
2H

Action

Public Hearing

Proposed Amendments to Title 5, California Code of Regulations Section 80303 Clarifying a Superintendent's Reporting Requirement upon a Credential Holder's Change in Employment Status

AGENDA INSERT

Executive Summary: This agenda item presents proposed amendments to Title 5, California Code of Regulations Section 80303 clarifying a superintendent's reporting requirement as to a credential holder's change in employment status.

Recommended Action: Staff recommends that the Commission adopt the proposed amendments.

Presenter: Vanessa C. Whitnell, Attorney,
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.

April 2013

Proposed Amendments to Title 5, California Code of Regulations Section 80303 Clarifying a Superintendent's Reporting Requirement as to a Credential Holder's Change in Employment Status

Updated Tally of Responses

As of April 19, 2013, the Commission has received the following written responses:

<i>Support</i>	<i>Opposition</i>	<i>Partial Support/Opposition</i>
2 organizational opinions	0 organizational opinions	1 organizational opinion
0 personal opinions	0 personal opinions	0 personal opinions

Responses Representing Organizations in Support

1. Terrie Peets, Human Resources and Administrative Services Coordinator, Alpine County Unified School District/County Office of Education. No comments. No response necessary.
2. Jenny Teresi, Senior Manager for Credential Services with San Bernardino County Superintendent of Schools on behalf of Human Resource Administrators from Riverside and San Bernardino Counties. No comments. No response necessary.

Responses Representing Organizations in Partial Support/Opposition

1. Michael Rothschild on behalf of the California Teachers Association

Staff Recommendation

Staff has analyzed the written comments from Michael Rothschild on behalf of the California Teachers Association. Staff recommends that the Commission adopt the proposed text that follows on pages 2 through 3 of the Agenda Insert. Note that this newly proposed text includes some changes to the originally proposed text. The reasons for these changes are set out in staff's response to the comments. For comparison, the originally proposed text is included on pages 4 through 5 of the Agenda Insert.

Staff recommends that the Commission approve the text on pages 2 through 3 of the Agenda Insert for public comment. Accordingly, the Commission should authorize staff to issue a 15 day notice to allow the public opportunity to comment on the proposed modifications.

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) The superintendent of an employing school district shall report a change in employment status to the Commission not later than 30 days after the final employment action 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-reelected;
 - (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 final employment action.~~
- (6) “Otherwise terminated” by a decision not to 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 as listed in Education Code section 44932 subdivision (a)(4) or layoff or reduction in force as described in 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 reporting district;
- (4) Name of last school or district 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;
- (7) Any and all documentation related to the case.

(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-reelected, 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 file an affidavit or declaration with the Commission.~~

(f) Official records released in accordance with the Public Records Act (Government Code sections 6250-6270) by the Commission on Teacher Credentialing are sufficient bases for personal knowledge of any person or persons who file an affidavit or declaration with the Commission.

(g) ~~(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.

(h) ~~(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: Ed. Code, § Section 44225, subd. (q). Reference: Ed. Code, § Section 44242.5, subs. (a) & (b)(3); and California Teachers Association v. California Commission on Teacher Credentialing, (Sacramento Superior Court Case No. 98AS03278, Judgment Granting In Part Request For Declaratory Relief, filed April 26, 1999.)

Originally Proposed Text; Submitted to OAL on February 15, 2013; Approved for the Rulemaking Process by the Commission in December 2012:

**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-reelected;
- (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 final employment action.

(6) “Otherwise terminated” by a decision not to 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 as listed in Education Code section 44932 subdivision (a)(4) or layoff or reduction in force as described in 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 reporting district;
- (4) Name of last school or district 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;
- (7) Any and all documentation related to the case.

(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-reelected, 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 file 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: Ed. Code, § 44225, subd. (q). Reference: Ed. Code, § 44242.5, subds. (a) & (b)(3).

Staff Response to Organizations in Partial Support/Opposition

1. Michael Rothschild on behalf of the California Teachers Association (CTA).

Comment 1:

On behalf of the California Teachers' Association, enclosed please find suggested changes to amendments to Title V, California Code of Regulations 80303 as proposed by the Commission on Teacher Credentialing. For clarity in the enclosed document these suggested changes are imposed upon section 80303 as it is presently constituted. A few of the Commission's proposals have been incorporated.

Response 1:

No response required. This comment does not designate any specific suggested changes.

Comment 2:

The CTA agrees with the commission's analysis that broad goals of the regulation are to ensure the fitness of credential holders as well as the public safety of students being educated by credential holders. The CTA also agrees that the regulation in its current form lacks clarity in three primary areas of concern. As stated by the Commission in its "Overview of Objectives of Amendments", those problems have long existed but were recently publically highlighted in the California State Auditor's November 2012 report concerning the Los Angeles Unified School District and its handling of allegations of misconduct against its employees.

Response 2:

No response required. This comment is in support of the Commission's analysis of the objectives of the proposed amendments.

Comment 3:

Basic to the State Auditor's report was its recognition that the Commission on Teacher Credentialing constitutes the only state-wide mechanism to monitor certificated employees who separate from local employment during the course of an investigation involving misconduct with students. Changes suggested by the California Teachers' Association will more effectively enable the Commission to perform this vital function when a local school district fails to report such an employment action to them. The suggested changes also more clearly state the procedure which a concerned citizen in the community may utilize to trigger such an investigation by the Commission.

Response 3:

Some of the changes suggested by CTA will contribute to increased clarity and some will not. Each specific change requested will be addressed in subsequent comments and responses.

Comment 4:

These suggested changes would allow any person, including an employee of the Commission, to sign an affidavit which provides the Committee of Credentials jurisdiction to investigate a superintendant who appears to be in violation of the regulation. It is known, for example, that the Commission subscribes to “Google Alerts” which provide that agency news reports about the education community in a timely manner. The suggested changes allow a Commission investigator or other staff person, for example, to note from that news source that a teacher had resigned in the face of sexual malfeasance allegations and then verify an absence of any report about it to the Commission. A declaration by the Commission employee about that would then trigger investigation of the situation. Absent changes now suggested by the CTA, that would not be possible.

Response 4:

This suggested change is in regard to CTA’s proposed subdivision (h) of the regulation. Staff does not recommend that a Commission employee draft an affidavit or declaration based on such media as “Google Alerts.” There are concerns as to the credibility of such information.

Furthermore, in the example used by Mr. Rothschild, involving a teacher’s resignation “in the face of sexual malfeasance allegations,” a Google Alert would not be sufficient to allow the Commission to open an investigation into the sexual malfeasance allegations against the accused teacher. Such an alert would not satisfy the jurisdictional requirements under Education Code Section 44242.5. Thus, it seems poor public policy for a Google Alert to provide the basis for possible adverse action against a superintendent for failure to satisfy reporting requirements.

CTA’s suggestion is problematic for another reason. The Commission, namely the Division of Professional Practices, is responsible for aiding in the *objective* review of educator misconduct. Thus, in order to ensure objectivity and avoid a potential conflict of interest, employees of the Division of Professional Practices should not simultaneously serve as complainants by initiating affidavits based on such media information as Google Alerts.

Nonetheless, an affidavit or declaration received by a member of the public, based on the Commission’s official records of a superintendent’s failure to report, would be sufficient to create jurisdiction for the Commission’s initial review of the superintendent under Education Code Section 44242.5 (b)(2). Accordingly, staff recommends the Commission’s adoption of the originally proposed amendments to subdivision (h).

Comment 5:

In order to achieve the foregoing, these suggested changes clarify the legal basis upon which jurisdiction for an investigation by the Committee of Credentials may be invoked. As currently proposed by the Commission at its Subdivision (g), the statement that official records of the Commission “are not hearsay” is inconsistent with long-established and clearly understood law. It also conflicts with Evidence Code section 1200(a) which defines “hearsay evidence”.

In contrast, these suggested changes recognize that official records of the Commission on Teacher Credentialing, as well as the absence of any report received by the Commission from a Superintendent of Schools, for example, do constitute “hearsay”. They are properly considered within exceptions to the hearsay rule as governed by California Evidence Code sections 1280 and 1284, which deal with “official records” and provide:

Evidence Code section 1280:

Evidence of a writing made as a record of an act, condition or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition or event if all of the following applies: (a) the writing was made by and within the scope of duty of a public employee.

(b) the writing was made at or near the time of the act, condition or event.

(c) the sources of information and method and time of preparation were such as to indicate its trustworthiness.

Evidence Code section 1284:

Evidence of a writing made by the public employee who is the official custodian of the records in a public office, reciting diligent search and failure to find a record, is not made inadmissible by the hearsay rule when offered to prove the absence of a record in that office.

The suggested changes implement these two longstanding Evidence Code sections. Materials obtained from the Commission by an interested citizen may be properly relied upon as the basis for an affidavit. The absence of any mandated report which should have been made by a superintendent may be similarly relied upon by a community member or employee of the Commission as the basis for an affidavit. This language will further clarify jurisdiction of the Committee of Credentials to continue its vital supervisory duties.

Response 5:

Staff partially agrees with this analysis and recommends incorporation of changes to subdivision (f). However, CTA’s proposed language in subsection (i) as to official records “otherwise in possession of the Commission” should not be included, because it is too broad and could potentially include a variety of information that is not disclosable to the public (i.e. confidential information, attorney work product, etc.). Staff does not recommend this change to the Commission.

Comment 6:

Thank you for providing the opportunity to comment about the proposed amendments to Title V, section 80303 of the California Code of Regulations. We are aware that a bill (AB 449) is pending in the Legislature relating to the same subject. Depending upon the outcome of that bill, the parties may need to look at revising the regulation consistent with that legislation.

Response 6:

No comment required. Any discussion as to AB 449 relative to the proposed amendments to Section 80303 is premature. The outcome of AB 449 is uncertain at this time. Thus, the Commission should consider the proposed amendments to section 80303 independent of the possibilities as to AB 449. The Commission can revisit section 80303 in the future if AB 449 becomes law.

Comment 7:

**COMMENT ON BEHALF OF THE CALIFORNIA TEACHERS ASSOCIATION
REGARDING:
CALIFORNIA CODE OF REGULATIONS
TITLE 5. EDUCATION
DIVISION 8. COMMISSION ON TEACHER CREDENTIALING
PROPOSED AMENDMENTS TO TITLE 5, CALIFORNIA CODE
OF REGULATIONS SECTION 80303 CLARIFYING A
SUPERINTENDENT'S REPORTING REQUIREMENT AS TO A
CREDENTIAL HOLDER'S CHANGE IN EMPLOYMENT STATUS**

**NOTICE OF PROPOSED REGULATORY ACTION ON BEHALF OF THE CALIFORNIA
TEACHERS ASSOCIATION**

TO: The California Commission on Teacher Credentialing

As proposed, amendments to the regulation seek to clarify the superintendent's reporting requirement.

We believe the following drafting changes to the regulation as presently constituted would help to further clarify this matter.

§ 80303 Reports of Change in Employment Status

(a) ~~Whenever~~ The superintendent of an employing school district shall report a change in employment status to the Commission not later than 30 days after the employment action 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-reelected;*
- (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 final employment action.*

Response 7:

The proposed change reorganizes the language of the regulation to emphasize a superintendent's reporting requirement immediately at the beginning of the subsection. Staff recommends subsections (a)(1)-(5) as proposed by CTA in place of the originally proposed amendments to subsections (a)(1)-(5).

Comment 8:

(b) A change of status solely due to unsatisfactory performance pursuant to Education Code § 44932(a)(4) or a reduction in force pursuant to Education Code § 44955-44958 does not constitute "an allegation of misconduct."

Response 8:

The originally proposed language is sufficient in noticing superintendents that they are not required to report final employment actions that result solely from unsatisfactory performance or lay-off. CTA's proposed subsection (b) would replace the originally proposed subsection (a)(6). CTA's language is too broad in that it deems that these final employment actions do not constitute "allegations of misconduct." This is not necessarily true. Thus, staff recommends the adoption of the originally proposed subsection (a)(6).

Comment 9:

~~(bc)~~ The report shall contain ~~all known~~ *the following* information about each alleged act of misconduct:

- (1) Name of credential holder;*
- (2) Current address of credential holder;*
- (3) Name of reporting district;*
- (4) Name of last school or district 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;*
- (7) Any and all documentation related to the case.*

Response 9:

The originally proposed language emphasizes that a superintendent must report "all known information," leaving little room for interpretation and ensuring the Commission's receipt of an adequate case file for review. CTA's proposed language weakens the regulation and limits information required to be provided to the Commission. Staff does not recommend that the Commission adopt the suggested change.

Comment 10:

~~(cc)~~ 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.*

Response 10:

CTA's proposed subsection (d) is identical to the originally proposed subsection (c). No response required.

Comment 11:

~~(de)~~ 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.

Response 11:

CTA's proposed subsection (e) is identical to the originally proposed subsection (d). No response required.

Comment 12:

~~(ef)~~ 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-reelected, 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.

Response 12:

CTA's proposed subsection (f) is identical to the originally proposed subsection (e). No response required.

Comment 13:

~~(g)~~ *Upon receipt of credible information that a report pursuant to subdivision (a) has not been made, the Commission on Teacher Credentialing shall send written notice to the responsible superintendent of an employing school district informing the superintendent of his or her obligation to comply with this regulation and requesting a statement, signed under penalty of perjury by the superintendent, describing all facts concerning his or her failure to comply.*

Response 13:

Staff recommends that the Commission reject this proposed language in its entirety for three reasons. First, the Commission does not require other categories of credential holders under review to self-report. Thus, if the Commission were to require the suggested statement under penalty of perjury from a superintendent, the Commission would subject one category of credential holder to a separate standard.

Further, the language “upon receipt of credible information” is vague and overbroad. As discussed in Comment/Response 4 above, CTA suggests that a Commission staff person should be able to create a declaration based on such media as “Google Alerts.” Again, there are concerns as to this type of news report being considered “credible information.” Given the lack of specificity and the potential for disagreement as to the credibility of certain sources of information, this language is problematic.

Finally, if the Commission were to request a statement under penalty of perjury from the superintendent, the Commission would be acting in the capacity of a complainant in creating its own jurisdiction. As mentioned previously in Comment/Response 4, the Commission, namely the Division of Professional Practices, is responsible for aiding in the *objective* review of educator misconduct. Thus, in order to ensure objectivity and avoid a potential conflict of interest, employees of the Division of Professional Practices should not simultaneously serve as complainants.

Comment 14:

(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, or by staff of, 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.

Response 14:

Staff recommends that the Commission reject this language and adopt the originally proposed subsection (h). CTA’s proposed subsection (h) encourages Commission staff to submit an affidavit or declaration. Again, as emphasized in Comment/Response 4 and Comment/Response 13 above, the Commission, namely the Division of Professional Practices, is responsible for aiding in the *objective* review of educator misconduct. Thus, in order to ensure objectivity and avoid a potential conflict of interest, employees of the Division of Professional Practices should not simultaneously serve as complainants. Since any member of the public with personal knowledge of the facts may submit a declaration to the Commission, the change is not necessary.

Comment 15:

(i) Official records released in accordance with the Public Records Act (Government Code 6250-6270) by the Commission on Teacher Credentialing or otherwise in possession of the Commission are sufficient bases for personal knowledge of any person who files an affidavit or declaration with the Commission.

Response 15:

Staff agrees with the CTA analysis in Comment 5 above. The Commission should replace the originally proposed subdivisions (f) and (g) with CTA’s proposed subdivision (i). However, CTA’s proposed language in subsection (i) as to official records “otherwise in possession of the Commission” should not be included, because it is too broad and could potentially include a variety of information that is not disclosable to the public (i.e. confidential information, attorney work product, etc.).

Comment 16:

Note: Authority Cited: Ed. Code, § 44225, subd. (q). Reference: Ed. Code, § 44242.5, subs. (a) & (b)(3)

Response 16:

CTA's proposed Note is identical to the originally proposed Note. No response required.

The written comments from Michael Rothschild on behalf of the California Teachers Association as received by the Commission on April 11, 2013 are attached and incorporated herein for the Commission's review.

LAW OFFICES OF

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April 10, 2013

HAND-DELIVERED 4/10/2013Commission on Teacher Credentialing
Division of Professional Practices
ATTN: Vanessa C. Whitnell, Attorney
1900 Capitol Avenue
Sacramento, CA 95811Re: Written Comments to Proposed Amendments to Title V, California Code of Regulations
section 80303

Dear Ms. Whitnell:

On behalf of the California Teachers' Association, enclosed please find suggested changes to amendments to Title V, California Code of Regulations 80303 as proposed by the Commission on Teacher Credentialing. For clarity in the enclosed document these suggested changes are imposed upon section 80303 as it is presently constituted. A few of the Commission's proposals have been incorporated.

The CTA agrees with the commission's analysis that broad goals of the regulation are to ensure the fitness of credential holders as well as the public safety of students being educated by credential holders. The CTA also agrees that the regulation in its current form lacks clarity in three primary areas of concern. As stated by the Commission in its "Overview of Objectives of Amendments", those problems have long existed but were recently publically highlighted in the California State Auditor's November 2012 report concerning the Los Angeles Unified School District and its handling of allegations of misconduct against its employees.

Basic to the State Auditor's report was its recognition that the Commission on Teacher Credentialing constitutes the only state-wide mechanism to monitor certificated employees who separate from local employment during the course of an investigation involving misconduct with students. Changes suggested by the California Teachers' Association will more effectively enable the Commission to perform this vital function when a local school district fails to report such an employment action to them. The suggested changes also more clearly state the procedure which a concerned citizen in the community may utilize to trigger such an investigation by the Commission.

These suggested changes would allow any person, including an employee of the Commission, to sign an affidavit which provides the Committee of Credentials jurisdiction to investigate a superintendant who appears to be in violation of the regulation. It is known, for example, that the Commission subscribes to "Google Alerts" which provide that agency news reports about the education community in a timely manner. The suggested changes allow a Commission investigator or other staff person, for example, to note from that news source that a teacher had resigned in the face of sexual malfeasance allegations and then verify an absence of any report about it to the Commission. A

declaration by the Commission employee about that would then trigger investigation of the situation. Absent changes now suggested by the CTA, that would not be possible.

In order to achieve the foregoing, these suggested changes clarify the legal basis upon which jurisdiction for an investigation by the Committee of Credentials may be invoked. As currently proposed by the Commission at its Subdivision (g), the statement that official records of the Commission "are not hearsay" is inconsistent with long-established and clearly understood law. It also conflicts with Evidence Code section 1200(a) which defines "hearsay evidence".

In contrast, these suggested changes recognize that official records of the Commission on Teacher Credentialing, as well as the absence of any report received by the Commission from a Superintendent of Schools, for example, do constitute "hearsay". They are properly considered within exceptions to the hearsay rule as governed by California Evidence Code sections 1280 and 1284, which deal with "official records" and provide:

Evidence Code section 1280:

Evidence of a writing made as a record of an act, condition or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition or event if all of the following applies: (a) the writing was made by and within the scope of duty of a public employee.
(b) the writing was made at or near the time of the act, condition or event.
(c) the sources of information and method and time of preparation were such as to indicate its trustworthiness.

Evidence Code section 1284:

Evidence of a writing made by the public employee who is the official custodian of the records in a public office, reciting diligent search and failure to find a record, is not made inadmissible by the hearsay rule when offered to prove the absence of a record in that office.

The suggested changes implement these two longstanding Evidence Code sections. Materials obtained from the Commission by an interested citizen may be properly relied upon as the basis for an affidavit. The absence of any mandated report which should have been made by a superintendent may be similarly relied upon by a community member or employee of the Commission as the basis for an affidavit. This language will further clarify jurisdiction of the Committee of Credentials to continue its vital supervisory duties.



Vanessa C. Whitnell, Attorney
Re: Proposed Amendments to section 80303
April 10, 2013
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Thank you for providing the opportunity to comment about the proposed amendments to Title V, section 80303 of the California Code of Regulations. We are aware that a bill (AB 449) is pending in the Legislature relating to the same subject. Depending upon the outcome of that bill, the parties may need to look at revising the regulation consistent with that legislation.

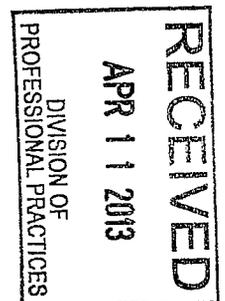
Very truly yours,



MICHAEL ROTHSCHILD

MR/ah

cc: Michael G. Barth



**COMMENT ON BEHALF OF THE CALIFORNIA TEACHERS ASSOCIATION
REGARDING:
CALIFORNIA CODE OF REGULATIONS
TITLE 5. EDUCATION
DIVISION 8. COMMISSION ON TEACHER CREDENTIALING
PROPOSED AMENDMENTS TO TITLE 5, CALIFORNIA CODE
OF REGULATIONS SECTION 80303 CLARIFYING A
SUPERINTENDENT'S REPORTING REQUIREMENT AS TO A
CREDENTIAL HOLDER'S CHANGE IN EMPLOYMENT STATUS**

**NOTICE OF PROPOSED REGULATORY ACTION ON BEHALF OF THE CALIFORNIA
TEACHERS ASSOCIATION**

TO: The California Commission on Teacher Credentialing

As proposed, amendments to the regulation seek to clarify the superintendent's reporting requirement.

We believe the following drafting changes to the regulation as presently constituted would help to further clarify this matter.

§ 80303 Reports of Change in Employment Status

(a) ~~Whenever~~ The superintendent of an employing school district shall report a change in employment status to the Commission not later than 30 days after the employment action 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:

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- (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 final employment action.*

(b) A change of status solely due to unsatisfactory performance pursuant to Education Code § 44932(a)(4) or a reduction in force pursuant to Education Code § 44955-44958 does not constitute "an allegation of misconduct."

(c) The report shall contain ~~all known~~ the following information about each alleged act of misconduct:

- (1) Name of credential holder;*
- (2) Current address of credential holder;*
- (3) Name of reporting district;*
- (4) Name of last school or district 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;*
- (7) *Any and all documentation related to the case.*

(~~ea~~) 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.*

(~~de~~) 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.

(~~ef~~) 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-reelected, 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.

(~~g~~) *Upon receipt of credible information that a report pursuant to subdivision (a) has not been made, the Commission on Teacher Credentialing shall send written notice to the responsible superintendent of an employing school district informing the superintendent of his or her obligation to comply with this regulation and requesting a statement, signed under penalty of perjury by the superintendent, describing all facts concerning his or her failure to comply.*

(~~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, or by staff of, 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~~) *Official records released in accordance with the Public Records Act (Government Code 6250-6270) by the Commission on Teacher Credentialing or otherwise in possession of the Commission are sufficient bases for personal knowledge of any person who files an affidavit or declaration with the Commission.*

Note: Authority Cited: Ed. Code, § 44225, subd. (g). Reference: Ed. Code, § 44242.5, subds. (a) & (b)(3)

