

---

# 6C

## Action

### *Professional Practices Committee*

## Policy on Division of Professional Practices Cases

---

**Executive Summary:** This agenda item provides a proposed policy recommendation for the Commission's consideration authorizing staff to close specific matters as a ministerial act when, after due diligence, legally required formal jurisdiction cannot be obtained.

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

**Presenter:** Nanette Rufo, Director, 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.

---

---

## Policy on Division of Professional Practices Cases

---

---

### Introduction

This agenda item presents a proposed policy regarding the disposition of cases where the Commission has initial jurisdiction only and cannot obtain formal jurisdiction. Formal jurisdiction is required by law before the Committee of Credentials (Committee) may set a case for formal review. If the Committee cannot lawfully set a case for formal review, it cannot make a recommendation for adverse action. Given the Commission's stated desire for greater transparency and accountability, this item is being presented to the Commission for discussion, review, and possible action.

### Policy for Cases where the Commission has Initial Jurisdiction Only

At August 2012 meeting, as part of the discussion concerning the duty of a Superintendent to report a credential holder's change in employment status, the Commission reviewed the basis of jurisdiction for the Committee of Credentials to initiate an investigation. Education Code §44242.5(b)<sup>1</sup> sets the legal *minimum* requirements for the Committee to commence an investigation and set the case for initial review.

Meeting any one of the six requirements presented in this statute allows the Committee to open an investigation. The Committee may commence initial review upon receipt of any of the following:

- (1) Official records of the Department of Justice, of a law enforcement agency, of a state or federal court, and of any other agency of this state or another state.
- (2) An affidavit or declaration signed by a person or persons with personal knowledge of the acts alleged to constitute misconduct.
- (3) A statement from an employer notifying the Commission that, as a result of, or while an allegation of misconduct is pending, a credential holder has been dismissed, nonreelected, suspended for more than 10 days, or placed pursuant to a final adverse employment action on unpaid administrative leave for more than 10 days, or has resigned or otherwise left employment.
- (4) A notice from an employer that a complaint was filed with the school district alleging sexual misconduct by a credential holder. Results of an investigation by the Committee based on this paragraph shall not be considered for action by the Committee unless there is evidence presented to the Committee in the form of a written or oral declaration

---

<sup>1</sup> A copy of Education Code §44242.5 is included as Attachment A

under penalty of perjury that confirms the personal knowledge of the declarant regarding the acts alleged to constitute misconduct.

- (5) A notice from a school district, employer, public agency, or testing administrator in violation of section 44420 (failure to fulfill contract), 44421.1 (inappropriate use of school records for a business purpose), 44421.5 (reporting false fiscal expenditure) or 44439 (subverting examinations).
- (6) An affirmative response on an application submitted to the Commission as to any conviction, adverse action on, or denial of a license, or pending investigation into a criminal allegation or pending investigation of a noncriminal allegation of misconduct by a governmental licensing entity.

However, Education Code §44242.5(d), contains additional requirements that must be met before a case may be set for formal review by the Committee. The circumstances described in paragraphs (2) through (6) also authorize the Committee to commence formal review. However, a formal review based upon records received as described in paragraph (1) above, (generally law enforcement records), can only be conducted when information is received that meets the requirements provided by Education Code §44242.5(d)(1):

Official records of a state or federal court that reflect a conviction or plea, including a plea of nolo contendere, to a criminal offense or official records of a state court that adjudge a juvenile to be a dependent of the court pursuant to Section 300 of the Welfare and Institutions Code due to allegations of sexual misconduct or physical abuse by a credential holder or applicant.

In a typical case, the Commission may receive a notice of arrest without a criminal case being filed in court. This is legally sufficient for the Committee to commence an investigation and set the case for initial review under Education Code section 44242.5(b). However, when the Committee then considers the matter, the Committee lacks jurisdiction Education Code section 44242.5(d) to set the matter for formal review. Therefore, the Committee is legally compelled to close the case. Given the very busy calendar of the Committee, staff is presenting these cases as part of the Committee's Consent Calendar. If the Consent Calendar case is adopted by the Committee then the case is closed.

At each meeting of the Committee, its consent calendar is crowded with cases where initial jurisdiction was obtained through the records from the Department of Justice, and where, after due diligence, there is no legal basis for formal jurisdiction. This situation does not have a significant impact on the Committee's time and resources, but does have a significant effect on the efficient use of DPP staff time. After staff determines that the Committee cannot obtain formal jurisdiction, staff prepares an analysis for review by management and each of these cases must be prepared in the Consent Calendar for review by the Committee. In every case these matters have been closed by the Committee simply because the Committee has no legal authority to do anything else.

To more effectively handle the work involved in this type of situation, staff is proposing the Commission adopt a policy that allows staff to close a case where, after due diligence, DPP staff is unable to obtain formal jurisdiction as required by law. At the October 2012 meeting of the Committee, the Committee considered the proposed policy and recommended its adoption by the Commission.

The types of cases that generally fall into this category are: no arrest, arrest with no charges filed, and charges filed and dismissed either before or after trial. If staff is authorized to close such matters, it will increase efficiency within the DPP. For example, for July through September the following number of cases were on the Committee's Consent Calendar:

<u>July</u>	<u>August</u>	<u>September</u>
184	236	150

Of these cases, the following number would be closed by staff action if the proposed policy presented is adopted:

	<u>July</u>	<u>August</u>	<u>September</u>
<i>Arrest and No Charges Filed:</i>	8	24	10
<i>Charges Filed and Dismissed:</i>	<u>10</u>	<u>27</u>	<u>17</u>
<i>Total</i>	18	51	27
Percent of Consent Calendar Cases	9.7%	22.1%	18.0%

Although the number of cases on each month's consent calendar varies based upon the records received from the Department of Justice, the recent data shows a potential reduction in work preparing the Consent Calendar by approximately 10 to 20%. This work is done by the Intake Unit, the unit facing the largest workload and backlog. This potential reduction in the Consent Calendar items would allow staff to better respond to inquiries from credential holders, process rap sheets and applications, reduce the need for overtime, and contribute to reducing the current backlog of cases.

The adoption of this policy will also improve the reputation of the Commission with its stakeholders. Currently an applicant who was arrested, but not charged in court, has his or her application delayed for months so that it can be processed and reviewed by the Committee. This occurs even when the underlying facts of their case are highly unlikely to result in a denial of the application. This policy would result in these applications being approved more quickly.

### **Conclusion**

Staff recommends that the Commission adopt the following policy: Commission staff may close a case without review by the Committee where, after due diligence, DPP staff is unable to obtain formal jurisdiction as required Education Code section 44242.5(d).

## Attachment A

### EDUCATION CODE SECTION 44242.5

(a) Each allegation of an act or omission by an applicant for, or holder of, a credential for which he or she may be subject to an adverse action shall be presented to the Committee of Credentials.

(b) The committee has jurisdiction to commence an initial review upon receipt of any of the following:

(1) (A) Official records of the Department of Justice, of a law enforcement agency, of a state or federal court, and of any other agency of this state or another state.

(B) For purposes of subparagraph (A), "agency of this state" has the same meaning as that of "state agency" as set forth in Section 11000 of the Government Code.

(2) An affidavit or declaration signed by person or persons with personal knowledge of the acts alleged to constitute misconduct.

(3) (A) A statement from an employer notifying the commission that, as a result of, or while an allegation of misconduct is pending, a credential holder has been dismissed, nonreelected, suspended for more than 10 days, or placed pursuant to a final adverse employment action on unpaid administrative leave for more than 10 days, or has resigned or otherwise left employment.

(B) The employer shall provide the notice described in subparagraph (A) to the commission not later than 30 days after the dismissal, nonreelection, suspension, placement on unpaid administrative leave, resignation, or departure from employment of the employee.

(4) A notice from an employer that a complaint was filed with the school district alleging sexual misconduct by a credential holder. Results of an investigation by the committee based on this paragraph shall not be considered for action by the committee unless there is evidence presented to the committee in the form of a written or oral declaration under penalty of perjury that confirms the personal knowledge of the declarant regarding the acts alleged to constitute misconduct.

(5) A notice from a school district, employer, public agency, or testing administrator of a violation of Section 44420, 44421.1, 44421.5, or 44439.

(6) (A) An affirmative response on an application submitted to the commission as to any conviction, adverse action on, or denial of, a license, or pending investigation into a criminal allegation or pending investigation of a noncriminal allegation of misconduct by a governmental licensing entity.

(B) Failure to disclose any matter set forth in subparagraph (A).

(c) An initial review commences on the date that the written notice is mailed to the applicant or credential holder that his or her fitness to hold a credential is under review. Upon commencement of a formal review pursuant to Section 44244, the committee shall investigate all alleged misconduct and the circumstances in mitigation and aggravation. The investigation shall include, but not be limited to, all of the following:

(1) Investigation of the fitness and competence of the applicant or credential holder to perform the duties authorized by the credential for which he or she has applied or that he or she presently holds.

(2) Preparation of a summary of the applicable law, a summary of the facts, contested and uncontested, and a summary of any circumstances in aggravation or mitigation of the allegation.

(3) Determination of probable cause for an adverse action on the credential. If the allegation is for unprofessional or immoral conduct, the committee, in any formal review conducted pursuant to Section 44244 to determine probable cause, shall permit the employer of the credential holder to be present while testimony is taken. If the allegation of unprofessional or immoral conduct involves sexual abuse, the employer shall be examined in the meeting for any relevant evidence relating to the sexual abuse.

## Attachment A

(A) If the committee determines that probable cause for an adverse action does not exist, the committee shall terminate the investigation.

(B) If the committee determines that probable cause for an adverse action on the credential exists, upon receipt of a request from an applicant or a credential holder pursuant to Section 44244.1, the commission shall initiate an adjudicatory hearing, as prescribed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code, by filing an accusation or statement of issues.

(d) The committee has jurisdiction to commence a formal review pursuant to Section 44244 upon receipt of any of the following:

(1) (A) Official records of a state or federal court that reflect a conviction or plea, including a plea of nolo contendere, to a criminal offense or official records of a state court that adjudge a juvenile to be a dependent of the court pursuant to Section 300 of the Welfare and Institutions Code due to allegations of sexual misconduct or physical abuse by a credential holder or applicant.

(B) Nothing in subparagraph (A) shall be construed to relieve the commission from the confidentiality provisions, notice, and due process requirements set forth in Section 827 of the Welfare and Institutions Code.

(2) An affidavit or declaration signed by a person or persons with personal knowledge of the acts alleged to constitute misconduct.

(3) A statement described in paragraph (3) of subdivision (b).

(4) Official records of a governmental licensing entity that reflect an administrative proceeding or investigation, otherwise authorized by law or regulation, which has become final.

(5) A notice described in paragraph (5) of subdivision (b).

(6) A response or failure to disclose, as described in paragraph (6) of subdivision (b).

(e) (1) Upon completion of its investigation, the committee shall report its actions and recommendations to the commission, including its findings as to probable cause, and if probable cause exists, its recommendations as to the appropriate adverse action.

(2) The findings shall be available, upon its request, to the employing or last known employing school district, or, if adverse action is recommended by the committee and the credential holder has not filed a timely appeal of the recommendation of the committee pursuant to Section 44244.1, upon a request made within five years of the date of the committee's recommendations to a school district providing verification that the credential holder has applied for employment in the district. The findings, for all purposes, shall remain confidential and limited to school district personnel in a direct supervisory capacity in relation to the person investigated. Any person who otherwise releases findings received from the committee or the commission, absent a verified release signed by the person who is the subject of the investigation, shall be guilty of a misdemeanor.

(3) The findings shall not contain any information that reveals the identity of persons other than the person who is the subject of the investigation.

(f) (1) Except as provided in paragraph (2) and, notwithstanding subdivision (b), for purposes of determining whether jurisdiction exists under subdivision (b), the commission, in accordance with Section 44341, may make inquiries and requests for production of information and records only from the Department of Justice, a law enforcement agency, a state or federal court, and a licensing agency of this state or a licensing agency of another state.

(2) For purposes of determining whether jurisdiction exists, paragraph (1) does not apply to release of personnel records.