

COMMISSION ON TEACHER CREDENTIALING

1812 9TH STREET
SACRAMENTO, CA 94244-2700

January 24, 1989

88-8910

TO: All Individuals and Groups Interested in the Activities
of the Commission on Teacher Credentialing

Richard Mastain

FROM: Richard K. Mastain, Executive Secretary

SUBJECT: Title 5 Regulations, Sections 80331-80338

The Office of Administrative Law has recently approved the above-referenced Title 5 regulations pertaining to what have come to be known collectively as the "Rules of Conduct for Professional Educators."

California Education Code section 44339 requires the Commission on Teacher Credentialing to adopt regulations requiring every applicant for a credential or for renewal of a credential to submit reasonable evidence of identification and good moral character and also requires the Commission to give notice to such persons of the standards by which the Commission determines that it shall not pursue or investigate offenses which are not clearly related to an applicant's fitness or competence to teach or to perform other certificated duties.

California Education Code sections 44345, 44420, and 44421 further authorize the Commission on Teacher Credentialing to deny applications for credentials and to privately admonish, suspend or revoke credentials of persons for violation of employment contracts or for "immoral or unprofessional conduct or persistent defiance of and refusal to obey the laws regulating the duties of persons serving in the public school system or for any cause which would have warranted the denial of an application for a credential or the renewal of a credential, or for evident unfitness for service."

Existing statutes and regulations do not address specific categories of conduct which will be construed as unprofessional, immoral, violative of employment contracts or which reflect unfitness for service. As a result, the above-specified individuals lack guidance as to the categories of conduct for which they may be held accountable. It is the purpose of these regulations to provide such guidance. Commentary is in italics:

AMENDMENTS TO TITLE 5 REGULATIONS
CHAPTER 3 OF PART VIII OF TITLE 5 CCR

ARTICLE 3. RULES OF CONDUCT FOR PROFESSIONAL EDUCATORS

SECTION 80331

(a) These rules are binding upon every person holding a credential or any license to perform educational services under the jurisdiction of the Commission on Teacher Credentialing, and the consequences of any willful breach may be revocation or suspension of the credential, or license, or private admonition of the holder.

(b) Nothing in these rules is intended to limit or supersede any provision of law relating to the duties and obligations of certificated persons or to the consequences of the violation of such duties and obligations. The prohibition of certain conduct in these rules is not to be interpreted as approval of conduct not specifically cited.

(c) These rules may be cited and referred to as "Rules of Conduct for Professional Educators".

(d) The Commission shall complete a study of the effect of these rules and present its findings to the Governor, the Legislature, and the State Board of Education no later than September 1, 1989.

(e) As used in these rules:

(1) "Certificated person" means any person who holds a certificate, permit, credential, or other license authorizing the performance of teaching or education-related service in grades K through 12 in California public schools.

(2) "Professional employment" means the performance for compensation of teaching or other education-related employment in a position for which certification requirements are set by law.

(3) "Confidential information" means,

A. Information made confidential by Section 35301 of the Education Code; or,

B. Information which was provided to the certificated person solely for the purpose of facilitating his/her performance of professional

services for or on behalf of the person or employer providing such information.

Authority Cited: Education Code Sections 44225(b), 44339

Reference: Education Code Sections 44345, 44420, 44421

Subsection (a) identifies the individuals to whom Article 3 is applicable and provides notice of the consequences of any willful breach of the rules. Subsection (b) makes it clear that these regulations are subsidiary to existing laws governing the duties and obligations of certificated persons and that the prohibition of conduct specifically referenced does not imply or constitute approval of conduct not expressly referenced. Subsection (c) provides a short reference name. Subsection (d) provides that a study of the effect of these regulations will be made by the Commission and that its findings must be reported as described. Subsection (e) provides definitional reference for terms used elsewhere in the regulations.

SECTION 80332

PROFESSIONAL CANDOR AND HONESTY IN LETTERS OR MEMORANDA OF EMPLOYMENT RECOMMENDATION

(a) A certificated person shall not write or sign any letter or memorandum which intentionally omits significant facts, or which states as facts matters which the writer does not know of his/her own knowledge to be true relating to the professional qualifications or personal fitness to perform certificated services of any person whom the writer knows will use the letter or memorandum to obtain professional employment nor shall he/she agree to provide a positive letter of recommendation which misrepresents facts as a condition of resignation or for withdrawing action against the employing agency.

(b) This rule has no application to statements identified in the letter or memorandum as personal opinions of the writer but does apply to unqualified statements as fact that which the writer does not know to be true or to statements as fact that which the writer knows to be untrue.

Authority Cited: Education Code Sections 44225(b), 44339

Reference: Education Code Sections 44345, 44420, 44421

Letters and/or memoranda of recommendations written by administrators or other certificated persons sometimes do not reflect the true state of facts surrounding the dismissal or other termination of employment of the individual and may mislead a successor school employer who relies upon such recommendation(s). It is the purpose of this regulation to give notice

to credential holders who author such correspondence that letters and/or memoranda of recommendation must reflect the true state of the facts.

SECTION 80333

WITHDRAWAL FROM PROFESSIONAL EMPLOYMENT

(a) A certificated person shall not abandon professional employment without good cause.

(b) "Good cause" includes but is not necessarily limited to circumstances not caused by or under the voluntary control of the certificated person.

Authority Cited: Education Code Sections 44225(b), 4439

Reference: Education Code Sections 44345, 44420, 44421

The abandonment of certificated employment by credential holders who are under contractual obligation can work a substantial hardship upon an employing school district which has relied upon the terms of the contract in order to implement its educational program. It is the purpose of this regulation to put credential holders on notice that abandonment of professional employment without good cause constitutes unprofessional conduct and is cause for disciplinary action.

SECTION 80334

UNAUTHORIZED PRIVATE GAIN OR ADVANTAGE

A certificated person shall not:

(a) Use for his/her own private gain or advantage or to prejudice the rights or benefits of another person any confidential information relating to students or fellow professionals;

(b) Use for his/her own private gain or advantage the time, facilities, equipment, or supplies which is the property of his/her employer without the express or clearly implied permission of his/her employer;

(c) Accept any compensation or benefit or thing of value other than his/her regular compensation for the performance of any service which he/she is required to render in the course and scope of his/her certificated employment. This rule shall not restrict performance of any overtime or supplemental services at the request of the school employer; nor shall it apply to or restrict the acceptance of gifts or tokens of minimal value offered and accepted openly from students, parents or other persons in recognition or appreciation of service.

Authority Cited: Education Code Sections 44225(b), 44339

Reference: Education Code Sections 44345, 44420, 44421

This regulation addresses problems consequent upon the unauthorized use of credential holders for private gain or advantage of information, property or facilities of their public school employers. It also addresses problems associated with the acceptance by credential holders of compensation or things of value in addition to their regular compensation in return for performing duties or services which they are already required to render in the course and scope of their employment. The regulation prohibits specific conduct in this context.

SECTION 80335

PERFORMANCE OF UNAUTHORIZED PROFESSIONAL SERVICES

A certificated person shall not, after July 1, 1989:

(a) Knowingly, accept an assignment to perform professional services if he or she does not possess a credential authorizing the service to be performed; unless he or she has first exhausted any existing local remedies to correct the situation, has then notified the county superintendent of schools in writing of the incorrect assignment, and the county superintendent of schools has made a determination, within 45 days of receipt of the notification, that the assignment was caused by extraordinary circumstances which make correction impossible, pursuant to the procedures referred to in Education Code Section 44258.9(g)(2) and (3).

(b) Knowingly and willfully assign or require a subordinate certificated person to perform any professional service which the subordinate is not authorized to perform by his or her credential or which is not approved by appropriate governing board authorization, unless he or she has made reasonable attempts to correct the situation but has been unsuccessful, and has notified the county superintendent of schools of those attempts, and the county superintendent of schools has determined, within 45 days of being notified of the assignment, that the assignment was caused by extraordinary circumstances which make correction impossible.

(c) Neither (a) nor (b) shall be applicable in a situation where extraordinary circumstances make the correction of the misassignment impossible.

(d) There shall be no adverse action taken against a certificated person under this rule for actions attributable to circumstances beyond his or her control.

Authority Cited: Education Code Section 44225(b), 44339

Reference: Education Code Section 44258.9(g)

California Education Code section 44258.9(g) mandates the Commission to establish reasonable sanctions for the misassignment of credential holders and sets a procedure for the determination of facts which constitute misassignment. This regulation serves to interpret and implement California Education Code section 44258.9 as it applies to sanctions for misassignment of certificated personnel within the public schools.

SECTION 80336

PERFORMANCE WITH IMPAIRED FACULTIES

(a) A certificated person shall not:

(1) Perform or attempt to perform any duties or services authorized by his or her credential during any period in which he or she knows or is in possession of facts showing that his or her mental or intellectual faculties are substantially impaired for any reason, including but not limited to use of alcohol or any controlled substance.

(2) Assign or require or permit a subordinate certificated person to perform any duties authorized by his or her credential during any period in which the superior certificated person knows of his or her own knowledge or is in possession of facts showing that the subordinate certificated person's mental or intellectual faculties are substantially impaired for any reason, including but not limited to use of alcohol or any controlled substance.

(b) For the purpose of this rule, substantial impairment means a visible inability to perform the usual and customary duties of the position in a manner that does not represent a danger to pupils, employees, or school property. It does not include or mean inability attributable to lack of, or inadequate, professional preparation or education.

Authority Cited: Education Code Sections 44225(b), 44339

Reference: Education Code Sections 44345, 44420, 44421

This regulation gives notice to credential holders and their credentialed supervisors that the use of controlled substances and/or alcohol and the toleration of such use when it and/or other factors cause a substantial impairment of mental faculties sufficient to adversely affect the performance of credentialed services will be deemed unprofessional and sanctioned.

SECTION 80337

HARASSMENT AND RETALIATION PROHIBITED

No certificated person shall directly or indirectly use or threaten to use any official authority or influence in any manner whatsoever which tends to discourage, restrain, interfere with, coerce, or discriminate against any subordinate or any certificated person who in good faith reports, discloses, divulges, or otherwise brings to the attention of the governing board of a school district, the Commission on Teacher Credentialing or any other public agency authorized to take remedial action, any facts or information relative to actual or suspected violation of any law regulating the duties of persons serving in the public school system, including but not limited to these rules of professional conduct.

Authority Cited: Education Code Sections 44225(b), 44339

Reference: Education Code Sections 44345, 44420, 44421

This regulation defines as unprofessional and forbids harassment and retaliation against certificated persons who have made good faith complaints concerning suspected misconduct.

SECTION 80338

DISCRIMINATION PROHIBITED

A certificated person shall not, without good cause, in the course and scope of his or her certificated employment and solely because of race, color, creed, gender, national origin, handicapping condition or sexual orientation, refuse or fail to perform certificated services for any person.

Authority Cited: Education Code Sections 44225(b), 44339

Reference: Education Code Sections 44345, 44420, 44421

This regulation provides notice that discrimination by certificated personnel will be deemed to be unprofessional and sanctioned where it results in the denial of educational services authorized to be performed by a credential holder.

These regulations were approved and filed with the Secretary of State on January 4, 1989. They will become effective on February 3, 1989.