

**PHILIP J. WEISER**  
Attorney General  
**NATALIE HANLON LEH**  
Chief Deputy Attorney General  
**ERIC MEYER**  
Chief Operating Officer  
**ERIC R. OLSON**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**Civil Litigation and**  
**Employment Law Section**

March 9, 2021

**SENT VIA EMAIL** ([doug.platt@state.co.us](mailto:doug.platt@state.co.us))

Mr. Doug Platt  
Department of Personnel and Administration  
1525 Sherman Street  
Denver, CO 80203

**RE:** Comments to Proposed Amendments to **Chapter 6**, State Personnel Board Rules and State Personnel Director's Administrative Procedures, Set for Joint Rulemaking Hearing on March 16, 2021

Dear Mr. Platt:

These written comments to the proposed amendments to Chapter 6 of the State Personnel Board Rules and State Personnel Director's Administrative Procedures are made on behalf of the Department of Public Health & Environment, the Governor's Office of Information Technology, and the Department of Corrections.

On the whole, the proposed revisions successfully meet the aim to modernize the rules and procedures to make both consistent with contemporary practice. The proposed changes update and streamline the existing rules in order to provide a more organized and clear statement of the rules. The revisions to the Board rules governing performance management provide clear and concise requirements for performance management programs. This gives state agencies clear rules on which to base their performance management programs and provides accountability provisions to aid in enforcing those requirements. The proposed revisions to the Board Rules on performance improvement, corrective, and disciplinary actions similarly provide a clearer statement of requirements on state agencies, and the expectations of state employees. Additionally, the proposed revisions include references and incorporate new statutory construction regarding factors to be considered in reaching decisions on disciplinary actions.

However, proposed changes to Board Rule 6-13 limit the applicability of a disciplinary suspension to a specific set of circumstances. Such a limitation may prevent state agencies from using this process to evaluate potential criminal activity to the detriment of the agencies, their employees, and the Colorado communities they serve.

## Comments on Specific Proposed State Personnel Board Rules

Board Rule 6-2: The change to this Rule provides more flexibility to allow for disciplinary action where appropriate. Together with the additional detail for the Factors to Consider in Taking Discipline in proposed Rule 6-12, this change provides clarity on the issue of when discipline is appropriate.

Board Rule 6-4.C.1: This Rule requires that an employee receives an interim overall evaluations within thirty days of moving positions to another appointing authority or department during a performance cycle. For clarity as to when an interim evaluation is not required we would recommend adding to Board Rule 6-4.C.1:

**“An interim overall evaluation is not required when an employee’s appointing authority moves to a new position or department during the performance cycle.”**

Board Rule 6-6.B: This rule provides that where a needs improvement performance rating relates to a recurring performance issues that has resulted in prior corrective or disciplinary action, an appointing authority may take disciplinary action at the same time as issuing the needs improvement performance rating. This change will aid state agencies in addressing continuing performance issues as part of the performance management process, streamlining the process and allowing state agencies to take appropriate action in a timely manner.

Board Rule 6-9.D: This rule provides that once a corrective action is removed from an employee’s personnel file, it is no longer relevant in a subsequent personnel action as to the Board Rule 6-12 factors. This prevents an appointing authority from using a removed corrective action in making a determination on taking discipline. The rule further provides that a removed corrective action may be relevant in certain limited circumstances including to show intent, knowledge, or absence of mistake. This rule change will be helpful where it is necessary to show an employee has knowledge or familiarity with a particular policy or procedure through prior corrective actions, without impacting the Rule 6-12 factors.

Board Rule 6-10: The proposed reorganization of Rule 6-10 clearly sets forth the requirements for the Rule 6-10 meeting allowing employees and appointing authorities to easily and quickly understand the purpose of the meeting and the obligations on each of the participants during and after the meeting.

Board Rule 6-11.A.4:

The proposed changes to the substance of the notice to employees may require additional details to be included in the notice. Requiring an unqualified amount of detailed information in a notice may lead to additional litigation over the sufficiency of each notice. In order to strike a balance between providing an employee with notice of the basis for the meeting, without requiring an unquantified level of detail in the notice, we recommend the following change in the language of the rule:

“The notice shall inform the employee of a summary of the suspected factual basis that prompted the appointing authority to consider taking disciplinary action.”

Board Rule 6-13.B.10.b:

This proposed change includes the provision that employees charged with a disqualifying offense under § 27-90-111, C.R.S., will or can, depending on the charge, be placed on disciplinary suspension without compensation. Section 27-90-111, C.R.S., pertains exclusively to employees of the Colorado Department of Human Services. While this rule change specifically permits the Department of Human Services to place an employee on disciplinary suspension without compensation when they are charged with a disqualifying offense, by exclusion it prohibits other agencies from doing the same when their employees are charged with felonies. In other agencies, where an employee is charged with a felony, the agency would not be permitted to place the employee on disciplinary suspension without compensation without regard for the nature of the charge and the potential danger to other state employees or the individuals served by that agency. By permitting only the Department of Human Services to place employees charged with disqualifying offenses on disciplinary suspension without compensation, this rule requires other agencies to place employees charged with similar crimes on paid administrative leave where they have reason to believe the employee could not safely remain on the job. In some criminal cases, the employing agency is not provided sufficient information about the factual circumstances to hold a Rule 6-10 meeting with the employee. With the proposed changes, in these instances, the agencies would have to keep an employee on paid administrative leave *indefinitely* while the charges are resolved – this may not be an appropriate use of state resources. We recommend revising Rule 6-13.B to include a provision to permit all agencies to place an employee charged with a felony on disciplinary suspension without compensation.

If you have any questions regarding the comments presented above, please contact the undersigned counsel.

Sincerely,

*s/ Jacob W. Paul*

---

MICHELLE BRISSETTE MILLER

First Assistant Attorney General

STACY L. WORTHINGTON

Second Assistant Attorney General

JACOB W. PAUL

Assistant Attorney General

Employment Personnel & Civil Rights

Civil Litigation and Employment Law

720-508-6590

720-508-6032 (FAX)

Email: [michelle.miller@coag.gov](mailto:michelle.miller@coag.gov)

[stacy.worthington@coag.gov](mailto:stacy.worthington@coag.gov)

[jacob.paul@coag.gov](mailto:jacob.paul@coag.gov)