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# DEPARTMENT OF PERSONNEL AND ADMINISTRATION

## State Personnel Board and State Personnel Director

### STATE PERSONNEL BOARD RULES AND PERSONNEL DIRECTOR'S ADMINISTRATIVE PROCEDURES

#### 4 CCR 801-1

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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The purpose of the State Personnel Board Rules and Director's Administrative Procedures is to establish a comprehensive system of rules and procedures for employees within the state personnel system. In order to distinguish ~~them~~ the Board Rules from the Director's ~~p~~Procedures, rules promulgated by the State Personnel Board are noted as "Board Rules". Rules adopted by the Board and procedures adopted by the Director require the formal rulemaking process defined in the Administrative Procedures Act.

Pursuant to § 24-50-101(3)(b), C.R.S., it is the duty of the State Personnel Board to provide fair and timely resolution of the cases before it. Pursuant to § 24-50-101(3)(c), C.R.S., it is the duty of the State Personnel Director to establish the general criteria for adherence to the merit principles and for fair treatment of individuals within the state personnel system.

#### Preamble

Unless otherwise noted in a specific provision, the entire body of State Personnel Board Rules were repealed and new permanent rules were adopted by the State Personnel Board on April 19, 2005, pursuant to a Statement of Basis and Purpose dated April 19, 2005. The entire body of the State Personnel Director's Administrative Procedures were repealed and new permanent procedures were adopted by the State Personnel Director on May 5, 2005, pursuant to a Statement of Basis and Purpose dated May 5, 2005. Such rules and procedures were effective July 1, 2005.

This version reflects changes to Chapter 6, Performance that became effective on **DATE**, 2021. These changes clarify and simplify the Board Rules and the Director's Procedures in Chapter 6, Performance. These changes also create the alignment of the Board Rules and Director's Procedures with current law.

~~This version reflects an emergency rulemaking by the State Personnel Director as follows: 3-49, D.4.; 5-39; 5-40; 5-41. These emergency administrative procedures are effective March 13, 2020 and are in effect for 120 days.~~

~~This version reflects rulemaking by the State Personnel Director as follows: to modify Procedures 3-49.(D)(4), 5-4.(A)., 5-7. (Table), 5-17.(A)., 5-21., 5-23., and 5-38.(A); and an emergency rule into permanent rule 5-41. All changes effective August 1, 2020.~~

~~This version reflects an emergency rulemaking by the State Personnel Director as follows: 5-4.A, 5-7 (Table). These emergency administrative procedures are effective April 1, 2020 and are in effect for 120 days.~~

## Chapter 6 Performance

Authority for rules promulgated in ~~this chapter~~ Chapter 6, Performance, is found in the Colorado Constitution Art. XII §13 and §§24-50-104, (1)(c) and (c.5), and 24-50-125, and 27-90-111, C.R.S. C.R.S. Board rules are identified by cites beginning with "Board Rule".

### General Principles

Board Rule 6-1. Employees represent the state so they are required at all times to use their best efforts to perform assigned tasks promptly and efficiently, and to be courteous and impartial in dealing with those served. Employees may be rewarded based on their level of performance.

Board Rule 6-2. ~~A-In general a~~ certified employee ~~shall be subject to~~ will receive a corrective action before receiving discipline-a disciplinary action. When appropriate, the appointing authority may proceed directly to disciplinary action, including termination, if unless the act is so flagrant or serious that immediate discipline is proper. ~~The nature and severity of discipline depends upon the act committed. When appropriate, the appointing authority may proceed immediately to disciplinary action, up to and including immediate termination.~~

### Performance Management

Board Rule 6-3. Appointing authorities and designated raters are responsible for communicating the department's performance pay program and the performance expectations and standards, including an individual written performance plan, and for evaluating performance in a timely manner in accordance with rule.

6-4. The Director shall establish requirements governing the performance management system. These requirements shall be applied by all appointing authorities and designated raters, including any person employed by the state who supervises an employee. The performance management system does not apply to employees in the senior executive service or medical plan.

A. A department's performance management program shall be approved by the Director before implementation. Departments must develop a performance management program that includes the dispute resolution process and is approved by the Director before implementation. All employees shall be evaluated, in writing, at least annually based on the past year's performance. If an employee moves to a position under another appointing authority or department during a performance cycle, an interim overall evaluation shall be completed and delivered to the new appointing authority or department within 30 days of the effective date of the move. No evaluation is required when an employee retires from employment in the state personnel system. These requirements shall be applied by all appointing authorities and designated raters, including any person employed by the state who supervises an employee.

B. The department's performance management component program must ~~must include the following. (8/1/08):~~

1. Include the department's internal dispute resolution process and the Director's external dispute resolution process as outlined in Chapter 8, Resolution of Appeals and Disputes;

2. ~~Include a detailed~~ training plan for employees and raters detailing the department's performance management program. Training is mandatory for all raters;:-
3. ~~Include the~~ ~~incorporate into each individual performance plan and evaluation the~~ statewide, uniform core competencies defined by the Director;:-
  - a. The department shall incorporate the statewide uniform core competencies into each individual performance management plan and evaluation.
  - b. The statewide, uniform core competencies cannot be disregarded in the final overall rating for each employee.
4. ~~Include the development of~~ ~~Develop a~~ performance evaluation form(s) to be used for employees by the raters;:-
5. ~~Include~~ ~~the~~ statewide uniform performance cycle as defined by the ~~State Personnel Director~~;:- (1/1/14)
6. ~~Include a~~ planning meeting with the employee that shall occur by the date specified in the department's performance management program;:- (7/1/07)
  - a. ~~The department should~~ ~~allow~~ for coaching and feedback ~~during throughout~~ the performance cycle, but shall include at least one (1) documented progress review.
7. ~~Specify whether the performance evaluations are numerical, qualitative, or a combination that conforms to one of the performance rating levels.~~ Include performance rating levels and standard definitions published in written directives by the Director. ~~The Director shall define the performance rating levels and publish these standard definitions in written directives;:-~~
  - a. The department shall specify whether the performance evaluations are numerical, qualitative, or a combination that correlate to one of the Director's defined performance rating levels.
  - b. A department's performance management ~~program and~~ forms shall also contain the standard definitions.
  - c. Departments may further define the levels in relation to mission and operational needs providing that such expansion falls within these required definitions. ~~Beginning with the performance cycle on April 1, 2007, for merit pay payable on July 1, 2008, three rating levels will be used. (9/1/12).~~
8. ~~Shall Not~~ establish a quota for the number of employees allowed to receive any of the performance ratings;:-
9. Include a description of the department's review process to monitor the quality and consistency of performance ratings within the department before final overall ratings are provided to employees; and
10. Develop an accountability component to ensure compliance with the department's

performance management ~~system and the department's~~ program. ~~\_-~~

a. Such programs shall specify the sanctions, including those required by these provisions and statute, to be imposed for any rater employed by the state who fails to complete the performance management plan or evaluation. ~~(7/1/07)~~

b. ~~Repealed. (7/1/07)~~

c. ~~Repealed. (7/1/07)~~

d. ~~A description of the department's review process to monitor the quality and consistency of performance ratings within the department before final overall ratings are provided to employees.~~

C. All employees shall be evaluated, in writing, at least annually based on the past year's performance.

1. If an employee moves to a position under another appointing authority or department during a performance cycle, an interim overall evaluation shall be completed and delivered to the new appointing authority or department within thirty (30) days of the effective date of the move.

2. No evaluation is required when an employee retires from employment in the state personnel system.

6-5. Designated raters shall be evaluated on their performance management and evaluation of employees. Absent extraordinary circumstances, failure to plan and evaluate in accordance with the department's established timelines results in a corrective action and ineligibility for merit pay. If the individual performance plan or evaluation is not completed within thirty (30) days of the corrective action, the designated rater shall be disciplinarily suspended in increments of one (1) workday following the pre-disciplinary meeting. ~~(7/1/07)~~

A. A reviewer ~~must~~shall sign the rater's evaluation of an employee. If the rater fails to complete an individual performance plan or evaluation, the reviewer is responsible for completion. If the reviewer fails to complete the plan or evaluation, the reviewer's supervisor is responsible, on up the chain of command until the plan or evaluation is completed as required. If a rating is not given, the overall evaluation shall be satisfactory until a final rating is completed.

Board Rule 6-6. Performance Improvement.

A. Performance Improvement Plans.

1. When appropriate, the department may issue a performance improvement plan to communicate performance concerns and expectations.

2. A performance improvement plan is not a corrective action.

3. A performance improvement plan shall establish a reasonable amount of time for the employee to improve.

4. If performance has not improved within the established amount of time in a performance improvement plan, the appointing authority may take other action as appropriate.
  - B. Needs Improvement Performance Rating. A needs improvement rating shall result in a performance improvement plan and/or a corrective action and a reasonable amount of time to improve, unless the employee has previously received a corrective or disciplinary action for the same type of performance issue. If a needs improvement performance rating relates to a recurring performance issue that has resulted in a prior corrective action or disciplinary action, the appointing authority may take disciplinary action concurrently with issuing the needs improvement performance rating.
  - A. ~~A needs improvement performance rating shall result in a performance improvement plan or a corrective action and a reasonable amount of time must be given to improve, unless the employee is already under corrective or disciplinary action for the same performance matter. A performance improvement plan is not a corrective action. If performance is still unsatisfactory at the time of reevaluation under a performance improvement plan, a corrective action shall be given. If performance is still unsatisfactory at the time of reevaluation under a corrective action, the appointing authority may take disciplinary action up to and including demotion or termination.~~
- 6-7. Each department heads shall will provide any report required or requested information pertaining to performance management to the Director by the specified deadline.

### Corrective ~~And and~~ Disciplinary Actions

Board Rule 6-8. An employee may only be corrected or disciplined once for a single incident but may be corrected or disciplined for each additional act of the same nature. Corrective and disciplinary actions can be issued concurrently.

Board Rule 6-9. ~~The decision to take corrective or disciplinary action shall be based on the nature, extent, seriousness, and effect of the act, the error or omission, type and frequency of previous unsatisfactory behavior or acts, prior corrective or disciplinary actions, period of time since a prior offense, previous performance evaluations, and mitigating circumstances. Information presented by the employee must also be considered.~~ Corrective Actions.

- A. The purpose of a corrective action is to correct performance issues or conduct. Corrective actions do not affect current base pay, status, or tenure.
- B. Corrective actions shall be in writing and include the following:
  1. The performance issues or conduct that need improvement;
  2. The expectations the employee shall meet;
  3. If appropriate, a reasonable amount of time for the employee to improve the performance issues or conduct;

4. The consequences for failing to correct the performance issues or conduct; and
  5. A statement that the employee may grieve the corrective action.
- C. A corrective action may also contain a statement that the corrective action will be removed from the official personnel records after a specified period of satisfactory compliance.
- D. A removed corrective action is not relevant in any subsequent personnel actions as to the factors in Board Rule 6-12, but may be relevant for other purposes such as proof of motive, opportunity, intent, knowledge, or absence of mistake.

Board Rule 6-10. ~~When considering discipline, the appointing authority must meet with the certified employee to present information about the reason for potential discipline, disclose the source of that information unless prohibited by law, and give the employee an opportunity to respond. The purpose of the meeting is to exchange information before making a final decision. The appointing authority and employee are each allowed one representative of their choice. Statements during the meeting are not privileged. The employee will be allowed up to 5 business days after the meeting to provide the appointing authority any additional information relating to issues discussed at the meeting.~~

~~The appointing authority must provide written notice by certified mail to the last known address of the employee, by hand delivery or by last known electronic mail address, informing the employee of the meeting at least 3 business days prior to the meeting. The written notice must contain the date, time, and location of the meeting; the purpose of the meeting; general information about the underlying reasons for scheduling the meeting; the employee's right to present information at the meeting; and the right to have a representative of choice accompany the employee to the meeting.~~

~~When reasonable attempts to hold the meeting fail, the appointing authority must send a written notice by certified mail to the last known address of the employee, by hand delivery or by last known electronic mail address, advising the employee of the possibility of discipline and stating the alleged reasons. The employee has 10 days from receipt of the notice to respond in writing. If the employee refuses to accept the notice, a dated return receipt from a mail carrier is conclusive proof of the attempt to deliver and the period to respond begins on that date. (1/01/15)~~

#### Rule 6-10 Meeting.

- A. The appointing authority is responsible for deciding whether to take disciplinary action.
- B. This Rule only applies to certified state employees.
- C. When considering discipline, the appointing authority shall meet with the employee before making a final decision.
- D. During the Rule 6-10 meeting, the appointing authority shall:
  1. Disclose the performance issues or conduct that may result in discipline;

2. Disclose the source of the information about the performance issues or conduct (unless prohibited by law); and
  3. Give the employee an opportunity to respond to the alleged performance issues or conduct.
- E. During the Rule 6-10 meeting, the appointing authority and employee are each allowed one (1) representative of their own choice. The appointing authority and the employee may agree in writing to allow more than one (1) representative.
- F. Statements during the Rule 6-10 meeting are not privileged.
- G. Both sides may record the Rule 6-10 meeting using an audio-recording device.
- H. The employee shall be allowed at least seven (7) days after the Rule 6-10 meeting to provide the appointing authority any additional information relating to the subjects discussed during the meeting.
- I. In deciding whether to take disciplinary action, the appointing authority shall consider all the information discussed during the Rule 6-10 meeting and any additional information provided by the employee.
- J. If agreed upon by the appointing authority and the employee, the Rule 6-10 meeting may be conducted using video-conferencing technology. Both sides may record a Rule 6-10 meeting that is conducted via video-conferencing.

Board Rule 6-11. ~~Corrective action is intended to correct and improve performance or behavior and does not affect current base pay, status, or tenure. It shall be a written statement that includes the areas for improvement; the actions to take; a reasonable amount of time, if appropriate, to make corrections; consequences for failure to correct; and a statement advising the employee of the right to grieve and the right to attach a written explanation. It may also contain a statement that the corrective action will be removed from the official personnel records after a specified period of satisfactory compliance. A removed corrective action cannot be considered for any subsequent personnel action.~~Notice of the Rule 6-10 Meeting.

- A. The appointing authority shall provide written notice to the employee about a Rule 6-10 meeting as follows:
1. The notice shall be provided at least seven (7) days prior to the meeting;
  2. The notice shall contain the date, time, and location of the meeting;
  3. The notice shall inform the employee that the appointing authority is considering taking disciplinary action;
  4. The notice shall inform the employee of the suspected factual basis that prompted the appointing authority to consider taking disciplinary action;



5. The notice shall inform the employee that the employee may present information during the meeting; and
  6. The notice shall inform the employee that a representative may accompany the employee to the meeting.
- B. When reasonable attempts to hold the Rule 6-10 meeting fail, the appointing authority shall provide written notice to the employee as follows:
1. The notice shall provide the employee general information about the alleged performance issues or conduct that prompted the appointing authority to consider taking disciplinary action; and
  2. The notice shall inform the employee that the employee may respond in writing within ten (10) days from delivery of the notice.
- C. If reasonable attempts to meet fail and if the employee does not respond to the notice sent pursuant to Board Rule 6-11(B), then the appointing authority may make a disciplinary decision without information from the employee.
- D. Proof of delivery of the notices under this Rule may be established by:
1. A dated return receipt from the United States Postal Service;
  2. A dated return receipt from a commercial delivery service provider;
  3. The employee's signature affixed to the notice;
  4. An affidavit of hand-delivery; or
  5. An affidavit attesting that the sender transmitted the Notice of the Rule 6-10 Meeting to a valid email address combined with a copy of the email.

Board Rule 6-12. ~~Disciplinary actions may include, but are not limited to: an adjustment of base pay to a lower rate in the pay grade; base pay below the grade minimum for a specified period not to exceed 12 months; prohibitions of promotions or transfers for a specified period of time; demotion; dismissal; and suspension without pay, subject to FLSA provisions. Administrative leave during a period of investigation is not a disciplinary action. At the conclusion of discipline involving temporary reductions in base pay, it shall be restored as if the discipline had not occurred. Reasons for discipline include:~~

~~failure to perform competently;~~

~~willful misconduct or violation of these or department rules or law that affect the ability to perform the job;~~

~~false statements of fact during the application process for a state position;~~

~~willful failure to perform, including failure to plan or evaluate performance in a timely manner, or inability to perform;~~

~~final conviction of a felony or other offense of moral turpitude that adversely affects the employee's ability to perform the job or may have an adverse effect on the department if employment is continued. Final conviction includes a no-contest plea or acceptance of a deferred sentence. If the conviction is appealed, it is not final until affirmed by an appellate court; and,~~

~~final conviction of an offense of a Department of Human Services' employee subject to the provisions of §27-1-110, C.R.S. Final conviction includes a no-contest plea or acceptance of a deferred sentence. If the conviction is appealed, it is not final until affirmed by an appellate court.~~

~~An employee who is charged with a felony or other offense of moral turpitude that adversely affects the employee's ability to perform the job or may have an adverse effect on the department may be placed on indefinite disciplinary suspension without pay pending a final conviction. If the employee is not convicted or the charges are dismissed, the employee is restored to the position and granted full back pay and benefits. Department of Human Services' employees charged with an offense as defined in §27-1-110, C.R.S., may be indefinitely suspended without pay pending final disposition of the offense.~~

~~If the Board or administrative law judge finds valid justification for the imposition of disciplinary action but finds that the discipline administered was arbitrary, capricious, or contrary to rule or law, the discipline may be modified.~~

#### Factors to Consider in Taking Discipline.

- A. The decision to take disciplinary action of a certified state employee shall be based upon:
  1. The nature, extent, seriousness, and effect of the performance issues or conduct;
  2. Type and frequency of prior unsatisfactory performance or conduct (including any prior performance improvement plans, corrective actions or disciplinary actions);
  3. The period of time since any prior unsatisfactory performance or conduct;
  4. Prior performance evaluations;
  5. Mitigating circumstances; and
  6. Information discussed during the Rule 6-10 meeting, including information presented by the employee.
- B. In considering any disciplinary action of an employee who has engaged in mistreatment, abuse, neglect, or exploitation against a vulnerable person, the appointing authority shall give weight to the safety of vulnerable persons over the interests of any other person. A vulnerable person shall be as defined in § 27-90-111(2)(e), C.R.S.
- C. In considering any disciplinary action of an employee for engaging in violent behavior or a threat of violent behavior against another person while on duty, the appointing authority shall

give predominant weight to the safety of the other person over the interests of the employee.

Board Rule 6-13. ~~Corrective and disciplinary actions are subject to the “Dispute Resolution” chapter. An appointing authority who has decided to discipline may also discuss alternatives with the employee in an attempt to reach a mutually acceptable resolution. If no resolution is reached, the employee retains the right to appeal. When resigning in lieu of disciplinary action, the employee forfeits the right to file any appeal.~~

Disciplinary Actions.

- A. Disciplinary actions are as follows: an adjustment of base pay to a lower rate in the pay grade; base pay below the grade minimum for a specified period not to exceed twelve (12) months; demotion; dismissal; and suspension without pay, subject to FLSA provisions. Administrative leave with pay during a period of investigation is not a disciplinary action.
- B. Reasons for discipline include, but are not limited to, the following:
  1. Failure to perform competently;
  2. Willful misconduct;
  3. Failure to comply with the Board Rules, Director’s Procedures, department’s rules and policies, state universal policies, or other applicable directives;
  4. A violation of any law that negatively impacts job performance;
  5. False statements or omissions of material facts during the application process for a state position;
  6. False statements or omissions of material facts during the course of employment;
  7. Violence or threats of violence;
    - a. “Violence” means any act of physical, verbal, or psychological aggression. “Violence” includes destruction or abuse of property by an individual.
    - b. “Threat” may include a veiled, conditional or direct threat in verbal, written, electronic, or gestural form, resulting in intimidation, harassment, harm, or endangerment to the safety of another person or property.
  8. Mistreatment, abuse, neglect or exploitation of a person;
  9. Conviction of a felony or any other offense that involves moral turpitude; and
  10. Conviction of a Department of Human Services’ employee of any of the offenses in § 27-90-111, C.R.S.
    - a. Conviction means a verdict of guilty or a plea of guilty or a plea of nolo contendere for

an offense in § 27-90-111, C.R.S. Conviction also includes receipt of a deferred judgment and sentence or a deferred adjudication, except that a person shall not be deemed to have been convicted if the person successfully completes a deferred sentence or deferred adjudication.

- b. Employees charged with an offense under § 27-90-111, C.R.S., shall notify their appointing authority of such charge before returning to work. An employee who is charged with a disqualifying offense under (9)(b) of § 27-90-111, C.R.S., shall be placed on disciplinary suspension without compensation pending final disposition of the criminal proceeding. An employee who is charged with a disqualifying offense under (9)(c) of § 27-90-111, C.R.S., may be placed on disciplinary suspension without compensation pending final disposition of the criminal proceeding. If an employee who is suspended pursuant to this provision is not convicted, and if an appointing authority has not issued discipline that provides otherwise, then the employee is restored to the position and granted back pay and benefits.
- c. If an appellate court reverses a conviction, or if an employee successfully completes a deferred sentence or a deferred adjudication, then a disciplinary action based solely on that conviction shall be reversed. In such an event, the employee is restored to the position and granted back pay and benefits.
- d. An appointing authority may issue a disciplinary action based upon the conduct underlying a criminal charge irrespective of the outcome of the criminal proceeding.

Board Rule 6-14. ~~The person conducting the meeting in accordance with Board Rule 6-10 is responsible for the decision to take disciplinary action. The decision is made after consideration of all written and verbal information collected. (1/01/15).~~

Disciplinary Letter.

- A. If issuing discipline, the appointing authority shall provide a written Disciplinary Letter to the employee that includes the following:
  - 1. The specific reasons for the discipline;
  - 2. The discipline imposed;
  - 3. The employee's right to appeal the discipline to the Board, including the time frame for filing such an appeal and the place for filing such an appeal; and
  - 4. The Board's physical address, email address, website, telephone and facsimile numbers.
- B. The department shall provide the Disciplinary Letter to the employee no later than five (5) days following the effective date of the discipline.
- C. Proof of delivery of the Disciplinary Letter may be established by:
  - 1. A dated return receipt from the United States Postal Service;

2. A dated return receipt from a commercial delivery service provider;
3. The employee's signature affixed to the Disciplinary Letter;
4. An affidavit of hand-delivery; or
5. An affidavit attesting that the sender transmitted the Disciplinary Letter to a valid email address combined with a copy of the email.

~~Board Rule 6-15. \_\_\_\_\_ A written notice of disciplinary action must be sent to the employee's last known address, by certified mail, or may be hand-delivered to the employee. The employee must receive the notice no later than five days following the effective date of the discipline. The notice must state the specific charge, the discipline taken, and right to appeal, including the time frame for such an appeal, and the Board's address and telephone and facsimile numbers for filing the appeal. Employees may submit a written statement to be attached to disciplinary action. (1/1/07)~~

- A. ~~If the employee refuses to accept the notice, a dated return receipt from a mail carrier is conclusive proof of the attempt to deliver.~~

~~Board Rule 6-15. \_\_\_\_\_ Corrective and disciplinary actions are subject to Chapter 8, Resolution of Appeals and Disputes.~~