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November 15, 2011

VIA E-MAIL & U.S. MAIL

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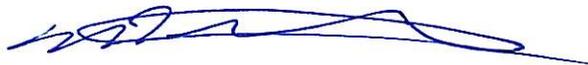
Re: November Stakeholders meeting

Dear Ken:

You have asked that I draft the enclosed memo proposing modification of the California Education Code and Title 5, section 8, of the California Code of Regulations with reference to the Committee of Credentials/Commission on Teacher Credentialing. It is provided to you in preparation for the November 18, 2011 "stakeholders" conference conducted by the Commission on Teacher Credentialing.

Basic to the concept presented is that the Committee of Credentials has, over the past several years, come to view itself as an entity to **penalize** teachers who have run afoul of law or regulations. Examples are set formulations of license suspension periods depending upon facts of an underlying criminal offense. Misguided proposals by Commission staff to impose "fines" are consistent with that. In contrast, the initial and true purpose for creation of the Committee of Credentials was to protect students within the classroom and, if possible, guide involved credential holders into rehabilitation or educational programs wherein they may continue quality service within the education community. Proposals made by the enclosed/attached memo are based upon the premise that the Committee of Credentials should move from its current self-image of "imposer of penalty" to one of "protecting students and encouraging quality educators." That philosophical shift will likely save the Commission millions of dollars while, at the same time, protecting students while recognizing due process rights of credential holders.

Very truly yours,



MICHAEL ROTHSCHILD

MR/bh

Enclosure

PROPOSALS FOR NOVEMBER 18, 2011 "STAKEHOLDERS" MEETING –  
COMMISSION ON TEACHER CREDENTIALING

**ISSUE ADDRESSED: ALTERNATIVE PROCESS FOR ALCOHOL OR  
DRUG RELATED CONVICTIONS**

1. Perceived problem: CTC staff has indicated as follows:

“If a process could be established in statute to provide for voluntary non-disciplinary process coupled with mandatory probation monitoring for misdemeanor DUI/alcohol related convictions, the major area of the COC caseload could be reduced.”

2. Proposed solution:

Create a simple, easily administered and low cost program within which first and second misdemeanor driving under the influence offenders where no bodily injury was involved may be diverted from the review process prior to consideration by the Committee of Credentials. Vehicle Code sections 23538(b) for first offenders and section 23542(b) for second offenders provide for court ordered drinking driver education/therapy programs as a condition of probation. Mandatory jail sentences and monetary fines are also contemplated by the Vehicle Code scheme. Duplicative review and penalty by the Commission on Teacher Credentialing is unwarranted. As such, upon a credential holder’s enrollment in and participation in a court ordered drinking driver program as mandated by Vehicle Code section 23538(b) or 23542(b), investigation of the matter by the Committee of Credentials should be held in abeyance.

Similar considerations apply when the court orders participation in an alcohol or drug education program pursuant to Vehicle Code section 23103.5(3). The latter would apply where, for example, there is an exceptionally low blood alcohol level and a plea to reckless driving pursuant to Vehicle Code section 23103 results.

Upon satisfactory proof being received that the program has been completed, the Commission investigation may then be closed. Should the credential holder fail to enroll in and/or satisfactorily complete the court program, the matter may then be subject to discretionary review commencing with a Letter of Inquiry from the Committee of Credentials. The foregoing diversion program should not apply if underlying facts confirm that the credential holder’s actions occurred upon or immediately adjacent to their place of employment or in any manner directly involved a student then enrolled at a facility where they were

employed. Misdemeanor reckless driving offenses would be included only if they were alcohol related, as recognized by Vehicle Code section 23103.5.

A more formal probationary program may be implemented with reference to credential holders who suffer a third or more driving under the influence conviction within a period of five years. They may be offered “diversionary probation” **prior** to review by the Committee of Credentials pursuant to a program upon terms and conditions similar to those currently utilized by the Commission **after** full review by the Committee of Credentials but with no suspension stayed. During the period of “diversionary probation” investigation by the Committee of Credentials could be held in abeyance. Upon successful completion of the “diversionary probation,” the investigation would then be closed. Upon rejection or failure of the “diversionary probation”, investigatory procedures before the Committee of Credentials commencing with a Letter of Inquiry may then be implemented.

Current review by the Committee of Credentials with reference to first and second driving under the influence offenders and alcohol related reckless driving offenses merely duplicates court procedures as mandated by the Vehicle Code. By allowing a choice for “diversionary probation” to third offender driving under the influence credential holders, successful participation in the formal, mandated probation would be encouraged as it would not impose either stayed license suspension or actual credential suspension thereby allowing the affected credential holder to maintain a “clean” record for purposes of future employability. That, of course, would not be the situation should they elect to decline the “diversionary probation”, proceed through the Committee of Credentials review process and then likely receive a full suspension or stayed suspension of their credential. By “frontloading” the probation supervision currently offered by the Commission on Teacher Credentialing, unnecessary review by the Committee of Credentials would be avoided while, at the same time, the credential holder would be encouraged to accept the terms and conditions of that probation as license suspension or a stayed suspension could be avoided.

3. Proposed Specific Implementation:

Title 5, California Code of Regulations section 80309.1 pertains to “initial review” by the Committee of Credentials. That regulation may be renumbered as section 80309.2. A new section 80309.1 could then be crafted to implement the contemplated alternative process for alcohol related convictions. Suggested language may be as follows:

**Upon a conviction becoming final of having violated Vehicle Code section 23103 which results in punishment pursuant to Vehicle Code section**

**23103.5, an initial violation of Vehicle Code section 23152 or a second such conviction becoming final within five years thereof, and except as provided in subdivision (c) below:**

- (a) Upon a credential holders enrollment in and participation in a court ordered drinking driver program as mandated by Vehicle Code section 23538(b) or 23542(b), or court ordered alcohol and drug education program pursuant to Vehicle Code section 23103.5(e), investigation of the matter shall be held in abeyance. Upon satisfactory proof received which confirms completion of the program the investigation shall be closed.**
- (b) Should the credential holder fail to enroll in and/or satisfactorily complete said program, the matter shall be subject to discretionary review by the Committee of Credentials.**
- (c) (a) and (b) shall not apply and investigation by the Committee of Credentials shall proceed whenever any conviction becomes final for having violated Vehicle Code section 23152 or Vehicle Code section 23103 if punishment is imposed pursuant to Vehicle Code section 231013.5 and the underlying facts confirm that the credential holders' actions occurred upon or immediately adjacent to their place of employment or in any manner directly involve a student then enrolled in a facility where the credential holder was employed.**

**Upon conviction becoming final of a credential holder's third or more conviction within a period of five years for having violated Vehicle Code section 23152, they shall be offered "diversionary probation" pursuant to a program upon terms and conditions as adopted by the Commission on Teacher Credentialing. During the period of "diversionary probation" investigation by the Committee of Credentials shall be held in abeyance. Upon successful completion of the "diversionary probation," the investigation shall be closed. Upon rejection of or failure of the "diversionary probation," investigatory procedures before the Committee of Credentials shall commence by Letter of Inquiry.**

**ISSUE ADDRESSED: ELIMINATE OR AMEND BREACH OF CONTRACT PROVISIONS.**

1. Perceived problem:

Under current law, the Committee of Credentials may suspend a credential for up to one year if a certificated employee refuses, without good cause, to fulfill a valid contract or leaves without the consent of the employing superintendent. This issue is an employment contract matter. Reports of breach of contract are not made on a uniform basis by school districts to the Committee of Credentials and districts are not required to make that report. Such breach of contract matters – even when it is indisputably clear that students have not been affected – unnecessarily consume Committee of Credentials resources.

2. Proposed solution:

Current law provides for a report by declaration under penalty of perjury based upon firsthand knowledge of malfeasance by a credential holder. Upon receipt of such verified allegations, the Committee of Credentials has the jurisdiction to commence an investigation. If a teacher abandons a contract, for example, and leaves students literally “hanging” without substitute or replacement personnel, they may be reported by the local school district to the Commission on Teacher Credentialing by verified affidavit. The requirement of a statement under “penalty of perjury” will likely serve to eliminate reports of claimed “breach of contract” where students were, as a practical matter, not affected and the report to the CTC would be driven by vindictive or political considerations.

3. Proposed Specific Implementation:

Repeal Education Code section 44420 and amend Education Code section 44242.5(b)(5) by deleting cross-reference to section 44420.

**ISSUE ADDRESSED: ENCOURAGE SETTLEMENT AT THE EARLIEST STAGE OF PROCEEDINGS**

1. Perceived Problem:

Proceedings before the Committee of Credentials have increasingly shifted to later stages of the investigatory process. Increasing numbers of review matters have required personal appearance before the Committee of Credentials rather than settlement at the initial “Letter of Inquiry” stage. Consistent with that, increasing numbers of review matters have proceeded to administrative proceedings pursuant to the California Procedure Act. Impact both in caseload

and fees paid to the Department of Justice to defend administrative hearings have increased. This has occurred in large part due to mistrust of Division of Professional Practices staff. One significant concern is the failure to provide exonerating evidence in “disclosure” to a credential holder or their attorney or even, it is suspected, to the Committee of Credentials itself. Some matters proceed to an administrative hearing with concomitant increased expense to the Commission based upon the suspicion – often later confirmed as accurate – that significant evidence may be contained within the Commission file which has previously not been revealed. That would be later revealed by Department of Justice attorneys as required by law at that late stage of proceedings.

2. Proposed Solution:

Prior to the 2003 appellate decision in *California Teacher’s Association v. California Commission on Teacher Credentialing* published at 111 Cal.App.4<sup>th</sup> 1001, then-California Code of Regulations section 80307 provided for broad discovery to credential holders and their attorneys of a Committee of Credential file to include:

All writings as defined by California Evidence Code section 250 which are included in the applicant’s or holder’s file including writings which include the basis for the allegations, with the exception of privileged information, shall be subject to discovery by the applicant or holder following commencement of an investigation.

At the Commission’s request, the Appellate Court in 2003 declared regulation 80307 to be void as it exceeded the narrow limitation of Education Code section 44244(a) that only “portions of the investigation of the original or supplemental allegations that constitute the basis for the allegations shall be opened to inspection of copying.” At page 1012 of its opinion the Court of Appeal recognized arguments presented to it by the California Teacher’s Association and commented with respect thereto as follows:

**Part of this argument is that full discovery is necessary to permit a full investigation that will result in avoiding unnecessary administrative hearings. Only after conducting a full investigation will the teacher know whether to accept or challenge the recommendation of the Committee. This policy argument is best directed to the legislature, which sets the policy in this area.**

Stated simply, the Court of Appeal's offer should be accepted and appropriate provisions of the Education Code modified to conform to the regulatory procedure as it existed before 2003. Early settlement will thereby be encouraged and otherwise unnecessary requests for an administrative hearing – which would result in the same full discovery of an entire file being provided at that late date – thereby avoided.

3. Proposed Specific Implementation:

Subdivision (a) of Education Code section 44244 should be amended to delete language which indicates that “the portions of the investigation of the original or supplemental allegations that constitute the basis for the allegations shall be open to inspection or copying by the holder or applicant and his or her attorney.” Instead, the following language should be substituted:

All writings as defined by California Evidence Code section 250 which are included in the applicant's or holder's file including, but not limited to, writings which form the basis for the allegations, with the exception of privileged information, shall be subject to discovery by the applicant or holder following commencement of an investigation. The Commission shall provide to the Committee of Credentials as well as any applicant or holder any and all available exonerating evidence.

**ISSUE ADDRESSED: RE-INVESTIGATE ONLY APPROPRIATE ALLEGATIONS WITHIN LOCAL TEACHER DISMISSAL PROCEEDINGS**

1. Perceived Problem:

The Committee of Credentials regularly reviews cases in which a credential holder left employment as a result of or while allegations of misconduct were pending. The Committee thereby reviews and relies on a Statement of Charges crafted by local counsel for school districts in their local dismissal actions. Experience has confirmed that multiple allegations of misconduct, many of which were never substantiated by any evidence whatever, let alone reliable evidence, are thereby presented to the Committee of Credentials. Rather than challenge spurious and unfounded charges, many teachers simply resign or “accept a golden handshake” in the face of tactically inflated allegations of misconduct. It is known that training sessions for local school district attorneys regularly encourage

throwing “the kitchen sink” at such a teacher in an effort to force resignation rather than litigation. All charges, no matter how spurious or factually unsupported, must under current law then be presented to the Committee of Credentials. Considerable resources are thereby expended both in prosecution and defense of matters never intended to be truly litigated at the school district level and, in many cases, allegations which ultimately had been abandoned or dismissed by a local school district.

2. Proposed Solution:

Eliminate local school district dismissal proceedings as a jurisdictional basis for a Committee of Credentials review. In truly egregious situations, a local school district would still be able to report by declaration under penalty of perjury based upon firsthand knowledge any untoward activities by a credential holder to the Committee of Credentials. Jurisdiction would, by that alternative means, be achieved.

3. Proposed Specific Implementation:

Amend Education Code section 44242.5 to delete subdivision (b)(3) and subdivision (d)(5).