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Action

Professional Practices Committee

Proposed Changes to Title 5 Sections 80300, 80303, 80307, 80310 and 80412 California Code of Regulations

Executive Summary: This item introduces proposed changes to Title 5 regulations regarding the discipline of professional certificated personnel.

Recommended Action: Direct staff to initiate the regulatory process.

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**PROPOSED CHANGES TO TITLE 5
SECTIONS 80300, 80303, 80307, 80310 AND 80412
CALIFORNIA CODE OF REGULATIONS**

Summary

This item introduces proposed changes to Title 5 regulations regarding the discipline of professional certificated personnel. The changes are necessary as a result of the enactment of legislation (SB 299, Chap. 342, Stats. 2001) and an appellate decision (*Cross v CTC, et al.*, 111 Cal. App. 4th 1001 (2003)). Additional proposed changes implement cost-saving procedures and make technical and clarifying corrections.

Fiscal Impact

There will be a minor cost to the agency related to disseminating the information to interested parties and holding a public hearing. Cost savings of approximately \$3,000 annually are projected once the regulations are revised.

Policy Issues to be Resolved

Should the Commission approve changes to Title 5 regulations?

Recommendation

Staff recommends that the Commission approve the changes to Title 5, California Code of Regulations, sections 80300, 80303, 80307, 80310, and 80412, and direct staff to initiate the regulatory process.

Background

Substantive Changes

New Law

The Commission sponsored Senate Bill 299 (Chapter 342, Stats. 2001) which, among other things, revised Education Code section 44002 to clarify that the definition of “credential” includes a certificate of clearance and a waiver. Accordingly, the definition of “credential” in section 80300(g) should be revised to align with current law.

SB 299 also clarified the circumstances under which the Committee of Credentials may commence an investigation. Currently, the Committee may commence an investigation under specified circumstances, including, but not limited to, notice from the employer of a credential holder that the credential holder has been suspended for more than 10 days, or has otherwise left employment because of an allegation of misconduct. SB 299 clarified that the Committee may initiate an investigation if a credential holder was placed on unpaid administrative leave for more than 10 days or for any other departure of the employee while allegations of misconduct are pending. Section 80303 should be revised to align with current law.

Appellate Court Decision

Section 80307 currently allows credential holders and applicants, following commencement of an investigation, to “discover” copies of all writings in their file, unless privileged, without redaction. Under the Information Practices Act, personal information disseminated by a state agency is limited. In *Cross v. CTC, et al.*, 111 Cal. App. 4th 1001 (2003) the court held that Section 80307 is invalid as it is over broad and in conflict with the IPA.

Education Code section 44244, subdivision (a), requires “discovery” of the “...portions of the investigation of the original or supplemental allegations that constitute the basis for the allegations shall be open to inspection or copying...” The entitlement to “discovery” is limited to the basis of the allegations of misconduct, and does not mandate that “all writings” be discovered, as Section 80307 currently requires.

Since Section 80307 requires that “all writings” be discovered, the court found that Section 80307 conflicts with the IPA by requiring disclosure of personal information in a credential holder’s file that is not necessary to carry out the Commission’s duties under Education Code section 44244. Section 80307 must be revised to reflect court’s finding that it must conform with Education Code section 44244 and the IPA.

Technical and Cost-Saving Changes

Section 80300: This section includes definitions of various terms, with subsection (k) defining “formal review” as “a meeting or hearing held pursuant to Education Code section 44244.” Since Education Code section 44244 does not authorize a hearing, this regulation should be changed to reflect the law.

Section 80303: Currently, this regulation requires the Committee to investigate any superintendent who fails to file reports under this section. This language should be discretionary to allow the Committee of Credentials to investigate the more egregious violations, and not mandate the investigation of technical violations, such as failing to file the reports within 30 days.

Section 80310(a): Education Code section 44244 requires notification by registered mail when the Committee of Credentials has made a recommendation. Currently, the Commission sends meeting notices, also known as formal review, by certified mail, return receipt requested. The Commission could save approximately \$3,000 in postage and labor costs annually by sending meeting notifications via regular mail, and still be in compliance with the Education Code. The California Code of Civil Procedure, section 1013(a), codifies the sending of notices by regular mail and is followed by other states, as well as by the federal government. Section 80310 should be revised to allow implementation of a valid form of legal notification that will result in substantial savings to the Commission.

Currently, Section 80310 states that meeting notices will be sent to the address of record. It is the responsibility of the credential holder or applicant to notify the Commission of any change of address. At times, Commission staff can obtain the last known address via Department of Motor Vehicle or court records, or through other means. In order to help ensure meeting notices are received in a timely manner, Section 80310 should be changed to allow the Commission, in its discretion, to send meeting notices to the last known address, as well as to the address of record. Section 80310 should also include a reminder to credential holders and applicants that it is their responsibility to keep address records up to date.

Section 80310(b): This section currently states that the notice of the Committee of Credentials’ recommendation and the Confidential Investigative Report shall be sent to all known employers. Pursuant to Education Code section 44242.5(e)(2), this section should be changed to indicate that the recommendation and report shall be sent to all known educational employers only.

Section 80412: This Section refers to the “Commission for Teacher Preparation and Licensing” and lists an outdated address for the Commission. This section should be revised to reflect the Commission’s current name. In keeping with other state agencies, the Commission’s address will not be listed in the regulation.

Proposed Changes to Title 5 Regulations

The proposed changes would:

- expand the definition of “credential” to include certificate of clearances and waivers, and delete the improper term “hearing” from the definition of “formal review;”
- clarify when the Committee of Credentials may commence an investigation upon notice from the employer of a credential holder that there has been a change in employment status while allegations of misconduct are pending, and make investigations of reporting violations discretionary, instead of mandatory;
- clarify that the notice of the Committee of Credentials recommendation and Confidential Investigative report will be sent to all known educational employers, not all employers;
- define the scope of disclosure of information while an investigation is in progress;
- allow meeting notices to be sent via regular mail rather than certified mail, return receipt requested; and
- update the regulations with the Commission’s current name and delete the outdated address.

80300	Definitions
80303	Reports of Change in Employment Status
80307	<u>Discovery Disclosure of Documents During Investigation</u>
80310	Notice of Meeting, Formal Review
80412	Filing of Mailing Address

80300 DEFINITIONS

(a) "Adverse action" is a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials.

(b) "Aggravating factor" is an event or circumstance, which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession. Aggravating factors may include, but are not limited to, the following:

- (1) a prior record of adverse action including the nature and extent of that record;
- (2) that the misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct;
- (3) that the misconduct was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators;

- (4) that the misconduct significantly harmed a child entrusted to the care of a credential holder or applicant, significantly harmed the public or the educational system;
- (5) that the holder or applicant demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders; or
- (6) that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source.

(c) "Applicant" is an individual applying for a credential, permit, waiver or other certification document issued by the Commission on Teacher Credentialing.

(d) "Commission" is the Commission on Teacher Credentialing or a predecessor agency.

(e) "Committee" is the Committee of Credentials.

(f) "Confidential investigative report" is a summary of applicable law and relevant facts, as well as information regarding aggravating and mitigating factors, prepared and presented to the Committee pursuant to Education Code section 44242.5(c)(2).

(g) "Credential" is any credential, certificate, life document, life diploma, permit, **certificate of clearance, or waiver**, or other document which authorizes the holder to perform services which require certification and was issued by the Commission.

(h) "Complainant" is the person or persons filing a statement pursuant to Education Code section 44242.5(b)(2), or an employer filing a notice pursuant to Education Code section 44242.5(b)(3), or (4).

(i) "Denial" is refusal to grant a credential to an applicant whose conduct comes within the provisions of Education Code sections 44435 or 44346.

(j) "Employer" is the entity which contracts with or otherwise engages a holder or applicant for the performance of educational services.

(k) "Formal review" is the meeting ~~or hearing~~ held pursuant to Education Code section 44244.

(l) "Holder" is an individual possessing a credential, permit, waiver or other certification document issued by the Commission.

(m) "Mitigating factor" is an event or circumstance which demonstrates that the public, schoolchildren and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever. Mitigating factors may include, but are not limited to, the following factors:

- (1) absence of any prior record of adverse action over many years of educational

service, coupled with present misconduct which is not deemed most serious;

- (2) lack of harm to the person who is the object of the misconduct;
- (3) emotional or physical difficulties suffered by the holder or applicant which substantially contributed to the misconduct; provided that the difficulties were not the product of illegal conduct by the credential holder or applicant, such as illegal drug or substance abuse; and further provided that the credential holder or applicant has established through clear and convincing evidence that he or she no longer has such difficulties;
- (4) a demonstration of good character of the applicant or holder attested to by references from the educational community or the general community from individuals aware of the extent of the applicant's or holder's misconduct;
- (5) objective action taken by the applicant or holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing which is designed to timely make amends for the consequences of the misconduct;
- (6) the proximity or remoteness in time relative to the seriousness of the misconduct; or
- (7) the nature and extent of subsequent rehabilitation.

(n) "Private admonition" is an adverse action defined and governed by Education Code section 44438.

(o) "Probable cause" is reasonable grounds for belief in the existence of facts warranting adverse action.

(p) "Public reproof" is a public warning from the Commission that conduct is not appropriate for a credential holder or applicant. Following a public reproof, commission of the same or similar misconduct may result in more serious adverse action. It is issued only when adequate to appropriately protect the public, schoolchildren and the profession.

(q) "Recurring conduct" is behavior involving the exercise of consistently poor judgment or misconduct.

(r) "Revocation" is the termination of an individual's ability to work in a position requiring certification. Once effective, the revocation continues unless the individual is reinstated by the Commission.

(s) "Sexual misconduct" is:

- (1) acts or conduct, directed at a minor which a reasonable person would believe to be motivated by sexual interest;

- (2) acts or conduct defined in Education Code section 44010 whether or not the applicant or holder was convicted or arrested; or
- (3) the proliferation or distribution of child pornography or the exploitation of any minor through the use of any pornography by a credential holder or applicant. "Pornography" consists of the acts defined in Part 1, Title 9, Chapters 7.5 and 7.6 of the Penal Code, commencing with section 311.

(t) "Suspension" is the temporary inactivation of a credential for a specified period of time. A suspension may be stayed on conditions of probation or may be an actual suspension or may be both. If an actual suspension, the credential holder may not work in a position requiring a credential during the period of actual suspension.

(1) A "stayed suspension" may be issued for a specified period of time only if the stay and performance of specified rehabilitative or probationary duties by the credential holder during the period of the stay is deemed consistent with the purposes of professional discipline.

(2) An "actual suspension" may be issued for a specified period of time. Actual suspensions imposed for one year or longer shall require presentation of sufficient proof to the Commission of the credential holder's rehabilitation, or present fitness to perform the duties authorized by the credential before the suspension may terminate.

Note: Authority cited: Sections 44225(q) and 44242.7(b), Education Code. Reference: Sections 44002, 44225(q), 44242.7, 44242.5, 44421, 44244, and 44438, Education Code.

80303 REPORTS OF CHANGE IN EMPLOYMENT STATUS

(a) Whenever a credential holder, working in a position requiring a credential:

- (1) is dismissed **or nonreelected;**
- (2) resigns;
- (3) is suspended **or placed on unpaid administrative leave as a final adverse employment action** for more than 10 days;
- (4) retires; or
- (5) is otherwise terminated by a decision not to employ or re-employ;

as a result of an allegation of **misconduct or while an allegation of misconduct is pending**, the superintendent of the employing school district shall report the change in employment status to the Commission **within not later than 30 days after the employment action.**

(b) The report shall contain all known information about each alleged act of misconduct.

(c) The report shall be made to the Commission regardless of any proposed or actual agreement, settlement, or stipulation not to make such a report. The report shall also be made if allegations served on the holder are withdrawn in consideration of the holder's resignation, retirement, or other failure to contest the truth of the allegations.

(d) Failure to make a report required under this section constitutes unprofessional conduct. The Committee shall **may** investigate any superintendent who holds a credential who fails to file reports required by this section.

(e) The superintendent of an employing school district shall, in writing, inform a credential holder of the content of this regulation whenever that credential holder, working in a position requiring a credential, is dismissed, **nonreelected**, resigns, is suspended **or placed on unpaid administrative leave as a final adverse employment action** for more than ten days, retires or is otherwise terminated by a decision not to employ or re-employ as a result of an allegation of misconduct **or while an allegation of misconduct is pending**. Failure to comply with this subdivision by a superintendent of schools constitutes unprofessional conduct which shall be investigated by the Committee of Credentials.

Note: Authority cited: Section 44225(q), Education Code. Reference: Section 44242.5(b)(3), Education Code.

80307 DISCOVERY DISCLOSURE OF DOCUMENTS DURING INVESTIGATION

~~(1) All writings as defined by California Evidence Code section 250 which are included in the applicant's or holder's file including writings which form the basis for the allegations, with the exception of privileged information, shall be subject to discovery by the applicant or holder following commencement of an investigation.~~

~~(b) The fee for providing discovery is \$.10 per page for photocopies, \$.50 per page for copies from microfilm, the actual cost of postage, and the actual cost of staff time at the hourly rate of a program technician.~~

~~(c) Credential holders or applicants being investigated shall be notified of the availability and cost of discovery upon notice of initial review from the Commission. Upon receipt of a written request for discovery, Commission staff shall, within five working days, notify the requester of the fee for discovery. This fee shall be paid prior to the release of the documents subject to discovery.~~

(a) Upon receipt of a written request, the Committee shall disclose to the credential holder or applicant or his or her attorney only those portions of the investigation that constitute the basis or bases of the allegations of misconduct.

(b) Disclosure of documents pursuant to subsection (a) may be provided at any time subject to the commencement of the initial review pursuant to Education Code section 44242.5(c).

(c) Except as provided in subsection (a), information contained in the investigative files are exempt from release under the Information Practices Act pursuant to subdivision (d) of section 1798.40 of the Civil Code.

Note: Authority cited: Section 44225(q), Education Code; *Cross v. CTC et al.*, 111 Cal. App. 4th 1001 (2003); Section 1798.40(d), Civil Code. Reference: Section 44244(a), Education.

80310 NOTICE OF MEETING, FORMAL REVIEW

(a) The notice of meeting required by Education Code section 44244(a), ~~for the meeting also known as formal review~~, shall be sent to the address of record of the holder or applicant ~~by certified mail, return receipt requested. The notice shall be sent to the address of record. In its discretion, the Committee may also send the notice to~~ and/or the last known address of the holder or applicant. However, it is the responsibility of the holder or applicant to notify the Commission of any change in his or her address of record. The notice to the holder or applicant shall contain a confidential investigative report.

(b) A copy of the notice, without the confidential investigative report, ~~The notice~~ shall be sent to any complainant and all known educational employers ~~or last known employer and to the university or college which submitted a pending application for certificate of clearance.~~

Note: Authority cited: Section 44225(q), Education Code. Reference: 44244(a), Education Code; 44242.5(e)(2), Education Code Section 1013(a), Code of Civil Procedure.

80412 FILING OF MAILING ADDRESS

(a) Every person applying for, holding, or to whom is issued, a credential, shall file with the Commission his or her present mailing address and shall notify the Commission of any change therein.

(b) Such filing of address and notice of change therein shall be made in writing and delivered, or forwarded by mail, postage prepaid, at the office of the ~~Commission for Teacher Preparation and Licensing, 1020 O Street, Room 222, Sacramento, California 95814~~ on Teacher Credentialing.

Note: Authority cited: Section 44225(q), Education Code.

(July 6, 2004 version.)