

MEMORANDUM

REVISION 21 SERIES D

TO: Holders of Career Service Rule Books
FROM: Career Service Board
DATE: October 7, 2016
SUBJECT: Revision of Career Service Rule 2 CAREER SERVICE BOARD

The Career Service Rules review project continues to make progress. The project is modernizing our rules for a more progressive city, updating them for the changes we've made in the city in recent years, removing duplication and redundancies, and consolidating rules wherever possible.

The following information provides an update on the most recent rules changes. The following changes and revisions to Rule 2 were approved by the Career Service Board on October 6, 2016:

Career Service Rule 2 CAREER SERVICE BOARD

The following is a summary of the rule changes, their intention and impact. Also included are new rule pages to replace outdated information along with insertion instructions for Career Service Rule Books.

Please refer to the following tables for information on the former rule description, the revised rule description and the intended impact of the revisions for Rule 2.

Rule 2 – CAREER SERVICE BOARD			
CURRENT RULE	REVISED RULE	NEW RULE NUMBER	REVISION INTENTION & IMPACT
Title of Rule 2 is currently <i>OFFICE OF HUMAN RESOURCES</i>	Change title of Rule 2 to <i>CAREER SERVICE BOARD</i>		The new title is a better description of the content of the rule since its purpose is to establish how the Board carries out its duties.

CURRENT RULE	REVISED RULE	NEW RULE NUMBER	REVISION INTENTION & IMPACT
Details the types of discrimination that the Board shall adopt, administer, and enforce in its rules.	Rather than detail each type of discrimination, the new rule would state, "For equal employment opportunity without regard to any status protected by federal, state or local laws."	2-11 B. 5.	Since federal, state, and local laws change relatively frequently, broadening the description ensures that all types of discrimination will be covered, even when changes take place in these laws. This Rule 2 also references Rule 16 CODE OF CONDUCT AND DISCIPLINE which lists the protected statuses (see 16-22).
Board minutes, correspondence, records, and files will be kept in accordance with state and local records retention requirements. OHR Executive Director is the official custodian of these documents.	Retains OHR Executive Director's responsibility as the official custodian of these documents and removes the reference to retention requirements.	2-11 D.	Records retention requirements are both a citywide policy and process, so there is no need to specifically state that in this Rule 2.
OHR Executive Director may call special meetings of the Board when directed to do so by a Co-Chairperson or by two or more members of the Board or when the OHR Executive Director deems it necessary.	States that the OHR Executive Director SHALL call special meetings of the Board.	2-12 A. 2.	Makes clear that the OHR Executive Director is expected to follow through with a Board directive.

CURRENT RULE	REVISED RULE	NEW RULE NUMBER	REVISION INTENTION & IMPACT
The presence of at least three Board members shall be required at a Board meeting before the Board can transact business legally.	The presence of at least three Board members shall be required at a Board meeting before a quorum exists and the Board can transact business legally.	2-12 B.	Clarifies that at least three Board members must be present to create a quorum and to transact business legally.
Requires notices of the Board's public meetings to be posted in the public area of the OHR and on a bulletin board provided for such notices on the first floor of the City and County Building.	Adds that these public notices must also be posted on the Career Service Board's internet page.	2-12 C. 2. and 2-32 A. 2.	Provides greater opportunities for awareness and transparency. (Note: This process is followed currently; the change is a formality that makes it a requirement in the Rules.)
A Board member must disqualify him/herself when there is a personal bias or prejudice, served as a witness or attorney in the matter, is likely to be a material witness in the matter, or "has a pecuniary or non-pecuniary interest that could be substantially affected by the outcome of the proceeding."	Replaces pecuniary or non-pecuniary with "any."	2-12 D. 1. d.	"Pecuniary" is a word that is rarely used and most people don't know its meaning. Replacing "pecuniary or non-pecuniary" with "any" makes the sentence easier to understand and does not change its meaning.

CURRENT RULE	REVISED RULE	NEW RULE NUMBER	REVISION INTENTION & IMPACT
<p>The Board or its designee may, at its discretion or as requested by any City department or agency, conduct personnel-related investigations.</p>	<p>The Board or its designee may, at its discretion or as requested by any City department or agency, retain a qualified investigator to conduct personnel-related investigations.</p>	<p>2-15</p>	<p>The City Attorney's Office has experienced situations throughout the City when an investigation is conducted by a non-qualified individual which has led to unnecessary legal challenges.</p>
<p>The OHR Executive Director shall may submit to the City Attorney the proposed rule change for review, including a ruling as to legality, at any time prior to posting for public comment by the Board and before final publication.</p>	<p>Changes "shall" to "may."</p>	<p>2-20 B. 1.</p>	<p>Currently, this is not always done and it is not always necessary.</p>
<p>Proposed rule changes shall be posted on bulletin boards and made available to appointing authorities, employees, and the general public for comments and suggestions. A short summary of the proposed rule change shall be posted with the proposed rule change.</p>	<p>Adds the requirement that proposed Rules changes will be posted on the Board's web page and that the proposed change contains the reason(s) for the proposed change.</p> <p>Removes the general reference to "bulletin boards" and replaces it with "...the same bulletin boards as local, state, and federal-mandated posters..."</p>	<p>2-20 B. 2.</p>	<p>Provides greater opportunity for transparency and awareness of proposed Rules changes. (Note: These processes are followed currently; the change is a formality that makes them a requirement in the Rules.)</p> <p>It is unclear which "bulletin boards" are being referenced in the current rule. In addition, specific bulletin boards are already referenced for postings in Rule 2-12 C. 2.</p>

CURRENT RULE	REVISED RULE	NEW RULE NUMBER	REVISION INTENTION & IMPACT
<p>A final proposed rule change, incorporating comments received during the public comment period which are deemed appropriate by the OHR Executive Director shall be posted with the Board Agenda for the meeting in which the public hearing will be held.</p>	<p>Removes “incorporating comments received during the public comment period which are deemed appropriate by the OHR Executive Director” from the sentence.</p>	<p>2-20 B. 3.</p>	<p>The OHR Director currently incorporates appropriate feedback as a natural part of the public process and is therefore unnecessary to place in the rule.</p>
<p>When the subject of a hearing is a proposed pay plan adjustment or a proposed rule change, the OHR shall provide electronic or facsimile copies of the notice of public hearing to appointing authorities who shall post such notices in conspicuous locations in the work places.</p>	<p>Removes “or facsimile” from the sentence.</p>	<p>2-32 B. 2.</p>	<p>Facsimile’s are rarely, if ever, used for this purpose. Removing “or facsimile” does not change the meaning of the sentence, and it modernizes current language.</p>
<p>Proceedings of a mandatory hearing shall be recorded and retained for a period of six (6) years, but need not be transcribed unless required in litigation. If a transcript is required, the party requesting the transcript shall pay the costs.</p>	<p>Removes the 6 year records retention requirement.</p>	<p>2-32 C. 2.</p>	<p>Records retention requirements are both a citywide policy and process, so there is no need to specifically state that in this Rule 2.</p>

CURRENT RULE	REVISED RULE	NEW RULE NUMBER	REVISION INTENTION & IMPACT
Board hearings may be continued for good and sufficient cause.	Removes “and sufficient” from the sentence.	2-32 C. 3.	No standard exists as to what “and sufficient” means in this context, so removing it does not change its meaning.
States that one of the OHR executive Director’s powers and duties consist of preparing and holding examinations, pass upon qualifications of applicants, establishing eligible lists and referring eligible applicants to appointing authorities to fill vacancies.	Changes “pass upon” to “determine” and “hold” to “administer.”	2-40 A. 2.	Clarifies the meaning of this responsibility of the OHR Executive Director.
Another of the OHR Executive Director’s responsibilities is to establish and maintain such records, forms and procedures as necessary to control personnel transactions.	Changes “transactions” to “actions.”	2-40 A. 4.	“Personnel actions” is a term that is commonly used and therefore more easily understood.
Yet another responsibility of the OHR Executive Director is to administer the Tuition Refund Program in accordance with the Denver Revised Municipal Code.	Changes “Tuition” to “Education.”	2-40 A. 7.	An ordinance enacted by City Council changed the name of the Program from “Tuition” to “Education.” Though the Program is currently unfunded, it is recommended that this language be retained in Rule 2 since the program itself still exists in ordinance.

CURRENT RULE	REVISED RULE	NEW RULE NUMBER	REVISION INTENTION & IMPACT
Describes the responsibilities of the Board and OHR Executive Director when the OHR Executive Director is absent for extended periods of time.	Changes the term “acting” to “interim.”	2-40 C.	Modernizes the current language.
None	Adds language describing the powers and duties of the Career Service Hearing Officers.	2-50	This rule describes the duties and organization of the Board and the duties and powers of the OHR Executive Director but omits duties of the Hearing Officers. Since both the OHR Executive Director and the Hearing Officers are appointees of the Board, it makes sense to add their duties to this Rule 2.
Appendix 2.A. contains language from the City Charter referencing the Career Service personnel system, and Appendix 2.B. contains language from the Denver Revised Municipal Code.	Removes this language from the Rule.		City Charter and Ordinance language is referenced in the purpose of this Rule 2, so the reader is aware of its existence, making duplication in this Rule 2 unnecessary.

	<u>Page Number</u>	<u>Issuance Dates</u>
<u>Remove:</u> Remove entire Rule 2	2-1 2-2 2-3 through 2-8 2.A.-1 2.B.-1 through 2.B.-3	September 25, 2015 February 12, 2016 January 7, 2013 January 7, 2013 January 7, 2013

	<u>Page Number</u>	<u>Issuance Dates</u>
<u>Replace with:</u> Entire Rule 2	2-1 2-2 2-3 through 2-8	October 7, 2016

PLEASE INSERT IN YOUR RULE BOOK AS SOON AS POSSIBLE. THANK YOU.

**RULE 2
CAREER SERVICE BOARD**

Purpose statement:

The purpose of this rule is to establish how the Career Service Board (“Board”) carries out its duties as provided for under the authority of the City Charter § 9.1.1 and Chapter 18 of the Denver Revised Municipal Code.

Section 2-10 Career Service Board

2-11 Officers and Duties

A. Duties and Organization of the Board:

1. The five-member Board shall foster and maintain a merit-based personnel system for the Career Service and shall be committed to equal employment opportunity in accordance with the City Charter and the Denver Revised Municipal Code. The Board shall carry out all other duties delegated by the Denver Revised Municipal Code.
2. The Board’s primary functions are to oversee the Office of Human Resources (“OHR”), oversee the Career Service Hearing Office, and serve as a quasi-judicial body to decide appeals of decisions of the Career Service Hearing Officers (“Hearing Officers”).
3. The Board shall have two Co-Chairpersons who shall be elected on an annual basis from the members of the Board.

B. The Board is responsible for adopting, administering and enforcing rules necessary to foster and maintain this merit-based personnel system including, but not limited to rules providing:

1. For the conduct of competitive examinations of competence (Rule 3 **RECRUITMENT AND SELECTION**);
2. That appointments and promotions of employees in the Career Service shall be made on the basis of merit and ability (Rule 3 **RECRUITMENT AND SELECTION**);
3. For probationary periods (Rule 5 **APPOINTMENTS AND STATUS**);
4. For like pay for like work and for the payment of generally prevailing compensation and benefits to Career Service employees (Rule 7 **CLASSIFICATION AND COMPENSATION**);
5. For equal employment opportunity without regard to any status protected by federal, state or local laws (see Rule 16 **CODE OF CONDUCT AND DISCIPLINE**);

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6. That dismissals, suspensions or disciplinary demotions of non-probationary employees in the Career Service shall be made only for cause, including the good of the service (Rule 16 **CODE OF CONDUCT AND DISCIPLINE**);
7. For grievance procedures (Rule 18 **DISPUTE RESOLUTION**); and
8. For appeals from actions of appointing authorities (Rule 19 **APPEALS**). (Revised February 12, 2016; Rule Revision Memo 18D)

C. Duties of the Co-Chairpersons:

1. One of the Co-Chairpersons shall preside at all meetings of the Board and each Co-Chairperson shall perform such other duties as may be assigned or delegated by the Board, but shall have no authority to act on behalf of the Board or in its name in any respect whatever except by special authorization of the Board. Such authorization shall be entered in the minutes of the Board meeting when such authorization is given.
2. The Co-Chairpersons may vote on all questions before the Board.
3. The Board shall designate, at its discretion, which Co-Chairperson shall have primary responsibility for presiding at Board meetings. In the absence of the Co-Chairperson assigned to preside, the other Co-Chairperson shall preside.
4. If neither Co-Chairperson is present, the remaining members of the Board shall designate a Chairperson pro tem.

D. Minutes and Record-Keeping:

The OHR Executive Director shall be the official custodian of all Board minutes, correspondence, documents and files.

E. Appointments:

The Board is responsible for appointing and overseeing the OHR Executive Director, Hearing Officers, and other appointees as allowed by the City Charter and Denver Revised Municipal Code.

2-12 Meeting Requirements

A. Meetings:

1. The Board shall meet on the first and third Thursday of each month, or as deemed necessary by the Board.
2. The OHR Executive Director shall call special meetings of the Board

when directed to do so by a Co-Chairperson, or by two or more members of the Board, or when the OHR Executive Director deems it necessary.

3. All meetings shall be public in accordance with the open meetings requirements of the Denver Revised Municipal Code, unless an executive session or private meeting is otherwise authorized.

B. Quorum:

The presence of at least three Board members shall be required at a Board meeting before a quorum exists and the Board can transact business legally. No action or order of the Board shall be valid unless at least three members of the Board concur. Board members shall be considered present at a Board meeting if physically present at the meeting, or if participating remotely to the extent that the Board member can hear Board proceedings and be heard by those at the Board meeting simultaneously.

C. Notice:

1. Advance notice of all public meetings of the Board shall be given in accordance with the open meetings requirements of the Denver Revised Municipal Code. Such notice shall be posted at least forty-eight (48) hours in advance of such meetings.
2. Such notice shall be posted in the public area of the OHR on a bulletin board provided for such notices, on the first floor of the City and County Building, and on the Career Service Board's internet page.
3. The notice shall include the date, time and place of the meeting and a general description of the subject or subjects to be discussed. No subjects other than those specified in the notice may be addressed.
4. The Board may cancel any meeting without notice if there is insufficient business to warrant a meeting, or if there is the absence of a quorum.

D. Disqualification of a Board Member:

1. Members of the Board shall disqualify themselves in any proceeding in which the Board member's impartiality might be reasonably questioned, including but not limited to, instances where the Board member:
 - a. Has a personal bias or prejudice concerning a party, or personal knowledge of disputed facts concerning the matter;
 - b. Served as an attorney or witness in the matter;
 - c. Is likely to be a material witness in the matter; or
 - d. Has any interest that could be substantially affected by the

outcome of the proceeding.

2. Members of the Board may disqualify themselves at any time for any other good cause.

2-13 Communications with the Board

- A. Written communications and requests to the Board shall be directed to the OHR Executive Director or to one of the Co-Chairpersons.
- B. Such written communications or requests shall be provided to all members of the Board.
- C. If any action is taken as a result of a written communication to the Board, notice of such action shall be given to the individual and/or agency concerned.
- D. Verbal communications to the Board will be allowed during scheduled meetings of the Board or as otherwise directed by the Board.

2-14 Pilot Programs

The Board may authorize the OHR Executive Director to implement new and innovative compensation/performance management programs on a pilot basis within selected agencies. If the pilot program achieves its objectives, the Board may approve citywide implementation of the new policy or rule. If the pilot program does not achieve its objectives, the Board may end the program.

2-15 Investigations by the Board and Subpoenas

The Board or its designee may, at its discretion or as requested by any City department or agency, retain a qualified investigator to conduct personnel-related investigations.

The Board has the authority under the City Charter to issue subpoenas as may be necessary to conduct an investigation.

Section 2-20 Adoption, Amendment or Repeal of Career Service Rules ("Rules")

- A. Changes to the Rules may be proposed by appointing authorities, employees, or other interested citizens. Such proposals shall be in writing and shall be directed to the OHR Executive Director or one of the Board Co-Chairpersons.
- B. When the Board or the OHR Executive Director determines that a change in the Rules is necessary or desirable, the procedure shall be as follows:
 1. The OHR Executive Director may submit to the City Attorney the proposed rule change for review, including a ruling as to legality, at any time prior to posting for public comment by the Board and before final publication.

2. The proposed rule change shall be posted on the same bulletin boards as the local, state, and federal-mandated posters, as well as the Career Service Board's internet page, and made available to appointing authorities, employees, and the general public for comments and suggestions. A short summary of the proposed rule change and the reason(s) for the proposed change shall be posted with the proposed rule change.
3. A final proposed rule change shall be posted with the Board Agenda for the meeting in which the public hearing will be held.
4. A public hearing on the proposed rule change shall be held by the Board.
5. The Board shall accept, reject or modify the proposed rule change. If the Board modifies a proposed rule change, the Board need not re-post the rule for public comment unless the Board, in its own discretion, determines that reposting is necessary.
6. When a rule is adopted, amended or repealed by the Board, such rule shall be published and made available to appointing authorities, employees and the public as promptly as possible.
7. The effective date of the rule change shall not be more than thirty (30) days after the date of adoption, amendment or repeal by the Board unless another date is designated by the Board.
8. The following changes to the Rules may be made by the OHR Executive Director without following the above-stated procedure: re-numeration; spelling and typographical error corrections; and revision and updating of internal references, appendices, and/or table of contents. Such changes may be published as administrative changes without the approval of the Board.

Section 2-30 Public Hearings by the Board

2-31 Types of Public Hearings

- A. Mandatory Public Hearings: The Board shall hold a public hearing on the following:
 1. Proposed changes to classification titles and/or attendant pay rates covered by the classification and pay plan resulting from:
 - a. Annual pay survey recommendations; or
 - b. Normal maintenance and administration of the classification and pay plan and related classifications (Effective May 3, 2006; Rule Revision Memo 8C).

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2. Proposed changes to employee benefits prior to the OHR Executive Director making any recommendations to the Mayor and City Council as provided in the Denver Revised Municipal Code;
 3. Adoption, amendment or repeal of a fund consolidation or de-consolidation for lay-off purposes;
 4. Determination of prevailing wages, in accordance with the Denver Revised Municipal Code;
 5. Adoption, amendment or repeal of a rule, except for changes that are administrative.
- B. Discretionary Public hearings: The Board may hold a public hearing, at its discretion, on any matter within the jurisdiction of the Board.

2-32 Notice and Conduct

A. Notice of Hearings:

1. Notice of public hearings by the Board shall be given at least thirteen (13) calendar days in advance of the hearing, and shall state the time, date, place, and subject of the hearing, who may be heard, and the process to be heard.
2. Such notice shall be posted in the public area of the OHR on a bulletin board provided for such notices, on the first floor of the City and County Building, and on the Board's internet page.

B. Special Additional Notice Requirements:

1. When the subject of a hearing is proposed fund consolidations or de-consolidations for purposes of lay-off, the department or agency affected by the proposed consolidation or de-consolidation shall post the notices in such locations that employees affected by the consolidation or de-consolidation shall be given reasonable notice of the time, date, place and subject of the hearing.
2. When the subject of a hearing is a proposed pay plan adjustment or a proposed rule change, the OHR shall provide electronic copies of the notice of public hearing to appointing authorities who shall post such notices in conspicuous locations in the work places.

C. Conduct of Hearings by the Board:

1. Persons wishing to speak at a hearing shall have their names placed on the agenda in advance of the hearing. The Board, in its discretion, may, at any time, admit more speakers preceding or during the hearing. The Board may, in its discretion, place reasonable limitations on the hearing.

2. Proceedings of a mandatory hearing shall be recorded, but need not be transcribed unless required in litigation. If a transcript is required, the party requesting the transcript shall pay the costs.
3. At the discretion of the Board, hearings may be continued for good cause.

Section 2-40 OHR Executive Director

A. Powers and Duties:

The OHR Executive Director shall serve at the pleasure of the Board, report directly to the Board, and perform all duties and responsibilities as directed by the Board, including those contained in these Rules, and as delegated by the Denver Revised Municipal Code. In addition, the OHR Executive Director's powers and duties are:

1. To interpret and enforce the Rules adopted by the Board in such a manner as to promote and maintain the principles of a merit-based personnel system and the just, speedy and effective resolution of disputes (Revised January 22, 2010; Rule Revision Memo 44C);
2. To prepare and administer examinations, determine qualifications of applicants, establish eligible lists and refer eligible applicants to appointing authorities to fill vacancies;
3. To establish and maintain a roster of all Career Service employees;
4. To establish and maintain such records, forms and procedures as necessary to control personnel actions;
5. To consider reasonable suggestions from appointing authorities, the public, and employees or their representatives, pertaining to any phase of the personnel program;
6. To delegate to a designee such duties as, in his/her opinion are appropriate, unless otherwise specifically provided in these rules;
7. To administer the Education Refund Program in accordance with the Denver Revised Municipal Code; and
8. To perform such other duties as may be necessary to foster and maintain a merit-based personnel system for the Career Service, further equal employment opportunity, or otherwise ensure the efficient operation of OHR.

B. Normal Working Hours:

The OHR Executive Director shall keep the OHR open for business from 8:00

a.m. to 5:00 p.m. Monday through Friday of each week, holidays excepted, unless good cause warrants a temporary or permanent change.

C. Interim OHR Executive Director:

1. When the OHR Executive Director will be absent for sixty (60) days or less, the OHR Executive Director shall designate a suitable and competent person as interim OHR Executive Director, unless the Board elects to designate one instead.
2. If the absence is going to be more than sixty (60) days, the Board shall designate an interim OHR Executive Director.

Section 2-50 Career Service Hearing Officers

A. Powers and Duties:

Career Service Hearing Officers serve at the pleasure of the Board, report directly to the Board, and perform all duties and responsibilities including those contained in these Rules, and as delegated by City Charter, to maintain a fair and efficient appeal process. In addition, the Hearing Officers' powers and duties are:

1. To ensure due process and to have authority to preside over all appeals permitted by Rule 19 **APPEALS** regarding employment disputes, and to perform the functions necessary to implement and maintain a fair, speedy, and efficient process for appeals.
 - a. Hear and evaluate testimony under oath or affirmation to determine case facts and maintain order and decorum, dispose of objections expressed, and permit questioning and cross-examination of witnesses.
 - b. Make rulings on motions; hold pre-hearing conferences; set hearing dates; grant continuances or stays; issue subpoenas; administer oaths; continue, dismiss, or rule on cases subject to appeal; research case law; render written decisions and orders; and related activities.
 - c. Take necessary action to control proceedings.
2. To administer the Alternative Dispute Resolution Program.