

# **PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION**

## **COLORADO PERA RULES**

### **8 CCR 1502-1**

## **NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING**

**November 20, 2015**

### **STATEMENT OF BASIS AND PURPOSE**

The statutory authority for rulemaking by the Public Employees' Retirement Association is section 24-51-204(5), Colorado Revised Statutes, as amended.

The purpose of this rulemaking is to amend the Colorado PERA Rules as follows:

1. Rule 2.15 is being amended to reflect name changes and affiliations of PERA employers.
2. Rule 2.40 is being amended to permit PERA Board trustee elections to be held by means other than mail ballot.
3. Rule 2.97 is being added to clarify that, for the purpose of any PERA benefits or payments from a PERA account that may be due, a named beneficiary, cobeneficiary, or other survivor who is not, by clear and convincing evidence, shown to survive a member or retiree by at least one hundred twenty hours is treated as having predeceased such member or retiree.
4. Rule 3.30E is being added to clarify that members who refund prior to January 1, 2017, and later purchase the time associated with that refunded account are not eligible for membership rights associated with that earlier refunded account. This is an addition that implements the new tier of benefits effective January 1, 2017, as required by Senate Bill 10-001.
5. Rule 5.25A is being updated to remove outdated language about the cost to purchase service credit. The update removes language about the cost prior to and after October 31, 2005, and clarifies that the cost to purchase service credit is a percentage of Highest Average Salary as set forth in the Table appearing on the PERA website.
6. Rule 5.25G is being removed because it is outdated. The Rule applies to service credit purchase applications received prior to January 1, 2009.

7. Rule 8.30A is being amended to clarify the application of section 24-51-802(3), C.R.S., which permits a retiree who is unmarried at retirement to select option 2 or 3 upon marriage and designate the new spouse as cobeneficiary. This Rule amendment codifies PERA's longstanding interpretation of section 24-51-802(3), C.R.S., that only a retiree who elects option 1 and is unmarried at retirement may select option 2 or 3 upon marriage and designate the new spouse as cobeneficiary.
8. Rule 10.40 is being added to clarify the method for determining eligibility for an annual increase for members with service credit as both a State Trooper and a non-State Trooper. PERA has an existing method for weighting service credit for these unique members which is set forth in Rule 6.10. This Rule 10.40 clarifies that for eligibility to receive an annual increase, the method for weighting the service credit is the same as determining the member's eligibility for service retirement.
9. Rule 11.12D(1) is being amended to require PERA employers to report salary for retirees who are working after retirement for that employer if the retiree is the specific subject of an agreement with the employer to provide services.
10. Rule 11.12D(2) is being amended to require retirees working after retirement for a PERA employer to submit the time worked for that employer to PERA via a form specified by PERA. Reporting by the retirees applies to retirees who are not the specific subject of an agreement with the employer to provide services.
11. Rule 11.12D(4) is being added to clarify the meaning of "specific subject of an agreement" for purposes of Rule 11.12D. Pursuant to this Rule, "specific subject of an agreement" means any agreement, written or otherwise, for the retiree to perform the services. The Rule also clarifies that if a retiree is working under his or her own social security number, or if the employer has knowledge that the individual is a PERA retiree, the employer is required to report salary to PERA.
12. Rule 11.20B(2) is being amended to clarify that retirees who suspend retirement and return to employment, then re-retire with an additional benefit segment, cannot receive a benefit totaling more than 100% of the retiree's Highest Average Salary. The amendment specifies that the 100% limit will be determined using the largest Highest Average Salary earned in any benefit segment.
13. Rule 16.30A is being amended to correct an error. The cross-reference in that Rule to Rule 16.10I should instead be Rule 16.10H. No changes are being made to the substance of this Rule.
14. Rule 16.30B is being amended to clarify the determination of the second through fifth years of membership for purposes of permitting a member to elect participation in the Defined Contribution Plan. The Rule is also being amended to correct an error. The cross-reference to Rule 16.10J should instead be Rule 16.10I.

15. Rule 16.30E is being amended to correct an error. The cross-reference in that Rule to Rule 16.E(ii) should instead be Rule 16.10E. No changes are being made to the substance of this Rule.
  
16. Rule 16.95K is being amended to permit members or inactive members to rollover a Transfer Account in the Defined Contribution Plan to the PERA 401(k) Plan. Previously, the Rule did not permit rollovers of a transfer account to the PERA 401(k) and 457 Plans.
  
17. Rule 17.40A is being amended to correct an error. The cross-reference in that Rule to Rule 4.10B should instead be Rule 4.10. No changes are being made to the substance of this Rule.

## RULE 2: ADMINISTRATION

Rule 2 assigns affiliated employers to one of the five divisions, sets procedures for administrative review of Board decisions, describes the requirements for regular and special meetings of the Board of Trustees and general meetings of the Association, defines a quorum, describes the election of Board members and officers, and specifies the actuarial methods and assumptions used by the Association. Unless otherwise indicated, for the purposes of Rule 2, where applicable, the term “member” shall include DPS members and the term “retiree” shall include DPS retirees.

### 2.10 Affiliated Employers

Whenever any state agency, its political subdivisions, any school district, any public entity or court becomes affiliated with the Association, the Board shall assign it and its employees to either the State Division, School Division, the Local Government Division, the Judicial Division, or the DPS Division.

### 2.15 Employer Assignments

#### A. State Division

(1) Within the State Division, one group shall be designated Institutions of Higher Education, and the other shall be designated Agencies and Instrumentalities.

(A) The Institutions of Higher Education group of the State Division shall consist of the following employers and their employees and any other institutions of higher education established subsequent to the adoption of the Rules:

Adams State College  
Aims Community College  
Arapahoe Community College  
Auraria Higher Education Center  
Aurora Community College  
Colorado Mesa University  
Colorado Mountain College  
Colorado Northwestern Community College  
Colorado School of Mines  
Colorado State University  
Colorado State University at Pueblo  
Commission on Higher Education  
Denver Community College  
Fort Lewis College  
Front Range Community College  
Lamar Community College  
Metropolitan State University of Denver  
Morgan Community College  
Northeastern Junior College  
Otero Junior College  
Pikes Peak Community College  
Pueblo Vocational Community College  
Red Rocks Community College  
State Board for Community Colleges and Occupational Education  
Trinidad State Junior College  
University of Colorado

University of Northern Colorado  
Western State College

- (B) The Agencies and Instrumentalities group of the State Division shall consist of the following employers and their employees and any other state agency or instrumentality established subsequent to the adoption of the Rules:

CollegelInvest  
College Assist  
Colorado Association of School Boards  
Colorado Association of School Executives  
Colorado Council on the Arts  
Colorado High School Activities Association  
Colorado Water Resources & Power Development Authority  
Colorado Community College System  
CoverColorado  
Department of Agriculture  
Department of Corrections  
Department of Education  
Department of Health Care Policy and Financing  
Department of Human Services  
Department of Labor and Employment  
Department of Law  
Department of Local Affairs  
Department of Military and Veterans Affairs  
Department of Natural Resources  
Department of Personnel and Administration  
Department of Public Health and Environment  
Department of Public Safety  
Department of Regulatory Agencies  
Department of Revenue  
Department of State  
Department of the Treasury  
Department of Transportation  
Fire and Police Pension Association  
General Assembly  
Joint Budget Committee  
Judicial Department  
Legislative Council  
Office of the District Attorneys  
Office of the Governor  
Office of Legislative Legal Services  
Office of the Lieutenant Governor  
Office of the State Auditor  
Pinnacol Assurance  
Public Employees' Retirement Association  
School for the Deaf and the Blind

Special District Association of Colorado  
State Historical Society

B. The School Division shall consist of the following affiliated employers and their employees and any other school district established and affiliated subsequent to the adoption of the Rules:

Adams County

Adams 12 Five Star Schools  
Adams County School District 14

Adams County School District 50

Bennett School District 29J  
Brighton School District 27J  
Mapleton School District 1  
Strasburg School District 31J  
~~Westminster School District 50~~

Alamosa County

Alamosa County School District Re-11J  
Sangre de Cristo School District Re-22J

Arapahoe County

Adams-Arapahoe School District 28J  
Byers School District 32J  
Cherry Creek School District 5  
Deer Trail School District 26J  
Englewood School District 1  
Littleton School District 6  
Sheridan School District 2

Archuleta County

Archuleta County School District 50 Jt

Baca County

Campo School District RE-6  
Pritchett School District RE-3  
Springfield School District RE-4  
Vilas School District RE-5  
Walsh School District RE-1

Bent County

Las Animas School District RE-1  
McClave School District RE-2

Boulder County

Boulder Valley School District RE2  
St. Vrain Valley School District RE1J

Chaffee County

Buena Vista School District R-31  
Salida School District R-32(J)

Cheyenne County

Cheyenne County School District Re-5

Kit Carson School District R-1

Clear Creek County

Clear Creek School District RE-1

Conejos County

North Conejos School District RE1J

Sanford School District 6J

South Conejos School District RE 10

Costilla County

Centennial School District R-1

Sierra Grande School District R-30

Crowley County

Crowley County School District RE-1

Custer County

Custer County Consolidated School District C-1

Delta County

Delta County School District 50(J)

Dolores County

Dolores County School District Re No. 2

Douglas County

Douglas County School District Re 1

Eagle County

Eagle County School District Re 50

Elbert County

Agate School District 300

Big Sandy School District 100J

Elbert School District 200

Elizabeth School District C-1

Kiowa School District C-2

El Paso County

Academy School District #20

Calhan School District RJ1

Cheyenne Mountain School District 12

Colorado Springs School District 11

Edison School District 54 Jt

Ellicott School District 22

Falcon School District 49

Fountain School District 8

Hanover School District 28

Harrison School District 2

Lewis-Palmer School District 38

Manitou Springs School District 14

Miami/Yoder School District 60 Jt

Peyton School District 23 Jt  
Widefield School District 3

Fremont County

Canon City School District Re-1  
Cotopaxi School District Re-3  
Florence School District Re-2

Garfield County

Garfield School District 16  
Garfield School District Re-2  
Roaring Fork School District Re-1

Gilpin County

Gilpin County School District Re-1

Grand County

East Grand School District 2  
West Grand School District 1

Gunnison County

Gunnison Watershed School District Re1J

Hinsdale County

Hinsdale County School District Re-1

Huerfano County

Huerfano School District Re-1  
La Veta School District Re-2

Jackson County

North Park School District R-1

Jefferson County

Jefferson County School District R-1

Kiowa County

Eads School District Re-1  
Plainview School District Re-2

Kit Carson County

Arriba-Flagler Consolidated School District No. 20  
Bethune School District R-5  
Burlington School District Re-6J  
Hi-Plains School District R-23  
Stratton School District R-4

Lake County

Lake County School District R-1

La Plata County

Bayfield School District 10Jt-R  
Durango School District 9-R  
Ignacio School District 11 Jt



Larimer County

Estes Park School District R-3  
Poudre School District R-1  
Thompson School District R-2J

Las Animas County

Aguilar Reorganized School District 6  
Branson Reorganized School District 82  
Hoehne Reorganized School District 3  
Kim Reorganized School District 88  
Primero Reorganized School District 2  
Trinidad School District 1

Lincoln County

Genoa/Hugo School District C-113  
Karval School District Re 23  
Limon School District Re 4J

Logan County

Buffalo School District Re-4  
Frenchman School District Re-3  
Plateau School District Re-5  
Valley School District Re-1

Mesa County

De Beque School District 49 Jt  
Mesa County Valley School District 51  
Plateau Valley School District 50

Mineral County

Creede Consolidated School District 1

Moffat County

Moffat County School District Re No.1

Montezuma County

Dolores School District RE 4A  
Mancos School District Re-6  
Montezuma-Cortez School District Re 1

Montrose County

Montrose County School District Re-1J  
West End School District Re-2

Morgan County

Brush School District Re-2 (J)  
Fort Morgan School District Re-3  
Weldon Valley School District Re-20 (J)  
Wiggins School District Re-50 (J)

Otero County

Cheraw School District 31  
East Otero School District R1

Fowler School District R4J  
Manzanola School District 3J  
Rocky Ford School District R2  
Swink School District 33

Ouray County

Ouray School District R-1  
Ridgway School District R-2

Park County

Park County School District Re-2  
Platte Canyon School District 1

Phillips County

Haxtun School District Re-2J  
Holyoke School District Re-1J

Pitkin County

Aspen School District 1

Prowers County

Granada School District Re-1  
Holly School District Re-3  
Lamar School District Re-2  
Wiley School District Re-13 Jt

Pueblo County

Pueblo City School District 60  
Pueblo County Rural School District 70

Rio Blanco County

Meeker School District RE1  
Rangely School District RE4

Rio Grande County

Del Norte School District C-7  
Monte Vista School District C-8  
Sargent School District Re-33J

Routt County

Hayden School District Re 1  
South Routt School District Re 3  
Steamboat Springs School District Re 2

Saguache County

Center Consolidated School District 26 Jt  
Moffat School District 2  
Mountain Valley School District Re 1

San Juan County

Silverton School District 1

San Miguel County

Norwood School District R-2J

Telluride School District R-1

Sedgwick County

Julesburg School District Re 1

~~Platte Valley School District Re3~~

Revere School District

Summit County

Summit School District Re 1

Teller County

Cripple Creek-Victor School District Re-1

Woodland Park School District RE-2

Washington County

Akron School District R-1

Arickaree School District R-2

Lone Star School District 101

Otis School District R-3

Woodlin School District R-104

Weld County

Ault-Highland School District Re-9

Briggsdale School District Re-10

Eaton School District Re-2

Gilcrest School District Re-1

Greeley School District 6

Johnstown-Milliken School District Re-5J

Keenesburg School District Re-3

Pawnee School District Re-12

Platte Valley School District Re-7

Prairie School District Re-11

Weld County School District Re-8

Windsor School District Re-4

Yuma County

Idalia School District RJ-3

Liberty School District J-4

Wray School District RD-2

Yuma School District 1

Boards of Cooperative Educational Services (BOCES)

Adams County Board of Cooperative Educational Services

Centennial Board of Cooperative Educational Services

East Central Board of Cooperative Educational Services

Expeditionary Learning School Board of Cooperative Educational Services

Grand Valley Board of Cooperative Educational Services

Mount Evans Board of Cooperative Educational Services

Mountain Board of Cooperative Educational Services

Northeast Board of Cooperative Educational Services

Northwest Colorado Board of Cooperative Educational Services  
Pikes Peak Board of Cooperative Educational Services  
Rio Blanco Board of Cooperative Educational Services  
San Juan Board of Cooperative Educational Services  
San Luis Valley Board of Cooperative Educational Services  
Santa Fe Trail Board of Cooperative Educational Services  
South Central Board of Cooperative Educational Services  
Southeastern Board of Cooperative Educational Services  
[Uncompahgre Board of Cooperative Educational Services](#)  
Ute Pass Board of Cooperative Educational Services

[Boards of Cooperative Services \(BOCS\)](#)

~~[Uncompahgre Board of Cooperative Services](#)~~

Vocational Schools

Delta-Montrose Area Vocational School

Other

Colorado Consortium for Earth and Space Science Education

#### C. Local Government Division

The Local Government Division shall consist of the following affiliated employers and their employees and any other entity of local government or public agency other than state that elect to affiliate with the Association:

Adams and Jefferson County Hazardous Response Authority

Alamosa Housing Authority

Arapahoe Park and Recreation District

Aurora Housing Authority

Baca Grande Water & Sanitation District

Beulah Water Works District

Black Hawk-Central City Sanitation District

Blanca-Fort Garland Metropolitan District

Boulder County

Boulder County Public Trustee's Office

Boxelder Sanitation District

Brush Housing Authority

Carbon Valley Park & Recreation District

Castle Pines Metropolitan District

Castle Pines North Metropolitan District

Center Housing Authority

Central Colorado Water Conservancy District

City of Alamosa

City of Boulder

City of Castle Pines

City of Colorado Springs

City of Fort Morgan

City of Las Animas

City of Lone Tree

City of Manitou Springs

City of Pueblo  
City of Wray  
City of Yuma  
Clearview Library District  
Collbran Conservancy District  
Colorado District Attorneys' Council  
Colorado First Conservation District  
Colorado Health Facilities Authority  
Colorado Housing and Finance Authority  
Colorado Library Consortium  
[Colorado River Fire Protection District](#)  
~~[Colorado River Fire Rescue Authority](#)~~  
Colorado School District Self-Insurance Pool  
Colorado Springs Utilities  
Columbine Knolls-Grove Metropolitan Recreation District  
Costilla Housing Authority  
County Technical Services  
Cucharas Sanitation and Water District  
Cunningham Fire Protection District  
Douglas County Housing Partnership  
Douglas County Libraries  
[Durango Fire Protection District](#)  
~~[Durango Fire and Rescue Authority](#)~~  
East Cheyenne Groundwater Management District  
East Larimer County Water District  
Eastern Rio Blanco Metropolitan Recreation & Park District  
Eaton Housing Authority  
Elbert County Library District  
Elizabeth Park and Recreation District  
El Paso – Teller County Emergency Telephone Service Authority  
Estes Park Housing Authority  
Estes Park Local Marketing District  
Estes Valley Fire Protection District  
Estes Valley Public Library District  
Forest Lakes Metropolitan District  
Fremont Conservation District  
Fremont Sanitation District  
Garfield County Housing Authority  
Grand Junction Regional Airport Authority  
Grand Valley Fire Protection District  
Green Mountain Water and Sanitation District  
GVR Metropolitan District  
Housing Authority of Arriba  
Housing Authority of the City of Boulder  
Housing Authority of the City of Colorado Springs  
Housing Authority of the County of Adams

Housing Authority of the Town of Limon  
Lamar Housing Authority  
Lamar Utilities Board  
Left Hand Water District  
Longmont Housing Authority  
Longs Peak Water District  
Louisville Fire Protection District  
Meeker Cemetery District  
Meeker Regional Library District  
Meeker Sanitation District  
Montrose Fire Protection District  
Montrose Recreation District  
Monument Sanitation District  
Morgan Conservation District  
Morgan County Quality Water District  
Mountain View Fire Protection District  
Mountain Water and Sanitation District  
Niwot Sanitation District  
North Carter Lake Water District  
North Chaffee County Regional Library  
Northeast Colorado Health Department  
Northeastern Colorado Association of Local Governments  
Park Center Water District  
Pine Drive Water District  
Pikes Peak Regional Building Department  
Plains Ground Water Management District  
Pueblo City-County Health Department  
Pueblo Library District  
Pueblo Transit Authority  
Pueblo Urban Renewal Authority  
Rampart Regional Library District  
Rangely Regional Library District  
Red Feather Mountain Library District  
Red, White & Blue Fire Protection District  
Republican River Water Conservation District  
Rifle Fire Protection District  
Rio Blanco Fire Protection District  
Rio Blanco Water Conservancy District  
Routt County Conservation District  
Sable-Altura Fire Protection District  
San Luis Valley Development Resources Group  
San Luis Valley Water Conservancy District  
San Miguel County Public Library District  
San Miguel Regional and Telluride Housing Authority  
Scientific and Cultural Facilities District  
Sheridan Sanitation District #1

Soldier Canyon Filter Plant  
Statewide Internet Portal Authority  
Steamboat II Water and Sanitation District  
Strasburg Metropolitan Parks & Recreation District  
St. Vrain Sanitation District  
Tabernash Meadows Water and Sanitation District  
Town of Alma  
Town of Bayfield  
Town of Crawford  
Town of Dinosaur  
Town of Eckley  
Town of Estes Park  
Town of Firestone  
Town of Lake City  
Town of Lochbuie  
Town of Mountain Village  
Town of Platteville  
Town of Rico  
Town of Rye  
Town of Seibert  
Town of Silver Plume  
Town of Timnath  
Tri-County Health Department  
Tri-Lakes Wasterwater Treatment Facility  
Upper Colorado Environmental Plant Center  
[Upper Thompson Sanitation District](#)  
Washington-Yuma Counties Combined Communications Center  
Weld County Department of Public Health and Environment  
West Greeley Conservation District  
Western Rio Blanco Metropolitan Recreation and Park District  
White River Conservation District  
Wray Housing Authority  
Yuma Housing Authority

#### D. Judicial Division

The Judicial Division shall consist of judges elected or appointed to positions in the following courts and any court established subsequent to the adoption of the Rules:

1st-22nd District Court  
Adams County Court  
Alamosa County Court  
Arapahoe County Court  
Archuleta County Court  
Baca County Court  
Bent County Court  
Boulder County Court  
Broomfield County Court

Chaffee County Court  
Cheyenne County Court  
Clear Creek County Court  
Conejos County Court  
Costilla County Court  
Court of Appeals  
Crowley County Court  
Custer County Court  
Delta County Court  
Denver County Court  
Denver Juvenile Court  
Denver Probate Court  
Dolores County Court  
Douglas County Court  
Eagle County Court  
Elbert County Court  
El Paso County Court  
Fremont County Court  
Garfield County Court  
Gilpin County Court  
Grand County Court  
Gunnison County Court  
Hinsdale County Court  
Huerfano County Court  
Jackson County Court  
Jefferson County Court  
Kiowa County Court  
Kit Carson County Court  
Lake County Court  
La Plata County Court  
Larimer County Court  
Las Animas County Court  
Lincoln County Court  
Logan County Court  
Mesa County Court  
Mineral County Court  
Moffat County Court  
Montezuma County Court  
Montrose County Court  
Morgan County Court  
Otero County Court  
Ouray County Court  
Park County Court  
Phillips County Court  
Pitkin County Court  
Prowers County Court



Pueblo County Court  
Rio Blanco County Court  
Rio Grande County Court  
Routt County Court  
Saguache County Court  
San Juan County Court  
San Miguel County Court  
Sedgwick County Court  
Summit County Court  
Supreme Court  
Teller County Court  
Washington County Court  
Weld County Court  
Yuma County Court

E. Denver Public Schools Division  
Denver Public School District No. 1

## 2.20 Administrative Review

### A. Request for Executive Director Initial Decision

A written request for an initial decision by the Executive Director must be received by the Association within 90 days after the date on which the staff decision is mailed. The staff decision shall be sent by certified mail.

### B. Request for Administrative Hearing

A written request for administrative hearing, including specifics, must be received by the Association within 45 days after the date on which the notice of the initial decision is mailed. The initial decision shall be made by PERA's Executive Director or the Executive Director's designee, and written notice of the initial decision shall be sent by certified mail.

### C. Notification of Scheduled Administrative Hearing

The person for whom the hearing is being conducted or their attorney, if represented, and the person representing the PERA administration will be notified by certified mail and first class mail of the time, date and place of the hearing no less than 45 days prior to the date of the hearing.

### D. Submission of Information Prior to the Hearing

- (1) No less than 30 days prior to the date for which the hearing is scheduled, the person who requested the hearing and the person representing the PERA administration each shall submit: (a) a statement which includes the issues presented, a brief analysis of those issues, the names of all witnesses to appear, a brief description of their expected testimony, and (b) the written information to be considered at the hearing.
- (2) No less than 20 days prior to the date for which the hearing is scheduled, the person who requested the hearing and the person representing the PERA administration each shall submit: a responsive statement including, to the extent appropriate, the same elements set forth in Rule 2.20 D (1)(a), and (b) and any additional written information to be considered at the hearing. After this submission, no further written information is to be submitted unless good cause is shown for the late submission.

#### E. Burden of Proof

The person who requested the hearing shall bear the burden of proof by a preponderance of the evidence at the hearing.

#### F. Consolidation of Administrative Hearings

Upon request of either party, the Board Chair at his or her discretion may direct consolidation of executive director initial decisions and/or administrative hearings in appropriate circumstances.

The party requesting consolidation must make such request in writing no later than 30 days after a written request for executive director initial decision or administrative hearing is filed pursuant to Rule 2.20A or B. Within 10 days of such a request, the other party may submit a written response stating that party's position regarding consolidation.

#### G. Administrative Hearing

##### (1) Appointment of Panel Members

The Panel shall consist of three Board members appointed by the Chair.

##### (2) Responsibilities of Panel

The Panel shall hear and consider the evidence and then shall issue written findings of fact, conclusions of law, and the decision. The Panel's decision shall constitute final administrative action appealable under Colorado Rule of Civil Procedure 106(a)(4) unless either party chooses to appeal the decision to the PERA Board pursuant to subparagraph (3) below.

Written notice of the Panel's decision shall be sent by certified mail to each person who requested the hearing or to their attorney, if represented, and to the person representing the PERA administration.

##### (3) Review by the Board

(a) Any party may choose to appeal the Panel's decision to the PERA Board. If any party chooses to appeal, it must submit a written request for review to the PERA Board, which must be received by the Association within 30 days after the date on which the Panel's decision is mailed. If no appeal is made to the PERA Board within the 30 days, the Panel's decision shall become final administrative action at the expiration of the 30 days to appeal to the PERA Board.

(b) If a request for review to the PERA Board is filed prior to the deadline, the PERA Board shall review the matter based on the existing evidentiary record. The Board's review of the matter shall be limited to issues of law and shall not include review of the factual findings by the Panel. The record for Board review shall include the written materials considered by the Panel, the findings of fact, conclusions of law, and the Panel's decision. The Board may permit briefs and oral argument, if requested by a party at the time of appeal. The three Board members who served on the Panel shall not participate in the Board's review. After review, the Board shall issue a written decision affirming, reversing, or modifying the Panel's decision. Alternatively, the Board may remand the matter to the Panel with instructions to make further factual findings on specific issues that will assist the Board in determining issues of law; however, the Board may not alter any factual findings made by the Panel. Once the Panel has conducted its additional factual findings, the matter shall be re-submitted to the Board to issue its written decision. Written notice of the Board's final decision shall be sent by certified mail to the parties or to their attorney, if represented, within 10 days of the date on which the written decision was made.

- (4) If the PERA Board reviews the Panel's decision pursuant to subsection (3) of section (G) of this Rule, the Board's decision after its review shall constitute final administrative action appealable under Colorado Rule of Civil Procedure 106(a)(4).

#### 2.30 Candidacy for Election to the Board

- A. Any member of the Association may become a candidate for election to the Board as a representative from his or her division, by submitting a petition containing the required signatures, and a biographical summary of 150 words or less. The petition and the biographical summary must be received by the Association office by the first working day of March of the election year.
- B. For candidacy to represent members in either the State, School or the Local Government Division, a candidate must submit a petition signed by no fewer than 100 members of the Division for which candidacy is declared.
- C. For candidacy to represent members in the Judicial Division, the candidate must submit a petition signed by no fewer than 10 members in the Judicial Division.
- D. For the term effective July 1, 2012, and in accordance with Section 24-51-203, C.R.S., for candidacy to represent members and retirees of the DPS Division, a candidate must submit a petition signed by no fewer than 100 members and/or retirees in the DPS Division.
- E. For candidacy as a retiree, the candidate must submit a petition signed by no fewer than 50 retirees. A retiree may not become a candidate in an election if the retiree's election would result in both retiree Trustees having retired from the same Division of membership. This paragraph (E) does not apply to retirees of the DPS Division.
- F. Petitions must include the signature and legible printed name of each member or retiree who signs. The signer must also provide either their legible address or their legible Social Security number.

#### 2.35 State Division Candidates

- A. Within the State Division at least one of the members elected to the Board shall be an employee of an employer designated in Rule 2.15 A(1)(A) as an Institution of Higher Education, and at least one of the members elected shall be an employee of a State employer designated in Rule 2.15 A(1)(B) as an Agency or Instrumentality.
- B. Should a State Division candidate who receives the highest number of votes be an employee of one of the employers within the same group as all other current Board members from the State Division, the candidate who receives the most votes and who is employed by an employer from the State Division group not represented on the Board shall be declared elected.

#### 2.40 Ballots for Board Election

Board election shall be held ~~by mail ballot~~ according to procedures approved by the Board. All returned ballots must be postmarked or otherwise submitted no later than May 31 of the election year.

#### 2.42 Division in Which a Member or Retiree is Eligible to Vote or Become a Candidate for Election to the Board

In situations in which an individual is a member and/or retiree of multiple divisions, the following provisions shall apply to determine in which Board election the individual is eligible to vote or to become a candidate for election to the Board:

- A. If the individual is an active member of one division and a retiree of another division, the individual shall be considered a retiree for purposes of determining eligibility to vote and/or become a candidate for election to the Board.
- B. If the individual is a retiree of multiple divisions, the individual shall be considered a retiree of the division from which the retiree first retired for purposes of determining eligibility to vote and/or become a candidate for election to the Board.
- C. If the individual is a retiree of multiple divisions, and the retirement dates are the same, the individual shall be considered a retiree of the division from which the retiree has the largest retirement benefit for purposes of determining eligibility to vote and/or become a candidate for election to the Board.
- D. If the individual is an active member working in multiple divisions, the individual shall be eligible to vote in the division in which he or she has the highest salary posting immediately preceding the date that the Board election ballots are mailed.
- E. If the individual is an active member working in multiple divisions, the individual shall be eligible to become a candidate for election to the Board in the division in which he or she has the highest salary posting in the month that the individual submits his or her candidacy packet to the Association.

#### 2.43 Gubernatorial Appointments

- A. At such time as the first trustee of the state, school, and local government division leaves the Board either by death, resignation, removal, expiration of term, or otherwise after January 1, 2007, the gubernatorial appointment shall assume office at the next regularly scheduled board meeting following appointment by the governor. Such gubernatorial appointed trustee who has not yet been confirmed by the senate shall serve until senate confirmation or until senate confirmation is denied at which time the appointee shall be removed from the Board and the vacancy shall be filled in accordance with statute. Thereafter, at such time that a gubernatorial appointee leaves the Board either by death, resignation, removal, expiration of term, or otherwise, the next gubernatorial appointee shall assume office at the next regularly scheduled board meeting following appointment by the governor. Such gubernatorial appointed trustee who has not yet been confirmed by the senate shall serve until senate confirmation or until senate confirmation is denied at which time the appointee shall be removed from the Board and the vacancy shall be filled in accordance with statute.
- B. Gubernatorial appointed trustees shall be compensated one hundred dollars per diem plus their actual and necessary expenses. The per diem amount shall be paid for each day that the trustee attends at least 75% of an official Board meeting, committee meeting, administrative hearing, trustee orientation, Board Planning session, or other function approved by the Board Chair or Vice Chair up to a maximum of 20 days per year.

#### 2.45 Assumption of Office

Members and retirees elected or appointed to the Board shall assume office at the first regular Board meeting held after July 1 of the year in which they were elected, or at the first regular meeting following certification of election or appointment, whichever is later.

#### 2.50 Election of Officers

The Board shall elect by secret ballot from its members a Chair and Vice Chair. They shall be elected at the first regular meeting held after January 1 commencing with the first regular meeting held after January 1, 2007, and shall serve for terms of two years. No member may serve continuously as Chair for more than two consecutive terms. All officers shall be elected by a majority of those present and voting.

#### 2.55 Duties of Officers

A. The Chair shall preside at all meetings of the Board. In the absence of the Chair, the Vice Chair shall assume the duties of the Chair.

B. Should the Chair be unable to complete the term as Chair, the Vice Chair shall serve as Chair until the Board elects a new Chair.

#### 2.60 Standing Committees

Members of standing committees of the Board shall be recommended by the Chair and subject to approval by the Board.

#### 2.70 Board Meetings

A. Regular meetings shall be held not less than quarterly according to an annual schedule adopted by the Board and published in the minutes of the Board. Time and location for such meetings shall be determined by the Board. The annual schedule may be modified by the Board as necessary.

B. Special meetings may be called by the Chair or any four members of the Board by providing three days notice to each member of the Board. A call for a special meeting must state the business to be considered, and the time, date and place of such meeting.

C. A majority of the Board shall constitute a quorum.

D. Board Action requires a majority vote of a quorum of the Board members. Board members may attend and vote via telephone and/or video conferencing.

E. No proxy voting shall be permitted.

#### 2.80 General Meeting

A general meeting of the Association may be called by the Board at any time and shall be called upon receipt of a petition signed by not less than 3 percent of the Association's membership.

#### 2.85 General Meeting Notice

Notice of a general meeting shall be mailed to each member not less than 10 days prior to the meeting, and shall state the time, place, and purpose of the meeting. Only matters which have been specified in the purpose of the meeting shall be considered. No proxy voting shall be permitted.

#### 2.90 Actuarial Assumptions

##### A. Funding Method

The funding method used by the Association shall be the entry age actuarial cost method.

##### B. Asset Valuation Method

The asset valuation method used by the Association shall be a "smoothed" market value of assets. The difference between actual market value actuarial gains from investment experience

and the expected actuarial gains from investment experience is recognized over a four-year period.

#### C. Actuarial Investment Assumption Rate

The actuarial investment assumption rate is 7.50 percent per year compounded annually, which is net after investment expenses.

#### D. Other Assumptions

Other actuarial assumptions set by the Board include the mortality table, and the probabilities of age and service retirement, withdrawal from service, disability, and death-in-service. These assumptions shall be set forth in the Association's *Comprehensive Annual Financial Report*, and, upon approval of the Report by the Board, such actuarial factors shall become part of the actuarial assumptions under Rule 2.90.

#### E. Money Purchase Benefits

The actuarial investment assumption rate and the mortality table shall be used in the actuarial determination of money purchase retirement benefits.

### 2.95 Funds Not Subject to Legal Process

A. For purposes of 24-51-212, C.R.S. a party asserting that any of the moneys, trust funds, reserves, accounts, contributions, pursuant to parts 4, 5, 14, 15, 16, and 17 of the Association Statutes or benefits referred to in the Association Statutes should be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, bankruptcy proceedings, or other legal process, because there is a judgment for a willful and intentional violation of fiduciary duties pursuant to 24-51-207, C.R.S., has the burden to prove that such a violation of fiduciary duty resulted in a direct financial gain for the offender or related party unless such a determination is set forth in the underlying judgment.

B. Direct financial gain means a monetary payment that would not have been received but for the willful and intentional violation of fiduciary duty. Direct financial gain shall not include the receipt of a benefit that such person or related party receives as a retiree or beneficiary of the Association as dictated by the statutory provisions of the Association.

### 2.96 Effect of Homicide on Beneficiary Designations

A. If a person designated as a beneficiary or entitled to survivor benefits under a member's defined benefit or defined contribution account, a participant's 401(k) plan account, or a participant's 457 plan account feloniously kills that member, the person's rights as a beneficiary or survivor are forfeited and the member's account will be treated as if the felonious killer pre-deceased the member. Upon proper written notice to the Association that a member or participant may have been feloniously killed by his or her beneficiary or survivor, the Association shall hold payment of the funds to which the suspected felonious killer would be entitled until such time as there is a final determination as to whether such individual committed the felonious killing. PERA is not liable for having made any payments to a beneficiary or survivor or for having taken any other action in reliance on the beneficiary or survivor's apparent entitlement to benefits prior to receipt of written notice pursuant to this Rule 2.96. PERA shall have no duty or obligation to make any determination as to whether or not the deceased member or participant was a victim of a felonious killing or to seek any evidence with respect to any such felonious killing even if the circumstances of the member or participant's death are suspicious or questionable as to the beneficiary or survivor's participation in any such felonious killing. PERA is only liable for actions taken two or more business days after PERA has receipt of proper written notice pursuant to

paragraph D of this Rule. Any form or service of notice other than that described in paragraph D of this Rule shall not be sufficient to impose liability on PERA for actions taken in paying a beneficiary or survivor.

- B. For purposes of this Rule 2.96, a “felonious killing” is the killing of the decedent by an individual who, as a result thereof, is convicted of, pleads guilty to, or enters a plea of nolo contendere to the crime of murder in the first or second degree or manslaughter, as said crimes are defined in sections 18-3-102 to 18-3-104, C.R.S.
- C. An individual will be considered to have committed a felonious killing if, after all right to appeal has been exhausted, a judgment of conviction, a plea of guilty, or a plea of nolo contendere, establishing criminal accountability for the felonious killing of the decedent conclusively establishes the convicted individual as the decedent’s killer. Notwithstanding the status or disposition of a criminal proceeding, an interested party may make a formal written request for a determination by the Association of whether, by a preponderance of the evidence standard, each of the elements of felonious killing of the decedent has been established. Upon receiving such a request, the Association shall issue a staff determination regarding its determination. The Association’s staff determination is appealable pursuant to PERA Rule 2.20. If the Association finds that the elements have been so established, such determination conclusively establishes that individual as the decedent’s killer for purposes of this Rule 2.96.
- D. For purposes of this Rule, “proper written notice” means written notice mailed to PERA’s main office by registered or certified mail, return receipt requested, or served upon PERA in the same manner as a summons in a civil action. The written notice shall indicate the name of the deceased member or participant, the name of the person asserting an interest, and a statement that a claim is being made pursuant to this Rule.

### **2.97 Requirement of Survival**

If a member or retiree’s named beneficiary, cobeneficiary, or other survivor does not survive the member or retiree by one hundred twenty hours, that person is deemed to have predeceased the member or retiree for purposes of the benefits provided under Article 51 of Title 24, C.R.S. If it is not established by clear and convincing evidence that the individual survived the member or retiree by one hundred twenty hours, it is deemed that the individual failed to survive for the required period. This Rule applies only to individuals born prior to the death of the member or retiree.

## RULE 3: MEMBERSHIP

Rule 3 describes continuation of membership, information required from employers and members and determination of member status by the Board. For the purposes of Rule 3, the term “member” shall include DPS members and the term “retiree” shall include DPS retirees.

### 3.15 Continuation of Membership

- A. Membership rights continue during an employer-certified leave of absence without pay.
- B. Membership rights continue during an absence due to work stoppage from the date work is halted through the date a court order is issued for return to work.
- C. Membership rights continue during periods in which pay has ceased due to seasonal or special nature of work requiring regularly recurring periods of more than 90 days during which no pay is received.

### 3.20 Local Government Employer Termination

Except for the rights of individuals who become vested, inactive members, membership rights for Local Government Division members terminate on the effective date of their employer’s termination of affiliation with the Association.

### 3.25 Member Records

The Association shall require such information as may be necessary to determine membership status or benefit eligibility including, but not limited to:

#### A. Employer Responsibility

An employer shall provide any information necessary to determine membership status or benefit eligibility including, but not limited to:

- (1) Written notice of changes in employment status resulting from transfer, promotion, leave of absence, resignation, dismissal, reinstatement or death.
- (2) Upon request from the Association, certification of previous employment status for periods during which service credit is in question.
- (3) Upon request from the Association, pay patterns, work patterns or other information required to determine service credit or benefits payable.

#### B. Member Responsibility

A member shall provide any information necessary to determine benefit eligibility and to maintain contact with the member including, but not limited to:

- (1) Written notice of changes in name, address or named beneficiary.
- (2) Proof of age for the member or cobeneficiary when such age cannot be determined by existing Association records.

### 3.30 Determination of Member Status

- A. If existing Association records are incomplete or in question, and no acceptable documentation can be provided by the employer or the member, the Board shall determine benefit eligibility and benefit payments based on the information available.
- B. An individual who refunded his or her member contribution account pursuant to 24-51-405, C.R.S. and purchases all or part of the period associated with the refunded member contribution account on or after July 1, 2005, pursuant to 24-51-503, C.R.S. shall have no rights associated with membership prior to July 1, 2005, except as mandated by federal law.



C. An individual who refunded his or her member contribution account pursuant to Section 24-51-405, C.R.S. and purchases all or part of the period associated with the refunded member contribution account on or after January 1, 2007, pursuant to Section 24-51-503, C.R.S., shall have no rights associated with membership prior to January 1, 2007, except as mandated by federal law.

D. An individual who refunded his or her member contribution account pursuant to Section 24-51-405, 24-51-1711, or 24-51-1729(6)(a)(I), C.R.S., and purchases all or part of the period associated with the refunded member contribution account on or after January 1, 2010, pursuant to Section 24-51-503 or 24-51-505, C.R.S., whichever is applicable, shall have no rights associated with membership prior to January 1, 2010, except as mandated by federal law.

[E. An individual who refunded his or her member contribution account pursuant to Section 24-51-405, 24-51-1711, or 24-51-1729\(6\)\(a\)\(I\), C.R.S., and purchases all or part of the period associated with the refunded member contribution account on or after January 1, 2017, pursuant to Section 24-51-503 or 24-51-505, C.R.S., whichever is applicable, shall have no rights associated with membership prior to January 1, 2017, except as mandated by federal law.](#)

#### 3.40 City Managers and Key Management Staff

For purposes of section 24-51-308, C.R.S., if a municipality does not have a city manager, then individuals who would otherwise report to a city manager but instead report to the Mayor or other governing body are still eligible to make a one-time, irrevocable election to be exempted from membership in the Association.

## RULE 5: SERVICE CREDIT

Rule 5 describes the determination and recording of earned service credit, type of purchased service credit and methods of payment for purchased service credit. Unless otherwise indicated, for the purposes of Rule 5, the term “member” shall include DPS members and the term “retiree” shall include DPS retirees.

### 5.10 Earned Service Credit

#### A. Employment Pattern of Less Than 12 Months

A member who is employed in a position in which the employment pattern covers at least 8 months but less than 12 months per year shall have service credit for each month based on:

- (1) The ratio of actual salary received during a month to 80 times the federal minimum wage hourly rate in effect at the time of service, and
- (2) The ratio of 12 months to 8 months service credit for a period of 12 consecutive months may not exceed one year, except as provided in Rule 5.10 B.

#### B. Combinations of Employment Patterns

Service credit for any combination of traditional, academic year or seasonal employment patterns occurring within one year will be calculated separately and combined for the annual total. Service credit for any period of 12 consecutive months may not exceed one year except for overlaps, which occur due to changes in employment patterns or overlapping employment contracts.

### 5.20 Purchased Service Credit

Purchased service credit may qualify a member for earlier service retirement, earlier reduced service retirement or increased benefits.

#### A. Repayment of Refund

A member may purchase all or part of a period associated with a refunded member contribution account. Service credit purchased based on all or part of a period associated with a refunded member contribution account pursuant to 24-51-503, C.R.S. is considered purchased service credit not earned service credit. The purchase of service credit relating to a refunded member contribution account pursuant to 24-51-503, C.R.S., shall not count toward the ten year limit for purchases of service credit specified in 24-51-505(2)(c), C.R.S.

#### B. Sabbatical Leaves

- (1) For periods of sabbatical leave granted before July 1, 1966, service credit is provided without payment. This provision does not apply to DPS members or retirees.
- (2) A member may elect to make separate purchases of service credit associated with more than one period of sabbatical leave. A member may not purchase any service credit associated with less than the entire period of any one sabbatical leave.

#### C. Noncovered Employment

- (1) A member may purchase all or part of a period of noncovered employment except as provided in 24-51-505, C.R.S.
- (2) A member who earns less than full service credit for a period of covered employment and has concurrent noncovered employment may not purchase service credit for that period in excess of the credit needed to obtain full service credit for that period. A member who earns full

service credit for a period of covered employment may not purchase credit for noncovered employment served during that period.

#### D. Portability

A member who has an active service credit purchase agreement and exercises portability pursuant to the provisions of Section 24-51-1747, C.R.S., may only continue to make payment on the service credit purchase agreement as long as the member selects the benefit structure under which the purchase is being completed. If the member does not choose the account for which the service credit purchase applies, then the purchase agreement will be terminated and all payments made under the purchase agreement will be returned to the member.

#### E. Outside Service Under the DPS Benefit Structure

- (1) A DPS benefit structure retiree who used substantiated outside service to reach full service retirement eligibility may not purchase that same time under the PERA benefit structure.
- (2) An inactive DPS member who has substantiated outside service may purchase that same time under the PERA benefit structure as long as the individual meets the requirements to be able to purchase that service under the PERA benefit structure. The amount of the substantiated outside service that can be used in the DPS benefit structure will be reduced by the amount of the purchase into the PERA benefit structure account.

#### 5.25 Service Credit Purchase Cost and Application

- A. The cost to purchase one month of noncovered employment shall be a percentage of the member's Highest Average Salary as set forth in the Table appearing on the PERA [Web site](#)~~website. Current service credit purchase cost shall remain in effect until October 31, 2005. From and after November 1, 2005, a revised Table appearing on the PERA Web site shall set forth the percentage of the member's Highest Average Salary.~~ Such percentage shall be determined by the age of the member at the time PERA receives the member's completed service credit purchase application.
- B. To purchase service credit, the member must apply using the service credit purchase application form provided by PERA.
- C. The completed service credit purchase application shall contain:
  - (1) Documentation of salary received by the member;
  - (2) Documentation of the member's dates of employment;
  - (3) Documentation of any other pension coverage including but not limited to a mandatory defined contribution plan for such employment.
- D. The Association shall have the authority to determine the adequacy of the documentation described in Rule 5.25 C.
- E. Absent complete documentation, no purchase agreement shall be issued.
- F. Once complete documentation has been received by the Association, the Association shall issue a service credit purchase agreement which will include the cost to purchase service credit based upon the age of the member at the time the Association receives the member's completed service credit purchase application. Failure to comply with all terms and conditions of the service credit purchase agreement will result in a breach of the agreement and the member will not be allowed to purchase service credit based on said agreement. The member's cost for any subsequent service credit purchase agreement based upon this documentation shall be

recalculated and determined based upon the member's age and Highest Average Salary when a subsequent agreement is issued.

~~G. For a member who was a member, inactive member, or retiree on December 31, 2006, the Highest Average Salary used to determine the cost to purchase noncovered employment shall be calculated pursuant to 24-51-101(25)(a), C.R.S. and 24-51-101(25)(b)(I) and (II), C.R.S. as long as the Association receives a complete service credit purchase application pursuant to rule 5.25 G. prior to January 1, 2009. This paragraph (G) does not apply to DPS members or retirees.~~

#### 5.26 Service Credit Purchase Based Upon Foreign Employment

The same documentation required under Rule 5.25 shall be required of members who seek to purchase service credit based upon previous employment with a foreign employer subject to the Internal Revenue Code and the Internal Revenue Service Rules and Regulations. If such documentation is in a language other than English, the member, at the member's own cost, shall provide a certified translation of the documentation.

- A. The salary received in foreign currency shall be converted to U.S. dollars at the exchange rate in effect for the time the foreign currency was earned.
- B. The resulting U.S. dollars will be compared to the U.S. minimum wage to determine the amount of service credit that can be purchased pursuant to 24-51-505(2), C.R.S.

#### 5.30 Payments for Purchased Service Credit

Lump-sum payments and installment payments must be completed during membership.

##### A. Lump-Sum Payments

A lump-sum payment is the first installment payment specified in 24-51-506(2)(b), C.R.S. Failure to make a lump sum payment pursuant to the terms of the service credit purchase agreement on or before its due date shall result in cancellation of the service credit purchase agreement.

##### B. Installment Payments

- (1) Installment payments must be made via Automated Clearing House (ACH) deduction from the member's checking or savings account or other financial account.
- (2) A service credit purchase agreement shall be canceled and payments made shall be returned to the member if more than three monthly installment payments become delinquent.
- (3) The Association shall notify a member of delinquency in payments.
- (4) A member may cancel a service credit purchase agreement at any time prior to completion of installment payments. All payments made shall be refunded without interest to the member upon receipt of the request for cancellation.
- (5) The period over which installment payments may be made shall not exceed 120 months or a period equal to twice the total amount of service credit to be purchased, whichever is less.
- (6) Installment payments shall be made monthly in amounts not less than the monthly payment amount required to complete payment of the purchase over the specified term of the installment agreement.
- (7) Monthly payment amounts in excess of the required monthly installment payment will not relieve the requirement for any future monthly installment payments pursuant to the service credit purchase agreement. Such extra payments will shorten the term of the agreement.

unless the member specifies in writing that the extra payments are to be used to reduce the amount of each remaining future monthly payment.

#### 5.35 Purchase of Service Credit Relating to a Refunded Member Contribution Account

The one percent of the member's Highest Average Salary associated with the cost to purchase forfeited service credit pursuant to 24-51-503(4), C.R.S. and any associated interest payment attributable thereto shall be allocated to the annual increase reserve as soon as administratively practical upon completion of the service credit purchase agreement and shall not be part of the member contribution account and never refundable to the member.

#### 5.40 Interest Rate

The interest rate shall be the actuarial investment assumption rate as set by the Board in effect during the period for which interest is charged.

## RULE 8: BENEFIT OPTIONS

Rule 8 describes the requirements for election of an option and designation of a named beneficiary or cobeneficiary. For the purposes of Rule 8, the term "member" shall include DPS members and the term "retiree" shall include DPS retirees.

### 8.10 Election of Options

The election of a benefit option shall be made in writing and shall contain the signature of the member or the signature of the individual(s) appointed to represent the member.

### 8.20 Designation of Named Beneficiary, Cobeneficiary or Coannuitant

Designation of a named beneficiary or cobeneficiary shall be made in writing and shall contain the signature of the member or the signature of the individual(s) appointed to represent the member. Such designation shall take effect upon receipt by the Association.

#### A. Named Beneficiary

The member or retiree may designate more than one named beneficiary. If more than one named beneficiary survives the member, the single payment of the balance of the member contribution account and the amount of the matching employer contributions shall be shared equally. If more than one named beneficiary survives the retiree, the single payment of the balance remaining in the member contribution account and the amount of matching employer contributions shall be shared equally. Designation of the named beneficiary may be changed by the member or retiree at any time prior to death.

#### B. Cobeneficiary

Only one cobeneficiary can be designated to receive benefits under the provisions of Options 2 or 3.

#### C. Coannuitant

Under the DPS benefit structure, only one coannuitant can be designated to receive benefits under the provisions of Options P2, or P3.

### 8.30 Designation of Cobeneficiary Upon Marriage or Civil Union

A. For purposes of Section 24-51-802(3), C.R.S., [only a retiree receiving an option 1 benefit may elect to change to an option 2 or 3 benefit option upon marriage or civil union.](#) ~~a~~A retiree may only elect once to change his or her option 1 to option 2 or 3 and designate his or her new spouse, whether by marriage or civil union, as cobeneficiary. Once such election is made, the retiree may not make such designation again even if such election is revoked within 60 days as permitted by Section 24-51-802(1), C.R.S.

B. For purposes of Section 24-51-802(3), C.R.S., a retiree who marries on or after January 1, 2011, must elect option 2 or 3 and designate his or her new spouse as cobeneficiary within 60 days of the date of marriage. If such election is not made within 60 days, the retiree may not elect option 2 or 3 and designate his or her new spouse as cobeneficiary

C. For purposes of Section 24-51-802(3), C.R.S., a retiree who enters into a civil union on or after January 1, 2014, must elect option 2 or 3 and designate his or her new spouse as a cobeneficiary within 60 days of the date of the civil union. If such election is not made within 60 days, the retiree may not elect option 2 or 3 and designate his or her new spouse as cobeneficiary.

## RULE 10: INCREASE IN BENEFITS

Rule 10 further defines eligibility for and determination of annual increases in benefits. Rules 10.10 and 10.20A. shall not apply to DPS members or retirees.

### 10.10 Retroactive Effective Date of Retirement or Survivor Benefit

- A. For a retiree who was a member, inactive member, or retiree on December 31, 2006, if the effective date of the benefit is retroactive, then increases in the benefit shall be determined by considering the benefit to have been paid from the effective date.
- B. For a survivor benefit recipient, if the effective date of the benefit is retroactive, then increases in the benefit shall be determined by considering the benefit to have been paid from the effective date.

### 10.20 Increase in Benefits for Cobeneficiaries

- A. For cobeneficiaries whose benefits are based on the account of a retiree who was not a member, inactive member, or retiree on December 31, 2006, the annual increase shall be effective only if the retirement benefits have been paid on the account for the full preceding calendar year and the retiree had met the requirements in 24-51-1001(3)(b), C.R.S. If upon the death of the retiree, the retiree had not met the requirements in 24-51-1001(3)(b), C.R.S. the cobeneficiary will be eligible to receive an annual increase when the retiree would have met the requirements in 24-51-1001(3)(b), C.R.S.
- B. For cobeneficiaries whose benefit is based on the account of a DPS member or DPS retiree, or whose benefit is based on the account of a member of the PERA benefit structure who began membership on or before December 31, 2006, the annual increase shall be effective only if the retirement benefits have been paid on the account for the preceding twelve months and the retiree had met the requirements in Section 24-51-1001(1)(b), C.R.S. If upon the death of the retiree, the retiree had not met the requirements in Section 24-51-1001(1)(b), C.R.S., the cobeneficiary will be eligible to receive an annual increase when the retiree would have met the requirements in Section 24-51-1001(1)(b), C.R.S. This Rule only applies to accounts for which the effective date of retirement is on or after January 1, 2011.

### 10.30 Proration of Annual Increase for Post-January 1, 2011 Benefit Recipients

This Rule shall only apply to post-January 1, 2011 benefit recipients whose benefit is based on the account of a DPS member or DPS retiree or whose benefit is based on an account of a member of the PERA benefit structure who began membership on or before December 31, 2006.

- A. When the benefit recipient receives his or her first annual increase after becoming eligible for the annual increase pursuant to Part 10 of the PERA statutes, in addition to receiving the applicable compounded annual increase percentage in July, the benefit recipient shall also receive:
  - (1) A one-time payment that is not compounded on the base benefit or retirement allowance, whichever is applicable, recognizing the period between the month in which the benefit recipient first became eligible for the annual increase to July of the year in which he or she receives his or her first annual increase. The amount of the one-time payment shall be the amount of the annual increase percentage paid in July multiplied by the base benefit or the retirement allowance, whichever is applicable, multiplied by the number of months the benefit recipient has been eligible for the annual increase.

(2) Upon re-retirement under sections 24-51-1103(1.5) or 24-51-1726.5, C.R.S., whichever is applicable, each benefit segment is eligible for the one-time payment as described in subsection (1) above.

B. For benefit recipients receiving multiple benefits, excluding benefit recipients who receive multiple benefit segments pursuant to sections 24-51-1103(1.5) or 24-51-1726.5, C.R.S., whichever is applicable, each benefit shall be looked at separately when determining eligibility for the annual increase and in determining the amount of the one-time payment as described in paragraph A. (1) above.

C. For benefit recipients receiving multiple benefit segments pursuant to sections 24-51-1103(1.5) or 24-51-1726.5, C.R.S., whichever is applicable, in which at least one or more is a reduced service retirement benefit, the total service credit across all benefit segments will be used in determining eligibility for the annual increase.

#### **10.40 Increase in Benefits for State Troopers Receiving a Reduced Service Retirement**

For a member who is receiving a reduced service retirement and has service credit both as a State Trooper, as defined in 24-51-101(46), C.R.S., and as a non-State Trooper, service credit for purposes of determining eligibility for the annual increase pursuant to Part 10 of Article 51 of Title 24, C.R.S will be weighted in the same manner as determining service retirement eligibility pursuant to Rule 6.10.



## RULE 11: EMPLOYMENT AFTER RETIREMENT

Rule 11 describes conditions under which retirees may be employed with and without a reduction or suspension of benefits, describes the conditions under which employer contributions must be paid on retirees performing services after retirement for a PERA employer and describes the conditions for recalculation of benefits upon termination of employment after retirement. Unless otherwise indicated, for the purposes of Rule 11, the term “member” shall include DPS members and the term “retiree” shall include DPS retirees.

### 11.05 Employment During the Effective Month of Retirement

- A. A day of work during the effective month of retirement is defined as any time worked for a PERA affiliated employer regardless of the number of hours worked per day.
- B. Employment by a retiree during the month of the effective date of retirement shall count toward the working after retirement limits specified in 24-51-1101(1), C.R.S.

### 11.10 Employment After Service Retirement

A retiree receiving a service retirement or reduced service retirement benefit may be employed, under certain conditions, without reduction in benefits.

#### A. Employment with an Affiliated Employer

- (1) For a service retiree employed in a position subject to limits on employment after service retirement, employment of more than four hours per day shall be considered one day.
- (2) Employment after service retirement shall include all of the time during which a retiree renders any paid service.

#### B. Employment with a Non-Affiliated Employer

A retiree receiving a service retirement or reduced service retirement benefit may be employed with a non-affiliated employer without a reduction in or suspension of benefits.

#### C. Employment of Benefit Recipients Other Than Retirees

Cobeneficiaries and survivors are not subject to employment limitations.

#### D. Employment Pursuant to Section 24-51-1101(1.8), C.R.S.

- (1) For the purposes of Section 24-51-1101(1.8), C.R.S., an “employer” is defined to be an entire school district and the charter schools of the district. Charter schools are not separate employers for purposes of Section 24-51-1101(1.8), C.R.S.
- (2) A service retiree who is working for an employer pursuant to Section 24-51-1101(1.8), C.R.S., may also work for one or more employers during the calendar year. Once the service retiree reaches one hundred ten days or seven hundred twenty hours in a calendar year, whichever is applicable, the retiree may only work the remaining thirty days or one hundred ninety six hours, without a reduction in benefits, for the employer that designated that service retiree pursuant to Section 24-51-1101(1.8), C.R.S. Any employment with another employer will subject the retiree to a reduction in benefits pursuant to Section 24-51-1102, C.R.S.
- (3) For purposes of Section 24-51-1101(1.8), on January 1 of each year, the employer must provide the Association with a list of any and all service retirees employed by the employer. The list must be updated with each service retiree who is hired that year.
- (4) For purposes of Section 24-51-1101(1.8), C.R.S., an employer is not required to designate all ten service retirees at the beginning of each year. However, once ten service retirees have

been designated during a calendar year, no additional service retirees may be designated even if one or more of the designated service retirees ceases work for that employer.

#### 11.12 Employer Contributions and Working Retiree Contributions on Retiree Service

- A. A PERA employer that receives the services of a retiree, other than as a volunteer, under the conditions specified in this Rule, shall remit employer contributions to the Association in the manner specified in 24-51-401, C.R.S. and this Rule. Working retiree contributions shall also be due on such a retiree in accordance with the provisions of Rule 4.60 and paragraph (F) of this Rule. Employer contributions and working retiree contributions shall be due to the Association only if a retiree is the individual performing services for a PERA employer. Employer contributions and working retiree contributions shall not be due to the Association for a retiree if no services are provided to a PERA employer by the retiree. Employer contributions and working retiree contributions shall not be due to the Association for a retiree who provides products or goods to a PERA employer rather than services.
- B. Ownership of up to 5 percent of a publicly traded company registered on a national securities exchange by a retiree shall not constitute ownership of the company or cause the company to be an affiliated party of the retiree for purposes of 24-51-1101(2), C.R.S. Any other form or degree of ownership in an entity providing services to a PERA affiliated employer shall constitute ownership or operation of the entity for purposes of 24-51-1101(2), C.R.S.
- C. For purposes of 24-51-1101(2), C.R.S. an affiliated party shall include:
- (1) any person who is the named beneficiary or cobeneficiary on the PERA account of the retiree,
  - (2) any person who is a relative of the retiree by blood or adoption to and including parents, siblings, half-siblings, children, and grandchildren,
  - (3) any person who is a relative of the retiree by marriage or civil union to and including spouse, spouse's parents, step-parents, step-children, step-siblings, and spouse's siblings, and
  - (4) any person or entity with whom the retiree has an agreement to share or otherwise profit from the performance of services for a PERA employer by the retiree other than the retiree's regular salary or compensation.
- D. When employer contributions or working retiree contributions are due to the Association as a result of services provided by a retiree, the amount of contributions shall be based on the following:
- (1) If the services provided to a PERA employer by the retiree are the specific subject of an agreement with the PERA employer, the ~~retiree shall disclose the amount agreed upon and the amount of employer contributions~~ employer shall report the salary to PERA and remit the appropriate contributions. ~~and w~~orking retiree contributions shall be based on the amount received by the retiree as specified in the agreement which, if paid directly by a PERA employer, would constitute salary under 24-51-101(42), C.R.S.
  - (2) If the services provided to a PERA employer by a retiree are not the specific subject of an agreement with the PERA employer, then the retiree shall disclose the amount of compensation received by the retiree for services the retiree is providing to the PERA employer. Retiree shall report monthly to the Association and the PERA employer the amount received for the services provided to the PERA employer and shall specify the amount of compensation received which, if paid directly by a PERA employer, would constitute salary

under 24-51-101(42), C.R.S. [The monthly report to the Association by the retiree shall be in the form specified by the Association.](#) The PERA employer shall remit employer contributions to the Association within 30 days after receipt of the retiree's disclosure. Working retiree contributions shall also be due in accordance with the provisions of Rule 4.60 and paragraph (F) of this Rule.

- (3) If a retiree fails to report the compensation required under subsection D.(2) then the retiree shall be responsible to pay the employer contribution required by 24-51-1101(2), C.R.S. together with interest on the employer contribution and the working retiree contribution at PERA's actuarial investment assumption rate. Any amounts due under this subsection D.(3) shall be collected via an offset of the retirement benefit of the retiree.

[\(4\) For purposes of this Rule 11.12 D., "specific subject of an agreement" means that an agreement between the retiree and the PERA employer, whether written or otherwise, contemplates services to be provided by the retiree. If the retiree is receiving compensation reported to the IRS under the retiree's own social security number or the PERA employer has knowledge of retiree status, the employer shall report under subsection D.\(1\).](#)

E. Regular salary or compensation received by the retiree as an employee of an entity which is not owned or operated by the retiree or any affiliated party shall not be subject to employer contributions or working retiree contributions.

F. Working retiree contributions for independent contractors shall be collected via an offset of the retiree's retirement benefit to the point that the full benefit is offset. Any contributions due in excess of the amount of the retirement benefit must be paid directly to the Association within 30 days after the services are provided to the PERA employer.

#### 11.15 Reduction/Offset in Benefits

A. Any reduction in benefits due to working in the month of effective date of retirement or due to exceeding the working after retirement limits for an affiliated employer shall take place in the month immediately following the month such work occurs or is reported to PERA. If such benefit reduction cannot completely occur in this month, it shall be applied to future months until the amount due is recovered.

B. For disability retirees who exceed the earnings limit for employment after disability retirement, the benefit offset shall take place in the month immediately following the month such work occurs or is reported to PERA. If such benefit offset cannot completely occur in this month, it shall be applied to future month's benefits. In no case shall the benefit offset exceed the total benefit paid on the retiree account. This paragraph (B) shall not apply to DPS disability retirees whose application was received prior to January 1, 2010.

C. For retirees who have multiple benefit segments pursuant to Section 24-51-1103 or 24-51-1726.5, C.R.S., all benefit segments shall be offset by any reduction in benefits due to working in the month of effective date of retirement or due to exceeding the working after retirement limits for an affiliated employer.

#### 11.16 Suspension of Service Retirement

A. A service retiree may prospectively suspend receipt of retirement benefits and return to membership. A retiree must return to membership in order to suspend receipt of retirement benefits. No retroactive suspension of benefits is allowed.

B. If a retiree suspends receipt of retirement benefits pursuant to 24-51-1103, C.R.S., and returns to work in a different division from which he or she retired, when the retiree resumes receipt of benefits due to re-retirement, the retiree shall remain retired from the division from which he or she originally retired. This Rule shall not apply to retirees who suspend receipt of retirement benefits on or after January 1, 2011.

#### 11.20 Termination of Employment After Retirement

##### A. PERA Retirees Who Suspend Benefits Before January 1, 2011

###### (1) Employment of Less Than One Year

A retiree who earns less than one year of service credit, following suspension of benefits and resumption of employment in a position subject to membership, shall receive a refund of member contributions made during the period of membership together with the amount of matching employer contributions, upon resumption of benefit payments. The amount of matching contributions shall be determined based on the service credit earned during the period of suspension and the age of the retiree.

###### (2) Employment of One Year or More

A retiree who earns at least one year of service credit following suspension of benefits and resumption of employment in a position subject to membership shall, upon subsequent retirement, receive a recalculated benefit which reflects the additional service credit earned during the period of membership and any change to the Highest Average Salary.

##### B. PERA Retirees Who Suspend Benefits on or After January 1, 2011 and DPS Retirees

###### (1) Employment of Less Than One Year

A retiree who earns less than one year of service credit, following suspension of benefits and resumption of employment in a position subject to membership, shall receive a refund of member contributions made during the period of membership, upon resumption of benefit payments.

###### (2) Employment of One Year or More

A retiree who earns at least one year of service credit following suspension of benefits and resumption of employment in a position subject to membership shall build a new benefit segment. Upon termination of employment, the retiree shall have the option to either refund the account pursuant to Section 24-51-1103 or 24-51-1711, C.R.S., whichever is applicable, or elect to receive a second benefit based upon the plan provisions that governed the retiree's initial retirement benefit. The retiree will be immediately eligible for a second benefit upon termination of employment, regardless of the retiree's age. Regardless of total years of service credit earned during the second benefit period, the sum of the option 1 benefit or option A benefit, whichever is applicable, calculated pursuant to Part 6 of Article 51 of Title 24, C.R.S., shall not exceed one hundred percent of the largest highest average salary earned in any one benefit segment.

#### 11.30 Employment After Disability Retirement

A retiree receiving a disability retirement benefit may be employed in a position subject to membership under the same conditions applied to service or reduced service retirement. A disability retirement benefit may be suspended following resumption of employment under the conditions specified in 24-51-707, C.R.S. This Rule 11.30 shall not apply to DPS retirees receiving a disability benefit whose disability application was received on or before December 31, 2009.

#### 11.40 Commencement of Employment After Retirement

Employment after retirement may begin no earlier than the second business day of the month in which retirement is effective. If employment begins in the month in which retirement is effective, the benefit of the retiree shall be reduced by 5 percent per day worked during the month of the effective date of retirement.

## RULE 16: DEFINED CONTRIBUTION PLAN

### 16.10 Terms

- A. Defined Contribution Plan means the Association's defined contribution plan established pursuant to 24-51-1501, C.R.S., as a component of the 401(k) Plan. The Defined Contribution Plan is a separate trust fund within the 401(k) Plan. The Defined Contribution Plan is a profit-sharing plan intended to satisfy the requirements of Section 401(a) of the Internal Revenue Code.
- B. Defined Contribution Account refers to an account containing sums transferred to the account via trustee to trustee transfer together with the contributions to the Defined Contribution Plan on behalf of the member of the Defined Contribution Plan and the earnings thereon less any distributions, any losses, and the member's allocable portion of the costs and expenses of administering the Plan.
- C. Commence Employment means the date the employee began actual performance of services for an employer as defined in 24-51-1501(4), C.R.S., and earned salary for such services regardless of when the payment occurs.
- D. Community College refers to any Community College in the state system of community and technical colleges governed by the State Board for Community Colleges and Occupational Education which shall include Arapahoe Community College, Colorado Northwestern Community College, the Community College of Aurora, the Community College of Denver, Front Range Community College, Lamar Community College, Morgan Community College, Northeastern Junior College, Otero Junior College, Pikes Peak Community College, Pueblo Community College, Red Rocks Community College, Trinidad State Junior College and the Colorado Community College and occupational education system.
- E. Member of the Defined Contribution Plan means an employee who elected to participate in the Defined Contribution Plan pursuant to 24-51-1503(1) or 24-51-1506(4), C.R.S., or who became a member pursuant to 24-51-1501(2) or 24-51-1503(3), C.R.S, and is presently performing services for that PERA-affiliated employer for salary resulting in contributions to the Defined Contribution Plan. Member of the Defined Contribution Plan also means, to the extent required, a member who is inactive but who has a Defined Contribution Account.
- F. For purposes of 24-51-1502(2)(a), C.R.S., reference to member of the Association includes a member of the Defined Contribution Plan.
- G. Except as expressly provided herein, for purposes of Part 15 of the PERA Statutes and this Rule 16, all time periods shall be determined in accordance with 2-4-108, C.R.S.
- H. Year of Membership in the Defined Contribution Plan means 12 months, not necessarily consecutive, during which contributions are made on the member's behalf pursuant to 24-51-1505(1), C.R.S., to the Defined Contribution Plan. A Defined Contribution Plan member's total years of membership in the Defined Contribution Plan shall be calculated by dividing the total number of months during which contributions were made on the member's behalf to the Defined Contribution Plan by 12. Credit shall not be provided for member contributions transferred pursuant to Rule 16.30 D after an employee elects to participate pursuant to 24-51-1506(4), C.R.S. Years of membership before a 12-month break in service shall not be includable for purposes of determining a Defined Contribution Plan member's years of membership after such 12-month break in service. Each time an election is made to participate in the Defined

Contribution Plan after a 12-month break in service, the employee shall have a new Defined Contribution Account with a new vesting schedule.

- I. For purposes of 24-51-1506(4), C.R.S., year of membership in the plan means 12 months of contributions, not necessarily consecutive, with an employer as defined in 24-51-1501(4), C.R.S. A member's total years of membership in the Defined Benefit Plan shall be calculated by dividing the total number of months of contributions by 12. Years of membership before a 12-month break in membership shall not be includable for purposes of determining a member's years of membership after such 12-month break in membership. Each time an election is made pursuant to 24-51-1502(1) or 1503(1), C.R.S., after a 12-month break in membership, the employee shall have a new calculation for years of membership for the purposes of 24-51-1506(4), C.R.S. Years of membership with an employer other than an employer defined in 24-51-1501(4), C.R.S., shall not count towards the calculation of years of membership pursuant to 24-51-1506(4), C.R.S.
- J. For purposes of Rule 16.10 I., reference to 12-month break in membership means 12 consecutive months for which no contributions are made on the member's behalf to the Defined Benefit Plan with an employer defined in 24-51-1501(4), C.R.S.
- K. 12-Month Break in Service means, except as otherwise required by federal law, 12 consecutive months for which no contributions are made on the member's behalf to the Defined Contribution Plan.
- L. Transfer Account means an account within the PERA 401(k) account containing the vested portion of the Defined Contribution Account together with any earnings thereon, less any distributions, losses and the member's allocable portion of the costs and expenses of administering the Plan that is established if there is a 12-Month Break in Service from the Defined Contribution Plan or an election is made to become a member of the Association pursuant to 24-51-1506(1), C.R.S., and Rule 16.30 A. The Transfer Account will be an account within the PERA 401(k) account but will be subject to the same distribution and investment election rules as the Defined Contribution Account.

#### 16.20 Initial Election Period

- A. Election to participate in the Defined Contribution Plan by an eligible employee pursuant to 24-51-1503(1), C.R.S., must be made in a manner approved by the Association. Such election must be received by the Association within 60 days from the date the employee commences employment. Such election becomes effective on the first valuation date following the receipt of the election form by the Association. If no such election is received by the Association within 60 days from the date the employee commences employment, the employee will automatically become a member of the Association's defined benefit plan.
- B. An eligible employee shall make only a single election pursuant to 24-51-1502(1) and 24-51-1503(1), C.R.S. Such an election, once made, may not be withdrawn.
- C. If member and employer contributions are made to the Association during the initial election period on behalf of an eligible employee who elects to be covered by the Defined Contribution Plan pursuant to 24-51-1502(1), C.R.S., such contributions (without interest) shall be transferred to the plan within 90 days after the eligible employee's election becomes effective.
- D. An employee of an employer as defined in 24-51-1501(4), C.R.S., who terminates his or her employment for any reason prior to the expiration of the 60 days pursuant to 24-51-1502(1) or 1503(1), C.R.S., and who has not made a choice to become a participant in a retirement plan,

shall be deemed to have been a member of the Association from the date of employment to the date of termination and thereafter an inactive member of the Association.

E. For purposes of Section 24-51-1747(2)(b)(III), C.R.S., any service performed for DPS prior to the merger date of January 1, 2010 shall count as service for purposes of the twelve month break in service.

#### 16.30 Additional Choice Within Years Two Through Five

A. Election to become a member of the Association pursuant to 24-51-1506(1), C.R.S., must be made in writing in a manner designated by the Association. Membership in the Association is effective on the first date of the pay period following the date the Association receives the form. Such election must be received within the second to fifth year of the employee's current period of membership in the Defined Contribution Plan. Years of membership in the Defined Contribution Plan shall be determined in accordance with Rule 16.10 ~~H~~.

B. Election to become a member of the Defined Contribution Plan pursuant to 24-51-1506(4), C.R.S., must be made in writing in a manner designated by the Association. Such election becomes effective on the first date of the pay period following the date the Association receives the election form. Such election form must be received within the second to fifth year of the employee's membership in the Association as determined in accordance with Rule 16.10 ~~J~~.

C. For an employee who becomes a member of the Association pursuant to 24-51-1506(1), C.R.S., the vested portion of his or her Defined Contribution Account pursuant to 24-51-1505(3), C.R.S., shall be transferred into the employee's Transfer Account. The amount of unvested employer contributions shall be forfeited pursuant to 24-51-1505(3), C.R.S.

D. An employee who elects to participate in the Defined Contribution Plan pursuant to 24-51-1503(1) or 1506(4), C.R.S., who has an existing member contribution account and is an inactive member of the Association, may either (i) elect to maintain his or her inactive member contribution account in the Association or (ii) direct that his or her member contribution account be transferred to the Defined Contribution Account; provided that after-tax contributions shall be transferred to an after-tax account in the employee's PERA 401(k) account. If an employee elects to transfer his or her member contribution account pursuant to this subsection (ii), and that employee has two member contribution accounts in the defined benefit plan, both accounts shall be transferred. If an employee elects to transfer his or her member contribution account pursuant to this subsection (ii), the Association will transfer such account within 90 days after the employee's election becomes effective.

E. An employee who elects to become a member of the Association pursuant to 24-51-1506(1), C.R.S., or after a 12-Month Break in Service from the Defined Contribution Plan and who has previously elected to transfer his or her member contribution account to the Defined Contribution Account pursuant to Rule 16.30 D (ii), may reestablish his or her member contribution account and corresponding service credit. The cost to reestablish the member contribution account shall be the amount of money that was originally in the member contribution account, plus interest calculated at the actuarial investment assumption rate pursuant to PERA Rule 2.90 C plus an amount equal to one percent of the member's highest average salary for each month or partial month of service credit to be reestablished in accordance with 24-51-503(4), C.R.S. An employee who elects to reestablish his or her member contribution account pursuant to this Rule 16.30 E ~~(iii)~~ may reestablish a portion of the account.



- F. A member of the Defined Contribution Plan who elects to receive a distribution of the entire vested balance of his or her Defined Contribution Account pursuant to Rule 16.90 or a member of the Defined Benefit Plan who elects to refund his or her Member Contribution Account pursuant to Rule 4.40, and then subsequently returns to membership in the Association or in the Defined Contribution Plan before there has been a 12-month break in service shall begin with the same number of years of membership he or she had accrued prior to terminating membership for purposes of the additional choice within years two through five as provided for in 24-51-1506, C.R.S. and Rule 16.30.
- G. Individuals who became members of the Defined Contribution Plan pursuant to section 24-51-1501(2) or 24-51-1503(3), C.R.S., are not eligible to make an additional choice within years two through five and this Rule 16.30 is not applicable to them.
- H. An individual with a DPS inactive account who is a member of the Association's Defined Contribution Plan on or after January 1, 2010, who elects at any time during the second to fifth year of membership in the Plan, pursuant to Section 24-51-1506, C.R.S., to terminate membership in the Defined Contribution Plan and to become a member of the Association's Defined Benefit Plan, must make a one-time irrevocable choice between the DPS benefit structure and the PERA benefit structure in accordance with the portability provisions of Section 24-51-1747, C.R.S. The provisions of this paragraph (H) only apply to a member who has not already had a one-time irrevocable choice.

#### 16.40 Investments

The investment alternatives available to a member of the Defined Contribution Plan shall be the same as those available in the PERA 401(k) Plan. In the event of a transfer from the Defined Contribution Plan to the Transfer Account, the investment alternatives designated by the member of the Defined Contribution Plan shall remain the same until changed.

#### 16.50 Beneficiary(ies)

- A. A member of the Defined Contribution Plan who is also a participant in the PERA 401(k) Plan may designate different beneficiaries for each account. In the event no beneficiary is designated for the Defined Contribution Plan Account, the beneficiary shall be the beneficiary designated for the member's 401(k) Plan Account, if any. In the event the member does not have a 401(k) Plan Account, or in the event no beneficiary is designated for the 401(k) Plan Account, or if no person, persons, or entity so designated shall survive the participant, the beneficiary shall be deemed to be the estate of the participant.
- B. If a Participant had a Defined Contribution Plan Account balance as of July 1, 2009, and that Participant had assets transferred to the plan on July 1, 2009 pursuant to Section 24-51-1501(2), C.R.S., the beneficiary of the Defined Contribution Plan Account shall be the beneficiary designated for the Defined Contribution Plan Account prior to such transfer of assets. In the event no beneficiary is designated for the Defined Contribution Plan Account, the beneficiary shall be the beneficiary designated for the member's 401(k) Plan Account, if any. In the event the member does not have a 401(k) Plan Account, or in the event no beneficiary is designated for the 401(k) Plan Account, or if no person, persons, or entity so designated shall survive the participant, the beneficiary shall be deemed to be the estate of the participant.
- C. If a Participant became a Participant in the Defined Contribution Plan pursuant to Section 24-51-1501(2), C.R.S., and that Participant did not have a Defined Contribution Plan Account balance as of July 1, 2009, but has an Account balance after July 1, 2009 as a result of the transfer of

assets pursuant to Section 24-51-1501(2), C.R.S., the beneficiary of the Defined Contribution Plan Account shall be the beneficiary, if any, designated with the service provider that held the assets prior to their transfer on July 1, 2009, as reported to PERA. This beneficiary can be changed in accordance with Rule 16.50 A or Rule 14.70 A. In the event that multiple service providers held assets prior to their transfer on July 1, 2009, and such service providers have different beneficiary designations on file for the Participant, all such designations will be null and void and a new designation will be required to be made in accordance with Rule 16.50 A. In the absence of such a designation, the beneficiary shall be the beneficiary designated for the member's 401(k) Plan Account, if any. In the event the member does not have a 401(k) Plan Account, or in the event no beneficiary is designated for the 401(k) Plan Account, or if no person, persons, or entity so designated shall survive the participant, the beneficiary shall be deemed to be the estate of the participant.

#### 16.60 Contributions

- A. The employer shall deliver all Defined Contribution Plan contributions, along with the required report to the service provider designated by the Plan Administrator within five days of the date the member of the Defined Contribution Plan is paid and consistent with the provisions of 24-51-401(1.7)(b) to (1.7)(d), C.R.S. If either the payment or the reports or both are late, interest shall be assessed and paid as specified in PERA Rule 14.30A.
- B. For purposes of deferring federal income tax imposed on salary, the employee contributions assumed and paid for by the employer shall be in lieu of paying such amounts as salary and shall be treated as employer contributions pursuant to Section 414(h)(2) of the Internal Revenue Code. For all other purposes, employee contributions assumed and paid for by the employer shall be considered employee contributions.
- C. Members of the Defined Contribution Plan shall be eligible to make tax-deferred contributions and rollover contributions to the 401(k) Plan. Members of the Defined Contribution Plan shall also be eligible to make tax-deferred contributions and rollover contributions to the 457(b) Plan if they are employed by an Employer that is affiliated with the Plan.
- D. If a Defined Contribution Plan Participant has assets transferred to the Defined Contribution Plan pursuant to Section 24-51-1501(2), C.R.S., and those assets contain rollover contributions, the rollover contributions will be transferred to the Participant's 401(k) Account and shall not remain in the Participant's Defined Contribution Plan Account.

#### 16.65 Contributions Based on Uniformed Service

- A. A member of the Defined Contribution Plan who is reemployed and has the rights under 24-51-507, C.R.S., and the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), may elect to make up his or her missed contributions for the period of uniformed service up to five years. Contributions must be made in accordance with USERRA, set forth at 38 U.S.C. § 4301, *et seq.*
- B. Contributions made by a member of the Defined Contribution Plan pursuant to this Rule must be made during the time period starting with the date of reemployment and continuing for up to three times the length of the member's immediate past period of uniformed service, with the repayment period not to exceed five years. Makeup contributions may only be made during this period and while the member is employed with the post-service employer.
- C. Upon PERA's receipt of the member contributions pursuant to section (A) of this Rule, the employer shall pay the employer contribution attributable to the period of time that the member

paid make-up contributions. The employer shall remit the entire amount due pursuant to this section within 30 days from the date the member makes his or her make-up contributions.

D. If the employee does not make up all of the contributions attributable to the period of service, his or her defined contribution account may be less than if he or she had done so. Even when the employee and employer make up all contributions attributable to the period of service, the employee's account may not be the same as if the employee had remained continuously employed because the employee is not permitted to experience gains or losses on the make-up contributions that occurred in his or her defined contribution account during the period of service.

#### 16.70 Return to Employment

A. A Member of the Defined Contribution Plan who has elected a lifetime annuity distribution option on or after an age that distributions are exempt from penalty under Internal Revenue Code Section 72(t) shall be deemed to be a Retiree of the Association subject to the provisions of Rule 11 and 24-51-1101, *et seq.*, C.R.S.

B. A Participant in the state defined contribution plan established pursuant to Part 2 of Article 52 of Title 24, as said part existed prior to its repeal in 2009, who has elected a lifetime annuity distribution option on or after an age that distributions are exempt from penalty under Internal Revenue Code Section 72(t) shall be subject to the provisions of Rule 11 and 24-51-1101, *et seq.*, C.R.S.

#### 16.80 Forfeiture

A. Except as otherwise required by federal law, upon the earlier of (i) a 12-Month Break in Service, (ii) the distribution of the vested portion of the Defined Contribution Plan member's Defined Contribution Account upon termination of membership in PERA, or (iii) the transfer of the vested portion of the member's Defined Contribution Account to a Transfer Account, the person shall forfeit the portion of the Defined Contribution Account that is not vested. Forfeitures shall be used to pay Plan expenses. If required by federal law, the forfeited portion of the Defined Contribution Account without earnings shall be reinstated upon the person's resumption of participation in the Defined Contribution Plan.

B. If a person has a 12-Month Break in Service from membership in the Defined Contribution Plan, the vested portion of the Defined Contribution Account will automatically be transferred to a Transfer Account. The amount of unvested employer contributions shall be forfeited pursuant to 24-51-1505(3), C.R.S.

#### 16.90 Distributions Upon Termination of Employment

A. The entire vested balance of the Defined Contribution Plan member's Defined Contribution Account shall become available for distribution as soon as administratively practicable following the date of the Defined Contribution Plan member's termination of membership in the Association, but the distribution shall not be made earlier than the date all of the member's contributions are credited.

B. At the election of the member of the Defined Contribution Plan and subject to procedures of the Association, the distribution may be made in the following manner:

(i) by lump sum payment of the entire vested portion of the Defined Contribution Account;

(ii) by partial distribution of an amount designated by the member of the Defined Contribution Plan;

(iii) by monthly payments in an amount designated by the member of the Defined Contribution Plan until the entire remaining Defined Contribution Account is distributed;

- (iv) by a combination of the methods specified in subsections(i) through (iii); or
- (v) by purchasing with the Defined Contribution Plan member's vested Defined Contribution Account a lifetime annuity contract from an insurance company or other authorized third party annuity provider.

Notwithstanding anything herein to the contrary, the distribution options specified in this Rule 16.90 B shall apply to the person's Transfer Account.

- C. Distributions due to death will be paid to the Defined Contribution Plan member's beneficiary.
- D. Except as provided in Article 15 of the PERA 401(k) Plan and this Rule 16, the procedures and restrictions for distributions shall be the same as for the PERA 401(k) Plan.
- E. A member of the Defined Contribution Plan who elects to receive a distribution of the entire vested balance of his or her Defined Contribution Account pursuant to this Rule and then subsequently returns to membership in the Association before there has been a 12-month break in service shall begin a new vesting schedule for future contributions.

#### 16.95 Miscellaneous

- A. The Domestic Relations Order requirements in PERA Rule 15 shall be the same for the Defined Contribution Plan as they are for the remainder of the PERA 401(k) Plan.
- B. A person may retire from the Association or receive a distribution from his or her Defined Contribution Account only if he or she has terminated PERA covered employment and is no longer actively contributing to either the Defined Contribution Plan or the Association's Defined Benefit Plan. Notwithstanding the foregoing, a person who retired from the Association prior to July 1, 2009, and became a member of the Defined Contribution Plan pursuant to Section 24-51-1501(2), C.R.S., and who is actively contributing to the Defined Contribution Plan as of July 1, 2009, may continue to be a retiree even though he or she is actively contributing to the Defined Contribution Plan. If such person has terminated employment with the employer that he or she was employed with as of July 1, 2009, and subsequently returns to work, he or she shall be treated as a PERA retiree and may not continue to contribute to the Defined Contribution Plan.
- C. A member of the Defined Contribution Plan may not obtain a loan from the member's Defined Contribution Account.
- D. The lifetime annuity distribution option for members of the Defined Contribution Plan will not be provided by the Association.
- E. Subject to Rule 16.95 B, an employee of an employer as defined in 24-51-1501(4), C.R.S. who is hired on or after July 1, 2009, and who was an employee of an employer as defined in 24-51-1501(4), C.R.S. during the 12 months prior to the date that the employee commences employment shall participate in the Plan that he or she was in based on the prior employment with an employer as defined in 24-51-1501(4), C.R.S. during the last 12 months. Notwithstanding the above, and subject to Rule 16.95 F and G, if the employee has been an active participant in the state defined contribution plan established pursuant to part 2 of article 52 of title 24, as said part existed prior to its repeal in 2009, during the 12 months prior to the date the employee commences employment with an employer, the employee shall be a member of the Association's Defined Contribution Plan upon commencing employment with the employer, and the employee shall not be considered an eligible employee for purposes of section 24-51-1506(1) and (2), C.R.S.

- F. An employee who is hired on or after January 1, 2008, by a Community College who was an employee of a Community College during the 12 months prior to the date that the employee commences employment, shall participate in the Plan that he or she was in based on the prior employment with a Community College in the last 12 months.
- G. An employee who commences employment with a Community College on or after January 1, 2008, who has not been employed by a Community College in the last 12 months, but who has been a Member of the Defined Contribution Plan in the last 12 months, shall continue to be a Member of the Defined Contribution Plan upon commencement of employment with the Community College.
- H. Any person who becomes a candidate for Board election in the State Division pursuant to Part 2 of the Association's Statutes and these Rules must disclose whether he or she is a member of the Defined Contribution Plan or a member in the Defined Benefit Plan.
- I. Except as required by 24-51-212, C.R.S., none of the moneys, accounts, benefits, or contributions associated with a Defined Contribution Account shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, bankruptcy proceedings, or other legal process.
- J. A person who no longer has a Defined Contribution Account and has not elected a lifetime annuity distribution option shall not have any rights associated with the Defined Contribution Plan and cannot be a retiree of the Association.
- K. A person who has a Transfer Account may only rollover the Transfer Account to another Plan not administered by the Association if that person is no longer a member of the Association. ~~The person shall not have the ability to rollover the Transfer Account~~ A member or inactive member who has a Transfer Account may rollover the Transfer Account or any portion thereof to the PERA 401(k) Plan ~~or the PERA 457(b) Plan.~~
- L. In the event there is a conflict between these Rules and the Plan Document, these Rules shall govern.

## RULE 17: DEFERRED COMPENSATION PLAN

Rule 17 establishes requirements for enrollment, changes to participation, suspension and resumption of contributions, submission of monthly contribution report and withdrawal. The Deferred Compensation Plan is a 457(b) plan, known as PERA's 457(b) Plan, established pursuant to Section 457(b) of the "Internal Revenue Code of 1986," as amended. For the purposes of Rule 17, the term "member" shall include DPS members and the term "retiree" shall include DPS retirees.

### 17.10 Enrollment in the 457(b) Plan

Any employee of an employer who has affiliated with the deferred compensation plan pursuant to section 24-51-1602, C.R.S. may enroll in the 457(b) Plan. Enrollment shall be effective upon receipt by the Plan of contributions or a rollover for the member.

### 17.20 Changes in 457(b) Plan Participation

Requests for changes in the percent of contributions assigned to each fund or the total amount in each fund must be submitted to the service provider designated by the Plan Administrator in accordance with the timeline as determined by the Administrator. Changes to contributions are effective as soon as administratively practicable, but in no event before the later of the first day of the next payroll period or the first day of the month after the day the service provider receives a properly executed Voluntary Salary Deferral Agreement for the participant.

### 17.30 Suspension of Participation

- A. A participant may stop contributions to the 457(b) Plan upon request. Changes are effective the first day of the next following payroll period.
- B. A participant may resume contributions as soon as administratively practicable, except that contributions may not be resumed within six months after receipt of an unforeseeable emergency withdrawal. Changes are effective as soon as administratively practicable, but in no event before the later of the first day of the next payroll period or the first day of the month after the day the service provider receives the change.

### 17.40 Contribution Report

- A. The employer shall deliver all 457(b) Plan contributions, along with the required report, to the service provider designated by the Plan Administrator within five days of the date contributions were deducted from the employee's salary. If either the report or contributions are delinquent, interest shall be assessed and paid as specified in Rule 4.10-B.
- B. The Plan Administrator shall prescribe the form in which 457(b) Plan contributions shall be reported.

### 17.50 Withdrawal

#### A. Upon Termination of Employment

A participant may withdraw the balance in the 457(b) account upon termination of employment from all employers that are affiliated with the 457(b) Plan.

#### B. Upon Attaining Age 70½

A participant who has attained 70½ years of age may withdraw monies from the 457(b) account prior to termination of employment.

#### C. Due to Unforeseeable Emergency

- (1) A participant who has not attained 70½ years of age may apply for an unforeseeable emergency withdrawal after contributions to the 457(b) account have been suspended and

after all other available withdrawals and loans have been made. A participant who has commenced receiving installment payments under the 457(b) Plan may request acceleration of such payments in the event of severe financial hardship due to an unforeseeable emergency.

- (2) A participant applying for unforeseeable emergency withdrawal must show a severe financial hardship of the participant or beneficiary resulting from: a) an illness or accident of the participant or beneficiary, the participant or beneficiary's spouse, or the participant or beneficiary's dependent; b) loss of the participant or beneficiary's property due to casualty not otherwise covered by homeowner's insurance; c) the imminent foreclosure of or eviction from the Participant or Beneficiary's primary residence; d) the need to pay for medical expenses of the Participant or Beneficiary, the Participant or Beneficiary's spouse, or the Participant or Beneficiary's dependent, including nonrefundable deductibles, as well as the cost of prescription drug medication; or e) the need to pay for funeral expenses of a spouse or a dependent of the Participant or Beneficiary (as defined in Internal Revenue Code § 152, and, for taxable years beginning on or after January 1, 2005, without regard to § 152(b)(1), (b)(2) and (d)(1)(B)).
- (3) Distributions due to an unforeseeable emergency must be limited to the amount reasonably necessary to satisfy the emergency need.
- (4) An unforeseeable emergency withdrawal may not be obtained more than once in a six month period.
- (5) If a distribution due to unforeseeable emergency is approved, the participant must cease deferrals into the 457(b) Plan for a period of six months beginning after receipt of the distribution.
- (6) A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship or by cessation of deferrals under the 457(b) Plan.

#### 17.60 Loans

All eligible 457(b) participants may borrow monies from the 457(b) account subject to loan provisions established by the Board and specified in the Plan document.

#### 17.70 Compliance with Internal Revenue Service Code

A member or retiree may only contribute to the plan up to the maximum contribution limits established by the Internal Revenue Service each year. If a person contributes to another 457 plan in the same year as they contribute to the PERA plan, the person is responsible for compliance with the Internal Revenue Service Code regarding maximum allowable contributions.