

# State of Colorado



Jared Polis  
Governor

Nora Kelly  
Board Chair

Rick Dindinger  
Board Director

State Personnel Board  
1525 Sherman Street 4<sup>th</sup> Floor  
Denver, Colorado 80203  
Phone (303) 866-3300  
Fax (303) 866-5038

## **MEETING MINUTES**

May 18, 2021

The State Personnel Board met on May 18, 2021. The Board held its meeting via a Zoom webinar.

The meeting was called to order at 8:00 a.m. Board Members Patricia Bangert, Nora Kelly, Karen Niparko, Sarah Wager, and Roxane White were present for the roll call via webinar. Rick Dindinger, Board Director, and Assistant Attorney General Amy Lopez, Board Counsel, were also present via webinar.

Members of the public also attended the meeting via webinar. In advance of the meeting, the Board posted information about the agenda and the webinar on its website.

### **I. REPORT OF DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA] AND REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR].**

There was no report scheduled this month.

### **II. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD.**

There were no initial decisions or other final orders on appeal for review.

### **III. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING.**

#### **A. Berry Meadows v. Department of Transportation, SPB 2021G031.**

Following discussion of the Administrative Law Judge's Preliminary Recommendation, the Board acted as follows: Ms. White moved to adopt the recommendation, deny Complainant's petition for hearing, and refer the matter to the State Personnel Director. Ms. Niparko seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Bangert, Ms. Kelly, Ms. Niparko, Ms. Wager and Ms. White.

**IV. INITIAL DECISIONS OF THE ADMINISTRATIVE LAW JUDGES FOR POTENTIAL REVIEW UNDER § 24-4-105(14)(a)(II), C.R.S.**

- A. Jerome Greene v. University of Colorado Boulder, College of Arts & Sciences, SPB 2021B040.

The Board did not take any action. Ms. Wager announced that she will recuse herself from this matter.

- B. Joshua Fisher v. Community College of Colorado, Front Range Community College, Campus Security & Preparedness, SPB 2019G061.

The Board did not take any action.

- C. Yoseph Kenno v. Governor's Office of Information Technology, SPB 2019B044(c).

The Board did not take any action.

**V. REVIEW OF MINUTES FROM THE APRIL 20, 2021, PUBLIC MEETING OF THE STATE PERSONNEL BOARD.**

Ms. White moved to approve the minutes as submitted. Ms. Wager seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Bangert, Ms. Kelly, Ms. Niparko, Ms. Wager, and Ms. White.

**VI. ADMINISTRATIVE MATTERS & COMMENTS.**

A. ADMINISTRATIVE MATTERS.

- Ms. Lopez announced that the annual training pursuant to C.R.S. § 24-3.7-102 will be on September 21, 2021.
- Mr. Dindinger reported about the results of the Board Member Nomination Process and 2021 statewide election. David Ruchman's nomination was uncontested. Mr. Ruchman will replace Nora Kelly as an elected Board Member when Ms. Kelly's term expires.

B. GENERAL COMMENTS.

- In advance of the meeting, the Board did not receive any requests to make a general comment publicly.

**VII. PROPOSED LEGISLATION AND/OR RULEMAKING**

There was no proposed legislation or rulemaking.

**VIII. EXECUTIVE SESSION**

At 8:15 a.m., Ms. Kelly moved to enter an executive session for the following purposes:

- For considering the Board Director's annual review pursuant to § 24-6-402(3), C.R.S. Mr. Dindinger requested the discussion occur in executive session.
- For a matter to be kept confidential pursuant to state and federal law.

Ms. Niprko seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Bangert, Ms. Kelly, Ms. Niparko, Ms. Wager, and Ms. White. Following the vote, the Board entered into executive session.

The first executive session ended at 9:03 a.m.

At 10:12 a.m., Ms. Kelly moved to re-enter executive session for the following purposes:

- For considering the Board Director's annual review pursuant to § 24-6-402(3), C.R.S. Mr. Dindinger requested the discussion occur in executive session.

Ms. Niprko seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Bangert, Ms. Kelly, Ms. Niparko, Ms. Wager, and Ms. White. Following the vote, the Board entered into a second executive session.

The second executive session started at 10:16 a.m. and ended at 11:03 a.m.

#### **IX. RULEMAKING HEARING.**

The Board conducted a rulemaking hearing regarding proposed changes to Chapter 9 (Fair Employment Practices). The rulemaking hearing started at 9:05 a.m.

Mr. Dindinger made a staff presentation regarding the proposed changes to Chapter 9.

The Board invited public comment. The Board heard a written comment from Joi Simpson (via Jim Davidson) that was read into the record.

The record closed at the conclusion of the public testimony.

The Board deliberated on the proposed changes to Chapter 9.

**First motion.** Ms. Kelly moved to repeal the Board Rules in the current version of Chapter 9 and to adopt the following proposed rules and the accompanying statements of basis and purpose as originally published on April 25, 2021:

- Board Rules 9-1 and 9-2.

Ms. Kelly's motion stated that the specific authority of the State Personnel Board to promulgate these rules is found at Article XII, sections 13 and 14 of the Colorado Constitution; the State Personnel System Act, section 24-50-101, *et seq.*, C.R.S.; and the Administrative Procedure Act section 24-4-103, 105 and 106, C.R.S. Ms. Kelly's motion also stated that the purpose for adopting and revising these rules is: (a) clarification for the Board Rules for improved understanding and ease of use by stakeholders, including the general public; (b) removal of redundant information and simplifying language of procedural requirements; and (c) correction of typographical errors, grammatical errors, and formatting errors. Ms. Kelly's motion also stated that the Board finds, as required by section 24-4-103(4)(b), C.R.S., that the record of the

rulemaking proceedings demonstrates the need for the rules; the proper statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated; the rules do not conflict with other provisions of law; and any duplication or overlapping was explained. Ms. Niparko seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Bangert, Ms. Kelly, Ms. Niparko, Ms. Wager and Ms. White.

**Second motion.**

Ms. Kelly moved to adopt the following proposed rules as originally published on April 25, 2021, but with the modifications as reflected in the deliberation document:

- Chapter 9 Preamble, Board Rules 9-3, 9-4, 9-5, 9-6 and 9-7.

Ms. Kelly's motion cited specific authority of the Board, the purposes for adopting the rules, and the Board's findings required under § 24-4-103(4)(b), C.R.S. Ms. Wager seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Kelly, Ms. Niparko, Ms. Wager and Ms. White. Ms. Bangert voted in opposition. (The deliberation document is attached to these Minutes as an exhibit.)

Following the votes on the motions, the rulemaking hearing closed by consensus at 10:08 a.m.

The Board continued its regular business.

The Board meeting adjourned by consensus at 11:05 a.m.

**SIGNED THIS 15th DAY OF JUNE, 2021.**

---

Nora Kelly, Chair

---

Sarah Wager, Vice Chair

---

Patricia Bangert, Board Member

---

Karen Niparko, Board Member

---

Roxane White, Board Member

Proposed Changes during formal APA process

Changes will be in Red

Comments

<b>Chapter 9 Fair Employment Practices</b>	<b>1</b>
General Principles	1
Discrimination	1
Disputes	2

## Chapter 9 Fair Employment Practices

Authority for rules promulgated in Chapter 9, Fair Employment Practices, is found in the Colorado Constitution Art. XII § 13(1), **C.R.S. Title 24, Article 34, Part 4**, and in C.R.S. ~~§24-34-402, and~~ 24-50-112.5(1)(b). Board rules are identified by cites beginning with "Board Rule".

### General Principles

Board Rule 9-1. It is to the benefit of the state to employ a diverse workforce that reflects the character of its general population to assist in providing effective services to citizens.

Board Rule 9-2. The state is committed to special efforts to increase representation of the population throughout all levels of the state personnel system. The state will continue to attract and retain qualified persons representing the population as future changes occur.

### Discrimination

Board Rule 9-3. Discrimination and/or harassment against any person is prohibited because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, ancestry, political affiliation, ~~organizational membership~~, veteran's status, marital status, **gender identity** or any other protected class recognized under the Colorado Anti-Discrimination Act (CADA). This applies to all employment decisions.

Board Rule 9-4. In determining whether discrimination **or harassment** has occurred, the Board shall apply Colorado law, including the standards and guidelines adopted by the Colorado Civil Rights Commission. The Board may refer to federal law in the event Colorado legal standards are unclear.

Board Rule 9-5. Each department shall notify applicants and employees of Board Rule 9-3 prohibiting discrimination and harassment. Any means or method reasonably designed to clearly communicate the information may be used.

- A. Each department will notify applicants and employees of the **titlename**, business address, email address, and telephone number of the ADA coordinator. Appointing authorities and employees should consult with their ADA coordinator concerning what constitutes a disability, reasonable accommodation, and undue hardship.

Board Rule 9-6. If the Board finds that discrimination **or harassment** has occurred, it may order affirmative relief that the Board determines to be appropriate, including reinstatement or rehiring of employees, with or without back pay, front pay, and any other relief authorized by the statutes governing the Board. This does not prohibit settlement by the parties at any stage of the proceedings.

### Disputes

Board Rule 9-7. For any complaint ~~on an action that violates the provisions of this Chapter 9, Fair Employment Practices,~~ of discrimination or harassment within the Board's and the Director's **jurisdiction**, refer to the provisions in Chapter 8, Resolution of Appeals and Disputes, for further information. **For complaints of discrimination or harassment outside the Board's jurisdiction, a person may be able to bring claims in other forums and should consult with an attorney.**