



COLORADO  
**PERA**<sup>®</sup>



# COLORADO PERA LAW

Includes Legislation Enacted in 2023

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## **PART 1: DEFINITIONS**

### **24-51-101. Definitions**

As used in this article 51, unless the context otherwise requires and except as otherwise defined in part 17 of this article 51:

- (1) "Actuarial equivalent" means an amount equal to a specified benefit based on an assumed interest rate and life expectancy.
- (2) "Actuarial investment assumption rate" means the assumed rate of return from investments as set by the board with the advice of the actuary.
- (3) "Actuarial valuation" means the determination, as of a valuation date, of the normal cost, actuarial accrued liability, actuarial value of assets, and related actuarial present values of the plan.
- (4) "Actuary" or "actuaries" means the professional consultants retained by the board to review statistics and make periodic evaluations of the finances needed for the payment of future retirement benefits, survivor benefits, and health care subsidies.
- (5) "Amortization period" means the number of years which is required to gradually extinguish the unfunded actuarial accrued liabilities of the plan if future actuarial experience exactly matches the assumptions set by the board.
- (6) "Association" means the public employees' retirement association created pursuant to the provisions of section 24-51-201.
- (6.5) "Base benefit" means the initial benefit for a benefit that becomes effective after March 1, 2009. For a benefit that became effective on or before March 1, 2009, "base benefit" means the total benefit payable as of June 30, 2010, including the sum of the initial benefit, accumulated annual increases, and cost of living increases.
- (7) "Benefit" means the monthly payment for service retirement, disability retirement, or survivor benefits. A refund pursuant to the provisions of section 24-51-405 or a single payment to a survivor is not a "benefit".
- (8) "Benefit recipient" means a retiree, spouse, cobeneficiary, qualified child, or dependent parent receiving monthly service retirement, disability retirement, or survivor benefits. "Benefit recipient" does not include a person who has received a refund pursuant to the provisions of section 24-51-405 or a single payment.

- (9) "Board" means the board of trustees created pursuant to the provisions of section 24-51-202 which has such duties and powers authorized by this article for the management of the association.
- (10) "Cobeneficiary" means:
- (a) The person or supplemental needs trust selected by the member or ordered by court decree prior to retirement to be the person selected under option 2 or 3 pursuant to the provisions of section 24-51-801 to receive a continuing benefit upon the retiree's death; or
  - (b) The person or supplemental needs trust designated by a member eligible for service retirement or ordered by a court decree prior to retirement to be the person selected to receive option 3 upon the member's death pursuant to the provisions of section 24-51-906.
- (11) Repealed.
- (12) (Deleted by amendment, effective March 1, 2001.)
- (13) "Contributions" means the total of employer and member contributions paid to the association.
- (13.5) "Deferred compensation plan" means an eligible deferred compensation plan established and administered pursuant to the provisions of 26 U.S.C. sec. 457 (b), as amended.
- (14) "Dependent parents" means, for survivor benefits purposes, parents who received fifty percent or more of their support from the member at the time of the member's death. "Dependent parents" also means parents who receive fifty percent or more of their support from a benefit recipient at the time they request eligibility for the health care program.
- (15) "Dependents" means the spouse, qualified children, and dependent parents of a benefit recipient.
- (16) "Disability" means mental or physical incapacitation as determined pursuant to part 7 of this article.
- (17) "Disabled" means mentally or physically incapacitated as determined pursuant to part 7 of this article.
- (18) "Division" means the state, school, local government, judicial, or Denver public schools division, each of which is identified by a separate trust fund, amortization period, and membership.

- (18.2) "DPS" means Denver public schools.
- (18.3) "DPS member" means any person who has an existing member account in the DPS plan on December 31, 2009, or has an existing member account based on service performed prior to January 1, 2010, for which such member received compensation on or after January 1, 2010.
- (18.5) "DPS plan" means the Denver public schools retirement system retirement and benefit plan enacted by the Denver public schools board of education pursuant to section 22-64-202, C.R.S., and governed by article 64 of title 22 and related plan documents, as amended, from inception to the repeal of said article. After May 21, 2009, the DPS plan may be amended solely for the purposes of complying with the federal "Internal Revenue Code of 1986", as amended, and such amendments shall be included in the DPS plan.
- (18.7) "DPS retiree" means a person who is receiving a service retirement or disability benefit from the association pursuant to part 17 of this article.
- (19) "Effective date of retirement" means the date after termination of employment on which the member becomes eligible for benefits.
- (20) "Employer" means the state of Colorado, the general assembly, any state department, board, commission, bureau, agency, or institution, the Colorado association of school boards, the Colorado high school activities association, the Colorado association of school executives, the fire and police pension association, the special districts association, the Colorado water resources and power development authority, the public employees' retirement association, the Colorado consortium for earth and space science education, all school districts in Colorado, and any political subdivision, city, municipality, county, housing authority, special district, library district, regional planning commission, public hospital, county or district public health agency, state university, state college, state local district college, or other public entity that is affiliated with the plan.
- (21) "Employer contribution" means the money paid by an employer to the association pursuant to the provisions of section 24-51-401 (1.7) for all member salaries paid and other required employer contributions made pursuant to the provisions of section 24-51-402.
- (21.5) "Erroneous contribution" means an amount contributed in error to a member contribution account based on compensation that is not salary as defined in subsection (42) of this section.

- (22) "Former member" means an individual who received a refund upon termination of employment pursuant to the provisions of section 24-51-405.
- (23) "Fund" means the total assets of the association which are credited to the various trust funds established and invested by the association pursuant to the provisions of this article.
- (24) "Health care" means the program provided for in part 12 of this article.
- (25) (a) "Highest average salary" means:
  - (I) (A) For a member or inactive member who has five years of service credit on December 31, 2019, or a retiree who was retired on December 31, 2019, one-twelfth of the average of the highest annual salaries upon which contributions were paid, whether earned from one or more employers, that are associated with three periods of twelve consecutive months of service credit;
  - (B) For a member or inactive member who does not have five years of service credit on December 31, 2019, or a member who was not a member, inactive member, or retiree on December 31, 2019, one-twelfth of the average of the highest annual salaries upon which contributions were paid, whether earned from one or more employers, that are associated with five periods of twelve consecutive months of service credit;
  - (II) For a member who does not have the requisite years of service credit, one-twelfth of the average of the total annual salaries earned during membership upon which contributions were paid;
  - (III) For benefits that become effective on or after January 1, 1982, where the individual earned less than one year of service credit after December 31, 1980, one-twelfth of the average of the highest annual salaries upon which contributions were paid which were associated with five consecutive years of service credit;
  - (IV) Notwithstanding any other provision of this subsection (25)(a) to the contrary, for members of the judicial division who have five years of service credit on December 31, 2019, retiring on or after July 1, 1997, one-twelfth of the highest annual salary upon which contributions were paid for twelve consecutive months; or

- (V) Notwithstanding any other provision of this subsection (25)(a) to the contrary, for members of the judicial division who do not have five years of service credit on December 31, 2019, or for members of the judicial division who were not members, inactive members, or retirees on December 31, 2019, one-twelfth of the average of the highest annual salaries upon which contributions were paid that are associated with three periods of twelve consecutive months of service credit.
- (b) (I) In calculating highest average salary pursuant to subparagraph (I) of paragraph (a) of this subsection (25), for a member who was a member, inactive member, or retiree on December 31, 2006, and who has an effective date of retirement before January 1, 2009, if any annual salary used in said calculation was associated with service credit earned during the last three years of membership, each annual salary increase shall be limited to fifteen percent. This limitation shall not apply to salary decreases.
- (II) In calculating highest average salary pursuant to subparagraph (I) of paragraph (a) of this subsection (25), for a member who was a member, inactive member, or retiree on December 31, 2006, and who has an effective date of retirement before January 1, 2009, if all annual salaries used in said calculation were associated with service credit earned prior to the last three years of membership, no fifteen percent limit shall be applied to the salary differences.
- (III) In calculating highest average salary for a member who was a member, inactive member, or retiree on December 31, 2006, and who has an effective date of retirement on or after January 1, 2009, the association shall determine the highest annual salaries associated with four periods of twelve consecutive months of service credit. The lowest of such annual salaries shall be the base salary. The first annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred fifteen percent of the base salary. The second annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred fifteen percent of the first annual salary used in the highest average salary calculation. The third annual salary to be used in the highest



average salary calculation shall be the actual salary reported up to one hundred fifteen percent of the second annual salary used in the highest average salary calculation.

- (IV) In calculating highest average salary for a member who was not a member, inactive member, or retiree on December 31, 2006, the association shall determine the highest annual salaries associated with four periods of twelve consecutive months of service credit. The lowest of such annual salaries shall be the base salary. The first annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the base salary. The second annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the first annual salary used in the highest average salary calculation. The third annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the second annual salary used in the highest average salary calculation.
- (V) Notwithstanding any other provision of this subsection (25)(b), in calculating highest average salary for a member or inactive member not eligible for service or reduced service retirement on January 1, 2011, and who was a member or inactive member with five years of service credit on December 31, 2019, or a retiree on December 31, 2019, the association shall determine the highest annual salaries associated with four periods of twelve consecutive months of service credit. The lowest of such annual salaries shall be the base salary. The first annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the base salary. The second annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the first annual salary used in the highest average salary calculation. The third annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the second annual salary used in the highest average salary calculation. This subsection (25)(b)(V) shall not apply to members of the judicial division, except for DPS members of the judicial division who have exercised portability pursuant to section 24-51-1747 and

selected the Denver public schools benefit structure. This subsection (25)(b)(V) shall apply to DPS members in accordance with section 24-51-1702 (17).

- (VI) Notwithstanding any other provision of this subsection (25)(b), in calculating highest average salary for a member or inactive member who does not have five years of service credit on December 31, 2019, or who was not a member, inactive member, or retiree on December 31, 2019, the association shall determine the highest annual salaries associated with six periods of twelve consecutive months of service credit. The lowest of such annual salaries shall be the base salary. The first annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the base salary. The second annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the first annual salary used in the highest average salary calculation. The third annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the second annual salary used in the highest average salary calculation. The fourth annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the third annual salary used in the highest average salary calculation. The fifth annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the fourth annual salary used in the highest average salary calculation. This subsection (25)(b)(VI) does not apply to members of the judicial division, except for DPS members of the judicial division who have exercised portability pursuant to section 24-51-1747 and selected the DPS benefit structure. This subsection (25)(b)(VI) applies to DPS members in accordance with section 24-51-1702 (17).
- (VII) Notwithstanding any other provision of this subsection (25)(b), for members of the judicial division who do not have five years of service credit on December 31, 2019, or for members of the judicial division who were not members, inactive members, or retirees on December 31, 2019, the association shall determine the highest annual salaries associated with four periods of twelve consecutive

months of service credit. The lowest of such annual salaries shall be the base salary. The first annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the base salary. The second annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the first annual salary used in the highest average salary calculation. The third annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the second annual salary used in the highest average salary calculation.

- (c) For retirements on or before January 1, 1989, if a member had a rate of pay reduction occur within any calendar year used in the calculation of highest average salary, the calculation shall be the average of the highest three periods of twelve consecutive months of salary if this results in a higher average salary.
- (d) (I) If a member has a rate of pay reduction resulting from the furloughing of such member during the 2002-03 or 2003-04 state fiscal years and the reduction occurs during any period of twelve consecutive months used to calculate the member's highest average salary, the member may pay during the three months prior to the effective date of retirement the full member contribution upon and be credited with an amount equal to any such reduction for the period used in the calculation of highest average salary. If a member pays the member contribution pursuant to this paragraph (d), the employer shall forward to the association the full amount of the employer contribution on the amount of pay reduction within ten business days following notice by the association of the amount due. The rate of employer and employee contributions shall be as set forth in section 24-51-401 (1.7).
- (II) Each employer shall forward to the association a list of its retired employees who had a furlough from July 1, 2002, through June 30, 2003. The list shall show the amount of pay reduction that resulted from the furlough of such employee for each month during that period. The retiree may pay the member contribution on such amount in full within thirty days of the date the association notifies

the retiree of the amount due. If the employee pays that contribution, then the employer shall forward to the association the full amount of the employer contribution on the amount of pay reduction within ten business days following notice by the association of the amount due pursuant to subparagraph (l) of this paragraph (d). Upon receipt of both contributions, the association shall include the amount of pay reduction that resulted from the furlough for the period used in the calculation of highest average salary.

- (26) “Inactive member” means a person who has terminated membership and is not making member contributions but who has money in a member contribution account. “Inactive member” includes persons making continuing payments in lieu of member contributions pursuant to the provisions of section 24-51-606 (2). Inactive members are not “members” as defined in subsection (29) of this section.
- (27) “Initial benefit” means the first full monthly benefit paid to the benefit recipient or the first full monthly benefit paid to a benefit recipient after recalculation of the benefit pursuant to the provisions of sections 24-51-1103 and 24-51-1104.
- (28) “Interest” means:
- (a) The actuarial investment assumption rate compounded annually for any interest charged to a member or benefit recipient pursuant to the provisions of this article;
  - (b) The applicable actuarial investment assumption rate compounded annually for any interest charged to an employer pursuant to the provisions of this article; and
  - (c) The rate established by the board for each calendar year pursuant to the provisions of section 24-51-407 for interest on member contributions.
- (28.5) “Matching employer contributions” means:
- (a) The portion of employer contributions used together with the member contribution account to determine the amount of a member’s money purchase retirement benefit pursuant to the provisions of sections 24-51-408 (1) and 24-51-605.5 (2); and
  - (b) The portion of employer contributions paid together with the refund of the member contribution account to members who have terminated membership pursuant to the provisions of sections 24-51-405 and 24-51-408 (2).

- (29) "Member" means any employee of an employer defined in subsection (20) of this section who works in a position which is subject to membership in the association and for whom contributions are made. "Member" includes such employee during leaves of absence without pay during which the employer-employee relationship continues if the period of leave is certified to the association by the employer. "Member" also includes any person hired by an employer affiliated with the Denver public schools division who is not a DPS member, unless otherwise indicated. "Member" does not include persons who have terminated employment or died.
- (30) "Member contribution" means the money paid to the association that equals a percentage of the member's salary as determined pursuant to the provisions of section 24-51-401 (1.7). "Member contribution" does not include working retiree contributions as defined in subsection (53) of this section.
- (31) "Member contribution account" means an account maintained for each member in the member contribution reserve to which member contributions, interest on member contributions, payments in lieu of member contributions, and payments and interest made for purchases of service credit are credited.
- (32) "Members of the judicial division" means justices of the supreme court and judges of the court of appeals, district courts, county courts, probate courts, and juvenile courts.
- (33) "Named beneficiary" means any person designated in writing by a member to receive a single payment upon the death of the member when survivor benefits are not payable.
- (34) "Plan" means the design of the association which is established for the purpose of providing employers, members, and cobeneficiaries and named beneficiaries of such members, such rights, obligations, and duties as provided for in the provisions of this article.
- (34.5) "Portability" means the provisions of section 24-51-1747.
- (35) "Premium" means the total amount charged by a life insurer, health insurer, health maintenance organization, health care provider, or by the association for each participant and shall be equal to the total of the amount paid by the participant and the premium subsidy, if any, paid by the plan.

- (36) "Projected service credit" means the service credit which would have been earned if the retiree receiving disability retirement benefits had continued membership until reaching sixty-five years of age; except that a member's service credit, including any projected service credit, cannot exceed twenty years.
- (37) "Qualified children" means natural or adopted children of a member who are unmarried and under eighteen years of age or who are unmarried and eighteen years of age or older but under twenty-three years of age if enrolled full time in an accredited school within six months after the date of death of such member. "Qualified children" includes any children who become mentally or physically incapacitated prior to attaining such age or marital status which precludes them from obtaining gainful employment, and such children shall continue to be considered qualified children so long as such disability continues.
- (38) Repealed.
- (39) "Retiree" means a person who is receiving a service or disability retirement benefit from the association pursuant to part 6 or 7 of this article.
- (40) "Retirement" means the time when the retiree is receiving retirement benefits pursuant to part 6 or 7 of this article.
- (41) "Retirement benefit" means the monthly service retirement benefit or the disability retirement benefit provided for in this article.
- (42) (a) (i) "Salary" means, for members who were members, inactive members, or retirees of the association on June 30, 2019, compensation for services rendered to an employer and includes: Regular salary or pay; any pay for administrative, sabbatical, annual, sick, vacation, or personal leave and compensation for unused leave converted to cash payments; pay for compensatory time or holidays; payments by an employer from grants; amounts deducted from pay pursuant to tax-sheltered savings or retirement programs; amounts deducted from pay for a health savings account as defined in 26 U.S.C. sec. 223, as amended, or any other type of retirement health savings account program; performance or merit payments, if approved by the board; special pay for work-related injuries paid by the employer prior to termination of membership; and retroactive salary payments pursuant to court orders, arbitration awards, or litigation and grievance settlements.

- (II) For members who were members, inactive members, or retirees of the association on June 30, 2019, “salary” does not include: Commissions; compensation for unused sick, annual, vacation, administrative, or other accumulated paid leave contributed to a health savings account as defined in 26 U.S.C. sec. 223, as amended, or a retirement health savings program; housing allowances; uniform allowances; automobile usage; insurance premiums; dependent care assistance; reimbursement for expenses incurred; tuition or any other fringe benefits, regardless of federal taxation; bonuses for services not actually rendered, including, but not limited to, early retirement inducements, Christmas bonuses, cash awards, honorariums and severance pay, damages, except for retroactive salary payments paid pursuant to court orders or arbitration awards or litigation and grievance settlements, or payments beyond the date of a member’s death.
- (b) (I) “Salary” means, for members who were not members, inactive members, or retirees of the association on June 30, 2019, compensation for services rendered to an employer and includes: Regular salary or pay; any pay for administrative, sabbatical, annual, sick, vacation, or personal leave and compensation for unused leave converted to cash payments; pay for compensatory time or holidays; payments by an employer from grants; amounts deducted from pay pursuant to tax-sheltered savings or retirement programs; amounts deducted from pay for a health savings account as defined in 26 U.S.C. sec. 223, as amended, or any other type of retirement health savings account program; amounts deducted from pay pursuant to a cafeteria plan as defined in 26 U.S.C. sec. 125, as amended; a qualified transportation fringe benefit plan as defined in 26 U.S.C. sec. 132, as amended; performance or merit payments, if approved by the board; special pay for work-related injuries paid by the employer prior to termination of membership; and retroactive salary payments pursuant to court orders, arbitration awards, or litigation and grievance settlements.

- (II) For members who were not members, inactive members, or retirees of the association on June 30, 2019, "salary" does not include: Commissions; compensation for unused sick, annual, vacation, administrative, or other accumulated paid leave contributed to a health savings account as defined in 26 U.S.C. sec. 223, as amended, or a retirement health savings program; housing allowances; uniform allowances; automobile usage; insurance premiums paid by employers; reimbursement for expenses incurred; tuition or any other fringe benefits, regardless of federal taxation; bonuses for services not actually rendered, including, but not limited to, early retirement inducements, Christmas bonuses, cash awards, honorariums and severance pay, damages, except for retroactive salary payments paid pursuant to court orders or arbitration awards or litigation and grievance settlements, or payments beyond the date of a member's death.
- (c) Compensation received by DPS members on or before December 31, 2009, shall be governed by part 17 of this article for purposes of determining includable salary. On and after January 1, 2010, compensation received by DPS members shall be governed by paragraphs (a) and (b) of this subsection (42) for purposes of determining includable salary. Any adjustments to compensation shall be governed by the provisions in effect for the period for which the adjustment applied.
- (43) "Service credit" means the total of all earned, purchased, projected, and unformed service credit; however, it does not necessarily equal the number of years employed.
- (44) "Service credit purchase agreement" means the agreement between the member and the association with regard to the service credit eligible for purchase, the cost of the purchase, the date the payment is to begin and end, and the method of payment.
- (45) "Single payment" means the one-time payment of the moneys credited to the member contribution account of a deceased member or deceased inactive member, together with matching employer contributions. A "single payment" is not a benefit.



- (46) “State trooper” means an employee of the Colorado state patrol, Colorado bureau of investigation, or successors to these agencies, who is vested with the powers of peace officers as provided for in section 24-33.5-409. In addition, for members who were not members, inactive members, or retirees on December 31, 2019, “state trooper” includes a county sheriff, undersheriff, deputy sheriff, noncertified deputy sheriff, or detention officer hired by a local government division employer on or after January 1, 2020, and a corrections officer classified as I through IV hired by a state division employer on or after January 1, 2020. Beginning July 1, 2020, “state trooper” also includes an employee of the division of fire prevention and control in the department of public safety who is classified in the firefighter I through firefighter VII class titles. Beginning July 1, 2023, “state trooper” also includes a wildlife officer as defined in section 16-2.5-116 (1), and a parks and recreation officer as defined in section 16-2.5-117 (1), who is employed by the division of parks and wildlife in the department of natural resources and was hired on or after January 1, 2011.
- (46.5) “Supplemental needs trust” means a valid third-party special needs trust established for a member’s or retiree’s child as the beneficiary of the trust that complies with the “Colorado Medical Assistance Act”, articles 4 to 6 of title 25.5, C.R.S., and the federal “Social Security Act”, as amended. The department of health care policy and financing shall review any trust established during the determination or redetermination of an individual’s eligibility for medical assistance and specifically as to the effect of any trust on such eligibility for medical assistance. The trust must be for the benefit of a single beneficiary and must be coterminous with the lifetime of such beneficiary.
- (47) “Surviving spouse” means the surviving spouse of a deceased member or a deceased inactive member and includes a widow and a widower.
- (48) “Survivor benefits” means the monthly benefit payable pursuant to part 9 of this article upon the death of a member or inactive member prior to retirement but does not include a single payment made upon the death of a member or inactive member.
- (49) “Termination of employment” means the last day of employment for which a member receives compensation on which contributions are remitted, including payment for accumulated sick or annual leave, or the last day of a period of unpaid leave of absence, whichever is later.

- (50) "Termination of membership" means the loss of membership which occurs on the date the member terminates employment, retires, or dies.
- (51) "Vested benefit" means an entitlement to a future monthly benefit which is earned upon completion of five years of service credit.
- (52) "Voluntary investment program" means a voluntary tax-deferred investment program established and administered pursuant to the provisions of 26 U.S.C. sec. 401 (k), as amended.
- (53) "Working retiree contributions" means an amount paid to the association that equals the percentage of salary that would be paid as member contributions pursuant to section 24-51-401 (1.7)(a); except that working retiree contributions shall not be considered member contributions and shall not be deposited in the member contribution account.

## **PART 2: ADMINISTRATION**

### **24-51-201. Public employees' retirement association—creation**

- (1) There is hereby created the public employees' retirement association, for the purpose of providing the benefits and programs specified in this article, which shall be a body corporate with the right to sue and be sued and the right to hold property for its use and purposes. Notwithstanding the applicability of article 54.8 of this title and sections 2-3-103, 24-4-103, 24-6-202, and 24-6-402, C.R.S., as provided for in this article, the association shall not be subject to administrative direction by any department, commission, board, bureau, or agency of the state. The association is an instrumentality of the state.
- (2) The public employees' retirement association, created pursuant to the provisions of subsection (1) of this section, shall consist of the following divisions:
  - (a) The state division;
  - (a.5) The school division;
  - (b) (Deleted by amendment, effective July 1, 1997.)
  - (c) The local government division;
  - (d) The judicial division; and
  - (e) The Denver public schools division.

### **24-51-202. Board of trustees—creation**

There is hereby created the board of trustees of the association, which shall have the responsibilities, duties, and authorities as set forth in this article.

### **24-51-203. Board—composition and election**

- (1) The board consists of the following fifteen trustees:
  - (a) The state treasurer;
  - (b) Three members of the state division elected by the members of that division, at least one of whom shall be an employee of a state institution of higher education and at least one of whom shall not be an employee of a state institution of higher education;
  - (c) Four members of the school division elected by the members of that division;

- (d) One member of the local government division elected by the members of that division;
- (e) One member of the judicial division elected by the members of that division;
- (f) Two retirees, one of whom shall be elected by those members who have retired from the local government division, the judicial division, or from the state division and one of whom shall be elected by those members who have retired from the local government division, the judicial division, or the school division; except that both retiree trustees cannot have retired from the same division; and
- (g) Three trustees appointed by the governor and confirmed by the senate who shall not be members, inactive members, or retirees of the association and who shall have significant experience and competence in investment management, finance, banking, economics, accounting, pension administration, or actuarial analysis. Of the three trustees appointed by the governor, no more than two shall be from the same political party.

(1.5) In addition to the board members specified in subsection (1) of this section, there shall be one ex officio board member from the Denver public schools division. The ex officio board member shall be elected by the Denver public schools division through a Denver public schools division member election administered by the association. The Denver public schools division ex officio member position exists so long as the Denver public schools division remains as a separate division of the association. The Denver public schools division ex officio member shall be a member or retiree of the Denver public schools division and shall be treated like all other members of the board, subject to the following:

- (a) The ex officio member may sit with the board and participate in discussions of agenda items, but shall not be allowed to vote on any matter coming before the board or any committee of the board, or to make any motion regarding any matter before the board or any committee of the board;
- (b) The ex officio member may be reimbursed for his or her actual and necessary expenses incurred in the execution of his or her duties as an ex officio member of the board, subject to the same requirements and restrictions as apply to reimbursement of expenses of statutory members of the board;

- (c) The ex officio member's fiduciary obligations and responsibilities shall be the same as any other board member, shall flow to the entire association membership, and are not limited to those of the Denver public schools division;
  - (d) The ex officio member shall be provided the same board and committee meeting materials as are provided to other members of the board, including any information that may be deemed confidential;
  - (e) The ex officio member shall be allowed to participate in or attend executive or closed sessions of the board or of any committee of the board subject to all association board rules, regulations, and policies, including, but not limited to, confidentiality and conflict of interest;
  - (f) The ex officio member may not be elected as an officer of the board;
  - (g) At the request of the ex officio member, the chair of the board may appoint the ex officio member as an ex officio member of any standing committee of the board;
  - (h) The ex officio member shall be allowed to attend and participate in any open meeting discussion at any board or committee meeting; and
  - (i) The ex officio member shall observe all rules, regulations, and policies applicable to members of the board and any other conditions, restrictions, or requirements established or directed by vote of a majority of the members of the board.
- (2) The board shall set the time and manner for the elections of trustees representing members and retirees. Elected trustees may be reelected to the board for an unlimited number of terms but, except for the state treasurer, no term for any trustee shall exceed four years.
- (3) The term for each of the trustees appointed by the governor is four years; except that the terms shall be staggered so that no more than one trustee's term expires in one year. Appointed trustees may be reappointed to the board for an unlimited number of terms.
- (4) When a vacancy occurs on the board among the elected trustees, the person who received the next highest number of votes in the most recent election of trustees shall be appointed to serve as trustee until the next election of trustees. If the person who received the next highest number of votes is unwilling to serve

as a trustee or if the trustee who created the absence ran unopposed, the board shall appoint a trustee. In either case, the appointed trustee shall be from the same division as the trustee whose absence created the vacancy.

- (5) When a vacancy occurs among the three appointed trustees, the governor shall appoint, with consent of the senate, a new trustee with the experience and competence specified in paragraph (g) of subsection (1) of this section to serve the remainder of any unexpired term. Such appointee may serve on a temporary basis if the general assembly is not in session when he or she is appointed until the general assembly is in session and the senate is able to consent to such appointment.
- (6) The elected trustees shall serve without compensation but shall be reimbursed by the association for any necessary expenses incurred in the conduct of their official duties and shall suffer no loss of salary from an employer for service on the board.
- (7) The appointed trustees shall be compensated by the association for their service on the board.
- (8) No person can be or can continue to be a trustee of the board who has been adjudicated of having violated any provisions of this article or who has been convicted of a felony or any crime involving the misappropriation of funds.

**24-51-204. Duties of the board**

- (1) The trustees shall elect from among themselves a chairman and any other officers as may be necessary for the board to carry out its duties and responsibilities.
- (2) The board shall set the time and place for meetings and conduct those meetings in accordance with the provisions of part 4 of article 6 of this title and shall maintain a record of its proceedings.
- (3) No vote of the board shall take place without a quorum present.
- (4) The board shall appoint and set the compensation for an executive director to administer the association.
- (5) The board shall adopt and promulgate such rules for the administration of the association and to specify the factors to be used in actuarial determinations or calculations required by this article. All rules shall be promulgated in accordance with the provisions of section 24-4-103, and such rules shall be consistent with the provisions of this article or other provisions of law.

- (6) The board shall submit to and the state auditor shall conduct or cause to be conducted financial and performance audits of all financial transactions and accounts kept by or for the association in a manner consistent with the requirements set forth in section 2-3-103, C.R.S.
- (7)
  - (a) The board or its designated agent shall submit an annual actuarial valuation report to the legislative audit committee and the joint budget committee of the general assembly, together with any recommendations concerning such liabilities that have accrued.
  - (b) In the annual actuarial valuation, the board shall first determine the total aggregate actuarial funded ratio of the association, apply the adjustments pursuant to section 24-51-1009.5, and then determine the actuarial funded ratio of each division separately.
- (7.5)
  - (a) The board or its designated agent shall perform an annual sensitivity analysis to determine when, from an actuarial perspective, model assumptions are meeting targets and achieving sustainability. In furtherance of making this determination, the board or its designated agent shall examine the data that the association currently collects. The board or its designated agent shall deliver an annual report detailing the findings of the analysis to the office of the governor, the joint budget committee, the legislative audit committee, and the finance committees of the senate and the house of representatives, or any successor committees.
  - (b) For purposes of the analysis required by subsection (7.5)(a) of this section, the association shall provide access to official member information and data under a confidentiality agreement with its designated agent, if applicable.
- (8) The board or its designated agent shall prepare and transmit annually a report to the governor regarding the policies, financial condition, and administration of the association.
- (9) The board shall obtain, and the association shall pay for, insurance or shall self-insure against liability which arises out of, or in connection with, the performance of duties by any trustee or employee of the association.
- (10) The board shall perform all duties imposed on it by law, including but not limited to administering the provisions of the DPS plan for qualifying DPS members. The board shall not be liable for actions of members that do not comply with court orders.

- (11) The board shall be immune from claims arising from the enforcement and implementation of laws regarding the consolidation or merger of retirement plans under its administration that are made a part of the association.

**24-51-205. General authority of the board**

- (1) The board shall have the authority to determine membership status within the state, school, local government, judicial, and Denver public schools divisions; exemptions from membership; eligibility for benefits, life insurance, health care, the voluntary investment program, the association's defined contribution plan, and the deferred compensation plan; and service credit and salary to be used in calculations pursuant to the provisions of this article. Such decisions by the board may be appealed through the administrative review procedures set forth in the board rules. Such final decision by the board shall be subject only to review by proper court action.
- (2) The board is authorized to accept on behalf of the association any moneys or properties received in the form of donations, gifts, appropriations, bequests, forfeitures, or otherwise, or income derived therefrom. The provisions of this subsection (2) shall not be interpreted to allow the board to accept or retain moneys held by the association that are presumed to be abandoned pursuant to the provisions of section 38-13-108.5, C.R.S.
- (3) The board is authorized to recover, through legal process or offset, any amount paid as benefits, refunds, single payments, premium subsidies, or other payments, to which the recipient is not entitled, with interest, plus attorney fees and costs associated with such recovery. If it is determined that the recipient was entitled to the amount paid, the recipient shall be entitled to the attorney fees and costs that he or she incurred in defending the legal action or offset initiated by the board.
- (3.5) The board is authorized to settle or compromise any dispute on behalf of the association. The board may consider relevant factors regarding any dispute, including but not limited to the cost of litigation, the likelihood of success on the merits, the cost of delay in resolving the dispute, and the actuarial impact on the fund, in determining whether to settle or compromise the dispute.
- (4) The board is authorized to use and hold property in a nominee partnership composed of trustees or employees of the association, designated by the board through appropriate resolution, to facilitate investment sale and exchange transactions. The partners of the nominee partnership shall be insured pursuant to the provisions of section 24-51-204(9).



- (5) The board may hold discussions in executive sessions which shall be closed to the public, in accordance with the provisions of section 24-51-204(2).
- (6)
  - (a) The board may delegate any of its responsibilities, duties, and authorities as set forth in this article to the executive director of the association or to designated agents of the association. Subject to paragraph (b) of this subsection (6), the executive director may correct an administrative error made by the board, the executive director, or the employees of the association and may make any appropriate correcting adjustments upon receiving written documentation of the following:
    - (I) That the error was an administrative error of the plan;
    - (II) That the error was not caused or contributed to in whole or in part by an employer, member, retiree, or other person eligible to receive payments from the association; and
    - (III) That the error was discovered on or after July 1, 1997.
  - (b) The executive director shall file a report monthly with the board setting forth the administrative errors corrected pursuant to paragraph (a) of this subsection (6). Such corrections shall be subject to board review after which the board may take any action it deems appropriate with regard to such errors.
- (7) The board is authorized to purchase and maintain appropriate annuity contracts for the purpose of providing a voluntary contribution program to qualified employees of affiliated employers pursuant to section 403(b) of the federal "Internal Revenue Code of 1986", as amended, and to create a separate trust fund to hold the assets of the program.

**24-51-206. Investments**

- (1) The board shall have complete control and authority to invest the funds of the association. Preference shall be given to Colorado investments consistent with sound investment policy.
- (2) Investments may be made without limitation in the following:
  - (a) Obligations of the United States government;
  - (b) Obligations fully guaranteed as to principal and interest by the United States government;
  - (c) State and municipal bonds;

- (d) Corporate notes, bonds, and debentures whether or not convertible;
- (e) Railroad equipment trust certificates;
- (f) Real property;
- (g) Loans secured by first or second mortgages or deeds of trust on real property; except that the origination of mortgages or deeds of trust on residential real property is prohibited. For the purposes of this paragraph (g) "residential real property" means any real property upon which there is or will be placed a structure designed principally for the occupancy of from one to four families, a mobile home, or a condominium unit or cooperative unit designed principally for the occupancy of from one to four families.
- (g.5) Investments in stock or beneficial interests in entities formed for the ownership of real property by tax-exempt organizations pursuant to section 501(c)(25) of the federal "Internal Revenue Code of 1986", as amended; except that the percentage of any entity's outstanding stock or bonds owned by the association shall not be limited by the provisions of paragraph (b) of subsection (3) of this section;
- (h) Participation agreements with life insurance companies; and
- (i) Any other type of investment agreements.

(3) Investments may also be made in either common or preferred stock with the following limitations:

- (a) The aggregate amount of moneys invested in corporate stocks or corporate bonds, notes, or debentures which are convertible into corporate stock or in investment trust shares shall not exceed sixty-five percent of the then book value of the fund.
- (b) No investment of the fund in common or preferred stock, or both, of any single corporation shall be of an amount which exceeds five percent of the then book value of the fund, nor shall the fund acquire more than twelve percent of the outstanding stock or bonds of any single corporation.
- (c) (l) Each investment firm offering for sale to the board corporate stocks, bonds, notes, debentures, or a mutual fund that contains corporate securities, shall disclose, in any research or other disclosure documents provided in support of the securities being offered, to the board whether the investment firm has an agreement with a for-profit

corporation that is not a government-sponsored enterprise, whose securities are being offered for sale to the board and because of such agreement the investment firm:

- (A) Had received compensation for investment banking services within the most recent twelve months; or
  - (B) May receive compensation for investment banking services within the next three consecutive months.
- (II) For the purposes of this paragraph (c), "investment firm" means a bank, brokerage firm, or other financial services firm conducting business within this state, or any agent thereof.

**24-51-207. Standard of conduct**

- (1) The trustees of the board shall be held to the standard of conduct of a fiduciary specified in subsection (2) of this section in the discharge of their functions. Their functions shall include any duty, obligation, power, authority, responsibility, right, privilege, activity, or program specified in this article in connection with the association.
- (2) (a) As fiduciaries, such trustees shall carry out their functions solely in the interest of the members and benefit recipients and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in performing such duties as required by law. The trustees shall act in accordance with the provisions of this article and with the care, skill, prudence, and diligence in light of the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims by diversifying the investments of the association so as to minimize the risk of large losses, unless in light of such circumstances it is clearly prudent not to do so.
- (b) Notwithstanding the provisions of paragraph (a) of this subsection (2), the mere settlement or compromise of any dispute by the board pursuant to the authority granted under section 24-51-205(3.5) is not per se a violation of the fiduciary duties of any trustee.

- (c) Notwithstanding the provisions of paragraph (a) of this subsection (2), the consolidation or merger of a plan created under part 2 of article 64 of title 22, C.R.S., prior to its repeal in 2010, into the association and the board's administration of that division following the effective date of the merger shall not be considered a breach of the board's duties or standards of conduct. No claims shall lie against the board, association, or the trustees arising from the consolidation or merger or the specific terms imposed by law.
- (3) The trustees of the board shall not engage in any activities which might result in a conflict of interest with their functions as fiduciaries for the association.
- (4) The trustees of the board, the executive director, the deputy executive directors, and any employee of the association who is in a fiduciary position shall be subject to and shall make financial disclosures pursuant to the provisions of section 24-6-202.
- (5) Any person who is in a fiduciary position with the association and who is adjudicated of violating any provisions of this article shall be personally liable to pay to the association an amount equal to any losses resulting from such violation and shall be subject to such equitable or remedial relief as the court deems appropriate. The court may enjoin any act or practice which violates any provision of this article.

**24-51-208. Allocation of moneys**

- (1) The moneys of the association shall be divided into several trust funds, including, but not limited to:
  - (a) The state division trust fund, which consists of contributions, payments, and interest paid by members and employers of the state division, in addition to a proportional share of investment income earned thereon;
  - (a.5) The school division trust fund, which consists of contributions, payments, and interest paid by members and employers of the school division, in addition to a proportional share of investment income earned thereon;
  - (b) (Deleted by amendment, effective July 1, 1997.)
  - (c) The local government division trust fund, which consists of contributions, payments, and interest paid by members and employers of the local government division, in addition to a proportional share of investment income earned thereon;

- (d) The judicial division trust fund, which consists of contributions, payments, and interest paid by members and employers of the judicial division, in addition to a proportional share of investment income earned thereon;
- (d.5) The Denver public schools division trust fund, which consists of contributions, payments, and interest paid by members, DPS members, and employers of the Denver public schools division, in addition to the proportional share of investment income earned thereon and the assets of the DPS plan trust funds as of January 1, 2010;
- (e) Repealed.
- (f) The health care trust fund, created pursuant to the provisions of section 24-51-1201(1), which consists of a portion of the employer contributions equal to one and two one-hundredths percent of member salaries; a portion of the amount paid by members to purchase service credit relating to noncovered employment as determined pursuant to section 24-51-505(7); thirty percent of the amount of any reduction in the employer contribution rates as determined in section 24-51-408.5(5) to amortize any overfunding in each division's trust fund; deductions of premium amounts from monthly benefits of participating benefit recipients; premiums paid directly to the trust fund by participating benefit recipients, members, and dependents; monthly payments made by employers on behalf of participating benefit recipients, members, and dependents; and interest; in addition to a proportional share of investment income earned thereon;
- (f.5) The Denver public schools division health care trust fund, created pursuant to the provisions of section 24-51-1201(2), which consists of a portion of the employer contributions equal to one and two one-hundredths percent of member salaries; a portion of the amount paid by members to purchase service credit relating to noncovered employment as determined pursuant to section 24-51-505(7); deductions of premium amounts from monthly benefits of participating benefit recipients; premiums paid directly to the trust fund by participating benefit recipients, members, and dependents; monthly payments made by employers on behalf of participating benefit recipients, members, and dependents; and interest; in addition to a proportional share of investment income earned thereon;
- (g) The voluntary investment program trust fund, which consists of voluntary contributions made pursuant to 26 U.S.C. sec. 401(k), as amended, and part 14 of this article and any investment income earned thereon;

- (h) The common operating fund, which consists of proportional allocations of money from the division trust funds and allocations from the other trust funds to meet the budget set by the board and any investment income earned thereon;
  - (i) The association's defined contribution plan trust fund pursuant to part 15 of this article and any investment income earned thereon;
  - (j) The deferred compensation plan trust fund, which shall hold assets of the plan established under 26 U.S.C. sec. 457(b), as amended, and part 16 of this article and any investment income earned thereon.
- (2) Within each of the state division, school division, local government division, judicial division, and Denver public schools division trust funds, the following reserves shall exist:
- (a) Member contribution reserve;
  - (b) Employer contribution reserve;
  - (c) Retirement benefits reserve; and
  - (d) (Deleted by amendment, effective May 25, 2006.)
  - (e) Survivor benefits reserve.
  - (f) (Deleted by amendment, effective May 25, 2006.)
- (2.5) Within each of the state division, school division, local government division, and judicial division trust funds, an annual increase reserve shall exist on and after January 1, 2007, and within the Denver public schools division trust fund, an annual increase reserve shall exist on and after January 1, 2010.
- (3) Within the member contribution reserve, there shall exist individual member contribution accounts.
- (4) At the time a benefit is paid, the association shall transfer to the retirement benefits reserve or survivor benefits reserve of the division from which the benefit is paid, whichever is applicable, one hundred percent of the present value of the actuarially determined liability of such benefit. Each division in which the account has contributions shall fund its proportionate share of the benefit liability based on the percentage of the member contribution account balance from that division as it relates to the total member contribution account balance.

**24-51-209. Disbursements**

Disbursements from the trust funds authorized in section 24-51-208 shall be subject to the approval of the board and shall be made only for the benefits, health care subsidies, investments, refunds, single payments, payments of remaining member contributions pursuant to the provisions of section 24-51-801, payments pursuant to the provisions of part 17 of this article, and expenses of the association.

**24-51-210. Allocation of assets and liabilities**

- (1) The assets and liabilities of the association shall be divided equitably on an historical accumulative basis among the several trust funds specified in section 24-51-208(1).
- (2) Repealed.

**24-51-211. Amortization of liabilities**

- (1) An amortization period for each of the state division, school division, local government division, judicial division, and Denver public schools division trust funds shall be calculated separately. A maximum amortization period of thirty years shall be deemed actuarially sound. Upon recommendation of the board, and with the advice of the actuary, the employer or member contribution rates for the plan may be adjusted by the general assembly when indicated by actuarial experience.
- (2) On or before November 1, 2009, the board shall submit specific, comprehensive recommendations to the general assembly regarding possible methods to respond to the decrease in the value of the association's assets, including real estate, private equity, and other investments, to decrease the amortization period of each division of the association, and to ensure that each division of the association will become and remain fully funded.

**24-51-211.5. Notice of possible change in benefits—actuarial necessity**

The association shall provide written notice to each member, DPS member, and inactive member of the association that the possibility of an actuarial necessity could occur in the future, and the general assembly may modify by bill the benefits allowed to members of the defined benefit plan.

**24-51-212. Funds not subject to legal process**

- (1) Except for federal tax liens on distributions payable by the association, for Colorado tax distraints and liens pursuant to section 39-21-114, C.R.S., on distributions payable by the association, for assignments for child support

purposes as provided in sections 14-10-118(1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for payments from the association in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113(6), C.R.S., and for restitution that is required to be paid for the theft, embezzlement, misappropriation, or wrongful conversion of public property or in the event of a judgment for a willful and intentional violation of fiduciary duties pursuant to section 24-51-207 where the offender or a related party received direct financial gain, none of the moneys, trust funds, reserves, accounts, contributions pursuant to parts 4, 5, 14, 15, 16, and 17 of this article, or benefits referred to in this article shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, bankruptcy proceedings, or other legal process. Member contributions are subject to garnishment resulting from a judgment taken for arrearages for child support or for child support debt, for restitution that is required to be paid for the theft, embezzlement, misappropriation, or wrongful conversion of public property or in the event of a judgment for a willful and intentional violation of fiduciary duties pursuant to section 24-51-207 where the offender or a related party received direct financial gain, only if the membership has terminated and the member is not vested.

- (2) Notwithstanding the provisions of this section, upon service to the association of orders, injunctions, or warrants issued pursuant to sections 18-17-105 and 18-17-106 or section 16-3-301, C.R.S., applicable to a member contribution account based upon allegations of theft, embezzlement, misappropriation, or wrongful conversion of public property, a member who terminates membership is prohibited from receiving a refund of the member's contribution account and matching employer contributions pursuant to section 24-51-405 or a refund of member contributions pursuant to part 17 of this article, until a court order or the issuing authority releases the member contribution account from said orders, injunctions, or warrants.



**24-51-213. Confidentiality**

- (1) All information contained in records of members, former members, inactive members, DPS members, DPS retirees, benefit recipients and their dependents, including those from the Denver public schools division, participants in the voluntary investment program established pursuant to part 14 of this article, participants in the defined contribution plan established pursuant to part 15 of this article, and participants in the deferred compensation plan established pursuant to part 16 of this article shall be kept confidential by the association.
- (2) (Deleted by amendment, effective June 5, 2003.)
- (3) Information regarding real estate, private equity, private debt, timber, and mortgage investments by the association may be kept confidential until the transaction is completed if it is determined by the board that disclosure of such information would jeopardize the value of the investment; except that the association may disclose such information to legislative members of the pension review commission created in article 51.1 of this title 24 while the commission is meeting in executive session. If the association cannot disclose such information without violating confidentiality provisions, then the association shall provide enough information to the legislative members of the commission, while the commission is meeting in executive session, to inform the legislators regarding whether such investments continue to be in the public interest.

**24-51-214. Benefits not offset by workers' compensation benefits**

Benefits paid under this article shall be in addition to any benefits paid to the benefit recipients pursuant to the provisions of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S.

**24-51-215. Insurance and banking laws not applicable**

None of the laws of this state regulating insurance, insurance companies, or banking institutions shall apply to the association or any of its trust funds.

**24-51-216. Legal adviser**

The attorney general shall be the legal adviser to the board upon request of the board, and the board shall have the authority to select and retain legal counsel in the board's discretion.

**24-51-217. Termination**

If the association is terminated or partially terminated for any reason, the rights of all members and former members affected thereby to benefits accrued and funded to the date of termination shall become nonforfeitable. Any distribution of assets shall be conducted in accordance with requirements of the federal “Internal Revenue Code of 1986”, as amended.

**24-51-218. Unclaimed moneys**

Notwithstanding any other provision of this article to the contrary, any moneys that are presumed to be abandoned pursuant to the provisions of section 38-13-108.5, C.R.S., shall be subject to the provisions of the “Unclaimed Property Act”, article 13 of title 38, C.R.S.

**24-51-219. Merger of school district retirement system (Repealed)**

**24-51-220. Report to general assembly - inclusion of climate risk assessment in annual stewardship report**

- (1) The association shall submit a report to the general assembly on January 1, 2016, and every five years thereafter, regarding the economic impact of the 2010 legislative changes to the annual increase provisions on the retirees and benefit recipients as compared to the actual rate of inflation and the progress made toward eliminating the unfunded liabilities of each division of the association.
- (2) On and after January 1, 2025, the association shall include, as part of its annual investment stewardship report or any successor annual report regarding the association’s investments that the association posts on its website or otherwise makes available to the public, a description of:
  - (a) The association’s process for identifying climate-change-related risks and assessing the financial impact that the climate-change-related risks have on the association’s operations;
  - (b) The current or anticipated future risks that climate change poses to the association’s investment portfolio, the impact that climate change has on the association’s investment strategies, and any strategy changes that the association has implemented in response to such impact;

- (c) Actions that the association is taking to manage the risks that climate change poses to the association's operations; and
- (d) The association's use and consideration of any climate-related reporting that the federal securities and exchange commission requires.

**24-51-221. Information provided to employer—salary definition**

An employer may request information from the association to determine whether to use "salary" as defined in section 24-51-101 (42)(a) or as defined in section 24-51-101 (42)(b), when the employer hires an employee who is a current member or retiree of the association. The association shall provide such information to the employer upon request.

## **PART 3: MEMBERSHIP**

### **24-51-301. Required membership**

All employees who hold positions subject to membership and whose salaries are paid by an employer shall become members as a condition of employment, except as specified in this article.

### **24-51-302. Optional membership (Repealed)**

### **24-51-303. Members of the general assembly**

- (1) Repealed.
- (2) A member of the general assembly who served as a legislator prior to July 1, 1967, shall be granted service credit for such prior service upon becoming a member of the association if such legislator had not elected to be exempt from membership during any period of legislative service prior to establishment of membership.

(3) and (4) Repealed.

### **24-51-304. Employees of the general assembly (Repealed)**

### **24-51-305. District attorneys**

- (1) District attorneys who have not made an election to participate in the association's defined contribution plan pursuant to section 24-51-1502(1) shall become members of the association's defined benefit plan. Up to five years of service credit shall be granted for public service as a district attorney prior to January 11, 1977, if the district attorney did not elect exemption from membership upon first becoming eligible for membership.
- (2) On behalf of a district attorney, the state of Colorado shall contribute eighty percent of the employer contributions and the county shall contribute twenty percent of the employer contributions based on the rate for the state division set forth in section 24-51-401(1.7). One hundred percent of member contributions shall be paid from the salary of such district attorney.

## **24-51-305.5. Employees of district attorneys**

- (1)
  - (a) The boards of county commissioners of the counties within a judicial district, in consultation with the district attorney for the judicial district, may authorize any assistant district attorney, chief deputy district attorney, or deputy district attorney in the judicial district to make a one-time irrevocable written election to become a member of the association's defined benefit plan or the association's defined contribution plan. Any such authority shall be granted on or before January 1, 2004, unless the boards of county commissioners make a finding that it was not fiscally appropriate to make the election prior to such date. No election shall be made pursuant to this subsection (1) unless authorized by the boards of county commissioners pursuant to this paragraph (a).
  - (b) An assistant district attorney, chief deputy district attorney, or deputy district attorney hired prior to the date upon which the boards of county commissioners authorize an election pursuant to paragraph (a) of this subsection (1) shall have sixty days from such date to make an election. In the absence of such election, such person shall continue to participate in his or her existing retirement system.
  - (c) An assistant district attorney, chief deputy district attorney, or deputy district attorney hired on or after the date upon which the boards of county commissioners authorize an election pursuant to paragraph (a) of this subsection (1) shall have sixty days from the date of commencing employment to make an election. In the absence of such election, such person shall be a member of the association's defined benefit plan.
- (2)
  - (a) The boards of county commissioners of the counties within a judicial district, in consultation with the district attorney for the judicial district, may elect to have the employees of the district attorney become members of the association's defined benefit plan or the association's defined contribution plan. The election shall be approved by not less than sixty-five percent of the employees of the district attorney. An election pursuant to this paragraph (a) shall be made prior to January 1, 2004, unless the boards of county commissioners make a finding that it was not fiscally appropriate to make the election prior to such date.

- (b) If an election is made pursuant to paragraph (a) of this subsection (2), the boards of county commissioners, in consultation with the district attorney, shall further determine whether to have the employees either become members of the association's defined benefit plan or the association's defined contribution plan. The determination shall be approved by not less than sixty-five percent of the employees of the district attorney.
- (c) If either the election specified in paragraph (a) of this subsection (2) or the determination specified in paragraph (b) of this subsection (2) is not approved as provided in said paragraphs, then the employees of the district attorney shall not become members of the association's defined benefit plan or the association's defined contribution plan. No more than one election may be made in a judicial district in any calendar year. If the boards of county commissioners determine that the employees shall become members of the defined benefit plan, then no employee of the district attorney shall participate in the defined contribution plan. If the boards determine that the employees shall participate in the defined contribution plan, then no employee shall become a member of the defined benefit plan.
- (d) An employee of a district attorney hired prior to the date upon which the employees of the district attorney approve the determination of the boards of county commissioners pursuant to paragraph (b) of this subsection (2) shall have sixty days from such date to make a one-time irrevocable election to become a member of the association's defined benefit plan or the association's defined contribution plan in accordance with the determination. In the absence of such election, such person shall continue to participate in his or her existing retirement plan.
- (e) An employee of a district attorney hired on or after the date upon which the employees of the district attorney approve the determination of the boards of county commissioners pursuant to paragraph (b) of this subsection (2) shall become a member of the association's defined benefit plan or the association's defined contribution plan in accordance with the determination.
- (f) The boards of county commissioners of the counties within a judicial district, in consultation with the district attorney for the judicial district, may make application to the board to terminate affiliation with the

association. Said application shall be made by submitting a resolution adopted by the boards of county commissioners that has been approved by at least sixty-five percent of the employees of the district attorney who are members or who participate in the plan. Applications to the board shall be made in accordance with the provisions of section 24-51-313.

(g) For purposes of this subsection (2), the term “employee of a district attorney” shall not include an assistant district attorney, chief deputy district attorney, or deputy district attorney.

(3) An assistant district attorney, chief deputy district attorney, deputy district attorney, or other employee of a district attorney who becomes a member of the association shall be a member of the state division. The judicial district employing such member shall be designated as a state employer that has affiliated with the association pursuant to section 24-51-309.

**24-51-306. Elected state officials (Repealed)**

**24-51-307. Elected municipal officials**

- (1) (a) Any elected official of a municipality which is affiliated with the association shall, within sixty days after taking office, make a one-time, irrevocable written election to become a member or to be exempted from membership. In the absence of a written election to be exempted from membership, an elected municipal official shall be a member.
- (b) Notwithstanding any other provision of the law to the contrary, any elected official of a municipality which is affiliated with the association may, on or before August 1, 1992, elect to be retroactively exempted from membership during all or any portion of the time period beginning on July 1, 1991, and continuing until such day of election of exemption from membership.

(2) Repealed.

**24-51-308. City managers and key management staff**

Any municipality affiliated with the association may authorize the city manager and key management staff who report directly to the city council or city manager to make a one-time, irrevocable election to be exempted from membership. If so authorized, the city manager and key management staff shall make a written election to become a member or to be exempted from membership within sixty days after becoming employed in the position. In the absence of a written election, such person shall be a member.

**24-51-309. Affiliation by public entities**

Except as otherwise provided in section 24-51-320, any political subdivision within the state of Colorado or any public agency created by the state or any of its political subdivisions may make application to the board to affiliate with the association. Any such entity specified in this section that previously exempted its employees from membership in the association may, by ordinance or resolution, apply to the board to be affiliated with the association. All applications shall be subject to approval by the board, and upon approval the benefits, duties, and responsibilities of employers and members shall begin from the date of affiliation with the association. The Denver public schools division shall include charter schools that participate in the DPS plan prior to January 1, 2010, and any future charter schools that are approved by the Denver public schools board of education and that enter into a charter contract with the Denver public schools board of education on or after January 1, 2010. The board shall not allow affiliation into the Denver public schools division of any employer not approved by the Denver public schools board of education.

**24-51-310. Persons not eligible for membership**

- (1) Persons not eligible for membership in the association include:
  - (a) (I) Students enrolled in an undergraduate or graduate program at and employed by a state college or university or by a public employer affiliated with a college or university, including the Auraria higher education center, when such employment is predicated on student status, whether or not required by federal law to be covered by a public employee retirement system or social security;
  - (II) Students enrolled and regularly attending classes in a school district and who have not graduated from high school whose employment by such district is predicated on student status;
  - (III) (A) Any other employees not described in subparagraph (I) or (II) of this paragraph (a) who are not required by federal law to be covered by a public employee retirement system or social security; except that a member of the military employed pursuant to section 28-3-904, C.R.S., for more than thirty consecutive days may elect to become a member of the association if the election is made within sixty days after the member first becomes eligible.



- (B) Notwithstanding the provision of sub-subparagraph (A) of this subparagraph (III), retirees for whom coverage is not required by federal law shall resume membership if such retirees return to work in a position subject to membership, or in a position described in section 24-51-308, and if such retirees voluntarily suspend their benefits.
- (b) Participants in a university of Colorado retirement plan to the extent required pursuant to section 23-20-139, C.R.S.;
  - (c) (Deleted by amendment, effective July 1, 1991.)
  - (d) Certain Colorado state university faculty and other employees of the extension service who are employed in a cooperative work program with the United States department of agriculture, whose participation in the federal civil service retirement system is a prerequisite to such employment;
  - (e) (Deleted by amendment, effective July 1, 1991.)
  - (f) Policemen and firefighters covered by an existing retirement system pursuant to the laws of this state;
  - (g) Repealed.
  - (h) Independent contractors and consultants to employers;
  - (i) Employees of a nonprofit public hospital, long-term care facility, health care facility, or veterans community living center which was previously affiliated with the association if such employees were hired subsequent to the sale, lease, or transfer of the hospital or veterans community living center;
  - (j) Employees of employers assigned to the local government division of the association whose positions were covered only under social security for such employment as of November 5, 1990, and employees in similar positions created later by such employers;
  - (k) Participants in an optional retirement plan organized pursuant to article 54.5 of this title to the extent required by section 24-54.5-106; except that persons who do not participate in such optional retirement plan shall remain members of the association.
  - (l) Repealed.
  - (m) Directors of special districts serving pursuant to the "Special District Act", Article 1 of Title 32, who begin their service as directors on or after July 1, 2022.

**24-51-311. Continuation of membership**

Notwithstanding the provisions of section 24-51-310, employees of a public hospital which is sold, leased, or otherwise transferred to a nonprofit corporation organized pursuant to the laws of this state for the purpose of conducting a hospital, or employees of an association-affiliated employer that has transferred title pursuant to section 26-12-112(5)(a), C.R.S., to an entity organized pursuant to the laws of the state for the purpose of conducting a long-term care facility or health care facility, may continue membership in the association if the board determines, in its sole discretion, that continued membership will not adversely affect its qualified governmental plan status and if the transfer agreement provides for continuance of membership and the new employer agrees to submit to the association the appropriate amount of employer and member contributions and disbursements pursuant to part 4 of this article.

**24-51-312. Payment of contributions**

- (1) Nothing in this article shall be construed as modifying or abridging the responsibilities of any person or employer for any social security payments which may be required pursuant to federal law.
- (2) Member or employer contributions paid to the association shall not be considered an increase in the salary of such member.
- (3) Service credit shall only be earned from the date membership begins and with the payment of contributions thereto.

**24-51-313. Termination of affiliation—employer assigned to local government division—requirements**

- (1) Any political subdivision within the state of Colorado or any public agency created by such a political subdivision that is an employer affiliated with the association pursuant to section 24-51-309 and that is assigned to the local government division may make application to the board to terminate the affiliation of the employer with the association. The application shall be made by submitting to the board an ordinance or resolution that has been adopted by the governing body of the employer and that has been approved by at least sixty-five percent of the employees of the employer who are members. Such employee members of the employer shall be notified in writing of the provisions of section 24-51-321 prior to a vote on an ordinance or resolution to terminate the affiliation of the employer with the association. Notwithstanding the provisions of this subsection (1), any such employer that ceases operations or ceases to

participate in the association for any reason shall be deemed to have terminated its affiliation with the association and must comply with the provisions of sections 24-51-315 to 24-51-319.

- (2) All applications for termination of affiliation shall comply with the requirements set forth in this section, and, except as otherwise provided in this part 3, all applications meeting such requirements shall be approved by the board. Applications which do not meet the requirements of this section shall not be approved by the board. Upon approval of such application, the effective date of termination of affiliation shall not occur earlier than sixty days or later than ninety days after the date upon which such application is submitted to the board.

**24-51-314. Termination of affiliation—rights of benefit recipients and inactive members**

The rights of benefit recipients and the vested rights of inactive members shall not be impaired or reduced in any manner as a result of the termination of affiliation of an employer with the association as provided in section 24-51-313.

**24-51-315. Termination of affiliation—reserves requirement**

- (1) The board has the authority to determine the amount of reserves required as of the effective date of termination of affiliation to:
  - (a) Maintain current benefits payable by the association to benefit recipients and to preserve the vested rights of inactive members; and
  - (b) Fully fund the liability for benefits payable by the association from the health care trust fund created by section 24-51-1201(1) to current and future benefit recipients pursuant to part 12 of this article 51.
- (2) The amount of reserves required under subsections (1)(a) and (1)(b) of this section shall be determined by the board utilizing certified actuarial reports prepared by the actuary. The actuarial study shall be conducted using assumptions approved by the board. The actuarial report shall also certify that the termination of affiliation shall not have an adverse financial impact on the actuarial soundness of the local government division trust fund. If the actuary determines, in accordance with accepted actuarial principles, that the termination of affiliation shall have an adverse financial impact on the actuarial soundness of the local government division trust fund, the applicant shall not be permitted to terminate affiliation. On the effective date of termination of affiliation, the actuarial reports prepared pursuant to this subsection (2) shall be

updated to finalize the amount of reserves required for the purposes specified in this subsection (2). The employer making the application and the employees of such employer who are members shall not be required to make any contributions to the association subsequent to the effective date of termination.

- (3) The expenses incurred by the board for the actuarial reports prepared as a result of an application for termination of affiliation shall be paid by the employer making such application.
- (4) The board shall provide any information contained in such actuarial reports upon request of the employer making the application for termination of affiliation.
- (5) The discount rate used for determining the amount of reserves in subsection (1) of this section shall be the actuarial investment assumption rate as set by the board pursuant to sections 24-51-101 (2) and 24-51-204 (5) minus two hundred basis points.
- (6) Determinations made by the board in this section and sections 24-51-313 and 24-51-316 shall be appealed through the administrative review procedures set forth in the board rules. Such final decision by the board shall be subject only to review by proper court action.

**24-51-316. Inadequate reserves—excess reserves—nonpayment**

- (1)
  - (a) In the event that the amount of the reserves required pursuant to section 24-51-315 (1)(a) exceeds the amount of the employer's share of the employer contribution reserve in the local government division trust fund as calculated by the actuary, then the employer shall make an additional payment as of the effective date of termination of affiliation in an amount equal to the difference between the amount of reserves required and the amount of reserves on deposit.
  - (b) In the event that the reserves required pursuant to section 24-51-315 (1)(b) for the health care trust fund created by section 24-51-1201 (1) exceeds the market value of assets attributable to the employer in the health care trust fund, the employer shall make an additional payment as of the effective date of termination of affiliation in an amount equal to the difference between the amount of reserves required and the amount of reserves on deposit.

- (c) If the actuary determines, in accordance with accepted actuarial principles, that the termination of affiliation of the employer shall have an adverse financial impact on the funding of the health care trust fund created by section 24-51-1201 (1), the employer shall make any additional payment necessary to ensure that the impact on the funding of the health care trust fund remains unchanged upon the employer's termination of affiliation.
- (2) In the event that the amount of the reserves on deposit in the local government division trust fund as calculated by the actuary for the employer requesting termination of affiliation exceeds the amount of reserves required pursuant to section 24-51-315 (1), such excess amount and the amount required for the transfer of member contributions as provided in section 24-51-317 shall be transferred by a direct trustee-to-trustee transfer to the alternate pension plan or system required by section 24-51-319 as of the effective date of termination of affiliation.
- (3) If any payment required pursuant to subsection (1) or (2) of this section is not made, interest shall be assessed on the amount due at the rate specified for employers in section 24-51-101 (28). Interest shall be calculated from the effective date of termination until such amount is paid in full.

**24-51-317. Termination of affiliation—member contributions**

Members who are employees of an employer that has terminated its affiliation with the association shall become inactive members as of the effective date of termination of affiliation. Such members may elect to have their member contributions credited to the alternative pension plan or system required by section 24-51-319. In the absence of such an election, member contributions will remain with the association unless the member otherwise elects to refund such contributions in accordance with section 24-51-405.

**24-51-318. Purchase of forfeited service credit**

The provisions of section 24-51-503 which relate to the purchase of service credit forfeited by the refund of member contributions shall not apply to the members who are employees of an employer which has terminated its affiliation with the association. Such service credit forfeited by such termination of affiliation may be purchased pursuant to the provisions of section 24-51-505.

**24-51-319. Retirement plan—creation and use**

An employer that terminates its affiliation with the association shall utilize an existing, or shall establish an alternative, pension plan or system established pursuant to the provisions of article 54 of this title 24. Failure to utilize or establish an alternative pension plan or system does not excuse the employer from the adherence to the remainder of the termination of affiliation provisions of this part 3.

**24-51-320. Reaffiliation of a public entity**

- (1) Any employer which terminates its affiliation with the association pursuant to the provisions of section 24-51-313 shall be eligible to apply for reaffiliation with the association as provided in section 24-51-309 no earlier than one year after the effective date of termination of affiliation.
- (2) Such application for reaffiliation shall not be submitted to the association unless approved by sixty-five percent of the employees of the public entity who are eligible to become members of the association.
- (3) The board shall not approve any application for reaffiliation with the association if such reaffiliation will have an adverse financial impact on the actuarial soundness of the local government division trust fund.

**24-51-321. No state liability—political subdivision pension plans**

The state shall not be held liable for any deficit that occurs in any defined benefit or defined contribution plan or system of any political subdivision within the state of Colorado or any public agency created by such a political subdivision which is an employer which has terminated affiliation with the association.

## PART 4: CONTRIBUTIONS

### 24-51-401. Employer and member contributions

(1) and (1.5) Repealed.

(1.6) For the purposes of sections 24-51-401 to 24-51-404 and sections 24-51-405.5, 24-51-409, and 24-51-411, the term “member” shall include DPS members and the term “retiree” shall include DPS retirees.

(1.7) (a) (i) Employers shall deliver a contribution report and the full amount of employer contributions, member contributions, and working retiree contributions to the association within five days after the date members and retirees are paid. Except as provided in this subsection (1.7)(a), subsection (7) of this section, and section 24-51-408.5, such contributions shall be based upon the rates for the appropriate division as set forth in the following table multiplied by the salary, as defined in section 24-51-101 (42), paid to members and retirees for the payroll period:

**TABLE A CONTRIBUTION RATES**

Division	Membership	Employer Rate	Member Rate
State	All Members	10.15%	8.0%
	Except State Troopers	12.85%	10.0%
School	All Members	10.15%	8.0%
Local Government	All Members	10.0%	8.0%
Judicial	All Members	13.66%	8.0%
DPS	All Members	10.15%	8.0%

- (II) Effective July 1, 2019, subject to section 24-51-413, the employer and member contribution rates shall be based upon the rates for the appropriate division as set forth in the following table multiplied by the salary, as defined in section 24-51-101 (42), paid to members and retirees for the payroll period:

**TABLE B CONTRIBUTION RATES**

Division	Membership	Employer Rate	Member Rate
State	All Members	10.4%	8.75%
	Except State Troopers	13.1%	10.75%
School	All Members	10.4%	8.75%
Local Government	All Members	10.0%	8.0%
Judicial	All Members	13.91%	8.75%
DPS	All Members	10.4%	8.75%

- (III) Effective July 1, 2020, except as provided in subsection (1.7)(g) of this section and subject to section 24-51-413, the employer and member contribution rates shall be based upon the rates for the appropriate division as set forth in the following table multiplied by the salary, as defined in section 24-51-101 (42), paid to members and retirees for the payroll period:

**TABLE C CONTRIBUTION RATES**

Division	Membership	Employer Rate	Member Rate
State	All Members	10.4%	9.5%
	Except State Troopers	13.1%	11.5%
School	All Members	10.4%	9.5%
Local Government	All Members	10.0%	8.0%
Judicial	All Members	13.91%	9.5%
DPS	All Members	10.4%	9.5%

- (IV) Effective July 1, 2021, except as provided in subsection (1.7)(g) of this section and subject to section 24-51-413, the employer and member contribution rates shall be based upon the rates for the appropriate



division as set forth in the following table multiplied by the salary, as defined in section 24-51-101 (42), paid to members and retirees for the payroll period:

**TABLE D CONTRIBUTION RATES**

Division	Membership	Employer Rate	Member Rate
State	All Members	10.4%	10.0%
	Except State Troopers	13.1%	12.0%
School	All Members	10.4%	10.0%
Local Government	All Members	10.0%	8.0%
Judicial	All Members	13.91%	10.0%
DPS	All Members	10.4%	10.0%

- (b) Contributions shall be calculated using the contribution rates that were in effect on the last day of the payroll period.
- (c) Contributions for salary payments made to a member for unintentional nonrecurring adjustments or corrections that are paid separate from one of the employer’s regular payroll cycles may be reported and paid to the association with the employer’s next regular payroll cycle.
- (d) If an employer makes payment to the association through an automated clearing house debit transaction, payment will be considered received on time if valid and executable automated clearing house instructions are received by the association by the date specified in paragraph (a) of this subsection (1.7).
- (e) In recognition of the effort to equalize the funded status of the Denver public schools division and the association’s school division as more fully provided in section 24-51-412, beginning January 1, 2015, and every fifth year thereafter, the association shall calculate a true-up to confirm the equalization status of the Denver public schools division and the association’s school division, and, if necessary, the board shall recommend that the general assembly adjust the Denver public schools total employer rate to assure the equalization of the Denver public schools division’s ratio of unfunded actuarial accrued liability over payroll to the association’s school division’s ratio of unfunded actuarial accrued liability over payroll at the end of the thirty-year period. The true-up shall be based on audited

results of the association's school division's and the Denver public schools division's actual unfunded actuarial accrued liability and payroll experience at every point of true-up. If the ratios of unfunded actuarial accrued liability over payroll based on actual experience are not projected to equalize over the thirty-year period, the board shall recommend that the Denver public schools division total employer rate be adjusted by the general assembly.

- (f) Repealed.
- (g) (l) (A) Except as otherwise provided in subsection (1.7)(g)(II) of this section and subject to section 24-51-413, for the 2020-21 state fiscal year, the amount of employer and member contributions for employers and members in the judicial division of the association shall be based upon the rates as set forth in the following table multiplied by the salary, as defined in section 24-51-101 (42), paid to members and retirees for the payroll period:

**TABLE C.5 CONTRIBUTION RATES**

Division	Membership	Employer Rate	Member Rate
Judicial	All Members	8.91%	14.5%

- (B) Except as otherwise provided in subsection (1.7)(g)(II) of this section and subject to section 24-51-413, for the 2021-22 state fiscal year, the amount of employer and member contributions for employers and members in the judicial division of the association shall be based upon the rates as set forth in the following table multiplied by the salary, as defined in section 24-51-101 (42), paid to members and retirees for the payroll period:

**TABLE D.5 CONTRIBUTION RATES**

Division	Membership	Employer Rate	Member Rate
Judicial	All Members	8.91%	15.0%
	<p>(II) Subsection (1.7)(g)(I) of this section does not apply to the employer or member contribution for judges employed by the Denver county court. For the 2020-21 and 2021-22 state fiscal years, the employer and member contribution rates for judges employed by the Denver county court shall be calculated pursuant to subsections (1.7)(a)(III) and (1.7)(a)(IV) of this section, as applicable, and subject to section 24-51-413.</p>		
(1.8)	(Deleted by amendment, effective May 25, 2006.)		
(2)	<p>Along with such contributions, the employer shall deliver to the association by the date established in subsection (1.7) of this section a contribution report containing any member information required by the board to properly credit money to the employer contribution reserve and the member contribution accounts in the member contribution reserve.</p>		
(3)	<p>The employer shall be assessed by the association, pursuant to rules adopted by the board, interest on the contributions, including working retiree contributions, if either contributions or member information is not submitted by the date established in subsection (1.7) of this section.</p>		
(4) and (5)	(Deleted by amendment, effective, July 1, 1991.)		
(6)	<p>For all members, contributions will be subject to any maximum limits imposed under federal income tax law including the limitations set forth in section 401 (a)(17) of the federal "Internal Revenue Code of 1986", as amended, and any other limit on the members' total gross salary that may be taken into account for purposes of determining member contributions.</p>		
(7)	<p>If a final judicial determination provides that an employer is obligated to pay damages to the association for unpaid contributions and the damages awarded are greater than the amounts provided pursuant to section 24-51-402, then the association shall reduce the employer contribution rate for the employer to a level that will offset the additional damages paid. If possible, the association shall set a rate of employer contributions that is sufficient to offset the additional damages</p>		

over a twelve-month period. If the employer does not owe sufficient employer contributions to offset the additional damages over a twelve-month period, then the association shall eliminate the employer contributions for the employer until the excess damages are fully offset.

**24-51-402. Unpaid contributions for any member—legislative declaration**

- (1) The general assembly hereby finds and declares that:
  - (a) The litigation of disputes regarding the payment of contributions by employers to the public employees' retirement association represents an inappropriate allocation of public moneys. Courts already suffer from overcrowded dockets, and the use of judicial resources to resolve such disputes means that taxpayers foot the bill for plaintiffs, defendants, and judges alike. Once all appropriate benefits have been accorded to members or inactive members of the association, any dispute then remaining is solely between governmental entities. The general assembly finds that the litigation of these disputes is an inappropriate use of the limited resources of the association, public employers, and the courts because it is possible to establish reasonable and fair rules for the resolution of such disputes without any need for judicial involvement. The general assembly therefore intends to resolve any current disputes and to clearly delineate the responsibilities of governmental entities so that future disputes do not require any litigation or unnecessary expenditure of state moneys.
  - (b) Fairness requires that the general assembly prescribe uniform results in every circumstance, a goal that is not obtainable when varying results arise from litigation of contributions disputes in the courts;
  - (c) Under the provisions of this section, members and inactive members will receive the full benefits promised by law and, therefore, there is no question regarding the equal treatment of any individual;
  - (d) In order to minimize the risk of future litigation between the public employees' retirement association and other governmental entities, it is appropriate to clarify under sections 24-51-205(3.5) and 24-51-207(2) that the board of trustees of the association may reasonably settle or compromise disputes without violating any principle of fiduciary responsibility;

(e) Should any judicial determination regarding an employer's liability for contributions be contrary to the results provided under this section, the association will be required under section 24-51-401(7) to accept a reduced employer contribution level to offset all excess damages above the level of contributions the general assembly has established. The general assembly further finds that the establishment of a proper rate of contributions is clearly a legislative function and that it is appropriate for the general assembly to modify the level of employer contributions when necessary to offset the results of judicial awards that are contrary to the amounts established by the general assembly. The general assembly declares that it is its express intent to overrule any judicial decision entered prior to May 22, 1995, that is contrary to the provisions of this section.

(2) The provisions of this section and sections 13-80-103.5(1)(d) and 13-80-108(13), C.R.S., apply to the following:

(a) Any cause of action accruing on or after May 22, 1995;

(b) Any unresolved cause of action accruing prior to May 22, 1995; and

(c) (l) Any cause of action resolved on or after July 1, 1994, but prior to May 22, 1995. The following shall govern the application of this section to the causes of action specified in this paragraph (c):

(A) This section shall affect only the total amount of the payments in any cause of action specified by this paragraph (c). Such total amount of payments shall not exceed the amount specified under subsection (3)(a) or (3)(b)(l) of this section, whichever is applicable. The association shall refund, or shall not collect, any difference between the amount paid, agreed to be paid, or awarded in any such cause of action and the amount specified under subsection (3)(a) or (3)(b)(l) of this section. Subsection (3)(b)(ll) of this section shall not affect the allocation of payments pursuant to an agreement, settlement agreement, or judgment resolving a cause of action specified by this paragraph (c).

(B) This section shall not require any member or inactive member to make any payment of unpaid contributions with respect to any cause of action specified by this paragraph (c) if such member or inactive member is not required to make such payment under the agreement, settlement agreement, or judgment resolving the cause of action.

(C) This section shall not affect any benefits provided to individuals as the result of the payment of unpaid contributions with respect to any cause of action specified by this paragraph (c).

(II) For the purposes of this paragraph (c), a cause of action is resolved if there is an agreement to make payment under the cause of action, whether or not the full payment has been made, if there is a settlement agreement in a lawsuit between the parties, whether or not the full payment under the settlement agreement has been made, or if there is a final judgment entered, whether or not the judgment has been fully paid or collected.

(3) If an employer fails to provide membership in the association to an individual so entitled pursuant to the provisions of this article or fails to provide the required level of employer contributions for an individual pursuant to the provisions of this article, the following payment shall be made to the association:

(a) If the individual is not a member or inactive member at the time the association first notifies the employer of its claim for unpaid contributions, the employer shall pay the unpaid employer contributions on behalf of the individual for the period contributions should have been made at the contribution rate applicable during such period, plus the amortization equalization disbursement in effect pursuant to section 24-51-411 for the period contributions should have been made, plus interest on such employer contributions and the amortization equalization disbursement at the applicable actuarial investment assumption rate, as such interest rate is from time to time adjusted, until such contributions are paid. If an employer pays contributions pursuant to this paragraph (a) on behalf of an individual who was not a member or inactive member when the association first notifies the employer and such individual subsequently becomes a member and completes one year of earned service credit, the member may purchase service credit for the appropriate period by paying the unpaid member contributions for the period for which contributions should have been made at the contribution rate applicable during such period, plus interest on such member contributions at the applicable actuarial investment assumption rate, as such interest rate is from time to time adjusted, until such contributions are paid.

- (b) (I) If the individual is a member or inactive member at the time the association first notifies the employer of its claim for unpaid contributions, the payment equals the lesser of the following amounts:
  - (A) For a member, the cost to purchase the appropriate amount of service credit at the rate established pursuant to section 24-51-505, plus the amortization equalization disbursement in effect pursuant to section 24-51-411 for the period contributions should have been made; and, for an inactive member, the cost to purchase the appropriate amount of service credit at the rate established pursuant to section 24-51-505, based upon the salary at the date of last employment, plus the amortization equalization disbursement that should have been made, plus interest at the applicable actuarial investment assumption rate, as such interest rate is from time to time adjusted, from the date of last employment until the date contributions are paid; or
  - (B) The unpaid employer and member contributions and amortization equalization disbursement for the period contributions should have been made, plus interest on such employer and member contributions and the amortization equalization disbursement at the applicable actuarial investment assumption rate, as such interest rate is from time to time adjusted, until such contributions are paid.
- (II) The amounts paid to the association shall be allocated and collected in the following order until the full amount that is owed under subparagraph (I) of this paragraph (b) is reached:
  - (A) The employer shall first pay the unpaid employer contributions and amortization equalization disbursement on behalf of the member or inactive member for the period contributions should have been made, plus interest on such employer contributions and amortization equalization disbursement at the applicable actuarial investment assumption rate, as such interest rate is from time to time adjusted, until such contributions are paid;

- (B) The member or inactive member shall next pay the unpaid employee contributions for the period contributions should have been made, without interest; and
  - (C) The employer shall next pay interest on the unpaid employee contributions for the period contributions should have been made at the applicable actuarial investment assumption rate, as such interest rate is from time to time adjusted, until such contributions are paid; except that the employer is only required to pay interest on the amount of employee contributions owed by the member or inactive member under sub-subparagraph (B) of this subparagraph (II) that the member or inactive member actually pays.
- (III) If the full amount owed pursuant to the provisions of this paragraph (b) is not paid because the member or inactive member pays less than the full amount of employee contributions, then:
- (A) If the member or inactive member was not provided membership during the applicable time period, the association shall provide partial service credit to the member or inactive member in the same proportion to the total amount of service credit that would have been earned if contributions had been made as the amount actually paid to the association bears to the amount that was owed to the association; and
  - (B) If the member or inactive member was provided membership during the applicable time period, the association shall provide a partial increase in the highest average salary of the member or inactive member in the same proportion to the increase in highest average salary that would have been earned if contributions had been paid as the amount actually paid to the association bears to the amount that was owed to the association.
- (4) Within ninety days after the time the association first notifies an employer of its claim for unpaid contributions, the association shall attempt to notify all members and inactive members regarding their rights to pay unpaid employee contributions pursuant to subsection (3)(b)(II)(B) of this section. Any member or inactive member who elects to pay all or any portion of unpaid employee



contributions shall notify the association of such election within one year after the date the employer pays the unpaid employer contributions pursuant to subsection (3)(b)(II)(A) of this section. If a member or inactive member fails to notify the association of the member's or inactive member's intent to pay as allowed under this subsection (4), the association may elect to treat the member or inactive member as having forfeited the right to make such contributions. Any member or inactive member who elects to pay all or any portion of unpaid employee contributions may pay employee contributions in installment payments over a period not to exceed sixty months or over a period equal to the amount of service credit that would have been earned if contributions had been made, whichever period is shorter.

- (5) If an individual for whom contributions are being claimed is not a member of the association at the time the association first notifies an employer of its claim for unpaid contributions, an action to collect unpaid contributions is subject to the limitations provided in section 13-80-103.5(1)(d), C.R.S. If an individual for whom contributions are being claimed is a member or inactive member at the time the association first notifies an employer of its claim for unpaid contributions, an action to collect unpaid contributions is not subject to any limitation under article 80 of title 13, C.R.S.

#### **24-51-403. Contributions assumed and paid by the employer**

For purposes of deferring federal income tax imposed on salary, the member contributions and the working retiree contributions assumed and paid for by the employer shall be in lieu of paying such amounts as salary and shall be treated as employer contributions pursuant to the provisions of 26 U.S.C. sec. 414(h)(2), as amended. For all other purposes of this article, member contributions assumed and paid for by the employer shall be considered member contributions.

#### **24-51-404. Combining member contributions**

Any member whose previous member contribution account has not been refunded shall be credited with such member contributions in said account upon a resumption of membership. Notwithstanding the provisions of this section, members exercising portability between the Denver public schools division and the other association divisions shall be governed by the provisions of section 24-51-1747.

## **24-51-405. Refund of the member contribution account**

- (1) Subject to portability, any member who terminates membership for any reason other than retirement or death may request a refund of all moneys credited to the member contribution account and payment of matching employer contributions if said member has not resumed membership. Upon request, a refund shall be made by the association within ninety days after the date of termination of employment covered by membership or the date the association received the refund request, whichever is later.
- (2) A member contribution account shall not be refunded and matching employer contributions shall not be paid to such member for any reason other than termination of membership.
- (3) Repealed.
- (4) All rights of membership and any future benefits associated with a member contribution account and matching employer contributions are forfeited when a refund is made.
- (5) Employer contributions made to the association are nonrefundable to an employer.
- (6) Partial refunds are prohibited.
- (7) The amount of matching employer contributions shall be determined pursuant to the provisions of section 24-51-408.
- (8) An individual who refunded his or her member contribution account pursuant to this section and again commences membership on or after July 1, 2005, but before January 1, 2007, whether or not the individual purchases all or part of the period associated with the refunded member contribution account, shall have no rights associated with membership prior to July 1, 2005, except as mandated by federal law, and such individual shall not be considered to have been a member, inactive member, or retiree on June 30, 2005.
- (9) An individual who refunded his or her member contribution account pursuant to this section and again commences membership on or after January 1, 2007, whether or not the individual purchases all or part of the period associated with the refunded member contribution account, shall not have any rights associated with membership prior to January 1, 2007, except as mandated by federal law, and such individual shall not be considered to have been a member, inactive member, or retiree on December 31, 2006.

- (10) Subject to portability, the amount available to DPS members in the event of a refund shall be governed by section 24-51-1711.

**24-51-405.5. Direct rollovers**

Notwithstanding any other provision of this article, effective January 1, 1993, a terminated member, a surviving spouse, or a named beneficiary may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover in accordance with section 401(a)(31) of the federal "Internal Revenue Code of 1986", as amended.

**24-51-406. Payments from the judicial division**

Any member of the judicial division who was a member of that division on or before July 1, 1973, and who retires from the judicial division with more than sixteen years of service credit may elect prior to retirement to receive, within ninety days following the effective date of retirement, a payment of the member contributions and interest together with matching employer contributions, calculated pursuant to the provisions of section 24-51-408(1), that are associated with the service credit earned during the seventeenth through the twentieth years. This payment shall negate the service credit earned during those years.

**24-51-407. Interest**

- (1) Member contributions shall earn interest beginning with the date of the first contribution, and, on succeeding balances, from the date of the first contribution through either the date the member contribution account is refunded and matching employer contributions are paid, the date a single payment is paid to the beneficiary, the date survivor benefits become payable, or the date of retirement, whichever occurs first.
- (2) Member contributions made prior to July 1, 1995, shall earn interest at the rate of six and eight-tenths percent per year, compounded annually, in lieu of the former rate, if a member contribution account exists for the person on July 1, 1995.
- (3) From July 1, 1995, to June 30, 2004, member contributions shall earn interest at a rate equal to eighty percent of the actuarial investment assumption rate, compounded annually, that was in effect at the time interest was earned.

- (4) On and after July 1, 2004, member contributions shall earn interest at a rate specified by the board, compounded annually, that is in effect at the time interest is earned. In no event shall the board specify a rate pursuant to this subsection (4) that exceeds five percent.
- (5) Notwithstanding the provisions of this section, DPS member accounts existing as of December 31, 2009, shall be credited regular interest in accordance with section 24-51-1702(31) through and including December 31, 2009. Thereafter, Denver public schools division member accounts shall earn interest in accordance with subsection (4) of this section.

**24-51-408. Matching employer contributions**

- (1) For members who receive a benefit or who receive a refund payable after meeting the age and service requirements for a service or reduced service retirement benefit, or for payments made to survivors or beneficiaries of members who die before retirement, matching employer contributions shall be an amount equal to the member contribution account less:
  - (a) Any amounts paid for the purchase of service credit;
  - (b) Any payments in lieu of member contributions; and
  - (c) Any interest accrued on the amounts specified in paragraphs (a) and (b) of this subsection (1).
- (2) For members who have five or more years of earned service credit and receive a refund prior to sixty-five years of age and prior to meeting the age and service requirements for a service or reduced service retirement benefit, the amount of matching employer contributions paid shall be one-half of an amount equal to the member contribution account less:
  - (a) Any amounts paid for the purchase of service credit;
  - (b) Any payments in lieu of member contributions; and
  - (c) Any interest accrued on the amounts specified in paragraphs (a) and (b) of this subsection (2).
- (2.5) Notwithstanding subsection (2) of this section, for a member who has less than five years of earned service credit as of the date of refund and who receives a refund prior to sixty-five years of age and prior to meeting the age and service requirements for a service or reduced service retirement benefit, the amount of matching employer contributions paid shall be one-half of an amount equal to the member contribution account accumulated prior to January 1, 2011, less:

- (a) Any amounts paid for the purchase of service credit;
  - (b) Any payments in lieu of member contributions; and
  - (c) Any interest accrued on the amounts specified in paragraphs (a) and (b) of this subsection (2.5).
- (3) Notwithstanding subsections (1) and (2) of this section, for members of the local government division and for payments made to survivors or beneficiaries of such members who die before retirement, the amount of matching employer contributions shall be eighty percent of the amount that would be paid to members, survivors, or beneficiaries in divisions of the association other than the local government division if the local government division members had the same contribution history and age as the members of the other divisions. Notwithstanding any other provision of this subsection (3) to the contrary, the amount of matching employer contributions for members of the local government division shall be as provided in subsections (1) and (2) of this section effective on July 1 of any year in which the most recent determination of the association's actuary specifies that such contributions for the local government division will not cause the amortization period in such division to exceed thirty years.
- (4) The provisions of this section shall not apply to DPS member contribution accounts that exist on December 31, 2009, with regard to past contributions or future contributions. Member contribution accounts in the Denver public schools division created on or after January 1, 2010, shall be governed by this section.

**24-51-408.5. Matching employer contribution on voluntary contributions made by members to tax-deferred retirement programs**

- (1) For any member who makes a voluntary contribution to any eligible tax-deferred retirement program, the employer shall make a matching contribution on such voluntary contribution to the eligible tax-deferred retirement program subject to the provisions of this section. A member of the defined contribution plan pursuant to part 15 of this article shall not be eligible for matching contributions under this section on voluntary contributions made from salary earned as a member of the defined contribution plan.
- (2) The tax-deferred retirement programs that are eligible to receive matching employer contributions in accordance with subsection (1) of this section shall include any tax-deferred retirement program in which the member participates:
- (a) That is available to members and is either established in accordance with state law or sponsored by the employer; and

- (b) (I) That is authorized under section 401(k), 403(b), or 457 of the federal "Internal Revenue Code of 1986", as amended; or
  - (II) That is authorized as a defined contribution plan under section 401(a) of the federal "Internal Revenue Code of 1986", as amended.
- (3) The level of the matching employer contribution on voluntary contributions by members to eligible tax-deferred retirement programs shall be set by the board annually not later than September 1 of each year. The level set by the board shall apply for the following calendar year. The level shall be set separately for each division of the association and shall be based on the percentage of salary for each division available for matching contributions according to subsection (4) of this section. When setting the level of the matching employer contribution on voluntary contributions to eligible tax-deferred retirement programs, the board shall specify the percentage of a member's voluntary contribution to be matched by the employer and the maximum voluntary contribution by any member subject to the matching employer contribution.
- (4) The matching employer contribution on voluntary contributions to eligible tax-deferred retirement programs shall terminate for payroll periods that end after the last day of the calendar month following April 2004 and thereafter shall resume only when the actuary determines that the actuarial value of assets exceeds one hundred ten percent of actuarial accrued liabilities. One-half of the amount of a reduction in the employer contribution rates as determined in subsection (5) of this section to amortize any overfunding in the respective division's trust fund shall be available for matching employer contributions.
- (5) If the actuarial value of assets exceeds one hundred ten percent of the actuarial accrued liabilities in any division, as determined by the association's actuary, the division shall be considered overfunded by the amount of the difference. If a division is overfunded, the association's actuary shall determine not later than September 1 of each year the reduction in the employer contribution rates specified in section 24-51-401(1.7) necessary to amortize the overfunding in excess of one hundred ten percent up to one hundred fifteen percent of actuarial accrued liabilities over a period of thirty years. The amount of any overfunding in excess of one hundred fifteen percent of actuarial accrued liabilities shall be amortized over a period of twenty years. The calculation of the

amount for any fiscal year of any decrease in the employer contribution rates due to overfunding shall be determined using the actuary's calculation from the preceding September 1.

- (6)
  - (a) If a division's trust fund is determined to be overfunded pursuant to subsection (5) of this section, then commencing with the fiscal year that begins following the actuary's calculation from the preceding September 1, the employer contribution rate specified in section 24-51-401(1.7) for state division employers, for school division employers, local government division employers, and judicial division employers shall be reduced to amortize any overfunding in the respective division's trust fund by twenty percent of the amount of any reduction in the employer contribution rates as determined in accordance with subsection (5) of this section. The calculation of the amount of any reduction in the employer contribution rates due to overfunding shall be determined using the actuary's calculation from the preceding September 1.
  - (a.5) (Deleted by amendment, effective July 1, 2004, and January 1, 2006.)
  - (b) Each employer shall subtract from their regular contribution to the association an amount equal to the amount that the employer paid as matching contributions on members' voluntary contributions to eligible tax-deferred retirement programs pursuant to this section.
  - (c) In no event shall the total reduction in any division's employer contribution rate pursuant to this subsection (6) cause the employer contribution rate to be inadequate to pay contributions required for the health care trust fund as specified in section 24-51-208(1)(f).
- (7) Employers shall pay a matching contribution on a member's voluntary contribution directly to the eligible tax-deferred retirement program or programs to which the member contributes. Employers shall submit a report to the association concerning payments made pursuant to this subsection (7). The report shall include the amount of the voluntary contributions and matching employer contributions and the programs to which the contributions were paid.

- (8) The provisions of this section shall not apply to employers affiliated with the Denver public schools division or DPS members.

**24-51-409. Refund of erroneous member contribution**

- (1) It is the intent of the general assembly that the association consider the payment of interest on any erroneous contribution made to a member contribution account and later refunded to the member. It is the further intent of the general assembly that, if the member was intentionally and actively involved in an erroneous contribution with an intent to increase a retirement benefit by including contributions to the member contribution account that were not based on salary, then interest may be withheld by the association as provided in this section.
- (2) The association shall refund to an employer, for payment to a member, any erroneous contribution, as defined in section 24-51-101(21.5), that was made by the employer to a member contribution account. The association shall refund to the employer for payment to such member, in addition to the amount of the erroneous contribution, interest in the amount specified in section 24-51-101(28)(c) for the period beginning on the date of the contribution and ending on the date of the refund; except that, if the member was intentionally and actively involved in the erroneous contribution made to his or her member contribution account, the refund of interest on that amount may be withheld by the association.

**24-51-410. Anticipation of forfeitures in determining plan cost**

Any benefits forfeited upon a termination of membership in the association shall be anticipated in determining the cost of the plan.

**24-51-411. Amortization equalization disbursement**

- (1) Beginning January 1, 2006, each employer shall deliver to the association an amortization equalization disbursement and, beginning January 1, 2008, a supplemental amortization equalization disbursement pursuant to the same procedures specified for employer contributions in section 24-51-401(1.7).
- (2) For the calendar year beginning January 1, 2006, the amortization equalization disbursement shall be one-half of one percent of the employer's total payroll. The amortization equalization payment shall increase by one-half of one percent of total payroll on January 1, 2007, and, subject to subsection (4) of this section, shall increase by four-tenths of one percent of total payroll at the start of each of



the calendar years following 2007 through 2012. For purposes of this section, the employer's total payroll shall be calculated by applying the definition of salary, pursuant to section 24-51-101(42), to the payroll for all employees working for the employer who are members of the association, or who were eligible to elect to become members of the association on or after January 1, 2006, including any amounts paid in connection with the employment of a retiree by an employer pursuant to section 24-51-1101(2). Beginning January 1, 2010, employers of the Denver public schools division shall pay the then-applicable accumulated rate of amortization equalization disbursement and the escalating rate in accordance with the provisions of this section.

- (3) For the calendar year beginning January 1, 2013, for employers in the school and Denver public schools divisions, the amortization equalization disbursement payment shall increase by four-tenths of one percent of total payroll at the start of each of the calendar years through 2015. For the calendar year 2016, for employers in the school and Denver public schools divisions, the amortization equalization disbursement payment shall increase by three-tenths of one percent of total payroll at the start of the 2016 calendar year. For purposes of this section, the employer's total payroll shall be calculated by applying the definition of salary, pursuant to section 24-51-101(42), to the payroll for all employees working for the employer who are members of the association, or who were eligible to elect to become members of the association on or after January 1, 2006, including any amounts paid in connection with the employment of a retiree by an employer pursuant to section 24-51-1101(2).
- (3.5) For the calendar year beginning January 1, 2013, for employers in the state division, the amortization equalization disbursement payment shall increase by four-tenths of one percent of total payroll at the start of each of the calendar years through 2017. For purposes of this section, the employer's total payroll shall be calculated by applying the definition of salary, pursuant to section 24-51-101(42), to the payroll for all employees working for the employer who are members of the association, or who were eligible to elect to become members of the association on or after January 1, 2006, including any amounts paid in connection with the employment of a retiree by an employer pursuant to section 24-51-1101(2).

- (4) For employers in the local government division and the judicial division, the amortization equalization disbursement shall not exceed the 2010 calendar year rates unless the rates are required to increase in accordance with subsection (4.5) or (9) of this section.
- (4.5) For the calendar year beginning January 1, 2019, for the employers in the judicial division, the amortization equalization disbursement payment shall be three and four-tenths percent of the employer's total payroll. The amortization equalization disbursement payment for employers in the judicial division shall increase by four-tenths of one percent of total payroll on January 1, 2020, and shall increase by four-tenths of one percent of total payroll at the start of each of the calendar years following 2020 through 2023. For purposes of this section, the employer's total payroll shall be calculated by applying the definition of salary, as defined in section 24-51-101(42), to the payroll for all employees working for the employer who are members of the association, including any amounts paid in connection with the employment of a retiree by an employer pursuant to section 24-51-1101(2).
- (5) For the calendar year beginning January 1, 2008, the supplemental amortization equalization disbursement shall be one-half of one percent of the employer's total payroll. The supplemental amortization equalization disbursement, subject to subsection (7) of this section, shall increase by one-half of one percent of total payroll on January 1 of each year following 2008 through 2013. For purposes of this section, the employer's total payroll shall be calculated by applying the definition of salary, pursuant to section 24-51-101(42), to the payroll for all employees working for the employer who are members of the association, or who were eligible to elect to become members of the association on or after January 1, 2006, including any amounts paid in connection with the employment of a retiree by an employer pursuant to section 24-51-1101(2). Beginning on January 1, 2010, employers of the Denver public schools division shall pay the then-applicable accumulated rate of supplemental amortization equalization disbursement and the escalating rate in accordance with the provisions of this section.
- (6) For the calendar year beginning January 1, 2014, for employers in the school and Denver public schools divisions, the supplemental amortization equalization disbursement payment shall increase by one-half of one percent of total payroll at the start of each of the calendar years through 2018. For purposes

of this section, the employer's total payroll shall be calculated by applying the definition of salary, pursuant to section 24-51-101(42), to the payroll for all employees working for the employer who are members of the association, or who were eligible to elect to become members of the association on or after January 1, 2006, including any amounts paid in connection with the employment of a retiree by an employer pursuant to section 24-51-1101(2).

- (6.5) For the calendar year beginning January 1, 2014, for employers in the state division, the supplemental amortization equalization disbursement payment shall increase by one-half of one percent of total payroll at the start of each of the calendar years through 2017. For purposes of this section, the employer's total payroll shall be calculated by applying the definition of salary, pursuant to section 24-51-101(42), to the payroll for all employees working for the employer who are members of the association, or who were eligible to elect to become members of the association on or after January 1, 2006, including any amounts paid in connection with the employment of a retiree by an employer pursuant to section 24-51-1101(2).
- (7) For employers in the local government division and the judicial division, the supplemental amortization equalization disbursement shall not exceed the 2010 calendar year rates unless the rates are required to increase in accordance with subsection (9) of this section.
- (7.5) For the calendar year beginning January 1, 2019, for the employers in the judicial division, the supplemental amortization equalization disbursement payment shall be three and four-tenths percent of the employer's total payroll. The supplemental amortization equalization disbursement payment for employers in the judicial division shall increase by four-tenths of one percent of total payroll on January 1, 2020, and shall increase by four-tenths of one percent of total payroll at the start of each of the calendar years following 2020 through 2023. For purposes of this section, the employer's total payroll shall be calculated by applying the definition of salary, as defined in section 24-51-101(42), to the payroll for all employees working for the employer who are members of the association, including any amounts paid in connection with the employment of a retiree by an employer pursuant to section 24-51-1101(2).

- (8) The amortization equalization disbursement and the supplemental amortization equalization disbursement payments by employers in the state, school, and Denver public schools divisions shall continue at the rate specified in subsections (3), (3.5), (6), and (6.5) of this section until adjusted pursuant to this subsection (8). When the actuarial funded ratio of the state, school, or Denver public schools division of the association, based on the actuarial value of assets, is at or above one hundred three percent as determined in the annual actuarial study of the association, the amount of the amortization equalization disbursement and supplemental amortization equalization disbursement shall be reduced, in equal parts, for that particular division by one-half of one percent each. If the actuarial funded ratio of the division based on the actuarial value of assets reaches one hundred three percent and subsequently the actuarial funded ratio of the division is below ninety percent, the amortization equalization disbursement and supplemental amortization equalization disbursement shall be increased by one-half of one percent each; except that, at no time shall the amortization equalization disbursement for the school and Denver public schools divisions exceed four and one-half percent or for the state division exceed five percent nor shall the supplemental amortization equalization disbursement for the school and Denver public schools divisions exceed five and one-half percent each or for the state division exceed five percent.
- (9) The amortization equalization disbursement and the supplemental amortization equalization disbursement payments by employers in the local government division shall continue at the rate specified in subsections (4) and (7) of this section until adjusted pursuant to this subsection (9). The amortization equalization disbursement and the supplemental amortization equalization disbursement payments by employers in the judicial division shall continue at the rates specified in subsections (4), (4.5), (7), and (7.5) of this section until adjusted pursuant to this subsection (9). When the actuarial funded ratio of the local government division or judicial division of the association, based on the actuarial value of the assets, is at or above one hundred three percent as determined in the annual actuarial study of the association, the amount of the amortization equalization disbursement and supplemental amortization equalization disbursement shall be reduced for employers in that particular division by one-half of one percent each. If the actuarial funded ratio of the division based on the actuarial value of the assets reaches ninety percent and

subsequently the actuarial funded ratio of the division is below ninety percent, the amortization equalization disbursement and supplemental amortization equalization disbursement shall be increased by one-half of one percent each; except that, at no time shall the amortization equalization disbursement or the supplemental amortization equalization disbursement exceed five percent each.

- (10) For state employers in the state division, for the 2007-08 state fiscal year and for each fiscal year through the 2016-17 state fiscal year, from the amount of changes to state employees' salaries and any adjustments to the annual general appropriation act pursuant to section 24-50-104, an amount equal to one-half of one percent of total salary shall be deducted and such amount shall be utilized by the employer to fund the supplemental amortization equalization disbursement. For the school, local government, judicial, and Denver public schools divisions, and the remaining employers in the state division who are not state employers, the supplemental amortization equalization disbursement shall, to the extent permitted by law, be funded by allocation of funds otherwise available for use as employee compensation increases prior to award as salary or other compensation to employees.
- (11) Moneys made available due to any reduction in the supplemental amortization equalization disbursement pursuant to subsection (8) or (9) of this section, whichever is applicable, shall, to the extent permitted by law, be allocated to employee compensation increases to the extent such source was originally used by an employer to fund the supplemental amortization equalization disbursement.

**24-51-412. Denver public schools district—contributions and disbursements—legislative declaration**

- (1) The general assembly hereby finds and declares that:
- (a) The Denver public schools has ongoing payment obligations related to certain pension certificates of participation that were issued in 1997 and 2008, referred to in this section as "PCOPS";
  - (b) Proceeds of the PCOPS were contributed to the Denver public schools retirement system trust fund, resulting in a funded ratio of the Denver public schools retirement system that exceeds the funded ratio of the school division of the association;

- (c) As specified in section 24-51-401, "Table A—Contribution Rates", the employers in the Denver public schools division are scheduled to pay a contribution rate three and six-tenths percent higher than employers in the school division of the association;
- (d) In recognition of the fact that Denver public schools retirement system's funded ratio exceeds that of the school division of the association as a result of the contributions from the PCOPS, the payments the Denver public schools makes in respect to the PCOPS provides a basis for the use of an offset in calculating the total of its employer contribution and the amortization equalization disbursement and supplemental amortization equalization disbursement.

(2) Due to the circumstances specified in subsection (1) of this section, contributions required to be made by employers in the Denver public schools division pursuant to section 24-51-401(1.7)(a) and disbursements required to be made pursuant to section 24-51-411 shall be reduced by an amount in each year equal to the obligations of the Denver public schools with respect to outstanding PCOPS, or any obligations incurred to refinance the PCOPS, at a fixed effective annual interest rate of eight and one-half percent and with principal maturities as they exist on January 1, 2010, or on the date of issuance of any obligations to refinance the PCOPS, recognizing that it is not the intention to increase substantially the offset by accelerating principal maturities through refinancing. The annual offset may be applied by the Denver public schools in installments as it determines so long as there are sufficient monthly contributions to fund the DPS health care trust fund and the annual increase reserve required pursuant to section 24-51-1009, taking into account the true-up provisions in section 24-51-401, and the calculation of the offset shall be included in the contribution reports required by section 24-51-401(1.7)(a). Since, as stated in paragraph (b) of subsection (1) of this section, the funded ratio of the Denver public schools retirement system trust fund presently exceeds that of the school division of the association, the anticipated equalization of the funded ratios over a thirty-year period of the two divisions provided in section 24-51-401(2) may necessarily result in a decline in the funded ratio of the Denver public schools division trust fund. Denver public schools shall annually submit to the association audited financial statements showing the actual debt service experience related to the PCOPS.

- (3) Pursuant to section 24-51-1701, the board of the association presently intends to present recommendations to the general assembly concerning the association's defined benefit plans, including the school division and the Denver public schools division, to attempt to assure security and sustainability of the plans. Nothing contained in these findings and declarations or elsewhere in this article is intended to restrict the powers of the general assembly to fix and adjust the level of contributions or disbursements required of employers hereafter.
- (4) (a) Under no circumstance shall any debt obligations of the Denver public schools become obligations of the association, any other employer affiliated with the association, or the state. In addition, under no circumstance shall any obligations of the association under a debt instrument issued by the association become obligations of the Denver public schools.
- (b) Nothing in this subsection (4) shall limit the application of any of the following provisions to Denver public schools, any charter school that is chartered by Denver public schools, or any charter school that serves students of Denver public schools: Section 22-41-110, C.R.S., relating to timely payment of school district obligations; section 22-30.5-406, C.R.S., relating to direct payment of charter school bonds; section 22-30.5-408, C.R.S., relating to the replenishment of charter school debt service reserve funds; or any other program that is available to school districts or charter schools that meet the conditions set forth in state law.

**24-51-413. Contribution and annual increase amount changes—definitions**

- (1) As used in this section, unless the context otherwise requires:
- (a) "Blended total contribution amount" means the weighted average of the total amounts paid by the employer and the member to the association for each of the five divisions pursuant to sections 24-51-401 (1.7) and 24-51-411, and the amount the association receives pursuant to section 24-51-414, but shall not include the portion of the employer contribution remitted to the health care trust fund pursuant to section 24-51-208 (1)(f) and (1)(f.5) and the portion of the employer contribution remitted to the annual increase reserve.
- (b) "Blended total required contribution" means the weighted average of the total of the association's reported actuarially determined contribution rates and member contribution rates of the five division trust funds.

- (c) "Weighted average" means the proportion of unfunded actuarial accrued liability attributable to each division reported as of the most recent valuation date.
- (2) Beginning July 1, 2019, and each July 1 thereafter, employer contribution rates, member contribution rates, annual increase amounts, and the direct distribution amount shall remain unchanged until such time as changes are required pursuant to this section.
  - (3) When the blended total contribution amount is less than ninety-eight percent of the blended total required contribution, the following adjustment shall occur:
    - (a) The annual increase percentage determined pursuant to sections 24-51-1002 and 24-51-1009 (4)(a) shall be reduced by up to one-quarter of one percent, but at no time will the annual increase percentage be reduced to equal less than one-half of one percent, except as provided in sections 24-51-1002 (1.5) and 24-51-1009 (1.5);
    - (b) The employer contribution rate will be increased by up to one-half of one percent, but at no time will the employer contribution rate be increased to exceed the employer contribution rates under section 24-51-401 (1.7)(a)(II), plus two percent;
    - (c) The member contribution rate will be increased by up to one-half of one percent, but at no time will the member contribution rate be increased to exceed the member contribution rates under section 24-51-401 (1.7)(a)(IV), plus two percent; and
    - (d) The amount of the direct distribution pursuant to section 24-51-414 will be increased by up to twenty million dollars, but at no time will the amount of the direct distribution exceed two hundred twenty-five million dollars in a fiscal year.
  - (4) The adjustment in subsection (3) of this section shall be determined by the association, shall be equally apportioned among the annual increases, the employer contributions, the member contributions, and, if applicable, the direct distribution amount, and shall be the maximum yearly adjustment allowed unless an adjustment less than the maximum adjustment is sufficient to bring the blended total contribution amount to one hundred three percent of the blended total required contribution. In no event shall a yearly adjustment cause the



blended total contribution amount to exceed one hundred three percent of the blended total required contribution. The adjustment shall be made once in any calendar year and shall not exceed the maximum yearly amounts indicated in subsections (3)(a), (3)(b), (3)(c), and (3)(d) of this section.

- (5) In the event any one of the four component parts of the adjustment as outlined in subsection (3) of this section has reached its total maximum, then no further adjustment shall be made to that component. Only the adjustments to the other three components shall continue as specified in subsections (3) and (4) of this section, even if the fully required adjustment to bring the blended total contribution amount to one hundred three percent of the blended total required contribution is not achieved.
- (6) When the blended total contribution amount is greater than or equal to one hundred twenty percent of the blended total required contribution, the following adjustment shall occur:
  - (a) Subject to sections 24-51-1002 (1.5) and 24-51-1009 (1.5), the annual increase percentage determined pursuant to sections 24-51-1002 and 24-51-1009 (4)(a) shall be increased by up to one-quarter of one percent, but at no time will the annual increase percentage be greater than two percent, except as provided in section 24-51-1009.5;
  - (b) The employer contribution rate will be reduced by up to one-half of one percent, but at no time will the employer contribution rate be less than the employer contribution rates under section 24-51-401 (1.7)(a)(l);
  - (c) The member contribution rate will be reduced by up to one-half of one percent, but at no time will the member contribution rate be less than the member contribution rates under section 24-51-401 (1.7)(a)(l); and
  - (d) The amount of the direct distribution pursuant to section 24-51-414 will be reduced by up to twenty million dollars in a fiscal year.
- (7) The adjustment in subsection (6) of this section shall be determined by the association, shall be equally apportioned among the annual increases, the employer contributions, the member contributions, and, if applicable, the direct distribution amount, and shall be the maximum yearly adjustment allowed unless an amount lower than the maximum adjustment is necessary to keep the blended total contribution amount equal to one hundred three percent of the blended total required contribution. In no event shall a yearly adjustment cause

the blended total contribution amount to fall below one hundred three percent of the blended total required contribution. The adjustment shall be made once in any calendar year and shall not exceed the maximum yearly amounts specified in subsections (6)(a), (6)(b), (6)(c), and (6)(d) of this section.

- (8) The adjustments pursuant to this section shall be determined based on the blended total contribution amount and blended total required contribution as reported in the annual actuarial valuation report required under section 24-51-204 (7) and shall be effective July 1 of the next calendar year. The first adjustment pursuant to this section shall not occur before July 1, 2020.

**24-51-414. Direct distribution**

- (1) (a) Except as otherwise provided in subsections (6), (7), and (8) of this section, on July 1, 2018, on July 1, 2019, on July 1, 2021, and on July 1 each year thereafter until there are no unfunded actuarial accrued liabilities of any division of the association that receives the distribution pursuant to this section, the state treasurer shall issue a warrant to the association in an amount equal to two hundred twenty-five million dollars. Such amount shall be paid to the association from the general fund, or any other fund, subject to section 24-51-413.
- (b) The state treasurer shall not issue a warrant to the association pursuant to subsection (1)(a) of this section during the 2020-21 state fiscal year.
- (2) For the purpose of allocating appropriate indirect, cash funded, or federal costs for the direct distribution pursuant to subsection (1) of this section, the office of state planning and budgeting may include funding sources other than the general fund in the governor's annual budget request for the 2019-20 fiscal year and each fiscal year thereafter to satisfy the funding amounts of the direct distribution.
- (3) The distribution pursuant to subsection (1) of this section shall end when there are no unfunded actuarial accrued liabilities of any division of the association that receives such distribution. By September 1, 2019, and by September 1 of each year thereafter, until the distribution pursuant to subsection (1) of this section is no longer required, the board shall determine whether the sum of the employer and member contributions pursuant to section 24-51-401 (1.7)(a), the contributions pursuant to section 24-51-411, and the distribution pursuant to subsection (1) of this section, is greater than the amount necessary to eliminate the unfunded actuarial accrued liability of each division of the association that

receives the distribution in the next fiscal year. If the board determines that the total amount of the distribution pursuant to subsection (1) of this section will not be required to eliminate the unfunded actuarial accrued liability of each division of the association that receives the distribution, the board shall notify the office of state planning and budgeting and the joint budget committee of the general assembly by September 1 of the applicable year.

- (4) The association shall allocate the direct distribution to the trust funds of each division of the association as it would an employer contribution, in a manner that is proportionate to the annual payroll of each division as reported to the association; except that the association shall not allocate any portion of the direct distribution amount to the local government division of the association.
- (5)
  - (a) Beginning with the annual general appropriation act for the 2019-20 state fiscal year, and for each annual general appropriation act thereafter, money distributed to the association pursuant to subsection (1) of this section shall be included for informational purposes in the annual general appropriation bill or in supplemental appropriation bills for the purpose of complying with the limitation on state fiscal year spending imposed by section 20 of article X of the state constitution and section 24-77-103. The information included in the annual general appropriation bill shall include an estimate of the amount of the distribution pursuant to subsection (1) of this section that is attributable to the state and the amount that is attributable to public education from kindergarten through the twelfth grade.
  - (b) Subsection (5)(a) of this section does not apply for the 2020-21 state fiscal year.
- (6) In order to recompense the association for a distribution in an amount equal to two hundred twenty-five million dollars that it had been scheduled to receive on July 1, 2020, pursuant to subsection (1)(a) of this section but did not receive due to the enactment of House Bill 20-1379, which amended subsection (1)(a) of this section and added subsection (1)(b) of this section to eliminate the distribution, in addition to the warrants issued pursuant to subsection (1)(a) of this section, on the effective date of this subsection (6), or as soon as possible thereafter, the state treasurer shall issue a warrant to the association in the amount of three hundred eighty million dollars. The warrant shall be paid to the association from the PERA payment cash fund created in section 24-51-416.

- (7) The amount of the warrant to be issued on July 1, 2023, to the association pursuant to subsection (1) of this section is reduced by the sum of one hundred fifty-five million dollars and an amount equal to seven and one-quarter percent multiplied by three hundred eighty million dollars; except that, if the 2021 annual rate of return on investments as reported in the association's annual report for 2021 exceeds seven and one-quarter percent, then the reduction shall be the sum of one hundred fifty-five million dollars and an amount equal to the association's rate of return on investments multiplied by three hundred eighty million dollars. If the annual rate of return is less than seven and one-quarter percent but greater than zero, then the reduction shall be the sum of one hundred fifty-five million dollars and an amount equal to the annual rate of return in the association's annual report for 2021 multiplied by three hundred eighty million dollars. In no event shall the total reduction be less than one hundred fifty-five million dollars or be greater than one hundred ninety million dollars.
- (8) The amount of the warrant to be issued on July 1, 2024, to the association pursuant to subsection (1) of this section is reduced by the lesser of an amount equal to seven and one-quarter percent multiplied by three hundred eighty million dollars or an amount equal to the association's annual rate of return on investments as reported in the association's annual report for 2022 multiplied by three hundred eighty million dollars; except that there shall be no reduction if the rate of return is zero or less.
- (9) In addition to any other distributions to the association pursuant to this section, on June 2, 2023, or as soon as possible thereafter, the state treasurer shall issue a warrant to the association that consists of the balance of the PERA payment cash fund created in section 24-51-416, as of the date the payment is made, plus ten million dollars paid from the general fund. The amount paid to the association pursuant to this subsection (9) is to recompense the association, in addition to the amount already paid to the association as partial recompensation pursuant to subsection (6) of this section, for the distribution that it was scheduled to receive on July 1, 2020, pursuant to subsection (1)(a) of this section, that the association did not receive due to the enactment of House Bill 20-1379.

**24-51-415. Defined contribution supplement**

Beginning January 1, 2021, and every year thereafter, employer contribution rates will be adjusted to include a defined contribution supplement, which will be calculated separately for the state and local government divisions, as applicable. The defined contribution supplement for each division will be the employer contribution amount paid to defined contribution plan participant accounts that would have otherwise gone to the defined benefit trusts to pay down the unfunded liability, plus any defined benefit investment earnings thereon, expressed as a percentage of salary on which employer contributions have been made. The employer contribution amounts in the sum shall only include contributions made on behalf of eligible employees, as defined in section 24-51-1502, who commence employment on or after January 1, 2019.

**24-51-416. PERA payment cash fund—creation—repeal (Repealed)**

## **PART 5: SERVICE CREDIT**

### **24-51-501. Earned service credit**

- (1) Service credit is earned for periods of employment with an employer during which salary is received by such employee and contributions are made to the association pursuant to the provisions of section 24-51-401(1.7). No service credit shall be earned in connection with the payment of working retiree contributions.
- (2) One year of service credit is earned for twelve calendar months of employment, for which contributions to the association are made, in which a member in each month earns salary greater than or equal to eighty times the federal minimum wage hourly rate in effect at the time of service. A member who is employed in a position in which the employment pattern covers a period of at least eight months but less than twelve months per year shall earn one year of service credit if at least eight months of service credit are earned during the months in which the member is employed during the year.
- (3) Earned service credit for periods of employment which do not meet the requirements described in subsection (2) of this section shall be determined by the ratio of actual salary received to eighty times the federal minimum wage hourly rate in effect at the time of service and the ratio of the number of months for which contributions are remitted to the number of months required for one year of service credit.
- (4) Earned service credit shall be recorded on an annual basis.
- (5) Earned service credit shall not extend beyond the date of death of a member.
- (6) Service credit of DPS members prior to or on December 31, 2009, shall be governed by section 24-51-1710. Beginning January 1, 2010, DPS members shall earn service credit pursuant to this section and shall purchase service credit relating to a refunded member contribution account and noncovered employment pursuant to this part 5; except that purchases by DPS members that are ongoing as of January 1, 2010, shall be governed by section 24-51-1705.

### **24-51-502. Purchased service credit**

- (1) A member may qualify earlier for service retirement, reduced service retirement, or increased benefits through the purchase of additional service credit.
- (2) Service credit purchases are limited to those specified in this part 5.

- (3) Service credit purchased pursuant to this part 5 by members who were members, inactive members, or retirees on December 31, 2006, shall be subject to the benefit provisions in effect for the existing member contribution account. Service credit purchased pursuant to this part 5 by members who were not members, inactive members, or retirees on December 31, 2006, shall be subject to the benefit provisions in effect for such member at the time of the initiation of payment of the purchase.

**24-51-503. Purchase of service credit relating to a refunded member contribution account**

- (1) Except as otherwise provided in section 24-51-318, the service credit forfeited with a refund pursuant to the provisions of section 24-51-405 may be purchased upon the former member's resumption of membership and after completion of one year of earned service credit by such member.
- (2) For members who were members, inactive members, or retirees on December 31, 2006, and for DPS members, the cost to purchase the forfeited service credit shall be the amount refunded plus interest accrued from the date of refund to completion of purchase.
- (3) Repealed.
- (4) For members who were not members, inactive members, or retirees on December 31, 2006, the cost to purchase the forfeited service credit shall be the amount refunded, plus interest accrued from the date of refund to completion of purchase, plus an amount equal to one percent of the member's highest average salary for each month or partial month of service credit to be purchased. The highest average salary shall be calculated either based on the salary currently reflected in the member account or by assuming the member's account has been credited with the service credit and salary associated with the forfeited service credit which is the subject of the purchase, whichever is higher. The one percent of highest average salary for each month or partial month of service credit purchased shall be allocated to the annual increase reserve pursuant to part 10 of this article. This subsection (4) shall not apply to DPS members.

**24-51-504. Purchase of service credit relating to a paid sabbatical leave**

- (1) The portion of service credit not earned during a paid sabbatical leave granted after July 1, 1966, may be purchased if the member makes member contributions on the difference between the partial salary paid and the salary which would have been paid if the paid sabbatical leave had not been taken.

- (2) Such member contributions made pursuant to the provisions of subsection (1) of this section may be made concurrently with member contributions on the partial salary paid for such sabbatical leave or after the sabbatical leave has ended at the applicable rate of member contributions pursuant to section 24-51-401 (1.7), plus interest from the date the sabbatical leave began until such purchase is complete.

**24-51-505. Purchase of service credit relating to noncovered employment**

- (1) Service credit may be purchased for any period of previous employment with any public or private employer in the United States, its territories, or any foreign country subject to the following conditions:
- (a) If the service credit to be purchased is for noncovered employment with an employer affiliated with the association, the member must have one year of earned service credit with the association at the time of the purchase. If the service credit to be purchased is for previous employment with a nonaffiliated employer, the member must have one year of earned service credit with the association at the time of the purchase; except that, if the previous employment for which the service credit is to be purchased is nonqualified service, as defined in section 415(n)(3)(C) of the federal "Internal Revenue Code of 1986", as amended, and the member first became a member of the association on or after January 1, 1999, the member must have five years of earned service credit with the association at the time of the purchase.
  - (b) The member must provide documentation of the dates of employment and a record of salary received.
  - (c) The member must provide certification from any retirement program covering such employment that the service credit to be purchased has not vested with that program, except to the extent otherwise required by federal law.
- (2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), one year of service credit may be purchased for each year of noncovered employment determined pursuant to the provisions of section 24-51-501(2) to (4) applicable to earned service credit.



- (b) Members who first became members on or after January 1, 1999, may purchase no more than five years of service credit for noncovered employment that is nonqualified service, as defined in section 415(n)(3)(C) of the federal "Internal Revenue Code of 1986", as amended.
  - (c) Members who initiate a purchase on or after November 1, 2003, may not purchase service credit that would cause the total years of noncovered service purchased during their membership to exceed ten years. This limit shall not apply to members who provide all required documentation of previous service to the association by October 31, 2003, together with application to purchase the service if the purchase is successfully completed pursuant to the service credit purchase agreement resulting from said application.
  - (d) Members employed by a public entity affiliated with the association pursuant to section 24-51-309 may purchase service credit for years employed by the entity without limit, if the purchase is completed before the member terminates employment with the entity, and any such purchase for years employed by the entity in excess of ten years is completed or installment payments initiated within three years after the date the employer affiliates with the association or November 1, 2006, whichever is later.
- (3) The cost to purchase service credit for noncovered employment shall be determined by the board and shall be sufficient to pay the actuarial liability associated with the purchase.
  - (4) (Deleted by amendment, effective July 1, 1995.)
  - (5) Repealed.
  - (6) Service credit purchased pursuant to the provisions of this section for periods of nonmembership shall not be credited toward the earned service credit requirement for disability retirement benefits as provided for in part 7 of this article or the earned service credit requirement for survivor benefit coverage as provided for in part 9 of this article.
  - (7) A portion of the amount paid by a member to purchase service credit related to noncovered employment shall be transferred to the health care trust fund on the effective date of the member's retirement or, in case of death prior to retirement, on the effective date of the survivor benefit. The amount

transferred shall be one and two one-hundredths percent of the member's highest average salary at the time of the purchase, with interest at the rate specified in section 24-51-101(28)(a).

**24-51-506. Payments for purchased service credit**

- (1) Service credit purchases may be made by a lump-sum payment, by installment payments, by a trustee-to-trustee transfer or a direct rollover of an eligible rollover distribution from a plan described in section 402(c)(8)(B)(iii) to (vi) of the federal "Internal Revenue Code of 1986", as amended, including but not limited to the voluntary investment program established pursuant to part 14 of this article and the deferred compensation plan established pursuant to part 16 of this article, or by a rollover of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of such code that is eligible to be rolled over and would otherwise be included in gross income. Service credit purchases shall be initiated and payment received in full during membership.
- (2) Installment payments for service credit purchases are subject to the following provisions:
  - (a) Repealed.
  - (b) The first installment payment shall be paid to the association on the date required by the service credit purchase agreement, and all subsequent payments are due on the tenth calendar day of each month thereafter. Failure to make timely installment payments shall cause the service credit purchase agreement to be cancelled, and all payments received will be returned to the member.
  - (c) Purchased service credit shall be credited to the member upon completion of all installment payments due.
- (3) Installment payments and interest shall be credited to the member contribution account. After installment payments are completed, they may not be withdrawn except with a refund pursuant to the provisions of section 24-51-405.
- (4) Upon the death of a member prior to completion of the service credit purchase, any installment payments made up to the date of death shall be refunded to the person eligible to receive survivor benefits, or a single payment shall be made to such person.
- (5) Any moneys a member pays for the purchase of service credit shall qualify for income tax deferral to the extent allowed by federal law.

**24-51-507. Uniformed service credit**

- (1) A member shall be granted additional service credit for uniformed service, as defined for reemployment right purposes under federal law, if:
  - (a) Such member had membership in the association at the time the uniformed service began;
  - (b) Such member was discharged from uniformed service and returned from the leave of absence for uniformed service to membership;
  - (c) The period of uniformed service is verified and is not already covered by association service credit upon return from uniformed service to membership; and
  - (d) All service credit forfeited by a refund pursuant to the provisions of section 24-51-405 is purchased.
- (2) Uniformed service credit shall be limited to a maximum of five years.
- (3) Death or any disability arising from uniformed service shall be excluded as a basis for disability retirement benefits or survivor benefits pursuant to the plan.
- (4) The provisions of this section shall not apply to DPS members.

**24-51-508. Leave of absence for uniformed service**

An employee who is on a leave of absence for uniformed service at the time his or her employer becomes affiliated with the association shall be entitled to service credit as provided for in section 24-51-507 upon becoming a member after returning to such employment.

**24-51-509. Combining service credit**

Service credit earned by a member during the most recent period of membership shall be combined with the service credit associated with the existing member contribution account of such member. Notwithstanding the provisions of this section, members exercising portability between the Denver public schools division and other association divisions are governed by the provisions of section 24-51-1747, retirees suspending retirement or reduced service retirement benefits are governed by section 24-51-1103(1), and DPS retirees suspending retirement benefits are governed by section 24-51-1726.5.

## PART 6: SERVICE RETIREMENT

### 24-51-601. Retirement benefit reserve

A retirement benefit reserve is hereby created to provide retirement benefits to retirees and cobeneficiaries.

### 24-51-601.5. Legislative declaration (Repealed)

### 24-51-602. Service retirement eligibility

- (1) (a) Members, except state troopers, who have five years of service credit as of January 1, 2011, and who have met the age and service credit requirements stated in the following table shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603 (1)(a), (2), and (3):

**TABLE B**  
**SERVICE RETIREMENT ELIGIBILITY**

---

Age Requirement (years)	Service Credit Requirement (years)
50	30
60	20
65	5

- (a.5) Notwithstanding paragraph (a) of this subsection (1), any person except a state trooper who had five years of service credit as of January 1, 2011, and who was not a member, inactive member, or retiree on June 30, 2005, but was a member, inactive member, or retiree on December 31, 2006, shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603 (1)(a), (2), and (3) if the member has met the age and service credit requirements stated in the following table:

**TABLE B.05**  
**SERVICE RETIREMENT ELIGIBILITY**

---

Age Requirement (years)	Service Credit Requirement (years)
Any Age	35
55	30
60	20
65	5

- (a.7) Notwithstanding paragraphs (a) and (a.5) of this subsection (1), any person except a state trooper who was not a member, inactive member, or retiree on December 31, 2006, or who was a member, inactive member, or retiree on December 31, 2006, but as of January 1, 2011, did not have five years of service credit, or who is a DPS member with less than five years of service credit as of January 1, 2011, shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603 (1)(a), (2), and (3), if the member has met the age and service credit requirements stated in the following table:

**TABLE B.07**  
**SERVICE RETIREMENT ELIGIBILITY**

Age Requirement (years)	Service Credit Requirement (years)
Any Age	35
55	30
60	25
65	5

- (b) State troopers who have met the age and service credit requirements stated in the following table shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603 (1) and (3):

**TABLE B.1**  
**SERVICE RETIREMENT ELIGIBILITY**

Age Requirement (years)	Service Credit Requirement (years)
Any Age	30
50	25
55	20
65	5

- (c) Members who were members, inactive members, or retirees on December 31, 2006, who had five years of service credit as of January 1, 2011, and who are fifty-five years of age or older shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603, without reduction pursuant

to section 24-51-604, if they have at least five years of service credit and if the number of years of their age plus the number of years of their service credit equals eighty years or more.

- (d) Members who were not members, inactive members, or retirees on December 31, 2006, but who were members, inactive members, or retirees on December 31, 2010, or members who were members, inactive members, or retirees on December 31, 2006, but as of January 1, 2011, did not have five years of service credit, or DPS members with less than five years of service credit as of January 1, 2011, and who are fifty-five years of age or older shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603, without reduction pursuant to section 24-51-604, if they have at least five years of service credit and if the number of years of their age plus the number of years of their service credit equals eighty-five years or more.

- (1.5) (a) Members, except state troopers, who were not members, inactive members, or retirees on December 31, 2010, but who were members, inactive members, or retirees on December 31, 2016, and who have met the age and service requirements stated in the following table shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603:

**TABLE B.2**  
**SERVICE RETIREMENT ELIGIBILITY**

---

Age Requirement (years)	Service Credit Requirement (years)
Any Age	35
58	30
65	5

- (b) Members who are eligible for a benefit pursuant to this subsection (1.5) and who are fifty-eight years of age or older shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603, without reduction pursuant

to section 24-51-604, if they have at least five years of service credit and if the number of years of their age plus the number of years of their service credit equals eighty-eight years or more.

- (1.7) (a) Members, except state troopers, who were not members, inactive members, or retirees on December 31, 2016, but who were members, inactive members, or retirees on December 31, 2019, who have met the age and service requirements stated in the following table and who are not eligible for service retirement benefits pursuant to subsection (1.8) of this section shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603:

**TABLE B.3**  
**SERVICE RETIREMENT ELIGIBILITY**

Age Requirement (years)	Service Credit Requirement (years)
Any Age	35
60	30
65	5

- (b) Members who are eligible for a benefit pursuant to this subsection (1.7) and who are sixty years of age or older shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603, without reduction pursuant to section 24-51-604, if they have at least five years of service credit and if the number of years of their age plus the number of years of their service credit equals ninety years or more.

- (1.8) (a) Members of the school division or Denver public schools division who were not members, inactive members, or retirees on December 31, 2016, but who were members, inactive members, or retirees on December 31, 2019, who have met the age and service requirements stated in the following table shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603; except that at least the most recent ten years of service credit

used in meeting the requirements of the table below must be earned in the school or Denver public schools divisions in order for the member to be eligible pursuant to this subsection (1.8)(a):

**TABLE B.4**  
**SERVICE RETIREMENT ELIGIBILITY**

Age Requirement (years)	Service Credit Requirement (years)
Any Age	35
58	30
65	5

(b) Members who are eligible for a benefit pursuant to this subsection (1.8) and who are fifty-eight years of age or older shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603, without reduction pursuant to section 24-51-604, if they have at least five years of service credit and if the number of years of their age plus the number of years of their service credit equals eighty-eight years or more.

(1.9) (a) Members, except state troopers, who were not members, inactive members, or retirees on December 31, 2019, who have met the age and service requirements stated in the following table shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603 (1), (2), and (3):

**TABLE B.5**  
**SERVICE RETIREMENT ELIGIBILITY**

Age Requirement (years)	Service Credit Requirement (years)
Any Age	35
64	30
65	5

(b) Members who are eligible for a benefit pursuant to this subsection (1.9) and who are sixty-four years of age or older shall, upon written application and approval of the board, receive service retirement benefits pursuant to the



benefit formula set forth in section 24-51-603, without reduction pursuant to section 24-51-604, if they have at least five years of service credit and if the number of years of their age plus the number of years of their service credit equals ninety-four years or more.

- (c) This subsection (1.9) does not create a contractual right for any member to the age requirement specified in table B.5 to receive a full service retirement benefit.
- (2) (a) State troopers who were not members, inactive members, or retirees on December 31, 2019, who have met the age and service requirements stated in the following table shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603 (1) and (3):

**TABLE B.6**  
**SERVICE RETIREMENT ELIGIBILITY**

---

Age Requirement (years)	Service Credit Requirement (years)
Any Age	35
55	25
65	5

- (b) State troopers who are eligible for a benefit pursuant to this subsection (2) and who are fifty-five years of age or older shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603, without reduction pursuant to section 24-51-604, if they have at least five years of service credit and if the number of years of their age plus the number of years of their service credit equals eighty years or more. This subsection (2) does not create a contractual right for any member to the age requirement specified in table B.6 to receive a full service retirement benefit.
- (2.3) Members with less than five years of service credit shall be eligible for service retirement benefits pursuant to section 24-51-605.5 upon reaching sixty-five years of age if contributions were made for sixty months.

- (2.5) Members with less than five years of service credit who have not made contributions for sixty months shall be eligible for money purchase retirement benefits calculated pursuant to section 24-51-605.5 (2), upon reaching sixty-five years of age.
- (3) Repealed.
- (4) (Deleted by amendment, effective January 1, 2010.)
- (5) (Deleted by amendment, effective January 1, 2011.)

**24-51-603. Benefit formula for service retirement**

- (1) (a) Except as otherwise provided in subsection (2) of this section, effective July 1, 1997, the option 1 benefit or option A benefit, whichever is applicable, for service retirement for members shall be calculated by multiplying the highest average salary by two and one-half percent times each year and fraction of a year of service credit. The following formula shall be used for this calculation:  

$$\text{Highest Average Salary} \times (.025 \times \text{Years and Fraction of a Year}).$$
- (b) (Deleted by amendment, effective July 1, 1992.)
- (2) (a) (Deleted by amendment, effective July 1, 1997.)
- (b) Except as otherwise provided in paragraph (c) of this subsection (2), on and after July 1, 1999, members of the judicial division who were members of that division on or before July 1, 1973, shall be eligible to receive an option 1 benefit upon retiring, which shall be calculated by multiplying the highest average salary by four percent times each year and fraction of a year for the first ten years of service credit, and by one and two-thirds percent times each year and fraction of a year in excess of ten years up to sixteen years of service credit, and by one and one-half percent times each year and fraction of a year in excess of sixteen years up to twenty years of service credit, and by two and one-half percent times each year and fraction of a year in excess of twenty years of service credit. The following formula shall be used for this calculation:

Highest Average Salary x [(0.04 x Years and Fraction of a Year through 10 Years) + (.0166 x Years and Fraction of a Year over 10 and up to 16 Years) + (.015 x Years and Fraction of a Year over 16 and up to 20 Years) + (.025 x Years and a Fraction of a Year over 20 Years)].

- (c) For any member of the judicial division who retires on or after July 1, 1999, and who is eligible to receive a benefit under this subsection (2), the association shall calculate the member's option 1 benefit under either subsection (1) of this section or this subsection (2), whichever results in the greater benefit.
  - (d) On July 1, 1999, for any member of the judicial division whose benefit became effective prior to July 1, 1999, and who is eligible to receive a benefit under this subsection (2), the association shall calculate the member's option 1 base benefit prospectively for benefit payments payable on or after July 1, 1999, under either subsection (1) of this section or this subsection (2), whichever results in the greater benefit. The association shall provide benefits to all such benefit recipients based upon such recalculated base benefits effective July 1, 1999.
- (3)
- (a) Regardless of total years of service credit, the option 1 benefit or option A benefit, whichever is applicable, calculated pursuant to the provisions of this part 6 shall not exceed an amount equal to one hundred percent of the highest average salary, nor shall the option 1 benefit or option A benefit, whichever is applicable, exceed the maximum permitted under federal income tax law.
  - (b) (Deleted by amendment, effective July 1, 1997.)
  - (c) Except as provided in subsection (2) of this section, on July 1, 1997, for benefit recipients whose benefits became effective prior to July 1, 1997, the association shall recalculate each recipient's option 1 base benefit as set forth in subsection (1) of this section, prospectively for benefit payments payable on or after July 1, 1997. The association shall provide benefits to all such benefit recipients based upon such recalculated base benefits effective July 1, 1997.

**24-51-604. Reduced service retirement eligibility**

- (1) DPS members with less than five years of service credit as of January 1, 2011, and members who were members, inactive members, or retirees on December 31, 2019, and who have met the age and service credit requirements

stated in the following table and who do not meet the requirements of section 24-51-602 shall, upon written application and approval of the board, receive reduced service retirement benefits pursuant to the benefit formula set forth in section 24-51-605:

**TABLE C**  
**REDUCED SERVICE RETIREMENT ELIGIBILITY**

Age Requirement (years)		Service Credit Requirement (years)
50		25
50	State Troopers only	20
55		20
60		5

- (2) Members who were not members, inactive members, or retirees on December 31, 2019, who have met the age and service credit requirements stated in the following table and who do not meet the requirements of section 24-51-602 shall, upon written application and approval of the board, receive reduced service retirement benefits pursuant to the benefit formula set forth in section 24-51-605:

**TABLE C.1**  
**REDUCED SERVICE RETIREMENT ELIGIBILITY**

Age Requirement (years)		Service Credit Requirement (years)
55		25
55	State Troopers only	20
60		5

**24-51-605. Benefit formula for reduced service retirement**

- (1) (a) For a member who is a state trooper, who is eligible to retire on and after July 1, 1998, but on or before January 1, 2011, and who retires upon reaching fifty years of age or older but before reaching sixty years of age, a reduced service retirement benefit shall be the option 1 benefit for service retirement, as calculated according to the formula set forth in section 24-51-603, reduced by three percent for each year and a proportional percentage for each fraction of a year from the effective

date of reduced service retirement to the date the member would have become eligible for a service retirement pursuant to the provisions of section 24-51-602(1).

- (b) For a member who is not a state trooper, who is eligible to retire on and after July 1, 1998, but on or before January 1, 2011, and who retires upon reaching fifty-five years of age or older but before reaching sixty years of age, a reduced service retirement benefit shall be the option 1 benefit for service retirement, as calculated according to the formula set forth in section 24-51-603, reduced by:
  - (i) Three percent for each year and a proportional percentage for each fraction of a year from the effective date of reduced service retirement to the date the member would have reached sixty years of age, or the date the member would have become eligible for a service retirement pursuant to the provisions of section 24-51-602(1), if earlier than sixty years of age; and
  - (ii) Four percent for each year and a proportional percentage for each fraction of a year from the date the member reaches sixty years of age to the date the member would have become eligible for a service retirement pursuant to the provisions of section 24-51-602(1), if on such date the member would have been older than sixty years of age.
- (c) For a member who is not a state trooper, who is eligible to retire on and after July 1, 1998, but on or before January 1, 2011, and who retires upon reaching sixty years of age or older but before reaching sixty-five years of age, a reduced service retirement benefit shall be the option 1 benefit for service retirement, as calculated according to the formula set forth in section 24-51-603, reduced by four percent for each year and a proportional percentage for each fraction of a year from the effective date of reduced service retirement to the date the member would have become eligible for a service retirement pursuant to the provisions of section 24-51-602(1).

(2) Repealed.

- (3) Notwithstanding the provisions of subsection (1) of this section, on and after July 1, 1993, for a member who is not a state trooper, who is eligible for a reduced service retirement benefit as of January 1, 2011, and who retires upon reaching fifty years of age or older but before reaching fifty-five years of age, a reduced service retirement benefit shall be the option 1 benefit for service retirement, as calculated according to the formula set forth in section 24-51-603, reduced by:
- (a) Six percent for each year and a proportional percentage for each fraction of a year from the effective date of reduced service retirement to the date the member would have reached fifty-five years of age, or the date the member would have become eligible for a service retirement pursuant to the provisions of section 24-51-602(1) if earlier than fifty-five years of age; and
  - (b) Three percent for each year and a proportional percentage for each fraction of a year from the date the member reaches fifty-five years of age to the date the member would have become eligible for a service retirement pursuant to the provisions of section 24-51-602(1), if on such date the member would have been older than fifty-five years of age.
- (4) For a member, DPS member, or inactive member who is not eligible for a retirement benefit as of January 1, 2011, the following provisions shall apply:
- (a) For a member or inactive member who retires prior to reaching eligibility for a full service retirement benefit pursuant to section 24-51-602, a reduced service retirement benefit shall be the option 1 benefit for service retirement, as calculated according to the formula set forth in section 24-51-603, reduced by an actuarially determined percentage to ensure that, as of the effective date of retirement, the benefit is the actuarial equivalent of the service retirement benefit.
  - (b) For a DPS member who retires prior to reaching eligibility for retirement pursuant to section 24-51-1713 or 24-51-602, whichever is applicable, a retirement with an actuarial reduction shall be the option A benefit as calculated according to the formula set forth in section 24-51-1715(1) (a)(i) or 24-51-603, whichever is applicable, reduced by an actuarially determined percentage to ensure that the benefit, as of the effective date of retirement, is the actuarial equivalent of the retirement benefit without an actuarial reduction.

**24-51-605.5. Benefit calculation for money purchase retirement benefit**

- (1) Members and vested inactive members who have met the age and service credit requirements for eligibility for a service retirement benefit or a reduced service retirement benefit shall, upon written application and approval of the board, receive the greater of:
  - (a) The retirement benefit calculated pursuant to section 24-51-603 or 24-51-605 for which the member is eligible; or
  - (b) The money purchase retirement benefit.
- (2) The money purchase retirement benefit referred to in paragraph (b) of subsection (1) of this section shall be actuarially determined and shall be based upon the value on the effective date of retirement of the member contribution account and matching employer contributions. The benefit shall be considered a service retirement benefit for all purposes of this article.

**24-51-606. Vested inactive member rights**

- (1) Any member who was a member, inactive member, or retiree on December 31, 2006, who has earned at least five years of service credit and who terminates membership and does not elect to receive a refund pursuant to the provisions of section 24-51-405 shall be eligible for a benefit to become effective upon reaching the age specified in table B in section 24-51-602 for a service retirement or in table C in section 24-51-604 for a reduced service retirement.
- (1.5) Any member who was not a member, inactive member, or retiree on December 31, 2006, who has earned at least five years of service credit and who terminates membership and does not elect to receive a refund pursuant to section 24-51-405 shall be eligible for a benefit to become effective upon written application and approval by the board and upon reaching the age specified in table B.05, B.07, B.1, B.2, B.3, B.4, B.5, or B.6 of section 24-51-602, as applicable, for a service retirement or in table C or C.1 of section 24-51-604 for a reduced service retirement. Notwithstanding the provisions of this subsection (1.5), for such a member who applies for retirement within ninety days after the member attains age and service eligibility, the effective date of retirement shall be the date the member attains such age and service eligibility.

- (2)
- (a) A vested inactive member may make direct payments to the association in lieu of member contributions in order to acquire eligibility for retirement pursuant to the provisions of section 24-51-602 or 24-51-604. Said payments do not purchase service credit for benefit calculation purposes pursuant to the provisions of section 24-51-603 or 24-51-605.
  - (b) Direct payments in lieu of member contributions are calculated at the applicable member contribution rates pursuant to section 24-51-401 (1.7), multiplied by the most recent full-time monthly salary paid for the position previously held by the vested inactive member.
  - (c) Direct payments may be made by a lump-sum payment or by monthly installments. Lump-sum payments shall not cause the benefit to become payable earlier than the first eligible date for reduced service retirement.
  - (d) Retroactive lump-sum payments shall include interest assessed from the date of termination of membership until the date on which direct payments begin.
  - (e) Installment payments, if made, shall be made from the date of termination of membership until the first date of eligibility for service retirement or reduced service retirement, as elected by the vested inactive member.
  - (f) Installment payments shall become due without notice on the tenth calendar day of each month. Failure to make timely installment payments shall cause all such payments to be refunded to the vested inactive member, and eligibility for retirement which was to be acquired by such payments shall be negated.
  - (g) Upon the death of a vested inactive member prior to the conclusion of direct payments in lieu of member contributions as authorized pursuant to the provisions of this section and prior to retirement, payments made up to the date of death shall be refunded to the person eligible to receive survivor benefits.
  - (h) Eligibility to make direct payments in lieu of member contributions shall be limited to vested inactive members who terminate membership before July 1, 2003, and make payments as specified in this section.



**24-51-606.5. Indexation of benefits for vested inactive members**

A vested inactive member who was a member or inactive member on December 31, 2006, who has reached the age and service requirements for a service or reduced service retirement benefit on or before January 1, 2011, and who has at least twenty-five years of service credit prior to terminating membership shall be eligible, upon retirement, for a benefit, as calculated pursuant to the provisions of section 24-51-603 or 24-51-605, which has been increased by the annual increase specified in sections 24-51-1001 to 24-51-1003, from the date of termination of membership or July 1, 1993, whichever is later, to the effective date of retirement.

**24-51-607. Benefit formula for service retirement or reduced service retirement involving direct payments**

A benefit for service retirement or reduced service retirement involving direct payments made by a vested inactive member shall be the option 1 benefit for service retirement, as calculated according to the formula set forth in section 24-51-603 or 24-51-605; except that the amount of the benefit shall then be multiplied by the ratio of service credit to the service credit required for eligibility as set forth in table B in section 24-51-602 or table C in section 24-51-604, whichever is applicable.

**24-51-608. Retirement from the judicial division (Repealed)**

**24-51-609. Service credit exceeding twenty years**

- (1) Service credit in excess of twenty years accrued on or before July 1, 1969, shall be included in the computation of the option 1 initial benefit for service retirement pursuant to the provisions of section 24-51-603 or 24-51-605, whichever is applicable.
- (2) On or before July 1, 1993, the association shall recalculate the initial benefit for all benefit recipients whose benefits became effective prior to July 1, 1992, pursuant to the benefit formula specified by the provisions of section 24-51-603 or 24-51-605, whichever is applicable. The association shall provide benefits to all such benefit recipients based upon such recalculated initial benefits effective from July 1, 1992.

**24-51-610. Division from which a member retires**

The division in which the retiree had membership immediately preceding the date of retirement shall be the division from which the member retires.

**24-51-611. Maximum limit under federal law**

Notwithstanding any other provision of this article, no benefit paid to any benefit recipient shall exceed the maximum permitted for qualified retirement plans pursuant to section 401(a)(17) or section 415 of the federal "Internal Revenue Code of 1986", as amended, including but not limited to all cost-of-living adjustments permitted by such code. Any changes in the maximum compensation limit under said section 401(a)(17) shall be applied prospectively. No contribution made pursuant to part 5 of this article or to section 24-51-606(2) shall cause the limits in section 415(n) of such code to be exceeded.

**24-51-612. Required benefit commencement date**

- (1) Payment of retirement benefits, for vested inactive members and deferred DPS members who are eligible to receive retirement benefits and who have not applied for such pursuant to the provisions of section 24-51-602, shall commence no later than April 1 of the calendar year following the calendar year in which the vested inactive member or deferred DPS member attains seventy and one-half years of age.
- (2) Payment of retirement benefits, for members and DPS members who are eligible to receive retirement benefits and who have not applied for such pursuant to the provisions of section 24-51-602, and who continue membership after attaining seventy and one-half years of age, shall commence on the effective date of retirement.

**24-51-613. Transfer mechanism between PERA and the Denver public schools employees' pension and benefit association (Repealed)**

**24-51-614. Employee retirement benefit study**

**24-51-615. Distribution of benefits**

Distribution of benefits from each division trust fund shall be made in accordance with section 401(a)(9) of the federal "Internal Revenue Code of 1986", as amended, including the incidental death benefit requirement in section 401(a)(9)(G), and the applicable treasury regulations and internal revenue service rulings and other interpretations issued thereunder, including treasury regulations sections 1.401(a)(9)-2 to 1.401(a)(9)-9. The provisions of this section shall override any distribution options that are inconsistent with section 401(a)(9) of the federal "Internal Revenue Code of 1986", as amended, to the extent that those distribution options are not grandfathered under treasury regulations section 1.401(a)(9)-6.

## **PART 7: SHORT-TERM DISABILITY AND DISABILITY RETIREMENT**

### **24-51-701. Eligibility to apply for short-term disability program payments and disability retirement**

- (1) Except as otherwise provided for in this section, any member shall be eligible to apply for disability retirement benefits or short-term disability program payments if:
  - (a) Application is received by the association within ninety days after the date of termination of employment;
  - (b) The member contribution account has not been refunded;
  - (c) The member has at least five years of earned service credit, of which at least six months have been earned during the most recent period of membership;
  - (d) The member is not eligible for service retirement pursuant to the provisions of section 24-51-602.
- (2) State troopers shall be eligible to apply for disability retirement or short-term disability program payments immediately upon becoming state troopers if the disability resulted from injuries sustained during the performance of duties as a state trooper.
- (3) Members of the judicial division shall be eligible to apply for disability retirement or short-term disability program payments without regard to the amount of earned service credit or to eligibility for service retirement.
- (4) Applications for disability for DPS members filed on or before December 31, 2009, shall be governed by the disability provisions of section 24-51-1734, and on or after January 1, 2010, disability shall be governed by the provisions of this part 7. Persons receiving disability benefits under the DPS plan as of December 31, 2009, shall continue to receive such benefits in accordance with the DPS plan.

### **24-51-702. Disability programs**

- (1) The association shall provide for two types of disability programs for disabilities incurred on or before termination of employment:
  - (a) Short-term disability. A member who is found by the disability program administrator to be mentally or physically incapacitated from performance of the essential functions of the member's job with reasonable accommodation

as required by federal law, but who is not totally and permanently incapacitated from regular and substantial gainful employment, shall be provided with reasonable income replacement, or rehabilitation or retraining services, or a combination thereof, under a program provided by the disability program administrator for a period specified in the rules adopted by the board. The cost of the program shall be funded by the association.

- (b) Disability retirement. A member who is found by the disability program administrator to be totally and permanently mentally or physically incapacitated from regular and substantial gainful employment as of the date of termination of employment shall be placed on disability retirement, and the association shall provide to such person a benefit as calculated in section 24-51-704. The benefit shall be paid directly by the association. A member of the judicial division shall also be eligible for disability retirement upon the entry of an order of retirement pursuant to section 23 of article VI of the state constitution for a disability interfering with the performance of the member's duties that is, or is likely to become, of a permanent nature.

### **24-51-703. Disability program design and administration**

The association shall contract with a disability program administrator to determine disability, to provide short-term disability insurance coverage, and to administer the short-term disability program. A contract shall conform to rules adopted by the board, which rules shall include but not be limited to standards relating to the determination of disability; the independent review, by a qualified panel, of determinations made by the disability program administrator and challenged by the applicant; requirements for medical or psychological examinations; the adjustment or termination of payments based on the mental or physical condition of the program participant; the change of status of a program participant from short-term disability to disability retirement or from disability retirement to short-term disability based on the mental or physical condition, education, training, and experience of the program participant; and the monitoring of the disability program administrator's performance by the association.

### **24-51-704. Calculation of disability retirement benefit**

Except as otherwise provided in this section, the disability retirement benefit shall be equal to the amount of the benefit payable pursuant to the provisions of section 24-51-603 which would have been payable upon reaching sixty-five years of age. Such calculation shall include earned and purchased service credit accumulated up to the date of disability plus projected service credit up to sixty-five years of age but not to exceed a total of twenty

years of service credit. In no case shall the amount of any disability retirement benefit exceed fifty percent of the highest average salary of said member unless the member has earned and purchased service credit in excess of twenty years which entitles the member to receive the benefit provided pursuant to the provisions of section 24-51-603, based on the actual service credit of said member.

**24-51-705. Ineligibility**

If any disability is the direct result of any intentionally self-inflicted injury, the member shall not be eligible for short-term program participation or disability retirement benefits.

**24-51-706. Disability determination for members of the judicial division**

The earned service credit of a member of the judicial division who retires due to disability shall include such service credit as would have been earned had membership continued to the end of the term of office which the member was serving at the time of termination of employment.

**24-51-707. Continuation of disability retirement benefits—reduction based on earned income—applications made prior to January 1, 1999**

(1) For any disability retiree whose disability retirement date is on or after July 1, 1988, and whose application for disability retirement was received by the association prior to January 1, 1999, the amount of the annual disability benefit shall be reduced by one-third of the amount by which the income earned by such retiree in the preceding calendar year plus the amount of the initial benefit multiplied by twelve exceeds the highest average salary of such retiree multiplied by twelve. The following formula shall be used to determine said reduction:

$$[\text{Earned Income} + (\text{Initial Benefit} \times 12) - (\text{Highest Average Salary} \times 12)] \times 1/3$$

(2) The provisions of this section shall apply from the date of disability retirement or January 1, 1989, whichever is later, to the date the retiree meets the requirements for service retirement set forth in section 24-51-602(1). Unless such disability benefit has been terminated, the provisions of this section shall apply regardless of whether the retiree is disabled or has recovered from such disability.

**24-51-708. Division from which a disabled member retires**

The division in which the retiree had membership immediately preceding the date of retirement shall be the division from which the member retires.

## **PART 8: BENEFIT OPTIONS**

### **24-51-801. Benefit options**

- (1) Any member applying for service retirement or disability retirement may elect to receive a monthly retirement benefit paid in accordance with any one of the following options:
  - (a) Option 1. A single life benefit payable for the life of the retiree and, upon the death of the retiree, the benefit ends. If, upon the death of the retiree, the total amount of benefits that have been paid to the retiree does not exceed the amount of moneys credited to the member contribution account, an amount equal to twice the amount of any remaining moneys shall be paid to the named beneficiary of the retiree or, if no named beneficiary exists, to the estate of the retiree.
  - (b) Option 2. A joint life benefit payable for the life of the retiree and, upon the death of the retiree, one-half of the benefit becomes payable to the cobeneficiary of said retiree for life. Upon the death of the cobeneficiary prior to the death of the retiree, an option 1 benefit shall become payable to the retiree. If, upon the death of both the retiree and the cobeneficiary, the total amount of benefits that have been paid to them does not exceed the amount of moneys credited to the member contribution account, an amount equal to twice the amount of any remaining moneys shall be paid to the named beneficiary of the retiree or, if no named beneficiary exists, to the estate of the person who survived the death of the other.
  - (c) Option 3. A joint life benefit payable for the life of the retiree and, upon the death of the retiree, the same benefit becomes payable to the cobeneficiary of the retiree for life. Upon the death of the cobeneficiary prior to the death of the retiree, an option 1 benefit shall become payable to the retiree. If, upon the death of both the retiree and the cobeneficiary, the total amount of benefits that have been paid to them does not exceed the amount of moneys credited to the member contribution account, an amount equal to twice the amount of any remaining moneys shall be paid to the named beneficiary of the retiree or, if no named beneficiary exists, to the estate of the person who survived the death of the other.
  - (d) Repealed.
- (2) Options 2 and 3 shall be the actuarial equivalent of option 1.

- (3) If an option is not elected by a member prior to the effective date of retirement, the member shall be deemed to have elected option 1.
- (4) Benefits calculated pursuant to part 17 of this article shall be subject to the benefit payment options provided in sections 24-51-1716 to 24-51-1725.
- (5)
  - (a) Upon the termination of a supplemental needs trust due to the death of the beneficiary of such trust prior to the death of the retiree, an option 1 benefit becomes payable to the retiree.
  - (b) If a supplemental needs trust is determined to be invalid or is terminated during the life of the retiree, the beneficiary that was named in the trust is the cobeneficiary.
  - (c) If a supplemental needs trust is not established before or within ninety days after the death of the retiree, is determined to be invalid, or is terminated on or after the death of the retiree, the beneficiary that was named in the trust is the cobeneficiary.

**24-51-802. Change in option or cobeneficiary**

- (1) Except as otherwise provided in this part 8, the election of an option and the designation of a cobeneficiary for options 2 and 3 shall not be changed after sixty days have elapsed from issuance of the initial benefit payment.
- (2) The election of an option or the designation of a cobeneficiary may be changed if the retiree returns to membership and thereafter earns one year of service credit; however, a member whose retirement or reduced service retirement benefits are in separate benefit segments pursuant to section 24-51-1103(1.5) shall elect the same option and designate the same cobeneficiary for all of his or her separate benefit segments.
- (3) A retiree who was not married on the effective date of retirement may elect option 2 or 3 upon marriage and designate the spouse as cobeneficiary. If a retiree is married on the effective date of retirement and the spouse on said date subsequently dies, the retiree may elect option 2 or 3 upon remarriage and designate the spouse as cobeneficiary.
- (3.5) In any dissolution of marriage action in any district court of the state, the court shall have the jurisdiction to order or allow a retiree who is a petitioner or respondent in such action to change the cobeneficiary that was named by such retiree at retirement.

- (3.8) In any dissolution of marriage action in any district court of the state that becomes final on or after July 1, 2003, in which the retiree retired on or after July 1, 1988, and elected to receive an option 2 or 3 benefit and designated his or her spouse as cobeneficiary, the court shall have the jurisdiction to order or allow a retiree who is a petitioner or respondent in such action to remove the spouse that was named cobeneficiary by the retiree at retirement, in which case an option 1 benefit shall become payable. The retiree may elect option 2 or 3 upon remarriage and designate the spouse as cobeneficiary.
- (4) Designation by a member of a cobeneficiary to receive an option 3 benefit pursuant to the provisions of part 9 of this article may be changed or omitted by said member at any time prior to the date of death.
- (5) Notwithstanding any provision to the contrary, a retiree may change the cobeneficiary that was named by such retiree and designate a supplemental needs trust as a cobeneficiary in place of the previously named cobeneficiary if:
  - (a) The beneficiary of the supplemental needs trust is the same person as the previously named cobeneficiary; and
  - (b) The retiree files an application and any required documents in a form as designated by the association.

**24-51-803. Determination of option 2 or 3 benefits**

- (1) For service retirement, the calculation of benefits payable pursuant to option 2 or 3, as set forth in section 24-51-801, shall be actuarially determined as of the date the retiree attained the age and service requirements for service retirement regardless of the effective date of such retirement.
- (2) For reduced service retirement and disability retirement, the calculation of benefits payable pursuant to option 2 or 3, as set forth in section 24-51-801, shall be actuarially determined as of the effective date of retirement.
- (3) When a retiree designates a spouse as a cobeneficiary subsequent to retirement pursuant to the provisions of section 24-51-802(3), the calculation of benefits payable pursuant to option 2 or 3, as set forth in section 24-51-801, shall be actuarially determined as of the date of designation.
- (4) When a retiree designates a cobeneficiary subsequent to retirement pursuant to the provisions of section 24-51-802(3.5), the calculation of benefits payable pursuant to option 2 or 3, as set forth in section 24-51-801, shall be actuarially determined as of the date of designation.



## **PART 9: SURVIVOR BENEFITS**

### **24-51-901. Survivor benefits reserve**

A survivor benefits reserve is hereby created to provide monthly survivor benefits to eligible survivors of certain deceased members and certain deceased inactive members.

### **24-51-902. Modification of named beneficiaries**

A named beneficiary may be added, deleted, or changed by a member or inactive member, including members from the Denver public schools division, upon written notice to the association.

### **24-51-903. Distribution to named beneficiaries**

All named beneficiaries, if more than one, who survive the deceased member or deceased inactive member, including members from the Denver public schools division, shall share equally in a single payment.

### **24-51-904. Survivor benefits—eligibility—“member” defined**

- (1) (a) Survivor benefits may become payable if the deceased person was:
    - (I) A member who had earned at least one year of service credit; except that such one-year service requirement shall be waived if the death of the member was job-incurred; or
    - (II) An inactive member who had earned at least one year but less than five years of service credit with at least six months of the service credit earned within three years immediately preceding death and the board finds that the inactive member died from the same illness or injury which caused the termination of employment for such inactive member; or
    - (III) An inactive member who had earned at least five years of service credit.
  - (b) For the purposes of this part 9, unless the context otherwise requires, “member” means a deceased member or a deceased inactive member who meets the eligibility requirements for survivor benefits on the date of death of such member.
- (2) In the event the member did not meet the service credit requirements specified in subsection (1) of this section, no survivor benefits shall be payable; however, a single payment shall be made to the named beneficiary of such member or, if no named beneficiary exists, to the estate of the member.

- (3) Notwithstanding any other provisions of this part 9, unless otherwise indicated, survivor payments of DPS members shall be governed by sections 24-51-1735 to 24-51-1746. Pursuant to the portability provisions of part 17 of this article, any frozen accounts shall be treated as inactive and governed by the survivor provisions applicable to the frozen account.

**24-51-905. Deceased member who was not eligible for service or reduced service retirement**

- (1) In accordance with the provisions of this part 9, if a member met the service credit requirements specified in section 24-51-904(1)(a)(I) or (1)(a)(II) but did not meet the age and service credit requirements for service retirement as of the date of death, pursuant to the provisions of section 24-51-602 or 24-51-604, survivor benefits or a single payment shall be payable in the following order:
- (a) To qualified children who are under twenty-three years of age;
  - (b) To the surviving spouse of the member if no qualified children specified in paragraph (a) of this subsection (1) exist;
  - (c) To qualified children who are twenty-three years of age or older if none of the persons specified in paragraphs (a) and (b) of this subsection (1) exist;
  - (d) To dependent parents if none of the persons specified in paragraphs (a) to (c) of this subsection (1) exist;
  - (e) To the named beneficiary if none of the persons specified in paragraphs (a) to (d) of this subsection (1) exist;
  - (f) To the estate of the deceased member if none of the persons specified in paragraphs (a) to (e) of this subsection (1) exist.
- (2) If an inactive member who had earned at least five years of service credit dies, survivor benefits or a single payment shall be payable in the following order:
- (a) To the surviving spouse;
  - (b) To the named beneficiary if no surviving spouse exists;
  - (c) To the estate of the deceased member if neither of the persons specified in paragraphs (a) and (b) of this subsection (2) exists.

**24-51-906. Deceased member who was eligible for service or reduced service retirement**

- (1) In accordance with the provisions of this part 9, if a member met the age and service credit requirements for service retirement as of the date of death, pursuant to the provisions of section 24-51-602 or 24-51-604, survivor benefits or a single payment shall be payable in the following order:
  - (a) To the cobeneficiary;
  - (b) To the surviving spouse of the member if no cobeneficiary specified in paragraph (a) of this subsection (1) exists;
  - (c) To qualified children if none of the persons specified in paragraphs (a) and (b) of this subsection (1) exist;
  - (d) To dependent parents if none of the persons specified in paragraphs (a) to (c) of this subsection (1) exist;
  - (e) To the named beneficiary if none of the persons specified in paragraphs (a) to (d) of this subsection (1) exist;
  - (f) To the estate of the deceased member if none of the persons specified in paragraphs (a) to (e) of this subsection (1) exist.

**24-51-907. Form of survivor benefits and single payments**

- (1) Survivor benefits shall be payable if received by persons specified in section 24-51-905(1)(a) or (1)(c) or 24-51-906(1)(a) or (1)(c).
- (2) A single payment shall be payable if received by persons specified in section 24-51-905(1)(e), (1)(f), (2)(b), or (2)(c) or 24-51-906(1)(e) or (1)(f).
- (3) Surviving spouses or dependent parents specified in section 24-51-905(1)(b), (1)(d), and (2)(a) and in section 24-51-906(1)(b) and (1)(d) shall be paid survivor benefits unless they also qualify as a named beneficiary specified in section 24-51-905(1)(e) or (2)(b) or 24-51-906(1)(e), in which case they may elect to receive a single payment or survivor benefits.

**24-51-908. Survivor benefits**

- (1) Survivor benefits paid to a cobeneficiary pursuant to the provisions of section 24-51-906(1)(a) shall be calculated in the same manner as option 3 benefits pursuant to the provisions of section 24-51-910. Survivor benefits paid to a surviving spouse pursuant to the provisions of section 24-51-905(2)(a) shall be calculated in the same manner as option 3 benefits pursuant to the provisions of section 24-51-910, and if the deceased vested inactive member had at least

twenty-five years of service credit and was eligible for a retirement benefit on or before January 1, 2011, such benefits shall be increased by the annual increase specified in sections 24-51-1001 to 24-51-1003, from the date of termination of membership or July 1, 1993, whichever is later, to the date benefits commence.

- (2) Survivor benefits paid to spouses pursuant to the provisions of section 24-51-906(1)(b) shall be calculated in the same manner as either option 3 benefits, pursuant to the provisions of section 24-51-910, or as surviving spouse's benefits pursuant to the provisions of section 24-51-909, upon the irrevocable election of such spouse.
- (3) Survivor benefits paid to spouses pursuant to the provisions of section 24-51-905(1)(b) shall be calculated in the same manner as:
  - (a) Surviving spouse's benefits, pursuant to the provisions of section 24-51-909, or option 3 benefits if the deceased member had ten years of service credit or the death of the member was job-related; or
  - (b) Surviving spouse's benefits, pursuant to the provisions of section 24-51-909, if the deceased member did not have ten years of service credit and the death of the member was not job-related.
- (4) Survivor benefits paid to qualified children pursuant to the provisions of section 24-51-905(1)(a) or (1)(c) or 24-51-906(1)(c) shall be forty percent of the highest average salary of the deceased member if paid to one child or fifty percent of the highest average salary of the deceased member, divided equally, if paid to two or more children. The minimum survivor benefit paid to such children shall be one hundred dollars each if one or two children qualify or two hundred fifty dollars, divided equally, if three or more children qualify, regardless of the highest average salary of the deceased member.
- (5) Survivor benefits paid to dependent parents pursuant to the provisions of section 24-51-905(1)(d) or 24-51-906(1)(d) shall be equal to twenty-five percent of the highest average salary of the deceased member if one parent qualifies or forty percent of the highest average salary of the deceased member, divided equally, if two parents qualify. The minimum survivor benefit paid to such parents shall be one hundred dollars to each dependent parent, regardless of the highest average salary of the deceased member.

**24-51-909. Surviving spouse's benefits**

A surviving spouse's benefit shall be equal to twenty-five percent of the highest average salary of the deceased member.

**24-51-910. Option 3 benefits**

The option 3 benefits provided for in this part 9 shall be the same as those benefits specified in section 24-51-801(1)(c) and calculated pursuant to the provisions of section 24-51-603 or 24-51-605.5(2), whichever provides the greater benefit, as if the deceased member had retired on the day of death; but in no case shall the option 3 benefits be less than twenty-five percent of the deceased member's highest average salary if the deceased member had at least ten years of service credit.

**24-51-911. Commencement of survivor benefits or single payment**

- (1) When a single payment is payable pursuant to the provisions of this part 9, said payment shall be made when the full amount of moneys credited to the member contribution account of the member, the full amount of matching employer contributions, and the person to receive the benefit have been determined.
- (2) Survivor benefits shall become payable to qualified children either at the time of the death of the member or within six months after the death of the member if the children attain eligibility by enrolling in school full time.
- (3) Survivor benefits pursuant to option 3 paid to a spouse specified in section 24-51-906(1)(b) shall become payable immediately upon the death of the member. Survivor benefits pursuant to option 3 paid to a spouse specified in section 24-51-905(2)(a) shall become payable when the deceased inactive member would have become eligible for reduced service retirement.
- (4) Survivor benefits pursuant to option 3 paid to a spouse specified in section 24-51-905(1)(b) shall become payable immediately if the death of the member occurred on or after July 1, 1979. If the death of the member occurred prior to July 1, 1979, the option 3 benefits shall become payable on and after July 1, 1985, upon satisfaction of the following conditions:
  - (a) If surviving spouse's benefits are not being received pursuant to the provisions of section 24-51-909 and the spouse has not elected to receive a single payment, such spouse may elect to receive an option 3 benefit, defined in section 24-51-910, immediately upon such election or when benefits for the children cease, whichever is later. Such election shall be irrevocable.

- (b) If surviving spouse's benefits are not being paid pursuant to the provisions of section 24-51-909 and the spouse elected to receive a single payment, such spouse may elect to receive an option 3 benefit, defined in section 24-51-910, which shall become payable upon payment to the association of an amount equal to the single payment plus interest. Such payment may be made in a lump sum or through temporary waiver of survivor benefits. Benefits so waived pursuant to this paragraph (b) shall be used for monthly installment payments until the total payment is completed, and the temporary benefit waiver shall terminate upon completion of said payment.
- (5) Except as otherwise provided in subsection (6) of this section, surviving spouse's benefits paid pursuant to the provisions of section 24-51-909 shall become payable upon reaching sixty years of age, or on December 31 of the calendar year in which the deceased member would have reached seventy and one-half years of age, whichever occurs earlier.
- (6) Surviving spouse's benefits defined in section 24-51-909 which are payable to a spouse found by the board to be mentally or physically incapacitated from gainful employment shall become payable on the day of the death of the deceased member without regard to the age of such spouse.
- (7) Survivor benefits shall become payable to dependent parents immediately upon the death of the member.
- (8) If at the time of the death of the member there is a supplemental needs trust established before or within ninety days after the death of the member for the benefit of the qualified child eligible for survivor benefits, survivor benefits payable pursuant to this part 9 to the beneficiary of the supplemental needs trust are payable to the trust.

**24-51-912. Termination of survivor benefits**

- (1) Survivor benefits payable pursuant to the provisions of section 24-51-908 shall terminate when the benefit recipient dies or is no longer qualified to receive such benefits.
- (2) Qualified children's survivor benefits shall terminate when the children marry or the board finds that such children are no longer mentally or physically incapacitated.

- (3) When children's survivor benefits paid pursuant to section 24-51-905(1)(a) are no longer payable, the surviving spouse may elect to receive:
  - (a) An option 3 benefit pursuant to the provisions of section 24-51-910;
  - (b) A surviving spouse's benefit pursuant to the provisions of section 24-51-909; or
  - (c) A single payment of any moneys remaining from the total of the amount credited to the member contribution account of the member and matching employer contributions.
- (4) In the event that a surviving spouse remarries prior to July 1, 1997, survivor benefits paid as surviving spouse's benefits pursuant to the provisions of section 24-51-909 shall terminate upon the remarriage of such spouse.
- (5) Survivor benefits paid to a dependent parent of a member pursuant to the provisions of section 24-51-908(5) shall terminate upon the remarriage of said parent.
- (6) If the association is paying a supplemental needs trust pursuant to section 24-51-911(8), such payment terminates and the provisions of this section and section 24-51-913 apply when the beneficiary of such supplemental needs trust is no longer eligible to receive survivor benefits. If a supplemental needs trust is determined to be invalid or terminates after the association commences payment to the supplemental needs trust, the survivor benefit, from then on, is paid to the beneficiary of the supplemental needs trust so long as that beneficiary is eligible for survivor benefits.

**24-51-913. Payment upon termination of survivor benefits**

- (1) Upon termination of survivor benefits as specified in section 24-51-912 prior to the association's having paid survivor benefits equal to the total of the amount of moneys credited to the member contribution account of the member and matching employer contributions, any remaining moneys shall be paid in the following order:
  - (a) To the named beneficiaries;
  - (b) To the estate of the member if no named beneficiaries specified in paragraph (a) of this subsection (1) exist.

**24-51-914. Reciprocal survivor benefits agreement (Repealed)**

## **PART 10:      INCREASES IN BENEFITS**

### **24-51-1001.      Types of benefit increases**

- (1) For benefit recipients whose benefits are based on the account of a member who was a member, inactive member, or retiree on December 31, 2006, or for benefit recipients whose benefits are based on the account of a DPS member or DPS retiree, annual increases in retirement benefits and survivor benefits shall be effective with the July benefit. Such increases in benefits shall be calculated in accordance with sections 24-51-1002 and 24-51-1003, subject to section 24-51-413, and shall be paid from the retirement benefits reserve or the survivor benefits reserve, as appropriate, so long as the following requirements are satisfied:
- (a) For benefit recipients whose benefit is based on a retiree or DPS retiree whose effective date of retirement is prior to January 1, 2011, or whose survivor benefits are based on a date of death that occurred prior to January 1, 2011, the benefits have been paid to the benefit recipient for at least seven months preceding July 1.
  - (b) For benefit recipients whose benefit is based on a retiree or DPS retiree whose effective date of retirement is on or after January 1, 2011, or whose survivor benefits are based on a date of death that is on or after January 1, 2011, and an annual increase has been applied to the benefit on or before May 1, 2018, the benefits have been paid to the benefit recipient for the twelve months prior to July 1, and for benefit recipients whose benefit is based upon a retiree or DPS retiree who was not eligible to retire as of January 1, 2011, the benefits have been paid to the benefit recipient for the twelve months prior to July 1 and an annual increase has been applied to the benefit on or before May 1, 2018, the retiree met the following requirements:
    - (l) For DPS members with five or more years of service credit as of January 1, 2011, and for members who are not state troopers who began membership prior to July 1, 2005, and have five or more years of service credit as of January 1, 2011, the retiree retired with a service retirement benefit pursuant to section 24-51-602 or 24-51-1713, whichever is applicable, or retired with a reduced service retirement benefit pursuant to section 24-51-604 or 24-51-1714, whichever is applicable, but has, as of January 1, attained the age and



- service credit years that when combined total at least eighty years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty;
- (II) For members who are not state troopers who began membership on or after July 1, 2005, but prior to January 1, 2007, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least eighty-five years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty;
  - (III) For DPS members with less than five years of service credit as of January 1, 2011, and for members whose membership began prior to January 1, 2007, with less than five years of service credit as of January 1, 2011, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least eighty-five years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty; or
  - (IV) For members who are state troopers and who were members, inactive members, or retirees on December 31, 2006, the retiree retired with a service retirement benefit pursuant to section 24-51-602 or retired with a reduced service retirement benefit pursuant to section 24-51-604, but has, as of January 1, attained the age and service credit years, when weighted with non-state trooper service credit, that combined total at least seventy-five years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of fifty-five.
- (b.5) For benefit recipients whose benefit is based on a retiree or DPS retiree whose effective date of retirement is on or after January 1, 2011, or whose survivor benefits are based on a date of death that is on or after January 1, 2011, and an annual increase has not been applied to the

retirement or survivor benefit on or before May 1, 2018, the benefits have been paid to the benefit recipient for thirty-six months total before July 1, and benefits have been paid to the benefit recipient for the twelve months prior to July 1, and for benefit recipients whose benefit is based upon a retiree or DPS retiree who was not eligible to retire as of January 1, 2011, the retiree met the following requirements:

- (I) For DPS members with five or more years of service credit as of January 1, 2011, and for members who are not state troopers who began membership prior to July 1, 2005, and have five or more years of service credit as of January 1, 2011, the retiree retired with a service retirement benefit pursuant to section 24-51-602 or 24-51-1713, whichever is applicable, or retired with a reduced service retirement benefit pursuant to section 24-51-604 or 24-51-1714, whichever is applicable, but has, as of January 1, attained the age and service credit years that when combined total at least eighty years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty;
- (II) For members who are not state troopers who began membership on or after July 1, 2005, but prior to January 1, 2007, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least eighty-five years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty;
- (III) For DPS members with less than five years of service credit as of January 1, 2011, and for members whose membership began prior to January 1, 2007, with less than five years of service credit as of January 1, 2011, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least eighty-five years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty; or

(IV) For members who are state troopers and who were members, inactive members, or retirees on December 31, 2006, the retiree retired with a service retirement benefit pursuant to section 24-51-602 or retired with a reduced service retirement benefit pursuant to section 24-51-604, but has, as of January 1, attained the age and service credit years, when weighted with non-state trooper service credit, that combined total at least seventy-five years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of fifty-five.

(c) No minimum age or service credit requirement shall apply to disability retirees or survivor benefit recipients.

(1.5) and (2) (Deleted by amendment, effective March 1, 1994.)

(3) For benefit recipients whose benefits are based on the account of a member who was not a member, inactive member, or retiree on December 31, 2006, annual increases in retirement benefits and survivor benefits, if any, shall be effective with the July benefit in accordance with section 24-51-1009, subject to section 24-51-413, and shall be paid from the retirement benefits reserve or the survivor benefits reserve, as appropriate, so long as the following requirements are satisfied:

(a) The benefits have been paid to the benefit recipient for the full preceding calendar year and an annual increase has been applied to the retirement or survivor benefit on or before May 1, 2018; and

(b) (I) For members who are not state troopers whose membership began on or after January 1, 2007, but prior to January 1, 2011, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least eighty-five years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty;

- (II) For members who are not state troopers whose membership began on or after January 1, 2011, but prior to January 1, 2017, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least eighty-eight years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty;
- (III) Subject to subsection (3)(b)(IV) of this section, for members who are not state troopers whose membership began on or after January 1, 2017, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least ninety years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty;
- (IV) For members whose membership began on or after January 1, 2017, the retiree retired from the school or Denver public schools divisions with a reduced service retirement benefit pursuant to section 24-51-604 and the retiree's most recent ten years of service credit was earned in the school or Denver public schools divisions, but, as of January 1, the retiree's age and total service credit total at least eighty-eight years, or the retiree retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty; or
- (V) For members who are state troopers who were not members, inactive members, or retirees on December 31, 2006, the retiree retired with a service retirement benefit pursuant to section 24-51-602 or retired with a reduced service retirement benefit pursuant to section 24-51-604, but has, as of January 1, attained the age and service credit years, when weighted with non-state trooper service credit, that combined total at least seventy-five years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of fifty-five.

(c) No minimum age or service credit requirement shall apply to disability retirees or survivor benefit recipients.

(3.5) For benefit recipients whose benefits are based on the account of a member who was not a member, inactive member, or retiree on December 31, 2006, annual increases in retirement benefits and survivor benefits, if any, are effective with the July benefit in accordance with section 24-51-1009, subject to section 24-51-413, and shall be paid from the retirement benefits reserve or the survivor benefits reserve, as appropriate, so long as the following requirements are satisfied:

- (a) The benefits have been paid to the benefit recipient for thirty-six months total, and benefits have been paid to the benefit recipient for the full preceding calendar year, and an annual increase has not been applied to the retirement or survivor benefit on or before May 1, 2018; and
- (b)
  - (I) For members who are not state troopers whose membership began on or after January 1, 2007, but prior to January 1, 2011, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least eighty-five years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty;
  - (II) For members who are not state troopers whose membership began on or after January 1, 2011, but prior to January 1, 2017, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least eighty-eight years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty;
  - (III) Subject to subsection (3.5)(b)(IV) of this section, for members who are not state troopers whose membership began on or after January 1, 2017, the retiree retired with a service retirement benefit pursuant to section 24- 51-602, or retired with a reduced service

retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least ninety years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty;

- (IV) For members whose membership began on or after January 1, 2017, the retiree retired from the school or Denver public schools divisions with a reduced service retirement benefit pursuant to section 24-51-604 and the retiree's most recent ten years of service credit was earned in the school or Denver public schools divisions, but, as of January 1, the retiree's age and total service credit total at least eighty-eight years, or the retiree retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty;
- (V) For members who are state troopers who were not members, inactive members, or retirees on December 31, 2006, but before December 31, 2020, the retiree retired with a service retirement benefit pursuant to section 24-51-602 or retired with a reduced service retirement benefit pursuant to section 24-51-604, but has, as of January 1, attained the age and service credit years, when weighted with non-state trooper service credit, that combined total at least seventy-five years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of fifty-five;
- (VI) For members who are not state troopers whose membership began on or after January 1, 2020, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least ninety-four years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty-four; or

(VII) For members who are state troopers whose membership began on or after January 1, 2020, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604, but has, as of January 1, attained the age and service credit years, when weighted with non-state trooper service credit, that combined total at least eighty years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty.

(c) No minimum age or service credit requirement shall apply to disability retirees or survivor benefit recipients.

(4) Benefits that are calculated pursuant to part 17 of this article 51 shall be governed by the benefit increase provisions of such part 17.

**24-51-1002. Annual percentages to be used**

(1) For benefit recipients whose benefits are based on the account of a member who was a member, inactive member, or retiree on December 31, 2006, or for benefit recipients whose benefits are based on the account of a DPS member or DPS retiree, the increase applied to benefits for the year 2010 shall be the lesser of two percent or the average of the annual increases determined for each month, to the nearest one-tenth of a percent, as calculated by the United States department of labor, in the national consumer price index for urban wage earners and clerical workers for each of the months in the 2009 calendar year.

(1.5) Notwithstanding any other provision of this section, for the years 2018 and 2019, the annual increase awarded shall be zero percent.

(2) Beginning on June 4, 2018, subject to section 24-51-1009.5, for benefit recipients whose benefits are based on the account of a member who was a member, inactive member, or retiree on December 31, 2006, or for benefit recipients whose benefits are based on the account of a DPS member or DPS retiree, the increase applied to benefits paid shall be one and one-half percent unless adjusted pursuant to section 24-51-413. The increase applied to such benefits shall be recalculated annually as of July 1 and shall be the compounded annual percentage of the annual increases applied to such benefits. In the first year that the benefit recipient is eligible to receive an annual increase pursuant to section 24-51-1001, the annual increase shall be prorated.

- (3) Benefits for vested inactive members with at least twenty-five years of service credit and benefits for survivors of deceased vested inactive members who had at least twenty-five years of service credit shall be increased by the annual increase specified in this section and sections 24-51-1001 and 24-51-1003 under prior law from the date of termination of membership or July 1, 1993, whichever is later, to March 1, 2009, or the date benefits commence, whichever is earlier. This subsection (3) shall only apply to members and inactive members who are eligible to receive a retirement benefit as of January 1, 2011.
- (4) Notwithstanding the provisions of subsection (1) of this section, the increase, if any, applied to the benefits of persons whose benefits are based on the account of a member who was not a member, inactive member, or retiree on December 31, 2006, will be calculated and paid in accordance with section 24-51-1009.

**24-51-1003. Annual increases in the base benefit**

The percentage recalculated pursuant to the provisions of section 24-51-1002 shall be multiplied by the base benefit or retirement allowance as defined in section 24-51-1702(34), whichever is applicable, to determine the increased benefit. In no case shall the benefit paid be less than the base benefit or retirement allowance, whichever is applicable.

**24-51-1004. Annual increases for benefits effective prior to May 1, 1969 (Repealed)**

**24-51-1005. Cost of living stabilization fund (Repealed)**

**24-51-1006. Cost of living increases (Repealed)**

**24-51-1007. Service credit exceeding twenty years (Repealed)**

**24-51-1008. Purchased service credit excluded (Repealed)**

**24-51-1009. Annual increase reserve—creation**

- (1) Each year prior to the effective date of an annual increase, the board shall determine the amount of the annual increase to be paid, if any. In no event shall the board award an annual increase to any division that exceeds the amount provided for in this section.



- (1.5) For the years 2018 and 2019, the annual increase awarded shall be zero percent.
- (2) The maximum annual increase that may be awarded by the board pursuant to section 24-51-1001 (3) shall be determined based on annual actuarial valuations of the annual increase reserve of each division. Each year after the board determines the annual increase amount, and prior to its effective date, a sum equal to the net present value of the total actuarial cost of paying the annual increase to all eligible recipients shall be reallocated from the annual increase reserves of each division to the retirement benefits reserve or the survivor benefits reserve, as appropriate. All annual increase payments shall be made from the reserves used for monthly benefit payments, and no annual increase payments shall be made from the annual increase reserve.
- (3) The annual increase reserve of each division shall contain the allocations specified in this subsection (3). Such amounts shall be retained in the annual increase reserve of each division until removed from that reserve pursuant to this section. The allocations shall be as follows:
- (a) A portion of the employer contribution specified in section 24-51-401 (1.7) equal to one percent of the salaries of members who were not members, inactive members, or retirees on December 31, 2006;
  - (b) A sum received in connection with purchased service credit pursuant to section 24-51-503 (4), specified as annual increase allocation; and
  - (c) A proportional share of the investment income earned on the amounts specified in paragraphs (a) and (b) of this subsection (3).
- (4) An actuarial valuation shall be conducted each year for the annual increase reserve of each division for the purposes of this section. The actuarial valuation shall include a determination of the total market value of the assets in the reserve and a calculation of the net present value of the actuarial liabilities associated with providing each of the annual increases described in subsections (4)(a), (4)(b), and (4)(c) of this section. Subject to section 24-51-1009.5, the maximum annual increase awarded by the board shall be the lesser of the following calculations:

- (a) Subject to the maximum annual increase as adjusted pursuant to section 24-51-413, a permanent increase equal to one and one-half percent of current benefits payable to benefit recipients then eligible for an annual increase in accordance with section 24-51-1001 (3);
  - (b) Subject to the provisions of subsection (4.5) of this section, a permanent increase of current benefits payable to benefit recipients then eligible for an annual increase in accordance with section 24-51-1001 (3) that is equal to the average of the annual increases determined for each month, to the nearest one-tenth of a percent, as calculated by the United States department of labor, in the national consumer price index for urban wage earners and clerical workers during the calendar year preceding the increase in the benefit for the year associated with the actuarial valuation of the annual increase reserve; or
  - (c) A permanent increase of current benefits payable to benefit recipients then eligible for an annual increase in accordance with section 24-51-1001 (3) that will exhaust ten percent of the year-end balance at market value of the annual increase reserve.
- (4.5) For the year 2010, the association shall use the average of the annual increases determined for each month, to the nearest one-tenth of a percent, as calculated by the United States department of labor, in the national consumer price index for urban wage earners and clerical workers for each of the months in the 2009 calendar year.
- (5) No calculation made pursuant to this section shall cause a reduction in current benefits of eligible benefit recipients.

**24-51-1009.5. Annual increase amount changes**

When the actuarial funded ratio of the association, based on the actuarial value of assets, is at or above one hundred three percent as determined in the annual actuarial study of the association, the upper limit of the annual increase shall be increased by one-quarter of one percent.

**24-51-1010. Increase in benefits—actuarial assessment required**

- (1) Before increasing benefits provided by the association, the general assembly shall cause to be conducted pursuant to subsection (2) of this section an actuarial assessment to ensure that the increases in benefits would not cause the actuarial value of assets of the association to decline below ninety percent of the actuarial accrued liabilities of the association.
- (2) Upon direction from the president of the senate and the speaker of the house of representatives, the director of research of the legislative council shall contract with a private person to conduct an actuarial assessment of the association. The assessment shall be conducted to determine whether and to what extent an increase in the benefits provided by the association would cause the actuarial value of the assets of the association to decline below ninety percent of the actuarial accrued liabilities of the association. The assessment shall be completed and a final report of its findings and conclusions shall be submitted to the general assembly as soon as practicable. The person conducting the actuarial assessment of the association and such person's employees shall, during the term of the contract, have access to any necessary documents and information in the custody of the association.

## **PART 11: EMPLOYMENT AFTER RETIREMENT**

### **24-51-1101. Employment after service retirement - report - definitions - repeal**

- (1) Except as otherwise provided in subsections (1.3), (1.8), (1.9), and (5) of this section or part 17 of this article 51, a service retiree from any division may be employed by an employer, whether or not in a position subject to membership, and receive a salary without reduction in benefits if the service retiree has not worked for any employer, as defined in section 24-51-101 (20), during the month of the effective date of retirement, and if:
  - (a) Employment of more than four hours per day does not exceed one hundred ten days in the calendar year;
  - (b) Employment of four hours or less per day does not exceed seven hundred twenty hours in the calendar year;
  - (c) Employment consisting of a combination of daily and hourly employment does not exceed one hundred ten days per calendar year;
  - (d) The service retiree is a member of the general assembly; or
  - (e) The service retiree is working in a position that has been temporarily vacated by an employee who has been called into active duty in the armed forces of the United States.
- (1.3)
  - (a) A service retiree who is a teacher, as defined in section 22-63-103 (11), may receive salary without reduction in benefits if:
    - (I) The school district or charter school hires the service retiree for the purpose of providing substitute teacher classroom instruction; and
    - (II) The school district or charter school hiring the service retiree determines that there is a critical shortage of qualified substitute teachers and that the service retiree has specific experience, skills, or qualifications that would benefit the district.
  - (b) As used in this subsection (1.3), “substitute teacher” has the same meaning set forth in section 22-63-103 (10); except that there shall be no restriction in the length of a continuous assignment.

- (c) A service retiree who is hired in accordance with subsection (1.3)(a) of this section does not count against the additional ten service retirees that a state college or university or an employer in the school or Denver public schools division may hire as authorized by subsection (1.8)(b) of this section.
- (d) This subsection (1.3) is repealed, effective July 1, 2025.

(1.5) and (1.7) Repealed.

- (1.8) (a) A service retiree who is hired by a state college or university or by an employer in the school or Denver public schools division of the association pursuant to subsection (1.8)(b) of this section and who is not subject to subsection (1.9) or (5) of this section may receive salary without reduction in benefits if employment of more than four hours per day does not exceed one hundred forty days in the calendar year, if employment of four hours or less per day does not exceed nine hundred sixteen hours in the calendar year, or if employment consisting of a combination of daily and hourly employment does not exceed one hundred forty days per calendar year, and if the service retiree has not worked for any employer, as defined in section 24-51-101 (20), during the month of the effective date of retirement. A service retiree described in this subsection (1.8)(a) who works for any employer, as defined in section 24-51-101 (20), during the month of the effective date of retirement shall be subject to a reduction in benefits as provided in section 24-51-1102 (2).
- (b) A state college or university or an employer in the school or Denver public schools division may hire up to ten service retirees who are not subject to subsection (1.3), (1.9), or (5) of this section in areas where the employer determines that there is a critical shortage of qualified candidates and that the service retiree has unique experience, skill, or qualifications that would benefit the employer. The employer shall notify the association upon hiring a service retiree pursuant to this subsection (1.8). A list of any and all service retirees employed by the employer shall be provided to the association at the start of each calendar year and shall be updated prior to any additional hirings during the same calendar year.
- (c) A state college or university or an employer in the school or Denver public schools division shall provide full payment of all employer contributions and all disbursements in accordance with part 4 of this article 51, and all

working retiree contributions in accordance with part 11 of this article 51, on the salary paid to the service retiree described in subsection (1.8)(a) of this section.

- (d) A service retiree who is employed pursuant to this subsection (1.8) shall not be required to resume membership. Upon termination of such retiree's employment, there shall be no benefit calculation reflecting additional service credit or any increase in the highest average salary of such person.
- (e) (I) For purposes of this subsection (1.8), "state college or university" means a postsecondary educational institution established and existing pursuant to section 5 of article VIII of the state constitution and title 23, C.R.S., and, for a postsecondary educational institution with more than one principal campus as specified in subparagraph (II) of this paragraph (e), the system administration of the postsecondary educational institution and each principal campus of the postsecondary educational institution.
- (II) As used in this paragraph (e), "principal campus" means:
  - (A) Each campus of the university of Colorado as described in section 23-20-101, C.R.S.;
  - (B) Each institution of the Colorado state university system established in sections 23-31-101 and 23-31.5-101, C.R.S., but not including the online university established in section 23-31.3-101, C.R.S.; and
  - (C) Each college included in the state system of community and technical colleges as listed in section 23-60-205, C.R.S.

- (1.9) (a) (I) Subject to the provisions of subsection (1.9)(h) of this section, a service retiree who is a teacher, a school bus driver, a school food services cook, a school nurse, or a paraprofessional as defined in section 22-60.3-102(9), and is hired pursuant to subsection (1.9)(b) of this section by an employer in the school division of the association that satisfies the criteria specified in subsection (1.9)(a)(II) of this section may receive salary without reduction in benefits for any length of employment in a calendar year if the service retiree has not worked for any employer,

as defined in section 24-51-101 (20), during the month of the effective date of retirement. A service retiree described in this subsection (1.9)(a) who works for any employer, as defined in section 24-51-101 (20), during the month of the effective date of retirement shall be subject to a reduction in benefits as provided in section 24-51-1102 (2).

- (II) The provisions of this subsection (1.9) apply only if:
  - (A) The employer in the school division of the association that hires the service retiree is a rural school district as determined by the department of education based on the geographic size of the school district and the distance of the school district from the nearest large, urbanized area, a board of cooperative services, as defined in section 22-5-103(2), or a charter school, as defined in section 22-5-119 (3)(d), that is located within a rural school district and, if the employer is a school district, the school district enrolls six thousand five hundred students or fewer in kindergarten through twelfth grade;
  - (B) The school district, board of cooperative services, or charter school hires the service retiree for the purpose of providing classroom instruction or school bus transportation to students enrolled by the district, enrolled by one or more of the districts served by the board of cooperative services, or enrolled by the charter school, or for the purpose of being a school food services cook, a school nurse, or a paraprofessional, as defined in section 22-60.3-102(9); and
  - (C) The school district, board of cooperative services, or charter school determines that there is a critical shortage of qualified teachers, school bus drivers, school food services cooks, school nurses, or paraprofessionals, as defined in section 22-60.3-102(9), as applicable, and that the service retiree has specific experience, skills, or qualifications that would benefit the district, board of cooperative services, or charter school.

- (b) An employer in the school division of the association that hires a service retiree pursuant to this subsection (1.9) shall notify the association upon hiring a service retiree pursuant to this subsection (1.9). A list of any and all service retirees employed by the employer shall be provided to the association at the start of each calendar year and shall be updated prior to any additional hirings during the same calendar year.
- (c) An employer in the school division of the association that hires a service retiree pursuant to this subsection (1.9) shall provide full payment of all employer contributions and disbursements in accordance with part 4 of this article 51, and all working retiree contributions in accordance with part 11 of this article 51, on the salary paid to the service retiree described in subsection (1.9)(a) of this section.
- (d) Any service retiree who is employed pursuant to this subsection (1.9) shall not be required to resume membership. Upon termination of such service retiree's employment, there shall be no benefit calculation reflecting additional service credit accumulated or any increase in the highest average salary of such person.
- (e) A service retiree who is employed pursuant to this subsection (1.9) shall not receive a health care premium subsidy pursuant to section 24-51-1206 during such employment.
- (f) Any service retiree who is employed pursuant to this subsection (1.9) shall be eligible to participate in the health plan offered by the employer in the school division while employed by the employer.
- (g) The period during which a service retiree may receive salary without reduction in benefits and without limitation in a calendar year pursuant to this subsection (1.9) shall not exceed six consecutive years from the date the service retiree began work pursuant to this subsection (1.9).
- (h) A teacher who retires before he or she has met the age and service credit requirements for full service retirement benefits pursuant to section 24-51-602 shall not be employed after retirement pursuant to this subsection (1.9) by the employer in the school division that was the teacher's last employer until two years after the teacher's date of retirement.



(i) On or before December 1, 2025, and on or before December 1 of each fifth year thereafter, the association shall submit a report to the finance committees of the house of representatives and the senate, or any successor committees, regarding the employment after service retirement provisions of this subsection (1.9). Notwithstanding the requirement in section 24-1-136(11)(a)(l), the requirement to submit the report required in this subsection (1.9)(i) continues indefinitely. The employers in the school division of the association that employ teachers, school bus drivers, school food services cooks, school nurses, or paraprofessionals, as defined in section 22-60.3-102(9), pursuant to this subsection (1.9) shall provide information requested by the association for the purposes of the report. The report shall include:

- (I) The number of teachers, school bus drivers, school food services cooks, school nurses, and paraprofessionals, as defined in section 22-60.3-102(9), who have been employed after service retirement pursuant to this subsection (1.9) as of the date of the report;
- (II) The extent to which this subsection (1.9) has helped employers in the school division address teacher, school bus driver, school food services cook, school nurse, and paraprofessional, as defined in section 22-60.3-102(9), shortages;
- (III) The costs, if any, to the association as a result of this subsection (1.9); and
- (IV) Any other information deemed relevant by the association.

(2) Salary from the employment, engagement, retention, or other use of a service retiree or DPS retiree in an individual capacity or of any entity owned or operated by a service retiree or affiliated party by an employer to perform any service as an employee, contract employee, consultant, independent contractor, or through any other arrangement, shall be subject to employer contributions but shall not be subject to member contributions. Effective January 1, 2011, such salary shall also be subject to working retiree contributions. Salary from employment by a retiree who is serving in a state elected official's position shall not be subject to employer contributions or working retiree contributions. Salary

from employment of a retiree who is participating in an educational employees' optional retirement plan pursuant to article 54.5 of this title shall not be subject to working retiree contributions.

(2.5) Repealed.

(3) Any service retiree employed pursuant to this section shall not be eligible for disability retirement and survivor benefits during the employment period in which member contributions are not being made pursuant to the provisions of this section.

(4) The provisions of this part 11 shall govern employment after service retirement except to the extent that specific provisions regarding portability and the effect of portability are provided in part 17 of this article.

(5) (a) Subject to subsection (5)(j) of this section, a service retiree who is a special service provider and is hired pursuant to this subsection (5) by a board of cooperative services that satisfies the criteria specified in subsection (5)(b) of this section may receive salary without reduction in benefits for any length of employment in a calendar year if the service retiree has not worked for any employer during the month of the effective date of retirement. A service retiree described in this subsection (5)(a) who works for any employer during the month of the effective date of retirement shall be subject to a reduction in benefits as provided in section 24-51-1102 (2).

(b) This subsection (5) applies only if:

(I) The board of cooperative services hires the service retiree to provide services in two or more rural school districts as determined by the department of education based on the geographic size of the school district and the distance of the school district from the nearest large, urbanized area;

(II) The board of cooperative services hires the service retiree for the purpose of providing special services to students enrolled by the districts served by the board of cooperative services; and

(III) The board of cooperative services determines that there is a critical shortage of qualified special service providers and that the service retiree has specific experience, skills, or qualifications that would benefit the students in the school districts served by the board of cooperative services.

- (c) A board of cooperative services that hires a service retiree pursuant to this subsection (5) shall notify the association before hiring the service retiree. A list of all service retirees employed by the board of cooperative services shall be provided to the association at the start of each calendar year and shall be updated prior to any additional hirings during the same calendar year.
- (d) The total number of service retirees hired by all boards of cooperative services pursuant to this subsection (5) during the time it is in effect shall not exceed forty. The association shall ensure that the boards of cooperative services do not hire more than forty service retirees pursuant to this subsection (5).
- (e) A board of cooperative services that hires a service retiree pursuant to this subsection (5) shall provide full payment of all employer contributions and disbursements in accordance with part 4 of this article 51, and all working retiree contributions in accordance with part 11 of this article 51, on the salary paid to the service retiree described in subsection (5)(a) of this section. In addition, a board of cooperative services that hires a service retiree pursuant to this subsection (5) shall make an additional monthly payment to the association in an amount equal to two percent of the salary paid to the service retiree.
- (f) Any service retiree who is employed pursuant to this subsection (5) shall not be required to resume membership. Upon termination of such service retiree's employment, there shall be no benefit calculation reflecting additional service credit accumulated or any increase in the highest average salary of such person.
- (g) A service retiree who is employed pursuant to this subsection (5) shall not receive a health care premium subsidy pursuant to section 24-51-1206 during such employment.

- (h) Any service retiree who is employed pursuant to this subsection (5) shall be eligible to participate in the health plan offered by the board of cooperative services or a school district served by the board of cooperative services while employed by the board of cooperative services.
- (i) The period during which a service retiree may receive salary without reduction in benefits and without limitation in a calendar year pursuant to this subsection (5) shall not exceed five consecutive years from the date the service retiree began work pursuant to this subsection (5).
- (j) A special service provider who retires before he or she has met the age and service credit requirements for full service retirement benefits pursuant to section 24-51-602 shall not be employed after retirement pursuant to this subsection (5) by the board of cooperative services that was the special service provider's last employer until two years after his or her date of retirement.
- (k) On or before December 1, 2023, the association shall submit a report to the finance committees of the house of representatives and the senate, or any successor committees, regarding the employment after service retirement provisions of this subsection (5). The boards of cooperative services that employ special service providers pursuant to this subsection (5) shall provide information requested by the association for the purposes of the report.  
The report shall include:
  - (I) The number of special service providers who have been employed after service retirement pursuant to this subsection (5) as of the date of the report;
  - (II) The extent to which this subsection (5) has helped boards of cooperative services address shortages of school special service providers;
  - (III) The costs, if any, to the association as a result of this subsection (5); and
  - (IV) Any other information deemed relevant by the association.
- (l) As used in this subsection (5):
  - (I) "Board of cooperative services" has the same meaning as set forth in section 22-5-103 (2).

- (II) "Employer" has the same meaning as set forth in section 24-51-101 (20).
- (III) "Special service provider" means a person who is employed by a board of cooperative services to provide special services to students in the school districts within the geographic region served by the board of cooperative services.

(m) This subsection (5) is repealed, effective July 1, 2025.

**24-51-1102. Reduction of a service retirement benefit—disclosure of service agreements by employers—definitions**

- (1) Except as otherwise provided in part 17 of this article, employment of a retiree by an employer, whether or not in a position subject to membership, that exceeds the daily or hourly calendar year limits stated in section 24-51-1101(1) shall result in a reduction of the benefit of such retiree by five percent per day for any part of a day that exceeds said limits. Any reduction of benefits pursuant to the provisions of this subsection (1) that exceeds one hundred percent of the benefit shall be carried forward to reduce future months' benefits.
- (2) Employment of a retiree by an employer, whether or not in a position subject to membership, that occurs during the month of the effective date of retirement shall result in a reduction of the benefit of such retiree by five percent per day for any part of a day that the retiree works during such month. Any reduction of benefits pursuant to the provisions of this subsection (2) that exceeds one hundred percent of the benefit shall be carried forward to reduce future months' benefits.
- (3) Each employer shall provide a copy to the association of any tax-related information on its employees or other individuals or firms whereby the employer receives services in any form, pursuant to rules promulgated by the association. In addition, each employer shall provide a copy to the association of any agreement, contract, letter of understanding, or other arrangement whereby the employer will receive services in any form, upon request by the association.
- (4) For purposes of subsections (1) and (2) of this section, "employment" shall be determined by the association consistent with the internal revenue service's guidance in revenue ruling 87-41, 1987 - 1 C.B. 296, as revised from time to time.

**24-51-1103. Contributions for a retiree who returns to membership—benefit calculation upon subsequent retirement—survivor benefit rights—disability retirement benefits**

- (1) Except as otherwise provided in section 24-51-1747, a retiree who returns to work in a position that is subject to membership may voluntarily suspend the service retirement benefits or the reduced service retirement benefits and resume membership. Upon such suspension, employer and member contributions are required to be made pursuant to the provisions of part 4 of this article.
- (1.5) A retiree who, on or after January 1, 2011, suspends his or her service retirement or reduced service retirement benefits shall not add any service credit to the benefit segment from which the retiree suspends his or her retirement. Subject to the election set forth below, any additional service credit accumulated will be reflected in separate benefit segments upon subsequent termination of membership, but only after one year of service credit has been earned during a period of suspension. The service retirement or reduced service retirement benefits for each qualifying separate benefit segment will be calculated pursuant to the benefit structure under which the retiree originally retired. The benefit for each separate benefit segment resulting from suspension shall be determined using the member's salary and service credit acquired during the period of suspension. The member's age and total service credit with the association upon retirement after each suspension shall govern whether the member shall receive a service retirement calculation or a reduced service retirement calculation pursuant to section 24-51-605 for that segment. Previous separate benefit segments shall be subject to recalculation only to reflect a change in the selected option or a designated cobeneficiary, if applicable, and no benefit increases pursuant to section 24-51-1001 will be applicable to any separate benefit segment during any period of suspension. Upon reinstatement of the retirement benefit allowance payments, no increase shall be made until such resumed payments have been paid continuously for the twelve months prior to July 1. Upon resumption of retirement after suspension, the association shall refund all moneys credited to the member contribution account during the period of suspension pursuant to section 24-51-405 unless, within a time period set by the association, the retiree makes written election to establish a separate benefit segment calculated as set forth above. The refund shall be an

amount equal to all moneys credited to the member contribution account during the period of suspension and payment of matching employer contributions pursuant to section 24-51-408. The requirement to have at least five years of service credit to be eligible for the matching employer contributions provided in section 24-51-408 shall not apply in the event of returning to retirement after suspension. No refund may be issued for any benefit segment from which a benefit has been drawn. Such refund shall be required for any separate benefit segment during which less than one year of service credit has been earned.

- (2) Survivor benefit rights provided for in part 9 of this article shall be available to a retiree who voluntarily suspends the benefits and returns to membership as if such retiree had not retired.
- (3) (Deleted by amendment, effective January 1, 2011.)

**24-51-1103.5. Contributions for a retiree employed by a school district during critical shortage—no benefit calculation upon subsequent termination—repeal (Repealed)**

**24-51-1104. Employment after disability retirement**

A disability retiree from any division whose disability application was received by the association prior to January 1, 1999, may be employed by an employer, whether or not in a position subject to membership, without any reduction in benefits pursuant to the terms and conditions specified in sections 24-51-1101 to 24-51-1103 and in section 24-51-707. However, if the disabling condition returns, the disability benefit may begin again upon the application of such member and approval of such application by the board.

**24-51-1105. Retirees from the judicial division**

- (1)
  - (a) Retirees from the judicial division may return to temporary judicial duties pursuant to the provisions of section 5 (3) of article VI of the Colorado state constitution and section 13-4-104.5, C.R.S., while receiving service retirement benefits.
  - (b) Notwithstanding the provisions of section 24-51-1101, upon written agreement with the chief justice of the Colorado supreme court, a member of the judicial division may perform, during retirement, assigned judicial duties without pay for ten, twenty, thirty, sixty, or ninety days each year and must receive a benefit increase equal to three and three-tenths

percent, six and seven-tenths percent, ten percent, twenty percent, or thirty percent, respectively, of the current monthly salary of judges serving in the same position as that held by the retiree at the time of retirement. Such agreement shall be for a period of not more than three years. A retiree may enter into subsequent agreements. The aggregate of these agreements shall not exceed twelve years, except at the discretion of the Colorado supreme court.

- (2) Repealed.
- (2.5) A retiree from the judicial division, who has entered into an agreement pursuant to subsection (1) of this section, may take a leave of absence from temporary judicial duties to be performed under such agreement, with a cessation of the increase specified in subsection (1) of this section. Within thirty days prior to each anniversary date of retirement, and upon written request to and approval by the chief justice, a retiree, who has taken a leave of absence, may reenter into such agreement to perform assigned temporary judicial duties. Upon reentering into such agreement, the retirement benefit shall include the benefit increase specified in subsection (1) of this section.
- (3) If a written agreement is entered into pursuant to the provisions of this section, and notice is received from the chief justice of the refusal of the retiree to accept a temporary assignment without just cause, the retirement benefit shall be recalculated to reduce the benefit to the amount payable without the increase specified in subsection (1) of this section. The reduction shall be effective on the first day of the month following such refusal.
- (4) Increases in the retirement benefit pursuant to the provisions of this section shall be reimbursed to the judicial division trust fund by an annual appropriation by the general assembly to the judicial department for payment into the judicial division trust fund.
- (5) Nothing in this section shall be construed to require a retiree from the judicial division to enter into an agreement to perform temporary judicial duties.
- (6) Retirees from the judicial division include justices and judges who have retired from the supreme court, the court of appeals, district courts, county courts, probate courts, and juvenile courts.



- (7) Retirees from the judicial division who received a “does not meet performance standard” or “do not retain” recommendation in their last judicial performance evaluation before their retirement, either public or unpublished, are not eligible to enter into an agreement under subsection (1)(b) of this section to return to temporary judicial duties during retirement.
- (8) Retirees from the judicial division who receive a disciplinary disposition from the commission on judicial discipline of private admonishment, private reprimand, private censure, public reprimand, public censure, suspension, or removal are not eligible to enter into an agreement under subsection (1)(b) of this section to return to temporary judicial duties during retirement.
- (9) Retirees from the judicial division who, during or after their term in office, receive private or public discipline from the office of the presiding disciplinary judge are not eligible to enter into an agreement under subsection (1)(b) of this section to return to temporary judicial duties during retirement.

## **PART 12: HEALTH CARE PROGRAM**

### **24-51-1201. Health care trust fund**

- (1) There is hereby created a health care trust fund to provide, for the state, school, local government, and judicial divisions, a premium subsidy for health care to benefit recipients choosing to enroll in the health care program and for a proportionate portion of the expenses of the program.
- (2) There is hereby created a health care trust fund to provide, for the Denver public schools division, a premium subsidy for health care to benefit recipients choosing to enroll in the health care program and for a proportionate portion of the expenses of the program. The board of education of the Denver public schools shall by trustee-to-trustee transfer place within the health care trust fund for the Denver public schools division the balance of the Denver public schools retiree health benefit trust held by the board of education on January 1, 2010.

### **24-51-1202. Health care program—design**

- (1)
  - (a) The board shall design a group health care program for retirees, members, DPS members, DPS retirees, and their dependents, with or without full medicare coverage provided by the federal “Health Insurance for the Aged Act”, 42 U.S.C. sec. 1395, as amended. This program shall provide health care benefits and a level of reimbursement for health care expenses which are consistent with prevailing community practices and other governmental health care systems, protection from catastrophic financial loss, and current and long-term fiscal soundness of the trust fund as determined by the board.
  - (b) Any group health care plan offered by the board that provides pharmacy benefits through the services of a pharmacy benefits manager shall require such manager to allow participation by any nonmail order retail pharmacy provider licensed in the state of Colorado if such pharmacy provider agrees to accept the fee schedule, terms, and conditions of participation established by the plan’s pharmacy benefits manager.
- (1.5) Any employer, as defined by section 24-51-101(20), may elect to provide health care coverage through the health care program for its employees who are members. Participation in the health care program by an employer shall be voluntary and in the employer’s sole discretion and shall not be mandatory for the employer.

- (2) The board shall establish procedures for enrollment and determine the methods of claims administration for the health care program.
- (3)
  - (a) The board shall ensure that the premium amount for the health care program is paid by those individuals enrolled in said program.
  - (b) The premium amount for a benefit recipient shall be deducted from monthly benefits. If the premium amount exceeds the monthly benefits, the excess amount shall be collected from the benefit recipient directly. The premium amount for a member shall be collected directly from the member's employer.
  - (c) Surviving spouses and divorced spouses enrolled in the health care program pursuant to the provisions of section 24-51-1204(1)(b) and (1)(c) shall directly pay the premium amount.
  - (d) If an individual who is directly paying for enrollment in the health care program fails to pay the premium amount within a reasonable period of time, as determined by the board, the association shall notify the individual that enrollment may be cancelled within thirty days if payment is not received.
- (4) The board may change the design and costs of the health care program at any time. Individuals enrolled in the health care program shall be notified thirty days prior to any change.
- (5) DPS retirees may enroll in the association's health care program subject to the provisions of this part 12.

**24-51-1203. Authority to contract and to self-insure**

The board shall have the authority to contract, self-insure, and make disbursements necessary to carry out the purposes of the health care program. Said authority shall include, but is not limited to, contracting with insurance carriers, health maintenance organizations, preferred provider organizations, and any other company or association as deemed necessary and proper by the board.

**24-51-1204. Health care program—eligibility**

- (1) The following persons are eligible to enroll in the health care program:
  - (a) All benefit recipients, including those from the Denver public schools division, and their dependents, including any dependent as defined in section 10-16-102(17), C.R.S.; any unmarried children who are not natural or adopted children of the benefit recipient but who reside full time with the benefit recipient, are dependents of the benefit recipient for federal income

tax purposes, and meet the age requirements of section 10-16-102(17), C.R.S.; and any qualified children as defined in the rules adopted by the board;

- (b) A surviving spouse of a retiree who elected option 1 or a DPS retiree who elected a single life annuity pursuant to part 17 of this article, if such spouse was covered by the health care program at the time of the death of the retiree;
  - (c) A divorced spouse of a retiree or of a DPS retiree if such spouse was enrolled in the health care program at the time of the divorce from the retiree;
  - (d) The guardian of a child receiving survivor benefits while the child is enrolled in the health care program;
  - (e) A member or a DPS member while receiving short-term disability program payments pursuant to part 7 of this article; and
  - (f) A member or a DPS member whose employer has elected to provide coverage through the health care program and such member's dependents.
- (2) If a supplemental needs trust is receiving benefit payments pursuant to this article, the supplemental needs trust is not eligible to enroll in the health care program; however, the beneficiary of such trust is eligible to enroll in the health care program in the same manner that the beneficiary would be allowed to enroll if the beneficiary was the direct benefit recipient.

**24-51-1205. Enrollment**

- (1) Except as otherwise provided in this section, enrollment of eligible persons in the health care program may only take place within thirty days following either the effective date of retirement or the date of application for retirement, whichever is later, or at such enrollment times and pursuant to such conditions as are established by the board.
- (2) Any benefit recipient, including those from the Denver public schools division, a member, or a DPS member enrolled in the health care program who has a change in dependents may, within thirty days after such change, add the dependents to be enrolled in the health care program.
- (3) Repealed.

## **24-51-1206. Premium subsidy**

- (1) The provisions of this section shall apply to the health care trust fund for the school, state, local government, and judicial divisions. After July 1, 1987, the general assembly shall consider the recommendation of the board and shall approve the premium subsidy that shall be paid monthly from the health care fund for benefit recipients enrolled in the health care program. The premium subsidy shall be set without regard to the division from which the retiree retired. No premium subsidy shall be paid for persons enrolled in the health care program who are not benefit recipients.
- (2) Except as otherwise provided in this section, and unless otherwise determined by the board through rule-making pursuant to section 24-51-204(5), on and after July 1, 2000, the premium subsidy shall be:
  - (a) Two hundred thirty dollars per month for benefit recipients who are under sixty-five years of age and who are not entitled to medicare hospital insurance benefits provided by the federal "Health Insurance for the Aged Act", 42 U.S.C. sec. 1395, as amended.
  - (b) One hundred fifteen dollars per month for benefit recipients who are sixty-five years of age or older or who are under sixty-five years of age and entitled to medicare hospital insurance benefits provided by the federal "Health Insurance for the Aged Act", 42 U.S.C. sec. 1395, as amended.
- (3) For benefit recipients whose benefits are based upon less than twenty years of service credit, the premium subsidy shall be reduced by five percent for each year of service credit less than twenty years. The service credit used in said calculation of the amount of the premium subsidy for disability retirees or their cobeneficiaries shall be the same service credit used in the calculation of the disability retirement benefit pursuant to the provisions of section 24-51-704. Any portion of a year equal to or exceeding six months shall be considered a full year for purposes of the calculations specified in this subsection (3).
- (4) The premium subsidy for a benefit recipient who is sixty-five years of age or older and who is not entitled to medicare hospital insurance benefits provided by the federal "Health Insurance for the Aged Act", 42 U.S.C. sec. 1395, as amended, shall be an amount which shall ensure that the premium paid by such benefit recipient is the same amount as the premium paid by a benefit recipient who is

sixty-five years of age or older with the same number of years of service credit, who is entitled to medicare hospital insurance benefits, and who has selected the same plan and type of coverage under the health care program.

- (5) If the amount of the premium for the health care of a benefit recipient is less than the amount of the premium subsidy as determined pursuant to the provisions of this section, the board shall pay the amount of the health care premium.
- (6) Any member or DPS member who does not have a member contribution account on December 31, 2009, must earn ten years of service credit with an affiliated employer other than an employer within the Denver public schools division in order to qualify, or for any benefit recipient whose benefits are based upon such members to qualify, for the premium subsidy specified in subsection (4) of this section. The service credit used in said calculation of the amount of the premium subsidy specified in subsection (4) of this section for disability retirees or their cobeneficiaries shall be the same service credit used in said calculation of the disability retirement benefit pursuant to the provisions of section 24-51-704.
- (7) If a supplemental needs trust is receiving benefit payments pursuant to this article, the supplemental needs trust is not eligible for a premium subsidy; however, the beneficiary of such trust is eligible for a premium subsidy in the same manner that the beneficiary would receive a premium subsidy if the beneficiary was the direct benefit recipient. If the eligibility of the premium subsidy causes the beneficiary of the supplemental needs trust to be disqualified from receiving public benefits, the beneficiary is not eligible for such premium subsidy so long as such condition exists.

**24-51-1206.5. Health care trust fund subsidy funding**

- (1) The amount of the premium subsidy funded by each health care trust fund established in section 24-51-1201 shall be based on the percentage of the member contribution account balance from each division as it relates to the total member contribution account balance from which the benefit is paid.
- (2) A person who receives multiple benefits shall only receive one premium subsidy.

## **24-51-1206.7. Denver public schools division premium subsidy**

- (1) The provisions of this section apply to the DPS health care trust fund. After January 1, 2010, the general assembly shall consider the recommendation of the board and shall approve by resolution the premium subsidy to be paid monthly from the Denver public schools health care trust fund for subsidy recipients of the Denver public schools division enrolled in the health care program. No premium subsidy shall be paid for persons enrolled in the health care program who are not benefit recipients. It is the intent of this section not to cause an increase or decrease in health care subsidies by DPS.
- (2) Except as otherwise provided in this section, and unless otherwise determined by the board through rule-making pursuant to section 24-51-204(5), on and after January 1, 2010, the premium subsidy for benefit recipients of the Denver public schools division shall be:
  - (a) Two hundred thirty dollars per month for subsidy recipients who are not entitled to medicare hospital insurance benefits provided by the federal "Health Insurance for the Aged Act", 42 U.S.C. sec. 1395, as amended; and
  - (b) One hundred fifteen dollars per month for subsidy recipients who are entitled to medicare hospital insurance benefits provided by the federal "Health Insurance for the Aged Act", 42 U.S.C. sec. 1395, as amended.
- (3) For subsidy recipients whose benefits are based upon less than twenty years of service credit, the premium subsidy shall be reduced by five percent for each year of service credit less than twenty years. The service credit used in said calculation of the amount of the premium subsidy for disability retirees shall be the same service credit used in the calculation of the disability retirement benefit pursuant to the provisions of section 24-51-704. Any portion of a year equal to or exceeding six months shall be considered a full year for purposes of the calculations specified in this subsection (3).
- (4) If the amount of the premium for the health care of a subsidy recipient is less than the amount of the premium subsidy as determined pursuant to the provisions of this section, the board shall pay the amount of the health care premium.
- (5)
  - (a) Service credit accrued by DPS members and members of the Denver public schools division on and after January 1, 2010, shall apply toward the calculation of the premium subsidy as provided in subsection (3) of this section. Service credit accrued under the DPS plan by DPS members

prior to January 1, 2010, shall apply toward the calculation of the premium subsidy as provided in subsection (3) of this section only if the service credit was accrued while employed by a Denver public schools and if at least one of the following applies:

- (I) The DPS member was participating in the Denver public schools retiree health benefit trust as of December 31, 2009; or
  - (II) The DPS member was a deferred DPS member as of December 31, 2009.
- (b) Subject to the provisions of paragraph (a) of this subsection (5), service credit shall be granted for an approved leave of absence any time during a member's employment with Denver public schools prior to December 31, 2009, to serve at a charter school, as defined in section 24-51-1702(10), for no longer than a three-year period, if written certification of eligibility under this paragraph (b) is provided to the association by Denver public schools. Service credit provided for in this paragraph (b) shall apply only to the calculation of a subsidy payable from the DPS division health care trust fund.

**24-51-1207. Cancellation of enrollment**

- (1) Upon thirty days' written notice to the association, any person enrolled in the health care program may cancel enrollment for himself, and any retiree may cancel enrollment in the health care program for his dependents.
- (2) Enrollment may be cancelled by the association upon thirty days' written notice to any person enrolled in the health care program whose premium amount has not been received by the first day of the month for which coverage was being purchased.

**24-51-1208. Long-term care insurance**

The board is authorized to identify and designate one or more insurance providers to offer long-term care insurance to members, DPS members, retirees, DPS retirees, or all. Long-term care insurance offered pursuant to this section shall be funded solely through premium payments by members or retirees electing to contract for such insurance.



## **PART 13: LIFE INSURANCE**

### **24-51-1301. Plan sponsored group life insurance**

The board may offer group life insurance coverage through any life insurance company qualified to do business in Colorado or may self-fund such coverage. Life insurance coverage shall be available to members and DPS members who voluntarily subscribe. Notwithstanding the provisions of section 10-7-201, C.R.S., the board shall determine the terms and conditions of coverage and may negotiate or discontinue said coverage at any time the board determines such action to be in the best interest of the members. Members or DPS members who have elected group life insurance coverage shall be notified sixty days prior to any change in coverage or discontinuance.

### **24-51-1302. Premiums for group life insurance**

- (1) Premiums for life insurance must be received by the association in order for an individual to be covered.
- (2) Continuation of life insurance coverage after retirement is available to any retiree from any division who, prior to retirement, authorizes life insurance premiums to be deducted from monthly benefit payments.
- (2.5) Life insurance coverage after termination of membership may continue for any inactive member who continues to pay life insurance premiums and does not receive a refund pursuant to the provisions of section 24-51-405 or part 17 of this article.
- (3) Life insurance provided pursuant to the provisions of this part 13 may be assigned by members, inactive members, or retirees, including those of the Denver public schools division.
- (4) The association shall pay no premium subsidy for life insurance.

### **24-51-1303. Life insurance beneficiary**

Unless a member, DPS member, inactive member, deferred DPS member, retiree, DPS retiree, or a court decree names a different beneficiary for life insurance purposes, the named beneficiary shall be the beneficiary of such life insurance.

**24-51-1304. Life insurance for certain retired state employees**

- (1) Any retiree who had life insurance coverage pursuant to the provisions of part 2 of article 8 of title 10, C.R.S., on June 30, 1986, shall continue to have such coverage unless the retiree refuses it. Any retiree who refuses such coverage may not resume coverage later.
- (2) The board may offer group life insurance coverage through any life insurance company qualified to do business in Colorado or may self-fund such coverage for eligible retirees under this section. The monthly premium shall be deducted from the benefits of each participating retiree and the association shall not pay any premium subsidy.

## **PART 14: VOLUNTARY INVESTMENT PROGRAM**

### **24-51-1401. Voluntary investment program established and fund created**

- (1) The board is hereby authorized to establish and administer a voluntary investment program and to create a separate trust fund to hold the assets of said investment program.
- (2) The voluntary investment program shall be available to all members, DPS members, retirees, and DPS retirees, and shall be in addition to any other retirement or tax-deferred compensation system established by the state or its political subdivisions.
- (3) The board is hereby authorized to offer participation in the voluntary investment program to all employees of employers that are affiliated with the association, regardless of whether those employees are members or retirees.
- (4) For purposes of this part 14, members and retirees shall include DPS members and DPS retirees.

### **24-51-1402. Contributions to the voluntary investment program**

- (1) An eligible employee pursuant to section 24-51-1401 may participate in the voluntary investment program authorized in section 24-51-1401 by authorizing his or her employer, as defined in section 24-51-101(20), to contribute an amount by payroll deduction in lieu of receiving such amount as salary or pay. The amount of such contribution by a participant shall be subject to any limitations established by federal law. These voluntary contributions, in addition to investment earnings, shall be exempt from federal and state income taxes until the ultimate distribution of such contributions has been made to the participant, member, former member, or beneficiary.
- (2) The board may, at its discretion, allow participants in the voluntary investment program to elect to make after-tax voluntary contributions to the voluntary investment program by payroll deduction. Investment earnings on such contributions are exempt from federal and state income taxes until the ultimate distribution of such contributions has been made to the participant, member, former member, or beneficiary.
- (3) All voluntary contributions by a participating member shall be included in the salary of such member for the purpose of calculating member and employer contributions pursuant to the provisions of section 24-51-401.

The member contribution provisions of section 24-51-401 and the matching employer contribution provisions of section 24-51-408.5 shall not apply to any voluntary contribution made by a retiree.

- (4) The employer shall deliver all voluntary contributions to the service provider designated by the association within five days after the date that the participants are paid and consistent with the provisions of section 24-51-401(1.7)(c) and (1.7)(d).
- (5)
  - (a) Effective July 1, 2009, all assets of the state defined contribution match plan established pursuant to section 24-52-104, as said section existed prior to its repeal in 2009, shall be transferred via trustee-to-trustee transfer to the association's voluntary investment program trust fund created in section 24-51-208(1)(g), and such defined contribution match plan shall be merged into the association's voluntary investment program. An individual's account in the state defined contribution match plan shall become part of the individual's existing 401(k) plan account if one exists. If the individual does not have an existing 401(k) plan account, a separate account shall be created for the individual within the trust fund and administered in accordance with the terms of the voluntary investment program. The administration of such asset transfer shall be determined by the board.
  - (b) For purposes of this subsection (5), "existing 401(k) plan account" means a voluntary investment account authorized under 26 U.S.C. sec. 401(k), as amended.

#### **24-51-1403. Expenses of the voluntary investment program**

The expenses of administering the voluntary investment program authorized in section 24-51-1401 shall be paid from the investment earnings of such voluntary investment program.

#### **24-51-1404. Investments of the voluntary investment program**

Participants in the voluntary investment program shall designate that their voluntary contributions be invested in one or more types of investments made available by the board. These investments may include, but are not limited to, equity investments, fixed-income investments, life insurance company products, and any investments permitted pursuant to the provisions of section 24-51-206.

## **PART 15:      DEFINED CONTRIBUTION RETIREMENT PLANS**

### **24-51-1500.2.    Legislative declaration**

The general assembly finds and declares that the purpose of the defined contribution plan established in this part 15 is to provide eligible employees who participate in the defined contribution plan with a path toward having a secure retirement through a focus on lifetime retirement income to maintain an eligible employee's standard of living following a full career of employment. The provisions of this part 15 are designed to avoid a negative impact on the defined benefit trusts in this article 51. Employers are responsible for ensuring that their employees understand the advantages and disadvantages of the defined benefit and defined contribution plans.

### **24-51-1501.      Defined contribution plan—establishment—creation of fund—definitions**

- (1)      The board is hereby authorized to establish and administer a defined contribution plan for eligible employees as provided in this part 15. The board shall establish the terms and conditions of the association's defined contribution plan offered to eligible employees. The assets of the plan shall be held in a separate trust fund of the association created for such purpose.
- (2)      (a)    Effective July 1, 2009:
  - (I)      The state defined contribution plan established pursuant to part 2 of article 52 of this title, as said part 2 existed prior to its repeal in 2009, shall be merged into the association's defined contribution plan for eligible state employees established under this part 15, and all the assets of the state defined contribution plan and the trust fund shall be transferred via trustee-to-trustee transfer to the defined contribution plan trust fund established pursuant to section 24-51-208 (1)(i);
  - (II)     Participants of the state defined contribution plan shall, subject to sections 24-51-1505 (4), 24-51-1506 (1), and 24-51-1506.5, become members of the association's defined contribution plan; and
  - (III)    The individual participant accounts in the state defined contribution plan shall become individual participant accounts within the association's defined contribution plan.

- (b) The administration of the asset transfer pursuant to paragraph (a) of this subsection (2) shall be determined by the board.
- (3) The department of personnel created in section 24-1-128 shall provide for the orderly transfer of all records pertaining to the state defined contribution plan and shall take any other action as necessary for the board to assume its duties under this part 15.
- (4) For purposes of this part 15, “employer” means the state, the general assembly, the office of a district attorney in a judicial district, any state department that employs an eligible employee, any community college governed by the state board for community colleges and occupational education. Effective January 1, 2019, “employer” also includes any employer in the local government division and, to the extent that they employ classified employees in the state personnel system, any state college or university as defined in section 24-54.5-102 (7), any institution under the control of the board of regents of the university of Colorado, or an institution governed pursuant to part 5 of article 21 of title 23. Prior to January 1, 2019, “employer” shall not include any state college or university as defined in section 24-54.5-102 (7), any institution under the control of the board of regents of the university of Colorado, or an institution governed pursuant to part 5 of article 21 of title 23.

**24-51-1502. New eligible employees—election—definitions**

- (1) Any eligible employee pursuant to paragraph (a) of subsection (2) of this section shall elect, within sixty days of commencing employment, either to become a member of the association’s defined benefit plan or the association’s defined contribution plan. If an employee does not make such election within the sixty-day period, the employee shall become a member of the association’s defined benefit plan. The employer is solely responsible for ensuring that an eligible employee pursuant to this section is given the opportunity to elect to become either a member of the defined benefit plan or the defined contribution plan.
- (2) (a) For purposes of this part 15, “eligible employee” means, effective July 1, 2009, and effective January 1, 2019, for local government division employees and state division employees who are employed only in a classified position in the state personnel system by a state college or university, any employee who commences employment with an employer and who, if not commencing employment in a state elected official’s position, has not been a member of the association’s defined benefit plan

or the association's defined contribution plan or an active participant of the state defined contribution plan established pursuant to part 2 of article 52 of this title 24, as said part existed prior to its repeal in 2009, during the twelve months prior to the date that he or she commenced employment. "Eligible employee" includes a retiree of the association who is serving in a state elected official's position but does not include any other retiree of the association or a retiree of the association who has suspended benefits.

- (b) An employee who is covered by a defined contribution plan pursuant to article 54.6 of this title or who is an employee of any state college or university as defined in section 24-54.5-102 (7), any institution under the control of the board of regents of the university of Colorado, or an institution governed pursuant to part 5 of article 21 of title 23, C.R.S., shall not be eligible to make the election pursuant to subsection (1) of this section.

- (3) Repealed.

**24-51-1502.5. New community college employees—election (Repealed)**

**24-51-1503. Defined contribution plan option**

- (1) An eligible employee shall be covered by the association's defined benefit plan with contributions and benefits as specified in parts 4 to 12 of this article, unless the member elects to participate in the association's defined contribution plan in accordance with this part 15 in lieu of the defined benefit plan within sixty days of commencing employment.
- (2) An employee hired by an employer who has been a member of the association's defined benefit plan or the association's defined contribution plan during the twelve months prior to the date that the employee commences employment shall automatically continue to be a member of such plan upon commencing employment. If automatically continuing in the defined contribution plan, the employee's individual participation account shall receive the same employer contribution pursuant to section 24-51-1505 (1), as previously entitled. The employee shall be considered an eligible employee for purposes of section 24-51-1506.
- (3) An employee of an employer who is hired on or after July 1, 2009, and who has been an active participant of the state defined contribution plan established pursuant to part 2 of article 52 of this title, as said part existed prior to its repeal in 2009, during the twelve months prior to the date that the employee

commences employment, shall be a member of the association's defined contribution plan upon commencing employment, and the employee shall not be considered an eligible employee for purposes of section 24-51-1506 (1) and (2).

- (4)
  - (a) An eligible employee who is a member, inactive member, or retiree of the association's defined benefit plan on December 31, 2006, and elects to participate in or is automatically enrolled in the association's defined benefit plan, or who makes an election pursuant to section 24-51-1506 (1) to become a member of the association's defined benefit plan, shall be subject to the benefit provisions in effect for the existing member contribution account.
  - (b) An eligible employee who elects to participate in the association's defined contribution plan and is not a member, inactive member, or retiree of the association's defined benefit plan on December 31, 2005, and subsequently becomes a member of the association's defined benefit plan shall be subject to the benefit provisions in effect at the time the employee becomes a member of the defined benefit plan. Any service credit purchased for the period of employment covered by the defined contribution plan shall be subject to the benefit provisions in effect for such member at the time of the commencement of the purchase.
- (5) Notwithstanding any other provision of this part 15, participation in the association's defined contribution plan by a district attorney, an assistant district attorney, a chief deputy district attorney, a deputy district attorney, or other employee of a district attorney shall be governed by the provisions of sections 24-51-305 and 24-51-305.5.

#### **24-51-1504. Investments**

- (1) The plan shall allow a member of the defined contribution plan to exercise control of the investment of the member's account under the plan, subject to the following provisions:
  - (a) The board shall select at least five investment alternatives that allow a member a meaningful choice between risk and return in the investment of the member's account.
  - (b) The plan shall allow the member to change investments regularly.



- (c) The plan shall provide the member with the information describing the investment alternatives, including information on the nature, investment performance, fees, and expenses of the investment alternatives.
- (2) The association and employers shall not have the responsibility to pay for any financial losses experienced by members of the defined contribution plan.

**24-51-1505. Contributions—vesting—definition**

- (1) Contribution rates by the employer and by members of the defined contribution plan established pursuant to this part 15 shall be the same as the rates that would be payable by the employer and the member pursuant to section 24-51-401. The individual's participant account shall receive the full member contribution amount in effect under section 24-51-401. The individual's participant account shall receive a portion of the employer contribution equal to the amount in table A in section 24-51-401 (1.7)(a). Any portion of the employer contribution above the amount in table A in 24-51-401 (1.7)(a) shall be paid to the employer's division trust fund.
- (2) Consistent with section 24-51-401 (1.7)(b), (1.7)(c), and (1.7)(d), the employer shall deliver all contributions within five days after the date members are paid.
- (3) Except as otherwise provided in subsection (4) of this section, members of the association's defined contribution plan shall be immediately and fully vested in their own contributions to the plan, together with accumulated investment gains or losses. Members shall be immediately vested in fifty percent of the employer's contribution to the defined contribution plan, together with accumulated investment gains or losses on that vested portion. For each full year of membership in the defined contribution plan, the vesting percentage shall increase by ten percent. The vesting percentage in the employer's contribution, with accumulated earnings or losses, shall be one hundred percent for all members with five or more years of membership in the defined contribution plan. If an individual becomes a member of the defined contribution plan without an existing account balance or after a twelve-month break in service, the individual shall begin a new vesting schedule with regard to future employer contributions in accordance with this subsection (3).
- (4) A member of the association's defined contribution plan with an accrued balance in the plan who became a member of the plan pursuant to section 24-51-1501 (2) or 24-51-1503 (3), shall be fully vested in one hundred percent of the state's past and future contributions to the plan, together with accumulated investment

gains or losses on that vested portion. If an individual becomes a member of the association's defined contribution plan without an existing account balance or after a twelve-month break in service, the individual shall begin a new vesting schedule with regard to vesting of future employer contributions in accordance with subsection (3) of this section.

**24-51-1506. Additional choices within first five years**

- (1) An eligible employee who is a member of the association's defined contribution plan, except for individuals who became members of the association's defined contribution plan pursuant to section 24-51-1501(2) or 24-51-1503(3), may elect, at any time during the second to fifth year of membership in the plan, to terminate membership in the plan and to become a member of the association's defined benefit plan with benefits and contribution rates specified in parts 4 to 12 of this article. Such election shall be irrevocable.
- (2) A member who elects to join the defined benefit plan pursuant to subsection (1) of this section may, upon meeting the requirements of section 24-51-505, purchase service credit for the period of employment covered by the defined contribution plan. The cost to purchase such service shall be the same as the cost determined by the board for the purchase of noncovered employment. The member may elect to have any portion of the member's account paid from the defined contribution plan to the defined benefit plan to facilitate the purchase of service credit through a direct rollover in accordance with section 401(a)(31) of the federal "Internal Revenue Code of 1986", as amended. The member may not be vested in the defined contribution plan upon purchasing service credit for employment that was covered by the defined contribution plan.
- (3) The board, in its sole discretion, may provide optional coverage for disability, survivor, and retiree health care benefits to members of the association's defined contribution plan.
- (4) An eligible employee who is a member of the association's defined benefit plan may elect, at any time during the second to fifth year of membership in the plan, to terminate membership in the plan and to become a member of the association's defined contribution plan created pursuant to this part 15. Such election shall be irrevocable.

**24-51-1506.5. Additional choices for employees who were eligible employees before January 1, 2006**

- (1) Effective July 1, 2009, any employee who became eligible to participate in the state defined contribution plan before January 1, 2006, who was a member or inactive member of the association may, as long as the employee is employed in a position with an employer for which the association's defined contribution plan is available, make a written election during the annual open enrollment period for the state employees group benefit plan of any year to participate in the association's defined contribution plan. The written election shall be effective the first day of the annual state employees group benefit plan year established pursuant to section 24-50-604(1)(m). In the absence of such written election, the employee shall be a member of the association's defined benefit plan.
- (2) Any employee who was eligible to participate in the state defined contribution plan before January 1, 2006, and who elects to participate in the association's defined contribution plan pursuant to subsection (1) of this section shall specify one of the following options:
  - (a) To terminate future defined benefit contributions beginning on the date of election while maintaining rights as provided by the laws applicable to the association relative to any contributions or benefits accrued prior to such election; or
  - (b) To terminate membership in the association's defined benefit plan and require payment by the association of all member contributions, accrued interest on such contributions, and matching employer contributions, as provided by the laws applicable to the association, to the association's defined contribution plan. Such election shall constitute a waiver of all rights and benefits provided by the association. Within ninety days after receipt of notice of an election to terminate membership pursuant to this paragraph (b), the association shall pay to the association's defined contribution plan an amount equal to the employee's member contributions plus accrued interest calculated pursuant to section 24-51-407 and matching employer contributions paid pursuant to section 24-51-408.
- (3)
  - (a) Effective July 1, 2009, any employee who became eligible to participate in the state defined contribution plan before January 1, 2006, and who participated in the state defined contribution plan before July 1, 2009, and became a member of the association's defined contribution plan

pursuant to section 24-51-1501(2) or 24-51-1503(3) may terminate future contributions to the association's defined contribution plan and instead participate in the association's defined benefit plan by making a written election during the annual open enrollment period for the state employee group benefit plan of any year. The written election shall be effective on the first day of the annual state employee group benefit plan year, established pursuant to section 24-50-604(1)(m). Any such election to participate in the association's defined benefit plan shall be in writing and shall be filed with the association and with such eligible employee's employer. In the absence of such written election, the employee shall be a member of the association's defined contribution plan.

- (b) Any employee who terminates participation in the defined contribution plan pursuant to paragraph (a) of this subsection (3) and becomes a member of the association's defined benefit plan may, upon meeting the requirements of section 24-51-505, purchase service credit for the period of employment during which the employee was a participant in the defined contribution plan. The cost to purchase service credit shall be determined in accordance with section 24-51-505(3). The employee may elect to have any portion of the employee's account paid from the defined contribution plan to the association to facilitate the purchase of service credit through a direct rollover in accordance with section 401(a)(31) of the federal "Internal Revenue Code of 1986", as amended. The employee may not be vested in the association's defined contribution plan upon purchasing service credit for employment that was covered by the defined contribution plan.

**24-51-1507. Transfer or rollover into plan**

The defined contribution plan may accept a direct rollover or a member rollover into the member's defined contribution plan account, to the extent permitted by federal law and authorized by the defined contribution plan.

**24-51-1508. Distribution options**

The defined contribution plan shall include options for the distribution of the defined contribution account, including payment in a lump sum and payment as a lifetime annuity. The state and other employers shall not have liability for any of the payments.

**24-51-1509. Rights of defined contribution plan members**

- (1) A defined contribution plan member shall not be considered a member or a retiree for the purpose of parts 4 to 12 of this article, nor shall his or her survivors or beneficiaries be considered benefit recipients.
- (2) A defined contribution plan member may participate in optional life insurance, long-term care insurance, the voluntary investment program, and the deferred compensation plan as provided in this article.
- (3) A member of the defined contribution plan shall be eligible to enroll in the health care program as a benefit recipient pursuant to section 24-51-1204(1)(a) only if the member elects the lifetime annuity distribution option. Any premium subsidy paid shall be based on the years of service credit in the defined benefit plan.
- (4) A member of the defined contribution plan who has reached the age at which a distribution would not be subject to a penalty pursuant to the federal "Internal Revenue Code of 1986", as amended, and who returns to employment shall be subject to the provisions of part 11 of this article concerning employment after retirement.
- (5) (Deleted by amendment, effective March 31, 2009.)

**24-51-1510. Report to members**

On a quarterly basis, the board shall report to members who participate in the defined contribution plan. The report shall include a statement of account balances, a review of account transactions, and the amount of administrative fees charged to the members during the quarter.

**24-51-1511. Limitation on actions by eligible employees**

Administrative actions or civil actions brought by employees to dispute the election for participation or failure to elect participation in the association's defined benefit plan, the association's defined contribution plan, or the defined contribution plan established pursuant to part 2 of article 52 of this title, as said article existed prior to its repeal in 2009, shall commence within one hundred eighty days after the election or within one hundred eighty days of the last day on which the employee may make an election to participate in such plan pursuant to this article and article 52 of this title, whichever is earlier, and not thereafter.

## **PART 16: DEFERRED COMPENSATION PLAN**

### **24-51-1601. Deferred compensation plan and trust fund**

- (1) Effective July 1, 2009, the state deferred compensation committee established pursuant to section 24-52-102, as said section existed prior to its repeal in 2009, shall be abolished, and the board shall assume the administration of and fiduciary responsibility for the state deferred compensation plan previously administered under part 1 of article 52 of title 24, as said part existed prior to its repeal in 2009. The board shall have the authority to set the terms and conditions of the deferred compensation plan.
- (2) The board shall establish, as set forth in section 24-51-208(1)(j), a deferred compensation plan trust fund, referred to in this part 16 as the “trust fund”, to hold the assets of the deferred compensation plan.
- (3) The trust fund shall be established under section 24-51-208(1)(j), effective upon transfer of assets of the deferred compensation plan to the trust fund. The board shall be trustee of the trust fund. No part of the assets and income of the trust fund shall be used for or diverted to purposes other than for the exclusive benefit of participants and their beneficiaries prior to the satisfaction of liabilities with respect to participants and their beneficiaries.
- (4) The department of personnel created in section 24-1-128 shall provide for the orderly transfer of all records pertaining to the state deferred compensation plan and the state defined contribution match plan and shall take any other action necessary for the board to assume its duties under this part 16.

### **24-51-1602. Affiliation with the deferred compensation plan**

- (1) An employee is not eligible to participate in the deferred compensation plan authorized in section 24-51-1601 unless his or her employer is affiliated with such plan.
- (2) An employer, as defined in section 24-51-101(20), may affiliate with the deferred compensation plan by making application to the association. All applications shall be subject to approval by the association. Upon affiliation, employees of the employer are eligible to begin deferring salary to the deferred compensation plan.

- (3) All employers that are affiliated with the deferred compensation plan prior to July 1, 2009, including entities that are not affiliated employers of the association, as employer is defined in section 24-51-101(20), shall remain affiliated and shall not have to apply to the association pursuant to subsection (2) of this section.
- (4) Any employee who is employed by an entity that is affiliated with the deferred compensation plan shall be entitled to participate in the plan regardless of whether that individual is a member or retiree of the association.

**24-51-1603. Contributions to the deferred compensation plan**

- (1) An employee of an employer affiliated with the deferred compensation plan pursuant to section 24-51-1602(2) or (3) may participate in the deferred compensation plan authorized in section 24-51-1601 by electing with his or her employer to defer receipt of salary by specifying an amount contributed by payroll deduction. The amount of such deferral by the employee shall be subject to any limitations established by federal law. The amount deferred, including investment earnings, shall be exempt from federal and state income taxes until the ultimate distribution of such contributions has been made to the participant, former participant, or beneficiary.
- (2) All voluntary deferrals by a participating member shall be included in the salary of such member in accordance with section 24-51-101(42) for the purpose of calculating member and employer contributions pursuant to the provisions of section 24-51-401. The member contribution provisions of section 24-51-401 shall not apply to any deferral made by a retiree.
- (3) Consistent with the provisions of section 24-51-401(1.7)(c) and (1.7)(d), the employer shall deliver all deferred compensation contributions to the trust fund via the service provider designated by the association, if applicable, within five days after the date the employees are paid.

**24-51-1604. Expenses of the deferred compensation plan**

The expenses of administering the deferred compensation plan authorized in section 24-51-1601 shall be paid from either the investment earnings or account balances of the deferred compensation plan.

**24-51-1605. Investments of the deferred compensation plan**

- (1) Individuals participating in the deferred compensation plan shall designate that their deferred compensation contributions be invested in one or more types of investments made available by the board. These investments may include, but are not limited to, equity investments, fixed-income investments, life insurance company products, and any investments permitted pursuant to section 24-51-206.
- (2) Neither the association nor any employers shall have the responsibility to pay for any financial losses experienced by members of the deferred compensation plan.



## **PART 17: DENVER PUBLIC SCHOOLS DIVISION**

### **24-51-1701. Legislative declaration**

- (1) The general assembly hereby finds and declares that:
  - (a) It is in the best interests of the people of this state to administer the Denver public schools pension system within the state under the public employees' retirement association.
  - (b) The combination of the Denver public schools retirement system as a separate division of the public employees' retirement association will recognize the distinctive characteristics of that system and its funding over sixty-three years, and will also facilitate the general assembly's anticipated assessment of the contribution and benefit structure of the association's defined benefit plans to maintain the perpetual sustainability of such plans based on the recommendations from the board of trustees of the association in 2010.
  - (c) The state's seventy-seven-year investment in the defined benefit plans for Colorado public servants has served the state invaluablely. The association has provided positive investment returns on funds that, when distributed as benefits, remain substantially within Colorado and fosters a professional and effective governmental service system. These features strengthen the provision of government services for all citizens of the state in ways that no other retirement system could, affecting the public safety and general welfare of the state for the better.
  - (d) The current separation of pension plans and provisions between Denver public schools employees and the employees of all the other school districts in the state creates artificial barriers for employees to relocate between the systems. Therefore, this separation hinders competitive forces for the placement of teachers and other employees at their potential optimum employment location, preventing the maximization of employee value for all school districts and citizens within the state.
- (2) The general assembly further finds and declares that the purpose of this part 17 is to combine the two systems with the intent of facilitating the perpetual future maintenance, security, and sustainability of the defined benefit plans within the public employees' retirement association. Given the special services and benefits rendered by Colorado's public servants to the citizens of the state, it is

the province, right, and obligation of the state to care for the members and the dependents and survivors of its public servants who are entitled to retirement benefits due to length of service or age or because they have been injured or disabled in service.

**24-51-1702. Definitions**

As used in this part 17, unless the context otherwise requires:

- (1) "Accredited service" shall have the same meaning as set forth in section 24-51-1704.
- (2) "Active service", as used in determining eligibility to receive benefits, as contrasted with determination of the amount thereof, means all periods of service that qualify as accredited service. Additionally, for employees appointed or reappointed on or after December 1, 1945, a maximum of ten years of civilian service, of a similar kind, in a tax-supported institution other than the district, referred to in this subsection (2) as "outside service", may count as active service; except that any service purchased together with any such outside service shall not exceed a maximum of ten years in calculating active service. No part of said outside service shall apply if earned while on leave from the district. Whenever the term "active service" is used with reference to civilian service of a similar kind of a regular or casual employee with any tax-supported institution other than the district, said active service shall be determined in a manner consistent with the definition of active service with the district. Periods of service in a charter school shall count as active service if such service is also counted as accredited service. Effective January 1, 1996, all service performed with the district or with a charter school and that meets the definition of accredited service shall be treated as if it were civilian service in a tax-supported institution other than the district, as provided in this subsection (2), if it is not counted as accredited service.
- (3) "Annual compensation" means the established contractual salary rate for a regular employee on an annual basis for regularly assigned services, before any deductions. Special stipends and extra pay for additional assignments not on the basis of the regular established contractual salary rate shall not be deemed a part of annual compensation. For compensation received on and after January 1, 2010, annual compensation shall be governed by section 24-51-101 (42) for purposes of determining benefits under this part 17.

- (4) "Annuity" means that portion of the benefit attributable to funds provided by normal or arrearage contributions or both made by a contributing or affiliate member.
- (5) "Attained age" means the age attained upon a particular birthday.
- (6) "Basic retirement allowance" means total retirement allowance excluding the annual retirement allowance adjustment.
- (7) "Board of education" means the board of education of Denver public schools.
- (8) "Career average salary" means the average of the applicable regular annual salary rates for the entire time of accredited service for regular employees.
- (9) "Casual employee" means any part-time or temporary employee of the district or of a charter school who received or receives payment in the form of wages or salary from the district or charter school. Payment of fees for contracted services to an independent contractor shall not be considered salary or wages. Any employee who is a regular employee shall not at the same time be a casual employee.
- (10) "Charter schools" means schools created pursuant to the "Charter Schools Act", part 1 of article 30.5 of title 22, C.R.S., that are a part of the Denver public schools and that are accountable to the board of education as complying with the purposes and requirements of said act.
- (11) "Consumer price index" or "CPI" means the index, calculated by the United States department of labor, in the national consumer price index for urban wage earners and clerical workers.
- (12) "Contributing service" means that portion of service for which an employee has paid the normal contribution, including any regular interest that would have been credited upon said contribution prior to the payment thereof by the member, together with an amount equal to the pension assessment, if applicable, that would have been payable during such service.
- (13) "Covered employment" means the employment of any regular or casual employee who is compensated by wages or salary paid by the district or by a charter school approved by the district. "Noncovered employment" means employment outside of the district or outside of a charter school approved by the district. Service in the armed forces of the United States is included in "noncovered employment".

- (14) "District" means school district no. 1 in the city and county of Denver and state of Colorado and is used synonymously with the term "Denver public schools". Unless explicitly stated otherwise in the text, the term "district" also includes those schools that are part of the Denver public schools and that are accountable to the board of education as charter schools and shall also include the Denver public schools retirement system. For clarity or emphasis, there are references in certain sections to both the district and a charter school. The lack of such a dual reference shall not, however, be interpreted to change the foregoing definition as to any other sections.
- (15) "Earned service" means service equal to the greater of a member's active or accredited service on January 1, 2004, calculated in accordance with the applicable provisions of this plan as it existed immediately prior to January 1, 2004. Following December 31, 2003, a member's earned service shall be used in lieu of active or accredited service in determining both the eligibility for and the amount of retirement benefits under the DPS plan. On and after January 1, 2010, earned service shall be governed by section 24-51-501.
- (16) "Employee contribution" means any funds, other than the pension assessment, payable and paid hereunder by a contributing or affiliate member. The following additional terms are applicable to the term "employee contribution":
- (a) "Accumulated contributions" means the balance in a member's account of normal arrearage or additional contributions and regular interest credits thereon. The pension assessment is not a part of accumulated contributions.
  - (b) "Arrearage contribution" means any contribution in excess of the normal contribution that is required of and paid by contributing or affiliate members.
  - (c) "Normal contribution" means the required payment by a contributing or affiliate member of a portion of compensation into the system retirement trust fund.
- (17) "Highest average salary" means the average monthly compensation of the thirty-six months of accredited service having the highest rates, multiplied by twelve, or the "career average salary", whichever is greater, and shall be applied to benefits, except for benefits under sections 24-51-1727 to 24-51-1731, attributable to retirement or death on or after July 1, 1994. For benefits under sections 24-51-1727 to 24-51-1731, "highest average salary" applies

to cases where termination of service occurs on or after July 1, 1994. This subsection (17) shall apply only to DPS members eligible for a retirement benefit as of January 1, 2011. For DPS members not eligible for a retirement benefit as of January 1, 2011, the definition of “highest average salary” specified in section 24-51-101 (25)(b)(V) and (25)(b)(VI) shall apply.

- (18) “Job sharing” means the occupation of a single staff position by two employees who receive annual compensation on the active payroll of the district, with each assignment being half-time for the entire contractual work year. Job sharing shall also mean the occupation of a less-than-full-time but greater-than-half-time position by one employee who receives annual compensation on the active payroll of the district and who has no other assignment with the district. Job sharing shall not include the occupation of a position by a person who is a casual employee.
- (19) “Membership” means the relationship a regular or casual employee has in the DPS plan and shall consist of the following:
- (a) “Affiliate member” means any casual employee who, pursuant to the provisions of this plan, has applied for affiliate membership and whose application has been accepted. “Affiliate member” includes any casual employee of a charter school or of the retirement system who applies for affiliate membership and whose application is accepted.
  - (b) “Annuitant” means a person who is receiving a retirement allowance.
  - (c) “Beneficiary” means a person or supplemental needs trust who has received, receives, or is designated to receive benefits accruing as a result of an employee’s membership.
  - (d) “Contributing member” means a regular employee of the district on December 1, 1945, and any employee hired as a regular employee on or after said date, except an employee who, pursuant to the plan adopted by the board of education on November 19, 1945, elected associate membership and has not subsequently become a contributing member as permitted under the plan. The term “contributing member” includes a regular employee of a charter school and a regular employee of the system.
  - (e) “Deferred member” means a former employee of the district who:
    - (l) Is not an annuitant who, on or before December 31, 2008, terminated employment with the district and who has on file an election and declaration of intent to apply for a deferred retirement allowance; or

- (II) On or after January 1, 2009, terminated employment with the district and has not requested a refund of such member's accumulated contributions.
- (f) "Supplemental needs trust" means a valid third-party special needs trust established for a member's or retiree's child as the beneficiary of the trust that complies with the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., and the federal "Social Security Act", as amended. The department of health care policy and financing shall review any trust established during determination or redetermination of an individual's eligibility for medical assistance and specifically as to the effect of any trust on such eligibility for medical assistance. The trust must be for the benefit of a single beneficiary and must be coterminous with the lifetime of such beneficiary.
- (20) "Money purchase monthly annuity" means the monthly annuity that is the actuarial equivalent of a lump sum amount.
- (21) "Monthly compensation" means annual compensation divided by twelve.
- (22) "Monthly crediting method" means the way in which earnings on member accounts are calculated and credited at the end of a calendar month based upon the accumulated contributions in the member's account at the beginning of that month pursuant to provisions of the DPS plan.
- (23) "Nonqualified service" means any noncovered employment that does not include:
  - (a) Service as an employee of the United States government, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing;
  - (b) Service as an employee of a public, private, or sectarian elementary or secondary school;
  - (c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection (23); or
  - (d) Service in the armed forces of the United States.
- (24) "Normal retirement age" means the attainment of age sixty-five.

- (25) "Outside service" means civilian service of a similar kind, in a tax-supported institution other than the district. Substantiation of outside service must be initiated as of July 1, 2009, or it cannot be applied to earned service for purposes of meeting regular retirement eligibility, pursuant to the provisions of this part 17 regarding earned service. Substantiation of such service must be completed on or prior to December 31, 2009.
- (26) "Pension" means the portion of the benefit attributable to funds provided by the district.
- (27) "Permanently incapacitated" means an incapacitating condition that is demonstrably permanent and prevents the employee from performing assigned duties subject to accommodation required in accordance with applicable law or reasonably imposed by the district. This subsection (27) applies only for purposes of determining eligibility for disability benefits for applications filed under the DPS plan prior to January 1, 2010.
- (28) "Permitted absence" means any authorized and unpaid absence, other than severance of employment; except that no absence in excess of thirty consecutive calendar days shall be deemed permitted unless the authorization therefor shall be in writing, signed by an appropriate administrative official or by authorization of the district. Regardless of any time factor, no absence continued after written notice to return shall be deemed a permitted absence.
- (29) "Primary percentage" shall be the product obtained by multiplying the unit benefit percentage factor by the total number of years and months of accredited service. Months shall be expressed as fraction with the number of months as the numerator and twelve as the denominator. The primary percentage shall be rounded to the nearest one-hundredth of a percent. Multiplying the primary percentage by the highest average salary as defined in subsection (17) of this section or career average salary, whichever is applicable, results in the annual retirement allowance expressed as a single life annuity and known as option A.
- (30) "Regular employee" means any employee who receives annual compensation on the active payroll of the district and whose employment by the district represents the employee's principal gainful occupation and requires so substantial a portion of time that it is impractical to follow any other substantially gainful occupation.

Absence of a regular employee on a permitted absence shall not change the employee's status as a regular employee. Any employee who is a casual employee shall not at the same time be a regular employee.

- (31) "Regular interest" means, on and after January 1, 2010, the rate set by the association's board as provided in section 24-51-407 (4) and as may be periodically adjusted. On or before December 31, 2009, "regular interest" means the rates specified in the DPS plan document.
- (32) "Reserve" means the present value of payments to be made on account of any benefit provided in this plan and computed upon the basis of such mortality tables and interest assumptions as may, from time to time, be approved.
- (33) "Reserve for employees to be retired" means the reserve that is part of the system retirement trust fund and identifies the amount of moneys set aside to provide for the basic benefits that are anticipated to be payable to currently active members or to those members who have already elected deferred retirement benefits but who, because of age, are not yet actually receiving such benefits.
- (34) "Retirement allowance" or "total retirement allowance" means the initial benefit for a benefit that becomes effective on or after January 1, 2010. For a benefit that became effective before January 1, 2010, "retirement allowance" means the total benefit payable as of June 30, 2010, including the sum of the initial benefit, accumulated annual increases, and cost of living increases.
- (35) "Retirement plan" means the retirement and benefit plan contained in this part 17.
- (36) "Supplement" or "special supplement" means postretirement increases in total retirement allowance to certain qualified annuitants and beneficiaries.
- (37) "Tax-supported institution" means a governmental entity or agency that either has the power to levy taxes or that receives governmental appropriations as such an entity or agency.
- (38) "Total temporary disability" means absence from work and temporary inability to perform assigned duties as a result of personal injury incurred in the scope and course of employment as determined by the district.
- (39) "Unit benefit percentage factor" means the percentage used as the factor for one year of accredited service. The unit benefit percentage factor shall be one and two-thirds percent from July 1, 1962, to January 1, 1980. The



unit benefit percentage factor shall be one and seventy-five one-hundredths percent effective January 1, 1980; one and ninety one-hundredths percent effective January 1, 1981; two percent effective January 1, 1982; two and seven one-hundredths percent effective January 1, 1988; two and twenty-five one-hundredths percent effective July 1, 1998; and two and one-half percent effective January 1, 2001. The unit benefit percentage applicable to a deferred retirement shall be that in effect on the actual date on which the employment of such member by the district finally terminated. In all other retirements, the unit benefit percentage factor shall be that in effect on the effective date of such retirement.

**24-51-1703. Denver public schools division—consolidation**

- (1) The DPS plan shall continue to govern the benefits and programs specified in such plan through December 31, 2009. On January 1, 2010, the DPS plan shall be superseded by the provisions of this article except to the extent that it is necessary to refer to the DPS plan for the correction of errors and as it may be incorporated by reference in this article.
- (2) On January 1, 2010, all the assets, liabilities, and obligations of the Denver public schools retirement system shall become the assets, liabilities, and obligations of the Denver public schools division of the association without any further act or document of transfer.
- (3) On January 1, 2010, notwithstanding the provisions of subsection (2) of this section, the Denver public schools retirement system or the association, or both, may take such actions and execute such certifications or other instruments as may be convenient to evidence the consummation of the merger of the two systems, its effective date, and the assets or any particular asset transferred. Any such certification or other instrument purportedly executed by an authorized officer of either system and bearing the seal of such system shall be prima facie evidence of all matters stated in the certification or instrument and may be relied upon by any third party, without further inquiry, including, without limitation, any public trustee or other public official of this or any other state or local government. If any certification or other instrument is recorded in the appropriate real estate records in this or any other state or local government, a copy of the certification or instrument, when duly certified by the custodian of the real estate records to be a true copy of the recorded original, shall have the same effect as the original.

- (4) The value of assets transferred as of January 1, 2010, as reflected in the audited financial report effective December 31, 2009, shall determine the initial asset value in the Denver public schools division trust fund for purposes of the initial and future valuations and the proportionate share of the total assets of the association attributable to the Denver public schools division. In the event that the audited value is adjudicated by a court of competent jurisdiction to be in error such that the true value on the date of transfer was different than reflected in the audited financials, an adjustment shall be made to the initial asset value of the Denver public schools division and appropriate adjustments made to the proportionate share of investment returns and expenses of the association attributed to the Denver public schools division. No adjustment to the starting asset value of the Denver public schools division shall result from a change in value after January 1, 2010, of the assets transferred. For purposes of this subsection (4), the Denver public schools retirement system real estate and private equity holdings shall be valued and audited as of December 31, 2009, and the directly owned real estate of the association shall be appraised for evaluation as of December 31, 2009.
- (5) (a) Prior legislative attempts to accomplish the merger of the Denver public schools retirement system into the school division of the Colorado public employees' retirement association with agreement among the three parties have proven unsuccessful notwithstanding substantial expenditures of time and money by the parties. The reasons for such lack of success include the methodology involved in the determination and allocation of the costs of a merger in order to avoid any subsidy to either merging party as a result of the merger. To avoid these problems and to obtain the public policy benefits of a merger, this section mandates the merger without any requirement of agreement among the parties and implements it through the creation of a separate division within the association. Notwithstanding such mandate, the successful integration of the Denver public schools retirement system into the association while maintaining a continuing high level of service to the members and beneficiaries of both systems has required and will continue to require the cooperation and best efforts of the governing bodies and staffs of the Denver public schools retirement system, the association, and the Denver public schools. In the course of the merger, the parties shall observe the fiduciary duties and legal obligations incident to their respective offices, positions, and employments, which duties and obligations may

not always be entirely clear or easily accomplished. Therefore, to secure the public policy objectives incident to the merger and its successful implementation in the most efficient way feasible, so long as such governing bodies and staffs act or have acted in good faith and in accordance with a good faith interpretation of the requirements of this section and other applicable law, they shall be deemed to have fulfilled their fiduciary duties and other legal obligations. In addition, such governing bodies and staffs shall have no personal liability for their acts or omissions incident to the implementation of the merger, including all activities reasonably related thereto. Any person who contends otherwise shall bear the burden of proving that any act or omission challenged does not meet the requirements of good faith.

- (b) It is the intent of this part 17 to achieve the mandated merger and to facilitate its implementation, thereby providing portability of the benefits of the members of the Denver public schools retirement system and the association. In addition, this part 17 is intended to pursue efficiencies in the administration of the benefits of members and beneficiaries of the Denver public schools retirement system and in the investment of moneys being transferred to the association and later accruing to it through employer and employee contributions, all in accord with changing conditions. The provisions of this part 17 and the benefit provisions for members and beneficiaries to be provided following the merger shall be interpreted and administered to attempt to further those objectives, and if pursued reasonably and in good faith shall be deemed to comply with applicable legal and fiduciary requirements. Any person who contends otherwise shall bear the burden of proving that any act or omission challenged does not meet all legal requirements applicable in the circumstances.
- (c) On January 1, 2010, the separate existence of the Denver public schools retirement system shall cease, and the terms of its trustees shall expire. In addition, the employment of its employees shall cease, subject to section 24-51-1748, providing for their employment by the association. Any claims against such trustees, former trustees, employees, or former employees in their respective capacities shall be commenced within such periods of limitation and shall be subject to such other provisions as may be provided by law, but in no case shall such an action be brought more than two years after January 1, 2010. Any claims relating to the merger

and made against the trustees, former trustees, employees, or former employees of the association in their respective capacities, and any claims relating to the merger and made against members or former members of the board of education or employees or former employees of the school district in their respective capacities shall be commenced within such periods of limitation and shall be subject to such other provisions as may be provided by law, but in no case shall such an action be brought more than two years after January 1, 2010.

**24-51-1704. Service credit**

- (1) "Accredited service", as used in the determination of benefits, allowed or allowable, shall include the following:
  - (a) Subject to the express limitations in this section, all periods of employment with the district or with a charter school as a regular employee for which the employee received or receives payments in accordance with annual compensation.
  - (b) All periods of employment with the district or with a charter school as a casual employee prior to the effective date of retirement for which the employee received or receives wages or salary from the district; except that no period of employment as a casual employee shall be counted as accredited service if such employee during such period is also a regular employee.
  - (c) Leaves of absence or permitted absences commencing prior to July 1, 1962, as governed by the DPS plan document.
  - (d) Leaves of absence or permitted absences commencing on or after July 1, 1962, under the following conditions:
    - (I) A leave of absence for service in the United States armed forces, study, travel, or research shall count as accredited service if the entire period of said leave qualifies as contributing service.
    - (II) If said leave is a sabbatical leave or a leave for restoration of health on a half-salary basis and if the normal contribution is based on the full annual compensation of the member and the leave qualifies as contributing service, then the entire period of such leave shall count as

accredited service. If, however, the normal contribution is based only on a fraction of the annual compensation, then said fraction shall be multiplied by the total period of such leave to determine the portion of the leave that shall count as accredited service.

- (III) (A) Notwithstanding any other provision of this subparagraph (III), an absence due to a temporary total disability compensable in accordance with the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., shall be deemed accredited service only in accordance with the provisions of this sub-subparagraph (A).
- (B) The portion of an absence due to a temporary total disability for which the employee is compensated by the district in accordance with its policies pertaining thereto from time to time shall be considered accredited service. If, however, the normal contribution is based only on a fraction of the annual compensation, then the fraction shall be multiplied by the total period of such leave to determine the portion of the leave that shall count as accredited service.
- (C) The portion of an absence due to a temporary total disability for which the employee is not compensated in the manner provided in sub-subparagraph (B) of this subparagraph (III) but for which the employee receives workers' compensation shall be considered accredited service only if qualified as such within the earlier of two years after the employee's return to work full time or thirty days prior to the effective date of the employee's retirement. Such qualification shall be accomplished by payment into the DPS plan of an amount equal to the normal contributions and pension assessments, together with interest as calculated, and within the time limits determined by the association board and computed as of the date the agreement to pay is made, for the portion of the absence covered by this sub-subparagraph (C) in accordance with subparagraph (VI) of this paragraph (d).

- (D) This subparagraph (III) shall become effective on January 1, 1986, and shall apply to absences covered by its terms that begin on or after that date.
  - (IV) No portion of a period of absence for illness where said period exceeds fifteen consecutive working days, for which period no payments in accordance with the employee's annual compensation were made, shall count as accredited service.
  - (V) Any other type of permitted absence not specified in this section may not be counted as accredited service unless the board of education, at the time such permitted absence is authorized, specifies that the time spent on such permitted absence shall be counted as accredited service for purposes of this retirement plan, subject to the requirement that the entire period of said absence shall qualify as contributing service. Notwithstanding this subparagraph (V), any such absence which is less than sixteen consecutive working days shall be counted as accredited service.
  - (VI) The normal contribution for all permitted absences other than those compensated in any way by the district shall be based upon the annual compensation in effect immediately prior to the date of commencement of such absence.
  - (VII) Service accrual for all permitted absences shall be consistent with service accruals that were allowed under this retirement plan immediately preceding the permitted absence. This shall include, without limitation, the retirement plan and associated rule definitions and provisions applicable to service accrual for job-sharing assignments as of any given date.
- (e) Leaves of absences or permitted absence commencing on or after January 1, 1980, which can qualify as accredited service in accordance with this subsection (1), must be qualified as contributing service within two years from the date the employee returns to work. On and after January 1, 1998, leaves of absence that are qualified as contributing service shall be qualified in accordance with provisions of the DPS plan document.

- (f) A person employed in a job-sharing assignment shall receive earned service accruals appropriate to reduce such service to its equivalent in full-time service.
- (g) A leave of absence granted to an employee to allow that employee to work in a charter school shall not count as accredited service unless the period of time spent in charter school employment is covered as contributing or affiliate membership, in which case the service shall be covered pursuant to the requirements of such membership.

**24-51-1705. Purchase of service credit relating to a refunded member contribution account and noncovered employment**

Purchases related to reemployment and noncovered employment for which payments are not complete prior to January 1, 2010, shall be governed by the DPS plan document. On January 1, 2010, service credit shall be credited to the member accounts to the extent of payments received, a new service credit purchase agreement shall be issued by the association using the previously existing lump-sum or installment payment amount, and future payments and service accruals shall be governed by part 5.

**24-51-1706. Accreditation of casual employment and qualifiable leave**

Accreditation of casual employment and qualifiable periods of leave as described in section 24-51-1704 for which payments are not complete prior to January 1, 2010, shall be governed by the DPS plan document. On January 1, 2010, such service shall be credited to the member accounts to the extent of payments received, and a new purchase agreement shall be issued by the association using the previously existing lump-sum or installment payment amount, and future payments and service accruals shall be governed by part 5 of this article. After January 1, 2010, accreditation of casual employment and qualifiable leaves as provided in this part 17 shall not be permitted.

**24-51-1707. Affiliate membership**

A casual employee who has been approved or has applied, and is ultimately approved, for status as an affiliate member as of December 31, 2009, shall remain an affiliate member and the benefits provided for pursuant to the DPS plan document shall govern at the time of retirement, unless such status is revoked pursuant to the DPS plan document.

Any applicant for affiliate member status shall complete payments in accordance with the DPS plan document or be subject to revocation of affiliate member status. On or after January 1, 2010, further applications for affiliate membership shall not be permitted, and all eligible benefits payable to the existing affiliate members shall be based on the highest average salary, as defined in section 24-51-1702(17), and benefit descriptions, as detailed in sections 24-51-1715, 24-51-1729, and 24-51-1734 to 24-51-1746.

**24-51-1708. Unclaimed moneys**

Any moneys due under this part 17 to employees who have resigned, been dismissed, or died prior to retirement, and that have been unclaimed for a period of three years shall be forfeited and credited to the Denver public schools division.

**24-51-1709. Arrearages**

Arrearage contributions allowed pursuant to this part 17 that require employer contributions, as well as employee contributions, shall be the obligation of and shall be paid by the member's Denver public schools division employer at the time the payment obligation was initiated even if the service so qualified was rendered during a period of employment with a different Denver public schools division employer.

**24-51-1710. Earned service**

- (1) Effective on January 1, 2004, each active member of the system shall be credited with earned service. Subject to the further provisions of this section, earned service shall be equal to the greater of a member's active or accredited service on January 1, 2004, calculated in accordance with the applicable provisions of this retirement plan as it existed immediately prior to January 1, 2004. Following December 31, 2003, a member's earned service shall be used in lieu of active or accredited service in determining both the eligibility for and the amount of retirement benefits under this retirement plan.
- (2) On and after January 1, 2010, in making calculations of earned service, active service shall not include outside service, but outside service substantiated on or before December 31, 2009, may be added to earned service in determining a member's eligibility to retire for superannuation with an unreduced benefit at age fifty-five or older and with at least twenty-five years of service, in accordance with sections 24-51-1715 and 24-51-1734; except that outside service taken together with service purchased under sections 24-51-1705 and 24-51-1706



may not exceed ten years in determining such eligibility to retire. This subsection (2) only applies to DPS members who retire from the Denver public schools division without exercising portability and DPS members who retire a frozen segment of service in the Denver public schools division that includes outside service.

- (3) On and after January 1, 2004, earned service shall be calculated in the same manner provided in the DPS plan document for calculating active service prior to January 1, 2004, except for casual employment, which shall be calculated in accordance with the provisions of the DPS plan document; except that earned service shall not include outside service.
- (4) In the case of a person who is an employee of the district on January 1, 2004, and thereafter qualifies as a deferred member in accordance with the DPS plan document and later applies for benefits under this part 17, the conversion to earned service shall be accomplished in the manner provided in this part 17, and benefits shall be calculated accordingly.
- (5) In the case of a person who, on January 1, 2004, has either qualified for disability retirement or has applied for disability retirement and is thereafter determined to be entitled to such disability retirement, the recomputation of retirement benefits in accordance with the DPS plan document shall be accomplished utilizing earned service calculated pursuant to the provisions of this section.
- (6) On and after January 1, 2004, this section shall, in accordance with its terms, amend and supersede all prior provisions of this retirement plan in conflict with such terms.

**24-51-1711. Contributions—refunds**

- (1) Refund upon termination. Upon termination of employment, a contributing member or affiliate member, subject to the portability provisions of section 24-51-1747, shall be entitled to a refund of the total accumulated contribution balance as of the date of such termination refund.
- (2) Request for refund for deferred members. Subject to the provisions of portability in section 24-51-1747, a deferred member account shall be available for refund unless a retirement benefit has commenced. The amount of the refund of such deferred account shall include any accumulated contribution balance or interest as of December 31, 2009, and interest accumulated thereafter, which shall be

in accordance with section 24-51-407(5). The accumulation of contributions or interest in the deferred account prior to December 31, 2009, shall be governed by the DPS plan document.

**24-51-1712. Application for retirement benefits**

Notwithstanding any other provision of this part 17, application for and processing of retirement applications shall be governed by the rules and procedures adopted by the association's board. Pursuant to the provisions of this part 17 regarding portability, references in this part 17 to service with the district shall be deemed to include service with all employers affiliated with the association.

**24-51-1713. Eligibility—retirements without actuarial reduction**

- (1) This section shall only apply to DPS members who have five or more years of service credit as of January 1, 2011. For DPS members who have less than five years of service credit as of January 1, 2011, eligibility for retirement without an actuarial reduction shall be governed by section 24-51-602(1)(a.7) and (1)(d).
- (2) Whenever a contributing member or affiliate member pursuant to the DPS plan has completed a period of twenty-five years of active service, of which not less than fifteen years shall have been with the district, and has attained the age of fifty-five years while in the service of the district, said member shall be eligible for retirement for superannuation. Such retirement shall be made upon due application and subject to such rules as may be prescribed by the association.
- (3) Whenever a contributing member or affiliate member of the DPS plan has completed a period of five years of active service and has attained the age of sixty-five while in the service of the district, said member shall be eligible for retirement for superannuation. Such retirement shall be made upon due application and subject to such rules as may be prescribed by the board of trustees.
- (4) Whenever a contributing member or affiliate member pursuant to the DPS plan has completed a period of thirty years of active service with the district and has attained the age of fifty years while in the service of the district, said member shall be eligible for retirement for superannuation. Such retirement shall be made upon due application and subject to such rules as may be prescribed by the association.

**24-51-1714. Eligibility—retirements requiring actuarial reduction**

- (1) This section shall only apply to DPS members who have five or more years of service credit as of January 1, 2011. For DPS members who have less than five years of service credit as of January 1, 2011, eligibility for retirement requiring an actuarial reduction shall be governed by section 24-51-604.
- (2) Whenever a contributing member or affiliate member pursuant to the DPS plan has completed a period of twenty-five years of active service with the district but has not attained the age of fifty-five years, said member shall be eligible for retirement for superannuation but with reduced benefits in accordance with the applicable provisions of section 24-51-1715. Any such retirement shall be voluntary and reflect the choice of the member.
- (3) Whenever a contributing member or affiliate member pursuant to the DPS plan has completed a period of fifteen years of active service with the district and has attained the age of fifty-five years while in the service of the district, said member shall be eligible for retirement for superannuation but with reduced benefits in accordance with the applicable provisions of section 24-51-1715. Any such retirement shall be voluntary and reflect the choice of the contributing member.
- (4) Whenever a contributing member or affiliate member pursuant to the DPS plan has completed a period of thirty years of active service with the district but has not attained the age of fifty years, said contributing member shall nevertheless be eligible for retirement for superannuation but with reduced benefits in accordance with the applicable provisions of section 24-51-1715. Any such retirement shall be voluntary and reflect the choice of the member.

**24-51-1715. Benefits**

- (1) The annual superannuation retirement allowance shall be determined in the following manner:
  - (a) Subject to the provisions of paragraph (c) of this subsection (1) pertaining to certain members appointed or reappointed on or after July 1, 2005, and for persons who become affiliate members on or after July 1, 2005, the following calculations shall apply:

- (I) If said member shall retire pursuant to section 24-51-1713, the highest average salary as defined in section 24-51-1702(17) shall be multiplied by the primary percentage which shall determine the annual retirement allowance expressed as a single life annuity and known as option A.
- (II) If, however, said member shall retire pursuant to section 24-51-1714(2), and if the member has reached retirement eligibility as of January 1, 2011, and has attained a minimum age of fifty years, the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a), shall be reduced by the lesser of four percent for each year that fifty-five exceeds said member's attained age or four percent for each year that thirty exceeds said member's number of years of active service with the district, in either case prorated for a partial year. For members who have not reached retirement eligibility as of January 1, 2011, the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a), shall be reduced by an actuarially determined percentage as of the effective date of retirement to ensure that the benefit is the actuarial equivalent of the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a).
- (III) If said member shall retire pursuant to section 24-51-1714(2), and if the member has reached retirement eligibility as of January 1, 2011, and is younger than age fifty, the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a), shall be reduced by the greater of four percent for each year that fifty exceeds said member's attained age or four percent for each year that thirty exceeds said member's number of years of active service with the district, in either case prorated for a partial year. For members who have not reached retirement eligibility as of January 1, 2011, the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a), shall be reduced by an actuarially determined percentage as of the effective date of retirement to ensure that the benefit is the actuarial equivalent of the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a).

- (IV) If said member shall retire pursuant to section 24-51-1714(3), and the member has reached retirement eligibility as of January 1, 2011, the annual retirement allowance, calculated pursuant to subparagraph (l) of this paragraph (a), shall be reduced by the lesser of four percent for each year that twenty-five exceeds said member's number of years of active service with the district or four percent for each year that sixty-five exceeds said member's age, in either case prorated for a partial year. For members who have not reached retirement eligibility as of January 1, 2011, the annual retirement allowance, calculated pursuant to subparagraph (l) of this paragraph (a), shall be reduced by an actuarially determined percentage as of the effective date of retirement to ensure that the benefit is the actuarial equivalent of the annual retirement allowance, calculated pursuant to subparagraph (l) of this paragraph (a).
- (V) If said member shall retire pursuant to section 24-51-1714(4), and if the member has reached retirement eligibility as of January 1, 2011, the annual retirement allowance, calculated pursuant to subparagraph (l) of this paragraph (a), shall be reduced by four percent for each year that fifty exceeds said member's age. For members who have not reached retirement eligibility as of January 1, 2011, the annual retirement allowance, calculated pursuant to subparagraph (l) of this paragraph (a), shall be reduced by an actuarially determined percentage as of the effective date of retirement to ensure that the benefit is the actuarial equivalent of the annual retirement allowance, calculated pursuant to subparagraph (l) of this paragraph (a).
- (b) If a reduction percentage is applicable, prior to calculation of the reduced retirement allowance, the annuity portion shall be determined and subtracted from the retirement allowance in order to determine the pension portion, using the terms of section 24-51-1726, if applicable, and then the reduced retirement allowance shall be determined by application of the appropriate reduction. The annuity portion of said allowance, as determined prior to the reduction, shall be subtracted from the reduced retirement allowance in order to determine the pension portion, if any, that may be applicable. In no event shall any reduced retirement allowance be less than the annuity portion of

said allowance as determined prior to the reduction percentage. Said annual retirement allowance shall be payable on a monthly basis and shall continue for so long as said member shall live or so long as may be provided under any option available to and elected by such member pursuant to the provisions of this retirement plan. Payment shall be made at the end of the calendar month for any retirement allowance attributable to said month, and upon the death of said member payment shall be allowed for that portion of the calendar month in which death occurs up to and including the date of death.

- (c) In making the calculation of the annual retirement allowance adjustment for a member who initially was appointed or who became an affiliate member on or after July 1, 2005, and who has reached retirement eligibility as of January 1, 2011, the reduction percentage provided in paragraph (a) of this subsection (1) shall be changed in each instance from four percent to six percent. For members who have not reached retirement eligibility as of January 1, 2011, the annual retirement allowance, calculated pursuant to subparagraph (l) of paragraph (a) of this subsection (1), shall be reduced by an actuarially determined percentage as of the effective date of retirement to ensure that the benefit is the actuarial equivalent of the annual retirement allowance, calculated pursuant to subparagraph (l) of paragraph (a) of this subsection (1).

#### **24-51-1716. Optional forms of allowance**

Any contributing member or affiliate member whose effective date of retirement is on or after December 31, 2004, may elect to receive a superannuation retirement allowance in accordance with any of the options hereinafter stated. Option A shall be deemed a basic option, and the amount of the annual retirement allowance payable under such option as determined under the provisions of section 24-51-1715 shall be the amount that shall be duly adjusted in computing payments to be made under options other than option A. Prior to application for retirement, any such election may be changed or revoked, but when a member files application for retirement and elects an option, such option may not thereafter be changed or revoked, except where the designated co-annuitant under option P2 or option P3 predeceases the member prior to the effective date of retirement, pursuant to section 24-51-1723 or 24-51-1724, whichever is applicable. This shall not preclude the member's right to have the option elected become effective as of the date of retirement. In addition to the provisions of this section, in any dissolution of marriage action in any

district court of the state of Colorado, the court shall have jurisdiction to order or allow an annuitant who is a petitioner or respondent in such action, and who selected an option P2 or P3 at the time of retirement designating the annuitant's spouse as the co-annuitant, to revoke the co-annuitant designation and for an option A benefit to become payable thereafter to the annuitant. The option A benefit shall be the original option A amount calculated as of the annuitant's effective date of retirement increased by any increases in the basic retirement allowance granted in accordance with the provisions of the DPS plan document and section 24-51-1732 subsequent to the annuitant's effective date of retirement. If no option is elected by a member at or prior to the time of application for retirement, such member shall be considered to have automatically elected to receive the applicable benefit under option A.

**24-51-1717. Option A**

Option A is a single life annuity, which is defined as a specified sum of money payable monthly to an annuitant from the time of retirement until the death of said annuitant, without refund of any kind to the estate of the deceased annuitant or anyone claiming by or through the annuitant. The monthly retirement allowance under option A shall be calculated in accordance with the provisions of section 24-51-1715. For retirements having effective dates on or after December 31, 2004, option A shall be revised to provide that if, upon the death of the annuitant, the total amount of retirement allowance that has been paid to the annuitant does not exceed the amount of the member's accumulated contributions, then the difference between said accumulated contributions and the total amount of retirement allowance paid to such annuitant shall be paid to the named beneficiary of the annuitant or, if no named beneficiary exists, to the estate of the annuitant. The monthly retirement allowance under the revised option shall be calculated in accordance with the provisions of section 24-51-1715.

**24-51-1718. Option B**

- (1) Option B is an installment refund annuity, which is defined as a smaller sum of money than the amount that would be payable under option A but that is the actuarial equivalent thereof, as provided in this retirement plan, payable monthly to an annuitant from the time of retirement until death, with the additional provision that if said annuitant dies before receiving an amount equal to the total reserve credited to said annuitant, said payments shall be continued to beneficiaries designated by said annuitant until the total amount of the payments made to such annuitant and to beneficiaries of said annuitant is equal to the total amount of reserve allocated to the payment of said annuitant's retirement allowance.

- (2) If a deceased member's estate is the beneficiary, payment in one sum of the commuted value of the retirement allowance shall be made to the member's estate. The rate of interest used in determining the commuted value shall be the actuarial investment assumption rate of the association on the date of death of the member.
- (3) In the event of the death of a retired deceased member's beneficiary who is receiving monthly benefits under option B, a payment in one sum of the commuted value of the remaining monthly payments shall be made to the estate of the deceased beneficiary. The rate of interest used in determining the commuted value shall be the actuarial investment assumption rate of the association on the date of death of the beneficiary.

**24-51-1719. Option C**

- (1) Any contributing member or affiliate member choosing or having chosen option C through December 31, 2009, will be governed by the DPS plan document. As of January 1, 2010, option C will no longer be a permissible payment choice.
- (2) Notwithstanding any provision to the contrary, an annuitant may change the co-annuitant that was named by such annuitant and designate a supplemental needs trust as a co-annuitant in place of the previously named co-annuitant if:
  - (a) The beneficiary of the supplemental needs trust is the same person as the previously named co-annuitant; and
  - (b) The retiree files an application and any required documents in a form as designated by the association.
- (3) If a supplemental needs trust is not established before or within ninety days after the death of the annuitant, is determined to be invalid, or is terminated on or after the death of the annuitant, the beneficiary that was named in the trust is the co-annuitant.

**24-51-1720. Option D**

Any contributing member or affiliate member choosing or having chosen option D through December 31, 2009, will be governed by the DPS plan document. As of January 1, 2010, option D will no longer be a permissible payment choice.



**24-51-1721. Option E**

- (1) Any contributing member or affiliate member choosing or having chosen option E through December 31, 2009, will be governed by the DPS plan document. As of January 1, 2010, option E will no longer be a permissible payment choice.
- (2) Notwithstanding any provision to the contrary, an annuitant may change the co-annuitant that was named by such annuitant and designate a supplemental needs trust as a co-annuitant in place of the previously named co-annuitant if:
  - (a) The beneficiary of the supplemental needs trust is the same person as the previously named co-annuitant; and
  - (b) The retiree files an application and any required documents in a form as designated by the association.
- (3) If a supplemental needs trust is not established before or within ninety days after the death of the annuitant, is determined to be invalid, or is terminated on or after the death of the annuitant, the beneficiary that was named in the trust is the co-annuitant.

**24-51-1722. Additional optional forms of allowance beginning December 31, 2004**

In addition to the options provided in sections 24-51-1717 and 24-51-1721, any contributing member or affiliate member whose effective date of retirement is on or after December 31, 2004, may elect to receive a superannuation retirement allowance in accordance with any of the options provided in sections 24-51-1723 and 24-51-1724. Option A shall be deemed a basic option under this section, and the amount of the annual retirement allowance payable thereunder, as determined under the provisions of section 24-51-1715, shall be the amount that shall be duly adjusted in computing payments to be made under options P2 and P3. Prior to application for retirement, any such election may be changed or revoked, but when a member files application for retirement and elects an option, such option may not thereafter be changed or revoked except as provided in this part 17.

**24-51-1723. Option P2**

- (1) Option P2 is a modified joint survivorship annuity, which is defined as a somewhat smaller sum of money than the amount that would be payable under option A but that is the actuarial equivalent thereof, as calculated under this

retirement plan, payable monthly to an annuitant from the time of retirement until the death of said annuitant, and, thereafter an amount equal to one-half of the monthly amount paid to the annuitant is payable monthly to the annuitant's designated co-annuitant until the death of that person. The designation of the co-annuitant shall be effective upon the effective date of the member's retirement and may not subsequently be changed except as provided in subsection (2) of this section. Upon the death of the co-annuitant prior to the death of the annuitant, the benefit payable to the annuitant thereafter shall be the original option A amount increased by any increases in the basic retirement allowance granted in accordance with the provisions of the DPS plan document and section 24-51-1732 subsequent to the annuitant's effective date of retirement. In addition to designating a co-annuitant, the member shall designate a beneficiary and shall have the exclusive right to change such designation of beneficiary at any time prior to the annuitant's death. If, upon the death of both the annuitant and the co-annuitant, the total amount of retirement allowance that has been paid to them does not exceed the member's accumulated contributions, then the difference between said accumulated contributions and the total amount of retirement allowance paid to such annuitant and co-annuitant shall be paid to the named beneficiary of the annuitant, or, if no named beneficiary exists, to the estate of the co-annuitant.

- (2) In case of the death of the designated co-annuitant under option P2 after the date of application for retirement and before the effective date of retirement, the member may make a change of option or designate a new co-annuitant within thirty days after the death of the previously designated co-annuitant and subject to the appropriate recalculation of the retirement allowance.
- (3) Notwithstanding any provision to the contrary, an annuitant may change the co-annuitant that was named by such annuitant and designate a supplemental needs trust as a co-annuitant in place of the previously named co-annuitant if:
  - (a) The beneficiary of the supplemental needs trust is the same person as the previously named co-annuitant; and
  - (b) The retiree files an application and any required documents in a form as designated by the association.

- (4) If a supplemental needs trust is not established before or within ninety days after the death of the annuitant, is determined to be invalid, or is terminated on or after the death of the annuitant, the beneficiary that was named in the trust is the co-annuitant.

**24-51-1724. Option P3**

- (1) Option P3 is a joint survivorship annuity, which is defined as a somewhat smaller sum of money than the amount that would be payable under option A but that is the actuarial equivalent thereof, as calculated under this retirement plan, payable monthly to an annuitant from the time of retirement until the death of said annuitant and thereafter to the annuitant's designated spouse or any one individual, so long as said designated spouse or individual shall live; except that, if the co-annuitant is not a designated spouse, the calculation of the payments to the annuitant and co-annuitant will be made in accordance with the further provisions of subsection (2) of this section. The designation of the co-annuitant shall be effective upon the effective date of the member's retirement and may not subsequently be changed except as provided in subsection (4) of this section. Upon the death of the co-annuitant prior to the death of the annuitant, the benefit payable to the annuitant thereafter shall be the original option A amount increased by any increases in the basic retirement allowance granted in accordance with the provisions of the DPS plan document and section 24-51-1732 subsequent to the annuitant's effective date of retirement. In addition to designating a co-annuitant, the member shall designate a beneficiary and shall have the exclusive right to change such designation of beneficiary at any time prior to the annuitant's death. If, upon the death of both the annuitant and the co-annuitant, the total amount of retirement allowance that has been paid to them does not exceed the member's accumulated contributions, then the difference between said accumulated contributions and the total amount of retirement allowance paid to such annuitant and co-annuitant shall be paid to the named beneficiary of the annuitant or, if no such named beneficiary exists, to the estate of the co-annuitant.
- (2) If the designated co-annuitant is not the annuitant's designated spouse or a former spouse of the annuitant under the circumstances stated in subsection (3) of this section, the co-annuitant's benefit shall be calculated in accordance with the treasury regulations under section 401(a)(9) of the federal "Internal Revenue

Code of 1986”, as amended, but, as so calculated, the benefits to the annuitant, the co-annuitant, and any beneficiary or to the estate of the co-annuitant, as provided for in option P3, shall be the actuarial equivalent of the amount that would be payable under option A as calculated under this retirement plan.

- (3) If the designated co-annuitant is a former spouse, and if pursuant to a properly executed and filed agreement under section 14-10-113, C.R.S., the designated co-annuitant may, upon the prior death of the annuitant, and for the life of the co-annuitant, receive a monthly payment equal to that otherwise payable to the annuitant.
- (4) In case of the death of the designated co-annuitant under option P3 after the date of application for retirement and before the effective date of retirement, the member may make a change of option or designate a new co-annuitant within thirty days after the death of the previously designated co-annuitant and subject to the appropriate recalculation of the retirement allowance.
- (5) Notwithstanding any provision to the contrary, an annuitant may change the co-annuitant that was named by such annuitant and designate a supplemental needs trust as a co-annuitant in place of the previously named co-annuitant if:
  - (a) The beneficiary of the supplemental needs trust is the same person as the previously named co-annuitant; and
  - (b) The retiree files an application and any required documents in a form as designated by the association.
- (6) If a supplemental needs trust is not established before or within ninety days after the death of the annuitant, is determined to be invalid, or is terminated on or after the death of the annuitant, the beneficiary that was named in the trust is the co-annuitant.

**24-51-1725. Determination of option P2 or P3 benefits**

For reduced superannuation retirements and disability recalculations, for members who retire with an effective date of retirement on or after December 31, 2004, the calculation of benefits payable pursuant to option P2 or P3, as set forth in sections 24-51-1723 and 24-51-1724, shall be actuarially determined as of the effective date of retirement or, in the case of a recalculation pursuant to the DPS plan document for a member retired for disability, the applicable recalculation date.

**24-51-1726. Minimum benefits—contributing members and affiliate members**

- (1) The minimum monthly pension portion of the retirement allowance under an option A settlement shall be the greater of:
  - (a) Such pension amount payable as a part of the retirement allowance computed under the provisions of section 24-51-1715 in the case of a member retiring for superannuation.
  - (b) The minimum benefits in effect on or after January 1, 1974, and prior to January 1, 1985, as governed by the DPS plan document.
  - (c) Effective January 1, 1985, the sum of fifteen dollars, multiplied by the number of whole years of accredited service plus additional whole months expressed as a fraction of a year of accredited service but in no event in excess of the total sum of one hundred fifty dollars, plus the sum of twenty dollars multiplied by the number of whole years of accredited service in excess of ten years plus additional whole months expressed as a fraction of a year of accredited service. These minimum benefits shall not apply to retirements previous to January 1, 1985.
  - (d) The minimum monthly pension portion of the retirement allowance under options other than option A shall be computed by taking such minimum amount as established under an option A settlement and making the appropriate reduction to reflect the additional actuarial factors involved under such other option pursuant to the applicable tables then in use.

**24-51-1726.5. Contributions for a retiree who returns to membership—benefit calculation upon subsequent retirement—survivor benefit rights**

- (1) Except as otherwise provided in section 24-51-1747, a DPS retiree who returns to work in a position that is subject to membership may voluntarily suspend his or her retirement allowance and resume membership. Upon such suspension, employer and member contributions are required to be made pursuant to the provisions of part 4 of this article.
- (2) A DPS retiree who, on or after January 1, 2011, suspends his or her retirement allowance shall not add any service credit to the benefit segment from which the retiree suspends his or her retirement. Subject to the election set forth

below, any additional service credit accumulated will be reflected in separate benefit segments upon subsequent termination of membership, but only after one year of service credit has been earned during a period of suspension. The retirement allowance for each qualifying separate benefit segment will be calculated pursuant to the benefit structure under which the retiree originally retired. The benefit for each separate benefit segment resulting from suspension shall be determined using the DPS member's salary and service credit acquired during the period of suspension. The DPS member's age and total service credit with the association upon retirement after each suspension shall govern whether the DPS member shall receive a retirement allowance pursuant to section 24-51-1713 or 24-51-1714 for that segment. Previous separate benefit segments shall be subject to recalculation only to reflect a change in the selected option or a designated coannuitant, if applicable, and no benefit increases pursuant to section 24-51-1001 will be applicable to any separate benefit segment during any period of suspension. Upon reinstatement of the retirement benefit allowance payments, no increase shall be made until such resumed payments have been paid continuously for the twelve months prior to July 1. Upon resumption of retirement after suspension, the association shall refund all moneys credited to the member contribution account during the period of suspension pursuant to section 24-51-405 unless, within a time set by the association, the retiree makes written election to establish a separate benefit segment calculated as set forth above. The refund shall be an amount equal to all moneys credited to the member contribution account during the period of suspension and payment of matching employer contributions pursuant to section 24-51-1711 or 24-51-1729(6)(a)(I), whichever is applicable. No refund can issue for any benefit segment from which a benefit has been drawn. Such refund shall be required for any separate benefit segment during which less than one year of service credit has been earned.

- (3) (a) A DPS member whose retirement allowances are in separate benefit segments pursuant to this section must elect the same option and designate the same coannuitant for all of his or her separate benefit segments.

- (b) A DPS retiree who suspends his or her retirement and elects a separate benefit segment pursuant to this section may change his or her original option and coannuitant election only if the original option selected was option A, P2, or P3. DPS retirees who selected option B, C, D, or E shall not be allowed to change that election.
- (4) Survivor benefit rights provided for in this part 17 shall be available to a DPS retiree who voluntarily suspends the benefits and returns to membership as if such retiree had not retired.

**24-51-1727. Eligibility for deferred members**

- (1) Benefits shall be payable under this section and sections 24-51-1728 to 24-51-1731 if the following conditions are met:
- (a) The employee must be an affiliate member or contributing member who has completed a period of not less than five years of active service with the district. Any contributing member or affiliate member who terminated employment prior to January 1, 1997, shall be governed by the DPS plan document.
  - (b) Such member is not eligible to receive and has not received, by virtue of district employment, payment of any other benefits under this retirement plan. A refund of accumulated contributions is not deemed a benefit within the meaning of this section.
  - (c) The employment of such member with the district, either regular or casual, has been terminated and there has not been a withdrawal of the member's accumulated contributions. In the case of a member whose employment has terminated and who withdrew such contributions but thereafter accepted reemployment with the district, such prohibition against withdrawal shall refer to any normal, arrearage, or additional contributions thereafter made by such employee.
  - (d) Within one year following an effective date of termination of employment falling on or before December 31, 2008, such member must file an election and declaration of intent to apply for a deferred retirement allowance. Such election and declaration shall be made in the manner and form as prescribed.

- (e) If a member's effective date of termination of employment falls on or after January 1, 2009, such member is automatically deemed a deferred member and is eligible to apply for a deferred retirement allowance upon meeting the requirements for commencement of a deferred retirement allowance.

**24-51-1728. Accredited service—deferred members**

In computing the amount of any deferred retirement allowance becoming due to such member upon final termination of employment, such member must, at the time of the effective date of termination of service, have a credit of accumulated contributions in such amount as would have been to such member's credit if such member had complied in full with the requirements of sections 24-51-1705 and 24-51-1707 as such requirements may apply. In the event said member fails to comply with such requirements, as applicable, then the accredited service of such member, subsequent to December 1, 1945, shall be credited in the same ratio that accumulated contributions, at the time of termination of service, bear to such member's credit if such member had complied in full with the requirements of sections 24-51-1705 and 24-51-1707 as such requirements may apply. If the provisions of section 24-51-1706 apply to such member applying for a deferred retirement allowance, then no portion of service subject to said provisions shall be counted as accredited service unless, at the time of termination of service, said member completed payment of the total amounts required by said section 24-51-1706. If such total amount as required by section 24-51-1706 is not so paid within such time, any incomplete amount paid in pursuant to section 24-51-1706 shall be refunded, without increase of any kind to such member, under such rules and regulations as the association may provide.

**24-51-1729. Benefits—deferred members**

- (1) In the event the employment of such member with the district terminates on or after July 1, 1962, the deferred retirement allowance, subject to the limitations set forth in section 24-51-1731, shall be computed in the following manner and paid under the following conditions:
  - (a) The amount of the deferred retirement allowance under option A shall be determined in the same manner and subject to the same conditions as is set forth in section 24-51-1715, if the member was a contributing member or affiliate member at the time that employment was terminated, with the following limitations:



- (I) Accredited service shall be determined to the actual date on which employment of such member finally terminated.
  - (II) For contributing members and affiliate members, highest average salary as defined in section 24-51-1702(17) shall be determined over the period to the actual date on which employment of such member finally terminated.
  - (III) The age factor for such member that is employed in calculating such deferred retirement allowance shall be that of attained age of fifty-five for employees having twenty-five or more years of active service, and that of attained age of sixty-five for employees having less than twenty-five years of active service. If, however, a member attains thirty or more years of active service with the district on or after January 1, 2001, the age factor for such member that is employed in calculating the deferred retirement allowance shall be that of attained age fifty.
  - (IV) The unit benefit percentage shall be in accordance with section 24-51-1702(39).
  - (V) In making the calculation of the deferred retirement allowance for one qualified for deferred benefits, the provisions of section 24-51-1715(1)(c) changing the reduction percentage from four percent to six percent for certain retirements shall not apply if the retiree terminated employment on or before June 30, 2005.
- (b) Said member must apply to the association for a deferred retirement allowance in the manner and form as may be prescribed in section 24-51-1712. Such application may not be filed sooner than sixty days before the effective date of the member's deferred retirement allowance. No deferred retirement allowance shall be payable to any otherwise eligible member unless proper application is received within the three-year period following the earliest possible effective date of such an allowance.
- (2) On or after January 1, 1998, the effective date of the deferred retirement allowance shall be thirty days after the date proper application for such allowance is received, but in no event before the attainment of age fifty-five by a member who has at least twenty-five years of active service, or age sixty-five, if such member has less than twenty-five years of active service. If, however, a member attains thirty or more years of active service with the district on or after

January 1, 2001, the effective date of the deferred retirement allowance shall be thirty days after the date proper application for such allowance is received, but in no event before the attainment of age fifty. The first monthly installment of said allowance shall be payable at the end of the month in which such effective date falls. No payment shall be made for any period prior to such effective date.

- (3) The deferred retirement allowance shall be payable under any of the options provided in sections 24-51-1717 to 24-51-1724, as elected by such member at the time of application for a deferred retirement allowance, and shall be calculated as provided therein, subject to the further provisions of this section. The age factor employed in calculating such deferred retirement allowance shall be that of attained age sixty-five as to such member, and under any option involving a co-annuitant the age of such co-annuitant at said attained age of sixty-five of such member; except that, for annuitants eligible for benefits at age fifty or age fifty-five, as applicable, the age factor employed in calculations shall be that of attained age fifty or age fifty-five, as applicable, as to such member and under any option involving a co-annuitant the age of such co-annuitant at said attained age of fifty or age fifty-five, as applicable, of such member.
- (4) In the case of a deferred retirement allowance payable after December 31, 1973, and prior to January 1, 1985, the minimum monthly pension attributable under an option A settlement shall be governed by the DPS plan document.
- (5) In the event the employment of a member with the district terminates on or after January 1, 1985, the minimum monthly pension portion of the retirement allowance under an option A settlement shall be the greater of:
  - (a) Such pension amount payable as a part of the retirement allowance computed under the provisions of section 24-51-1729;
  - (b) The sum of fifteen dollars, multiplied by the number of whole years of accredited service plus additional whole months expressed as a fraction of a year of accredited service but in no event in excess of the total sum of one hundred fifty dollars, plus the sum of twenty dollars multiplied by the number of whole years of accredited service in excess of ten years plus additional whole months expressed as a fraction of a year of accredited service.
- (6)
  - (a) In the event the employment of a member with the district terminates on or after January 1, 2001, at the time said member becomes eligible to receive benefit payments in accordance with this section, the member shall have the following additional options:

- (I) A payment equal to two hundred percent of the deferred member's then-accumulated contributions calculated without reference to amounts contributed for purchase of periods of noncovered employment service credit and interest credits on amounts so contributed; or
  - (II) A retirement allowance equal to the sum of the amount determined in paragraph (b) of subsection (5) of this section plus a money purchase monthly annuity that is the actuarial equivalent of two hundred percent of the deferred member's accumulated contributions at the time the member becomes eligible to receive benefit payments calculated without reference to amounts contributed for purchase of periods of noncovered employment service credit and interest credits on amounts so contributed. The determination of the money purchase monthly annuity shall incorporate the provisions of section 24-51-1732 and utilize the assumptions of the association.
- (b) The minimum monthly pension portion of the retirement allowance under options other than option A shall be computed by taking such minimum amount as established under an option A settlement and making appropriate reduction therein to reflect the additional actuarial factors involved under such other option pursuant to the applicable tables then in use.

**24-51-1730. Deferred member death**

In case any deferred member, as defined under section 24-51-1702(19)(e), dies while such membership status remains in force but before the effective date of the deferred retirement allowance, the amount of the accumulated contribution balance at the time of death shall be paid to the designated beneficiary of record or to the member's estate.

**24-51-1731. Benefits for deferred members determined upon date of termination**

Subject to the provisions of this section, in the event of reemployment, all rights and privileges incident to a deferred retirement allowance shall be and remain as provided under the retirement plan and its pertinent policies and rules and regulations in effect at

the time of such termination of employment. If such employee whose employment has been terminated is reemployed by the district and thereafter remains continuously in the employ of the district for a sufficient period to establish a full year of accredited service, then any rights with respect to a deferred retirement allowance shall be determined by the provisions of sections 24-51-1727 to 24-51-1730 in effect on the date of such subsequent termination of employment.

**24-51-1732. Benefit increases—annual retirement allowance adjustment—contributing members—affiliate members—deferred members—survivors (2001 and 2005)**

- (1)
  - (a) Monthly retirement and survivor benefit payments, including the increases determined under the provisions of the DPS plan document attributable to retirement or death of an eligible employee of the district who retired or died after December 1, 1945, shall be increased in accordance with part 10 of this article.
  - (b) Adjusted payments based on survivor benefits that are suspended by reason of the beneficiary not having attained the minimum age requirements provided in sections 24-51-1738 to 24-51-1740 or pursuant to the provisions of the DPS plan document shall not continue to accumulate or accrue during such period of suspension.
- (2) Upon attainment of the minimum age requirements and resumption of such survivor's benefit payments or reinstatement under the provisions of the DPS plan document, no increase shall be made until such resumed payments have been paid continuously for the twelve months prior to July 1.
- (3) (Deleted by amendment, effective February 23, 2010.)
- (4) No increase shall be payable incident to any retirement or survivor benefits becoming payable to any legal entity other than an individual person, to a personal representative or other person acting in an analogous representative capacity. This subsection (4) shall not preclude payment of such increase to the guardian or conservator of a person otherwise entitled thereto.
- (5) Pursuant to section 24-51-1726.5, adjusted payments based on benefits that are suspended by reason of the annuitant's having returned to service with an employer affiliated with the association as a regular employee shall not continue to accumulate or accrue during such period of suspension. Upon reinstatement

of the retirement allowance payments, no increase shall be made until such resumed payments have been paid continuously for the twelve months prior to July 1.

- (6) Annuitants who are reemployed by the district on or before December 31, 2009, shall until termination of such employment be subject to the DPS plan document provisions related to the reemployment of an annuitant. Any subsequent employment shall be governed by part 11 of this article.

**24-51-1733. Domestic relations order**

Agreements entered into pursuant to section 14-10-113(6), C.R.S., on or before December 31, 2009, shall be subject to the provisions of the DPS plan document, and agreements entered into on and after January 1, 2010, pursuant to section 14-10-113(6), C.R.S., shall be subject to the provisions of the rules and regulations of the association.

**24-51-1734. Disability retirement**

Applications for disability for DPS members filed on or before December 31, 2009, shall be governed by the disability provisions of the DPS plan document, and on or after January 1, 2010, disability shall be governed by the provisions of part 7 of this article. Persons receiving disability benefits under the DPS plan as of December 31, 2009, shall continue to receive such benefits in accordance with the DPS plan. The association board shall administer the provisions of the DPS plan regarding discontinuance or reduction of disability benefits paid under the DPS plan.

**24-51-1735. Survivor benefits—refund**

- (1) The determination of death and survivor benefits for DPS members shall be governed by this section. Pursuant to the provisions of this part 17 regarding portability, references in this section to service with the district shall be deemed to include service with all employers affiliated with the association.
- (2) In case of death of any affiliate or contributing member prior to retirement, the total accumulated contribution balance at the time of death shall be payable in one lump sum to the designated beneficiary, if applicable, or to the member's estate, unless one or more of the following circumstances exist:
  - (a) Said member meets the definition of deferred member under section 24-51-1702(19)(e) at the time of death, in which case section 24-51-1730 shall apply.

- (b) The designated beneficiary or beneficiaries of said member shall elect, pursuant to the provisions of sections 24-51-1736 to 24-51-1746, to have the provisions of said sections 24-51-1736 to 24-51-1746 applied in lieu of the refund above mentioned.

**24-51-1736. Eligibility for survivor benefits**

- (1) No benefits shall be payable under sections 24-51-1736 to 24-51-1746 unless all of the following conditions are met:
  - (a) At the time of death the deceased member was a contributing member, or a contributing member who retired for disability on or after July 1, 1962, and who would not be precluded pursuant to the DPS plan document from rights for survivor benefits.
  - (b) The deceased contributing member was a regular employee in the active service of the district continuously for the five-year period prior to said member's death, said five-year period having been contributing service, except:
    - (I) Absence on sabbatical leave or on a leave for restoration of health on a half-salary basis for periods during which contributions are paid shall be deemed continuous employment within the meaning of sections 24-51-1736 to 24-51-1746 and included in the required five-year period. Time absent from employment because of leave other than sabbatical leave or a leave for restoration of health on a half-salary basis and time absent from employment because of a permitted absence not constituting a termination of regular employment shall be disregarded and for the purposes of sections 24-51-1736 to 24-51-1746 shall not be deemed either an interruption of service or included in the required five-year period.
    - (II) If the deceased member was retired for disability on or after July 1, 1962, and was a contributing member upon the effective date of disability retirement, the requirement of five years of service prior to death shall be waived.

**24-51-1737. Eligible beneficiaries**

- (1) Payments under sections 24-51-1736 to 24-51-1746 are limited to:

- (a) (I) A child, including an adopted child, of the deceased member, so long as the child is living, under the age of eighteen years, and unmarried; except that where an eligible member dies on or after January 1, 1988, the definition of an eligible child shall include:
    - (A) An unmarried child under the age of twenty-three years who is enrolled on a full-time basis, within four months of the member's death, in a duly accredited school; or
    - (B) An unmarried child, regardless of age, who is found to be so mentally or physically incapacitated that such person is financially dependent upon the member pursuant to the test of financial dependency established for a surviving parent in paragraph (d) of this subsection (1).
  - (II) Adoptions involving an otherwise eligible child and occurring subsequent to the death of the member shall terminate the eligibility of such a child, unless such adoption is by the unremarried surviving spouse of the member, and in such a case eligibility of the child shall be terminated by a subsequent remarriage of said surviving spouse.
- (b) The surviving widow or widower of the deceased member who has not remarried and has in her or his care a child eligible to receive benefits as set forth in paragraph (a) of this subsection (1). If benefits are payable under said paragraph (a) or this paragraph (b), the DPS plan document shall govern any amounts due to any unremarried widow or widower.
  - (c) The surviving widow or widower who has not remarried, if no benefits are payable or if payable have ceased to any beneficiary qualified under paragraph (a) or (b) of this subsection (1).
  - (d) A dependent parent of the deceased member who has not remarried since such member's death, so long as such parent is living; except that said parent shall be eligible only if there are no beneficiaries qualified under paragraph (a), (b), or (c) of this subsection (1) at the time of the member's death. Dependence of a surviving parent must be established by a showing to the association beyond reasonable doubt that such parent was dependent upon the deceased member for not less than one-half of the parent's support and actually received such support from the deceased member during the six-month period prior to the death of such member.

- (2) Effective for surviving spouses of members who die on or after January 1, 1984, eligibility for beneficiaries as described in paragraphs (a), (b), and (c) of subsection (1) of this section will not be forfeited by remarriage.
- (3) If at the time of the death of the member there is a supplemental needs trust established before or within ninety days after the death of the member for the benefit of the child eligible for survivor benefits, survivor benefits payable pursuant to sections 24-51-1736 to 24-51-1746 to the beneficiary of the supplemental needs trust are payable to the trust so long as that beneficiary is eligible for survivor benefits. If a supplemental needs trust is determined to be invalid or terminates after the association commences payment to the supplemental needs trust, the survivor benefit, from then on, is paid to the beneficiary of the supplemental needs trust so long as that beneficiary is eligible for survivor benefits.

**24-51-1738. Survivors of members who died between 1974 and 1984**

Benefits payable to survivors of deceased eligible members who die on or after January 1, 1974, and prior to January 1, 1984, subject to the limitations provided in sections 24-51-1736 to 24-51-1746, shall be governed by the DPS plan document.

**24-51-1739. Survivors of members who died between 1984 and 1988**

Benefits payable to survivors of deceased eligible members who die on or after January 1, 1984, and prior to January 1, 1988, subject to the limitations provided in sections 24-51-1736 to 24-51-1746, shall be governed by the DPS plan document.

**24-51-1740. Survivors of members who die in 1988 or later**

- (1) Benefits payable to survivors of deceased eligible members who die on or after January 1, 1988, subject to the limitations provided in sections 24-51-1736 to 24-51-1746, shall be as follows:
  - (a) To each beneficiary under section 24-51-1737(1)(a), a monthly amount equal to the greater of ten percent of highest average salary as defined in section 24-51-1702(17), or one hundred sixty dollars prorated, if there are four or more eligible beneficiaries so long as such condition continues and is required in order not to exceed a maximum total allowance of the greater of thirty percent of highest average salary as defined in section 24-51-1702(17), or four hundred eighty dollars;



- (b) To the surviving spouse of the deceased member, as defined in section 24-51-1737(1)(b), so long as living, and having in his or her care a child eligible to receive benefits as provided in paragraph (a) of this subsection (1), calculated as follows:
- (I) Where the deceased member had less than fifteen years of accredited service, the difference, if any, between the amounts payable to beneficiaries under paragraph (a) of this subsection (1) and the greater of thirty percent of highest average salary as defined in section 24-51-1702(17), or four hundred eighty dollars;
  - (II) Where the deceased member had more than fifteen years of accredited service, the difference, if any, between the amounts payable to beneficiaries under paragraph (a) of this subsection (1) and the greater of four hundred eighty dollars or forty percent of highest average salary as defined in section 24-51-1702(17), which percentage shall be increased by two percent of highest average salary as defined in section 24-51-1702(17), for each whole year, and month prorated as a portion of a year, of accredited service in excess of twenty-five;
- (c) To a beneficiary under section 24-51-1737(1)(c) who has attained age sixty and who is the survivor of a deceased member who had less than fifteen years of accredited service, the lesser of thirty percent of highest average salary as defined in section 24-51-1702(17) or four hundred eighty dollars. So long as benefits, if any, are payable under paragraphs (a) and (b) of this subsection (1), only the excess, if any, of the benefit provided under this paragraph (c) shall be payable in addition thereto, but if no benefits are payable under said paragraphs (a) and (b) of this subsection (1), or, if payable, such amounts have been terminated, then the full amount of the benefit payment provided by this paragraph (c) shall be payable.
- (d) To a beneficiary under section 24-51-1737(1)(c) who has attained age fifty and who is the survivor of a deceased member who had fifteen or more years of accredited service, a monthly amount of four hundred eighty dollars or, if greater, thirty percent of highest average salary as defined in section 24-51-1702(17), increased by one percent of highest average salary, as defined in section 24-51-1702(17), for each whole year, and

month prorated as a portion of a year, of accredited service in excess of fifteen. So long as benefits, if any, are payable under paragraphs (a) and (b) of this subsection (1), only the excess, if any, of the benefit provided under this paragraph (d) shall be payable in addition thereto, but if no benefits are payable under said paragraphs (a) and (b) of this subsection (1), or, if payable such amounts have terminated, then the full amount of the benefit payment provided by this paragraph (d) shall be payable.

- (e) To each beneficiary under section 24-51-1737(1)(d), a monthly amount equal to the greater of ten percent of the deceased member's highest average salary as defined in section 24-51-1702(17), or two hundred forty dollars.

#### **24-51-1741. Effective date of survivor benefits**

On or after January 1, 1998, if survivor benefits are payable under sections 24-51-1736 to 24-51-1746, such benefits shall be deemed to accrue as of the first day following the death of the member or the first day when the first beneficiary becomes eligible, whichever is later, and shall be computed and payable from that date accordingly.

#### **24-51-1742. Election by designated beneficiary**

If the deceased member had designated a beneficiary, other than the member's estate, to receive the refund of the accumulated contribution balance, no survivor's benefits shall be subject to claim under sections 24-51-1736 to 24-51-1746 unless such designated beneficiary or beneficiaries then entitled to receive such refund, by written notification delivered within such time and in such form as prescribed, shall elect, in lieu of receiving such refund, to have the provisions of sections 24-51-1736 to 24-51-1746 applied.

If there is more than one designated beneficiary then entitled to receive such refund, such election must be joined in by all of them. If the deceased member had designated the estate as such beneficiary or if by operation of law the estate shall be entitled to such refund, then such election may be made by the duly appointed personal representative of the estate of such deceased member in like time and in like manner as may be prescribed by the board by general rule as specified in this section. If, however, such deceased member was qualified for retirement under the terms and conditions of sections 24-51-1713 and 24-51-1714, the designated beneficiary or beneficiaries so entitled to refund or benefits under sections 24-51-1736 to 24-51-1746, may elect, in lieu of such benefits, to allow benefits to be paid under either option B or option P3 subject to the applicable sections thereof providing for superannuation retirement. Such election shall

be made within such time and in such form as the board may prescribe and shall become effective as of the day after the date of the member's death. If there is more than one designated beneficiary entitled to receive such benefits, such election must be joined in by all of them.

**24-51-1743. When election becomes irrevocable**

The election described in section 24-51-1742 shall become irrevocable upon the first payment thereunder of any benefits provided under sections 24-51-1736 to 24-51-1746 or under sections 24-51-1713 and 24-51-1714. If, subsequent to exercise of such election by the appropriate beneficiary or beneficiaries but prior to the first payment of benefits thereunder, such beneficiary or beneficiaries desire to revoke such earlier election, such person or persons shall be permitted to do so and shall thereupon be eligible to receive a refund paid under the terms and conditions set forth in section 24-51-1735, and such revoking beneficiary or beneficiaries shall thereafter have no rights to any benefits of any kind, incident to the death of such member, other than said refund. If the election has been made to receive benefits hereunder and there is only one beneficiary and such beneficiary shall die before any payment of such benefits is made, a refund of such deceased member's accumulated contributions, computed as of the date of death, shall be made to the estate of such deceased beneficiary. If there shall be more than one beneficiary but all of them shall have died before any payment of such benefits is made, such refund shall be made to the estate of the last survivor of said several beneficiaries.

**24-51-1744. Fund transfer**

Upon the effective date of benefits under sections 24-51-1736 to 24-51-1746, the accumulated contributions of said deceased member at the time of death shall be transferred to and merged with that portion of the Denver public schools division trust fund set aside as a reserve to provide such benefits.

**24-51-1745. Payment in good faith**

Any payments of such survivor's benefits made to any person who is an eligible survivor of the deceased member and entitled thereto shall, to the extent of such payments actually made, be and constitute a complete release and acquittance to the system under this retirement plan. Such release shall not be deemed to preclude the right of another claimant or an adverse claimant of such survivor's benefits from establishing a right to future payments.

**24-51-1746. Waive appointment of guardian**

In the payment of survivor benefits hereunder, the association may, from time to time, authorize and approve payments directly to a minor or the parent caring for such minor without requiring the appointment of a duly constituted guardian for such minor. Likewise, the association may waive the appointment of a conservator for a beneficiary deemed mentally incompetent or otherwise unable by reason of age or illness to act without assistance, and may, from time to time, authorize and approve such payments to the person or institution having care of such beneficiary. The receipt of the person or institution so receiving such payments shall be a complete release and acquittance under this retirement plan with respect to such payments in all respects as if such payments had been made to a duly constituted guardian or conservator.

**24-51-1747. Portability between the Denver public schools division and the other four divisions within the association—definitions**

- (1) As used in this section, unless the context otherwise requires:
- (a) “DPS active member” means a person, as defined in subsection (2) of this section, who as of December 31, 2009, is an employee of the Denver public school district, the Denver public schools retirement system, or a Denver public school district charter school, and is a member of the Denver public schools retirement system. Active members include employees, other than part-time or hourly employees, on leave of absence from the Denver public school district, the Denver public schools retirement system, or a Denver public school district charter school on December 31, 2009.
  - (b) “DPS inactive member” means a person, as defined in subsection (3) of this section, who as of December 31, 2009, has a member account balance at the Denver public schools retirement system, is not employed by the Denver public school district, the Denver public schools retirement system, or a Denver public school district charter school, and is not receiving benefits from the Denver public schools retirement system.
  - (c) “Denver public schools retirement system” means the Denver public school district retirement system that will become the Denver public schools division within the association.
  - (d) “Freeze” or “frozen” means cessation of the collection of contributions and the granting of benefit or service accruals. However, interest will continue to accrue on frozen accounts at the applicable interest rate.

- (e) "Nonretirement plan choice affiliate employer" means any employer, other than the state or the community colleges, affiliated with the association.
- (f) "One-time irrevocable choice" refers to the choice of either the benefits as specified in this part 17 or the benefits under the PERA benefit structure. The choice period shall be a sixty-calendar-day choice period. Unless otherwise specified, the sixty-day choice period shall begin on the date the association receives the first contributions from the affiliated employer. If an individual is eligible to make a one-time irrevocable choice and fails to make the choice within the choice period, he or she will be automatically enrolled in the benefit structure with which the individual has accrued the most service credit at the beginning of the choice period. If the individual fails to make a choice and has service credit in both benefit structures and the amount of service credit in both structures is equal, then he or she will be automatically enrolled in the benefit structure with the most recent contribution prior to the first day of the choice period. Contributions received prior to a choice being made will be applied to the PERA benefit structure. Upon a choice being made within the sixty-day period, these contributions will be applied to the applicable division and the applicable benefit structure within that division. While the choice is pending, the individual shall not be allowed a refund or to retire.
- (g) "Parties" means the association, the Denver public schools retirement system, and the Denver public school district.
- (h) "PERA benefit structure" means the benefits provided in this article, except for the benefits provided for in part 15 of this article unless otherwise indicated, and except for the benefits provided for in this part 17.
- (i) "Retirement plan choice affiliated employer" means the state or the community colleges of the state.
- (j) "Denver public school district" means the school district sponsoring the Denver public schools retirement system.

- (k) "Denver public school district charter school" means a charter school that was approved before January 1, 2010, by the Denver public school district board of education and that has employees participating in the Denver public schools retirement system before January 1, 2010, and that is certified as a Denver public school district charter school at the time of merger. "Denver public school district charter school" also means a charter school approved by the Denver public school board of education on or after January 1, 2010. A Denver public school district charter school is considered an employer within the Denver public schools division.
  - (l) "Denver public schools division" refers to the separate division created within the association that will consist solely of the Denver public school district and Denver public school district charter schools and have a separate benefit structure from the other divisions within the association. The benefit structure for the Denver public school district division shall be governed by the DPS plan document and this part 17, where applicable.
- (2)
- (a) (i) A person who is not retired and is a DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who continues his or her employment with an employer within the Denver public schools division on and after January 1, 2010, shall continue to accrue a benefit under the school district division benefit structure as set forth in this part 17. Employment with any nonretirement plan choice eligible employer affiliated with the association other than the Denver public school district or a Denver public school district charter school on and after January 1, 2010, either concurrent or not concurrent, shall trigger a one-time irrevocable choice. This choice shall freeze the account not chosen. If the individual becomes an inactive member and decides to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, shall be under the PERA benefit structure in effect at that time.
  - (ii) A person who is not retired and is a DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who continues his or her employment with an employer within the Denver public schools division

on and after January 1, 2010, shall continue to accrue a benefit under the Denver public schools benefit structure as set forth in this part 17. Employment with any retirement plan choice employer affiliated with the association on and after January 1, 2010, without a twelve-month break in service, shall trigger a one-time irrevocable choice. The choice shall freeze the account not chosen. If the individual becomes an inactive member and decides to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

- (III) A person who is not retired and is a DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who continues his or her employment with an employer within the Denver public schools division on and after January 1, 2010, shall continue to accrue a benefit under the benefit structure as set forth in this part 17. If the individual is employed with any employer that is under the optional retirement plan choice pursuant to article 54.5 of this title, in an optional retirement plan choice position, he or she will have the choice as provided in article 54.5 of this title. For purposes of determining optional retirement plan choice eligibility, service credit within the benefit structure as set forth in this part 17 and service credit with the association will be combined. If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

- (IV) A person who is not retired and is a DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who continues his or her employment with an employer within the Denver public schools division on and after January 1, 2010, shall continue to accrue a benefit under the benefit structure as set forth in this part 17. If the individual is employed at the university of Colorado in a position defined as eligible for the university retirement plan, he or she will have the choice as provided in section 23-20-139, C.R.S. For purposes of determining university retirement plan choice eligibility, service credit within the benefit structure as set forth in this part 17 and service credit with the association will be combined. If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.
- (b) (I) A DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who terminates employment with his or her employer and becomes inactive and is later reemployed by any nonretirement plan choice affiliated employer of the association, including the Denver public school district and a Denver public school district charter school, will trigger a one-time irrevocable choice. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.



- (II) A DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who terminates employment with his or her employer and becomes inactive and is later reemployed by any retirement plan choice affiliated employer of the association within twelve months of the date of termination will trigger a one-time irrevocable choice. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.
  
- (III) A DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who terminates employment with his or her employer and becomes inactive and is later reemployed by any retirement plan choice affiliated employer of the association after a twelve-month break in service will have a retirement plan choice pursuant to section 24-51-1503(1). If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time. If the individual chooses to participate in the association's defined contribution plan, the individual may either elect to maintain his or her inactive account or direct that his or her member account be transferred to the defined contribution account; except that after-tax contributions shall be transferred to an after-tax account in the association's 401(k) account. If an individual elects to transfer his or her account pursuant to this subparagraph (III), the association shall transfer such account within ninety days after the employee's election becomes effective.

- (IV) A DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who terminates employment with his or her employer and becomes inactive and is later reemployed by any employer that is under the optional retirement plan choice pursuant to article 54.5 of this title, in an optional retirement plan choice position, will have the choice as provided in article 54.5 of this title. For purposes of determining optional retirement plan choice eligibility, service credit within the benefit structure as set forth in this part 17 and service credit within the PERA benefit structure will be combined. If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.
- (V) A DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who terminates employment with his or her employer and becomes inactive and is later reemployed at the university of Colorado in a position defined as eligible for the university retirement plan shall have the choice as provided in section 23-20-139, C.R.S. For purposes of determining university retirement plan choice eligibility, service credit within the benefit structure as set forth in this part 17 and service credit within the PERA benefit structure will be combined. If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent

employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

(c) A DPS active member who is also a member of the association pursuant to section 24-51-101(29) on January 1, 2010, will immediately be given a one-time irrevocable choice. The sixty-day choice period will begin on January 1, 2010. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with an affiliated employer of the association, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

- (3) (a) (I) A person who is not retired and is a DPS inactive member on January 1, 2010, who is subsequently employed by any nonretirement plan choice affiliated employer of the association, including the Denver public school district and a Denver public school district charter school, will trigger a one-time irrevocable choice. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.
- (II) A person who is not retired and is a DPS inactive member on January 1, 2010, who is subsequently employed by any retirement plan choice affiliated employer of the association within twelve months of the date of termination will trigger a one-time irrevocable choice. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

- (III) A person who is not retired and is a DPS inactive member on January 1, 2010, who is subsequently employed by any retirement plan choice affiliated employer of the association after a twelve-month break in service will have a retirement plan choice pursuant to section 24-51-1503(1). If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the benefit structure of the association in effect at that time. If the individual chooses to participate in the association's defined contribution plan, the individual may either elect to maintain his or her inactive account or direct that his or her member account be transferred to the defined contribution account; except that after-tax contributions shall be transferred to an after-tax account in the association's 401(k) account. If an individual elects to transfer his or her account pursuant to this subparagraph (III), the association will transfer such account within ninety days after the employee's election becomes effective.
- (IV) A person who is not retired and is a DPS inactive member on January 1, 2010, who is subsequently employed by any employer that is under the optional retirement plan choice pursuant to article 54.5 of this title in an optional retirement plan choice position will have the choice as provided in article 54.5 of this title. For purposes of determining optional retirement plan choice eligibility, service credit within the benefit structure as set forth in this part 17 and service credit within the PERA benefit structure will be combined. If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen.

If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

- (V) A person who is not retired and is a DPS inactive member on January 1, 2010, with either an inactive account with the association or no account with the association who is subsequently employed at the university of Colorado in a position defined as eligible for the university retirement plan will have the choice as provided in section 23-20-139, C.R.S. For purposes of determining university retirement plan choice eligibility, service credit within the benefit structure as set forth in this part 17 and service credit within the PERA benefit structure will be combined. If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.
- (b) A person who is not retired and is a DPS inactive member on January 1, 2010, who is also an active member of the association pursuant to section 24-51-101(29) on January 1, 2010, will immediately be given a one-time irrevocable choice. The sixty-day choice period will begin on January 1, 2010. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with an affiliated employer of the association, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

- (c) A DPS inactive member who is also an inactive member of the association who does not make a one-time irrevocable choice and subsequently retires from either benefit structure shall choose at time of retirement which of the two benefits to accrue upon returning to employment with any affiliated employer.
- (4) Notwithstanding subsections (1), (2), and (3) of this section, any employment with a Denver public schools division employer prior to January 1, 2010, is considered employment with the association for purposes of the eligibility for retirement plan choice as specified in part 15 of this article.
- (5) Any individual hired by the Denver public school district or a Denver public school district charter school on or after January 1, 2010, without an existing account in either the benefit structure under this part 17 or the PERA benefit structure shall be governed exclusively by the statutes and rules of the association as they exist at the time of hire.
- (6)
  - (a) A person who is a retiree of the Denver public schools retirement system before January 1, 2010, shall not be subject to the working retiree contributions or a benefit reduction due to postretirement employment with an affiliated employer of the association existing before January 1, 2010, as long as the retiree continues to be employed by that same employer. A retiree so situated shall be entitled to a second and entirely separate retirement coverage segment under the PERA benefit structure.
  - (b)
    - (I) A retiree of the Denver public schools retirement system with no member contribution account with the association on January 1, 2010, who returns to work for any affiliated employer of the association, including the Denver public school district or a Denver public school district charter school, shall be subject to the provisions of this article and rules of the association governing employment after service retirement. The retiree may suspend and add a separate benefit segment to his or her Denver public schools retirement system benefit. The retiree shall not be entitled to accrue a benefit under the PERA benefit structure.
    - (II) An individual who retires under the benefit structure provided in this part 17 after January 1, 2010, who did not make a one-time irrevocable choice and returns to work for any affiliated employer of the association, including the Denver public school district or a Denver

public school district charter school, shall be subject to the provisions of this article and rules of the association governing employment after service retirement. The individual may suspend and add a separate benefit segment to his or her Denver public schools retirement system benefit. The individual shall not be entitled to accrue a benefit under the PERA benefit structure.

- (c) A retiree of the Denver public schools retirement system with an inactive account in the association on January 1, 2010, who is employed by an affiliated employer of the association, including the Denver public school district or a Denver public school district charter school, shall be subject to the provisions of this article and rules of the association governing employment after service retirement. If the retiree chooses to suspend his or her benefit, he or she must make a one-time irrevocable choice within sixty days from the date of suspension to either add to his or her inactive account under the benefit structure for that account or add a separate benefit segment to his or her Denver public schools retirement system benefit. The retiree shall not be required to suspend his or her retirement benefit but will not be able to add to the inactive account or add a separate segment to the Denver public schools retirement system benefit unless the Denver public schools retirement system benefit is suspended. If the inactive account is chosen, the retiree will be permanently ineligible to add a separate segment to the Denver public schools retirement system benefit. If adding a separate segment to the Denver public schools retirement system benefit is chosen, the retiree will be permanently ineligible to add to the inactive account.
- (d) A Denver public schools retirement system retiree shall be considered a retiree of the association for purposes of part 15 of this article and article 54.5 of this title. A Denver public schools retirement system retiree shall also be considered a retiree of the association when employed by the university of Colorado after January 1, 2010.
- (e) A retiree of the Denver public schools retirement system before January 1, 2010, who is an active member of the association's defined contribution plan shall not be subject to a benefit reduction due to postretirement employment with his or her employer as long as the retiree continues to be employed by that same employer. The retiree shall be

entitled to continue to contribute to the defined contribution plan. If the retiree begins employment with another nonretirement plan choice employer, including the Denver public school district or a Denver public school district charter school, the retiree will be subject to the provisions of this article and rules of the association governing employment after service retirement. If the retiree chooses to suspend his or her benefit, he or she must add a separate benefit segment to his or her benefit as set forth in this part 17. The retiree shall not be required to suspend his or her retirement benefit, but will not be able to add a separate segment to the benefit as set forth in this part 17 unless the benefit is suspended.

- (f) A retiree of the Denver public schools retirement system before January 1, 2010, who is an active member of the association's defined contribution plan shall not be subject to a benefit reduction due to postretirement employment with his or her employer as long as the retiree continues to be employed by that same employer. The retiree shall be entitled to continue to contribute to the defined contribution plan. If the retiree begins employment with another retirement plan choice employer without a twelve-month break in service, the retiree shall be subject to the provisions of this article and rules of the association governing employment after service retirement. If the retiree chooses to suspend his or her benefit within twelve months from the date of employment, he or she shall be placed into the defined contribution plan and will continue to build on his or her defined contribution account. If the retiree chooses to suspend after twelve months, he or she will build another segment onto the benefit as set forth in this part 17.
- (g) An association retiree who is also a Denver public schools retirement system retiree on January 1, 2010, and who is subsequently employed by an affiliated employer of the association, including the Denver public school district or a Denver public school district charter school, shall be subject to the provisions of this article and rules of the association governing employment after service retirement with regard to both benefits. If the retiree does not suspend the benefits and works beyond the statutory limits, both retirement benefits shall be offset by five percent per day for every day worked beyond the limit. If the retiree chooses to suspend the benefits, he or she shall suspend both benefits and shall make a one-time irrevocable



choice within sixty days from the date of suspension to either add to his or her association account under the benefit structure for that account or add a separate benefit segment to his or her benefit as set forth in this part 17. The retiree shall not be required to suspend his or her retirement benefits but will not be able to add to either account unless the benefits are suspended. If the association account is chosen, the retiree permanently forfeits the ability to add a separate segment to the benefit under this part 17. If the benefit under this part 17 is chosen, the retiree permanently forfeits the ability to add to the association account.

- (7) (a) A person who is a retiree of the association and a DPS active member before January 1, 2010, shall not be subject to a benefit reduction due to postretirement employment with the Denver public school district or a Denver public school district charter school as long as the retiree continues to be employed by the same employer. A retiree so situated shall be entitled to a second and entirely separate retirement coverage segment under the benefit structure as set forth in this part 17. If such a retiree terminates employment with that employer, the retiree shall be subject to the provisions of this article and rules of the association governing employment after service retirement if reemployed by any affiliated employer. If the retiree chooses to suspend his or her benefit, the retiree shall make a choice within sixty days from the date of suspension to either add to his or her account under the PERA benefit structure for that account or add to his or her account as set forth in this part 17. The retiree shall not be required to suspend his or her retirement benefit, but will not be able to add to the benefit or add to the account under this part 17 unless the retirement benefit is suspended. If the association account is chosen, the retiree permanently forfeits the ability to add to the account under this part 17. If the account under this part 17 is chosen, the retiree permanently forfeits the ability to add to the association account. If the retiree does not suspend the association benefit, the separate segment of coverage will become an inactive account.
- (b) Subject to the provisions of paragraph (d) of this subsection (7), a retiree of the association with no member account in the Denver public schools retirement system on January 1, 2010, who is employed by the Denver public school district or a Denver public school district charter school after January 1, 2010, shall be subject to the provisions of this article and rules of the association governing employment after service retirement.

(c) A retiree of the association with an inactive account with the Denver public schools retirement system on January 1, 2010, who is employed by any affiliated employer, including the Denver public school district or a Denver public school district charter school, beginning on or after January 1, 2010, shall be subject to the provisions of this article and rules of the association governing employment after service retirement. If the retiree chooses to suspend his or her benefit, he or she shall make a one-time irrevocable choice within sixty days from the date of suspension to either add to his or her account with the association under the benefit structure for that account or add to the account as set forth in this part 17. The retiree shall not be required to suspend his or her retirement benefit, but will not be able to add to either account unless the retirement benefit is suspended. If the association account is chosen, the retiree permanently forfeits the ability to add to the account under this part 17. If the account under this part 17 is chosen, the retiree permanently forfeits the ability to add to the association account.

(d) A retiree of the association who was not a member of the Denver public schools retirement system on December 31, 2009, but who was employed by the Denver public school district or a Denver public school district charter school as an hourly employee on December 31, 2009, shall not be subject to a benefit reduction due to postretirement employment with the Denver public school district or a Denver public school district charter school as long as the retiree continues to be employed by the same employer. The retiree shall be subject to the working retiree contributions beginning January 1, 2011, as specified in section 24-51-1101(2), and the employer shall be required to remit employer contributions as specified in section 24-51-1101(2), plus the applicable amortization equalization disbursement and supplemental amortization equalization disbursement as specified in section 24-51-411.

(8) An individual may reinstate time within the benefit structure that he or she is in as long as the time is not concurrent with the time, either earned or purchased, in the other benefit structure. The cost to reinstate the time shall be the cost required by the association's statutes and rules. An individual may purchase, at the actuarial cost according to the association's statutes and rules, time that has been previously refunded in the other benefit structure as long as the time is not

concurrent with time, either earned or purchased, in the other benefit structure. The limits on the amount of service credit an individual may purchase set forth in this article shall apply to members under the benefit structure in this part 17.

- (9)
  - (a) A disability application submitted to the Denver public schools retirement system prior to January 1, 2010, shall be processed in accordance with this part 17.
  - (b) Any disability application submitted to the association on or after January 1, 2010, shall be processed in accordance with the provisions of this article and rules of the association.
  - (c) An individual shall not be eligible for disability benefits based on an account that is frozen.
- (10) A frozen account shall be considered an inactive account for purposes of survivor benefit eligibility.
- (11) Any time an individual continues to accrue a benefit under this part 17 while employed by an association affiliated employer other than the Denver public school district or a Denver public school district charter school, the individual's salary for pension purposes shall be governed by the association's definition of salary. On and after January 1, 2010, individuals in the Denver public schools division shall earn service credit based on the association's accrual rate of one month of service earned if the member receives eighty times federal minimum wage in one month while employed by a PERA affiliated employer, including the Denver public school district or a Denver public school district charter school.
- (12) A retiree or a beneficiary receiving a benefit from the Denver public schools retirement system, a disability retiree of the Denver public schools retirement system who applied for a disability retirement benefit prior to January 1, 2010, and a survivor benefit recipient based on an account of a person who died prior to January 1, 2010, shall have his or her benefits paid in accordance with the benefit structure as set forth in this part 17. For administrative convenience, annual benefit adjustments for such individuals may be scheduled so that the adjustments coincide with the dates on which benefit adjustments are effective under the rules of the association. Within the first calendar year following the effective merger date, it shall not be the intention of the association to deny an anticipated annual increase or to grant an additional increase to any annuitant,

beneficiary, or survivor, as defined in section 24-51-1702, but rather that the association will administer an appropriate annual increase considering any differences between the administrative procedures under the DPS plan and the association in relation to the timing of the payment of such increase.

- (13) The funding of a benefit based on an account that has contributions from the Denver public schools division shall be funded in the same manner as the association funds the benefit based on an account that has contributions in any one of the other four divisions as provided in section 24-51-208(4).

**24-51-1748. Staff members of the Denver public schools retirement system**

- (1) Each staff member employed by the Denver public schools retirement system on the date of the merger shall be hired as an employee-at-will of the association at a salary not less than the annual salary received from the Denver public schools retirement system as of the merger date, and the staff member's employment thereafter shall be governed by the policies, rules, and statutes applicable to the employees of the association; except that such staff members may accrue retirement benefits in accordance with the rules of the Denver public schools retirement system as they existed on the day preceding the effective date of the merger. As of the effective date of the merger, Denver public schools or the Denver public schools retirement system shall be responsible for the payment to the association of any accrued employment benefits other than benefits provided for under the association owed to each employee of the Denver public schools retirement system.
- (2) Notwithstanding the provisions of section 24-51-1206.7(5), service credit of staff members described in subsection (1) of this section prior to January 1, 2010, that was accrued with the Denver public schools and the Denver public schools retirement system shall apply toward the calculation of the premium subsidy as provided in section 24-51-1206.7.



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