

CALIFORNIA STATE PERSONNEL BOARD

Date of Issue: February 19, 1991

MEMO To: ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS

SUBJECT: STIPULATIONS ON ADVERSE ACTIONS AND REJECTIONS ON  
PROBATION

The purpose of this memo is to advise departments and employee organizations of a recent determination by the Office of Administrative Law (OAL) and the response of the State Personnel Board (SPB).

In a memo dated December 20, 1989, to all State agencies and employee organizations, the Board advised parties of the need to submit proposed stipulated agreements on adverse action and rejections on probations to the Board on a timely basis. The memo noted also that the Board was aware that a number of stipulated agreements had been executed which did not comply with the requisite time frames and provided parties until January 31, 1990, to obtain SPB approval of these agreements. Finally, the memo advised parties of a recent decision by the Board to disapprove a settlement agreement which contained language limiting information that a department would provide to other agencies concerning the circumstances surrounding a resignation and exempted the employee from indicating on applications for State employment that their resignation was under unfavorable circumstances. The memo provided parties with an opportunity to reconsider similar language in settlement agreements previously submitted to the Board.

As a result of challenges filed by several employee organizations, the OAL has determined that the January 31, 1990 grace period provided by the Board constituted a regulation and should have been adopted in accordance with the provisions of the Administrative Procedures Act. Regarding the information in the December 20, 1989 memo concerning the recently disapproved agreement, OAL indicated "Absent additional facts and evidence, we cannot say with absolute certainty that the Board has adopted a rule that restricts the contents of stipulated agreements. However, we can conclude that any such rule would govern agency procedure and constitute a "regulation" as defined in the key provision of Government Code section 11342, subdivision (b)."

The Board plans no action concerning the January 31, 1990 grace period since the matter is moot and we contemplate no need for this exemption in the future. Regarding the contents of stipulated agreements, proposed agreements will no longer be returned for reconsideration when those agreements contain language similar to that previously disapproved by the Board. The Board will review all submitted stipulations and continue to decide on a case-by-case basis whether the agreements should be approved. In the event the Board determines that further

guidance on stipulations is necessary, the Board will utilize its precedential decision-making authority, seek legislation or adopt regulations.

For further information concerning this memorandum, contact David Leighton at (916) 445-5191 or ATSS 485-5191 or TDD (916) 445-5191.

/s/  
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