



COLORADO  
**PERA**®



# COLORADO PERA RULES

Effective January 1, 2022





## STATEMENT OF BASIS AND PURPOSE

In accordance with its duty to administer the Colorado Public Employees' Retirement Association, the Board of Trustees has the authority to adopt and revise Rules in accordance with 24-51-204(5), Colorado Revised Statutes (C.R.S.).

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## **RULE 1: DEFINITIONS**

Rule 1 defines certain terms used in the Rules, and further defines certain terms defined in Article 51, Title 24, C.R.S. For the purposes of Rule 1, except Rule 1.20G, which shall not apply to DPS members who are eligible to retire as of January 1, 2011, the term "member" shall include DPS members and the term "retiree" shall include DPS retirees.

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

### **1.10 Denver Public Schools**

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

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

Terms used in the Rules shall have the meaning specified:

- A. Foreign employer means a person or an entity that is formed under the laws of a jurisdiction outside the United States or its Territories.
- B. Pay pattern means the frequency of periodic salary payments.
  - (1) Academic pay pattern means salary is paid over a period of at least 8 months but less than 12 months.
  - (2) Seasonal pay pattern means salary is paid over a period of 1 to 11 months as determined by work available.
  - (3) Traditional pay pattern means salary is paid over a period of 12 months.
- C. Noncovered employment means public or private employment with an employer in the United States, its territories, or any foreign country for which no PERA service credit was earned. Qualified service and non-qualified service shall be determined in accordance with the Internal Revenue Code, and the Internal Revenue Service Rules and Regulations.
- D. Retroactive salary means salary for previous periods of employment for which payment was delayed or the rate of pay subsequently changed. Retroactive salary payments shall be considered earned in the months for which the salary should have been paid, had no delay or subsequent rate change occurred.

For retroactive salary payments that are made pursuant to court orders or arbitration awards or litigation and grievance settlements, the PERA-includable salary cannot be greater than the rate of pay the member would have received had he or she been employed with the employer and/or paid at the time the services were performed. In the event that the retroactive salary payment is less than the rate of pay the member would have received had he or she been employed with the employer and/or paid at the time the services were performed, the Association shall provide partial service credit to the member by prorating the service credit in the same proportion to the salary that was actually paid versus the salary that would have been paid.

#### E. Qualified Children

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

## F. Salary

### (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.

(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

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 payment is includable pursuant to this Rule and is in no way designed to manipulate Highest Average Salary.

(3) Performance or Merit Payments

Performance or merit payments are payments 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 payment is includable pursuant to this Rule and is in no way designed to manipulate Highest Average Salary. All payments shall be considered earned in the month in which the performance payment is made, except that payments 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.

(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 sections 24-51-101(42)(a)(II) and (b)(II), C.R.S., are not 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 employer demonstrates its intent that the payment is a salary payment rather than a bonus, and the Association determines that the payment is includable pursuant to this Rule and is in no way designed to manipulate Highest Average Salary.

#### 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**

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

### **2.10 Affiliated Employers**

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

### **2.15 Employer Assignments**

#### **A. State Division**

- (1) Within the State Division, one group shall be designated Institutions of Higher Education, and the other shall be designated Agencies and Instrumentalities.
  - (A) The Institutions of Higher Education group of the State Division shall consist of the following employers and their employees and any other institutions of higher education established subsequent to the adoption of the Rules:

Adams State University  
Aims Community College  
Arapahoe Community College  
Auraria Higher Education Center  
Community College of Aurora  
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  
Community College of Denver  
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 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 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:

CollegeInvest  
College Assist  
Colorado Association of School Boards  
Colorado Association of School Executives  
Colorado High School Activities Association  
Colorado House of Representatives  
Colorado Senate  
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  
Joint Budget Committee  
Judicial Department  
Legislative Council  
Office of the District Attorneys  
Office of Economic Development and International Trade  
Office of the Governor  
Office of Information Technology  
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

Hayden School District Re 1  
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

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

Weld County 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  
Education reEnvisioned Board of Cooperative Education Services  
Expeditionary Learning School Board of Cooperative Educational Services  
Grand Valley Board of Cooperative Educational Services  
Mount Evans Board of Cooperative Educational Services  
Mountain Board of Cooperative Educational Services  
Northeast Board of Cooperative Educational Services  
Northwest Colorado Board of Cooperative Educational Services  
Pikes Peak Board of Cooperative Educational Services  
Rio Blanco Board of Cooperative Educational Services  
San Juan Board of Cooperative Educational Services  
San Luis Valley Board of Cooperative Educational Services  
Santa Fe Trail Board of Cooperative Educational Services  
South Central Board of Cooperative Educational Services  
Southeastern Board of Cooperative Educational Services  
Uncompahgre Board of Cooperative Educational Services  
Ute Pass Board of Cooperative Educational Services

Vocational Schools

Technical College of the Rockies

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  
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  
Maiker Housing Partners  
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  
Southwest La Plata Library District  
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 Wastewater 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 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).

## **2.30 Candidacy for Election to the Board**

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

## **2.35 State Division Candidates**

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

## **2.40 Ballots for Board Election**

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

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

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

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

## **2.43 Gubernatorial Appointments**

- A. At such time as the first trustee of the state, school, and local government division leaves the Board either by death, resignation, removal, expiration of term, or otherwise after January 1, 2007, the gubernatorial appointment shall assume office at the next regularly scheduled board meeting following

appointment by the governor. Such gubernatorial appointed trustee who has not yet been confirmed by the senate shall serve until senate confirmation or until senate confirmation is denied at which time the appointee shall be removed from the Board and the vacancy shall be filled in accordance with statute. Thereafter, at such time that a gubernatorial appointee leaves the Board either by death, resignation, removal, expiration of term, or otherwise, the next gubernatorial appointee shall assume office at the next regularly scheduled board meeting following appointment by the governor. Such gubernatorial appointed trustee who has not yet been confirmed by the senate shall serve until senate confirmation or until senate confirmation is denied at which time the appointee shall be removed from the Board and the vacancy shall be filled in accordance with statute.

B. Gubernatorial appointed trustees shall be compensated one hundred dollars per diem plus their actual and necessary expenses. The per diem amount shall be paid for each day that the trustee attends at least 75% of an official Board meeting, committee meeting, administrative hearing, trustee orientation, Board Planning session, or other function approved by the Board Chair or Vice Chair up to a maximum of 20 days per year.

## **2.45 Assumption of Office**

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

## **2.50 Election of Officers**

The Board shall, by secret ballot, elect from among its members a Chair and Vice Chair, each to serve for terms of two years. When elections are required, they shall take place at the last regular meeting held in the calendar year, and the newly elected Chair and Vice Chair shall assume office as of the next regular meeting. No member may serve continuously as Chair for more than two consecutive terms. All officers shall be elected by a majority of those present and voting.

## **2.55 Duties of Officers**

- A. The Chair shall preside at all meetings of the Board. In the absence of the Chair, the Vice Chair shall assume the duties of the Chair.
- B. Should the Chair be unable to complete the term as Chair, the Vice Chair shall serve as Chair until the Board elects a new Chair.

## **2.60 Standing Committees**

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

## **2.70 Board Meetings**

- A. Regular meetings shall be held not less than quarterly according to an annual schedule adopted by the Board and published in the minutes of the Board. Time and location for such meetings shall be determined by the Board. The annual schedule may be modified by the Board as necessary.
- B. Special meetings may be called by the Chair or any four members of the Board by providing three days notice to each member of the Board. A call for a special meeting must state the business to be considered, and the time, date and place of such meeting.
- C. A majority of the Board shall constitute a quorum.
- D. Board Action requires a majority vote of a quorum of the Board members. Board members may attend and vote via telephone and/or video conferencing.
- E. No proxy voting shall be permitted.

## **2.80 General Meeting**

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

## **2.85 General Meeting Notice**

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

## **2.90 Actuarial Assumptions**

### **A. Funding Method**

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

### **B. Asset Valuation Method**

The asset valuation method used by the Association shall be a "smoothed" market value of assets. The difference between actual market value actuarial gains from investment experience and the expected actuarial gains from investment experience is recognized over a four-year period.

C. Actuarial Investment Assumption Rate

The actuarial investment assumption rate is 7.25 percent per year compounded annually, which is net after investment expenses.

D. Other Assumptions

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

E. Money Purchase Benefits

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

**2.95 Funds Not Subject to Legal Process**

- A. For purposes of 24-51-212, C.R.S. a party asserting that any of the moneys, trust funds, reserves, accounts, contributions, pursuant to parts 4, 5, 14, 15, 16, and 17 of the Association Statutes or benefits referred to in the Association Statutes should be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, bankruptcy proceedings, or other legal process, because there is a judgment for a willful and intentional violation of fiduciary duties pursuant to 24-51-207, C.R.S., has the burden to prove that such a violation of fiduciary duty resulted in a direct financial gain for the offender or related party unless such a determination is set forth in the underlying judgment.
- B. Direct financial gain means a monetary payment that would not have been received but for the willful and intentional violation of fiduciary duty. Direct financial gain shall not include the receipt of a benefit that such person or related party receives as a retiree or beneficiary of the Association as dictated by the statutory provisions of the Association.

## **2.96 Effect of Homicide on Beneficiary Designations**

- A. If a person designated as a beneficiary or entitled to survivor benefits under a member's defined benefit or defined contribution account, a participant's 401(k) plan account, or a participant's 457 plan account feloniously kills that member, the person's rights as a beneficiary or survivor are forfeited and the member's account will be treated as if the felonious killer pre-deceased the member. Upon proper written notice to the Association that a member or participant may have been feloniously killed by his or her beneficiary or survivor, the Association shall hold payment of the funds to which the suspected felonious killer would be entitled until such time as there is a final determination as to whether such individual committed the felonious killing. PERA is not liable for having made any payments to a beneficiary or survivor or for having taken any other action in reliance on the beneficiary or survivor's apparent entitlement to benefits prior to receipt of written notice pursuant to this Rule 2.96. PERA shall have no duty or obligation to make any determination as to whether or not the deceased member or participant was a victim of a felonious killing or to seek any evidence with respect to any such felonious killing even if the circumstances of the member or participant's death are suspicious or questionable as to the beneficiary or survivor's participation in any such felonious killing. PERA is only liable for actions taken two or more business days after PERA has receipt of proper written notice pursuant to paragraph D of this Rule. Any form or service of notice other than that described in paragraph D of this Rule shall not be sufficient to impose liability on PERA for actions taken in paying a beneficiary or survivor.
- B. For purposes of this Rule 2.96, a "felonious killing" is the killing of the decedent by an individual who, as a result thereof, is convicted of, pleads guilty to, or enters a plea of nolo contendere to the crime of murder in the first or second degree or manslaughter, as said crimes are defined in sections 18-3-102 to 18-3-104, C.R.S.
- C. An individual will be considered to have committed a felonious killing if, after all right to appeal has been exhausted, a judgment of conviction, a plea of guilty, or a plea of nolo contendere, establishing criminal accountability for the felonious killing of the decedent conclusively establishes the convicted individual as the decedent's killer. Notwithstanding the status or disposition of a criminal proceeding, an interested party may make a formal written request for a determination by the Association of whether, by a preponderance of the evidence standard, each of the elements of felonious killing of the decedent

has been established. Upon receiving such a request, the Association shall issue a staff determination regarding its determination. The Association's staff determination is appealable pursuant to PERA Rule 2.20. If the Association finds that the elements have been so established, such determination conclusively establishes that individual as the decedent's killer for purposes of this Rule 2.96.

D. For purposes of this Rule, "proper written notice" means written notice mailed to PERA's main office by registered or certified mail, return receipt requested, or served upon PERA in the same manner as a summons in a civil action. The written notice shall indicate the name of the deceased member or participant, the name of the person asserting an interest, and a statement that a claim is being made pursuant to this Rule.

## **2.97 Requirement of Survival**

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

## **2.98 Effect of Marital or Civil Union Status on Beneficiary Designations**

The designation of a beneficiary under the defined contribution plan, 401(k) plan, 457 plan, or life insurance program, or of a cobeneficiary, co-annuitant, or named beneficiary under the defined benefit plan, is not subject to revocation pursuant to 15-11-804, C.R.S., as amended.

## **RULE 3: MEMBERSHIP**

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

### **3.15 Continuation of Membership**

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

### **3.25 Member Records**

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

#### **A. Employer Responsibility**

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

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

#### **B. Member Responsibility**

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

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

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

- A. If existing Association records are incomplete or in question, and no acceptable documentation can be provided by the employer or the member, the Board shall determine benefit eligibility and benefit payments based on the information available.
- B. An individual who refunded his or her member contribution account pursuant to 24-51-405, C.R.S. and purchases all or part of the period associated with the refunded member contribution account on or after July 1, 2005, pursuant to 24-51-503, C.R.S. shall have no rights associated with membership prior to July 1, 2005, except as mandated by federal law.
- C. An individual who refunded his or her member contribution account pursuant to Section 24-51-405, C.R.S. and purchases all or part of the period associated with the refunded member contribution account on or after January 1, 2007, pursuant to Section 24-51-503, C.R.S., shall have no rights associated with membership prior to January 1, 2007, except as mandated by federal law.
- D. An individual who refunded his or her member contribution account pursuant to Section 24-51-405, 24-51-1711, or 24-51-1729(6)(a)(I), C.R.S., and purchases all or part of the period associated with the refunded member contribution account on or after January 1, 2010, pursuant to Section 24-51-503 or 24-51-505, C.R.S., whichever is applicable, shall have no rights associated with membership prior to January 1, 2010, except as mandated by federal law.
- E. An individual who refunded his or her member contribution account pursuant to Section 24-51-405, 24-51-1711, or 24-51-1729(6)(a)(I), C.R.S., and purchases all or part of the period associated with the refunded member contribution account on or after January 1, 2017, pursuant to Section 24-51-503 or 24-51-505, C.R.S., whichever is applicable, shall have no rights associated with membership prior to January 1, 2017, except as mandated by federal law.

### **3.40 City Managers and Key Management Staff**

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

## **RULE 4: CONTRIBUTIONS**

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

### **4.10 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.

### **4.15 Payment of Unpaid Contributions**

#### A. Retiree

A person who retired before the Association first notified the employer of a claim for unpaid contributions shall be treated as an inactive member for determining the amount due the Association, and for all other purposes of 24-51-402(3) through (5), C.R.S.

#### B. Non-Member

The cost to purchase service for an individual who was not a member or inactive member when the Association first notified the employer of a claim for unpaid contributions shall be the amount of member contributions which would have been paid, had the individual been properly covered as a member, plus interest accrued from the last date the individual was paid but not properly covered to completion of payment.

### C. Member or Inactive Member

For an individual who was a member or inactive member at the time the Association first notified the employer of a claim:

#### (1) Cost

The cost to purchase service credit under 24-51-402(3)(b)(1)(A), C.R.S., shall be based on the salary amount and percentage used pursuant to 24-51-505, C.R.S. Such cost shall not be applicable if the individual has less than one year of service credit.

#### (2) Salary Increase Only

If payment of unpaid contributions results in an increase in salary, but no increase in service credit, the amount due shall be the unpaid employer and member contributions plus interest, as provided by 24-51-402(3)(b)(1)(B), C.R.S.

#### (3) Notification to PERA

The Association must receive in writing, within one year after the date the employer pays the unpaid employer contributions, an election from an individual declaring the intent to pay unpaid employee contributions, or the individual's right to make such contributions shall be forfeited.

#### (4) Payment by Member or Inactive Member

##### (a) Deadline for Start of Payment

If an individual elects pursuant to 24-51-402(4), C.R.S., to pay all or any portion of the unpaid employee contributions, the lump-sum payment or the first installment payment must be made no later than the first full month following one year after the date the employer pays the unpaid employer contributions.

##### (b) Lump-Sum Payment

Eligibility to make payment under 24-51-402, C.R.S., shall be forfeited if payment is not made within 30 days following the date on which the lump-sum payment is due.

##### (c) Installment Payments

Installment payments shall be subject to the provisions of Rule 5.30 B. If the purchase agreement is cancelled pursuant to Rule 5.30 B(2) or (4), eligibility to make payments under 24-51-402, C.R.S., shall be forfeited.

#### D. Defined Contribution Plan

If an employer fails to provide an eligible employee membership in the Defined Contribution Plan or the required level of contributions to a member's account in the Defined Contribution Plan, the employer shall pay all unpaid employer contributions pursuant to 24-51-401 C.R.S. *et seq.*, plus interest at the actuarial investment assumption rate.

##### (1) Payment of Employer Contribution plus Interest to Account

The amount of contributions plus interest shall be allocated to the eligible employee or member's Defined Contribution Plan account in the same proportion as would have been paid had the contributions been made timely. (For purpose of clarity, pursuant to 24-51-1505(1), C.R.S., any contribution exceeding the amount in table A in 24-51-401(1.7)(a), C.R.S., plus attributable interest, shall be paid to the employer's division trust fund.)

##### (2) Election by Eligible Employee or Member to Pay

The eligible employee or member shall have the option to pay the full amount of member contributions to the eligible employee or member's Defined Contribution Plan account. Any such individual who elects to pay all or any portion of unpaid member contributions shall notify the Association of such election within one year after the date the employer pays the unpaid employer contributions, and may make payment by any method provided in Rule 4.15C(4).

##### (3) Payment by Employer of Interest

Upon receipt by the Association of amounts paid pursuant to Rule 4.15D(2), the employer shall pay interest on the unpaid member contributions at the actuarial investment assumption rate during the time such member contributions should have been made until the date the contributions are received by the Association. The interest paid by the employer pursuant to this Rule 4.15D(3) shall be allocated to the eligible employee or member's Defined Contribution Plan account.

### **4.20 Contributions on Retroactive Salary Payments**

Contributions with interest must be made in a lump sum on retroactive salary paid.

### **4.25 Furlough Payments**

Retirees who retired before June 30, 2003, who had salary reduction due to furlough days from July 1, 2002, to June 30, 2003, and members who had salary reduction due to furlough days from July 1, 2002, to June 30, 2004, may opt to make member contributions on the amount that their salary was reduced upon notice by the Association.

- A. Such notice by the Association shall be made upon receipt of the required salary reduction information from the employer but no earlier than 90 days before the member's effective date of retirement as evidenced by the member's completed and filed retirement application.
- B. Upon receipt of the member contributions, the Association shall notify the employer of the employer contributions due on the salary reduction. Upon payment by the employer, the member or retiree's Highest Average Salary shall be recalculated and benefits adjusted.

#### **4.30 Use of Contributions for Payment of Benefits**

For purposes of payment of benefits, money credited to the member contribution account is used first.

#### **4.40 Refunds**

- A. Any member who terminates membership is entitled to a refund of the member contribution account and, subject to Section 24-51-408(2), 24-51-408(2.5), 24-51-1103, and 24-51-1726.5, C.R.S., the amount of matching employer contributions upon request, except that a retiree who returns to membership prior to January 1, 2011, and earns one year of service credit will have the benefit recalculated instead of receiving a refund. The amount available to DPS members in the event of a refund shall be governed by Section 24-51-1711 or 24-51-1729(6)(a)(l), C.R.S.
- B. No refund will be made prior to receipt of employer certification of date of termination of employment, unless membership has been terminated and no contributions have been received for a period of 90 days.
- C. No refund will be made prior to the date of termination of employment.
- D. Member contributions and interest are subject to garnishment for child support purposes as provided in 24-51-212, C.R.S., only if the membership has terminated and the member is not vested.
- E. For purposes of Section 24-51-1747, C.R.S., if a member requests a refund of two member contribution accounts, PERA shall combine the accounts and treat the refund as a refund of one member contribution account for administrative purposes.

#### **4.50 Contributions Based on Uniformed Service**

- A. A member who is reemployed and has the rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), may elect to make up his or her missed contributions for the period of uniformed service up to five years. Contributions must be made in accordance with USERRA, set forth at 38 U.S.C. § 4301, *et seq.*
- B. Contributions made by a member pursuant to this Rule must be made during the time period starting with the date of reemployment and continuing for up to three times the length of the member's immediate past period of uniformed service, with the repayment period not to exceed five years. Makeup contributions may only be made during this period and while the member is employed with the post-service employer.
- C. Upon PERA's receipt of the member contributions pursuant to section (A) of this Rule, the employer shall pay the employer contribution attributable to the period of time that the member paid make-up contributions. The employer shall pay interest on both the employer contributions and the member contributions at the applicable actuarial investment assumption rate, as such interest rate is from time to time adjusted, for the entire period of time for which make-up contributions are made through the date such contributions are fully paid to PERA. The employer shall remit the entire amount due pursuant to this section within 30 days from the date the member makes his or her make-up contributions.

#### **4.60 Working Retiree Contributions for Independent Contractors**

- A. When the working retiree contribution is due on an independent contractor, the employer must notify the Association and the Association shall offset the retirement benefit of the retiree in accordance with Rule 11.12F.
- B. Subject to subparagraph C. below, if the employer fails to notify the Association, and therefore the Association fails to collect the working retiree contribution via an offset of the retiree's benefits, the employer shall be responsible for the interest due on the contribution amount from the due date to the date the contributions are received.

C. If the retiree independent contractor fails to report the compensation as required under PERA Rule 11.12 D.(2), the retiree shall be responsible for the interest on the working retiree contribution at PERA's actuarial investment assumption rate. The interest shall be collected via an offset of the retirement benefit of the retiree.

#### **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 5: SERVICE CREDIT**

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

### **5.10 Earned Service Credit**

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

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

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

#### **B. Combinations of Employment Patterns**

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

### **5.20 Purchased Service Credit**

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

#### **A. Repayment of Refund**

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

## B. Sabbatical Leaves

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

## C. Noncovered Employment

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

## D. Portability

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

## E. Outside Service Under the DPS Benefit Structure

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

## **5.25 Service Credit Purchase Cost and Application**

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

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

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

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

### **5.30 Payments for Purchased Service Credit**

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

A. Lump-Sum Payments

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

B. Installment Payments

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

- (7) Monthly payment amounts in excess of the required monthly installment payment will not relieve the requirement for any future monthly installment payments pursuant to the service credit purchase agreement. Such extra payments will shorten the term of the agreement unless the member specifies in writing that the extra payments are to be used to reduce the amount of each remaining future monthly payment.

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

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

### **5.40 Interest Rate**

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

## **RULE 6: SERVICE RETIREMENT**

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

### **6.10 Service Retirement Eligibility**

- A. In addition to the eligibility requirements specified in 24-51-602, C.R.S., for members who have service credit as a State Trooper for which a higher contribution rate was required, eligibility for service retirement shall be determined by weighting the State Trooper service credit according to the eligibility requirements for State Troopers.
- B. In addition to the eligibility requirements specified in 24-51-604, C.R.S., for members who have service credit as a State Trooper, as defined in 24-51-101(46), C.R.S., and as a non-State Trooper, eligibility for reduced service retirement shall be determined by weighting the State Trooper or non-State Trooper service credit, as appropriate, according to the reduced eligibility requirements for State Troopers and non-State Troopers.
- C. If a member is eligible for a reduced service retirement benefit pursuant to Rule 6.10B, the weighted service credit will be utilized in the calculation of the reduced service retirement benefit pursuant to 24-51-605, C.R.S.

### **6.15 Division From Which a Member Retires**

A retiree who had membership in multiple divisions in the month immediately preceding retirement shall be considered a retiree of the division in which the retiree has the greater salary postings in the month immediately preceding the effective date of retirement. If the retiree had the same amount of salary postings in more than one division in the month immediately preceding the effective date of retirement, the Association shall look to the prior month or months until there is a month that the retiree has greater salary postings from one of the divisions, and the retiree shall be considered a retiree of the division with the greater amount of salary.

### **6.20 Service Retirement Application**

Application for service retirement shall be made with the form(s) prescribed by the Association.

## **6.25 Cancellation of Retirement Application**

Applicants for service retirement may cancel the application anytime prior to the earlier of (1) the issuance of the initial benefit or (2) the use of any Health Care Benefit pursuant to 24-51-1201 *et seq.* C.R.S. Requests for cancellation must be made to the Association in writing.

## **6.30 Effective Date of Retirement**

Retirement shall be effective on the first day of a month.

- A. For members who have met the requirement for service retirement or reduced service retirement, the effective date of retirement shall be no earlier than the first day of the month following the last day of employment exclusive of any payment for accumulated annual leave for which service credit is earned, or extension of service credit for members employed on an academic year basis.
- B. For vested, inactive members, service retirement or reduced service retirement shall be effective no earlier than the first day of the month in which the age and service requirements are met.
- C. For elected officials who retire at the completion of their term of office who have met the requirements for service retirement or reduced service retirement, the effective date of retirement shall be the first of the month in which the term of office ends.

## **6.40 Member Becomes Service Retiree**

The member shall become a retiree on the effective date of retirement.

## **6.50 Death Before Effective Date of Retirement**

If a member who has applied for retirement dies before the effective date of retirement, the survivor benefits or single payment shall be payable as described in 24-51-908, C.R.S.

## **6.60 Direct Payments by Vested, Inactive Members**

A vested, inactive member who terminated membership before July 1, 2003, may make direct payments in lieu of contributions to acquire eligibility for service retirement or reduced service retirement.

### A. Lump-Sum Payments

- (1) Lump-sum payments, except for retroactive payments described in Rule 6.60 B (2), shall not be subject to interest.
- (2) Lump-sum payments, except those preceding the initiation of installment payments, shall not be refunded unless the member contribution account is refunded. Lump-sum payments preceding the initiation of installment payments shall not be refunded after installment payments have been completed.

## B. Installment Payments

For vested, inactive members who elect to make direct payments in installments, certain requirements shall apply:

- (1) Installment payments must begin no later than the last day of the month following the month in which employment is terminated, except as specified in Rule 6.60 B (2).
- (2) For installment payments which begin later than the last day of the first full month following termination of employment, a lump-sum payment, retroactive to the date of termination will be required before installment payments can begin.
- (3) Installment payments are due without notice on the last day of each month, and shall become delinquent on the 10th calendar day of the following month.
- (4) Any eligibility purchased and payments made shall be refunded if more than two consecutive monthly payments become delinquent.
- (5) Payments may be discontinued at any time prior to receipt by the Association of the final payment. Upon discontinuation of payments, all direct payments made shall be refunded and any eligibility purchased shall be negated.

## **6.70 Replacement Benefit Arrangement**

The Association is authorized to establish one or more arrangements under Section 415(m) of the Internal Revenue Code to restore to members the portion of their benefits affected by Code Section 415, in accordance with 24-51-611, C.R.S.

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

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

## **RULE 7: DISABILITY BENEFITS**

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

### **7.10 Disability Application**

- A. The disability application, using the prescribed form, is to be submitted to the Association.
- B. An applicant may cancel the application prior to the first payment, but the request to cancel must be submitted to the Association in writing.
- C. An applicant may qualify for short-term disability, disability retirement, or neither. The same applicant shall not be paid both short-term disability and disability retirement for the same day.

### **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, 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.

## **7.15 Examinations, Records, and Other Information**

- A. An applicant is required to undergo reasonable examination by physicians, rehabilitation experts, vocational experts, or other experts selected by the disability program administrator.
- B. An applicant is required to provide medical records, other medical information, employment information, financial information, and any other information reasonably requested by the disability program administrator.
- C. An applicant, any current employer, and any former employer is required to provide the job description, job duties, essential functions, job site conditions, possible accommodation, payroll records, attendance records, return-to-work information, and any other employment-related information reasonably requested by the disability program administrator.
- D. Failure to undergo a reasonable examination or re-examination, failure to cooperate with the examiner or the disability program administrator, or failure to provide requested information within 60 days may cause the application to be cancelled and any payment, if started, to cease.

## **7.25 No Voluntary Suspension**

After payment for short-term disability or disability retirement has started, voluntary suspension is not permitted.

## **7.30 Performance of Disability Program Administrator**

- A. The Association shall monitor the performance of the disability program administrator periodically. For this purpose, the disability program administrator shall provide periodic reports to the Association.
- B. The Board shall receive a report on the disability program administrator's performance at least annually.

## **SHORT-TERM DISABILITY:**

### **7.40 Contract with Disability Program Administrator**

- A. The contract with the disability program administrator, in addition to the applicable statutes and rules, shall govern short-term disability. As soon as administratively feasible following the receipt of employer contributions, the Association shall segregate as a separate fund the portion of the contributions necessary to fund the short-term disability program.
- B. The contract with the disability program administrator begins January 1, 1999. The applicant's disability must exist on or after that date, and the applicant's waiting period must occur entirely on or after that date.

- C. The contract with the disability program administrator may be amended from time to time.

#### **7.45 Medical Standard for Short-Term Disability**

For short-term disability, the applicant, because of the applicant's medical condition, must not be able to perform the essential functions of the applicant's job with reasonable accommodation as required by federal law.

- A. The medical condition causing the disability must be physical or mental or a combination of both. The medical condition must be under ongoing appropriate treatment by a physician with the appropriate specialty.
- B. The disability must exist prior to termination of employment as defined in 24-51-101(49), C.R.S.
- C. The applicant must not be totally and permanently mentally or physically incapacitated from regular and substantial gainful employment as defined in Rule 7.70.
- D. The applicant is not disabled for this purpose if the applicant is medically able to do the types of material duties which the applicant was regularly performing prior to disability and which cannot be reasonably modified or omitted, whether or not the applicant does so.
- E. The applicant is not disabled for this purpose if the applicant is medically able to perform any job, based on the applicant's existing education, training, and experience, that earns at least 75 percent of the applicant's predisability earnings from PERA-covered employment as defined in Rule 7.50(B)(1), whether or not the applicant does so.

#### **7.50 Payment**

- A. The disability program administrator shall determine the amount payable for short-term disability, if any, and shall pay it.
- B. Short-term disability may provide certain income replacement and reasonable rehabilitation as specified in the contract with the disability program administrator.
  - (1) The maximum amount of monthly income replacement shall be 60 percent of the applicant's predisability earnings from PERA-covered employment. For short-term disability, predisability earnings from PERA-covered employment shall be the monthly average of the applicant's salary as defined in 24-51-101(42), C.R.S., on which PERA contributions were paid for the 12 consecutive calendar months immediately preceding the last full day on the job prior to the waiting period.

(2) As provided in the contract with the disability program administrator, this maximum amount of income replacement shall be reduced by workers' compensation benefits, unemployment compensation benefits, payment for back pay claims, and other amounts to the extent that total payments would otherwise exceed 100 percent of predisability earnings from PERA-covered employment. This short-term disability is not a substitute for workers' compensation or unemployment compensation.

## **7.60 Termination**

A. Payment of short-term disability shall not be made under any of the following circumstances:

- (1) The applicant is no longer disabled, the applicant satisfies the medical standard for disability retirement in Rule 7.70, the applicant returns to work other than for a temporary return to work as determined by the disability program administrator, or the applicant does not qualify for short-term disability for any other reason.
- (2) The maximum payment period of 22 months ends.
- (3) The applicant refunds pursuant to 24-51-405, C.R.S. Short-term disability may be paid to an applicant after termination of employment as defined in 24-51-101(49), C.R.S., but not after a refund.
- (4) The applicant is eligible for regular service retirement pursuant to 24-51-602, C.R.S., unless the applicant is in the Judicial Division.
- (5) The applicant dies.

B. The applicant shall notify the disability program administrator immediately in writing as soon as the applicant no longer qualifies for payment. In the case of the applicant's death, the applicant's estate or relative is to provide such notice within 30 days.

C. The amount of any overpayment is to be recovered through repayment or offset.

D. A member receiving short-term disability payments may voluntarily terminate receipt of short-term disability payments. Any subsequent receipt of short-term disability payments or disability retirement benefits would be contingent upon meeting the eligibility requirements to apply for such Program as specified at 24-51-701, C.R.S., and the resulting determination by the program administrator.

## **7.65 Terms**

- A. Short-term disability shall not be a "benefit" as defined in 24-51-101(7), C.R.S. A person receiving short-term disability shall not be a "benefit recipient" as defined in 24-51-101(8), C.R.S.
- B. Short-term disability payments shall not be "salary" as defined in 24-51-101(42), C.R.S., shall not be subject to PERA contributions, and shall not result in service credit for PERA purposes.
- C. Short-term disability payments shall not reduce the applicant's member contribution account as defined in 24-51-101(31), C.R.S. Any future payment by the Association, after short-term disability, such as a refund, retirement benefits, survivor benefits, or otherwise shall be governed by the applicable provisions of 24-51-101 *et seq.*, C.R.S.

## **DISABILITY RETIREMENT:**

### **7.70 Medical Standard for Disability Retirement**

For disability retirement, the applicant, because of the applicant's medical condition, must be totally and permanently mentally or physically incapacitated from regular and substantial gainful employment.

- A. The medical condition causing the disability must be physical or mental or a combination of both. The medical condition must be under appropriate treatment by a physician with the appropriate specialty.
- B. This determination shall be based on whether the applicant is disabled as of termination of employment as defined in 24-51-101(49), C.R.S.
- C. To be mentally or physically incapacitated from regular and substantial gainful employment, the applicant's medical condition must prevent the applicant from engaging in any work from which the applicant could earn at least 75 percent of the applicant's predisability earnings from PERA-covered employment.
  - (1) For disability retirement, predisability earnings from PERA-covered employment shall be the monthly average of the applicant's salary as defined in 24-51-101(42), C.R.S., on which PERA contributions were paid for the 12 consecutive calendar months immediately preceding the last full day on the job.
  - (2) The applicant is not disabled for this purpose if the applicant is medically able to perform the essential functions of any job with reasonable accommodation as required by federal law and earn at least 75 percent of predisability earnings from PERA-covered employment, whether or not the applicant does so.

- (3) To be total and permanent, the applicant must reasonably be expected not to recover.
- D. If the applicant does not satisfy this medical standard for disability retirement, the applicant may instead qualify for short-term disability.

#### **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 Part 9 of Article 51 of Title 24, C.R.S.

#### **7.77 Payment**

- A. The Association shall determine the amount payable as the monthly disability retirement benefit, if any, and shall pay it. The amount payable shall be governed by the applicable provisions of 24-51-701 *et seq.*, C.R.S.

B. If the applicant receives any amount by litigation, compromise, settlement, or other method that resolves a claim for back pay for PERA-covered employment, the applicant shall not be permitted to retain or receive any disability retirement for the same period as the claim.

## **7.80 Termination**

A. If the applicant is no longer disabled based on the medical standard in Rule 7.70 or otherwise is not qualified for disability retirement for any reason other than the applicant's death, the applicant may receive disability retirement benefits for a maximum of three calendar months immediately following the month in which the determination is made that the applicant no longer qualifies for disability retirement.

B. If payment to the applicant for disability retirement terminates for any reason other than the applicant's death, future payment may occur under the following circumstances:

- (1) The applicant qualifies and applies for a regular or reduced service retirement as specified in 24-51-602 or 24-51-604, C.R.S.
  - a. The applicant's benefit is determined using service credit that includes only actual earned and purchased service credit, not any service credit projected based on 24-51-704, C.R.S.
  - b. The applicant may select a new option and a new cobeneficiary for this new effective date of retirement.
- (2) The applicant qualifies and applies for a refund as specified in 24-51-405, C.R.S., but such refund shall be based on the remaining balance in the applicant's member contribution account, if any, after reduction for all disability retirement benefits.
- (3) The applicant dies after disability retirement benefits have terminated for some other reason. Survivor benefits or a single payment may be payable, but only as specified in 24-51-901 *et seq.*, C.R.S. For the purpose of calculating any survivor benefits, service credit shall not include any service credit projected based on 24-51-704, C.R.S.
- (4) Short-term disability may follow termination of disability retirement, but only if (i) the applicant initially satisfied all of the requirements for short-term disability, except that the applicant satisfied the medical standard for disability retirement in Rule 7.70, (ii) the applicant continues to satisfy all of the requirements for short-term disability, and (iii) the applicant has received disability retirement for less than the maximum payment period

for short-term disability. Under these circumstances, short-term disability shall be paid to the applicant, but only for any months remaining after reducing the maximum payment period for short-term disability by the number of months for which disability retirement was paid.

- C. If the applicant dies while receiving disability retirement, future payment, if any, is governed by 24-51-801, C.R.S.
- D. The applicant shall notify the Association immediately in writing as soon as the applicant no longer qualifies for disability retirement. In the case of the applicant's death, the applicant's estate or relative is to provide such notice within 30 days.
- E. The amount of any overpayment is to be recovered through repayment or offset.
- F. A disability retiree may voluntarily terminate receipt of disability retirement benefits. Any subsequent receipt of short-term disability payments or disability retirement benefits would be contingent upon meeting the eligibility requirements to apply for such Program as specified at 24-51-701, C.R.S., and the resulting determination by the program administrator.

## **7.85 Terms**

- A. Disability retirement shall be a "benefit" as defined in 24-51-101(7), C.R.S. A person receiving disability retirement shall be a "benefit recipient" as defined in 24-51-101(8), C.R.S., and a "retiree" as defined in 24-51-101(39), C.R.S. An applicant shall first become a disability retiree as of the effective date of disability retirement.
- B. In accordance with Rule 4.30, disability retirement benefits shall reduce the applicant's member contribution account as defined in 24-51-101(31), C.R.S.

## **7.90 Denver Public Schools**

- A. Any disability application submitted to the Association on or after January 1, 2010, by a DPS member shall be processed in accordance with the provisions of Section 24-51-701, *et seq.*, C.R.S. and this Rule 7.
- B. A disability application submitted to the Denver Public Schools Retirement System prior to January 1, 2010, shall be processed in accordance with Section 24-51-1701, *et seq.*, C.R.S. and the following rules:
  - (1) PERA shall contract with a medical advisor to assess and provide a recommendation regarding each disability application. Applicants may be required to undergo medical or psychological examination by the medical advisor or by physicians selected by the medical advisor.

(2) Determination of Disability

- (a) The medical advisor shall make a recommendation to PERA staff regarding the disability status of the applicant. Upon review of the application and the medical advisor's recommendation, PERA staff shall make a determination regarding the disability status of the applicant and shall grant or deny such application. PERA staff shall issue a written determination to the applicant via certified mail.
- (b) An applicant may request that the PERA Chief Benefits Officer review the staff determination. A written request for review must be received by the Association within 30 days after the date on which the staff determination is mailed. The Chief Benefits Officer shall issue a written determination, which shall be sent to the applicant via certified mail.
- (c) An applicant may request an administrative hearing before the Executive Director by submitting a written request, including specifics, which must be received by the Association within 30 days after the date on which the determination by the Chief Benefits Officer is mailed. The hearing shall follow the format set forth in Rule 2.20(C) through (E). The Executive Director's decision shall constitute final administrative action appealable under Colorado Rule of Civil Procedure 106(a)(4).

C. Review of Previously Granted Disability Retirement

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

- (2) If any retired employee shall refuse to submit to a required examination or to submit to the disability program administrator, upon request, other pertinent data concerning the retired employee's current physical or mental condition, or if the doctor selected by the retired employee shall fail or refuse to take necessary action to enable the contemplated procedure to go forward with reasonable promptness, the disability program administrator may, without further notification to the retired employee, proceed to review the retirement granted to such employee upon such information as may be secured by the disability program administrator. The Association shall have the right to withhold benefit checks until such required response has been received.
- (3) If the disability program administrator determines that the retired employee does not remain permanently incapacitated from performing such employee's former usual employment with DPS, the disability program administrator shall provide the retiree with a summary of the reasons for the finding. The retiree shall be given 15 days to appeal the decision of the disability program administrator. The determination made by the disability program administrator shall be appealable only to the disability program administrator, not to the Association. Once 15 days have passed without appeal, or once a final determination upholding the disability program administrator's determination has been made by the disability program administrator, the Association shall terminate the retiree's benefit.
- (4) No person over the age of 65 in any given year shall be subject to re-examination.

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

- (1) Pursuant to the DPS Plan, qualification of time spent since the effective date of disability retirement as accredited service requires that the disability retiree submit a copy of his or her federal income tax form for the calendar year involved. All such documentation must be submitted to the Association no later than six months following the end of such year.
- (2) The DPS Plan provides for the addition of accredited service earned at the effective date of disability retirement to 65.
- (3) The Association will notify, in writing, those disability retirees eligible to receive additional accredited service. Such notice will be sent annually to those persons eligible to comply and will advise them of the requirements necessary at least six months prior to the time limits for compliance set forth in Rule 7.90 D(1).

## **RULE 8: BENEFIT OPTIONS**

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

### **8.10 Election of Options**

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

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

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

#### **A. Named Beneficiary**

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

#### **B. Cobeneficiary**

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

#### **C. Coannuitant**

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

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

A. For purposes of Section 24-51-802(3), C.R.S., only a retiree receiving an option 1 benefit may elect to change to an option 2 or 3 benefit option upon marriage or civil union. A 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.
- 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.
- 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 9: SURVIVOR BENEFITS**

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

### **9.10 Designation of Named Beneficiary**

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

### **9.20 Job-Incurred Death**

The member's death shall be considered job-incurred if the illness or injury which caused the death resulted from the performance of job duties.

### **9.30 Survivor Benefit Application**

Application for survivor benefits shall be made with the form(s) prescribed by the Association. Eligibility of applicants to receive survivor benefits shall be determined from documentation establishing age of applicant, relationship of applicant to deceased member, unmarried status, disability status, and full-time enrollment in school for children over age 18 and under age 23.

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

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

A. Benefits Payable at the Death of the Member

Survivor benefits payable at the death of the member shall be payable on the first day of the month following the month in which the death occurred.

B. Benefits Payable to Child Upon Enrollment in School

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

C. Surviving Spouse's Benefits

Surviving spouse's benefits shall become payable on the first day of the month in which the surviving spouse becomes eligible for a benefit.

#### D. Qualified Children's Benefits

Survivor benefits payable to qualified children pursuant to Rule 1.20 E shall become payable on the first day of the month in which the child is born or the decree of adoption is entered.

### **9.50 Termination of Benefits**

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

#### A. Qualified Children's Benefits

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

B. Dependent Parent's Benefits

Dependent parent's benefits shall terminate on the date the parent remarries.

**9.60 Resumption of Survivor Benefits Payments**

- A. Survivor benefits which have been terminated due to a child's ineligibility may be reinstated, upon receipt by the Association, of verification of unmarried status, and school attendance or disability status. Benefits will be terminated for any other benefit recipients who had become eligible, during the child's period of ineligibility, effective the first of the month in which documentation needed for reinstatement is received.
- B. Survivor benefits which have been terminated due to marriage shall be reinstated upon receipt, by the Association, of a court order declaring the marriage invalid.
- C. Reinstated benefits shall become payable the first day of the month of renewed eligibility, provided that no other benefit has been paid on the account for the same time period to which a retroactive payment might apply. If another benefit has been paid, the reinstated benefit shall become payable on the first of the month eligibility is verified.

**9.70 Division From Which Benefits are Payable**

- A. The division in which a deceased member or inactive member had membership immediately preceding the date of death shall be the division which determines the eligibility and benefits for a survivor of that member.
- B. The survivor of a deceased member who was receiving salary from employers in multiple divisions prior to his or her date of death shall receive benefits from the division in which the deceased member had the greater salary postings in the month immediately preceding his or her death. If the deceased member had the same amount of salary postings in more than one division in the month immediately preceding death, the Association shall look to the prior month or months until there is a month that the deceased member had greater salary postings from one of the divisions, and the division with the greater amount of salary shall be the division which determines the eligibility and benefits for a survivor of that member.

## **RULE 10: INCREASE IN BENEFITS**

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

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

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

### **10.20 Increase in Benefits for Cobeneficiaries**

- A. For cobeneficiaries whose benefits are based on the account of a retiree who was not a member, inactive member, or retiree on December 31, 2006, the annual increase shall be effective only if the retirement benefits have been paid on the account for the full preceding calendar year and the retiree had met the requirements in 24-51-1001(3)(b), 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.

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

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

A. When the benefit recipient receives his or her first annual increase after becoming eligible for the annual increase pursuant to Part 10 of the PERA statutes, in addition to receiving the applicable compounded annual increase percentage in July, the benefit recipient shall also receive:

- (1) A one-time payment that is not compounded on the base benefit or retirement allowance, whichever is applicable, recognizing the period between the month in which the benefit recipient first became eligible for the annual increase to July of the year in which he or she receives his or her first annual increase. The amount of the one-time payment shall be the amount of the annual increase percentage paid in July multiplied by the base benefit or the retirement allowance, whichever is applicable, multiplied by the number of months the benefit recipient has been eligible for the annual increase.
- (2) Upon re-retirement under sections 24-51-1103(1.5) or 24-51-1726.5, C.R.S., whichever is applicable, each benefit segment is eligible for the one-time payment as described in subsection (1) above.

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

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

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

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

## **RULE 11: EMPLOYMENT AFTER RETIREMENT**

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

### **11.05 Employment During the Effective Month of Retirement**

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

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

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

- A. Employment with an Affiliated Employer
  - (1) For a service retiree employed in a position subject to limits on employment after service retirement, employment of more than four hours per day shall be considered one day.
  - (2) Employment after service retirement shall include all of the time during which a retiree renders any paid service.
- B. Employment with a Non-Affiliated Employer  
A retiree receiving a service retirement or reduced service retirement benefit may be employed with a non-affiliated employer without a reduction in or suspension of benefits.
- C. Employment of Benefit Recipients Other Than Retirees  
Cobeneficiaries and survivors are not subject to employment limitations.
- D. Employment Pursuant to Section 24-51-1101(1.8) and (1.9), 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) or (1.9), 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 any remaining days or hours, without a reduction in benefits, for the employer that designated that service retiree pursuant to Section 24-51-1101(1.8) or (1.9), 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) and (1.9), the employer must provide the Association with a list of any and all service retirees employed by the employer no later than March 31st of the applicable calendar year. The list must be updated with each service retiree who is hired that year.
- (4) For purposes of Section 24-51-1101(1.8) and (1.9), C.R.S., an employer is not required to designate all ten service retirees by March 31st of the applicable calendar year. However, once ten service retirees have been designated during a calendar year pursuant to Section 24-51-1101(1.8), C.R.S., 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.

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

A. A PERA employer that receives the services of a retiree, other than as a volunteer, under the conditions specified in this Rule, shall remit employer contributions to the Association in the manner specified in 24-51-401, C.R.S. and this Rule. Working retiree contributions shall also be due on such a retiree in accordance with the provisions of Rule 4.60 and paragraph (F) of this Rule. Employer contributions and working retiree contributions shall be due to the Association only if a retiree is the individual performing services for a PERA employer. Employer contributions and working retiree contributions shall not be due to the Association for a retiree if no services are provided to a PERA employer by the retiree. Employer contributions and working retiree contributions shall not be due to the Association for a retiree who provides products or goods to a PERA employer rather than services.

B. Ownership of up to 5 percent of a publicly traded company registered on a national securities exchange by a retiree shall not constitute ownership of the company or cause the company to be an affiliated party of the retiree for purposes of 24-51-1101(2), C.R.S. Any other form or degree of ownership in an entity providing services to a PERA affiliated employer shall constitute ownership or operation of the entity for purposes of 24-51-1101(2), C.R.S.

C. For purposes of 24-51-1101(2), C.R.S. an affiliated party shall include:

- (1) any person who is the named beneficiary or cobeneficiary on the PERA account of the retiree,
- (2) any person who is a relative of the retiree by blood or adoption to and including parents, siblings, half-siblings, children, and grandchildren,
- (3) any person who is a relative of the retiree by marriage or civil union to and including spouse, spouse's parents, step-parents, step-children, step-siblings, and spouse's siblings, and
- (4) any person or entity with whom the retiree has an agreement to share or otherwise profit from the performance of services for a PERA employer by the retiree other than the retiree's regular salary or compensation.

D. When employer contributions or working retiree contributions are due to the Association as a result of services provided by a retiree, the amount of contributions shall be based on the following:

- (1) If the services provided to a PERA employer by the retiree are the specific subject of an agreement with the PERA employer, the employer shall report the salary to PERA and remit the appropriate contributions. Working retiree contributions shall be based on the amount received by the retiree as specified in the agreement which, if paid directly by a PERA employer, would constitute salary under 24-51-101(42), C.R.S.
- (2) If the services provided to a PERA employer by a retiree are not the specific subject of an agreement with the PERA employer, then the retiree shall disclose the amount of compensation received by the retiree for services the retiree is providing to the PERA employer. Retiree shall report monthly to the Association and the PERA employer the amount received for the services provided to the PERA employer and shall specify the amount of compensation received which, if paid directly by a PERA employer, would constitute salary under 24-51-101(42), C.R.S. The monthly report to the Association by the retiree shall be in the form specified by the Association. The PERA employer shall remit employer contributions to the Association within 30 days after receipt of the retiree's disclosure. Working retiree contributions shall also be due in accordance with the provisions of Rule 4.60 and paragraph (F) of this Rule.
- (3) If a retiree fails to report the compensation required under subsection D.(2) then the retiree shall be responsible to pay the employer contribution required by 24-51-1101(2), C.R.S. together with interest on the employer contribution and the working retiree contribution at PERA's actuarial investment assumption rate. Any amounts due under this subsection D.(3) shall be collected via an offset of the retirement benefit of the retiree.
- (4) For purposes of this Rule 11.12 D., "specific subject of an agreement" means that an agreement between the retiree and the PERA employer, whether written or otherwise, contemplates services to be provided by the retiree. If the retiree is receiving compensation reported to the IRS under the retiree's own social security number or the PERA employer has knowledge of retiree status, the employer shall report under subsection D.(1).

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

- F. Working retiree contributions for independent contractors shall be collected via an offset of the retiree's retirement benefit to the point that the full benefit is offset.

### **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 31st 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 1st 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.

## **11.16 Suspension of Service Retirement**

- A. A service retiree may prospectively suspend receipt of retirement benefits and return to membership. A retiree must return to membership in order to suspend receipt of retirement benefits. No retroactive suspension of benefits is allowed.
- B. If a retiree suspends receipt of retirement benefits pursuant to 24-51-1103, C.R.S., and returns to work in a different division from which he or she retired, when the retiree resumes receipt of benefits due to re-retirement, the retiree shall remain retired from the division from which he or she originally retired. This Rule shall not apply to retirees who suspend receipt of retirement benefits on or after January 1, 2011.

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

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

- (1) Employment of Less Than One Year

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

- (2) Employment of One Year or More

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

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

- (1) Employment of Less Than One Year

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

(2) Employment of One Year or More

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

### **11.30 Employment After Disability Retirement**

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

### **11.40 Commencement of Employment After Retirement**

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

## **RULE 12: HEALTH CARE PROGRAM**

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

### **12.10 Enrollment**

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

#### A. Enrollment When First Eligible

##### (1) Enrollment of Benefit Recipients

- (a) Service retirees and reduced service retirees may enroll themselves and any eligible dependents for whom coverage is desired within 30 days after the date of the first benefit payment.
- (b) Survivor benefit recipients and disability retirees may enroll within 30 days after the date of the first benefit payment.
- (c) A surviving cobeneficiary who was not enrolled in the Program may enroll within 30 days after the date of death of the retiree. Coverage and requisite premium deductions will continue for a cobeneficiary whose coverage was in effect at the death of the retiree unless the cobeneficiary requests cancellation of coverage.

##### (2) Enrollment of Spouses Not Receiving Benefits

- (a) The surviving spouse of a retiree who elected Option 1, or a DPS retiree who elected a single life annuity, must notify the Association in writing within 30 days after the date of death of the retiree in order to continue the coverage which was in effect at the death of the retiree.
- (b) The divorced spouse of a retiree must notify the Association in writing within 30 days after the date of the divorce in order to continue the coverage which was in effect at the time of the divorce.
- (c) For purposes of Section 24-51-1204(1)(b), C.R.S., a single life annuity under the DPS benefit structure shall include Option A, Option B, and Option D.

(3) Enrollment of New Dependents

- (a) Newborn or newly adopted children may be enrolled within 30 days after the date of birth or adoption. Other children may be enrolled within 30 days after the date they become qualified as described in 24-51-1204(1)(a), C.R.S.
- (b) Spouses may be enrolled within 30 days after the date of marriage or civil union.
- (c) Dependent parents may be enrolled within 30 days after the date they become dependent parents as described in 24-51-101(14), C.R.S.

B. Enrollment Upon Loss of Other Coverage

Benefit recipients and others eligible for coverage who are not enrolled in the Health Care Program may enroll within 30 days after loss of other coverage.

C. Enrollment Upon Reaching Medicare Eligibility

- (1) Benefit recipients and others eligible for coverage may enroll in the Health Care Program within 30 days after their Medicare effective date.
- (2) Persons enrolled in the Health Care Program may change coverage from one health plan sponsored by the Program to another within 30 days after reaching Medicare eligibility.

D. Open Enrollment

A period of open enrollment shall be held annually. Benefit recipients may enroll themselves and their eligible dependents during the annual open enrollment period.

**12.20 Payment of Health Care Premiums by Benefit Recipients**

Premium payments made by benefit recipients shall be made through deduction from the benefit payment or by direct payment.

A. Deductions from Benefit Payments

The portion of the monthly premium paid by the benefit recipient shall be deducted from the benefit payment, unless the portion of the premium to be paid by the benefit recipient exceeds the amount of the benefit payment.

B. Direct Payment

If the portion of the premium to be paid by the benefit recipient exceeds the amount of the benefit payment, the benefit recipient shall make direct payments.

## **12.25 Conditions for Direct Payment of Health Care Premiums**

Direct payment of premium amounts may be made on a monthly or quarterly basis. The Association shall bill the benefit recipient, the surviving spouse or the divorced spouse for the direct payments.

### **A. Requirements for Timely Payments**

Direct payments are due prior to the month for which coverage is being purchased in accordance with the timeline as determined by the Association.

### **B. Cancellation Due to Non-Payment**

Payments not made within 30 days of the due date shall result in cancellation of coverage effective at the end of the last month for which premium payments were made.

## **12.30 Health Care Premiums for Benefit Recipients Who Have Multiple Benefit Segments**

When a retiree suspends his or her service retirement or reduced service retirement benefits and builds one or more separate benefit segments pursuant to Section 24-51-1103(1.5) or 24-51-1726.5, C.R.S., whichever is applicable, the service credit in all benefit segments shall be added together by the Association for the purposes of determining payment of premium subsidies for the Health Care Program.

## **RULE 13: LIFE INSURANCE PROGRAM**

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

### **13.10 Enrollment**

Life insurance coverage shall be available to members who voluntarily subscribe.

#### **A. Enrollment Upon Becoming a Member**

A member may enroll within 90 days after becoming a member without proof of insurability.

#### **B. Open Enrollment**

- (1) Open enrollment during which proof of insurability will not be required shall be held at times and for a period to be specified by the Association.
- (2) Open enrollment shall be available to members only.

### **13.20 Direct Payment of Premiums for Group Life Insurance**

A. Members may pay life insurance premiums directly to the life insurance plan in which they are enrolled. Inactive members may continue coverage after termination of employment by paying life insurance premiums directly to the life insurance plan in which they are enrolled, provided they have not received a refund of their account.

B. Members on a leave without pay may make payments for the life insurance premiums to their employer, who shall report the payments on the monthly contribution report.

C. Retirees whose benefits have been suspended may pay premiums directly to the life insurance plan in which they are enrolled.

### **13.30 Designation of Beneficiary for Life Insurance**

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

## **RULE 14: VOLUNTARY INVESTMENT PROGRAM**

Rule 14 describes certain requirements of the Voluntary Investment Program, a 401(k) plan established pursuant to Section 401(k) of the Internal Revenue Code of 1986, as amended. In addition to this Rule 14 and Part 14 of Article 51 of Title 24, C.R.S., the Voluntary Investment Program, or "401(k) Plan", is also governed by PERA's 401(k) and Defined Contribution Plan and Trust Document adopted by the Board (the "Plan document").

### **14.10 Enrollment in the 401(k) Plan**

- A. Any employee of an affiliated employer may enroll in the 401(k) Plan in accordance with the terms of the Plan document.
- B. A person whose assets are transferred from the state defined contribution match plan to the 401(k) Plan pursuant to 24-51-1402(5)(a), C.R.S., shall be automatically enrolled in the 401(k) Plan.

### **14.15 Changes in 401(k) Plan Participation**

Requests for changes in the percent of contributions assigned to each fund or the total amount in each fund must be submitted in the time and manner designated by the Plan Administrator.

### **14.20 Suspension of Participation**

A participant may stop contributions to the 401(k) Plan in accordance with the terms of the Plan document.

### **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 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. Interest on delinquent reports or contributions shall be assessed and paid to the Plan Administrator 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. The Plan Administrator, in its sole discretion, may waive the interest so computed.

## **14.40 Distributions**

Distribution of a participant's 401(k) account may commence as specified in the Plan document.

## **14.50 Loans**

All eligible 401(k) participants may borrow monies from the participant's 401(k) account subject to loan provisions established by the Board and specified in the Plan document.

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

A participant may only contribute to the plan up to the maximum contribution limits established by the Internal Revenue Service each year. If a participant contributes to another plan subject to the same maximum limit in the same year as the participant contributes to PERA's 401(k) plan, the participant is responsible for compliance with the Internal Revenue Service Code regarding maximum allowable contributions.

## **14.70 Beneficiary Designations**

Designation of a beneficiary shall be made in the manner prescribed by the Plan document.

## **RULE 15: DOMESTIC RELATIONS ORDERS (DROs)**

Rule 15 requires that the standardized form be used by the parties to a domestic relations order, as well as by the court, and includes other rules for administration of domestic relations orders. For the purposes of Rule 15, the term "member" shall include DPS members and the term "retiree" shall include DPS retirees.

### **15.05 Definitions**

A DRO for the PERA defined benefit plan, the PERA defined contribution plan, the PERA 401(k) Plan, or the PERA 457 Plan shall consist of: (1) The written agreement for a DRO pursuant to C.R.S. §14-10-113(6) (hereinafter "agreement") and (2) The domestic relations order (hereinafter "order").

### **15.10 Standardized Forms**

As specified in 14-10-113(6)(d), C.R.S., the standardized agreement and order forms provided by PERA must be used by the parties and by the court, for the agreement and the order to be valid with respect to PERA. The standardized forms must be executed voluntarily by both parties and properly completed to be a valid DRO with respect to PERA, with no changes or alterations to the provisions of the standardized forms.

### **15.20 Type of Plan**

PERA's required plan is a "defined benefit plan" as defined in 14-10-113(6)(b)(II), C.R.S., and all payments from the Plan shall be considered payments from a defined benefit plan. PERA's defined contribution plan, PERA's voluntary plan, the 401(k) Plan, and PERA's deferred compensation plan, the 457(b) Plan, are each a "defined contribution plan" as defined in 14-10-113(6)(b)(III), C.R.S.

### **15.25 DRO Submission Requirements**

- A. The parties shall submit the agreement to PERA within 90 days after entry of the decree and the permanent orders regarding property distribution in a proceeding for dissolution of marriage, legal separation or declaration of invalidity of marriage. For the agreement to be valid with respect to PERA, the agreement and order shall be entered by the court upon or before entry of any decree of dissolution of marriage, decree of legal separation, or declaration of invalidity of marriage or within 90 days after entry of the decree and the permanent orders regarding property distribution in a proceeding for dissolution of marriage, legal separation or declaration of invalidity of marriage. Certified copies of the agreement and order shall be received by PERA within 90 days after entry of the order and agreement, but must be received by PERA at least 30 days before PERA shall make its first payment pursuant to the DRO.

Notwithstanding the foregoing, a person who was divorced prior to July 1, 2009 and who was a member of: (1) the state defined contribution match plan and whose assets were transferred to the 401(k) Plan pursuant to 24-51-1402(5)(a), C.R.S.; (2) the state defined contribution plan and whose assets were transferred to the PERA Defined Contribution Plan pursuant to Section 24-51-1501(2)(a); or (3) the state deferred compensation plan previously administered under Part 1 of Article 52 of Title 24, as said part existed prior to its repeal in 2009 and whose assets were transferred to the PERA 457(b) Plan pursuant to Section 24-51-1601, C.R.S., shall have until July 1, 2010 to submit certified copies of the agreement and the order to PERA with respect to the assets so transferred.

B. An existing DRO that is valid with respect to PERA may be modified only by written agreement of the parties to the DRO and approved by the court. The standardized forms provided by PERA must be used by the parties to modify a DRO. Certified copies of the agreement and order shall be submitted to and received by PERA at least 30 days before PERA shall make its first payment pursuant to the modified DRO.

### **15.30 Application by Alternate Payee**

An alternate payee must make application for payment with the forms prescribed by PERA. No payment shall be made by PERA to the alternate payee until after all of the necessary forms have been completed and received by PERA and all other statutory, regulatory, and rule requirements for payment are satisfied.

### **15.40 Participant's Account**

The member contribution account for the defined benefit plan, the defined contribution account for the defined contribution plan and the member's account for the 401(k) Plan or the 457(b) Plan shall be reduced by payments made to the alternate payee.

### **15.50 Review of DRO Issues**

Any issue pertaining to PERA and what PERA can or cannot do pursuant to a DRO (including, but not limited to, the validity of any DRO with respect to PERA, whether PERA can make any payment pursuant to any DRO, and what the amount and timing of any payment by PERA can be) shall be resolved through PERA's administrative review process pursuant to Rule 2.20.

### **15.60 DPS Benefit Structure**

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

## **RULE 16: DEFINED CONTRIBUTION PLAN**

### **16.10 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 and is also governed by PERA's 401(k) and Defined Contribution Plan and Trust Document (the "Plan document"). 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 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. 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.

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.

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.

I. For purposes of Rule 16.10 H., 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.

- 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.
- 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.

## **16.20 Initial Election Period**

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

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

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

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

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.

## **16.40 Investments**

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

## **16.50 Beneficiary(ies)**

Beneficiary designations shall be governed by the terms of the Plan document.

## **16.60 Contributions**

- A. The employer shall deliver all Defined Contribution Plan contributions, along with the required report, 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 14.30. 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.

## **16.65 Contributions Based on Uniformed Service**

- A. A member of the Defined Contribution Plan who is reemployed and has the rights under 24-51-507, C.R.S., and the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”), may elect to make up his or her missed contributions for the period of uniformed service up to five years. Contributions must be made in accordance with USERRA, set forth at 38 U.S.C. § 4301, *et seq.*
- B. Contributions made by a member of the Defined Contribution Plan pursuant to this Rule must be made during the time period starting with the date of reemployment and continuing for up to three times the length of the member’s immediate past period of uniformed service, with the repayment period not to exceed five years. Makeup contributions may only be made during this period and while the member is employed with the post-service employer.
- C. Upon PERA’s receipt of the member contributions pursuant to section (A) of this Rule, the employer shall pay the employer contribution attributable to the period of time that the member paid make-up contributions. The employer shall remit the entire amount due pursuant to this section within 30 days from the date the member makes his or her make-up contributions.
- D. If the employee does not make up all of the contributions attributable to the period of service, his or her defined contribution account may be less than if he or she had done so. Even when the employee and employer make up all contributions attributable to the period of service, the employee’s account may not be the same as if the employee had remained continuously employed because the employee is not permitted to experience gains or losses on the make-up contributions that occurred in his or her defined contribution account during the period of service.

## **16.70 Return to Employment**

- A. A member of the Defined Contribution Plan who elects to receive a distribution of the entire vested balance of his or her Defined Contribution Account pursuant to this Rule and then subsequently returns to membership in the Association before there has been a 12-month break in service shall begin a new vesting schedule for future contributions.

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

#### **16.80 Forfeiture**

- A. Except as otherwise required by federal law, upon the earlier of (i) a 12-Month Break in Service, (ii) the distribution of the vested portion of the Defined Contribution Plan member's Defined Contribution Account upon termination of membership in PERA, or (iii) the transfer of the vested portion of the member's Defined Contribution Account to a Transfer Account, the person shall forfeit the portion of the Defined Contribution Account that is not vested. Forfeitures shall be used to pay Plan expenses. If required by federal law, the forfeited portion of the Defined Contribution Account without earnings shall be reinstated upon the person's resumption of participation in the Defined Contribution Plan.
- B. If a person has a 12-Month Break in Service from membership in the Defined Contribution Plan, the vested portion of the Defined Contribution Account will automatically be transferred to a Transfer Account. The amount of unvested employer contributions shall be forfeited pursuant to 24-51-1505(3), C.R.S.

#### **16.90 Distributions Upon Termination of Employment**

Distribution of a member's Defined Contribution Account may commence as specified in the Plan document.

#### **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.

## **RULE 17: DEFERRED COMPENSATION 457(B) PLAN**

Rule 17 describes certain requirements of the Deferred Compensation Plan, which is a 457(b) plan established pursuant to Section 457(b) of the Internal Revenue Code of 1986, as amended. In addition to this Rule 17 and Part 16 of Article 51 of Title 24, C.R.S., the Deferred Compensation Plan, or “457 Plan”, is also governed by the Deferred Compensation Plan document adopted by the Board (the “Plan document”).

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

Any employee of an employer who has affiliated with the Deferred Compensation Plan pursuant to section 24-51-1602, C.R.S. may enroll in accordance with the Plan document.

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

Requests for changes in the amount or investment of contributions must be submitted in the time and manner determined by the Plan Administrator.

### **17.30 Suspension of Participation**

A participant may stop contributions to the 457(b) Plan in accordance with the terms of the Plan document.

### **17.40 Contribution Report**

The employer shall deliver all 457(b) Plan contributions, along with the required report, in the form and manner 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 owed to participant accounts, and additional interest shall be assessed and paid to the Association as specified in Rule 4.10.

### **17.50 Distribution of Benefits**

Distribution of a participant’s 457 Plan account may commence as specified in the Plan document.

### **17.60 Loans**

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

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

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

## **RULE 18: DPS MEMBERS AND DPS RETIREES**

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

### **18.10 Data Certification**

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

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

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

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

Pursuant to Sections 24-51-1718, 1719, and 1721, C.R.S. under Options B, C and E, respectively, where payments become due to the estate of a deceased contingent beneficiary, or to an estate as designated or contingent beneficiary, the payments remaining due shall be commuted. Where payment is due to a trust which is the functional substitute, in the particular case, for a testamentary disposition, the Executive Director may, under appropriate conditions, direct payment to the trustee of such trust. Where the applicable adjustment is the lesser of 2% or the actual increase in the national consumer price index for urban wage earners and clerical workers (the "Index"), as calculated by the United States Department of Labor, a factor derived as follows shall be used in making the commutation calculation. Such factor shall be the average of the annual increases paid for the five calendar years preceding the date of death of such contingent beneficiary, or of the death of the Annuitant or Co-Annuitant resulting in a payment due to an estate as contingent beneficiary, as the case may be, provided that if the change for any such year (i) is less than zero, then zero shall be substituted or (ii) is more than 2%, then 2% shall be substituted. If the death occurs before the Index figure is available for the calendar year prior to the particular death, then the Executive Director may use a period of the most recent 60 months then available, divided into five 12-month periods beginning with the earliest month of such 60-month period. In making the commutation calculation, the annual adjustment factor derived as just provided shall be incorporated into an algorithm with the other pertinent factors after consultation with the Association's actuary.

#### **18.40 Effective Date of Annual Increase Payable to Members of the DPS Benefit Structure**

The effective date of the annual increase payable to members of the DPS benefit structure who were hired prior to July 1, 2005, shall be the same date that the annual increase is paid to members of the PERA benefit structure who were hired before January 1, 2007. Notwithstanding the foregoing, effective with the January 2010 benefit payment, eligible benefit recipients under the DPS benefit structure will receive an increase of .5417 percent which signifies two-twelfths of the 3.25 percent annual increase for the months of January and February 2010.



## Contact PERA



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