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Action

Public Hearing

Proposed Amendments to California Code of Regulations, Title 5, Sections 80300, 80303, 80307, 80310 and 80412, Pertaining to the Committee of Credentials

Executive Summary: The Commission will consider the amendments to sections 80300, 80303, 80307, 80310 and 80412 of Title 5, California Code of Regulations, at a public hearing scheduled for 9:30 a.m. on December 1, 2004 at the California Commission on Teacher Credentialing, 1900 Capitol Avenue, Sacramento, California. These sections pertain to the discipline of professional certificated personnel. The changes were noticed in Coded Correspondence 04-0008 mailed October 14, 2004. The written comment period closed at 5:00 p.m. on November 24, 2004.

Recommended Action: Staff recommends that the Commission adopt the proposed recommended changes.

Presenter: Mary C. Armstrong, Director
Kim Hunter, Staff Counsel
Division of Professional Practices

Strategic Plan Goal(s): 1

Promote educational excellence through the preparation and certification of professional educators.

- ◆ Evaluate and monitor the moral fitness of credential applicants and holders and take appropriate action.

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Introduction

The proposed amendments to California Code of Regulations, Title 5, sections 80300, 80303, 80307, 80310 and 80412 Pertaining to the Committee of Credentials are being presented for public hearing. Included in this item are the background of the proposed regulations, a brief discussion of the proposed changes, and the financial impact. Also included are the responses to the notification of the public hearing and a copy of the notification distributed in Coded Correspondence 04-0008 dated October 15, 2004.

Background of the Proposed Regulations

Summary of Existing Laws and Regulations

Staff is proposing modifications to existing regulations made 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 make technical and clarifying corrections and provide cost-saving procedures.

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. The definition of “credential” in section 80300(g) has been revised to include certificates of clearance and waivers as part of the definition of “credential” in order to align the regulation 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. In order to align the regulation with current law, section 80303 has been revised to include unpaid administrative leave for more than 10 days or for any other departure of the employee while allegations of misconduct are pending as a basis for the Commission to initiate an investigation.

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 overbroad and in conflict with the IPA.

Education Code section 44244, subdivision (a), requires disclosure 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..." Disclosure 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 disclosed, 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 has been revised to reflect the court's finding that it conform to Education Code section 44244 and the IPA.

Technical Changes: Section 80300 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 has been revised to reflect the law.

Section 80303 requires the Committee to investigate any superintendent who fails to file reports under this section. This language has been revised 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 currently states that meeting notices, also known as formal review, will be sent via certified mail, return receipt requested. Education Code section 44244 requires notification by registered mail when the Committee of Credentials has made a recommendation and does not require special mailing procedures at other times. The Commission could send 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 has been revised to allow implementation of a valid form of legal notification that will result in substantial savings in postage and labor costs to the Commission. This change will result in a savings of approximately \$3,000 per year.

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 has been revised 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 has also been amended to include a reminder to credential holders and applicants that it is their responsibility to keep address records up to date.

Section 80310 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 has been amended to indicate that the recommendation and report shall be sent to all known educational employers only.

Section 80412 refers to the "Commission for Teacher Preparation and Licensing" and lists an outdated address for the Commission. This section has been revised to reflect the Commission's current name. In keeping with other state agency-promulgated regulations, the Commission's address will not be listed in the regulation.

Proposed Changes

Section 80300: Staff is proposing that the definition of "credential" be expanded to include certificates of clearance and waivers, and to delete the improper term "hearing" from the definition of "formal review."

Section 80303: Staff is proposing that the regulation be changed to 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 to make investigations of reporting violations discretionary, instead of mandatory.

Section 80307: Staff is proposing that the scope of disclosure of information while an investigation is in progress be defined.

Section 80310: Staff is proposing that the regulation be changed to allow meeting notices to be sent via regular mail rather than certified mail, return receipt requested. Staff is also proposing that the regulation be changed to 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.

Section 80412: Staff is proposing that the regulations be updated with the Commission's current name and that the outdated address be deleted.

Financial Impact

California Commission on Teacher Credentialing: Cost savings of approximately \$3,000 annually are projected once the regulations are revised.

California Colleges and Universities: None

Private Persons: None

Mandate Costs: None

Notice of Proposed Rulemaking Mailing List and Responses

Mailing List

- Members of the California Commission on Teacher Credentialing
- California County Superintendents of Schools
- Credential Analysts at the California County Superintendents of Schools Offices
- Superintendents of Selected California School Districts
- Deans and Directors at the California Institutions of Higher Education With Commission-accredited programs
- Credentials Analysts at the California Institutions of Higher Education with Commission-accredited programs
- Presidents of Selected Professional Educational Associations
- Interested Attorneys

Also placed on the internet at <http://www.ctc.ca.gov>.

As of Tuesday, November 9, 2004, the Commission has received no response to the public announcement.

Recommendations

Staff recommends that the Commission adopt the amendments to the California Code of Regulations, Title 5, sections 80300, 80303, 80307, 80310, and 80412 Pertaining to the Committee of Credentials.

*Proposed Amendments to California Code of Regulations,
Title 5, Sections 80300, 80303, 80307, 80310 and 80412
Pertaining to the Committee of Credentials*

INITIAL PROPOSED REGULATIONS

80300 Definitions

80303 Reports of Change in Employment Status

80307 ~~Discovery~~ Disclosure of Documents During Investigation

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.*, *Sacramento Superior Court, 01CS0175*; 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.

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.