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*Barclays Official*  
**CALIFORNIA  
CODE OF  
REGULATIONS**

**Title 2. Administration**

**Division 5. Local Agency Personnel Standards**

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**BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS**  
50 California Street • Nineteenth Floor • San Francisco, CA 94111  
800-888-3600

# BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

## REVISED EDITION

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## TITLE 2. ADMINISTRATION

### NOMENCLATURE CROSS-REFERENCE

(NOTE: Effective April 1, 1990, the Office of Administrative Law authorized the renaming of the hierarchical headings used within the Titles of the *California Code of Regulations*. Until the agencies implement these changes in their regulations, use the following Cross-Reference Table for the new organizational headings used in this Title.)

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#### REVISED HIERARCHY

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Subchapter .....	Chapter
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## Division 5. Local Agency Personnel Standards

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## Division 5. Local Agency Personnel Standards

### Chapter 1. Approved Local Merit System Standards

#### Article 1. Purposes

##### § 17010. Purposes.

These Standards are adopted by the State Personnel Board to implement Government Code Sections 19800–19810 which require establishment of personnel standards in regulatory form necessary “to assure state conformity with applicable federal requirements”. These standards are intended to be used as broad, flexible guidelines reflecting generally accepted personnel practices. The State Personnel Board Executive Officer will provide necessary interpretations of the standards.

They provide for meeting the federal and state requirements by local agencies and are applicable to both Approved Local Merit Systems and the Interagency Merit System directly administered by the State Personnel Board. These standards must be met by a local agency wishing to establish its own Approved Local Merit System in order to qualify for certain state and federally funded programs. In Approved Local Merit Systems, the State Personnel Board Executive Officer will review each system for sufficient conformity with applicable Federal requirements. If sufficient conformity is found, the approval will be continued.

The departments administering state and federally funded programs in local agencies which have not met the criteria for Approved Local Merit System status constitute the Interagency Merit System directly administered by the State Personnel Board.

NOTE: Authority cited: Sections 19800 and 19801, Government Code. Reference: Sections 19800–19810, Government Code.

##### HISTORY

1. Repealer of Chapter 1 (Sections 17010–17380, not consecutive) and new Chapter 1 (Sections 17010–17100, not consecutive) filed 1–21–77; effective thirtieth day thereafter (Register 77, No. 4). For prior history see Register 72, No. 20.
2. Repealer of Chapter 1 (Articles 1–7, Sections 17010–17100, not consecutive) and new Chapter 1 (Articles 1–5, Sections 17010–17300, not consecutive) filed 5–29–81; effective thirtieth day thereafter (Register 81, No. 22).

#### Article 2. Definitions

##### § 17030. Definitions.

The following definitions apply to both Chapter 1 and Chapter 2 of the Local Agency Personnel Standards. Where more appropriate, definitions are incorporated into the text of a regulation.

(a) **Appointing Authority:** Local agency legislative body or a department head (or their representative) having authority to appoint and to remove employees from employment.

(b) **Career Service:** All positions in a local agency that are covered by these rules. See Section 17200 for identification of covered and exempted positions.

(c) **Certification:** Forwarding of names of eligibles from an appropriate eligible list or lists to the appointing authority.

(d) **Discrimination:** The adverse effects of a personnel management decision on employees or applicants based on race, color, sex, age, disability, religious creed, national origin, ancestry, marital status, or other category identified by statute, when such decision is not based on job-related criteria.

(e) **Executive Officer:** The individual appointed by the California State Personnel Board to serve as its executive officer. Under the provisions of Government Code Section 18654, any power, duty, or jurisdiction which the Board may legally delegate is presumed to have been dele-

gated to the executive officer unless the Board has formally reserved the same for itself.

(f) **Federal Standards:** Those standards contained in the “STANDARDS FOR A MERIT SYSTEM OF PERSONNEL ADMINISTRATION” which are filed in regulatory form in the Consolidated Federal Register (CFR) under Title 5, Part 900, Subpart F (Vol. 44, No. 34, Friday, February 16, 1979) or such future revisions which become applicable.

(g) **Impartial Process:** A dispute resolution procedure wherein a decision is rendered by a group or individual capable of making an objective judgment free of favor or prejudice. Such group or individual may include but is not limited to the following:

(1) A “civil service commission” established substantially as set forth in Government Code Sections 31110 through 31113, inclusive, provided no member serves in any other capacity in the local agency; and

(2) Any other group or individual selected:

(A) By mutual agreement of the parties; or

(B) By some other objective method which will ensure impartiality. Examples of those who might satisfy these latter conditions are ad hoc panels, State Hearing Officers, and professional arbiters.

(h) **Local Agency:** As defined in Government Code Section 19810, local agency means any city, county, city and county, district, or other subdivision of the state or any independent instrumentality thereof.

(i) **Permanent Appointment:** The status of an employee who has completed a probationary period.

(j) **Permanent Status:** The employment condition in which an employee has rights in the career service and in a class. Upon satisfactory completion of the probationary period following initial appointment, an employee gains permanent status in the career service, and is subject to removal from the career service only for cause, curtailment of work or lack of funds. Upon satisfactory completion of the probationary period following promotion within the career service, an employee gains permanent status in the class to which promoted, and is subject to removal from the class only for cause, curtailment of work or lack of funds.

(k) **Personnel Plan:** The personnel plan consists of all documents governing employment in the departments of a local agency administering state and federally funded programs. These include, but are not necessarily restricted to: charter provisions; salary, position budget, and enabling ordinances; rules and regulations; class specifications, examination announcements, and related materials that set forth standards; employee-management memoranda of understanding; and such other reports, minute orders, administrative rules, and procedural instructions that may be specifically requested by the State Personnel Board Executive Officer and necessary to establish a merit system for its grant-in-aid departments in accordance with these standards.

(l) **Position:** Any office or employment (whether part time or full-time, temporary or permanent, occupied or vacant) calling for the performance of specified and related duties.

(m) **Probationary Period:** The time limited period of paid service which is an extension of the examination process required before an employee gains permanent status.

(n) **Statistically Significant:** the degree of underutilization is equal to or greater than the .05 level of significance using the one-tailed Z Test method of statistical analysis outlined in Appendix 4 of the *Interim Guidelines for Conducting the Annual Analysis of the State Work Force*, issued March 2002, by the State Personnel Board. Using this methodology, a computed Z value of 1.65 or greater is sufficient to conclude that any underutilization is statistically significant.

(o) **Status:** The condition of an employee's appointment, such as provisional, probationary, permanent, or as defined in the personnel rules adopted by the governing board of a local agency.

(p) **Suspension:** An enforced leave of absence for disciplinary purposes or pending investigation of charges made against an employee.

(q) Underutilization: Having fewer persons of a particular race/ethnic or gender group in an occupation or at a level in a department than would reasonably be expected by their availability in the relevant labor force.

NOTE: Authority cited: Sections 19801, Government Code. Reference: Sections 19800–19810, Government Code; *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16; and *Hazelwood School District v. United States* (1977), 433 U.S. 299, 308, fn. 14.

#### HISTORY

1. Amendment of subsections (d) and (I), new subsections (n) and (q), subsection relettering and amendment of NOTE filed 5–7–2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

## Article 3. Merit Principles

### Subarticle 1. Merit Principle 1

#### § 17110. General Requirement.

Recruiting, selecting and advancing employees shall be on the basis of their relative ability, knowledge and skills, including open consideration of qualified applicants for initial appointment.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### § 17111. Recruitment.

Recruitment efforts shall be planned and carried out in a manner that assures equal employment opportunity and open competition for initial career service appointment for all job applicants. Basic recruitment efforts for entry into the career service shall include posting of examination announcements in appropriate public places for a minimum of five working days to ensure that an adequate number of candidates will apply.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code; *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16; and *Hazelwood School District v. United States* (1977), 433 U.S. 299, 308, fn. 14.

#### HISTORY

1. Amendment of section and NOTE filed 5–7–2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

#### § 17112. Selection.

(a) Selection procedures, including appropriate ranking for entry to the career service, shall be job related and shall maximize to the extent practicable validity, reliability and objectivity. The Uniform Guidelines on Employee Selection Procedures, as published in the Consolidated Federal Register (at 5 CFR, 900, Subpart F, Appendix B), are incorporated into these rules.

(b) Competition for appropriate positions may be limited to facilitate the employment of persons with a disability or participants in employment or rehabilitation programs authorized by Congress or the California Legislature.

(c) Appointments to permanent career service positions shall be made through selection from appropriately ranked eligible lists. Appointment procedures may not allow appointment either beyond the top ten eligibles or the top ten percent of eligibles or the top predetermined score group of those on an eligible list who are willing to accept the conditions of employment.

(d) Permanent appointment for entry to the career service will be contingent upon satisfactory performance by the employee during a reasonable, time-limited probationary period. As a general rule, probationary periods may not exceed one year.

(e) Non-status appointments shall not be used as a way of defeating the purpose of the career service and shall have a reasonable time limit. As a general rule, reasonable time limit is one year. If lists of eligibles are available, they shall be used for filling temporary positions. Short-term, emergency appointments may be made without regard to the other provi-

sions of this section, to provide for maintenance of essential services in an emergency situation where normal procedures are not practical.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code; *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16; and *Hazelwood School District v. United States* (1977), 433 U.S. 299, 308, fn. 14.

#### HISTORY

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#### § 17113. Career Advancement.

Formal promotional examination processes are encouraged when filling higher level career service positions. Such processes shall maximize to the extent practicable validity, reliability and objectivity.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

### Subarticle 2. Merit Principle 2

#### § 17120. General Requirement.

Equitable and adequate compensation will be provided.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### § 17121. Classification.

Classification plans shall be maintained on a current basis, and shall:

- (a) be the foundation for selection, compensation, training, promotion, demotion, reduction in force, reemployment, and related decisions;
- (b) include class specifications formally adopted by the local agency's governing board or its authorized representative; and
- (c) include job-related minimum qualifications or employment standards of education, experience, knowledge, and abilities.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802, 19803, Government Code.

#### § 17122. Compensation.

To maintain a high quality public work force and to assure equitable compensation for comparable work, the compensation plan shall take into account the responsibility and difficulty of the work, the compensation needed to compete in the labor market, and other pertinent factors.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

### Subarticle 3. Merit Principle 3

#### § 17130. Training.

Employees will be trained as-needed to assure high-quality performance. In addition to providing training to improve performance, training should also be provided as needed to prepare employees for more responsible assignments and to implement affirmative action plans for equal employment opportunity.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

### Subarticle 4. Merit Principle 4

#### § 17140. General Requirement.

Employees shall be retained on the basis of the adequacy of their performance, and provision shall be made for correcting inadequate performance and separating employees whose inadequate performance cannot be corrected.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### § 17141. Separation and Layoff.

Employees who have acquired permanent status shall not be subject to separation except for cause or such reason as curtailment of work or lack of funds. Procedures will be established to provide for the transfer,

demotion or separation of employees whose performance continues to be inadequate after reasonable efforts have been made to correct it. Retention of employees in classes affected by reduction in force shall be based upon systematic consideration of type of appointment and other relevant factors.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### § 17142. Employee Evaluation.

Local agencies should establish a systematic method of evaluating employee performance which should influence such personnel management decisions as merit salary adjustments, need for training, and order of layoff.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

### Subarticle 5. Merit Principle 5

#### § 17150. General Requirement.

Fair treatment of applicants and employees in all aspects of personnel administration will be assured, without discrimination and without regard to political affiliation, and with proper regard to their privacy and constitutional rights as citizens.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803 Government Code.

#### § 17151. Equal Employment Opportunity.

(a) Equal opportunity shall exist in recruitment, examination, appointment, training, promotion, retention, discipline, or any other aspect of employment.

(b) Prohibitions against discrimination consistent with the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000e et seq.), the Rehabilitation Act of 1973 as amended (29 U.S.C. § 791 et seq.), the Age Discrimination in Employment Act of 1967 as amended (29 U.S.C. 621 et seq.), the Equal Pay Act of 1963 (29 U.S.C. § 206 (d)(1)) and other relevant statutes shall be established and enforced.

(c) Equal employment opportunity programs shall be developed and implemented to include the following:

(1) Removal of artificial barriers to equal employment opportunity.

(2) Assessment of the local agency's work force, including a comparison of the local agency's work force composition with the relevant labor force composition. Records of such assessments and comparisons shall be provided annually and at such other time as required to the State Personnel Board Executive Officer.

(3) Where there is statistically significant underutilization of any group based on race, ethnicity or gender as shown by the work force-labor force comparison, the local agency shall:

Develop and implement written recruitment plans which will ensure all-inclusive outreach and equal opportunity for all groups. Copies of such recruitment plans shall be made available, upon request, to the State Personnel Board Executive Officer.

Assess selection processes to ensure that they are based solely on job-related criteria and are free of illegal adverse impact as defined in the Uniform Guidelines on Employee Selection Procedures (Guidelines), incorporated in Section 17112, against any group. Such assessments shall be conducted consistent with procedures outlined in the Guidelines. Where illegal adverse impact is found, the local agency shall identify the cause and take appropriate corrective action on a timely basis.

Comply with all equal employment opportunity requirements mandated by federal agencies as a condition for obtaining or maintaining federal funding of programs.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code; *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16; and *Hazelwood School District v. United States* (1977), 433 U.S. 299, 308, fn. 14.

#### HISTORY

1. Amendment of section heading, section and NOTE filed 5-7-2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215;

effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

#### § 17152. Employee/Management Relations.

(a) Nothing in a local agency employee-management relations agreement shall conflict with these standards.

(b) There shall be written procedures for resolving employee grievances and discrimination complaints. To the maximum extent possible, the procedures should include steps to resolve discrimination and all other types of employee grievances without recourse to formal appeals procedures.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### § 17153. Appeals.

(a) In the event of separation for cause or demotion for cause, local agencies shall provide permanent employees in covered programs with the right to appeal through an impartial process that results in timely, enforceable decisions.

(b) Local agencies shall provide for appeals of alleged discrimination, by an applicant or employee, through an impartial process that results in timely, enforceable decisions.

(c) In the event of reduction in force, employees with permanent status shall have the right to appeal the application of reduction in force rules as they relate to the establishment of and certification from layoff and re-employment lists. Such appeals shall be through an impartial process that may be recommendatory or enforceable on the appointing authority. This provision shall not be construed to provide for employee appeals of management rights to identify the classes of layoff, number of positions to be reduced, and effective date of the layoffs.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

### Subarticle 6. Merit Principle 6

#### § 17160. Political Rights and Prohibitions.

The provisions of the Federal Hatch Act and applicable state statutes shall be followed. All employees shall be informed of their political rights and prohibited practices under the Hatch Act and applicable state laws.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

## Article 4. Administration

#### § 17200. Employment Covered and Exempted from Standards.

(a) These standards apply to personnel engaged in the administration of federally aided programs which by law or regulation require a merit system of personnel administration that meets standards published by the United States Office of Personnel Management. These rules are applicable to all positions in such programs, irrespective of the source of funds for their individual salaries, except those exempted by this section.

(b) The following positions may be exempted from application of these standards: Members of policy, advisory, review, and appeals boards or similar bodies who do not perform administrative duties as individuals; officials serving ex officio and performing incidental administrative duties; one confidential assistant or secretary to any of the foregoing exempted officials; attorneys serving as legal counsel or conducting litigation; the executive head of an independent local agency or department administering programs covered by these rules; deputies who share with executive head authority over all major functions in covered local agencies or departments; time-limited positions established for the purpose of conducting a special study or investigation; and unskilled labor.

(c) County Welfare Directors and Deputy Directors who had permanent status in such classes on the date these regulations became effective shall continue to retain the rights of permanent status as long as they continue to occupy positions they held on the effective date of these regulations.

(d) Additional exemptions of positions must receive the prior approval of the State Personnel Board Executive Officer.

(e) Waivers from specific provisions of these regulations may be granted by the State Personnel Board Executive Officer, at the request of a local agency, for time-limited experimental or research projects designed to improve merit systems or their operations. To the extent such a waiver also involves waiving provisions of the Federal Standards for a Merit System of Personnel Administration, the State Personnel Board Executive Officer shall review the request and make a recommendation in the manner required by the United States Office of Personnel Management.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### HISTORY

1. Amendment filed 12-11-84; effective thirtieth day thereafter (Register 84, No. 50).

### § 17201. Extension of Merit System and Changes in Merit System Jurisdictions.

Upon the initial extension of merit system coverage to a program, an employee may obtain status through a noncompetitive qualifying process.

An employee with permanent status under a merit system meeting these standards will retain comparable status if the program is placed under the jurisdiction of another merit system.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

### § 17210. Procedure for Establishing and Maintaining an Approved Local Merit System.

(a) Any local agency wishing to establish and administer its own Approved Local Merit System for its grant-aided departments shall:

(1) request the State Personnel Board Executive Officer to review and approve its system; and

(2) adopt a personnel plan for its grant-in-aid departments in accordance with these standards. The State Personnel Board Executive Officer shall publish criteria for determining if personnel plans and personnel management practices meet the requirements of these standards.

(b) Amendments to personnel plan materials for an Approved Local Merit System and its continuing administration shall be subject to review on an ongoing basis by the State Personnel Board Executive Officer for conformity and compliance in operation. Materials requested by the State Personnel Board Executive Officer to determine conformity with these standards will be supplied by local agencies.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

### § 17220. Requirements for Records and Reports.

Appropriate records shall be maintained and available to permit determination by the State Personnel Board that a jurisdiction conforms to these requirements and its own rules and regulations. Decisions on selection, classification and certification require documentation.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802, 19803, and 19808, Government Code.

## Article 5. Assuring Compliance

### § 17300. Enforcement.

When corrective action relating to a standards issue is required, the State Personnel Board Executive Officer will negotiate with the appropriate local agency. Technical assistance necessary to comply with these rules will be provided by the State Personnel Board Executive Officer at the request of the local agency. In the event the issue is not resolved within a reasonable period of time, the State Personnel Board Executive Officer may take any or a combination of the following actions:

(a) Require the local agency to use approved Interagency Merit System procedures.

(b) Withdraw approval of the local merit system. The agency will revert to Interagency Merit System status.

(c) Recommend that the funding department or the State Controller withhold from the local agency funding that applies to the procedure in question.

Local agencies may appeal such action to the State Personnel Board.

The State Personnel Board may also conduct a hearing under Government Code Sections 19805 and 19806 to determine whether a particular merit system is in compliance with the standards. When the Board, after hearing, determines that a local merit system is not in conformity with the Standards, it shall notify such local agency and the appropriate State officers in writing of its decision.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19805-19808, Government Code.

## Chapter 2. Merit System Regulations

### Article 1. Administration

#### § 17400. Interagency Merit System Regulations.

The provisions of Local Agency Personnel Standards Chapter 1 apply to all local agencies, including those in the Interagency Merit System (IMS), subject to the requirements of Government Code Sections 19800-19810.

The provisions of Chapter 2 are the regulations for the Interagency Merit System. They are adopted by the State Personnel Board in accordance with the provisions of Government Code Section 19803, which provides for State Personnel Board administration of a merit system for local agencies not administering their own merit systems, in order to assure State conformity with applicable Federal requirements.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### HISTORY

1. Repealer of Chapter 2 (Articles 1-6, Sections 17400-17592, not consecutive) and new Chapter 2 (Articles 1-9, Sections 17400-17592, not consecutive) filed 10-14-80; effective thirtieth day thereafter (Register 80, No. 42).

#### § 17402. Applicability of Specific Portions of Chapter 1.

The following sections of Chapter 1 are not repeated in Chapter 2, but apply in the Interagency Merit System: Employment Covered and Exempted (17200), Definitions (17030), Equal Employment Opportunity and Affirmative Action (17151), Employee/Management Relations (17152), Political Rights and Prohibitions (17160), and Extension of Merit System and Changes in Merit System Jurisdiction (17201).

NOTE: Authority cited: Section 19801, Government Code. Reference: Section 19803, Government Code.

#### HISTORY

1. Amendment filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).

#### § 17403. Delegation to the State Personnel Board Executive Office and State Personnel Board Staff.

The provisions of Government Code 18654 and 18654.5 are reprinted in these regulations, and are applicable in the Interagency Merit System: "18654. The intention of the Legislature is hereby declared to be that the executive officer shall perform and discharge under the direction and control of the board the powers, duties, purposes, functions, and jurisdiction vested in the board and delegated to him by it.

"Any power, duty, purpose, function, or jurisdiction which the board may lawfully delegate shall be conclusively presumed to have been delegated to the executive officer unless it is shown that the Board by affirmative vote recorded in its minutes specifically has reserved the same for its own action. The executive officer may redelegate to his subordinates unless by board rule or express provision of law he is specifically required to act personally.

"18654.5. The executive officer shall administer the civil service statutes under rules of the board, subject to the right of appeal to the board."

Whenever it is stated in these rules that the "State Personnel Board" may or shall act, the State Personnel Board specifically has reserved the same for its own exclusive action. Whenever it is stated that the "State

Personnel Board Executive Officer" may or shall act, the Executive Officer of the State Personnel Board has the authority to act thereon. Nothing herein prohibits the Executive Officer from re delegating to subordinates as provided in Section 18654 of the Government Code. Any party in interest may appeal to the State Personnel Board for review of the actions and decisions of the Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17404. Authorized Use of Local Agency Regulations.

Upon local agency request, the State Personnel Board Executive Officer, in lieu of one or more IMS regulations, authorize the use of local agency regulations which:

(a) Meet the requirements of Chapter 1; and

(b) Meet conditions which may be more specifically set forth in these IMS regulations.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17405. Delegation to Local Agency.

Upon mutual agreement between the State Personnel Board Executive Officer and a local Interagency Merit System agency, and subject to appropriate audit and controls, authority for administering portions of these regulations may be delegated to a local agency personnel office or program department.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17406. Availability of Local Agency Personnel Standards.

Each agency within the IMS shall have copies of these LAPS regulations readily available for employee reference.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17408. Adequate Notice of Action Taken.

Where provisions of these regulations require that a party or parties concerned be notified of actions taken, notification by letter to that party's or parties' last known address(es) shall constitute adequate notice of such action.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

## Article 2. Classification

#### § 17412. Establishment of Classification Plan.

The State Personnel Board Executive Officer shall establish and maintain a classification plan for all positions covered by these regulations. The classification plan shall be the basis for selection, compensation, training, promotion, demotion, reduction in force, reemployment and related decisions. The classification plan shall include class specifications which shall be established and maintained by the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17414. Position Allocation.

Every position within the Interagency Merit System shall be allocated to an appropriate class within the classification plan. The allocation of positions to classes within the classification plan is the responsibility of the State Personnel Board Executive Officer. Those positions which meet the following criteria shall be included within the same class:

(a) The duties and responsibilities are sufficiently similar that they may be described by the same title;

(b) Within a given local agency the same salary rate or range may equitably apply;

(c) The knowledge and abilities required are the same;

(d) Substantially the same tests of fitness are required. The local appointing authority shall report to the State Personnel Board Executive Officer any intention to establish new positions and material changes in the

duties of any position under that person's jurisdiction in order that such positions may be classified and allocated.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17416. Use of Local Agency Classifications.

The State Personnel Board Executive Officer may authorize the use of local agency classification plans for clerical, staff services and other agencywide class series. Such classification plans shall:

(a) Be the basis in other departments of the local agency for the personnel management decisions listed above in Section 17412.

(b) Include written class specifications formally adopted by the local agency governing board or its authorized representative.

(c) Include in the written class specifications job-related minimum qualifications of education, experience, knowledge and abilities.

(d) Be the basis for position allocation, using the criteria listed above in Section 17414.

Copies of local agency class specifications authorized under this section for use in the Interagency Merit System shall be filed with and retained by the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17418. Status of Incumbent of Reallocated Position.

The incumbent of a reallocated position may be moved to the new class only in accordance with the regulations governing promotions, demotions, transfers, and reinstatements except as otherwise provided for by the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17420. Training Assignments.

The appointing authority may, with the employee's agreement, and with the prior approval of the State Personnel Board Executive Officer, assign an employee duties allocable to another class for the purpose of training. Such an assignment shall not be to another class in the same class series, nor shall it require the layoff or demotion of another employee. Such an assignment shall initially be for no more than one year. Extension of such a training assignment may be made for up to one additional year when the parties concerned are in agreement. An employee participating in such an arrangement shall have the right to return to a position in the former class upon completion of the training assignment.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

## Article 3. Compensation

#### § 17422. Compensation Plan.

Each local agency shall have a compensation plan which shall include: (a) a salary rate or range for each class; and (b) salary rates or ranges based on difficulty of work with reasonable differentials between classes; and (c) salary rates or ranges which take into consideration prevailing compensation for comparable positions in the geographic area of recruitment. The compensation plan shall apply equitably and uniformly to all employees. The local agency compensation plan, approved by the local legislative body or its designated representative, shall be forwarded to the State Personnel Board Executive Officer, showing the date of adoption or change and the effective date of implementation.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17424. Salary Payment.

Employees in a class shall be paid the salary established for the class, except as otherwise provided in these regulations.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17426. "Y" Rate.

At the recommendation of the appointing authority, and with the concurrence of the State Personnel Board Executive Officer, an employee's salary may remain above the maximum for the employee's class if the salary would be reduced through no fault of the employee.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

## Article 4. Examining

### § 17430. Entry to Career Service.

Entry into the Interagency Merit System career service covered by these regulations shall be through open competitive examination. Subject to approval by the State Personnel Board Executive Officer, competition for positions identified by the appointing authority may be limited to facilitate the employment of the handicapped or participants in employment or rehabilitation programs authorized by Congress or the California Legislature.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17432. Announcements.

Public notice of all examinations for establishment of eligible lists shall:

(a) Be given in sufficient time to allow potential applicants to make application for competition. Announcements shall be posted for a minimum of five working days unless the State Personnel Board Executive Officer determines that a shorter posting period is necessary to meet the needs of the appointing authority; and

(b) Provide the following minimum information: title, salary, minimum and special qualifications for the class, place, scope, and approximate date of the examination.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17434. Special Recruitment.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### HISTORY

1. Repealer filed 5-7-2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

### § 17435. General Qualifications.

The following general qualifications shall be deemed to be a part of the personal characteristics included in the minimum qualifications of each class specification and need not be specifically set forth therein: integrity, honesty, sobriety, dependability, industry, thoroughness, accuracy, good judgment, initiative, resourcefulness, courtesy, ability to work cooperatively with others, willingness and ability to assume the responsibilities and to conform to the conditions of work characteristic of the employment.

A valid California driver's license is required where the position requires the driving of an automobile.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17436. Minimum Qualifications.

All candidates for employment within the Interagency Merit System shall possess the minimum qualifications established for the class.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17440. Special Qualifications.

When required by the needs of the service, special qualifications in specific skill or knowledge areas may be prescribed by the State Personnel Board Executive Officer for specified positions within a class.

When such special qualifications are needed, examinations will test the special skill or knowledge area, and only eligibles possessing such special qualifications will be certified for vacancies in positions requiring them.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17442. Applications.

Application for examination shall be made on forms furnished or approved by the State Personnel Board Executive Officer. Applicants shall certify the truth of statements made on the application by their signature.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17444. Selection Process.

Eligible lists shall be established as the result of competitive examinations open to all persons who lawfully may be appointed to positions within the class for which such examinations are held.

Examinations shall fairly test and determine the qualifications, fitness and ability of competitors to perform the duties of the class to which they seek appointment.

Examinations shall be held at such times and places and be conducted under such procedures as the State Personnel Board Executive Officer may determine. Written examinations shall be so managed that no examination paper will disclose the name of any applicant until all the examination papers are scored objectively and both the key answers and the passing score have been determined.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17446. Promotional Examinations.

(a) The State Personnel Board Executive Officer may announce and hold promotional examinations for the purposes of establishing promotional eligible lists for specified areas, local agencies, or subdivisions of local agencies.

Participation in promotional examinations shall be limited to permanent or probationary or other employees who are designated in advance of the examination by the State Personnel Board Executive Officer as eligible to participate. Local agency employees other than those with permanent or probationary Interagency Merit System appointments must have obtained their initial local agency appointments through a job-related competitive selection process in order to compete in a promotional IMS examination under this rule.

(b) Upon request of the appointing authority, the State Personnel Board Executive Officer may decide to not require a publicly announced promotional examination in case of reclassification of a position or when the size of the potential candidate group is less than the number of eligibles that would be certified. In such cases, all of the following conditions shall be met:

(1) Only individuals having permanent or probationary Interagency Merit System status within the department where the vacancy exists shall be allowed to compete.

(2) All individuals eligible for consideration shall be notified of the vacancy in writing, and if interested, shall be interviewed for it by the appointing authority.

(3) The individual appointed shall meet the minimum qualifications for the class.

(c) In order to facilitate promotion from aid classes, as defined in the class specifications, the State Personnel Board Executive Officer may authorize use of a scored evaluation of work experience in such class to be used in lieu of one of the parts of the competitive examination. This provision applies only where there are two or more scored parts of the competitive examination.

(d) Promotion from trainee to first journey level classes, as defined in the class specifications, shall be made on the basis of:

(1) The employee meeting the minimum qualifications for the first journey level class, and

(2) A written statement from the appointing power or an official designated by the appointing power that the employee's job performance meets the department's requirements for promotion to the first journey level class.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

## HISTORY

1. Amendment filed 12-11-84; effective thirtieth day thereafter (Register 84, No. 50).

**§ 17448. Examination Records.**

All examinations, and any papers submitted by competitors, are property of the State Personnel Board and are confidential records which shall be opened for inspection only as follows or under such conditions as are further specified by the State Personnel Board Executive Officer:

(a) On written request to the State Personnel Board Executive Officer, competitors may, within 14 calendar days after the date on which the Notifications of Test Results of such examination were mailed to them, compare their answer sheets with a scoring key at such time and place and under supervision of such person as the State Personnel Board Executive Officer may designate.

(b) A competitor's papers shall be open to inspection only by the competitor, or a representative upon written authorization of such competitor. The application form of eligibles certified to fill vacancies may be inspected by the appointing authority to whom such eligibles have been certified or by an authorized representative.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17450. Rating Examinations.**

The State Personnel Board Executive Officer shall determine the results of each applicant's examination in conformance with these regulations and the examination announcement. All applicants in the same examination shall be accorded equal treatment in all phases of the examination procedure in accordance with these regulations.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17452. Disqualification of Applicants.**

The State Personnel Board Executive Officer may refuse to examine an applicant, or, after examination, may disqualify such applicant or remove the applicant's name from an eligible list, or refuse to certify any eligible on an eligible list for any of the following reasons:

- (a) Failure to meet the requirements prescribed for participation in the examination as announced in the public notice;
- (b) Failure to file the application correctly or within the prescribed time limits;
- (c) False statements of material facts or attempted deception in the application or examination;
- (d) Disability which renders the applicant unfit for performance of the principal duties of the class (however, candidates who otherwise meet the qualifications and pass the examination may be appointed to certain positions);
- (e) Conviction of any crime which renders the person unsuitable for a position in the class;
- (f) Dismissal from prior employment for a cause rendering the applicant unfit for a position in the class;
- (g) Participating in the compilation, administration, or correction of the examination;
- (h) Use or attempted use of political pressure or bribery to secure an advantage in an examination or appointment;
- (i) Any other action of the applicant that renders the applicant unsuitable for employment.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17454. Selection Process Appeal Procedures.**

Examination appeals may be filed in accordance with the provisions of Article 8, Appeals, Grievances and Complaints.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**Article 5. Certification****§ 17458. Establishment of Eligible Lists.**

An eligible list consisting of names of persons who qualified shall be established after each examination. Names shall be placed on the eligible list in order of their final rating, starting with the highest.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17460. Merged Lists.**

The State Personnel Board Executive Officer may merge eligible lists for a class. Names shall be placed on a merged list in order of their scores on the original lists, starting with the highest. Persons whose names appear on merged lists shall retain their eligibility until the date the original list on which they appeared would have expired.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17461. Certification from Comparable List.**

If an eligible list is exhausted, as provided in Section 17468, the State Personnel Board Executive Officer may certify names from an eligible list or lists for a related class. Waiver of certification from such comparable lists does not affect the eligible's standing on the original list for the class for which the eligible was examined.

NOTE: Authority cited: Section 19801, Government Code. Reference: Section 19803, Government Code.

## HISTORY

1. Amendment filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).

**§ 17463. Order of Eligible Lists.**

As provided in Sections 17518 and 17519, reemployment lists shall take precedence over all other eligible lists. In the absence of an appropriate reemployment list, the order of eligible lists shall be:

- (a) Departmental promotional list
- (b) Local agency promotional list
- (c) Open lists

If fewer than five names of persons willing to accept appointment are on a list, additional eligibles shall be certified from the list or lists next in order until five names are certified.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17464. Removal of Name from Promotional Eligible List.**

A person who terminates employment within the IMS shall be considered as having relinquished the right to be considered for promotion, and the person's name shall be removed from any promotional eligible lists on which it appears. If the person is reemployed by an IMS agency, the name shall, upon written request to the State Personnel Board Executive Officer, be returned to the promotional list or lists on which it appeared, providing that such list or lists are still in existence.

If an employee who is competing in a promotional examination resigns before the date the eligible list is established, the employee shall not attain any promotional eligibility from such examination.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17466. Transfer of Eligibility.**

The State Personnel Board Executive Officer may transfer an individual's eligibility from one local agency's eligible list to another local agency's eligible list for the same class if requested by the receiving local agency's appointing authority.

A competitor unsuccessful in an examination for a given local agency will not be permitted to transfer eligibility established elsewhere for the same class to the list resulting from the examination that the competitor failed.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17468. Exhaustion of Eligible Lists.**

If there are fewer than five eligibles available to an appointing authority, the State Personnel Board Executive Officer may consider an eligible list to be exhausted for that appointing authority.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17470. Certification of Names.**

When a local agency notifies the State Personnel Board Executive Officer that it anticipates it will have a vacant position, the State Personnel Board Executive Officer shall certify to the appointing authority the names and addresses of the five persons who stand highest on the eligible list for the class to which the position belongs and who have indicated a willingness to accept the conditions of employment.

The number of names to be certified to the appointing authority shall be on the basis of the number of appointments to be made plus four, except that when the score for the last certifiable name on an eligible list is the same as one or more scores following it, all names having that same score shall be certified.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code

**§ 17471. Use of Local Agency Certification Rule.**

Upon request of a local agency, the State Personnel Board Executive Officer may approve the use of the local agency's certification rule in lieu of the rule in Section 17470 if such local agency certification rule meets all of the following criteria:

(a) It has been formally approved by the governing board for use in all the agency's nongrant-aided departments.

(b) It includes a specific limitation on the number of names to be certified.

(c) Application of the rule is not likely to result in certification of the entire eligible list, or in referral of more eligibles than the appointing authority can reasonably interview for the available vacancies.

When a local agency certification rule is to be used in connection with an IMS examination, the rule shall be described in the examination announcement.

A local agency certification rule may not be used in cases of certification from reemployment lists unless the State Personnel Board Executive Officer has approved the use of the local agency's procedures for layoff and reemployment as provided in Section 17521.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17473. Contacting Eligibles.**

Eligibles contacted to ascertain their interest in appointment shall be given a reasonable time to respond. The appointing authority shall inform all eligibles contacted of the class, salary, location, nature of appointment special conditions of the position, and the nature of response required.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17475. Acceptable Conditions of Employment.**

The State Personnel Board Executive Officer shall ascertain from each eligible the acceptable conditions, tenure, location, and other pertinent conditions of employment under which the eligible will accept appointment. Such statement of acceptable conditions of employment by the eligible shall constitute an automatic waiver of certification to positions having less acceptable conditions of employment. Conditions of employment acceptable to an eligible may be changed at the eligible's written request to the State Personnel Board Executive Officer, but in such event the eligible shall not be retroactively certified.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17477. Waivers.**

An eligible may voluntarily waive the right of appointment or the right to be considered for appointment. No person shall cause or attempt to cause an eligible to waive these rights. Written evidence of waiver shall

be submitted by the appointing authority, upon request, to the State Personnel Board Executive Officer.

An eligible's name shall be removed from an eligible list when the eligible indicates no interest to three offers of employment or to three inquiries sent by the appointing authority to determine interest in employment.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17478. Placement on Inactive List.**

(a) Lists Resulting From Open and Promotional Examinations. An eligible's name shall be placed on the inactive list when the eligible:

(1) Fails to respond within stated time limits to a communication regarding availability for employment;

(2) Fails to appear for a job interview;

(3) Accepts a job offer but fails to report to work;

(4) Requests in writing to the State Personnel Board Executive Officer to be temporarily withdrawn from the eligible list;

(5) Cannot be located by postal authorities.

(b) Reemployment Lists. An eligible's name shall be placed on the inactive reemployment list upon written request from the eligible to the State Personnel Board Executive Officer.

An eligible's name may be restored to the active eligible list or reemployment list upon written request from the eligible to the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

## Article 6. Appointments, Transfers and Nonpunitive Separations and Demotions

### Subarticle 1. Appointments

**§ 17481. Appointments.**

All appointments to positions in the Interagency Merit System shall be as a result of certification from eligible lists or reemployment lists, or as provided in Sections on employment covered and exempted from standards (17200), provisional appointments (17482), emergency appointments (17485), promotional examinations (17446), transfer (17498, 17500, 17515, and 17590), reinstatement (17528 and 17590), extension of merit system coverage (17201), and demotion (17525). The provisions of these listed sections shall not be applied in a manner which circumvents the general requirement that appointments shall be made on the basis of competition.

NOTE: Authority cited: Section 19801, Government Code. Reference: Section 19803, Government Code.

#### HISTORY

1. Amendment filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).

**§ 17482. Provisional Appointments.**

If no eligible list exists for a class, or the list is exhausted as provided in Section 17468, the State Personnel Board Executive Officer may authorize the appointing authority to make provisional appointments to that class. The provisional appointee must meet the minimum qualifications for the class. No person may serve in a provisional appointment for more than 60 calendar days after an eligible list has been established for the class, and in no event for more than six months from the date of appointment unless an extension is authorized by the State Personnel Board. Prompt notice of provisional appointment shall be given to the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17483. Reinstatement to Former Position upon Termination of Provisional Appointment.**

Permanent or probationary employees who have accepted provisional appointments in higher classes within the same local agency have the right, at the termination of the provisional appointments, to be reinstated to positions in their former classes.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17485. Emergency Appointments.

Whenever an emergency exists which requires immediate services, and it is not possible to secure persons from appropriate eligible lists, the appointing authority may appoint without regard to other provisions of these rules governing appointments. In no case, however, shall an individual serve under an emergency appointment for more than a total of 30 working days in any 12-month period.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17486. Limited-Term Appointment.

If an employee is needed for a limited period, a certification of names shall be made by the State Personnel Board Executive Officer of those eligibles who have indicated willingness to accept limited-term employment. The duration of limited-term appointments shall be for no longer than one day less than the probationary period.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17488. Intermittent Appointments.

Extra-help or on-call positions which require work on an intermittent basis shall be filled by people on eligible lists willing to work on that basis. If there is not a sufficient number of eligibles willing to work on that basis, the eligible list shall be considered exhausted for that type of appointment, as provided in Section 17468, and a provisional appointment may be made. The employment of persons on an irregular or extra-help basis shall not be used as a way of circumventing the requirements in these regulations. The State Personnel Board Executive Officer shall establish procedures to control the use of intermittent appointments.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code. Probationary Periods

### § 17490. Probationary Periods.

(a) The probationary period is considered an extension of the selection process. Each appointment to a permanent position from an eligible list shall include a probationary period as a condition of appointment. The probation period shall not exceed one year, and shall be the same for each position within a class.

(b) Reports of probationers' overall performance shall be made to them at sufficiently frequent intervals to keep them adequately informed of their progress on the job. A written appraisal of performance shall be made to the employee at least twice during the probationary period, the first being no later than upon completion of the first half of the probationary period and the second being prior to the completion of the last month of the probationary period. The final probationary report shall be made available, on request, to the State Personnel Board Executive Officer. If the required performance report is not prepared, a probationer automatically acquires permanent status at the end of the probationary period unless formally rejected under Section 17493.

(c) Provisional or limited-term employment, or employment in the same agency in employment or rehabilitation programs authorized by Congress or the California Legislature, may be credited as part of the probationary period when such employment is immediately followed by probationary appointment to the same class.

(d) An employee in a permanent position who is working less than a normal work week shall remain on probation for an hourly equivalent of the probationary period.

(e) The appointing authority may require an employee who receives an appointment either through permissive reinstatement or transfer to serve a new probationary period.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17491. Use of Local Agency Rules on Probationary Periods.

The State Personnel Board Executive Officer may authorize use of local agency rules governing probationary periods if such rules meet all of the following criteria:

(a) Probationary periods must be time limited and must be the same for all positions in a class.

(b) If the local agency rules provide that probationary periods may be extended, extensions shall be allowed only for extended absence of the employee or for other similar reasons written into the rules and approved by the State Personnel Board Executive Officer.

(c) There shall be a written report of probationary performance at the end of the probationary period and such report will document whether the probationer is to be given permanent status. If the required performance report is not prepared, a probationer automatically acquires permanent status at the end of the probationary period unless formally rejected under Section 17493.

(d) Provisions shall be written into the rules to cover length of probationary periods for other than full-time employees.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17493. Rejection During Probationary Period.

At any time an employee may be rejected from a probationary appointment without right of appeal or hearing, except that such rejection shall not be based on political affiliation or discrimination. A statement of cause for rejection shall be delivered to the employee in writing before the rejection shall be finally effective.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

## Subarticle 2. Performance Appraisal

### § 17495. Performance Appraisal.

Each IMS agency should establish a systematic method of evaluating employee performance, which should influence such personnel management decisions as merit salary adjustment, need for training, performance improvement and order of layoff. In order to be recognized under these rules, such a system should meet all of the following criteria:

(a) It must be applied systematically to all employees in the department.

(b) It must require regular, periodic reports, at least once each year.

(c) Reports must be in writing, and there must be a system for retaining written reports.

(d) Performance rating criteria must be job related and objective and applied consistently to all employees in a class. (e) The employee shall have an opportunity to review and respond to each written performance evaluation before it becomes an official part of that employee's record.

(f) There must be a local agency administrative complaint process through which employees can challenge performance evaluations which are overall below standard or lower. (g) Employees must be made aware of the purposes for which performance reports are made and the personnel management decisions which will be influenced by employee performance reports.

(h) Performance reporting forms must be designed in such a way that overall performance which is superior and overall performance which is unacceptable are clearly distinguished from other possible ratings of overall performance.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

## Subarticle 3. Transfer

### § 17498. Transfer of Employee in the Same Class.

The appointing authority may transfer an employee from a position in one organizational subdivision to another position in the same class in the same or another organizational subdivision. An employee may transfer

from a position in one local agency to a position in the same class in another local agency upon mutual agreement of the employee and the receiving local agency and providing there is no reemployment list for the class of transfer in the receiving agency.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17500. Interclass Transfer.

(a) Transfer of an employee from a position in one class to a position in another class at substantially the same level shall be made only with the prior approval of the State Personnel Board Executive Officer. The knowledge and abilities of the classes must be so closely related that the employee can reasonably be expected to discharge the duties of the new class by the end of the probationary period.

(b) Transfers within the same local agency shall not result in salary increases that equal or exceed the difference between the salary for the class from which transfer is proposed and the salary for the next logical promotional class. Typically, the higher promotional class is the next higher class in a series.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### Subarticle 4. Reduction in Force

#### § 17502. Reduction in Force.

(a) Whenever it is necessary because of lack of funds or whenever it is otherwise in the best interests of the appointing authority to reduce staff, the appointing authority may lay off employees including those who have been granted an approved leave of absence. The order in which employees would be separated or demoted in a reduction in force shall be based upon type of appointment, seniority and to the extent practical, relative efficiency. If a performance reporting system is used to determine relative efficiency, it must meet the requirements of Section 17495.

(b) When a layoff is imminent in a local agency, the State Personnel Board Executive Officer may prohibit appointments, except from reemployment lists, to classes of potential layoff, lower level classes in the same series, and classes to which transfer under Section 17500 or 17515 could be made.

(c) If federal law or the United States Constitution requires the adjustment of the order of layoff pursuant to Government Code Section 19798, or if the failure to adjust the order of layoff in accordance with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds, a local agency may not proceed with a seniority-based layoff, but may have to adjust the order of layoff in accordance with Section 17520.

NOTE: Authority cited: Section 19803, Government Code. Reference: Sections 19798 and 19800, Government Code; and *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16.

#### HISTORY

1. New subsection (c) and amendment of NOTE filed 5-7-2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

#### § 17504. Area of Layoff.

The classes and geographic areas of layoff are to be determined by the appointing authority, subject to concurrence by the State Personnel Board Executive Officer.

Employees laid off in designated programs or geographic areas of a department shall have the right to displace employees in other programs or geographic areas of the department who are lower on the seniority list as determined by Section 17510.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17508. Seniority Score Computation.

(a) Persons with permanent or probationary appointments in an IMS agency shall receive credit for all employment in agencies governed by LAPS Chapter 1 and Chapter 2 if that employment has not been broken

by a permanent separation of 6 months. When there has been a permanent separation of 6 months or more, credit shall be given only for employment following such break in service. Persons hired from a reemployment list regain all previously earned seniority on the date of reemployment. An employee who transfers from a department covered by these rules to another department in the same local agency, and who subsequently returns without a permanent separation, retains seniority earned prior to the transfer from the IMS-covered department.

(b) Notwithstanding the provisions of 17508(a), employees on approved leaves of absence such as educational leave, military leave, maternity leave, and disability leave shall retain seniority accumulated before the leave of absence. The time on such approved leave of absence is not included in the seniority score computation. Time on industrial disability leave shall be included in the seniority score computation.

(c) One point seniority credit shall be given for each qualifying month of service.

(d) Twelve points shall be added to the seniority score of an employee with an overall rating of superior, outstanding or similar term denoting the highest rating category in the local agency performance appraisal system, on the last two regularly scheduled written performance reports. This provision applies only if the local rating system meets the provisions of Section 17495.

(e) When two or more employees have the same total seniority score, the tie shall be broken and preference given in the following sequence: employee with the greatest seniority in the class in which layoff is being made and in higher level classes; employee with the greatest seniority in the department of layoff; employee with the greatest seniority in agencies covered by LAPS Chapter 1 and Chapter 2; employee with the greatest seniority in the local agency; employee whose name is drawn by lot by the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### HISTORY

1. Amendment filed 12-11-84; effective thirtieth day thereafter (Register 84, No. 50).

#### § 17510. Order of Separation in Reduction in Force.

(a) Separation of employees shall be in order in which their names appear on the seniority list for the affected class. Persons having the least seniority credit shall be separated first, except as otherwise provided in these rules.

(b) Employees in the same class shall be separated during a reduction in force in the following appointment sequence:

- (1) Emergency
- (2) Provisional
- (3) Intermittent
- (4) Limited term

(5) Permanent part time and permanent full time Within limited-term and permanent part-time and permanent full-time appointments, employees with probationary status in a class shall be laid off before employees with permanent status in the same class.

Exceptions to 17510(b) may be approved by the State Personnel Board Executive Officer upon request of the local agency.

(c) Employees who have been selectively certified by examination for special qualifications, or who have been employed from an examination given only for positions requiring special qualifications, shall be considered to be in separate classifications for purposes of reduction in force.

(d) The following provisions apply only if the local agency performance reporting system meets the provisions of Section 17495.

(1) Within each of the permanent appointment groups, probationary employees whose last recorded overall performance rating is unsatisfactory, unacceptable or similar term denoting the lowest rating category in the local agency performance appraisal system, shall be laid off before any other permanent or probationary employee.

(2) Within each of the permanent appointment groups, permanent employees whose last two recorded overall performance ratings are unsatisfactory, unacceptable or similar term denoting the lowest rating category

in the local agency performance appraisal system, shall be laid off before any other permanent or probationary employee with satisfactory performance.

(e) Notwithstanding seniority provisions of these rules, employees in trainee level classes, as defined in the class specifications, shall be laid off or demoted in lieu of layoff before employees in first journey level classes in the same class series.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### HISTORY

1. Editorial correction of subsection (d)(2) (Register 95, No. 40).

### § 17512. Notice to Affected Employee in Reduction-in-Force Situation.

The State Personnel Board Executive Officer, or local agency to which such authority has been delegated, shall send written notice to each employee affected by a reduction in force at least 21 calendar days prior to the effective date of the action. The notice shall include the:

- (a) Reason for layoff;
- (b) Classes to which the employee has rights under Section 17514 to demote in lieu of layoff;
- (c) Effective date of the action;
- (d) Seniority score of the employee;
- (e) Location of the seniority list so that employees may compare their scores with others;
- (f) Formula by which the seniority score is computed;
- (g) Appeal rights of the employee;
- (h) Conditions governing retention on and reinstatement from reemployment lists;
- (i) Rules regarding waiver of reinstatement and voluntary withdrawal from the reemployment list; and
- (j) Other relevant information provided by the local agency or the State Personnel Board.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17514. Demotion in Lieu of Layoff.

In lieu of being laid off, employees may elect demotion to:

- (a) Any class with substantially the same or lower maximum salary in which they had permanent or probationary status; or
- (b) A class in the same line of work as the class of layoff, but of lesser responsibility if such classes are designated by the State Personnel Board Executive Officer.

Demotion rights to specified classes may be applicable only within the department of layoff.

To be considered for demotion in lieu of layoff, employees must notify their appointing authority in writing of their election no later than seven calendar days after receiving the notice of layoff.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17515. Interdepartmental Transfer.

When a local agency is experiencing layoffs in departments not covered by the Interagency Merit System the State Personnel Board Executive Officer may approve local agency requests for appointments of individuals being laid off from other departments to vacant positions in departments in the Interagency Merit System. The State Personnel Board Executive Officer shall determine, after consideration of the selection plans under which such individuals were hired, if the knowledge and abilities of the classes involved are sufficiently related that such employees can reasonably be expected to discharge the duties of the new class by the end of the probationary period. This section cannot be used for classes where there is a reemployment list in the Interagency Merit System department.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17516. Qualifying Month of Service.

(a) When computing seniority for full-time employees the starting and ending months of a period of service shall be considered a complete

month if the employee has 15 or more calendar days of service in the appropriate calendar month. No credit is given for less than 15 days of service. The State Personnel Board Executive Officer may approve a different method of computing months of full-time service to be consistent with the method used in the local agency for departments not covered by these regulations.

(b) For other than full-time employees, 160 hours worked shall be equivalent to one month's service and seniority credit shall be given upon the completion of each 160 hours worked. The State Personnel Board Executive Officer may approve a different method of computing months of part-time service to be consistent with the method used in a local agency for departments not covered by these regulations.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17518. Departmental Reemployment Lists.

(a) The State Personnel Board Executive Officer shall establish departmental reemployment lists, and certify names from them, for all classes in which reduction in force occurs in local agency departments covered by these rules. Such reemployment list establishment and certification may be delegated to local agencies. Departmental reemployment lists shall remain in effect for three years. Reemployment lists may be extended by the State Personnel Board Executive Officer.

(b) Departmental reemployment lists shall contain the names of permanent employees who were laid off or demoted in lieu of layoff for each class. Local agencies shall fill all vacancies in affected classes with persons on appropriate class departmental reemployment lists based on type of appointment at time of layoff. Names shall be certified in inverse order of separation, the most senior first.

The highest available eligible who has expressed a willingness to accept employment shall be appointed. An employee whose name appears on an active departmental reemployment list will be allowed three waivers to offers of employment.

(c) Individuals may have their names removed from a departmental reemployment list and placed on an inactive list in accordance with the provisions of 17478(b). When an employee fails to reply to an offer of reemployment within 10 calendar days after mailing of the offer or, after accepting a job offer, fails to appear for work as scheduled, the employee's name will be placed on the inactive list. An employee's name may be restored to the active departmental reemployment list upon written request to the State Personnel Board Executive Officer or to the local agency to which certification for reemployment was delegated.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17519. Reemployment Lists from Other Departments Covered by These Regulations.

Where there exists a reemployment list for the same class for another department covered by these rules in the same local agency, the State Personnel Board Executive Officer may require the use of the reemployment list to fill vacancies.

The provisions of Sections 17518(b) and (c) regarding waivers and placement on inactive lists apply. An appointment shall be made from among the highest five available eligibles who have expressed a willingness to accept employment. If such a reemployment list has fewer than three names, however, the State Personnel Board Executive Officer may grant authority to make other types of appointments.

Employees appointed under these conditions may be required by the new appointing authority to serve a new probationary period. Such an appointment shall not remove a name from the reemployment list for the department from which the employee was laid off or demoted in lieu of layoff.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17520. Modified Reduction-in-Force Process.

(a) If a local agency is required by federal law or the United States Constitution to adjust the order of layoff pursuant to Government Code Section 19798, or if the failure to adjust the order of layoff in accordance

with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds, the local agency shall be subject to the provisions of Government Code Section 19798 and regulations of the State Personnel Board governing the adjustment of layoff pursuant to that statute.

(b) Where the State Personnel Board, after a hearing, finds that past discriminatory hiring practices have occurred in a covered local agency department, that is subject to the provisions of Government Code Section 19798, the State Personnel Board may authorize modification of the layoff, demotion, or reemployment process of the departments under Inter-agency Merit System jurisdiction to remedy the effects of the discriminatory hiring practices.

NOTE: Authority cited: Section 19803, Government Code. Reference: Sections 19800 and 19798, Government Code; and *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16.

#### HISTORY

1. Amendment of section and NOTE filed 5-7-2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

### § 17521. Alternate Procedure for Layoff and Reemployment Following Layoff.

The State Personnel Board Executive Officer may approve alternate local agency systems for conducting a layoff in departments subject to these regulations. In order for such an alternate system to be approved, it must meet all of the following conditions:

- (a) Be included in a charter provision, formal memorandum of understanding, or have been approved by the local governing board following public hearing.
- (b) Give employees credit for all employment in all agencies governed by LAPS Chapters 1 and 2 on the same basis as credit is given for service in the local agency.
- (c) Provide that employees with probationary or permanent status in a class shall be laid off after all other employees in that class.
- (d) Provide a method for breaking tie scores.
- (e) Be based on the factors identified in 17502(a) or other objective factor.
- (f) Provide a minimum of 14 days' notice to affected employees.
- (g) Establish a mechanism for appeals to be heard by an impartial body whose decisions are binding on the appointing authority.
- (h) Include a provision which allows affected employees to demote in lieu of layoff.
- (i) Include a provision that demoted or laid off employees have first priority, for a specified period of time, for vacancies in classes from which they were laid off or demoted in lieu of layoff.

Such alternate system approved by the State Personnel Board Executive Officer will be administered by the local agency, subject to review by the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code. Demotion, Reinstatement and Leaves

## Subarticle 5. Demotion, Reinstatement and Leaves

### § 17525. Demotion.

An appointing authority may demote an employee for disciplinary or medical reasons. An employee may demote in lieu of layoff. An employee may demote voluntarily with appointing authority approval. In all cases demotion shall be to a position in:

- (a) A class determined by the State Personnel Board Executive Officer to be in the same series as the present class; or
- (b) A class in which the employee has previously held permanent or probationary status; or
- (c) A class, the knowledge and abilities of which, are determined by the State Personnel Board Executive Officer to be closely related to those of the employee's present class.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17527. Medical Demotion, Transfer or Termination.

The provisions of this rule apply to employees with permanent or probationary appointments. An appointing authority may require an employee to submit to a medical examination by a physician or physicians designated by the appointing authority to evaluate the capacity of the employee to perform the work of the position. When such a requirement is made of an employee, fees for the examination shall be paid by the appointing authority. When the appointing authority, after considering the conclusions of the medical examination provided for by this section, or medical reports from the employee's physician, and other pertinent information, concludes that the employee is unable to perform the work of the present position, but is able to perform the work of another position including one of less than full time, the appointing authority may demote or transfer the employee to such a position.

When the appointing authority concludes that the employee is unable to perform the work of the present position, or any other available position in the agency, the appointing authority may terminate the employee. The appointing authority shall make reasonable job restructuring and other accommodation before demoting or terminating an employee under this section.

The appointing authority may demote, transfer, or terminate an employee, without requiring the employee to submit to a medical examination, when the appointing authority relies upon a written statement submitted to the appointing authority by the employee as to the employee's condition, or upon medical reports submitted to the appointing authority by the employee.

The employee shall be given written notice 15 calendar days prior to the demotion, transfer or termination. No later than 30 calendar days following the notification of action, the employee may file an employment rights appeal as provided in Article 8 of these rules.

If it is determined by the appointing authority, or the State Personnel Board upon petition of the employee, that the employee who was terminated, demoted, or transferred in accordance with this section is no longer incapacitated for duty, the employee shall be reinstated to a vacant position in the class from which he or she was originally removed, in a comparable class, or in a lower related class. If there is no vacant position in the class from which the employee was originally removed, the name of the employee shall be placed upon the reemployment list for that class and upon such other reemployment lists as are determined to be appropriate by the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17528. Reinstatement.

(a) **Permissive Reinstatement.** Upon request of an appointing authority to the State Personnel Board Executive Officer, a person who has held permanent or probationary status in the IMS shall be eligible for reinstatement. Reinstatement may be made to any class in which the employee previously had permanent or probationary status, or to another class with substantially the same duties as determined by the State Personnel Board Executive Officer. An appointing authority may require a reinstated employee to serve the probationary period for the class to which the employee is reinstated.

(b) **Mandatory Reinstatement After a Nonpermanent Appointment.** A permanent or probationary employee who has accepted an emergency, limited-term or provisional appointment in a higher class within the same agency shall, if the employee so desires at the termination of that appointment, be reinstated to a position in the former class.

(c) **Mandatory Reinstatement After an Exempt Appointment.** An employee with permanent status in the IMS who has accepted an exempt appointment as county welfare director or deputy director in the same or another IMS agency shall, if the employee so desires at the termination of that appointment, be reinstated to a position in the former class.

(d) **Mandatory Reinstatement After Rejection During Probation.** A permanent appointee who has vacated a position within a department or

subdivision that is in IMS in a county to accept another position within the same or another department or subdivision that is in IMS in the same county, and who is rejected during the probationary period, shall be reinstated to a position in the former class, except if dismissed under Section 17544. Reinstatement shall be reported to the State Personnel Board Executive Officer by the appointing authority on the appropriate personnel document.

NOTE: Authority cited: Section 19801, Government Code. Reference: Section 19800, Government Code; and *Karen Patchin* (1998) SPB Dec. No. 98-06.

#### HISTORY

1. Amendment of subsection (d) and NOTE filed 3-24-2000; operative 3-24-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 12).

#### § 17530. Absence Without Leave.

Absence without leave, whether voluntary or involuntarily, for five consecutive working days may be considered an automatic resignation by the local agency.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17532. Informal Leave.

An approved absence from duty without pay of an employee for a peri-

od not exceeding 20 working days will not be considered a break in service.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17534. Approved Leaves of Absence.

With the approval of the appointing authority, a permanent or probationary employee may be granted a leave of absence without pay or with partial or full pay. Except for military, education and disability leaves, the provisions of Section 17508 regarding loss of previously earned seniority credit apply to leaves that exceed six months. The State Personnel Board Executive Officer may waive this provision in order to be consistent with the rules regarding leaves of absence used by a local agency for departments not covered by these regulations.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17538. Records and Reports.

The State Personnel Board Executive Officer shall establish and maintain a service record for each employee in the Interagency Merit System.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

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## Article 7. Disciplinary Action

### § 17542. Disciplinary Action.

As used in these regulations, disciplinary action means dismissal, demotion, reduction in compensation, suspension, or any other disciplinary action that affects the employee's present status. The appointing authority, or a designated representative of that authority, may take disciplinary action against an employee for the causes specified in this Article. Under these rules rejection during probation is not a disciplinary action.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17544. Cause for Disciplinary Action.

The action of an employee which reflects discredit upon a public service, or is a hindrance to the effective performance of the department in which the employee is employed shall be considered good cause for discipline. Such actions are:

- (a) Incompetency
- (b) Inefficiency
- (c) Neglect of duty
- (d) Insubordination
- (e) Absence without leave
- (f) Conviction of a felony
- (g) Discourteous treatment of the public or other employees
- (h) Improper political activity
- (i) Willful disobedience
- (j) Willful concealment or misrepresentation of material facts in applying for or securing employment
- (k) Other conduct either during or outside of duty hours which causes discredit to the agency or the employment

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17546. Notice of Disciplinary Action.

Written notice of disciplinary action shall be served on the recipient personally, or by certified mail.

For employees with permanent status in the class of employment or another class in the Interagency Merit System, such written notice shall be served at least five calendar days prior to the effective date of any disciplinary action, and shall include:

- (a) A description of the action taken and its effective date or dates;
- (b) A clear and concise statement of the reasons for such action including the acts or omissions on which the disciplinary action is based;
- (c) A statement advising the employee of the right to appeal to the State Personnel Board and the time within which the appeal must be made;
- (d) A statement that a copy of the materials upon which the action is based is attached or available for inspection upon request; and
- (e) A statement advising the employee of the right to respond either verbally or in writing, to the authority proposing the action prior to its effective date.

For employees without permanent status in the class of employment or another class in the Interagency Merit System, such written notice shall be served no later than 15 calendar days after the effective date of any disciplinary action, and shall include items (a), (b) and (c) above.

The notice of disciplinary action shall conform to standards approved by the Executive Officer.

A copy of the notice of disciplinary action shall be filed with the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17548. Disciplinary Action Becomes Final.

If the employee fails to appeal a disciplinary action within the time specified, or, after appealing, withdraws his appeal, the disciplinary action taken by the appointing power shall be final.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

## Article 8. Appeals, Grievances and Complaints

### § 17550. Appeals.

(a) Employment Rights Appeals—As provided in Government Code Section 19803, the State Personnel Board shall hear and decide employment rights appeals. The following actions, when taken against employees with permanent status in the Interagency Merit System, are appealable to the State Personnel Board: Involuntary demotion, dismissal, suspension, medical termination or transfer, automatic resignation, reduction in pay for disciplinary reasons, other disciplinary action that affects the employee's present status, layoff, refusal to hire from a reemployment list, and grievances involving discrimination or political affiliation. Grievances involving discrimination or political affiliation shall be processed as provided in Sections 17570–17575, and be filed with the State Personnel Board only if not resolved locally.

Rejection during probation is not appealable to the State Personnel Board unless such rejection is alleged to be on the basis of discrimination or political affiliation.

Employment rights appeals shall be processed as provided for in Sections 17552–17567 of these rules.

(b) Selection Process Appeals—Employees and applicants may appeal selection process decisions as provided in Sections 17580–17582 of these rules.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17551. Grievances.

(a) Where the term grievance is defined in a local memorandum of understanding, ordinance or resolution applicable to employees in positions covered by these rules, that definition shall be used in lieu of the definition in Section 17571. Where the term grievance is not defined in a local memorandum of understanding, ordinance or resolution applicable to employees in covered positions, the definition in Section 17571 shall be used.

(b) Grievances shall be processed as provided in applicable local memoranda of understanding, ordinances or resolutions. If there is no memorandum of understanding, ordinance or resolution for covered positions, the Interagency Merit System grievance procedure described in Sections 17571–17572 shall be used.

(c) If an employee grievance alleges the improper act or failure to act was due to discrimination in terms of race, color, sex, age, handicap, religious creed, national origin, ancestry, marital status or other categorization identified by statute; the employee shall be allowed to use either the applicable grievance procedure or the discrimination complaint procedure described in Section 17575. The employee shall not use both procedures for the same complaint.

Under either procedure the employee has the further right of appeal to the State Personnel Board.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

## Subarticle 1. Processing Employment Rights Appeals

### § 17552. Initiation of Employment Rights Appeals.

Except as otherwise provided in Section 17567, all employment rights appeals shall be filed in writing with the State Personnel Board within 30 calendar days from the date of the action, or notification of action against which the appeal is made.

Appeals shall state the facts upon which they are based, and the relief requested in sufficient detail to enable the State Personnel Board to understand the nature of the proceeding and the parties concerned.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17553. Referral to Hearing Officer.

When there is filed with the State Personnel Board an employment rights appeal; such filing shall automatically operate as the reference of every such proceeding to the hearing officer for hearing, or investigation without hearing as appropriate; but no such reference shall preclude the State Personnel Board from recalling the proceeding for hearing or investigation by it. Any proceeding may be assigned by the State Personnel Board or its president to the hearing officer for hearing or investigation. In any case, when a proceeding has been assigned to the hearing officer, the hearing officer is the authorized representative of the State Personnel Board and is fully authorized and empowered to grant or refuse extensions of time, to set such proceeding for hearing, to conduct a hearing or investigation in every such proceeding, and to perform any and all other acts in connection with such proceeding that may be authorized by law or these rules.

The State Personnel Board Hearing Officer shall mail to or serve on the respondent a copy of the appeal.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17554. Amended Notice of Disciplinary Action.

At any time before an employee's appeal is submitted to the State Personnel Board or its authorized representative for decision, the appointing authority may, with the consent of the Board, or its authorized representative serve on the employee and file with the Board an amended or supplemental notice of disciplinary action.

If the amended or supplemental notice presents new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare a defense thereto, but he shall not be entitled to file a further appeal unless the State Personnel Board or its authorized representative so orders. Any objections to the amended or supplemental causes or allegations may be made orally at the hearing and shall be noted in the record.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17555. Notice of Hearings.

The employee and local agency shall be given written notice of hearing.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17556. Scope of Hearing Involving Convictions.

In the case of dismissal under the provisions of Section 17544(f), the scope of the appeal shall be limited to the issues of the nature of the offense and the jurisdiction of the court.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17557. Evidence Submitted in Hearing.

Oral evidence shall be taken only on oath or affirmation.

Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issue, even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify; and to rebut the evidence.

If appellants do not testify in their own behalf they may be called and examined as on cross-examination.

The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

Hearsay evidence shall be admitted and may be used for the purpose of supplementing or explaining any direct evidence, but shall not be suf-

ficient in itself to support a dismissal, suspension, or demotion unless it is the type of hearsay admissible over objection in a civil action. The rules of privilege shall be effective to the same extent to which they are now or may hereafter be recognized in civil actions.

Irrelevant and unduly repetitious evidence shall be excluded.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17558. Right of Representation.

The appellant and local agency may be represented by counsel or other representation.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17559. Subpoenas.

The State Personnel Board shall issue at the request of the parties, subpoenas and subpoenas duces tecum in accordance with the provisions of Section 1985 of the Code of Civil Procedure.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17560. Depositions.

The State Personnel Board may order the taking of depositions in the manner prescribed in Section 11511 of the Government Code.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17561. Reporting.

In all appeals involving dismissal or demotion the proceedings shall be recorded.

Proceedings involving other issues need not be recorded but either party may at its own expense provide a recorder for the hearing.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17562. Hearings Are Public.

All hearings shall be public except when the parties stipulate otherwise.

At the request of either party and in the sound discretion of the hearing officer, witnesses who have not testified may be excluded from the hearing room until such time as they are called to testify.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17563. Basis for Decision.

Whenever the decision of the local agency is found to be supported by substantial evidence it shall be affirmed; provided, however, that the State Personnel Board may reduce the severity of the action and make such other orders as are just and proper under the circumstances.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17564. Proposed Decisions.

In all cases referred or assigned to the hearing officer for hearing or investigation, the hearing officer shall submit to the State Personnel Board a proposed decision in such form that it may be adopted as the decision of the State Personnel Board.

The proposed decision shall include findings of fact. The findings may be stated in the language of the pleadings or by reference thereto and shall include determination of all relevant issues presented. A copy of the proposed decision shall be filed with the State Personnel Board as a public record. Upon the filing of the proposed decision, the State Personnel Board may adopt it in its entirety; may take action in accordance with Section 17563; or may itself decide the case upon the record, including the transcript, with or without taking additional evidence, except in appeals where no transcript shall be required, and where in the absence of a transcript the Board may act upon its own investigation of the facts.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17565. Rehearing.

Any party to the appeal, within 30 calendar days after service of a copy of the decision on such party, may apply for a rehearing by filing with the

State Personnel Board a written petition therefor. Within 30 calendar days after such filing, a copy of the petition shall be served upon the other party to the proceedings. Within 60 calendar days after such service of the petition for rehearing, the State Personnel Board itself shall either grant or deny the petition in whole or in part. Failure to act upon a petition for rehearing within this 90-day period shall constitute a denial of the petition. If a rehearing is granted, the State Personnel Board may either rehear the case itself, decide the case on the pertinent parts of a prior hearing and such additional evidence and argument as the State Personnel Board shall in its discretion permit, or may refer the matter to a hearing officer. NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17566. Decision Becomes Final.

Unless proper application for rehearing is made, the decision on every Interagency Merit System appeal shall become final 30 calendar days after service of a copy of the decision on the parties to the proceedings. NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17567. Use of Local Agency Process.

The State Personnel Board may permit use of a local agency procedure, rather than the procedures in Sections 17553-17566, to resolve an employment rights appeal; if such is requested by the employee and the local agency prior to the beginning of formal hearing officer proceedings. When the Board permits use of a local agency procedure for resolving an employment rights appeal, the following is required:

(a) The appellant shall formally waive the right to decision by the State Personnel Board on a waiver form provided by the Executive Officer.

(b) The resolution procedure to be used shall be an impartial procedure that meets the requirements of Section 17030(g).

(c) The decision resulting from the local procedure shall be binding upon the parties to the dispute.

NOTE: Authority cited: Section 19801, Government Code. Reference: Section 19803, Government Code.

#### HISTORY

1. Amendment of subsection (b) filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22). Grievance Procedures

## Subarticle 2. Grievance Procedures

#### § 17570. Grievance Processing.

Grievances shall be defined and processed as provided in local memoranda of understanding, ordinances or resolutions applicable to employees in positions covered by these rules. If there is no such memorandum of understanding, ordinance or resolution for covered positions, the Interagency Merit System grievance procedure described in Sections 17571-17572 shall be used.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17571. General Provisions of Interagency Merit System Grievance Procedure.

(a) A grievance exists whenever an employee feels adversely affected by any action or failure of action by the employee's appointing authority, a supervisor, or another employee in the same department.

(b) Except in the informal part of the first level of review in the grievance procedure, a written decision shall be rendered to an employee at each level of review. The decision at each level, unless the time limit is extended by mutual agreement, shall be given within 10 calendar days of receipt of the grievance. An employee who is not satisfied with the decision may, within 10 calendar days after receiving such decision, submit the grievance to the next level of review.

If no agreement on extension of time for rendering a decision has been made, and if the decision has not been given within the stipulated time, an employee may submit the grievance to the next level of review within 10 calendar days of the date such decision was due.

Failure by an employee to submit the grievance to a level of review within the time limit, unless that limit is extended by mutual agreement, shall terminate the grievance process.

Any level of review may be omitted if it is jointly agreed to by the employee and the appointing authority.

(c) The grievance procedure shall consist of a maximum of four levels of review. Another person or body of persons may be substituted for any level of review if mutually agreed to by the employee and the appointing authority.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17572. Steps in the Interagency Merit System Grievance Procedure.

(a) First Level of Review. The employee grievance shall be discussed on an informal basis with the immediate supervisor within 21 calendar days from the date of the action or the employee's knowledge of the action causing the grievance. Every effort shall be made to resolve the grievance at this level and, if necessary, should include conferences among supervisory or administrative personnel.

In this first step of the grievance process, the immediate supervisor shall, at the time the verbal decision is rendered, advise the employee of the right to file a written grievance within 10 calendar days for further consideration.

If a grievance is not resolved informally between the employee and supervisor, a written grievance may be prepared. It should be on an appropriate form; shall be definitive, identify the action requested, and shall be submitted to the immediate supervisor for review and written response.

(b) Second Level of Review. This level shall consist of any of the following persons who have been designated by the appointing authority to hear employee grievances:

- (1) Second-line supervisor or administrator within the agency; or
- (2) The agency personnel officer.

(c) Third Level of Review. This level shall be the appointing authority.

(d) Final Level of Review. This level shall be the local governing board or its designated representative. The decision rendered at this level is the final administrative remedy provided for within the grievance procedure.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17575. Alternate Process for Resolving Grievances Involving Alleged Discrimination.

If an employee grievance alleges the improper act or failure to act was due to discrimination in terms of race, color, sex, age, handicap, religious creed, national origin, ancestry, marital status, or other categorization identified by statute; the employee shall be allowed to use either the grievance procedure or the following discrimination complaint procedure. The employee shall not use both procedures for the same complaint.

(a) First Step. The aggrieved employee may discuss the complaint informally with an Equal Employment Opportunity (EEO) Counselor. The EEO Counselor shall be a person trained in EEO procedures and counseling techniques to provide informal counseling on matters pertaining to discrimination. Such discussion and counseling shall be initiated within 21 calendar days of the alleged discriminatory action.

(b) Second Step. No later than 10 calendar days following conclusion of informal counseling, the aggrieved employee may file a formal written discrimination complaint with an Equal Employment Opportunity (EEO) Investigator. The EEO Investigator shall be a person trained in EEO procedures and investigative techniques to provide formal investigation of matters pertaining to discrimination. The EEO Investigator shall submit to the appointing authority, within 21 calendar days, a formal written report covering the specific complaint, relief sought, findings of fact, and recommend action.

(c) Final Step. If the aggrieved employee and appointing authority agree with the recommended action in the EEO Investigator's written report, and the appointing authority has the authority to implement it, it shall be implemented. Otherwise a decision on the formal complaint shall

be made by the local governing board or its designated representative within 21 calendar days from the time it was filed with the governing board.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**HISTORY**

1. Editorial correction of subsection (a) (Register 95, No. 40).

**§ 17576. Further Appeal of Grievances.**

Regardless of whether the grievance was processed under Section 17570, 17572, or 17575, a grievance alleging discrimination or adverse treatment due to political affiliation may be appealed to the State Personnel Board if not satisfactorily resolved through local agency processes.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**Subarticle 3. Examination Appeals**

**§ 17580. Selection Process Appeal Procedures.**

The State Personnel Board Executive Officer shall establish procedures for the timely hearing of examination appeals prior to final review and decision by the State Personnel Board. Any correction in ratings shall not affect appointments which may have already been made from the eligible list.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17581. Processing of Examination Appeals.**

Employees and applicants may appeal selection process decisions on the following grounds:

- (a) For alleged irregularity, discrimination, bias, or fraud in one or more steps in an examination, or
- (b) For alleged improper acts or circumstances resulting in erroneous interpretation and application, by the examiners, of the skills, knowledge and abilities considered to be essential for satisfactory performance in the class for which the candidate is being examined.

Appeals of decisions from selection procedures must be filed with the State Personnel Board within 30 calendar days after the date on which notification of the results of such procedure was mailed to the candidate.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17582. Examination Material Available to Appellant.**

Sufficient examination material shall be made available to an appellant to explain the basis for the examination decision, and to confirm the computation of the appellant's score. No access to examination items will be allowed if in the judgment of the State Personnel Board Executive

Officer such access would result in unfair advantage to a competitor in a future examination.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**Article 9. Cooperation with Other Merit System Agencies**

**§ 17588. Certification from Eligible Lists of Other Merit Systems.**

At the request of an Interagency Merit System appointing authority, and with the approval of the agency for which the eligible list was prepared, the State Personnel Board Executive Officer may authorize that appointing authority to use an existing eligible list for a comparable class established in conformity with these standards but under another recognized merit system.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17590. Transfer or Reinstatement from Other Merit Systems.**

Upon the request of an Interagency Merit System appointing authority, a person who has held permanent status in another recognized merit system shall be eligible for reinstatement or transfer to an appropriate vacant position in the same class, comparable class or in a lower related class in the Interagency Merit System in accordance with standards established by the State Personnel Board Executive Officer. This section shall not be used for a class for which the receiving agency has a reemployment list.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

**§ 17592. Interagency Assignments.**

For the purpose of training or to obtain maximum utilization of available staff, employees may be temporarily assigned or loaned between agencies. Each such temporary assignment or loan must be agreed to by the employee concerned and shall not initially exceed a period of two years. Extensions are subject to the approval of the State Personnel Board Executive officer. Employees from other jurisdictions will not gain status in the Interagency Merit System through such training assignments or loans. The assignment may be terminated by any of the parties involved at any time. Employees participating in such assignments shall be considered for all purposes of this Article and these regulations as employees of the agency from which they were loaned or assigned except that their salary may be paid as agreed upon by the participating agencies.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

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