

## STATEMENT OF BASIS AND PURPOSE

### Amendments and Additions to Rules of the Public Employees' Retirement Association

1. Rule 1.10 A is being added to clarify that the term "member" and the term "retiree" in the Rules shall not include Denver Public Schools ("DPS") members and retirees unless otherwise noted. This change is necessitated by the merger of Denver Public Schools Retirement System ("DPSRS") into PERA, effective January 1, 2010, pursuant to S.B. 09-282.
2. Rule 1.10 B is being added to define the benefits provided under Part 17 of Article 51 of Title 24 as the "DPS benefit structure." This change is necessitated by the merger of Denver Public Schools Retirement System ("DPSRS") into PERA, effective January 1, 2010, pursuant to S.B. 09-282.
3. Rule 1.20 E(5) is being amended to clarify that it shall not apply to the DPS benefit structure because it is inconsistent with provisions of the DPS benefit structure, specifically C.R.S. § 24-51-1737, which was added by S.B. 09-282.
4. Rule 1.20 E(6) is being added to clarify that qualified children under the DPS benefit structure are defined in C.R.S. § 24-51-1737, which was added by S.B. 09-282.
5. Rule 1.20 F(5) is being added to clarify that differential pay, as defined by the Internal Revenue Code, and paid while the member is on military duty, shall be PERA-includable salary. Pursuant to the Heroes Earnings Assistance and Relief Act of 2008, PERA may include differential pay as salary, but is not required to do so. This Rule is necessary to state PERA's decision to treat differential pay as salary.
6. Rule 1.20 G(4) is being added to clarify that PERA's rules relating to Highest Average Salary do not apply to DPS members or retirees. Pursuant to S.B. 09-282, the definition of Highest Average Salary under the DPS benefit structure is different than PERA's definition. The rules relating to highest average salary for PERA therefore do not apply and this clarification is necessary.
7. Rule 2.10 is being amended to add the DPS Division as a PERA-affiliated employer pursuant to C.R.S. § 24-51-201(2)(e), which was amended by S.B. 09-282.
8. Rule 2.15 is being amended to add the Denver Public Schools as an affiliated employer of the DPS Division to the list of employer assignments pursuant to S.B. 09-282.
9. Rule 2.30 B is being amended to correct a grammatical error.
10. Rule 2.30 C is being amended to correct a grammatical error.

11. Rule 2.30 D is being added to specify the requirements for becoming a candidate to the Board to represent members and retirees of the DPS Division pursuant to C.R.S. § 24-51-203, which was amended by S.B. 09-282.
12. Rule 2.30 D is being renumbered as Rule 2.30 E due to the addition of new text in subsection D. This subsection is further being amended to clarify that retirees of the DPS Division are not eligible for election to the retiree seat on the PERA Board, pursuant to C.R.S. § 24-51-203, which was amended by S.B. 09-282.
13. Rule 2.30 E is being renumbered as Rule 2.30 F due to the addition of new text in subsection D.
14. Rule 2.90 C is being amended to reflect the new actuarial investment assumption rate of 8.00 percent per year compounded annually, as adopted by the Board on September 16, 2009, effective January 1, 2010.
15. Rule 2.95 A is being amended to clarify that part 17 of the PERA statutes (the DPS benefit structure) is not subject to legal process. Part 17 was added pursuant to S.B. 09-282, and PERA's anti-alienation statute, C.R.S. § 24-51-212, was also amended by S.B. 09-282 to state that part 17 is not subject to legal process.
16. Rule 2.96 is being added to specify the effect that a homicide will have upon beneficiary designations. This Rule is being added due to several instances in which a PERA member has been allegedly killed by his or her beneficiary.
17. Rule 3.30 C is being added to clarify that a member who refunds and then later reinstates his or her account on or after January 1, 2007, shall have no rights associated with membership prior to January 1, 2007.
18. Rule 3.30 D is being added to clarify that a member, including a DPS member, who refunds and then later reinstates his or her account on or after January 1, 2010 or purchases that time as a purchase of service credit, whichever is applicable, shall have no rights associated with membership prior to January 1, 2010. This addition is necessary due to the merger of the DPSRS plan with PERA pursuant to S.B. 09-282.
19. Rule 4.40 A is being amended to clarify that DPS members who refund their accounts are entitled to the refund amount as specified in C.R.S. § 24-51-1711 or C.R.S. § 24-51-1729(6)(a)(I) , which was added by S.B. 09-282.

20. Rule 4.40 E is being added to clarify that, for administrative purposes, PERA will treat a refund of two member contribution accounts as a refund of one member contribution account. Pursuant to S.B. 09-282, effective January 1, 2010, it will now be possible for a member to have two member contribution accounts and PERA must adopt this rule to deal with the administrative issues involved in refunding both accounts.
21. Rule 4.50 is being amended to delete the reference to C.R.S. § 24-51-507. That statute states that it does not apply to DPS members or retirees, so the deletion of the statute from the rule will allow the rule to be applicable to DPS members and retirees.
22. Rule 5.20 B(1) is being amended to clarify that it does not apply to DPS members and retirees because S.B. 09-282 did not grant those members or retirees such a benefit.
23. Rule 5.20 D is being added to clarify the rules related to service credit purchases as such purchases are impacted by the portability provisions of C.R.S. § 24-51-1747, which was added by S.B. 09-282. This rule specifies that a member who exercises portability between the PERA benefit structure and the DPS benefit structure may not continue to make payments on a service credit purchase agreement in the benefit structure not chosen.
24. Rule 5.25 G is being amended to clarify that it does not apply to DPS members or retirees. This provision relates to service credit purchase applications that are received prior to January 1, 2009. DPS members and retirees do not join PERA until January 1, 2010, pursuant to S.B. 09-282, so this provision is inapplicable to them.
25. Rule 6.80 is being added to adopt language pursuant to the Internal Revenue Code § 415 final regulations, published April 5, 2007. The IRS required that this language be adopted by the time that tax returns would be required in 2010. The language of this rule relates to testing the 415 limits upon retirement as well as on an annual basis when the 415 limit is adjusted for cost of living increases.
26. Rule 7.90 is being added to deal with the merger of DPSRS into PERA effective January 1, 2010. Pursuant to S.B. 09-282, any disability application submitted by a DPS member on or after January 1, 2010 shall be processed in accordance with the current PERA disability plan, set forth in C.R.S. §§ 24-51-701, *et seq.*, and PERA Rule 7. However, any applications received prior to January 1, 2010, must be processed in accordance with the DPSRS Plan Document. DPSRS ceases to exist January 1, 2010, so PERA may need to process applications received prior to January 1, 2010. This rule adds administrative procedures necessary to process any such outstanding disability applications. This rule also allows PERA to review previously granted disability retirement benefits under the DPS Plan.

27. Rule 8.20 C is being added to clarify that only one co-annuitant can be designated under the DPS benefit structure for Options B, P2, or P3. This change is necessary due to the merger of the DPSRS plan into PERA pursuant to S.B. 09-282.
28. Rule 9.40 B is being amended to clarify that a qualified child under the DPS benefit structure must enroll in school within four months of the date of death of the member. This change is necessary due to C.R.S. § 24-51-1737, which was enacted pursuant to S.B. 09-282.
29. Rule 9.50 A is being amended to clarify when qualified children's survivor benefits terminate under both the PERA benefit structure and the DPS benefit structure. This change is necessary due to C.R.S. § 24-51-1737, which was enacted pursuant to S.B. 09-282.
30. Rule 11.15 B is being amended to clarify that it does not apply to DPS disability retirees. This change is necessary because this provision was not part of the DPSRS disability program. Pursuant to S.B. 09-282, PERA will continue to administer the disability benefits that were granted prior to January 1, 2010.
31. Rule 11.20 A is being amended to clarify that it only applies to PERA retirees. Pursuant to S.B. 09-282, the provisions of working after retirement apply differently to DPS retirees and PERA retirees when those retirees suspend their retirement and subsequently return to PERA-covered employment.
32. Rule 11.20 B is being added to specify the treatment of DPS retirees who suspend their retirement benefit and subsequently return to PERA-covered employment. This rule is necessary to clarify provisions of S.B. 09-282.
33. Rule 11.30 is being amended to clarify that it does not apply to DPS disability retirees whose disability application was received prior to January 1, 2010. Pursuant to S.B. 09-282, disability applications received by DPSRS prior to January 1, 2010, are to be administered pursuant to the provisions of the DPSRS Plan. That provisions of that plan do not include the language contained in this rule, so it is therefore inapplicable to those individuals who submit their applications prior to January 1, 2010.
34. Rule 12.10 A is being amended to clarify that a surviving spouse of a DPS retiree who elected a single life annuity is eligible to enroll in the PERA Health Care Program even though the spouse is not receiving a retirement benefit. This rule was further amended to define "single life annuity." This change is necessary due to provisions of C.R.S. § 24-51-1204(1)(b), which was amended by S.B. 09-282.

35. Rule 14.65 is being amended to remove the references to “member” and “retiree” and replace them with references to “employee” due to the expanded eligibility for the Voluntary Investment Program pursuant to S.B. 09-66.
36. Rule 15.60 is being added to state that a separate DRO agreement must be submitted if the member has a member contribution account under both the PERA benefit structure and the DPS benefit structure. Due to the merger of DPSRS with PERA pursuant to S.B. 09-282, it is now possible for a member to have two member contribution accounts, so the DRO process must be modified accordingly.
37. Rule 16.20 E is being added to clarify that any service performed for DPS prior to the merger date of January 1, 2010 shall count as service for purposes of the 12-month break in service as it relates to the defined contribution plan. This addition is to reiterate the provisions of C.R.S. § 24-51-1747, which was enacted pursuant to S.B. 09-282.
38. Rule 16.30 D is being amended to clarify that a member who elects to transfer his or her member contribution account to the PERA defined benefit plan in accordance with C.R.S. §§ 24-51-1503(1) or 1506(4) must transfer both member contribution accounts if he or she has two such accounts. Due to the merger of DPSRS with PERA pursuant to S.B. 09-282, it will now be possible for a member to have multiple member contribution accounts in the defined benefit plan, and this Rule must be amended to accommodate that possibility.
39. Rule 16.30 H is being added to clarify that an individual with a DPS inactive account who chooses to change from the PERA defined contribution plan to the PERA defined benefit plan must make a one-time irrevocable choice between the DPS benefit structure and the PERA benefit structure if the one-time irrevocable choice has not yet been exercised. This addition is necessitated by C.R.S. § 24-51-1747, which was enacted pursuant to S.B. 09-282.
40. Rule 18.10 is being added to deal with the large volume of data that will be transferred from DPSRS to PERA to effectuate the merger pursuant to S.B. 09-282. This rule specifies that the data, as certified by DPSRS, will have a presumption of accuracy unless the DPS member or retiree can demonstrate otherwise.
41. Rule 18.20 is being added to make the PERA benefit structure the default plan choice where a one-time irrevocable choice between the PERA benefit structure and the DPS benefit structure is not made and service credit is the same in both benefit structures and both benefit structures have had the most recent contributions at the same time.
42. Rule 18.30 is being added to clarify the actuarial assumptions used when a DPS retiree receiving an Option B, C, or E benefit dies, and upon the date of death, the co-annuitant and the contingent beneficiary are also dead. In this scenario, the estate is owed a

lump sum payment, and these actuarial assumptions are used to commute the future monthly benefits to a present value lump sum amount that can be paid to the estate. This change is necessary due to the merger of DPSRS with PERA pursuant to S.B. 09-282.

# Colorado

# PERA

# Rules

| Effective January 1, ~~2009~~2010

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## **Rule 1: Definitions**

Rule 1 defines certain terms used in the Rules, and further defines certain terms defined in Article 51, Title 24, C.R.S. For the purposes of Rule 1, except Rule 1.20G, which shall not apply to DPS members or retirees, the term "member" shall include DPS members and the term "retiree" shall include DPS retirees.

Unless otherwise stated, the terms and phrases contained in these rules shall have the same meaning as specified in Article 51 of Title 24, C.R.S.

### **1.10 Denver Public Schools**

- A. Unless otherwise indicated in the Rules, the term "member" shall not include a DPS member as that term is defined in Section 24-51-101(18.3) and the term "retiree" shall not include a DPS retiree as that term is defined in Section 24-51-101(18.7).
- B. The benefits provided under Part 17 of Article 51 of Title 24, C.R.S., shall herein be referred to as the DPS benefit structure.

### **1.20 Terms Used in Rules**

#### **E. Qualified Children**

- (1) Natural children means those biological children of a member who are conceived prior to the date of death of the member and are born within the normal gestation period after the date of the death of the member.
- (2) Adopted children means those for whom a petition for adoption was filed in court prior to the date of the death of the member and such petition is diligently pursued to the entry of the final decree of adoption.
- (3) Qualified children shall not include natural or adopted children of a member or inactive member whose parental relationship to the child has been terminated or determined by a court not to exist prior to the death of the member or inactive member.
- (4) Qualified children shall not include natural children of a member or inactive member whose parental relationship to the child is determined by a court after the death of the member or inactive member.
- (5) Qualified children shall include natural or adopted children of a member or inactive member who are legally adopted by another parent after the death of the member or inactive member. This subsection (5) shall not apply to qualified children eligible for benefits pursuant to the provisions of Section 24-51-1737, C.R.S.
- (6) For purposes of the DPS benefit structure, qualified children means those children who are eligible to receive survivor benefits pursuant to Section 24-51-1737, C.R.S.

#### **F. Salary**

- (5) Payments made by an employer for differential pay, as defined in section 414(u)(12) of the Internal Revenue Code of 1986, as amended, shall be treated as PERA salary pursuant to 24-51-101(42), C.R.S.

G. Highest Average Salary

(4) This Rule 1.20G shall not apply to DPS members or retirees.

**Rule 2: Administration**

Rule 2 assigns affiliated employers to one of the ~~four~~ 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, ~~or~~ the Judicial Division, or the DPS Division.

**2.15 Employer Assignments**

E. Denver Public Schools Division

Denver Public School District No. 1

**2.30 Candidacy for Election to the Board**

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 ~~less~~ 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 ~~less~~ 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.

DE. For candidacy as a retiree, the candidate must submit a petition signed by no ~~less~~ 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.

EF. 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.

## 2.90 Actuarial Assumptions

### C. Actuarial Investment Assumption Rate

The actuarial investment assumption rate is 8.508.00 percent per year compounded annually, net after administrative expenses.

## 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, ~~and 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.

## 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.

### **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.

#### **3.30 Determination of Member Status**

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.

### **Rule 4: Contributions**

Rule 4 requires the Association to prescribe the form in which the Contribution Report is submitted, describes procedures for correction of reporting errors, determines the calculation of interest due if either is delinquent, contains provisions regarding payment of unpaid contributions, describes the use of contributions for benefit payments and describes procedures for refunds. Unless otherwise indicated, for the purposes of Rule 4, except for Rule 4.25, the term "member" shall include DPS members and the term "retiree" shall include DPS retirees.

#### 4.40 Refunds

- A. Any member who terminates membership is entitled to a refund of the member contribution account and the amount of matching employer contributions upon request, except that a retiree who returns to membership and earns one year of service credit will have the benefit recalculated instead of receiving a refund. The amount available to DPS members in the event of a refund shall be governed by Section 24-51-1711 or 24-51-1729(6)(a)(I), C.R.S.
- E. For purposes of Section 24-51-1747, C.R.S., if a member requests a refund of two member contribution accounts, PERA shall combine the accounts and treat the refund as a refund of one member contribution account for administrative purposes.

#### 4.50 Contributions Based on Uniformed Service

- A. A member 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.*

#### **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.

#### 5.20 Purchased Service Credit

##### 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.

##### 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.

#### 5.25 Service Credit Purchase Cost and Application

- 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 C. prior to January 1, 2009. This paragraph (G) does not apply to DPS members or retirees.

## **Rule 6: Service Retirement**

Rule 6 defines service retirement eligibility, provides for cancellation of retirement applications, further defines effective date of retirement, identifies the transition from member to retiree, describes benefits payable upon the death of an applicant and describes requirements for direct payments in lieu of contributions. For the purposes of Rule 6, except for Rule 6.50 and Rule 6.60, the term "member" shall include DPS members and the term "retiree" shall include DPS retirees.

### **6.80 Maximum Limit Under Federal Law**

The cost of living adjustments under section 415(d) of the Internal Revenue Code of 1986, as amended ("the Code"), to the limits under section 415(b)(1)(A) of the Code are hereby incorporated by reference and shall continue to apply after the member's termination of membership, as provided in Treasury Regulations section 1.415(a)-1(d)(3)(v). Pursuant to Treasury Regulations section 1.415(b)-1(c)(5), in no event shall the amount payable to a member in any limitation year under the form of benefit elected (taking into account annual cost-of-living increases in Part 10 of Article 51 of Title 24) be greater than the Code section 415(b)(1)(A) limit applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the Code and Treasury Regulations section 1.415(d)-1.

## **Rule 7: Disability Benefits**

For the purposes of Rule 7, and subject to Rule 7.90, the term "member" shall include DPS members and the term "retiree" shall include DPS retirees.

### **7.90 Denver Public Schools**

- A. Any disability application submitted to the Association on or after January 1, 2010, by a DPS member shall be processed in accordance with the provisions of Section 24-51-701, et seq., C.R.S. and this Rule 7.
- B. A disability application submitted to the Denver Public Schools Retirement System prior to January 1, 2010, shall be processed in accordance with Section 24-51-1701, et seq., C.R.S. and the following rules:
  - (1) PERA shall contract with a medical advisor to assess and provide a recommendation regarding each disability application. Applicants may be required to undergo medical or psychological examination by the medical advisor or by physicians selected by the medical advisor.
  - (2) Determination of Disability
    - (a) The medical advisor shall make a recommendation to PERA staff regarding the disability status of the applicant. Upon review of the application and the medical advisor's recommendation, PERA staff shall make a determination regarding the disability status of the applicant and shall grant or deny such application. PERA staff shall issue a written determination to the applicant via certified mail.

(b) An applicant may request that the PERA Chief Benefits Officer review the staff determination. A written request for review must be received by the Association within 30 days after the date on which the staff determination is mailed. The Chief Benefits Officer shall issue a written determination, which shall be sent to the applicant via certified mail.

(c) An applicant may request an administrative hearing before the Executive Director by submitting a written request, including specifics, which must be received by the Association within 30 days after the date on which the determination by the Chief Benefits Officer is mailed. The hearing shall follow the format set forth in Rule 2.20(C) through (E). The Executive Director's decision shall constitute final administrative action appealable under Colorado Rule of Civil Procedure 106(a)(4).

### C. Review of Previously Granted Disability Retirement

(1) At any time, upon reasonable notice to any retired employee of DPS previously granted disability retirement, provided the benefits for such retiree have not yet been recalculated pursuant to sections 70.2031 or 90.2031 of the DPS Plan, the Association shall have the right to require any such retiree to submit to re-examination to determine whether the retired employee remains permanently incapacitated from performing such employee's former usual employment with DPS. The re-examination shall be performed by a disability program administrator hired by the Association, who shall determine whether the disabling condition continues. The disability program administrator may require any such retiree to answer questions relative to current physical or mental condition and to submit such data in connection therewith as the disability program administrator may deem pertinent and helpful in determining whether the retiree remains incapacitated from performing such employee's former usual employment with DPS.

(2) If any retired employee shall refuse to submit to a required examination or to submit to the disability program administrator, upon request, other pertinent data concerning the retired employee's current physical or mental condition, or if the doctor selected by the retired employee shall fail or refuse to take necessary action to enable the contemplated procedure to go forward with reasonable promptness, the disability program administrator may, without further notification to the retired employee, proceed to review the retirement granted to such employee upon such information as may be secured by the disability program administrator. The Association shall have the right to withhold benefit checks until such required response has been received.

(3) If the disability program administrator determines that the retired employee does not remain permanently incapacitated from performing such employee's former usual employment with DPS, the disability program administrator shall provide the retiree with a summary of the reasons for the finding. The retiree shall be given 15 days to appeal the decision of the disability program administrator. The determination made by the disability program administrator shall be appealable only to the disability program administrator, not to the Association. Once 15 days have passed without appeal, or once a final determination upholding the disability program administrator's determination has been made by the disability program administrator, the Association shall terminate the retiree's benefit.

(4) No person over the age of 65 in any given year shall be subject to re-examination.

#### D. Review and Recalculation of Disability Benefits

(1) Pursuant to the DPS Plan, qualification of time spent since the effective date of disability retirement as accredited service requires that the disability retiree submit a copy of his or her federal income tax form for the calendar year involved. All such documentation must be submitted to the Association no later than six months following the end of such year.

(2) The DPS Plan provides for the addition of accredited service earned at the effective date of disability retirement to 65.

(3) The Association will notify, in writing, those disability retirees eligible to receive additional accredited service. Such notice will be sent annually to those persons eligible to comply and will advise them of the requirements necessary at least six months prior to the time limits for compliance set forth in Rule 7.90 D(1).

#### **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.

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

##### **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.

## **Rule 9: Survivor Benefits**

Rule 9 describes the requirements for designation of named beneficiaries, defines job incurred death, specifies the date on which survivor benefits become payable and the date on which survivor benefits terminate. For the purposes of Rule 9, the term "member" shall include DPS members and the term "retiree" shall include DPS retirees.

### **9.40 Commencement of Survivor Benefits**

Survivor benefits shall become payable on the first day of a month.

#### **B. Benefits Payable to Child Upon Enrollment in School**

Survivor benefits which become payable to a qualified child upon full-time enrollment in school within six months of the date of the death of the member, or, for the DPS benefit structure, full-time enrollment in school within four months of the date of death of the member, shall be payable on the first day of the month in which full-time enrollment begins.

### **9.50 Termination of Benefits**

Survivor benefits shall be terminated on the date the survivor dies or is no longer qualified to receive such benefits.

#### **A. Qualified Children's Benefits**

- (1) Under the PERA benefit structure, Qqualified children's survivor benefits shall terminate on the date of marriage of the child, on the date the Board finds that the child is no longer incapacitated, on the last day of the school term in which the child's full-time enrollment ceases, or, for disabled children age 23 or older, on the first day of the month in which the surviving spouse becomes eligible for a benefit.
- (2) Under the DPS benefit structure, qualified children's survivor benefits shall terminate on the date of marriage of the child, on the date the Board finds that the child is no longer incapacitated, or on the last day of the school term in which the child's full-time enrollment ceases. The benefit shall also terminate on the date that an otherwise eligible child is adopted by anyone other than the unremarried surviving spouse of the member, and in such a case eligibility of the child shall be terminated by a subsequent remarriage of said surviving spouse.
- (3) Benefits shall continue during annual vacation months for which the child is not enrolled in school if the child certifies within 30 days after the end of the prior term that they are enrolled for the following term. If the child does not certify within 30 days after the end of the prior term that he or she is enrolled for the following term, that child's benefits will be suspended for those vacation months. If that child later certifies that he or she is or was enrolled in school for the following term, the Association will resume payment of benefits and shall make retroactive payments to the child for the months for which the benefits were suspended due to failure to provide the summer certification. In the case of multiple qualified children, a child who is entitled to retroactive benefits pursuant to this Rule 9.50 A. shall not be paid benefits in an amount that would cause the total amount of benefits paid to the qualified children to exceed the percentage of highest average salary as provided in 24-51-908(4) or 24-51-1738 through 1740, C.R.S. The Association shall not pay benefits in excess of the amount it must pay pursuant to the statutory provisions of the Association.

## **Rule 10: Increases to Benefits**

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

## **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.

### **11.15 Reduction/Offset in Benefits**

- 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.

### **11.20 Termination of Employment After Retirement**

#### **A. PERA 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 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.

##### **B-(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 increase in the Highest Average Salary.

#### **B. 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 24-51-1711, C.R.S., 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.

**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.

**Rule 12: Health Care Program**

Rule 12 describes requirements for enrollment and payment of premiums for the Health Care Program. For the purposes of Rule 12, the term "member" shall include DPS members and the term "retiree" shall include DPS retirees.

**12.10 Enrollment**

Enrollment in the Health Care Program is subject to receipt by the Association of the prescribed enrollment form(s).

A. Enrollment When First Eligible

(2) Enrollment of Surviving Spouses Not Receiving Benefits

(a) The surviving spouse of a retiree who elected Option 1, or a DPS retiree who elected a single life annuity, must notify the Association in writing within 30 days after the date of death of the retiree in order to continue the coverage which was in effect at the death of the retiree.

(c) For purposes of Section 24-51-1204(1)(b), C.R.S., a single life annuity under the DPS benefit structure shall include Option A, Option B, and Option D.

**Rule 13: Life Insurance Program**

Rule 13 describes conditions for enrollment for group life insurance coverage, provides for direct payment of premiums, and specifies requirements for designation of beneficiaries. For the purposes of Rule 13, the term "member" shall include DPS members and the term "retiree" shall include DPS retirees.

#### **Rule 14: Voluntary Investment Program**

Rule 14 establishes requirements for enrollment, changes to participation, suspension and resumption of contributions, submission of monthly contribution report and withdrawal. The Voluntary Investment Program is a 401(k) plan, known as PERA's 401(k) Plan, established pursuant to Section 401(k) of the "Internal Revenue Code of 1986," as amended. For the purposes of Rule 14, the term "member" shall include DPS members and the term "retiree" shall include DPS retirees.

#### **14.65 Compliance with Internal Revenue Service Code**

A member or retiree participant 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 401(k) 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.

#### **Rule 15: Domestic Relations Orders (DROs)**

Rule 15 requires that the standardized form be used by the parties to a domestic relations order, as well as by the court, and includes other rules for administration of domestic relations orders.

For the purposes of Rule 15, the term "member" shall include DPS members and the term "retiree" shall include DPS retirees.

#### **15.60 DPS Benefit Structure**

If a member has a member contribution account under both the PERA benefit structure and the DPS benefit structure, the member shall submit a separate DRO agreement with respect to both member contribution accounts. The standardized forms provided by PERA must be used by the parties.

#### **Rule 16: Defined Contribution Plan**

#### **16.20 Initial Election Period**

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**

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.

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.

#### **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.

#### **Rule 18: DPS Members and DPS Retirees**

Rule 18 describes the rights and benefits of participants in the DPS plan, which was merged with the PERA system effective January 1, 2010, pursuant to Section 24-51-1701, et seq., C.R.S. Rule 18 also details the rules and requirements for portability between the Denver Public Schools Division and the other four divisions within the Association.

#### **18.10 Data Certification**

The Denver Public Schools Retirement System (DPSRS) will certify all data of the accounts of DPS members and retirees as of December 31, 2009. The certified data will be used by PERA and will have a presumption of accuracy unless the DPS member or retiree is able to demonstrate otherwise.

#### **18.20 Plan Selection Due to Failure to Make a One-Time Irrevocable Choice**

For purposes of Section 24-51-1747(1)(f), C.R.S. regarding one-time irrevocable choice, if the individual fails to make a choice and has service credit in both benefit structures and the amount of service credit in both structures is equal, and both structures have had the most recent contributions at the same time, then the individual shall be enrolled in the PERA benefit structure.

#### **18.30 Options B, C and E - Commutation Calculations**

Pursuant to Sections 24-51-1718, 1719, and 1721, C.R.S. under Options B, C and E, respectively, where payments become due to the estate of a deceased contingent beneficiary, or to an estate as designated or contingent beneficiary, the payments remaining due shall be commuted. Where payment is due to a trust which is the functional substitute, in the particular case, for a testamentary disposition, the Executive Director may, under appropriate conditions, direct payment to the trustee of such trust. Where the Annual Retirement Allowance Adjustment applicable to such benefit is 3.25%, that factor shall be used in making the commutation calculation. Where, however, the applicable adjustment is the lesser of 3% or the actual increase in the national consumer price index for urban wage earners and clerical workers (the "Index"), as calculated by the United States Department of Labor, a factor derived as follows shall be used in making the commutation calculation. Such factor shall be the average of the

changes in the Index for the five calendar years preceding the date of death of such contingent beneficiary, or of the death of the Annuitant or Co-Annuitant resulting in a payment due to an estate as contingent beneficiary, as the case may be, provided that if the change for any such year (i) is less than zero, then zero shall be substituted or (ii) is more than 3%, then 3% shall be substituted. If the death occurs before the Index figure is available for the calendar year prior to the particular death, then the Executive Director may use a period of the most recent 60 months then available, divided into five 12-month periods beginning with the earliest month of such 60-month period. In making the commutation calculation, the annual adjustment factor derived as just provided shall be incorporated into an algorithm with the other pertinent factors after consultation with the Association's actuary.