

***PUBLIC EMPLOYEES RETIREMENT  
ASSOCIATION OF NEW MEXICO  
BOARD POLICIES AND PROCEDURES***

***Adopted March 29, 2001; amended 2002, 2011, 2012, 2014, 2019, 2021 and 2023***

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*Current Edition of Robert's Rules of Order*

*Rules Administration Committee Charter*

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*Executive Director Charter*

*Executive Director Evaluation Form*

## **1.00 GENERAL GUIDELINES**

### **1.10 Overview and Purpose.**

The New Mexico Public Employees Retirement Board (“Board”) is the Trustee of the public pension funds created by state statute and administered by the Public Employees Retirement Association (“PERA”).<sup>1</sup> As Trustees, Board Members are fiduciaries to the various PERA funds and must prudently administer these retirement systems for the sole and exclusive benefit of PERA’s active, deferred, and retired members and their beneficiaries.<sup>2</sup> Additionally, the Executive Director has a fiduciary duty to prudently administer PERA and its investments for the sole and exclusive benefit of PERA members and beneficiaries. In order to maintain the respect, trust and confidence of its members and beneficiaries, all Board Members and the Executive Director must use the powers and resources of their offices only to advance the interests of PERA members and beneficiaries and not to obtain personal benefits or promote private interests incompatible with members’ interests. Board Members and the Executive Director shall conduct themselves in a manner that justifies the confidence placed in them by PERA members and beneficiaries, and at all times maintain their integrity and discharge their responsibilities ethically in the course of their public service with PERA.

The purpose of these policies is to provide the governing rules for Board Members and the Executive Director of the New Mexico Public Employees Retirement Association.

### **1.20 Governing Law.**

**Constitutional Authority:** The Board is governed by the provisions of N.M. Const. art. XX, § 22, which provide:

**Sec. 22. [public employees and educational retirement system trust funds; expenditures and encumbrances prohibited; administration; vesting of property rights.]**

- A. All funds, assets, proceeds, income, contributions, gifts and payments from any source whatsoever paid into or held by a public employees retirement system or an educational retirement system created by the laws of this state shall be held by each respective system in a trust fund to be administered and invested by each respective system for the sole and exclusive benefit of the members, retirees and other beneficiaries of that system. Expenditures from a system trust fund shall only be made for the benefit of the trust beneficiaries and for expenses of administering the system. A system trust fund shall never be used, diverted, loaned, assigned, pledged, invested, encumbered or appropriated for

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<sup>1</sup> Public Employees Retirement Act, NMSA 1978, Sections 10-11-1, et seq. (1999), the Judicial Retirement Act, NMSA 1978, Sections 10-12B-1 et seq. (1997), the Magistrate Retirement Act, NMSA 1978, Sections 10-12C-1 et seq. (1997) the Volunteer Firefighters Retirement Act, NMSA 1978, Section 10-11A-1 et seq. (1997) and the Deferred Compensation Act, NMSA 1978, Sections 10-7A-1 et seq.

<sup>2</sup> N.M. Const. art. XX, § 22.

any other purpose. To the extent consistent with the provisions of this section, each trust fund shall be invested and the systems administered as provided by law.

- B. The retirement board of the public employees retirement system and the board of the educational retirement system shall be the trustees for their respective systems and have the sole and exclusive fiduciary duty and responsibility for administration and investment of the trust fund held by their respective systems.
- C. A retirement board shall have the sole and exclusive power and authority to adopt actuarial assumptions for its system based upon the recommendations made by an independent actuary with whom it contracts. The legislature shall not enact any law that increases the benefits paid by the system in any manner or changes the funding formula for a retirement plan unless adequate funding is provided.
- D. Upon meeting the minimum service requirements of an applicable retirement plan created by law for employees of the state or any of its political subdivisions or institutions, a member of a plan shall acquire a vested property right with due process protections under the applicable provisions of the New Mexico and United States constitutions.
- E. Nothing in this section shall be construed to prohibit modifications to retirement plans that enhance or preserve the actuarial soundness of an affected trust fund or individual retirement plan.

**Statutory Authority:** In addition to its constitutional mandate, the Board must also adhere to the following statutes governing its authority:

- Public Employees Retirement Act, NMSA 1978, Sections 10-11-1, *et seq.*
- Judicial Retirement Act, NMSA 1978, Sections 10-12B-1 *et seq.*
- Magistrate Retirement Act, NMSA 1978, Sections 10-12C-1 *et seq.*
- Volunteer Firefighters Retirement Act, NMSA 1978, Sections 10-11A-1 *et seq.*
- Deferred Compensation Act, NMSA 1978, Sections 10-7A-1 *et seq.*
- Governmental Conduct Act, NMSA 1978, Sections 10-16-1 *et seq.*
- Financial Disclosure Act, NMSA 1978, Sections 10-16A-1 *et seq.*
- Inspection of Public Records Act, NMSA Sections 14-2-1 *et seq.*
- Open Meetings Act, NMSA 1978, Sections 10-15-1 to 10-15-4, as amended.

**1.30 Mission Statement.** The mission of the Board of the Public Employees Retirement Association is to prudently preserve, protect, invest and administer PERA Funds to meet its current and future obligations and provide quality services to PERA members and their beneficiaries.

**1.40 Value Statement.** The Board will act with integrity in meeting its fiduciary responsibilities to PERA's members and beneficiaries. The Board will make efficient, effective, prudent and visionary decisions in fulfilling its mission. Board Members will be reliable, responsible, and will utilize opportunities to receive necessary training in order to be knowledgeable fiduciaries. The Board will engage

in inclusive decision making processes, which support its expectation that the Board speaks with a unified voice.

**1.50 Fiduciary Responsibilities.**

**1.51 Duty of Prudent Care:** Board Members and the Executive Director shall, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character with like aims. Good faith does not excuse failure to use prudent care in the administration of the PERA Fund.

**1.52 Duty of Loyalty:** Board Members and the Executive Director shall give their undivided loyalty and act solely for the benefit of the present and future participants and beneficiaries of the PERA Fund, and shall balance the interests of present and future participants and beneficiaries where those interests may diverge.

**1.53 Duty to Deal Impartially:** Board Members and the Executive Director shall deal impartially with all active, deferred, and retired PERA members and beneficiaries.

**1.54 Duty to Preserve the Trust:** Board Members and the Executive Director shall preserve the trust assets through implementation of the Board Investment Policy and monitoring fund performance.

**1.55 Duty to Invest as Prudent Investor:** Board Members and the Executive Director have a duty to the PERA Funds' members and beneficiaries to invest and manage the funds as a prudent investor would, in light of the purpose, terms, distribution requirements and other circumstances of the trust. This standard requires the exercise of reasonable care, skill, and caution, and is to be applied to investments not in isolation but in the context of the trust portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the PERA Fund. In making and implementing investment decisions, the Board, the Executive Director (and any delegated personnel) have a duty to diversify the investments of the PERA Fund unless, under the circumstances, it is clearly prudent not to do so.

**1.56 Duty to Be Educated:** The complexities of sound management of the assets and liabilities of the PERA Fund impose a continuing responsibility for all Board Members and the Executive Director to attend educational conferences, seminars, and other events that are required to conduct the business of PERA, or that will better prepare them to perform their fiduciary duties.

**1.57 Duty as Co-Trustee:**

- a. Board Members and the Executive Director have a duty to participate in the administration of the PERA Fund.
- b. Board Members and the Executive Director have a duty to use reasonable care to prevent co-trustees from committing a breach.
- c. Board Members and the Executive Director have a duty to compel performance or redress a breach.

**1.60 Governance Principles:** The Board shall establish and communicate Board policies and priorities and then appropriately monitor performance. The Board recognizes that the achievement of its goals requires self-discipline by the Board as a whole and by individual Board Members to abide by the policies articulated herein and to govern in a manner consistent with the Board's value statement. The Board is responsible for creating and maintaining an atmosphere that encourages frank and collegial discussions both at the Board and Committee levels and between the Board and PERA management.

**1.70 Board Composition, Nomination, Election and Resignations.**

- 1.71 Composition.** The composition of the Board of PERA shall be as provided by applicable law.
- 1.72 Nomination and Election.** The nomination, election and appointment of individuals to serve as Board Members of PERA shall be as provided by applicable law.
- 1.73 Term Limits.** Board Members shall serve terms and shall have term limits as provided by applicable law.
- 1.74 Resignations.** A Board Member may resign from his/her position by providing written notice to the Board and also informing the Executive Director by copying him/her on the resignation notice.

**2.00 BOARD'S ROLE AND DUTIES**

Consistent with its fiduciary role as Trustees of the PERA Funds, the Board's principal role is to ensure that PERA is appropriately governed and managed for the benefit of current and future members and beneficiaries of the fund. With the overriding goal of protecting fund assets and maintaining liquidity to meet distribution obligations, the Board shall:

**2.10 Adopt and Monitor PERA Policies.**

- 2.11** Set the long-term strategic direction for PERA, focusing on the goals of PERA against which its performance is measured and monitored.
- 2.12** Create, adopt, review and/or revise Board rules, policies and guidelines regarding administration of the retirement system and investment of its assets as necessary but at least every 2 years in odd-numbered years.
- 2.13** Select, supervise, compensate and regularly evaluate the Executive Director. The Board shall evaluate the Executive Director at least annually.
- 2.14** Delegate execution of established Board policy and strategic objectives to the Executive Director and the Chief Investment Officer, and through them, re-delegation to PERA staff.
- 2.15** Create, adopt, and publish an annual schedule for regular board meetings.
- 2.16** Identify benchmarks and requirements that trigger Board review.
- 2.17** Identify information needs and determine how, when and in what form information is to be timely delivered to Board Members to enable the Board to meet its responsibilities.
- 2.18** Provide for the election of active members and retired members on the Board.



- 2.19** Evaluate the Board's performance annually at the retreat, and take any steps necessary to improve Board operations.

**2.20 Review and Evaluate PERA Performance.**

- 2.21** Monitor performance and regularly review results as measured by performance standards:
- A. PERA's mission/value statements.
  - B. Long-range goals including the performance based budget, communication plan and other such plans as directed by the Board.
  - C. Performance measures that include external as well as internal measures.
- 2.22** Review, approve and monitor actuarial data, assumptions, methodologies and actuarial experience studies annually.
- 2.23** Review, approve and monitor system asset-liability study triennially.
- 2.24** Approve the annual budget.
- 2.25** Ensure the integrity of the financial control and reporting system.
- 2.26** Oversee annual independent audit, including approval of the outside auditor.
- 2.27** Issue requests for information (RFIs) and requests for proposals (RFPs) for consultants and other service providers and participate in evaluation committees, at the Board's discretion and as provided for in PERA's Investment-related Procurement Policy.

- 2.30 Board Powers.** The Board shall have the sole power and authority to hear and determine all facts pertaining to applications for benefits from PERA or any other matter pertaining to the administration of PERA.

- 2.40 Board Delegation.** The Board may delegate authority to the Executive Director to perform any act or duty of the Board, except the authority to set the compensation and benefits of the Executive Director. The Executive Director may, in turn, delegate to subordinates any such act or duty. Except where the Board, in delegating that authority, provides that the Executive Director may act finally, all material acts of the Executive Director and subordinates shall be reported to the Board at its next regular meeting and shall be subject to review, ratification, or reversal by the Board.

**2.50 Individual Board Member Responsibilities**

- 2.51** At all times individual Board Members shall act in the best interest of PERA consistent with their fiduciary duty, ensuring the highest standard of duty to PERA's members and beneficiaries, and in conformance to the Board's policies.
- 2.52** Individual Board Members shall abide by and monitor the Board's policies.
- 2.53** Individual Board Members cannot act or speak on behalf of the entire Board or PERA unless specifically authorized by the Board.
- 2.54** An individual Board Member may request to remove any item from the Consent Agenda for discussion and/or action on the regular agenda. If

such item is agendaized for Board action, such action must be taken by a majority vote of the Board members present at the meeting.

**2.55** Individual Board Members shall refrain from involvement in operational management of PERA, except as requested by the Executive Director or designee.

**2.56** Individual Board Members shall refrain from performing any function delegated or normally assigned to PERA staff unless prior approval is obtained from the Board.

## **2.60 Board Chair and Vice Chair.**

**2.61 Role of Board Chair.** The Board Chair's principal role is to lead the Board in the conduct of Board business by managing the affairs of the Board and ensuring the integrity of the Board's processes. The Chair's specific duties, delegated by the Board, are to:

- A.** Provide leadership to the Board in terms of collegiality and ethical conduct, avoiding any bias for or against an individual Board Member.
- B.** Ensure that Board operations and activities are consistent with this Policy.
- C.** Set the Board agenda with input from Board Members and the Executive Director, articulating, setting priorities and scheduling agenda items as appropriate. If the Chair declines to place an item on an agenda, four (4) individual Board Members may petition in writing and place an item on the agenda without the Chair's consent.
- D.** Conduct Board meetings, controlling the process of the Board deliberations pursuant to these Board Policies.
  - 1. Ensure timely, fair, orderly, thorough and efficient deliberations, including enforcement of the Board's Rules of Order pursuant to Section 2.85 of this Policy.
- E.** Ensure information flow to the Board that is comprehensive and timely without being overly detailed. With input from the Board Members, Committee Chairs and the Executive Director, determine the frequency, subjects and format of information that is provided to the Board and Committees prior to meeting.
- F.** Make decisions on matters that the Board has expressly delegated to the Chair the decision-making authority:
  - 1. Convene and chair meetings of the Board.
  - 2. Appoint Committee membership, Committee Chairs and Vice-Chairs, with consideration given to the expressed desires of individual Board Members and the value of periodic rotation of Committee members to provide exposure to different Board responsibilities.
  - 3. In consultation with affected Committee Chairs, resolve the scope of authority of different Committees as set forth in the Committee charters with the goal of ensuring the most effective and efficient operation of the Board.

4. Certify actions taken by the Board, as needed.

- G. Represent PERA or designate other Board Members to represent PERA to outside organizations.
- H. Act as the representative and formal spokesperson for the Board for communications between the Board and the Executive Director, and between the Board and the media and the public.
- I. Initiate the Board's ongoing assessment of Board performance, process and organization, recognizing that continuing improvement will require periodic change to meet future needs and conditions.

**2.62 Nomination and Election of Board Chair and Vice Chair.** The Board shall accept nominations for election of Board Chair and Vice Chair at the first meeting of the Board in the calendar year and shall vote for Board Chair and Vice Chair at the first regular meeting of the Board in that calendar year. Further nominations may be made from the floor on the date of the election. The terms of both Chair and Vice-Chair shall be for one calendar year. Both Chair and Vice-Chair may serve subsequent terms.

**2.63 Absence or Incapacity of Board Chair.** In the absence or incapacity of the Board Chair, the Vice-Chair shall have the duties and responsibilities delegated and established by Board policy in conformance with the authority delegated to the Board Chair.

**2.64 Resignation of Board Chair.** When the Board Chair resigns prior to the expiration of the Chair's elected term, the Vice Chair shall become the Board Chair to complete the unexpired term and shall have the duties and responsibilities delegated and established by Board policy in conformance with the authority delegated to the Board Chair

**2.65 Resignation or Succession of Board Vice-Chair.** When the Board Vice-Chair resigns or succeeds to the position of Board Chair, the Board shall hold an election for a new Board Vice-Chair to complete the unexpired term.

## **2.70 Committees, Committee Chairs and Committee Vice-Chairs.**

**2.71 Standing Committees.** The standing Board Committees are Rules and Administration, Audit and Budget, Legislative, Investments, SmartSave and Disability Review. These Committees shall:

- A. Assist the Board by considering policy alternatives and implications for Board deliberations and actions.
- B. Act for the Board when formally delegated such authority for specific purposes. Committee authority is limited to areas explicitly delegated by the full Board, as set forth in the Committee charters, which are attached as appendixes to this governing Board Policy Manual.

**2.72 Creation of Ad Hoc Committees.** A special ad hoc committee may be established from time to time by the Board Chair to address limited purposes and for limited times. These special ad hoc committees cease to exist automatically upon the completion of their stated purpose as

determined by the Board Chair. The composition of the ad hoc committee shall consist of at least two Board Members. Moreover, the Board Chair shall give consideration to the equitable representation between the member groups, the expressed desires of individual Board Members and the value of providing exposure to different Board responsibilities.

**2.73 Attendance at Committee Meetings.** All Board Members shall be advised of the meetings of each Committee, and may choose to attend any Committee meeting, regardless of whether or not they are members of the Committee. Board Members may participate in Committee discussions, but may only vote on Committees of which they are members.

**2.74 Committee Chair Responsibilities.** Committee Chairs are responsible for organizing the work of the Committees. In fulfilling this function they:

- A. Set the Committee agenda in consultation with the Board Chair and the Executive Director and/or Chief Investment Officer.
- B. Convene and chair meetings of the Committee.
- C. Appoint temporary committee members as may be necessary to achieve a quorum. Such appointments shall be effective for the duration of the meeting or until a quorum of the committee members is achieved.
- D. Ensure that the Committee operates to assist the Board consistent with Board rules and policies including:
  - i. Limiting meeting discussion content to issues that, according to Board delegation, are within the Committee's jurisdiction.
  - ii. Ensuring timely, fair, orderly, thorough but efficient deliberations, and enforcement of the Board's Rules of Order pursuant to Section 2.85 of this Policy.
- E. Work directly with the staff person(s) assigned by the Executive Director and consultants designated to the Committee, as appropriate, on matters within the Committee's authority.
- F. Act as a liaison between the Committee, the Board Chair and the Board.
- G. Provide the Board Chair with recommendations concerning subcommittee membership.

**2.75 Committee Vice-Chair Responsibilities.** In the absence or incapacity of the Committee Chair, the Committee Vice-Chair shall have the duties and responsibilities delegated to the Committee Chair and established by the Committee's authority.

## **2.80 Meeting Procedures.**

**2.81 Meeting Schedule.** Board meetings shall be held accordance with applicable law and according to an annual schedule adopted by the Board and published in the minutes of the Board upon adoption. The annual

schedule shall identify the time and location of regular board meetings and the Board Chair may modify the adopted schedule.

**2.82 Special/Emergency Meetings.** Subject to applicable law, the Board Chair, or any four Board Members, may call for special or emergency meetings of the Board. Any such request must be submitted to the Executive Director to coordinate.

**2.83 Notice of Meetings.** At least 72 hours' notice of all Board and Committee meetings shall be provided to the public and in accordance with the notice provisions of the Open Meetings Act, NMSA 1978, Sections 10-15-1 to 10-15-4, as amended.

**2.84 Meeting Agendas and Materials.** To the extent practicable, the agenda and related materials for Board and standing Committee regular meetings shall generally be distributed to the Board and/or Committee Members at least 7 calendar days in advance of the meeting. The agenda shall be made available to the public before any Board or standing Committee regular meeting in accordance with Open Meetings Act, NMSA 1978, Sections 10-15-1 to 10-15-4, as amended. Members of the public who wish to obtain copies of the meeting materials may do so to the extent and in the manner the materials are available under Inspection of Public Records Act, NMSA Sections 14-2-1 *et seq.*

**2.85 Rules of Order and Quorum.**

- A. The Board and its Committees shall operate under the Open Meetings Act, NMSA 1978, Sections 10-15-1 to 10-15-4, as amended, and under the current edition of Robert's Rules of Order.
- B. A quorum must be present for the Board or a Committee to conduct business. A majority of the Board or Committee constitutes a quorum.
- C. Board or Committee Members may not attend meetings through delegates or authorize voting by proxy.

**2.86 Recusal.** Where a Board Member discloses a conflict of interest or the potential for an appearance of a conflict of interest in the outcome of an official Board or Committee action, that Board Member shall notify the Board and recuse himself/herself from opining on and voting on such action, and must exit the room during the Board's deliberations and vote on such action.

**2.87 Closed Session Policy.** The Board shall limit the business it conducts in closed session to those matters specifically authorized under applicable law. Closed sessions of the Board and its Committees shall be limited to Board Members and only those other persons who are required by the Board. Before the Board meets in closed session, the Chair shall make a written statement for the reason for closing the meeting (written statement can be included in the written agenda posted for the Board meeting, with citation to the applicable Open Meetings Act provision). All discussions and material considered in closed session shall be treated by Board Members and other attendees as confidential. Matters properly considered in closed session include:

- A. Discussions pertaining to the hiring, promotion, or removal of personnel;
- B. Deliberations on proposed decisions relating to benefit appeals and disability determinations;
- C. Discussion with, or to receive advice from, legal counsel regarding pending or threatened litigation, when discussion in open session concerning those matters would prejudice the position of the Board in the litigation.

**2.88 Decorum.** The Chair shall have the authority to maintain decorum at all Board and Committee meetings. The Chair may rule Board member, staff or public comments out of order. If the Chair reasonably believes any person attending a Board or Committee meeting, other than a Board member, is engaged in willfully disruptive behavior such as to constitute trespass, the Chair may have that person physically removed from the premises, and may impose other sanctions as provided by law and this Policy.

**2.89 Public Comment.** The Board values and encourages input from PERA Members on any issue under the Board's purview. The purpose of these procedures is to set up a process to allow public comment at PERA Board meetings which will include Regular, Special and Annual Board Meetings, but not Committee Meetings. Also, the meeting agenda will include an agenda item labeled "Public Comment."

- A. Based on the schedule of the meeting, the Chair will allow a time limit of 3 – 5 minutes for each speaker to address the Board on any issue under the Board's purview.
- B. If the meeting is in person, anyone wishing to speak will sign-in on the Public Comment form that will be located at the back of the room. The form will include name of the individual, organizations they represent and contact number. If the meeting is virtual (i.e., Zoom or other), the person wishing to speak will click on the "raise hand" button during the appropriate time the Board is on the "Public Comment" section of the meeting.
- C. If the meeting is in person, the Chair will call for the Public Comment form and when recognized by the Chair, the speaker will come to the podium, identify themselves for the record the organizations they represent and make their comments based on the time limit established by the Chair who will maintain the clock. Once the speaker's time is up, the Chair will thank the speaker and they will return to their seats. If the meeting is virtual (i.e., Zoom or other), the Chair will request staff bring the speaker into the meeting and then the Chair will recognize the speaker and they will introduce themselves, the organizations they represent, their contact number and make their comments based on the time limit established by the

Chair who will maintain the clock. Once the speaker's time is up, the Chair will thank the speaker and have staff take them back out of the virtual meeting.

- D. Speakers will always act in a professional and civil manner and the use of profanity or threatening language will not be tolerated in any way. The Chair shall maintain appropriate decorum during the Public Comment period and will take appropriate action against offending behavior as noted in Section 2.88, above.
- E. The Board will direct staff to make note of any issues that need to be followed up on and, as appropriate, request staff to contact the speaker and identify solutions to any issue presented. [amended: 3/2021]

#### **2.90 Minutes.**

All Committee and Board meetings shall be documented with minutes that are reviewed and approved by the committee and the Board, respectively. All minutes shall satisfy the deadlines and other requirements of the Open Meetings Act, NMSA 1978, Sections 10-15-1 to 10-15-4, as amended.

#### **2.91 Format.**

- A. Minutes shall record the actions and deliberations of the Board or Committee. Minutes shall reflect procedural requirements (notice, approval of the agenda, the presence of a quorum, etc.), identification of the matters considered, the actions taken or approved and other decisions reached.
- B. Minutes shall include a short statement of each action taken by the board and not a verbatim recording of the Board meeting. All Board and Committee actions shall be recorded.
- C. If the Board or Committee provides the public an opportunity to address the Board or Committee, then the Minutes shall indicate the name of the person who addressed the Board or Committee, any relevant organizational affiliation of that person, and a brief summary of the provided public comment.
- D. Minutes shall reflect participation by advisors (staff, consultants, actuaries, legal counsel, or other professionals) and the Board or Committee's consideration of the advisor's report, advice or opinion.

#### **2.92 Preparation of Minutes.**

- A. PERA's contract recorder shall prepare and deliver to PERA staff for review, comment and revision, a draft of the minutes of each Board and Committee meeting no later than ten (10) working days after the date of the meeting
- B. PERA staff shall deliver minutes to the Board Members present at the meeting(s) for review, comment and revision. Board revisions shall be made within two (2) working days after delivery.

**2.93** **Approval of Minutes.** Minutes shall be approved, amended or disapproved, at the next Committee/Board meeting where a quorum is present pursuant to NMSA 1978 Section 10-15-1 (G).

**2.94** **Retention.** Original minutes and all required attachments or exhibits shall be retained pursuant to law.

### **3.00** **STANDARDS OF CONDUCT**

**3.10** **Expected Conduct:** Board Members, the Executive Director and the PERA staff shall conduct themselves with integrity and dignity, exercising care, prudence and diligence required of public pension fund fiduciaries. Board Members, the Executive Director and staff should also avoid conduct that gives the appearance of impropriety.

**3.11** **Decision-making and Conflicts:** Board Members and the Executive Director shall make decisions consistent with their fiduciary duty. No Board Member or the Executive Director shall participate in a decision or action involving any asset or benefit for his/her own interest except insofar as the benefit is incidental to the Board Member's membership as a PERA participant or retiree or deferred compensation plan participant. Board Members and the Executive Director shall disclose and refrain from participating in any discussion or decision concerning an investment, benefit or other action in which the Board Member has an interest or a conflict, including abstention from voting regarding the action.

**3.12** **Record-keeping:** As Trustees of the Funds, the Board shall ensure that adequate records are kept of all formal actions, in the form of official minutes or other documents, sufficient to provide documentation for those decisions for future reference. Records of all matters voted, including abstentions from voting, shall be maintained as part of Board or Committee meeting minutes.

**3.13** **Breach:** No Board Member or the Executive Director shall breach his or her fiduciary duty or shall knowingly participate in the breach of fiduciary duty by another Board Member or the Executive Director, including concealment of such breach, or knowingly or negligently permitting such breach to occur. Each Board Member and the Executive Director has an obligation to disclose a breach of fiduciary duty to the Board Chair, or in the case of the Board Chair, to the Board Vice-Chair.

**3.14** **Subsequent Employment:** No Board Member shall contract or accept employment with any person or entity who contracts with PERA and shall not do so for a period of one year after leaving the Board. No Board Member shall appear before the Board or submit any proposal to the Board on behalf of another person or entity for a period of one year after leaving the Board. Violation shall cause any such person or entity to be disqualified from entering into any contract or obtaining anything of value from PERA for a period of five years after the Board Member has left the Board.

### **3.20** **Prohibited Transactions and Acts.**



**3.21 Influence for Private Gain.** A Board Member, the Executive Director and staff shall not use the prestige or influence of the State or PERA for private gain or advantage, or the private gain or advantage of another, including, but not limited to, taking an official act, which directly or indirectly benefits him/her or a family member.<sup>3</sup>

**3.22 Use of PERA Property.** No Board Member, Executive Director or staff member shall use PERA facilities, equipment (including, but not limited to, copy machines, telephones, vehicles, postage meters, data processing or word processing equipment, or personal computers), supplies or employees for private gain or advantage, or for the private gain or advantage of another.

**3.23 Self-Dealing.** Board Members, the Executive Director and PERA staff members shall not do any of the following:

- A. Deal with the assets of PERA in their own interest or for their own account.
- B. In their individual or in any other capacity, act in any transaction involving the system on behalf of a party, or represent a party, whose interests are adverse to the interests of PERA or the interests of PERA's members and beneficiaries, without express written consent of the Board.
- C. Receive any consideration for their personal account from any party conducting business with PERA in connection with a transaction involving the assets of PERA.

**3.24 Publication in Re-Election Year.** During the last year of their term, if a Board Member seeking re-election to the Board submits an article for publication in the PERA newsletter, it must first be approved by the Chair. If the article is written by the Chair, it must be approved by the Vice-Chair prior to publication. Neither the Chair nor Vice Chair shall unreasonably withhold their approval of such publication.

**3.30 Conflicts of Interest.**

**3.31 Prohibited Conduct.** Members of the Board, the Executive Director and staff shall avoid any action, whether or not specifically prohibited by these guidelines or any applicable federal or state statute, which might result in, or create the appearance of:

- A. Giving preferential treatment to any member, beneficiary, individual, firm or organization, etc.;
- B. Lacking complete independence or impartiality; or
- C. Diminished confidence of the public and the membership in the integrity of the Board governance.

**3.32 Illegal Gifts.** No Board Member, the Executive Director or staff shall demand, exact, solicit, or extort, accept, or receive anything of value (including, but not limited to, money, meals, drinks, entertainment, lodging, travel expenses, services or other consideration) other than that

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<sup>3</sup> Family member includes spouse and legal dependents. NMSA 1978, §10-16-2(D) (1993).

lawfully received by the Board Member in his/her official capacity under Section III.E of this Policy.

**3.33 Disclosure and Recusal.** Board Members shall disclose their employment, union affiliations, and any other organizational or association affiliations to the Executive Director annually, and the Executive Director shall make that information available to the Board at the next regular Board meeting after such information is collected. The Board can determine, in its discretion, whether a conflict of interest may exist for any particular Board Member by majority vote, and can discuss whether recusal from a decision would be recommended and/or necessary.

**3.34 Scope of Restrictions.** A Board Member, the Executive Director or staff may not do through third parties that which he/she may not do directly under the foregoing restrictions.

**3.40 Financial Conflicts and Disclosures.**

**3.41 Financial Conflicts:** Board Members, the Executive Director and staff shall not have any financial interests in any person, entity or transaction that may affect his/her official acts as a Board Member, PERA Executive Director or staff member, except insofar as the financial interest is incidental to their membership in the Fund or the deferred compensation plan.

**3.42 Disclosure Statement:** On or before January 31 of each year, each Board Member and the Executive Director and Executive Staff shall complete and deliver to the Executive Director for filing with the Secretary of State a disclosure statement that affirmatively states that the Board Member, Executive Director or Executive Staff does not have a financial interest that may affect his/her official acts as a Board Member, Executive Director or Executive Staff and disclosing his/her family members' financial interest(s) in any business engaged or, to the Board Member's, Executive Director's or Executive Staff's knowledge, proposing to engage in any transaction with PERA. The requirements of the Financial Disclosure Act applicable to Board Members and the Executive Director and Executive Staff also apply to the Board Members' and Executive Director's and Executive Staff's spouses. The disclosure statement shall be in the form prescribed by the Secretary of State and shall contain at least the following information:

A. Compliance with NMSA 1978, §10-11-133(G), which states that no Board Member or the Executive Director shall:

- i. have any direct or indirect interest in the gains or profits of any investment made by the Board;
- ii. receive any direct or indirect pay or emolument for services provided the Board, except as provided for in the State of New Mexico Per Diem and Mileage Act, NMSA 1978, §10-8-1, et seq. and current DFA Rules;
- iii. directly or indirectly, for the Board Member for themselves or as agent or partner of others, borrow any of the funds or deposits of

- PERA or in any manner use them except to make current and necessary payments authorized by the Board; or
- iv. become an endorser or surety or become in any manner an obligor for money of the Board loaned or borrowed.

**3.43**     **New Board Member:** Each new Board Member shall complete and deliver to the Secretary of State and Executive Director the disclosure statement, described in this Section, within two months of assuming duties as a Board Member.

**3.44**     **Updated Disclosures:** Each Board Member and the Executive Director shall update his/her disclosure statement within forty-five (45) days of the date that the Board Member or Executive Director becomes aware of a change in circumstances as described in Paragraph D2 above.

**3.45**     **Exception:** Nothing herein shall be construed to limit the right of any Board Member or the Executive Director to personally invest in financial instruments or mutual funds that PERA may also hold or which are offered by PERA's financial managers.

**3.50**     **Gifts, Contributions, Disclosures and Solicitations.**

**3.51**     **Gifts and Solicitations:** Except for gifts of food or beverage given in a place of public accommodation and consumed at the time of receipt, not exceeding \$50 for a single gift or \$150 in a calendar year, Board Members or the Executive Director may not accept gifts or anything of value<sup>4</sup> directly or indirectly from a person or entity (NMSA 1978, §10-11-130.1) that:

- A. has a current contract with the retirement board or association;
- B. is a potential bidder, offeror or contractor for the provision of services or personal property to the retirement board or association;
- C. is authorized to invest public funds pursuant to state or federal law or is an employee or agent of such a person; or
- D. is an organization, association or other entity having a membership that includes persons described in Paragraphs (A) through (C) of this subsection.

**3.52**     **Exception:** An occasional gift of less than \$10.00 in value shall not be included in the limitations on gifts.

**3.53**     **Disclosures by Board Members, the Executive Director and Executive Staff:** Consistent with this policy and in order to afford PERA participants the assurance that Board Members perform their duties in an impartial manner, the Board shall:

- A. At least semi-annually, disclose anything of value from entities described in Section 3.51, received in their capacity as a PERA Board Member, except as provided for in the State of New Mexico Per Diem and Mileage Act, NMSA 1978, §10-8-1, et seq. and current DFA Rules.

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<sup>4</sup> "Anything of value" includes, without limitation, food, drink, gifts, compensation, contributions or reimbursement for travel or any other activity that is not permitted in NMSA 1978, §10-11-130.1.

**B.** The PERA Gift Report Form (attached to this Policy's appendix) shall be completed at least semi-annually by each Board Member, even if he or she reports "no gifts."

- i.** The reports shall be filed in the Executive Director's Office with the Executive Director's Executive Assistant.
- ii.** Semi-annual reports shall be filed immediately following the six-month period covered by the report. Board Members may file reports more frequently than semi-annually.

**3.54**     **Contributions:** No person who is a candidate in a primary or general election for a position that qualifies the person for ex officio membership on the Board, no Member serving ex officio on the Board and no person who is a nominee for the Board by election of the membership shall accept anything of value of more than \$25.00 as a contribution from a person who:

- A.** has a current contract with the retirement board or association;
- B.** is a potential bidder, offeror or contractor for the provision of services or personal property to the retirement board or association;
- C.** is authorized to invest public funds pursuant to state or federal law or is an employee or agent of such a person; or
- D.** is an organization, association or other entity having a membership that includes persons described in Paragraphs (A) through (C) of this subsection.

**3.60**     **Outside Employment and Other Outside Activity:** Board Members, the Executive Director and Executive Staff shall not engage in any outside employment or other activity that is not compatible with the full and proper discharge of their duties and responsibilities with the Board. Activities or actions that are not compatible with Board duties include, but are not limited to, the following:

**3.61**     Engaging in any outside employment, private business activity, or other interest which may interfere with the Board Member's ability to perform his/her duties as Board Member, or which may impair the efficient operation of the Board;

**3.62**     Accepting employment or rendering services in exchange for pay regarding the PERA Act, policies, rules or matters of PERA business, except if the employment or services are in the course of public employment;

**3.70**     **Procurement Quiet Period:** Except as specifically provided below, during the pendency of any Request for Information, Request for Proposal or Invitation to Bid, no person or entity that submits an application or bid for the award of a PERA contract, nor an agent for such person or entity, may have any communication concerning any topic with the Board, Executive Director, or staff member, except as expressly provided in the procurement document. This "quiet period" communication restriction exists from the date that the procurement document is issued until the contract is consummated.

**3.71** Any applicant or bidder who violates these communication restrictions, or permits an agent to violate these restrictions on behalf of the applicant or bidder, will be immediately disqualified from further consideration under the solicitation.

**3.72** These communications shall not apply to:

- A. Staff who are identified within the Request for Proposal or Invitation to Bid as responsible for responding to prospective applicant or bidder questions;
- B. Communications by a firm under contract to provide services to PERA, where the communication is made to the Board or Committee or staff and relates to the services for which the firm already has been retained; and
- C. Communication that is required of finalists, consistent with the terms of the Request for Proposal or Invitation to Bid, for the purpose of providing the Board and staff with information that updates any information previously included in the proposal or bid.
- D. Communications to negotiate the final terms of such contract after the award has been made.

**3.73** If the Chair (or the Vice Chair if the Chair is involved) determines that a violation has occurred, the Chair will promptly inform the Board and the Procurement Manager of this determination, and the Procurement Manager will inform the applicant or bidder of his/her immediate disqualification.

#### **4.00 FIDUCIARY COUNSEL**

The Board recognizes the need for the specialized advice of a fiduciary counsel to assist the Board in discharging its fiduciary responsibilities. The Board directs the General Counsel to contract for fiduciary counsel services; and further directs the General Counsel to approve all activities of fiduciary counsel except in instances where the Board wishes to work directly with fiduciary counsel without the input of the General Counsel. In that instance the Chair shall direct the activities of fiduciary counsel.

Subject to the determination of the General Counsel and the limitations set forth above, the fiduciary counsel contract will include provisions for the following:

- A. Attendance at Board and Committee meetings, including special meetings, as needed and as directed by the General Counsel or the Board/Committee Chair.
- B. Fiduciary counsel will be assigned to drafting of legal analyses and the review of written materials as determined by the General Counsel.
- C. The contract will include a 30-day termination clause.
- D. The contract will provide for recognition of fiduciary status, a conflict of interest prohibition and reporting procedure pursuant to the Campaign Reporting Act, NMSA 1978 Sections 1-19-25 *et seq.*

#### **5.00 CLAIMS AGAINST FIDUCIARIES [\[RESERVED\]](#)**

This policy section establishes the manner by which the Board should process and manage fiduciary liability claims throughout the lifecycle of such claims.

#### **6.00 RISK MANAGEMENT AND DATA SECURITY**

## **6.10 Risk Assessments and Policies.**

**6.11 Board Responsibilities.** The Board is responsible for adopting a policy for an effective system of enterprise-wide risk management and compliance. This includes ensuring that risk assessments are performed yearly and that the results are considered by the Board for potential action, if necessary, to remedy any identified risk. The Board is responsible for securing appropriate insurance coverage against risks.

**6.12 Executive Director Responsibilities.** The Executive Director is responsible for:

- A. Creating the risk governance structure, risk assessment and risk management and compliance practices, and the guidelines, policies and processes for risk assessment and risk management based on the board policy and framework.
- B. Ensuring management establishes a strategy relating to key risks, including but not limited to, strategic, operational, financial, compliance, reputational and investment risks.
- C. Establishing the methodology for measuring risk management performance.
- D. Supervising annual risk management assessment and reporting back to the Board the results of risk assessment tests.

**6.20 Data Security and Breach Notification.** The Board shall review and adopt a data security policy that requires PERA to maintain reasonable security measures to protect PERA members' and beneficiaries' information for unauthorized access. The Executive Director shall prepare a proposed Data Security and Breach Notification Policy with the assistance of PERA staff to present to the Board for approval and adoption on an annual basis.

**6.30 [Insurance Coverage. \[RESERVED\]](#)**

## **7.00 BOARD EDUCATION AND TRAVEL**

**7.10 Board Education:** Establishing standards of accountability and approval for Board Members relative to official Board education is vested with the Board itself by statute and PERA Rule. Approval of official Board education by Board Members is delegated to the Executive Director for review and approval or denial, then for submission to the full Board for concurrence.

**7.11** Within two months (per PERA Rule 2.80.200.21A NMAC) of becoming a Board Member, all new Board Members shall attend the "New Board Member Orientation."

**7.12** If adequate funding is provided, a Board Member may attend one (1) and ideally two (2) relevant educational conferences or seminars every fiscal year.

**7.13** Section 10-11-133(F) NMSA 1978 (2010) requires the Board to provide Board members no less than 8 (eight) hours of training in pension fund investing, fiduciary obligations or ethics each year. Such training may be provided by PERA or approved outside sources and

can be received through out-of-state educational conferences, staff and consultant educational sessions and in-state education conferences. PERA Rule 2.80.200.21B NMAC requires Board Members to certify annually that they have met this requirement. Board Members who fail to meet this requirement for two (2) consecutive years are deemed to have resigned from the Board.

**7.20 Fiduciary Education Session.** Each year, the General Counsel of PERA will arrange for a fiduciary education session that will update the Board Members on issues affecting their service on the Board. All Board Members are expected to attend.

**7.30 Ethics Education Session.** Every year, Board Members are required to complete a two-hour ethics training course. The General Counsel of PERA shall ensure that every Board Member completes this requirement and shall report compliance to the Board annually.

**7.40 Sexual Harassment Training.** Every two years, Board Members are required to complete a two hour sexual harassment/hostile workplace environment training course. The General Counsel of PERA shall ensure that every Board Member completes this requirement and shall report compliance to the Board annually.

**7.50 Board Travel Requests.**

**7.51** The Executive Director shall monthly provide all Board Members a list of upcoming seminars, professional and educational conferences, and other events that might assist Board Members in conducting the business of PERA.

**7.52** As fiduciaries, Board Members must ensure that only reasonable and necessary expenses are incurred in the governance and management of PERA, and must establish an annual travel budget that is included in the annual operating budget, which the PERA staff proposes, the Board approves, and both monitor on a quarterly basis.

**7.53** Individual Board Members shall submit to the Executive Director for approval any request to participate in any event requiring travel and submit a budget proposal for such travel.

**7.54** The Executive Director shall review all Board travel requests to ensure that they are compliant with this Policy, and all travel requests shall be placed on the Board Consent Agenda.

**7.60 Authorization of Board Travel Within New Mexico:** Travel by Board Members to attend all publicly noticed meetings or workshops of the Board and any of the Board's committees or legislative hearings affecting PERA and any other event that is required to conduct the business of PERA does not require specific approval under this policy. Travel to and returning from the PERA office for PERA-related business does not require approval under this policy. Prior approval of Board Member travel within New Mexico to attend any professional and educational conference or seminar where any portion is paid for by PERA shall be approved in the same way as Board travel outside New Mexico.

**7.70 Authorization of Board Travel Outside New Mexico:**

**7.71** When a Board Member requests approval for Board-sponsored travel, the Board Chair or Vice Chair shall inform the requesting Member of travel approval or denial in a timely manner. If there are budget limitations, priority shall be given to new Board Members.

- A. If a Board Member is formally sanctioned by the Board, his or her out-of-state travel shall be suspended for the sanction period.
- B. Board Members shall be ineligible for out-of-state travel for educational purposes during the last thirty (30) days of their term of office, unless re-elected to a new term.

**7.72** No prepayment or reimbursement of Board Members for travel expenses will be made for travel that is not approved in advance as provided for in this section.

**7.80 Speakers:**

**7.81 PERA Sponsored Travel.** A request to be a speaker or moderator at a conference or seminar requiring travel where any portion is proposed to be paid by PERA shall be put on the Consent Agenda and, if approved by the Board, expenses shall be paid by PERA.

**7.90 Emergency Travel:** In an emergency situation, the Board Chair shall review and approve or deny the travel requests for travel that have not been approved at a previous monthly Board meeting, but which will occur prior to the next Board meeting. The Vice Chair will review and approve or deny emergency travel requests for the Board Chair.

**7.100 Payment for Travel:** PERA shall pay for all approved Board Member travel, including transportation and related meals and lodging as set forth in the State of New Mexico Per Diem and Mileage Act, NMSA 1978, §10-8-1, et seq. and current DFA Rules. While traveling, Board Members may participate in meals provided by third parties as allowed by NMSA 1978, §10-11-130.1. In such situations, Board Members may not claim per diem reimbursements for such meals and must comply with the Board's policies regarding gifts and disclosure. Submission of claims for reimbursement for all travel expenses shall be made within 180 days from the date of travel and shall be accompanied by receipts and/or other proof of payment. Claims for reimbursement shall be submitted on the reimbursement form then in use by PERA and presented to the Executive Director or his/her designee for final review prior to payment.

**7.110 Report on Travel:** Each Board Member shall verbally report to the Board on any event requiring travel outside of New Mexico for which PERA has paid within sixty (60) days after travel has been completed. Such verbal report shall be made on the record at a regular Board meeting.

**8.00 INSIDER TRADING POLICY**

**8.10 Confidentiality of Inside Information:** Board Members who come into possession of material non-public information concerning a publicly traded company must safeguard the information and not intentionally or inadvertently



communicate it to any person (including family members and friends) unless the person has a need to know for legitimate, PERA-related reasons. Any Board Member who improperly reveals material non-public information to another person or any other person with whom the Board Member shares the information can be held liable under the anti-fraud provisions of the federal securities laws (primarily section 10(b) of the Securities Exchange Act of 1934 (“1934 Act”). To avoid even the appearance of impropriety, Board Members should refrain from providing advice or making recommendations regarding the purchase or sale of any securities traded by PERA.

**8.20 Prohibition of Insider Trading:** The anti-fraud provisions of the federal securities laws generally prohibit persons who have a duty not to disclose material non-public information from trading securities on the basis of such information. In addition, the anti-fraud provisions prohibit fraudulent, manipulative, or deceptive trading practices. Persons who violate these prohibitions are subject to potential civil damages and criminal penalties. The civil damages can consist of disgorgement of any illicit profits and a fine of up to three times the profit gained or loss avoided. The criminal penalties can be as much as \$1 million and 10 years imprisonment per violation. PERA, its Board and executive staff, certain key personnel, and consultants could be deemed “controlling persons” subject to potential liability under federal securities laws. A Board Member should contact the PERA Office of General Counsel immediately if he/she becomes aware of the possibility of a violation of insider trading laws.

**8.30 Materiality:** Information regarding a publicly traded company is deemed material if it would be considered important by a reasonable investor in deciding whether to buy, sell, or refrain from any activity regarding that company’s securities. Further, such information would be material if it were likely to have a significant impact on the market price of that company’s securities. So long as the information remains material and non-public, it must be maintained in strict confidence and not used for trading purposes. By way of example, it is probable that the following information, in most circumstances, would be deemed material:

- 8.31** Annual or quarterly financial results;
- 8.32** A significant change in earnings or earnings projections;
- 8.33** Unusual gains or losses in major operations;
- 8.34** Negotiations and agreements regarding significant acquisitions, divestitures, or business combinations.
- 8.35** A significant increase or decrease in dividends on the company’s stock; and
- 8.36** Major management changes.

[Amended: 4/28/2011]

## **9.00 SANCTIONS & ENFORCEMENT**

**9.10 Investigation.** Any breach of fiduciary duty, violation of this Policy or other conduct that falls below the high ethical standard this Board expects of itself, shall be looked into by the Board or its designee. If a majority of the Board requests, an investigation shall be conducted by an outside investigator. The investigator shall be selected by a vote of at least seven Board Members at a public Board meeting.

At the conclusion of the investigation, the investigator will report his or her findings to the Board.

**9.20 Censure Motions & Hearing:** A motion to censure a member of the Board shall be treated by the Chair as a motion to refer the matter to the selected investigator and for a report back to the Board. Adoption of the motion to refer and any subsequent motion for censure or to otherwise discipline a member of the Board requires either (1) an affirmative two-thirds votes of the Board Members present at the Board meeting, or (2) if less than two-third of the Board Members present, then unanimous vote of those present at the Board meeting. The Board Member charged with misconduct shall not be entitled to vote on such motions and shall not be counted for the purposes of calculating the two-thirds or unanimous vote requirements.

**9.30 Removal From Office:** In the case of removal from the Board, a hearing shall be conducted in accordance with 280.1500.10.3 NMAC, except that the Board shall hear the evidence and make a decision, instead of a hearing officer. After a hearing and vote by the Board, a Board Member may be removed in the following instances.

**9.31** A Board Member may be removed for unexcused absences from four consecutive scheduled meetings of the Board or Committees on which the Member has been placed in any consecutive twelve-month period.

**9.32** With the exception of public officers removable only by impeachment,<sup>5</sup> violation of the Governmental Conduct Act or this Policy is grounds for discipline, including dismissal.<sup>6</sup> Dismissal includes removal from the Board.

**9.33** Removal of a Board Member is an extreme remedy and shall be utilized by the Board only when necessary to protect the assets of the Trust.

The purpose of removing a trustee is not to inflict a penalty for past action, but to preserve the Trust assets. The standard in each case is whether the circumstances are such that the continuance of the Board Member in office would be detrimental to the Trust.

Removal is also appropriate in instances of gross misconduct<sup>7</sup> and repeated violation of this policy and of the Board Member's fiduciary duty.

**9.34 Discipline Short of Removal:** Discipline may include the following:

- A. Formal reprimand and public censure by the Board, which shall be permanently recorded in the Board minutes.
- B. Suspension from participation on the Board or a particular Board activity for a specified period of time not to exceed one year.

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<sup>5</sup> Violations of the Governmental Conduct Act by the two ex officio members of the PERA Board are referred to the New Mexico House of Representatives by the Attorney General, which is consistent with the New Mexico Constitution. NMSA 1978, § 10-16-14(C).

<sup>6</sup> NMSA 1978, § 10-16-14(D) & § 10-16-11(C). The Attorney General may also enforce the Governmental Conduct Act by civil injunctive or other appropriate court orders. NMSA 1978, §10-16-14(E).

<sup>7</sup> "Gross misconduct" is defined as violation of clearly established policy or rule, dereliction from duty, unlawful behavior involving matters of dishonesty or deception, but not negligence or carelessness.

- C. Notwithstanding paragraph 2 of this subsection, a second sanction by the Board during a Board Member's term of office may result in suspension from participation on the Board or a particular Board activity for the remainder of his or her term.
- D. Removal from Board or Committee meetings for disruptive behavior.

## **10.00 EXECUTIVE DIRECTOR**

### **10.10 Delegation**

By Resolution adopted by the Board, as amended from time to time, the Board has delegated authority to the Executive Director to perform certain acts within the power of the Board itself to perform. The Board may not delegate to the Executive Director the authority to set the compensation and benefits of the Executive Director. Unless the delegation provides that the Executive Director has the authority to act finally, any such acts that are material to the administration of PERA shall be reported to the Board at its next regular meeting and shall be subject to review, reversal or ratification by the Board. Pursuant to the Resolution, the management of PERA is delegated to the Executive Director who shall be the executive and administrative head of the system. The Executive Director shall operate the system within the framework established by all applicable laws, and in accordance with rules and policies adopted by the Board. The Executive Director shall act as advisor to the Board on all matters pertaining to the system, act as liaison between the Board, members, member organizations, employers, employer organizations, state departments and agencies, the Legislature, and shall also act as Secretary of the Board. Notwithstanding this section, the Executive Director has the duty to bring to the attention of the Board all matters which materially impact PERA.

### **10.20 Duties and Authority:**

The Executive Director shall have the duties and responsibilities set forth in the Charter for Executive Director, appended hereto.

**10.21 Standards of Conduct:** The Standards of Conduct set forth in Section 3.0 shall also apply to the Executive Director.

**10.22 Hiring Exempt Employees:** The Executive Director has the sole authority to employ all PERA employees. When employing persons for the positions of Deputy Director, Chief Investment Officer and General Counsel, the Executive Director shall disclose at the next regular board the credentials of such persons that met the qualifications for employment.

### **10.30 Performance Evaluations**

#### **10.31 Executive Director**

- A. The Executive Director shall be formally evaluated by the Board in closed session at least once a year, following the close of the fiscal year.
- B. The Board shall follow the process set out in the Executive Director Evaluation Form attached as an appendix to this Policy.
- C. Performance criteria shall primarily include objectives for outcomes that are under the Executive Director's control, but may also include

outcomes for which the Executive Director may reasonably be expected to exercise influence.

- D. Performance criteria requiring additional resources shall be enforced only in the event that such incremental resources have been authorized and funded in PERA's annual budget.

#### **10.32 Exempt Staff**

- A. The Executive Director shall develop and execute performance plans for all employees under his/her supervision. Such performance plans shall be consistent with the Executive Director's performance plan.
- B. Exempt employees shall be evaluated by the Executive Director in relation to their performance plan at least once per year.

**10.40 Compensation of Executive Director:** Based upon the Board's evaluation of the Executive Director's performance for the preceding fiscal year, the Board shall meet in open session prior to September 1 of the subsequent fiscal year to discuss and vote on changes in the Executive Director's compensation for that fiscal year. The compensation of the Executive Director shall be included in the Board-approved budget for the fiscal year in which the compensation is to be paid.

**10.50 Internal Communications:** It is the responsibility of the Executive Director, or his or her designee, to act as the liaison for communication and information flow between the Board and PERA staff.

**10.60 External Communications:** The Executive Director has extensive experience and institutional knowledge which are of value to the PERA organization. The Executive Director is authorized generally to speak to the Legislature and other stakeholders and interested parties on behalf of PERA and the Board, and to answer questions about the system posed by such persons or entities. On legislative and legal matters for which the Board has not taken a position, the Executive Director may provide factual information upon request and may express the Executive Director's professional opinion upon consultation with the Board Chair and Vice Chair.

#### **10.70 Professional Development:**

**10.71** The performance plan which the Board adopts and monitors each year for the Executive Director shall include training and professional development.

**10.72** The Board shall approve training for the Executive Director in the same manner as for Board Members.

### **11.00 DELEGATION TO CHIEF INVESTMENT OFFICER**

**11.10 Delegation.** The Board and the Executive Director have delegated responsibility of certain specified investment decisions to PERA's Chief Investment Officer ("CIO"), which include the selection of investment vehicles, managers and consultants, both discretionary and non-discretionary, consistent with the Board's adopted risk and return parameters, asset allocations and investment policies and procedures. In discharging this delegated responsibility, the CIO must adhere to the same fiduciary duties that apply to the Board and the Executive Director, including but not limited to the duty of prudent investment, the duty to diversify, and the duty of prudence, care, knowledge and diligence.

## **11.20 Duties and Authority. [RESERVED]**

### **12.00 COMMUNICATIONS**

The Board recognizes that effective communication is integral to good governance. In order to achieve the mission and objectives of PERA, the Board has established the following policies for communicating clearly among Board Members, senior management, PERA members, and external parties.

#### **12.10 Ex Parte Communications.**

- 12.11** Board Members are prohibited from having an ex parte communication with any party or their representative on the merits of any matter in controversy arising out of a challenge to a benefit determination or audit finding made by PERA staff. This prohibition on ex parte communications shall commence the moment a disagreement arises that could result in litigation and shall remain in full effect until the Board has made a final determination on the matter.
- 12.12** A Board Member or the Executive Director shall not have an ex parte communication on the merits of a Disability Review Committee matter or an administrative appeal with any party or their attorney until after the Board's decision and the case is administratively final. A Board Member shall not engage in private ex parte communications regarding any official Board actions prior to taking such action. Any ex parte communications made known to the Executive Director, PERA staff or individual Board Members shall be reported to the Chair. If the Chair determines that the ex parte communication involved the merits of the matter, recusal from participating and voting on the appeal by the Board Member who received the ex parte communication shall be required.
- 12.13** The Board's communications with PERA's General Counsel, or with someone acting on the General Counsel's behalf, are not considered ex parte communications.
- 12.14** Board Members are prohibited from publishing any writing or making any statement to the media, to state administrators, legislative personnel, or members of the public on the purported basis of representing PERA's position or policy on any matter or subject before the Board has formally adopted a policy or position on the matter or subject and authorized the Board Member to speak on behalf of the Board or PERA. This provision shall not be interpreted to preclude Board Members from expressing their personal views as private citizens.

#### **12.20 Electronic Communications.**

- 12.21** Any electronic communication by a Board Member, the Executive Director, the Chief Investment Officer or any staff pertaining to PERA business shall be treated as a business record of PERA subject to PERA's record retention policy and New Mexico Public Records Act, NMSA 1978, Sections 14-3-1 *et seq.* (1999). The ownership of the server on which the communication took place shall be irrelevant to this determination.

- 12.22** Electronic communications by Board Members pertaining to PERA business should be transacted only on a PERA dedicated account provided to the Board Members.
- 12.23** Electronic communications between Board Members must not violate any provision of the Open Meetings Act, NMSA 1978, Sections 10-15-1 *et seq.*
- 12.24** Communications that a Board Member wishes to disseminate to a majority of the members of the Board or a majority of the members of a standing committee shall be submitted to the Executive Director or his/her designee only. The Executive Director or his/her designee will then, in his/her discretion, forward said communications to the full Board. The communication shall be distributed publicly to the entire Board as a communications item and posted with the public agenda for the next regular Board meeting unless the communication is a privileged communication or otherwise protected from public disclosure by law.
- 12.25** Electronic communications from PERA staff to Board Members may be sent to the personal account designated by individual Board Members. In such event, PERA staff shall retain a copy of the email communications according to PERA's record retention policy and New Mexico Public Records Act, NMSA 1978, Sections 14-3-1 *et seq.* (1999).

**12.30** **Communications Among the Board.** The Board shall carry out its activities in accordance with the spirit of open governance, including in satisfaction of the provisions of the Open Meetings Act, NMSA 1978, Sections 10-15-1 *et seq.* Specifically, the Board must:

- 12.31** Ensure that communications by and between the Board Members comply with the Open Meetings Act;
- 12.32** Not conduct or participate in communications (one at a time or in a group that in total constitutes a quorum of the Board or Committee) either directly or through intermediaries or electronic devices for the purpose of developing a concurrence for an action to be taken. Any such conduct shall constitute a prohibited meeting.
- 12.33** Not take any action, whether preliminary or final, by secret ballot.
- 12.34** Communicate in a straightforward, constructive manner with due respect and professionalism during meetings of the Board and its Committees.

**12.40** **Staff Communications to the Board.**

- 12.41** All Board Member requests for information, concerns, or ideas for staff projects shall be directed to the Executive Director, who shall in turn direct staff as appropriate. Under no circumstances shall Board Members directly communicate about such matters with any PERA staff subordinate to the Executive Director outside a duly noticed Board or Committee meeting, without the Executive Director's prior permission. If exigent circumstances arise during the Executive Director's absence, such matters may be directed to the Executive Director's designee who shall act in lieu of the Executive Director.
- 12.42** The Executive Director may decline to accept a Board Member's request for information that requires the expenditure of significant staff time or

external resources, provided that the Executive Director then places the matter on the subsequent Board or Committee agenda, as appropriate, for consideration and direction by the full Board or Committee.

**12.50 General Counsel Communications to Board.** PERA Office of General Counsel shall provide advice to the full Board upon request by the Board. Board Members shall not seek individual legal advice or individual formal opinions from PERA's Office of General Counsel or contract legal counsel without Board approval. This policy shall not preclude individual Board Members from requesting PERA's interpretation of the statutes and rules that PERA administers.

**12.60 Outside Counsel Communications to the Board.** Communications, whether oral or in writing, delivered to the Board in closed session or designated as confidential and/or attorney-client privilege shall not be disclosed to others by any Board Member. Moreover, if the Board seeks to refer a matter to outside fiduciary counsel, it may communicate its request through the Executive Director and/or the General Counsel who may speak on its behalf to the outside fiduciary counsel.

**12.70 Hired Consultants Communications to the Board.** All communications between Board Members and a hired consultant shall only occur during a duly noticed Board or Committee meeting.

**12.80 PERA Members/Beneficiaries Communications to the Board.** The Board Members must be sensitive to PERA members and beneficiaries' inquiries and complaints. At the same time, Board members should not become involved in the day-to-day operational management of PERA, which is a role delegated to the Executive Director and the PERA staff.

**12.81 Member/Beneficiary Inquiries.**

- A. Members and retirees should be directed to contact PERA staff directly when inquiries of a general nature are made of PERA Board Members.
- B. If members and retirees have specific questions about member services, they should be directed to contact the Deputy Director.
- C. Inquiries about operations should be referred to the Deputy Director .
- D. Inquiries about deferred compensation should be referred to the Deferred Compensation Plan Manager or the Third-Party Administrator of the Deferred Compensation Plan.
- E. Inquiries about investments should be referred to the Chief Investment Officer.
- F. Board Members are encouraged to have members and retirees submit general information such as address changes, etc., directly to PERA staff or online at RIO Self-Service so as to lessen the chance of errors or misunderstanding

**12.82 Member/Beneficiary Complaints.**

- A. Complaints to PERA Board Members are to be directed to the Executive Director, or to his or her designee, for resolution.
- B. If designated, the Deputy Director will respond to member services issues.

- C. If designated, the Deputy Director will respond to inquiries about operations.
- D. If designated, the Chief Investment Officer will respond to inquiries about investments or deferred compensation.

### **12.83 Procedure for Handling Complaints.**

- A. The complaint will be investigated and a response given to the PERA member or retiree within 5 working days of receiving the complaint.
- B. The Board Member initiating the complaint will be notified when PERA staff has responded to the complaint.
- C. PERA staff is prohibited from divulging any confidential member information when notifying the Board Member that staff has responded to the complaint

## **13.00 CONFIDENTIAL MEMBER INFORMATION**

A Board Member and PERA shall not use or disclose, directly or indirectly, confidential information<sup>8</sup> obtained in the course of or by reason of his/her official capacity. Confidential information shall be used solely for PERA purposes and under no circumstances revealed to unauthorized persons or entities, except as may be required to be disclosed as a public record under the PERA Act, NMSA 1978, §10-11-130(I) (1997) and the Inspection of Public Records Act, NMSA 1978, §14-3-1 (1999).

New Mexico state law prohibits PERA staff and Board Members from disclosing confidential member information.

The law on disclosure of confidential member or retiree information is found at NMSA 1978, Section 10-11-130(I) (2010).

## **14.00 LOBBYING AND LEGISLATION**

## **15.00 POLITICAL ACTIVITIES**

**15.10** No one who holds, or who is seeking election or appointment to, any office or employment with a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing any position, nomination, confirmation, promotion, or change in compensation or position, within the federal, state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or political party, or upon any other corrupt condition or consideration.

**15.20** No one who holds, or is seeking election or appointment to any office shall, directly or indirectly, offer or arrange for any increase in compensation or salary for an

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<sup>8</sup> “Confidential information” is defined in the PERA Act at NMSA 1978, §10-11-130(I), as all information contained in a member or retiree file except the applicable coverage plan, amounts of contributions made by both the member and the employer, and the pension amounts paid. With the release or consent of the member, other information may be released. The names and addresses of members and retirees may be released without the release or consent of the member to candidates for election to the PERA Board. Confidential information may also include confidential contract, financial, investment or legal information, and information not available to the public at large, or divulgence of such information in advance of the time prescribed for its authorized release.



employee of a federal, state or local agency in exchange for, or a promise of, a contribution or loan to any committee controlled directly or indirectly by the person who holds, or is seeking election or appointment, to office.

**15.30** Though PERA's staff is free to make contributions to a political campaign of a trustee or to any charitable organization, Board Members, the Executive Director and the Chief Investment Officer shall refrain from soliciting campaign or charitable contributions from staff, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.

## **Attachment 1**

### **Board Member Certification**

I, \_\_\_\_\_, hereby certify that I have read and understand the Board Policies and Procedures for the Public Employees Retirement Association of New Mexico (“Policies”), and agree to strictly adhere to the Policies. I further certify that I understand that the failure to act in conformance with the Policies may result in serious consequences, including but not limited to removal from the Board.

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Board Member Signature

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Date