

# **PUBLIC EMPLOYEES' RETIREMENT BOARD**

## **Public Employees' Retirement Association**

### **COLORADO PERA RULES**

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

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##### **Authority**

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

##### **Scope and Purpose**

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

1. Rule 1.20F is being amended to treat cash payments in lieu of fringe benefits paid by employers to be treated as PERA salary pursuant to section 24-51-101(42), C.R.S.
2. Rule 2.15 is being amended to reflect name changes and affiliations of PERA employers.
3. Rule 2.20F is being amended to clarify the deadline for a party to request consolidation of administrative appeals and to accurately retitle subsection F of the Rule.
4. Rule 11.10E is being added to clarify that instructors at state colleges and universities may determine hours worked for purposes of Section 24-51-1101(1), C.R.S. by deeming each one credit hour taught as equal to three hours worked.
5. Rule 11.15D is being added to require retirees working after retirement for a PERA employer that fail to timely report exceeding the working after retirement limits will be required to pay interest at PERA's actuarial investment assumption rate.
6. Rule 14.30 is being amended to clarify the charges for delinquent 401(k) Plan reports and contributions.

##### **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, 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, not at the election of the member, other than sick, paid because the individual has accrued in excess of the maximum accumulation allowed by the employer's established leave policy.
- (d) If an accrued leave payment pursuant to an established employer policy or employment contract includes unused leave for any type of leave in addition to sick leave, the payment shall be treated as PERA salary pursuant to 24-51-101(42), C.R.S., provided each of the criteria in (1)(a) or (1)(c) above, whichever is applicable, are met.

(2) Cash Payments in lieu of Fringe Benefits

~~Salary does not include employer provided fringe benefits converted to cash payments in lieu of employer payment for the 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 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.
- (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)(b), 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.

## **2.15 Employer Assignments**

### **A. State Division**

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

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

Adams State College  
Aims Community College  
Arapahoe Community College  
Auraria Higher Education Center  
Aurora Community College  
Colorado Mesa University  
Colorado Mountain College  
Colorado Northwestern Community College  
Colorado School of Mines

Colorado State University  
Colorado State University at Pueblo  
Commission on Higher Education  
Denver Community College  
Fort Lewis College  
Front Range Community College  
Lamar Community College  
Metropolitan State  
University of Denver  
Morgan Community College  
Northeastern Junior College  
Otero Junior College  
Pikes Peak Community College  
Pueblo Vocational Community College  
Red Rocks Community College  
State Board for Community Colleges and Occupational Education  
Trinidad State Junior College  
University of Colorado  
University of Northern Colorado  
Western State 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 School District 50~~ 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  
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  
Northeast Colorado Health Department  
Northeastern Colorado Association of Local Governments  
Park Center Water District  
Pine Drive Water District  
Pikes Peak Regional Building Department  
[Plains Ground Water Management District](#)  
[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 Filter Plant-Soldier Canyon Water 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.
- (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](#)[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~~[after the deadline for](#) a written request for executive director initial decision or administrative hearing is ~~filed~~[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. 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).

#### **11.10 Employment After Service Retirement**

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

A. Employment with an Affiliated Employer

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

B. Employment with a Non-Affiliated Employer

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

C. Employment of Benefit Recipients Other Than Retirees

Cobeneficiaries and survivors are not subject to employment limitations.

- D. Employment Pursuant to Section 24-51-1101(1.8), C.R.S.
- (1) For the purposes of Section 24-51-1101(1.8), C.R.S., an “employer” is defined to be an entire school district and the charter schools of the district. Charter schools are not separate employers for purposes of Section 24-51-1101(1.8), C.R.S.
  - (2) A service retiree who is working for an employer pursuant to Section 24-51-1101(1.8), C.R.S., may also work for one or more employers during the calendar year. Once the service retiree reaches one hundred ten days or seven hundred twenty hours in a calendar year, whichever is applicable, the retiree may only work the remaining thirty days or one hundred ninety six hours, without a reduction in benefits, for the employer that designated that service retiree pursuant to Section 24-51-1101(1.8), C.R.S. Any employment with another employer will subject the retiree to a reduction in benefits pursuant to Section 24-51-1102, C.R.S.
  - (3) For purposes of Section 24-51-1101(1.8), on January 1 of each year, the employer must provide the Association with a list of any and all service retirees employed by the employer. The list must be updated with each service retiree who is hired that year.
  - (4) For purposes of Section 24-51-1101(1.8), C.R.S., an employer is not required to designate all ten service retirees at the beginning of each year. However, once ten service retirees have been designated during a calendar year, no additional service retirees may be designated even if one or more of the designated service retirees ceases work for that employer.

E. Employment as an Instructor at a State College or University

- (1) An instructor at a state college or university may, but is not required to, determine hours worked for purposes of the limit in Section 24-51-1101(1) or (1.8), C.R.S., as applicable, by deeming each one credit hour taught per semester to equal three hours worked per week in that semester. An instructor who determines hours worked using this method may not exceed seven hundred twenty or nine hundred sixteen hours worked in the calendar year, or the daily equivalent if combining the hourly employment limit with other daily employment.
- (2) For the purposes of this Rule, “state college or university” has the same definition as 24-51-1101(1.8)(e)(I), C.R.S.

**11.15 Reduction/Offset in Benefits**

- A. Any reduction in benefits due to working in the month of effective date of retirement or due to exceeding the working after retirement limits for an affiliated employer shall take

place in the month immediately following the month such work occurs or is reported to PERA. If such benefit reduction cannot completely occur in this month, it shall be applied to future months until the amount due is recovered.

- B. For disability retirees who exceed the earnings limit for employment after disability retirement, the benefit offset shall take place in the month immediately following the month such work occurs or is reported to PERA. If such benefit offset cannot completely occur in this month, it shall be applied to future month's benefits. In no case shall the benefit offset exceed the total benefit paid on the retiree account. This paragraph (B) shall not apply to DPS disability retirees whose application was received prior to January 1, 2010.
- C. For retirees who have multiple benefit segments pursuant to Section 24- 51-1103 or 24-51-1726.5, C.R.S., all benefit segments shall be offset by any reduction in benefits due to working in the month of effective date of retirement or due to exceeding the working after retirement limits for an affiliated employer.
- D. Retirees who exceed the working after retirement limits shall report the excess hours or days worked to PERA no later than March 31<sup>st</sup> of the following year. If the retiree fails to timely report the excess hours or days, interest at PERA's actuarial investment assumption rate shall be applied to the amount owed pursuant to Section 24-51-1102, C.R.S. Interest shall be calculated retroactively to April 1<sup>st</sup> of the year in which the reporting was due. The reduction in benefit and any interest due under this subsection D. shall be collected via an offset of the retirement benefit of the retiree.

#### **14.30 Contribution Report**

- A. The employer shall deliver all 401(k) Plan contributions, along with the required report, to the service provider designated by the Plan Administrator within five days of the date contributions were deducted from the employee's salary. If either the report or contributions are delinquent, interest shall be assessed and paid as specified in Rule 4.10 to participants as determined by the Plan Administrator in a manner consistent with the Employee Plans Compliance Resolution System, Rev. Proc. 2016-51, as updated and superseded by future IRS guidance.
- B. The Plan Administrator shall prescribe the form in which 401(k) Plan contributions shall be reported. Fees associated with the collection of delinquent reports or contributions shall be assessed and paid to the Plan Administrator computed on a daily interest rate on the contribution amount from the due date to the day that both the required report and contributions are received. The Plan Administrator, in its sole discretion, may waive the fee so computed.