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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

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.

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

Introduction

The proposed amendments to California Code of Regulations, Title 5, Section 80303 ("regulation 80303") will clarify the requirement for a superintendent to report when a school district takes an adverse employment action against a credential holder. Additionally, the 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 on Teacher Credentialing ("Commission") within thirty days of the final action by the district.

Background

The Problem the Amendments Intend to Address

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.

The 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. However, the regulation in its current form lacks clarity in some areas and contributes to three ongoing problems.

First, the existing language often results in districts over-reporting, to include such "misconduct" as unsatisfactory performance style or such final employment actions as lay-offs or reductions in workforce. This over-reporting consumes valuable Commission resources that are better invested in reviewing final employment actions that arise from genuine misconduct. Second, the current regulation fails to instruct superintendents as to what materials are required for the Commission to adequately investigate a credential holder. Again, this results in a diversion of Commission resources to ensure an adequate case file for review. This also delays the Commission's investigation of a credential holder who may be unfit to teach. Finally, the jurisdictional restrictions placed on the Commission by Education Code section 44242.5, subdivisions (a) and (b)(3) have frustrated the purpose of the regulation in the sense that the Commission has little ability to review a superintendent for failure to comply with reporting requirements.

Although these three problems have long existed, they were recently publicly highlighted in the California State Auditor's November 2012 report concerning the Los Angeles Unified School

District's handling of allegations of misconduct against its employees. In the report, the State Auditor concluded that the Los Angeles Unified School District reported many cases that did not require reporting, thereby unnecessarily amplifying the workload for the Commission. In addition, the State Auditor advised that the district should take measures to ensure the reporting of complete information to the Commission. Further, the audit emphasized the district's failure to timely report at least 144 cases when required to do so, which resulted in the Commission's inability to review credential holders who may have been unfit for the classroom. These report findings clearly illustrate the concerns that give rise to the need for clarification of regulation 80303.

Accordingly, the Commission is considering a proposal to amend the regulation 80303 reporting requirement to: 1) ensure that resources are devoted to the review of genuine educator misconduct; 2) secure complete and adequate case files for efficient review of educator misconduct; and 3) clarify for the public information sufficient for the Commission to obtain jurisdiction to commence an investigation as to superintendents who fail to satisfy reporting requirements.

Purpose of Proposed Amendments: Implementing the Authorizing Statute

Pursuant to the authority vested in the Commission by section 44225, subdivision (q), and in order to implement section 44225, the Commission proposes amendments to regulation 80303.

Section 44225, subdivision (q), the authorizing statute for regulation 80303, *requires* the Commission to “propose appropriate rules and regulations” to implement section 44225. Under section 44225, the Commission is responsible for meeting the following objectives, among others:

- Establishing professional standards. (See section 44225, subdivision (a).)
- Reviewing and revising the code of ethics for the teaching profession. (See section 44225, subdivision (c).)
- Ensuring that public school teachers have the human skills to inspire pupils, have the sensitivity to foster pupils' self-esteem, are able to work effectively across a variety of socioeconomic and cultural backgrounds, and practice equity regardless of pupils' ethnicity, gender, religious background, or disabling condition. (See section 44225, subdivisions (d)(4)-(d)(8).)

Regulation 80303 currently assists the Commission in accomplishing these objectives in that it requires a superintendent to notify the Commission of a credential holder's change in employment status due to an allegation of misconduct or while an allegation of misconduct is pending. The regulation compels the superintendent of the employing school district to report to the Commission not later than 30 days after the employment action. This notification triggers the Commission's jurisdiction to review a credential holder for the allegations of misconduct. (See section 44242.5, subdivisions (a) and (b)(3).) Accordingly, regulation 80303 supports the Commission in fulfilling its duty to ensure credential holder compliance with professional and ethical standards as required under section 44225.

The proposed amendments to regulation 80303 will further aid the Commission in fulfilling this duty. The modifications will clarify the reporting requirement for superintendents. They will also

delineate procedures that may be used by the public to report a superintendent who fails to submit a required report to the Commission. Accordingly, the amendments will likely encourage superintendent compliance with reporting requirements and thus timely Commission review of credential holder misconduct. The changes to regulation 80303 will safeguard the professional and ethical standards that are imperative to the profession as emphasized by the authorizing statute.

Rationale for Amendments: Reasonably Necessary to Comply with the Authorizing Statute and Address the Problem

The proposed amendments to regulation 80303 satisfy the Necessity Standard. The changes to the regulation are *reasonably necessary* to effectuate the Commission’s duties under section 44225, the authorizing statute for the regulation. Again, section 44225 requires the Commission to set “professional standards” and review the “code of ethics” for the profession.

Regulation 80303 aids the Commission in doing so in that it requires superintendents to report final employment actions that arise from misconduct. Nonetheless, the language of regulation 80303 should be clarified in order to address the three problems previously discussed: over-reporting, inadequate case files, and the Commission’s inability to review superintendents who fail to report. As mentioned previously, these three concerns were publicly highlighted in a recent report by the California State Auditor.

Unfortunately, there currently is no specific jurisdictional provision that would trigger the Commission’s ability to review a superintendent who over-reports, provides inadequate files, or fails to report altogether. If a superintendent decides not to report, it is unlikely that he/she would turn him/herself in to initiate the Commission’s jurisdiction for review under section 44242.5, subdivisions (a) and (b)(3). Therefore, the Commission has little means of enforcing the reporting requirements.

It follows that a superintendent’s failure to comply with reporting requirements impedes the Commission’s ability to review credential holders who violate the code of ethics befitting of an educator. Thus, the Commission is restrained from complying with its duties under section 44225.

The reasonable remedy is to modify regulation 80303 to better emphasize and clarify a superintendent’s already existing reporting requirements. The modifications will make it clear that the Commission requires reports as to misconduct, rather than reports as to substandard teaching or lay-offs. The changes will also ensure that a credential holder’s case file is complete and accurate by precisely defining the documentation required in a superintendent’s report. Further, the changes will clarify procedures that may be used by the public to give the Commission jurisdiction to review a superintendent who fails to submit a required report. These amendments will thereby aid the Commission in maintaining professional standards and a code of ethics for the teaching profession as mandated under section 44225.

Anticipated Benefits

The proposed amendments to regulation 80303 are anticipated to:

- Ensure that Commission resources are used efficiently.
- Secure complete and adequate case files for fair and efficient Commission review of educator misconduct.
- Clarify for the public the information sufficient for the Commission to obtain jurisdiction to commence an investigation as to superintendents who fail to satisfy reporting requirements.
- Aid the Commission in maintaining professional standards for the teaching profession as mandated under section 44225.
- Increase protection of the health and welfare of California residents, namely public school children.
- Increase protection of worker safety in California, namely of employees of public schools.

Economic Impact Assessment

The proposed amendments to regulation 80303 will not:

- Create or eliminate jobs within the State of California;
- Create new businesses or eliminate existing businesses within the State of California;
- Expand businesses currently doing business within the State of California;
- Directly benefit the environment within the State of California.

However, the proposed amendments to the regulation will benefit the health and welfare of California residents and worker safety. Credential holder misconduct that is relevant to the health and welfare of public school children (i.e. withholding nutrition from a student) or to public school employees (i.e. harassment of a co-worker), will be reviewed by the Commission more swiftly if superintendents' reports are timely and complete.

Proposed Amendments to the Regulation

§80303

(a): The language, “as a result of an allegation of misconduct or while an allegation of misconduct is pending,” appears in this first subsection instead of subsection (a)(5) in order to *emphasize in the forefront of the regulation* the circumstances in which the Commission requires a report of a final employment action.

(a)(5): Deletes the language that is moved to subsection (a). See reasoning above. This subsection also includes the word “final” before “employment action” in order to emphasize that a superintendent should not send unnecessary reports prior to the time the Commission can exercise its jurisdiction to commence initial review. This helps to ensure that Commission resources are used efficiently.

(a)(6): This entire subsection is new language to clarify that the Commission requires reports as to genuine misconduct, rather than reports as to unsatisfactory teaching performance or lay-offs. This also helps to ensure that Commission resources are used efficiently.

(b)(1)(7): The new language gives meaning to the already-existing requirement that “the report shall contain all known information about each alleged act of misconduct” by delineating the potential known information. This will help ensure an adequate case file for Commission review.

(c): The new language requires Commission acknowledgement of the superintendent’s report within 30 days of receipt in order to establish confirmation.

(d): The new language changes the word “may” to “shall” in order to ensure that the Committee investigates a superintendent who holds a credential and fails to report as required by regulation 80303. This subsection is still subject to the jurisdictional requirements of Education Code, Section 44242.5.

(f): This entire subsection is new language that defines “official records” for the purposes of subsection (g).

(g): This entire subsection is new language that deems “official records” of the Commission to satisfy the “personal knowledge” requirement for persons who file an affidavit or declaration with the Commission based on such records.

(h): This entire subsection is new language that clarifies for the public the information sufficient for the Commission to obtain jurisdiction to commence an investigation as to superintendents who fail to satisfy reporting requirements.

(i): This entire subsection is new language that requires the Commission to send a reminder letter to superintendents where the Commission has information or belief that a superintendent has failed to comply with reporting requirements.

Documents Incorporated by Reference: None.

Documents Relied Upon in Preparing Amendments to the Regulation

- California State Auditor’s Report, Bureau of State Audits, Re: Los Angeles Unified School District’s Handling of Allegations Against Employees, November 2012.

Other Determinations Regarding the Proposed Amendments

The Commission has made the following initial determinations:

- The proposed amendments impose no mandate on local agencies or school districts that would require reimbursement.
- The proposed amendments do not require a report to be made; rather, the amendments clarify an already existing reporting requirement and clarify an option for noncompulsory public reporting.
- The proposed amendments present no fiscal impact. (See Fiscal Impact Statement.)
 - Cost or savings to any state agency: none.
 - Cost or savings in federal funding to the state: none.
 - Other non-discretionary cost or savings imposed upon local agencies: none.
 - Cost to any local agency or school requiring reimbursement: none.

- The proposed amendments present no effect on housing costs.
- The proposed amendments will not have any significant statewide adverse economic impact.
- The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed amendments.
- The proposed amendments do not affect small businesses.

Notice of Proposed Rulemaking Mailing List

Notice List

- Ken Burt, California Teachers Association
- Michael Rothschild, Rothschild Wishek & Sands LLP
- David Simmons, Ventura County Office of Education

Also posted on the Internet at <http://www.ctc.ca.gov>.

Tally of Responses

As of Monday, March 25, 2013, the Commission received the following written responses:

Support

1 organizational opinion
0 personal opinions

Opposition

0 organizational opinions
0 personal opinions

Total Responses: 1

Responses Representing Organizations in Support

1. Terrie Peets, Human Resources and Administrative Services Coordinator, Alpine County Unified School District/County Office of Education

Staff Recommendation

Staff recommends that the Commission adopt the proposed amendments to Title 5, California Code of Regulations Section 80303.

**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).