

## CHAPTER 1. ADMINISTRATIVE OPERATIONS

### Subchapter

1. General Provisions
3. Administrative Review and Hearings

[**Authority:** 74 O.S., §§ 901, 903, 904, 905, 908, and 909; 75 O.S., §§ 302, 305, and 307]

[**Source:** Codified 12-27-91]

## SUBCHAPTER 1. GENERAL PROVISIONS

### Section

- 590:1-1-1. Purpose
- 590:1-1-2. System purpose and authority
- 590:1-1-3. Board of Trustees
- 590:1-1-4. Executive Director
- 590:1-1-5. Retirement Coordinators
- 590:1-1-6. Hearing procedures [REVOKED]
- 590:1-1-7. Declaratory rulings [REVOKED]
- 590:1-1-8. Petitions for rulemaking
- 590:1-1-9. Designee Board members

#### **590:1-1-1. Purpose**

The purpose of Chapter 1 is to outline the administrative structure of the Oklahoma Public Employees Retirement System, including the Board of Trustees and Executive Director. It further provides the procedures for enforcing administrative rights of members of the System.

#### **590:1-1-2. System purpose and authority**

(a) This agency, known as the Oklahoma Public Employees Retirement System, was established to provide:

- (1) an orderly means whereby employees, of participating employers, who are eligible as set by statute, may transfer to inactive service without undue hardship and without prejudice;
- (2) for said employees to accumulate reserves adequate to provide for themselves and their dependents;
- (3) to effectively and efficiently administer the programs necessary to attain these goals for public employees;
- (4) to effectively and efficiently administer the programs necessary to attain these goals for Justices and Judges; and
- (5) to effectively and efficiently administer the Defined Contribution Plans for state employees.

OAC 590: OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM

(b) The System shall be vested with the powers and duties specified in Title 74 O.S. Sections 901 to 935 and Title 20 O.S. Sections 1101 to 1112 and such other powers as may be necessary to enable it, its officers, employees, and agents to carry out fully and effectively the purpose and intent of said retirement laws.

[Source: Amended at 22 Ok Reg 125, eff 10-06-04 (emergency); Amended at 22 Ok Reg 1353, eff 5-26-05]

**590:1-1-3. Board of Trustees**

(a) The membership of the Board of Trustees shall be governed by statute, namely 74 O.S., Section 905.

(b) The Board shall serve the System without compensation but shall receive their actual and necessary expenses, subject to statutory limitations applying to other State employees, as are incurred in the performance of duties of the Board, which shall be paid as an operating expense from the appropriate operating fund of the System.

(c) The Board shall elect one of its Members as Chairman of the Board at its annual meeting and shall also elect another Member to serve as Vice Chairman and the Vice Chairman shall perform the duties of the Chairman in the absence of the latter.

(d) The Board may establish such committees as may be needed. Each committee shall be composed of not more than five (5) members of the Board of Trustees, appointed by the Chairman of the Board. The committees shall make recommendations on any matters before them, but shall have no authority to act on behalf of the Board. No recommendations of any committee shall have effect without approval of the Board of Trustees.

[Source: Amended at 12 Ok Reg 3235, eff 7-27-95]

**590:1-1-4. Executive Director**

(a) The Executive Director is appointed by the Board of Trustees and is the administrative officer for the Board. He is responsible for the general administration of the Retirement System.

(b) The Executive Director shall have the following powers and duties:

(1) Responsibility for maintaining records of the individual Members, records of all types of funds, reserves, and equipment necessary for the operation of the accounting procedures.

(2) Under his direction, coordination of investments with the Investment Managers; establishing and monitoring acceptable methods for receipt, recording and depositing of all funds of the System; and directing the implementation of investment policies of the Board by coordination with the Investment Managers.

(3) Under his direction, approval of Enrollment Applications, responsibility for the proper enrollment of members, and providing information to Retirement Coordinators and participants as to the benefits.

(4) Withholding income tax from benefits paid by the Oklahoma Public Employees Retirement System, unless election is made to make an estimated payment directly to the IRS. Alternatives are available to retirants for withholding purposes.

OAC 590: OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM

(c) The Executive Director and Deputy Director are authorized to sign all vouchers for the State Retirement System. Persons authorized by the Executive Director shall sign the vouchers in the event of the absence of the Executive Director or the Deputy Director.

[Source: Amended at 12 Ok Reg 3235, eff 7-27-95; Amended at 13 Ok Reg 3325, eff 7-25-96]

**590:1-1-5. Retirement Coordinators**

(a) **Appointment.** Retirement Coordinators shall be appointed for each participating county, city, town or county hospital and each State agency to serve as a representative between the Retirement Board and the participating Employer.

(b) **Responsibilities.** These Retirement Coordinators shall be responsible for the enrollment, assistance of the completion of forms, and instructions to the members on behalf of the participating employer relating to the Oklahoma Public Employees Retirement System.

(c) **Notice to members; Plan information.** The Retirement Coordinator shall be responsible for ensuring that each participating member of the System is provided basic Plan information in the form of the most current Member Handbook or other similar publications from the System, and all other official notices from the System. The member shall also be directed to the website of the System, [www.opers.ok.gov](http://www.opers.ok.gov), for more specific Plan information. Each Retirement Coordinator shall establish and maintain sufficient documentation to verify compliance with this rule, and shall furnish the verification upon request by the System.

(d) **Employment; training; liability.** The Retirement Coordinator is employed by and under the authority of each participating county, city, town or county hospital and each State agency and is not an employee of the System. The System will make available information and training opportunities, however, it is the responsibility of the Coordinator to become familiar with the Plan provisions and keep abreast of all changes and amendments. Neither the System nor the Board will be liable for or bound by any mistakes, errors or misrepresentations of the Retirement Coordinators.

[Source: Amended at 12 Ok Reg 3235, eff 7-27-95; Amended at 13 Ok Reg 3325, eff 7-25-96; Amended at 20 Ok Reg 1747, eff 6-12-03; Amended at 25 Ok Reg 994, eff 5-11-08; Amended at 29 Ok Reg 497, eff 5-11-12]

**590:1-1-6. Hearing procedures [REVOKED]**

[Source: Amended at 12 Ok Reg 3235, eff 7-27-95; Amended at 19 Ok Reg 798, eff 2-13-02 (emergency); Amended at 19 Ok Reg 1474, eff 5-28-02; Amended at 20 Ok Reg 1747, eff 6-12-03; Revoked at 25 Ok Reg 994, eff 5-11-08]

**590:1-1-7. Declaratory rulings [REVOKED]**

[Source: Revoked at 26 Ok Reg 120, eff 9-18-08 (emergency); Revoked at 26 Ok Reg 951, eff 4-25-09]

**590:1-1-8. Petitions for rulemaking**

- (a) Any interested person may petition the Board of Trustees requesting the promulgation, amendment, or repeal of a rule. Any such petition must be in writing and shall specify the requested action, the impact of the requested action and the desired outcome.
- (b) The Board shall act upon the petition within 30 days of receipt. Failure to act within 30 days shall be deemed a denial of the petition.

**590:1-1-9. Designee Board members**

- (a) The State Insurance Commissioner, the Director of the Office of Management and Enterprise Services, and the Corporation Commission are authorized to designate an individual to act in his or her place as a member of the Board of Trustees. This designation must be in writing, signed by the designating official and filed with the System. The designation must clearly indicate the identity of the designee and whether the designation is limited as to duration or is an on-going designation. The designation should also set forth instructions as to membership on any Committees where the official is a member. Absent specific instructions regarding committee attendance, it is assumed that the designee is authorized to appear at both Committee and Board meetings. Once a proper designation is filed, the designee may appear at meetings and may act on any items properly before the Board.
- (b) The Corporation Commission and the Oklahoma Tax Commission shall each select a member of the respective Commission to serve on the Board of Trustees. Each Commission shall provide a notification of the selection in writing, signed by the Chairman of the respective Commission to be filed with the System. In lieu of such selection of a member, the Corporation Commission may select a designee of the Commission with notification as provided in subsection (a) of this section.

[Source: Added at 22 Ok Reg 125, eff 10-06-04 (emergency); Added at 22 Ok Reg 1353, eff 5-26-05; Amended at 31 Ok Reg 2314, eff 9-12-14]

**SUBCHAPTER 3. ADMINISTRATIVE REVIEW AND HEARINGS**

**Section**

- 590:1-3-1. Purpose and general overview of administrative hearings
- 590:1-3-2. Definitions
- 590:1-3-3. Commencement of hearing
- 590:1-3-4. Hearing Examiner
- 590:1-3-5. Representation and participation in administrative proceedings
- 590:1-3-6. Location of hearings
- 590:1-3-7. Pre-hearing conference
- 590:1-3-8. Hearing procedure
- 590:1-3-9. Pleadings; filing; order
- 590:1-3-10. Discovery
- 590:1-3-11. Rules of evidence
- 590:1-3-12. Proposed order; objections; rehearing

OAC 590: OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM

- 590:1-3-13. Hearing before the Board of Trustees
- 590:1-3-14. Rehearing; appeal
- 590:1-3-15. Settlement
- 590:1-3-16. Prohibited communications
- 590:1-3-17. Expedited proceedings
- 590:1-3-18. Declaratory rulings

[Source: Codified 5/11/08]

**590:1-3-1. Purpose and general overview of administrative hearings**

- (a) **Purpose.** The purpose of this Subchapter is to give the member or participating employer, or in the case of a deceased member a joint annuitant or beneficiary, a reasonable way to have a disagreement or controversy considered fairly. In all cases, the member or participating employer, or the joint annuitant or beneficiary of a deceased member, shall have an opportunity to resolve disagreements with the System without a formal hearing.
- (b) **Formal hearing.** If a case cannot be resolved informally, the provisions of this Subchapter provide for a formal hearing before a Hearing Examiner, who is not an employee or officer of the System. The Hearing Examiner makes proposed findings, conclusions and recommendations which are reviewed and acted upon by the Board of Trustees.
- (c) **Right to appeal.** The member or participating employer, or the joint annuitant or beneficiary of a deceased member, retains the right to seek relief from a final order in an administrative hearing by the Board of Trustees by way of appeal to the District Court of Oklahoma County.
- (d) **Governing rules.** The rules set forth in this Subchapter shall govern all contested proceedings before the System or its delegated Hearing Examiner. These rules shall be given the most reasonable meaning, taken in their total context, and will be construed to secure due process in the proper resolution of each controversy.

[Source: Added at 25 Ok Reg 994, eff 5-11-08; Amended at 26 Ok Reg 951, eff 4-25-09]

**590:1-3-2. Definitions**

For purposes of this Subchapter:

**"Claimant"** means the member or participating employer, or in the case of a deceased member a joint annuitant or beneficiary, filing an appeal with the System.

**"System"** means the Oklahoma Public Employees Retirement System, the Uniform Retirement System for Justices and Judges, the Oklahoma State Employees Deferred Compensation Plan, and the Oklahoma State Employees Deferred Savings Incentive Plan.

[Source: Added at 25 Ok Reg 994, eff 5-11-08; Amended at 26 Ok Reg 951, eff 4-25-09]

**590:1-3-3. Commencement of hearing**

- (a) **Appeal.** A decision of the System affecting service credit, contributions, benefits, eligibility or any other rights of a claimant may be appealed to the Board of Trustees. The appeal must be commenced by filing a timely written request with the General Counsel. In order for the appeal to be considered timely, it must be filed within thirty (30) days after the date of mailing of the decision.
- (b) **Contents of appeal.** The appeal shall be in writing and shall set forth the following:
- (1) the name, address and Social Security number of the claimant;
  - (2) a statement regarding the nature or amount of the disagreement or dispute;
  - (3) a clear and concise assignment of each error alleged to have been committed;
  - (4) a brief summary of the argument and relevant legal authority upon which each assignment of error is made; provided, the claimant shall not be bound or restricted in the hearing, or on appeal, to the arguments and legal authorities contained and cited in this initial writing; and
  - (5) a statement of the relief sought.
- (c) **Assignment of hearing number; pre-hearing conference date.** The General Counsel shall assign a hearing number to the appeal, create a court file, notify the Hearing Examiner, and set a date for a pre-hearing conference between the parties and the Hearing Examiner.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

#### **590:1-3-4. Hearing Examiner**

Appeals to the Board of Trustees shall be assigned to a Hearing Examiner who will conduct a pre-hearing conference and an evidentiary hearing and prepare a proposed order for the Board of Trustees. The Chair of the Board of Trustees, or a designee of the Chair, shall appoint the Hearing Examiner from a list of individuals previously selected by the Board of Trustees to act in this role.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

#### **590:1-3-5. Representation and participation in administrative proceedings**

- (a) **Pro se or legal counsel.** Claimant may appear pro se at any stage of the proceeding or may be represented by legal counsel, provided such counsel must be duly licensed to practice law in the State of Oklahoma, and that such counsel has the right to appear and act for and on behalf of the claimant.
- (b) **Other representation.** If the claimant wants to be represented by someone other than himself/herself or an attorney, the Hearing Examiner may require that such person, before being recognized as a representative of the claimant, make a proper showing that he or she has the necessary qualifications to enable the representative to render such services to the claimant. Upon such showing by the representative, the Hearing Examiner shall certify the representative.
- (c) **Proof of authority to represent.** Any person representing a claimant may be required to show written proof, in a form satisfactory to the System, of his or her authority to represent the claimant in the matter.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

**590:1-3-6. Location of hearings**

All hearings shall take place in the offices of the Oklahoma Public Employees Retirement System. The hearing may be relocated upon a showing that extreme or unusual circumstances exist which would prejudice the claimant. Any such request for relocating the hearing shall be made to the Hearing Examiner who may approve only upon good cause shown or if agreed to by the System.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

**590:1-3-7. Pre-hearing conference**

(a) **General provisions.** A pre-hearing conference shall be scheduled with the Hearing Examiner within sixty (60) days of receipt by the System of the appeal and at least thirty (30) days prior to the hearing, unless such time periods are waived by the parties. The conference shall be informal, structured by the Hearing Examiner, and not open to the public. The purpose of the pre-hearing conference is to allow the parties, before the Hearing Examiner, to attempt to resolve the case or parts of it, to discuss the facts, identify legal issues, present discovery requests, make appropriate stipulations, and to propose a procedural schedule. A record of the pre-hearing conference shall not be made unless requested by the parties and ordered by the Hearing Examiner. If ordered, a stenographic record shall be made in accordance with and pursuant to 590:1-3-8(d).

(b) **Notice and continuance.** The claimant shall be notified by the System of the date and time at least seven (7) calendar days prior to the scheduled conference. A request for a continuance shall be filed with the System no less than three (3) calendar days prior to the scheduled conference. A lesser period of time may be permitted for good cause shown.

(c) **Rulings; pre-hearing conference order.** During the pre-hearing conference, the Hearing Examiner shall make all the necessary rulings. At the conclusion of the pre-hearing conference, the Hearing Examiner shall issue a pre-hearing conference order which shall set forth the agreements reached at the pre-hearing conference. The pre-hearing conference order shall be signed by the parties and the Hearing Examiner. The pre-hearing conference order shall set forth, among other things, the following information:

- (1) the date and time of the hearing;
- (2) the date to file a written brief or statement of the case;
- (3) the date to file a list of witnesses, documents and exhibits. Any witnesses for whom a subpoena is required shall include the name, address and a brief statement of the testimony to be offered; and
- (4) any requirements or request for discovery.

(d) **Failure to appear.** If the claimant fails to appear at the scheduled pre-hearing conference or to timely request a continuance of the pre-hearing conference, the Hearing Examiner shall dismiss the appeal and notice shall be sent to the claimant of the dismissal.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

**590:1-3-8. Hearing procedure**

- (a) **Purpose and process.** The hearing provides each party the opportunity to present witnesses and evidence in support of his or her respective case. Hearings shall be conducted in accordance with the Administrative Procedures Act and the rules in this Subchapter. The hearing shall be structured by the Hearing Examiner and open to the public. The Hearing Examiner may order parts of the proceedings closed when evidence of a confidential nature is to be introduced or where to do so would be in the best interests of a party, witness, the public or other affected persons.
- (b) **Party responsibility.** Each party shall be present, on time, and prepared. Failure to do so may result in dismissal of the appeal unless good cause is shown.
- (c) **Hearing Examiner responsibility.** The Hearing Examiner will convene the hearing, note appearances, and consider any motions or preliminary matters. The Hearing Examiner shall administer oaths or affirmations of the witnesses. The Hearing Examiner may also:
- (1) question any party or any witness;
  - (2) establish a scheduling order for the hearing to include time lines for further filings and the date of the hearing before the Board of Trustees;
  - (3) rule on any request for an extension of time, or on any other motions or other procedural matters;
  - (4) regulate the course of the hearing, rule on admissibility of all evidence, and regulate the conduct of the participants;
  - (5) request additional briefs on issues or law as may be reasonably necessary;
  - (6) take official notice of any material fact not appearing as evidence in the record if the fact is among traditional matters of judicial notice;
  - (7) recess and reconvene the hearing; or
  - (8) order the proceedings to be expedited in the event of severe financial hardship, upon good cause shown, in accordance with 590:1-3-17.
- (d) **Transcript of hearing.** The System shall cause a full stenographic record of the hearing to be made by a competent court reporter. A copy of the stenographic record shall be provided to any party to the proceeding at the request and expense of such party.
- (e) **Arguments; witnesses; evidence.** The party requesting the hearing shall be heard first and has, unless otherwise provided by law, the burden of proof to show in what respect the action or proposed action of the System is incorrect. Each party shall have the opportunity to present its case, to make opening statements, to call and examine witnesses, to offer documentary evidence into the record and to make closing arguments. Each party shall also have the opportunity to cross-examine opposing witnesses on matter covered in direct examination and, in the discretion of the Hearing Examiner, upon matter relevant to the issues even though not covered in direct examination. Any objection to testimony or evidentiary offers should be made, and the basis of the objection stated on the record.
- (f) **Scheduling order.** Prior to the closing of the record, each party shall agree to a proposed scheduling order which shall include deadlines for submitting a proposed final order, filing objections to the Hearing Examiner's Proposed Final Order, rebuttals to any objections, requesting a rehearing, and the date of the hearing before the Board of Trustees. The Hearing Examiner shall sign the agreed scheduling order and each party shall receive a copy.

(g) **Closing the record.** The record shall be closed when each party has had an opportunity to be heard and present evidence. Once the record is closed, no additional evidence or arguments shall be considered. The Hearing Examiner may grant a rehearing, reopening or reconsideration of the hearing upon a showing of good cause by either party prior to the date of the scheduled hearing before the Board of Trustees.

[Source: Added at 25 Ok Reg 994, eff 5-11-08; Amended at 29 Ok Reg 497, eff 5-11-12]

**590:1-3-9. Pleadings; filing; order**

(a) **Filing of pleadings; paper size.** The General Counsel serves as the "Court Clerk" for the administrative hearing process and all original pleadings shall be filed therein. All pleadings shall be filed with the System no later than 5:00 PM on the required date. Pleadings not received by the deadline will be considered as filed out of time. The General Counsel shall forward copies of all original pleadings or other documents filed with the System in the hearing process to the Hearing Examiner in a timely manner. All pleadings shall be signed, dated and filed on letter size 8 ½" x 11" paper and double spaced in 12 point type with 1" margins.

(b) **Electronic filing; facsimiles.** Electronic filing is encouraged. Electronic copies or facsimiles will be accepted but must be signed and filed by the appropriate deadline. Electronic copies shall be sent to the General Counsel as an email attachment. The attachment must be a scanned document in a pdf format reflecting the signature of the claimant or the representative of the claimant. Any exhibits filed electronically shall be contained in a separate pdf file and each exhibit properly labeled. It shall be the responsibility of the claimant to verify that the System has received the electronic copy or facsimile and that it is legible and acceptable to the System.

(c) **Order of filing briefs.** Each party shall have the opportunity to file a written brief or statement of the case setting forth the facts, arguments, and legal authorities. The briefs shall be included in the record. The claimant or party requesting the hearing shall submit a brief according to the pre-hearing conference order. The System shall respond to such brief within twenty (20) days of the filing of the claimant's brief. At the discretion of the Hearing Examiner, the claimant may file a reply to the System's response within seven (7) days of the filing of the System's response.

(d) **Continuances or extensions.** A party seeking a continuance or extension shall file a proper motion, and for good cause shown, a continuance or extension will be granted by the Hearing Examiner.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

**590:1-3-10. Discovery**

(a) **Authority of the Hearing Examiner.** The Hearing Examiner may, upon his or her own motion, or on the motion of either party, allow the use of discovery available in a civil action in the District Courts of Oklahoma. The failure of a party to have sufficient time to exercise any discovery mechanism on account of a lack of time shall not of itself constitute good cause for the granting of a continuance of a hearing.

(b) **Subpoenas; costs; fees; service.** Subpoenas to compel the attendance of witnesses, for the furnishing of information required by the Hearing Examiner, and/or for the production of evidence or records of any kind may be issued by the Executive Director of the System. Subpoenas shall be served, and a return made, in any manner prescribed for the service of a subpoena in a civil action. The party requesting the subpoena shall bear the cost of serving it. Fees for a non-party witness who is subpoenaed to appear shall be the same as those fees allowed to witnesses in a civil matter. Party witnesses shall not be entitled to witness fees.

(c) **Confidentiality.** Any information obtained through discovery proceedings shall be used only for matters pending in the case in which they were discovered, and shall be accorded the same degree of confidentiality as any other document or information filed with or generated by the System.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

#### **590:1-3-11. Rules of evidence**

The rules of evidence used during a hearing shall be those specified by the Oklahoma Administrative Procedures Act.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

#### **590:1-3-12. Proposed order; objections; rehearing**

(a) **Proposed order.** After the close of the hearing, each party shall be permitted the opportunity to submit a proposed final order which shall include findings of fact and conclusions of law to the Hearing Examiner. The Hearing Examiner shall prepare and file with the System a proposed final order which shall include findings of fact, conclusions of law, and a recommended order to the Board of Trustees. A copy of the proposed order shall be provided to all parties by the System as soon as practical and at least twenty (20) days prior to the scheduled hearing before the Board of Trustees. The parties may waive the twenty-day requirement by written stipulation.

(b) **Objections to proposed order.** Each party shall have the opportunity to file a written statement setting forth any objections, exceptions and/or arguments they desire the Board of Trustees to consider in its review of the proposed order by the Hearing Examiner. This statement shall be filed with the System within the time limit prescribed by the Hearing Examiner in the scheduling order and a copy shall be provided to the other party. The parties may prepare a written response in rebuttal to the other party's objecting statement within the time limit prescribed by the Hearing Examiner in the scheduling order and a copy shall be provided to the other party. In no event shall the objections or the response in rebuttal be filed less than seven (7) days prior to the hearing before the Board. New or additional evidence or materials may not be introduced by either party in the objections or in the responses.

(c) **Rehearing before the Hearing Examiner.** Each party shall have the opportunity to request a rehearing before the Hearing Examiner. Such request must be filed with the System and made within the time limit prescribed by the Hearing Examiner in the scheduling order. A copy shall be provided to the other party.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

**590:1-3-13. Hearing before the Board of Trustees**

- (a) **Procedure.** On a date set forth in the scheduling order, the Hearing Examiner's proposed order shall be set before the Board of Trustees for consideration. The parties shall have a reasonable opportunity to make a brief statement to the Board concerning the facts and any arguments and will be allowed to respond to any questions from the Trustees. The Board may review the complete record, including a transcript of the original hearing conducted by the Hearing Examiner and all documentary evidence. The Chair of the Board shall have authority to set the amount of time any party may have to present information to the Board.
- (b) **Remand.** If the Board determines the facts to be in error or incomplete, the Board may remand the case, with instructions, to the Hearing Examiner for further evidentiary hearing.
- (c) **Final order.** After consideration of the record and arguments, the Board shall accept, reject or modify the Hearing Examiner's proposed order. The final order shall include findings of fact and conclusions of law, separately stated. As in all matters before the Board, seven (7) affirmative votes are necessary to accept, reject or modify the order under consideration. A copy of the Board's final order shall be delivered to the claimant or the representative of the claimant within fifteen (15) days of final action by the Board.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

**590:1-3-14. Rehearing; appeal**

- (a) **Rehearing.** Any party receiving an adverse order from the Board may file a petition for rehearing, reopening or reconsideration of the final order of the Board. Such application shall be filed with the System within ten (10) days from the date of the entry of the Board's order and must be in compliance with 75 O.S. § 317.
- (b) **Appeal.** Any party aggrieved by the order of the Board may, within thirty (30) days from the date the aggrieved party is notified of the order, file an action for judicial review in the District Court of Oklahoma County.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

**590:1-3-15. Settlement**

Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default. The Executive Director or the General Counsel shall report to the Board of Trustees any settlement that occurs after the filing of the proposed order by the Hearing Examiner.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

**590:1-3-16. Prohibited communications**

The Administrative Procedures Act prohibits direct or indirect communications by any party or representative of a party with the Hearing Examiner or the Board of Trustees in connection with any issue of fact or law regarding an appeal before the Hearing Examiner or Board, except upon notice which provides an opportunity for all parties to participate. The Hearing Examiner and the Board shall not consider any evidence or statements made to them by a party or a representative of a party in connection with a pending appeal.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

**590:1-3-17. Expedited proceedings**

(a) **Cases which may be expedited.** In an appeal before the Hearing Examiner, the System and the claimant may stipulate to expedite the hearing proceedings in the following cases:

- (1) a decision by the System that a claimant does not meet the requirements for a severe financial hardship under the System's deferred compensation plan; or
- (2) a decision that has created a severe financial hardship under any other of the System's plans.

(b) **Motion to expedite.** If the parties cannot agree to expedite the proceedings, the aggrieved party may file a motion to expedite proceedings. The Hearing Examiner shall rule on the motion within seven (7) days after the filing of the motion with the System.

(c) **Proposed schedule to expedite.** The parties shall be permitted to submit a proposed schedule of the proceedings in the event the Hearing Examiner grants the motion. If the motion is granted, the Hearing Examiner shall file an expedited schedule of the proceedings.

(d) **Conduct of expedited hearing.** In all other aspects, the hearing shall be conducted in a similar manner as a hearing which has not be expedited.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]

**590:1-3-18. Declaratory rulings**

(a) **General provisions.** The Board of Trustees may issue declaratory rulings as to the applicability of any rule or principle of law embodied in an order of the Board which is requested by or on behalf of any member, joint annuitant or beneficiary directly affected thereby subject to the terms and conditions set forth in this section.

(b) **Form of petition; where to file.** A declaratory ruling petition must be made in writing, be signed by the petitioner or an authorized representative or agent, and filed with the General Counsel of the System. The petition must state:

- (1) that a declaratory ruling is requested pursuant to 590:1-3-18;
- (2) the petitioner's name, address, phone number, and Social Security number;
- (3) the issue(s) and all relevant facts on which a declaratory ruling is requested, stated clearly and concisely;
- (4) the petitioner's desired result and legal basis for that result, including reference to the applicable statutes, rules and case law; and

- (5) whether the petitioner is presently pursuing any administrative review, litigation, or negotiation on the issue with the System, as well as the name of any other person or entity that the petitioner or a duly authorized representative knows is involved with the identical issue pending before or with the System.
- (c) **Proposed draft.** The petitioner may provide a proposed draft ruling for consideration by the Board of Trustees.
- (d) **Additional information.** The Board may request additional information from the petitioner as deemed necessary to issue a declaratory ruling. Failure to provide the requested information shall result in denial of the petition.
- (e) **Effect of a declaratory ruling.** A declaratory ruling shall have the following effect:
- (1) the ruling shall apply only to the particular fact situation stated in the petition;
  - (2) the ruling shall apply only to the petitioner;
  - (3) the ruling shall bind the Board and the System only prospectively; and
  - (4) the ruling may be revoked, altered or amended by the Board at any time.
- (f) **Exceptions to binding effect of declaratory ruling.** The declaratory ruling shall cease to be binding if:
- (1) a pertinent change is made in the applicable law by the Legislature;
  - (2) a pertinent change is made in the rules of the Board or the System;
  - (3) a pertinent change in the interpretation of the law is made by a court or administrative tribunal; or
  - (4) the actual facts are determined to be materially different from the facts set out in the petitioner's declaratory ruling petition.
- (g) **Issuance of a declaratory ruling.** The Board shall make a good faith effort to issue a declaratory ruling within ninety (90) days from the date of receipt of a complete and proper petition unless, in the discretion of the Board, the issue is of such complexity or novelty that additional time is required.
- (h) **Contents of a declaratory ruling.** A written response from the Board or any employee or agent of the Board or System to any inquiry from any person or entity shall not be construed to be a declaratory ruling unless made in conformity with this subsection. A declaratory ruling shall contain:
- (1) a statement that: "This is a declaratory ruling issued by the Board of Trustees of the Oklahoma Public Employees Retirement System pursuant to 75 O.S. § 307" or similar wording; and
  - (2) the signature of the Chair or Vice-Chair of the Board of Trustees.
- (i) **Denial of a petition for declaratory ruling.** The Board, in its discretion, may deny a petition for declaratory ruling for good cause. In this instance, the Board shall indicate in writing the reasons for refusing to issue a declaratory ruling. Good cause includes, but is not limited to, the following:
- (1) the petition does not substantially comply with the information required by this section;
  - (2) the petition involves hypothetical situations or alternative plans;
  - (3) the petitioner requests the Board to interpret or apply a statute, or requests a determination as to whether a statute is constitutional under the Oklahoma Constitution or the United States Constitution;

OAC 590: OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM

- (4) the facts or issues presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue a declaratory ruling;
  - (5) the issue about which the declaratory ruling is requested is primarily one of fact;
  - (6) the issue is presently being considered in a rulemaking, administrative or judicial proceeding that may definitively resolve the issue;
  - (7) the issue cannot be reasonably resolved prior to the issuance of rules;
  - (8) the issue is the subject of an administrative proceeding or litigation; or
  - (9) the petitioner is not identified or is anonymous.
- (j) **Withdrawal of petition for declaratory ruling.** The petitioner may withdraw the petition for a declaratory ruling, in writing, prior to the issuance of the declaratory ruling.
- (k) **Judicial review.** A declaratory ruling, or refusal to issue such ruling, shall be subject to a judicial review, pursuant to the Administrative Procedures Act, in the same manner as individual proceedings.

[Source: Added at 25 Ok Reg 994, eff 5-11-08]