

STATEMENT OF BASIS AND PURPOSE

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

1. Rule 1.20 F(6) is being added to clarify that tips received by a member for services rendered are considered PERA includable salary. This change is necessitated by the fact that C.R.S. § 24-51-101(42), defining items that are and are not PERA salary, does not address tips.
2. Rule 2.15 is being modified to reflect a name change of Mesa State College to Colorado Mesa University.
3. The headings in Rule 2.20 are being amended to clarify what steps of the administrative review process are being outlined in each paragraph. No changes are being made to the substance of this Rule.
4. Rule 3.40 is being added to clarify what individuals are eligible for exemption from PERA membership pursuant to C.R.S. § 24-51-308 when there is not a city manager. This rule is necessitated by recent actions taken by PERA employers to eliminate their city manager roles and have individuals who would have otherwise reported to the city manager (and thus been eligible for PERA exemption), report to the mayor or a different governing body.
5. The existing paragraphs in Rule 4.60 are being renumbered as Rule 4.60 A and Rule 4.60 B.
6. Rule 4.60 C is being added to clarify who is responsible for payment of interest to PERA for the working retiree contribution when an independent contractor fails to report compensation as required by PERA Rule 11.12 D(2). This rule is necessitated by changes made to PERA under Senate Bill 10-001, effective January 1, 2011, under which a working retiree contribution is due to the Association for certain individuals working after retirement for a PERA employer.
7. Rule 5.20 E is being added to clarify the ability for an individual who has substantiated outside service under the DPS benefit structure to purchase that same service under the PERA benefit structure. This rule is necessitated by the merger of PERA and DPSRS under Senate Bill 09-282, effective January 1, 2010.
8. Rule 11.12 D(3) is being amended to clarify that the interest due under that section applies to both the employer contribution and the working retiree contribution.
9. Rule 18.30 is being amended to address changes made to the cost of living adjustment in Senate Bill 10-001, effective February 23, 2010. This rule addresses payments that may be due to contingent beneficiaries under the DPS benefit structure, and contains a

formula that utilizes the applicable cost of living adjustment. Therefore, it is necessary to update the rule with the current cost of living adjustment provisions.

Colorado PERA Rules

Effective January 1, ~~2011~~2012

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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 who are eligible to retire as of January 1, 2011, 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.

1.20 Terms Used in Rules

Terms used in the Rules shall have the meaning specified:

F. Salary

(1) Accrued Leave Payments

- (a) Payments by an employer in satisfaction of amounts owed for accrued but unused leave, other than sick leave shall be treated as PERA salary pursuant to 24-51-101(42), C.R.S., if the following criteria are met:
 - The payment by the employer of the accrued leave is made in a lump sum at the termination of the member's employment or in periodic payments after severing employment not at the election of the member. Periodic payments must be made over consecutive pay periods and for a period not to exceed the amount of service credit awarded in association with the payment. In the event that periodic payments are made, a single benefit adjustment will be made at the end of the payment period;
 - The accrued leave payments are paid at a rate not to exceed the member's most recent rate of pay; and
 - The payment is for accrued leave earned by the member pursuant to an established employer policy or employment contract and not as a result of a retroactive grant or an award by the employer.
- (b) If each of the above criteria are met, consistent with longstanding PERA practice, the accrued leave payment will be treated as salary in calculating service credit and highest average salary for retirement by applying the payment over the number of months as determined by the member's most recent monthly rate of pay. Additional service credit for these months will be included in the retirement benefit calculation. These months may also be used in the highest average salary calculation.
- (c) Salary includes an annual lump sum payment of accrued leave, other than sick, paid because the individual has accrued in excess of the maximum accumulation allowed by the employer's established leave policy.

(2) Fringe Benefits

Salary does not include employer provided fringe benefits converted to cash payments in lieu of employer payment for the fringe benefits.

(3) Performance or Merit Payments

Performance or merit payments are payments made pursuant to a written plan or policy which are in addition to regular salary or which replace regular salary increases in recognition of sustained employee performance over the evaluation period. In order for performance or merit

payments to be treated as PERA salary pursuant to 24-51-101(42), C.R.S., the Association must have determined that the following criteria have been met:

- The payment must be for performance and is made pursuant to a written plan adopted by the employer which identifies which employees are covered by the plan;
 - The written plan specifies objective criteria under which employees may participate in the plan and receive payments pursuant to the plan; and
 - The written plan specifies the payments to be made under the plan or the method for determining the payments made under the plan.
- (4) Contributions Under Internal Revenue Code Section 125 and 132 Salary shall not include amounts excluded from gross income under a cafeteria plan defined in Internal Revenue Code Section 125, or under a qualified transportation fringe benefit program defined in Internal Revenue Code Section 132(f)(4), so long as such deductions are made in equal periodic deductions through the year.
- (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.

(6) Tips

Tips received by a member for services rendered in connection with his or her employment by an employer shall be salary pursuant to section 24-51-101(42), C.R.S.

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.

2.15 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
~~Mesa State College~~
Metropolitan State College 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

2.20 Administrative Review

A. Request for ~~Administrative Hearing~~ 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 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 administrative hearing is filed pursuant to Rule 2.20B. 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. 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).

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.

3.40 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 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.

4.60 Working Retiree Contributions for Independent Contractors

A. When the working retiree contribution is due on an independent contractor, the employer must notify the Association and the Association shall offset the retirement benefit of the retiree in accordance with Rule 11.12F.

B. Subject to subparagraph C. below. ~~If~~ if the employer fails to notify the Association, and therefore the Association fails to collect the working retiree contribution via an offset of the retiree’s benefits, the employer shall be responsible for the interest due on the contribution amount from the due date to the date the contributions are received.

C. If the retiree independent contractor fails to report the compensation as required under PERA Rule 11.12 D.(2), the retiree shall be responsible for the interest on the working retiree contribution at PERA’s actuarial investment assumption rate.

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

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.

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.

11.12 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 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 and working 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 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.
- 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.

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.

18.30 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 32% 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 annual increases paid 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 32%, then 32% 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.