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Information

Professional Practices Committee

Precedential Decisions for Discipline Cases

Executive Summary: The Committee will discuss whether to designate published discipline decisions as precedential.

Recommended Action: For information only

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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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Precedential Decisions for Discipline Cases

Introduction

Every applicant for a credential or holder of a credential who has received a recommendation from the Committee of Credentials to deny an application or to impose discipline on a credential is entitled to request an administrative hearing with an independent administrative law judge (ALJ) who issues a proposed decision for the Commission's review, adoption and action. If the Commission chooses to designate some of these Decisions as precedential Decisions they could provide guidance, consistency and clarity from the Commission to ALJs as well as to school districts, credential holders and teacher preparation programs.

Background

Under current law (Government Code § 11425.60), "an agency may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur. The agency is required to maintain an index of significant legal and policy determinations made in precedent Decisions. The index shall be updated not less frequently than annually, unless no precedent decision has been designated since the last preceding update. The index shall be made available to the public by subscription, and its availability shall be publicized annually in the California Regulatory Notice Register."

Proposal to Designate Precedential Decisions

After a request is made for an administrative review of a Committee recommendation, an administrative hearing is held at which time both the respondent (applicant or credential holder) and the Commission are provided the opportunity to present evidence and testimony. The ALJ then makes findings based on the evidence and testimony presented and issues a proposed decision recommending the discipline to be imposed. In many cases the ALJ's decision is the same recommendation as the Committee's although because it is a *de novo* review, the discipline imposed can be more or less severe than the Committee's recommendation. The Commission reviews the proposed decision and can decide to adopt the decision or, if it disagrees with either the finding or the discipline imposed, it can choose to call for the transcript, review the transcript and issue a decision and order. On average, ten Decisions become final each year and approximately nine are adopted from the proposed Decisions issued by an ALJ. The Commission calls for the transcript on the average of one to two times per year.

Many agencies utilize the provisions of the Government Code §11425.60 to provide guidance to both stakeholders and the various ALJs assigned to a case. For example, a precedent decision could be instructive to an ALJ who is unfamiliar with accepted practices at school sites as a way to become familiar with such practices and whether or not failure to adhere to such practices could result in a determination that misconduct occurred. Other Decisions which staff could recommend as appropriate to be designated as precedent are those with a significant legal or policy determination of general application that is likely to recur. The cases chosen involve unprofessional conduct, moral turpitude and immoral conduct.

One of the Commission's strategic goals is to improve customer service and consistency. School districts, credential holders, teacher preparation programs, all of which are external customers, seek guidance and consistency within the discipline process. Additionally, ALJs, the Attorney General's Office and credential holders and applicants' legal representatives also seek guidance and consistency throughout the discipline process. Publishing written precedential Decisions would provide guidance and consistency as well as improve communication with all interested parties. Additionally, the Commission's precedential Decisions become controlling authority which ALJs who deliberate over the Commission's discipline cases would follow in subsequent cases.

Next Steps

If the Commission chooses to designate and publish precedential Decisions, the next steps would be to direct staff to identify Decisions that would be appropriate for a designation as precedent and return to the Commission with the Decisions for the Commission's review and action. Staff could also be directed to establish a procedure for continuing to designate future Decisions as precedential as appropriate.