

**Regulations Implementing Revised
Federal Grant-in-Aid Merit System Requirements
(Government Code Sections 19800 through 19811)**

Text of Modified Regulations

The original proposal is in single underline. Changes are illustrated by a double underline for proposed additions and by strikeout for proposed deletions.

TITLE 2. ADMINISTRATION

Add Division 5 to the California Code of Regulations, title 2, to read as follows:

DIVISION 5. STATE AND FEDERAL GRANT-IN-AID PROGRAM MERIT SYSTEMS

CHAPTER 1. GENERAL

§ 17010. Purpose.

Every Local Agency administering a state or federally funded aid program that requires as a condition of program participation that the Local Agency operate a merit-based Personnel System is subject to this Division.

NOTE: Authority cited: Sections 19800, 19801, and 19811, Government Code.

Reference: Sections 19801 and 19810, Government Code.

§ 17011. Definitions.

As used in this Division,

(a) Administrative Law Judge means an individual in state service duly appointed to a position classified as an Administrative Law Judge.

(b) Classification means a category of positions that are sufficiently similar in the type of work performed by incumbents, level of difficulty,

responsibility, and qualifications required such that the positions warrant similar treatment in personnel and pay administration.

(c) Department means the California Department of Human Resources.

(d) Director means the Director of the California Department of Human Resources.

(d e) Disciplinary Action means an action by a Local Agency against an employee that is based on the employee's performance of the duties of the position and that results in the dismissal, demotion, suspension, or loss of pay or work hours of a permanent employee. Disciplinary Action does not include letters of reprimand, written instructions to the employee regarding correcting workplace behavior, or any other action that does not change a permanent employee's job classification or decrease his or her pay.

(ef) Federal Requirements means the federal principles and standards for a merit-based Personnel System set forth in federal regulations administered by the Office of Personnel Management, "Intergovernmental Personnel Act Programs; Standards for a Merit System of Personnel Administration" in the Code of Federal Regulations (CFR), under Title 5, Part 900, Subpart F, 62 FR 5323, Oct. 14, 1997 and as amended from time to time.

(fg) Hearing Officer means an individual designated by the Director to hear and prepare proposed decisions in those matters that may be appealed to the Department, including but not limited to appeals from audit findings and appeals from actions affecting Program employees. The Director may delegate to the Hearing Officer those duties and powers relating to the conduct of hearings established by Government Code section 19815.4(e) for purposes of making a determination.

(gh) Local Agency means any city, county, city and county, district, or other subdivision of the state, or any independent instrumentality thereof, that is required to utilize a merit-based Personnel System for Program employees.

(hi) Personnel System means the laws, rules, practices and policies a Local Agency follows, and the operation of its merit-based employee management system for applicants, Program employees and other Local

Agency employees. Personnel System includes but is not limited to, the performance of, and any documentation of:

(1) hiring, examination and selection, training, performance evaluation and disciplinary procedures;

(2) compensation plans, classification descriptions, position descriptions and duty statements;

(3) employee-management memoranda of understanding;

(4) anti-discrimination policies and procedures; and

(5) conflict of interest rules and procedures.

(j) Program or Programs means those state and federally funded operations that require any Local Agency administering any portion of the Program operate a merit-based Personnel System for employees engaged in Program operations. Such Programs include but are not limited to, the Social Security Act, as amended; the Public Health Service Act, as amended; and the Federal Civil Defense Act, as amended.

NOTE: Authority cited: Sections 19800, 19801, and 19811, Government Code.

Reference: Sections 19800, 19801, 19802, 19802.5, 19803, and 19810, Government Code.

§ 17012. Local Agency Administered Approved Merit-Based Personnel System for Program Employees—Total or Partial Approval.

(a) Every Local Agency may operate its Personnel System for Program employees in the same manner as it does for other employees of the Local Agency after the Department reviews and approves the Personnel System in order to confirm that the Personnel System is merit-based and satisfies the Federal Requirements. Upon request by a Local Agency, the Department shall review the Local Agency's Personnel System, may request additional information as it deems necessary, and shall make a

determination as to the adequacy of the Personnel System and advise the Local Agency of the Department's decision.

(b) In determining whether a Local Agency's Personnel System is consistent with the Federal Requirements, the Department shall review elements of the Personnel System that relate to the Federal Requirements including:

(1) Procedures and rules for employee recruitment, selection, and advancement.

(2) Compensation policies and procedures.

(3) Training policies and practices.

(4) Performance evaluation standards and procedures, including procedures for correcting and disciplining employees for poor performance.

(5) Overall fairness of the Personnel System, including policies regarding equal employment opportunity and nondiscrimination.

(6) Rules regarding conflicts of interest including rules protecting employees from coercion for partisan political purposes and prohibiting employees from using their authority to interfere with actions of others relating to elections.

(c) Once approved to operate its Personnel System for Program employees as for other employees, a Local Agency shall certify to the Department in the form and manner that the Department requires that it is operating its Personnel System in accordance with the information reviewed and approved by the Department and that it will continue to do so. The certification shall be renewed by the Local Agency on Department request.

(d) Any Local Agency approved to operate its own or any part of its Personnel System prior to January 1, 2014 shall be deemed approved by the Department. The Department may request that the Local Agency acknowledge its acceptance of any new standards adopted by the Department.

(e) A Local Agency that wants to apply a particular policy, standard, or procedure governing its Personnel System for its employees to Program employees may submit documentation that the policy, standard, or procedure is consistent with the Federal Requirements to the Department and ask the Department for approval. If the Department approves the request, the Local Agency may thereafter apply the approved policy, standard or procedure and the Department will administer the remainder of the personnel management system for the Local Agency in accordance with Chapter 2 of this division.

(f) If the Department denies the request of a Local Agency to operate all or part of its Personnel System for Program employees, it shall advise the Local Agency of the reasons for the denial in writing. The Local Agency may renew its request at any time.

(g) Any Local Agency approved to operate all or any part of its Personnel System for Program employees shall retain records pertaining to personnel management of Program employees. A copy of the policy on retention of personnel and related human resources records or a written advisement of the Local Agency's plan to preserve the records shall be provided to the Department upon request. If the Local Agency has no such policy, the Local Agency shall agree to retain records for seven (7) years from the date of the action or the date of the employee's separation, whichever is longer.

(h) Any Local Agency approved to operate all or part of its Personnel System for Program employees is subject to audit by the Department to determine compliance with the Federal Requirements. The audit schedule, scope, and frequency are within the discretion of the Department. The audit process may include an entrance conference with the Local Agency, a review of documentation, field work as necessary to clarify or expand on the documentation, an exit interview, and an opportunity for comment by the Local Agency to the draft report prepared by the Department. If a Local Agency submits written comments in response to a draft report, the response shall be included in the final audit report.

NOTE: Authority cited: Sections 19800, 19801, and 19811, Government Code.

Reference: Sections 19801, 19802.5, 19803, 19805, and 19808,
Government Code.

§ 17013. Department Procedures for Resolving Disputed Audit Findings.

(a) For purposes of this section, the following definitions shall apply.

(1) “Department Representative” means the manager of the division within the Department responsible for administration of merit system standards for Local Agencies under these regulations, or his or her designee.

(2) “Hearing” means a review of written submissions by the Parties and may include oral testimony or presentations if the Hearing Officer deems it appropriate.

(3) “Parties” means the Department Representative and the Local Agency collectively.

(b) After a final audit report has been issued, the Department Representative or the Local Agency may request that the Director convene a hearing within 30 calendar days of the issuance of the final audit report in order to resolve any disputed findings contained in the audit report. Any such request shall be made in writing to the Director and shall include a description of the particular elements of the audit report that are disputed and the reasons for the dispute.

(c) Within 15 calendar days of receiving a request for a hearing, the Director shall assign a staff manager who has not previously been involved in any aspect of the audit to serve as the Hearing Officer and to prepare a draft final decision for the Director’s review and adoption at the conclusion of the hearing process. The Hearing Officer shall promptly notify the Parties of his or her appointment.

(d) Within 30 calendar days of notice of the appointment of the Hearing Officer, the Parties shall prepare and provide to the Hearing Officer and to the other party a written statement in support of its position.

(e) Within 30 calendar days of the Hearing Officer receiving the statements, the Hearing Officer may schedule a date for oral presentations by the Parties if the Hearing Officer deems such presentations necessary to fully identify and understand the issues in dispute. The scope and manner of the oral presentations shall be within the discretion of the

Hearing Officer. Any presentations shall be recorded and available for transcription at the request of either party and at the expense of the party so requesting.

(f) Within 30 calendar days of the date that all material requested by the Hearing Officer is submitted, the Hearing Officer shall prepare a draft determination of the dispute and provide it to the Director. The Department Representative shall have the burden of proof to establish by a preponderance of the evidence that the Local Agency's Personnel System is out of compliance with the Federal Requirements.

(g) The Director shall have 30 calendar days from receipt of the draft determination to take action. If the 30 calendar days expire without the Director taking action, the draft decision shall be deemed the final determination of the Director. The Director may adopt the draft determination or direct that additional information be provided by the Local Agency or the Department Representative to the Hearing Officer and the determination be resubmitted for the Director's review subsequent to consideration of that information.

(h) The Director's decision shall include a determination of whether any authority previously granted to the Local Agency to operate all or part of its own Personnel System for Program employees shall be rescinded or modified. In the event the Local Agency is directed to take action under the terms of the Director's final determination and fails to do so within 60 calendar days or such longer period as the Director may designate in his/her decision the Director shall notify the state officer responsible for administering the Program of his or her decision that the Local Agency is not in conformity with Federal Requirements.

Note: Authority: Sections 19800, 19801, and 19811, Government Code. Reference: Sections 19800, 19802.5, 19803, 19805, and 19806, Government Code.

§ 17014. Qualifications and Classifications of Program Employees.

(a) Except for those positions designated as unclassified under (b), the Local Agency shall allocate every Program position to a Classification consistent with the Local Agency's approved Personnel System that is appropriate for the duties of the position.

(b) Every Local Agency may designate a limited number of positions within the Program as unclassified or otherwise not subject to merit system requirements and the requirements of these regulations so long as such designation is consistent with the Local Agency's approved Personnel System concerning the type, number, level and process for establishing such unclassified positions.

Note: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code, and CFR 900.602(a).

CHAPTER 2. DEPARTMENT ADMINISTERED MERIT-BASED PERSONNEL SYSTEM FOR PROGRAM EMPLOYEES.

§ 17030. Department Oversight of Local Agency Personnel System for Program Employees.

For any Local Agency not approved to operate its own Personnel System in total, the Department shall oversee the Local Agency's operation of its merit-based Personnel System for Program employees pursuant to this Chapter. In the case of a Local Agency that is approved by the Department to operate specific elements of its Personnel System for Program employees, the Department shall oversee all other aspects of the Local Agency's operation of its merit-based Personnel System pursuant to this Chapter.

NOTE: Authority cited: Sections 19800, 19801, and 19811, Government Code.

Reference: Sections 19801, 19803, and 19808, Government Code.

§ 17031. Qualifications and Classification of Program Employees.

(a) Except for those positions designated as unclassified under (b), the Local Agency shall allocate every Program position to a Classification established by the Department that is appropriate to the duties of the position. The Local Agency's position allocation shall be subject to audit by the Department.

(b) Every Local Agency may designate a limited number of positions within the Program as unclassified or otherwise not subject to merit system

requirements and the requirements of these regulations so long as such designation is consistent with the Local Agency's Personnel System regarding the type, number, level and process for establishing such unclassified positions. Designations of positions as unclassified are subject to audit by the Department.

Note: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

§ 17032. Recruitment and Selection of Program Employees.

(a) The Department shall ensure that the availability of Program employee positions is advertised for a sufficient period of time and in a manner that provides for a qualified candidate pool based on the level of the position, the required qualifications, and the availability of qualified applicants in the appropriate labor market.

(b) The advertisement shall include a description of the duties of the position, the position compensation, required minimum qualifications, a description of the selection process, and instructions on when and how to submit an application.

(c) If applications will be accepted for a period of time different from the advertising period, the advertisement shall state the date, time and manner that applications will be accepted; and the date for accepting applications shall be on the close of advertising or subsequent to the close of advertising.

Note: Authority: Sections 19800, 19801, and 19811, Government Code. Reference: Section 19803, Government Code.

§ 17033. Selection Processes for Applicants to Program Positions.

(a) The selection process shall fairly test and determine the relative qualifications, fitness and ability of applicants to perform the duties of the Program position to which they seek appointment. Applicants shall be selected based on job-related criteria developed prior to reviewing or examining any individual application. The selection process may be conducted through interviews, written examinations, performance based examinations, assessments of education and experience of the applicants, or any combination of processes that are reasonably designed to ascertain the applicant's ability to perform the duties of the Program position.

(b) Eligibility to participate in the selection process may be limited to current employees of the Local Agency or of the Program if the Local Agency's Personnel System allows for such limitations on the candidate group in positions at a similar level to the vacant Program position.

Note: Authority: Sections 19800, 19801, and 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17034. Certification of Qualified Candidates and Appointment to Program Positions.

(a) At the conclusion of the selection process, the Department shall provide to the Local Agency a list of applicants and the scores each applicant achieved in the selection process for the Program position. The Local Agency shall follow its Personnel System to certify the appropriate number of names for consideration for appointment and to finalize the appointment.

(b) Appointment procedures for Program employees shall be conducted by the Local Agency in the same manner as for other Local Agency employees.

(c) If Local Agency employees are required to serve probationary periods, the Local Agency shall require and administer probationary periods for Program employees in the same manner. If a Local Agency is authorized to reject an employee while the employee is on probation, Program employees may be rejected for the same reasons and in the same manner as for other employees. ~~The notification of rejection on probation shall be~~

in writing and indicate the reasons for the rejection. The Program employee may appeal that rejection to the Department. The appeal must be in writing and filed within 30 calendar days of the date on which the rejection became effective. The appeal does not delay the effective date of the rejection on probation.

(d) The rights of the parties to an appeal under this section shall be in accordance with section 17045(b) through (g) of these regulations except that the appellant has the burden to show by a preponderance of the evidence that the reasons cited by the Local Agency for the rejection on probation are false and the rejection was done in bad faith.

Note: Authority: Sections 19800, 19801, and 19811, Government Code. Reference: Section 19803, Government Code.

§ 17035. Disqualification of Applicants from Consideration for Program Positions.

A Local Agency or the Department may disqualify any applicant from competing in the examination or from further consideration for appointment for any of the following reasons:

- (a) Failure to meet any of the required qualifications for the position.
- (b) Failure to follow application or examination procedures for the position.
- (c) False statements in the application or selection process.
- (d) Any other reason established in the Local Agency's Personnel System.

Any applicant so disqualified shall be notified in writing of the basis for the disqualification and shall be entitled to appeal the decision in accordance with section 17036 of these regulations.

Note: Authority: Sections 19800, 19801, and 19811, Government Code. Reference: Section 19803, Government Code.

§ 17036. Selection Process Appeals.

(a) Applicants to Program positions may appeal to the Department actions and decisions made in the Local Agency selection process on the following grounds:

(1) for alleged irregularity, discrimination, bias, or fraud in one or more steps in an examination.

(2) for alleged improper acts or circumstances resulting in erroneous interpretation and application, by the examiners, of the skills, knowledge and abilities considered essential for satisfactory performance in the class for which the applicant was examined.

(b) Appeals of decisions from selection procedures must be filed with the Department within 30 calendar days of the date on which the appellant receives notice of the decision that he or she is appealing. Sufficient examination material shall be made available to an appellant to explain the basis for the examination decision, and to confirm the computation of the appellant's score unless in the Department's discretion such access would result in an unfair advantage to the appellant in a future examination.

(c) The Director shall appoint a Hearing Officer to hear the appeal and to prepare a proposed decision. The Hearing Officer shall review documents submitted by the appellant and such other evidence as the Hearing Officer may request. The appellant shall have the burden of demonstrating by a preponderance of the evidence that the selection process was conducted improperly and that as a result, the applicant was ineligible for consideration by the Local Agency in filling the position. The Hearing Officer may in his or her discretion schedule an evidentiary hearing. The Hearing Officer shall prepare a proposed decision for the Director. The Director shall render a decision within 60 calendar days of submission of all of the evidence.

(d) An appeal under this section shall not require a delay of an appointment to a Program position unless the Local Agency in its discretion determines a delay is appropriate. Any correction in ratings shall not affect appointments that may have already been made from the eligible list.

Note: Authority: Sections 19800, 19801, and 19811, Government Code.
Reference: Sections 19803 and 19805, Government Code.

§ 17037. Compensation for Program Employees.

Local Agencies shall compensate Program employees pursuant to the Personnel System in the same manner established for other Local Agency employees. The Department may review the Local Agency's compensation policy and practices as necessary to ensure compliance with the Federal Requirements. The compensation plan may include provisions explaining the circumstances under which a Program employee's salary may remain above the maximum for the Program employee's Classification if the salary would be reduced through no fault of the Program employee and if the Personnel System permits compensation above the classification maximum under the same circumstances for all Local Agency employees.

Note: Authority: Sections 19800, 19801, and 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17038. Training for Program Employees.

Local Agencies shall provide training to Program employees pursuant to the Personnel System in the same manner established for other Local Agency employees. The Department may review the Local Agency's training policy and practices as necessary to ensure compliance with the Federal Requirements.

Note: Authority: Sections 19800, 19801, and 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17039. Performance Evaluation for Program Employees.

Local Agencies shall evaluate the performance of Program employees pursuant to the Personnel System in the same manner established for other Local Agency employees. Performance rating criteria must be job related, objective, and applied consistently to all employees subject to performance evaluation. Program employee complaints about the performance evaluation reports or process shall be processed in accordance with Local Agency procedures.

Note: Authority: Sections 19800, 19801, and 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17040. Overall Fairness of the Local Agency Personnel System.

The Local Agency shall provide for equal employment opportunity, nondiscrimination, and other policies promoting fairness in the overall personnel operations for applicants and Program employees pursuant to the Personnel System in the same manner established for other Local Agency employees.

Note: Authority: Sections 19800, 19801, and 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17041. Conflict of Interest and Improper Use of Authority for Program Employees.

The Local Agency shall follow the rules and procedures regarding conflicts of interest, including rules relating to improper use of authority by an employee for Program employees pursuant to the Personnel System in the same manner established for other Local Agency employees.

Note: Authority: Sections 19800, 19801, and 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17042. Reduction in Force.

(a) In the event that the Local Agency determines a reduction in the number of Program employees is necessary, the Local Agency shall follow the procedures established in its Personnel System for reductions in force. Such procedures may include but are not limited to requirements for how and when notice is given to the affected employees, limits on appointments to vacant positions pending completion of the reduction in force, and provisions for creating reemployment lists of those employees laid off or demoted through the reduction in force process.

(b) (1) For the purposes of the Local Agency reduction in force process, seniority shall be calculated for Program employees as for any other employee of the Local Agency with the exception that Program employees hired prior to the effective date of this regulation shall retain the seniority

accrued prior to the effective date of this regulation, as provided in subsection (2). Program employees who are hired after the effective date of this regulation shall accrue seniority in accordance with the Personnel System of the Local Agency.

(2) In addition to other seniority to which a Program employee is entitled, Program employees with permanent or probationary appointments in a Local Agency overseen by the Department prior to the effective date of this regulation shall be credited with all seniority accrued as of the effective date of this regulation as provided in this subsection. After the effective date of these regulations, these Program employees will accrue seniority in accordance with the Personnel System of the Local Agency.

(A) Program employees who were appointed on a permanent or probationary basis prior to the effective date of this regulation shall be credited for all employment in any Local Agency governed by this division if that employment was not broken by a permanent separation of six (6) months. When there had been a permanent separation of six (6) months or more, credit earned is only for employment following such break in service. Program employees hired from a reemployment list regained all previously earned seniority on the date of reemployment. A Program employee who transferred to another department in the same Local Agency, and who subsequently returned to the Program without a permanent separation, retains seniority earned prior to the transfer from the Program.

(B) One point of seniority credit shall be given for each qualifying month of service earned prior to the effective date of these regulations.

(C) Notwithstanding the provisions of subsection (b)(2)(A), Program employees who were on approved leaves of absence such as educational leave, military leave, maternity leave, and disability leave shall retain seniority accumulated before the leave of absence. The time the Program employee spends on such approved leave of absence shall not be included in the seniority score computation except that a Program employee who was on industrial disability leave shall have that time credited in the seniority score computation.

(D) Twelve points shall be added to the seniority score of a Program employee with an overall rating of superior, outstanding or similar term

denoting the highest rating category in the Local Agency performance appraisal system, on the last two regularly scheduled written performance reports. This provision only applies if the Local Agency rating system included performance reporting forms that were designated in such a way that overall performance which was superior and overall performance which was unacceptable were clearly distinguished from other possible ratings of overall performance.

(c) A Program employee may appeal to the Department a reduction in force decision affecting his or her employment. Prior to filing an appeal with the Department, the employee shall attempt to resolve the dispute directly with the Local Agency. In the event the Local Agency and the Program employee are unable to resolve the dispute, the Program employee must notify the Department in writing of his or her appeal and the basis for the appeal. The Program employee must attach evidence that a remedy was sought from the Local Agency and denied. The appeal must be received by the Department within 30 calendar days of the date on which the Program employee was notified that the Local Agency would not provide the relief the Program employee requested.

(d) The scope of appeal is limited to:

(1) The Local Agency's failure to comply with an element of the Personnel Plan that adversely impacted the appellant in particular.

(2) Miscalculation of the appellant's seniority score where seniority is a factor in the order of lay-off.

(e) The Department shall resolve the appeal by reviewing documents submitted by the parties and such other evidence as the Department may request. The Department may in its discretion schedule an evidentiary hearing. The Department shall render a decision within 60 calendar days of submission of all of the evidence.

(f) The reduction in force process shall not be delayed by the filing of any appeal unless the Local Agency determines a delay is appropriate.

Note: Authority: Sections 19800, 19801, and 19811, Government Code.
Reference: Sections 19803 and 19805, Government Code.

§ 17043. Failure to Meet Requirements for Continuing Employment.

(a) If such a procedure is permitted under the Local Agency's Personnel System, in lieu of disciplinary action, a Local Agency may terminate, demote, transfer, reduce the salary, or otherwise alter the employment of a Program employee without the Program employee's consent and for reasons unrelated to the Program employee's job performance when the only cause of action against the employee is failure to meet a requirement for continuing employment. Such actions shall not be considered disciplinary for purposes of the Program employee's record and may be referred to as non-disciplinary actions. Such actions may include but are not limited to demotion or transfer; termination based on an unapproved absence by the employee; demotion or transfer unrelated to a reduction in force; actions based on the Program employee's medical condition; the imposition of paid and unpaid leaves; and any other action permitted under the Local Agency's Personnel System.

(b) A Program employee may appeal such actions to the Department after seeking a remedy directly from the Local Agency. In the event the Local Agency and the Program employee are unable to resolve the dispute, the Program employee shall notify the Department in writing of his or her appeal and the basis for the appeal. The employee shall attach evidence of having requested a remedy directly from the Local Agency and the outcome of that request. Such appeals must be filed with the Department within 30 calendar days of the date on which the Program employee was notified that the Local Agency would not provide the relief the Program employee requested. An appeal does not delay the effective date of the action.

(c) The scope of appeal is limited to:

(1) Whether the Local Agency failed to comply with an element of the Personnel System.

(2) Whether the Local Agency is taking the action for an unlawful reason.

(d) On receipt of the appeal, the Director shall appoint a Hearing Officer who is an Administrative Law Judge to hear the appeal in accordance with Section 17045 and prepare a proposed decision, except that the appellant

has the burden of proving by a preponderance of the evidence that the non-disciplinary action was improper. The Director shall render and issue a decision within 90 calendar days of all evidence being submitted.

(e) The appellant's rights to reinstatement to his or her former position after the cause of the non-disciplinary action has been resolved shall be determined by the Local Agency in accordance with the Local Agency's Personnel System.

Note: Authority: Sections 19800, 19801, and 19811, Government Code.
Reference: Sections 19803 and 19805, Government Code.

§ 17044. Disciplinary Actions based on Program Employee Performance or Conduct.

When a Program employee's performance or conduct is unacceptable to the Local Agency, the Local Agency may take Disciplinary Action against the Program employee for any cause established in the Local Agency's Personnel System. The Local Agency shall prepare and serve the Disciplinary Action in accordance with the Personnel System rules, including provisions describing the length and type of notice to be given to the Program employee, the contents of the notice, any right to meet or appeal to the Local Agency prior to the action becoming effective, and the inclusion of documentary evidence with the notice of the action.

Note: Authority: Sections 19800, 19801, and 19811, Government Code.
Reference: Section 19803, Government Code.

§ 17045. Appeals from Program Employee's Disciplinary Action.

(a) A Program employee may appeal a Disciplinary Action to the Department within 30 calendar days of the date on which the Disciplinary Action became effective. The appeal must be in writing and need not be in any particular form but shall include a description for the basis of the appeal and the relief requested by the appellant. The Department shall ensure that the Local Agency receives a copy of the appeal and all materials provided by the appellant. The appeal does not delay the effective date of the Disciplinary Action.

(b) The Director shall designate a Hearing Officer who is an Administrative Law Judge to hear the appeal and prepare a proposed decision for the Director's consideration. The Hearing Officer shall preside over all aspects of the hearing, may grant or refuse extensions of time, set the hearing dates, conduct the hearing and administer oaths to witnesses, rule on the submission of evidence, request additional evidence or the submission of documents by the parties, including legal briefs, and perform any and all other acts in connection with the hearing that may be necessary. Hearings are public, although witnesses may be excluded, unless the Hearing Officer determines that it is appropriate to close the hearing.

(c) Each party shall have these rights: to call and examine witnesses; to be represented by counsel or another representative of their choosing; to request the issuance of subpoenas and subpoenas duces tecum; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issue, even though that matter was not covered in the direct examination; and to impeach any witness regardless of which party first called the witness to testify. The party with the burden of proof shall have the opportunity to rebut the evidence.

(d) If an appellant does not testify on his or her behalf, the appellant may be called and examined as on cross-examination by the Local Agency. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence shall be admitted and may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it is the type of hearsay admissible over objection in a civil action. The rules of privilege shall be effective to the same extent to which they are now or may hereafter be recognized in civil actions. Irrelevant and unduly repetitious evidence may be excluded.

(e) The Local Agency shall have the burden of proving by a preponderance of evidence that the Disciplinary Action is supported by the evidence and that proper procedures were followed.

(f) The Department shall issue a decision within 90 calendar days of submission of all of the evidence or other information requested by the

Hearing Officer and shall provide the decision to both parties. The decision may uphold the Disciplinary Action in all respects, or modify the penalty assessed to a lower level of discipline if a lesser penalty is available under the Local Agency Personnel System.

(g) After 30 calendar days, the decision shall be binding on the Local Agency and is the final administrative decision in the matter. Notwithstanding the above, within 30 calendar days after service of a copy of a decision, any party may file a petition for rehearing with the Department. The petition shall be in writing and shall contain all the grounds upon which the party requesting rehearing believes the petition should be granted. Any party making such a request shall serve a copy of the request on the opposing party. If such a request is made, the Department shall grant or deny the request within 60 calendar days. If a petition for rehearing is granted, the matter may be set for rehearing or the Department may reconsider the appeal based solely upon the existing record and arguments provided by the parties. The Hearing Officer shall determine the scope, procedures, and the schedule for any subsequent proceedings. Failure to act upon a petition within 90 calendar of its filing shall be deemed a denial of the petition.

Note: Authority: Sections 19800, 19801, and 19811, Government Code. Reference: Sections 19803 and 19805, Government Code.

§ 17046. Processing Grievances from Program Employees.

Grievances shall be defined and processed as provided in the Personnel System for Program employees as for other Local Agency employees.

Note: Authority: Sections 19800, 19801, and 19811, Government Code. Reference: Section 19803, Government Code.

§ 17047. Department Audits of Local Agency Personnel Systems.

The Department may audit any Local Agency's Personnel System under this Chapter as necessary to ensure that those elements of the Personnel System applied to Program employees are in compliance with the Federal Requirements. The audit schedule, scope, and frequency of audits are within the discretion of the Department. The audit process may include an

entrance conference with the Local Agency, a review of Local Agency documentation, field work as necessary to clarify or expand on the documentation, an exit interview, and an opportunity for comment by the Local Agency to the draft report prepared by the Department. If a Local Agency submits written comments in response to a draft report, the response shall be included in the final audit report. The Local Agency or Department Representative may dispute Department audit findings pursuant to section 17014 of these regulations.

Note: Authority: Sections 19800, 19801, and 19811, Government Code.
Reference: Sections 19803 and 19808, Government Code.