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# 3A

## Action

### *Professional Practices Committee*

#### **Regulations Needed to Implement DPP Efficiencies Proposed Changes to Title 5 Sections 80300, 80309.1, 80310, 80311, 80314.5, 80317 and Addition of New Section 80318 California Code of Regulations**

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**Executive Summary:** The Committee will review proposed changes to Title 5 regulations regarding the discipline of certificated personnel made necessary as a result of Commission action and the enactment of Senate Bill 63.

**Recommended Action:** Direct staff to initiate the regulatory process.

**Presenters:** Mary Armstrong, Director  
and Kim Hunter, Staff Counsel  
Division of Professional Practices

**Strategic Plan Goal(s): 1**

**Promote educational excellence through the preparation and certification of professional educators.**

- ◆ Evaluate and monitor the moral fitness of credential applicants and holders and take appropriate action.

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**Regulations Needed to Implement DPP Efficiencies  
Proposed Changes to Title 5  
Sections 80300, 80309.1, 80310, 80311, 80314.5,  
80317 and the Addition of New Section 80318  
California Code of Regulations**

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**Summary**

This item introduces proposed changes to Title 5 regulations regarding the discipline of certificated personnel. The changes are necessary as a result of Commission action at the April 2005 Commission meeting and the anticipated enactment of budget bill legislation (SB 63, Chapter 73, Statutes of 2005).

**Fiscal Impact**

There will be a minor cost to the agency related to disseminating the information to interested parties and holding a public hearing. Cost savings of approximately \$46,000 annually are projected once the regulations are revised.

**Policy Issues to be Resolved**

Should the Commission approve changes to Title 5 regulations?

**Recommendation**

Staff recommends that the Commission approve the changes to Title 5, California Code of Regulations, sections 80300, 80309.1, 80310, 80311, 80314.5, and 80317, and the addition of new section 80318, and direct staff to initiate the regulatory process.

## **Background**

Staff is proposing modifications to existing regulations, and new regulations, as a result of the enactment of legislation (SB 63 Chapter 73, Statutes of 2005) and Commission direction to draft regulations implementing an in-house appeals process when the Committee of Credentials recommends a public reproof or private admonition as disciplinary action.

Cost savings measures mandated by SB 63 (Chapter 73, Statutes 2005), are contained in Education Code section 44242.3 and amended Education Code section 44244. Section 44242.3 mandates that first-time applicants subject to investigation by the Committee of Credentials have an opportunity to respond to the allegations in writing. The Committee is required to grant or recommend denial of an application based on the information obtained during the investigation and the applicant's response. This change in the Committee's procedure allows the first-time applicant one opportunity to provide a written explanation of alleged misconduct, with no right to appear personally before the Committee. Currently, an applicant has two opportunities to submit information to the Committee with a right to an appearance before the Committee. The Commission anticipates savings of approximately \$15,000 per year, and the streamlined process would result in more expeditious processing of applications. In addition, without the additional workload of appearances by first-time applicants, the Committee would be able to review more investigations of first-time applicants every month.

Section 44244 was amended to eliminate the current requirement that, after the Committee conducts an investigation, the notice of the Committee's recommended disciplinary action be sent via registered mail. The California Code of Civil Procedure, section 1013(a), codifies the sending of notices by regular mail, a practice that is followed by other state agencies, as well as by the federal government. This valid form of legal notification will result in savings to the Commission in postage and labor costs of approximately \$11,000 per year.

Approximately \$20,000 in annual savings is projected by replacing full administrative hearings with an in-house review process for low-level discipline (public reprovals and private admonitions). Currently, when the Committee recommends that credential holders be publicly reproofed or privately admonished, credential holders may request an administrative hearing. This process, in which a hearing is held, testimony is taken from witnesses, and an administrative law judge issues a proposed decision, is expensive and lengthy. The proposed regulations would provide for a streamlined administrative review process, in which a reviewing officer would review the Committee's findings and documents that provide the basis for the allegations, the credential holder's written explanation contesting the recommended discipline, and a response by Commission staff. This process will allow for quick final decisions regarding low-level discipline for credential holders, while still providing the requisite due process. At the same time, credential holders facing other levels of discipline will also be allowed the option to request an administrative review in lieu of an administrative hearing.

**Summary of Changes:**

80300: A definition of the administrative review process is included, and the definition of “applicant” is revised to include first-time applicants as defined by Education Code section 44242.3.

80309.1: Revised to provide for the streamlined investigation process for first-time applicants.

80310: Revised to provide for the streamlined investigation process for first-time applicants, and the requirement that registered mail be used is deleted.

80311: Revised to provide for the streamlined investigation process for first-time applicants.

80314.5: Deletes the requirement that registered mail be used.

80317: Clarifies how a credential holder may request an administrative hearing or review, and provides that credential holders may opt for an administrative review in lieu of an administrative hearing.

80318: Describes the administrative review process.

**Proposed Amendments to the California Code of Regulations,  
Title 5, Sections 80300, 80309.1, 80310, 80311, 80314.5, and 80317  
and the Addition of 80318  
Pertaining to the Committee of Credentials**

**INITIAL PROPOSED REGULATIONS**

80300	Definitions
80309.1	Initial Review
80310	Notice of Meeting, Formal Review
80311	Request for Appearance
80314.5	Notice of Committee Action
80317	Administrative Hearings
<b><u>80318</u></b>	<b><u>Administrative Review</u></b>

**80300 DEFINITIONS**

(a) "Adverse action" is a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials.

(b) "Aggravating factor" is an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession. Aggravating factors may include, but are not limited to, the following:

- (1) a prior record of adverse action including the nature and extent of that record;
- (2) that the misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct;
- (3) that the misconduct was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators;
- (4) that the misconduct significantly harmed a child entrusted to the care of a

credential holder or applicant, significantly harmed the public or the educational system;

(5) that the holder or applicant demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders; or

(6) that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source.

(c) **“Administrative review” is an administrative process that provides a credential holder with an opportunity to contest the Committee’s recommendation that the credential holder be publicly reprovved or privately admonished.**

(d) **Except as provided in section 44242.3 of the Education Code,** “~~A~~applicant” is an individual applying for a credential, permit, waiver or other certification document issued by the Commission on Teacher Credentialing.

~~(d)~~ (e) “Commission” is the Commission on Teacher Credentialing or a predecessor agency.

~~(e)~~ (f) “Committee” is the Committee of Credentials.

~~(f)~~ (g) “Confidential investigative report” is a summary of applicable law and relevant facts, as well as information regarding aggravating and mitigating factors, prepared and presented to the Committee pursuant to Education Code section 44242.5(c)(2).

~~(g)~~ **(h)** "Credential" is any credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver, or other document which authorizes the holder to perform services which require certification and was issued by the Commission.

~~(h)~~ **(i)** "Complainant" is the person or persons filing a statement pursuant to Education Code section 44242.5(b)(2), or an employer filing a notice pursuant to Education Code section 44242.5(b)(3), or (4).

~~(i)~~ **(j)** "Denial" is refusal to grant a credential to an applicant whose conduct comes within the provisions of Education Code sections 44435 or 44346.

~~(j)~~ **(k)** "Employer" is the entity which contracts with or otherwise engages a holder or applicant for the performance of educational services.

~~(k)~~ **(l)** "Formal review" is the meeting held pursuant to Education Code section 44244.

~~(l)~~ **(m)** "Holder" is an individual possessing a credential, permit, waiver or other certification document issued by the Commission.

~~(m)~~ **(n)** "Mitigating factor" is an event or circumstance which demonstrates that the public, schoolchildren and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever. Mitigating factors may include, but are not limited to, the following factors:

- (1) absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious;
- (2) lack of harm to the person who is the object of the misconduct;
- (3) emotional or physical difficulties suffered by the holder or applicant which substantially contributed to the misconduct; provided that the difficulties were not the product of illegal conduct by the credential holder or applicant, such as illegal drug or substance abuse; and further provided that the credential holder or applicant has established through clear and convincing evidence that he or she no longer has such difficulties;
- (4) a demonstration of good character of the applicant or holder attested to by references from the educational community or the general community from individuals aware of the extent of the applicant's or holder's misconduct;
- (5) objective action taken by the applicant or holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing which is designed to timely make amends for the consequences of the misconduct;
- (6) the proximity or remoteness in time relative to the seriousness of the misconduct; or
- (7) the nature and extent of subsequent rehabilitation.

~~(n)~~ (o) "Private admonition" is an adverse action defined and governed by Education Code section 44438.

~~(o)~~ **(p)** "Probable cause" is reasonable grounds for belief in the existence of facts warranting adverse action.

~~(p)~~ **(q)** "Public reproof" is a public warning from the Commission that conduct is not appropriate for a credential holder or applicant. Following a public reproof, commission of the same or similar misconduct may result in more serious adverse action. It is issued only when adequate to appropriately protect the public, schoolchildren and the profession.

~~(q)~~ **(r)** "Recurring conduct" is behavior involving the exercise of consistently poor judgment or misconduct.

~~(r)~~ **(s)** "Revocation" is the termination of an individual's ability to work in a position requiring certification. Once effective, the revocation continues unless the individual is reinstated by the Commission.

~~(s)~~ **(t)** "Sexual misconduct" is:

- (1) acts or conduct, directed at a minor which a reasonable person would believe to be motivated by sexual interest;
- (2) acts or conduct defined in Education Code section 44010 whether or not the applicant or holder was convicted or arrested; or
- (3) the proliferation or distribution of child pornography or the exploitation

of any minor through the use of any pornography by a credential holder or applicant. "Pornography" consists of the acts defined in Part 1, Title 9, Chapters 7.5 and 7.6 of the Penal Code, commencing with section 311.

(†) (u) "Suspension" is the temporary inactivation of a credential for a specified period of time. A suspension may be stayed on conditions of probation or may be an actual suspension or may be both. If an actual suspension, the credential holder may not work in a position requiring a credential during the period of actual suspension.

(1) A "stayed suspension" may be issued for a specified period of time only if the stay and performance of specified rehabilitative or probationary duties by the credential holder during the period of the stay is deemed consistent with the purposes of professional discipline.

(2) An "actual suspension" may be issued for a specified period of time. Actual suspensions imposed for one year or longer shall require presentation of sufficient proof to the Commission of the credential holder's rehabilitation, or present fitness to perform the duties authorized by the credential before the suspension may terminate.

Note: Authority cited: Sections 44225(q) and 44242.7(b), Education Code. Reference: Sections 44002, 44225(q), 44242.3, 44242.5, 44242.7, 44244.1, 44246, 44421, 44244, and 44438, Education Code.

## 80309.1 INITIAL REVIEW

- (a) **Except as provided in section 44242.3 of the Education Code,** ~~P~~prior to issuance of a notice of meeting pursuant to section 80310 the Committee shall conduct an initial review of the matter based upon written information.
- (b) Notification of the initial review shall be provided to the holder or applicant only.
- (c) When the matter is set for initial review by the Committee the staff shall provide written notification to the applicant or holder and offer the applicant or holder a reasonable opportunity to provide written information to the Committee prior to the Committee meeting. All written statements by the applicant or holder provided to the Committee shall be verified under penalty of perjury.
- (d) Staff shall submit a confidential investigative report to the Committee.

Authority cited: section 44225(q), Education Code. Reference: Section **44242.3 and** 44242.5, Education Code.

## 80310 NOTICE OF MEETING, FORMAL REVIEW

(a) **Except as provided in section 44242.3 of the Education Code,** ~~The~~ notice of meeting required by Education Code section 44244(a), for the meeting also known as formal review, shall be sent to the holder or applicant by **certified** mail, ~~return receipt requested~~. The notice shall be sent to the address of record and/or the last known address of the holder or applicant. The notice to the holder or applicant shall contain a confidential investigative report.

(b) The notice shall be sent to any complainant and known employer, or last known employer and to the university or college which submitted a pending application for certificate of clearance.

Authority cited: Section 44225(q), Education Code. Reference: Section **44242.3 and** 44244(a), Education Code; and Section 1013(a) Code of Civil Procedure.

## 80311 REQUEST FOR APPEARANCE

(a) **Except as provided in section 44242.3 of the Education Code,** ~~No~~ later than 20 **calendar** days prior to formal review before the Committee pursuant to section 80310, the holder or applicant may request an opportunity to personally appear before the Committee during the formal review to respond, under oath, to questions from the Committee.

(b) Upon receipt of a request for an appearance, staff shall schedule a specific day and time

to appear before the Committee during the formal review. Staff shall also notify all complainants and the last known employer, of the scheduled appearance. This notice shall state that the complainant and/or employer may also appear to offer relevant testimony before the Committee.

(c) If the holder or applicant is unable to appear before the Committee at the scheduled time, the Committee shall conduct the meeting, as noticed pursuant to section 80310, without an appearance. The Committee may grant a continuance if an emergency situation exists.

Authority cited: Section 44225(q), Education Code. Reference: Section 44242.3 and 44244, Education Code.

#### **80314.5 NOTICE OF COMMITTEE ACTION**

A written copy of the recommendation and findings of the Committee together with a notice of appeal rights available shall be sent by **registered** mail to the holder's or applicant's last known address within 14 **calendar** days after the meeting or hearing at which the recommendation is made. Unless the recommendation involves private admonition, as provided in Section 44438 of the Education Code, a copy of the said recommendation, but not the findings, unless otherwise provided by law, shall be mailed to all complainants and parties requesting notice of the Committee's decision in the case. Such recommendation, but not the findings, unless otherwise provided by law, shall also be made available to members of the public upon request.

Authority cited: Section 44225(q), Education Code. Reference: Sections 44244 and 44438, Education Code.

### **80317 ADMINISTRATIVE HEARING**

**(a)** The credential holder or applicant may, ~~within thirty (30) days after personal service or the mailing of notice of the Committee's recommendation,~~ request an administrative hearing ~~by giving written notice~~ to contest the Committee's recommendation for a denial, suspension or revocation of a credential. The request shall be in writing and shall be received by the Commission no later than 30 calendar days after the date of the mailing of the notice of the Committee's recommendation. The administrative hearing is a trial de novo. Any prayer contained in an Accusation or Statement of Issues shall request "appropriate adverse action according to evidence."

**(b)** In lieu of requesting an administrative hearing, the credential holder or applicant may request an administrative review.

Note: Authority cited: Section 44225(q), Education Code. Reference: Sections 44244(d), ~~and~~ 44244.1, ~~and~~ **44246**, Education Code.

### **80318** **ADMINISTRATIVE REVIEW**

**(a)** The credential holder may request an administrative review to contest the

Committee's recommendation for a public reproof or private admonition. The request shall be in writing and shall be received by the Commission no later than 30 calendar days after the date of the mailing of the notice of the Committee's recommendation.

(b)(1) The administrative review is conducted by a reviewing officer, designated by the Commission, based upon the findings of the Committee, the documents that form the basis of the allegations, evidence submitted at the formal review, the credential holder's written explanation, including any evidence attached thereto, and a response from Commission staff.

(b)(2) The reviewing officer shall acknowledge the request for administrative review in writing and forward a copy of the Committee's findings, the documents that form the basis of the allegations, and evidence submitted at the formal review to the credential holder.

(b)(3) The credential holder may submit a written statement explaining the basis for contesting the Committee's recommendation, along with any supporting material. The written statement and any supporting materials must be received by the reviewing officer no later than 30 calendar days after the date the reviewing officer acknowledges the request for administrative review pursuant to subsection

(b)(2). The reviewing officer shall provide to the Commission staff a copy of the written statement and supporting materials submitted by the credential holder. No

**late submissions shall be considered by the reviewing officer.**

**(b)(4) Commission staff may submit a response to the reviewing officer and to the credential holder. The response must be received by the reviewing officer and the credential holder no later than 50 calendar days after the date the reviewing officer acknowledges the request for administrative review pursuant to subsection (b)(2).**

**No late submissions will be considered.**

**(b)(5) The reviewing officer shall determine whether the Committee's recommendation is supported by a preponderance of the evidence.**

**(c) The reviewing officer shall issue a recommendation no later than 60 calendar days from the receipt of the Commission staff's response pursuant to subsection (b)(4), or from the last date for receipt of materials from the credential holder pursuant to subsection (b)(3), whichever is later. A recommendation of the reviewing officer to impose a public reproof or private admonition shall be forwarded to the Commission for adoption. A recommendation of the reviewing officer to impose a suspension or revocation shall be remanded to the Committee for consideration. If, after the matter is remanded to the Committee for consideration, the Committee recommends a public reproof or private admonition, the matter shall be forwarded to the Commission for adoption.**

**(D) The individual designated as a reviewing officer shall not have had any**

**involvement with the matter prior to the administrative review.**

**Authority cited: Section 44225(q), Education Code. Reference:**