

RULE 1: DEFINITIONS

1.20 Terms Used in Rules

F. Salary

(1) Accrued Leave Payments

(a) Payments by an employer in satisfaction of amounts owed for accrued but unused 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, not at the election of the member, paid because the individual has accrued in excess of the maximum accumulation allowed by the employer's established leave policy.

~~(e)~~(d) Notwithstanding anything herein to the contrary, any payout of leave made for a year the member has reached any maximum limit imposed under federal income tax law, including the limitations set

forth in section 401(a)(17) of the federal Internal Revenue Code of 1986, as amended, shall not be included in the member's salary or service credit for the year paid or any future year.

(2) Cash Payments in lieu of Fringe Benefits

Effective with the employer's fiscal year beginning on or after January 1, 2018, cash payments in lieu of fringe benefits paid by an employer will be treated as PERA salary pursuant to section 24-51-101(42), C.R.S., if the Association determines that the following criteria have been met:

- The payment is in lieu of an otherwise non-monetary fringe benefit and is available to all employees in a particular class without regard to length of service; and
- The payment amount does not exceed market value of the fringe benefit; and
- The payment is in no way designed to manipulate Highest Average Salary.

In addition to the above criteria, the payments must be made in equal periodic payments or must be spread over the period for which the fringe benefit would otherwise be available.

(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.

All payments meeting the above criteria that are paid to DPS members who were eligible to retire as of January 1, 2011, shall be considered earned in the months for which the performance payment was based. All

other payments meeting the above criteria shall be considered earned in the month in which the performance payment is made.

(4) Contributions Under Internal Revenue Code Section 125 and 132

(a) For members who were members, inactive members, or retirees on June 30, 2019, 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.

(b) For members who were not members, inactive members, or retirees on June 30, 2019, salary shall 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).

(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.

(7) One-time payments

PERA employers pay one-time, non-base building payments to their employees as compensation for services rendered. Under section 24-51-101(42), C.R.S., payments made to employees that are actually for services rendered can be PERA salary, but honorariums, cash awards, bonuses, and other payments enumerated in section 24-51-101(42)(a)(II) and (b)(II), C.R.S., are not PERA salary. This Rule sets forth the criteria that must be met in order for one-time payments to be PERA salary. One-time, non-performance and non-merit based payments paid by an employer shall be treated as PERA salary pursuant to section 24-51-101(42), C.R.S. if the Association determines that the following criteria have been met:

- The payment is a flat dollar amount or flat percentage to all employees in a particular class without regard to length of service. The class of employees must be a class that the employer regularly

uses for purposes of setting base compensation; and

- The payment was pre-approved by the employer prior to the fiscal/ academic year (the amount of the payment does not have to be approved at that time); and
- The payment is in no way designed to manipulate Highest Average Salary; and
- The employer provides the Association with documentation demonstrating its intent that the payment is a salary payment rather than a bonus.

If the Association determines that the above criteria have been met, then the payment shall be considered earned in the month in which the payment is made.

G. Highest Average Salary

- (1) In calculating Highest Average Salary, the Association shall sort the three or five periods of twelve consecutive months of service credit in chronological order.
- (2) For a member who was a member, inactive member, or retiree on December 31, 2006, and who has an effective date of retirement on or after January 1, 2009 and has more than 36 months of earned service credit and less than 48 months of earned service credit, the Highest Average Salary shall be calculated using the highest annual salaries associated with three periods of twelve consecutive months of service credit and no annual base salary shall be used.
- (3) For a member who was not a member, inactive member or retiree on December 31, 2006, and who has five years of service credit on December 31, 2019, or a member of the judicial division who does not have five years of service credit on December 31, 2019, or a member of the judicial division who was not a member, inactive member, or retiree on December 31, 2019, and who has more than 36 months of earned service credit and less than 48 months of earned service credit, the Highest Average Salary shall be calculated using the highest annual salaries associated with three periods of twelve consecutive months of service credit and no annual base salary shall be used.
- (4) For a member or inactive member who does not have five years of service credit on December 31, 2019, or a member who was not a member, inactive member, or retiree on December 31, 2019, who has more than 60 months of earned service credit and less than 72 months of earned service credit, the Highest Average Salary shall be calculated using the highest annual salaries associated with five periods of twelve

consecutive months of service credit and no annual base salary shall be used.

- (5) For purposes of section 24-51-101(25), C.R.S., and this Rule 1.20G, the term “highest annual salaries” shall mean the salaries associated with four or six periods of twelve consecutive months of service credit that when summed together achieve the highest cumulative value. The salaries associated with each individual twelve month period of service credit shall not be considered separately from the four- or six-year cumulative total for purposes of determining which periods yield the “highest annual salaries.”
- (6) This Rule 1.20G shall not apply to DPS members who are eligible to retire as of January 1, 2011.

RULE 2: ADMINISTRATION

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 University
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 Colorado University

- (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:

- CollegInvest
- 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
Bennett School District 29J
Brighton School District 27J
Mapleton School District 1
Strasburg School District 31J
Westminster Public Schools

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

Kiowa County 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
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
[Colorado Digital Board of Cooperative Educational Services](#)
[Colorado River 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
Uncompaghre Board of Cooperative Educational Services
Ute Pass Board of Cooperative Educational 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 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
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
[North Front Range Water Quality Planning Association](#)
Northeast Colorado Health Department
Northeastern Colorado Association of Local Governments
Park Center Water District
Pine Drive Water District
Pikes Peak Regional Building Department
Plum Creek Water Reclamation Authority
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 Water Treatment Authority
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.

(1) 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 Appeals

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 the deadline for a written request for

executive director initial decision or administrative hearing is due 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. After thirty days from the date the Panel's decision is mailed, 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).

RULE 3: MEMBERSHIP

~~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.~~

RULE 4: CONTRIBUTIONS

4.10 Contribution Report

The Association shall prescribe the form in which the Contribution Report shall be submitted.

A. **Delinquent Reports or Contributions**

Failure by an employer to submit the Contribution Report or contributions, including working retiree contributions for employees who are also retirees of the association, as required, shall make the employer responsible for payment of the contribution amount plus interest computed on a daily rate on the contribution amount from the due date to the day that both the required report and contributions are received. However, the Association, in its sole discretion, may waive the interest so computed if only the report is delinquent and the delinquency is non-recurring. Any resulting expenses incurred by the Association (including charges or expenses imposed by third parties) for delinquency or inadequate funding by the employer shall be paid by the employer. The Association, in its sole discretion, may waive such expenses.

B. Member contributions and service credit shall be assigned to the month that includes the last date in the payroll period.

4.70 State Trooper Contribution Rates

Members who meet the definition of "state trooper" pursuant to 24-51-101(46), C.R.S., and employers of those members, shall pay the member and employer contribution rates for state troopers set forth in 24-51-401, C.R.S., regardless of the division the employer is assigned.

RULE 7: DISABILITY BENEFITS

7.12 Determination and Appeal

- A. The Association shall determine eligibility to apply for disability benefits as defined in 24-51-701(1) and (3), C.R.S., salary as defined in 24-51-101(42), C.R.S., service credit as defined in 24-51-101(43), C.R.S., the amount payable as disability retirement benefits, the provisions pertaining to the earned income reduction in 24-51-707, C.R.S., and the appropriate division in 24-51-708, C.R.S. Any appeal of the determinations made by the Association shall be to the Association in accordance with Rule 2.20.
- B. The disability program administrator shall determine all disability matters other than those specified in Rule 7.12(A), including, but not limited to, whether the applicant satisfies the medical standards in Rules 7.45 and 7.70. Matters determined by the disability program administrator shall be appealable only to the disability program administrator, not to the Association. The appeal process used by the disability program administrator shall include two levels: the first appeal must be received by the disability program administrator within 180 days of the date the determination is mailed; the second appeal must be received by the disability program administrator within 90 days of the date the first appeal decision is mailed. ~~The second level appeal will include as one level~~, if requested by the applicant, review of a medical determination by a panel of independent experts, qualified based on their expertise and experience and not involved in the original decision. The appeal process also shall comply with applicable statutory and regulatory requirements.

7.75 Effective Date of Disability Retirement

- A. Disability retirement shall be effective on the first day of a month. The effective date of disability retirement shall be no earlier than the first day of the month following termination of employment as defined in 24-51-101(49), C.R.S., without consideration of any lump-sum payment for accumulated annual leave for which service credit is earned or of any extension of service credit for members employed on an academic year basis.
- B. An applicant must terminate employment with all PERA-covered employers no later than the last day of the month following the determination that the applicant qualifies for disability retirement. If the applicant fails to terminate by that date, the application shall be cancelled.
- C. If an applicant is changing from short-term disability to disability retirement, the effective date for the disability retirement shall be the later of (i) the date specified in Rule 7.75(A) or (ii) the first day of the month in which the applicant's short-term disability ends. For the purposes of determining projected service credit pursuant to

24-51-704, C.R.S., the applicant shall receive service credit for any month the applicant received short-term disability pursuant to 24-51-702(1)(a), C.R.S., up to a maximum of one month of service credit per month or the amount to which the member would be entitled pursuant to Rule 5.10. If the applicant receives any short-term disability after the effective date for disability retirement, the amount of short-term disability paid for that month shall reduce the amount paid as disability retirement for the same month.

- D. If the applicant dies prior to the effective date of disability retirement or dies prior to a determination that the applicant qualifies for disability retirement, the Association shall not pay disability retirement, but shall pay survivor benefits or a single payment as specified in 24-51-905, C.R.S.

RULE 8: BENEFIT OPTIONS

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 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.~~
- D. For purposes of Rules 8.30B. and C., PERA must receive all supporting documentation within 90 days of the date of the marriage or civil union. If the election is not made within 60 days and the supporting documentation is not received by PERA within 90 days of the date of the marriage or civil union, the retiree may not elect option 2 or 3 and designate his or her new spouse as cobeneficiary.

RULE 10: INCREASE IN BENEFITS

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) or 24-51-1001(3.5), C.R.S., as applicable. If upon the death of the retiree, the retiree had not met the requirements in 24-51-1001(3)(b) or 24-51-1001(3.5), C.R.S., as applicable, the cobeneficiary will be eligible to receive an annual increase when the retiree would have met the requirements in 24-51-1001(3)(b) or 24-51-1001(3.5), C.R.S., as applicable.
- 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) or 24-51-1001(1)(b.5), C.R.S., as applicable. If upon the death of the retiree, the retiree had not met the requirements in Section 24-51-1001(1)(b) or 24-51-1001(1)(b.5), C.R.S., as applicable, 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) or 24-51-1001(1)(b.5), C.R.S., as applicable. This Rule only applies to accounts for which the effective date of retirement is on or after January 1, 2011.

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 in the position eligible for the Defined Contribution Plan 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.F. 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.G. 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~~H. 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~~I. For purposes of Rule 16.10 ~~H~~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~~J. 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~~K. 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.

16.30 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~~G.
- 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 ~~H~~H.
- 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 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.

16.60 Contributions

- A. The employer shall deliver all Defined Contribution Plan contributions, along with the required report, ~~to the service provider in the manner~~ 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. Any resulting expenses incurred by the Plan Administrator (including charges or expenses imposed by third parties) for delinquency or inadequate funding by the employer shall be paid by the employer. The Plan Administrator, in its sole discretion, may waive such

expenses.

- 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.

16.95 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 or Local Government 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. 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.
- L. In the event there is a conflict between these Rules and the Plan Document, these Rules shall govern.

