

SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES

I.

Introduction

The State Personnel Board (Board) proposes to amend Sections 171.1, 437, 439.2 439.4 of Title 2, Chapter 1, of the Code of Regulations (CCR). A 45-day public comment period on this rulemaking action was held from June 26, 2021, through August 8, 2022. A public hearing was held on August 9, 2022. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board's responses are below.

II.

Summary of Written Comments from Rachael McCord, Assistant Deputy Director, Covered California.

Comment I Section 439.2:

Covered California believes that the proposed amendment to section 439.2, subdivision (a)(3)(C) will create an overlap between out-of-class and training and development assignments. Specifically, Covered California argues that because out-of-class assignments are typically performed within the same class series and/or career path, the proposed amendment allowing training and development assignments to the same class series will result in an increase of out-of-class disputes for departments.

Covered California then asks if it is allowable for someone to perform an out-of-class assignment and then later be selected for a training and development assignment.

Additionally, Covered California asks if repealing the subdivision would allow for training and development assignments to be completed from rank and file to supervisory classifications. As an example, would an Associate Governmental Personnel Analyst (AGPA) be eligible to accept a training and development assignment to a Staff Services Manager I (Supervisor) (SSM I (Supervisor))?

Response I:

The Board thanks and appreciates Covered California for its feedback to this regulatory package. The Board disagrees that the proposed amendment to section 439.2 would create an overlap between out-of-class assignments and training and development assignments.

Article 19.1 makes clear that training and development assignments are distinct and separate from out-of-class assignments. Specifically, section 439 mandates that training and development assignments be designed to provide employees the opportunity to obtain the experience necessary to meet the minimum qualifications of a training and development class, acquire broader or more specialized competencies that will improve the employee's performance in his or her current position and classification, prepare the employee for future promotion, and/or facilitate the employee's entry into a new occupational or career-related field. Moreover, section 439.3 outlines a competitive and merit-based selection process for assigning training and development assignments to state employees requiring advertisement and the use of job-related criteria to fairly evaluate and compare candidates. Additionally, the employee would need to compete in a civil service exam for the classification prior to being permanently appointed to the class.

Out-of-class assignments do not require a competitive selection process and are not used to provide training and development to current state employees. Rather, the purpose of out-of-class assignments is to accommodate temporary staffing needs when other alternatives are determined to be unfeasible. As such, there should be no confusion between an out-of-class assignment and a training and development assignment. Therefore, it is unlikely that the proposed amendment would produce an increase of out-of-class disputes.

An employee is allowed to serve in a training and development assignment after completing an out-of-class assignment in the same classification as long as the criteria outlined in Article 19.1 are met.

Furthermore, a rank and file employee is allowed to serve in a training and development assignment to a supervisory classification as long as the criteria outlined in Article 19.1 are met. Therefore, in response to Covered California's example, an AGPA would be permitted to serve in a training and development assignment to a SSM I (Supervisor) class.

Summary of Written Comments from Leslie Emery, Staff Services Manager II, Human Resources Division, California Public Employees Retirement System (CalPERS).

Comment II Section 171.1 & 439.4:

CalPERS would like further clarification regarding the proposed amendments to sections 171.1 and 439.4. Specifically, CalPERS asks whether credit would be given to two classifications during the training and development assignment. For example, if a candidate is an SSM I serving a training and development assignment as an IT Specialist I would the time spent count towards the minimum qualifications for both the SSM I and the IT Specialist I?

Response II:

The Board thanks and appreciates CalPERS for its feedback to this regulatory package. The intent of proposed amendments 171.1 and 439.4 is to ensure that when employees serve in a training and development assignment, they may count the training and development assignment as time worked in either their appointment class or in their training and development assignment class in order to qualify for promotional examinations. The word “and” was chosen to ensure the applicant can use either qualifying experience or a combination thereof without exceeding the length of the training and development assignment.

For example, an employee who served as a Staff Services Analyst (SSA) for one year and then received a training and development assignment to an Information Technology Technician (ITT) for two years could use the two years served in the training and development assignment as an ITT to qualify for the Information Technology Associate (ITA) examination. The employee could also count the training and development assignment’s two-year duration toward three years worked as an SSA (one year as SSA plus two years as ITT on T&D assignment) in order to qualify for the AGPA examination.

Summary of Written Comments from Jennifer Dong Kawate, Personnel Officer, Department of Water Resources (DWR).

Comment III Section 439.2:

DWR believes that striking section 439. 2, subdivision (a)(3)(C) would create conflict with subdivision (a)(3)(B). Currently, subdivision (a)(3)(B) states that a training and development assignment may be considered to a classification with a promotional salary range provided that “there is not another class nearer in salary to the employee’s current class that will provide the appropriate training experience. If such a class exists, that class shall be used for purposes of the training and development assignment.” DWR states that this would cause confusion because the classification that is nearest in salary to the employee’s current classification that provides them the appropriate training experience would be their current classification. Their current classification should provide the employee with the experience they need to meet the minimum qualifications (MQs) for entrance into a higher salaried class within their same class series.

Additionally, allowing employees to accept a training and development assignment to a promotional classification within their same class series circumvents the merit selection process because the employee would be able to perform the duties of the higher paid position without demonstrating their qualifications through a competitive examination.

Lastly, allowing employees to accept a training and development assignment to a promotional classification could create scenarios where hiring supervisors use training and development assignments as a “testing out” period in lieu of probation. This could potentially cause an employee to serve an additional probationary period on top of the 24 months served during a T&D assignment.

DWR recommends that the Board reconsiders allowing employees to accept a training and development assignment within their promotional pathway, strike section 439.2 (a)(3)(B) or add clarifying language to address limitations to training and development assignments within an employee's promotional pathway, such as how many steps higher the employee can T&D to.

Response III

The Board thanks and appreciates DWR for its feedback to this regulatory package.

The scenario provided by DWR fails to demonstrate how removing subdivision (a)(3)(C) would conflict with subdivision (a)(3)(B). For example, if a department advertises a SSM II vacancy, while indicating that it would also accept training and development assignments, then a current state employee serving as an AGPA that applies for the vacancy could not accept a training and development assignment to the SSM II classification because the SSM I (Supervisor) classification is nearer in salary and would provide the appropriate training experience. Therefore, subdivision (a)(3)(B) ensures that the employee serving as an AGPA appropriately follows the promotional pattern to develop competencies and skills for future promotions and/or to meet the minimum qualifications of the SSM II class. Likewise, if a department advertises a SSM I (Supervisor) vacancy, while also indicating that it would accept training and development assignments, then a current state employee serving as an AGPA that applies for the vacancy could accept a training and development assignment to the SSM I (Supervisor) classification. The AGPA classification would not be appropriate because it would not provide the training or experience of the SSM I (Supervisor) classification as outlined under section 439. Similarly, the SSM I (Specialist) class would not be appropriate because it would not provide the training or experience of the supervisor class.

The purpose of the proposed amendment to section 439.2 is to broaden which classifications may be considered for training and development assignments. Specifically, by eliminating section 439.2, subdivision (a)(3)(C), an employee will be able to apply to and serve in a training and development assignment to a higher salary class that is in the same class series as the employee's current class. The less-restrictive criteria ensure that qualified candidates are afforded the same employment opportunities to compete for and obtain broader or more specialized competencies in order to support their career development and upward mobility.

The DWR's argument that allowing employees to accept a training and development assignment to a promotional classification within their same class series circumvents the merit selection process because the employee would be able to perform the duties of the higher paid position without demonstrating their qualifications through a competitive examination equally applies to those employees who do not currently serve in the same class series. Those employees also have not demonstrated their qualifications through a competitive examination and yet they are able to compete for and be assigned to training and development classifications that are higher in salary. This is inconsistent and disadvantages otherwise qualified candidates at a detriment to the state's career development and upward mobility efforts. Moreover, one of the main purposes of the

training and development program is to provide training and development to those who do not meet the minimum qualifications, and therefore, are ineligible to take the examination. If an employee meets the minimum qualifications, then a different appointment method, such as Limited-Term or Permanent, could be used. Furthermore, Article 19.1 devises a merit-based selection process wherein employees must apply and compete for training and development assignments like any other vacancy. In short, the proposed amendment improves upon the training and development process by ensuring that more qualified and experienced candidates, who have already demonstrated the knowledge, skills, abilities, and competencies to succeed in the training and development assignment, possess the same opportunity as lesser qualified candidates who are in a different class series to obtain broader or more specialized competencies in order to improve their performance and prepare for future promotions. Additionally, as stated above, the employee would have to compete in an examination prior to permanent appointment to the classification.

Last, the DWR's fear that allowing employees to accept a training and development assignment to a promotional classification could create scenarios where hiring supervisors use training and development assignments as a "testing out" period in lieu of probation is a possibility whether or not the employee's current classification is within the same class series or not. Moreover, this scenario fails to recognize one of the primary purposes of the training and development program—to train and develop employees who do not meet the minimum qualifications of the classification in order to promote upward mobility in the employee's chosen field. Additionally, the requirements and restrictions of a training and development assignment will be explained to the employee before the employee *voluntarily* accepts the assignment. If the terms of the training and development assignment are not acceptable to the employee, the employee does not have to accept the assignment.

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.