

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 2 (Filing with the Board)**

§ 52.4. Requirements and Method of Delivery for Filing Appeals and Complaints with the Board.

Appeals filed with the Board shall be subject to the following:

- (a) All appeals and complaints shall be in writing.
- (b) Except as otherwise provided in these Regulations, each appeal and complaint shall be filed with the Appeals Division and shall:
 - (1) Identify the name, address, and telephone number of the Appellant or Complainant;
 - (2) If different than the Appellant or Complainant, identify the name, address, and telephone number of the person filing the appeal or complaint, including the State Bar number if the person filing the appeal or complaint is an attorney;
 - (3) Except as provided in Government Code section 19575, state the facts that form the basis for appeal or complaint; and
 - (4) Identify all Respondents known to the Appellant or Complainant including, for individually-named Respondents, first and last name, job title, and business address.
- (c) Unless the appeal or complaint names some other Respondent, the Appellant's or Complainant's appointing power shall be considered the only Respondent.
- (d) The Appeals Division shall mail or serve a copy of the appeal or complaint to or on the Respondent(s).
- (e) Time Limitations for Filing Appeals or Complaints with the Board. Except as otherwise provided in the act or these regulations, every appeal or complaint shall:
 - (1) be filed with the Appeals Division within the following time limits;

(A) Appeals from disciplinary action filed pursuant to the provisions of Government Code sections 19575, shall be filed within 30 days after the effective date of the notice of adverse action;

(B) Appeals from disciplinary action filed pursuant to the provisions of Education Code section 89539, subdivision (a), or Government Code section 19590, subdivision (c), shall be within 30 days of the employee's receipt of the notice of adverse action;

(C) Appeals from rejection during probationary period filed pursuant to the provisions of Government Code section 19175 shall be filed within 15 days of the effective date of the notice of rejection during probationary period;

(D) Appeals from non-punitive transfer, demotion or termination filed pursuant to the provisions of Government Code section 19585 shall be filed within 30 days after the effective date of the notice of non-punitive action;

(E) Appeals from medical transfer, demotion or termination filed pursuant to the provisions of Government Code section 19253.5, subdivision (f), shall be filed within 15 days of service of the notice of medical action;

(F) Appeals from a CEA termination filed pursuant to the provisions of Government Code section 19889.2 shall be filed within 30 days of the employee's receipt of the notice of termination;

(G) Complaints of whistleblower retaliation filed pursuant to the provisions of Education Code section 87164 or Government Code sections 8547.8 and 19683, shall be filed within one year from the most recent act of reprisal complained about;

(H) Requests-to-File-Charges filed pursuant to the provisions of Government Code section 19583.5 shall be filed within one year of the event or events upon which the appeal is based;

(I) Appeals from constructive medical transfer, suspension, demotion, or termination shall be filed within 30 days of the employee being notified that he or she would not be permitted to resume the duties of their position;

(J) Appeals from the following types of cases shall be filed within 30 days of the effective date of the action:

(i) Termination of appointment from the Limited Examination and Appointment Program (LEAP); and

(ii) Termination or automatic resignation from a Permanent Intermittent appointment;

(K) Appeals from pre-employment medical disqualification, pre-employment psychological disqualification, and pre-employment drug test failure, shall be filed within 30 days of the date of service of the notice of disqualification;

(L) Appeals from improprieties in the civil service examination process, including the CEA examination process, shall be filed as follows:

(i) Appeals from qualification appraisal interviews shall be filed within 30 days of the date that examination results are mailed to the Appellant;

(ii) Appeals from written examinations shall be filed within 30 days of the date that examination results are mailed to the Appellant.

(iii) Appeals from online examinations shall be filed within 30 days of the date that the examination results are available to the Appellant.

(M) Petitions to Set Aside Resignations pursuant to Education Code section 89542 shall be filed within 30 days after the last date upon which services to the state university or college are rendered, or the date the resignation is tendered, whichever is later;

(N) Appeals from Automatic Resignation for Absence Without Leave pursuant to Education Code section 89541 shall be filed within 90 days of the effective date of such separation. If the appointing authority has notified the employee of the automatic resignation, any request for reinstatement must be filed within 15 days of the service of notice of separation;

(O) Appeals from disciplinary action, rejection during probationary period, medical transfer or termination, automatic resignation, layoff, refusal to hire from a re-employment list, or grievance involving discrimination or political affiliation, filed pursuant to the provisions of Government Code section 19800 - 19810, pertaining to Local Agencies, shall be filed in accordance with the provisions of Title 2, Division 5, Chapter 2, Article 8, Subarticle 1, section 17550.

(P) Appeals from Withhold from Certification shall be filed within 30 days of the date that the Notice of Withhold from Certification is mailed to the Appellant.

(Q) Appeals challenging a Voided Appointment, ~~including the amount of any reimbursement ordered pursuant to section 243.3, subdivision (c),~~ shall be filed within 30 days of the ~~date that the Notice of Voided Appointment is mailed to the Appellant~~ effective date of the Voided Appointment. Appeals challenging any reimbursement ordered pursuant to section 243.3, subdivision (c) shall be filed within one year of the effective date of the Voided Appointment.

(R) Back pay claims and requests for back pay hearings, as described in section 61, shall be filed within one year of the date of the board's decision giving rise to the back pay obligation.

(2) In all other cases, the appeal or complaint shall be filed within 30 days after the event upon which the appeal or complaint is based.

(3) Any Appellant or complainant seeking to file an appeal or complaint beyond the time limits in this section, must file a petition with the Chief ALJ or his or her designee demonstrating good cause as to why the appeal or complaint should be accepted. Upon good cause being shown, the Chief ALJ or his or her designee may allow an appeal or complaint, except as otherwise limited by statute, to be filed within 30 days after the end of the period in which the appeal or complaint should have been filed.

(f) Methods of Delivery for Filing Appeals or Complaints with the Board.

(1) Appeals or complaints delivered by electronic mail (e-mail), will be filed on the date received by the Board.

(2) Appeals or complaints delivered by the U.S. Postal Service are filed on the date received by the Board. An Appellant or Complainant may obtain proof of the filing of the appeal or complaint by submitting either an extra copy of the appeal or complaint or the first page only, with a self-addressed, return envelope, postage prepaid. The Appeals Division shall return the copy marked with the date of filing.

(3) Appeals or complaints hand delivered to the Board during regular business hours will be filed on the date received by the Board after the filing party has complied with applicable statutory and regulatory filing requirements.

NOTE: Authority cited: Sections 18502 and 18701, Government Code. Reference: Sections 18675 and 19889.2, Government Code.

**CALIFORNIA CODE OF REGULATIONS
TITLE 2 (Administration)
DIVISION 1 (Administrative Personnel)
CHAPTER 1 (State Personnel Board)
SUBCHAPTER 1.2 (Hearings and Appeals)
ARTICLE 6 (Evidentiary Hearing Process)
SUBARTICLE 3. (Hearings)**

§ 58.4. Hearings are Public

Every appeal hearing, including the hearing of an adverse action appeal, shall be public, unless otherwise required by law to be closed to the public.

(a) A hearing shall be open to public observation. Nothing in this subdivision limits the authority of the presiding officer to order on the record, closure of a hearing or make other protective orders to the extent necessary or proper for any of the following purposes:

(1) To satisfy the United States Constitution, the California Constitution, federal or state statute, or other law, including but not limited to laws protecting privileged, confidential, or other protected information.

(2) To ensure a fair hearing in the circumstances of the particular case.

(3) To conduct the hearing, including the manner of examining witnesses, in a way that is appropriate to protect a minor witness or a witness with a developmental disability, as defined in section 4512 of the Welfare and Institutions Code, from intimidation or other harm, taking into account the rights of all persons.

(b) To the extent a hearing is conducted by telephone, television, or other electronic means, and is not closed as otherwise required by law, the requirement that the meeting is open to public observation pursuant to subdivision (a) is satisfied if members of the public have an opportunity to be physically present at the place where the presiding officer is conducting the hearing. do both of the following:

(1) At reasonable times, hear or inspect the agency's record, and inspect any transcript obtained by the agency.

(2) Be physically or virtually present at the place where the presiding officer is conducting the hearing. For purposes of this section, the term "present" can be satisfied either by providing a designated location from which members of the public can observe the meeting via a live audio or a video feed of the hearing made available to the public on the internet or by teleconference.

(c) This section does not apply to a prehearing conference or settlement conference, or proceedings for alternative dispute resolution.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 11425.20, subd. (b)(2), 18675, Government Code.

CALIFORNIA CODE OF REGULATIONS
TITLE 2 (Administration)
DIVISION 1 (Administrative Personnel)
CHAPTER 1 (State Personnel Board)
SUBCHAPTER 1.3 (Classifications, Examinations, and Appointments)
ARTICLE 10 (Appointments)

§ 243.2. ~~Correction~~Voiding of Unlawful Appointments.

(a) When the Board, Executive Officer, or Department determines that an appointment is unlawful, the Board, Executive Officer, or Department may take ~~corrective~~appropriate action up to and including voiding the appointment under the following circumstances:

(1) The action to ~~correct~~ or void the appointment is taken within one year after the appointment; and

(A) The appointing power or employee or both the appointing power and employee did not act in good faith in accordance with section 243; or

(B) The appointment was accepted and made in good faith by both the appointing power and employee; and the appointment would not have been made but for some mistake of law or fact that if known to the parties would have rendered the appointment unlawful when made.

(b) When the Board or Executive Officer determines that an appointment is unlawful and the appointment has been in effect for longer than one year, the Board or Executive Officer may take ~~corrective~~appropriate action up to and including voiding the appointment under any or all of the following circumstances:

(1) The employee did not act in good faith in accordance with section 243, subdivision (c).

(2) The appointing power did not act in good faith in accordance with section 243, subdivision (b).

(3) The action(s) or omission(s) found to render the appointment(s) unlawful resulted in a selection process not based solely on merit or that significantly disadvantaged the other candidates.

~~(c) Where corrective action includes voiding an appointment(s), the Board, Executive Officer, or Department, whichever has decided to take the action, may order the appointing power to void the appointment(s) and provide the affected employee(s) the right to respond to the appointing power, as set forth in section 243.5.~~

(c) When the Department determines that an appointment is unlawful and the appointment was not made in good faith and has been in effect for longer than one

year, the Department shall request the Board or Executive Officer take appropriate action up to and including voiding the appointment in accordance with the provisions of subdivision (b).

(d) The provisions herein shall not limit or restrict the authority to delegate powers and duties related to the ~~correction~~voiding of unlawful appointments, as expressed in section 37.

NOTE: Authority cited: Sections 18502, 18701 and 18660, Government Code.
Reference: Cal. Const., Art. VII, §§ 1 and 3; and Sections 18502, 18654, 18710, 19050 and 19257.5, Government Code.

§ 243.5. Right to Respond; Right to Appeal.

~~Unless otherwise ordered pursuant to section 243.2, subdivision (c), where corrective action of an unlawful appointment(s) is determined appropriate the Board, Executive Officer, or Department, whichever has decided to take the action, shall notify the affected employee(s) and appointing power of the proposed action at least 15 calendar days prior to the effective date of the proposed action. The notice shall state the reason(s) for the proposed action and notify the employee(s) and the appointing power of their right to respond, either verbally or in writing, within 15 calendar days of the date of the notice. The notice shall specify the amount of reimbursement ordered and inform the Appellant of their right to challenge the amount of reimbursement and/or the Voided Appointment itself pursuant to section 243.6, subdivision (a).~~

(a) When the Department determines that an appointment is unlawful and should be voided, the Department shall, prior to taking any action in accordance with section 243.2, subdivisions (a) or (b), provide written notification to the appointing power and affected employee(s) of the intent to void the appointment, and shall provide the appointing power and affected employee(s) the right to respond, either verbally or in writing, within 15 calendar days of the date of the Intent to Void Notice. The 15-calendar day notice period may be extended an additional 15 calendar days upon a showing of good cause. For purposes of this section, "good cause" means a substantial and compelling reason allowing the appointing power or affected employee(s) to be given additional time to respond. The Intent to Void Notice shall inform the appointing power and affected employee(s) of the specific facts and reasons supporting the Department's determination that the appointment is unlawful.

(b) The Department shall review and consider the responses from the appointing power and/or affected employee(s). If the Department determines that the appointment is unlawful, the Department shall provide a Final Determination of Voided Appointment to the appointing power and affected employee(s) informing them of its determination. The Final Determination of Voided Appointment shall include: the specific facts and reasons supporting the Department's determination to void the appointment; the effective date upon which the appointment is deemed voided, which shall be no earlier than the date

the employee is provided the Final Determination of Voided Appointment; the estimated amount of reimbursement ordered; and, the employee's right to file an appeal with the Board or Executive Officer challenging the voided appointment, including the amount of any reimbursement ordered pursuant to section 243.3, subdivision (c).

(c) The Department shall not void any appointment where the effective date of the voiding occurs more than one year after the effective date of the appointment. In those instances where the effective date of the voiding would have occurred more than one year after the effective date of the appointment, the Department may submit a request to the Board or Executive Officer to void the appointment, provided the Department has determined that either the appointing power and/or the employee did not act in good faith when offering and/or accepting the appointment. Any such request to the Board or the Executive Officer shall include the Department's Intent to Void Notice required by section 243.5, subd. (a), any response received from the appointing power and/or the employee, and a statement setting forth all applicable facts and reasons supporting the Department's determination that the appointment was unlawful and not made and/or accepted in good faith. The Department shall provide a copy of the request and all supporting documents to the appointing power and affected employee(s).

(d) After having reviewed a request to void an unlawful appointment filed by the Department, the Board or Executive Officer shall issue a final decision concerning the voided appointment and neither the employee, Department, or appointing power shall have any further right of appeal or response, except as is set forth in section 243.6. Where the Board or Executive Officer's final decision orders an appointing power to void an appointment, the Board shall notify the Department, the appointing power, and the affected employee(s) of the decision, and the appointing power shall be required to take all necessary steps to void the appointment within five working days of the issuance of the final decision. Nothing in this section shall preclude the Board or Executive Officer from conducting any additional investigation or hearing it deems necessary to reach a just decision concerning the voided appointment.

(e) When the Board or Executive Officer determines, as part of its own independent investigation or hearing, that an appointment is unlawful and must be voided, prior to taking any action in accordance with section 243.2, subdivisions (a) or (b), the Board or Executive Officer shall provide written notification to the Department, the appointing power and the affected employee(s) of the intent to void the appointment and shall provide the Department, the appointing power and the affected employee(s) the right to respond within 15 calendar days from the Intent to Void Notice. The 15-calendar day notice period may be extended an additional 15 calendar days upon a showing of good cause. For purposes of this section, "good cause" means a substantial and compelling reason allowing the appointing power or affected employee(s) to be given additional time to respond. The Intent to Void Notice shall inform the Department, the appointing power and affected employee(s) of the specific facts and reasons supporting the Board or Executive Officer's determination. After receiving and considering all responses from the Department, the appointing power and/or the affected employee(s), the Board or Executive Officer shall issue a final decision concerning the matter and neither the

Department, appointing power, or employee shall have any further right of appeal or response, except as is set forth in section 243.6. Where the Board or Executive Officer's final decision orders the employee's appointment be voided, the Board shall notify the Department, the appointing power, and the employee of the decision, and the appointing power shall void the appointment within five working days of the issuance of the final decision.

(f) Appeals challenging a voided appointment shall be limited to 15 pages, except upon a showing of good cause, and state all applicable reasons and legal bases supporting the appeal.

(1) Upon receipt of an appeal challenging a voided appointment, the Board or Executive Officer shall provide the Department and/or the appointing power with a copy of the appeal and all supporting documents received with the appeal and shall provide the Department and/or the appointing power a right to respond to the appeal. Any such response to the appeal shall: be filed with the Board or Executive Officer within 30 days of the date the notice of appeal was issued to the Department or appointing power and state all applicable reasons and legal bases supporting the decision to void the appointment.

(2) After having reviewed and considered any appeal and response(s) filed by the employee, Department, and/or appointing power, the Board or Executive Officer shall issue a final decision concerning the voided appointment and neither the employee, Department, or appointing power shall have any further right of appeal or response, except as is set forth in Section 243.6. Nothing in this section shall preclude the Board or Executive Officer from conducting any additional investigation or hearing it deems necessary to reach a just decision concerning the voided appointment.

NOTE: Authority cited: Sections 18502 and 18701, Government Code. Reference: Section 18670, Government Code.

§ 243.6. Right to Appeal-Reimbursement Hearing; Petition for or Reconsideration.

~~(a) When the Executive Officer or Department takes action to correct an unlawful appointment(s) that includes voiding the appointment(s) and/or requiring reimbursement of compensation pursuant to section 243.3, subdivision (c), the employee(s) and/or the appointing power may file a written appeal to the Board in accordance with section 52.4, subdivision (e)(1)(Q).~~

~~(b) When the Board takes action to correct an unlawful appointment(s) that includes voiding the appointment(s) and/or requiring reimbursement of compensation pursuant to section 243.3, subdivision (c), the employee(s) and/or the appointing power may file a written petition for reconsideration to the Board within 30 calendar days of receipt of the final decision to take corrective action. Where the corrective action is taken solely as to~~

~~the appointing power and does not impact the appointment, the appointing power may file a written petition for reconsideration to the Board within 30 calendar days of receipt of the final Board decision.~~

(a) When the Board or Executive Officer issues a decision ordering the appointing power to void an appointment, and where the Board or Executive Officer finds that the employee did not act in good faith when accepting the appointment, the employee shall, pursuant to section 243.3, subdivision (c), be required to reimburse to the appointing power all compensation earned by the employee during the period of the unlawful appointment. In the event the employee and appointing power are unable to agree on the amount of reimbursement owed by the employee, the employee and/or the appointing power may, pursuant to section 243.3, subdivision (c), file a written appeal for a reimbursement hearing with the Board. Any such appeal for a reimbursement hearing shall be filed within one year of the effective date of the voided appointment.

(1) Upon the acceptance of an appeal for a reimbursement hearing, the Board shall schedule the matter for an investigatory hearing. Prior to the commencement of the investigatory hearing, the Board may direct the parties to file with the Board separate briefs setting forth the amount of reimbursement in dispute and the specific manner by which the parties arrived at their respective determinations concerning the amount of reimbursement owed by the employee.

(b) Any party to any decision issued by the Board or Executive Officer concerning a voided appointment shall be permitted to file a Petition for Reconsideration with the Board concerning the decision. Any such Petition for Reconsideration shall be filed with the Board within 30 days of receipt of the Board's or Executive Officer's final decision.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18670, 18654.5 and 18710, Government Code.