



# New Mexico State Personnel Board State Personnel Office

**SUSANA MARTINEZ  
GOVERNOR**

**Eugene J. Moser**  
Director

**Nivia L. Thames**  
Deputy Director

**State Personnel Board**  
Paul T. Yarbrough, Chairman  
Christine Romero, Vice Chairman

Devon Day Chris Sanchez  
Rebecca Long

**State Personnel Board Meeting  
State Personnel Office  
2600 Cerrillos Road  
Santa Fe, NM 87505  
July 27, 2012  
9:00 AM**

## **Minutes**

### **I. Procedural Items**

#### **Call to Order**

The meeting of the State Personnel Board was called to order by Chairman Yarbrough at approximately 9:00 a.m. on July 27, 2012, at the State Personnel Office, Santa Fe, New Mexico.

Invocation                      Stuart Hamilton

Pledge of Allegiance              Scott Summerfield

#### **Roll Call**

Nivia Thames, Deputy Director, State Personnel Office (SPO), called roll and a quorum was established with the following members present:

Paul Yarbrough, Chairman  
Christine Romero, Vice Chair  
Devon Day

Board Member Sanchez and Board Member Long were absent.

#### **Approval of Agenda**

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2600 Cerrillos Road, Santa Fe, New Mexico, 87505 (505) 476-7759

**Board Member Day moved to approve the agenda, seconded by Vice Chairman Romero. Motion carried.**

Approval of Minutes – June 22, 2012

**Board Member Day moved to approve the June 22, 2012 State Personnel Board meeting minutes, seconded by Vice Chairman Romero. Motion carried.**

II. Director's Report

Deputy Director Thames advised that Director Moser is ill and it is anticipated he will return to work in the near future.

III. General Public Comment

No public comment.

IV. Review Rule Change and Process for Public Comment – 1.7.8 NMAC Drug and Alcohol Abuse

Katie Thwaites, General Counsel, SPO explained that the proposed rule change to 1.7.8 NMAC Drug and Alcohol Abuse includes an addition in paragraph M of 1.7.8.7 and is necessary for the Department of Health (DOH) to comply with statutory requirement under NMSA 9-7-18 which was passed during the 2011 Legislative session and became effective in July 2011.

Ms. Thwaites noted review of the proposed rule change does not require a formal adoption or a motion at this time.

The proposed rule change will be published in the New Mexico Register on August 15, 2012 which will begin the 30-day public comment period. The deadline to submit written public comment will be 5:00 p.m. on September 17, 2012. Public comments will be presented to the Board at the October 12, 2012 Board meeting. The public will also have an opportunity to be heard during general public comment at the October 12, 2012 Board meeting. If approved and adopted by the Board on October 12, 2012, the rule change will become effective on October 30, 2012.

IV. Human Services Department – Policy Making Exempt Positions

April Naranjo, HR Consultant, SPO said in accordance with Subsection N of the Personnel Act 10-9-4, Coverage of Service, the Human Services Department (HSD) is requesting approval to designate three vacant classified positions as exempt policymaking positions.

Currently, HSD has three exempt positions that are not designated as exempt policy making positions; however, these positions are authoritative decision making positions and have the authority to make policy on behalf of the Cabinet Secretary. HSD's plan is to convert three exempt positions to classified positions and establish three policy making exempt positions. This request has no impact on HSD's current classified or exempt FTE count.



The first position, Deputy Cabinet Secretary of Finance assists the Cabinet Secretary in overseeing and providing direction for the financial operations and programs under HSD's authority which incorporates a total budget of over \$4.9 billion. In particular, the Deputy Secretary position is primarily responsible for the Medical Assistance Division (MAD). The MAD is comprised of over 40 categories of eligibility within New Mexico Medicaid and assists over 500,000 New Mexicans receiving benefits. In addition to the traditional Medicaid services, MAD also administers *Insure New Mexico!* Solutions which are state and federally funded insurance programs for individuals, non-profit organizations and small businesses, as well as expanded coverage options for children and pregnant women.

The Behavioral Health Services Division's (BHSD) primary role is to serve as the Mental Health and Substance Abuse State Authority for the State of New Mexico. The Authority's role is to address need, services, planning, monitoring and continuous quality systemically for all adults across the State of New Mexico. HSD is a member of the New Mexico Behavioral Health Purchasing Collaborative (Collaborative) and BHSD works with the Collaborative in establishing policy and in its contractual relationship with the statewide entity to implement strategies to manage the adult behavioral health system.

The second position, Chief Legal Counsel oversees HSD's legal office and provides legal expertise and advice to the Cabinet Secretary. The legal office provides guidance to program staff to assist with decision-making in areas that may have legal implications and ensures compliance with interpretation of laws and regulations in these program areas and represents the agency in state and federal court and in administrative tribunals. The Chief Legal Counsel has authority to make legal policy decisions on behalf of the Cabinet Secretary.

The third position, Director of Healthcare Reform serves as the principle source of Healthcare Reform Policy in developing and implementing strategies while advising the Cabinet Secretary in regard to healthcare reform. The position functions as Director of Healthcare Reform and is primarily responsible to ensure the Patient Protection and Affordable Care Act (PPACA) is executed and in alignment with federal and state rules and regulations and has authority to make policy decisions on behalf of the Cabinet Secretary. The position provides guidance on the impact of reform on patients, physicians and other key stakeholders while ensuring policies are in the best interest of the citizens of the State of New Mexico in compliance with both state and federal law.

The three policy making exempt positions will not affect HSD's current classified FTE count and will merely be a swap of Exempt positions to Exempt Policy Making positions. In collaboration with HSD's request and pursuant to Subsection N of 10-9-4 of the Personnel Act, Board approval is requested.

Charissa Saavedra, Deputy Secretary, HSD added the purpose of the request is an attempt to accurately align Exempt positions in the department.

Vice Chairman Romero asked if the positions are FALSA Exempt positions or Governor Exempt positions. Ms. Naranjo clarified that the positions are Governor Exempt positions. Vice Chairman Romero asked why the positions were not submitted to the Department of Finance and Administration (DFA) for approval. Ms. Naranjo said the Board has authority over



Classified positions; therefore the Classified positions are being created as Exempt Policy Making positions. The current Governor Exempt (non-policy) positions will be eliminated. Vice Chairman Romero asked why the Governor Exempt (non-policy) positions are not being converted to Policy Exempt positions. Ms. Naranjo said it is necessary to convert a Classified position to a Policy Exempt position. Vice Chairman Romero said the Board is responsible for making sure the integrity of the State Personnel System is in place, rules are followed and games are not being played in any of the agencies. Ms. Saavedra added that legal counsel from both SPO and DFA reviewed the conversion of the proposed positions. Chairman Yarbrough asked if the conversion of the three positions was cost neutral. Ms. Saavedra said the conversion of the positions will not have an increase cost on the budget.

**Board Member Day moved to approve the Human Services Department – Policy Making Exempt positions for the Deputy Cabinet Secretary of Finance, Chief Legal Counsel and Director of Healthcare Reform, seconded by Vice Chairman Romero. Motion carried.**

V. Classification

A. Supervisor Classification

Cliff McNary, State Classification Manager, SPO presented 58 new proposed Supervisor Classifications and Pay Bands. The Supervisory Classifications and Pay Bands is an ongoing project and its expressed purpose is to identify the function of supervision in the non-Manager classified service. The proposal is cost neutral; the Supervisory differential will be included in the base pay.

**Board Member Day moved to approve the 58 Supervisor Classifications and Pay Bands as presented, seconded by Vice Chairman Romero. Motion carried.**

B. State Personnel Office Human Resource Division Director

Justin Najaka, State Compensation Director, SPO presented the proposed State Personnel Human Resources Division Director Classification and Pay Band Assignment. The classification is a new classification to be used by the SPO to more accurately capture the duties and size of four division director's jobs at SPO. The purpose of the positions is to direct the statewide human capital management program with statewide coverage within the classified service under the SPO agency services model. Mr. Najaka noted the agency services model has primarily affected the agency operations side.

Functions and distinguishing characteristics include directing a SPO division responsible for the statewide policy program development administration maintenance of human resource programs with an emphasis on planning, evaluating, leading, direction and employee management supervision. These positions also identify policy issues and work with various Cabinet Secretaries, Agency Heads, Agency Division Directors, Agency Human Resource Managers and staff as well as Governor's staff, Legislative staff and external staff. These positions also represent the SPO Director and the State Personnel Board (SPB) on policy issues. The four individuals who are currently in these positions are already earning a salary that is higher than the minimum of the proposed pay band. There is no fiscal impact to implement the study; however one incumbent is already in a classification with the same pay



band while the other three incumbents are at a lower pay band. Ongoing discussions continue regarding the SPO budget impact.

In response to Vice Chairman Romero, Mr. Najaka said there are currently five division directors at SPO. Mr. Najaka noted the SPO will also be working on a specific classification series that are different from the central SPO. Many comparative states are also proceeding in the same direction. Vice Chairman Romero expressed concern with the proposed classification.

Chairman Yarbrough asked if there are other agency specific classifications. Mr. Najaka said classifications are ongoing. In addition, the Board has already approved specific classification series for the Taxation and Revenue Department (TRD) Tax Auditor, the State Auditor and the Public Defender Department. Chairman Yarbrough asked if there will be overlap in terms of responsibilities and individuals within SPO that are already providing the same services. Mr. Najaka explained there is interaction and overlap; however there is not overlap in terms of duplication of functions. Mr. Najaka noted the salaries of the three individuals currently in the Administrative Operations II Manager classification are below the proposed midpoint.

Vice Chairman Romero asked if there are any other SPO classifications that are being reviewed for presentation to the Board in the future. Mr. Najaka said work has begun to create a classification that is more in line with the Executive Personnel Analyst I and II; replacing the current Compensation Benefits and Job Analyst classification. In addition, SPO will work with DFA to identify policy work at the State Budget Division versus the agency budget work done by agencies. The Information Technology classification will also be addressed.

**Board Member Day moved to approve the State Personnel Human Resources Division Director Classification and Pay Band Assignment as presented, seconded by Chairman Yarbrough. Motion carried. Vice Chairman Romero opposed.**

#### C. Statistician

Cliff McNary, State Classification Manager, SPO presented the proposed Public Education Department (PED) Statistician series classifications and pay bands. The Chief Statistician rises to a level of legislative strategic planning with respect to the initiatives put forth by the PED. The Statistician Supervisor is more hands-on creation of the type of empirical instruments that PED needs to put into place in order to test and measure the initiatives in educational achievement and improvement in the public education system.

The Chief Statistician will direct the statewide school and district accountability system which measures student growth and attainment of academic goals and evaluates the effectiveness of schools and their districts in order to increase student proficiency and academic content, school attendance, high school graduation, college enrollment and completion of college credits. The Chief Statistician will be a professional graduate level assigned to design empirical instruments.

Anjolette Torres, Legislative Director, PED added that PED has worked collaboratively with the SPO to develop the proposed classification. A classified Chief Statistician at the Ph.D. level is required to carry through the empirical instruments and oversight. In addition, federal and education requirements mandate a Ph.D. level statistician.



Mr. McNary added that there is no fiscal impact to the proposed classification and pay band assignment.

**Vice Chairman Romero moved to approve the PED Statistician series classifications and pay bands as presented, seconded by Chairman Yarbrough. Motion carried. Board Member Day opposed.**

D. Petroleum Specialist

Cliff McNary, State Classification Manager, SPO presented a title correction to the Petroleum Engineer classification. The Petroleum Engineer is a recognized occupation; however there is no sanctioning body that recognized the engineering function of the classification. Mr. McNary noted that there is a quasi-sanctioning body in Texas that certify Petroleum Engineers.

There is no fiscal impact to the title correction and there is no change to the content of the job classification.

Vice Chairman Romero asked how many FTE would be affected by the change. Mr. McNary said three to four FTE would be affected. Chairman Yarbrough asked if the title change would affect recruitment. Mr. McNary said no, agencies do not utilize this job as an engineering job.

**Board Member Day moved to approve the title correction of the Petroleum Engineer classification as presented, seconded by Vice Chairman Romero. Motion carried.**

VI. Executive Session

**Vice Chairman Romero moved to go into Executive Session. The authority for closing the meeting is under the Open Meetings Act NMSA 1978, Section 10-15-1 (H)(3), for deliberations in connection with an administrative adjudicatory proceeding, for the matters listed on the agenda; seconded by Board Member Day:**

1. *Griego v. NM Public Defender Department*; Docket No. 11-098;
2. *Whetsel v. NM Corrections Department*; Docket No. 11-101;
3. *Herrera v. NM CYFD*; Docket No. 11-070;
4. *Torres v. NM Department of Health*; Docket No. 11-127; and
5. *Vigil v. NM Corrections Department*; Docket No. 12-019.

Deputy Director Thames called roll and all members voted in the affirmative. **Motion carried.**

The Board met in Executive Session from approximately 10:11 a.m. to 11:14 a.m. The State Personnel Board discussed in closed session only those matters specified in the Motion to close.

After careful consideration of the proceedings and the Administrative Law Judge's recommendation regarding *Griego v. NM Public Defender Department*; Docket No. 11-098, **Board Member Day** moved to adopt the **Administrative Law Judge's recommended decision, seconded by Vice Chairman Romero. Motion carried.**

After careful consideration of the proceedings and the Administrative Law Judge's recommendation regarding *Whetsel v. NM Corrections Department*; Docket No. 11-101, **Vice Chairman Romero** moved to adopt the **Administrative Law Judge's recommended decision with the following change:**

**Section VII, Recommended Conclusion of Law, Paragraph 10, second sentence is changed to read: "A suspension of fifteen (15) calendar days is appropriate discipline under the circumstances of this case." seconded by Board Member Day. Motion carried.**

After careful consideration of the proceedings and the Administrative Law Judge's recommendation regarding *Herrera v. NM Children, Youth and Families Department*; Docket No. 11-070, **Board Member Day** moved to adopt the **Administrative Law Judge's recommended decision, seconded by Vice Chairman Romero. Motion carried.**

After careful consideration of the proceedings and the Administrative Law Judge's recommendation regarding *Torres v. NM Department of Health*; Docket No. 11-127, **Board Member Day** moved to adopt the **Administrative Law Judge's recommended decision on the Motion to Dismiss for Lack of Jurisdiction and direct that the case be re-docketed in accordance with Recommended Conclusions of Law 13 and 14, seconded by Vice Chairman Romero. Motion carried.**

After careful consideration of the proceedings and the Administrative Law Judge's recommendation regarding *Vigil v. NM Corrections Department*; Docket No. 12-019, **Vice Chairman Romero** moved to adopt the **Administrative Law Judge's recommended decision, with the following changes to the Conclusions of Law:**

**Paragraphs 15, 16, and 17 are deleted and are replaced with a new Paragraph 15 reading as follows: "The discipline of a suspension of five (5) working days is appropriate under the circumstances." seconded by Board Member Day. Motion carried.**

#### VII. Litigation Update

No activity to report.

#### VIII. Other Business

Next Meeting Date: August 24, 2012

#### IX. Adjournment

With no further business, **Board Member Day** moved to adjourn the **State Personnel Board meeting at approximately 11:20 a.m., seconded by Vice Chairman Romero. Motion carried.**

**Approved by:**

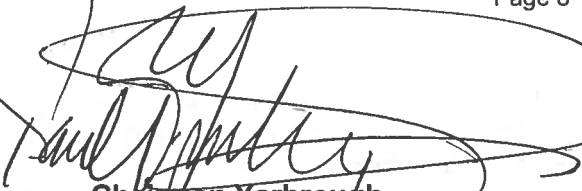
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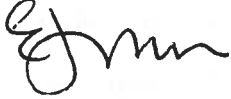
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Chairman Yarbrough  
State Personnel Board

Attest:



Eugene Moser, Director

