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# 11

## Action

### *Public Hearing*

## Proposed Amendments to Title 5 of the California Code of Regulations Pertaining to Fingerprint Submissions

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**Executive Summary:** Proposed amendments to Title 5 of the California Code of Regulations pertaining to fingerprint submissions as recommended by the Bureau of State Audits are presented for public hearing.

**Recommended Action:** Staff recommends that the Commission adopt the proposed amendments to the regulations pertaining to fingerprint submissions.

**Presenter:** Tammy A. Duggan, Consultant, Certification, Assignment and Waivers Division

#### Strategic Plan Goal: 1

Promote educational excellence through the preparation and certification of professional educators

- ◆ Grant credentials, certificates and permits as set out in regulation and statute

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# **Proposed Amendments to Title 5 of the California Code of Regulations Pertaining to Fingerprint Submissions**

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## **Introduction**

The proposed amendments to Title 5 of the California Code of Regulations are to update the language pertaining to the submission of fingerprints and to establish parameters for the situations in which an individual must resubmit fingerprints.

## **Background**

The Joint Legislative Audit Committee requested that the Bureau of State Audits within the California State Auditor's office conduct an audit of the Commission's educator discipline process. The audit report, completed in April 2011, included a recommendation that the Commission notify the Department of Justice (DOJ) when it no longer needs reports of arrest and prosecution (RAP) sheets on an individual for misconduct perpetrated in California. The audit report determined that the Commission spends between one week and five weeks of staff time each year needlessly reviewing RAP sheets for individuals who do not hold valid documents. The proposed amendments are designed to reduce the number of RAP sheets reviewed by Commission staff each year by invalidating the fingerprint information for individuals who have not held valid documents for more than eighteen months. Penal Code §11105.2(d) states that "Any agency which submits the fingerprints of applicants for licensing, employment, certification, ... shall immediately notify the department ... when the applicant's license or certificate is revoked, [or] when the applicant may no longer renew or reinstate the license or certificate..." Notifying the DOJ that fingerprint information is not needed will allow the DOJ to discontinue the notification of subsequent arrest reports process for the affected individuals.

The Commission solicited input regarding the invalidation of fingerprints from California school districts, county offices, and institutions of higher education. Through this contact, it was decided that fingerprints should be invalidated for individuals who have not held valid documents for more than eighteen months. Invalidating fingerprints for individuals with documents that have lapsed for less than eighteen months could potentially create additional work for Commission staff, stakeholders, and credential applicants as individuals often take leaves of absence for a year or less due to illness, difficulty finding teaching positions, or to further their education. As stated above, the Commission only receives subsequent RAP sheets for misconduct that occurs in California. Therefore, waiting more than eighteen months after an individual's documents have lapsed before invalidating their fingerprints increases the odds that he/she will leave the state and commit a crime for which the Commission will not receive notification. The proposed regulations will require individuals to resubmit their fingerprints if they have not held a valid document for more than eighteen months.

The Commission also routinely receives fingerprint information from individuals prior to the submission of an application for a credential, certificate, permit, waiver, or document. The proposed amendments add language stating that the fingerprints for these individuals will be

valid for eighteen months. If an application for a credential, certificate, permit, waiver, or document is not received within eighteen months from the date the DOJ provides the Commission with the fingerprint information, the individual's fingerprints will be invalidated and the resubmission of fingerprints will be required with his/her next application. This will allow the Commission to notify the DOJ that subsequent RAP sheets are not required for individuals who submit their fingerprints more than eighteen months prior to submitting an application for a credential, certificate, permit, waiver, or document.

The Federal Bureau of Investigation (FBI) does not provide subsequent RAP sheets to the Commission; arrest information from the FBI is only provided at the time an individual's fingerprints are submitted through the DOJ for clearance. Requiring individuals to resubmit fingerprints when they have not held a valid document in California for more than eighteen months will allow the Commission to receive updated arrest information from the FBI for misconduct that may have occurred in other states. This is especially important because individuals with expired documents may have resided outside California during the lapse of their certification.

### **Proposed Amendments to Regulations**

#### **§80028**

**Note:** Updates the subdivision referenced for EC §44320 from (b) to (d). Amendments to Education Code (EC) §44320 as a result of Senate Bill (SB) 1422 (Chap. 1245, Stats. 1992) moved the subdivision that includes the Certificate of Clearance requirement from (b) to (d). Adds Education Code §44350 as a Reference. EC §44350 states that all Commission documents must be issued with expiration dates.

#### **§80301**

**Title:** Deletes "Application for" from the title of this section. A separate form was previously required with applications that included fingerprint information. However, the separate form was discontinued several years ago when the character and identification clearance information was added to the Application for Credential Authorizing Public School Service form.

**(b):** Updates the name of the application form required for all types of documents issued by the Commission along with reference to the Title 5 section that defines the application form. Also adds the Activity Supervisor Clearance Certificate (EC §49024) to the list of documents requiring character and identification clearance.

**(c):** Updates the name of the application form required for all types of documents issued by the Commission along with reference to the Title 5 section that defines the application form.

**Note:** Adds EC §49024 pertaining to the Activity Supervisor Clearance Certificate as a Reference.

#### **§80442**

**Title:** Changes the title from "Personal Identification Cards" to the more generic term of "Fingerprints." Penal Code §11077.1 as amended by SB 970 (Chap. 470, Stats. 2003) requires submission of fingerprints via livescan unless a livescan station is not available. This Title 5

section requires submission of fingerprints via livescan and allows for the submission of personal identification (fingerprint) cards only if an individual resides outside California.

**(a):** Clarifies that the requirement in EC §44340 to include fingerprints when filing an application is met with the submission of fingerprints via livescan (electronic process) as required by the DOJ. Penal Code §11077.1 as amended by Senate Bill 970 (Chap. 470, Stats. 2003) requires submission of fingerprints via livescan unless a livescan station is not available. Adds language allowing the submission of personal identification (fingerprint) cards by individuals applying for certification while residing outside California.

**(c):** Amends the language pertaining to “personal identification cards” and the subsequent filing of “cards” to “fingerprints.” Subdivision (a) defines who must submit livescan and who are allowed to submit fingerprint cards; therefore, the generic term of “fingerprints” is more appropriate in this subdivision. Adds new language requiring the submission of fingerprints by applicants who have not held a valid document issued by the Commission for more than eighteen months. The Commission continues to receive subsequent arrest information for individuals who do not hold valid credentials, certificates, permits, waivers, or documents which unduly increases the workload of the Commission’s Division of Professional Practices. The proposed language will allow the Commission to notify the DOJ that it is no longer interested in receiving subsequent arrest information for individuals who have allowed their California certification to lapse for more than eighteen months.

**(d):** The Commission routinely receives fingerprint information from the DOJ for individuals who submitted their fingerprints via livescan (electronically) but who do not subsequently submit an application for any type of credential, permit, certificate, waiver, or document. The Commission continues to receive subsequent arrest information for these individuals which unduly increases the workload of the Division of Professional Practices. The proposed language will allow the Commission to notify the DOJ that it is no longer interested in receiving subsequent arrest information for individuals who submit their fingerprints electronically but who do not apply for a credential, permit, certificate, waiver, or document within eighteen months from the date the fingerprint information is received from the DOJ. Individuals who do not apply for certification within eighteen months from the date the fingerprint information is received from DOJ will be required to resubmit fingerprints with their next application.

Personal identification cards (fingerprint cards) are not accepted separate from an application form and processing fee.

**Documents Incorporated by Reference:** None.

**Documents Relied Upon in Preparing Regulations:** California State Auditor April 2011 Report 2010-119 available on the Bureau of State Audits website at <http://bsa.ca.gov/pdfs/reports/2010-119.pdf>.

**Disclosures Regarding the Proposed Actions**

The Commission has made the following initial determinations:

*Mandate to local agencies or school districts:* None.

*Other non-discretionary costs or savings imposed upon local agencies:* None.

*Cost or savings to any state agency:* None.

*Cost or savings in federal funding to the state:* None.

*Significant effect on housing costs:* None.

*Significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states:* None.

These proposed regulations will not impose a mandate on local agencies or school districts that must be reimbursed in accordance with Part 7 (commencing with section 17500) of the Government Code.

*Cost impacts on a representative private person or business:* The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

*Assessment regarding the creation or elimination of jobs in California [Govt. Code §11346.3(b)]:* The Commission has made an assessment that the proposed amendments to the regulations will not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

*Effect on small businesses:* The proposed regulations will not have a significant adverse economic impact upon business since they apply only to the submission of fingerprint information from individuals seeking documents that authorize service in California's public schools.

## **Notice of Proposed Rulemaking Mailing List and Responses**

### Mailing List

- Members of the 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-approved programs
- Credential Analysts at the California Institutions of Higher Education with Commission-approved programs
- Presidents of Selected Professional Educational Associations

Also placed on the Internet at <http://www.etc.ca.gov>.

### **Tally of Responses**

As of Wednesday, January 11, 2012, the Commission had received the following written responses to the public announcement:

#### ***Support***

1 organizational opinion  
2 personal opinions

#### ***Opposition***

0 organizational opinions  
0 personal opinions

**Total Responses: 3**

#### ***Responses Representing Organizations in Support***

1. Jeanne Nava, Assistant Superintendent, Human Resources, Tulare County Office of Education

#### ***Responses Representing Individuals in Support***

1. Susana Fernandez, Support Services Manager, Orange County Department of Education
2. Enid Brinkman, Credentials & Retirement Supervisor, Tulare County Office of Education

#### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed amendments to Title 5 of the California Code of Regulations pertaining to fingerprint submissions.

**CALIFORNIA CODE OF REGULATIONS  
TITLE 5. EDUCATION  
DIVISION 8. COMMISSION ON TEACHER CREDENTIALING**

#### **§ 80028. Certificate of Clearance.**

A Certificate of Clearance is a document, issued by the Commission, which verifies that the holder meets personal qualifications necessary to obtain a regular California teaching or services credential. Each candidate for an initial credential shall, prior to admission to student teaching under any professional preparation program approved by the Commission, obtain a Certificate of Clearance. No less than 60 working days prior to admission to student teaching, the candidate shall submit the following materials to the Commission:

- (a) A completed application via the online application system.
- (b) One-half of the credential issuance/reissuance or renewal fee specified in Section 80487(a)(1) unless otherwise established by law. The fee shall apply toward the initial credential.
- (c) Verification of completion of livescan.

The Certificate of Clearance shall be issued for a period of five years when the Commission has verified that the candidate meets personal qualifications necessary to obtain a regular California teaching or services credential.

Note: Authority cited: Section 44225(b), Education Code. Reference: Section 44320(~~bd~~) and 44350, Education Code.

**§ 80301. Notice to Applicants for Issuance or Renewal of Credentials; ~~Application for Character and Identification Clearance.~~**

- (a) An applicant for issuance or renewal of a credential shall not be required to disclose, and the Committee of Credentials shall not inquire into or consider, any acts or omissions not related to his or her fitness or competence to perform the duties authorized by his or her credential.
- (b) Each applicant for initial issuance of a credential shall submit a completed Application for ~~Character and Identification Clearance on~~ Credential Authorizing Public School Service form adopted by the Commission as specified in §80001 on which he or she will set forth evidence of identification and good moral character which shall be used for the sole purpose of determining the applicant's eligibility for a credential, ~~or Certificate of Clearance, or Activity Supervisor Clearance Certificate.~~
- (c) The Application for ~~Character and Identification Clearance~~ Credential Authorizing Public School Service as specified in §80001 shall include, but not be limited to, the following information for applicants:
  - (1) that the Commission is prohibited from issuing to or renewing the credential of any person convicted of any sex offense listed under Education Code Section 44010; or any narcotics offense listed under Education Code Section 44011; or who has been determined to be a mentally disordered sex offender; or that if a person holds a credential and has been convicted of any offense listed in Education Code Section 44424, such credential must be revoked.

Note: Authority cited: Section 44225(q), Education Code. Reference: Sections 44339, 44346, ~~and~~, 44425 and 49024, Education Code.

**§ 80442. ~~Personal Identification Cards~~ Fingerprints.**

- (a) Except as provided in subsection (c), each applicant for a credential shall submit with the application verification of livescan. Individuals who reside outside California may submit duplicate personal identification cards provided by the Commission or obtained from the Bureau of Identification of the Department of Justice. Such identification cards shall be completed in the manner required by the instructions on the card.
- (b) The fingerprints of the applicant shall be taken by a qualified officer or employee of the state, or of any political subdivision thereof, or by a person designated by the Commission.
- (c) Where an applicant is seeking an additional credential and has filed ~~personal identification cards~~ fingerprints in connection with a previous credential, or renewal thereof, said applicant need not ~~file~~ subsequently submit fingerprints ~~cards~~ except upon express request by the Commission or when a valid credential, certificate, permit, waiver, or other document has not been held for more than eighteen months.

(d) Fingerprints submitted to the Commission electronically via livescan prior to the filing of an application form by the individual will be valid for eighteen months. If an application form is subsequently filed after the eighteen month validity period, the individual will be required to resubmit fingerprints.

Note: Authority cited: Section 44225, Education Code. Reference: Section 44340, Education Code.