

STATE OF NEW HAMPSHIRE



PERSONNEL APPEALS BOARD

ANNUAL REPORT FISCAL YEAR 2020

SEPTEMBER 1, 2020

PREPARED PURSUANT TO

RSA 21-I:46, VI

By its Members:

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Marilee Nihan

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And

Administrator of the Personnel Appeals Board

(Vacant)

Acknowledgments

Governor

Christopher T. Sununu

Executive Council

Michael J. Cryans – District 1

Andru Volinsky – District 2

Russell E. Prescott – District 3

Theodore B. Gatsas – District 4

Debora Pignatelli -District 5

Commissioner of Administrative Services

Charles M. Arlinghaus

Director of Personnel

Lorrie Rudis

Board's Administrative Staff

Administrative Attorney (Vacant)

Executive Assistant (Vacant)

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RSA 21-I:45 COMPOSITION OF THE BOARD

There is hereby established a personnel appeals board as follows:

- I. The board shall consist of up to 5 members, not more than 3 of whom shall be from the same political party. At least 2 members of the board shall have been employed as labor relations or personnel professionals for at least five years. One member shall have been employed within a public personnel field of employment for at least 3 years. At least 2 members shall be attorneys licensed to practice in the state of New Hampshire and experienced in the conduct of adjudicative hearings and decision writing. Each member shall be appointed by the governor with the consent of the council for a term of 3 years and a person appointed to fill a vacancy shall be appointed for the unexpired term. Each member of the board shall hold office until a successor is appointed and qualified. The governor shall designate one member as chairperson of the board. The board shall elect one member to serve as vice-chairperson. Both the chairperson and the vice-chairperson shall be attorneys and members in good standing of the New Hampshire Bar Association. No member of the board shall be employed full time in any agency of state government. Three members shall constitute a quorum to conduct hearings, deliberative sessions, and business meetings.
- II. Members of the board shall convene in person to conduct appeal hearings and pre-hearing conferences with the parties, to deliberate on concluded cases and pending motions, and to conduct periodic business meetings associated with their duties and they shall designate one or more members to participate in legislative and regulatory matters that pertain to the board. They shall read appeal records, motions, court decisions, and other evidentiary materials outside of scheduled hearings and meetings and in preparation for them. The members shall therefore be paid a stipend of \$200 in each biweekly state payroll cycle for the work performed outside of scheduled sessions. Members of the board shall also be paid \$400 for each day devoted to the work of the board and shall be reimbursed for travel, professional development, and other business-related expenses.
- III. Members of the board shall be removed only as provided in RSA 4:1.

DUTIES OF THE BOARD

The board conducts hearings on appeals from classified state employees who wish to challenge adverse disciplinary actions taken by the appointing authorities such as letters of warning, suspensions, and terminations.

The board is a quasi-judicial body that requires the chairperson and vice-chairperson to be members of the N. H. Bar Association. The other members must have sufficient experience in labor relations, personnel management, or human resources administration. Each board member must have the knowledge, experience, and expertise to render thoughtful and fair decisions

Many of the cases that come before the board involve complex facts, arguments and legal issues that often require several days of testimony followed by thoughtful and time-consuming deliberation among the board members. Therefore, it is imperative to the integrity of the appeals process to be able to recruit and retain qualified attorneys and experienced personnel professionals to serve on the board.

At the present time, two of the members are attorneys and two are experienced personnel professionals, one from the public sector and the other from the private sector.

BOARD DEVELOPMENTS IN FY 2020

In FY 2020 the board experienced the “perfect storm” of board members and support position vacancies. (1) In November 2019, board member David Goldstein passed away following a brief illness, leaving the board with only three members and a bare quorum. In January 2020 board member Gail Wilson was appointed to fill that vacancy. (2) In February 2020, the board chair, Attorney Christopher Nicolopoulos, was confirmed as Commissioner of the Department of Insurance, leaving the board once again with a bare quorum. (3) Also in February 2020, the board’s administrator, Attorney Steven Bunker, resigned to take a position with another state agency and the board’s only administrative support person retired, leaving the board with no support staff whatsoever. (4) In March 2020, the Covid-19 pandemic resulted in a hiring freeze, budget constraints, and multiple delays in scheduled hearings. In May 2020, Attorney Jason Major was appointed to fill the fourth board seat and the second attorney position.

The board is administratively attached to the NH Department of Administrative Services, Division of Personnel and its budget is incorporated into the budget of the Division of Personnel. In response to the hiring freeze and budget cuts, the board members assumed the daily business operations of the board such as answering mail and emails, scheduling and rescheduling hearings, and writing the decisions that the administrator/staff attorney would normally have drafted for the board’s review and editing. With no end in sight for the pandemic or the hiring freeze or easing of budgetary pressures, it is anticipated that the board members will continue to conduct the daily business operations of the board for the foreseeable future.

Over the last few months, the board benefited from the part-time assistance of one employee of the Division of Personnel for administrative support and we anticipate that we will continue to be assisted part time in this manner until the hiring freeze is lifted. In addition, for CY 2021, the Division has offered to assign a staff attorney to sit in on some the hearings and to draft some of the decisions. The board wishes to express its gratitude to the Director of Personnel for working with the board so the board can maintain its hearing schedule and render its decisions in a timely manner. The board will maintain this arrangement for as long as it is needed.

CASE LOAD AND SCHEDULING

The board scheduled prehearing conferences and hearings on the merits as timely as possible, taking into account the schedules of the parties and their witnesses and the availability of a hearing room. At the onset of the social distancing guidelines, the board conducted hearings and prehearing conferences by WebEx. At the request of parties and the coordination with the Division of Personnel, the Board has begun to hold some hearings live using appropriate COVID-19 social distancing and precautionary measures. The board plans to continue to follow the social distancing and other health-related protocols for as long as necessary.

Cases filed in FY 2020 and trends appear in the tables, charts, and graphs that follow.

APPEALS RECEIVED DURING FY 2020

(Arranged by Department)

DOCKET	TYPE	DEPT
2020-T-004	TERMINATION	CORRECTIONS
1 DEPARTMENT OF CORRECTIONS APPEAL		
2020-D-002	LETTER OF WARNING	DEPT. OF JUSTICE
1 DEPARTMENT OF JUSTICE APPEAL		
2020-D-003	LETTER OF WARNING	DHHS
2020-T-003	TERMINATION	DHHS
2020-T-005	TERMINATION	DHHS
2020-O-001	OTHER - RULES APPLIED	DHHS - DCYF
2020-T-010	TERMINATION	DHHS - NH HOSPITAL
5 DEPARTMENT OF HEALTH & HUMAN SERVICES APPEALS		
2020-D-004	LETTER OF WARNING	DOIT
2020-T-006	TERMINATION	DOIT
2 DEPARTMENT OF INFORMATION TECHNOLOGY APPEALS		
2020-D-001	LETTER OF WARNING	EDUCATION
1 DEPARTMENT OF EDUCATION APPEAL		
2020-D-007	LETTER OF WARNING	LABOR
1 LABOR DEPARTMENT APPEAL		

2020-O-002	OTHER - RELEASE OF CONFIDENTIAL INFO	LIQUOR COMMISSION
1 LIQUOR COMMISSION APPEAL		
2020-T-011	TERMINATION	MILITARY AFFAIRS & VETERANS SERVICES
1 DEPARTMENT OF MILITARY AFFAIRS & VETERANS SERVICES APPEAL		
2020-D-005	LETTER OF WARNING	NH VETERANS HOME
2020-T-001	TERMINATION	NH VETERANS HOME
2020-T-007	TERMINATION	NH VETERANS HOME
2020-T-008	TERMINATION	NH VETERANS HOME
2020-T-009	TERMINATION	NH VETERANS HOME
2020-T-015	TERMINATION	NH VETERANS HOME
6 NH VETERANS HOME APPEALS		
2020-C-001	CLASSIFICATION	OPLC
1 OFFICE OF PROFESSIONAL LICENSURE COMMISSION APPEALS		
2020-D-006	LETTER OF WARNING	SAFETY
2020-T-013	TERMINATION	SAFETY - FIRE STANDARDS & EMERGENCY MEDICAL SERVICES
2020-T-002	TERMINATION	SAFETY, STATE POLICE
2020-T-012	TERMINATION	SAFETY, STATE POLICE
2020-T-014	TERMINATION, NON-DISCIPLINARY	SAFETY, STATE POLICE
5 DEPARTMENT OF SAFETY APPEALS		
TOTAL OF 25 APPEALS RECEIVED BY PERSONNEL APPEALS BOARD IN FY2020		

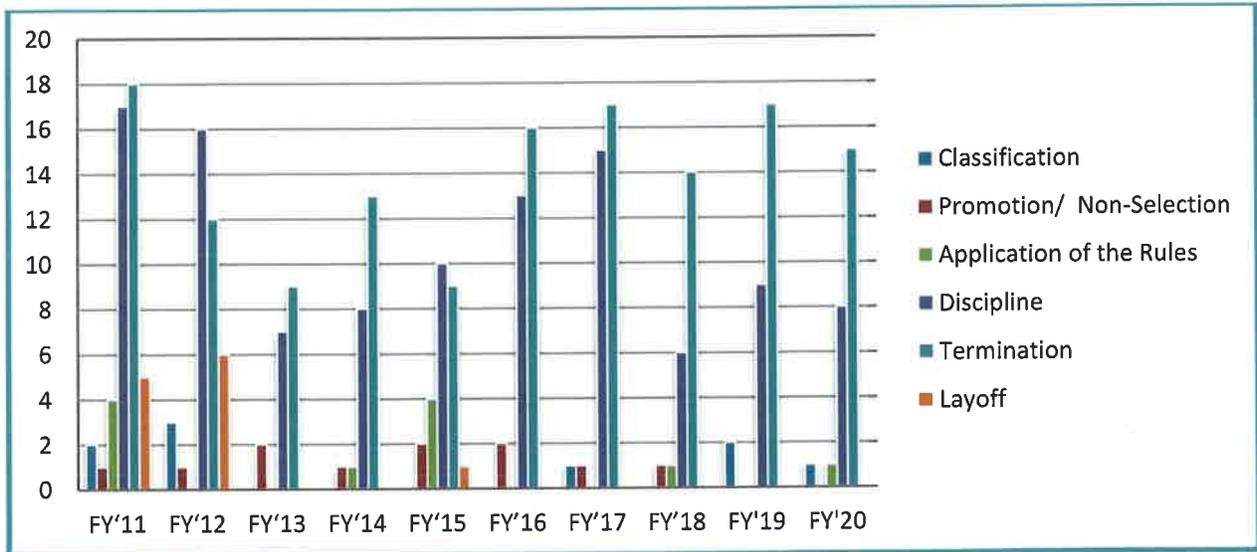
APPEALS RECEIVED DURING FY 2020

(Arranged by Appeal Type)

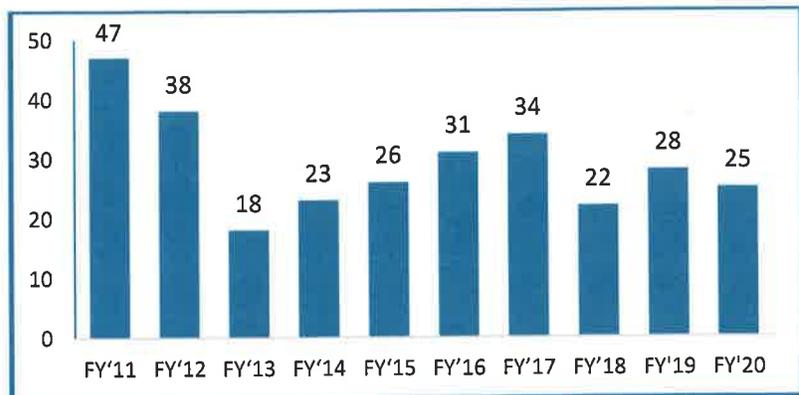
DOCKET	TYPE		DEPT
2020-C-001	CLASSIFICATION	1	OPLC
1 CLASSIFICATION APPEAL			
2020-D-001	LETTER OF WARNING	1	EDUCATION
2020-D-002	LETTER OF WARNING	1	DEPT. OF JUSTICE
2020-D-003	LETTER OF WARNING	1	DHHS
2020-D-004	LETTER OF WARNING	1	DOIT
2020-D-005	LETTER OF WARNING	1	NH VETERANS HOME
2020-D-006	LETTER OF WARNING	1	SAFETY
2020-D-007	LETTER OF WARNING	1	LABOR
7 LETTERS OF WARNING APPEALS			
2020-O-001	OTHER - RULES APPLIED	1	DHHS - DCYF
2020-O-002	OTHER - RELEASE OF CONFIDENTIAL INFO	1	LIQUOR COMMISSION
2 OTHER TYPE OF APPEALS			
2020-T-004	TERMINATION	1	CORRECTIONS
2020-T-003	TERMINATION	3	DHHS
2020-T-005	TERMINATION		DHHS
2020-T-010	TERMINATION		DHHS - NH HOSPITAL
2020-T-006	TERMINATION	1	DOIT
2020-T-011	TERMINATION	1	MILITARY AFFAIRS & VETERANS SERVICES
2020-T-001	TERMINATION	5	NH VETERANS HOME
2020-T-007	TERMINATION		NH VETERANS HOME
2020-T-008	TERMINATION		NH VETERANS HOME
2020-T-009	TERMINATION		NH VETERANS HOME
2020-T-015	TERMINATION		NH VETERANS HOME
2020-T-013	TERMINATION	4	SAFETY - FIRE STANDARDS & EMERGENCY MEDICAL SERVICES
2020-T-002	TERMINATION		SAFETY, STATE POLICE
2020-T-012	TERMINATION		SAFETY, STATE POLICE
2020-T-014	TERMINATION, NON-DISC		SAFETY, STATE POLICE
15 TERMINATION APPEALS			
TOTAL OF 25 APPEALS RECEIVED BY PERSONNEL APPEALS BOARD IN FY2020			

10-YEAR HISTORY OF APPEALS FILED

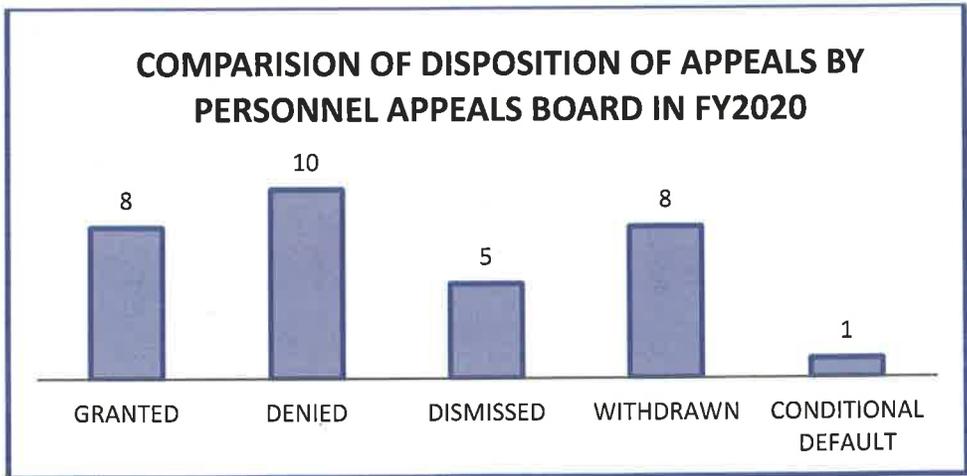
	FY'11	FY'12	FY'13	FY'14	FY'15	FY'16	FY'17	FY'18	FY'19	FY'20
Classification	2	3	0	0	0	0	1	0	2	1
Promotion/ Non-Selection	1	1	2	1	2	2	1	1	0	0
Application of the Rules	4	0	0	1	4	0	0	1	0	1
Discipline	17	16	7	8	10	13	15	6	9	8
Termination	18	12	9	13	9	16	17	14	17	15
Layoff	5	6	0	0	1	0	0	0	0	0
Total	47	38	18	23	26	31	34	22	28	25



**10-YEAR COMPARISON OF
TOTAL NUMBER OF APPEALS
FILED PER YEAR**



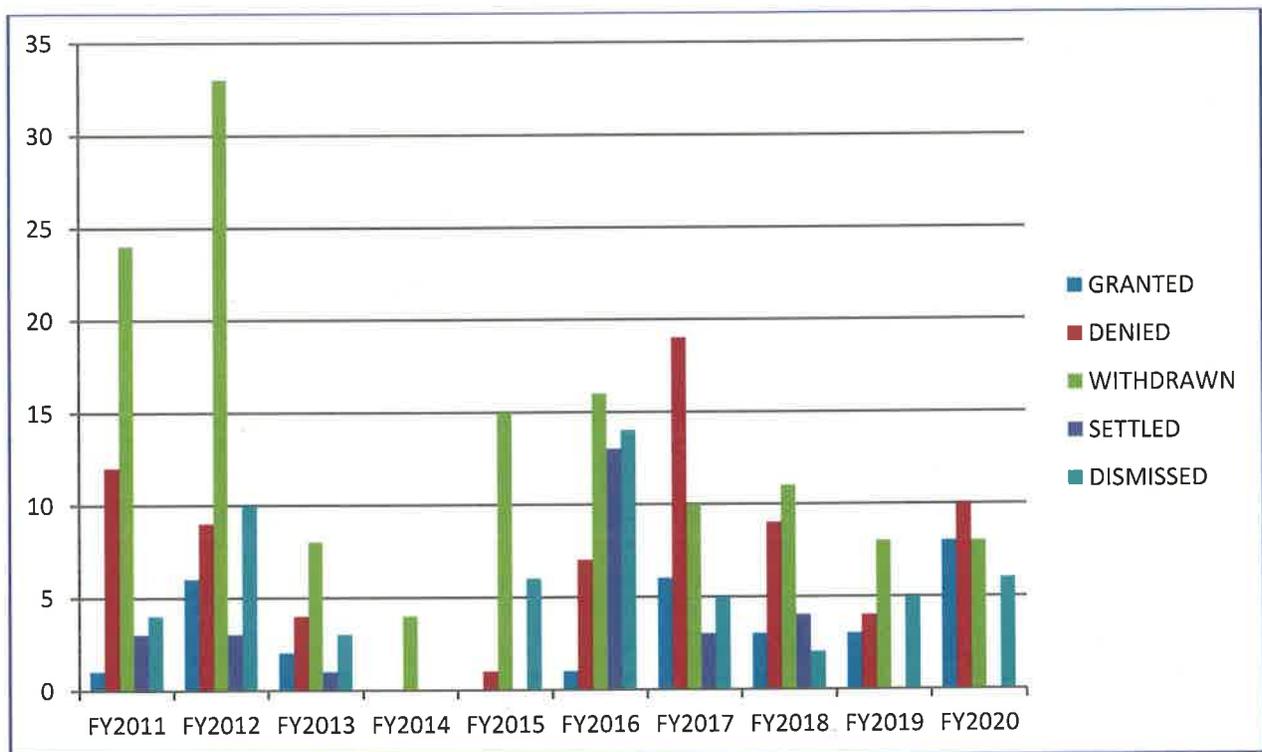
APPEALS DISPOSED BY PERSONNEL APPEALS BOARD IN FY 2020			
Docket #	Department	Appeal Reason	Final Action
2018-T-011	Corrections	Termination	DENIED
2018-T-012	Liquor Commission	Termination	WITHDRAWN
2019-C-001	Administrative Services	Classification	GRANTED
2019-C-002	Administrative Services	Classification	GRANTED
2019-D-005	Corrections	Disciplinary Demotion	GRANTED
2019-D-006	Office of Veterans Services	Letter of Warning	DENIED
2019-D-008	DHHS - NH Hospital	Letter of Warning	GRANTED
2019-D-009	Information Technology	Letter of Warning	DENIED
2019-T-003	DHHS	Termination (Non-Disciplinary)	WITHDRAWN
2019-T-004	Adjutant General's Dept.	Termination	GRANTED
2019-T-007	DAS-Bureau of General Services	Termination	DENIED
2019-T-009	Liquor Commission	Termination	DENIED
2019-T-010	Corrections	Termination	DENIED
2019-T-011	Employment Security	Termination	WITHDRAWN
2019-T-012	DHHS	Termination	DENIED
2019-T-013	Corrections	Termination	GRANTED
2019-T-014	Environmental Services	Termination	WITHDRAWN
2019-T-015	Liquor Commission	Termination	DENIED
2019-T-016	DOIT	Termination	WITHDRAWN
2019-T-017	Liquor Commission	Termination	WITHDRAWN
2020-C-001	OPLC	Classification	DENIED
2020-D-001	Education	Letter of Warning	DISMISSED
2020-D-004	Office of Information Technology	Letter of Warning	GRANTED
2020-D-007	Labor	Letter of Warning	DISMISSED
2020-O-002	Liquor Commission	Release of Confidential Info	DISMISSED
2020-T-001	NH Veterans Home	Termination	DISMISSED
2020-T-002	Safety	Termination	GRANTED
2020-T-003	DHHS	Termination	WITHDRAWN
2020-T-004	Corrections	Termination	DISMISSED
2020-T-005	DHHS	Termination	DENIED
2020-T-007	NH Veterans Home	Termination	Conditional Default w/o Prejudice
2020-T-010	DHHS - NH Hospital	Termination	WITHDRAWN



10-YEAR COMPARISON OF APPEALS CLOSED PER YEAR

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
GRANTED	1	6	2	0	0	1	6	3	3	8
DENIED	12	9	4	0	1	7	19	9	4	10
DISMISSED	4	10	3	0	6	14	5	2	1	6
WITHDRAWN	24	33	8	4	15	16	10	11	6	8
SETTLED	3	3	1	0	0	13	3	4	2	0
TOTAL	44	61	18	4	22	51	43	29	16	32

*In 2014, since there was not a quorum of the Personnel Appeals Board for a substantial part of the year, appeals could not be closed except by withdrawal or settlement.



STATISTICAL ANALYSIS

In FY 2020, the board received 25 appeals. This was a 10% decrease from the 28 appeals received in FY 2019 this may be attributable to state employees working from home during the pandemic. The board scheduled 36 cases for prehearing conferences in FY 2020. This represents a 16% decrease from the 42 cases for which prehearing conferences were scheduled in FY 2019. The FY 2020 prehearing conferences were held on 3 separate days.

The board held hearings for 16 appeals in FY 2020. This represents a 75% increase over the 4 hearings that the board held in FY 2019. 19 Hearings were scheduled in FY 2020, but 5 were continued, withdrawn, or dismissed. In FY 2019, 15 hearings were scheduled but 9 of were continued, withdrawn, or dismissed. The board conducted on average 1.33 hearings each month in FY 2020. In addition, the board met on 4 separate occasions solely to conduct its business and comply with the monthly meeting requirement of RSA 21-I:46; although the board also conducted business meetings following each prehearing conference and hearing held.

The board authored 18 decisions in FY 2020, affirming the disciplinary actions of state agencies in 10 cases and ruling in favor of the appellants in 8 cases. 10 of the decisions involved terminations, 4 involved letters of warning, 3 involved positions classifications, and 1 involved a disciplinary demotion. In FY 2020, 8 appeals were withdrawn, 5 were dismissed, and 1 was a conditional default, for a total of 32 appeals disposed of by the board in FY 2020. The board also received and disposed of a number of motions for reconsideration/rehearing and issued orders on several other motions.

The time lag between the initial filing of an appeal and its final disposition varies from case to case. The scheduling may be affected by the availability of one or both of the parties and their witnesses, attorneys, or union representatives. The board may grant continuances for prehearings or hearings for good cause such as the unavailability of either party or a critical witness, delays in the evidentiary discovery process, inclement weather, settlement in progress, sudden illnesses or other exigent circumstances beyond the control of the board or participants. In any event, the board continues to strive to assure that all appeals are heard in a timely manner within the context of the complexity of each case and accords priority to those cases that involve a sudden loss of compensation to the affected employee.

PUBLIC ACCESS TO RECORDS AND PROCEEDINGS

Documents submitted to the board including, but not limited to, requests for hearings, pleadings and attachments, are exempt from disclosure under the provisions of RSA 91-A:5, IV unless and until those documents are presented to the board and are admitted into the record at a public hearing because those records include personnel records and records pertaining to internal personnel practices. Once those documents are introduced as a public hearing, however, they are included in the public record pursuant to RSA 21-I:42, IX (a)(3) and RSA 541-A, the Administrative Procedures Act, and they are open to public inspection unless otherwise exempt from disclosure by a court order or an order of the board as authorized by RSA 91-A:5, IV.

The public is made aware of these rules by an advisory posted on the board's website that reads: "Hearings are open to the public. In most cases, documents that a person files as an attachment to an original appeal or as evidence in an appeal become public records. As such, agencies and employees filing appeals need to be careful about releasing any documents that they would not want published and made available to the general public."

Employees can opt to go through an informal settlement process prior to having a full hearing before the board. This process is not open to the public and is encouraged as a way for the parties to resolve their dispute before going to the board for adjudication or other disposition.

Before 2008 the board kept hard-copy files that included all submissions, notices, pleadings, exhibits, written communications and decisions on all appeals that were filed as well as copies of all tape-recorded hearings and related proceedings. The rules were amended in 2008 to include provisions for the retention of records whereby the parties could retrieve their copies of exhibits once a final deadline for any further appeal had passed. The exhibits that were not returned to the parties could then be destroyed with a corresponding reduction of the board's files in each case to only copies of pleadings and decisions. In 2009 the board began to purge the hard-copy files and to replace the original appeals, pleadings and decisions with an electronic copy maintained on CD's. The vast majority of the board's old archived pleadings and decisions have since been scanned and the paper records have been shredded and recycled.

Since electronic computer files are backed up daily, in 2016 CD maintenance of files was replaced with file maintenance on the state's computer hard drive. Each file is scanned and maintained indefinitely. The hard copy is shredded and recycled.

In accordance with the provisions of RSA 91-A the board's website includes notices of public meetings with agendas, minutes of meetings, prehearing case conferences, hearings, and decisions.

DECISIONS OF THE NH SUPREME COURT IN FY 2020

None of record for FY 2020.

OBSERVATIONS AND RECOMMENDATIONS

RSA 21-I:46, VI requires the board to include a section in its current report describing the board's observations about any potential issues pertaining to the personnel system and its recommendations for addressing those issues.

The board understands the value of effective supervisors and managers and the role they play within state government. As an employer the State of New Hampshire must ensure that supervisors and managers continue to receive the necessary training and resources to remain effective leaders. In addition to mentoring and learning from one's own supervisor or manager, the state offers educational opportunities for supervisors and managers to enhance the skills needed for successful supervision and managements of their employees.

The Division of Personnel's Bureau of Education and Training offers a two-day "Foundations of Supervision" class to current supervisors and managers, employees who have been promoted into a supervisory or managerial position or to new employees who are hired into a supervisory or managerial position. It is important that supervisors and managers have and/or develop the skills to not only manage the workload that they and their supervisors are responsible for but also to enrich their knowledge of how to effectively manage and supervise their staff so they are able to work as a cohesive team. The board strongly encourages all state supervisors and managers to take advantage of this educational opportunity.

In addition to the "Foundations of Supervision" class, the Bureau also offers a nationally accredited training program known as the Certified Public Supervisor Program (CPS). The CPS program offers a wide variety of classes with topics that often come before the board. The board believes that it would be beneficial for supervisors to enroll in this program so that they may refresh their supervisory skills as well as develop new skills that will help them become even more effective supervisors.