

Commission on Teacher Credentialing

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

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This report concludes that, according to Commission on Teacher Credentialing (commission) management, as of the summer of 2009 the Division of Professional Practices (division) had accumulated a backlog of about 12,600 unprocessed reports of arrest and prosecution (RAP sheets), resulting from an insufficient number of trained staff, ineffective and inefficient processes, and a lack of an automated system for tracking the division's workload. These conditions appear to have resulted in delayed processing of alleged misconduct and potentially allowed educators of questionable character to retain a credential. Some of the more extreme cases involved allegations that credential holders distributed obscene material to a student, demonstrated recurring misconduct such as prostitution and petty theft, kissed a student, and made inappropriate sexual comments to female students.

The division needs further improvement in its processing of reports of misconduct. For example, the division and the Committee of Credentials (committee) have not addressed some of the important challenges to promptly reviewing reports of misconduct and making recommendations to the commission regarding discipline for the credential holders. Specifically, the division receives more reports each month than the committee can review. To streamline the committee's workload, the division will close or decide not to open cases if it believes the committee would not choose to recommend disciplinary action against the credential holder; however, we question the division's legal authority to do so.

Additionally, the division lacks written procedures for processing reported misconduct, adequate performance data regarding the time needed to review reports, accurate and complete data regarding its caseload, and adequate management reports to facilitate tracking of its caseload.

Finally, 40 percent of the commission employees who responded to our survey indicated that familial relationships or employee favoritism compromised the commission's hiring and promotion practices. In addition, the commission does not have a complete set of approved hiring procedures that it uses consistently, nor do its managers and staff consistently document their steps in the hiring process or their justification for selecting candidates. Consequently, the commission is vulnerable to allegations that its hiring decisions are unfair and that employment opportunities are not afforded equally to all candidates.

In the report, the California State Auditor (state auditor) made the following recommendations to the commission. The state auditor's determination regarding the current status of the recommendation is based on the commission's responses to the state auditor as of October 2011.

Recommendation 1.1—See pages 38 and 39 of the audit report for information on the related finding.

To comply with the law and reduce unnecessary workload, the division should continue to notify the California Department of Justice (Justice) of RAP sheets for individuals in whom the division is no longer interested, so Justice will no longer notify the division of criminal activity for these individuals.

Commission's Action: Fully implemented.

The commission has continued to notify Justice of the RAP sheets it no longer is interested in receiving. The commission also stated it is developing an automated system that it expects to deploy by November 1, 2011, that will notify Justice on a daily basis of the RAP sheets the commission is no longer interested in receiving.

Recommendation 2.1—See pages 48 and 49 of the audit report for information on the related finding.

The commission should revise its strategic plan to identify the programmatic, organizational, and external challenges that face the division and the committee, and determine the goals and actions necessary to accomplish its mission.

Commission's Action: Pending.

The commission stated that, because the executive director plays a critical role in the development and implementation of the commission's strategic plan, it will revise the plan after the newly appointed executive director begins work at the commission on or before November 1, 2011. It also indicated that the commission's quarterly agenda calls for the new executive director to present a plan for revising the strategic plan to the commission at its meeting to be held in January 2012.

Recommendation 2.2—See page 50 of the audit report for information on the related finding.

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.

Commission's Action: Pending.

According to the commission, it is collecting, organizing, analyzing, and using data to identify staffing levels necessary to accommodate its workload. The commission also stated that, to address critical need for staffing in the near term, it adjusted management and staffing in the division and received approval for a freeze-exemption request from the Department of Finance to fill existing vacancies. It indicated that the commission's general counsel will, as part of the annual budget development process, review workload data for the purpose of identifying staffing levels needed to accommodate its workload.

Recommendation 2.3—See page 51 of the audit report for information on the related finding.

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.

Commission's Action: Partially implemented.

The commission submitted a request to the attorney general on May 2, 2011, and the commission indicated it expects to receive the opinion in early 2012. According to the commission, until it receives the opinion, the commission's staff are no longer closing investigations of alleged misconduct prior to the committee's review and action. The commission stated that all cases are being presented to the committee on either a consent or a discuss calendar, which provides a brief description of the offense. According to the commission, cases can be taken off the consent or discuss calendar at the request of any member of the committee for further discussion.

Recommendation 2.4—See pages 49 and 50 of the audit report for information on the related finding.

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.

Commission's Action: Pending.

The commission indicated that once it receives the attorney general's opinion, it will work with the Legislature to address needed statutory changes and it will move forward in adopting any needed policy, regulatory, or procedural changes.

Legislative Action: Unknown.

The state auditor is not aware of any action taken by the Legislature as of January 5, 2012.

Recommendation 2.5—See pages 51—54 of the audit report for information on the related finding.

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.

Commission's Action: Fully implemented.

The commission developed and posted on its intranet a procedures manual that generally indicates revised dates of April and May 2011. According to the commission, it plans to update the procedures manual as the procedures are fine tuned or new rules are developed. It also indicated that the new general counsel will initiate a review of the current manual and establish time frames for annually reviewing and updating the manual to ensure it remains current.

Recommendation 2.6—See pages 54 and 55 of the audit report for information on the related finding.

The division should provide the training and oversight, and should take any other steps needed, to ensure that the case information in its database is complete, accurate, and consistently entered to allow for the retrieval of reliable case management information.

Commission's Action: Partially implemented.

The commission provided training to its staff to ensure that they consistently and accurately enter information into the database. According to the commission, the new general counsel, who was hired in September 2011, will implement a new oversight system that includes establishing performance standards and expectations for timely processing and accurate work, as well as implement procedures to audit and monitor work to ensure prompt and accurate case management.

Recommendation 2.7—See pages 55 and 56 of the audit report for information on the related finding.

The commission should continue to implement its new procedures related to deleting cases from its database to ensure that all such proposed deletions are reviewed by management for propriety before they are deleted and a record is kept of the individuals to which each such deleted case record pertains. Further, the commission should develop and implement policies and procedures related to managing changes and deletions to its database.

Commission's Action: Partially implemented.

The commission developed and implemented procedures related to managing deletions to its database. However, according to the commission, it has not yet had the time to develop and implement policies and procedures related to managing changes, but it plans to address this area in the one-year response.

Recommendation 2.8—See pages 56—59 of the audit report for information on the related finding.

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 all 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.

Commission's Action: Fully implemented.

The commission has developed and implemented an intake document database to ensure that staff promptly log-in and assign a number to all reports of educator misconduct, such as school reports, affidavits, and self-disclosures, it receives. The commission indicated that the intake system allows the division to track complaints that do not become cases, link complaints to a case and an individual, and can generate reports that assist management to monitor the status of the complaints.

Recommendation 2.9.a—See pages 59—62 of the audit report for information on the related finding.

To adequately address the weaknesses we discuss in its processing of reports of misconduct, the division should revisit management's reports and processes for overseeing the investigations of misconduct to ensure that the reports and practices provide adequate information to facilitate reduction of the time elapsed to perform critical steps in the review process.

Commission's Action: Pending.

According to the commission, it has implemented a number of workload and management reports that will help management monitor the volume of work. The commission indicated that staff have conducted a preliminary analysis of the process for tracking the reviews of misconduct that may require mandatory action and requests for information surrounding misconduct reports. It also stated that the commission's next steps to fully meet this recommendation include the new general counsel analyzing and determining whether additional reports are necessary to ensure proper handling and monitoring of the case files. The commission plans to fully address each of the bullets under this recommendation by the April 2012 progress report.

Recommendation 2.9.b—See pages 59—62 of the audit report for information on the related finding.

The division should adequately track 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.

Commission's Action: Pending.

See the commission's response under recommendation 2.9.a.

Recommendation 2.9.c—See pages 59—62 of the audit report for information on the related finding.

The division should ensure that its reports and practices provide adequate information to facilitate prompt requests for information surrounding reports of misconduct from law enforcement agencies, the courts, schools, and knowledgeable individuals.

Commission's Action: Pending.

See the commission's response under recommendation 2.9.a.

Recommendation 2.9.d—See page 60 of the audit report for information on the related finding.

The division should ensure that its reports and practices provide adequate information to facilitate an understanding of the reasons for delays in investigating individual reports of misconduct without having to review the paper files for the cases.

Commission's Action: Pending.

See the commission's response under recommendation 2.9.a.

Recommendation 2.9.e—See page 61 of the audit report for information on the related finding.

The division should provide clear evidence of management review of reports intended to track the division's progress in its investigations of misconduct.

Commission's Action: Pending.

See the commission's response under recommendation 2.9.a.

Recommendation 2.9.f—See page 62 of the audit report for information on the related finding.

The division should clearly track the dates at which the commission will lose its jurisdiction over the case as a result of the expiration of statute-based time frames for investigating the misconduct.

Commission's Action: Pending.

See the commission's response under recommendation 2.9.a.

Recommendation 2.10—See page 61 of the audit report for information on the related finding.

The division should develop and implement procedures to track cases after they have been assigned to the investigative process.

Commission's Action: Pending.

See the commission's response under recommendation 2.9.a.

Recommendation 3.1.a—See pages 67 and 68 of the audit report for information on the related finding.

To better ensure that its hiring decisions are fair and that employment opportunities are 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 prepare and/or formally adopt a comprehensive hiring manual that clearly indicates hiring procedures and identifies the parties responsible for carrying out various steps in the hiring process.

Commission's Action: Fully implemented.

The commission developed and adopted a hiring handbook in June 2011, which identifies the hiring process and the parties responsible for each stage in the hiring process. The commission indicated that the State Personnel Board provided assistance in the development of the handbook and its senior managers reviewed and approved the handbook. The commission also indicated that it is consulting with the State Personnel Board to develop best practices in the commission's office of human resources, including developing and publishing an annual examination plan.

Recommendation 3.1.b—See pages 68—70 of the audit report for information on the related finding.

To better ensure that its hiring decisions are fair and that employment opportunities are 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 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.

Commission's Action: Fully implemented.

According to the commission, it held a training session for all supervisors and managers on June 22, 2011. The training included an overview of the documentation that managers and supervisors must submit to the commission's office of human resources for each step in the hiring process.

Recommendation 3.1.c—See pages 68—70 of the audit report for information on the related finding.

To better ensure that its hiring decisions are fair and that employment opportunities are 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 ensure hiring managers provide to the commission's office of human resources documentation supporting their appointment decisions, 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.

Commission's Action: Fully implemented.

The commission indicated that its office of human resources monitors all hiring processes and maintains documentation for each hiring and examination process, including applications received, notes related to interviews, reference checks, and hiring justification.

Recommendation 3.2.a—See pages 70—73 of the audit report for information on the related finding.

To ensure that employees understand their right to file either an Equal Employment Opportunity (EEO) complaint or a grievance, and to reduce any associated fear of retaliation, the commission should include in its EEO policy a statement informing staff members that they may make complaints without fear of retaliation.

Commission's Action: Fully implemented.

On May 9, 2011, the commission provided its staff an updated EEO policy, which states that employees may make complaints without fear of reprisal. In addition, the commission's EEO handbook informs staff that retaliation and intimidation is not allowed.

Recommendation 3.2.b—See pages 70—73 of the audit report for information on the related finding.

The commission should actively notify employees annually of its EEO complaint and grievance processes, including the protection from retaliation included in both.

Commission's Action: Fully implemented.

The commission stated that it plans to remind all staff members annually of the EEO and Sexual Harassment Prevention Policy and that staff will be required to certify that they have reviewed the policy.

Recommendation 3.2.c—See pages 70—73 of the audit report for information on the related finding.

The commission should conduct training on its EEO complaint process on a periodic basis.

Commission's Action: Fully implemented.

According to the commission, as of August 25, 2011, all managers and supervisors participated in a training workshop on workplace retaliation provided by the Department of Fair Employment and Housing. The commission also provided EEO training to the rank and file employees and a separate training for all supervisors and managers during September and October 2011. According to the commission, it plans to continue to provide this training on a biennial basis.