

**State of California  
Office of Administrative Law**

**In re:**  
**State Personnel Board**

**Regulatory Action:**

**Title 02, California Code of Regulations**

**Adopt sections:**

**Amend sections:** 67.6, 67.7

**Repeal sections:**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2022-1028-04**

**OAL Matter Type: Regular (S)**

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This rulemaking action by the State Personnel Board updates notice requirements related to whistleblower retaliation hearings and determinations.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/1/2022.



**Date:** December 14, 2022

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**Lindsey S. McNeill**  
**Senior Attorney**

**For:** **Kenneth J. Pogue**  
**Director**

**Original:** Suzanne Ambrose, Executive  
Officer

**Copy:** Lori Gillihan

## NOTICE PUBLICATION/REGULATION SUBMISSION

**REGULAR**

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-Z2022-0510-03	REGULATORY ACTION NUMBER 2022-1028-045	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY California State Personnel Board			AGENCY FILE NUMBER (if any)

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

DEC 14 2022

2:00 PM

OFFICE OF ADMIN. LAW  
2022 OCT 28 PM 4:11

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE Whistleblower Appeals Rights		TITLE(S) 2	FIRST SECTION AFFECTED 67.6	2. REQUESTED PUBLICATION DATE May 20, 2022
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Lori Gillihan		TELEPHONE NUMBER 916-651-1043
FAX NUMBER (Optional)		NOTICE REGISTER NUMBER 2022, 20-2		PUBLICATION DATE 5/20/2022
OAL USE ONLY	ACTION ON PROPOSED NOTICE			
	<input type="checkbox"/> Approved as Submitted	<input type="checkbox"/> Approved as Modified	<input type="checkbox"/> Disapproved/Withdrawn	

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Whistleblower Appeals Rights		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT		
	AMEND 67.6 & 67.7		
	REPEAL		
TITLE(S) 2			
3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify)		
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) 8/19/2022 - 9/6/2022			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			
7. CONTACT PERSON Lori Gillihan	TELEPHONE NUMBER 916-651-1043	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) lori.gillihan@spb.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Suzanne M. Ambrose Digitally signed by Suzanne M. Ambrose Date: 2022.10.27 16:47:53 -0700	DATE
TYPED NAME AND TITLE OF SIGNATORY Suzanne M. Ambrose, Executive Officer	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 14 2022

Office of Administrative Law



FINAL TEXT

**CALIFORNIA CODE OF REGULATIONS  
TITLE 2. ADMINISTRATION  
DIVISION 1. ADMINISTRATIVE PERSONNEL  
CHAPTER 1. STATE PERSONNEL BOARD  
SUBCHAPTER 1.2. HEARINGS AND APPEALS  
ARTICLE 10. WHISTLEBLOWER RETALIATION COMPLAINT PROCESS**

§ 67.6. Findings of the Executive Officer.

- (a) The Executive Officer shall issue a Notice of Findings within 60 business days of the date the Executive Officer accepts the complaint pursuant to Section 67.3, unless the complaining party agrees, in writing, to extend the period for issuing the findings, or unless the time period is otherwise tolled. The Notice of Findings shall be served upon all parties to the complaint, as well as any non-party manager, supervisor, employee, or appointing power found to have engaged in retaliatory acts.
- (b) In those cases where the Executive Officer concludes that the allegations of retaliation were not proven by a preponderance of the evidence, the Executive Officer shall issue a Notice of Findings dismissing the complaint and that decision shall be deemed the final decision of the Board. The Notice of Findings shall notify the Complainant that ~~his or her~~ their administrative remedies have been exhausted and that the Complainant may pursue whatever judicial remedies are available to ~~him or her~~ them.
- (c) In those cases where the Executive Officer concludes that the Complainant proved one or more of the allegations of retaliation by a preponderance of the



evidence, the Notice of Findings shall identify the allegations deemed substantiated, and ~~the named Respondents~~ any manager, supervisor, employee, or appointing power deemed found to have engaged in retaliatory acts. If the Notice of Findings concludes that any individual manager, supervisor, or other employee engaged in improper retaliatory acts, the Notice of Findings shall identify the legal causes for discipline under section 19572 of the Government Code.

- (d) The Notice of Findings shall notify any manager, supervisor, employee, or appointing power ~~inform any Respondent~~ found to have engaged in retaliatory acts of ~~his or her~~ their right to request a hearing regarding the Notice of Findings. Any such request shall be filed with the Appeals Division, and served on all other parties within 30 days of the issuance of the Notice of Findings. If a timely request for hearing is not filed with the SPB, the Board may order any appropriate relief, including, but not limited to, reinstatement, back pay, restoration of lost service credit, if appropriate, compensatory damages, and the expungement of any adverse records of the state employee or applicant for state employment who was the subject of the alleged acts of misconduct prohibited by section 8547.3 of the Government Code.
- (e) Upon receipt of a timely request for hearing, the Appeals Division shall schedule the matter for a Trial Setting Conference. At least 12 calendar days prior to the Trial Setting Conference, each party shall file with the Appeals Division, and serve on the opposing party, a Trial Setting Conference statement setting forth the party's estimated time for hearing; a list of all witnesses that the party intends to call; and, the dates the party, the party's representative, and the party's witnesses are unavailable for hearing.



- (f) Failure of Complainant or any of Respondents party to appear and/or proceed at a Trial Setting Conference, unless the hearing is continued for good cause pursuant to Section 58.3, shall result in evidentiary sanctions.
- (g) At the Trial Setting Conference, the ALJ shall schedule the matter for an evidentiary hearing. The hearing shall be conducted in accordance with Article 6, beginning with section 56.1.

Note: Authority cited: Sections ~~6215~~ and 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671.1, 18675, 19572, 19574, 19575, 19582, 19590 and 19683, Government Code; and Section 6129, Penal Code.

**CALIFORNIA CODE OF REGULATIONS  
TITLE 2. ADMINISTRATION  
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§ 67.7. Disciplinary Action for Proven Retaliatory Acts.

- (a) In those cases where the Board issues a final decision that finds that a manager, supervisor, or other state civil service employee who is a named party to the retaliation complaint has engaged in improper retaliatory acts and those acts constitute legal cause for discipline, the Board shall order the appointing authority to place a copy of the Board's decision in that individual's Official Personnel File within 30 days of the issuance of the Board's order and to also, within that same time period, notify the Office of the State Controller of the disciplinary action taken against the individual. The appointing authority shall also, within 40 days of the issuance of the Board's order, notify the Board that it has complied with the provisions of this subdivision.
- (1) In accordance with the provisions of Penal Code section 6129, subdivision (c)(3), any employee of the Department of Corrections and Rehabilitation found to have engaged in retaliatory acts shall be disciplined by, at a minimum, a suspension without pay for 30 days, unless the Board determines that a lesser penalty is warranted. In those instances where the Board determines that a lesser penalty is warranted, the decision shall specify the reasons for that determination.



- (b) In those cases where the Board issues a final decision that finds that any community college administrator, supervisor, or public school employee, has engaged in improper retaliatory acts, the Board shall order the appointing authority to place a copy of the Board's decision in that individual's Official Personnel File within 30 days of the issuance of the Board's order and also, within 40 days of the issuance of the Board's order, notify the Board that it has complied with the provisions of this subdivision.
- (c) Any decision, as described in subdivision (a) or (b), shall be deemed a final decision of the Board and the individual against whom the disciplinary action was taken shall not have any further right of appeal to the Board concerning that action, with the exception of a Petition for Rehearing.
- (d) In those cases where the Board issues a final decision that finds that a non-party manager, supervisor, or employee may have engaged in improper retaliatory acts, the Board shall notify the manager's, supervisor's, or employee's appointing power of that fact in writing and provide the appointing power with a copy of the Board's final decision.
- (1) Within 60 calendar days after receiving the notification, the appointing power shall either serve a notice of adverse action on the manager, supervisor, or employee, or set forth in writing its reasons for not taking adverse action against the manager, supervisor, or employee and submit the reasons for not doing so to the Board.
- ~~(d)~~ (e) For purposes of this Section, the Board's decision is deemed to be final after:
- (1) 30 days has elapsed from the date the Executive Officer issued ~~his or her~~ their Notice of Findings dismissing the complaint; or
  - (2) a request for hearing pursuant to section 67.6, subdivision (d), has not been timely filed with the Board; or
  - (3) 30 days has elapsed from the date that the Board has issued a decision adopting or modifying the proposed decision submitted by an administrative law judge after an evidentiary hearing and a Petition for Rehearing concerning that decision has not been filed with the Board; or



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Governor Gavin C. Newsom

(4) a decision has been issued by the Board after a hearing before that body and no Petition for Rehearing concerning that decision has been filed with the Board.

Note: Authority cited: Sections 18215 and 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.3, 8547.8, 18670, 18671, 18675, 18710, 19572, 19574, 19582, 19583.5, 19590, 19592 and 19683, Government Code; and Section 6129, Penal Code.