STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. **2016B075**

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

LAURA SAURINI,
Complainant,

vs.

DEPARTMENT OF CORRECTIONS, OFFICE OF CLINICAL & CORRECTIONAL SERVICES, DIVISION OF CLINICAL SERVICES,
Respondent.

Administrative Law Judge (ALJ) Susan J. Tyburski held the commencement hearing on September 23, 2016, and the evidentiary hearing on May 31, June 1, 2, 20, 21, 22, 23, 27 and 28, July 13, 14, 24 and 26, and August 4, 2017,[1] in this matter at the State Personnel Board, Courtroom 6, 1525 Sherman Street, Denver, Colorado. The record was closed on August 11, 2017, after the exhibits were reviewed and redacted for inclusion in the record. Complainant appeared *pro se*. Respondent appeared through its attorney, Eric W. Freund, Senior Assistant Attorney General.

MATTER APPEALED

Complainant worked for the Department of Corrections (DOC) as a Social Work / Counselor III. She was administratively discharged on February 29, 2016. Complainant alleges that Respondent violated the Director's Administrative Procedure 5-6 (Rule 5-6) by failing to grant her request to accommodate her medical condition by allowing her to work part time in Denver, and failed to properly calculate her Family Medical Leave (FML) in determining whether she had exhausted that leave. Complainant also alleges that her separation from employment constituted retaliation for protected disclosures, in violation of the State Employee Protection Act (Whistleblower Act), §24-50.5-101, *et seq.*, C.R.S. Complainant requests that her administrative separation be rescinded. She further requests that Respondent be ordered to either allow her to return to work at her prior position with accommodations as needed, or to identify a position within the DOC for which she is qualified, with or without accommodation.

Respondent counters that it did not retaliate against Complainant, and that its administrative discharge of Complainant for exhaustion of her accrued leave complied with Administrative Procedure 5-6. Respondent requests that the Board affirm its administrative discharge of Complainant and deny her requested relief.

For the reasons discussed below, Complainant's administrative separation from employment by Respondent is **affirmed.**

ISSUES

1. Was Respondent's administrative termination of Complainant's employment arbitrary, capricious

---

[1] At Complainant's request due to her medical restrictions, the ALJ limited each scheduled day of hearing to 4-6 hours.

or contrary to rule or law?

2. Did Respondent retaliate against Complainant in violation of the Whistleblower Act?

FINDINGS OF FACT

Background

1. Respondent's Sex Offender Treatment and Monitoring Program (SOTMP) is a cognitive behavioral program that provides specialized treatment and monitoring services for convicted sex offenders while they are incarcerated within Respondent's facilities. The SOTMP provides treatment to help convicted sex offenders better manage their mental illness, maintain appropriate behavior, and successfully reintegrate into the community upon their release. Sex offenders may become eligible to participate in the SOTMP after they have indicated a willingness to undergo treatment and are within 4 years of parole eligibility.

2. Complainant was hired in June 2014 as a SOTMP Family Therapist Counselor III with Respondent's Office of Clinical and Correctional Services, Division of Clinical Services (Clinical Services).

3. At all times relevant to this appeal, Complainant's appointing authority was Renae Jordan, Respondent's Director of Clinical and Correctional Services.

4. At all times relevant to this appeal, Dr. Jill Lampela, Chief of Behavioral Health, reported to Ms. Jordan.

5. At all times relevant to this appeal, Julie Drew was a Staff Resources Coordinator / Program Assistant for Respondent's Clinical Services, and reported to Ms. Jordan.

6. At all times relevant to this appeal, Rick Thompkins was Respondent's Chief Human Resource Officer.

7. At all times relevant to this appeal, Leonard Woodson was the Clinical Services Program Manager and served as Complainant's supervisor until December 2015.

8. Jason Guidry worked as a sex offender therapist with the SOTMP, and was Complainant's co-worker in 2014 and 2015. He became Complainant's immediate supervisor in December 2015.

9. Mr. Woodson participated in Complainant's interview and hiring process. Complainant, as well as Mr. Woodson and the rest of the hiring panel, understood that they were hiring Complainant to work as a sex offender therapist. After Complainant was hired, they discovered that the open position for which she applied, and was hired, was intended to work in the SOTMP education program (SEP). Complainant accepted this position, and did not grieve or appeal the change in work duties.

10. Complainant's assigned duties primarily involved organizing and conducting educational meetings for family members and other support persons for sex offenders involved in the SOTMP, as well as facilitating "disclosure" meetings in which offenders would disclose their sex offending histories and relapse prevention plans to family members or their designated community support person. Complainant prepared family members and support persons for what they might hear in the disclosure meetings and facilitated post-meeting debriefing sessions. Complainant also

participated in weekly SOTMP staff meetings. Only 20% of Complainant's official duties involved conducting sex offender group therapy sessions and supplemental individual therapy.

Complainant's Disclosures to Mr. Woodson

11. During her initial months of employment with Respondent, Complainant was trained by Ann Greenwood, who served as the SEP coordinator. Complainant assisted Ms. Greenwood with the SEP coordination work. Another employee named Debbie Baty also assisted with SEP work.

12. During the spring and summer of 2015, Complainant raised a number of concerns to Mr. Woodson about the SEP's use of volunteers with a non-profit organization, Circles of Support and Accountability (COSA), as support persons for sex offenders in treatment. Mr. Woodson followed up on Complainant's concerns and clarified that volunteers must complete SOTMP support education in order to serve as support persons for offenders.

13. Ms. Baty left Respondent's employment and Ms. Greenwood retired in May 2015. In July 2015, Complainant communicated concerns she had about inadequate SEP staffing to Mr. Woodson. Mr. Woodson asked Complainant to put her concerns in writing.

14. On July 29, 2015, Complainant provided a letter to Mr. Woodson that described increasing delays in facilitating disclosures and offender wait lists, as well as the personal stress she was experiencing, as a result of inadequate SEP staffing. Complainant stated that she was feeling overwhelmed by the SEP work, which was exacerbating her medical condition.[2] Complainant concluded that, after August 5, 2015, she would need to "significantly decrease the amount of support education services that I am able to provide, including disclosures."

Complainant's Outside Employment and Requests for Accommodation

15. Sometime during the summer of 2015, Complainant obtained part-time outside employment as a counselor for Englewood Public Schools. She asked Mr. Woodson if she could work part time for Respondent; Mr. Woodson asked Ms. Jordan, who denied this request.

16. On August 10, 2015, Complainant sent Ms. Jordan an email stating, in pertinent part:

> I know my supervisor Lenny Woodson asked you if I could go part-time, and he said the answer was no. I am leaving DOC within 3-4 weeks as a full time employee, but I would love to help out with the SOTMP Support Education program that is an intense and high maintenance program, on a part-time or contract basis.

17. On August 12, 2015, Complainant submitted her resignation via email to Mr. Woodson and Dr. Lampela. This email stated:

> This is my official notification of my dates of resignation. My last day at DW/DR will be Monday Aug. 31. I will take vacation on Sept 1-3 and will be at the monthly SOTMP meeting on Friday Sept. 4. My last day will officially be Monday Sept. 7.
>
> My offer still stands to withdraw the resignation and to stay part-time (.4 or .5) or on a contract basis either temporarily or indefinitely, in order to assist with the transition/training of the SOTMP Support Education program to a different

[2] To protect Complainant's privacy, her medical condition is not specifically identified in this decision.

therapist.

18. Ms. Drew informed Complainant that she needed to fill out Respondent's resignation form, and that her resignation date needed to be her last day worked. On August 13, 2015, Complainant informed Ms. Drew that her last day worked would be September 8, 2015.

19. On August 14, 2015, Complainant sent Ms. Jordan an email stating, in pertinent part:

> I am not putting in an official resignation just yet. I want to talk with you more about going part-time, and how my disability plays a large part in how all this has played out and come to the point of needing to go part-time for health concerns, while I think that staying would be the most beneficial for the team, clients and sex offender treatment completions.

20. On August 19, 2015, Complainant talked with Ms. Jordan about the possibility of working part time as an accommodation for Complainant's medical condition. Ms. Jordan informed Complainant that the needs of the program needed to be evaluated. Ms. Jordan instructed Complainant to work with Jana Maher, Respondent's ADA Coordinator, on potential accommodations.

21. On August 20, 2015, Complainant emailed Ms. Jordan about Ms. Greenwood, who had arranged with previous management to work part time, and requested a similar arrangement. Complainant suggested that another employee, Becky Lowe, may have had a similar arrangement allowing her to work part time. Complainant also requested part-time transitional duty while her accommodation request was pending.

22. On August 21, 2015, Ms. Jordan informed Complainant that she was concerned about the "business need" and "work load" involved in Complainant's position, that "[i]t would not be responsible of me to approve less than full time," and that she was "having the program reviewed and a staffing analysis completed." Complainant responded that she wanted to have the same opportunity to work part time as other employees, and renewed her request for part-time transitional duty while her accommodation request was pending.

23. On August 24, 2015, Complainant sent Ms. Jordan the following email:

> I did have a doctor's appointment today and they are filling out the paperwork and the request for an accommodation of part-time work. I hope to have that in by this week, as soon as they can get that completed.
>
> I had not turned in the paperwork for resignation or identified an official date. Please let me know if you will honor the ARs of either transitional duty and/or honoring the accommodation during the interactive/evaluation process.

24. On August 24, 2015, Complainant's Family Nurse Practitioner (FNP), Sharon Peterson, completed a query from Ms. Maher about Complainant's ability to perform the essential functions of her job and need for accommodation. FNP Peterson identified the following as Complainant's "permanent work restrictions": "Please allow [Complainant] to work part time hours to reduce her exacerbation of her disease. The max hours would be 20 hours / week."

25. After consulting with Mr. Woodson and Dr. Lampela about the work involved in coordinating the SEP and the problems experienced in having a number of different persons sharing that work, Ms. Jordan determined that the needs of this program required one full-time

employee to serve as the SEP coordinator.

26. On August 27, 2015, Ms. Jordan emailed Complainant:

> Due to the vital importance of the full time job responsibilities of this position, I will not approve transitional duty involving a reduction of work hours.
>
> I understand that your request for an ADA accommodation is being processed. Please continue to direct questions related to this process to the Staff ADA Coordinator.

27. On August 28, 2015, Complainant requested reconsideration of Ms. Jordan's denial of transitional duty. Her request for reconsideration was referred to Mr. Thompkins.

28. On September 10, 2015, FNP Peterson completed a State of Colorado Medical Certification Form – Employee's Health Condition, which indicated that Complainant was seeking "a reduced work schedule due to continuing exacerbation of symptoms" of her medical condition. FNP Peterson described the "probable duration of the condition" as "permanent." FNP Peterson indicated that Complainant could perform the essential functions of her job, but that working part time on a reduced schedule was "medically necessary." The reduced work schedule needed by Complainant was estimated to be 4-8 hours per day, 2.5 days per week, from September 1, 2015 through "indefinite." The following note was added: "Maximum 20 hours per week at Department of Corrections." FNP Peterson also noted that periodic flare-ups of Complainant's condition could prevent her from performing her job functions.

29. On October 9, 2015, Complainant met with Ms. Jordan, Mr. Thompkins, Ms. Maher, Dr. Lampela and Mr. Woodson to discuss Complainant's request for accommodation.

30. During her discussion with Complainant on October 9, 2015, Ms. Jordan discovered that Complainant was working an outside job during the daytime. Ms. Jordan instructed Complainant that she was required to submit a Permit for Outside Work, as required by Board Rule 1-14 and Administrative Regulation 1450-06, Outside Employment / Volunteer Activity for DOC Employees.

31. Shortly after her discussion with Ms. Jordan on October 9, 2015, Complainant submitted a Permit for Outside Work. This Permit indicated that, on September 1, 2015, Complainant began working 18 hours per week for Englewood Public Schools as a school counselor. This work was scheduled to last through the end of the school year in May 2016.

32. On October 12, 2015, Complainant's treating physician, Dr. Louis Morris, completed a Fitness-To-Return Certification for Respondent, indicating that Complainant was able to return to work on a reduced schedule for 4-8 hours per day from September 1, 2015 through May 16, 2016. This Certification contained the following notation: "Maximum 20 hours at DOC per week." This Certification also indicated that Complainant could work a full, regularly scheduled day with no restrictions beginning May 16, 2016.

33. On October 15, 2015, Ms. Jordan denied Complainant's Permit for Outside Work:

> As per our discussion on Friday, October 9, 2015, you acquired and began outside work on September 1, 2015, without prior approval. Since September 1, 2015, you have modified your Colorado Department of Corrections (DOC) work schedule to accommodate this outside employment without authorization. This is a violation of Administrative Regulation 1450-06, Outside Employment / Volunteer Activity for

DOC Employees. Effective immediately, you are directed to cease outside employment.

34. On October 21, 2015, Dr. Morris provided the following information to Respondent concerning Complainant's request for a part time work schedule:

> [Complainant's] diagnosis limits her ability at this time to function with adequate energy needed to work 40 hours per week, 52 weeks per year, including mandatory overtime consisting of nights and weekends at the Department of Corrections.
>
> In addition, she needs adequate rest and cannot work graveyard shifts. Her symptoms have been exacerbated and she needs more rest in general; thus at this time we are recommending the restriction of a reduction to a 20 hours maximum work schedule at the Department of Corrections.
>
> Although [Complainant's] condition is permanent; at this time, she has requested that we re-evaluate her work restrictions in the future. We will do this by May 2016.
>
> . . . . .
>
> At this time, we are recommending a maximum of 20 hours per week at the Department of Corrections, with a range of working 4-8 hours per day. We will re-evaluate her condition in regards to this reduced work schedule by May 2016.

35. Complainant specifically asked her medical providers to plan to re-evaluate her condition in May 2016.

36. Complainant did not comply with Ms. Jordan's October 15, 2015 directive to cease outside employment, and continued to work for Englewood Public Schools until that employment ended in May 2016. Complainant also intermittently worked a third job as an adjunct instructor for Regis University.

Respondent's Attempts to Accommodate Complainant's Medical Condition

37. On August 28, 2015, Ms. Maher informed Complainant that, if an "employee cannot perform the essential functions of the current position, the employer is required to look for another position within the organization that might fit [an employee's restrictions or accommodation requests]." As a result, Ms. Maher was looking for other part time positions within Respondent's work force in an attempt to accommodate Complainant's request for part time work.

38. In response, Complainant informed Ms. Maher: "If you are looking at positions outside of the SOTMP program for me, only mental health in Denver would work. I can not be asked to sell my house and move, that would not be good for my health whatsoever."

39. On August 31, 2015, Ms. Maher replied to Complainant:

> I wanted to touch base to let you know that I am continuing my research and will contact you again when I have more to report.
>
> I understand leaving the Denver area is not an option you can consider. Your geographic preference will certainly be a factor in this process.

40. Ms. Jordan approved Complainant's request for part time transitional duty from October 12, 2015 through October 30, 2015.

41. On October 27, 2015, Ms. Maher sent Complainant a determination letter concerning her accommodation request that stated:

> During our meeting on Friday October 9, 2015, you specified Denver as the only feasible location you could work and that the only type of position you would consider would be as a Social Worker III.
>
> Your health care provider has established the following restrictions:
>
> - Maximum work week of 20 hours per week at the Colorado Department of Corrections
> - No graveyard shifts
>
> The restrictions, as established by your health care provider, prevent you from completing the essential functions of your current assignment as a full time Social Worker III.
>
> We have conducted a search for a vacant, part time Social Worker III position in Denver and there are none at this time, however, we will continue to look for a position that meets your restrictions and requested accommodation.

42. On November 2, 2015, Complainant was placed on medical leave and was not allowed to return to work. On November 12, 2015, Ms. Jordan sent Complainant the following notice:

> After further review of your Fitness-to-Return Certification signed by your physician on October 12, 2015, I have determined that Clinical Services cannot meet your physical restrictions; therefore, you will not be allowed to return to work at this time. Your restrictions will be reviewed as we receive updates to determine if current restrictions can be met.

43. On November 6, 2015, Ms. Maher sent Complainant the following response to additional queries from Complainant:

> The interactive process has not been discontinued; I will continue to look for a position that meets your health care provider's restrictions as well as your desire to remain in a Social Worker III position and working in Denver.
>
> To answer your original question from your Nov. 3 email; the justification for the ADA Accommodation Request outcome was included in the October 27, 2015 letter sent to you. I've attached a copy here. Simply put, you have indicated that you are unable to perform the essential functions of the full time position you are in and there are no current positions to accommodate you based on the scheduling and location restrictions.

44. On November 10, 2015, Ms. Maher sent Complainant an additional explanation reiterating why Respondent could not change her position from full time to part time as an accommodation:

> When an ADA qualified employee requests an accommodation, the employer is

required to consider reasonable accommodations.

The employer is not required to:

1. Create a new position;
2. Remove essential functions of the position or require another employee to perform the essential functions of the position.

Since the essential functions of your position require a full time schedule, the requested accommodation of working up to 20 hours per week, amounts to creating a new position and requiring another employee to perform those functions that would no longer be accomplished due to the reduction of hours.

If an employer is unable to accommodate an employee in their current position, then we are required to look for other possibilities. In your case, we are looking for part time Social Worker III positions in Denver.

If your situation changes and you would consider another job classification besides a SW III or another work location, let me know. That would reduce the limitations that currently exist.

45. Complainant was allowed to return to work on December 11, 2015. In her absence, Mr. Guidry became her immediate supervisor. At 8:01 a.m. on December 10, 2015, Ms. Jordan sent Complainant the following directive via email:

> I spoke with your supervisor regarding your reduced schedule. You are scheduled to work 8 am – 5 pm on Mondays and Fridays, and 8 am – 12 noon on Wednesdays. You are expected to return to work on Friday, December 11, 2015. Jason will discuss the specifics of your work assignment upon your return tomorrow.

46. Complainant acknowledged receipt of Ms. Jordan's directive at 10:32 a.m. on December 10, 2015 via email.

47. At 1:22 p.m. on Friday, December 11, 2015, Complainant sent Mr. Guidry the following email:

> Today,
>
> Signed in at 8am, signing out about 130.
> Using FML on Monday, back on Tuesday

48. On Monday, December 14, 2015, Complainant worked at Englewood Public Schools.

49. On Tuesday, December 15, 2015, at 6:12 a.m., Complainant sent Mr. Guidry an email, informing him that she wasn't feeling well and would be working at home that day. Mr. Guidry forwarded this email to Ms. Jordan, who immediately sent Complainant the following email:

> I was notified by your supervisor that you indicated you would be working from home today. Working from home is not part of your accommodation and I am not authorizing you to do so. Additionally, today is not one of your scheduled work days. It is my expectation that you meet your assigned work schedule as directed.

50. On December 15, 2015, at 10:44 a.m., Complainant sent Ms. Maher a request to work from home as an accommodation. Ms. Maher informed Complainant that additional information would be needed from her doctor to support this request.

51. On December 22, 2015, Complainant submitted a request for accommodation to Ms. Maher, asking for the ability to work from home and to have "late starts."

52. Complainant obtained a letter from Dr. Morris, dated December 22, 2015, that stated:

> Due to continued stress and symptom exacerbation of [Complainant's] condition, at this time her schedule at the Department of Corrections needs to be reduced to 16 hours per week, consisting of two eight-hour shifts, with either a Monday or a Friday off for adequate rest.
>
> She also needs to be allowed to utilize "late starts" when necessary due to her condition.

Dr. Morris did not address Complainant's request to work from home. This letter was forwarded to Ms. Maher.

53. On January 6, 2016, Ms. Maher sent Dr. Morris a request for information concerning Complainant's request to work from home as an accommodation.

54. On January 8, 2016, Ms. Maher sent Complainant a request for medical information supporting her request to work from home as an accommodation.

55. On January 13, 2016, Dr. Morris completed a State of Colorado Medical Certification Form – Employee's Health Condition that described the "probable duration" of Complainant's condition as "permanent," and estimated the part-time work schedule needed by Complainant as 8 hours per day, 2 days per week from December 22, 2015 through "indefinite." Again, Dr. Morris made no mention of Complainant's request to work from home.

56. On January 20, 2016, Ms. Maher sent Complainant a follow-up to Ms. Maher's January 8th request for medical information supporting Complainant's request to work from home as an accommodation.

57. On February 19, 2016, Complainant obtained a letter from Dr. Morris that stated:

> Please be informed her [sic] that [Complainant] has been under our care for her [medical condition]. She has been working at the Department of Corrections about 16 hours per week. We have authorized that type of schedule due to the increased stress that is very detrimental for her [medical condition] and can cause severe exacerbations. She is able to work other jobs in order to support herself financially which also improves her overall health as she can be a productive member of society.

58. Ms. Maher never received any medical documentation supporting Complainant's request to work from home.

59. On February 29, 2016, Ms. Maher notified Complainant that the medical information provided by Complainant's treating physician did not support her request to work from home. Ms.

Maher added: "[N]or would working from home be a reasonable accommodation in your current assignment as a Social Worker III. Your current position requires the ability to meet with offenders, one-on-one in order to provide required treatment."

Complainant's Disclosures to Ms. Jordan

60. During a meeting with Ms. Jordan in January 2016 to discuss her accommodation requests, Complainant shared her concerns that sex offenders may be rushed through accelerated or modified treatment programs in order to meet parole eligibility dates, and that Respondent's use of COSA created ethical issues. Complainant believed that, because COSA was led by a parent of a current offender in SOTMP, it created an unethical "dual relationship with a client," in violation of ethical standards set by the Sex Offender Management Board (SOMB). Complainant also shared concerns about Respondent's funding of grants for COSA, and about COSA volunteers participating in offenders' disclosure sessions without first participating in SOTMP training. Finally, Complainant was concerned that SOTMP was not evaluating offenders for pedophilia, psychopathy and other sadistic behavior, which would disqualify them from eligibility for treatment.

61. Following her meeting with Complainant, Ms. Jordan contacted Dr. Lampela, relayed Complainant's concerns, and asked Dr. Lampela to investigate them.

62. On February 17, 2016, Complainant sent Ms. Jordan a written summary of the "malpractice / ethical issues" she believed existed within the SOTMP. Ms. Jordan forwarded this letter to Dr. Lampela.

63. On March 17, 2016, Dr. Lampela sent Ms. Jordan a report of her investigation into Complainant's concerns. Dr. Lampela concluded that no ethical violations or malpractice situations existed in SOTMP.

Exhaustion of FML and Denial of Short Term Disability

64. On September 9, 2015, Ms. Drew sent Complainant information concerning the FMLA. On September 10, 2015, Ms. Drew and Mr. Thompkins talked with Complainant and explained the FML paperwork. Complainant submitted a request for FML due to her serious health condition.

65. On September 18, 2015, Complainant's request for intermittent FML was approved up to 20 hours per week. Complainant had 520 total hours of FML available.

66. Complainant's FML hours were tracked through Respondent's payroll department pursuant to Respondent's regulations and policies. Ms. Jordan had no control over the input or accounting of these hours.

67. Complainant used 64 hours of FML in September 2015 and 83 hours of FML in October 2015.

68. After Complainant was placed on medical leave on November 2, 2015, she applied for Short Term Disability benefits. On November 19, 2015, Complainant received a letter from Unum Benefits Center denying her claim for Short Term Disability. This letter states, in pertinent part:

> [T]here is no indication that you do not have functional capacity for a 40 hour a week work schedule, on which your Short Term Disability is based, and you are

continuing to work for your second employer.

69. On November 23, 2015, Complainant submitted a request to Ms. Maher and Ms. Jordan to return to work and use intermittent FML.

70. On December 2, 2015, Mr. Thompkins notified Complainant that her request for intermittent / reduced schedule FML was granted.

71. On December 17, 2015, Ms. Jordan notified Respondent's payroll department that she was granting 20 hours of paid administrative leave per week from November 2, 2015 through December 11, 2015, to replace FML deducted from Complainant's available FML bank during the time she was placed on medical leave. Complainant's available FML was adjusted accordingly.

72. Following the adjustments to Complainant's available FML leave, Complainant used 84 hours of FML in November 2015 and 109.5 hours of FML in December 2015.

73. On January 20, 2016, due to Complainant's request to reduce her work schedule to 16 hours per week, her use of intermittent FML was approved up to 24 hours per week.

74. Complainant used 131 hours of FML in January 2016, and 60.50 hours of FML through February 12, 2016.

75. Between September 1, 2015 and February 12, 2016, Complainant used a total of 532 FML hours, exhausting her available 520 hours of FML.

Respondent's Decision to Administratively Separate Complainant from Employment

76. In mid-February 2016, Risk Management Specialist Sandy McGinnis notified Ms. Drew that Complainant had exhausted her sick and annual leave, as well as her FML.

77. By certified letter dated February 19, 2016, Ms. Jordan notified Complainant that she had exhausted her sick and annual leave on February 2, 2016, had exhausted her FML on February 10, 2016, and was not eligible for Short Term Disability. As a result, Ms. Jordan scheduled an information sharing meeting with Complainant on February 24, 2016 to discuss her leave and status, pursuant to Administrative Procedure 5-6.

78. Ms. Jordan, Ms. Maher and Ms. McGinnis met with Complainant on February 24, 2016. At this meeting, Ms. Jordan informed Complainant of her exhaustion of sick leave, annual leave, and FML, and asked Complainant whether her medical condition had changed. Complainant reiterated that she believed she should be accommodated with a part time position as a SW III in Denver. Ms. Jordan explained, once again, that she could not change the existing SEP coordinator position from full time to part time. There were no available part-time SW III positions in Denver, and Complainant was not willing to accept open part-time SW III positions outside of Denver.

79. Ms. Jordan notified Complainant of her administrative separation by letter dated February 29, 2016. This letter informed Complainant of her appeal rights and the need to contact the employee's retirement plan.

80. Complainant timely appealed her administrative discharge and raised a whistleblower complaint.

DISCUSSION

I. BURDEN OF PROOF

Complainant bears the burden to prove by a preponderance of the evidence that her administrative separation by Respondent was arbitrary, capricious, or contrary to rule or law. §24-50-103(6), C.R.S.; *Velasquez v. Dep't of Higher Ed.*, 93 P.3d 540, 542 (Colo. App. 2004). Complainant also bears the burden to prove by a preponderance of the evidence that she was subject to retaliation under the Whistleblower Act, § 24-50.5-101, *et seq.*, C.R.S.

II. COMPLAINANT'S ADMINISTRATIVE SEPARATION FROM EMPLOYMENT BY RESPONDENT UNDER ADMINISTRATIVE PROCEDURE 5-6

An employee's administrative separation from employment is controlled by Administrative Procedure 5-6, which states, in relevant part:

> If an employee has exhausted all credited paid leave and is unable to return to work, unpaid leave may be granted or the employee may be administratively discharged by written notice following a good faith effort to communicate with the employee. Administrative discharge applies only to exhaustion of leave.
>
> A. The notice of administrative discharge must inform the employee of appeal rights and the need to contact the employee's retirement plan on eligibility for retirement.
>
> B. An employee cannot be administratively discharged if FML or short-term disability leave (includes the 30-day waiting period) apply, or if the employee is a qualified individual with a disability under the ADA who can reasonably be accommodated without undue hardship.

Administrative Procedure 5-6 imposes a series of requirements before an employee can be discharged for exhaustion of leave: (1) the employee must have exhausted all credited paid leave; (2) the employee must be unable to return to work; (3) the employee cannot have the protection of FML or short-term disability leave; (4) the employee cannot be a qualified individual with a disability under the ADA who can be reasonably accommodated; (5) there must be a good faith effort to communicate with the employee concerning his or her work status and plans; and (6) there must be a written notice of the discharge issued after such communication or good faith communication effort, and this notice must have appeal rights and retirement plan information.

In this case, the evidence presented by both parties demonstrates that Complainant exhausted all credited paid leave, and was unable to return to her full-time position at the time of her administrative discharge, satisfying the first and second requirements. In addition, there is no dispute that Complainant received written notice of her administrative discharge via letter dated February 29, 2016. This letter contains the requisite appeal rights and retirement plan information, satisfying the sixth requirement. The remaining issues are whether Complainant was entitled to protection of the FMLA or short-term disability leave, whether she was a qualified individual with a disability under the ADA who could be reasonably accommodated, and whether Respondent made a good faith effort to communicate with Complainant concerning her work status and plans before issuing the February 29, 2016 separation letter.

A. At the Time of Her Administrative Discharge, Complainant Was Not Subject to Protection of FML or Short-Term Disability Leave.

The preponderance of the evidence establishes that, at the time of her administrative separation on February 29, 2016, Complainant had exhausted all available FML.

Complainant disagrees with Respondent's application of its regulations and policies to count certain vacation days and holidays as FML, resulting in more FML hours than should have been counted against her. In addition, Complainant argues that, on days she took FML, she should have been provided paid work time for leaving her home and going to the post office to pick up certified mail from her employer. Complainant also alleges that, prior to requesting FML, there were times she attended SEP meetings, and shopped for SEP supplies, outside of her regular schedule in 2014 and 2015, and that she should be retroactively granted "compensatory time" for these extra hours. Complainant provided no authority to substantiate the recalculation of FML she alleges. Further, Complainant's work for an outside employer on days when she took FML from Respondent raises questions concerning the credibility of these claims.

Complainant also argues that Ms. Jordan knew Complainant planned to request short term disability for an upcoming surgery scheduled in March 2017, and that Complainant was improperly denied that potential protection because of her February 29, 2017 administrative discharge. At the time of this discharge, however, Complainant had not submitted a claim for short term disability related to her surgery. Her prior claim for short term disability had been rejected because her part-time employment with Englewood Public Schools, combined with her part-time schedule for Respondent, demonstrated that she was capable of working 40 hours per week. Ms. Jordan credibly testified that her decision to administratively terminate Complainant's employment was due to Complainant's exhaustion of all available leave and inability to be accommodated in a part-time position. The preponderance of the evidence establishes that Complainant was not subject to the protection of short term disability leave at the time of her administrative discharge.

B. Complainant Failed to Establish That Her Request for a Part Time Work Schedule Was A Reasonable Accommodation of Her Medical Condition.

Under the ADA, subsequently amended by the Americans With Disabilities Amendment Act (ADAAA) of 2008, 42 U.S.C. sec. 12101, *et seq.*,[3] a "qualified individual with a disability" is "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires..." 42 U.S.C. §12112(a). Because of Complainant's permanent medical condition and the restrictions imposed by her medical providers, Complainant is disabled within the broad coverage of the ADAAA. Under Administrative Procedure 5-6, Respondent was required to determine whether it could reasonably accommodate Complainant's restrictions without undue hardship.

Reasonable accommodation requires an interactive process involving the participation of both parties. *Templeton v. Neodata Services Inc.*, 162 F.3d 617, 619 (10th Cir. 1998). The regulations implementing the ADA and the ADAAA state that this informal, interactive process "should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations." 29 C.F.R. §1630.2(o)(3). See also 29 C.F.R. pt. 1630 app. 1630.9 appendix, "Process of Determining the Appropriate Reasonable Accommodation."

[3] The ADAAA expanded the definition of "disability" but did not alter these requirements of the ADA.

A reasonable accommodation is one that presently, or in the near future, enables an employee to perform the essential functions of his or her job. *Hudson v. MCI Telecommunications Corp.*, 87 F.3d 1167, 1169 (10th Cir. 1996). An employee bears the burden of establishing that an accommodation is reasonable. Without information concerning the expected duration of an impairment, an employer cannot determine whether an employee will be able to perform the essential functions of the job in the near future. *Id.* Complainant's medical providers consistently stated that her medical condition was permanent and the duration of her restriction to part-time work was indefinite. Complainant's medical condition did not improve during the six months the parties were engaged in the interactive process and Complainant was permitted to work part time; instead, Complainant's accommodation requests became more restrictive, moving from a 20-hour week to a 16-hour week, followed by a request to work from home that was not substantiated by any medical documentation. While some of the medical statements and certifications obtained by Complainant noted that her condition would be re-evaluated in May 2016, this re-evaluation was admittedly requested by Complainant[4], and did not reflect a medical opinion that her condition was expected to improve. Complainant's own belief in the possibility of improvement or recovery, especially where it contradicts the consistent characterization of her condition by her medical providers as "permanent," is not sufficient to establish the duration of her medical condition. *Cisneros v. Wilson*, 226 F.3d 1113, 1131 (10th Cir. 2000).

The Tenth Circuit has held that physical attendance in the workplace is generally an essential function of any job. *Mason v. Avaya*, 357 F.3d 1114, 1119-1120 (10th Cir. 2004). An employer is not required to eliminate an essential function or fundamental duty of a position in order to accommodate a disabled employee. A requested accommodation is "reasonable" if it "seems reasonable on its face, i.e., ordinarily or in the run of cases." *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 401 (2002). The ADA does not "demand action beyond the realm of the reasonable." *Id.*

Complainant has failed to establish that her requests for a 20-hour-a-week schedule, and then a 16-hour-a-week schedule, were reasonable, especially considering the fact that her requested schedule allowed her to work 18 hours a week in her second job for Englewood Public Schools. Ms. Jordan credibly testified that the demands of the SEP coordinator position required a full time employee who was present to meet with participants in the SEP, and Complainant has failed to establish that converting that position to a part-time job constitutes a reasonable accommodation.

Once Ms. Jordan determined, on October 27, 2015, that Complainant could not perform the essential functions of her job with her requested accommodation, Ms. Jordan and Ms. Maher spent several months looking for an alternative part-time position that was acceptable to Complainant. This search, while necessarily limited by the constraints concerning job title and geographical location imposed by Complainant, nevertheless continued until the very last day of Complainant's employment.

While reasonable accommodation may include reassignment of an employee to a vacant position, an employer is not required to create a new position for that employee. *Community Hospital v. Fail*, 969 P.2d 667, 678 (Colo. 1998). In engaging in a lengthy search for an alternative part-time position, Respondent more than fulfilled its obligations under Administrative Procedure 5-6(B). Thus, Complainant has failed to prove, by a preponderance of the evidence, that her administrative discharge by Respondent violated Administrative Procedure 5-6(B).

[4] Coincidentally or not, Complainant's outside job with Englewood Public Schools was scheduled to end in May 2016.

C. Respondent Made a Good Faith Effort to Communicate with Complainant Concerning Her Work Status and Plans Before Issuing the February 29, 2016 Administrative Separation Letter.

Ms. Jordan met with Complainant at least twice, in October 2015 and January 2016, to discuss her requests for accommodation, and engaged in additional communications with Complainant via email, culminating in a final meeting held on February 24, 2016. In addition, Ms. Maher maintained a regular email correspondence with Complainant between August 2015 and February 2016 concerning Complainant's accommodation requests and answered Complainant's numerous queries. These emails, telephone conversations and face-to-face meetings demonstrate "a good faith effort to communicate" with Complainant prior to her administrative discharge, as required by Administrative Procedure 5-6.

III. COMPLAINANT'S WHISTLEBLOWER CLAIM

Complainant alleges that Respondent's administrative termination of her employment constituted retaliation for raising concerns about the use of COSA, as well as inadequate pre-treatment screening of sex offenders and inadequate staffing of the SEP, and thus violated the Whistleblower Act, § 24-50.5-101, *et seq.*, C.R.S. The purpose of the Whistleblower Act, set forth in the legislative declaration, is to encourage "state employees . . . to disclose information on actions of state agencies that are not in the public interest." § 24-50.5-101, C.R.S.; *Lanes v. O'Brien*, 746 P.2d 1366, 1371 (Colo. App. 1987). The Whistleblower Act "protects state employees from retaliation by their appointing authorities or supervisors because of disclosures of information about state agencies' actions which are not in the public interest." *Ward v. Indus. Comm'n*, 699 P.2d 960, 966 (Colo. 1985). To establish a *prima facie* violation of the Whistleblower Act, Complainant must demonstrate that she made disclosures that are "protected" under this statute, and that they were a substantial or motivating factor in the actions taken by the agency. *Id.* at 968. If Complainant makes such a showing, the burden shifts to the Respondent to prove that it would have reached the same decision even in the absence of Complainant's protected conduct. *Id.* at 964.

For the first prong of a whistleblower claim, Complainant must show that she made a "disclosure of information," defined as "the written provision of evidence to any person, or the testimony before any committee of the general assembly, regarding any action, policy, regulation, practice, or procedure, including, but not limited to, the waste of public funds, abuse of authority, or mismanagement of any state agency." § 24-50.5-102(2), C.R.S. To warrant protection under the Whistleblower Act, the disclosure of information must involve a matter of public concern. Disclosures that do not concern matters in the public interest or that are not of public concern do not implicate the statute. *Ferrell v. Colorado Dept. of Corrections*, 179 P.3d 178, 186 (Colo. App. 2007). In the First Amendment contest, the U.S. Supreme Court advises that matters of public concern relate "to any matter of political, social, or other concern to the community." *Connick v. Myers*, 461 U.S. 138, 146 (1983).

Complainant raised ethical concerns about the use of COSA, led by a parent of an offender in SOTMP, as well as concerns about adequate screening of sex offenders before beginning SOTMP treatment and ultimately being released to the community. Complainant also complained about inadequate staffing of the SEP. These communications concerning a sex offender treatment program administered by the Respondent involve matters of public concern and thus meet the definition of protected disclosures under § 24-50.5-102(2), C.R.S.

In addition to establishing that she engaged in protected communications by raising issues of public concern, Complainant must also demonstrate that she made "a good faith effort to

provide to [her] supervisor or appointing authority or member of the general assembly the information to be disclosed prior to the time of its disclosure." § 24-50.5-103(2), C.R.S. If Complainant makes a disclosure about a matter of public concern to one of these persons or entities, a single disclosure is sufficient to satisfy the requirements of the Whistleblower Act. Requiring an employee to make a second disclosure beyond a communication with his supervisor "would undermine a major purpose of the statute, namely to protect an employee from retaliation by the supervisor to whom the information is first disclosed." *Gansert v. Colorado*, 348 F.Supp.2d 1215, 1228 (D.Colo. 2004).

Complainant's expressions of her concerns to Mr. Woodson in July 2015, and to Ms. Jordan in January and February 2016, are sufficient to meet the reporting requirements of § 24-50.5-103(2), C.R.S. *Gansert*, 348 F.Supp.2d at 1226-28. Thus, Complainant has established the first prong of a *prima facie* whistleblower claim.

In addition to establishing that protected disclosures occurred, Complainant must also demonstrate that she suffered a disciplinary action by Respondent, as defined by the Whistleblower Act, and that her protected disclosures were a substantial or motivating factor in this action. *Ward*, 699 P.2d at 968. The Whistleblower Act prohibits the initiation or administration of "any disciplinary action against any employee on account of the employee's disclosure of information." § 24-50.5-103(1), C.R.S. "Disciplinary action" is broadly defined by § 24-50.5-102(1), C.R.S. as:

> ... any direct or indirect form of discipline or penalty, including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, corrective action, reprimand, admonishment, unsatisfactory or below standard performance evaluation, reduction in force, or withholding of work, or the threat of any such discipline or penalty.

Under this definition, the termination of Complainant's employment via administration separation on February 29, 2016, constitutes a disciplinary action under the Whistleblower Act, meeting the second prong of a *prima facie* case.

To meet the third and final prong of a *prima facie* whistleblower claim, Complainant must establish a causal connection between the administrative termination of her employment by Respondent and her protected disclosures. *Maestas v. Segura*, 416 F.2d 1182, 1188-89 (2005). The Whistleblower Act prohibits the initiation or administration of "any disciplinary action against any employee on account of the employee's disclosure of information." § 24-50.5-103(1), C.R.S. Employers may violate the Act if they had both legitimate and retaliatory motives in issuing the discipline. *Taylor v. Regents of the University of Colorado*, 179 P.3d 246, 249-50 (Colo. 2007). In dual motive situations, the requisite causal connection exists if the disclosure of information was a substantial or motivating factor in the imposition of discipline. *Ward*, 699 P.2d at 966.

Complainant has failed to establish that her communication of concerns about SOTMP and SEP was a substantial or motivating factor in her administrative separation from employment. Rather than taking retaliatory action against Complainant, the actions of Ms. Jordan over several months demonstrate thoughtful consideration of Complainant's various concerns and requests. In August 2015, Ms. Jordan allowed Complainant to withdraw her resignation notice and proceed with a request for part-time work as an accommodation of her medical condition. In October 2015, Ms. Jordan did not terminate Complainant for failing to submit a Permit for Outside Work before engaging in such outside work, and then refusing to follow Ms. Jordan's directive to cease that outside employment, in violation of Board Rules 1-13 and 1-14, promulgated pursuant to § 24-50-117, C.R.S. Ms. Jordan's treatment of Complainant does not indicate retaliatory animus.

Ms. Jordan credibly testified that, upon learning of Complainant's concerns in January 2016, she immediately contacted Dr. Lampela to investigate them and report back to her. To ensure that she did not miss any of the issues Complainant raised, Ms. Jordan asked Complainant to put her concerns in writing, and forwarded those concerns to Dr. Lampela in February 2016. Most persuasively, the evidence demonstrates that Ms. Jordan carefully considered Complainant's shifting requests for accommodation over the course of six months. Thus, the preponderance of the evidence demonstrates the absence of retaliatory animus towards Complainant.

The Tenth Circuit Court of Appeals has consistently held that an employee may establish a *prima facie* case of retaliation by proffering "evidence of such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions" in an employer's "proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence and hence infer" that the employer "did not act for the asserted [non-retaliatory] reasons." *Frye v. Okla. Corp. Comm'n*, 516 F.3d 1217, 1228 (10th Cir. 2008) (citations omitted). Complainant argues that Respondent's prior arrangement with Ms. Greenwood to allow her to work part time in administering the SEP reflects an inconsistency that renders its denial of her accommodation requests suspect. However, Ms. Jordan's explanations as to why she requested an evaluation of the business needs of this program, and why she subsequently found that there was a clear business need for a full-time employee to administer the SEP, were consistent and credible.

In her July 29, 2015 letter requested by Mr. Woodson, Complainant described a lack of staffing for administration of the SEP. Thus, it was reasonable for Ms. Jordan to request an evaluation of the work involved in administering the SEP before making any future staffing decisions concerning the administration of this crucial program. Upon receiving that information, Ms. Jordan determined that the prior practice of dividing up various duties among several employees was an inefficient way to administer the SEP. Ms. Jordan credibly concluded that it was essential to staff the SEP administration work with one dedicated full-time employee, providing a consistent support structure for this sex offender treatment program.

The evidence presented during the evidentiary hearing demonstrates that, every time Complainant raised concerns about the administration of SOTMP and SEP, these concerns were carefully considered and investigated by Mr. Woodson and Ms. Jordan. While Complainant may not agree with Mr. Woodson's and Ms. Jordan's interpretation of the applicable policies and ethical standards governing SOTMP and SEP, there is no evidence that either Mr. Woodson or Ms. Jordan harbored retaliatory animus against Complainant for raising these concerns, or that such animus motivated any of Ms. Jordan's decisions or actions concerning Complainant. Therefore, Complainant has failed to prove that Respondent violated the Whistleblower Act.

IV. THE DECISION TO ADMINISTRATIVELY SEPARATE COMPLAINANT FROM EMPLOYMENT WAS NOT ARBITRARY, CAPRICIOUS, OR CONTRARY TO RULE OR LAW.

The Colorado Supreme Court has defined the arbitrary and capricious exercise of agency discretion as follows:

> (a) By neglecting or refusing to use reasonable diligence and care to procure such evidence as it is by law authorized to consider in exercising the discretion vested in it.
> (b) By failing to give candid and honest consideration of the evidence before it on which it is authorized to act in exercising its discretion.
> (c) By exercising its discretion in such manner after a consideration of

> evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions.

Lawley v. Dep't of Higher Ed., 36 P.3d 1239, 1252 (Colo. 2001), citing *Van de Vegt v. Board of Commissioners of Larimer County*, 55 P.2d 703, 705 (Colo. 1936).

The preponderance of the evidence establishes that, at the time of her administrative separation on February 29, 2016, Complainant had exhausted all available leave, including FML, was not under the protection of short-term disability leave, and was unable to return to her full-time position. As the appointing authority, Ms. Jordan made her best efforts to engage Complainant in an interactive process to identify and explore possible accommodation of Complainant's medical condition. Ms. Jordan used reasonable diligence to procure adequate evidence about Complainant's condition and restrictions, as well as the business needs of Respondent in adequately and reliably staffing the full time position held by Complainant, and gave candid and honest consideration to that evidence. Ms. Jordan's explanations that she needed a full time employee to fill Complainant's position was consistent, credible, and reasonable, especially in light of the problems faced by Respondent in staffing and administering the SEP in 2015. Therefore, Complainant has failed to prove, by a preponderance of the evidence, that her administrative discharge was arbitrary or capricious.

CONCLUSIONS OF LAW

1. Respondent's administrative termination of Complainant's employment was not arbitrary, capricious, or contrary to rule or law.

2. Respondent did not retaliate against Complainant as a whistleblower, in violation of the Whistleblower Act, § 24-50.5-101, *et seq.*, C.R.S.

ORDER

Respondent's decision to administratively terminate Complainant's employment is affirmed. Complainant's appeal is dismissed with prejudice.

Dated this 25th day
of September, 2017.

[redacted]

Susan J. Tyburski
Administrative Law Judge
State Personnel Board
1525 Sherman Street, 4th Floor
Denver, CO 80203

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS

1. To abide by the decision of the Administrative Law Judge ("ALJ").
2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is mailed to the parties. Section 24-4-105(15), C.R.S. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is mailed to the parties. Section 24-4-105(14)(a)(II) and 24-50-125.4(4), C.R.S. and Board Rule 8-62, 4 CCR 801. The appeal must describe, in detail, the basis for the appeal, the specific findings of fact and/or conclusions of law that the party alleges to be improper and the remedy being sought. Board Rule 8-65, 4 CCR 801. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline referred to above. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990); Sections 24-4-105(14) and (15), C.R.S.; Board Rule 8-63, 4 CCR 801.
3. The parties are hereby advised that this constitutes the Board's motion, pursuant to Section 24-4-105(14)(a)(II), C.R.S., to review this Initial Decision regardless of whether the parties file exceptions.

RECORD ON APPEAL

The cost to prepare the electronic record on appeal in this case is $5.00. This amount does not include the cost of a transcript, which must be paid by the party that files the appeal. That party may pay the preparation fee either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS. A party that is financially unable to pay the preparation fee may file a motion for waiver of the fee. That motion must include information showing that the party is indigent or explaining why the party is financially unable to pay the fee.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. Board Rule 8-64, 4 CCR 801. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 59 days of the date of the designation of record. For additional information contact the State Personnel Board office at (303) 866-3300.

BRIEFS ON APPEAL

When the Certificate of Record of Hearing Proceedings is mailed to the parties, signifying the Board's certification of the record, the parties will be notified of the briefing schedule and the due dates of the opening, answer and reply briefs and other details regarding the filing of the briefs, as set forth in Board Rule 8-67, 4 CCR 801.

ORAL ARGUMENT ON APPEAL

A request for oral argument must be filed with the Board on or before the date a party's brief is due. Board Rule 8-70, 4 CCR 801. Requests for oral argument are seldom granted.

PETITION FOR RECONSIDERATION

A petition for reconsideration of the decision of the ALJ must be filed within 5 calendar days of receipt of the decision. The petition for reconsideration must allege an oversight or misunderstanding by the ALJ. The filing of a petition for reconsideration does not extend the thirty-calendar day deadline, described above, for filing a notice of appeal of the ALJ's decision. Board Rule 8-60, 4 CCR 801.

CERTIFICATE OF MAILING

This is to certify that on the 25th day of September, 2017, I electronically served true copies of the foregoing INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE and NOTICE OF APPEAL RIGHTS addressed as follows:

Laura Saurini
[redacted]

Eric W. Freund
Senior Assistant Attorney General
Civil Litigation & Employment Law Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th floor
Denver, CO 80203
Eric.Freund@coag.gov