
4B

Action

Professional Practices Committee

Policies on Division of Professional Practices Cases

Executive Summary: This agenda item provides proposed policy recommendations for the Commission's consideration on discipline relating to single alcohol offenses and failure to disclose information on an application.

Recommended Action: Staff recommends that the Commission adopt the proposed policy recommendations.

Presenter: Nanette Rufo, Director, Division of Professional Practices

Strategic Plan Goal: 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

March 2012

Policies on Division of Professional Practices Cases

Introduction

This agenda item presents two issues for the Commission's consideration: a proposed policy about the handling of a single alcohol offense, and second a proposed policy about failure to disclose required information on a credential application. Given the Commission's stated desire for greater transparency and accountability, these items are being presented to the Commission for review. Also included in this item is a copy of Mr. Rothschild's most recent correspondence for the Commission's consideration (Appendix A).

Policy for Single Misdemeanor Alcohol Offense

At the December 2010 meeting of the Commission on Teacher Credentialing (Commission), the Commission looked at data showing five-year trends. That data clearly showed that the largest single case type was criminal alcohol offenses. Data collected from February 2010 to the end of November 2011, shows that "Reports of Arrest and Prosecution" (RAP) sheets for a first-time alcohol offense constitutes 28.61% of the RAP sheets received in the Division of Professional Practices (DPP). A misdemeanor "alcohol offense" as described in this policy proposal includes driving under the influence (DUI), drunk in public and wet (or alcohol involved) reckless driving.

Under Education Code section 44421, the Commission "shall privately admonish, publicly reprove, revoke or suspend for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause that would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service." Education Code section 44345(c) allows the Commission to deny an application if the person "is addicted to the use of intoxicating beverages to excess."

In addition to looking at the criminal conviction, the Commission must also review the particular facts surrounding a conviction before making a decision to take a disciplinary action. Under case law and regulation, the Commission must look at the facts and determine whether the misconduct has a relationship to the person's ability or fitness to perform the duties authorized by a credential.

The typical DUI offense is where a police officer pulls over a car because of irregularities in driving. The officer does roadside testing and blood alcohol testing. If the driver fails the testing, the driver may be arrested, booked and released. If the person is convicted of a criminal offense, the Commission has jurisdiction to take an adverse action. However, the adverse action may only be taken if the misconduct has a relationship to the fitness to perform the duties authorized by the credential. Under Title 5, California Code of Regulations, section 80302, the following factors (also called Morrison factors) are to be weighed:

1. The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity

anticipated;

2. The proximity or remoteness in time of the conduct;
3. The type of credential held or applied for by the person involved;
4. The extenuating or aggravating circumstances surrounding the conduct;
5. The praiseworthiness or blameworthiness of the motives resulting in the conduct;
6. The likelihood of the recurrence of the questioned conduct;
7. The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons; and
8. The publicity or notoriety given to the conduct.

In the typical first-time misdemeanor DUI, it is difficult to make the connection between the criminal conduct and the ability to perform the duties authorized by the credential. However, such a connection is occasionally present. For example, a district administrator could be arrested for a DUI while driving a district vehicle, or perhaps circumstances of a particular DUI offense could result in extensive local publicity, adversely impacting the local educational community.

The issue of how to effectively handle alcohol offenses was also raised at the stakeholder meeting held in November. A proposal was made by Michael Rothschild, attorney representing the California Teachers Association, for a policy applicable to all drunk driving offenses. A copy of Mr. Rothschild's most recent correspondence is attached for the Commission's consideration as Appendix A.

Current practice by DPP, and informally approved by the Committee, is that a *single* alcohol-related offense that is not aggravated by a high blood alcohol level, property damage, involvement of a child, on school property or while driving to or from school employment, is presented to the Committee on the Consent Calendar. Before putting the matter on the Consent Calendar, DPP staff checks with Department of Motor Vehicles records to determine if the person was convicted of other alcohol offenses and checks to determine if online court documents are available. The Committee routinely votes to close these cases.

Proposed Policy on One Alcohol Offense

At the December 2011 meeting of the Committee, the Committee decided to recommend to the Commission the following policy for a single alcohol related offense:

An applicant or holder who is convicted of one misdemeanor alcohol related offense shall not be submitted to the Committee of Credentials for review. Staff shall close the matter and note the offense in the DPP database.

If an applicant or holder has other acts of misconduct, staff shall include the DUI

offense when presenting the case to the Committee of Credentials.

The exception to this policy is where staff is aware of the involvement of a child, a school or school property in the alcohol offense, or where adverse publicity impacts the local community. These exceptions shall be presented to the Committee of Credentials.

This recommendation utilizes staff time in the most effective manner possible. Preparing the Consent Calendar takes staff time. For matters that are being routinely closed, expending any additional time to prepare a Consent Calendar is not an efficient use of scarce resources. In addition, this proposal allows a large number of cases to be handled in a rapid manner. If the Commission adopts the proposed policy, cases can be opened and closed in just a few days. If cases wait for a Committee meeting, each case will be open for up to an additional 30-45 days.

From a legal perspective, it is unusual that a single alcohol related offense will give rise to a sufficient nexus to take an adverse action. Absent publicity, involvement of children or school property, it is difficult to determine how a single offense would impact a person's ability to perform the duties authorized by the credential.

It is important to note that alcohol related misconduct does not go unpunished. Court ordered criminal sanctions for a first offense DUI typically include: informal probation for three to five years; a fine of between \$1400 and \$1800; a restricted license enables the person to drive during the course of employment, to and from work or school; and a California licensed DUI program. There is also a mandatory 48 hours of jail time with a DUI first offense, though this requirement is often converted to work service. Issuing such punishments for criminal actions is the role of the courts. The Commission's role is to take action to protect the public only when such misconduct impacts the classroom or the educational community.

An additional factor for the Commission to consider in weighing the Committee's recommendation is that the employing school district also receives subsequent arrest notices. The employer, not the Commission, is in a position to know if the alcohol related crime is related to conduct in the classroom. For example, a district may have received comments about an educator smelling of alcohol. The district would be in a position to connect the arrest notice for the DUI with such reports. The district, not the CTC, is in the best position to deal with the concerns since the district has more knowledge of any performance issues. The policy recommended by staff would let a single alcohol offense without aggravating factors be handled as a local issue.

Policy on Failure to Disclose Information

Applicants are required to disclose certain information on their applications. The information is requested in a section called "Professional Fitness Questions" (PFQs). This section includes questions about arrests, convictions, and leaving employment under adverse circumstances. The application, including the PFQ section, is signed by the applicant, verifying the facts under penalty of perjury.

When an applicant omits required PFQ information on the application, it is considered a "failure to disclose." The report of the Bureau of State Audits noted that inconsistent practices were used in the DPP in determining whether to: 1) take no action on a failure to disclose; or 2) send a letter informing the applicant that failure to disclose is considered falsification of an application and

grounds for denial; or 3) opening an investigation and presenting the matter to the Committee. To assist the Commission in setting policy in this area, at its December 2011 meeting the Committee of Credentials considered and recommended to the Commission some policies when an applicant fails to disclose information.

The policies recommended by the Committee weigh the “materiality” of the information that was not disclosed. Here the concept of materiality is boiled down to the question, “if the Committee knew this information would it possibly result in a different outcome of the matter?” Thus, if the applicant failed to disclose a conviction that the Committee previously investigated, no action should be taken. However, if a serious offense was not disclosed, then the failure to disclose should be added as an allegation of misconduct. Based on those concepts the Committee recommends the following policies to the Commission regarding failure to disclose:

1. *If an applicant fails to disclose information that the Committee of Credentials and/or Commission has previously reviewed, investigated or taken action on, no action should be taken.*
2. *If an applicant fails to disclose information that is presented to the Committee of Credentials on a Consent Calendar, the failure to disclose will be added to the information on the Consent Calendar.*
 - a. *If the Committee of Credentials closes the case, then a letter should be sent to the applicant concerning the duty to fully and truthfully respond to questions on the application.*
 - b. *If the Committee of Credentials determines to open an investigation, then the failure to disclose should be included in the allegations.*
3. *If an applicant fails to disclose information of such a nature that the Committee of Credentials commences an investigation into the alleged misconduct, then the failure to disclose should be included as an allegation.*
4. *The Commission delegates authority to the Commission’s attorney staff to make exceptions to these failures to disclose policies based on the facts of a particular case. Any exception shall be documented in the file with the name of the attorney staff making the decision.*

Recommendations

Staff recommends that the Commission adopt the following policy for handling a single alcohol offense:

- a. *An applicant or holder who is convicted of one misdemeanor alcohol related offense shall not be submitted to the Committee of Credentials for review. Staff shall close the matter and note the offense in the DPP database.*
- b. *If an applicant or holder has other acts of misconduct, staff shall include the DUI offense when presenting the case to the Committee of Credentials.*

- c. *The exception to this policy is where staff is aware of the involvement of a child, a school or school property in the alcohol offense, or where adverse publicity impacts the local community. These exceptions shall be presented to the Committee of Credentials.*

Staff recommends that the Commission adopt the following policy for sending Failure to Disclose letters:

- a. *If an applicant fails to disclose information that the Committee of Credentials and/or Commission has previously reviewed, investigated or taken action on, no action should be taken.*
- b. *If an applicant fails to disclose information that is presented to the Committee of Credentials on a Consent Calendar, the failure to disclose will be added to the information on the Consent Calendar.*
 - 1) *If the Committee of Credentials closes the case, then a letter should be sent to the applicant concerning the duty to fully and truthfully respond to questions on the application.*
 - 2) *If the Committee of Credentials determines to open an investigation, then the failure to disclose should be included in the allegations.*
- c. *If an applicant fails to disclose information of such a nature that the Committee of Credentials commences an investigation into the alleged misconduct, then the failure to disclose should be included as an allegation.*
- d. *The Commission delegates authority to the Commission's attorney staff to make exceptions to these failures to disclose policies based on the facts of a particular case. Any exception shall be documented in the file with the name of the attorney staff making the decision.*



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February 10, 2012

Ms. Mary Sandy, Executive Director
California Commission on Teacher Credentialing
1900 Capitol Avenue
Sacramento, CA 95811-4213

Dear Executive Director Sandy:

Please consider this a formal request to deliver the attached document dated February 1, 2012 from Michael Rothschild to the Commission members as soon as possible.

This is also a formal request for their respective e-mail addresses.

Thank you for your attention to these requests.

Sincerely,

A handwritten signature in black ink that reads 'Ken Burt'. The signature is fluid and cursive, with the first and last names clearly legible.

Ken Burt, Liaison Program Coordinator
California Teachers Association

Kb:db

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February 1, 2012

VIA E-MAIL & U.S. MAIL

Ken Burt
CTA Governmental Relations
1118 10th Street
Sacramento, CA 95814

Re: BSA Audit Recommendations and Resulting Stakeholder Meetings – Streamlining Procedures Before the Committee of Credentials

Dear Mr. Burt:

Nanette Ruffo, Director, Division of Professional Practices, has issued a set of five “agenda items” for the Commission on Teacher Credentialing following stakeholder meetings which addressed streamlining procedures before and narrowing the scope of review by the Committee of Credentials. At the request of the California Teachers Association, I prepared specific proposals for and thereafter attended the November 18, 2011 “stakeholder’s meeting”. Having reviewed Ms. Ruffo’s “information items 4B and 4C” and “action items for 4D and 4E” based upon that proceeding, I believe that the comments which follow are essential to effective implementation of creative suggestions produced by the “stakeholder meetings”. The agreed goal of all concerned was to protect the rights of applicants and licensees by the effective, efficient and fair handling of cases in a timely manner. Ms. Ruffo’s report does not fully reflect what occurred and, stated simply, does not go far enough in supporting that goal.

(1) Proposed Early Settlement Policy:

At page PPC-4D-4 of Action Item 4D entitled “Policies on Division of Professional Practices Cases,” Ms. Ruffo proposes amendment of Title V Regulation 80320 to allow settlement of Committee of Credentials matters at any time after an investigation has commenced. Although not specifically so-attributed, this proposal appears to implement suggestion number 5 which resulted from the November 18, 2011 stakeholder meeting (reference page PPC-4C-19 of Information Item 4C) that staff be able to enter into early settlements and thereby close cases without first exhausting all administrative steps before the Committee of Credentials.

Two significant problems are presented by this proposal. The first relates to the potential for unfair dealing to be perceived by affected teachers and their attorneys. That would undermine, as a practical matter, any true attempts at early settlement. The second relates to discovery by staff counsel of all materials within a teacher’s file at the earliest stage of proceedings as no competent attorney will allow any settlement without first knowing what cards, so to speak, the Committee of Credentials is holding.

As currently framed, Title 5, California Code of Regulations section 80320, provides that the Committee may consider a settlement only after an administrative hearing is requested. The clear purpose for allowing settlement negotiations to occur only after all proceedings before the Committee of Credentials have concluded is to preclude any suspicions by a credential holder that if settlement negotiations at an early stage fail, members of the Committee may hold it against them when they appear, for example, at a formal review personal appearance. If the regulation is to be amended as suggested by staff counsel, language should therefore be added which precludes consideration by the Committee of the fact of or content of any settlement negotiations when evaluating a credential holder prior to an administrative hearing request. To have credibility in the process, there also should be an outright ban on the Committee's knowledge of any such negotiations until they have been concluded with staff counsel and the credential holder then provides written consent that the resulting proposed agreement be presented to the Committee of Credentials is appropriate.

"Early settlement" will not be possible unless and until the current policy of only **selective** discovery of materials held by Commission staff with reference to any investigation is changed to provide full disclosure from inception of the investigation. Stated simply, such full disclosure is now available only after a credential holder exhausts all procedural steps before the Committee of Credentials and then requests an administrative hearing pursuant to the Administrative Procedure Act. If the request by staff counsel is to shift their ability to negotiate a settlement from the administrative hearing stage to the earliest possible stage of proceedings before the Committee of Credentials, similar considerations apply to making full disclosure to the affected teacher and their attorney. Otherwise, the latter would be "flying blind" or could constitute legal malpractice by the teacher's attorney. As summarized at suggestion number 11 resulting from the stakeholder meetings (page PPC-4C-21 of Information Item 4C), the "current process supports more cases going through the full process...[and] with full discovery, earlier settlements would be possible according to defense attorneys."

CTC staff counsel has recommended amendment of Title V, California Code of Regulations section 80320 in furtherance of its early settlement proposal. For that to be of realistic practical effect, Education Code section 44244(a) must be amended as indicated at pages 4-6 of our proposals before the "stakeholder's meeting" of November 18, 2011 which provided:

1. Perceived Problem:

Proceedings before the Committee of Credentials have increasingly shifted to later stages of the investigatory process. Increasing numbers of review matters have required personal appearance before the Committee of Credentials rather than settlement at the initial "Letter of Inquiry" stage. Consistent with that, increasing numbers of review matters have proceeded to administrative proceedings pursuant to the California Procedure Act. Impact both in caseload and fees paid to the Department of Justice to defend administrative hearings have increased. This has occurred in large part due to mistrust of Division of Professional Practices staff. One significant concern is the failure to provide exonerating evidence in "disclosure" to a credential holder or their attorney or even, it is suspected, to the Committee of Credentials itself. Some matters proceed to an administrative hearing with concomitant increased expense to the Commission based upon the suspicion – often later confirmed as accurate – that significant evidence may be contained within the Commission file which has previously not been revealed. That would be later revealed by Department of Justice attorneys as required by law at that late stage of proceedings.

2. Proposed Solution:

Prior to the 2003 appellate decision in *California Teacher's Association v. California Commission on Teacher Credentialing* published at 111 Cal.App.4th 1001, then-California Code of Regulations section 80307 provided for broad discovery to credential holders and their attorneys of a Committee of Credential file to include:

All writings as defined by California Evidence Code section 250 which are included in the applicant's or holder's file including writings which include 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.

At the Commission's request, the Appellate Court in 2003 declared regulation 80307 to be void as it exceeded the narrow limitation of Education Code section 44244(a) that only "portions of the investigation of the original or supplemental allegations that constitute the basis for the allegations shall be opened to inspection of copying." At page 1012 of its opinion the Court of Appeal recognized arguments presented to it by the California Teacher's Association and commented with respect thereto as follows:

Part of this argument is that full discovery is necessary to permit a full investigation that will result in avoiding unnecessary administrative hearings. Only after conducting a full investigation will the teacher know whether to accept or challenge the recommendation of the Committee. This policy argument is best directed to the legislature, which sets the policy in this area.

Stated simply, the Court of Appeal's offer should be accepted and appropriate provisions of the Education Code modified to conform to the regulatory procedure as it existed before 2003. Early settlement will thereby be encouraged and otherwise unnecessary requests for an administrative hearing – which would result in the same full discovery of an entire file being provided at that late date – thereby avoided.

3. Proposed Specific Implementation:

Subdivision (a) of Education Code section 44244 should be amended to delete language which indicates that "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 by the holder or applicant and his or her attorney." Instead, the following language should be substituted:

All writings as defined by California Evidence Code section 250 which are included in the applicant's or holder's file including, but not limited to, 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. The Commission shall provide to the Committee of Credentials as well as any applicant or holder any and all available exonerating evidence.

(2) Proposed Policy on Alcohol Offenses:

At pages PPC-4D-2 and et seq., (Action Item 4D) Ms. Ruffo acknowledges, apparently with approval, the “easily administered and low cost program” proposed by myself with reference to alcohol related driving offenses. As proposed by staff counsel, their policy fails to acknowledge – and to that extent seriously misstates – the “easily administered and low cost program” which was presented on behalf of the CTA to the stakeholder meeting in November, 2011. It similarly fails to acknowledge the strengths of that alternative process for alcohol convictions as summarized at section 9 of the stakeholder’s “suggestions to streamline the disciplinary review process” which provided (page PPC-4D-20 of Information Item 4C):

Suggestion, for conviction of drunk driving only

- 1/2 in the conviction – no adverse action
- 3rd plus conviction – diversion

There was no discussion of any proposed delay of implementing the proposal. If anything, all participants appeared to feel that it was a positive course to pursue without further meetings.

Staff counsel limits its proposal for leaving drunk driving offenses to the courts without overt action by the Committee of Credentials to first offenders only. The CTA proposal is far more comprehensive – it applies to all drunk driving and reckless driving matters.

The foregoing consensus recommendation was in response to the following specific recommendation then-presented on behalf of the CTA:

1. Perceived problem: CTC staff has indicated as follows:

“If a process could be established in statute to provide for voluntary non-disciplinary process coupled with mandatory probation monitoring for misdemeanor DUI/alcohol related convictions, the major area of the COC caseload could be reduced.”

2. Proposed solution:

Create a simple, easily administered and low cost program within which first and second misdemeanor driving under the influence offenders where no bodily injury was involved may be diverted from the review process prior to consideration by the Committee of Credentials. Vehicle Code sections 23538(b) for first offenders and section 23542(b) for second offenders provide for court ordered drinking driver education/therapy programs as a condition of probation. Mandatory jail sentences and monetary fines are also contemplated by the Vehicle Code scheme. Duplicative review and penalty by the Commission on Teacher Credentialing is unwarranted. As such, upon a credential holder’s enrollment in and participation in a court ordered drinking driver program as mandated by Vehicle Code section 23538(b) or 23542(b), investigation of the matter by the Committee of Credentials should be held in abeyance.

Similar considerations apply when the court orders participation in an alcohol or drug education program pursuant to Vehicle Code section 23103.5(3). The latter would apply where, for

example, there is an exceptionally low blood alcohol level and a plea to reckless driving pursuant to Vehicle Code section 23103 results.

Upon satisfactory proof being received that the program has been completed, the Commission investigation may then be closed. Should the credential holder fail to enroll in and/or satisfactorily complete the court program, the matter may then be subject to discretionary review commencing with a Letter of Inquiry from the Committee of Credentials. The foregoing diversion program should not apply if underlying facts confirm that the credential holder's actions occurred upon or immediately adjacent to their place of employment or in any manner directly involved a student then enrolled at a facility where they were employed. Misdemeanor reckless driving offenses would be included only if they were alcohol related, as recognized by Vehicle Code section 23103.5.

A more formal probationary program may be implemented with reference to credential holders who suffer a third or more driving under the influence conviction within a period of five years. They may be offered "diversionary probation" prior to review by the Committee of Credentials pursuant to a program upon terms and conditions currently utilized by the Commission **after** full review by the Committee of Credentials. During the period of "diversionary probation" investigation by the Committee of Credentials could be held in abeyance. Upon successful completion of the "diversionary probation," the investigation would then be closed. Upon rejection or failure of the "diversionary probation", investigatory procedures before the Committee of Credentials commencing with a Letter of Inquiry may then be implemented.

Current review by the Committee of Credentials with reference to first and second driving under the influence offenders and alcohol related reckless driving offenses merely duplicates court procedures as mandated by the Vehicle Code. By allowing a choice for "diversionary probation" to third offender driving under the influence credential holders, successful participation in the formal, mandated probation would be encouraged as it would not impose either stayed license suspension or actual credential suspension thereby allowing the affected credential holder to maintain a "clean" record for purposes of future employability. That, of course, would not be the situation should they elect to decline the "diversionary probation", proceed through the Committee of Credentials review process and then likely receive a full suspension or stayed suspension of their credential. By "frontloading" the probation supervision currently offered by the Commission on Teacher Credentialing, unnecessary review by the Committee of Credentials would be avoided while, at the same time, the credential holder would be encouraged to accept the terms and conditions of that probation as license suspension or a stayed suspension could be avoided.

3. Proposed Specific Implementation:

Title 5, California Code of Regulations section 80309.1 pertains to "initial review" by the Committee of Credentials. That regulation may be renumbered as section 80309.2. A new section 80309.1 could then be crafted to implement the contemplated alternative process for alcohol related convictions. Suggested language may be as follows:

Upon a conviction becoming final of having violated Vehicle Code section 23103 which results in punishment pursuant to Vehicle Code section 23103.5, an initial violation of Vehicle Code section 23152 or a second such conviction becoming final within five years thereof, and except as provided in subdivision (c) below:

- (a) Upon a credential holders enrollment in and participation in a court ordered drinking driver program as mandated by Vehicle Code section 23538(b) or 23542(b), or court ordered alcohol and drug education program pursuant to Vehicle Code section 23103.5(e), investigation of the matter shall be held in abeyance. Upon satisfactory proof received which confirms completion of the program the investigation shall be closed.
- (b) Should the credential holder fail to enroll in and/or satisfactorily complete said program, the matter shall be subject to discretionary review by the Committee of Credentials.
- (c) (a) and (b) shall not apply and investigation by the Committee of Credentials shall proceed whenever any conviction becomes final for having violated Vehicle Code section 23152 or Vehicle Code section 23103 if punishment is imposed pursuant to Vehicle Code section 23103.5 and the underlying facts confirm that the credential holders' actions occurred upon or immediately adjacent to their place of employment or in any manner directly involve a student then enrolled in a facility where the credential holder was employed.

Upon conviction becoming final of a credential holder's third or more conviction within a period of five years for having violated Vehicle Code section 23152, they shall be offered "diversionary probation" pursuant to a program upon terms and conditions as adopted by the Commission on Teacher Credentialing. During the period of "diversionary probation" investigation by the Committee of Credentials shall be held in abeyance. Upon successful completion of the "diversionary probation," the investigation shall be closed. Upon rejection of or failure of the "diversionary probation," investigatory procedures before the Committee of Credentials shall commence by Letter of Inquiry.

(3) Narrow Scope of Local District Mandatory Reports:

Within "Objective 3" of the proposed Division of Professional Practices Strategic Plan it is proposed that the Commission: (PPC-4E-4 of Action Item 4E):

Convene a stakeholders meeting to discuss revisions to the regulation requiring reports from school districts (Title V, CCR section 80303).

The issue presented was discussed in full at the November stakeholder's meeting. It clearly appeared to be the consensus of participants that local school districts need not report to the Committee of Credentials a local dismissal action based solely upon incompetence. This was based upon the problem perceived for the November stakeholder meeting at page PPC-4C-30 of Information Item 4C by the California Teachers Association as follows:

The Committee of Credentials regularly reviews cases in which a credential holder left employment as a result of or while allegations of misconduct were pending. The Committee thereby reviews and relies on a Statement of Charges crafted by local counsel for school districts in their local dismissal actions. Experience has confirmed that multiple allegations of misconduct, many of which were never substantiated by any evidence whatever, let alone reliable evidence, are thereby presented to the Committee of Credentials. Rather than challenge spurious and unfounded charges, many teachers simply resign or “accept a golden handshake” in the face of tactically inflated allegations of misconduct. It is known that training sessions for local school district attorneys regularly encourage throwing “the kitchen sink” at such a teacher in an effort to force resignation rather than litigation. All charges, no matter how spurious or factually unsupported, must under current law then be presented to the Committee of Credentials. Considerable resources are thereby expended both in prosecution and defense of matters never intended to be truly litigated at the school district level and, in many cases, allegations which ultimately had been abandoned or dismissed by a local school district.

The foregoing is acknowledged at paragraph 12 of the “Suggestions to Streamline the Disciplinary Review Process” which resulted from the November stakeholder meeting (PPC-4C-21 of Information Item 4C):

Investigate only appropriate allegations – related to teacher dismissals:

- Employers agree that dismissals for “unsatisfactory performance” should not be sent to CTC.
- Discovery weaknesses on the front end/difficulties of proof become clear early on – signed affidavit at the beginning.

The foregoing may be achieved by an appropriate amendment so-limiting Education Code section 44242.5 subdivisions (b)(3) and (d)(5).

Although within its Action Item 4E staff counsel suggests that a stakeholders meeting be “convened” to discuss the foregoing, that is not necessary. The issue was discussed at length at the stakeholder’s meeting in November, 2011. Similar considerations apply to the suggested changes with reference to DUI and related offenses previously discussed.

As I indicated on behalf of the CTA in November, 2011, the foregoing proposals are based upon the premise that the Committee of Credentials should move philosophically from its current self-image of “imposer of penalty” to one of “protecting students and encouraging quality educators”. Particularly where a court has already imposed significant punishment. That shift will better meet the stakeholders’s goal of protecting the safety of students and the rights of applicants and licensees by the effective, efficient and fair handling of cases in a timely manner. More efficient use of resources will clearly result. I sincerely hope that this letter and my prior communication dated November 15, 2011 will be of assistance in achieving the foregoing.

Very truly yours,


MICHAEL ROTHSCHILD

MR:sas