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Information

Professional Practices Committee

Division of Professional Practices Workload Report

Executive Summary: This agenda item provides a report on the Division of Professional Practices' current workload and an update on a follow-up report by the Bureau of State Audits.

Recommended Action: For information only

Presenter: Nanette F. 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.

Division of Professional Practices Workload Report

Introduction

To increase its oversight over the work of Division of Professional Practices (DPP), in 2011 the Commission on Teacher Credentialing (Commission) directed staff to present information about DPP's workload as a standing part of the Commission's agenda.

The DPP is responsible for managing the disciplinary caseload and providing legal advice to the statutorily created disciplinary review committee, the Committee of Credentials (Committee). The Committee is an investigatory body comprised of seven members appointed by the Commission for two-year terms. Members include an elementary teacher, a secondary teacher, one school board member, a school administrator, and three public representatives. The Committee is responsible for reviewing allegations of misconduct against a credential holder or applicant and making a recommendation to the Commission as to whether probable cause exists for adverse action against a credential or application. Once the Committee makes a recommendation for an adverse action, the credential applicant or holder may accept the recommendation and the matter is placed on the Commission's Consent Calendar. The applicant or holder also has the option to appeal the Committee's recommendation and ask for an administrative hearing. An administrative hearing is a full evidentiary hearing, held before an administrative law judge, where witnesses testify and evidence is presented.

Highlights for the June 2014 Statistics

The Commission's dashboard (see Attachment A) reports on six key measurements in line graph form, showing both current year numbers as well as the prior year numbers for comparison purposes.

The "Total Cases" are the number of open cases within DPP, including cases in the Intake Unit, before the Committee, pending before the Commission and pending an administrative hearing. At the end of June the caseload was 2,430, up slightly from the last Commission meeting.

"Cases Opened" are new cases received during the month, from all sources, including criminal arrest notices, district reports and educators who self-report misconduct. In June, staff opened 425 cases, which is within the normal range of 400-500 cases a month.

As can be seen in the "Initial Review Cases" and the "Formal Review Cases," the Committee continues to effectively handle the large number of cases under consideration by the Committee. The numbers in these two charts reflect the number of cases reviewed by the Committee at its monthly three-day meeting. The two-step process (initial review and formal review) is required by statute.

"Cases Closed" is the number of matters closed during June by Commission action, Committee action or closed by staff where the Commission has given formal delegation of authority (e.g. single alcohol offenses that do not involve schools or minors). In June, 389 cases were closed.

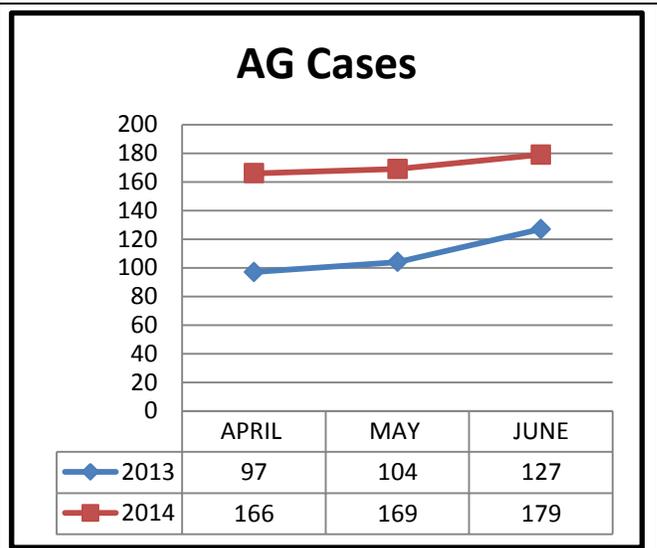
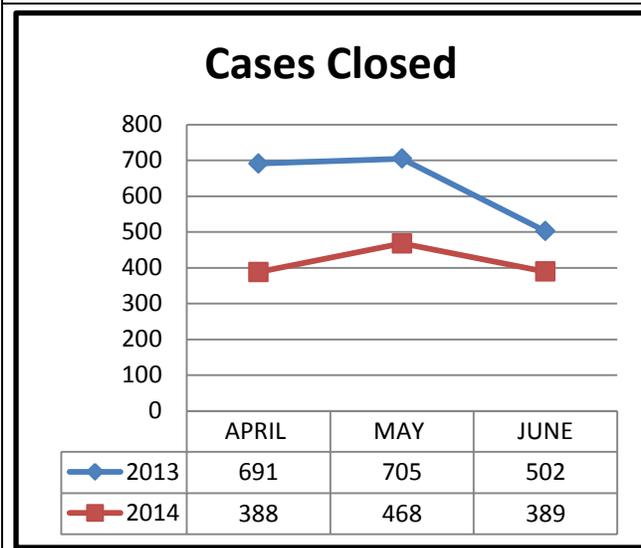
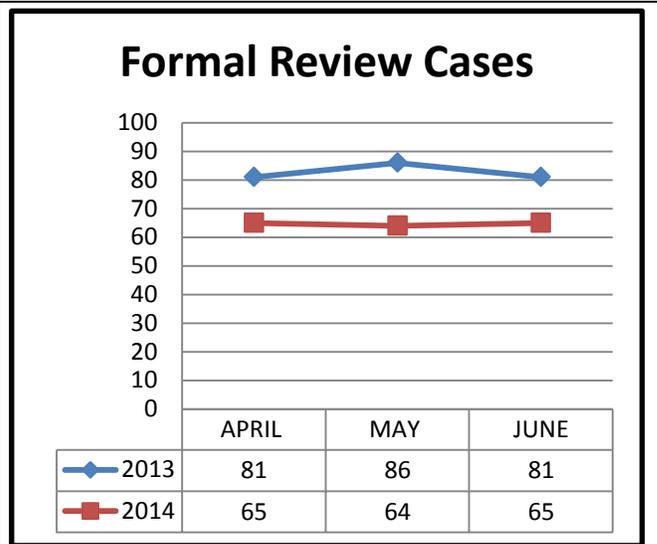
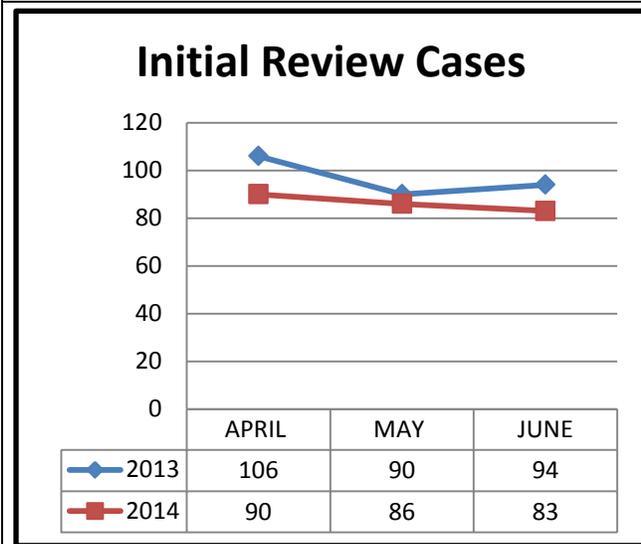
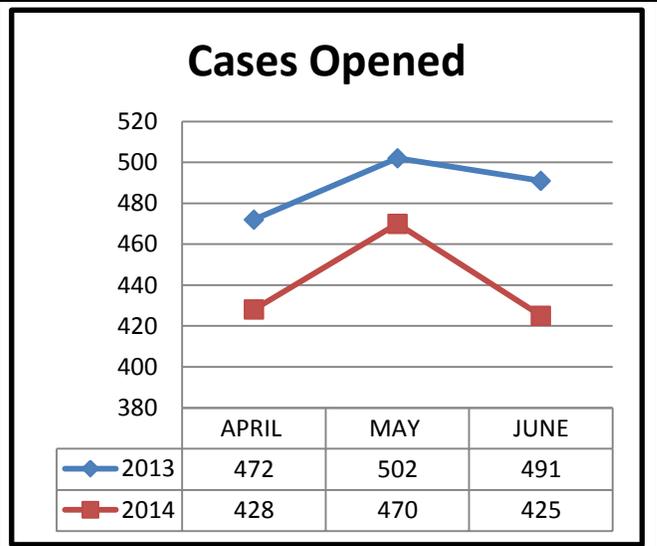
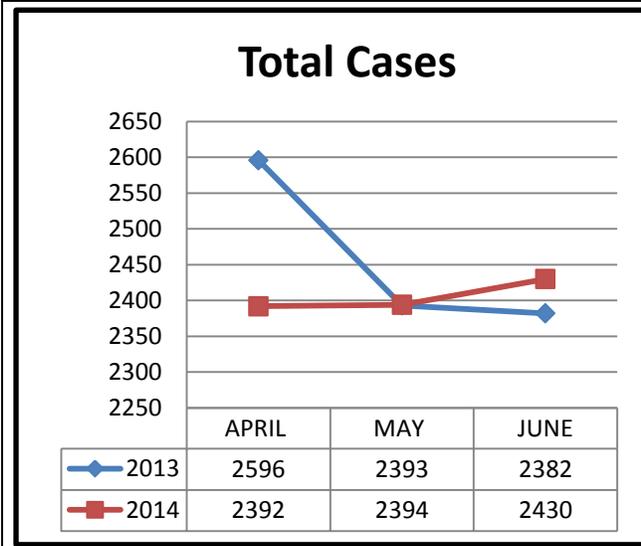
“AG Cases” is the number of cases in which the Office of the Attorney General (AG) represents the Commission in an administrative hearing as a result of an individual appealing the recommendation of the Committee. When a person appeals, the Commission’s case file is transferred to the AG’s office with a request that the AG represent the Commission in the administrative hearing. That number continues to grow, with 179 cases open at the AG’s office at the end of June.

Update on Bureau of State Audits (BSA)

On Friday May 9, 2014, the Commission was called by the BSA and informed that the BSA would be doing a follow-up audit of the Commission. The purpose of the review “whether the Commission has taken the steps it reported to us to reduce its backlog of reported teacher misconduct.” The entrance meeting was held on May 14, 2014, and three auditors began work at the Commission’s office that same day. The BSA audit team remained working at the Commission until June 2. During that time the auditors requested and reviewed voluminous documentation and interviewed several DPP staff. DPP staff continued to respond to questions for a couple weeks after the audit team finished work at the Commission’s office.

The BSA report was publicly released on July 10, 2014. The report found that the Commission fully implemented or resolved 21 of 22 recommendations. The sole recommendation in the report is to update the Commission’s Strategic Plan to include timelines and measurable targets to better measure and evaluate progress toward meeting the goals in the Strategic Plan. A copy of the report is attached (Attachment B).

DPP Monthly Dashboard Reports





Elaine M. Howle State Auditor
Doug Cordiner Chief Deputy

July 10, 2014

2014-502

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

This letter report presents the results of a follow-up review of the Commission on Teacher Credentialing (commission) subsequent to recommendations made in 2011 by the California State Auditor (state auditor). In April 2011 the state auditor submitted a report to the governor and legislative leaders titled *Commission on Teacher Credentialing: Despite Delays in Discipline of Teacher Misconduct, the Division of Professional Practices Has Not Developed an Adequate Strategy or Implemented Processes That Will Safeguard Against Future Backlogs*, Report 2010-119. The report recommended that the commission improve its investigations of alleged educator misconduct by formalizing investigative procedures and tracking critical stages in the investigative process. The report also recommended that the commission revise its strategic plan to include challenges, goals, and actions, and obtain a legal opinion from the Office of the Attorney General (attorney general) on the legal authority and extent to which the Committee of Credentials (committee) can delegate its discretionary authority to staff in the Division of Professional Practices (division). As the Table beginning on page 2 shows, this follow-up review found that the commission has fully implemented almost all of our recommendations or resolved the underlying issues related to two of them.

Background

The commission was created in 1970 with the responsibility of ensuring excellence in education by establishing high standards for the preparation and licensing of public school educators. The commission consists of 19 members, 15 of whom are voting members, and it appoints an executive director to oversee the commission's four divisions and one section.

The commission also appoints the members of the committee—a seven-member body. The committee reviews allegations of misconduct and determines the relationship between the alleged misconduct and the credential holder's fitness, competence, or ability to effectively perform the duties authorized by the credential, and whether there is probable cause to take adverse action against the credential holder. The committee then reports its findings of probable cause and makes recommendations for appropriate adverse actions to the commission for adoption. The commission's division conducts the investigations of misconduct on behalf of the committee and the commission. Upon receiving reports or allegations of misconduct, the division gathers the documents and testimony necessary to determine whether probable cause exists for discipline and a recommendation for an adverse action against the credential holder, prepares the necessary reports for review, and provides support for any proceedings, such as appeals of committee and commission findings and recommendations.

In our February 2013 report titled *Implementation of State Auditor's Recommendations: Audits Released in January 2011 Through December 2012*, we concluded, based on the commission's responses, that it had fully implemented all of the recommendations from our April 2011 report. The state auditor's practice is to occasionally follow up on past audit reports to verify the agency's assertions regarding its implementation of our recommendations. For this follow-up review, we interviewed staff and reviewed documentation supporting the commission's implementation of our recommendations. The Table summarizes the results of our review.

Table
Status of Recommendations Made in California State Auditor's Report 2010-119

RECOMMENDATION	STATUS BASED ON FOLLOW-UP REVIEW
To comply with the law and reduce unnecessary workload, the Division of Professional Practices (division) should continue to notify the California Department of Justice (Justice) of reports of arrest and prosecution (RAP sheets) for individuals in whom the division is no longer interested, so Justice will no longer notify the division of criminal activity for these individuals. (1.1)*	Fully Implemented
The Commission on Teacher Credentialing (commission) should revise its strategic plan to identify the programmatic, organizational, and external challenges that face the division and the Committee of Credentials (committee), and determine the goals and actions necessary to accomplish its mission. (2.1)	Partially Implemented [†]
To ensure that it can effectively process its workload in the future, the commission should collect the data needed to identify the staffing levels necessary to accommodate its workload. (2.2)	Fully Implemented
The commission should seek a legal opinion from the Office of the Attorney General (attorney general) to determine the legal authority and extent to which the committee may delegate to the division the discretionary authority to close investigations of alleged misconduct without committee review, and take all necessary steps to comply with the attorney general's advice. (2.3)	Resolved
Once the commission has received the attorney general's legal advice regarding the extent to which the committee may delegate case closure to the division, the commission should undertake all necessary procedural and statutory changes to increase the number of cases the committee can review each month. (2.4)	Resolved
The division should develop and formalize comprehensive written procedures to promote consistency in, and conformity with, management's policies and directives for reviews of reported misconduct. (2.5)	Fully Implemented
The division should provide the training and oversight, and should take any other steps needed, to ensure that the case information in its case management database is complete, accurate, and consistently entered to allow for the retrieval of reliable case management information. (2.6)	Fully Implemented
The commission should continue to implement its new procedures related to deleting cases from its database to ensure that all such proposed deletions are reviewed by management for propriety before they are deleted and a record is kept of the individuals to which each such deleted case record pertains. Further, the commission should develop and implement policies and procedures related to managing changes and deletions to its database. (2.7)	Fully Implemented
To ensure that the division promptly and properly processes the receipt of all the various reports of educator misconduct it receives, such as RAP sheets, school reports, affidavits, and self-disclosures of misconduct, it should develop and implement procedures to create a record of receipt of all these reports that it can use to account for them. In addition, the process should include oversight of the handling of these reports to ensure that case files for the reported misconduct are established in the commission's database to allow for tracking and accountability. (2.8)	Fully Implemented
To adequately address the weaknesses we discuss in its processing of reports of misconduct, the division should revisit management's reports and processes for overseeing the investigations of misconduct to ensure that the reports and practices provide adequate information to facilitate the following:	
• Reduction of the time elapsed to perform critical steps in the review process. (2.9.a)	Fully Implemented
• Adequate tracking of the reviews of reports of misconduct that may require mandatory action by the commission to ensure the timely revocation of the credentials for all individuals whose misconduct renders them unfit for the duties authorized by their credential. (2.9.b)	Fully Implemented
• Prompt requests for information surrounding reports of misconduct from law enforcement agencies, the courts, schools, and knowledgeable individuals. (2.9.c)	Fully Implemented
• An understanding of the reasons for delays in investigating individual reports of misconduct without having to review the paper files for the cases. (2.9.d)	Fully Implemented

RECOMMENDATION	STATUS BASED ON FOLLOW-UP REVIEW
• Clear evidence of management review of reports intended to track the division's progress in its investigations of misconduct. (2.9.e)	Fully Implemented
• Clear tracking of the dates at which the commission will lose its jurisdiction over the case as a result of the expiration of statute-based time frames for investigating the misconduct. (2.9.f)	Fully Implemented
The division should develop and implement procedures to track cases after they have been assigned to the investigative process. (2.10)	Fully Implemented
To better ensure that its hiring decisions are fair and that employment opportunities are equally afforded to all eligible candidates, and to minimize employees' perceptions that its practices are compromised by familial relationships or employee favoritism, the commission should do the following:	
• Prepare and/or formally adopt a comprehensive hiring manual that clearly indicates hiring procedures and identifies the parties responsible for carrying out various steps in the hiring process. (3.1.a)	Fully Implemented
• Maintain documentation for each step in the hiring process. For example, the commission should maintain all applications received from eligible applicants and should preserve notes related to interviews and reference checks. Documentation should be consistently maintained by a designated responsible party. (3.1.b)	Fully Implemented
• Hiring managers should provide to the commission's office of human resources documentation supporting their appointment decisions, and the office of human resources should maintain this documentation so that it can demonstrate that the hiring process was based on merit and the candidate's fitness for the job. (3.1.c)	Fully Implemented
To ensure that employees understand their right to file either an Equal Employment Opportunity (EEO) complaint or a grievance, and to reduce any associated fear of retaliation, the commission should do the following:	
• Include in its EEO policy a statement informing staff members that they may make complaints without fear of retaliation. (3.2.a)	Fully Implemented
• Actively notify employees annually of its EEO complaint and grievance processes, including the protection from retaliation included in both. (3.2.b)	Fully Implemented
• Conduct training on its EEO complaint process on a periodic basis. (3.2.c)	Fully Implemented

Sources: Recommendations made in the report by the California State Auditor (state auditor) titled *Commission on Teacher Credentialing: Despite Delays in Discipline of Teacher Misconduct, the Division of Professional Practices Has Not Developed an Adequate Strategy or Implemented Processes That Will Safeguard Against Future Backlogs*, Report 2010-119 (April 2011), and the state auditor's analysis of the commission's actions related to the recommendations.

* This number corresponds to the recommendation number in the state auditor's report titled *Implementation of State Auditor's Recommendations: Audits Released in January 2011 Through December 2012*, Report 2013-406 (February 2013).

† Based on our follow-up review, we changed the status of this recommendation from fully implemented to partially implemented because we found the commission's strategic plan lacked timelines and measurable targets. Further, the commission only informally tracks and evaluates the status of each goal.

The Commission Implemented Almost All of Our Recommendations or Resolved the Recommendation's Underlying Issues

The commission has fully implemented 19 of our recommendations, partially implemented another, and resolved the underlying issues related to the remaining two recommendations from our April 2011 report. Specifically, the commission has formalized a variety of procedures intended to improve its oversight of investigations into alleged educator misconduct. For example, the commission implemented a process to improve the accuracy and completeness of the division's Credential Automation System Enterprise (CASE) database. In addition, the commission developed procedures for cases that have the potential for mandatory action, which should help it to better track the cases it is reviewing and investigating to ensure that it can take timely adverse action against credential holders when necessary. Further, according to its records, the commission has reduced the percentage of assigned cases open more than 180 days from 63 percent in February 2012 to 20 percent in June 2014. The commission has also formalized hiring procedures and Equal Employment Opportunity (EEO) policies to ensure that hiring decisions are fair and the fear of retaliation associated with EEO complaints is eliminated.

However, we found that the commission could make minor improvements to obtain greater benefits related to two recommendations, one that it initially reported as fully implemented, but we assessed as partially implemented, and another that it fully implemented. For example, the commission updated its strategic plan to identify challenges and goals as we recommended in our April 2011 report and reported this recommendation fully implemented. However, our follow-up review found that the strategic plan would be more useful if the commission included timelines and measurable targets to help it better measure its progress toward meeting its goals. Additionally, the commission only informally tracks and evaluates the status of each goal. For these reasons, we assessed this recommendation as partially rather than fully implemented. The commission plans to revise its strategic plan in August 2014.

Types of Cases the Commission on Teacher Credentialing Has Delegated Its Ministerial Authority to Close to the Division of Professional Practices

No Jurisdiction: The Commission on Teacher Credentialing (commission) does not have formal jurisdiction pursuant to California Education Code, Section 44242.5(b).

Mental Health Suspension: The credentials of an individual are indefinitely suspended by the commission for mental health issues pursuant to Title 5, California Code of Regulations, Section 80309.

Expired Credentials: Cases where credentials are expired and no application is pending unless the alleged misconduct also involves any of the following:

- Allegations of sexual misconduct
- Crimes against children
- Reports filed by school districts, and actions taken by other licensing agencies

Single Misdemeanor Alcohol Offense: Cases with one misdemeanor alcohol-related offense unless the offense also involves any of the following:

- A child
- A school or school property
- Adverse publicity that impacts the local community

Vehicle Code Violations: Cases with a conviction of multiple infractions or a single misdemeanor under the California Vehicle Code unless the violation also involves any of the following:

- A child
- A school or school property
- Adverse publicity that impacts the local community

Sources: Commission meeting agendas.

For another recommendation we assessed as fully implemented, we recommended that the commission develop and formalize comprehensive written procedures to promote consistency in, and conformity with, management's policies and directives for reviews of reported misconduct. In our follow-up review we found that the commission has prepared and placed on its intranet a variety of individual documents that describe specific procedures for division staff to follow when performing reviews of reported misconduct. However, there is no index or guide for these procedure documents, making it difficult for division staff to use these procedures. To be more effective we suggest that the commission create a table of contents or a similar document with electronic links that connect staff to the procedures for each step of the review process. With these minor improvements, the commission can continue to build on its successful implementation of our recommendations.

The commission did not fully implement two of our recommendations, but it has taken alternative actions that appropriately resolve the concerns we raised. We recommended that the commission seek a legal opinion from the attorney general to determine the legal authority and the extent to which the committee may delegate to division employees the authority to close investigations of alleged misconduct without committee review. Further, we recommended that it undertake all necessary procedural and statutory changes to increase the number of cases the committee can review once it receives the opinion. The commission attempted to seek an opinion from the attorney general in order to implement these two recommendations, while at the same time increasing the number of cases it reviewed each month: from an average of 50 to 60 per month as noted in our April 2011 report, to an average of 72 to 103 per month for fiscal years 2011–12 through 2013–14. In addition, the commission took formal action to provide specific written guidance and direction to staff as to which cases they had the authority to close without further review by the committee. Based on this new guidance relating to the extent of its delegation of authority, our legal counsel concluded that division staff are acting in an appropriate ministerial capacity when closing the types of cases shown in the text box.

This action by the commission resolved our concern that only the commission may exercise discretionary authority—that is, authority that involves the exercise of judgment—over case closures, and that division staff may act only in a ministerial capacity. Under this new guidance the division must forward to the committee for its review those cases that require the committee to exercise its discretion. For example, the division would forward to the committee for its review all cases of alleged misconduct that involve an alcohol-related incident, which also involves a child, school property, or negative publicity. These types of cases require the committee to weigh the facts and exercise its judgment before making a decision as to the appropriate action to take, if any, against the individuals allegedly involved in the misconduct. As a result of these actions, the commission withdrew its request to the attorney general at its August 2012 meeting.

Although the commission has appropriately delegated its authority to division staff to close five types of ministerial cases of educator misconduct, at the time of our follow-up review the commission had developed procedures for only four of five of these case types. Specifically, the commission had not developed procedures for closing cases involving expired credentials; rather, it directed staff to use procedures for another case type. Without clear procedures for closing cases involving expired credentials, staff may inappropriately apply their judgment in determining whether a case should be closed. After we brought this matter to the commission's attention, it developed procedures in June 2014 that specifically addressed how staff are to close cases involving expired credentials.

Recommendations

To make its strategic plan a more useful mechanism for accomplishing its mission, the commission should ensure that, to the extent possible, its goals have timelines and are measureable. Further, the commission should periodically evaluate and track its progress towards meeting its goals.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code. We limited our review to those areas specified in the letter report.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Staff: John Baier, CPA, Audit Principal
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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.



Commission on Teacher Credentialing

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Office of the Executive Director

June 25, 2014

Elaine M. Howle, CPA*
California State Auditor
Bureau of State Audits
621 Capitol Mall, Suite 1200
Sacramento, California 95814

Dear Ms. Howle:

The Commission on Teacher Credentialing welcomes the opportunity to respond to the follow up review of your April 2011 audit. The 2011 audit was sobering review of business practices in the Division of Professional Practices, the division that manages the Commission's educator discipline program. While the audit's criticisms were painful for the Commission, your recommendations provided a catalyst for change and improvement and as a result, energized the agency as a whole and the Division of Professional Practices in particular. We are committed to continuing to improve our business practices to better serve the public.

While government is often criticized for an inability to implement change, your follow-up report shows that the Commission has achieved substantial and lasting reforms. In 2011 and 2012 the Commission's priority was implementing the recommendations made by your office and eliminating the backlog of discipline cases. We continue to review, refine and improve our work and business practices to enhance the safety of students and the integrity of the education profession.

As your report notes, the Commission is scheduled to begin the process of developing a new strategic plan at its August 2014 meeting. I am sure the Commission will consider your recommendation to have goals which include timelines and measurable targets as it develops an updated plan.

Your follow up report also contains a suggestion for developing a table of contents for the procedures used by staff. After the suggestion was raised by your staff during the audit, Commission management developed a table of contents and disseminated it to division staff. A copy of the table was provided to your staff. ①

We appreciate the time and effort of the Bureau of State Audits in conducting this follow up review.

Sincerely,

A handwritten signature in black ink that reads "Mary Vixie Sandy". The signature is written in a cursive, flowing style.

Mary Vixie Sandy, Ed.D
Executive Director

Ensuring Educator Excellence

* California State Auditor's comment appears on page 7.

Comment

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE COMMISSION ON TEACHER CREDENTIALING

To provide clarity and perspective, we are commenting on the Commission on Teacher Credentialing (commission) response to our audit. The number below corresponds to the number we have placed in the margin of the commission's response.

- ① The "table of contents" that the commission mentions is simply a listing of documents by topic on the commission's intranet, but it lacks any electronic links to the procedures. Therefore, we believe it is of limited value because staff will continue to need to manually search the electronic file of documents on the commission's intranet when they want to reference any procedures.