
5B

Information/Action

Credentialing and Certificated Assignments Committee

Assignment Monitoring and Compliance Activities

Executive Summary: This agenda item presents for discussion and potential Commission direction ways in which the Commission's assignment monitoring and compliance activities might be streamlined and strengthened to provide appropriate oversight.

Policy Question: Should the Commission move forward with full implementation of the assignment monitoring activities currently specified in regulations or consider modifications to some aspects of the assignment monitoring process?

Recommended Action: That the Commission discuss and provide direction concerning assignment monitoring compliance activities and related sanctions.

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Strategic Plan Goal

I. Educator Quality

- ◆ Ensure that credential processing and assignment monitoring activities accurately, effectively, and efficiently identify educators who have met high and rigorous certification standards and who are appropriately assigned.

Assignment Monitoring and Compliance Activities

Introduction

This agenda item presents for discussion and potential Commission direction ways in which the Commission's assignment monitoring and compliance activities might be streamlined and strengthened to provide appropriate oversight. Information on the assignment monitoring process is provided in brief along with the statutory and regulatory basis for these activities. The current level of implementation for all assignment monitoring activities is described to inform the discussion on the work and costs associated with a full level of implementation as currently specified in regulations. Additionally, potential modifications to some aspects of the assignment monitoring process are included for further discussion.

Background

"Misassignment" is defined in EC §33126(b)(5)(B) and Title 5 Regulations §80339(f) as the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate, credential, permit, or waiver with an appropriate authorization for the assignment or is not authorized for the assignment under another section of statute or regulations. While California defines this practice as the 'misassignment' of an educator, this phenomenon is often referred to as 'out-of-field teaching' in many other states and research reports.

The assignment monitoring and compliance activities discussed in this item were created to ensure that all classes are staffed with prepared and qualified teachers. In a research report on this topic, Richard M. Ingersoll provides a national historical perspective for this long-term issue.

*...Although ensuring that our nation's classrooms are all staffed with qualified teachers is a perennially important issue in our schools, it is also among the least understood, especially in regard to the sources of the problem. One of the least recognized of these sources is the phenomenon known as out-of-field teaching—teachers assigned to teach subjects which do not match their training or education. This is a crucial factor because highly qualified teachers may actually become highly unqualified if they are assigned to teach subjects for which they have little background. Educators have, of course, long been aware of the existence of out-of-field teaching. James Conant, former President of Harvard University and father of the SAT, called attention to the widespread "misuse of teachers" through out-of-field assignments in his landmark 1963 study *The Education of American Teachers*. Albert Shanker, the former head of the American Federation of Teachers, condemned out-of-field teaching as education's "dirty little secret" in a 1985 opinion piece in the *New York Times*.¹*

Education Code (EC) §44258.9 in *Appendix A* provides the statutory authority for assignment monitoring which was created to limit the occurrence of misassignments in California. In the late

¹ Ingersoll, Richard M. (2003, September). *Out-of-Field Teaching and the Limits of Teacher Policy*. Accessed on January 23, 2014 at <http://depts.washington.edu/ctpmail/PDFs/LimitsPolicy-RI-09-2003.pdf>.

1980's two important pieces of legislation gave the Commission authority to establish sanctions for educators who knowingly assign certificated staff to positions for which they are not legally authorized.

EC §44258.9(e) includes statutory authority for the Commission to develop reasonable sanctions pertaining to the performance of unauthorized professional services.

(e) (1) The Commission on Teacher Credentialing shall establish reasonable sanctions for the misassignment of credential holders.

Prior to the implementation of regulations establishing sanctions, the Commission on Teacher Credentialing shall engage in a variety of activities designed to inform school administrators, teachers, and personnel within the offices of county superintendents of schools of the regulations and statutes affecting the assignment of certificated personnel. These activities shall include the preparation of instructive brochures and the holding of regional workshops.

Title 5 Regulations were developed as part of a joint effort with several constituent organizations and Commission staff. These regulations establish specific compliance activities and potential sanctions and were approved in 1993 by the Commission and the Office of Administrative Law. The full text of Title 5 §§80339-80339.6 is provided in *Appendix B* for reference. The underlying goal of the Commission regulations is to ensure compliance at the local level with assignment statute and regulations so that educators are serving in a manner consistent with their preparation.

Additional information related to assignment monitoring was presented to the Commission through a series of agenda items. In June 2012, an information item on *Authorization and Certificated Assignment in California* was presented in order to provide a general overview: <http://www.ctc.ca.gov/commission/agendas/2012-06/2012-06-5B.pdf>. A separate information item on *Special Education Authorizations and Assignments in California* was provided for more targeted information in January 2013: <http://www.ctc.ca.gov/commission/agendas/2013-01/2013-01-3C.pdf>. In September 2012, a biennial report to the Legislature on the *Assignment Monitoring of Certificated Employees in California by County Offices of Education 2007-2011* was presented. This report may be accessed through the following link on the Commission website: <http://www.ctc.ca.gov/reports/AM-2007-2011.pdf>.

Overview of Assignment Monitoring

More than 300,000 teachers and other certificated staff serve in California's 1,043 school districts.² The Commission's responsibilities include ensuring that these educators are assigned in a manner consistent with their preparation which is aligned with the authorization(s) on their credentials. How best to ensure that appropriately prepared and authorized educators are serving in California's public schools continues to be a topic of significant interest.

²California Department of Education. *Fingertip Facts on Education in California – CalEdFacts*. Accessed on January 23, 2014 at <http://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp>.

According to the language specified in EC §44225(e), the Commission determines the scope and authorization of credentials, ensures competence in teaching and other educational services, and establishes sanctions for the misassignment of credential holders. Each credential, certificate, permit issued by the Commission authorizes an individual to teach or serve in the public schools of California. EC §44203(d) defines “Authorization” as the designation that appears on a credential, certificate, or permit that identifies the subjects and circumstances (settings, grade levels) in which the holder of the document may teach, or the services the holder may render. As specified in EC §44258.9, assignment monitoring is conducted to ensure that the educator has the appropriate credential and authorization for the instruction and/or services provided.

Basic Assignment Principles

The first consideration is always the students who will be served by the individual filling the teaching or service assignment. Employing a person who holds the appropriate credential assures the employing agency that the teacher, counselor, administrator, librarian, nurse, or other certificated employee has met the standards established for that position by the state through legislation (*Education Code*) and regulation (*California Code of Regulations, Title 5*). School site administrators, as well as district and county administrators, have the responsibility under EC §44258.9(b) to have evidence of the document(s) each individual holds in order to make a legal and appropriate assignment.

California has many provisions within the Education Code that provide legal avenues for the assignment of certificated employees outside their basic credential authorization if specific criteria are met. These Education Code options allow local school districts the flexibility to assign teachers to provide instruction in subjects other than those already authorized by the credential(s) they hold.

In most cases, teaching assignments made under these options require the agreement of the school site administrator, the affected teacher and the local governing board in order to determine if this is the best available option. Most options require a resolution by the local governing board and teacher consent to the assignment but may be renewed annually. Through assignment monitoring, the Commission collects information from the county offices on the most frequently used local assignment options.

The Commission has attempted to balance the need for each individual to have the appropriate preparation and authorization for their assignment with the employer’s need for flexibility in assigning their staff to meet the unique circumstances found in their local context. However, the monitoring of certificated staff assignments is mandated by EC §44258.9. County superintendents of schools must submit an annual report to the Commission on Teacher Credentialing summarizing the results of all assignment monitoring and reviews conducted in that year.

In accordance with EC §44258.9, there are two primary types of assignment monitoring conducted by the county offices of education each year. Both types of monitoring are described in brief on the following page but the full scope of the monitoring required by statute may be referenced in *Appendix A*.

One-Fourth Assignment Monitoring

Approximately one-quarter of the certificated staff assignments in the school districts within each county are reviewed annually. At the end of a four-year cycle the certificated staff assignments for all districts in California will have been monitored by their local county office of education. The current four-year monitoring cycle includes the 2011-2012 through 2014-2015 school years.³

Annual Monitoring for Schools Ranked in Deciles 1 through 3 (2012 Base API)

As a result of legislation related to the *Williams Settlement*, EC §44258.9 was amended to also require county superintendents to annually monitor all certificated assignments in schools ranked in the lowest three deciles of California's base Academic Performance Index (API). County superintendents are also required to annually collect data related to teachers serving in classrooms with a population of 20% or more English learner students at these same school sites.⁴

Compliance and Reporting Activities by County Offices of Education

The county superintendent of schools must provide written notification to the school district superintendent of the assignment monitoring results including details on the misassignments identified. As part of the notification, the district superintendent is provided 30 calendar days to correct any identified misassignments (120 calendar days is provided for correction if more than 5% of the certificated secondary teachers are misassigned in a district).

As noted previously, county superintendents must also submit an annual report to the Commission on Teacher Credentialing by July 1st of each year summarizing the results of all assignment monitoring and reviews conducted in that year. Part of this reporting includes notification to the Commission of all misassignments that were not corrected within the 30 calendar days. When a misassignment has not been corrected by the local education agency within the 30 calendar days it is referred to as an uncorrected misassignment.

The Commission's history with assignment monitoring and reporting since the 1989-1990 school year demonstrate that, although a significant number of unauthorized assignments may be identified by the county office of education at the initial stages of monitoring, in most cases the county works successfully with the district to achieve the necessary corrections within the same school year. In some cases, districts determine that corrective action is not possible within the specified timeframes provided in statute due to a variety of employment challenges while in other cases districts choose to ignore or reject the corrective advice provided by the county.

In examining county assignment monitoring reports, an average of approximately 90% of identified misassignments are corrected within the mandated timeframes through county and district efforts. For the 2012-2013 school year, 14 county offices reported a total of 1,580 *uncorrected* misassignments across 73 school districts. School districts with uncorrected

³ The Commission is required to complete this monitoring for the seven single district counties in California: Alpine, Amador, Del Norte, Mariposa, Plumas, Sierra, and San Francisco.

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misassignments are subject to additional review and compliance activities by the Commission as specified in Title 5 §§80339-80339.6.

Title 5 §80339.3 provides Commission staff with a variety of compliance activities to engage in with the district superintendent when uncorrected misassignments are reported by a county office. The county office identification and review occurs during one school year. The results of the monitoring, including the uncorrected misassignments, are not reported to the Commission until the conclusion of the school year on July 1st as specified in statute. Therefore, all additional compliance activities conducted by Commission staff occur during the next school year. Commission staff must confirm all uncorrected misassignments reported by the county office and verify if a document was subsequently issued that would provide appropriate authorization for the assignment.

Commission staff next notifies the district in writing of the confirmed misassignments reported by the county office that remain uncorrected. As contact by the Commission occurs in the subsequent school year, determining whether an educator has been removed, resigned, retired, or reassigned is the initial goal of the communication with the district. Additionally, staff requests information on the current assignment for each educator identified and documentation of any actions by the local governing board to authorize the assignment. If the educator has remained in the same unauthorized assignment, the correspondence also provides possible corrective solutions for the district to consider.

Depending on the number and nature of the misassignments, additional compliance activities by staff may include entering into a written Compliance agreement with the district superintendent. The Compliance Agreement sets forth agreed upon remedial steps that must be taken to correct all misassignments and establish a deadline for meeting the terms of the agreement.

80339.3. Staff Review and Determination.

Staff shall review the materials and information provided by the county superintendent. If staff determines that the assignment is authorized, this information shall be communicated, in writing, to the county superintendent and the school superintendent. If staff determines that the assignment is unauthorized, the school superintendent and the governing board of the local school district shall be notified in writing of the staff determination of misassignment and advised of the possible penalties if the misassignment is not corrected. As a part of the notification, staff shall offer the school superintendent the opportunity to enter into a written Compliance Agreement, setting forth the remedial steps agreed to be taken in order to correct the misassignment(s) and establishing a deadline for meeting all of the terms of the agreement.

Committee on Authorized Assignments

Title 5 §80339.3 specifies that following the compliance procedures noted above, failure by a district to correct a misassignment will result in a referral to the Committee on Authorized Assignments (COAA). As delineated in Title 5 §80339.1 (*Appendix B*), the COAA would be established by the Commission and consist of five members appointed by the Commission, as outlined on the following page. All members are required to have experience in the area of legally permissible assignment authorizations. Members would be appointed to serve two-year terms and could be reappointed.

The COAA would be composed of the following members as specified in regulations:

- 2 practicing teachers;
- 1 practicing school services representative (except a school administrator);
- 1 practicing school administrator or certificated human resources administrator; and
- 1 school board member.

At this time, funds have not been appropriated to establish and support the work of a COAA. The additional shaded activities identified in *Table 2* as specified in Title 5 §§80339.4 and 80339.5 have yet to be fully implemented.

Referral to the Committee of Credentials

Title 5 §80339.5 provides that the COAA may identify the individual(s) responsible for a misassignment through the compliance process. The COAA should then report its findings in writing to the Committee of Credentials (COC) for further investigation and consideration of adverse action against the credentials of responsible certificated persons, such as the school administrator. As the COAA has not been established, to date there have been no referrals to the COC.

EC §44242.5(b) authorizes the COC to commence an initial review based on the official records of a state agency. Since the COAA is established by regulation and given specific tasks, the records of the COAA would qualify as an official record of the state for review. EC §44242.5(d)(4), provides that the COC may commence a formal review based on the *Official records of a governmental licensing entity that reflect an administrative proceeding or investigation, otherwise authorized by law or regulation, which has become final*. The COAA investigation as delineated in regulations would become final when a decision is reached to refer the matter to the COC. These sections of statute provide the basis of jurisdiction for the COC to take adverse action against the credentials of an individual responsible for the misassignment.

Current Monitoring and Compliance Activities

The July 1st reporting deadline for county offices is the only date specified in statute or regulations in relation to assignment monitoring activities conducted by the county offices. Therefore, each county office of education determines their own monitoring schedule within the specified cycle and establishes required activities each year. *Table 1* provides a sample monitoring schedule that includes the basic activities and timeframes for both county and Commission staff. This sample schedule is provided for illustrative purposes only and is not intended to reflect the actual months these activities are completed by every county.

The sample schedule provides activities that occur over multiple months and subsequent activities in overlapping months. Both county offices and the Commission may be monitoring multiple districts and/or sites during a particular cycle with the various due dates and timeline of activities often dependent on the number of districts to be monitored as well as their relative size and complexity. While one district may have a site visit in January with written notification in February another district for that county may be scheduled for a site visit in February with written notification in March. Additionally, Commission staff may engage in follow-up activities in Year 2 while simultaneously conducting monitoring for new districts in Year 1.

Table 1: Sample Assignment Monitoring and Compliance Schedule

Year 1	September-January	County contacts districts and sites subject to assignment monitoring and requests necessary documentation for initial paper review (including site master schedules and credential information records).
	December-March	County may schedule site visits to districts and school sites as part of the monitoring process in order to conduct interviews and address questions from the monitoring.
	February-April	County must provide the results of the monitoring through written notification to the district superintendent. The notification must include a listing of all misassignments identified noting those that remain unresolved and provide 30 calendar days for correction (120 days is provided for correction if more than 5% of the certificated secondary teachers are misassigned in a district). County offices also provide suggestions for the correction of the identified misassignments to districts as part of the monitoring process.
	March-May	Within 30 calendar days of notification, districts take action to correct the identified misassignments that remain (many misassignments are corrected earlier in the monitoring process when first identified). At the end of the 30 calendar days, the district provides appropriate records to the county to confirm correction of the misassignments. County offices review the documentation and information submitted by districts and determine whether any uncorrected misassignments remain.
	July 1st	County offices report the results of all monitoring activities to the Commission along with detailed information for each uncorrected misassignment.
Year 2	September-January	While supporting monitoring efforts for the new school year, Commission staff begins the review of assignment monitoring data submitted for the prior school year. Uncorrected misassignments are reviewed and confirmed. Commission records are reviewed to determine if the educator recently obtained the appropriate credential, certificate, permit and/or authorization for the assignment.
		District Superintendents are contacted by Commission staff in writing regarding the confirmed uncorrected misassignments reported from the prior school year along with possible corrective solutions. For the new school year, districts must confirm whether the individual has been removed, resigned, retired, or reassigned. If the individual is still serving in the same assignment, the district must provide evidence of another legal authorization such as governing board action for a local assignment option in the Education Code. If the individual has remained

		in the misassignment with no additional action, the district must provide an explanation of the circumstances and plan to correct.
	October-March	Commission staff review district responses to the uncorrected misassignments report and letter. If any uncorrected misassignments remain the Commission contacts the district superintendent to set-up a compliance agreement. The compliance agreement includes agreed upon remedial steps to be taken to correct the remaining misassignment(s) and establishes a deadline for meeting the agreement terms.
	November-July	Commission staff conduct follow up activities with each district as part of the compliance agreement. Depending on the number and nature of the misassignments and the terms of the compliance agreement these activities may continue into a third school year. Failure to comply with the terms of the agreement should result in referral to the Committee on Authorized Assignment (COAA); however, at this time the COAA has not been established.
Year 3	August-July	Additional compliance activities by Commission staff and if referred up to two potential meetings by COAA (if established). The first meeting involves a review of all documentation and the possible issuance of a Letter of Non-Compliance to be read at the next public local governing board meeting. If the misassignments remain unresolved the second meeting determines the certificated staff responsible for possible referral to the COC.

Table 2 outlines the current assignment monitoring activities as specified in both statute and regulations. The table includes both the responsible party for each activity and the authority that serves as the basis for these activities. The monitoring and compliance activities occur over a period of two school years with the double line in the table indicating activities that continue into the next school year. The *unshaded* activities outlined in Table 2 are those that have been fully implemented and reflect current assignment monitoring and compliance activities. The *shaded* activities in Table 2 represent those activities that have yet to be fully implemented by the Commission. There have been multiple agenda items over the last two decades associated with these topics; however, previous Commission items were unable to resolve the matter due primarily to staffing limitations and fiscal constraints.

Table 2: Assignment Monitoring Activities and Authority

	Responsible Party	Activity	Authority
Year 1	County Office of Education	Review approximately one-fourth of all certificated assignments each year on a four year cycle so that all certificated staff are monitored at end of cycle.	EC §44258.9
		Review all certificated staff assignments annually for school sites ranked in the lowest three deciles. Base API ranking year changes on a three year cycle.	
		Notify District Superintendent of all identified misassignments in writing.	
	School District	Correct all identified misassignments within 30 days (120 days is provided for correction if more than 5% of the certificated	

		secondary teachers are misassigned in a district).	
	County Office of Education	Report all misassignments not corrected by each district within 30 or 120 days as appropriate to the Commission by July 1.	
Year 2	Commission Staff	Review uncorrected misassignments reported by each county against Commission records and confirm misassignments.	T5 §80339.3
		Notify District Superintendent and governing board in writing of uncorrected misassignments and possible penalties if not corrected	
		Offer District Superintendent the opportunity to enter into a written Compliance Agreement, setting forth agreed upon remedial steps to be taken to correct the misassignment(s) and establish a deadline for meeting the agreement terms.	
Years 2/3	Commission Staff	Refer to the ‘Committee on Authorized Assignments’ (COAA) if there is a failure to correct a misassignment following the steps outlined in section 80339.3 as long as it is more than 30 days from staff notification.	T5 §80339.4
	COAA	Review Commission records on the alleged misassignment to determine if a misassignment has occurred.	
		Issue a letter of non-compliance to the local governing board of the school district setting forth the nature of the misassignment if COAA determines a misassignment has occurred.	
	Local District Governing Board	Read the letter of non-compliance issued by COAA at the first public meeting following receipt. The presiding officer of the local governing board shall certify this action took place in writing.	
	COAA	Review the matter again in order to determine whether more severe sanctions are appropriate if a misassignment has not been corrected within 30 days after the letter of non-compliance has been issued. The COAA identifies the individuals responsible for the misassignment and reports its findings in writing to the Committee of Credentials (COC) for further investigation and consideration of adverse action against the credentials of responsible certificated persons.	T5 §80339.5

As *Table 2* illustrates, some significant assignment monitoring compliance activities specified in regulations have not been fully implemented. The implications of full implementation of these activities are discussed below along with other possible approaches for streamlining and improving assignment monitoring.

Implications of Full Implementation of Assignment Monitoring Activities

Establishing a Five Person Committee on Authorized Assignments

The creation of a five person committee would cost approximately \$600 per person for a total cost of approximately \$3,000 for each committee meeting. Significant additional Commission staff time would also need to be allocated to support the work of the Committee. Based on the specified compliance activities, each district would need to be examined by the COAA at two separate meetings prior to action and referral to the COC. While regulations specify that the COAA committee members have experience in legally permissible assignment authorizations, additional meetings may be necessary to provide an orientation into all aspects of the work. Based

on the number of districts and individuals that potentially could need review and action, staff would anticipate a need for up to 4 – 6 one day meetings per year occurring every 2 – 3 months. However, as we have never engaged in this level of work it is difficult to gauge the number of meetings or time needed to accomplish the work.

Many of the activities outlined in regulations for the COAA are redundant activities already completed by both the County Offices of Education and Commission staff. The assignment monitoring and compliance activities engaged in by Commission staff provide oversight as well as a check and balance to this process. At the end of the compliance activities specified in the current regulations, the district superintendent would have been notified in writing a minimum of two times over two school years about the uncorrected misassignments prior to referral to the COAA for review. Additional review by the COAA would further extend that time and result in at minimum a third and fourth notification prior to referral to the COC for potential action.

The COAA does have three key functions that may not be completed by Commission staff based on current regulations.

1. Issuance of the Letter of Non-Compliance to the local governing board of the school district that must be read at the next public meeting following receipt.
2. Investigation to determine all certificated individuals responsible for knowingly continuing an unauthorized assignment and not engaging in corrective action; and
3. Action to refer responsible certificated staff to the COC for potential adverse action against all credentials held.

Consideration of Similar Activities in Other States

Commission staff completed an initial review of other state education websites in order to determine to what extent misassignments or out-of-field teaching are monitored. Staff also attempted to identify to what extent other states engage in compliance activities and/or apply penalties to address this issue. Several states appear to monitor out-of-field teaching though the methods used to complete this work were not readily available in the initial review.

Compliance activities and penalties were identified in several states. Examples of penalties include but are not limited to parent notification, financial penalty of \$500 per teacher per year assessed against the employing board of education for any individual assigned to one or more periods per day in a teaching field for which he or she is not properly certified, and reduction of a teacher's retirement credit if not teaching in a content area appropriate to their certification. In one case, staff identified local governing board policies that imposed significant consequences for their teachers that did not meet the regulations set by the state in this matter indicating that they incurred significant funding penalties from the state for non-compliance with the out-of-field rule.

Staff will continue to gather the most recent and accurate information on this topic for all states if directed to do so by the Commission. Staff have also initiated a survey through the National Association of State Directors of Teacher Education and Certification (NASDTEC) to confirm current practices in each state.

Possible Approaches to Streamlining and Improving Assignment Monitoring

Some possible approaches for streamlining and improving assignment monitoring compliance activities and sanctions are provided below for Commission discussion.

1. *Commissioners could direct staff to fully implement the compliance activities and sanctions currently specified in regulations.*

Full implementation would require the creation and funding of the COAA. Additional staff time would need to be redirected to support these activities. The COAA process for the most part is redundant with other current activities undertaken by county and Commission staff.

2. *Commissioners could direct staff to engage stakeholders in conversations to determine if there are better solutions that make more sense in today's context for addressing concerns surrounding the issues of uncorrected misassignments and non-compliance.*

These meetings could be conducted by staff through the use of technology and sharing of draft documents in order to minimize cost.

3. *Commissioners could direct staff to continue researching compliance activities, sanctions, and penalties in other states that might further inform a discussion of potential options.*

Preliminary research suggests that states have enacted a variety of measures to address these issues. Practices range from fiscal penalties against the local education agency to reducing retirement credit for out-of-field/misassigned teachers. Changes of this magnitude would require careful study and a change in statute.

4. *Commissioners could direct staff to come back with proposed modifications to the assignment monitoring process. One option is to transfer many of the responsibilities currently within the scope of work identified for the COAA to Commission staff and the Executive Director.*

Regulations could be amended to delegate the Executive Director the authority to issue a Letter of Non-Compliance to the local governing board retaining the requirement that it be read at the next public meeting. Additionally, staff could complete the necessary review of certificated staff responsible for the unauthorized assignments that were not corrected following multiple notifications. Additional activities could be added to regulations to include public notification via the Commission website for districts that were issued a Letter of Non-Compliance. Public notification could potentially include posting the letter along with a chart providing the name of the district superintendent, site administrator, and certificated individual serving in the unauthorized assignment along with the specifics of that matter.

Summary and Next Steps

The Commission staff will take appropriate next steps based on Commission direction.

Appendix A

Statutory Authority for Assignment Monitoring

Education Code section 44258.9.

(a) The Legislature finds that continued monitoring of teacher assignments by county superintendents of schools will ensure that the rate of teacher misassignment remains low. To the extent possible and with funds provided for that purpose, each county superintendent of schools shall perform the duties specified in subdivisions (b) and (c).

(b) (1) Each county superintendent of schools shall monitor and review school district certificated employee assignment practices in accordance with the following:

(A) Annually monitor and review schools and school districts that are likely to have problems with teacher misassignments and teacher vacancies, as defined in subparagraphs (A) and (B) of paragraph (5) of subdivision (b) of Section 33126, based on past experience or other available information.

(B) Annually monitor and review schools ranked in deciles 1 to 3, inclusive, of the base Academic Performance Index, as specified in paragraph (2) of subdivision (c) of Section 1240, if those schools are not currently under review through a state or federal intervention program. If a review completed pursuant to this subparagraph finds that a school has no teacher misassignments or teacher vacancies for two consecutive years, the next review of that school may be conducted according to the cycle specified in subparagraph (C), unless the school meets the criteria of subparagraph (A).

(C) All other schools on a four-year cycle.

(2) Each county superintendent of schools shall investigate school and district efforts to ensure that a credentialed teacher serving in an assignment requiring a certificate issued pursuant to Section 44253.3, 44253.4, or 44253.7 or training pursuant to Section 44253.10 completes the necessary requirements for these certificates or completes the required training.

(3) The Commission on Teacher Credentialing shall be responsible for the monitoring and review of those counties or cities and counties in which there is a single school district, including the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City and County of San Francisco. All information related to the misassignment of certificated personnel and teacher vacancies shall be submitted to each affected district within 30 calendar days of the monitoring activity.

(c) County superintendents of schools shall submit an annual report to the Commission on Teacher Credentialing and the department summarizing the results of all assignment monitoring and reviews. These reports shall include, but need not be limited to, the following:

(1) The numbers of teachers assigned and types of assignments made by the governing board of a school district under the authority of Sections 44256, 44258.2, and 44263.

(2) Information on actions taken by local committees on assignment, including the number of assignments authorized, subject areas into which committee-authorized teachers are assigned, and evidence of departures from the implementation plans presented to the county superintendent by school districts.

(3) Information on each school district reviewed regarding misassignments of certificated personnel, including efforts to eliminate these misassignments.

(4) (A) Information on certificated employee assignment practices in schools ranked in deciles 1 to 3, inclusive, of the base Academic Performance Index, as specified in paragraph (2) of subdivision (c) of Section 1240, to ensure that, at a minimum, in any class in these schools in which 20 percent or more pupils are English learners, the assigned teacher possesses a certificate issued pursuant to Section 44253.3 or 44253.4, or has completed training pursuant to Section 44253.10, or is otherwise authorized by statute.

(B) This paragraph shall not relieve a school district from compliance with state and federal law regarding teachers of English learners or be construed to alter the definition of "misassignment" in subparagraph (B) of paragraph (5) of subdivision (b) of Section 33126.

(5) After consultation with representatives of county superintendents of schools, other information as may be determined to be needed by the Commission on Teacher Credentialing.

(d) The Commission on Teacher Credentialing shall submit biennial reports to the Legislature concerning teacher assignments and misassignments that shall be based, in part, on the annual reports of the county superintendents of schools.

(e) (1) The Commission on Teacher Credentialing shall establish reasonable sanctions for the misassignment of credentialholders. Prior to the implementation of regulations establishing sanctions, the Commission on Teacher Credentialing shall engage in a variety of activities designed to inform school administrators, teachers, and personnel within the offices of county superintendents of schools of the regulations and statutes affecting the assignment of certificated personnel. These activities shall include the preparation of instructive brochures and the holding of regional workshops.

(2) Commencing July 1, 1989, a certificated person who is required by an administrative superior to accept an assignment for which he or she has no legal authorization, after exhausting existing local remedies, shall notify the county superintendent of schools in writing of the illegal assignment. The county superintendent of schools, within 15 working days, shall advise the affected certificated person concerning the legality of his or her assignment. There shall be no adverse action taken against a certificated person who files a notification of misassignment with the county superintendent of schools. During the period of the misassignment, the certificated person who files a written notification with the county superintendent of schools shall be exempt from Section 45034. If it is determined that a

misassignment has taken place, any performance evaluation of the employee under Sections 44660 to 44664, inclusive, in any misassigned subject shall be nullified.

(3) The county superintendent of schools shall notify, through the office of the school district superintendent, a certificated school administrator responsible for the assignment of a certificated person to a position for which he or she has no legal authorization of the misassignment and shall advise him or her to correct the assignment within 30 calendar days. The county superintendent of schools shall notify the Commission on Teacher Credentialing of the misassignment if the certificated school administrator has not corrected the misassignment within 30 days of the initial notification, or if the certificated school administrator has not described, in writing, within the 30-day period, to the county superintendent of schools the extraordinary circumstances which make this correction impossible.

(4) The county superintendent of schools shall notify the superintendent of a school district in which 5 percent or more of all certificated teachers in the secondary schools are found to be misassigned of the misassignments and shall advise him or her to correct the misassignments within 120 calendar days. The county superintendent of schools shall notify the Commission on Teacher Credentialing of the misassignments if the school district superintendent has not corrected the misassignments within 120 days of the initial notification, or if the school district superintendent of schools has not described, in writing, within the 120-day period, to the county superintendent of schools the extraordinary circumstances that make this correction impossible.

(f) An applicant for a professional administrative service credential shall be required to demonstrate knowledge of existing credentialing laws, including knowledge of assignment authorizations.

(g) The Superintendent shall submit a summary of the reports submitted by county superintendents pursuant to subdivision (c) to the Legislature. The Legislature may hold, within a reasonable period after receipt of the summary, public hearings on pupil access to teachers and to related statutory provisions. The Legislature also may assign one or more of the standing committees or a joint committee, to determine the following:

(1) The effectiveness of the reviews required pursuant to this section.

(2) The extent, if any, of vacancies and misassignments, as defined in subparagraphs (A) and (B) of paragraph (5) of subdivision (b) of Section 33126.

(3) The need, if any, to assist schools ranked in deciles 1 to 3, inclusive, of the base Academic Performance Index, as defined in paragraph (2) of subdivision (c) of Section 1240, to eliminate vacancies and misassignments.

Appendix B

Title 5 California Code of Regulations

Sections 80339 Through 80339.6 Pertaining to Unauthorized Certificated Employee Assignments and Section 80335 Pertaining to Performance of Unauthorized Professional Service

Section 80339. Definitions

The following definitions pertain to Sections 80339.1 through 80339.6.

- (a) “Commission” is the Commission on Teacher Credentialing.
- (b) “Committee” is the Committee on Authorized Assignments.
- (c) “County superintendent” means the county superintendent of schools.
- (d) “School superintendent” means the superintendent of the local school district.
- (e) “Staff” refers to the staff of the Commission on Teacher Credentialing.
- (f) “Misassignment” refers to the assignment of a certificated person to a position not authorized by the credential or certificate or permit or by regulations or pertinent sections of the Education Code.

Note: Authority cited: Sections 44225 and 44258.9(g), Education Code. Reference: Section 44258.9(g), Education Code.

Section 80339.1. Membership of the Committee on Authorized Assignments

The Committee shall be established by the Commission and shall consist of five (5) members appointed by the Commission. Membership shall include two (2) practicing school teachers, one (1) practicing school service representative other than a school administrator, one (1) practicing school administrator or one (1) practicing certificated human resources administrator, and one (1) school board member. All members shall have experience in the area of legally permissible assignment authorizations. Members shall be appointed to serve two (2) year terms and may be reappointed.

Note: Authority cited: Sections 44225 and 44258.9(g), Education Code. Reference: Section 44258.9(g), Education Code.

Section 80339.2. Materials to be Forwarded by the County Superintendent

Notices required to be sent to the Commission under the terms of Education Code section 44258.9(g)(3) shall include all of the following:

- (a) All writings which form the basis on which a determination of misassignment was made;
- (b) Copies of all communications sent to the school superintendent informing him or her of the specific individuals in misassignments, and identifying the administrators immediately responsible for the misassignment;
- (c) All written responses submitted by the school district or school administrator in response to communication described in Education Code section 44258.9(g)(3);

- (d) All writings informing the certificated employee that he or she is serving in an unauthorized position. The county superintendent must advise the employee of the misassignment and of the professional obligation of the individual to seek an authorized position. Copies of any written response by the employee shall also be provided to the Commission;
- (e) Information regarding the steps taken to identify for the Commission the administrator(s) responsible for the misassignment;
- (f) All other materials which mitigate or aggravate the possible penalties or which supplement the information presented.

Note: Authority cited: Sections 44225 and 44258.9(g), Education Code. Reference: Section 44258.9(g), Education Code.

Section 80339.3. Staff Review and Determination

Staff shall review the materials and information provided by the county superintendent. If staff determines that the assignment is authorized, this information shall be communicated, in writing, to the county superintendent and the school superintendent. If staff determines that the assignment is unauthorized, the school superintendent and the governing board of the local school district shall be notified in writing of the staff determination of misassignment and advised of the possible penalties if the misassignment is not corrected. As a part of the notification, staff shall offer the school superintendent the opportunity to enter into a written Compliance Agreement, setting forth the remedial steps agreed to be taken in order to correct the misassignment(s) and establishing a deadline for meeting all of the terms of the agreement.

Note: Authority cited: Sections 44225 and 44258.9(g), Education Code. Reference: Section 44258.9(g), Education Code.

Section 80339.4. Referral to the Committee on Authorized Assignments and Issuance of Letter of Non-Compliance

Failure to correct a misassignment following the procedures set forth in section 80339.3 shall result in the referral of the matter by staff to the Committee at the next meeting of the Committee as long as it is more than 30 days from staff notification. Commission files on the alleged misassignment shall be provided to the Committee and the Committee shall review the information contained in the record and determine if a misassignment occurred. If it decides that a misassignment has occurred, the Committee shall cause a letter of non-compliance to be issued to the local governing board of the subject school district. This letter shall set forth the nature of the misassignment and be signed by the Executive Director of the Commission and the members of the Committee. This letter shall be read at the first public meeting following its receipt by the presiding officer of the local governing board, and he or she shall so certify to the Commission in writing that this has been accomplished.

Note: Authority cited: Sections 44225 and 44258.9(g), Education Code. Reference: Section 44258.9(g), Education Code.

Section 80339.5. Referral to the Committee of Credential

If a misassignment has not been corrected within 30 days after the letter of non-compliance has been issued, the Committee shall review the matter again in order to determine whether more severe sanctions are appropriate. It shall, in appropriate cases, identify the individuals it determines to be responsible for the misassignment. It shall then report its findings in writing to the Committee of Credentials for further investigation and consideration of adverse action against the credentials of responsible certificated persons pursuant to Title 5, California Code of Regulations section 80335 and other statutes and regulations applicable to the jurisdiction and operation of the Committee of Credentials.

Note: Authority cited: Sections 44225 and 44258.9(g), Education Code. Reference: Section 44258.9(g), Education Code.

Section 80339.6. Rights of Certificated Persons

When a certificated person files a written notice pursuant to Education Code section 44258.9(g)(2), that person may request the Committee to review any determination and decision by the county superintendent that an assignment is legally authorized. When a certificated person employed in a county-operated school files a written notice pursuant to Education Code section 44258.9(g)(2), that person may also request the Committee to review any determination and decision by the county superintendent that the assignment is legally authorized. In these cases, the county superintendent, the administrators immediately responsible for the misassignment, and the local governing board of the subject county will be treated in the same manner as those comparable individuals and bodies at the district level are treated in Title 5, California Code of Regulations sections 80339.2 through 80339.6.

When a certificated person who has been notified pursuant to Title 5, California Code of Regulations section 80339.2 that he or she is in an unauthorized assignment submits to the county superintendent of schools written verification of his or her effort to obtain an authorized assignment, he or she shall not be subject to penalties under Title 5, California Code of Regulations section 80339.5. Such verification may include, but need not be limited to, copies of written requests to the immediate administrator or supervisor, the district department for personnel matters, and the school superintendent.

Note: Authority cited: Sections 44225 and 44258.9(g), Education Code. Reference: Section 44258.9(g), Education Code.

Section 80335. Performance of Unauthorized Professional Services

A certificated person shall not, after July 1, 1989:

- (a) Knowingly, accept an assignment to perform professional services if he or she does not possess a credential authorizing the service to be performed; unless he or she has first exhausted any existing local remedies to correct the situation, has then notified the county superintendent of schools in writing of the incorrect assignment, and the county superintendent of schools has made a determination, within 45 days of receipt of the notification, that the assignment was caused by extraordinary circumstances which make

correction impossible, pursuant to the procedures referred to in Education Code Section 44258.9(g)(2) and (3).

- (b) Knowingly and willfully assign or require a subordinate certificated person to perform any professional service which the subordinate is not authorized to perform by his or her credential or which is not approved by appropriate governing board authorization, unless he or she has made reasonable attempts to correct the situation but has been unsuccessful, and has notified the county superintendent of schools of those attempts, and the county superintendent of schools has determined, within 45 days of being notified of the assignment, that the assignment was caused by extraordinary circumstances which make correction impossible.
- (c) Neither (a) nor (b) shall be applicable in a situation where extraordinary circumstances make the correction of the misassignment impossible.
- (d) There shall be no adverse action taken against a certificated person under this rule for actions attributable to circumstances beyond his or her control.
- (e) Effective October 20, 1993, no adverse action described in Title 5, California Code of Regulations, section 80331(a) shall be imposed for violation of this section prior to review and attempted disposition pursuant to Title 5, California Code of Regulations, sections 80339 through 80339.6.

Note: Authority cited: Sections 44225 and 44258.9(g), Education Code. Reference: Section 44258.9(g), Education Code.