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# 5B

## Information

### *Professional Practices Committee*

### **Division of Professional Practices Annual Workload Report Fiscal Year 2017-18**

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**Executive Summary:** This agenda item presents the annual report on the discipline workload of the Division of Professional Practices (DPP) for Fiscal Year 2017-18.

**Recommended Action:** For information only

**Presenter:** Vanessa Whitnell, Director, Division of Professional Practices

#### **Strategic Plan Goal**

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

- d) Effectively, efficiently, and fairly monitor the fitness of all applicants and credential holders to work with California students.

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# Division of Professional Practices Annual Workload Report

## Fiscal Year 2017-18

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### Introduction

This agenda item presents the annual report on the discipline workload of the Division of Professional Practices (DPP) for Fiscal Year (FY) 2017-18.

### 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 monitors the moral fitness and professional conduct of credential applicants and holders. The Commission has authority to discipline an applicant or holder for fitness-related misconduct.

Disciplinary action may be taken based on the applicant's or holder's immoral or unprofessional conduct, evident unfitness for service, refusal to obey laws regulating certificated 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.

DPP collects information concerning alleged misconduct and presents the information to the Committee of Credentials (COC). The seven members of the COC are appointed by the Commission to review the alleged misconduct. The COC 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 COC meets once each month, for three days, at the Commission's office in Sacramento. It has the legal authority to close an investigation where the evidence does not support the allegations or to recommend discipline where the evidence shows probable cause to believe the allegations. All disciplinary recommendations made by the COC are subject to appeal by the credential applicant or holder and final approval by the Commission.

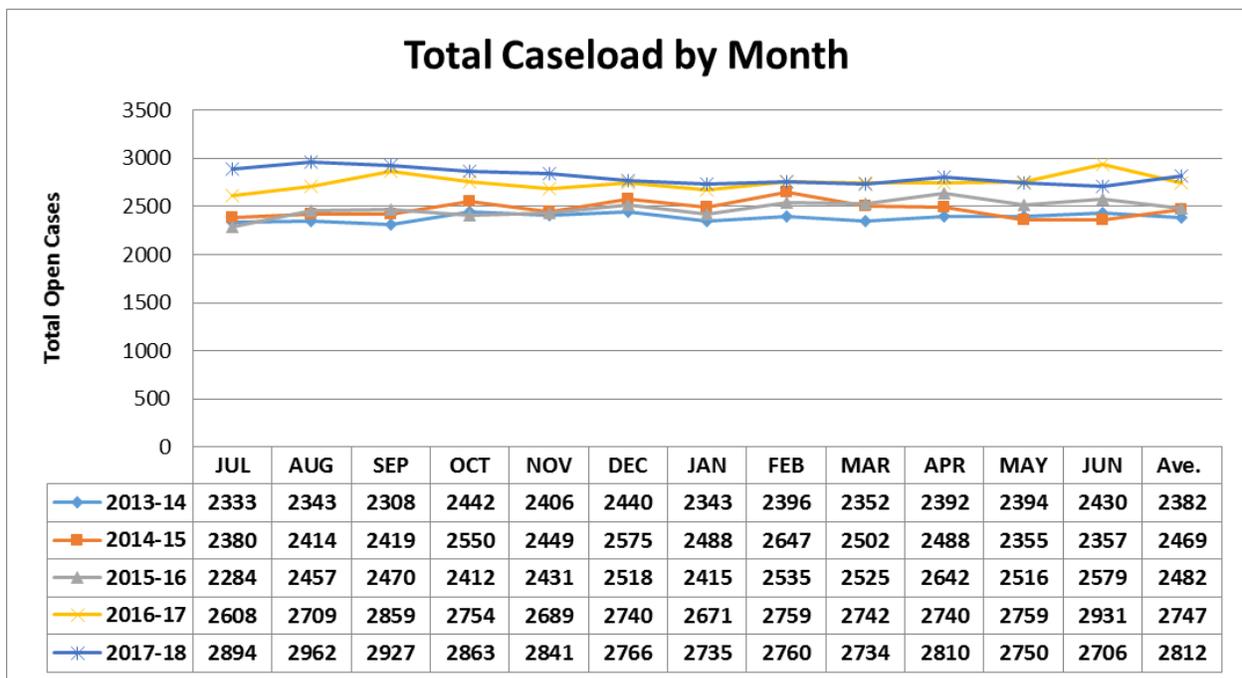
DPP obtains jurisdiction to initiate an investigation of misconduct and/or moral fitness when it receives information including, but not limited to, the following: a report of an employment action taken by an employing school district as a result of misconduct or while allegations of misconduct are pending; a complaint made under penalty of perjury by someone with firsthand knowledge of misconduct; a report of criminal convictions from the Department of Justice (DOJ); or from self-disclosure on an application for a credential.

## Division Workload

In 2016-17, DPP's monthly caseload increased from the normal average of 2,400 – 2,600 open cases to a range of 2,600 – 2,800 open cases. In FY 2017-18, DPP's monthly caseload ranged from 2,706 – 2,962 open cases. The large increase in volume is a result of the upsurge in applications submitted by both applicants and first time applicants. Despite these increases, cases continue to be processed timely.

### Number of Cases Opened

FY 2017-18 began with 2,931 open cases and ended with 2,706, and a monthly average of 2,812. Staff opened an average of 491 cases per month. The average monthly open caseload has steadily increased from 2,382 cases in 2013-14 to 2,812 in 2017-18, an average growth of 430 cases.



### Where did the cases come from?

The number of cases opened by report type has remained fairly consistent over the past five years, with the notable exception of Application & RAP type reports, which have significantly increased cases by 449 cases in 2015-16, 559 cases in 2016-17, and 574 cases in 2017-18, when compared to FY 2014-15. This increase has created a higher workload for DPP. As indicated in the chart below, the total number of cases opened on an annual basis has steadily increased from 5,514 cases in 2013-14 to 5,895 cases in 2017-18.

NEW CASES OPENED BY REPORT TYPE					
REPORT TYPE	2013-14	2014-15	2015-16	2016-17	2017-18
APPLICATION	733	753	776	792	715
APPLICATION & RAP	1811	1964	2413	2523	2538

RAP SHEET	1971	1757	1592	1433	1484
SCHOOL DISTRICT/OFFICE OF ED	731	636	568	687	650
OTHER	81	72	88	108	196
ARRESTING AGENCY	2	1	2	5	8
AFFIDAVIT/COMPLAINT	147	133	198	242	247
BREACH OF CONTRACT	18	85	36	50	53
STATE TEST MISCONDUCT	2	0	0	0	0
WAIVER	18	3	5	0	4
<b>TOTAL</b>	<b>5514</b>	<b>5404</b>	<b>5678</b>	<b>5840</b>	<b>5895</b>

Another increasing trend has been the number of reports made by school districts. Until early 2012, the Commission received between 200 – 250 district reports annually. Starting in February 2012, due to some highly publicized cases of misconduct, the number of school district reports dramatically increased. In FY 2010-11, district reports were about 3% of new cases. In FY 2017-18, district reports (including breach of contract complaints) were 12% of all new cases.

Finally, the table indicates a growth in affidavit cases submitted by members of the public. Affidavit cases have risen by 53% since 2014-15. This may be attributable to the Commission’s user-friendly website. The public can now easily access complaint forms under the Educator Discipline tab.

*What was the credential status of persons reported to the CTC?*

New cases opened by designation indicate whether an individual under review is a new or current applicant and/or whether the person currently holds a credential. In FY 2017-18 as compared to 2013-14, the number of applicant cases increased by 250; the number of applicant/holder cases increased by 75; and the number of first time applicant cases increased by 431.

<b>NEW CASES OPENED BY DESIGNATION</b>					
<b>DESIGNATION</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>
APPLICANTS	300	298	373	392	550
APPLICANTS/HOLDERS	283	321	320	332	358
FIRST TIME APPLICANTS	1953	2068	2490	2573	2384
HOLDERS	2959	2708	2490	2538	2603
WAIVERS	19	9	5	5	0
<b>TOTAL</b>	<b>5514</b>	<b>5404</b>	<b>5678</b>	<b>5840</b>	<b>5895</b>

*What types of misconduct were alleged?*

During FY 2017-18, the number of new cases opened by offense type remained relatively consistent with previous years, as shown below:

NEW CASES OPENED BY TYPE OF MISCONDUCT					
MISCONDUCT TYPE	2013-14	2014-15	2015-16	2016-17	2017-18
ALCOHOL	2409	2290	2531	2447	2482
OTHER CRIMES	1085	1151	1338	1396	1332
SERIOUS CRIMES/FELONIES	825	835	842	924	942
DRUGS	223	280	229	240	251
CHILD CRIME NON-SEXUAL	555	560	445	454	447
CHILD CRIME SEXUAL	328	216	216	306	331
ADULT-SEXUAL	89	72	77	73	110
<b>TOTAL</b>	<b>5514</b>	<b>5404</b>	<b>5678</b>	<b>5840</b>	<b>5895</b>

*How Many Cases were Reviewed by the Committee of Credentials?*

Effective May 2013, DPP management set a target for the number of Initial Review cases to 90 cases per month. Due to the increased number of cases being opened, an average of 95 cases were presented to the COC each month during FY 2017-18 as shown below, with a high of 100 cases in June 2018:

FY	INITIAL REVIEW CASES												TOTAL
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	
<b>2013-14</b>	91	93	90	84	90	91	88	90	89	90	86	83	<b>1065</b>
<b>2014-15</b>	89	93	93	95	91	93	91	88	89	89	92	94	<b>1097</b>
<b>2015-16</b>	92	90	91	89	90	89	88	90	94	92	90	93	<b>1088</b>
<b>2016-17</b>	88	91	89	91	92	93	93	88	91	88	91	91	<b>1086</b>
<b>2017-18</b>	91	93	93	92	96	97	88	91	98	99	98	100	<b>1136</b>

The increased number of cases presented to the COC each month is intended to limit the growth of the overall case load as well as limit the number of cases pending before the COC. The goal for FY 2018-19 is to continue to reduce the number of open cases to ensure they remain in DPP's new "normal range" of 2,600 – 2,800 cases and continue to complete cases in a timely manner. Accordingly, staff expects to submit 105 Initial Review cases per month to the COC until such time as the number of new cases begins to decline. Staff will monitor the caseload to determine whether an increase or decrease in this number would be appropriate in the future.

The number of Initial Review cases has a direct impact on the number of Formal Review cases agendaized for COC review. Formal review is the second stage in the review process of those cases not closed during Initial Review. At the Formal Review stage, an individual can request an opportunity to testify and answer questions before the COC members. In FY 2017-18, the number of Formal Review cases remained steady when compared to the prior year. A comparison of the Formal Review cases by FY are as follows:

FY	FORMAL REVIEW CASES												
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
<b>2013-14</b>	62	64	66	66	68	58	72	68	68	66	64	65	<b>787</b>
<b>2014-15</b>	70	61	61	71	73	72	68	66	63	62	56	56	<b>779</b>
<b>2015-16</b>	69	75	74	69	69	67	69	64	71	70	70	66	<b>833</b>
<b>2016-17</b>	73	72	56	66	61	65	65	56	67	69	72	60	<b>782</b>
<b>2017-18</b>	69	51	67	68	63	63	71	66	61	55	72	74	<b>780</b>

One factor that has helped reduce the caseload in the past is the number of Consent Calendar cases presented to the COC on a monthly basis. Below is the number of Consent Calendar cases presented to the COC during the past five years:

FY	CONSENT CALENDAR CASES												
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
<b>2013-14</b>	153	114	91	110	155	121	135	107	113	124	138	123	<b>1484</b>
<b>2014-15</b>	108	93	101	89	193	91	154	112	211	161	177	193	<b>1683</b>
<b>2015-16</b>	110	112	170	166	134	110	118	142	143	139	145	148	<b>1637</b>
<b>2016-17</b>	109	134	95	134	149	131	158	115	112	168	111	110	<b>1526</b>
<b>2017-18</b>	145	125	154	163	148	97	127	108	114	133	96	156	<b>1566</b>

The COC reviewed an average of 131 cases per month on the Consent Calendar in 2017-18, including a high of 163 cases for the October 2017 COC meeting.

*How Many Cases were Closed by the Commission's Delegation to Staff?*

In 2012 and 2013 the Commission adopted policies that delegated authority to staff to close cases that met very specific criteria. For example, the Commission adopted a policy that allowed staff to close a case that involved a single alcohol-related offense that did not impact children or schools. Staff closed 1,402 cases in 2017-18 based on this delegation, as shown in the table below:

FY	SINGLE ALCOHOL OFFENSE												
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
<b>2013-14</b>	150	124	99	178	122	154	160	120	140	106	136	110	<b>1599</b>
<b>2014-15</b>	139	91	106	115	126	148	149	151	130	127	103	123	<b>1508</b>
<b>2015-16</b>	99	188	153	106	122	121	130	131	115	123	141	121	<b>1550</b>
<b>2016-17</b>	20	50	74	252	93	177	144	106	139	124	77	184	<b>1440</b>
<b>2017-18</b>	124	150	129	104	98	114	132	114	152	78	116	91	<b>1402</b>

No jurisdiction cases involve cases where CTC is unable to obtain "formal jurisdiction." By law, COC must have both initial and formal jurisdiction before the COC can make a recommendation for discipline. These types of cases typically involve an arrest with no charges filed or an arrest with charges dismissed. Staff closed 726 cases in 2017-18 based on this delegation, as shown in the table below:

FY	NO JURISDICTION FOR FORMAL REVIEW												
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
2013-14	57	52	62	52	62	86	59	44	43	51	43	46	657
2014-15	49	50	43	45	52	52	51	59	58	43	55	43	600
2015-16	54	65	45	54	38	58	69	34	53	47	56	72	645
2016-17	59	66	49	53	69	45	75	50	65	42	54	61	688
2017-18	34	82	72	75	62	43	33	68	74	34	89	60	726

Vehicle Code violation cases involve specific minor infractions or misdemeanors under the Vehicle Code. Violations of this type include driving without a license and driving on a suspended license. The exceptions to this policy include the involvement of a child, school property, or adverse publicity impacting the local community. Staff closed 82 cases in 2017-18 based on the Commission’s Vehicle Code delegation, as shown in the table below:

FY	SPECIFIED VEHICLE CODE VIOLATIONS												
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
2013-14	6	13	7	11	8	12	12	9	6	12	10	4	110
2014-15	8	5	12	13	8	6	9	12	6	11	7	11	108
2015-16	5	17	18	13	12	12	10	9	6	10	11	6	129
2016-17	4	5	5	13	8	15	16	7	8	9	1	18	109
2017-18	7	12	7	7	7	3	6	3	14	7	2	7	82

Expired credential cases involve cases where the educator no longer holds a valid credential and has no application(s) pending. Cases of this type are flagged in the system and reviewed if the individual submits a new application. The expired credential policy contains four exceptions, which include allegations of sexual misconduct, crimes against children, reports filed by school districts, and actions taken by other licensing agencies. Below are the number of cases closed based on the Commission’s expired credential policy:

FY	EXPIRED CREDENTIALS												
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
2013-14	5	5	4	10	10	16	7	7	9	11	7	2	93
2014-15	6	5	18	7	11	14	5	6	10	8	17	16	123
2015-16	10	8	8	12	6	9	11	5	7	2	7	4	89
2016-17	7	6	6	10	9	8	7	7	11	21	6	9	107
2017-18	10	5	8	11	8	18	17	20	19	9	16	19	157

### Timeliness of Action on Cases

In response to the 2011 Bureau of State Audits (BSA) report, staff followed a methodology used by the State Auditor to measure the timeliness of 30 random cases completed during the 2017-18 fiscal year. While the auditor used a random sample of “cases closed by the division or reviewed by the COC” ([April 2011 Audit, page 25](#)), staff used a more rigorous sample using only

cases reviewed by the COC. Of the 30 random sample cases, one case was removed as an outlier that involved a lengthy delay in receiving criminal records.

As indicated in the chart below, DPP has made significant improvements in timeliness when compared to the findings of the BSA audit. The average time it takes to open a case has been reduced from 128 to 14 days. The average time it takes for the Division to take its first action on a case has been reduced from 103 to 14 days. The total average time for a case has been reduced from 683 to 383 days, while the median time was reduced from 721 to 395 days. The “Educator Discipline Timeliness” chart shown below details all of the current milestones compared to the 2011 audit.

<b>EDUCATOR DISCIPLINE – TIMELINESS</b>		
<b>Receive a report of Misconduct</b>		
	<b>2011 BSA</b>	<b>FY 2017-18</b>
<b>Average</b>	128	14
<b>Median</b>	38	15
↓		
<b>Case Opened</b>		
<b>Average</b>	103	14
<b>Median</b>	69	10
↓		
<b>DPP Requests court, law enforcement and other documents related to the misconduct (first action)</b>		
<b>Average</b>	274	185
<b>Median</b>	209	168
↓		
<b>Letter of Inquiry sent (beginning of investigation)</b>		
<b>Average</b>	85	78
<b>Median</b>	86	78
↓		
<b>30 Day/Formal meeting letter sent</b>		
<b>Average</b>	62	65
<b>Median</b>	60	63
↓		
<b>Date of COC Recommendation Action</b>		
<b>Average</b>	88	100
<b>Median</b>	76	98
↓		
<b>RECOMMENDED COC ACTION MOVES TO CTC AGENDA (COMMISSION ACTION)</b>		
<b>TOTAL TIME</b>		
<b>Average</b>	683	383
<b>Median</b>	721	395

### **Adverse Actions**

Adverse actions fall into two categories, mandatory actions and discretionary actions. Mandatory actions are actions required by statute. A criminal conviction for a specified sex offense, drug offense or certain other specified crime requires the Commission to mandatorily revoke all credentials. Mandatory revocations are placed on the Commission’s Consent Calendar for information at the next scheduled Commission meeting.

<b>MANDATORY ACTIONS</b>					
<b>ACTION TYPE</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>
MANDATORY REVOCATION	173	134	146	126	161
MANDATORY DENIAL	46	30	42	41	46
<b>TOTAL</b>	<b>219</b>	<b>164</b>	<b>188</b>	<b>167</b>	<b>207</b>

Discretionary actions are action taken following an Order by the Commission in cases where the COC recommended an adverse action. The COC's recommendation may be accepted by the credential holder or applicant, or it may be appealed. On appeal, an administrative hearing is held before a final action is taken by the Commission. A comparison of the number of discretionary adverse actions is shown in the table below:

<b>DISCRETIONARY</b>					
<b>ACTION TYPE</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>
REVOCATION	222	266	276	242	268
DENIAL	67	92	75	105	121
SUSPENSIONS	320	267	224	255	252
PRIVATE ADMONITION	4	6	1	1	1
PUBLIC REPROVAL	32	40	32	50	45
<b>TOTAL</b>	<b>645</b>	<b>671</b>	<b>608</b>	<b>653</b>	<b>687</b>

The total number of adverse actions has remained fairly consistent, as shown below:

<b>ADVERSE ACTIONS</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>
DISCRETIONARY DECISIONS	645	671	608	653	687
MANDATORY ACTIONS	219	164	188	167	207
<b>TOTAL</b>	<b>864</b>	<b>835</b>	<b>796</b>	<b>820</b>	<b>894</b>

### **Requests for an Administrative Hearing**

At the Formal Review stage, the COC may close its investigation or make a recommendation for adverse action. The person under review for misconduct is provided notice of the recommendation and has the right to request an administrative hearing.

If the person requests an administrative hearing, the Commission is represented by the Office of the Attorney General (OAG) and the matter is heard by an Administrative Law Judge (ALJ) who issues a Proposed Decision to the Commission. The Commission can adopt the Proposed Decision, reduce the penalty, or reject the Proposed Decision and call for the transcript. After review of the transcript, the Commission can adopt the Proposed Decision or issue its own decision. The number of open cases assigned to OAG for representation finally began a decline this FY as shown below:

OPEN CASES ASSIGNED TO OAG												
FY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
2012-13	82	81	82	82	85	87	91	92	97	97	104	127
2013-14	126	134	141	145	147	147	151	156	159	166	169	179
2014-15	182	185	194	215	210	223	215	230	228	219	228	229
2015-16	238	238	244	249	250	254	266	265	280	281	279	278
2016-17	282	283	283	287	290	286	297	292	306	307	289	294
2017-18	288	290	291	299	279	263	240	239	243	232	219	201

OAG adjudicates the Commission's cases by administrative hearing, default, withdrawal by the educator, settlement, or declining to prosecute. The chart below summarizes the OAG's adjudication of cases for the Commission this FY:

ADMINISTRATIVE ADJUDICATIVE	2017-18
DECLINE TO PROSECUTE	7
CONSENT DETERMINATION OR	74
DECEASED	2
PROPOSED ALJ DECISIONS	53
DEFAULT DECISION	26
WITHDRAW ADMIN HEARING	43
WITHDRAW SOI/ACC	6
RECALLED	1

#### Deputy Attorney General (DAG) Requests:

DPP's Investigation Unit (IU) was expanded during the 2016-17 FY and recently assigned a new task of assisting the OAG in clearing its backlog of Commission cases. In providing this support to OAG, the IU locates victims and witnesses, as well as obtains affidavits and other types of documents to assist DAGs in preparation for hearing to the clear and convincing evidence standard. The IU began FY 2017-18 with 34 pending OAG investigation requests leftover from the previous FY, completed 134 and ended with 19 pending requests as shown below:

Total Number of OAG Investigation Requests 2017-18													
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	AVE
Beg Bal	34	32	30	31	26	23	18	27	30	30	21	18	
Requests	13	6	9	11	6	6	18	10	10	6	12	11	9.8
(-) Completed	15	8	9	16	9	11	9	7	10	15	15	10	11.2
End Bal	32	30	30	26	23	18	27	30	30	21	18	19	

## Reinstatement of a Previously Revoked Credential

The Commission hears Petitions for Reinstatement, as required by the Administrative Procedures Act, in Closed Session to determine whether petitioners whose credentials were revoked are now fit to hold a credential. In a Petition for Reinstatement, the petitioner has the burden of proof to show that he or she has rehabilitated from the misconduct that led to the revocation.

During the past five years, the number of Petitions for Reinstatement per year has remained fairly consistent. During FY 2017-18, the Commission granted more petitions than it denied as shown below:

PETITIONS FOR REINSTATEMENT			
FISCAL YEAR	GRANT	DENY	TOTAL
2011-12	10	12	22
2012-13	15	10	25
2013-14	9	16	25
2014-15	13	11	24
2015-16	7	13	20
2016-17	19	14	33
2017-18	18	17	35

## Conclusion

FY 2017-18 was a challenging and busy year for DPP. Here are the highlights:

- DPP's monthly caseload averaged 2,812 open cases, a "new normal," as compared to the prior normal range of 2,400 – 2,600 open cases. The large increase in volume is a result of the upsurge in applications received by both applicants and first time applicants.
- DPP's total number of open cases annually has risen steadily from 5,514 in 2013-14 to 5,895 in 2017-18 based largely on an increase in applications from applicants with a criminal history.
- Over the past five years, the number of applicant cases has increased by 250; the number of applicant/holder cases has increased by 75; and the number of first time applicant cases has increased by 431.
- Due to the increased case numbers, the COC heard an average of 95 Initial Review cases per month during FY 2017-18. This calendar year, the COC will begin hearing 105 cases per month.
- The number of open cases assigned to OAG for representation finally began a decline this FY and is close to equilibrium. The investigative team completed 134 investigative requests for OAG this FY in partnership with the Commission's in-house OAG liaison attorney.
- Despite the ever-increasing workload, DPP has made significant improvements in timeliness when compared to the BSA audit. DPP continues to ensure timeliness by

increasing staff workloads and the number of cases presented to the COC, as well as providing the newly directed investigative support to the OAG.

DPP is able to maintain case efficiency and quality due to a dedicated and knowledgeable staff of technicians, analysts, investigators, legal analysts, attorneys, and managers. DPP's team of employees has all-hands-on-deck in triaging the increased caseload and is currently operating at maximum capacity. The Commission's Executive Director and General Counsel are working with the administration to determine staffing solutions for addressing the rising COC workload and additional investigative support required by OAG. Even in light of the challenges of this FY, DPP continues to timely fulfill its statutory responsibilities in protecting the safety of school children and the due process of California educators.