SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES

I.

Introduction

The State Personnel Board (Board) proposes to amend Sections 64.1, 64.2, 64.3, 64.4, 64.5, and 64.6 of Title 2, Chapter 1, of the Code of Regulations (CCR). A 45-day public comment period on this rulemaking action was held from July 18, 2025, through September 3, 2025. A public hearing was held on September 4, 2025. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board's responses is below.

II. Summary of Written Comments

From Jacqueline Tkac, California Associate of Professional Scientists (CAPS-UAW)

Comment I.

CAPS-UAW expresses concern with the formatting of sections 64.4 and 64.5. The union notes that section 64.4 directs readers to section 64.5, yet section 64.5 is divided so that subdivision (a) addresses disability-based complaints, subdivision (b) addresses denial of reasonable accommodation complaints, and subdivision (c) applies to both section 64.4's subdivisions (a) and (b) as well as section 64.5's subdivisions (a) and (b). This cross-reference structure is confusing and could be clarified by adding a new section to clearly explain how these provisions interact.

Response I.

The Board appreciates CAPS-UAW's request for clarification on the interaction of Sections 64.3, 64.4, and 64.5. In response, the Board has made three focused revisions to make the procedural structure more transparent. First, Section 64.3, subdivision (c), now states expressly that a complainant alleging a denial of reasonable accommodation may either file directly with the Board or first file with the state agency; clarifying an option that was implicit in the original text. Second, a new subdivision, Section 64.4, subdivision (c), explains that the state agency's 90-day decision requirement applies to denial of reasonable-accommodation complaints only when the complainant chooses to pursue the internal process. Third, Section 64.5, subdivision (b), now begins with language confirming that its filing timelines apply regardless of whether the complainant filed first with the state agency, ensuring the subdivision governs all reasonable-accommodation complaints. Together, the revisions clarify the issues CAPS-UAW raises and make the dual-path filing structure clear.

Jennifer McBride, Attorney III, Employment and Administration Section Office of Legal Services, Program Integrity and Compliance Branch, Department of Health Care Services (DHCS)

Comment II.

DHCS seeks clarification on the scope of complaints covered by sections 64.4 and 64.5. These sections currently refer only to "discrimination complaints." In practice, the SPB and some departments interpret "discrimination" to include harassment and retaliation when based on a protected category under the Fair Employment and Housing Act (FEHA). Under FEHA, discrimination, harassment, and retaliation are distinct claims. DHCS observes that the proposed text does not expressly mention harassment or retaliation, and the absence of explicit language could create uncertainty for complainants, departments, and representatives, increasing the risk of jurisdictional disputes about timelines and filing requirements.

To promote consistency with statutory law, case law, SPB practice, and the Board's goal of clarity, DHCS recommends revising sections 64.4 and 64.5 to specify whether they apply only to discrimination claims or also to harassment and retaliation claims. If the intent is to cover all three, DHCS suggests revising the section headings and operative language to read "Complaint of discrimination, harassment, and retaliation" to provide clear notice, align with FEHA terminology, and prevent interpretive disputes.

Response II.

The Board appreciates DHCS's request for clarification on the scope of sections 64.4 and 64.5. Section 64.1 states that any state civil service employee or applicant who believes they have been subjected to discrimination, harassment, or retaliation based on a protected disability may file a complaint "in accordance with Sections 64.2 through 64.6." Because section 64.1 directs all complaints into the procedures set out in the later sections, every reference to a "complaint" in sections 64.4 and 64.5 necessarily includes discrimination, harassment, and retaliation.

To make that connection plain to readers who may look only at sections 64.4 or 64.5, the Board will update the opening sentence of each section to repeat the inclusive language of section 64.1. These changes will bring the text in line with the statute and the Board's long-standing practice and will help avoid any confusion about the types of complaints covered.

Sandy M. Mendes, Attorney, Assistant Chief Counsel, Employment Developmental Department (EDD)

Comment III.

EDD requests clarification of section 64.3, which allows a complaint to be filed directly with the Board when it concerns a denial of reasonable accommodation. EDD asks what constitutes a denial for purposes of this provision. Specifically, EDD seeks guidance on whether a formal denial letter or memorandum from the appointing authority is required, or whether an

employee's belief that their accommodation request has been denied is sufficient. EDD also asks whether a partial accommodation where some but not all of the employee's limitations are addressed, would qualify as a denial.

Response III.

The Board appreciates EDD's request for clarification of the term "denial of reasonable accommodation" in section 64.3. The regulation does not require any specific form of written notice before a complainant may file directly with the Board. A denial occurs when the appointing authority communicates, by words or by conduct that it will not provide the accommodation requested, will not provide an effective alternative, or engages in an unjustified delay that effectively denies the request.

The regulation is procedural. It sets out how and when a complainant may file with the Board but does not define the substantive standards that determine whether a denial has occurred. Those standards are established by state and federal disability laws and are interpreted by the agencies and courts responsible for enforcing them.

Departments should rely on their legal offices, CalHR, and the appropriate enforcement agencies for guidance on how those laws apply. Section 64.3 simply provides a clear process for bringing such matters before the Board. It does not expand or alter the rights and responsibilities created under other laws.

Comment IV.

EDD asks whether section 64.3 covers denials of a reasonable accommodation requests made on the basis of an associational disability; that is, a request for accommodation related to the disability of someone with whom the employee has a relationship or association.

Response IV.

The Board appreciates EDD's request for clarification on whether section 64.3 applies to requests for reasonable accommodation based on an associational disability. This comment raises broader questions about how state and federal disability laws define and limit the right to a reasonable accommodation. Those questions are governed by the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.) and the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). Both laws protect employees from discrimination because of their relationship or association with a person who has a disability, but they also set the boundaries for when an employer must provide a reasonable accommodation.

Section 64.3 does not attempt to answer those substantive questions. The regulation is procedural. Its purpose is to describe when and how a complainant may file a disability-related complaint with the Board. It does not expand or restrict the circumstances in which an employer must grant an accommodation, nor does it modify the rights or duties established by other laws.

Departments that receive requests involving associational disabilities should look to their legal offices, CalHR, and the appropriate enforcement agencies for guidance on how federal and state disability laws apply. Section 64.3 ensures that employees and applicants have a clear and consistent process for filing complaints with the Board. It does not change the underlying obligations created by those laws.

Comment V.

EDD comments on the Economic Impact Assessment, noting that section 64.5, subdivision (b) (1) - (2) permits an employee to file a complaint directly with the Board either after a denial of a reasonable accommodation request or 30 days after the request was made, whichever occurs first. EDD reports that it received 101 reasonable accommodation requests between June 1 and June 30, 2025, and states that meeting this new filing window would require additional staffing, including attorneys and HR staff, to manage the anticipated increase in complaints.

Response V.

The Board acknowledges EDD's concern about potential workload impacts from the filing timelines in section 64.5, subdivision (b). The purpose of this provision is to ensure that employees who request a reasonable accommodation have prompt access to the Board's process when a department denies a request or does not act within thirty days. As explained in the Initial Statement of Reasons, the amendment eliminates unnecessary delays that can disadvantage employees with disabilities while preserving the appointing authority's opportunity to resolve the matter internally.

While departments may need to review their internal procedures to respond within the thirty-day window, the regulation does not impose new substantive duties or require departments to complete their review within thirty days. It simply allows an employee to seek Board review if a decision is not made within that period. Departments remain free to continue processing requests after a complaint is filed, and the Board anticipates that most requests will be resolved informally without requiring significant new staffing.

Comment VI.

EDD asks whether section 64.5, subdivision (e)(3), requires that a request for reasonable accommodation be submitted in writing.

Response VI.

The Board appreciates EDD's question about whether section 64.5, subdivision (e)(3), requires a reasonable accommodation request to be submitted in writing. The regulation does not impose a written-request requirement. Subdivision (e)(3) asks the complainant to attach a copy of any written request or response if such documents exist, or to state that no written request or response was received. This language ensures that the Board has whatever

documentation is available but does not create a new duty to put the initial request in writing.

Steven Stovich, Chief of Human Resources Administration Office, California High-Speed Rail Authority (HSR)

Comment VII.

HSR comments on section 64.5, which allows an employee to appeal to the Board after denial of a reasonable accommodation request or 30 days after the request is made, whichever occurs first. HSR expresses concern that this timeline could permit complaints to be filed while the department is still engaged in the interactive process. HSR further asserts that allowing appeals before the department issues a decision is unreasonable and that permitting the Board to accept complaints 30 days after a request is made undermines the interactive process.

Response VII.

The Board understands HSR's concern that the thirty-day filing option in section 64.5 might invite complaints while a department is still working through the interactive process. The purpose of the provision is to guarantee employees timely access to the Board when a department either denies a request or does not act within a reasonable period. As the Initial Statement of Reasons explains, employees with disabilities can face significant hardship when decisions are delayed, and the thirty-day window ensures they are not left without a remedy.

The regulation does not require an employee to file after thirty days, nor does it cut off the department's ability to continue the interactive process. It simply gives the employee the option to seek Board review if no decision has been made. In practice, it is unlikely that an employee will file a complaint if the department is actively engaging in the interactive process, communicating in good faith, and responding to the employee's needs. Departments remain free to continue discussions and to resolve the accommodation request even after a complaint is filed, and the Board encourages departments to complete the interactive process whenever possible before or after a filing.

Mike Alvarez, Chief Equal Employment Opportunity Officer, California Highway Patrol (CHP)

Comment VIII.

CHP states that the proposed language in sections 64.3, subdivision (c), and 64.5, subdivision (b), would permit a complainant to appeal directly to the Board thirty days after submitting a reasonable accommodation request, even without a departmental denial. CHP explains that this approach departs from the current process, which requires a complainant to first file a complaint with the department's EEO office, receive a written decision within ninety days, and then appeal to the Board if dissatisfied.

CHP contends that the proposed change undermines the interactive process required by the

ADA and FEHA by creating a presumptive denial after thirty days and allowing appeals before the department completes its evaluation. CHP further asserts that this framework would divert resources from providing accommodations to contesting premature appeals, lead to duplicative proceedings, reduce efficiency, and compromise confidentiality. CHP also believes the proposed process is inconsistent with other SPB appeals, such as discrimination complaints or withholds of certification, which require a final departmental decision before an appeal may be filed. Finally, CHP notes that the Board's Notice of Proposed Rulemaking states that there will be no costs to state agencies, but CHP anticipates increased costs and workload due to a higher volume of appeals under the proposed language.

Response VIII.

The Board understands CHP's concern that the thirty-day filing option in sections 64.3, subdivision (c), and 64.5, subdivision (b), differs from the current practice of requiring a final departmental decision before an appeal may be filed. The change is deliberate. As explained in the Initial Statement of Reasons, the amendment is intended to give employees timely access to the Board when a department either denies a request or does not act within a reasonable period. Employees with disabilities can face real hardship when accommodation requests remain unresolved, and the thirty-day window prevents requests from languishing without recourse.

The regulation does not require an employee to file after thirty days, nor does it create a presumptive denial. It simply gives the employee the option to seek Board review if no decision has been made. In practice, it is unlikely that an employee will file if the department is actively engaged in the interactive process, communicating in good faith, and responding to the request. Departments remain free to continue discussions and to resolve the accommodation request even after a complaint is filed, and the Board encourages departments to complete the interactive process whenever possible.

The Board recognizes that this process differs from other SPB appeals, but the difference reflects the unique need for efficiency in reasonable accommodation cases. The Board does not expect significant new costs because the regulation does not impose a new substantive duty to decide within thirty days and allows departments to continue their evaluation even after a filing.

Conclusion.

The Board appreciates the comments and feedback it received regarding this proposed amendment. The modified text with the changes clearly indicated are available to the public as stated in the Notice of Modification to Text of Proposed Regulation.