

# 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

### REPORT NUMBER 2010-119, ISSUED APRIL 2011

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 April, June, and August 2012.

### **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 that as of March 5, 2012, it began an automated process of returning RAP sheets to Justice. Further, the commission stated it promulgated a regulation governing the expiration of fingerprints so that as a person's fingerprints expire under the proposed regulation, the commission's database will automatically notify Justice that it should no longer send RAP sheets for that person.

**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: Fully implemented.***

The commission adopted an amendment to its 2007 strategic plan at its March 2012 meeting. The amendment adds to the current strategic plan a goal 7: "Effectively, efficiently, and fairly monitor the fitness of all applicants and credential holders to work with California students." The amendment also identifies five objectives and the major activities that need to take place in order to implement the objectives. According to the commission, the focus of the first two objectives is the remediation of the issues identified by the state auditor in its report. Finally, the commission also indicated that it held a one-day retreat for strategic planning to consider commission-wide issues and challenges.

**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: Fully implemented.***

According to the commission, its Credentialing Automation System Enterprise (database) now captures every case assignment to staff, every common activity completed by staff, and each change in staff assignment as a case moves through the review process. The commission also stated that it standardized and implemented changes to its work processes, reorganized the staff of the division, restructured the management team to narrow the span of control and increase accountability, and submitted numerous policies regarding cases to the commission for its decision. Further, according to the commission, because of serious budget constraints caused by its decrease in revenue, any increase in staffing levels must be achieved through the redirection of existing resources within the commission or increasing the efficiencies within the division. Although the commission indicated that the data collected within the division will support a workload study, it has yet to perform one.

**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: Fully implemented.***

The commission submitted a request to the attorney general on May 2, 2011. However, in its one-year response, the commission indicated that it was not waiting for the attorney general's opinion to begin increasing the number of cases presented to the committee. It stated that it had taken steps to increase the number of cases the committee was reviewing from 50-60 cases to 100 cases each month by May 2012 to determine if that workload was possible for the committee.

At its August 2012 meeting, the division informed the commission that since May 2011 it has been presenting all cases to the committee and that the practice was working. As a result, the commission adopted the following policy: All matters where the committee has jurisdiction to investigate shall be presented to the committee. Any exceptions to this policy shall only be made where the commission has explicitly granted staff specific authority to take such an action with sufficient clarity that the staff's action is a ministerial duty. Since this policy made the commission's request for a formal opinion from the attorney general unnecessary, it also approved the withdrawal of the request at its August 2012 meeting.

**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: Fully implemented.***

This recommendation was resolved by the commission's actions described under recommendation 2.3.

***Legislative Action: No longer necessary.***

**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.***

As indicated in its six-month response, 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: Fully implemented.***

As indicated in its six-month response, the commission provided training to its staff to ensure that they consistently and accurately enter information into the database. Additionally, in its one-year response, the commission stated that most of the management and supervisory team in the division were replaced and it is in the process of recruiting a new management team. According to the commission, management duties will include routine or scheduled reviews of data.

In an August 2012 update, the commission provided its newly developed policy and procedures for reviewing data to ensure its accuracy. The commission also stated that it selected a random sample of 60 case files and reviewed 23 key data points for each file, creating a possibility of 1,380 errors. According to the commission, it developed, completed, and saved documentation of this review, during which it found a very low rate of error—only seven errors in total. Finally, in keeping with the procedures that the division developed, the commission plans to complete this data audit annually.

**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: Fully implemented.***

The commission developed a deletion management process and created a policy and procedures related to managing changes and deletions in its database. In addition, the policy requires the chief counsel to audit the data on an annual basis which, according to the commission, will occur after the new management team is in place.

**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.***

As indicated in its six-month response, the commission 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: Fully implemented.***

As indicated in its one-year response, the commission developed a variety of case aging reports designed to show the age of cases and to provide management with the information necessary to oversee and monitor the investigation of all reports of misconduct. These reports appear to include information about critical steps in the review process. Additionally, the committee recently reviewed a plan on setting performance measures for critical stages of the division's business processes. The plan also presents proposed targets to perform vital tasks and a proposed report on performance measures, with targets, cycle time, and volume. According to the plan, these measurements will be displayed in a data dashboard, an executive level information display that is designed to be easy to read. However, the commission stated that to implement the dashboard requires revisions to the database, which will not be completed until the summer of 2012. In an August 2012 update, the commission stated that it has implemented the dashboard, which is described more fully under recommendation 2.9.c.

**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: Fully implemented.***

The commission has developed or enhanced reports to track and monitor the progress of cases involving mandatory offenses and it provided examples of these reports. According to the commission, these reports provide the tools needed by management to monitor the workload involving mandatory offenses and to ensure timely revocation or denial of credentials.

**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: Fully implemented.***

In its one-year response, the commission stated that at its January 2012 meeting, it reviewed a “dashboard measurement” tool for setting performance measures for critical stages of the division’s business processes. It also presented proposed targets to perform vital tasks, such as for requesting documents related to the misconduct from the appropriate entities, as well as a sample report on performance measures that displays targets, cycle times, and volumes. However, the commission stated that to implement the dashboard requires revisions to the database, which will not be completed until the summer of 2012.

In an August 2012 update, the commission indicated that it had actually developed and was using two dashboards to provide data about the promptness of handling cases. According to the commission, one dashboard is for the commission’s use in exercising its oversight responsibilities for discipline cases and measures three key stages of the division’s workload: intake of mail, case management, and review by the committee. It also stated that each item on the dashboard gives three critical measurements: volume of work, average time for the work, and the goal for timely action. Further, the commission indicated that it developed and is using a second dashboard that focuses on key areas within the intake unit, which experiences the highest volume of work, to provide managers and staff with an easy to view method of seeing progress and problems.

**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: Fully implemented.***

The commission modified its database to include a “Cause for Delay” activity and it incorporated this activity into three of the reports its database generates. According to the commission, this will allow management to determine whether a case is delayed, whether the delay is caused by an external agency, and the reason for the delay. Although the commission has built the activity into the database, it stated that due to certain warranty issues surrounding its database, it cannot implement the activity until the end of May 2012. Since its April 2012 response, the commission developed procedures on the activities staff will perform to track the “cause for delay” in the database. In June 2012, it conducted training related to these procedures and, according to the commission staff began entering the reasons for delays as they reviewed cases. Finally, in the August 2012 update, the commission stated that its information technology section developed a report on causes for delay.

**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: Fully implemented.***

According to the commission, beginning in October 2011, it has held a weekly management meeting that includes the chief counsel, assistant chief counsel, supervising special investigator, and the acting staff services manager and it plans to include new managers as they are recruited. The commission stated that during the weekly meeting the management team focuses on issues facing the division, including staffing issues, case work issues, and case delays as well as spending some time to review various reports. However, the commission indicated that the management team does not review every type of report at each meeting, but all reports are provided to each manager as they are developed.

**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: Fully implemented.***

The commission stated it modified its database to include statute of limitation dates to show when it will lose jurisdiction to investigate a case. The commission developed a monthly report for the purpose of alerting management about any cases that are within six months of the statute of limitations date, created procedures to inform staff on how to enter the statute of limitations date into the database, and trained staff on the process. For cases involving reports from school districts, the commission indicated that attorneys now review the reports during the intake process to determine the correct date for the statute of limitations.

**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: Fully implemented.***

The commission stated that it developed procedures, modified the database, and developed and implemented the "COC Assigned and Pending Cases" report to track cases after they are assigned to the investigative process. In addition, the commission provided training on the investigative process.

**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.***

As indicated in its six-month response, 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<sup>1</sup> 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.***

As indicated in its six-month response, 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.***

As indicated in its six-month response, the commission stated 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.

<sup>1</sup> On July 1, 2012, the State Personnel Board and the Department of Personnel Administration were combined to create the California Department of Human Resources.

***Commission's Action: Fully implemented.***

As indicated in its six-month response, 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.***

As indicated in its six-month response, 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.***

As indicated in its six-month response, 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.