CODED CORRESPONDENCE

DATE: March 1, 2013	**NUMBER:** 13-02
TO: All Individuals and Groups Interested in the Activities of the Commission on Teacher Credentialing	**FROM:** Mary Vixie Sandy Executive Director Commission on Teacher Credentialing

SUBJECT: 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
The Commission on Teacher Credentialing ("Commission") proposes to amend California Code of Regulations, Title 5, Section 80303 ("regulation 80303") after considering all public comments, objections, and recommendations.[1]

Public Hearing
A public hearing on the proposed amendments will be held:

April 19, 2013
8:30 a.m.
Commission on Teacher Credentialing
1900 Capitol Avenue
Sacramento, CA 95811

Written Comment Period
Any interested person may submit written comments as to the proposed amendments via mail, email, or fax to the following agency representative or alternative contact person, in the event that the agency representative is unavailable:

[1] All references to regulations are to Title 5, California Code of Regulations unless otherwise indicated.

Representative:
Commission on Teacher Credentialing
Division of Professional Practices
Attn: Vanessa C. Whitnell, Attorney
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Alternative Contact Person:
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The written comment period closes at 5:00 p.m. on April 15, 2013. Comments must be *received* by this time in order to be given consideration by the Commission.

Authority and Reference
Pursuant to the authority vested in the Commission by Education Code, Section 44225, subdivision (q), and in order to implement Education Code, Section 44225, the Commission proposes amendments to regulation 80303.[2] The Commission references Section 44242.5, subdivisions (a) and (b)(3) as the jurisdictional basis for review of reports received by superintendents under the requirements of regulation 80303.

Informative Digest/Policy Statement
Overview of Objectives of Amendments
The proposed amendments to 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 within thirty days of the final action by the district.

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.

[2] All references to statutes are to the California Education Code unless otherwise indicated.

First, the existing language often results in districts over-reporting, to include such "misconduct" as unsatisfactory teaching performance or such final employment actions as lay-offs or

reductions in workforce. This over-reporting consumes valuable Commission resources that should be 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 in order 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 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 presenting 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.

Consistent with Existing State Law

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.

Determination of Consistency/Compatibility with Existing State Regulations
The Commission has determined that the proposed amendments to regulation 80303 are not inconsistent or incompatible with existing regulations.

Rationale for Amendments
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.

Documents Relied Upon by the Agency in Proposing Amendments

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

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.

Consideration of Alternatives
The Commission must conclude that there are no adequate reasonable alternatives to the clarification of regulation 80303. Currently, the Commission sends correspondence to superintendents, reminding them of their reporting requirements under the regulation. Yet, the Commission lacks independent authority to do anything further. Failures to report still occur.

The amendments to regulation 80303 will better explain what is already required of superintendents. In addition, the amendments will define already-existing procedures that may be used by the public to report a superintendent who fails to comply with the regulation. If a member of the public requests information as to a superintendent's failure to report and then submits that information to the Commission for review in the form of an affidavit or declaration, the Commission will have jurisdiction to initiate review of the superintendent under Section

44242.5, subdivision (b)(2). This method has already been utilized by the public to trigger the Commission's jurisdiction to review a non-reporting superintendent under Section 44242.5, subdivision (b)(2). In other words, the jurisdictional provision is already in place. The amendments explain how the public can activate the Commission's jurisdiction in such cases. They impose no additional regulatory burden on superintendents or the public.

No alternative would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected persons than the proposed amended regulation, or would be more cost effective to affected persons and equally effective in implementing statutory policy or other provision of law.

The Commission invites interested persons to present potential alternatives to the proposed amendments to regulation 80303 during the written comment period or at the public hearing.

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.)
- 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.

Availability of Rulemaking File

This notice, along with the express terms of the proposed amendments, the initial statement of reasons, and any substantial changes to the original proposal will be available for public review on the Commission's website at www.ctc.ca.gov. In addition, this rulemaking file and all information on which the proposed amendments are based will be available upon request for inspection and copying at the address designated in this notice.

Availability of Final Statement of Reasons

The final statement of reasons will be submitted by the Commission to the Office of Administrative Law. When it is available, a copy will be posted on the Commission's website at www.ctc.ca.gov. The final statement of reasons will also be made available for inspection and copying at the address designated in this notice.

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).

Commission on Teacher Credentialing
1900 Capitol Avenue Sacramento, CA 95811 www.ctc.ca.gov

Attn: Vanessa C. Whitnell, Division of Professional Practices
Subject: Reporting Requirement as to a Credential Holder's Change in Employment Status
Section: Proposed Amendments to Title 5, California Code of Regulations Section 80303

Response to the Proposed Amendments

Any interested person may submit written comments as to the proposed amendments via mail, email, or fax to the following agency representative or alternative contact person, in the event that the agency representative is unavailable:

Representative:
Commission on Teacher Credentialing
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Attn: Vanessa C. Whitnell, Attorney
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Alternative Contact Person:
Commission on Teacher Credentialing
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Attn: Chastine Gaspar, Senior Attorney
1900 Capitol Avenue
Sacramento, CA 95811
cgaspar@ctc.ca.gov
Fax: (916) 323-6735

The written comment period closes at 5:00 p.m. on April 15, 2013. Comments must be *received* by this time in order to be given consideration by the Commission.

1. ☐ **Yes**, I agree with the proposed amendments. Please count me in favor.
2. ☐ **No**, I do not agree with the proposed amendments. Attach additional information on a separate page that explains why you do not agree.
3. ☐ Personal opinion of the undersigned.
   ☐ Organizational opinion representing: (Circle One) School District, County Schools, College/University, Professional Organization, Other_____
4. ☐ Yes, I will attend the public hearing. Place my name on the list to make a presentation.
   ☐ No, I will not make a presentation to the Commission at the public hearing.

Signature: _____ Date: _____
Printed Name: _____
Title: _____ Phone: _____
Employer/Organization: _____
Mailing Address:_____