO, and that complaint triggers a need for a next-level authority to take prompt action, the Board is not well-situated to react.

To address the above scenario, the Board hereby delegates to the Board President the following powers and responsibilities:

- (1) To receive and review personnel complaints about the CEO;
- (2) To receive and review any other personnel complaints that the CEO, in his/her sound judgment, decides to recuse him/herself from handling;
- (3) To take, or considering taking, interim actions that, in the judgment of the Board President, are appropriate to help SCERS comply with law or policy, protect the parties, and/or de-escalate conflicts and disputes, until the next Board meeting.
- (4) To consult with SCERS' General Counsel – or outside counsel if the General Counsel recuses him/herself – to determine the appropriate interim actions; and
- (5) To report any interim actions taken by the Board President to the collective Board at the next meeting.

To be clear, "interim actions" refer to short-term actions appropriate to comply with law or policy, defuse, prevent injury, etc. until the next Board meeting, whereupon the Board can deliberate and take action collectively. Examples of "interim actions" include initiating a fact

investigation (particularly where required by law), or mediating communications. “Interim actions” do not include formal employment actions such as termination, suspension, etc.

This delegation of authority shall be deemed effective as of June 1, 2021.

Delegation of Authority in the Event of CEO Recusal from Personnel Management Decision

Government Code section 31522.1 states: “The board of retirement . . . may appoint such administrative, technical, and clerical staff personnel as are required to accomplish the necessary work of the boards. . . . The personnel shall be county employees and shall be subject to the county civil service or merit system rules and shall be included in the salary ordinance or resolution adopted by the board of supervisors for the compensation of county officers and employees.”

Although Section 31522.1 authorizes the Board to appoint staff, the Board has historically delegated that authority to the CEO. Under unusual circumstances, there may be a legal or ethical need for the CEO to recuse him/herself from an employee management decision (e.g., a decision to discipline an employee). Upon such recusal, there would be a need for a secondary Board delegate to perform the function that the CEO otherwise would have performed.

To address the above scenario, the Board hereby delegates to the Board President the power to make personnel management decisions in place of the CEO should the CEO, in his/her sound judgment, elect to recuse him/herself from that decision. (It is anticipated that such recusal would very rarely occur.) In making that management decision, the Board President shall consult with SCERS’ General Counsel, Chief Operating Officer, and other senior staff as necessary to aid in the decision-making. If, after consideration, the Board President concludes that the personnel management decision is better made by the Board collectively, he/she may elevate the matter accordingly.

**RESPONSIBILITIES**

Executive Owner: General Counsel

**POLICY HISTORY**

<b>Date</b>	<b>Description</b>
09-15-2021	Board approved new policy