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# 4A

## Action

### *Certification Committee*

#### **Proposed Addition to Title 5 of the California Code of Regulations for the Handling of Applications, Including Variable Term Waiver Applications, Submitted by Qualified Individuals with a Disability**

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**Executive Summary:** This agenda item proposes the addition of Section 80002.1 to Title 5 of the California Code of Regulations (CCR) to clarify the procedures for the handling of applications, including variable term waiver (VTW) applications, submitted by qualified individuals with a disability.

**Staff Recommendation:** That the Commission approve the proposed addition of Section 80002.1 to Title 5 of the CCR related to the handling of applications submitted by qualified individuals with a disability for the purpose of beginning the rulemaking file for submission to the Office of Administrative Law and scheduling a public hearing.

**Presenter:** Tammy Duggan, Consultant, Certification Division

#### **Strategic Plan Goal**

##### ***I. Educator Quality***

- c) Ensure that credential processing and assignment monitoring activities accurately, effectively, and efficiently identify educators who have met high and rigorous certification standards and who are appropriately assigned.

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# Proposed Addition to Title 5 of the California Code of Regulations for the Handling of Applications, Including Variable Term Waiver Applications, Submitted by Qualified Individuals with a Disability

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## Introduction

This agenda item proposes the addition of Section 80002.1 to Title 5 of the California Code of Regulations (CCR) to clarify the procedures for the handling of applications, including variable term waiver (VTW) applications, submitted by qualified individuals with a disability<sup>1</sup>.

## Background

At the [June 2018](#) meeting, the Commission repealed the numerical limits previously established for the reissuance of Speech-Language Pathology Services VTWs. The Commission did so based on an appeal from a waiver applicant with an undisputed disability under the Government Code. The applicant argued that a waiver was a reasonable accommodation. The Commission agreed to ensure through regulation the agency's handling of waiver applications from qualified individuals with a disability who request reasonable accommodations, even when there are limits placed on waivers by the Commission. In relation to this issue, the Commission discussed regulating those limits as well at the June 2018 meeting.

In this item, staff proposes the addition of section 80002.1 to Title 5 of the CCR to regulate the agency's handling of all applications, including VTW applications, from qualified individuals with a disability who request reasonable accommodation. An overview of current practice for initial issuance and reissuance of VTWs is provided in Table 1 of Appendix A, and will be the subject of a more comprehensive analysis with proposed regulations at a future meeting.

## Current VTW Practice and Reissuance Limits

VTWs are temporary documents issued to individuals who have not met all credential requirements, and allow an employing agency to fill a vacancy that would otherwise go unstaffed or be filled with the holder of a substitute permit. An applicant for a VTW must commit to make progress on the requirements necessary for issuance of the associated credential or permit in order to qualify for the associated credential, permit, or authorization. The information provided in this item focuses on VTWs.

Individuals serving on VTWs most commonly fall into one or more of the following categories:

- Additional academic or experience requirements must be satisfied to qualify for a Short-

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<sup>1</sup> The term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires... [reference 42 U.S.C. Section 12111(8)].

Term Staff Permit (STSP) or Provisional Internship Permit (PIP);

- Completion of a Commission-approved program is required to qualify for a credential for which there is no permit or intern credential option, or when the program sponsor does not offer an intern program;
- Experience is required to satisfy the recency requirement for a designated subjects teaching credential; and
- Additional time is needed to satisfy California's basic skills requirement (BSR) to qualify for a permit or credential.

Initial VTWs may be issued for one or more of the reasons cited above. The most common occurrence of VTWs issued for multiple reasons is when an individual must satisfy the coursework/program and basic requirements. Whether a subsequent VTW will be issued depends on the type of VTW held.

Each VTW application is evaluated by Commission staff on a case-by-case basis to determine if the applicant meets the requirements for issuance (or reissuance); what requirements the applicant still needs to complete to qualify for the associated credential, certificate, permit, or authorization; and whether or not the remaining requirements can reasonably be completed in one year. The following factors are considered when determining whether or not the applicant will be allowed to apply for a subsequent waiver:

- Type of VTW requested;
- Requirements not yet met for associated credential, certificate, permit, or authorization;
- Length of program associated with the requested waiver, if applicable;
- Progress made by the applicant toward completion of the requirements for the associated credential, certificate, permit, or authorization prior to issuance of the VTW; and
- Number of VTWs previously held by the applicant.

If the evaluation results in issuance (or reissuance) of the requested VTW, the VTW document will specify the requirements that must be completed for reissuance or, if the remaining requirements can be reasonably completed in one year, state that a subsequent VTW is not available.

Table 1 in [Appendix A](#) provides an overview of the types of VTWs issued by the Commission and the number of reissuances available. If the Commission decides to regulate waiver limits in the future, one possibility would be to do so based on current practice as summarized in Table 1. In the alternative, the Commission could declare a strict numerical limit by document type based on analysis of data relative to the use of waivers across all credential types. Tables 2 and 3 in [Appendix A](#) provide initial issuance and reissuance data related to VTWs issued in the past 20 years. For the time being, staff recommends that the Commission propose regulatory language to the Office of Administrative Law in order to comply with the Commission's agreement to regulate the agency's handling of waiver applications from qualified individuals with a disability who request reasonable accommodations. Staff will follow up on the analysis of waiver limits at a future meeting.

### **Rationale for Proposed Amendments**

Subsection (b) of Government Code section 12944 reads, “It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an individual’s mental or physical disability or medical condition.” The terms “medical condition,” “mental disability,” and “physical disability” are defined in subsections (i), (j), and (m), respectively, in Government Code section 12926.

Although the cited Government Code requires licensing boards to provide reasonable accommodations to qualified individuals with disabilities, the statute does not clarify how requests for reasonable accommodation are handled. The proposed addition of section 80002.1 to Title 5 of the CCR will identify the Commission staff that will be responsible for evaluating applications from individuals who request reasonable accommodations due to a disability. Specifically, the applications for reasonable accommodation will be evaluated by Certification management. Management will determine 1) whether the applicant has submitted sufficient medical documentation to demonstrate a limitation based on mental or physical disability or medical condition and 2) whether the request for accommodation is reasonable.

### **Staff Recommendation**

That the Commission approve the proposed addition of Section 80002.1 to Title 5 of the CCR related to the handling of applications submitted by qualified applicants with disabilities for the purpose of beginning the rulemaking file for submission to the Office of Administrative Law and scheduling a public hearing.

## **CALIFORNIA CODE OF REGULATIONS**

### **TITLE 5. EDUCATION**

#### **DIVISION 8. COMMISSION ON TEACHER CREDENTIALING**

#### **§ 80002.1. Request for Reasonable Accommodation by Applicant: Qualified Individual with a Disability**

An individual applying for a credential, as defined in Education Code Section 44002, who has a mental disability, physical disability, or medical condition as defined in Government Code Section 12926, may request a reasonable accommodation pursuant to subsection (b) of Government Code Section 12944. Requests for reasonable accommodation shall be approved or denied following an evaluation by the Certification Division.

Note: Authority cited: Section 44225(q), Education Code. Reference: Section 44002, Education Code and Sections 12926 and 12944, Government Code.

## Appendix A

**Table 1: Current Practices for Initial Issuance and Reissuance of VTWs**

VTW Type	Requirement(s) Typically Waived	Current Reissuance Practices
<b>Teaching Credentials</b>		
30-day Substitute Teaching Permit	<ul style="list-style-type: none"> <li>• Basic Skills Requirement (BSR)</li> </ul>	<ul style="list-style-type: none"> <li>• Two years for CBEST*</li> </ul>
Multiple Subject, Single Subject, and Education Specialist	<ul style="list-style-type: none"> <li>• BSR</li> <li>• Coursework/experience for STSP/PIP</li> </ul>	<ul style="list-style-type: none"> <li>• Two years for CBEST*</li> <li>• None if BSR met</li> </ul>
Education Specialist Added Authorizations	<ul style="list-style-type: none"> <li>• Program completion</li> <li>• Prerequisite Credential</li> </ul>	<ul style="list-style-type: none"> <li>• One year for program</li> <li>• Two for prerequisite credential</li> </ul>
Adapted Physical Education	<ul style="list-style-type: none"> <li>• Program completion</li> </ul>	<ul style="list-style-type: none"> <li>• One year</li> </ul>
Reading and Literacy Added Authorization	<ul style="list-style-type: none"> <li>• Program completion</li> </ul>	<ul style="list-style-type: none"> <li>• One year</li> </ul>
Bilingual Authorization	<ul style="list-style-type: none"> <li>• BSR</li> <li>• Target Language Proficiency</li> <li>• Prerequisite Credential</li> </ul>	<ul style="list-style-type: none"> <li>• Two years for CBEST*</li> <li>• One year for target language proficiency</li> <li>• Two years for prerequisite credential</li> </ul>
Crosscultural, Language and Academic Development	<ul style="list-style-type: none"> <li>• BSR</li> </ul>	<ul style="list-style-type: none"> <li>• Two years for CBEST*</li> </ul>
Designated Subjects	<ul style="list-style-type: none"> <li>• Experience recency requirement</li> </ul>	<ul style="list-style-type: none"> <li>• One year</li> </ul>
Certificate of Completion of Staff Development	<ul style="list-style-type: none"> <li>• Program</li> </ul>	<ul style="list-style-type: none"> <li>• Two years</li> </ul>
Exchange and Sojourn	<ul style="list-style-type: none"> <li>• BSR</li> </ul>	<ul style="list-style-type: none"> <li>• Two years for CBEST*</li> </ul>
<b>Services Credentials</b>		
Administrative Services	<ul style="list-style-type: none"> <li>• BSR</li> <li>• Program completion</li> </ul>	<ul style="list-style-type: none"> <li>• Two years for CBEST*</li> <li>• One year for program</li> </ul>
Clinical or Rehabilitative Services	<ul style="list-style-type: none"> <li>• BSR</li> <li>• Program completion</li> </ul>	<ul style="list-style-type: none"> <li>• Two years for CBEST*</li> <li>• Four years for program completion</li> </ul>
Teacher Librarian	<ul style="list-style-type: none"> <li>• BSR</li> </ul>	<ul style="list-style-type: none"> <li>• Two years for CBEST*</li> </ul>
Pupil Personnel Services	<ul style="list-style-type: none"> <li>• BSR</li> <li>• Program completion</li> </ul>	<ul style="list-style-type: none"> <li>• Two years for CBEST*</li> <li>• One year for program</li> </ul>
Speech-Language Pathology	<ul style="list-style-type: none"> <li>• BSR</li> <li>• Program completion</li> </ul>	<ul style="list-style-type: none"> <li>• Two years for CBEST*</li> <li>• Limit currently suspended for program completion pending adoption of regulations</li> </ul>

\*The most common reason for the issuance of VTWs is to allow individuals time to satisfy California's basic skills requirement (BSR). Although alternative examinations may be accepted to satisfy the BSR, the alternative examinations are traditionally taken prior to an individual's enrollment in a college or university. Because the alternative examinations are not commonly attempted after an individual has earned a bachelor's degree and because the examinations are not administered by the Commission and, therefore, would be very difficult to track, the California Basic Educational Skills Test (CBEST) is the only examination acceptable toward reissuance of a VTW issued to an individual who has not yet satisfied the BSR.

**Table 2: Initial VTWs by Document Title Issued in the Past 20 Years**

<b>Document Title for VTWs Currently Issued</b>	<b>Cumulative (20 year)</b>	<b>% of Total</b>
30-Day Substitute Teaching Permit	18,646	40.7%
Education Specialist Instruction Credential <sup>^</sup>	10,480	22.9%
Single Subject Teaching Credential	3,356	7.3%
Multiple Subject Teaching Credential	1,809	4.0%
Certificate of Completion of Staff Development	1,673	3.7%
Speech-Language Pathology Services Credential	1,656	3.6%
Clinical or Rehabilitative Services Credential	1,637	3.6%
Adapted Physical Education Added Authorization	805	1.8%
Bilingual, Crosscultural, Language and Academic Development Certificate	669	1.5%
Crosscultural, Language and Academic Development Certificate	707	1.5%
Pupil Personnel Services Credential	702	1.5%
Designated Subjects Special Subjects Teaching Credential	571	1.2%
Administrative Services Credential	254	0.6%
Sojourn Certificated Employee Teaching Credential	96	0.2%
Teacher Librarian Services Credential	30	0.1%
Career Technical Education Teaching Credential	3	0.0%
Exchange Certificated Employee Teaching Credential	2	0.0%
<b>Document Title for VTWs No Longer Issued</b>	<b>Cumulative (20 year)</b>	<b>% of Total</b>
Specialist Instruction Credential in Special Education	1,190	2.6%
Reading Certificate	752	1.6%
Resource Specialist Added Authorization	371	0.8%
Library Media Teacher Services Credential	165	0.4%
Specialist Instruction Credential (Reading)	165	0.4%
Designated Subjects Adult Education Teaching Credential: Full Time	13	0.0%
Designated Subjects Vocational Education Teaching Credential: Full Time	10	0.0%
Full Time Designated Subjects Career Technical Education Teaching Credential	9	0.0%
Health Services Credential	7	0.0%
School Nurse Services Credential	7	0.0%
Designated Subjects Supervision and Coordination Credential	2	0.0%
Designated Subjects Vocational Education Teaching Credential: Part Time	2	0.0%
Teacher Librarian Services Permit	2	0.0%
Library Media Teacher Services Permit	2	0.0%
Part Time Designated Subjects Career Technical Education Teaching Credential	1	0.0%
Designated Subjects Adult Education Teaching Credential: Part Time	1	0.0%
<b>Total</b>	<b>45,795</b>	<b>100%</b>

<sup>^</sup>Includes Education Specialist Added Authorization VTW numbers.

**Table 3: Number of Initial and Reissuance of VTWs in the Past 20 Years**

<b>Number Per Individual</b>	<b>Total Per Number</b>	<b>Overall % Over 20 Years</b>
1 waiver	40,206	72.7%
2 waiver	9,468	17.1%
3 waiver	3,290	6.0%
4 waiver	1,309	2.4%
5 waiver	508	0.9%
6 waiver	244	0.4%
7 waiver	123	0.2%
8 waiver	61	0.1%
9 waiver	32	0.1%
10 waiver	18	0.0%
11 waiver	11	0.0%
12 waiver	5	0.0%
13 waiver	6	0.0%
14 waiver	8	0.0%
15 waiver	2	0.0%
19 waiver	1	0.0%
<b>Total</b>	<b>55,292</b>	<b>100%</b>