



CALIFORNIA STATE PERSONNEL BOARD

801 Capitol Mall • Sacramento, CA 95814

**NOTICE OF PROPOSED ADOPTION OF REGULATIONS
AND STATEMENT OF REASONS**

**California Code of Regulations
Title 2, Administration
Division 1, Administrative Personnel**

DATE: December 21, 2001

TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND
MEMBERS OF THE GOVERNOR'S CABINET

SUBJECT: Regulations Governing the State Personnel Board's State Employee
Mediation Program

AUTHORITY:

Under authority established in Government Code Section 18701, the State Personnel Board (SPB) has proposed to adopt Sections 60 through 60.10 to Title 2 of the California Code of Regulations, to provide procedures for conducting voluntary mediation hearings to resolve disputes between parties of one or more state agencies.

REFERENCE:

These regulations are enacted to implement, interpret, and/or make specific, Government Code Section 11420.20.

PUBLIC HEARING:

Date and Time: February 5, 2002, from 2:30 p.m. to 3:00 p.m.
Place: Auditorium
801 Capitol Mall, Room 150
Sacramento, California 95814
Purpose: To receive oral public comments about this action.

WRITTEN PUBLIC COMMENT PERIOD:

The public comment period for written comments will close February 4, 2002, at 5:00 p.m. This is to allow time for SPB staff to provide copies of any written comments to the five-member State Personnel Board (Board) for their consideration at the time of the hearing; however, any person may also submit written comments about the proposed changes at the hearing. To be considered by the Board, written comments must be received by Bruce Monfross at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, before the close of the written comment period. During

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the 45-day written comment period, written comments may also be e-mailed to Bruce Monfross at bmonfross@spb.ca.gov or faxed to (916) 653-4256.

AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/CONTACT PERSONS:

Copies of the express terms of the proposed action, the Statement of Reasons, and all of the information upon which the proposal is based are available upon request directed to SPB's contact person. The rulemaking file is available for review during normal business hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Please contact Bruce Monfross at (916) 653-1403 or TDD (916) 653-1498 for additional information regarding this action. The backup agency contact for this action is Steve Unger at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, (916) 651-8461 or TDD (916) 653-1498. Questions regarding the substance of these regulations should be directed to the contact person. Questions regarding the regulatory process in conjunction with these regulations should be directed to the backup contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, SPB will make the full text of the changed regulation(s) available for at least 15 days before the date the regulation is permanently amended.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Government Code Section 18701 authorizes the Board to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act.

Government Code Section 11420.20 authorizes state agencies that engage in alternative dispute resolution, including mediation by a neutral mediator, to implement their own regulations to govern their particular mediation process.

Several years ago, SPB established the State Employee Mediation Program (SEMP) as a pilot program in order to provide an efficient, inexpensive, non-adversarial alternative to managing or resolving disputes that occur within the workplace, without diminishing the rights of any party to the mediation to subsequently address the issue(s) in a more traditional administrative, judicial, or other forum. Since its inception, SEMP has proven to be extremely successful in resolving workplace disputes, resulting in fewer disciplinary and/or discrimination/retaliation hearings being appealed to SPB. As a result of this success, in 2001 the Legislature appropriated funds for SPB to formalize SEMP as a no-cost alternative to parties who voluntarily seek to resolve pending or potential workplace disputes.

While the Office of Administrative Hearings has implemented regulations related to alternative dispute resolutions conducted by state agencies (California Code of Regulations, Title 1, Sections 1200-1230), Government Code Section 11420.20 authorizes state agencies that engage in alternative dispute resolution, including mediation by a neutral mediator, to implement their own regulations to govern their particular mediation process.

SPB is proposing to add Sections 60 through 60.10 to Title 2 of the California Code of Regulations in order to set forth the rules governing the mediation process conducted under the auspices of SEMP, including:

1. Which matters may be mediated under SEMP.
2. The process for referring matters to SEMP.
3. The effect that mediation under the SEMP will have on pending or future legal claims before the Board.
4. Qualification standards and standards of conduct for the SEMP mediator.
5. Confidentiality of communications made during the mediation.
6. Termination of the mediation and methods for resolving the dispute by mutual agreement.

IMPACT ON SMALL BUSINESSES:

No impact on small businesses is anticipated from the implementation of the proposed amendments. Government Code Sections 8547.8, 19683, and 19700-19706 apply only to state agencies. The proposed regulations will affect only state agencies and state employees and applicants for state employment.

LOCAL MANDATE:

SPB has determined that the proposed action has no mandate upon local agencies or school districts and therefore requires no reimbursement pursuant to Section 17561 of the Government Code.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Savings to State Agencies:

The proposed regulations have been created in order to clarify the procedures set forth in Government Code Sections 8547.8, 19683, and 19700-19706. It is anticipated that

any additional costs that the proposed regulations may cause for state agencies will be insignificant.

Impact on Housing Costs:

The proposal will not affect housing costs.

Costs or Savings in Federal Funding to the State:

No impact.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed:

No costs to local agencies or school districts are required to be reimbursed.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

The proposal does not impose nondiscretionary costs or savings on local agencies.

Cost Impact on Representative Private Persons or Businesses:

SPB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:

SPB has made an initial determination that the proposed action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT REGARDING THE EFFECT ON JOBS OR BUSINESSES:

The adoption of the proposed regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

DETERMINATION:

SPB must determine that no alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SPB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

FINAL STATEMENT OF REASONS:

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law pursuant to Government Code Section 18214, under which no Final Statement of Reasons is required. If a Final Statement of Reasons is nevertheless prepared, it may be obtained from the contact person or the backup contact person when it becomes available.

ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEB SITE:

The text of the proposed regulations; the Notice of Proposed Adoption of Regulations and Statement of Reasons; and, if prepared and when available for review, the Final Statement of Reasons will be on SPB's Web site at: www.spb.ca.gov.

STATEMENT OF REASONS:

The Office of Administrative Hearings has implemented regulations related to alternative dispute resolutions conducted by state agencies; however, Government Code Section 11420.20 authorizes state agencies that engage in alternative dispute resolution, including mediation by a neutral mediator, to implement their own regulations to govern their particular mediation process. SEMP, established as a pilot program by SPB several years ago as a means of providing an efficient, inexpensive, non-adversarial alternative to managing or resolving disputes that occur within the workplace, has proven to be extremely successful. The program offers an innovative, forward-looking approach to diffusing workplace disputes by utilizing mediation as an informal collaborative problem-solving process. SEMP mediation promotes better understanding and assists employers and employees in managing workplace disputes by providing state employees with tools to effectively resolve current and future conflicts. SEMP provides a confidential, non-adversarial process which has been useful for resolving complaints that were initially presented as claims of discrimination, requests for reasonable accommodation and allegations of unfairly imposed disciplinary action as well as interpersonal conflicts that cause disruption and tension in the work place.

These proposed regulations will implement those practices and procedures that SPB has discovered are most beneficial in effectuating the conflict resolution goals embodied in SEMP. While certain of the provisions set forth in these regulations are similar to the model regulations promulgated by the Office of Administrative Hearings, particularly with regard to the qualifications of mediators and the confidentiality of communications made during SEMP mediations, the great majority are specific to SEMP and simply cannot be adequately addressed by the Office of Administrative Hearings' model regulations. These provisions include: (1) Which matters may be mediated under SEMP; (2) The process for referring matters to SEMP; (3) The effect that mediation

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under SEMP will have on pending or future legal claims before the Board; and
(4) Termination of the mediation and methods for resolving the dispute by mutual agreement.

Mike Willihnganz
Chief, Policy Division

Attachment: Text of Proposed Adoption of Regulations



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Regulations Governing the State Employee Mediation Program

All new text is indicated by underline.

Title 2. ADMINISTRATION

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

§ 60. Definition and Purpose.

Mediation refers to a process whereby a neutral third person called a Mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is a voluntary, informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable written agreement. In mediation, decision making authority rests with the parties, not the Mediator. The role of the Mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring resolution alternatives.

The purpose of the State Personnel Board's State Employee Mediation Program (SEMP) is to provide an efficient, inexpensive, non-adversarial alternative to managing or resolving disputes that occur within the workplace, without diminishing the rights of any party to the mediation to subsequently address the issue(s) in a more traditional administrative, judicial, or other forum.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.1. Exclusivity.

The model regulations related to alternative dispute resolution implemented by the Office of Administrative Hearings (1 Cal. Code Regs., Sections 1200-1230), pursuant to Government Code Section 11420.20, are not applicable to SEMP.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.2. Scope.

Any party to a dispute that is either pending, or has the potential to come before, the Appeals Division of the State Personnel Board, may request that the dispute be referred to mediation.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.3. Referral of Proceedings.

(a) Any party to a dispute may initiate mediation by filing a request for mediation with the SEMP unit of the Appeals Division. The application shall contain:

(1) a statement as to whether an appeal or complaint has been filed with the State Personnel Board or whether the dispute is pending in any other forum;

(2) an election to mediate the dispute;

(3) the name of the appointing authority and the names, addresses, telephone and fax numbers or other appropriate electronic communication addresses or numbers of all individual parties to the dispute; and

(4) a statement as to whether all of the parties to the dispute have agreed to mediation.

(b) Filing a request for mediation constitutes consent to submit the dispute to mediation. A request for mediation shall not stay any pending proceeding and shall have no effect on any procedural or substantive right of any party to the dispute, unless each party agrees otherwise in writing.

(c) A designee of the State Personnel Board shall review the application to determine if the dispute is suitable for mediation. If it is determined that the dispute is not suitable for

mediation, the designee of the State Personnel Board shall notify the requesting party of that fact. If it is determined that the dispute is suitable for mediation, the designee of the State Personnel Board shall assign the matter to a Mediator for case development.

(d) Upon receipt of assignment of the mediation, the Mediator shall contact the party requesting mediation as well as the other parties to the dispute to determine whether all parties have agreed to mediate, confirm that the case is suitable for mediation, and develop the case for mediation. The Mediator will discuss with each party their perspective of the facts, issues, and expectations for the mediation.

(e) If the Mediator is unable to confirm that all of the parties to the dispute are willing to mediate, or if the Mediator determines the dispute is not suitable for mediation, the parties shall be so notified and the matter closed or referred back to the appropriate Appeals Division process.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.4. Date, Time and Place of Mediation.

Once the Mediator has confirmed voluntary participation by the disputing parties, and has confirmed that the case is suitable for mediation, the Mediator shall, in consultation with the parties and co-Mediator, fix the date, time, and place of each mediation session. The mediation shall be held at any convenient location agreeable to the parties and the Mediator. The mediation need not be completed within any set period of time, and more than one mediation session may be scheduled if all parties and the Mediator agree that additional mediation sessions would prove productive. Statutory, regulatory, and other timelines related to the dispute itself will not be affected unless by written stipulation of the parties.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.5. Attendance at Mediation.

All involved, consenting parties shall attend the mediation session(s). A party other than a natural person (e.g., a governmental entity) satisfies this attendance requirement by sending a

representative familiar with the facts of the dispute, and that person shall have the authority to negotiate and effectively recommend settlement to the governmental entity involved. Any party to the mediation may have the assistance of an attorney or other representative, but the role of the representative may be limited by agreement of the parties and the Mediator so as to best effectuate the goals of the mediation.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.6. Standards of Conduct for Neutral Mediators.

Any Mediator, whether a trained volunteer or paid, participating in the mediation pursuant to these regulations shall comply in good faith with the California statutes and regulations governing mediation, including Evidence Code Sections 703 and 1115-1128 and 2 Cal. Code Regs., Sections 60-60.10.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.7. Agreements.

Agreements resolving the mediated dispute may be written, signed, and dated by the parties or an authorized representative of the party or parties.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.8. Termination of Mediation.

Any party or the Mediator may terminate the mediation at any time by written notice to or by the Mediator and all other parties to the mediation, or in any other manner provided by Evidence Code Section 1125. If any party or the Mediator terminates the mediation, or if the mediation does not result in resolution, the parties shall resume the same status as before the mediation and shall proceed as if mediation had not taken place.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.9. Confidentiality of Communications.

Confidentiality shall be governed by Evidence Code §703.5 and Evidence Code Sections 703.5 and 1115-1128.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Section 11420.20, Government Code.

§ 60.10. Alternate Resolution of the Complaint/Appeal.

It is the policy of the Board to encourage parties to a complaint/appeal to attempt to resolve the complaint/appeal informally through use of the State Personnel Board's State Employee Mediation Program. Toward that end, if the parties to a complaint/appeal filed with the Board mutually request, in writing, an extension of any deadlines set forth in Board regulations concerning any hearing conducted by the Board in an effort to utilize the above-referenced alternative dispute resolution processes, the Board or its designated representative may grant such a request for an extension not to exceed 60 days.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Section 11420.20, Government Code.