

CALIFORNIA STATE AUDITOR

Joint Oversight Hearing Joint Legislative Audit Committee

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Commission on Teacher Credentialing:

Despite Delays in Discipline of Teacher Misconduct, the
Division of Professional Practices Has Not Developed an
Adequate Strategy or Implemented Processes That Will
Safeguard Future Backlogs

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Statement by
ELAINE M. HOWLE, CPA
California State Auditor



Independent NONPARTISAN
TRANSPARENT Accountability





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Elaine M. Howle, State Auditor

BUREAU OF STATE AUDITS

BACKGROUND ON THE COMMISSION ON TEACHER CREDENTIALING

The Commission on Teacher Credentialing (commission) was created in 1970 with the responsibility of ensuring excellence in education by establishing high standards for the preparation and licensing of public school educators. In addition to teaching credentials, the commission issues credentials, certificates, and permits for positions such as school administrators, activity supervisors, and educators working in specialized teaching areas. The commission appoints the members of an advisory committee, known as the Committee of Credentials (committee), which, among other things, reviews allegations of misconduct and makes recommendations to the commission regarding probable cause and the appropriate disciplinary action to take against a credential holder. The focus of our audit was on the role that the commission plays in taking appropriate adverse action regarding teaching credentials.

By law, the process used to take action against a licensed credential holder or an applicant for a credential is designed to balance two very important interests. On one hand, it is designed to ensure that schoolchildren are protected by taking appropriate action regarding the license of an unfit teacher. On the other hand, the process is designed to protect the constitutional property interests of credentialed teachers. This means that a teacher may not have his or her teaching credential suspended or revoked without a constitutionally adequate process, which typically involves notice and a right to be heard on the matter before action is taken. As we performed our audit work, these competing interests were very much in the forefront of our minds.

The law calls for a process that begins when the Division of Professional Practices (division), within the commission, receives information that alleges misconduct. The source of this information varies: it may come from a school employer, directly from a teacher who is self-reporting, from a law enforcement agency, or from a member of the public. The division conducts the investigations of misconduct on behalf of the committee and the commission. Upon receiving reports or allegations of misconduct, the division gathers the documents and testimony necessary to determine probable cause for discipline and a recommendation for an adverse action on the credential, prepares the necessary reports for review, and provides support for any proceedings, such as appeals of committee and commission findings and recommendations. In addition to providing legal assistance on investigations, the division's attorneys provide legal counsel to the committee.

Some allegations are considered so serious, namely those showing evidence of a conviction for certain serious or violent crimes, that the teaching credential must be immediately suspended or revoked without a hearing. These are known as "mandatories" by the division. All other allegations of misconduct, known as "discretionaries" must be presented to the committee so that the committee can determine whether adverse action is appropriate. The committee reviews the allegations and determines whether probable cause exists to take adverse action against a credential. If the committee determines that there is no probable cause, then the inquiry stops there. If the committee finds probable cause, then it reports its findings and recommendations for appropriate action to the commission. Adverse actions range from a private admonishment to suspension, revocation, or denial of a credential. The commission may adopt the committee's recommendations without further action unless the applicant or the credential holder appeals.

In addition to taking action against the credential of a licensed teacher, the committee also determines whether an applicant should receive a teaching credential. Generally, an applicant may be denied a credential if he or she lacks the qualifications to teach or is otherwise unfit because he or she has, for example, exhibited conduct such as being addicted to intoxicating beverages or controlled substances, moral turpitude, deception or fraud in his or her application for a credential, conviction for a sex or controlled substance offense, or is sufficiently physically or mentally impaired so as to render the applicant unfit to perform the duties authorized by the credential, or had a credential revoked in the past or in another state due to such behavior.

The Joint Legislative Audit Committee (audit committee) requested the Bureau of State Audits to perform an audit of the commission's educator discipline process, with a general focus on the timelines of the commission's review of allegations of misconduct against credential holders.

We expected to find that the division uses management practices that enable it to efficiently and effectively process the information it receives and to resolve cases involving holders of or applicants for teaching credentials. To manage its caseload and prevent backlogs, we expected that the division would employ control systems and procedures that include a management information system that allows it to track the status of cases requiring mandatory adverse action against a credentialed teacher. This system would need to accurately and completely track all cases received, including the type of case, the length of time a case has spent in each stage of review, and the person responsible for the case. We also expected to find that the commission expeditiously addresses cases in which criminal conduct is alleged or for which the commission has received a notification of criminal activity from the California Department of Justice (Justice). Importantly, we expected that these control systems and procedures would prevent backlogs, which create delays in the reviewing and processing of reported misconduct and increase the risk that management's policies and procedures will not be followed. These were our expectations based on the legal framework and on generally accepted best practices for managing a licensing revocation process.

AUDIT HIGHLIGHTS

Our review of the commission revealed weaknesses in the educator discipline process and in hiring policies and practices.

As of the summer of 2009, according to the commission's management, the division had accumulated a backlog of 12,600 unprocessed reports of arrest and prosecution (RAP sheets)—almost three times a typical annual workload.

These conditions appear to have significantly delayed processing of alleged misconduct and potentially allowed educators of questionable character to retain a credential. Our case review revealed the following concerning the division:

- For nearly 40 percent of the cases we reviewed, it took more than 80 days to open a case after receiving a report of misconduct and nearly two years in one case and three years in another case.
- It did not effectively track the status of cases that, if the credential holder is convicted of the crime charged, require mandatory revocation of the credential— it took one and a half months and six months, respectively, in two cases to revoke the credential after receiving court documents.
- It relied on the prosecution of criminal charges and delayed in seeking additional information from school districts, witnesses, and alleged victims, thus jeopardizing its ability to obtain information needed to investigate the misconduct.

To streamline the committee's processing of pending cases, the division uses its discretion to close cases or not open cases for which it believes the committee would choose not to recommend disciplinary action against the credential holder. However, we do not believe the committee can lawfully delegate this discretion to the division.

The commission's database that tracks cases the division reviews and investigates does not always contain complete and accurate information regarding cases of reported misconduct.

- We found discrepancies between the information in the database and paper files.
- The commission does not have procedures to account for all reports of educator misconduct it receives.
- Recently implemented reports lack the information necessary to make them efficient case-tracking and management tools.

Because the commission does not have a complete set of approved hiring procedures and did not consistently document justification for hiring a particular candidate, it is vulnerable to allegations that its hiring decisions are unfair and that employment opportunities are not afforded equally to all candidates.

Chapter 1

To comply with the law and reduce unnecessary workload, the Division of Professional Practices (division) should continue to notify the Department of Justice (Justice) of reports of arrest and prosecution (RAP sheets) for individuals in whom the division is no longer interested, so Justice will no longer notify the division of criminal activity for these individuals.

Implementation of this recommendation is a two-stage process.

Stage One:

In March 2010, the Commission on Teacher Credentialing transitioned to a daily electronic uploading of the RAP sheet data from Justice into the commission's Credentialing Automation System Enterprise (CASE) system. Previously, this was a paper process handled by a different division.

Stage Two:

An analysis of the data is necessary to determine the parameters regarding a RAP sheet "discontinue request" to Justice. There is a work plan in progress to address the scope of this portion of the recommendation.

Outstanding Issues:

- Determine how many people are currently in the CASE system that were issued a one-time document, 30-day substitute, etc. If they have not renewed this document in three (3) years then Justice would be notified that the commission is no longer interested in receiving subsequent RAP information.
- Determine those individuals that submitted fingerprint information in anticipation of requesting a document, but who never applied.

Commission staff is working to identify who is appropriate to include in the domain. It is anticipated that once this recommendation is fully implemented, it will significantly reduce the number of unnecessary RAP sheets received by the commission from Justice.

Partial corrective action taken.

During our audit the division began a process to return by mail unneeded RAP sheets to Justice as a means of notifying Justice that they are no longer needed.

The commission anticipates completing this project in November 2011.

Chapter 2

<p>The commission should revise its strategic plan to identify the programmatic, organizational, and external challenges that face the division and the Committee of Credentials (committee), and determine the goals and actions necessary to accomplish its mission.</p>	<p>This recommendation will be implemented when the new executive director is appointed, at which time he or she will begin the process to revise the strategic plan. The recommendations from the audit will be included in the strategic plan at that time.</p>	<p>Corrective action pending.</p>
<p>To ensure that it can effectively process its workload in the future, the Commission on Teacher Credentialing (commission) should collect the data needed to identify the staffing levels necessary to accommodate its workload.</p>	<p>Commission staff is currently gathering data to determine how long it takes to complete each of the tasks in the discipline review process. In addition, staff presented the expected service level goals to the commission on June 2, 2011. The commission has directed staff to collect baseline data and report on each of the activities in the discipline review process.</p> <p>Once the division has calculated the amount of work that can be completed by an individual per hour or per day, the commission will then be able to project the staffing needs for the division.</p> <p>This analysis will provide the detail needed to develop a Budget Change Proposal for fiscal year 2012–13, if appropriate. It is expected that an agenda item with the data will be presented to the commission at its August 2011 meeting.</p>	<p>Corrective action pending.</p>
<p>The commission should seek a legal opinion from the attorney general to determine the legal authority and extent to which the committee may delegate to the division the discretionary authority to close investigations of alleged misconduct without committee review, and take all necessary steps to comply with the attorney general's advice.</p>	<p>On May 2, 2011, the commission submitted a request for a formal opinion from the attorney general regarding the delegation issue.</p> <p>In the interim, effective May 1, 2011, the committee will review an electronic consent calendar of work evaluated by legal staff and take action. In addition, the commission developed an electronic process to notify individuals on the consent calendar of the action taken by the committee. This process is done within 24 hours of the meeting.</p>	<p>Partial corrective action taken.</p>

CALIFORNIA STATE AUDITOR RECOMMENDATIONS	COMMISSION ON TEACHER CREDENTIALING 60-DAY RESPONSE ON IMPLEMENTING RECOMMENDATIONS JUNE 7, 2011	STATE AUDITOR'S ASSESSMENT OF IMPLEMENTATION STATUS
<p>Once the commission has received the attorney general's legal advice regarding the extent to which the committee may delegate case closures to the division, the commission should undertake all necessary procedural and statutory changes to increase the number of cases the committee can review each month.</p>	<p>This recommendation is delayed until the commission receives the opinion from the attorney general, a process that generally takes six to seven months.</p> <p>Until the opinion is received, the commission staff will work with policymakers, stakeholders, and other interested parties to discuss potential procedural and statutory solutions to increase the number of cases reviewed by the committee.</p>	<p>Corrective action pending.</p> <p>Staff plan to recommend to the commission at its August 2011 meeting that it convene a series of stakeholder meetings beginning in early fall 2011 to review the committee's process. Staff hope the discussions can lead to recommendations for the commission's January 2012 meeting. Any resulting statutory changes could be introduced by February 2012. Implementation of non-statutory recommendations could begin in late winter or early spring of 2012.</p>
<p>The division should develop and formalize comprehensive written procedures to promote consistency in, and conformity with, management's policies and directives for reviews of reported misconduct.</p>	<p>On May 6, 2011, a comprehensive division procedure manual was completed and posted on the commission's intranet along with other division training materials and resources. In addition, the manual was forwarded to the Bureau of State Audits (bureau) on May 19, 2011. On May 25, 2011, division staff participated in mandatory training on the use of the site. Additional training is scheduled in June 2011.</p>	<p>Partial corrective action taken.</p> <p>The division provided the bureau a copy of its written procedures. However, in our report we concluded that the division had not updated its previous procedures and the procedures were not consistently used. As such, we believe the division should also develop processes to ensure the new procedures manual is revised when necessary and is consistently used by division staff.</p>

CALIFORNIA STATE AUDITOR RECOMMENDATIONS

COMMISSION ON TEACHER CREDENTIALING 60-DAY RESPONSE ON IMPLEMENTING RECOMMENDATIONS JUNE 7, 2011

STATE AUDITOR'S ASSESSMENT OF IMPLEMENTATION STATUS

The division should provide the training and oversight, and should take any other steps needed, to ensure that the case information in its database is complete, accurate, and consistently entered to allow for the retrieval of reliable case management information.

The commission staff will continue to develop and enhance various management tools that will provide better oversight. A draft oversight plan is being reviewed and other reports are being worked on. Two reports completed are as follows:

- DPP Monthly Activity Report
- DPP RAP Sheet Processing Summary

In addition, staff has developed a procedure manual for entering activities in the system and training and retraining staff to provide uniformity to ensure that information in the system is consistent, accurate, and complete.

Partial corrective action taken.

We view oversight of the information input to the commission's database as crucial to ensure a complete and accurate database that can be used to manage the division's workload. Commission staff will have a draft plan in place for piloting in early fall 2011. Further, commission staff believe the plan will need to be refined for several months as the new tracking and reporting system is refined. Commission staff anticipate the draft oversight plan will be in place prior to the six-month response and in use by the one-year response.

The commission should continue to implement its new procedures related to deleting cases from its database to ensure that all such proposed deletions are reviewed by management for propriety before they are deleted and a record is kept of the individuals to which each such deleted case record pertains. Further, the commission should develop and implement policies and procedures related to managing changes and deletions to its database.

During our audit, the division manager directed staff not to delete cases, modified the database to remove the "delete case" function, and developed case deletion procedures. In its response to our audit report, the commission stated that it had addressed our recommendation.

Partial corrective action taken.

The division manager's actions only partially addressed our recommendation. Although the corrective action addressed deletions of cases, staff still had the ability to delete information from case files in the database, such as investigative activities or the receipt of documents, without management approval. We believe the commission should implement further controls to prevent the deletion of the historical record of action taken on a particular case file.

CALIFORNIA STATE AUDITOR RECOMMENDATIONS

COMMISSION ON TEACHER CREDENTIALING 60-DAY RESPONSE ON IMPLEMENTING RECOMMENDATIONS JUNE 7, 2011

STATE AUDITOR'S ASSESSMENT OF IMPLEMENTATION STATUS

<p>To ensure that the division promptly and properly processes the receipt of all the various reports of educator misconduct it receives, such as RAP sheets, school reports, affidavits, and self-disclosures of misconduct, it should develop and implement procedures to create a record of the receipt of all these reports that it can use to account for them. In addition, the process should include oversight of the handling of these reports to ensure that case files for the reported misconduct are established in the commission's database to allow for tracking and accountability.</p>	<p>A complaint tracking database is being developed to track the receipt of the various reports listed in this recommendation. The complaint tracking database will be closely linked to the division's current CASE tracking system</p>	<p>Corrective action pending.</p> <p>This recommendation is estimated to be completed by July 2011.</p>
<p>To adequately address the weaknesses we discuss in its processing of reports of misconduct, the division should revisit management's reports and processes for overseeing the investigations of misconduct to ensure that the reports and practices provide adequate information to facilitate the following:</p> <ul style="list-style-type: none"> • Reduction of the time elapsed to perform critical steps in the review process. • Adequate tracking of the reviews of reports of misconduct that may require mandatory action by the commission to ensure the timely revocation of the credentials for all individuals whose misconduct renders them unfit for the duties authorized by their credential. • Prompt requests for information surrounding reports of misconduct from law enforcement agencies, the courts, schools, and knowledgeable individuals. • An understanding of the reasons for delays in investigating individual reports of misconduct without having to review the paper files for the cases. • Clear evidence of management review of reports intended to track the division's progress in its investigations of misconduct. • Clear tracking of the dates at which the commission will lose its jurisdiction over the case as a result of the expiration of statute-based time frames for investigating the misconduct. 	<p>The commission staff will continue to develop and enhance various management tools that will provide better oversight. A draft oversight plan is being reviewed and other reports are being worked on. Two reports completed are as follows:</p> <ul style="list-style-type: none"> • DPP Monthly Activity Report • DPP RAP Sheet Processing Summary <p>In addition, staff has developed a procedure manual for entering activities in the system and training and retraining staff to provide uniformity to ensure that information in the system is consistent, accurate, and complete.</p>	<p>Partial corrective action taken.</p> <p>We view oversight of the information input to the commission's database as crucial to ensure a complete and accurate database that can be used to manage the division's workload. Commission staff will have a draft plan in place for piloting in early fall 2011. Further, commission staff believe the plan will need to be refined for several months as the new tracking and reporting system is refined. Commission staff anticipate the draft oversight plan will be in place prior to the six-month response and in use by the one-year response.</p>
<p>In addition, the division should develop and implement procedures to track cases after they have been assigned to the investigative process.</p>	<p>No response from the commission.</p>	<p>No corrective action taken.</p>

Chapter 3

To better ensure that its hiring decisions are fair and that employment opportunities are equally afforded to all eligible candidates, and to minimize employees' perceptions that its practices are compromised by familial relationships or employee favoritism, the commission should do the following:

- Prepare and/or formally adopt a comprehensive hiring manual that clearly indicates hiring procedures and identifies the parties responsible for carrying out various steps in the hiring process.
- Maintain documentation for each step in the hiring process. For example, the commission should maintain all applications received from eligible applicants and should preserve notes related to interviews and reference checks. Documentation should be consistently maintained by a designated responsible party.
- Hiring managers should provide to the commission's office of human resources documentation supporting their appointment decisions, and the office of human resources should maintain this documentation so that it can demonstrate that the hiring process was based on merit and the candidate's fitness for the job.

On June 1, 2011, staff completed development, with assistance from the State Personnel Board, and circulated a comprehensive hiring handbook to managers and supervisors. Required training of all managers and supervisors is scheduled for June 22, 2011.

As part of the new process there are some additional safeguards to ensure that in the event of an audit or if a hire is challenged the hiring is legally defensible.

The commission's hiring handbook states that hiring managers should submit a hiring package to the office of human resources within 5 days of selecting a candidate to fill the open position. The hiring package is intended to contain the documentation necessary to support the hiring decision should the decision be challenged. Documentation includes the job description, application screening criteria, interview questions and the value rating for each, candidate selection rating criteria, and all applications submitted for the position filled. The office of human resources is to maintain the hiring package for two years.

Partial corrective action taken.

To ensure that employees understand their right to file either an equal employment opportunity (EEO) complaint or a grievance, and to reduce any associated fear of retaliation, the commission should do the following:

- Include in its EEO policy a statement informing staff members that they may make complaints without fear of retaliation.
- Actively notify employees annually of its EEO complaint and grievance processes, including the protection from retaliation included in both.
- Conduct training on its EEO complaint process on a periodic basis.

On May 9, 2011 a revised EEO policy was provided to all staff. In addition, an EEO handbook that outlines the process for filing an EEO complaint was developed and provided to all staff. Commission leadership is currently looking for a training class which, once identified, will be shared with staff. In addition, to ensure that 100 percent of the commission's staff is aware of the EEO policy, each July staff shall certify that they have reviewed and are familiar with the EEO policy.

Commission staff that wish to file a grievance will be referred to the respective bargaining unit contract that outlines the process and procedures to file a grievance. In addition, staff has access to their bargaining unit representatives who can assist them with the process.

Partial corrective action taken.