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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15990.3] (Division 3 added by Stats. 1945, Ch. 111.)

PART 1. STATE DEPARTMENTS AND AGENCIES [11000 - 11898] (Part 1 added by Stats. 1945, Ch. 111.)

CHAPTER 4.5. Administrative Adjudication: General Provisions [11400 - 11475.70] (Chapter 4.5 added by Stats. 1995, Ch. 938, Sec. 21.)

ARTICLE 6. Administrative Adjudication Bill of Rights [11425.10 - 11425.60] (Article 6 added by Stats. 1995, Ch. 938, Sec. 21.)

11425.10. (a) The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements:

- (1) The agency shall give the person to which the agency action is directed notice and an opportunity to be heard, including the opportunity to present and rebut evidence.
- (2) The agency shall make available to the person to which the agency action is directed a copy of the governing procedure, including a statement whether Chapter 5 (commencing with Section 11500) is applicable to the proceeding.
- (3) The hearing shall be open to public observation as provided in Section 11425.20.
- (4) The adjudicative function shall be separated from the investigative, prosecutorial, and advocacy functions within the agency as provided in Section 11425.30.
- (5) The presiding officer is subject to disqualification for bias, prejudice, or interest as provided in Section 11425.40.
- (6) The decision shall be in writing, be based on the record, and include a statement of the factual and legal basis of the decision as provided in Section 11425.50.
- (7) A decision may not be relied on as precedent unless the agency designates and indexes the decision as precedent as provided in Section 11425.60.
- (8) Ex parte communications shall be restricted as provided in Article 7 (commencing with Section 11430.10).
- (9) Language assistance shall be made available as provided in Article 8 (commencing with Section 11435.05) by an agency described in Section 11018 or 11435.15.

(b) The requirements of this section apply to the governing procedure by which an agency conducts an adjudicative proceeding without further action by the agency, and prevail over a conflicting or inconsistent provision of the governing procedure, subject to Section 11415.20. The governing procedure by which an agency conducts an adjudicative proceeding may include provisions equivalent to, or more protective of the rights of the person to which the agency action is directed than, the requirements of this section.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

11425.20. (a) A hearing shall be open to public observation. This subdivision shall not limit the authority of the presiding officer to order 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 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, settlement conference, or proceedings for alternative dispute resolution other than binding arbitration.

(Amended by Stats. 2021, Ch. 401, Sec. 11. (AB 1578) Effective January 1, 2022.)

11425.30. (a) A person may not serve as presiding officer in an adjudicative proceeding in any of the following circumstances:

(1) The person has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage.

(2) The person is subject to the authority, direction, or discretion of a person who has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage.

(b) Notwithstanding subdivision (a):

(1) A person may serve as presiding officer at successive stages of an adjudicative proceeding.

(2) A person who has participated only as a decisionmaker or as an advisor to a decisionmaker in a determination of probable cause or other equivalent preliminary determination in an adjudicative proceeding or its preadjudicative stage may serve as presiding officer in the proceeding.

(c) The provisions of this section governing separation of functions as to the presiding officer also govern separation of functions as to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

11425.40. (a) The presiding officer is subject to disqualification for bias, prejudice, or interest in the proceeding.

(b) It is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice, or interest, that the presiding officer:

(1) Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group.

(2) Has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding.

(3) Has as a lawyer or public official participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding.

(c) The provisions of this section governing disqualification of the presiding officer also govern disqualification of the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(d) An agency that conducts an adjudicative proceeding may provide by regulation for peremptory challenge of the presiding officer.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

11425.50. (a) The decision shall be in writing and shall include a statement of the factual and legal basis for the decision.

(b) The statement of the factual basis for the decision may be in the language of, or by reference to, the pleadings. If the statement is no more than mere repetition or paraphrase of the relevant statute or regulation, the statement shall be accompanied by a concise and explicit statement of the underlying facts of record that support the decision. If the factual basis for the decision includes a

determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it.

(c) The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the proceeding. The presiding officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

(d) Nothing in this section limits the information that may be contained in the decision, including a summary of evidence relied on.

(e) A penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule subject to Chapter 3.5 (commencing with Section 11340) unless it has been adopted as a regulation pursuant to Chapter 3.5 (commencing with Section 11340).

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

11425.60. (a) A decision may not be expressly relied on as precedent unless it is designated as a precedent decision by the agency.

(b) An agency may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur. Designation of a decision or part of a decision as a precedent decision is not rulemaking and need not be done under Chapter 3.5 (commencing with Section 11340). An agency's designation of a decision or part of a decision, or failure to designate a decision or part of a decision, as a precedent decision is not subject to judicial review.

(c) An agency shall maintain an index of significant legal and policy determinations made in precedent decisions. The index shall be updated not less frequently than annually, unless no precedent decision has been designated since the last preceding update. The index shall be made available to the public by subscription, and its availability shall be publicized annually in the California Regulatory Notice Register.

(d) This section applies to decisions issued on or after July 1, 1997. Nothing in this section precludes an agency from designating and indexing as a precedent decision a decision issued before July 1, 1997.

(Amended by Stats. 1996, Ch. 390, Sec. 8. Effective August 19, 1996. Operative July 1, 1997, by Sec. 11 of Ch. 390.)