
6B

Information/Action

Professional Practices Committee

Proposed Amendments to Regulation 80303, Reporting Change in the Employment Status of a Credential Holder

Executive Summary: This agenda item provides proposed amendments to Title 5, California Code of Regulations section 80303 pertaining to the reporting of changes in the employment status of a credential holder.

Recommended Action: Staff recommends the Commission initiate the rulemaking process on the proposed changes to the regulation.

Presenter: Michal G. Barth, Assistant Chief Counsel, Division of Professional Practices.

Strategic Plan Goal

I. Educator Quality

- ◆ Effectively, efficiently, and fairly monitor the fitness of all applicants and credential holders to work with California students.

Proposed Amendments to Regulation 80303, Reporting Change in the Employment Status of a Credential Holder

Introduction

The proposed amendments to Title 5, California Code of Regulations (CCR) section 80303 (the regulation) will clarify the requirement for a superintendent to report when a school district takes an adverse employment action against a credential holder. Additionally, proposed changes will clarify procedures that may be used by the public to report a superintendent who fails to submit a required report to the Commission within thirty days of the final action by the district.

Background

The current regulation requires notification to the Commission when a credential holder, working in a position requiring a credential is dismissed, resigns, is suspended for more than 10 days, retires or is terminated as the result of an allegation of misconduct or while an allegation of misconduct is pending. The regulation further requires that the superintendent of the employing school district report the change in employment status to the Commission not later than 30 days after the employment action.

As initially drafted and promulgated by the Commission, the regulation contained a broader reporting requirement. Until 1999, *both* the educator and the superintendent were required to report a substantial change in employment status to the Commission.

At the August 2012 Commission meeting, the Commission considered existing regulation section 80303. After discussion of the regulation's strengths and weaknesses, the Commission directed staff to prepare a proposal to strengthen the reporting requirement.

History of the Regulation

The regulation in its original form was operative on September 7, 1997. On April 26, 1999, the California Teachers Association filed a legal challenge in Superior Court, questioning the legality of the regulation. The Court found that two parts of the regulation were unauthorized in its scope and penalties. The court looked at relevant statutory provisions of Education Code §44242.5, which specifically sets forth the circumstances when the Commission may initiate an investigation of a credential holder. The first challenged part of the regulation, formally designated as subdivision (a) (5) of the regulation, requiring the holder of a credential, working in a position requiring a credential, to report a change in employment status to the Commission. The second challenged the provision related to subdivision (d) of the regulation, which stated failure to self-report was unprofessional conduct. As a result of that challenge, both provisions were deemed void by the Court. The Commission then formally deleted these provisions from the regulation. No other portions of the regulation were changed. (Sacramento Superior Court Case No. 98AS03278, Judgment Granting In Part Request For Declaratory Relief, filed April 26, 1999.) The legal requirement that the Commission must have jurisdiction under the provisions of Education Code section 44242.5 frustrated the purpose of the regulation as it has been difficult to obtain jurisdiction.

Proposed Amendments to the Regulation

Staff is presenting a proposal to clarify the reporting requirement, to clarify for the public information sufficient for the Commission to obtain jurisdiction to commence an investigation. The proposed text is as follows, with new language indicated by underline, and deletions by ~~strikethrough~~:

**CALIFORNIA CODE OF REGULATIONS
TITLE 5. EDUCATION
DIVISION 8. COMMISSION ON TEACHER CREDENTIALING
CHAPTER 3, COMMITTEE OF CREDENTIALS
ARTICLE 1, GENERAL PROVISIONS**

§ 80303 Reports of Change in Employment Status

(a) Whenever a credential holder, working in a position requiring a credential, as a result of an allegation of misconduct or while an allegation of misconduct is pending:

- (1) is dismissed or non-re-elected;
- (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 not later than 30 days after the employment action.

(6) "Otherwise terminated" by a decision not employ or re-employ as used in section (a)(5) above shall not include or be interpreted to include a change of status that is solely for unsatisfactory performance (Education Code section 44932 subdivision (a)(4)) or layoff or reduction in force (Education Code sections 44955 through 44958).

(b) The report shall contain all known information about each alleged act of misconduct organized as follows:

- (1) Name of credential holder;
- (2) Current address of credential holder;
- (3) Name of last employing district;
- (4) Name of last school assignment;
- (5) An explanation of the allegation of misconduct or pending allegation of misconduct;
- (6) Current contact information for all persons who may have information relating to the alleged 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. The Commission shall acknowledge receipt of such report within thirty (30) days of receipt by the Commission.

(d) Failure to make a report required under this section constitutes unprofessional conduct. The Committee ~~may~~ shall 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, non-re-elected, 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

(f) Official records of the Commission on Teacher Credentialing shall include any documents released under the Public Records Act (PRA) (Government Code sections 6250-6270).

(g) Official records released in accordance with the PRA by the Commission on Teacher Credentialing are not hearsay, and as such shall be deemed to constitute personal knowledge of any person or persons who files an affidavit or declaration with the Commission.

(h) Jurisdiction to investigate failure to submit a report required under this section may be based upon an affidavit or declaration of facts, submitted to the Commission on Teacher Credentialing under penalty of perjury, sufficient to establish that required reporting is not being done or not being done in a timely manner.

(i) Where the Commission has information or belief that a report has not been made under this regulation, a letter shall be sent to the responsible superintendent providing facts and detailing reporting responsibilities.

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

The Rulemaking Process

To adopt a regulation, the Commission must follow the rulemaking procedures in the Administrative Procedure Act (APA) (Government Code section 11340 et seq.) and regulations adopted by the Office of Administrative Law (OAL). The APA requirements are designed to provide the public with a meaningful opportunity to participate in the adoption of regulations.

The APA requires the Commission to meet certain public hearing and notice requirements. Once the Commission decides to start the regulation process, it develops the documents required to conduct a formal APA rulemaking proceeding. To start the process of considering a regulation, the Commission publishes a Notice of Rulemaking in the California Regulatory Notice Register, mails the notice to those persons who have filed a request for notice of regulatory action, and posts the notice, text, and Initial Statement of Reasons on the Commission's website. These requirements are set to ensure that the public has notice and an opportunity to comment on any proposed regulation.

Once the notice is published in the California Regulatory Notice Register (the Notice), the APA rulemaking process is officially started. The published Notice will provide, at a minimum, a 45-day opportunity for any member of the public to comment in writing on the proposed regulation. The notice specifies where the comments must be directed and the date this opportunity to comment on the proposal ends. The Notice also will inform the public about the date the Commission will hold a public hearing on the proposed regulation.

Under the APA, an agency has an option as to whether it will hold a public hearing on a proposed rulemaking action. However, if an agency does not schedule a public hearing, any interested person can submit a written request for one to be held. The written request for a hearing must be submitted at least 15 days prior to the close of the written public comment period, and the agency must give notice of and hold a public hearing. (See Government Code section 11346.8.)

After the initial public comment period, a rulemaking agency may decide to change its initial proposal either in response to public comments received or on its own initiative. The agency must then decide whether a change is (1) nonsubstantial; (2) substantial and sufficiently related; or (3) substantial and not sufficiently related. (See Government Code section 11346.8(c).) If a proposed change is substantial, then additional notice must be given to the public and 15 days are allowed for additional public comment.

Under the APA, the Commission must summarize and respond on the record to timely comments that are directed at the proposal or at the procedures followed by the agency during the regulatory action. With each comment, the agency must either (1) explain how it has amended the proposal to accommodate the comment, or (2) explain the reasons for making no change to the proposal. The summary and response to comments is included as part of the rulemaking file in a document called a Final Statement of Reasons. (See Government Code section 11346.9.)

Conclusion

Staff recommends the Commission approve initiating the rulemaking process on the proposed changes to the regulation.