
2H

Information

General Session

Recommendations from the April 7, 2011 Audit Report

Executive Summary: This agenda item provides an update to the Commission on the April 7, 2011 Bureau of State Audits' Audit of the Division of Professional Practices (DPP) and the Office of Human Resources; the Commission's response to the Audit as well as an update on staffs' progress in addressing the recommendations; and a report on DPP's current workload.

Recommended Action: For information only

Presenters: Mary C. Armstrong, Director, Division of Professional Practices, Andy Munguia, Senior Information Systems Analyst, Enterprise Technology Services Section and Crista Hill, Director, Administrative Services Division

Strategic Plan Goal: 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

June 2011

Recommendations from the April 7, 2011 Audit Report

Summary

This agenda item provides an update to the Commission on the April 7, 2011 Bureau of State Audits' Audit of the Division of Professional Practices (DPP) and the Office of Human Resources; and the Commission's responses to the Audit recommendations. At the request of the Chair of the Commission staff has also prepared Standards of Service goals for all tasks within DPP as well as reports on the DPP current workload.

Audit Update

On April 7, 2011 the California State Auditor issued a report entitled "*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*". Although the Auditor recognized that previously existing processes had undergone enhancements and had changed significantly before and during the time period of the Audit, the Auditor made several recommendations to improve the current process and ensure that all cases are completed in a timely manner. In response to these recommendations as well as direction from the Commission, the Division has already accomplished the following:

- Developed a process to notify the Department of Justice when there is no further need to receive RAP sheets on specified individuals because they no longer hold credentials. This action will reduce the number of unnecessary RAP sheets received by the Division. (Audit Recommendation 1)
- Requested a legal opinion from the Attorney General to determine whether the Commission may delegate to the Division the authority to close investigations. Until this opinion is received, the COC will review a consent calendar of cases recommended to be closed prepared by the Division's legal staff. (Audit Recommendation 4)
- Prepared comprehensive written procedures including revised standards of service to ensure consistency and conformity by staff in processing and analyzing reported misconduct. (Audit Recommendation 6)
- Developed an automated workload report to monitor the progress of all cases for reports to the Commission. An automated case aging report is also being developed to alert management and the Commission about cases with unexplained delays in processing. (Audit Recommendation 8)
- Initiated a plan to develop a comprehensive hiring practices manual with assistance from the State Personnel Board. (Audit Recommendation 10)
- Developed and circulated a revised Equal Employment Opportunity policy. (Audit Recommendation 11)

- Developed a Teacher Discipline Improvement Initiative detailing the Commission's plans for improving its discipline function for distribution to the Joint Legislative Audit Committee at its hearing on May 10, 2011. (Attachment 1)

The full text of the BSA Recommendations and the Commission's response (updated as of May 15, 2011) to each recommendation is set forth below:

Responses from the Commission on Teacher Credentialing regarding the Recommendations from the Bureau of State Audit

BSA Recommendations	Commission Responses
<p>Recommendation One: To comply with the law and reduce unnecessary workload, the division should continue to notify Justice of individuals for whom it is no longer interested in receiving RAP sheets.</p>	<p>Response: The Commission concurs with this recommendation, implementation has begun and a work plan to complete all phases of the project developed.</p>
<p>Recommendation Two: The commission should revise its strategic plan to identify the programmatic, organizational, and external challenges that face the division and the committee, and to determine the goals and actions necessary to accomplish its mission.</p>	<p>Response: The Commission will include the Audit recommendations in its next revision of its strategic plan. A new Executive Director will be in place by 2012 and that would be an appropriate time for a revision of the Commission's strategic plan.</p>
<p>Recommendation Three: 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.</p>	<p>Response: The Commission concurs with the recommendation. The Commission plans to request a Budget Change Proposal for FY 12-13.</p>
<p>Recommendation Four: The commission should seek a legal opinion from the 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.</p>	<p>Response: The Commission requested a formal Attorney General's opinion on May 2, 2011.</p>
<p>Recommendation Five: Once the commission has received the attorney general's legal advice regarding the extent to which the committee may delegate case closures 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.</p>	<p>Response: The Commission concurs with this recommendation. Upon receipt of the opinion the Commission will determine the necessary action to take. (Receipt of the opinion is expected in approximately 6 months.</p>

<p>Recommendation Six: 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.</p>	<p>Response: The Commission concurs with the recommendation and has completed a comprehensive Division of Professional Practices' Procedure Manual and has posted it and other training materials on a dedicated Division of Professional Practice site on the Commission's intranet.</p>
<p>Recommendation Seven: The division should provide training and oversight, and should take any other necessary steps, to ensure that the case information in the commission's database is complete, accurate, and consistently entered to allow for the retrieval of reliable case management information.</p>	<p>Response: The Commission concurs with the recommendation. The Division of Professional Practices is working with the Enterprise Technology Services Section to make the necessary oversight improvements suggested in the Audit.</p>
<p>Recommendation Eight: 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 the receipt of 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.</p>	<p>Response: The Commission concurs with the recommendation and implementation has already been initiated through the use and enhancement of the CASE tracking system. The workload activity report project, a component of this recommendation has already been completed.</p>
<p>Recommendation Nine: To adequately address the weaknesses in its processing of reports of misconduct, the division should revisit its management reports and its processes for overseeing the investigations of misconduct to ensure that the reports and practices provide adequate information to facilitate the following:</p> <ul style="list-style-type: none"> • Reduction of the time elapsed to perform critical steps in the review process. • 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. • Prompt requests for information surrounding reports of misconduct from law enforcement agencies, the courts, schools, and knowledgeable individuals. • An understanding of the reasons for delays in investigating individual reports of misconduct without having to review the paper files for the cases. 	<p>Response: The Commission concurs with the recommendation and implementation has already been initiated through the use and enhancement of the CASE tracking system. A weekly and monthly automated case activity report has been developed and a weekly/monthly case aging report is in the final stages of development.</p>

<p>Recommendation Ten: To better ensure that its hiring decisions are fair and that employment opportunity is 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:</p> <ul style="list-style-type: none"> • Prepare and/or formally adopt a comprehensive hiring manual that clearly indicates hiring procedures and identifies parties responsible for carrying out various steps in the hiring process. • 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. • Hiring managers should provide to the commission's Office of Human Resources documentation supporting the appointment decision, 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. 	<p>Response: The Commission concurs with the recommendations and has initiated a plan to develop a manual and maintain the proper documentation with assistance from the State Personnel Board.</p>
<p>Recommendation Eleven: To ensure that employees understand their right to file either an EEO complaint or grievance, and to reduce any associated fear of retaliation, the commission should do the following:</p> <ul style="list-style-type: none"> • Include in its EEO policy a statement informing staff members that they may make complaints without fear of retaliation. • Actively notify employees annually of its EEO complaint and grievance processes, including the protection from retaliation included in both. • Conduct training on its EEO complaint process on a periodic basis. 	<p>Response: The Commission concurs with the recommendation and issued a revised EEO policy on May 9, 2011 and notified employees of the revision. Training will be conducted on a periodic basis.</p>

As provided by statute, the California State Auditor requests auditees to report their progress implementing recommendations at 60 days, 6 months and one year. The California State Auditor's Office annually reports to the Legislature the auditee's progress in implementing recommendations.

Workload Update

DPP Workload

Staff from the Enterprise Technology and Support Services Section (ETSS) and DPP have developed a DPP Monthly Activity Summary. The Summary for April 2011 is provided on the next page. A May 2011 Summary will be provided as an agenda insert at the June 2, 2011 Commission meeting. The format will include an updated listing of current case load and include the work received each month in DPP covering the pre-Committee Work Load (Pre-COC) and the Committee of Credentials workload: Cases Completed: Cases Scheduled for COC review and cases completed by the COC but still open. (Open cases include those that have moved to the Office of Attorney General; are either settlement cases or are in the probation monitoring program.) Each Activity Summary will also include a cumulative summary of cases by Status and Type. A case aging summary showing both the age of each case as well as an explanation for where the case is in the DPP process is being developed and will be provided when completed. Staff has also prepared a monthly report detailing the number of Criminal History Information Reports (RAPs) it receives each month as well as a key to explain the various categories (provided on pages 7-9).

DPP Monthly Activity Summary

Activity During April 2011

Status as of the last day of April 2011

Workload Statistics

Case Load Summary	
Starting Case Load	2,953
Cases Opened	303
Cases Closed	393
Ending Case Load	2,863
Work Received in DPP	
Apps	1,045
Raps	535
Misc	14
Documents Requested	
Arrest	194
Court	393
Mandatory Actions	
Revocations	13
Denials	8
Automatic Suspensions	6

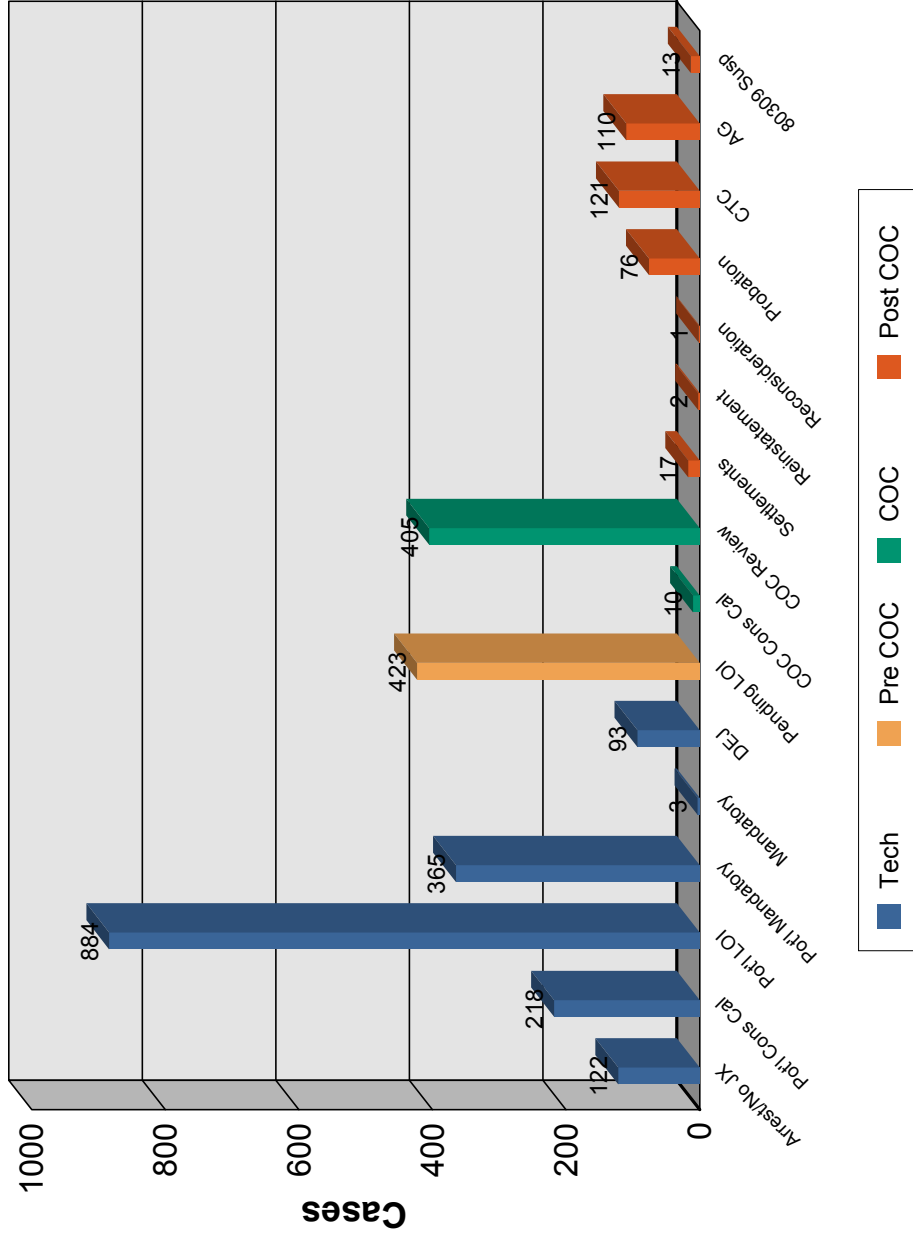
COC Prep

Future COC Meeting (May 2011)	
LOI	53
30-Day	43

COC Current (April 2011)

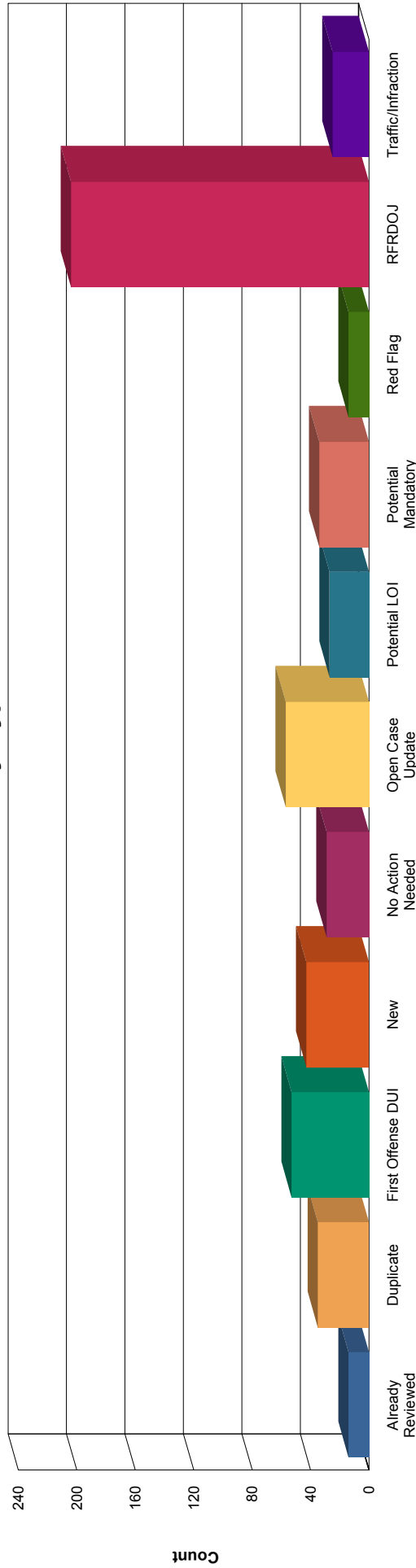
Cases to COC	
LOI	62
30-Day	44
Reconsideration	3
Cases Completed	
Closed	11
Granted	18
Post COC	
Settlement	3
AG	3
CTC	49

Cases by Status and Type



DPP RAP Sheet Processing Statistics for April 2011

RAPs by Type



Total RAPs: 535
Possible Cases: 157

Rap Categories

RAP CATEGORIES

Rap sheets are assigned to different categories depending on the level of review necessary which include determining factors, such as prior misconduct, type of current misconduct, type of credential held.

Raps are currently processed in two different groups. Raps that need additional processing and may result in a case file (*) and Raps that do not require additional processing.

CATEGORIES/DEFINITIONS

Already Reviewed: This is a rare category. Subsequent rap notifications are usually new misconduct. However, rap notifications may be received for misconduct previously reviewed.

Duplicate: If a Respondent has been fingerprinted on multiple occasions, the same rap sheet will be submitted to CTC on more than one occasion. The arrest/conviction information will be identical on these raps. The original fingerprint date will be different.

First Offense DUI: If a rap notification is received with DUI related information, DPP may review a singular DUI offense without any further processing, if it is the only misconduct within the past 5 years. Effective May 1, 2011 – all First Offense DUI's are considered Consent Calendar items and will go to COC.

***New:** Respondent has a rap with new charges, and a case needs to be opened.

No Action Necessary (NAN): Raps are considered No Action Necessary when a rap is received that reflects PROSECUTION RELEASE-DETENTION ONLY-LACK of SUFFICIENT EVIDENCE, or INADMISS SEARCH & SEIZ. These raps indicate there might have been an arrest, but no formal charges were filed against Respondent. In many of these cases, we do not have jurisdiction to review the case, and therefore No Action is Necessary. Cases are opened when they involve child crimes.

***Open Case Update:** A rap sheet may be categorized as Open Case Update if there is already an established case open regarding prior misconduct that is being reviewed by staff.

***Potential LOI:** The level of misconduct requires Committee review and are categorized Potential LOI. The Respondent's prior case history and current misconduct are all factored in to determine a level of review.

***Potential Mandatory:** The level of misconduct on the rap notification may require a Mandatory action by CTC upon receipt of a criminal conviction. Potential Mandatory actions may result in an auto-suspension while court charges are pending. These raps are priority and require immediate processing.

Red Flag: DPP currently has a date requirement in which we allow Respondents with an expired credential 3 months before officially removing their fingerprint clearance. Once FP clearance is removed, a Respondent MUST be re-fingerprinted. Red Flagging notifies all departments that DPP has information that must be reviewed prior to approval and granting of any/all applications.

Rap Categories

RFRDOJ: (Red Flag Reject Department of Justice) If a Respondent no longer has a valid credential or an application in Siebel, his rap sheet will be marked as RFRDOJ. An RFRDOJ rap occurs when the Respondent is NOT holding a credential, and their misconduct did not occur while they were holding. The Rap sheet is returned to DOJ and requires that Respondent be re-fingerprinted when submitting a subsequent application.

Traffic: Rap notifications with simple traffic citations may be reviewed depending on Respondent's prior misconduct (DUI, multiple license violations). These raps generally require no further processing.

Infraction: Rap notifications regarding minor misdemeanor to an infraction, or the charge may be a local ordinance violation, these raps may be categorized as Infractions. This rap requires no further processing.

The Commission also directed staff to provide for its information and review the standards of service for each task in DPP. DPP's standards of service goals were updated on May 4, 2011 to reflect some of the changes in procedures that have already been implemented as a result of the audit and have been incorporated in the Procedures Manual. Most significantly when warranted a case is now opened simultaneously when a RAP is processed. The Standard of Service goals are set forth below:

DPP Standard of Service Goals

TASK	GOAL
Receive rap and open case	Daily and simultaneously open case (no more than 5 business days)
From rap to open case and request documentation (potential mandatory)	COB next day
From receipt of application by DPP to open case	5 business days
From open case to request documents for applications (App Pak)	5 business days (revised process may eliminate)
From open case to request documents on a holder	7 business days (follow-up in 30 days)
From receipt of mail to add to file (this information is not maintained in Siebel)	5 business days
From receipt of all documents to recommendation for COC Consent Calendar or LOI checklist	5 business days
From receipt of all documents, analysis to mandatory recommendation	5 days
Legal review to determine if LOI	5 days
From pending LOI to assignment to analyst or investigator	90 days
From LOI assignment to analyst or investigator to LOI letter	30 days
From initial review to formal review	6 months (legal requirement under Education Code section 44243(b)(1))

From knowledge of misconduct to letter of initial review or close	11 months (Education Code section 44242.7 requires all misconduct by a credential holder to be presented to COC within one year the misconduct was discovered or four years from the date of misconduct)
Percent of calls answered	90%
Average hold time	Less than 3 minutes
Email from schools district and IHE answer time	3 business days (auto reply all others)

ETSS staff and DPP have developed an intranet site for DPP. This site will provide staff access to the Procedure Manual and other training materials. A copy of the Procedure Manual has been furnished to each Member of the Commission as well as management.

Addressing COC Workload

In the first quarter of 2011, the COC transitioned to a paperless agenda. As a result, COC members are now able to obtain case summaries and other agenda materials 3 to 5 days earlier than previously. This allows COC members greater flexibility in managing their review of cases and, in some instances, eliminates additional time away from employment. It is anticipated that some of the time formerly spent preparing cases might be used to schedule additional meeting time for the COC to increase the number of cases reviewed at each meeting. In addition, staff has identified categories of cases with uncomplicated fact patterns that may be added to the COC schedule without increasing meeting time. This project was initiated in early May and the first level of review will be conducted in June. The COC will review 66 cases for initial review in June and 84 in July.

Next Steps

Staff will send the Monthly Activity Summary to the Members of the Commission and any interested legislators each month. Staff will continue working to implement the State Auditor's recommendations and file required updates. The first report is required to be filed on June 7, 2011.

Attachment 1



COMMISSION ON
TEACHER CREDENTIALING

Ensuring Educator Excellence

TEACHER DISCIPLINE IMPROVEMENT INITIATIVE

A Summary of Implementation Plans and Action
in Response to the State Auditor's Report issued April 7, 2011

Presented by the Commission on Teacher Credentialing
to the Joint Legislative Audit Committee
Ricardo Lara, Chair
May 10, 2011

Ting Sun
Chair

Dale Janssen
Executive Director

TEACHER DISCIPLINE IMPROVEMENT INITIATIVE

Ensuring Educator Excellence through Improved Discipline Processes and Procedures

The Commission on Teacher Credentialing (Commission) is an agency in the Executive Branch of California State Government. It was created in 1970 by the Ryan Act (Teacher Preparation and Licensing Act of 1970, Education Code Sections 44200 *et. seq.*), and is the oldest of the autonomous state standards boards in the nation. The major purpose of the agency is to serve as a state standards board for educator preparation for the public schools of California, the licensing and credentialing of professional educators in the State, the enforcement of professional practices of educators, and the discipline of credential holders in the State of California.

The Division of Professional Practices (DPP or Division) is the division charged with the responsibility of supporting the work of the Committee of Credentials (COC), a statutory committee appointed by the Commission to review allegations of misconduct by applicants for and holders of certificated documents issued by the Commission. DPP is also the legal department for the Commission and the Director of DPP serves as the General Counsel for the Commission. The Director/General Counsel oversees a staff of attorneys, investigators, analysts, and technicians. In support of the work of the COC, Commission staff reviews criminal history information reports (RAP sheets) received from the Department of Justice, reports of misconduct from individuals, reports of changes in employment from school districts, and disclosures of potential misconduct from applicants. The Commission reviews thousands of allegations of misconduct a year; the majority of which involve criminal conduct.¹ Commission staff reviews the conduct, gathers the necessary documents to evaluate the conduct, performs a legal review as to jurisdiction and defensibility, and initiates the discretionary investigation on behalf of the COC. Additionally, Commission legal staff works with the members of the COC to identify behaviors that the Committee has determined do not warrant a recommendation of an adverse credentialing action.

On April 7, 2011 the California State Auditor issued a report “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”. Although the Auditor recognized that previously existing processes had undergone enhancements and had changed significantly before and during the time period of the Audit, the Auditor made several recommendations to improve the current process and ensure that all cases are completed in a timely manner (Attachment 1). In response to these recommendations as well as direction from the Commission, the Division has already accomplished the following:

- Developed a process to notify the Department of Justice when there is no further need to receive RAP sheets on specified individuals because they no longer hold credentials. This action will reduce the number of unnecessary RAP sheets received by the Division. (Audit Recommendation 1)
- Developed an automated workload report to monitor the progress of all cases for reports to the Commission. An automated case aging report is also being developed to alert

¹ See Division of Professional Practices Discipline Workload Report FY 2009-2010, Item 2A, December 9-10 Commission meeting (Attachment 5).

management and the Commission about cases with unexplained delays in processing (Attachment 2). (Audit Recommendation 8)

- Requested a legal opinion from the Attorney General to determine whether the Commission may delegate to the Division the authority to close investigations. Until this opinion is received, the COC will review a consent calendar of cases recommended to be closed prepared by the Division's legal staff (Attachment 3). (Audit Recommendation 4)
- Prepared comprehensive written procedures to ensure consistency and conformity by staff in processing and analyzing reported misconduct. (Audit Recommendation 6)
- Developed a revised Equal Employment Opportunity policy. (Audit Recommendation 11)

In addition to reporting to the State Auditor on the Commission's progress in implementing all of the Audit's recommendations, staff will also report progress on these and other DPP improvements to the full Commission at each meeting and to interested members of the Legislature.

The continued improvements and changes fall into three broad categories which form the basis of the Commission's Teacher Discipline Improvement Initiative, as follows:

- I. Utilize and Enhance Technology to Implement Processes that will Safeguard Against Future Backlogs
- II. Develop Case Priorities to Minimize and Eliminate Case Delays Within the Commission's Control
- III. Institute a Discussion of Statutory Changes that Will Protect Children and Maintain the Professional Integrity of Certificated Educators

I. Utilize and Enhance Technology to Implement Processes that will Safeguard Against Future Backlogs

Case Tracking System

Prior to the Audit, the Commission had begun final implementation of a computer based tracking system to identify and track documents, applications and cases as they are processed through DPP. The system provides weekly reports to staff members and management to identify that activities have been completed and cases are processed in a timely manner. In addition, the system also identifies high priority cases, notifies management when activities are not completed and establishes a weekly report to track applications as soon as the application is assigned to DPP. The Audit included several recommendations to strengthen this system and provide improved oversight, data, and information about case status. The Commission technology staff has already begun working with DPP staff to fully implement all of the State Auditor's technology recommendations.

Improvements in Management and Tracking of Criminal History Information Reports

Each month as many as 1000 criminal history information reports (RAPs) can be received by DPP. Prior to 2010, RAPs were sent to another Division of the Commission, downloaded, printed and then provided to DPP in a paper format. When the RAPs were received by DPP, they were sorted and all priority RAPs involving serious criminal misconduct were processed, however RAPs involving lower level misconduct or persons on longer holding credentials were

set aside for later processing. A majority of the RAPs received by DPP do not result in a case being opened or considered by the COC. It was, however, necessary to sort and process the reports, enter relevant information as necessary into the system, track arrests to determine if the arrest led to a conviction, and, in some cases, obtain necessary police reports and court documents. Other RAPs involved persons who no longer held a credential or who had never held a credential and had to be returned to the DOJ. As a result of staff turnover, training issues and furloughs, DPP faced a backlog in processing these lower level RAPs. DPP addressed the issue two ways. First, student assistants were hired to process the backlogged RAPs. The project was begun in September 2009 and fully completed by June 2010. Second, to prevent future problems of this nature, streamline the procedure, and utilize technology, in early 2010 DPP moved to a paperless receipt and sort of RAPs. The RAPs are now sent electronically directly to DPP, entered in the system, sorted by priority and tracked, all on a same day basis. While this does not eliminate the workload that results if a case is opened, it does eliminate any backlog of RAPs to be processed. In order to further enhance this process and provide improved tracking of cases, DPP has now implemented a procedure to open a case, when warranted, simultaneously with the processing of RAPs and then cases rather than RAPs will be assigned to technician staff. (Attachment 4)

Improve Reporting of Educator Misconduct by School Districts

In September 2010, the Commission redesigned its website to simplify reports of Educator Misconduct by employing school districts and charter/private schools as well as the public (<http://www.ctc.ca.gov/educator-discipline/school-districts.html>). Notification forms were developed to standardize reporting and assist employers and members of the public in determining what kind of information was needed by DPP. In addition, a process was developed to permit receipt of information electronically as well as by facsimile and US mail.

Streamline Processing of Pending COC Cases

In early July 2009, as a result of both the limited amount of time the volunteer COC members have each month to meet and consider the cases and the cancellation of several meeting days caused by imposition of furloughs, the Commission through the Executive Director and the Committee delegated to legal staff the responsibility to close cases and/or grant credentials where the alleged misconduct did not rise to the level that warranted an Education Code §44242.5(b) informal review by the COC. The new procedure resulted in processing these matters one to seven weeks faster than the previous practice which was a benefit to applicants who were awaiting a decision on a pending application and school districts that are required by law to remove an applicant from the classroom while the review is pending. As a result of the audit's questions regarding this practice, an Attorney General's opinion has been requested to determine whether this work can be delegated. In the interim, the staff has returned to preparing a consent calendar. Although this will delay the process, staff has developed appropriate technology to minimize delay by automating all post-committee actions (granting or closing files and notification to respondents).

Utilize Technology to Support Adequate and Appropriate Staffing Levels

An added benefit of the case tracking system and monthly activity summary is the availability of verifiable data to support adequate and appropriate staffing levels without relying on temporary help such as student assistants and retired annuitants. This is particularly evident for the

technician staff where the crucial first steps in the discipline process begin. The Commission anticipates preparing a BCP for 2012-13.

II. Develop Case Priorities to Minimize and Eliminate Case Delays Within the Commission's Control

Processing Mandatory Cases

The Division has developed enhanced procedures to identify and prioritize cases where based on the type of criminal misconduct, the law requires that an application be denied or a credential be suspended or revoked. In addition, the time period to process a mandatory case after receipt of final court documents is now 5 days or less.

Shorten Administrative Appeal Procedures

Periodic meetings are held with the staff at the Attorney General's Office to discuss the administrative workload process. Educators have the right to appeal the COC's recommendation for adverse action before it is sent to the Commission for final action. These appeals are handled by the Attorney General's office. Staff from both offices have developed a case priority system to complete cases at the administrative level in a timely manner. This includes setting expectations for filing accusations (which begins the administrative hearing process), and setting cases for hearing. In June 2010, DPP and the Attorney General's office put in place a new process to handle high priority cases which involves direct assignment of a case to a Deputy Attorney General who drafts the accusation rather than assignment to legal analysts. This change has already resulted in a minimum of nine months being eliminated in the administrative hearing process.

Addressing COC Workload

In the first quarter of 2011, the COC transitioned to a paperless agenda. As a result, COC members are now able to obtain case summaries and other agenda materials 3 to 5 days earlier than previously. This allows COC members greater flexibility in managing their review of cases and, in some instances, eliminates additional time away from employment. It is anticipated that some of the time formerly spent preparing cases might be used to schedule additional meeting time for the COC to increase the number of cases reviewed at each meeting.

III. Institute a Discussion of Statutory Changes that will Protect Children and Maintain the Professional Integrity of Certificated Educators

The Commission, through the COC, is charged with monitoring the moral fitness of certificated educators and applicants. First and foremost, this monitoring process is done through the prism of determining whether allegations of misconduct have harmed or are potentially harmful to public school children. An equally important concern is whether the misconduct is an act of moral turpitude which calls into question the certificated educator's professional integrity and ability to serve as a role model. Currently, discipline falls into two categories. Mandatory denials of applications and suspensions or revocations of credentials are required by statute and do not go through the COC's discretionary review process. Convictions that result in mandatory action include misdemeanor and felony sex offenses, drug offenses and serious and violent felony convictions (Attachment 6). In FY 09/10 there were 202 mandatory revocations and 64 mandatory denials. All other misdemeanor and felony convictions are reviewed by the COC. In

addition, the COC reviews allegations of misconduct reported by school districts as well as the public. During FY 09/10 the Committee recommended revocation in 104 cases and 49 denials. In an additional 281 cases reviewed, the COC recommendation resulted in suspensions, public reprovls and private admonitions, which indicates that the Committee did not believe that the misconduct reviewed warranted barring the certificated educator from the classroom. In addition, the COC also closed 150 cases following review. There is a very important fundamental constitutional right to due process guaranteed to certificated educators. Finally, the COC performs an important function, particularly with respect to misconduct arising from a school setting since the members, by statute, include two teachers, a school board representative, and an administrator as well as three public members. Valuable insight and real world knowledge is provided when reviewing non-criminal misconduct allegations. The downside is that all of the members are volunteers who have school district or other employment and their time is limited. Currently, the COC meets 3 days a month. Increasing the time the COC meets could be too great a burden, particularly for the classroom teacher members. It is against this backdrop that the following possible statutory changes are put forth to initiate a discussion.

Proposed Statutory Changes to Assist the Commission's Effectiveness in Investigating Educator Misconduct

Provide Increased Investigatory Authority to the Commission

Provide statutory authority to allow the Commission to make preliminary investigatory inquiries about allegations of misconduct and contact any individual or entity that may reasonably have knowledge of the alleged misconduct. Pursuant to court order, the Commission has jurisdiction to conduct an investigation, including requests for information to public agencies, *only* upon receipt of relevant information as specified within and pursuant to Education Code section 44242.5, copy attached as Attachment 7. Currently, unless the Commission receives such information as specified in the manner specified in section 44242.5, it may not proceed to investigate, including the undertaking of a preliminary review of allegations of misconduct.²

Improve School District Reporting

Establish stricter enforcement/consequences for school districts who fail to notify the Commission regarding termination, resignations, suspensions and non-reelection of certificated employees. Several such situations were identified in the audit report which added to delays in processing cases. Currently, the only consequence is to take action against a Superintendent's credential however not all Superintendents hold credentials and frequently the current Superintendent is not the person who was in charge when the District failed to notify the Commission. Providing stricter sanctions could result in more attention being paid to this statutory responsibility on the part of school districts. Sanctions could be in the form of withholding of funding or requiring payment of a fine.

Proposed Statutory Changes to Provide Increased Protections, Decrease COC Workload and Fund the Discipline Process

² A previous attempt to effectuate this statutory change by amending SB 1656 (Chap. 471, Stats, 2002) was unsuccessful due to opposition from teacher groups.

Increase Suspension Authority

Currently, the ability to suspend a credential prior to conviction applies to certain sex and drug offenses which are considered so potentially harmful that action to suspend should be taken automatically once charges are filed. For other offenses including serious and violent felonies, a certificated educator continues to hold a valid credential until convicted and sentenced, a process that can take months or years. (School districts often remove the teacher from the classroom during this time.) A statutory change could broaden the authority to suspend a credential during the duration of the criminal matter to ensure that the credential holder could not be employed in a public school while the criminal matter was pending.

Expand Mandatory Revocation/Denial Statutes

Current law does not provide that all felony convictions result in mandatory revocations. Historically, those felony convictions that are reviewed by the COC result in a recommendation to revoke. The recommendation can be appealed to an Administrative Law Judge. Although school districts often remove the teacher from the classroom, throughout the process the credential of the educator under review remains valid. Providing for a revocation for all felony convictions would eliminate this issue. This change would also allow more time for the COC to review non-criminal matters.

Shorten COC Review Process for Applicants

Existing statutes and regulations provide applicants with the same two-tiered review by the COC and a right to appear personally before the Committee that is available to credential holders. If first time applicants were limited to one paper review, the result would be a faster processing of applicants and cost savings by eliminating one review and the personal appearances. The two tier review was originally enacted to provide credential holders a safeguard because of the possibility of untrue allegations and undue damage to a educator's reputation and employment that could result. The same rationale is not applicable for applicants who are requesting entry to the profession. In FY 09/10 the COC reviewed 207 applicants. This is approximately 12 days of COC meeting time each year. If one stage of the review were eliminated this would allow additional time for the COC's review of other cases.³

Impose Discipline Fees

Currently, the cost of discipline is spread throughout all credential holders. A model used by other licensing agencies is one which charges fees to those persons who are subject to review. In addition, a processing fee is charged when an appeal is filed. Statutory authority to cite and fine lower levels of discipline and institute a charge over and above the application fee could be imposed to cover increases in discipline costs or support staff increases.

Largely as a result of the settlement program, instituted in 2003, where cases are reviewed for possible settlement before an administrative hearing is requested, the DPP currently monitors 74 credential holders on probation. This program has allowed certificated personnel to remain in the classroom while still ensuring the safety of California's public school children and has resulted in a cost and time savings by eliminating the administrative review process, however it has also resulted in an increased workload to be absorbed by staff. Credential holders benefit because

³ This statutory change was included as budget trailer language in 2005 (Chap.73, Stats. 2005) and was repealed in 2006 as urgency legislation (Chap. 79 Stats. 2006).

they are allowed to continue employment while on probation. A review of other licensing agencies in the state indicates that some charge a monthly fee (usually \$25 a month) to recover some of the costs of probation or diversion monitoring. In addition, the criminal courts charge a sliding fee to recover the costs of probation. Alternatively, the application fee could be raised in order to meet the costs.

Develop a Fine Schedule for Certain Misdemeanor Cases

Legislation could establish a statutory based fee schedule in lieu of suspensions and COC review for non-school related non-violent misdemeanor convictions where safety of children was not an issue. There would be no discretion regarding the fines and the COC review would not be required. The criminal conviction has provided the forum for adjudication and presentation of defenses and mitigating factors and the level of review is “beyond a reasonable” doubt.

Create an Alternative Process for Alcohol Related Convictions

Currently 40-45% of the criminal arrest/conviction reports involve an alcohol related offense. Because of state and federal employment protections, most of the holders who have an alcohol related problem remain in the classroom and many are monitored by their employers. In addition, those credential holders who have been through the COC review process frequently agree to a reduction in the adverse action recommended by the COC in exchange for probation monitoring. If the educator tests positive for alcohol while monitored adverse action is imposed without a full COC due process review. If a process could be established in statute to provide for a voluntary non-disciplinary process coupled with mandatory probation monitoring for misdemeanor DUI/alcohol related convictions the a major area of the COC caseload could be reduced.

Eliminate or Amend Breach of Contract Provisions (Education Code Section 44420)

Under current law the COC 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 Superintendent. This issue is an employment contract matter. Reports of breach of contract are not made on a uniform basis by school districts throughout the state and districts are not required to make a 44420 report. If this section is not eliminated a fine in lieu of suspension could be allowed.

Establish Waiting Periods for Denied Applicants and Petitioners for Reinstatement

Under current law an applicant who is denied a credential may reapply 30 days after final action on the denial and one year following a Petition for Reinstatement. Often these short time periods are not enough time to result in a different decision by the COC or the Commission, however the cases add to the workload. Setting a one-year waiting period for denied applicants to reapply and five years following denial of a petition for reinstatement would decrease workload and provide an adequate time period to elapse before a subsequent review.

Attachment 1

Responses from the Commission on Teacher Credentialing regarding the Recommendations from the Bureau of State Audit

BSA Recommendations	Commission Responses
<p>Recommendation One: To comply with the law and reduce unnecessary workload, the division should continue to notify Justice of individuals for whom it is no longer interested in receiving RAP sheets.</p>	<p>Response: The Commission concurs with this recommendation and implementation has already been initiated.</p>
<p>Recommendation Two: The commission should revise its strategic plan to identify the programmatic, organizational, and external challenges that face the division and the committee, and to determine the goals and actions necessary to accomplish its mission.</p>	<p>Response: The Commission will consider the recommendations of the audit report when it next revises its strategic plan.</p>
<p>Recommendation Three: 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.</p>	<p>Response: The Commission concurs with the recommendation.</p>
<p>Recommendation Four: The commission should seek a legal opinion from the 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.</p>	<p>Response: The Commission requested a formal Attorney General's opinion on May 2, 2011.</p>
<p>Recommendation Five: Once the commission has received the attorney general's legal advice regarding the extent to which the committee may delegate case closures 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.</p>	<p>Response: The Commission concurs with this recommendation. Upon receipt of the opinion the Commission will determine the necessary action to take. (Receipt of the opinion is expected in approximately 6 months.)</p>
<p>Recommendation Six: 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.</p>	<p>Response: The Commission concurs with the recommendation and has completed a comprehensive Division of Professional Practices' Procedure Manual.</p>

<p>Recommendation Seven: The division should provide training and oversight, and should take any other necessary steps, to ensure that the case information in the commission’s database is complete, accurate, and consistently entered to allow for the retrieval of reliable case management information.</p>	<p>Response: The Commission concurs with the recommendation.</p>
<p>Recommendation Eight: 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 the receipt of 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.</p>	<p>Response: The Commission concurs with the recommendation and implementation has already been initiated through the use of the CASE tracking system.</p>
<p>Recommendation Nine: To adequately address the weaknesses in its processing of reports of misconduct, the division should revisit its management reports and its processes for overseeing the investigations of misconduct to ensure that the reports and practices provide adequate information to facilitate the following:</p> <ul style="list-style-type: none"> • Reduction of the time elapsed to perform critical steps in the review process. • 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. • Prompt requests for information surrounding reports of misconduct from law enforcement agencies, the courts, schools, and knowledgeable individuals. • An understanding of the reasons for delays in investigating individual reports of misconduct without having to review the paper files for the cases. 	<p>Response: The Commission concurs with the recommendation and implementation has already been initiated through the use of the CASE tracking system.</p>
<p>Recommendation Ten: To better ensure that its hiring decisions are fair and that employment opportunity is equally afforded to all</p>	<p>Response: The Commission concurs with the recommendations.</p>

<p>eligible candidates, and to minimize employees' perceptions that its practices are compromised by familial relationships or employee favoritism, the commission should do the following:</p> <ul style="list-style-type: none"> • Prepare and/or formally adopt a comprehensive hiring manual that clearly indicates hiring procedures and identifies parties responsible for carrying out various steps in the hiring process. • 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. • Hiring managers should provide to the commission's Office of Human Resources documentation supporting the appointment decision, 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. 	
<p>Recommendation Eleven: To ensure that employees understand their right to file either an EEO complaint or grievance, and to reduce any associated fear of retaliation, the commission should do the following:</p> <ul style="list-style-type: none"> • Include in its EEO policy a statement informing staff members that they may make complaints without fear of retaliation. • Actively notify employees annually of its EEO complaint and grievance processes, including the protection from retaliation included in both. • Conduct training on its EEO complaint process on a periodic basis. 	<p>Response: The Commission concurs with the recommendation and issued a revised EEO policy on May 9, 2011 and notified employees of the revision. Training will be conducted on a periodic basis.</p>

DPP Monthly Activity Summary

Activity During April 2011

Status as of the last day of April 2011

Workload Statistics

Case Load Summary

Starting Case Load	2,953
Cases Opened	303
Cases Closed	393
Ending Case Load	2,863

Work Received in DPP

Apps	1,045
Raps	535
Misc	14

Documents Requested

Arrest	194
Court	393

Mandatory Actions

Revocations	13
Denials	8
Automatic Suspensions	6

COC Prep

Future COC Meeting (May 2011)

LOI	53
30-Day	43

COC Current (April 2011)

Cases to COC

LOI	62
30-Day	44
Reconsideration	3

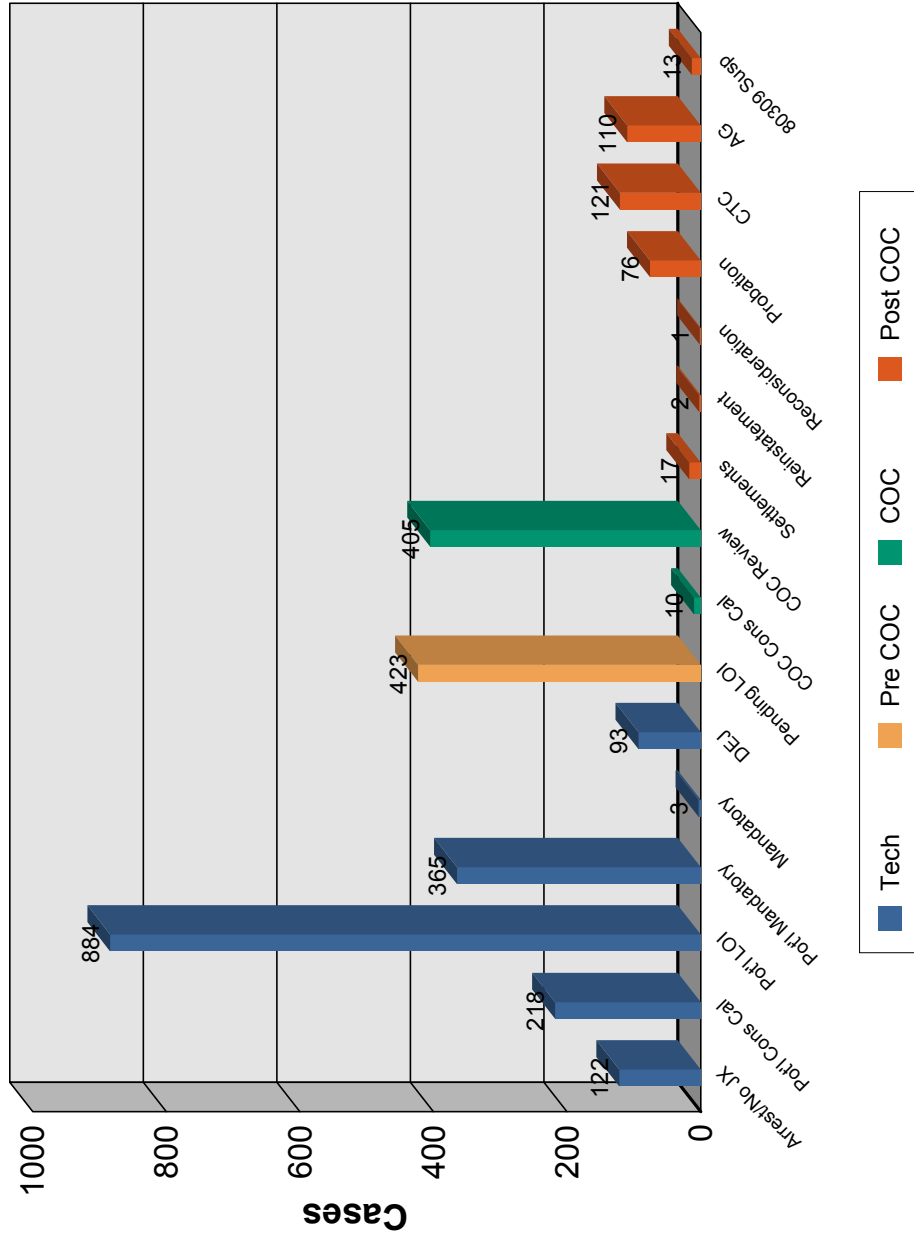
Cases Completed

Closed	11
Granted	18

Post COC

Settlement	3
AG	3
CTC	49

Cases by Status and Type





Commission on Teacher Credentialing

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Office of the Executive Director

May 2, 2011

Susan Lee, Supervising Deputy Attorney General
Opinion Unit
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

Request for Opinion

Dear Ms. Lee:

The Commission on Teacher Credentialing (Commission) requests an opinion interpreting the statute delegating authority to the Executive Director as it relates to the discretionary disciplinary process of the Commission and the Committee of Credentials (Committee.) Specifically:

May the Commission pursuant to subdivision (b) of section 44220 of the Education Code delegate to the Executive Director and through him his subordinate staff, the authority to review and determine which cases are required to be presented to the Committee in accordance with subdivision (a) of section 44242.5 of the Education Code?

Background and Statutory Framework

The Commission is an agency in the Executive Branch of California State Government. It was created in 1970 by the Ryan Act (Teacher Preparation and Licensing Act of 1970, Education Code Sections 44200 *et. seq.*), and is the oldest of the autonomous state standards boards in the nation. The major purpose of the agency is to serve as a state standards board for educator preparation for the public schools of California, the licensing and credentialing of professional educators in the State, the enforcement of professional practices of educators, and the discipline of credential holders in the State of California.

Section 44220 of the Education Code¹ gives a broad delegation of authority to the Executive Director. Subdivision (b) of section 44220 reads as follows:

Any power, duty, purpose, function, or jurisdiction that the commission may lawfully delegate is delegated to the executive director, unless the commission specifically has reserved the same for its own action.

The powers and duties provision of the Commission contained in section 44225 sets forth an extensive list of tasks that the Commission is required to perform, but it contains no specific reference to discipline. The Commission has not specifically reserved any functions that relate

¹ All statutory references are to the Education Code unless otherwise noted.

to the discretionary disciplinary review process in regulations promulgated by the Commission (Title 5 of the California Code of Regulations (commencing with section 80000)) nor in the Commission's Policy Manual (Commission on Teacher Credentialing Policy Manual, updated December 2007.) Section 600 of the Policy Manual reiterates and explains the statutory delegation to the Executive Director as follows:

(b) Any power, duty purpose, function, or jurisdiction which the Commission may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Director unless it is shown that the Commission has specifically reserved the same for its own action.

(e) The Executive Director may authorize such assisting staff to perform in the name of the Executive Director, any of the authorized duties of the Executive Director.

The statutory provisions governing the discretionary² review process of disciplinary matters concerning credential holders and applicants for credentials is set forth in the sections 44240 through 44246. Section 44240 requires the Commission to appoint the Committee members in designated categories. The Education Code does not set forth a powers and duties provision for the Committee and there is no Legislative intent language in the statutes relating to the Committee. Section 44241 applies various administrative provisions to the Committee, including the delegation authority to the Executive Director found in section 44220. Section 44242 states that the Committee is under the direct supervision of the Commission and section 44243 states that the Commission may assign administrative duties to the Committee and shall supervise the work of the Committee and provide statements of policy and procedure as it deems appropriate. The Commission addresses its relationship with the Committee in sections 500 through 512 of the Policy Manual.

In order to perform its statutory duties, the members of the Committee meet once a month in Sacramento for three days to review the cases prepared by Commission staff. In order to investigate acts of misconduct, jurisdiction for an initial review must be established under the provisions of subdivision (b) of section 44242.5. At the initial review, the Committee determines whether to close the investigation or to proceed to a formal review pursuant to section 44244. A separate jurisdictional basis is required under subdivision (d) of 44242.5 to proceed to the formal review³. Respondents have a right to make a personal appearance at the formal review. The appearances limit the number of formal reviews the Committee can conduct during each meeting. After the formal review, the Committee may close the investigation or recommend an adverse action. The respondent may accept the recommendation of the Committee which is presented to the Commission on a

² The Education Code contains provisions requiring the denial of an application or revocation of a credential by operation of law based on a specified criminal conviction (sections 44346, 44346.1, 44423.6, 44424, 44425, 44425.5, and 44426.) The Commission's involvement in these cases is purely ministerial (*DiGenova v. State Board of Education*, 45 Cal. 2d 255, 260.)

³ For example, a police report or court document reflecting an individual has been arrested or charged with a crime would provide jurisdiction to conduct an initial review under section 44242.5(b)(1), but a conviction would be required to proceed to formal review under section 44242.5(d)(1). A sworn statement or an employment action provides jurisdiction for both initial and formal review under sections 44242.5(b)(2) and (b)(3) and 44242.5 (d)(2) and (d)(3).

Consent Calendar for adoption pursuant to section 44244.1. The respondent may appeal the recommendation of the Committee pursuant to section 44246 and the matter is adjudicated under the Administrative Procedures Act. The Commission is represented during these proceedings by the Office of the Attorney General.

The Division of Professional Practices (DPP) is the division charged with the responsibility of supporting the work of the Committee. DPP is also the legal department for the Commission and the Director of DPP serves as the General Counsel for the Commission. The Director/General Counsel oversees a staff of attorneys, investigators, analysts, and technicians. In support of the work of the Committee, Commission staff reviews criminal justice summaries (RAP sheets) received from the Department of Justice, reports of misconduct from individuals, reports of changes in employment from school districts, and disclosures of potential misconduct from applicants. The Commission reviews thousands of allegations of misconduct a year; the majority of which involve criminal conduct.⁴ Commission staff reviews the criminal conduct, gathers the necessary documents to evaluate the conduct, performs a legal review as to jurisdiction and defensibility, and initiates the discretionary investigation on behalf of the Committee. Additionally, Commission legal staff works with the members of the Committee to identify behaviors that the Committee has determined do not warrant a recommendation of an adverse credentialing action⁵.

Analysis

The Commission has historically interpreted the intent of the statutes governing the Committee as providing statutory due process prior to any discipline being imposed on a credential holder. The Committee on Education of the Assembly issued a report that addressed perceived deficiencies with the predecessor to the Committee of Credentials when it was under the auspices of the Department of Education (*The Restoration of Teaching: A Report of the Subcommittee of Personnel and Teacher Qualifications*, January 1967, pp. 21-35) which led to the Ryan Act that established the present day Commission and Committee. The recommendations of the subcommittee focused on providing greater due process and fairness to the Committee review process.

The language of subdivision (a) of section 44242.5 reads as follows:

Each allegation of an act or omission by an applicant for, or holder of, a credential for which he or she may be subject to an adverse action shall be presented to the Committee of Credentials.

In a recent audit report on the Commission, the State Auditor issued a *de facto* legal opinion in which she interpreted the above-referenced language to require "...where the allegation of misconduct is one that gives the committee initial jurisdiction and may subject a credential holder or applicant to adverse action, staff must present it to the committee" (California State Auditor Report 2010-119, p. 108.) Under this interpretation of the statute, every credential

⁴ See Division of Professional Practices Discipline Workload Report FY 2009-2010, Item 2A, December 9-10 Commission meeting.

⁵ Although a delegation of authority from the Committee was not viewed as applicable, Commission staff worked closely with the Committee to insure that its members were fully informed of staff's actions and were in agreement. Accordingly, Commission staff presented the Committee with information about the type of cases that cannot support discipline and the process of staff closing these cases was approved unanimously by a quorum of the Committee.

holder or applicant who was arrested for a crime, but not yet convicted would have to be presented to Committee for initial review, regardless of the nature of the crime or the status of the criminal case. The commencement of an initial review requires that the case be presented to the Committee for formal review within six months (section 44244(b)(1)) with a possibility of a six months extension from the chair of the Commission (section 44244(c)). If the individual is not convicted of the crime within this timeframe, the Committee would not have jurisdiction to proceed to the formal review absent Commission staff obtaining sworn statements from witnesses in multiple ongoing criminal investigations scattered throughout the state of California. The Commission has never taken the view that criminal charges that do not result in a conviction should routinely⁶ be pursued given the statutory relationship between initial review jurisdiction under 44242.5(b)(1) [official documents from court or law enforcement agency] and formal review jurisdiction under 44242.5(d)(1) [documents supporting a conviction].

The State Auditor's opinion is also based on the assumption that the Committee has delegation authority rather than the Commission. Based on the statutory structure outlined above, the Commission has taken the position that the Committee performs an invaluable function, but has no authority to delegate. All delegations of authority flow from the Commission (sections 44220, 44241, 44242, 44243, Policy Manual sections 500-512, and 600). Recognizing that a legal opinion of the State Auditor has no binding effect, the Audit recommended that the Commission seek a legal opinion from the Attorney General to provide guidance on this issue.

Historically, the "shall" language of this passive-voiced sentence in section 44242.5 has been interpreted by the Commission to mean that no discipline may be imposed on an applicant or credential holder unless the allegations are reviewed by the Committee. Commission staff, on behalf of the Commission, presents allegations of misconduct that have been reviewed for jurisdictional and legal sufficiency.

The Education Code does not contain a definition of "misconduct" and provides no specific guidance as to what criminal behavior has a sufficient nexus to holding a credential to warrant a discretionary review and a possible adverse action. Section 44421 provides a general statement for the grounds for imposing an adverse action:

The Commission on Teacher Credentialing shall privately admonish, publicly reprove, revoke or suspend for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause that would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service.

⁶ On relatively rare occasions, the Commission will obtain initial review jurisdiction pursuant to a police report or court document and attempt to obtain formal review jurisdiction by obtaining a sworn statement from an individual with firsthand knowledge of the alleged misconduct. These cases usually involve an allegation of sexual misconduct with a minor where the Commission has determined that if a sworn statement can be obtained the Commission has a reasonable probability of prevailing in the matter because of its lower burden of proof and the fact that the behavior does not have to be criminal to be unprofessional or immoral for licensing purposes. Current staff and resources do not allow such action in every case.

Grounds for denying an application are found in section 44345:

The commission may deny any application for the issuance of a credential or for the renewal of a credential made by any applicant who falls under any of the following categories:

- (a) Lacks the qualifications which are prescribed by law or regulations adopted by the commission pursuant thereto.
- (b) Is physically or mentally so disabled as to be rendered unfit to perform the duties authorized by the credential for which he or she applies. However, the mere fact that an applicant has sought or received psychiatric treatment shall not be considered as preliminary evidence of mental disability and shall not provoke special scrutiny of such applicant's qualifications for a credential.
- (c) Is addicted to the use of intoxicating beverages to excess.
- (d) Is addicted to the use of controlled substances.
- (e) Has committed any act involving moral turpitude.
- (f) Has had a certification document revoked.
- (g) Has intentionally practiced or attempted to practice any material deception or fraud in his or her application.
- (h) Fails or refuses to furnish reasonable evidence of identification or good moral character.
- (i) Has been convicted of any offense defined in subdivision 1 of Section 314 of the Penal Code prior to September 7, 1955.

Any denial pursuant to subdivisions (a) to (e), inclusive, shall be based upon reasons related to the applicant's fitness to teach or fitness to perform other duties for which that applicant is certificated, or competence to perform the duties which the credential would authorize the applicant to perform.

Based on this statutory guidance, it is not always clear which criminal behavior can sustain an adverse action. Section 44421 lists “unprofessional conduct” and “evident unfitness for service,” but does not define either term. Section 44345 lists moral turpitude as grounds for denying an application, but both alcohol and drug use appear to be limited to cases involving addiction. The seminal case that is now applied to almost all misconduct involving licensing is *Morrison v. State Board of Education*, 1 Cal. 3d 214 (1969), which list the so called *Morrison* factors, as follows:

We therefore conclude that the Board of Education cannot abstractly characterize the conduct in this case as 'immoral,' 'unprofessional,' or 'involving moral turpitude' within the meaning of section 13202 of the Education Code unless that conduct indicates that the petitioner is unfit to teach. In determining whether the teacher's conduct thus indicates unfitness to teach the board may consider such matters as the likelihood that the conduct may have adversely affected students or fellow teachers, the degree of such adversity anticipated, the proximity or remoteness in time of the conduct, the type of teaching certificate held by the party involved, the extenuating or aggravating circumstances, if any, surrounding the conduct, the praiseworthiness or blameworthiness of the motives resulting in the conduct, the likelihood of the recurrence of the questioned conduct, and the extent to which disciplinary action may inflict

an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. These factors are relevant to the extent that they assist the board in determining a teacher's fitness to teach, i.e., in determining whether the teacher's future classroom performance and overall impact on his students are likely to meet the board's standards *id.*, at pp. 229-230.

Even though *Morrison* involved non criminal conduct, it is now routinely applied to criminal behavior. In a case recently litigated by the Commission, an Administrative Law Judge (ALJ) issued a Proposed Decision dismissing an accusation imposing a 60 day suspension on a credential holder who had been convicted of three instances of driving under the influence of alcohol over a lengthy period of time. The credential holder introduced evidence that she was not addicted to alcohol and persuaded the ALJ that the conduct could not be found to be unprofessional under the Education Code and applicable law. The Commission rejected the Proposed Decision, called for the transcript, and issued its own decision finding that the behavior was unprofessional. The respondent sought judicial review and ultimately, the Court of Appeals for the Third Appellate District, using the *Morrison* factors, held that the three convictions supported an adverse action under applicable law. (*Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462.) Applying the *Morrison* factors, the legal staff on behalf of the Commission determines that a significant portion of the criminal misconduct involving credential holders or applicants for a credential cannot legally support an adverse action and those convictions have not been presented to the Committee. This is a case-by-case review and cases involving minor crimes with aggravating circumstances that may support discipline are presented to the Committee.

The contemporaneous administrative construction of an enactment by those charged with its enforcement is entitled to great weight, and courts generally will not depart from that construction unless it is clearly erroneous or unauthorized (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 309). The Commission is charged with interpreting its governing statutes in a manner that is true to the Legislative intent that allows the agency to effectively carry out its statutory functions. Statutes must be construed so as to give a reasonable and commonsense construction that is consistent with the apparent purpose and intention of the lawmakers, that is practical rather than technical, and that leads to wise policy rather than mischief or absurdity (*People v. Turner* (1993) 15 Cal.App.4th 1690, 1696). Interpreting subdivision (a) of section 44242.5⁷ to require a body that sits three days a month and has a very full agenda to review every arrest or even every conviction involving a credential holder or applicant for a credential holder that takes place throughout the state of California could result in such an absurdity.

⁷Although an attempt might be made to argue that section 80308 of Title 5 of The California Code of Regulations provides authority for a review other than that found in section 44242.5, the Commission was unsuccessful in defending a Writ of Mandate, *Hewitt v. CTC*, Sacramento County Superior Court No. 98CS01418 (1999) and did not file an appeal and is therefore binding on the agency. The decision limits the Commission's authority to investigate to the process set forth in section 44242.5 and specifically states that section 80308 of Title 5 of the California Code of Regulations does not provide a separate investigative authority. This case could be construed to mean that all cases presented to the Committee pursuant to section 44242.5 must go through the formal process set forth in subdivision (b) through (f) of the statute.

Unfortunately, subdivision (a) of section 44242.5 has not been the subject of litigation that resulted in a reported case that can be cited as precedent. An individual did file a Petition for a Writ of Mandate asserting that subdivision (a) of section 44242.5 required that his complaint against a credential holder be presented to the Committee for review (*Barrera v. Commission on Teacher Credentialing*, SF Superior Court CPF 10510855 (2010)). The Deputy Attorney General representing the Commission made a number of arguments in opposition of the writ, but after the case was briefed by both sides, the Court did not issue a tentative decision and posed the following question to be argued at the hearing on the matter:

On calendar for Thursday, December 16, 2010, Line 11, PETITIONER ARTURO BARRERA, IN HIS OFFICIAL CAPACITY AS GLENN COUNTY SUPERINTENDENT OF SCHOOLS' Motion For Issuance Of Peremptory Writ Of Mandate, A HEARING IS REQUIRED. DOES SECTION 44242.5 (A) ALLOW DISCRETION CONCERNING WHICH MATTERS ARE REFERRED TO THE COMMITTEE OF CREDENTIALS?

After hearing argument, the Court issued the following ruling:

LAW AND MOTION 301, RULING - A R G U E D; PETITIONER ARTURO BARRERA, IN HIS OFFICIAL CAPACITY AS GLENN COUNTY SUPERINTENDENT OF SCHOOLS' MOTION FOR ISSUANCE OF PEREMPTORY WRIT OF MANDATE IS DENIED. THE COURT FINDS THAT SECTION 44242.5 CANNOT BE READ TO IMPOSE A MANDATORY DUTY ON RESPONDENT TO PRESENT PLAINTIFF'S ALLEGATIONS TO THE COMMITTEE.

The Commission is aware such a case cannot serve as true precedent; however, it does serve as evidence that at least in this instance, subdivision (a) of section 44242.5 was not found to require an allegation of misconduct to be presented to the Committee.

Conclusion

In construing statutory language, a court must consider the language in the context of the entire statute and the statutory scheme of which it is a part. The court is required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. If possible, significance should be given to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose. When used in a statute, words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole (*Dubois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388).

The Commission is of the opinion that the statutory scheme governing the discretionary review process of the Committee when viewed in context with the statutes addressing the relationship of the Committee to the Commission and the delegation of authority to the Executive Director and his staff supports the following conclusion:

Only those allegations of misconduct that legal staff, acting on behalf of the Commission through its delegation of authority to the Executive Director, determine can support an adverse action are required to be presented to the Committee under subdivision (a) of section 44242.5.

If you have any questions please contact Mary Armstrong, General Counsel, at marmstrong@ctc.ca.gov.

Respectively submitted,

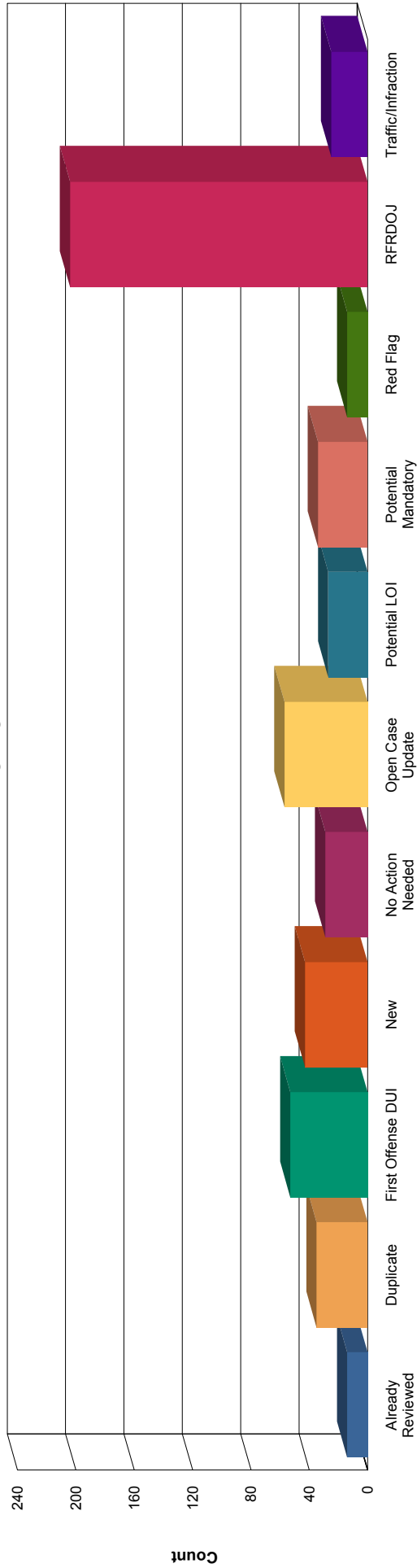
A handwritten signature in black ink, appearing to read "Dale Janssen", with a long horizontal flourish extending to the right.

Dale A. Janssen
Executive Director

Attachments

DPP RAP Sheet Processing Statistics for April 2011

RAPs by Type



Total RAPs: 535
Possible Cases: 157

Rap Categories

RAP CATEGORIES

Rap sheets are assigned to different categories depending on the level of review necessary which include determining factors, such as prior misconduct, type of current misconduct, type of credential held.

Raps are currently processed in two different groups. Raps that need additional processing and may result in a case file (*) and Raps that do not require additional processing.

CATEGORIES/DEFINITIONS

Already Reviewed: This is a rare category. Subsequent rap notifications are usually new misconduct. However, rap notifications may be received for misconduct previously reviewed.

Duplicate: If a Respondent has been fingerprinted on multiple occasions, the same rap sheet will be submitted to CTC on more than one occasion. The arrest/conviction information will be identical on these raps. The original fingerprint date will be different.

First Offense DUI: If a rap notification is received with DUI related information, DPP may review a singular DUI offense without any further processing, if it is the only misconduct within the past 5 years. Effective May 1, 2011 – all First Offense DUI's are considered Consent Calendar items and will go to COC.

***New:** Respondent has a rap with new charges, and a case needs to be opened.

No Action Necessary (NAN): Raps are considered No Action Necessary when a rap is received that reflects PROSECUTION RELEASE-DETENTION ONLY-LACK of SUFFICIENT EVIDENCE, or INADMISS SEARCH & SEIZ. These raps indicate there might have been an arrest, but no formal charges were filed against Respondent. In many of these cases, we do not have jurisdiction to review the case, and therefore No Action is Necessary. Cases are opened when they involve child crimes.

***Open Case Update:** A rap sheet may be categorized as Open Case Update if there is already an established case open regarding prior misconduct that is being reviewed by staff.

***Potential LOI:** The level of misconduct requires Committee review and are categorized Potential LOI. The Respondent's prior case history and current misconduct are all factored in to determine a level of review.

***Potential Mandatory:** The level of misconduct on the rap notification may require a Mandatory action by CTC upon receipt of a criminal conviction. Potential Mandatory actions may result in an auto-suspension while court charges are pending. These raps are priority and require immediate processing.

Red Flag: DPP currently has a date requirement in which we allow Respondents with an expired credential 3 months before officially removing their fingerprint clearance. Once FP clearance is removed, a Respondent MUST be re-fingerprinted. Red Flagging notifies all departments that DPP has information that must be reviewed prior to approval and granting of any/all applications.

Rap Categories

RFRDOJ: (Red Flag Reject Department of Justice) If a Respondent no longer has a valid credential or an application in Siebel, his rap sheet will be marked as RFRDOJ. An RFRDOJ rap occurs when the Respondent is NOT holding a credential, and their misconduct did not occur while they were holding. The Rap sheet is returned to DOJ and requires that Respondent be re-fingerprinted when submitting a subsequent application.

Traffic: Rap notifications with simple traffic citations may be reviewed depending on Respondent's prior misconduct (DUI, multiple license violations). These raps generally require no further processing.

Infraction: Rap notifications regarding minor misdemeanor to an infraction, or the charge may be a local ordinance violation, these raps may be categorized as Infractions. This rap requires no further processing.

2A

Information

Professional Practices Committee

Division of Professional Practices Discipline Workload Report FY 2009-2010

Executive Summary: This agenda item is a status report on the discipline workload of the Division of Professional Practices for FY 2009-2010.

Recommended Action: For information only

Presenter: Mary Armstrong, Director, Division of Professional Practices

Strategic Plan Goal: 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

December 2010

Division of Professional Practices Discipline Workload Report FY 2009-2010

Introduction

This agenda item is a status report on the discipline workload of the Division of Professional Practices (DPP) for FY 2009-2010.

Background

In addition to administering the laws and rules governing the issuance of credentials and approving educator preparation programs, the Commission on Teacher Credentialing (Commission) enforces professional conduct standards. In order to ensure a high level of public confidence in California teachers and other credentialed public school employees, DPP through the statutorily created Committee of Credentials (Committee), monitors the moral fitness and professional conduct of credential applicants and holders. The Commission has the authority to discipline an applicant or holder for fitness-related misconduct.

Applications and credentials may be adversely affected based on the applicant's or holder's immoral or unprofessional conduct, evident unfitness for service, refusal to obey laws regulating certified duties, unjustified refusal to perform under an employment contract, addiction to intoxicating beverages or controlled substances, commission of any act of moral turpitude, or intentional fraud or deceit in an application.

The Commission appoints the seven members of the Committee to review all alleged misconduct. The Committee includes three credential holders employed in public schools (one elementary teacher, one secondary teacher, and one administrator), one school board member, and three public members. The Committee meets once each month at the Commission's office in Sacramento and has the authority to close an investigation where the evidence does not support the allegations or to recommend discipline where the evidence supports the allegations. All discipline recommendations made by the Committee are subject to challenge and appeal by the credential applicant or holder and final approval by the full Commission.

The discipline investigation process is confidential, and only the discipline recommendation of the Committee and the Commission's final adoption of a disciplinary action are public information.

DPP Discipline Workload FY 2009-2010

Reports of Misconduct

DPP obtains jurisdiction to initiate an investigation of misconduct and/or moral fitness when it receives a report of an employment action taken as a result of misconduct by an employing school district; a complaint, under penalty of perjury, of alleged misconduct made from someone with firsthand knowledge; and as a result of reports of criminal convictions made by the Department of Justice (DOJ) and/or as a result of self-disclosure on an application. During FY 2009-10, the following reports of misconduct, by type were reviewed:

Reports of Misconduct

	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10
School District Reports	139	238	211	231	241
Complaints under penalty of perjury	139	47	223	135	130
All others (includes DOJ reports and self Disclosures)	4846	4490	3376	3777	5352
Total	5124	4775	3810	4143	5723

Caseload

Once jurisdiction is established, the reports of misconduct are reviewed by staff. A determination is made whether this alleged misconduct comes within the Commission's statutory authority. If yes, then a case is opened. The FY 2009-10 caseload is as follows:

New Cases Opened

	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10
Applicants	851	423	348	409	360
Applicants/holders	453	737	672	561	558
First time applicants	2069	2665	2364	2404	2074
Holders	1271	1357	1283	820	2624
Waivers	81	74	84	94	46
Total	4725	5256	4751	4288	5662

Cases Opened Per Fiscal Year by Type

	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10
Application	1677	2010	1537	1748	1221
Application & RAP	1654	1676	1549	1728	1913
Rap Sheet	1408	672	303	256	2115
School District/County Office of Education	139	238	211	221	241
Other	69	115	153	49	126
Arresting Agency	4	5	26	17	9
Affidavit/Complaint	139	47	21	15	27
Breach of Contract	8	4	3	8	21
State Test Misconduct	0	8	3	2	10
Waiver	18	1	11	95	46
Total	5116	4776	3817	4139	5729

Committee Review

After a case is opened, the matter is prepared for initial review by the Committee. The review is governed by statute and at any point the Committee can close the case on jurisdictional or evidentiary grounds. Following its final review, the Committee makes a recommendation regarding whether or not to take adverse action. The Committee's recommendation is placed on the Commission's Consent Calendar for final action.

Cases Completed

	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10
Staff Action	5171	4224	3133	3087	4630
COC Grant/Close	562	585	574	538	150*
Commission	553	685	695	595	712
Total	6286	5494	4402	4220	5492

*Reflects change in procedure initiated in July 2009 which shifted portion of COC workload to staff action category resulting in increased number of staff actions.

Final Actions

Final actions fall into two categories. Mandatory actions are imposed by statute. The mandatory actions are delegated by the Commission to the Executive Director and are noticed on the Consent Calendar at the next scheduled Commission meeting. Discretionary actions are delegated by statute to the Committee for review and then the Committee's recommendation is sent to the Commission for final action. The Committee's recommendation can alternatively be appealed before a final action is taken and result in administrative adjudication (see next page).

Commission Final Actions FY 05/06 through 09/10

Mandatory Actions

	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10
Revocations	114	114	103	90	202
Denials	38	36	42	29	64

Discretionary Actions

	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10
Revocation	245	197	166	131	104
Denials	107	82	65	44	49
Suspension	172	267	279	194	207
Public Repeval	56	78	82	66	55
Private Admonition	16	16	24	20	19
Total Mandatory and Discretionary Actions	748	790	761	574	700

Administrative Adjudication

After its administrative review, the Committee may close its investigation or make a recommendation of adverse action. Respondents are provided notice of the recommendation and have the right to request an administrative appeal. The Commission is represented by the Attorney General and the matter is heard by an Administrative Law Judge who issues a proposed decision to the Commission. The Commission can adopt the proposed decision or reject it and call for the transcript. After review of the transcript, the Commission can adopt the Proposed Decision or issue its own decision.

Administrative Adjudication Workload FY 05/06 through 09/10

	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10
Appeals Requested	N/A	N/A	103	161	159
Settlements (Commission)	N/A	N/A	68	62	46
Settlements (Attorney General)	N/A	N/A	15	10	24
Proposed Decisions Adopted by CTC	N/A	N/A	7	10	12
Decisions Issued by CTC	N/A	N/A	8	5	3
Judicial Actions (Writs)	N/A	N/A	2	2	6

Commission Disciplinary Workload

The Commission hears petitions for reinstatement, as provided by the Administrative Procedures Act, in closed session to determine whether petitioners whose credentials were revoked are fit to again hold a credential.

Petitions for Reinstatement FY 05/06 through 09/10

	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10
Granted	3	7	5	9	9
Denied	7	8	10	15	15
Total Petitions	10	15	15	24	24

Other DPP Discipline Activities

In addition to the workload described above DPP provides telephonic and electronic mail responses to stakeholders and the public. A new telephone system was also fully implemented in 2009 to forward discipline related calls from the Commission's toll-free number to DPP. The number of telephone calls for does not reflect calls made directly to DPP.

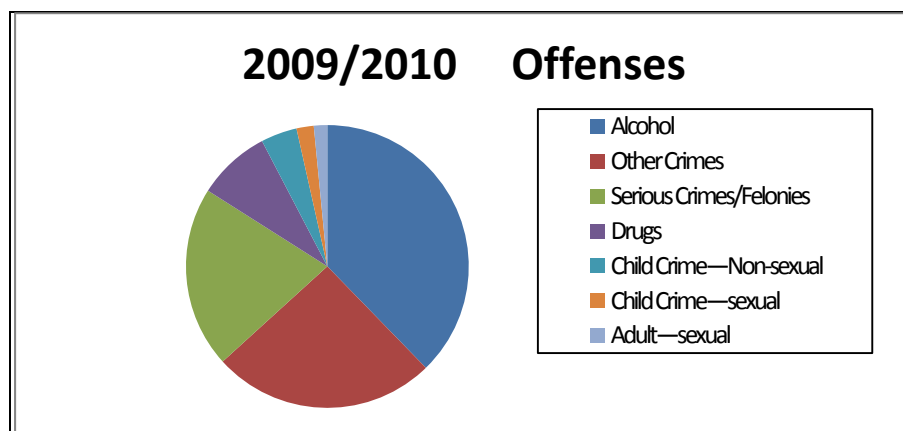
	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10
E-mails Sent to DPP Info	N/A	N/A	592	4,588	5,630
Phone Calls	N/A	N/A	37,448	9,801	8,088

Analysis of Types of Criminal Misconduct

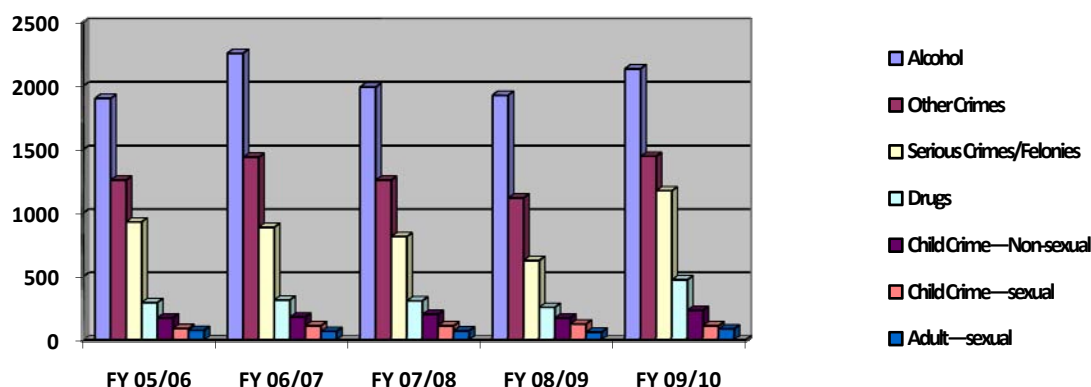
Of the total number of allegations of criminal misconduct reviewed during FY 2009-10, one-third of the offenses were alcohol related. This trend is consistent with the criminal misconduct over the previous four years.

Cases Opened by Offense Code FY 06 through 09-10

	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10
Alcohol	1901	2258	1990	1927	2136
Other Crimes	1259	1438	1258	1118	1446
Serious Crimes/Felonies	930	887	813	626	1174
Drugs	295	315	308	257	473
Child Crime—Non-sexual	175	179	201	173	234
Child Crime—Sexual	89	112	110	126	112
Adult—Sexual	76	67	71	61	87
Total	4725	5256	4751	4288	5662



Criminal Misconduct Cases by Type FY 05/06 through 09/10



Improvements Initiated During FY 2009-2010

DPP continues to review its processes and procedures to determine both efficiencies and streamlining of its work. The goal is to balance its mission of protection of California's public school children with the due process rights of credential holders and applicants. In the last half of FY 2008-2009 and throughout 2009-2010, DPP and the Attorney General's Office faced additional challenges with the imposition of furloughs for DPP and budget cuts at the Attorney General's Office. To that end DPP initiated the following improvements and changes during FY 2009-10.

- **Case Tracking System**

Final implementation of a computer based tracking system to identify and track documents, applications and cases as they are processed through DPP. This system provides weekly reports to staff members and management to ensure that cases are processed in a timely manner. In addition the system also identifies high priority cases and notifies management when activities are not completed and establishes a weekly report to track applications as soon as the application is assigned to DPP.

- **Improvements in Management of Criminal History Information Reports**

As a result of staff turnover, training issues and furloughs DPP faced a backlog in processing lower level criminal history information reports (raps) sent from the Department of Justice to the Commission. Unlike applicant information which is for the most part processed electronically, these reports were in a paper format sent to CAW and then to DPP. Many of the raps received in this manner do not result in a case being opened or considered by the COC. It was, however, necessary to sort and process the reports, enter relevant information as necessary into the system, track arrests to determine if the arrest led to a conviction, and, in some cases, obtain necessary police reports and court documents. In order to streamline the procedure, in early 2010 DPP moved to a paperless receipt and sort of raps. Raps are now sent electronically to DPP, entered in the system, sorted by priority and tracked, all on a same day basis. While this does not eliminate the workload that results if a case is opened, it does eliminate the number of raps waiting to be processed.

- **Streamline Processing of Pending COC Cases**

In early July 2009, as a result of both the limited amount of time the volunteer COC members have each month to meet and consider cases and the imposition of furloughs cancelling several meeting dates, staff and the Chair of the COC met with the Executive Director to discuss strategies to streamline the processing of pending COC cases. It was decided that matters which were unlikely to rise to the level of an Education Code §44242.5(b) informal review by the COC which previously had been presented to the COC on a consent agenda would be delegated to staff to grant or close. (These matters consist of a review of misconduct that was not the type which results in a COC recommendation for discipline because of various factors such as the length of time since the misconduct occurred, lack of recurring misconduct or evidence of rehabilitation provided with an application.) The new procedure has resulted in processing these matters one to seven weeks faster than the previous practice. The biggest benefit is to applicants who are awaiting a review and school districts that are not forced to remove an applicant from the classroom unnecessarily.

- **Consultation with Attorney General's Staff**

Periodic meetings are held with the staff at the Attorney General's Office to discuss the administrative workload process. Staff from both offices are developing and refining a case priority system to resolve cases at the administrative level in a timely manner. In June 2010, DPP and the Attorney General's office put in place a new process to handle high priority cases which involves direct assignment to a Deputy Attorney General who drafts the accusation rather than assignment to legal analysts. It is anticipated that this process will result in reducing the time it takes to bring a case to administrative hearing by a minimum of 12 months.

Next Steps

In FY 2010-2011, the Commission will complete the Credential Web Interface Project (CWIP) which will upgrade the Commission's existing computer system. DPP plans as part of the CWIP improvement project to achieve increased automation of its records, improve electronic monitoring of workload, improve DPP's continued use of technology to achieve greater efficiency and improve

and provide real time notification to school districts and the public regarding disciplinary actions. This will allow increased effectiveness in protecting California's public school children while at the same time providing credential holders and applicants with both due process and a faster processing time.

Criminal Offenses Requiring Denial or Revocation of Teaching Credentials

**Table 1 – Enumerated Crimes and Violent/Serious Felonies
in Education Code Sections 44346.1 and 44424**

Penal Code sections	Descriptions	Enumerated Crimes ¹	Violent Felonies ²	Serious Felonies ³
136.1	Intimidation of witness and victims		√	√
186.22	Any felony offense, which would also constitute a violation of section 186.22 (participation in criminal street gang)			√
187 – 191	Murder	√	√	√
187/664	Attempted murder	√	√	√
191.5	Gross vehicular manslaughter while intoxicated			√ ⁴
192(a)	Voluntary manslaughter	√	√	√
192(c)(1) or (3)	Vehicular manslaughter			√ ⁴
192.5(a) or (c)	Vehicular manslaughter while operating vessel			√ ⁴
193	Manslaughter	√		
194	Death of victim within 3 years and a day	√		
203	Mayhem	√	√	√
205	Aggravated mayhem	√	√	√
206	Torture	√		
207	Kidnapping	√	√	√
208	Kidnapping – victim under 14	√	√	√
209	Kidnapping for ransom or to commit other crimes	√	√	√
209.5	Kidnapping during carjacking	√	√	√
210	Pose as kidnapper to extort	√		
210.5	Taking hostages	√		
211	Robbery	√	√	√
212.5	Robbery	√	√	√
214	Train robbery	√		
215(a)	Carjacking	√	√	√
217.1	Assault on public officials	√		
220	Assault w/intent to commit mayhem, rape, sodomy, and oral copulation	√	√	√
222	Administering stupefying drugs during felony	√		
244	Assault w/caustic chemicals	√		√

¹Enumerated crimes are listed in Education Code § 44424 and includes misdemeanors except as otherwise noted.

²Violent felonies are listed in Penal code § 667.5(c).

³Serious felonies are listed in Penal Code §§ 1192.7(c) and 1192.8.

⁴The offense is only a serious felony when it involves the personal infliction of great bodily injury on any person other than an accomplice, or the personal use of a dangerous or deadly weapon within the meaning of Penal Code §§ 1192.7(c)(8) or (23).

Penal Code sections	Descriptions	Enumerated Crimes ¹	Violent Felonies ²	Serious Felonies ³
245	Assault w/deadly weapon or by the means of force likely to produce great bodily injury	√		√
245.2	Assault w/deadly weapon/force on driver			√
245.3	Assault w/deadly weapon/force on custodial Officer			√
245.5	Assault w/deadly weapon/force on school Employee			√
246	Shooting at inhabited dwelling			√
261	Rape	√	√ ⁵	√
261.5	Unlawful sexual intercourse w/minor (statutory Rape)	√		
262	Rape of spouse	√	√ ⁶	
264.1	Voluntarily acting in concert with another...to commit an act in §§ 261, 262, or 289	√	√	√
265	Abduct women for marriage, etc.	√		
266	Entice minor female for prostitution, etc.	√		
266a	Take person for prostitution w/o consent	√		
266b	Take person for illicit relations	√		
266c	Inducing consent of sexual act by fraud or fear	√		
266d	Receive money for cohabitation placement	√		
266e	Purchase a person to work as prostitute	√		
266f	Sell person for immoral purpose	√		
266g	Place wife in brothel	√		
266h	Pimping/pimping a minor	√		
266i	Pandering/pandering with a minor	√		
266j	Procure a child under 14 years for lewd or lascivious acts	√		
267	Abduct minor for prostitution	√		
272	Contributing to the delinquency of a minor (involving lewd or lascivious conduct)	√		
273a	Willful cruelty to child	√		
273ab	Assault resulting in death to child	√		
273d	Corporal punishment or injury to child	√		
273f	Sending minor to immoral place	√		
273g	Immoral acts before child	√		
278	Child stealing	√		
285	Incest	√		
286	Sodomy	√	√	√
286.5	Sexual assault on animal	√		
288	Lewd or lascivious acts	√	√ ⁷ √	√ ⁶
288.2	Harmful matter sent w/intent to seduce minor	√		
288.5	Continuous sexual abuse of child	√	√	√
288a	Oral copulation	√	√	√
289(a)	Forcible acts of sexual penetration		√	√

⁵Includes only violations of Penal Code §§ 261(a)(2) or (6).

⁶Includes only violations of Penal Code §§262(a)(1) or (a)(4).

⁷Includes only offenses involving a child under 14 years.

Penal Code sections	Descriptions	Enumerated Crimes ¹	Violent Felonies ²	Serious Felonies ³
422	Making criminal threats			√
424	Embezzlement by public officer	√		
425	Failure to pay public money	√		
451	Arson			√
451(a) or (b)	Arson		√	
459	Burglary in the first degree, as defined in 460(a)		√ ⁸	√
484	Theft of personal property (felony only)	√		
484b	Diversion of funds (felony only)	√		
484c	Obtain money by false voucher (felony only)	√		
484e	Theft of access card (felony only)	√		
484f	Forge access card (felony only)	√		
484g	Fraudulent use of access card (felony only)	√		
484h	Access card offenses by retailer (felony only)	√		
484i	Possess access card equipment (felony only)	√		
484j	Publication of access card number w/intent to defraud (felony only)	√		
484.1	False representation to pawnbroker (felony only)	√		
485	Theft: Appropriate lost property (felony only)	√		
487	Grand theft (felony only)	√		√ ⁹
487a	Grand theft: animal carcass (felony only)	√		
487b	Grand theft: convert real property (felony only)	√		
487d	Grand theft: gold dust, mining equip (felony only)	√		
487e	Grand theft: dog (felony only)	√		
487g	Grand theft: animal for sale/research (felony only)	√		
503	Embezzlement	√		
504	Embezzlement	√		
518	Extortion		√	
4500	Assault w/force by a prisoner			√
4501	Assault w/deadly weapon by a prisoner			√
4503	Holding of hostages by a prisoner			√
11418(b) or (c)	Using weapons of mass destruction		√	√
12022.53	Commit felony w/use of firearm		√	√
12034(c) or (d)	Discharge of firearm from vehicle			√
12303.3	Exploding a destructive device w/intent to injure			√
12308	Use of destructive device w/intent to murder		√	√
12309	Exploding destructive device		√	√
12310	Exploding destructive device		√	√
H & S § 11055(d)(2) & (f)(1)(A)	Providing illegal drugs			√
H & S § 11100(a)	Providing illegal drugs			√

⁸The offense is a violent felony if "it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary." See Penal Code § 487(d)(2).

⁹Includes only grand theft involving a firearm – Penal Code § 487(d)(2).

Penal Code sections	Descriptions	Enumerated Crimes ¹	Violent Felonies ²	Serious Felonies ³
Vehicle Code § 2800.3	Willful flight			√ ⁴
Vehicle Code § 23104(b)	Reckless driving			√ ⁴
Vehicle Code § 23153	DUI			√ ⁴
Various	Any attempt to commit an enumerated crime, a violent felony, or a serious felony	√	√	√ ¹⁰
Various	Any conspiracy to commit a serious felony			√
Various	Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more enumerated offenses, violent felonies, or serious felonies ¹¹	√	√	√
Various	Any felony punishable by death or life imprisonment in the state prison		√	√
Various	Any felony where the defendant personally uses a dangerous or deadly weapon, or a firearm		√	√
Various	Any felony where the defendant personally inflicts great bodily injury on those other than accomplices		√	√
Various	Assault w/intent to commit rape			√
Various	Assault w/intent to commit robbery			√
Various	Attempt to commit felony punishable by death or life imprisonment			√
Various	Felony w/personal use of dangerous/deadly weapon			√
Various	Grand theft involving firearm			√

¹⁰Other than assault – see Penal Code § 1192.7(39).

¹¹See Education Code §§ 44424(a), 44346.1(b).

Table 2 – Sex Offenses

Penal Code Section	Descriptions	See Education Code § 44010, subsection:
220	Assault to commit rape	(a)
243.4(a)(b)(c)	Sexual battery	
261	Rape	
261.5	Unlawful sexual intercourse with minor (statutory rape)	
262	Rape of spouse by force/fear/threat	
264.1	Aiding and abetting rape	
266	Entice minor female for prostitution/etc.	
266j	Providing or transporting child under 16 for purpose of lewd or lascivious act	
267	Abduct minor for prostitution	
272	(On or after 9/15/61) Contributing to the delinquency of a minor involving lewd or lascivious conduct	
285	Incest	(a)
286	Sodomy	(a), (g)
288	Lewd or lascivious acts with child under 14 years	(a)
288.3	Contact minor w/intent to commit sexual offense	(j)
288.4	Contact minor w/intent to commit sexual offense	(j)
288.5	Lewd or lascivious acts	(a)
288a	Oral copulation	(a), (g)
289	Penetration by foreign object	(a)
290	Registration as a sex offender and for any conviction resulting in requirement to register as a sex offender	(j) Ed. Code §44425(d)
311(1)	(After 9/7/55 but before 9/15/61) Indecent exposure	(d)
311(2)	(Before 9/15/61) Procuring another's lewd exposure or excitation lewd thoughts	(b)
311.1	Sent or brought into state for sale or distribution, matter depicting sexual conduct by minor	(a)
311.2	Sending or bringing into state for sale or distribution, matter depicting sexual conduct by minor; transaction with minor	
311.3	Sexual exploitation of child	
311.4	Employment or use of minor to perform prohibited acts	
311.10	Advertising for sale or distribution obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct	
311.11	Possession or control of matter depicting minor engaging or simulating sexual conduct	
313.1	Distribute harmful matter to minors	
314	(On or after 9/15/61) Indecent exposure	(c)
647(a)	Disorderly conduct: solicit lewd act	(a)
647(d)	Disorderly conduct: loiter in or about toilet	
647a	(Before 12/31/87) Annoy/molest children	
647b	Loitering about adult schools; molesting of pupils	(b)
647(5)	(Before 9/15/61) Vagrancy, lewd: solicitation of homosexual activity	
647.6	(After 1/1/88) Annoy/molest children	(a)
Various	Any attempt to commit any of the above-mentioned offenses	(h)
Various	Any commission or attempt in another state or against the laws of the United States, which if committed in California would have been punishable as one or more of the above-mentioned offenses. [Including §290 per Ed. Code §44425(d)]	(i) Ed. Code §44425(d)
Wel & Inst §702	(Prior to 9/15/61) Lewd and lascivious conduct	(f)
Wel & Inst §6300	Commitment as a mentally disordered sex offender under former article (commencing with §6300) of Chapter 2 of Part 2 of the Welfare & Institutions Code, repealed by Chapter 928 of the statutes of 1981.	(k)

Table 3 – Controlled Substance Offenses

Health & Safety Code Sections	Descriptions	See Education Code § 44011, subsection:	
11350	Possession of designated controlled substances	(a)	
11351	Possession/purchase of designated controlled substances for sale		
11351.5	Possession of cocaine for sale		
11352	Transportation/etc. designated controlled substances		
11352.1	Dispensing or furnishing drugs without a license		
11352.5	Sale of heroin		
11353	Adult induces/etc. minor to violate controlled substance provisions		
11353.1	Violation of 11353 by an adult near other minors		
11353.4	Multiple violations of 11353 by an adult; involving minor under 14 yrs		
11353.5	Sale/etc. of controlled substance by adult to a minor under 14 yrs and near other minors		
11354	Minor induces/etc. another minor to violate controlled substance provisions		
11355	Sale/etc. of substance in lieu of controlled substance		
11361	Employment of minor under 14 yrs to transport/sell/etc.		
11366	Open/maintain place to sell/etc. controlled substance		
11368	Forged or altered narcotic prescription		
11377	Possession of controlled substance		
11378	Possession of controlled substance for sale		
11378.5	Possession of phencyclidine for sale		
11379	Transportation/etc. of controlled substance		
11379.2	Possession for sale, or sale of ketamine		
11379.5	Transportation/etc. of phencyclidine		
11379.6	Manufacture/etc. of controlled substances		
11379.7	Violation of specified offenses near child under 16		
11379.8	Violation of 11379.6 with specified controlled substances		
11379.9	Causing death or great bodily injury of another person		
11380	Use/etc. of minor by an adult to violate controlled substance provisions		(a)
11380.1	Violation of 11380 with specified controlled substances		
11380.5	Furnishing/etc. minor with specified controlled substances		
11382	Sale/etc. of substance in lieu of controlled substance		
11550	Use/under the influence of controlled substance	(b)	
Various	Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the above-mentioned offenses.		
11500	(Former section) Unlawful possession of a controlled substance	(c)	
11500.5	(Former section) Unlawful possession of controlled substance for sale		
11501	(Former section) Unlawful transportation of controlled substance		
11502	(Former section) Inducing minor's violation of controlled substance provisions		
11502.1	(Former section) Inducing minor's violation of controlled substance provisions		
11503	(Former section) Unlawful sale, transportation, etc. of controlled substance		
11557	(Former section) Operating or maintaining place for dispensing Controlled substance		
11715	(Former section) Forging or altering prescription		