



# New Mexico State Personnel Board State Personnel Office

SUSANA MARTINEZ  
GOVERNOR

Justin Najaka  
Director

State Personnel Board  
Christine B. Romero, Chair  
Jerry Manzagol, Vice Chair

Nivia L. Thames  
Deputy Director

State Personnel Board Meeting  
State Personnel Office  
2600 Cerrillos Road, Santa Fe, NM 87505  
October 19, 2018  
Minutes

Megan Muirhead Carmen V. Chavez

## I. Procedural Items

### Call to Order

The meeting of the State Personnel Board (SPB) was called to order by Chair Romero at approximately 9:00 a.m. on October 19, 2018, at the State Personnel Office (SPO), Santa Fe, New Mexico.

### Roll Call

Director Justin Najaka called roll and a quorum was established with the following members present:

Christine B. Romero, Chair  
Jerry Manzagol, Vice Chair  
Megan Muirhead, Board Member  
Carmen V. Chavez, Board Member

Invocation Helen Quintana

Pledge of Allegiance Mario Chavez

### Approval of Agenda

Board Member Muirhead moved to approve the October 19, 2018, State Personnel Board Agenda; seconded by Board Member Chavez. Motion carried.

---

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



NEW MEXICO  
CENTENNIAL  
1812-2012

AGENCY PARTNER  
SUPPORTING

**Approval of Minutes** – August 24, 2018

**Vice Chair Manzagol moved to approve the August 24, 2018 State Personnel Board minutes, seconded by Board Member Chavez. Motion carried.**

**II. Director's Report**

Director Najaka provided the following update:

**HR Consolidation Update:**

On October 1, 2018 Children, Youth and Families Department was brought into the model. SPO has integrated CYFD into the model. A total of 26 positions were included, SPO went through the Board of Finance in January and July for the general fund agencies however after the agency looked at their federal fund distribution and reimbursement methodology, it was identified that it wasn't the same split that was used previous years but actually based on the individuals and the HR administrative services program, they were able to narrow it down to a scope of 94% general fund and 6% split. Those employees that were brought into the model were introduced later in the meeting.

**Facility Update:**

The Carruthers building is almost ready for employees to move in. The floor has been installed. Carpet and work stations will be installed over the next couple of days. The electrical is almost complete. We are working with DoIT to get the network connection running. The schedule move in date is November 19, 2018. A meeting is scheduled for next week for the certificate of occupancy, to make sure that is in place before November 19th. Employees will need to be moved out of the Willie Ortiz building in four weeks. Surplus Properties are moving out the extra furniture today that we do not need. A couple of storage units have been placed in the parking lot and we will be bringing in 3-4 more units. Everyone has been working very hard to prepare for the move. 91 boxes of Central HR position files were brought over from CYFD. A lot of closed files have been transferred to the records center. Director Najaka commended GSD for all their help throughout the whole process. The renovations to the Willie Ortiz building should be complete by the end of March, 2019.

Leave Management and Training are currently in the Fleming building which is across the parking lot of the Willie Ortiz building and will be moved back to the Willie Ortiz building once the renovations are complete.

Vice Chair Manzagol asked if the State Personnel Board meeting will be held at the Carruthers building since the Willie Ortiz building will be under renovations at the time of the next Board meeting.

Justin Najaka indicated that a location has not been determined yet but it will likely be at the Toney Anaya building or at the Carruthers building.

Christine Romero asked if it was possible at the next Board meeting during the Director's report if pictures/visuals can be given to them to see the Carruthers building and the Albuquerque building.

Staff Update:

Shawn Haynes has transferred to the Department of Public Safety. Tony Redding has been hired as the Chief Procurement Officer. The employees who were transferred from CYFD introduced themselves- Mario Chavez, Employee Relations Specialist; Max Rodriguez, HR Consultant for Workforce Planning; Melinda Quintana, HR Office Administrator in the Service Center; Jackie Sisneros in the Service Center; Diane Swan, Recruitment Supervisor in Talent Acquisition; Melissa Perea, HR Assistant in Leave Management; Brittany Montoya, in Employee Relations and Jamie Phillips, Medical Issues Coordinator in Leave Management.

### III. General Public Comment

No individuals signed up for General Public Comment.

### IV. Consideration of Repeal of 1.7.6.12 Rescission of Resignation

Justin Najaka, Director for the State Personnel Board discussed with the board members State Personnel Rule 1.7.6.12-Rescission of Resignation. The purpose of the rule repeal of 1.7.6.12 NMAC is to make an employee resignation effective immediately. Under the current rule, an employer "must" allow an employee three (3) days to rescind their resignation. The repeal of this rule will eliminate that time requirement and align the resignation process with best streamline operations and encourage better communication between employees and agencies. At the August 24, State Personnel Board meeting the Board voted to initiate the rulemaking process to repeal 1.7.6.12 NMAC- Rescission of Resignation. At that meeting, this body designated Director Najaka as the hearing officer to accept written comments and preside over a public rule hearing on October 12, 2018. Notice of the proposed rulemaking was published in the New Mexico Register on September 11, 2018. The written comment period ended on October 11, 2018. On October 12, a public hearing was held in which all interested persons were given a reasonable opportunity to submit data, views or comments orally or in writing on this proposed rule repeal. Prior to the rule hearing, 25 comments were submitted during the comment period and two additional individuals appeared at the October 12, hearing. Director Najaka anticipated more people to show up at the public hearing. It was a quick hearing, it lasted for about 15 minutes. Although there were many comments, the most prevalent category generally related to using this three day time frame as a "cooling off period" - stating many reasons from dealing with both personal and work related stressors to mistreatment by supervisors to misinformation provided by agency representatives or other employees not clear on rules and policies. One respondent stated that the repeal of this rule violates both the United States Constitution and New Mexico Constitution in regards to Due Process, Sexual Discrimination, Equal Protection and Eminent Domain. After consultation with State Personnel Office legal counsel it has been determined that was not accurate. Finally, there were some employees that simply responded that they opposed the rule change but did not state a reason why. It is important to note that the repeal of the three day "automatic" rescission period does not prevent an employee and the agency from mutually agreeing to rescind the resignation up to the time of separation. It simply removes the "mandatory" requirement that an agency stay in a holding pattern for three days. Director Najaka spoke to Human Resource leaders from other state governments at both the 2018 NASPE mid-year meeting and the 2018 NCASG meeting and is unaware of other states having a mandatory provision in rule or code. Additionally, he is not aware of other private sector organizations to have the mandatory provision in their systems.



In the Board's packet, they have the complete record of the process ranging from the Notice of Rule Making to the minutes of the October 12 meeting to include all submitted comments.

After considering public comments and based on the desire to align the resignation process with best practices in the human resource profession, streamline operations and encourage better communication between employees and agencies, Director Najaka recommended to the Board to approve the repeal of 1.7.6.12 NMAC as published, and that the rule repeal become effective when published in the New Mexico Register. As previously stated, there were 25 comments; which all of those comments were given to the Board prior to the meeting for their review. Many individuals provided justification as to why they thought the repeal was not a good idea but most of it came back to the cooling off period. In regards to communication-we want the employee and agency to work together.

Vice Chair Manzagol commented not all resignations are done because of stress or adverse conditions, a lot of resignations are done simply because they are going from one agency to another or going to a private industry, so we are not talking about all resignations. Vice Chair Manzagol feels that the three day period should not be mandatory, as the employee and the employer can always come to an agreement if the employee changes their mind.

Board Member Chavez commented also. She indicated that by changing the rule, it does not prevent the employee to go to their employer a day after or over the weekend, once the employee has had the opportunity to cool off. The employee still can have a conversation with their employer and advise them that they want to stay.

Director Najaka agreed with Vice Chair Manzagol and Board Member Chavez comments.

**Board Member Muirhead moved to approve the Repeal of 1.7.6.12 NMAC-Rescission of Resignation; seconded by Vice Chair Manzagol. Motion carried.**

Stephen Vigil, Assistant Attorney General, explained that now the agency has formally adopted the repeal in a public meeting, a concise explanatory statement needs to be prepared and signed by Chair Romero or Chair Romero can delegate to Director Najaka to sign. Once the concise explanatory statement is signed, the agency has 15 days to file with the State Records Center. Once filed with the State Records Center, it is published in the New Mexico Register and the rule will be in effect.

## V. **EMNRD Safety Sensitive Designation Addition Request**

Alicia Lucero, SPO Quality Assurance Auditor presented the 2018 Out-of-Cycle Review and Approval of Safety Sensitive/Omnibus Designated Position Report. In accordance with Designation of Safety-Sensitive Positions, Subsection D. of 1.7.8.9 NMAC, the State Personnel Board (SPB) shall review and approve out-of-cycle requests for additions and deletions of Safety Sensitive designated positions. Safety Sensitive positions are recognized as positions in which the impairments of drug or alcohol use would constitute an immediate and direct threat to public health or safety, these include but are not limited to: Peace officers; Correctional officers; Employees who are required to regularly carry firearms; Employees who regularly transport other people as their principle job; and Positions involving use of

equipment that could pose a risk to public health or safety. The Energy, Minerals and Natural Resources Department (EMNRD) is requesting SPB's approval for the addition of one (1) position that now requires a Safety Sensitive designation. Based on an evaluation of tasks and workload of the Eagle Nest and Cimarron Canyon State Park in Northern New Mexico, it appears that having a position with a Peace Officer Certification will ensure the public's safety as well as ensure the rules and laws are adhered to. Based on attendance data for FY18, both state parks served 365,814 park visitors, while only maintaining two (2) Park Law Enforcement Officers. With the increase in park visitors and based on the substantial amount of visitors, these parks are in need of an additional Law Enforcement Park Officer to assist with the law enforcement tasks. With the Parks being in a rural and remote area, the response time for the County Sheriffs and the NM State Police Officers are delayed. With an additional Peace Officer available on site, EMNRD anticipates a more rapid response time for law enforcement situations, search/rescue and medical emergencies. Therefore, with the addition of one (1) Safety Sensitive position, the revised total Safety Sensitive designated positions equals 4,375 positions. The total Omnibus designated position equals 120 positions. Positions designated as both Safety Sensitive and Omnibus totals 1,090. Thus, New Mexico State government maintains a total of 5,585 Safety Sensitive and Omnibus designated positions. Based upon review and analysis of the out of cycle review, Ms. Lucero concurs and recommends that the SPB approve the 2018 out-of-cycle addition of Safety Sensitive Designated positions in accordance with Designation of Safety Sensitive Positions, Subsection D. of 1.7.8.9 NMAC. Parks Director Tafoya from EMNRD was present and indicated that the additional position of safety sensitive would be extremely important and critical to the Parks.

Board Member Chavez asked Director Tafoya how they came to the conclusion of just one additional position. Director Tafoya indicated that they currently have two Park Law Enforcement Officers and having one additional officer will help with serving the needs in terms of time off and rotating schedules, they felt one additional officer will suffice.

**Vice Chair Manzagol moved to approve the EMNRD Safety Sensitive Designation Position Request; seconded by Board Member Muirhead. Motion carried.**

**Board Member Muirhead moved that the State Personnel Board meeting be closed. 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; and to include NMSA 1978, Section 10-15-1(H)(7) for pending litigation; second by Board Member Chavez.**

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

The Board met in Executive Session from approximately 9:39 a.m. to 10:20 a.m.

**For the record, the matters discussed in closed session were limited to those specified in the Motion to close.**

- 1. duPassage & Chavez v. New Mexico Children, Youth and Families Department;  
Docket Nos. 18-027 & 18-028**



After careful consideration of the Administrative Law Judge's Recommended Decision and the parties' exceptions to the Recommended Decision, if any, in *duPassage & Chavez v. New Mexico Children, Youth and Families Department*; Docket Nos. 18-027 & 18-028-consolidated, **Vice Chair Manzagol moved to adopt the Administrative Law Judge's Recommended Decision. Motion seconded by Board Member Chavez. Motion carried.**

**2. Robinson v. New Mexico Department of Health, Docket No. 18-004**

After careful consideration of the proceedings and the Administrative Law Judge's recommendations in Robinson v. New Mexico Department of Health; Docket No. 18-004, **Board Member Muirhead moved to adopt the Administrative Law Judge's recommendations with the following modification:** Finding of Fact#23 has a typo as evidence in page 8, summary by Dr. Gallardo's testimony and should read: Mr. Robinson's confirmatory d-and-l isomer test indicated 7% neutral l-isomer Methamphetamine and 93% illicit d-isomer Methamphetamine, Ex.5; **Motion seconded by Board Member Chavez.**

**3. Schaefer v. New Mexico Department of Health, Docket No. 18-008**

After careful consideration of the Administrative Law Judge's proposed findings of fact, analyzes of the relevant law and/or policies in light of the proposed findings of fact of the Recommended Decision and the parties' exceptions to the Recommended Decision, if any, in Schaefer v. New Mexico Department of Health, Docket No. 18-008, **Board Member Chavez moved to adopt the Administrative Law Judge's Recommended Decision. Motion seconded by Vice Chair Manzagol. Motion carried.**

## VI. Litigation Update

Richard Blumenfeld, Administrative Law Judge for the Board, presented the Litigation Update.

In the first quarter of Fiscal Year 2019, Adjudication received 12 new appeals and disposed of 9. There are currently 25 appeals pending. An update on appeals of Board decisions: District Court Judge Raymond Ortiz issued a Final Judgment in the matter of Rojo v. DMA reversing the Board's January 19, 2018 Amended Final Decision. Judge Ortiz issued his decision September 24, 2018, the State as 30-days to appeal that to the Court of Appeals. As you might recall in the Amended Final Decision, the Board reduced Mr. Rojo's discipline from a dismissal to a 30-day suspension and awarded him back pay beginning August 17, 2017, the date of the District Court's order, denying DMA's Motion for Rehearing. In his Final Judgment, Judge Ortiz agreed that a 30-day suspension was warranted for Mr. Rojo, but found that the Board's back pay award was arbitrary and capricious and contrary to State Personnel Board Rules, and essentially ordered Mr. Rojo be paid all remaining back pay to the date of his 2013 termination. Copies of Judge Ortiz' Final Judgment were provided to the Board members. No new appeals of Board decisions have been filed, and there is no dispositive action to report in the eight other Board decisions currently on appeal.

No questions from the Board.

**VII. Other Business – Next Meeting Date:** Friday, November 30, 2018, location of the meeting TBD.

**VIII. Adjournment**

With no further business, **Board Member Muirhead** moved to adjourn the State Personnel Board meeting at approximately 10:28 a.m.; seconded by Vice Chair Manzagol. Motion carried.

Approved by:



**Christine B. Romero, Chair  
State Personnel Board**

Attest:



**Justin Najaka, Director**

