

For the 45-day comment period, proposed text is underlined; and
For the 45-day comment period, text proposed to be deleted is shown in strikethrough.

**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 including, but not limited to, the following:
- (1) The Complainant;
 - (2) Any supervisor, manager, employee, or appointing authority who is a named party to the retaliation complaint; and,
 - (3) Any supervisor, manager, employee, or appointing authority who is not a named party to the retaliation complaint.
- (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: Section 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

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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 manager, supervisor, or employee who is not a named party to the retaliation complaint 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.
- (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
- (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: Section 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671, 18675, 18710, 19572, 19574, 19582, 19583.5, 19590, 19592 and 19683, Government Code; and Section 6129, Penal Code.